

Full Council

19th March 2019



Report of: Head of Paid Service

Title: Senior Executive Remuneration Review – Audit for year ending 31 March 2018

Ward: N/A

Officer Presenting Report: Mike Jackson, Head of Paid Service

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Recommendation

- i) That Full Council accepts the recommendations from the Council’s external auditors, BDO;
- ii) that Full Council approves the action plan in response to the recommendations from the Council’s external auditors, BDO; and
- iii) that Full Council requests that the Head of Paid Service provides an update to the next Ordinary Meeting of Full Council after Annual Council.

Summary

The report sets out the Council’s response to the recommendations made by the Council’s external auditors, BDO, which are the subject of a separate agenda item at this meeting. The Council’s response is provided in Appendix A.

The significant issues in the report are:

- The Council has accepted all of the recommendations and there is a clear action plan to address them.
- The action plan has been the subject of discussion with BDO and they have confirmed they are in agreement with the Council’s response to the recommendations.
- The actions to address the statutory recommendations will be completed by the end of May 2019 and an update will be provided to the next Ordinary Meeting of the Council after the Annual Council Meeting.





BRISTOL CITY COUNCIL

Senior executive remuneration review

Audit for the year ended 31 March 2018

11 March 2019

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SCOPE OF REVIEW

We focused on four key areas relevant to the departure of the ex-Chief executive, these being:

- Final payment arrangements
- *Recruitment processes*
- *Probation arrangements*
- *Performance management arrangements*

We compared information and arrangements relevant to the ex-Chief Executive with issues arising from the departure of the ex-City Director and, to determine whether circumstances had progressed positively, also to more recent senior executive-related examples.

This report focuses solely on final payment arrangements, being the area giving rise to Statutory Recommendations.

We reviewed the various documentation relating to the final payment decisions relating to the ex-Chief executive. This included, but was not limited to:

- Employment contract
- Notes relating to the discussions held relating to the exit
- Legal advice obtained from Geldards LLP
- Legal advice obtained from Bevan Brittan LLP
- Various policy and procedural documentation relevant to the ex-Chief Executive's period of employment and as updated to the current time of the review

We also discussed the issues with:

- Denise Murray, Director of Finance
 - Quentin Baker, Director of Legal & Democratic Services & Monitoring Officer
 - Nancy Rollason, Head of Legal Service and Deputy Monitoring Officer
 - Husinara Jones, Team Leader - Commercial & Governance Team
 - Mark Williams, Head of Human Resources
 - James Brereton, Interim People and Culture Manager
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EXECUTIVE SUMMARY

This summary provides an overview of the key findings that we believe are important to the Council in considering and responding to the results of the review of arrangements relevant to the final payment to the ex-Chief Executive made by the Council during the year ended 31 March 2018.

REVIEW SCOPE AND FINDINGS

Final payment

Our review concluded that it was inappropriate to conclude that all of the final payment made was contractual.

Disclosures relating to the final payment in the 2017/18 financial statements were corrected, with the whole payment (including pensions-related elements) being re-categorised from salary to amounts relating to termination.

The arrangements currently in place still do not support transparency in the Member approval of final payments.

Recommendations previously made in connection with the final payment made to the ex-City Director have not been implemented and contributed towards the issues identified with the final payment to the ex-Chief Executive. These weaknesses persist.

For the payment in question:

- Whilst external legal advice was sought relating to the interpretation of the contract in the context of contractual entitlement, this element was obtained without the involvement of the Council's Legal Services, there was confusion about what information was provided to support the advice and we consider that the conclusion reached was surprising given the clarity of the relevant terms set out in the contract.
- The decision to not require approval from the HR Committee was supported by external legal advice, but there is no definitive evidence to explain why this was concluded. However, the final payment was at the time considered to be contractual, and there was also an apparent inconsistency between the Council's Pay Policy Statement and the HR Committee's Terms of Reference (ToR). However, this route was not consistently applied to other cases.

FINAL PAYMENTS

Overall summary and conclusion

The key issue of transparency, which was a feature of the final payment to the ex City Director and the subject of recommendations raised in September 2017, was also a key issue in the decision made in respect of the final payment made to the ex-Chief Executive. The position remains unaddressed.

There is a lack of recorded decision trail relating to various aspects of the case which means that a definitive conclusion is impossible to achieve. However, the combination of the uncertainties relating to the obtaining of legal advice relating to contractual obligations, which have been found to be incorrect, combined with the decision apparently taken to not seek approval from the HR Committee which was not a consistent approach, should be of concern to the Council.

We have made a number of recommendations for improvement in Appendix I, including three statutory recommendations. The status of statutory recommendations and the requirements for the Council in considering them is set out in Appendix II.

Contractual obligations

The contract set out various requirements relating to different termination notice periods within the probation period, within the first 12 months and thereafter.

Whilst the Council had the option to not require the ex-Chief Executive to serve her notice period and to make a Payment in Lieu of Notice (PILON), this would only have been for the notice period to which the individual was entitled based on the relevant terms at that point in time.

The Council sought external legal advice in this matter, with this element being obtained without the involvement of the Council's Legal Services, and the advice provided was passed on to relevant Members. We are not able to determine from records available the exact specification for, or scope of, the advice. However, it contradicted our expected, and subsequently confirmed, interpretation of the contractual position

Decision making

The Council does not have a formal policy on *how* to deal with severance payments for senior staff.

The Pay Policy Statement (PPS) makes it clear that the Human Resources (HR) Committee is responsible for approval of the severance packages of “Chief Officers”. At the point in time when the final payment for the ex-Chief Executive was being determined, “Chief Officers” included the Chief Executive, Strategic Directors and Service Directors.

The Terms of Reference (ToR) for the HR Committee does not make explicit reference to severance packages, but includes a raft of other responsibilities linked to remuneration, including “determining the pay . . . of 1st and 2nd tier posts and post holders”. They do not include guidance on *how* to put together severance packages or any financial limits on such payments.

The decision to not require approval from the HR Committee was supported by external legal advice, but there is no definitive evidence to explain why this was concluded. However, the final payment was at the time considered to be contractual, and there was also an apparent inconsistency between the Council’s Pay Policy Statement and the HR Committee’s Terms of Reference (ToR), as set out above - so it is possible that the absence of an explicit reference relating to severance packages on the HR Committee ToR meant that, despite the PPS being explicit, it was concluded that no approval needed to be sought.

It is not possible, therefore, to state definitively that the *wrong* process was followed. However, the route taken does not accord with practice that was being undertaken with other cases.

The HR lead (the then Interim Service Director, HR and Workforce) was involved in a number of cases, including leading negotiations relating to the ex Chief executive, involving providing instructions to lawyers. It does not appear credible, therefore, that key individuals were unaware of the inconsistency of treatment regarding the HR Committee.

For the case of the ex-Chief Executive, Members were therefore not provided with any opportunity to challenge the composition or level of the final payment and certainly not a clear and transparent set of options and supporting calculations to enable a properly informed decision to be taken by them relating to contractual and non-contractual elements.

Recommendations

Generally, severance payments to staff should be limited to obligations created by the contractual terms and should not be extended to include discretionary elements. However:

- When presenting information on severance arrangements for senior staff, the Council should ensure that the appropriate Committee is given sufficient detail on the costs and alternative options, while taking into account confidentiality requirements. More detailed guidance is provided in the Audit Commission report: *By Mutual Agreement - Severance Payments to Council Chief Executives (2010)*. Particular attention should be paid to improving decision-making by adopting the following approach:
 - making costed option appraisals available to Members
 - making a robust case for any discretionary payments
 - ensuring Members need to make an active approval of discretionary elements
 - A policy and associated guidance should be drafted to cover severance packages for senior staff, including the following:
 - what can and cannot be included in the package, i.e. whether it is limited to purely contractual terms (e.g. payment in lieu of notice, contractual pension contributions) or whether discretionary elements (e.g. contributions to legal costs or training, other discretionary payments) are allowed;
 - financial limits and approval levels for individual elements of the package, both contractual and discretionary, and the overall package;
 - the process for authorising individual elements of the package and the overall package
 - If discretionary payments are made as part of severance packages, then they should be fully explained in the notes to the financial statements, with the salary element of any such payment being disclosed as 'Compensation for Loss of Office', in line with the requirements of *The Accounts and Audit Regulations 2015*
 - The HR Committee Terms of Reference should be revised to explicitly cover the point that any severance payment to the Head of Paid Service should be recommended by the HR Committee for approval by Full Council. Alternatively, Full Council could delegate the approval of any severance payments in respect of the Head of Paid Services
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APPENDICES

APPENDIX I: RECOMMENDATIONS AND ACTION PLAN

Key: ■ Statutory recommendation ■ Other recommendation ■ Other observations

AREA	RECOMMENDATION	MANAGEMENT RESPONSE	RESPONSIBLE OFFICER	TIMING
■	<p>When presenting information on severance arrangements for senior staff, the Council should ensure that the appropriate Committee is given sufficient detail on the costs and alternative options, while taking into account confidentiality requirements. More detailed guidance is provided in the Audit Commission report: <i>By Mutual Agreement - Severance Payments to Council Chief Executives (2010)</i>. Particular attention should be paid to improving decision-making by adopting the following approach:</p> <ul style="list-style-type: none"> • making costed option appraisals available to Members • making a robust case for any discretionary payments • ensuring Members need to make an <i>active</i> approval of discretionary elements 			
■	<p>A policy and associated guidance should be drafted to cover severance packages for senior staff, including the following:</p> <ul style="list-style-type: none"> • what can and cannot be included in the package, i.e. whether it is limited to purely contractual terms (e.g. payment in lieu of notice, contractual pension contributions) or whether discretionary elements (e.g. contributions to legal costs or training, other discretionary payments) are allowed; • financial limits and approval levels for individual elements of the package, both contractual and discretionary, and the overall package; • the process for authorising individual elements of the package and the overall package 			
■	<p>The HR Committee Terms of Reference should be revised to explicitly cover the point that any severance payment to the Head of Paid Service should be recommended by the HR Committee for approval by Full Council. Alternatively, Full Council could delegate the approval of any severance payments in respect of the Head of Paid Services</p>			
■	<p>If discretionary payments are made as part of severance packages, then they should be fully explained in the notes to the financial statements, with the salary element of any such payment being disclosed as 'Compensation for Loss of Office', in line with the requirements of The Accounts and Audit Regulations 2015</p>			

APPENDIX II: STATUS OF STATUTORY RECOMMENDATIONS

This report includes statutory recommendations made under Schedule 7 of the Local Audit and Accountability Act 2014.

These recommendations must be sent to the Secretary of State when they are made.

These recommendations require the Council to consider and respond to the recommendations in a particular way. Requirements include:

- The Council must consider the report or recommendation at a meeting held before the end of the period of one month beginning with the day on which it was sent to the Council
- At the meeting the Council must decide:
 - whether the report requires the Council to take any action or whether the recommendation is to be accepted, and
 - what, if any, action to take in response to the report or recommendation.
- For the meeting:
 - notice must be published on the Council's website, stating the time and place of the meeting
 - the notice must be published before the beginning of the period of 8 days ending with the day of the meeting
 - Information contained in recommendations is not to be treated as exempt information for the purposes of any Act or instrument made under an Act that applies in relation to exempt information within the meaning of Part 5A of the Local Government Act 1972
- As soon as is practicable after making decisions in respect of the recommendations, the Council must:
 - notify the Council's local auditor of those decisions, and
 - publish a notice containing a summary of those decisions which has been approved by the auditor on the Council's website.

APPENDIX III: FEES SCHEDULE

		Budget
Consideration of final payment and associated management arrangements	£21,000	-
TOTAL ADDITIONAL ASSURANCE SERVICES	£21,000	-

APPENDIX IV: AUDIT QUALITY

BDO is totally committed to audit quality

It is a standing item on the agenda of BDO's Leadership Team who, in conjunction with the Audit Stream Executive (which works to implement strategy and deliver on the audit stream's objectives), monitor the actions required to maintain a high level of audit quality within the audit stream and address findings from external and internal inspections.

BDO welcomes feedback from external bodies and is committed to implementing all necessary actions to address their findings.

We recognise the importance of continually seeking to improve audit quality and enhancing certain areas. Alongside reviews from a number of external reviewers, the AQR (the Financial Reporting Council's Audit Quality Review team), QAD (the ICAEW Quality Assurance Department) and the PCAOB (Public Company Accounting Oversight Board who oversee the audits of US companies), the firm undertakes a thorough annual internal Audit Quality Assurance Review and as a member firm of the BDO International network we are also subject to a quality review visit every three years.

We have also implemented additional quality control review processes for all listed and public interest audits.

More details can be found in our Transparency Report at www.bdo.co.uk

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The matters raised in our report prepared in connection with the audit are those we believe should be brought to the attention of the organisation. They do not purport to be a complete record of all matters arising. No responsibility to any third party is accepted.

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