

<b>APPOINTMENTS COMMITTEE</b>		
<b>Report Title</b>	<b>Terms and Conditions of new Chief Executive Post</b>	
<b>Key Decision</b>	no	
<b>Ward</b>	n/a	
<b>Contributors</b>	<b>Head of Organisational Development and Human Resources</b>	
<b>Class</b>	<b>Part 1</b>	<b>Date 13 November 2017</b>

## **1. Summary**

This report asks the Appointments Committee to note that Barry Quirk, the Council's incumbent Chief Executive, has given notice to terminate his employment with the Council, and to recommend the terms and conditions of employment for the new Chief Executive. By law the decision to appoint a new Chief Executive is reserved to full Council and as such Council will receive a report on the process for recruiting the new Chief Executive on the 22<sup>nd</sup> November 2017. The Appointments Committee recommendations on terms and conditions of employment will feed into this Council report.

## **2. Purpose**

The purpose of this report is to recommend terms and conditions of employment for the new Chief Executive to allow for a search and selection campaign to take place to enable the council to recruit a new Chief Executive of a high level, subject to approval by Council on 22<sup>nd</sup> November,

## **3. Recommendations**

3.1 To note that the Chief Executive has served notice of termination of his employment with the Council and that his last day of service will be [31/01/2018]

3.2 To recommend to Council the terms and conditions to which a new Chief Executive will be recruited:-

3.2.1 The Chief Executive post will be appointed to on a full time basis.

3.2.2 The salary range of the Chief Executive post will be £175,000 to £185,000 depending on the experience of the candidate.

3.2.3 To delegate to the Head of Organisational Development and Human Resources, having taken external advice, authority to approve that the

maximum salary can be increased by up to £10,000 to secure an exceptional candidate who would otherwise not be appointed.

3.2.4 To delegate to the Head of Organisational Development and Human Resources authority to amend the job description and person specification on external advice, without changing substantially the nature of the role, to the extent necessary to reflect current requirements and best practice.

3.2.5 To delegate to the Head of Organisational Development and Human Resources, on advice from the Head of Law, authority to finalise the Chief Executive contract in a way which reflects the existing contractual terms and conditions and reflects current legislation and circumstances subject to the changes proposed in 5.1 – 5.22 relating to remuneration, the role being a full time position and the removal of provisions relating to payment on termination .

## **4 Background**

### *The incumbent Chief Executive*

4.1 Barry Quirk has served as the Council's Chief Executive for approximately 23 years, since his appointment in November 1994.

4.2 It is testament to the high esteem in which the Chief Executive is held that, following his involvement with several other London Chief Executives via London Gold in response to the tragic events at Grenfell Tower on 14 June 2017, on 23 June 2017, Barry Quirk was seconded from Lewisham to the Royal Borough of Kensington and Chelsea (RBKC) to act as their Head of Paid Service. He was given particular responsibility to be the officer lead on their response to the disastrous fire that sadly took the lives of so many people and had such a devastating effect on the lives of so many more.

4.3 RBKC has agreed to reimburse Lewisham for the full costs of the Chief Executive's Lewisham salary during this secondment and will continue to do so until the Chief Executive's formal last day of service with the Council. For the element of his time when the Chief Executive is not employed by Lewisham, he is employed directly as the Head of Paid Service with RBKC, a role which he will conduct on a full time basis, once his employment with Lewisham formally comes to an end.

4.4 Barry Quirk has now served formal notice of termination of his employment with the Council and his last day of service with the Council will be [31/01/2018]

### *Interim arrangements*

- 4.5 On the secondment of the Chief Executive to RBKC, it was imperative to put in place temporary arrangements that secured appropriate continuity in the management of the Council. Because of the strength of the Executive Management Team which works collaboratively and efficiently together, the Chief Executive delegated authority to Executive Directors to act with his authority within their own remit, with the overall corporate management of the Council delegated to the Executive Director for Resources and Regeneration.
- 4.6 During the period of his notice, whilst formally employed with the Council, the Chief Executive retains the responsibilities that attach to his role and proposed future interim arrangements will be reported to Council on 22 November to cover the period until the new Chief Executive is in post.

## **5 The Terms and Conditions of the New Chief Executive**

### *Full Time Role*

- 5.1 Barry Quirk was appointed on a full time basis on November 1994, and is the longest serving Chief Executive in the whole of English Local Government.
- 5.2 At its meeting on 17th February 2011 the Appointments Committee agreed, under the Council's flexible retirement scheme, to vary the Chief Executive's contract of employment so that his hours and salary reduced to the equivalent of 60% of his full time salary. It received an independent report from Stephen Taylor of Blakesley Associates who recommended that although 'a part time Chief Executive would not normally be appropriate' that a 'unique set of circumstances call for a unique consideration'. It was recognised that allowing Barry Quirk to reduce to three days a week enabled the Council to retain the services of a Chief Executive with vast amounts of experience who is very highly esteemed not only in the local government world but across the public sector.
- 5.3 This reduced hours arrangement has been under continual and regular review by the Appointments Committee.
- 5.4 At its meeting on 31 October 2016, the Appointments Committee reviewed and approved the current Chief Executive's working arrangements but resolved that should he leave the Council's service, the terms and conditions attaching to the post should be reconsidered. It received an independent report from Jerry Cope of t-three Group that concurred that 'if a new Chief Executive is appointed in the future, a high level evaluation suggested that this would need to be on a full time basis, as is common across London boroughs'. Their recommendation was based primarily on the grounds of workload and expectations, but also considered the issue of being able to attract a candidate to apply for such a high demanding role whilst only being paid for three days to carry it out in.

- 5.5 However the unique set of circumstances that supported a part time Chief Executive have changed. The Chief Executive will now be new in role and also joining a new administration following Mayoral and local elections in May 2018. Whoever is elected, the new administration will no doubt want to set the Council's future direction as soon as possible, so that the vision of a new Mayor and Council can be embarked upon at the earliest opportunity with a view to improving the life chances of local people and improving the Council's contribution to their wellbeing. The time requirements on a new Chief Executive to support delivery of the future direction will be far too stretching to be able to consider anything other than a full time position.

### *Remuneration*

- 5.6 The Chief Executive's role in local government is highly complex, managing diverse functions in a highly politicised environment where often local and national pressures conflict. The Council's ability to attract and retain a high calibre leader capable of delivering this complex agenda, particularly during times of financial challenge is crucial.
- 5.7 Recruitment for Chief Executives is currently an extremely competitive market with a high degree of turnover across the London Boroughs and upcoming appointments at Westminster and Hammersmith and Fulham and possible appointments to come at other London Boroughs. On a national level there are also recruitment campaigns running for Chief Executives at Birmingham, Surrey, Worcestershire and Wokingham.
- 5.8 The remuneration offered for the post needs to be adequate to attract and retain a high quality employee dedicated to the service of the public. However, at the same time with the current challenging financial climate, there is a need to avoid being unnecessarily generous or otherwise excessive.
- 5.9 Therefore, to enable a salary range to be set for the new Chief Executive external research has been conducted to both understand the London Local Authority landscape and also through leading search consultants with experience of the London Local Authority marketplace, to understand the dynamics of what salary range would need to be offered to attract a high calibre appointment. This wide external expert referencing has taken place due to there being insufficient time to reconstitute the independent Executive Remuneration Panel following the resignation of the chair.
- 5.10 Analysis of Chief Executive basic salaries across London has been carried out using London Councils 2016 data (Appendix A). This is the best representation of current data available but needs to be caveated by the facts that there will have been a few post changes since the data was collected and that the data does not include the 1% pay award to Chief Executives this year.

- 5.11 With the 1% pay increase factored in London Borough Chief Executive basic salaries vary widely and range from £162k (Islington) to £242k (City of London). However it is important to reflect that some Boroughs, unlike Lewisham, also pay additional remuneration, such as a car allowance or performance bonus.
- 5.12 Analysis of Inner London versus outer London salaries (Table 1 below) shows not surprisingly a c£12,000 premium to Inner London Salaries. However, when analysing salaries by political control there is little difference between inner London and Outer London for Labour controlled Boroughs.

**Table 1 Analysis of London Chief Executive Basic Salaries**

	All London Councils	Conservative	Labour	Liberal Democrat	No Overall Control
Inner London	£193,932	£209,899	£182,531		£215,581
Outer London	£182,064	£184,110	£183,902	£164,630	£167,216
TOTAL	£185,035	£193,780	£183,353	£164,630	£199,459

Source London Councils 2016 (uplifted by 1% pay award)

- 5.13 The full time equivalent salary for Lewisham's Chief Executive is currently £196,254, for which Barry Quirk was paid on a pro rata basis at 60% full time equivalent, receiving £117,752 per annum.
- 5.14 Expert advice has been sought by the Head of Organisational Development and Human Resources from leading search and selection consultants with experience of the Local Authority Chief Executive market place and in particular with experience of the London landscape. These independent consultants were asked to give advice on the salary range that should be offered to attract a strong candidate (table 2 below)

Search Consultancy	Salary Range	Additional Comments
Penna	£165k - £185k	Appointment salary based on experience but within this range. However if you wished to attract existing London Chief Executives then the top of the range and possibly more could have to be paid.
Gatenby Sanderson	£180k	Would attract Executive Directors from London Boroughs and possibly Chief Executives from Unitary Authorities, but more may need to be paid in order to attract a highly experienced Chief Executive
SOLACE	£170k - £180k	

Berwick/Odgers	£175k - £195k	
Davidson and Partners	£185k - £195k	To attract interest from some existing London borough Chief Executives would need to pay £195k

- 5.15 When considering the correct salary range to offer one needs to take into account that offering a salary range that is too low will mean it will be more difficult to attract Executive Directors from both London Boroughs and County Councils, as the premium to their existing salary would be too little. Also there is a need to be mindful that potential candidates will be aware that other Boroughs have Chief Executive vacancies that may be advertised soon, and that potential candidates may hold out for these if the salary on offer at Lewisham is not sufficiently attractive.
- 5.16 In summary, the most important consideration is that the salary on offer is right for Lewisham and reflects the challenges of the role but avoids being unnecessarily generous or even excessive. Bearing this in mind, and the analysis and external advice in the points above, it is suggested that the salary range on offer should be £175k - £185k to attract strong Executive Directors from London, County Councils and major Metropolitan Councils as well as Chief Executives from Unitary Authorities, and also allow Lewisham to be competitive in light of possible upcoming Chief Executive vacancies. The salary range represents up to c£20k reduction against the current full time equivalent salary for Lewisham's Chief Executive of £196,254
- 5.17 To support what is a dynamic process, officers recommend that delegated authority be given to the Head of Organisational Development and Human Resources to agree, having taken external advice, that the maximum salary can be increased by up to £10,000 to secure an exceptional candidate who would otherwise not be appointed.

*Other Contractual Terms and Conditions*

- 5.18 The role profile and person specification will need to be refreshed to ensure they reflect the present day and future requirements of a Chief Executive role, as the existing version was produced 20 years ago. It is proposed that the Head of Organisational Development and Human Resources update these as appropriate with the support of external advice to reflect current requirements and best practice. However, any changes would not substantially change the nature of the Chief Executive role.
- 5.19 The Chief Executive contract again was mainly written 20 years ago and needs refreshing mostly with minor changes to better reflect the newer wording in Lewisham's standard contract and the JNC Local Authority Chief Executives conditions of service handbook. It already contains the standard

sickness absence entitlements and annual leave provision. Newer standard contract clauses for example around intellectual property rights will be added as well new clauses under an emergency planning heading relating to the Chief Executives Gold Command responsibilities at both a Borough and London level.

5.20 Termination notice periods in the contract have been reviewed. The clauses that it is proposed will remain will be the notice period that the Chief Executive would need to give the Council (at least three months written notice) and the Council needing to give the Chief Executive six months notice for reasons outside gross misconduct/misconduct/incapability. Also the standard clauses relating to gross misconduct (no notice period), incapability (three months written notice) and committing act/acts of misconduct (three months written notice) would remain.

5.21 The current contract of the Chief Executive contains a provision for a termination payment in the event of his dismissal from the Council for a reason that would amount to unfair dismissal. These provisions were agreed at the time when the Chief Executive was already in post and moving from a fixed term contract to a permanent one. They were agreed by Members and considered appropriate in the circumstances prevailing at the time. However the appointment of a new Chief Executive will be in a different context and officers are of the view that such a clause is not now necessary or appropriate. In any event, anticipated legislative changes are likely to limit the scope for any such payment. For these reasons, officers propose that there be no provision for a termination payment (other than for notice) in the contract of the new Chief Executive.

5.22 Therefore the Appointments Committee is asked to agree that a Chief Executive be appointed on a contract which mostly reflects the existing contractual terms and conditions, with the main contractual changes recommended being those proposed earlier relating to remuneration, the role being a full time position and the removal of any contractual provisions relating to payment on termination .

## **6. Legal Implications**

6.1 The Appointments Committee is being asked to consider the terms and conditions on which a new Chief Executive is to be appointed. Under the Council's Constitution, such matters are delegated to the Appointments Committee. The Council will receive a detailed report on the process to be followed to appoint a new Chief Executive when it meets on 22<sup>nd</sup> November to which this report and the resolution of this committee will be appended.

6.2 The Council's general power to appoint staff is set out in Section 112 Local Government Act 1972. In Lewisham, the Chief Executive is designated as the Head of Paid Service under Section 4 Local Government and Housing Act 1989. This is a statutory post with the duties set out in Section 4 (3) of the

1989 Act which include reporting, (where they think it appropriate) on the co-ordination of the discharge of the Council's functions, the number and grades of staff required, the organisation of staff and their appointment and proper management. The post is also designated as the Council's Returning Officer and Electoral Registration Officer for the purposes of legislation pertaining to electoral law.

- 6.3 By virtue of the Local Authorities (Standing Orders) (England) Regulations 2001, as amended, Councils must include in their procedural rules that an offer of appointment as the Head of Paid Service is subject to the approval of full Council. Before an offer of appointment may be made, the Regulations require that the Authority must ensure that the proper officer notify each member of the Executive of the proposed appointment giving them an opportunity to object to the proposed appointment. An offer of appointment may only be made if either the Mayor has confirmed that there is no objection, no objection has been raised or any objection made is not deemed material. The Council's Constitution reflects these legal requirements which must be followed in this recruitment process.
- 6.4 The Council's Pay Policy Statement which is agreed annually under the provisions of Section 38 Localism Act 2011 et seq. provides that if the salary for a post which did not previously exist is proposed to exceed £100,000 then that salary must be approved by full Council. It is a statutory requirement that the Council must abide by its Pay Policy Statement once agreed. The Head of Law is of the view that, the proposed changes to the terms and conditions of the Chief Executive are not sufficiently material to trigger the requirement for this approval, but in any event the Council will be asked on the 22<sup>nd</sup> November to agree to the proposed salary for a new Chief Executive recommended by the Appointments Committee.
- 6.5 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.6 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 6.7 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a



protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed in the paragraph above.

6.8 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

6.9 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

6.10 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

6.11 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

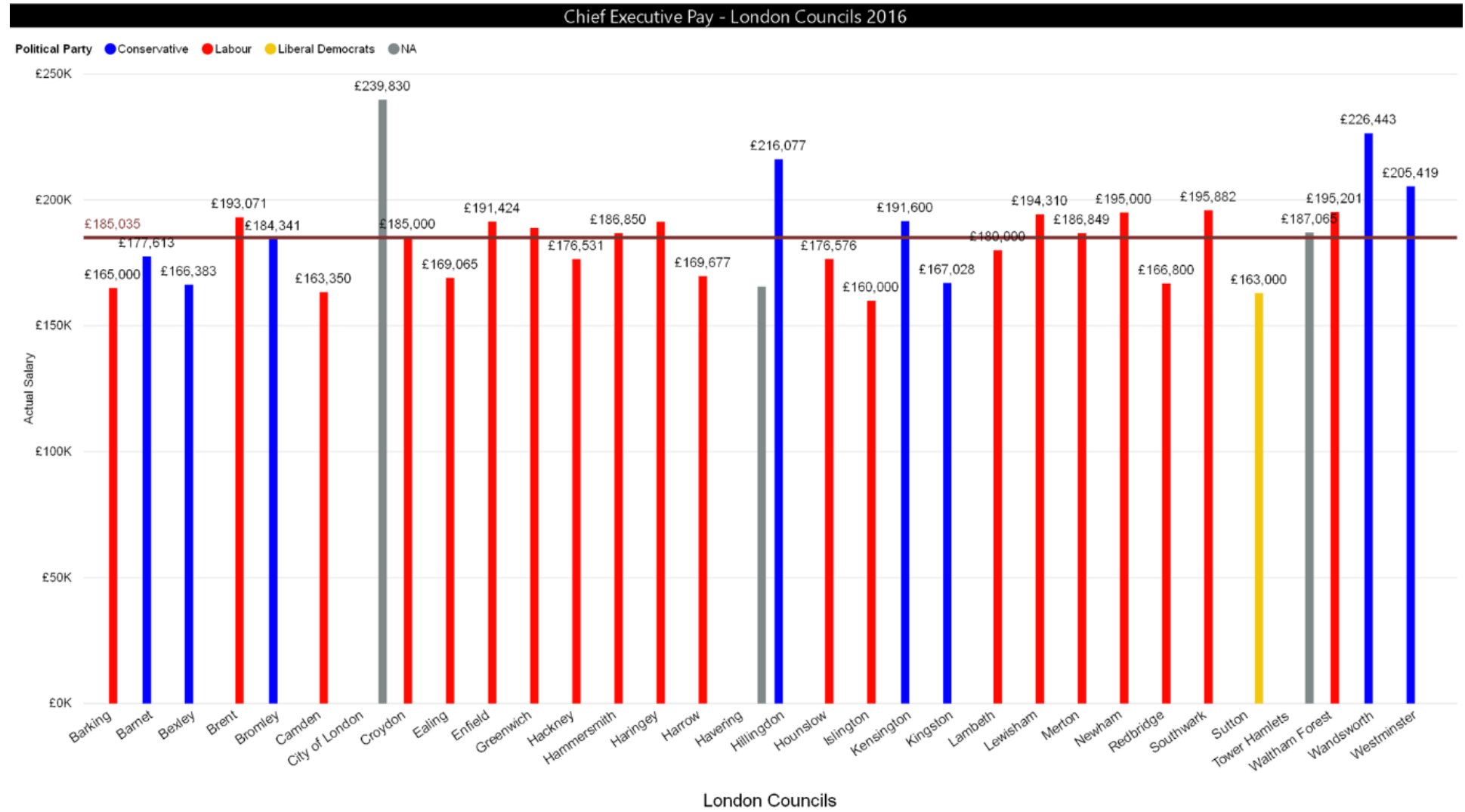
## **7. Financial Implications**

The full time equivalent salary for Lewisham's Chief Executive is currently £196,254, for which Barry Quirk was paid on a pro rata basis at 60% full time equivalent, receiving £117,752 per annum plus on costs. This is met from existing budgets. If the recommendations in this paper are accepted, the additional costs of a newly appointed Chief Executive paid in the range of £175,000 to £185,000 per annum plus on costs (with up to an additional £10,000 for an exceptional candidate) can be met from corporate provisions.

## **8. Conclusion**

The need to recruit to the position of Chief Executive is pressing. With the Mayoral and local elections in May 2018, whoever is elected, the new administration will no doubt want to set the Council's future direction as soon as possible. The proposals in this report are designed to enable the recruitment of a high calibre new Chief Executive to proceed as smoothly as possible, so that the vision of a new Mayor and Council can be embarked upon at the earliest opportunity with a view to improving the life chances of local people and improving the Council's contribution to their wellbeing.

# Appendix 1 - Chief Executives Pay Comparison – London Councils 2016



# Chief Executive Salary Comparison by Political Control – Inner London



# Chief Executive Salary Comparison by Political Control – Outer London

