

Taunton Deane Borough Council 2018/19 objection summary



The objection

The objection was made in respect of redundancy payments to former employees of Taunton Deane Borough Council as part of the transition to the successor organisation, Somerset West and Taunton Council. The objector posed the following questions as part of their objection:

- a. How many of the 191 redundancies were of employees occupying posts which remain, largely or wholly unchanged, in the new structure?
- b. Of those posts which remain in the new structure, how many were filled at the date of transfer by other members of staff (who might otherwise have been redundant) transferring into them?
- c. Does the redundancy payment of £343,000 to the former Chief Executive include or exclude the sum of £88,899 described as “compensation for loss of office”?
- d. On what basis did the former Council agree to make payment for loss of office in the case of the former Chief Executive when there was no requirement for loss of office?
- e. What financial or other savings or cost benefits accrue to the Council as a result of making the former Chief Executive redundant?

The objector requested that I issue a Report in the Public Interest on this matter under schedule 7 of the Local Audit and Accountability Act 2014 (the Act).

The objector also identified that they believed the Council had acted ultra-vires as staff members could choose to make themselves redundant when, in the objector’s view, these posts were not redundant. I took this to mean that the objector also wished to me to apply to the Court, under section 28 the Act, for a declaration that the salary payments in the areas mentioned were unlawful.

Work carried out

In responding to the objection, our work included:

- a. discussing the issue with key officers and using their responses to understand the Council’s position on the issues and queries raised;
- b. reviewing relevant documentation that supported the decision-making in respect of the redundancies, including the Council’s legal advice; and
- c. obtaining our own independent legal advice on matters of employment law.

Findings

In terms of the specific matters the objector raised, I summarise my conclusions below:

How many of the 191 redundancies were of employees occupying posts which remain, largely or wholly unchanged, in the new structure?

There were 190 redundancies in total as per the 2018/19 audited statement of accounts of Taunton Deane Borough Council, of which 188 were voluntary redundancies and 2 were compulsory.

It was my view that no posts remained wholly unchanged in the new organisation, but the extent to which posts could be said to have remained largely unchanged is less clear. The Council took the view that the nature and the extent of the changes to job descriptions were sufficient to justify the approach that was taken. It is clear that a reduction in headcount was required in certain areas in order to achieve the necessary cost savings, irrespective of whether some of these employees occupied roles that may be considered similar to roles in the new structure. I set out the further consideration of the legality of the redundancy situation in the 'Wider considerations' section later in this report.

Of those posts which remain in the new structure, how many were filled at the date of transfer by other members of staff (who might otherwise have been redundant) transferring into them?

There were 536 employees across the predecessor councils and 190 of them received redundancy payments. However, this does not necessarily mean 346 employees were placed in roles in the new structure, as some previous employees may not have had sufficient length of service to receive a redundancy payment or may have left prior to the voluntary redundancy consultation process.

The predecessor Councils were of the view that none of the posts in the new structure remained wholly or largely unchanged, although it was our view that similarities did of course exist between some old and new roles. A significant proportion of employees were successful in their applications for roles in the new structure as they were considered to have the necessary skills and demonstrated the required attitude and behaviours. I requested the specific details, however after a considerable time delay the Council were unable to provide the total number of posts filled by previous members of staff transferring into them.

Does the redundancy payment of £343,000 to the former Chief Executive include or exclude the sum of £88,899 described as "compensation for loss of office"?

A redundancy payment of £88,899 was made to the former Chief Executive in relation to compensation for loss of office, as disclosed in the accounts. Early payment of pension benefits sometimes results in a shortfall in pension funding as no further contributions will be made in respect of that member. This shortfall is also known as the pension strain, which is required to be paid into to Somerset Pension Fund by the Council. The Pension Fund calculate this amount and request this from the Council, which amounted to £253,036 in this instance.

On what basis did the former Council agree to make payment for loss of office in the case of the former Chief Executive when there was no requirement for loss of office?

I sought clarification on the payments made to the former Chief Executive from independent legal advisors and have based our conclusions upon this advice.

The Regulations governing the merger process specifically set out the basis for the payment for loss of office. The 'Local Government (Boundary Changes) Regulations 2018', Part 4, section 12 set out the statutory provisions.

Findings (cont'd)

The current Chief Executive was appointed 1 January 2019 and the former Chief Executive was made redundant at the end of February 2019. As such it was my view, following consultation with legal advisors, that the Council complied with the legislation referred above and the former Chief Executive was dismissed by reason of redundancy.

The payment of £253,036 in respect of the local government pension scheme appears to have been made in accordance with the requirement in section 30(7) of the Local Government Pension Scheme Regulations 2013.

I did not find evidence to suggest that the payment to the former Chief Executive was unlawful or otherwise inappropriate.

What financial or other savings or cost benefits accrue to the Council as a result of making the former Chief Executive redundant?

The former Chief Executive's redundancy was part of the wider transformation programme which led to the demise of Taunton Deane Borough Council and West Somerset District Council. There were no specific savings directly attributed to making the former Chief Executive redundant.

Based on the revenue and capital budget 2019/20 taken to Shadow Council on 21st February 2019 £197k of savings were expected from the transformation programme in 2018/19, the year of account which the objection relates. The wider transformation programme and savings arising from the new Council were forecast to be £2,195k in 2019/20.

Wider considerations

In considering the objector's view that the Council had acted ultra-vires, I further considered the redundancies. For expenditure to be lawful, the Council needs to have the necessary legal powers to incur it, to have acted rationally in exercising those powers and to have followed appropriate authorisation processes.

In this case, the predecessor Councils appear to have the legal powers to incur the expenditure. Specifically, in respect of the former Chief Executive, 'The Local Government (Boundary Changes) Regulations 2018' provide these legal powers. Legislation also provides for Local Government employees to receive redundancy payments. I sought independent employment law advice on the redundancy situation to confirm that the payments were legally appropriate.

I also concluded that the expenditure was appropriately authorised. The former Chief Executive approved the redundancy policy and minutes from the Shadow Council meeting held 10th September 2018 confirm that the former Chief Executive has the delegated authority to make such decisions. It was also confirmed at this meeting that the former Chief Executive was not responsible for their own potential redundancy, and the legislation referred to above provides the legal basis for this particular payment.

The predecessor Councils considered the availability of suitable alternative roles in the new structure. However, in adopting this process the predecessor Councils departed from their previous longstanding policies of assimilating employees into alternative roles where there was at least an 80% match with their old role. Instead, all employees were given the freedom to express interest in up to three roles in the new structure or to apply for voluntary redundancy. Particular roles were not ring-fenced to specific pools of employees and all applicants had to attend a selection day and were assessed through a combination of interviews and tests.

The Council is able to change its redundancy policy and the new approach was implemented following consultation with UNISON. However, it is concerning that the Council did not seek detailed legal advice before embarking on such a radically different approach. The initial legal advice that was obtained was very limited in scope and insufficient information was provided to enable a meaningful legal analysis to be made of the risks and benefits of this new approach before proceeding with it.

One of the principles for rational decision-making is that the Council took into account appropriate information in taking its decision, with the estimated cost of the redundancies being a key piece of information in this instance. The actual cost of the redundancies was considerably higher than the original estimate and I needed to understand how this had occurred and whether it represented any flaws in the original decision-making.

This appeared to confirm that the Council accepted more applications for voluntary redundancy than was actually required to avoid compulsory redundancies. Many of these were from employees who would have received high enhanced redundancy payments and would have been entitled to an increase in their pensions if they were aged 55 or over. This raises questions over the extent to which the Council followed its own policy when considering applications for voluntary redundancy and whether the escalating redundancy payments and agency worker costs were the best use of public money in this instance.

I also considered the Council's decision to include voluntary, as opposed to compulsory, redundancy as one of the options to staff. Employers are expected to explore alternatives to making compulsory redundancies and offering the opportunity to apply for voluntary redundancy is one of those valid alternatives. Crucially, however, an employer should retain the ability to accept or refuse any particular application to take voluntary redundancy. Appendix B 4.7 of the Council's Organisation Change Procedure, Selection and Redundancy Processes for New Operating Model makes it clear that the Council did retain this discretion.

Wider considerations (cont'd)

This should have meant that applications for voluntary redundancy were only accepted where this accorded with the need to reduce headcount for that job type and allowed the retention of valuable skills and experience in the new structure. However, it is evident from other documents provided by the Council that in some areas the number of voluntary redundancies, and the timing of these, led to immediate staff shortages that had to be covered by more expensive agency workers in the short-term, whilst an external recruitment process took place.

Based on our considerations, and having sought independent legal advice, I concluded that the Council was not acting unlawfully from an employment law perspective by making redundancy payments in these circumstances. However, I noted a lack of evidence that the Council obtained appropriate legal advice, or properly analysed and weighed up all of the considerations involved (i.e. the costs of redundancy against saving money on potential complex debates and claims) in order to ensure that it made the best use of public money and maintained an optimal workforce. It may therefore be argued that the Council did not achieve the best value for money (in terms of outcome vs costs) in this situation, and that its decision-making was to some extent flawed through lack of clarity and explicit consideration of the various factors.

Conclusions

Report in the Public Interest

Having considered the various matters carefully, I concluded that I would not issue a Report in the Public Interest. This was because:

- a. whilst I raised some concerns about aspects of the redundancy scheme, I did not conclude that the scheme, and hence the payments made under it, were unlawful;
- b. I had no concerns over the lawfulness of the redundancy payment to the former Chief Executive;
- c. the decisions in relation to the scheme were taken by the predecessor Councils which no longer exist, with specific delegation to the former Chief Executive who is no longer in post. The need for a Report in the Public Interest to ensure accountability is therefore diminished;
- d. I am satisfied that the lessons which the successor Council needs to learn from this matter are captured in the recommendations I made, and that these recommendations are not of such seriousness that they warrant making in a Report in the Public Interest (or, for the avoidance of doubt, as statutory recommendations under schedule 7 of the Local Audit and Accountability Act); and
- e. through this document, my views on this matter are reaching the public domain and being discussed at the Council's Audit and Governance Committee, which feels to be an appropriate and proportionate approach.

Declaration to the Court

In this case, for the reasons set out in the report, I do not believe that the redundancy payments were unlawful from an employment law standpoint. I have identified some aspects of the decision making which could amount to irrational exercise of discretion, but I have not concluded that there was clearly an unlawful item of account. Furthermore, even if an unlawful item of account did exist, I would not seek a declaration from the Court to that effect because:

- a. as noted above, the decisions in relation to the scheme were taken by the predecessor Councils which no longer exist, with specific delegation to the former Chief Executive who is no longer in post. It is not clear what purpose a declaration would serve;
- b. the costs of seeking a declaration are significant; and while they would be nowhere near the costs of the redundancy payments, given the limited practical result of a declaration, I do not believe it would be in the public interest to incur expenditure on court action in this instance;
- c. there is no suggestion that those who provided or received the redundancy payments did not make or receive them in good faith; and
- d. seeking a declaration would be unlikely to achieve any clarification of the law, as the situation which the predecessor Councils faced and the various factors coming into play was not common across a large number of councils.

Nevertheless, I made recommendations to the Council and will follow these up as part of our audit work. For the avoidance of doubt, these are not statutory recommendations made under schedule 7 (section 2) of the Local Audit and Accountability Act 2014.

Recommendations

I recommend that:

- a. The Council should ensure that key decisions are based upon up-to-date evidence and that an audit trail is maintained following the event to ensure that the decision can be appropriately evidenced. This should include a clear evaluation of the costs and benefits of the decision and an assessment of their value for money.
- b. The Council should ensure that it obtains sufficiently detailed legal advice before it embarks on any significant decisions or transactions, including those with considerable public interest. It should retain written copies of this advice to enable it to evidence the legal basis for the decisions made.



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