

COUNCIL		
Report Title	Recruitment of new Chief Executive	
Key Decision		
Ward	All	
Contributors	Head of Law	
Class	Part 1	Date 22 November 2017

1. Summary

This report asks the Council to note that Barry Quirk, the Council's incumbent Chief Executive, has given notice to terminate his employment with the Council; to agree the procedure for the appointment of a new Chief Executive on the terms and conditions agreed by the Appointments Committee; and to agree that the current interim management arrangements continue pending the appointment of a new Chief Executive.

2. Purpose

The purpose of this report is to agree arrangements to secure that a new Chief Executive is in place as soon as possible to fulfil the statutory duties of the Head of Paid Service and to ensure that the Council's interim arrangements provide continuity of management direction at the highest level in the meantime.

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 agree the terms and conditions upon which a new Chief Executive is to be recruited as suggested by the Appointments Committee and referred to in Paragraph 4.11 and Appendix 1 to this report;
- 3.3 To agree the process by which a new Chief Executive is to be recruited, as set out in paragraphs 4.12-4.16 of this report and to note that the Head of Organisational Development & Human Resources will appoint an external recruitment agency and former London Chief Executive to assist with that process;
- 3.4 To agree that an Advisory Panel of 9 members of the Council be appointed as set out in paragraphs 4.17-4.22 below with the terms of reference set out in

paragraph 4.21 below;

- 3.5 Subject to agreement to 3.4 above, to appoint members to that Advisory Panel;
- 3.6 To agree to the clarification of the constitutional position set out in paragraph 5.3 of this report.
- 3.7 To note the interim management arrangements put in place by the Chief Executive to date and to agree that in accordance with paragraphs 4.6-4.9, the Executive Director for Resources and Regeneration continue to fill the role of Acting Chief Executive until a new Chief Executive is appointed and is in post. Such appointment will authorise the Executive Director for Resources and Regeneration to exercise all of the functions currently exercisable by the current Chief Executive, including those of Returning Officer and Electoral Registration Officer.
- 3.8 In recognition of the additional duties, to authorise the Head of Organisational Development & Human Resources on the basis of external advice, to agree an appropriate honorarium in respect of the additional duties associated with acting as Interim Chief Executive.

4. Background

A time of change

- 4.1 After 16 years as the elected Mayor of Lewisham, Sir Steve Bullock will stand down from that position in May 2018, when a new Mayor will be elected. At the same time, 54 councillors will be elected to represent the borough's 18 wards. Together the new Mayor and the newly elected councillors will undoubtedly wish to set a new direction for the Council to achieve the objective of improving the wellbeing of local people. It will no doubt seek new ways to work with its partners, local residents and stakeholders to strive to make Lewisham the best place in London to live, work and learn. In such a context, the Council's new Chief Executive will play a key role in implementing the new Council's strategic priorities.

The incumbent Chief Executive

- 4.2 Barry Quirk has served as the Council's Chief Executive for approximately 23 years, since his appointment in November 1994. In 2011, at his request, the Appointments Committee agreed under the Council's flexible retirement scheme to vary his contract of employment so that his hours and salary reduced to the equivalent of 60% of his full time salary.
- 4.3 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.

- 4.4 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.
- 4.5 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

- 4.6 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.
- 4.7 Given the scale of the task facing RBKC, the temporary secondment of the Chief Executive has become more extended as the management issues facing RBKC are unprecedented and enormous. So that there can be no confusion during his absence, the Chief Executive has made it clear that, whilst Executive Directors still retain their own responsibilities, the power to exercise all of his functions under his existing contract as Chief Executive are delegated by him to the Executive Director for Resources and Regeneration. He notified the Council of this delegation in writing on 30th October 2017.
- 4.8 During the period of his notice, whilst formally employed with the Council, the Chief Executive retains the responsibilities that attach to his role and it is incumbent upon him to be satisfied that the interim arrangements are working satisfactorily. To this end, he has given assurance that he will be in contact with the Executive Director for Resources and Regeneration and will be available to her to discuss any concerns she may have about Lewisham management issues and to offer advice if necessary, whilst he is formally the Council's Chief Executive.

- 4.9 The Council is now asked to endorse these arrangements and to agree that the Executive Director for Resources and Regeneration continue to act as Acting Chief Executive in the period until a new Chief Executive has been appointed and is in post. If this is approved, given that the arrangement is likely to subsist for several months pending the appointment of a new Chief Executive, it will be necessary to ensure that there are sufficient additional resources to support the Executive Director for Resources and Regeneration in relation to her current duties to provide her with the time and capacity to perform the significant duties of Acting Chief Executive over the coming months as the recruitment process proceeds. It would only be fair and proper to compensate her for this longer term interim arrangement.

The terms and conditions of the new Chief Executive

- 4.10 When it was agreed that the contract of the Chief Executive could be amended to a reduced hours basis, it was recognised that doing so 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. These reduced hours arrangements have been under continual and regular review by the Appointments Committee. At its meeting on 31 October 2016, that Committee 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.
- 4.11 The Appointments Committee met on 13 November 2017 to conduct that review. A copy of the report it received now appears at Appendix 1. The Appointments Committee accepted all of the recommendations in it. Members will note that it agreed that any new Chief Executive should be appointed on a full time basis at a salary of up to £185,000 with discretion to the Head of Organisational Development & Human Resources to agree an additional £10,000 to appoint a Chief Executive who would not otherwise be appointed. The rationale for these recommendations is set out in Appendix 1 and Members' attention is drawn to its contents and to the external advice contained in it.

Council is asked to agree that a Chief Executive be appointed on a contract which reflects those terms and conditions, and which accords with the decisions of the Appointments Committee on 13th November 2017.

The recruitment process

- 4.12 Subject to agreement to the terms and conditions on which the vacancy is to be advertised, it is proposed that the Head of Organisational Development & Human Resources would 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.

- 4.13 Given the importance of the position to the Council, it is proposed that alongside the appointed recruitment agency, the Council should bring in the services of a senior former London Chief Executive who has particular experience of the requirements of the role, to assist in the process. Adverts would be placed very soon after Council approval is obtained to proceed, with a closing date of approximately the end of 2017, 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.
- 4.14 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, again 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 January 2018, with formal interviews scheduled to take place in February. Given the need for the newly appointed Chief Executive to liaise closely with Council partners, officers are seeking to arrange that as part of the recruitment process, they too should have the opportunity to meet the shortlisted candidates.
- 4.15 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 in March 2018.
- 4.16 If an appointment were made, there would then be a need to obtain clearances, and 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 June or September 2018, after upcoming local elections. Any new appointee (if external) would be able to liaise with a newly elected Mayor pending their start date, about the anticipated direction of the Council.

An Advisory Panel

- 4.17 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. However, given the length of time for which the current Chief Executive has been in post, there has not, until now, been the need to consider the recruitment of a replacement since the introduction of the new political governance arrangements in 2002.

- 4.18 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. This makes it clear that the final decision is for full Council. The Council's procedural rules further state that the Appointments Committee will carry out the appointment of the Chief Executive subject to the approval of the full Council. Again it is clear that it is for full Council to make the formal decision.
- 4.19 Members may now wish to consider adopting a recruitment process which would be appropriate in the current circumstances which are unprecedented under the existing political management arrangements. On the one hand 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. On the other hand, 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.
- 4.20 Given the significance of this appointment to the future of the Council, Members may take the view 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 9 members, namely the Chair of Council (who should chair the Panel), the Chair of Overview and Scrutiny Committee and the Mayor, plus 3 additional members of the Executive, 2 members from the largest political group who are not members of the Mayor and Cabinet, and one further non-executive member who is not a member of the largest political group. This would provide for a broader involvement of members, both executive and non-executive, though still remain on a manageable scale.
- 4.21 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.
- 4.22 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.

5 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. Though the terms of reference of the Appointments Committee include the terms and conditions of employment of the Head of Paid Service, the recruitment and selection of the Head of Paid Service is excluded from the remit of the Appointments Committee. The Constitution's detailed rules relating to staffing matters are set out in Part H – Employment Procedure Rules. The recruitment and dismissal of the Head of Paid Service is dealt with at Paragraph H6. This states that the recruitment of the Head of Paid Service is delegated to the Appointments Committee, subject to the approval of full Council. Both provisions state that the decision must be taken by full Council and in this respect are consistent. However the constitutional wording may be thought to be a little contradictory. Council may now eliminate any possible confusion. It is open to full Council to clarify its intentions so that the procedure to be followed accords with its wishes. If the Council is minded to approve the proposal in this report for the establishment of an Advisory Panel, then it is at liberty to do so. The insertion of a short addition before the existing text of paragraph H6 would provide absolute clarity. The amended paragraph H6 would read as follows:-

“Where the Council requests the Appointments Committee to assist with the appointment of the Head of Paid Service, the functions of the appointment of the Head of Paid Service are delegated to the Appointments Committee in accordance with Article 9, subject to the approval of full Council. No letter of appointment or dismissal may be sent until such approval is obtained “

- 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 any amendments it considers necessary in particular circumstances. There is no prohibition on any change which the Council deems necessary and the Council itself may at any time exercise functions which it has delegated.
- 5.5 It is proposed 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. It is subject to the political balance requirements set out in Section 15 Local Government and Housing Act 1989 and regulations pertaining to it. In any event it is proposed that the single Lewisham councillor outside the majority party should serve on this Panel. The proposals meet the conditions in Section 15 and relevant regulations.
- 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. The Head of Law is of the view that the change 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 is now asked to agree to the proposed salary for a new Chief Executive as set out in this report.
- 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 of the current Chief Executive is £117,000 plus on costs. This is met from existing budgets. The additional costs of a newly appointed Chief Executive paid in the range of £175,000 to £185,000 p.a.(and any additional salary up to £10,000) and on costs can be met from corporate provisions. The total costs of the recruitment process are likely to be approximately £35,000 (including advertising, agency, search and selection) and can also be met from corporate provisions.
- 6.2 The Council is recouping the current salary of the Chief Executive from RBKC and so the Chief Executive's Lewisham salary will be saved in total from the date of his secondment until a new Chief Executive is in post. If a new Chief Executive were to take up their post in June 2018, this would be equivalent to approximately one year's salary of £117,000. Any honorarium to be paid to an Acting Chief Executive, and any back up costs to support this interim position would be covered by these savings.

7 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 ensure that the recruitment of a new Chief Executive proceeds 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.