

Cheshire East Council

Cabinet

Date of Meeting:	6 th February 2018
Report of:	Sara Barker – Head of Strategic HR
Subject/Title:	Mutually Agreed Resignation Scheme (MARS)
Portfolio Holder:	Cllr Paul Findlow, Corporate Policy and Legal Services

1. Report Summary

- 1.1 The purpose of this report is to seek approval for the introduction of a Mutually Agreed Resignation Scheme (MARS) policy and guidance.

2. Recommendations

That :-

- 2.1 The MARS policy, guidance and payment schedule are approved (Appendices 1 and 2).
- 2.2 The scheme is offered to Council employees from April 2018 for a specific period of time as required.
- 2.3 It is noted the Pay Policy Statement (PPS) 2018/19 progressing to Council on 22nd February, will be amended to include the MARS Policy subject to approval.

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 and it should be noted that the settlement agreement will not contain a confidentiality clause.

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 been 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 has been shared with the trade unions for comment. Feedback received from the Trade Unions will be shared verbally with Cabinet on 6th February 2018.

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 not 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. In addition, a review of the MARS will be undertaken by the Head of Strategic HR after a 12 month period and the outcome of that review reported to Staffing Committee and Cabinet.

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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