



SIGNED OFF BY	Mari Roberts Wood, Managing Director & Head of Paid Service
AUTHOR	Kate Brown, Head of Organisational Development & HR
TELEPHONE	01737 276092
EMAIL	Kate.Brown@reigate-banstead.gov.uk
TO	Employment Committee
DATE	12 September 2023
EXECUTIVE MEMBER	Deputy Leader and Executive Member for Finance, Governance and Organisation

KEY DECISION REQUIRED	No
WARDS AFFECTED	N/A

SUBJECT	OD & HR Restructure Staffing Update
----------------	-------------------------------------

RECOMMENDATIONS
<p>(i) To note the forecast statutory and contractual payments owed to the referenced Officer in Appendix 1 as a result of redundancy;</p> <p>To recommend to Council:</p> <p>(i) That the employment of the Officer referenced in Annex 1 ends by redundancy (dismissal) on 22 September 2023 with notice to dismiss given on this date and employment terminated on this same date;</p> <p>(ii) That delegated authority to approve the final payment, when employer pension costs are confirmed, be granted to the Managing Director (Head of Paid Service) and Chief Finance Officer (Section 151 Officer) in consultation with the Deputy Leader and Executive Member for Finance, Governance and Organisation.</p>

REASONS FOR RECOMMENDATIONS

To ensure that the requirements under the Localism Act 2011 are met with regards to officer exit payment costs over £100,000.

EXECUTIVE SUMMARY

As part of the Council's approach to secure financial sustainability, an Organisational Development & Human Resources (OD & HR) restructure has been agreed, which strengthens the senior professional and leadership resource in the team and delivers a £0.100 million per year budget saving and a reduction from 13 to 11.0 FTE (which was implemented for 2023/24 onwards).

A full consultation process has been completed, which included both staff within the team and the recognised trade unions.

As a result of this restructure, six positions from the tier immediately below the Head of Service are to be deleted from the establishment. The members of staff employed in those positions have been put at risk of redundancy: three officers directly employed are affected, the other positions are either vacant or being covered via temporary resource.

One officer has accepted redeployment to an alternative role in the new structure at a lower grade, leaving two officers at risk of redundancy.

For the first redundancy case, notice of termination has been given and the redundancy process is progressing, under delegated approval from the Managing Director (Head of Paid Service) and Chief Finance Officer (Section 151 Officer) in consultation with the Leader and Deputy Leader.

This report focuses on the third redundancy case (position reference 2312A, employee ID reference number 0343150) within the service that results in total statutory exit payment costs to the Council that are above £100,000.

The legal and financial considerations are set out within this report and within the Redundancy Case at Annex 1, which includes an explanation of the requirement to comply with regulations issued under the Localism Act 2011 which requires full Council approval to officer exit payments greater than £100,000.

The Employment Committee is asked to recommend that Full Council approves the statutory costs associated with the redundancy in order to issue notice and terminate the officer's employment (dismissal for reason of redundancy).

STATUTORY POWERS

1. There are relevant Acts of Parliament that govern the Council's actions in relation to this report, namely:
 - Employment Rights Act 1996

- Local Government Act 1989, 2000
- Local Authorities (Functions and Responsibilities) (England) Regulations 2000
- Localism Act 2011
- Representation of the People Act 1983
- Income Tax (Earnings and Pensions) Act 2003 (IPETA))
- The Local Government Pension Scheme Regulations 2020 (from the Public Service Pensions Act 2013)

BACKGROUND

2. As part of the Council's approach to secure financial sustainability, an Organisational Development & Human Resources (OD & HR) restructure has been agreed, which strengthens the senior professional and leadership resource in the team and delivers a £0.100 million per year budget saving and a reduction from 13 to 11.0 FTE (which was implemented for 2023/24 onwards).
3. Part of the revised structure focuses on enhancing professional resources within the team to best support the organisation. This is in particular to strengthen senior professional and leadership capacity in the team to deliver strategic aspects of our OD & HR Strategy & Workplan. The revised structure offers enhanced resilience in the team and ultimately more clarity for managers, staff and Members in terms of key contacts within the team – for payroll, operational OD & HR matters and strategic OD & HR advice and support.
4. A full consultation process has been completed, which included both staff within the team and the recognised trade unions, as well as discussions with the Senior Management Team (including the Head of Paid Service and Section 151 Officer).
5. In summary the changes across the service comprise:
 - The HR Manager position is deleted from the establishment (vacant, currently covered by an interim);
 - 6 further senior professional established roles are deleted

This puts the individuals employed in these positions at risk of redundancy (three people in total). The three remaining positions are vacant and being covered by interim arrangements.

- New positions created at the senior level in the team (reporting to the Head of Service):
 - 1 x Senior HR Lead Service Development & Projects;
 - 1 x Senior HR Lead Payroll & Systems; and
 - 1 x Senior Culture and Organisational Development Lead.

6. Those staff at risk of redundancy have been consulted, and this has resulted in one officer accepting an alternative redeployment role at a lower grade within the structure, and the remaining two officers remaining at risk of redundancy.
7. For the first redundancy case notice of termination has been given and the redundancy process is progressing, following approval by the Head of Paid Service and Section 151 Officer in consultation with the Leader and Deputy Leader.
8. This report focuses on the third redundancy case within the service that results in total statutory exit payment costs to the Council that are above £100,000. Further background and full details of the redundancy case are provided at Annex 1.

KEY INFORMATION

9. The Officer does not fulfil any additional or statutory roles that will need replacing.
10. The payment made to the Officer represents statutory and contractual entitlements, with no discretionary element or enhancements
11. As required by The Localism Act 2011, the payment requires approval by Full Council due to the value of the total exit costs as a result of the redundancy.
12. The statutory and contractual sums to be paid to the Officer on termination of employment due to redundancy are:
 - a. Redundancy Pay of £28,951.61
Statutory 29 weeks' pay, tax free as under £30K threshold.
This is calculated using the statutory table based on the individual's age and length of service at the time of redundancy to determine the number of weeks' pay owed.

Contractually the Council's terms are that we base a week's pay on the actual contractual salary, rather than the statutory cap on a week's pay of £669.
 - b. Post Employment Notice Pay/Pay in Lieu of Notice of £11,978.70
Subject to Employer & Employee NI and tax deduction
This is a statutory entitlement to receive paid notice to terminate employment and is 12 weeks' notice in light of the Officer's length of service.
 - c. Pay in Lieu of Annual Leave and accrued time off in lieu of £15,920.74
Subject to Employer & Employee NI and tax deduction.
This is a contractual payment due for accrued annual leave that has not been taken.
 - d. Total exit payment to Officer = £56,851.05
13. The remaining costs resulting from the redundancy are as a result of the requirements under the [Local Government Pension Scheme Regulations in redundancy or efficiency retirement situations](#). Specifically:

If you [employee/officer and member of the LGPS]:

- *lose your job because of redundancy or business efficiency*
- *have met the two-year vesting period, and*
- *are age 55 or over*

your LGPS benefits must be paid to you immediately.

14. The cost of an LGPS member's early access to their pension must be borne by the employing local authority at exit. In this case, the Officer meets the criteria above and the additional Early Access to Pension Employer Cost is: £94,528.87 (based on an estimate provided by the Surrey County Council (SCC) Pensions team).
15. This unavoidable (statutory) additional employer contribution cost is significant due to the age and length of service of the Officer in this case.
16. Taking into account the amount due to the Officer detailed above and the employer pension costs, the total cost to the Council of this redundancy is estimated to be: £151,379.92 (pending final confirmation of pension costs by the SCC Pensions Team). Confirmed figures from SCC Pensions Team will be provided when they (the SCC Pension team) receive formal notification of the redundancy.
17. Employment committee is therefore being asked to note that the employment of the Officer referenced in Annex 1 will end by redundancy (dismissal) on 22 September 2023 with notice to dismiss given on this date and employment terminated on this same date.
18. The committee is also being asked to recommend to Council that delegated authority to approve the final payment, when employer pension costs are confirmed, is granted to the Managing Director (Head of Paid Service) and Chief Finance Officer (Section 151 Officer) in consultation with the Deputy Leader and Executive Member for Finance, Governance and Organisation.

LEGAL IMPLICATIONS

19. The relevant Acts of Parliament that govern the Council's actions in relation to this redundancy situation are provided under the Statutory Powers section above.

FINANCIAL IMPLICATIONS

20. The financial implications of the recommendations in this report are set out below.

21. Summary of costs:

Redundancy & Termination costs to be paid directly to the Officer	£56,851.05
Employer Pension Costs (early access to Pension)	£94,528.87
Sums to be paid to third parties	£0
Total Cost 2023/24	£151,379.92*

*estimate, pending confirmation from SCC Pensions Team

22. Following consultation with the Chief Finance Officer, the cost will be charged to the OD & HR service in 2023/24 and will therefore result in a budget overspend for 2023/24 financial year. This is to be offset where possible through other service budget underspends.
23. The payment will be offset over a period of less than five years through the annual budget saving of £0.100 million that has already been implemented for the service for 2023/24 onwards.

EQUALITIES IMPLICATIONS

24. The equalities implications of this case relate specifically to the potential risk to the Council of a discrimination claim (age discrimination) to an Employment Tribunal if the Officer was not able to access their pension entitlement. Please refer to more details provided under 'Risk Management Considerations' below.

COMMUNICATION IMPLICATIONS

25. Should the redundancy costs be approved, the Officer and Head of Service for OD & HR has agreed how the redundancy situation will be communicated to the organisation.
26. Should the redundancy costs be declined, there is a risk of reputational damage, particularly if the Officer makes a claim to an Employment Tribunal. This situation would need consideration and input from colleagues within our Communication and Engagement Team.
27. A summary of exist payments is reported in the Council's annual statement of accounts.

ENVIRONMENTAL SUSTAIANABILITY IMPLICATIONS

28. There are no environmental sustainability implications arising for this report.

RISK MANAGEMENT CONSIDERATIONS

29. A risk lies around the fact that this redundancy case requires Full Council approval, given the requirements of the Localism Act (2011).
30. Throughout this process the Council's [Redundancy, Redeployment and Early Retirement policy](#) has been followed. Should either the Employment Committee, or subsequently, Full Council reject the recommendations, there would be no feasible mitigations to the risk of the Officer in question taking a legal/tribunal route. This would likely be on the grounds of a Constructive Dismissal claim and also likely at least a claim for Age Discrimination but potentially other discrimination claims too. Given the Officer's professional HR background, they are alert to their legal and contractual entitlements and arguably more likely to take matters to an Employment Tribunal.

31. Compensation for constructive dismissal, if awarded by an Employment Tribunal, is made up of a Basic Award (BA) and a Compensation Award (CA). The BA in this case would be the maximum cap of £19,290 and the CA would take into account loss of wages, future wages, loss of statutory rights and loss of pension, which could be a maximum payment of the Officer's annual salary of £52,056. This could therefore total a maximum of £71,346.
32. As well as a Constructive Dismissal claim, there would likely be a claim for Discrimination (at least Age Discrimination, potentially other discrimination claims). Unlike in unfair dismissal, there is no ceiling on the amount of compensation a tribunal can award for discrimination. The onus of proof would be on the Council to show that there was no discrimination. In every case it is crucial to enquire why an employee has received less favourable treatment, and whether it was on the grounds of age or some other reason. When awarding compensation related to discrimination, the Employment Tribunal will consider loss of earnings, an award for damages for 'injury to feelings', a personal injury, aggravated damages, punitive damages and interest on the sum awarded.
33. If the Officer submitted a claim to tribunal, significant Council Officer time will need to be given to responding/defending the claim. There would also be the cost of Legal representation for the Council to defend the case which would likely run into thousands of pounds.
34. When defending any tribunal claim, even where we would be legally represented, the Council Officer time involved in preparing our defence could be significant and would likely impact Executive Member/Employment Committee Member time too.
35. Additionally, the potential cost to the Council in defending a tribunal claim isn't limited to legal fees, damages or Officer time out of the organisation to defend the claim. It is important to also factor in the potential cost to the Council's reputation and employer brand – negative impact on talent attraction and negative impact on how current staff view us as an employer, with a potential negative cost on employee satisfaction, engagement and productivity. The press and public are usually allowed to attend tribunal hearings and to listen to the evidence and outcome. This means that adverse publicity surrounding any allegations or finding of employer wrongdoing can be extremely damaging.

CONSULTATION

36. Staff consultation on the restructure of the OD & HR team has taken place as well as consultation with the Council's recognised trade unions (meaning that they had an opportunity to comment on the restructure proposals and support any of their union members directly affected by the changes).
37. Formal consultation with the team on the proposals on the amended resourcing requirements and structure of the OD & HR Service began in February 2023 and concluded in June 2023.

38. Consultation has also taken place with the Senior Management Team (SMT), which has included conversations with the key statutory officers (including Head of Paid Service and Section 151 Officer) for delegated authority decisions.

POLICY FRAMEWORK

39. The proposals in this report are consistent with the Council's HR policies.

BACKGROUND PAPERS

None

Annexes

1 – Redundancy Case