

COUNCIL		
Report Title	Recruitment of Permanent Chief Executive	
Key Decision		
Ward		
Contributors	Head of Organisational Development & HR	
Class	Part 1	Date 3 April 2019

1. Summary

This report asks the Council to agree the procedure for the appointment of a new Chief Executive on the same terms and conditions previously agreed by the Appointments Committee on 13th November 2017 and Council on 28th November 2017

2. Purpose

The purpose of this report is to agree arrangements to recruit a permanent Chief Executive to provide management direction in the delivery of the Council's strategy, and fulfil the statutory position of Head of Paid Service.

3. Recommendations

- 3.1 To agree that the terms and conditions, previously agreed by the Appointments Committee for the Chief Executive on 13th November 2017 and endorsed by Council on 28th November 2017, will be used for the appointment of a permanent Chief Executive.
- 3.2 To agree the process by which a new Chief Executive is to be recruited, as set out in paragraphs 4.3-4.15 of this report and to agree that the Head of Organisational Development & Human Resources will appoint an external recruitment agency to assist with that process;
- 3.3 To agree that an Advisory Panel of 7 members of the Council be appointed as set out in paragraph 4.13 below with the terms of reference set out in paragraph 4.14 below;
- 3.4 Subject to agreement to 3.3 above, to appoint members to that Advisory Panel;

4. Background

Interim Chief Executive Arrangements

- 4.1 On 28th November 2018 Council agreed to appoint Janet Senior, Executive Director for Resources and Regeneration, as Interim Chief Executive with effect from 1st January 2019.

The terms and conditions of the new Chief Executive

- 4.2 On 13th November 2017 the Appointments Committee agreed updated terms and conditions to be included in the Chief Executive's contract. These were subsequently endorsed by full Council on 28th November 2017. It is not proposed that there should be any change to these terms and conditions.

The recruitment process

- 4.3 There is now a need to appoint to the post of Chief Executive on a permanent basis to support the Council and lead the workforce in the delivery of the Council's Corporate Strategy. To do this, the Council now needs to agree the arrangements for doing so.
- 4.4 It is proposed that the Head of Organisational Development & Human Resources will commission an external recruitment agency to assist with the recruitment process. The Head of Organisational Development & Human Resources has already carried out preparatory work in this respect, and subject to the Council's approval to the process, would be in a position to formally commission that the recruitment process begin without any delay.
- 4.5 The Council's commitment to fairness and equality will be followed to ensure that every effort is made in the recruitment process to allow for a broad range of appropriately qualified candidates, representing the diverse background of our Borough, will be considered in the search and selection process.
- 4.6 Given the importance of the position to the Council, it is proposed that a recruitment agency will be used to ensure a search can commence to find a high calibre candidate. Adverts would be placed very soon after Council approval is obtained to proceed, with a closing date in May 2019, providing sufficient time to attract quality applications from a wide field of candidates. The appointed agency would conduct the longlisting process following consideration of applications received, appropriate testing and initial interviews.
- 4.7 It would then be proposed that the agency submit a long list of candidates to a Panel (as to which see below) which would prepare a shortlist of their preferred candidates, with assistance from external advisors if desired and the Head of Organisational Development & Human Resources. It is envisaged that the shortlisting process could be complete by the end of June 2019, with formal interviews scheduled to take place in July 2019. Stakeholders will also

be involved in the process to allow candidates to meet some of our key partners as well as enabling partners to give feedback on candidates.

- 4.8 The appointment of a Chief Executive would require a formal Council decision and need to follow statutory process, so if the recruitment process does not fit with the existing Council timetable, an additional meeting may need to be called, possibly at the end of July 2019 or later.
- 4.9 If an appointment were made, there would then be a need to obtain clearances, and for formal offer and acceptance before the successful candidate (if external) could serve notice to terminate their current employment, which may be 3 or 6 months depending on their existing contractual position. It is possible therefore, (if an external appointment were made) that a new Chief Executive may not be in post until November 2019-February 2020.

An Advisory Panel

- 4.10 By law the decision to appoint a new Chief Executive is reserved to full Council. This legal requirement is reflected in the Council's Constitution.
- 4.11 Article 9 of the Council's Constitution states that the Council's Appointments Committee will assist the Council in this recruitment process if so requested by the Council. Though the final decision is for full Council, if the Council does not request the Appointments Committee to carry out this function, then the Council needs to put in place other practical arrangements to assist the Council in relation to this appointment.
- 4.12 Members may now wish to consider appointing an Appointments Panel to assist in this process. It would be impractical, not to say impossible, for the full Council (all 54 councillors and the elected Mayor acting together) to administer the recruitment process and to interview candidates. By contrast, the membership of the Appointments Committee is rather restricted and ad hoc. It is appointed on a meeting by meeting basis and need only consist of 5 members including the Chair of Overview and Scrutiny, two executive members and two non-executive members (or the smallest higher number to reflect the political composition of the Council). The Mayor may attend as a non-voting member.
- 4.13 Given the significance of this appointment to the future of the Council, Members would be free to take the view if they so wished, as they did in 2018, that it would be appropriate for an advisory panel to be established to facilitate participation of a larger, though not unwieldy, number of members in the recruitment process. Members may take the view that such a panel, if established, consist of 7 members, namely the Mayor, Chair of Council (who should chair the Panel), the Chair of Overview and Scrutiny Committee, plus four additional members, two of whom would be executive members and two non executive members. This would provide for a broader involvement of

members, both executive and non-executive, though still remain on a manageable scale.

- 4.14 The proposed terms of reference for the Advisory Panel would be to shortlist and interview candidates for the post of Chief Executive and, with professional support from the external advisors and the Head of Organisational Development & Human Resources, to report to full Council with a recommendation concerning the appointment of a new Chief Executive.
- 4.15 If the Council agrees to the establishment of this Panel, it is asked to agree its constitution, terms of reference and to make appointments to it.

Legal Implications

- 5.1 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.
- 5.2 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.
- 5.3 Article 9(1) of the Council's Constitution states that the appointment of the Head of Paid Service is a matter for full Council. The terms of reference of the Appointments Committee include the terms and conditions of employment of the Head of Paid Service. However the recruitment and selection of the Head of Paid Service is specifically excluded from the remit of the Appointments Committee, as it is a matter for full Council. However the Appointments Committee may be required to assist the Council in this process "as the Council shall request from time to time". It is now a matter for the Council to decide on the most appropriate arrangements for this recruitment.
- 5.4 The Council's Constitution provides that its Constitution Working Party may keep the Constitution under review and advise the Council on any amendments which it thinks may be necessary. However, this does not mean

that the Council has no power to make such arrangements as it considers necessary in particular circumstances.

- 5.5 It is proposed in this report that an Advisory Panel be appointed to assist the Council to make its final decision. Formally this body would be an advisory committee of the Council making recommendations to the Council for decision by it.
- 5.6 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. There are not any changes proposed to the terms and conditions already approved by the full Council, this is not a new post, and in any event the proposed salary would conform with both the Council's 2018/19 Pay Policy Statement and that proposed for 2019/20 which appears elsewhere on the agenda.
- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 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>

5.12 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](#)

5.13 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>

6 **Financial implications**

6.1 The cost of the full time salary and on costs will be met from existing budgets. The total costs of the recruitment process are likely to be approximately £35,000 (including advertising, agency, search and selection) and will also be met from corporate provisions.