

This report contains exempt information of the description in paragraphs in paragraphs 1, 2, 3, 4 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 in that it contains information relating to any individual, information which is likely to reveal the identity of an individual, information relating to the financial or business affairs of any particular person (including the authority holding that information), information relating to any consultations or negotiations, or contemplated consultations or negotiations in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the Authority, and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. The public interest in maintaining the exemption outweighs the interest in disclosure because disclosure would adversely affect the Authority's interests.



Northumberland County Council

COUNTY COUNCIL

Strictly confidential and subject to legal professional privilege

27th July 2022

Settlement of Employment Tribunal Claim

Report of the Staff and Appointments Committee

Purpose of report:

This report asks Council to receive and consider the report and the recommendations of the Staff and Appointments Committee (which is attached at Appendix 1) in respect of a settlement of the Employment Tribunal claim presented by the Chief Executive in June 2021.

The Staff and Appointments Committee is scheduled to meet in the morning of the 27th July 2022, accordingly, Council will be provided with a verbal update and confirmation of the Committee's resolution and recommendation. In addition to the verbal update, any agreed resolutions and recommendations will be circulated in the Council chamber.

Recommendation:

To receive and consider the recommendations from Staff and Appointments Committee held on the 27th July 2022.

Link to Corporate Plan:

The Corporate Plan includes a commitment to financial prudence and effectiveness. The County Council is also committed to being a good employer and to manage legal claims effectively and efficiently.

Key issues

1. There are long standing employee relations issues between the Chief Executive and the County Council. Members will recall that in the summer of 2020 the Chief Executive was suspended from her duties. A Disciplinary investigation commenced but was terminated on legal advice and the Chief Executive returned to work.
2. The Chief Executive has made a significant number of complaints under the dignity at work, grievance and member code of conduct policies, and she has commenced a claim in the Newcastle Employment Tribunal alleging detriments arising from alleged 'whistle-blowing'.
3. Staff and Appointments Committee (SAC) has received updates on the progress of these claims in February, April, June and July 2022 and those reports are referred to as related background reports.
4. On 23rd May 2022, the Chief Finance Officer issued a report under Ss114 and 114A of the Local Government Finance Act 1988. The report included two issues in relation to which the Chief Executive has particular responsibility - unlawful expenditure arising from the Council participating in a trading activity otherwise than through a company; and the payment of an allowance to herself of £40,000 per annum.
5. On 8th June 2022 the Council received a report on its Corporate Governance from Max Caller CBE. Mr Caller reported on the irretrievable breakdown in the relationship between the Council and the Chief Executive and recommended that immediate action was needed to resolve her employment position for the Council to move on.
6. Subsequently and following detailed legal advice, the SAC wrote to the Chief Executive seeking her comments in relation to her unlawfully paid allowance and whether, and to what extent, it should be retrospectively approved or repaid to the Council. .
7. The Employment (Appeals) Committee has written to the Chief Executive to invite her representations in relation to matters that could potentially form the basis of disciplinary allegations identified from the Caller Report and S.114/114A report.
8. The Chief Executive has been in poor health for much of this year and has been in receipt of a medical certificates continuously since March 2022. She has been referred by the Council to its Occupational Health Service and regular updates provided to the Staff and Appointments Committee. The most recent Occupational Health advice confirmed that the Chief Executive is incapable of performing her duties for the foreseeable future.

9. At its meeting on 20th June 2022 the Committee received advice from James Goudie QC on the scope for settlement of the claims that outlined the relevant factors to be weighed and balanced if the Council were to consider a settlement of the various issues and claims as between the Council and the Chief Executive. This advice has provided a framework for further mediation with the Chief Executive. This advice is attached to the 27th of July 2022 Staff and Appointments Committee report.
10. Staff and Appointments Committee agreed to delegate authority to the interim Deputy Chief Executive to progress settlement discussions with the Chief Executive and her representatives in consultation with the Chairman of SAC, Executive Director of Finance (Section 151 Officer), interim Director of Governance (Monitoring Officer) and interim Service Director HR & OD.
11. Subsequent to the June meeting, a formal approach was made to the Joint Secretaries of the JNC, to see if they might be able to offer any advice or conciliation. Following correspondence with Mrs Lally's representatives, the Council's external strategic legal advisers (Greenburgh & Co) and your officers concluded that such joint secretarial conciliation was not possible, but the Chief Executive's representatives indicated a willingness to return to the mediation table.
12. Accordingly, on 18th July 2022 the Committee nominated members to a cross-party delegation and a mediation meeting with the Chief Executive and her representatives took place on 19th July 2022 in York. The Council was represented by Mr Greenburgh, of Greenburgh & Co, and the three statutory officers were also in attendance, either in person or virtually.
13. After many hours of detailed negotiation, Heads of Terms were agreed which would terminate the employment of the Chief Executive on the grounds of her ill-health and provide for a comprehensive settlement of all the various claims and counterclaims between the Council, its officers, its members and former members, and the Chief Executive. The objective in reaching this settlement is to draw a line under all the issues in a final way and allow both parties to move forward.
14. On 27th July 2022 the Staff and Appointments Committee will have considered the attached report, marked as Appendix 1 and further advice from James Goudie QC. A verbal update and confirmation of the Committee's resolution and recommendation will be provided verbally to the meeting.
15. In reaching this recommendation, Staff and Appointments Committee have evaluated the proposed settlement terms and alternative courses of action and considered the alternatives available, the costs, impact on the organisation and the countervailing public interest in following due process and allowing the council to move forward with a clear deck. This consideration includes the financial and non-financial terms and the Council's obligations under the Special Severance Payments Statutory Guidance issued by the Government in March 2022. County Council must now form their own judgement on these matters.
16. The external auditor has been consulted and after having taken external legal advice he is presently not minded to challenge the decision.

Implications

Policy	<p>As noted above, the Corporate Plan requires financial prudence and that decisions should be made taking account of best value considerations.</p> <p>The Council sets out to be a good employer, and to act fairly in accordance with its duties.</p>
Finance and value for money	<p>The best value duty, as set out in section 3 of the Local Government Act 1999 (“the 1999 Act”), provides that “A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. The best value duty is relevant to local authority duties to deliver a balanced budget (Part 1 of the Local Government Finance Act 1992), provide statutory services and secure value for money in spending decisions. This will include decisions to make Special Severance Payments.</p> <p>The costs impact and value for money considerations set out in the body of the report and its appendices should be noted. The costs of the settlement can be met from the 2022/23 Contingency Fund.</p>
Legal	<p>The County Council has a duty not to discriminate and any employee is entitled to present a claim. Equally the Council must examine claims carefully and defend them appropriately, irrespective of the identity of the claimant. The Council has engaged expert support from external solicitors to assist with the Tribunal claim and case management generally in relation to these employment issues and related governance matters.</p> <p>Other legal implications have been covered in the body of this report.</p>
Procurement	<p>Not directly applicable. External legal support has been subject to appropriate waivers where required.</p>
Human Resources	<p>These are covered in the body of the report</p>
Property	<p>N/A</p>

Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	The most senior officer of the Council has brought a claim alleging unlawful discrimination. Although the claims for race and sex discrimination have now been withdrawn, this nevertheless has the potential to have a wider impact on EDI within the organisation and in the community whatever the outcome.
Risk Assessment	This is included within the report
Crime & Disorder	N/A
Customer Consideration	N/A
Carbon reduction	N/A
Health and Wellbeing	This is covered in a separate report to Committee
Wards	N/A

Background papers:

N/A

Relevant related background reports from the following Staffing and Appointments Committee

- 17 February 2022
- 7 April 2022
- 20 June 2022[SB1]
- 18 July 2022

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

	Full Name of Officer
Monitoring Officer/Legal	
Executive Director of Finance & S151 Officer	
Relevant Executive Director	
Chief Executive	

Portfolio Holder(s)	
---------------------	--

Author and Contact Details