

Staffing Committee

Supplementary Agenda

Date: Thursday 25th January 2018
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

12. **Mutually Agreed Resignation Scheme** (Pages 3 - 18)

The Chairman has agreed to this item being considered as an item of urgent business as, in the event of Cabinet approving the Mutually Agreed Resignation Scheme on 6 February 2018, a recommendation to Council is required to amend the Pay Policy Statement to reflect the adoption of the Scheme

To consider a report on the proposed Mutually Agreed Resignation Scheme policy, which will be considered by Cabinet on 6 February 2018

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CHESHIRE EAST COUNCIL

Staffing Committee

Date of Meeting: 25 January 2018
Report of: Head of Strategic HR
Subject/Title: Mutually Agreed Resignation Scheme

Urgent Item - Mutually Agreed Resignation Scheme

1. Cabinet is due to meet on 6th February 2018 and will consider a report proposing the adoption of a Mutually Agreed Resignation Scheme (MARS). Should Cabinet agree to adopt this scheme, then in order to comply with requirements of the Localism Act 2011 in respect of any payments that may be made to “Chief Officers” (as defined in that Act) under the MARS scheme, there is a need for the fact that a MARS scheme has been approved, to be referenced in the Pay Policy Statement (PPS). If the MARS scheme is approved, it is understood to be the intention that it becomes operational from 1st April 2018. In order to be operational by 1st April 2018, reference to it needs to be included in the PPS as intended to be adopted at Council on 22nd February.
2. As Members are aware, it is a function of this Committee to recommend to Council the approval of a Pay Policy Statement. As there is no meeting between 6th February and 22nd February at which the Staffing Committee could re-consider the PPS, an urgent need has arisen for this meeting to consider recommending to Council (in the event of Cabinet approving a MARS scheme at its meeting on 6th February 2018) that the PPS it adopts on 22nd February reflects the adoption of the MARS by Cabinet.
3. Owing to the timescales around the development and proposed approval of the MARS scheme, it has not been possible to take the matter to an earlier Staffing Committee, or place it on the agenda for the current meeting otherwise than as an urgent item.
4. Additionally, this agenda item provides the ideal opportunity for Members to be informed and also to provide feedback and any recommendations to Cabinet. This approach accords with Staffing Committee’s Terms of Reference.
5. Paragraphs 2.33 and 2.34 of the Committee Procedure Rules in the Constitution deal with urgent agenda items as follows:-

Committee and Sub-Committee Agenda – Urgent Items of Business

- 2.33 Generally, business will only be transacted at meetings of Committees and Sub-Committees which appears on the agenda and which has been available for public inspection at least five clear working days

before the meeting or, where the meeting is convened at short notice, from the time the meeting is convened.

- 2.34 The Chairman of the Committee or Sub-Committee may agree to deal with an item of business at the meeting if, in his/her opinion, the matter is urgent given the circumstances requiring a decision. The Chairman's ruling and the reasons for urgency will be recorded in the Minutes of the meeting.

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Cheshire East Council

Staffing Committee

Date of Meeting:	25 th January 2018
Report of:	Sara Barker – Head of Strategic HR
Subject/Title:	Mutually Agreed Resignation Scheme (MARS)
Portfolio Holder:	Cllr Paul Findlow

1. Report Summary

- 1.1 The purpose of this report is to inform and provide Staffing Committee Members with the opportunity to also provide feedback and make recommendations to Cabinet on the proposed Mutually Agreed Resignation Scheme (MARS) policy, prior to Cabinet on 6th February 2018.

2. Recommendations

That :-

- 2.1 The MARS policy and payment schedule is noted by Staffing Committee as outlined in the Appendices of this report.
- 2.2 Feedback is provided at Staffing Committee on 25th January 2018.
- 2.3 An amendment is made to the Pay Policy Statement (PPS) 2018/19 progressing to Council, to include the MARS Policy, subject to approval at Cabinet on 6th February 2018.

3. Reasons for Recommendation

- 3.1 The Council has already consulted on its pre-budget report (2018/21 MTFS Budget Proposal Summary) that it will aim to develop a local Mutually Agreed Resignation Scheme (MARS).
- 3.2 In order to give flexibility to apply the MARS scheme to Chief Officers, the MARS policy is required to be included within Council's Pay Policy Statement (PPS) 2018/2019. That can be achieved when the PPS is presented to 22nd February Council for adoption.
- 3.3 The principles for the MARS scheme were developed from the NHS Staff Council Section 20 national agreement and recommended as good practice for NHS Trusts to support them to alleviate the need for future redundancies and to reduce costs. It has also been used to increase flexibility for an

employer to address rapid change and service redesign. Since then the scheme has become more widely utilised and now operates in Local Government and Education.

- 3.4 Where it is decided to cease or substantially reduce an area of service delivery, any resulting reduction in the requirement for jobs will normally be dealt with under the Council's Redundancy Policy. However, due to a number of years of budget reductions and the merging of many roles, combined with the addition of new priorities, it is often not possible to simply cease or change workloads and make whole posts redundant. As a result, some Councils have adopted Mutually Agreed Resignation Schemes (MARS) which is more flexible, provides choice to employees and employers, opens up career development opportunities and enables cost reductions over the short to medium term. These schemes are usually offered on a time-limited basis, as organisational requirements demand.

4. Other Options Considered

- 4.1 The Council has a range of policies and procedures that allow staff to exit the organisation but many are linked to statutory schemes such as redundancy or the Local Government Pension Regulations. In addition, there are a range of other schemes such as career breaks, voluntary reduced hours and secondment policies which do provide flexibility for staff during their employment. In relation to these policies, the Retirement and Severance Policy is comparable to the proposed MARS policy but it is not as flexible and has limitations. Its main purpose is to be applied in ill health and organisational change/redundancy circumstances. Elements of the Retirement and Severance Policy are aimed at employees over 50 years of age with links to the Council's Pension Discretions Regulations which apply in early retirement, redundancy and grounds of efficiency circumstances only. The MARS policy will be an addition to these policies and will differ in that it is non contractual and voluntary for staff to apply. It also has no pension implications and is more flexible in use for the Council as it requires.

5. Background

- 5.1 The MARS policy and procedures have been developed as a consequence of the staff savings identified in the 2018/21 Medium Term Financial Strategy and is outlined in the Workforce Section of that report.

6. Wards Affected and Local Ward Members

- 6.1 There is no direct impact on wards or ward members.

7. Implications of Recommendation

7.1 Policy Implications

- 7.1.1 MARS enables individual employees, in agreement with the Council, to choose to leave their employment voluntarily in return for a discretionary 'severance' payment. This will be through a voluntary application process

which is non contractual. This creates job vacancies that may be filled by the redeployment of staff from other jobs or for those seeking career development. This will create additional turnover to potentially reduce the risk of future compulsory redundancies, enable the redeployment of resources to higher priority areas of work and reduce costs in lower priority areas.

- 7.1.2 The MARS policy will also be supported by guidance, FAQs and an application process which sets out comprehensive rules and conditions applying to the scheme to provide absolute clarity for both employees and the Council.
- 7.1.3 Approval of MARS applications will be entirely at the Council's discretion. Applications will not be considered where, for example, the service area is subject to consultation for reorganisation and employees are at risk of redundancy. Other criteria are listed in the policy document attached to this report see Appendix 1. There is no right of appeal against non-selection for MARS.
- 7.1.4 Invitations to apply, together with the process and any time limits for doing so, are contained in the scheme guidance and will be communicated to staff by a range of communication methods. Applications will be in writing and follow a formal application and approval process.
- 7.1.5 The Executive Director for the service, in consultation with the Head of Strategic HR, will consider applications; decisions will be made in discussion with the relevant Head of Service based on a business case developed for each application by the Head of Service. Each approved application will require ongoing savings sufficient to recover costs and provide additional financial savings. Staff accepting a severance payment will be required to sign a MARS settlement agreement.

7.2 Legal Implications

- 7.2.1 The MARS scheme does not amount to a contractual entitlement or a change in terms and conditions of employment. As such, there is no requirement to obtain the approval of the Trade Union before it is implemented. However, as noted above, appropriate engagement with the Trade Unions has taken place and is continuing.
- 7.2.2 There will be an additional work stream for Legal Services in documenting the terms of staff departures under MARS. It is currently anticipated that this cost can be absorbed into base operational provision. However, there may be a need for some of the savings retained to administer the scheme to be used to reimburse legal officer costs in order to ensure there is no detrimental impact on the provision of other core legal advice and assistance services.
- 7.2.3 Additionally, it is custom and practice to reimburse the cost of legal fees incurred by departing employees in their consideration of the agreement to document the terms of their departure. That can be in the region of £250-£350 plus VAT per agreement.

7.2.4 As with all such schemes, the Council will have to be mindful of any potential discrimination to those employees with Protected Characteristics especially age. As such, an Equality Impact Assessment has been undertaken with details set out at Par 7.4 below. In addition to the Protected Characteristics consideration has also been given to whether the scheme could amount to less favourable treatment to Fixed Term Workers. There is a risk that a Fixed Term Worker may consider that they have been treated less favourable by being excluded from the scheme. However, the Council would be in a strong position to defend the same on the basis that there is a genuine and appropriate need for the scheme as set out in the main body of this report and therefore can be objectively justified. As with age discrimination, the impact will be kept under review by the HR Team particularly with regard to fixed term employees who have had a number of successive contracts.

7.3 Financial Implications

7.3.1 The Council's financial forecast and supporting strategy has set out the Council's approach to balancing the budget. The development of new proposals such as MARS will seek to achieve a balance between ensuring sufficient resources are available to work on the key priorities with the need to drive transformation and achieve sustainable employee cost reductions. It is estimated in the MTFS that the scheme will save £1.5m during 2018/19 financial year. There is a risk that the savings estimate will not be met as it is dependent on staff applying for the scheme but this will be monitored.

7.3.2 Initially, the scheme may need to be funded centrally to meet the upfront costs of the MARS payments. With the resulting savings (upon the staff leaving or structural re-design) to be allocated against service budgets and recorded separately to monitor the effectiveness of the scheme.

7.3.3 Application will also be made to HMRC to seek agreement that the first £30,000 of any MARS payment will be classed as a severance payment legally and would be tax free. Although it should be noted this is currently under review by HMRC.

7.3.4 Restrictions on the employee returning to CEC employment would be applied. For example, most schemes have a restriction of two years.

7.3.5 Application could be made for MARS payments to be capitalised and potentially funded from flexible capital receipts. This is currently being explored by the Finance Team.

7.3.6 Financial support will also be required as one third of all savings will be retained by the service areas to support structural change and development costs. The remaining two thirds will be retained centrally for budget savings.

7.3.7 As Settlement Agreements will be required as part of the scheme, there will be costs incurred in respect of this legal process as outlined in the legal

Section of this report. Cheshire Pension Fund will be contacted to confirm that no pension liabilities fall on the Council as a result of using this scheme.

7.4 Equality Implications

- 7.4.1 An Equality Impact Assessment has been undertaken identifying a potential risk around Age Discrimination. This is because the payment formula is based on an employee's length of service, which may well mean that older service employees will also be the longer serving employees and thus will receive a larger amount by way of severance than younger employees with less service.
- 7.4.2 That gives rise to a potential risk around indirect discrimination. However, a policy having the potential to amount to indirect discrimination will not be unlawful if it can be objectively justified. It is considered that the operation of the policy can be objectively justified on the basis that:-
- A) It may be more likely, but not always the case that older applicants will have longer service than younger applicants.
 - B) Is seeking to provide a greater financial cushion to older employees which is a legitimate endeavour on the basis that they may face greater challenges in finding alternative employment.
 - C) A flat rate proposal creates a different disparity in that it does not appropriately reflect length of service. For that reason it is likely to prove unattractive and impact on the likely number of applicants. Furthermore, a flat-rate may have the effect of being more appealing to those with less service (and so potentially younger workers) which could also create a risk around indirect discrimination.
- 7.4.3 Adequate consideration has been given to proportionality and alternative options. The Council will need to continue to keep this consideration under review through the administration of the scheme, analyse and assess potential impacts on protected characteristics, and act accordingly. In light of these factors, in conjunction with operational experience with MARS schemes elsewhere in the country, it is considered that this does not pose a significant unmanageable risk.

7.5 Rural Community Implications

- 7.5.1 There are no implications in this report on the rural community

7.6 Human Resources Implications

- 7.6.1 This scheme will impact on HR resources during its development, consultation, and implementation. Organisation wide resourcing implications thereafter will require careful oversight to ensure service demands are achieved and employees are treated fairly.

7.7 Health and Wellbeing Implications

7.7.1 There are no implications for Health and Wellbeing as this scheme is voluntary and up to each employee whether they wish to apply or not.

7.8 Implications for Children and Young People

7.8.1 There are no implications for Children and Young People.

7.9 Overview and Scrutiny Committee Implications

7.9.1 There are no implications for Overview and Scrutiny Committee.

7.10 Other Implications

7.10.1 Communication with the Workforce

7.10.1.1 It is proposed to hold a series of briefings for Managers and interested employees on MARS for a period of four weeks prior to the scheme being launched. This will ensure a thorough understanding of the scheme and allow any detailed questions or queries to be answered.

7.10.1.2 Invitations to apply, together with the process and the duration of the scheme, will be communicated to staff by a range of communication methods including Team Voice and staff briefings. Applications will be made in writing and through a formal application and approval process. Each application process should run for a minimum of three weeks in order to maximise potential savings.

7.10.1.3 A draft communication plan has been developed to ensure that all staff and managers are aware of the scheme and fully understand the implications this will include; roadshows, drop-in workshops, Q&As and staff engagement.

7.10.2 Union Engagement

7.10.2.1 Initial discussions and early briefing of the Trade Unions has taken place. In addition, draft documentation of the MARS will be shared with the trade unions for comment.

8. Risk Management

8.1 There are a number of risks associated with the MARS policy including:-

8.1.1 As employees decide voluntarily whether to apply there is no guarantee how many or which employees will apply for the scheme to enable the level of transformation desired or the estimated savings being realised.

- 8.1.2 Robust governance arrangements need to be in place to ensure that any MARS resignations would not have taken place ordinarily .e.g. normal retirement, resignation to take up a new job, etc.
- 8.1.3 Genuine savings are realised from the deletion of the post following resignation or another saving occurs as a result of staffing reorganisation or changes.
- 8.2 In order to mitigate these risks, effective governance and equality monitoring arrangements will be put in place by the HR Team to ensure that resource implications/decisions do not impact adversely on service delivery and to ensure an equitable operation of the policy.

9. Access to Information

- 9.1 As mentioned in this report, information related to this scheme is included in the Medium Term Financial Strategy.

10. Contact Information

- 10.1 Contact details for this report are as follows:

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MARS (MUTUALLY AGREED RESIGNATION SCHEME) Policy

1. Policy Statement

The Council recognises the importance of creating a secure working environment and will take the necessary steps to ensure continuity of employment wherever possible; by thoughtful workforce planning that ensures the effective, economic and efficient provision of service.

This policy sets out the Council's approach to dealing with potential voluntary severance and this scheme has been designed for occasional use, as required by the Council, in order to make budgetary savings or enable development opportunities. **It does not form part of an employee's terms and conditions of employment and may be subject to change at the Council's discretion.**

The scheme can only be accessed at a time determined by the Chief Executive acting on behalf of the Council and employees have complete discretion to apply when the scheme is open and the right to withdraw at any time up to formal legal sign off with a settlement agreement.

2. Principles

The Mutually Agreed Resignation Scheme (MARS) will be used by the Council to meet the financial challenges including management costs and workforce reductions and other efficiency needs and help to increase our flexibility and be able to address periods of rapid change.

Under MARS an employee can apply to resign from their employment on a mutually agreed date with an additional payment. The additional payment is calculated in accordance with the approved payment table which is part of the Guidance notes for the scheme. **MARS is not a redundancy payment.**

MARS enables individual employees, in agreement with the Council, to choose to leave their employment voluntarily in return for a discretionary 'severance' payment. This creates job vacancies that may be filled by the redeployment of staff from other jobs or for those seeking career developments.

By using this approach, it is hoped it will create sufficient turnover to avoid future compulsory redundancies, enable the redeployment of resources to higher priority areas of work and reduce costs in lower priority areas.

3.Purpose

A range of strategies are being deployed across the Council with the aim of maximising efficiency and creating a more flexible workforce whilst meeting the current financial pressures. This scheme will assist in addressing some of the financial pressures the Council is currently facing. We are also aware that some staff may wish to consider career or lifestyle changes and this scheme is open to all staff (with some exemptions – see below).

4.Business Case

MARS applications must demonstrate that the departure of an employee on severance terms would be in the financial and operational interests of the Council.

The business case to be prepared to leave under MARS should include:

- Why the additional payment represents value for money.
- That application of the scheme will not have an adverse effect on service delivery.

5.Eligibility

All permanent employees of Cheshire East Council, with at least one year's continuous service, are eligible to apply, however there are some exemptions:

Employees employed by a School or ASDV

Employees who are yet to have their probationary period confirmed.

Posts that are under review as part of the Council's managing change or restructuring process.

Employees who are in a consultation process which may result in their role being at risk of redundancy.

Employees who have indicated their intention to resign and/or retire prior to the scheme going live.

Where an employee has already secured employment with another employer.

Where an employee has been notified of the date of the termination of their contract of employment for any other reason

Temporary staff employed through an Agency, Contractors, Consultants, Casual Workers and Apprentices are not eligible to apply.

It is entirely a decision for each employee to decide whether to apply or not as this scheme is voluntary and not contractual. The Chief Executive acting on behalf of the Council can decide to offer the scheme whenever it is considered appropriate to and has the right to change the terms and conditions of the scheme as required.

6.Application Process

Invitations to apply, together with the process and any time limits for doing so, will be communicated to staff by a range of communication methods. Applications will be in writing and through a formal application and approval process.

The MARS guidance, FAQs and Application process set out comprehensive rules and conditions relating to the scheme, to ensure transparency, clarity and financial probity.

The Executive Director for the service will consider applications and decisions will be made in discussion with the relevant Head of Service and HR based on a business case for each application developed by the Head of Service. The business case will always require an ongoing saving sufficient to recover costs and provide additional budgetary savings. Staff accepting a severance payment will be required to sign a MARS settlement agreement.

A business case will be prepared which demonstrates that the costs of the early exit will be recovered through salary savings within a specified period of the termination date, and that there is an ongoing saving in that and future financial years. The saving could be achieved by simply not replacing posts, or replacing them in a different way.

Acceptance of any application for MARS will be entirely at the Council's discretion. Criteria that may be taken into consideration may include:

- Whether the service area is under consultation for reorganisation, at risk of redundancy etc.
- Retention of relevant skills/experience that cannot be replaced at lower cost
- Whether there is anyone else who can undertake the work
- Compassionate grounds or other special circumstances
- The employee's ability to adapt to future changes and requirements
- Creation of internal job/promotion opportunities which provide for succession planning
- Potential impact on other staff

There is no right of appeal against non-selection for MARS.

Employees accepted under the scheme cannot return to the Council's employment for a period of 2 years to the same or similar role.

7.MARS Severance Payments

The MARS guidance document contains details of the Payment Table which is based on the employees reckonable service calculated on the RPMO regulations. The Council reserves the right to review this payment table prior to each round of application invitations.

8.Salary Sacrifice Schemes

Where employees are participating in salary sacrifice schemes at the time of their resignation, payments will be calculated, as there may be an early termination charge. Employees are advised to contact their scheme administrator about this as part of their consideration as to whether to apply for this scheme.

9.Equality

Cheshire East Council will ensure that, when implementing this procedure, no employee will be disadvantaged on the basis of their gender or transgender, marital status or civil partnership, racial group, religion or belief, sexual orientation, age, disability, pregnancy or maternity or caring responsibility. This means that the Policy may need to be adjusted to cater for the specific needs of an individual including the provision of information in alternative formats where necessary.

10.Monitoring

Data relating to MARS terminations will be collated after each period the scheme is used to ensure that the Policy is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

11.Review

The policy will be reviewed in the light of operating experience and/or changes in legislation.

Useful Links:

Prepared by:

HR Policy and Strategy Team

Date:

24.1.18

Review Date:

To be reviewed after the first application process.

Mutually Agreed Resignation Scheme (MARS): Payment Table

MARS payments are calculated using the following Model:

Reckonable Service (completed years' service will be taken as at 1 March 2017)	Scale of payment
1 year's continuous service	12 weeks' basic pay
2 year's continuous service	12 weeks' basic pay
3 year's continuous service	12 weeks' basic pay
4 year's continuous service	12 weeks' basic pay
5 year's continuous service	12 weeks' basic pay
6 year's continuous service	12 weeks' basic pay
7 year's continuous service	13 weeks' basic pay
8 year's continuous service	14 weeks' basic pay
9 year's continuous service	15 weeks' basic pay
10 year's continuous service	16 weeks' basic pay
11 year's continuous service	17 weeks' basic pay
12 year's continuous service	18 weeks' basic pay
13 year's continuous service	19 weeks' basic pay
14 year's continuous service	20 weeks' basic pay
15 year's continuous service	21 weeks' basic pay
16 year's continuous service	22 weeks' basic pay
17 year's continuous service	23 weeks' basic pay
18 year's continuous service	24 weeks' basic pay
19 year's continuous service	25 weeks' basic pay
20 year's continuous service	26 weeks' basic pay
21 year's continuous service	27 weeks' basic pay
22 year's continuous service	28 weeks' basic pay
23 year's continuous service	29 weeks' basic pay
24 year's continuous service	30 weeks' basic pay
25 year's continuous service	31 weeks' basic pay
26 year's plus continuous service	32 weeks' basic pay

To calculate your payment please refer to your latest pay slip, use your basic monthly pay figure, multiply this by 12 and divide this figure by 52.143 to give you your weekly pay. Then, find your total number of year's "reckonable service" with the Council. Your reckonable service date can be found in East self-service under my information and it is your hire date.

If you are unable to access this data or have no computer access, then please call TSC on 01244 977252 for assistance.

Successful applicants will receive a letter of confirmation, outlining the amount due to be paid on termination of your appointment.

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