

# HR Committee

22<sup>nd</sup> September 2016



**Report of:** Service Director HR & Workplace

**Title:** Chief Executive pay, conditions & performance management

**Ward:** N/A

**Officer Presenting Report:** Richard Billingham

**Contact Telephone Number:** (0117 92) 22670

## Recommendations

That the Committee recommends to the Full Council:

1. The Council's Pay Policy Statement be amended to state that the basic salary of the job of Chief Executive be maintained at 10 times the UK Living Wage (as set by the Living Wage Foundation), inclusive of any increases agreed by the Joint Negotiating Committee for Local Authority Chief Executives (the JNC for Chief Executives). This means the starting salary would be £160k, pending announcement of the latest rate of the UK Living Wage at the beginning of November, which the Council will then take account of on the following 1<sup>st</sup> April.
2. The Pay Policy Statement be further amended to include provision for a retention and performance incentive by way of payment at the Council's absolute discretion of a non-pensionable bonus at the end of the Chief Executive's employment subject to satisfactory fulfilment of transparent and objective criteria to be agreed annually between the jobholder and a politically-balanced Performance Management Panel including the Mayor and suitably-qualified independent advisers. If paid, the bonus to be no more than 10% of the cumulative gross basic salary paid between the start and end of the employment. No bonus to be paid in the event that the employment is terminated by reason of poor performance or misconduct.
3. The Council's Constitution be amended to include provision for the Performance Management Panel, which will annually set the objectives of the Chief Executive, judge the jobholder's performance and recommend to the HR Committee what level (if any) of bonus should be paid at the end of the employment, if the Chief Executive continues to meet the annual objectives. The Panel to be composed of the Mayor and two councillors who are not members of the Executive, plus up to 2 suitably-qualified independent panel members, who will have expertise in executive performance and remuneration.
4. The composition of the Selection Committee must fully reflect the diversity of the Council's workforce and the City.

That the Committee approves:

5. In recognition of the particular knowledge and skills required to help deliver a stable financial base to allow the Council to develop its policies and drive forward specific initiatives into 2020, the job of Chief Executive be offered on the basis of a fixed term contract to end no later than 31<sup>st</sup> December 2020. The contract to be terminable earlier than 31<sup>st</sup> December 2020 on notice to give flexibility to end without having to pay the balance of the term.
6. The contract will incorporate the national agreement of the JNC for Chief Executives, though local provisions relating to performance management, grievance and dismissal (the Independent Persons (Statutory Officer Panel) process) will prevail.
7. If the jobholder chooses to opt out of membership of the Local Government Pension Scheme (LGPS), the Council will make contributions to a private scheme equivalent to that which would be made to the LGPS (currently 20% of pensionable pay).

That the Committee notes:

8. The Independent Persons process would not be triggered providing the Council had not given an undertaking to renew the fixed term contract on expiry. However, a dismissal process would be followed in line with the Council's normal procedure for employees on fixed term contracts, and the Executive Objections Procedure may apply.
9. The Independent Persons process and Executive Objections procedure would apply in the event of early termination of the contract for poor performance or misconduct, unless termination is agreed by mutual consent via a settlement agreement.
10. The use of a fixed term contract gives the Council some flexibility because its requirements at the leadership level are likely to change, particularly given the current financial climate and the changing landscape of local government generally. The fixed term contract will be linked to the Council's immediate and short-term needs. The focus of the job of Chief Executive is likely to be different post-2020. This will be reflected in the documentation supporting the recruitment process.
11. Following a successful tendering exercise conducted by members with the advice of officers, the appointment of Odgers Berndtson to act on the Council's behalf in the recruitment to the job of Chief Executive. A broad and diverse pool of candidates will be sought, including those who may not have a local government or public sector background.

**Summary**

This report seeks the Committee's approval for proposals relating to the pay, conditions and performance management of the job of Chief Executive.

**The significant issues in the report are:**

- Identified in the Recommendations above.

**Policy**

1. The pay of the Chief Executive is set out in the Council's Pay Policy Statement, which must be approved annually by the Full Council. Any amendments to the Statement also require the approval of the Full Council.
2. The terms and conditions of employment of the job of Chief Executive are set by the Human Resources Committee.

3. The process of recruiting the Chief Executive is the responsibility of the Selection Committee. The appointment will be made on merit, as required by law.
4. Confirming the appointment of the Head of Paid Service (who is usually the Chief Executive) is reserved to the Full Council.
5. The Council's Constitution currently makes no provision for the performance management of the Chief Executive.
6. The law requires that the Head of Paid Service serves the Council as a whole. To this end, the jobholder is subject to the political restrictions that apply to all officers who regularly advise members or speak to the media on the Council's behalf.

### **Consultation**

7. **Internal**  
None.
8. **External**  
Bevan Brittan LLP, whose advice has been fully incorporated in the proposals and contents of this report.

### **Context**

9. At its previous meeting, the HR Committee requested that officers bring forward proposals regarding the pay, conditions and performance management of the job of Chief Executive, taking into account the organisation's priorities between now and 2020, specifically the requirement to deliver results on a series of high-profile policies with radically fewer resources.
10. The proposals developed by officers are identified in the Recommendations above. They fall within the parameters discussed with HR Committee at its previous meeting, such as the use of a fixed term contract and the need to ensure the salary of the Chief Executive is no more than 10 times that of the UK Living Wage. They could be seen as unusual in a local government context, but not in the wider public sector, or other sectors. They have been developed in line with expert legal advice.

### **Proposal**

11. As identified in the Recommendations above.

### **Other Options Considered**

12. Making a permanent appointment to the job. This is not recommended at this stage because the skills required of the Chief Executive are likely to change significantly from 2020.
13. Excluding the national agreement of the JNC for Chief Executives from the contract. This is not recommended because the JNC allows sufficient local flexibility so that excluding it from the contract is more likely to discourage applications from suitably qualified individuals.

14. Including the facility to extend or renew the contract. This is not recommended because doing so runs the risk of converting the contract from fixed term to permanent, termination of which would be likely to trigger the Independent Persons process. Moreover, the required skillset of the Chief Executive is likely to be different after 2020 from that required until that point.
15. Restricting performance management of the Chief Executive to the Mayor alone (with or without advisers). This is not recommended because as Head of Paid Service the Chief Executive serves the Council as whole and therefore the objectives of the job holders and judgement of their performance cannot be reserved to the Executive. In addition, the payment of a bonus would be a non-executive matter requiring the approval of a non-executive body (such as the Human Resources Committee).
16. Allowing a bonus to be paid annually. This is not recommended because it removes the long-term incentive for the jobholder to remain committed and successful until the natural expiry of the contract.

### **Risk Assessment**

17. The proposals are somewhat unusual in the context of local government, but not within the wider public sector, or other sectors. It is likely that this will result in a slightly different pool of applicants for the job. If this proves to be an obstacle to making a good appointment, then further proposals to overcome this will be brought forward for the Committee's consideration.

### **Public Sector Equality Duties**

- 18a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
  - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
  - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
    - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
    - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
  - tackle prejudice; and
  - promote understanding.

18b) No equality impact assessment has been undertaken because this report concerns one job only.

## **Legal and Resource Implications**

### **Legal**

The pay of the Chief Executive is set out in the Council's Pay Policy Statement, and any amendments to the Statement require the approval of the Full Council.

Other than in relation pay and to dismissal for poor performance and misconduct, the terms and conditions of employment for the Chief Executive are set by the Human Resources Committee.

The Council's Constitution currently does not provide for the performance management of the Chief Executive and any amendments to the Constitution require the approval of the Full Council.

Legal and HR advice should be sought when drafting the terms of the fixed term contract for the new Chief executive.

(Advice provided by Shahzia, Interim Service Director, Legal and Democratic Services)

### **Financial**

#### **(a) Revenue**

A total revenue budget of £219k is included in the 2016/17 revenue budget for the total annual cost of the Chief Executive role, which includes on-costs (employers National Insurance and Pension contributions) and provision for the national agreement of the JNC for Chief Executive.

It is recommended in the report that the basic pay of the Chief Executive is maintained at 10 times the UK Living Wage (as set by the Living Wage Foundation). This is revised annually each year in November. The current rate is £8.25 per hour and is expected to increase incrementally by 2020. The government's National Living Wage is forecast to increase to £9+ per hour by 2020. In reviewing these proposals and based on HR advice, it has been assumed that the UK Living Wage will increase by an average of 45p per hour per annum to £10 per hour by 2020/21. Applying this rate, the estimated annual salary cost of the Chief Executive will increase to £225k to £230k (inclusive on on-costs) per annum in 2017/18 to £260k-£265k (inclusive of on-costs) by 2020/21. This proposed increase will require a growth item to be included in the Medium Term Financial Plan.

In addition to the annual salary arrangements described above, the report includes a proposal to pay a bonus to be no more than 10% of the cumulative basic salary paid between the start and end of the contract, to be paid at the end of the fixed term contract. The total amount payable will be dependent on the start date of the fixed term contract, the actual annual salary (based on the UK Living Wage), and on the satisfactory fulfilment of transparent and objective criteria. If

paid in full, the cost implication of this proposal is expected to be in the range of £65k to £70k. This is not currently included in the current revenue budget and provision for this will need to be made within the Medium Term Financial Plan.

The estimates provided in this report will require review as part of the annual budget setting process to take account of the annually published UK Living Wage figures.

Advice given by: Janet Ditte: Service Manager, Finance Business Support  
Date: 14th September 2016

**(b) Capital**

Not applicable.

**Land**

Not applicable.

**Personnel**

These are identified in the Recommendations above.

**Appendices:**

None.

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

None.