

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

**Reference Number:**

**3987**

**Author:**

**Paul Slater**

**Department:**

**COVID Response & Recovery**

**Contact:**

**Paul Slater**

**(Job Title: Service Redesign Consultant, Email: paul.slater@nottinghamcity.gov.uk, Phone: 01158763829)**

**Subject:**

**VR Settlement Agreement Costs: Independent Legal Advice**

**Total Value:**

**£75,000 (Type: Revenue)**

**Decision Being Taken:**

**To approve the expenditure to secure Freeths to ensure provision of independent legal advice for employees entering into a settlement agreement as part of a voluntary redundancy process.**

**To approve the use of the workforce reserve to fund this cost.**

**Reasons for the Decision(s)**

Nottingham City Council (NCC) has faced some of its most significant challenges in recent months, both in terms of operational response and the financial impact of the COVID-19 pandemic. While central government is providing some funds for local authorities, it is nowhere near enough and this is only compounding NCC's already finely balanced financial position and existing budget challenges.

To date, NCC have allocated £23.5m of funding from Government towards the general Covid-19 costs and losses. Whilst welcome, this funding is still insufficient in the face of increased service demand and reduced income. The current estimate is that COVID-19 has cost NCC a minimum of £88m and this figure is likely to increase further. Without significant additional funding for COVID-19 costs and losses, NCC face serious concerns over the budget for this year. The financial impact of Covid-19 is also likely to affect our budget for several future years.

In response to COVID-19 and the existing budget challenges, NCC is actively lobbying Government for additional support. However, indications are that any further funding is likely to be limited, for example the Government has already indicated lost income will only be funded at 75%.

NCC has a set of budget proposals that may result in redundancies. NCC aims to reduce the need for any compulsory redundancy through the consultation process. Where redundancies are required, it is proposed that Voluntary Redundancy (VR) applications will be used to fulfil the budget proposals.

The final date for VR applications is 19 August 2020. VR applications for colleagues that are approved by management will be required to receive independent legal advice prior to signing the agreement. This decision therefore is to request the expenditure to enable the settlement agreement process to go ahead and achieve the ultimate savings required in the budget proposals.

**Other Options Considered:**

1. Not to commission external solicitors. There is a requirement to have independent legal advice for employees required to sign settlement agreements.

2. Arrange and commission independent legal advice.

The procurement process of identifying 3 quotes has been followed. The preferred external solicitor offered best value in terms of cost, the level of service to support VR process, which also requires minimal labour resources on behalf of the Council to facilitate.

**Background Papers:**

NA

**Published Works:**

Revisions to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 - Policy Statement - Appointment and Conditions of Service Committee - June 2020

**Affected Wards:**

Citywide

**Colleague / Councillor  
Interests:**

**NA**

**Consultations:**

**Those not consulted are not directly affected by the decision.**

**Crime and Disorder  
Implications:**

**NA**

**Equality:**

**EIA not required. Reasons: No potential adverse impact on workforce or citizensAn EIA has been completed for VR incorporating this aspect of the process.**

**Social Value  
Considerations:**

**NA**

**Decision Type:**

**Portfolio Holder**

**Subject to Call In:**

**Yes**

**Call In Expiry date:**

**25/09/2020**

**Advice Sought:**

**Legal, Finance, Procurement**

**Legal Advice:**

**Nottingham City Council (the "Council") are undertaking a voluntary redundancy exercise. In cases where employees' applications for voluntary redundancy are approved, it is a requirement that they enter into a settlement agreement with the Council. From the Council's point of view, one of the functions of a settlement agreement is to ensure that an employee will not bring a legal claim against the Council. In order for a settlement agreement to be legally binding, it is necessary that the requirements of section 203(3) of the Employment Rights Act 1996 (the "ERA 1996") are met. For the purpose of this advice, the relevant requirements are that the employee must have received advice from a "relevant independent adviser" as defined by section 203(3A) of the ERA 1996 and that such an adviser has appropriate insurance or an indemnity covering the risk of a claim in respect of loss arising in consequence of the advice given. Of the three firms of solicitors considered, all will engage individuals capable of qualifying as a "relevant independent advisers" as defined by section 203(3A) of the ERA 1996 and all will be capable of having the appropriate insurance or indemnity in place.**

**Although it is not a legal requirement for an employer to pay towards the cost of the employee obtaining advice from a "relevant independent adviser" it is common practice for it to do so, (it ensures that the requirements stipulated under section 203(3) of the ERA are met). The Council has a practice of only paying towards an adviser's fee where an employee is not represented by a trade union and/or is personally liable for the fees of the adviser.**

**If this proposal is accepted then, when putting forward the name of a firm which employees can seek advice from, it should be made clear that employees can exercise their own choice as to who they can seek advice from i.e. employees are not obliged to seek advice from a firm nominated by the Council.**

**Aman Patel, Solicitor, Commercial, Employment and Education Team Advice provided by Aman Patel (Solicitor) on 10/08/2020.**

**Finance Advice:**

**The costs associated with this decision will be funded from the workforce reserve (held corporately) which also supports other redundancy costs.**

**The Voluntary Redundancy approach forms part of the budget strategy being undertaken by the organisation to deliver in year and future year savings.**

**This decision is only focused on the additional external advice required and does not predicate any decisions regarding individual redundancies'. Advice provided by Ceri Walters as Finance Co-ordinator (Head of Commercial Finance) on 20/08/2020.**

**Procurement Advice:**

**This decision relates to the commissioning of external solitors to provide independent legal advice for Council employees entering into a settlement agreement as part of the voluntary redundancy process. The solitors have been selected through a quotation process undertaken to secure the offer which represents best value to the Council in relation to the cost to the Council and resources involved, and the level of service offered. An appropriate agreement should be in place with the solicitors to ensure the Council's requirements are met. Advice provided by Jo Pettifor (Procurement Team Manager) on 13/08/2020.**

**Signatures**

<b>Eunice Campbell-Clark (Portfolio Holder Health, HR and Equalities)</b>
<b>SIGNED and Dated: 17/09/2020</b>
<b>Hugh White (Corporate Director for COVID Response and Recovery)</b>
<b>SIGNED and Dated: 06/09/2020</b>