

## SLOUGH BOROUGH COUNCIL

**REPORT TO:** Council                      **DATE:** 18<sup>th</sup> December 2018

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**WARD(S):** All

### PART I FOR DECISION

#### PROCEDURES FOR SETTLEMENT AGREEMENTS FOR OFFICERS

##### 1 Purpose of Report

To recommend to Council procedures for dealing with settlement agreements for Officers and consequential actions to enable the operation of such procedures by the Council.

##### 2 Recommendations

The Council is requested to resolve:

- (a) that the resolution adopted by the Council on 28 September 2017 be rescinded and the procedures for dealing with settlement agreements for Officers set out in this Report be agreed; and
- (d) that the Service Lead Governance be instructed to arrange for any necessary changes to the Constitution to give effect to such procedures.

##### 3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

##### 3a. Slough Joint Wellbeing Strategy Priorities

Good governance arrangements will have positive implications for the SJWS and the JSNA

##### 3b Five Year Plan Outcomes

Good governance arrangements relating to the Council's procedures for dealing with settlement agreements for officers leaving the Council will enhance Outcome 3 of the Council's five year plan that Slough will be an attractive place where people choose to live, work and stay.

##### 4 Other Implications

- (a) Financial  
The financial implications arising from this Report appear in paragraph 5 of this Report.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
Procedures for settlement agreements for officers	Risk that the inability to have a flexible and efficient procedure for dealing with settlement agreements with officers will have a detrimental affect on the efficient operation of the Council.	Provisions in The Employment Rights Act 1996, provisions in the Constitution and Council resolution agreed on 28 September 2017	Economic/ Financial:  Probability significant, impact marginal, Score 8  Legal/ Regulatory:  Probability low, impact marginal, Score 6  Management:  Probability low, impact marginal, Score 6.	New procedures set out in the Constitution following the making of the resolutions recommended in this Report.

(c) Human Rights Act and Other Legal Implications

There are no Human Rights Act implications.

Settlement agreements with officers whose contracts for service with the Council are terminating need to comply with requirements set out in the Employment Rights Act 1996 if they are to be legally binding.

(d) Equalities Impact Assessment

There is no need identified for an Equalities Impact Assessment in connections with this Report.

5 Supporting Information

5.1 At their meeting on 28 September 2017 Council passed a resolution in the following terms:

***“That all redundancy / severance packages over and above an individual’s statutory / contractual entitlement will be approved by full Council”.***

5.2 The above resolution is not limited or qualified in terms of the seniority of the Officer who may be involved or in any other way and applies to any settlement agreement under contemplation with any officer at any level.

- 5.3 This requirement has come under consideration recently in connection with agreements that were under negotiation in respect of Officers and which were required to be concluded urgently before the next scheduled meeting of the Council. These agreements could only be progressed under the Scheme of Delegation to Officers allowing the Chief Executive to discharge all Council side functions in case of emergency or urgency and revealed the inherent undesirability of this becoming a common and default procedure for dealing with every such case as such agreements are almost invariably likely to need to be completed in circumstances of urgency.
- 5.4 This recent need for negotiation of settlement agreements has also raised considerations relating to the provisions of Section 111A of the Employment Rights Act 1996 and how these provisions may sit with the Council's resolution. Section 111A provides for the confidentiality of discussions in connection with a settlement agreement by making evidence of such discussions inadmissible in any subsequent proceedings. The purpose of this provision is to encourage the use of settlement agreements as a way of handling potentially difficult employment situations and may be proposed prior to undertaking any other formal process. They can assist to obviate costly legal and disciplinary proceedings. This is recognised by ACAS in their statutory code of practice relating to such agreements. This code is taken into account by Tribunals in relevant cases. The risk of such confidentiality being breached in the context of operating the reporting procedures to Council for any decision under their resolution is also a relevant matter for the Council to consider in the context of this Report.
- 5.5 The confidentiality provisions in Section 111A of the Employment Rights Act 1996 do not prevent matters being raised subsequently at a Tribunal if they relate to an automatically unfair reason for dismissal such as whistleblowing, union membership or asserting a statutory right. Neither do they prevent disclosure where claims are made on grounds other than unfair dismissal such as claims of discrimination, harassment, victimisation or other behaviour prohibited by the Equalities Act 2010. Additionally, these confidentiality provisions do not apply in instances of "improper behaviour" such as fraud, undue influence, perjury, blackmail, threats of physical assault and other criminal behaviour, victimisation, putting undue pressure such as threats of invocation of disciplinary process if a settlement agreement is not signed or, conversely, if any threat is made to undermine an organisation's public reputation if an agreement is not signed (unless the Public Interest Disclosure Act 1998, which protects whistle-blowers, applies).
- 5.6 The Council's resolution also sits incongruously with delegation D.30 in the Council's Scheme of Delegation to Officers. This delegation gives Officers at Service Lead level and above authority to settle any legal / Employment Tribunal claims in accordance with Council policy and procedures whereas they are not able to approve settlement agreements above statutory limits. The use of settlement agreements is likely to be practical only where a payment above statutory limits is under negotiation as there would be no incentive otherwise for such an agreement to be reached.
- 5.7 Statutory guidance issued by the Secretary of State under Section 40 of the Localism Act 2011 requires that any severance packages for staff leaving the

organisation in excess of £100,000 need to be subject to a vote of full council.

5.8 The Council's attention is also drawn, for the purposes of this Report, to Rule 8.27 of the Council's Financial Procedure Rules in Part 4.6 of the Constitution. This provides that Directors must refer to the Service Lead for People and to the Section 151 Officer any payments in relation to redundancy, early retirement or any other payments associated with an employee's termination of employment and that no commitment in these matters shall be entered into without their joint agreement.

5.9 In consideration of the matters outlined above, it is recommended that Council agree to

- (a) rescind their Resolution of 28 September 2017 set out in paragraph 5.1 above;
- (b) agree to procedures whereby payments in connection with termination of employment of officers in excess of £60,000 above statutory or contractual entitlements in any individual case require the approval of full Council;
- (c) that the amounts of all payments in connection termination of employment be reported to the Council annually; and
- (d) The Service Lead for Governance be instructed to arrange for any necessary changes to the Constitution to give effect to such procedures.

## 6 **Comments of Other Committees**

This Report has not been considered by any other Committees. Any changes to the Constitution require the Monitoring Officer's consent and this will be sought appropriately.

## 7 **Conclusion**

It is considered that the adoption of the resolutions recommended by this Report will enable procedures to be put in place which will lead to a more flexible and efficient procedure for dealing with settlement agreements for officers.

## 8 **Background Papers**

The Constitution, Minutes of the Council Meeting on 28 September 2017, ACAS statutory and non-statutory codes of practice on settlement agreements and supplementary statutory guidance "Openness and accountability in local pay: Guidance under Section 40 of the Localism Act 2011" (February 2013) issued by Secretary of State for Communities & Government