

## **AUDIT COMMITTEE**

26 July 2023

### **Review of Exit Payments**

Report of Jan Willis, Executive Director of Transformation and Resources and S151 Officer

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#### **1. Purpose of the Report**

- 1.1. To bring to the attention of the Committee the views of the Chief Finance Officer (S151 Officer) on the lawfulness of exit payments to former senior officers.

#### **2. Recommendations**

- 2.1. It is recommended that Audit Committee note the views of the Chief Finance Officer.

#### **3. Link to the Corporate Plan**

- 3.1. This report is consistent with the priorities in the Corporate Plan 2023-26 “Achieving Value for Money”.

#### **4. Background**

- 4.1. In May 2022 I issued a report under S114 and S114A of the Local Government Finance Act 1988 informing Council that in my view it was likely that the Council had incurred and were continuing to incur items of unlawful expenditure in relation to the provision of international consultancy services on a commercial basis outside of a company as required by the Localism Act 2011; and the payment of an allowance to the Chief Executive since 2017 which did not have proper authorisation and was contrary to the Council’s pay policy statement.
- 4.2. One of the agreed actions arising from that report was that I would undertake further investigation to establish whether any other unlawful payments have been made to any officers or former officers, including severance payments, which may require further reports under S114 of the Local Government Finance Act 1988. The purpose of this report is to inform the Committee of the outcome of my consideration of this matter and whether I believe my statutory reporting duty under the 1988 Act has been triggered.
- 4.3. Following my report to Council in May 2022 internal audit was requested to review any exit package where the package exceeded £100k and any package made to a former chief or deputy chief officer in the period from May 2017 to May 2022. In total, 8 exit packages were identified. Of the 8 packages identified, 4 were payments to

former statutory, chief or deputy chief officers. 5 were paid on the basis of redundancy or voluntary redundancy and 3 were mutually agreed exit arrangements. The outcome of the internal audit review was reported to this Committee in January 2023.

4.4. The relevant payments are as follows:

- Chief Executive – £360,000 in 2017/18
- Director of Finance & Chief Executive - £72,312 in 2018/19
- Commissioning and Finance Manager - £135,603.50 in 2018/19
- Short Term Support Service Manager - £110,452.98 in 2020/21
- Service Director Adult Social Care - £435,968.39 in 2020/21
- Legal Services Manager - £72,434.50 in 2021/22
- Revenues Manager - £166,151.66 in 2021/22
- Chief Information Officer - £138,190.79 in 2021/22

4.5. Internal Audit's review was undertaken on the basis of the following objectives:

- To establish the relevant County Council policies in place at the time of each exit payment;
- To assess whether the policies complied with relevant legislation;
- To assess whether exit payments made to former postholders were in accordance with these policies and relevant legislation.

## **5. Legal framework**

5.1. The Localism Act 2011 sets out the requirement for relevant authorities in relation to pay accountability, particularly senior pay. Relevant requirements of the Localism Act 2011 are that:

- The County Council must prepare a pay policy statement (Section 38 (1));
- The pay policy statement must include the County Council's policies relating to the approach to the payment of chief officers on their ceasing to hold office under or to be employed by the County Council (Section 38 (4) (f));
- A pay policy statement must be approved by a resolution of the County Council before it comes into force (Section 39 (1));
- Each pay policy statement must be prepared and approved before the end of the 31 March immediately preceding the financial year to which it relates (Section 39 (3));
- For any determination made by the County Council which relates to the remuneration of or other terms and conditions applying to a chief officer of the

County Council, the County Council must comply with its pay policy statement for the financial year in making the determination (Section 41 (1) and (2)).

5.2 Section 43(2) of the Localism Act defines a “chief officer” as

- a) the head of its paid service designated under section 4(1) of the Local Government and Housing Act 1989;*
- b) its monitoring officer designated under section 5(1) of that Act;*
- c) a statutory chief officer mentioned in section 2(6) of that Act;*
- d) a non-statutory chief officer mentioned in section 2(7) of that Act;*
- e) a deputy chief officer mentioned in section 2(8) of that Act.”*

5.3 Section 2(6) of the Local Government and Housing Act 1989 defines a statutory officer as

- (a) The Director of Children’s Services appointed under section 18 of the Childrens Act 2004 and the director of adult services appointed under section 6(A1) of the Local Authority Social Services Act 1970;*
- (b) The director of public health appointed under 73(A)1 of the National Health Service Act 2006;*
- (c) The Chief Education Officer appointed under section 532 of the Education Act 1996;*
- (d) The chief officer of a fire brigade maintained under the Fire Services Act 1947;*
- (e) The section 151 officer.*

5.2. Section 2(7) of the Local Government and Housing Act 1989 defines a non-statutory chief officer as

- (a) a person for whom the head of the authority’s paid service is directly responsible;*
- (b) a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the head of the authority’s paid service; and*
- (c) any person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority.*

5.3. Section 2(8) of the Local Government Housing Act defines a deputy chief officer as a *person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers.*

- 5.4. Section 43(3) of the Act defines “remuneration”, in relation to a chief officer as
- (a) *the chief officer’s salary or, in the case of a chief officer engaged by the authority under a contract for services, payments made by the authority to the chief officer for those services,*
  - (b) *any bonuses payable by the authority to the chief officer,*
  - (c) *any charges, fees or allowances payable by the authority to the chief officer,*
  - (d) *any benefits in kind to which the chief officer is entitled as a result of the chief officer’s office or employment,*
  - (e) *any increase in or enhancement of the chief officer’s pension entitlement where the increase or enhancement is as a result of a resolution of the authority, and*
  - (f) *any amounts payable by the authority to the chief officer on the chief officer ceasing to hold office under or be employed by the authority, other than amounts that may be payable by virtue of any enactment.*
- 5.5. In February 2012 the Department for Communities and Local Government (DCLG) published ‘Openness and Accountability in Local Pay: Guidance under Section 40 of the Localism Act 2011’ and in February 2013 published a supplementary guidance document. The documents cover Sections 38 to 43 of the Localism Act 2011 and set out the key principles that underpin the pay accountability provisions in the Act.
- 5.6. Paragraph 13 of the February 2012 guidance sets out measures to enable greater scrutiny of the money spent by authorities on severance and appropriate levels of accountability for decisions on high value exit payments. Specifically, the guidance states that *“Authorities should, therefore, offer full council (or a meeting of members in the case of fire authorities) the opportunity to vote before large severance packages beyond a particular threshold are approved for staff leaving the organisation. As with salaries on appointment, the Secretary of State considers that £100,000 is the right level for that threshold to be set.”*

## **6. Key Issues**

- 6.1. In each of the years in question, the Council adopted a pay policy statement by 31 March for the forthcoming year. Each of the pay policy statements included reference to severance and redundancy payments and stated that Staff and Appointments Committee had delegated authority from full Council to approve severance and redundancy payments to Chief Officers. However, the definition of Chief Officers within the pay policy statements for the period 2017/18 to 2021/22 did not accord with the definition set out in section 43(2) of the Localism Act. Specifically, the Monitoring Officer was not designated as a chief officer, nor did the definition include other non-statutory chief officers or deputy chief officers as defined in sections 2(7)

and 2(8) of the Local Government and Housing Act 1989. The effect of this omission was that severance payments to some chief officers were not subject to scrutiny or approval by either the Staff and Appointments Committee or full Council during that period.

- 6.2. A review undertaken by internal audit and reported to this Committee in January 2023 identified 4 exit payments to chief officers in the period May 2017 to May 2022 of which only two (to the former Chief Executive and the former Executive Director of Finance and Deputy Chief Executive) were properly approved by either Staff and Appointments Committee or full Council. It is my view that these two payments were unlawful on the basis that they were not properly approved in accordance with the requirements of the Localism Act regarding exit payments to chief officers.
- 6.3. The Council's Pay Policy Statements for 2017/18 and 2018/19 adequately covered the requirement set out in statutory guidance for exit payments over £100,000 to be approved by full Council. Paragraphs 24 and 25 of both documents including the following provision:

*“The Staff and Appointments Committee has delegated authority from Full Council to approve severance and redundancy payments for Chief Officers, unless the severance package (including redundancy, any discretionary elements, strain on pension fund costs and any pay in lieu of notice) exceeds £100,000, in which case the proposal must be approved by Full Council. Any severance or redundancy package for any other employee where the cost exceeds £100,000 (including redundancy pay, any discretionary elements, strain on pension fund costs and any pay in lieu of notice) must be approved by Full Council.”*

- 6.4. However, for reasons that are unclear, this provision was removed from the Pay Policy Statements for 2019/20, 2020/21 or 2021/22. The 2022/23 Pay Policy Statement, agreed by Full Council on 30 March 2022 explicitly references the requirements of Section 43 of the Localism Act and any “exit packages over £100k.” Further amendments were made to the 2023/24 Pay Policy Statement to ensure full compliance with the requirements of the Localism Act 2011 and statutory guidance.
- 6.5. As a result of this omission, between 2019/20 and 2021/22, five exit packages over £100,000 were not subject to scrutiny and approval by the Staff and Appointments Committee or full Council. This includes one payment to a former deputy chief officer (the Service Director for Adult Services). It is my view that all these payments were unlawful on the basis that they were not properly approved in accordance with paragraph 13 of the 2012 statutory guidance.
- 6.6. Five payments above the £100,000 threshold were made in accordance with voluntary severance and redundancy schemes in operation at the time. In four of these cases, notwithstanding that approval from the Staff and Appointments Committee was never sought, there is evidence of the appropriate value for money checks and senior management sign-off processes having been followed, including

approval by the Chief Executive or Deputy Chief Executive and S151 Officer and confirmation that a minimum 2-year payback period will be achieved.

- 6.7. Of the two severance payments to former chief officers that were not approved by Staff and Appointments Committee or full Council, one (to the former Legal Services Manager and Monitoring Officer) was subject to a settlement agreement arising from mutual agreement to terminate their employment. As noted above, this payment should have been approved by full Council or Staff and Appointments Committee by virtue of the fact that the role of Monitoring Officer fell within the definition of a chief officer in section 43(2) of the Localism Act 2011, notwithstanding that the value of the payment was less than £100,000.
- 6.8. In the remaining case (the former Service Director for Adult Social Care) an exit payment was made on the basis of voluntary redundancy. Again, approval for this payment should have been sought from Staff and Appointments Committee or full Council by virtue of the fact that the role fell within the definition of a deputy chief officer in section 2(8) of the Local Government and Housing Act 1989 and therefore section 43(2) of the Localism Act 2011 and that the value of the payment was well above the £100,000 threshold.
- 6.9. It is my view that both payments to former chief officers were unlawful on the basis that they were not properly approved in accordance with the requirements of the Localism Act 2011.
- 6.10. In considering whether there was otherwise a lawful basis for each of these payments to former chief officers, I have attempted to establish an evidence trail as to why the payments were made, who approved them, whether any alternatives were considered and how making the payments represented best value to the Council and the taxpayer.
- 6.11. In both cases the evidence trail is mostly absent and opaque at best. So far as the payment to the Service Director for Adult Services is concerned, it appears that expressions of interest for voluntary redundancy were originally sought in 2019 from directors in the adult social care service and in principle agreement was given for the voluntary redundancy of the Service Director Adult Social Care with a prospective leaving date of 31 March 2020. Following the outbreak of the covid pandemic in March 2020 the leaving date was amended to 31 May 2020 and subsequently extended further on a rolling monthly basis throughout the summer of 2020. The Service Director Adult Social Care again confirmed on 30 September 2020 that he wished to be considered for voluntary redundancy with a leaving date of 31 December 2020 following a further invitation for expressions of interest from the Executive Director of Adult Social Care and Children's Services on 29 September 2020.
- 6.12. It was subsequently agreed that the leaving date would be brought forward to 31 October 2020. I am aware of speculation that the reason for the leaving date being brought forward at short notice was the imminent introduction of a £95,000 cap on

public sector exit payments which were signed into law on 14 October 2020 and became effective from 4 November 2020. There is no direct evidence of this, and the business case stated that it was due to the deteriorating health of the director. Nevertheless, it is clear that the underlying business case and settlement agreement were drafted with some haste.

- 6.13. Although the name of the Executive Director of Adult Social Care and Children's Services was on the business case along with the Chief Executive, it is not clear whether either had sight of the final version before the settlement agreement was signed on 22 October 2020.
- 6.14. Certainly it would appear that the first time the S151 Officer became aware of the settlement agreement was on 3 November when he was asked by payroll to urgently approve the CHAPS payments on the basis that the Council was legally bound to make payment within 14 days of the agreement. He sought confirmation by email that same day that the payment had been authorised by the ED Adult Social Care and Children's Services and the Chief Executive prior to him authorising the CHAPS payments. It was only at this point that the ED Adults and Childrens Services gave formal approval via the Lagan system. The ED HR&OD responded that she had the Chief Executive's verbal approval and the Chief Executive would provide a signature the following day. In the meantime, she would provide approval on the Chief Executive's behalf in her capacity as Deputy Chief Executive.
- 6.15. Clearly the way approval of the Director's exit package was managed was highly unsatisfactory, even more so considering the significant value of the exit package. The final business case for voluntary redundancy identified costs of £265,223.85 comprising redundancy of £64,656.34 and pension strain of £200,576.51. The salary cap for the purposes of calculating redundancy pay specified in the Council's redundancy policy at that time was not applied in this case, for reasons that are unclear. As a result, the redundancy payment was overstated by £22,348.65.
- 6.16. Annual savings from deletion of the post were identified as £156,076.55 giving a payback period against the original costs of 1.69 years. The final cost of the package including accrued holiday pay and payment in lieu of notice (PILON) was £296,964.23. The payback period on this basis would have been 1.9. By local convention, any payback period of less than 2 years is deemed to offer value for money.
- 6.17. On 6 May 2021 the Council received an invoice for £194,153.90 from NHS Pensions Finance for a final pay control notice issued under regulation D3 of the NHS Pension Scheme Regulations. This appears to have come as a complete surprise to officers in HR, including the ED HR & OD. Following a successful appeal, the amount of the charge was later reduced to £139,004.16. Nevertheless, the effect of the charge was to increase the final total cost of the exit package for the Service Director Adult Social Care to £435,968.39 and to increase the payback period to 2.79 years.

6.18. Clearly, had the potential charge been factored into the business case at the time the Director's redundancy was agreed, the requirement to demonstrate value for money based on a 2-year payback period would not have been met.

6.19. A final pay control charge is made against an employer where a member of the NHS Pension Scheme has been awarded a significant pay increase in the four years prior to retirement. The charge is calculated by reference to an allowable amount which is the lesser of:

- The member's pensionable pay in the relevant year
- The member's pensionable pay in the previous year plus CPI plus 4.5% (CIP plus 7% from 2018 onwards)
- The percentage increase in the member's pensionable pay for the current year compared with the previous year.

6.20. An increase in pensionable pay is disregarded for the purposes of regulation D3 if it is due to promotion on the basis of fair and open competition. In the case of the Service Director Adult Social Care, this was the case: the significant increase in pensionable pay was the result of a series of acting up arrangements and internal promotions.

## **7. Conclusions**

7.1. It is clear to me that six of the exit payments identified by the internal audit review reported to this Committee in January 2023 were unlawful on the basis that the approvals required in the Council's Constitution were not observed and that the payments failed to take account of prevailing policy frameworks, statute and/or statutory guidance. Nor is it clear how in all cases, these payments were reflected in the audited accounts.

7.2. Both S114 of the Local Government Finance Act 1988 and S5 of the Local Government and Housing Act 1989 are written in mandatory terms. Where the relevant officer finds that there is unlawful expenditure or unlawful actions, they shall make a report. At first glance, it would appear that there is a statutory reporting duty in relation to this issue.

7.3. However, further provisions in the relevant legislation indicate an element of discretion. The statutory obligations require the relevant statutory officer to consult the Head of Paid Service and (as the case may be) the S151 or Monitoring Officer in preparing a report. I am advised that the purpose of consultation is to take account of their views and in particular, whether the public interest would be served in a formal statutory report being made in public. It is axiomatic then, that there is discretion as to whether a report is published, depending on that consultation.

7.4. At the forefront of my mind in considering whether to issue a statutory report is whether the public interest would be served, and that the Council has proper arrangements in place to secure 'best value'. The judgement I must make is whether there is sufficient confidence that the lessons of the past have been learned to prevent any repeat of the



issue, and whether members and the public now know the details of what was paid to whom, when and why.

- 7.5. It is already documented in the internal audit report to this Committee in January 2023 that there have been a number of significant severance payments and that those payments did not comply with the approval mechanisms set out in the Constitution, the statutory provisions or the pay policy statements. This report sets out those failings in further detail.
- 7.6. Furthermore, since my S114 report was considered by Council in June 2022, the Council has made significant progress in its governance arrangements and has put in place more transparent and robust reporting and approval processes. The pay policy statement has been amended to ensure compliance with the requirements of the Localism Act 2011. There is now a requirement for the S151 Officer to be consulted prior to entering into settlement agreements and to sign off all exit packages, regardless of value. The requirements of the Localism Act 2011 regarding transparency and accountability for exit payments to chief and deputy chief officers and all severance payments over £100,000 are now well understood.
- 7.7. Having consulted informally with both the Head of Paid Service and the current and former Monitoring Officers and our external legal advisers, I am satisfied that all the relevant facts have been put in the public domain and that the measures outlined above have minimised the risk of any repeat occurrence. Therefore, on balance, I am not persuaded that there is a compelling public interest in making a statutory report concerning these matters, and it is not my intention to do so. In the interests of full transparency, however, it is my intention to bring a full report on these matters to Staff and Appointments Committee at the earliest opportunity.
- 7.8. The only other remaining issue to consider is whether there would be any reasonable likelihood in seeking to recover any payments that were made unlawfully. Having considered legal advice I have concluded that there are not good prospects, and that the legal costs of seeking restitution, and the uncertainty created would outweigh any advantage that might be achieved.

## IMPLICATIONS ARISING OUT OF THE REPORT

<b>Policy</b>	None
<b>Finance and value for money</b>	All exit payments must be in the financial and managerial interests of the Council and demonstrate value for money.
<b>Legal</b>	These are set out in the body of the report.
<b>Procurement</b>	None
<b>Human Resources</b>	Redundancy payments are approved in accordance with the Council's redundancy scheme and pay policy statement. Exit payments may also be made following mutual agreement to terminate employment.
<b>Property</b>	None
<b>Equalities</b>	None
<b>Risk Assessment</b>	None
<b>Crime &amp; Disorder</b>	None
<b>Customer Considerations</b>	None
<b>Carbon Reduction</b>	None
<b>Health &amp; Wellbeing</b>	None
<b>Wards</b>	All

### Report sign off:

	<b>Name</b>
Monitoring Officer/Legal	Stephen Gerrard
Executive Director of Transformation and Resources & S151 Officer	Jan Willis
Chief Executive	Helen Paterson
Portfolio Holder(s)	N/A

### Background Documents

Council 8 June 2022 – Statutory report under S114 and S114a of the Local Government Finance Act 1988

Audit Committee 27 July 2022 – Section 114 report by the S151 Officer

Audit Committee 25 January 2023 – Review of Exit Packages (report of the Chief Internal Auditor)

**Report Author:**

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Item	Page	Explanation of Purpose and Content
Narrative Report	5	To offer interested parties an easily understandable effective guide to the most significant matters reported in the accounts.
Independent Auditor's Report to Northumberland County Council	24	Once the audit is complete the Auditor's report will be signed.
Statement of Responsibilities	27	Sets out the responsibilities of the Council and of the Section 151 Officer for the statement of accounts.
<b>Core Financial Statements</b>		
Comprehensive Income and Expenditure Account (CIES)	29	This statement shows the accounting cost in the year of providing services in accordance with generally accepted accounting practices, rather than the amount to be funded from taxation.
Movement in Reserves Statement	30	This statement shows the movement in the year on the different reserves held by the Council, analysed into 'usable' reserves and other reserves.
Balance Sheet	31	The balance sheet shows the value of the assets and liabilities recognised by the Council as at 31 March. The net assets of the Council (assets less liabilities) are matched by the reserves held by the Council.
Cash Flow Statement	32	The cash flow statement shows the changes in cash and cash equivalents of the Council during the reporting period. The statement shows how the Council generates and uses cash and cash equivalents by classifying cash flows as operating, investing and financing activities.
Notes to the Accounts	35	The notes are important in the presentation of a true and fair view. They aim to assist understanding by presenting information about the basis of preparation of the core financial statements, by disclosing information

Item	Page	Explanation of Purpose and Content
		required by the Code that is not presented elsewhere and by providing information that is not provided elsewhere but is relevant to the understanding of the accounts. They also include the policies and procedures adopted in compiling the accounts.
Housing Revenue Account	147	The Housing Revenue Account (HRA) is a ring-fenced account and records expenditure and income relating to the running of the Council's own housing stock and closely related services or facilities, which are provided primarily for the benefit of the council's own tenants.
Collection Fund Account	155	The Collection Fund is an agent's statement the reflects the statutory obligation for billing authorities, such as the council, to maintain a separate Collection Fund. The statement shows the transactions of the billing authority in relation to the collection from taxpayers and distribution to local authorities and the Government of council tax and non-domestic rates.
Group Accounts	159	The Group accounts consolidate the results and balances of the Council with those organisations considered to be part of the Group.
Firefighters Pension Fund	173	The Firefighters' Pension Fund shows Employee and Employer contributions being paid into the fund, offset by Pension payments being paid out of the fund. The shortfall is met by central government grant from the Home Office.
Glossary of Terms used in the Accounts	177	To assist readers in understanding terminology used in the statement of accounts.