

ORDINARY COUNCIL

13th March 2024

**Subject: Next steps arising from an Internal Audit Report into Senior Manager Pay and Conditions**

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**1. Purpose of Report**

To receive the report of the Staff Appointments and Review Panel which met on 27 February 2024 and to make a decision regarding the next steps to be taken to resolve issues identified by the Internal Audit Report into Senior Manager Pay and Conditions.

**2. Links to Council's Priorities and Objectives**

This report relates to the Council's enabler objective – democracy and its decision processes.

**3. Recommendations**

That the Council resolves *EITHER*:

- (1) to ratify the remuneration decisions made by and in respect of the late chief executive and the former chief finance officer as referred to in this report; *OR*
- (2) to note the unlawful decisions and potentially unlawful payments made at that time and obtain further legal and other professional advice and analysis with a view to issuing a claim or claims for restitution; *OR*
- (3) to note the unlawful decisions and potentially unlawful payments made at that time and write down these monies as not to be recovered or irrecoverable.

If recommendation (2) is resolved, that Council further resolves:

- (4) that the s151 Officer is given delegated authority in consultation with either the Leader of the Council or the Cabinet Member for Resources to withdraw from the General Reserve sums above £50,000 to a maximum of £100,000 to meet the cost of the further legal and other professional advice and analysis.
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## **4. Background**

4.1 The Staff Appointments and Review Panel (SARP) met on 27 February 2024 to consider the next steps to be taken following an Internal Audit report into senior manager pay and conditions.

4.2 At SARP, the Committee was asked to consider the same three options as are set out in this report and to provide a recommendation to Council. Following debate, SARP resolved to recommend to Council:

“To note the view as to the unlawful decisions, and potentially unlawful payments made at that time, and to obtain further legal and other professional advice and analysis with a view to issuing a claim or claims for restitution.”

4.3 However, it remains for Council to consider all three options and come to its own resolution.

## **5. Proposals**

5.1 The options available to Council are set out in the SARP Report of 27 February 2024 and are as follows:

Option 1: To ratify the remuneration decisions made by and in respect of the late chief executive and by and in respect of the former s151 officer.

Option 2: To note the view as to the unlawful decisions, and potentially unlawful payments made at that time, and to obtain further legal and other professional advice and analysis with a view to issuing a claim or claims for restitution.

Option 3: To note the view as to the unlawful decisions, and potentially unlawful payments made at that time, and to write down these monies as not to be recovered or irrecoverable.

5.2 The recommendation from SARP is that Council should adopt Option 2 - because of the Council's fiduciary duty to its residents it should seek further advice and if possible, seek to claim back the monies. Further legal and other professional advice is needed because of the complexity of the law around restitution and the need to employ tracing agents to identify sums which might be capable of being recovered.

5.3 If the Council supports the recommendation of the SARP a further report will be presented to Council in the new municipal year with that specialist legal and professional advice. Members will then be asked to make the decision as to whether a claim for the monies should be issued.

5.4 It is prudent of the Council to explore Option 2 given the sums of money paid, but it should be noted that this option will incur additional costs in obtaining the specialist professional advice, and that there is no guarantee as to the recovery of any money. This is an extremely complex area of law and whilst the Council may have been deficient in its governance around decision making, it does not follow that the sums paid are recoverable. The question of lawfulness relates to the governance process which was followed. The subject matter of the

payments was something which a reasonable Council, acting reasonably might have otherwise agreed.

## 6. Corporate Implications

### (a) Financial Implications

- (i) The value of the payments under consideration are set out in the table below. Taking forward Option 2 as recommended by SARP will mean that further legal and other professional advice will be sought on each of these.

Type of payment	Value	Lawfulness
Flexible retirement decisions for senior managers	The value of the pension strain payments was £542,925 - this was paid to the Pension Fund and not to any individual	It is permissible to grant flexible retirement in line with the corporate policy however this decision was taken incorrectly
Flexible retirement decisions for late chief executive	The value of the financial strain payment was £60,085 – this was paid to the Pension Fund and not to any individual	The decision was taken by members – albeit incorrectly by Cabinet instead of correctly by full Council
Flexible retirement scheme additional payments for senior managers through senior manager annual leave buy back scheme	The value of payments is £263,351	No policy framework existed for these payments to be made and there is no evidence that members knew about them (but contractual terms and conditions were amended). Non-Disclosure Agreements were put in place.
Flexible retirement scheme additional payments for late chief executive through senior managers annual leave buy back scheme – includes	The value of payments is £201,966 <sup>1</sup>	No policy framework existed for these payments to be made and there is no evidence that Members knew about them. There is also no evidence that contractual terms and conditions were amended

<sup>1</sup> The value of payments is £201,966. This is higher than in the Internal Audit Report as that only went back to 2016/17 but the payments to the late chief executive under the scheme commenced in 2012/13.

Type of payment	Value	Lawfulness
payment following death		
Authorising performance payments to oneself – late CEX	£79,189	Failure of process and no evidence that Performance Related Pay (PRP) was payable under the contractual terms and conditions
Authorising performance payments to oneself – ex s151 officer	£5,812	Failure of process but PRP was payable under the contractual terms and conditions
<b>Total</b>	<b>£1,153,328</b>	

- (ii) The costs of the additional external professional advisors will need to be funded from the Council's General Reserve. At present there is no estimate of what these costs will be. Under the Council's Financial Regulations, where the sum does not exceed £10,000 the s151 Officer has delegated authority to withdraw from the General Reserve while if the sum is more than £10,000 but less than £50,000, the s151 Officer is able to approve following consultation with either the Leader of the Council or the Cabinet Member for Resources. As the costs could exceed £50,000, if Option 2 is approved, then it is also recommended that the s151 Officer be given delegated approval (in consultation with either the Leader of the Council or the Cabinet Member for Resources, to withdraw from the General Reserve. There is no maximum sum within the Council's Financial Regulations but it is suggested that the delegation be limited to a maximum of £100,000 so that the Council has visibility of the transactions.
- (iii) To date the Council has spent £72,961 in external fees to investigate the issues raised in the Internal Audit report. A grant of £25,000 has been received from the Local Government Association to pay for additional legal advice to the Council to deal with the complex question of lawfulness and recoverability.

**(b) Legal Implications**

- (i) The legal implications for this report are as set out in the SARP Report of 27 February 2024.
- (ii) The meeting of the SARP discussed the means and process by which the monies paid out, as a result of the decisions by former officers that are considered to be unlawful, may be recovered.
- (iii) If Council resolves to pursue this route, this will likely follow a stepped process that will involve:

- a) Obtaining specialist legal opinion - The law in respect of determining the ultra vires payments and claiming the monies back from those who have now benefited from receiving that money (the beneficiaries), particularly in respect of those who received those monies innocently and in good faith have used that money since, is a complex legal area that will require the obtaining of expert advice.
- b) Acting on that advice, identifying those sums that have been paid and that the Council could seek to recover.
- c) Tracing those sums to where the monies, or identifiable assets purchased with those, now lie and with whom, employing agents as required to do so.
- d) Contacting the identified beneficiaries to discuss the possibilities concerning return.
- e) Obtaining further legal advice concerning a claim against those beneficiaries for restitution and unjust enrichment, including an assessment of the defences that the beneficiaries have raised or may have.
- f) The Council, in the form of a report, will then need to consider:
  - to what extent the Council has a reasonable and justifiable claim for restitution and unjust enrichment against individuals, which will more likely than not be upheld by the courts, and
  - where agreement cannot be reached with the beneficiaries, to delegate to the Assistant Director for Legal & Democratic Services and Monitoring Officer authority to issue and settle court proceedings.

**(c) Human Resources and Equality Implications**

**Human Resources**

As set out in the SARP Report of 27 February 2024.

**Equality Implications**

As set out in the SARP Report of 27 February 2024.

**(d) IT and Asset Management Implications**

None.

**7. Timescale for implementation and Risk Factors**

If the option recommended by SARP is agreed, Officers will immediately progress with seeking the additional legal and other professional advice. The report (as referred to in paragraph 5.3) containing the advice will be made to Council as soon as possible.

**8. Background Papers**

SARP Report 27 February 2024

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