



SPECIAL COUNCIL – 11TH JULY 2013

SUBJECT: INTERIM MANAGEMENT ARRANGEMENTS

REPORT BY: LEADER OF COUNCIL

1. PURPOSE OF REPORT

- 1.1 The Council is required to consider proposals for the appointment or engagement of a Head of Paid Service, on an interim basis.

2. SUMMARY

- 2.1 Members will be aware that following recent developments in the investigation by Avon and Somerset Police, the Council's Acting Chief Executive, Mr Nigel Barnett was suspended, pending referral of allegations of potential misconduct to the Council's Investigating and Disciplinary Committee.
- 2.2 It is a statutory requirement that all Councils shall have a Head of Paid Service at all times. On Tuesday 2nd July 2013, the Council's Acting Deputy Chief Executive, Sandra Aspinall, agreed to assume the responsibilities of the Head of Paid Service in her role as Acting Deputy Chief Executive, pending consideration of a range of options in relation to interim arrangements by the Council.

3. LINKS TO STRATEGY

- 3.1 It is a legal requirement for a local authority to have a Head of Paid Service.

4. THE REPORT

- 4.1 Members will be aware that I issued a statement on Tuesday, 9th July outlining options to address the above requirement (Appendix 1).
- 4.2 I have been working with the Acting Deputy Chief Executive and the Chief Executive of the WLGA, Mr Steve Thomas, to explore a range of options to put in place appropriate interim arrangements. I have also sought external legal advice from Geldards on the legal implications arising from the proposals set out in my statement.
- 4.3 The Council is now invited to consider the proposals set out in this Report, which seeks to put in place appropriate arrangements to cover the role of Head of Paid Service during the suspension of the Chief Executive and the Acting Chief Executive.

4.4 The options are:-

OPTION 1 - Sharing a Chief Executive with another Local Authority
Estimated 6 month financial implication - £36k to £65k

OPTION 2 - Appointing an Interim Head of Paid Service from within the Corporate Management Team
Estimated 6 month financial implication - £86k

OPTION 3 - Recruiting an Interim Head of Paid Service from outside the Council selected from a list provided by the WLGA of professional Consultants who regularly undertake Interim Head of Paid Service assignment across the UK
Estimated 6 month financial implication - £88k to £121k

OPTION 4 - Recruiting an Interim Head of Paid Service from outside the Council based on a proven track record in the role of Head of Paid Service with an in-depth understanding and knowledge of Welsh local government and the devolved context.
Estimated 6 month financial implication - £92k (if full time and paid in accordance with the council's current pay policy for a Chief Executive).

4.5 In considering each of these options, the relative strengths and weaknesses of each have been identified and considered with care and these are fully outlined in my statement (Appendix 1).

4.6 When I issued my statement to Members on Tuesday, 9th July 2013, it had been understood that the Council would be able to engage an Interim appointment to undertake the role of Head of Paid Service via the WLGA's consultancy services that are commonly called upon by Councils in Wales in such circumstances.

4.7 The Council's Legal advisers had, however, highlighted a potential impediment to the timing of that proposal by reason of the certain regulatory and constitutional provisions that apply to the recruitment of a Head of Paid Service and any Chief Officer (within the meaning of the Local Government and Housing Act 1989). These are contained in the Local Government (Standing Orders) (Wales) Regulations 2006 and the Council's Officer Employment Rules. Further advice was sought to determine whether these provisions can be departed from when appointing on an interim basis only, and if not, how to ensure compliance in the current circumstances.

4.8 The relevant provisions require that the Council will:-

- Draw up a statement specifying the duties of the officer concerned and any qualifications or qualities sought in the person to be appointed;
- Make arrangements for the post to advertise it in such a way as to bring it to the attention of persons qualified to apply for it;
- Make arrangements for a copy of the Statement to be sent to any person on request.

4.9 The legal advice confirmed that there are no dispensations or exceptions that would allow the Council to disregard the relevant provision when making an appointment on an interim basis. Further, the Council was advised that the relevant provisions state that any reference to the appointment of a Chief Officer "includes" a reference to the engagement or purported engagement of such an officer "under a contract of employment". However, I have been advised that the wording of this provision could be interpreted as applying also to the engagement of a Head of Paid Service (or Chief Officer) under a contract for services such as the consultancy type engagement. That is commonly used to engage "Interims" in Wales.

- 4.10 As such, I was advised that whether the Council engages an Interim Head of Paid Service under a contract of employment or a consultancy contract, the provisions of the 2006 Regulations and the Council's Officer Employment Rules, will need to be followed.
- 4.11 In compliance with the relevant provisions, the Council has produced a statement of the duties of the role and qualities and capabilities required of the post holder. This is based on the statement for the role that was produced when the post of Head of Paid Service was the subject of a competitive appointments process in 2010. That statement however has been reviewed and revised to reflect the fact that this is an interim role and that the Office holder will be expected to address certain specific challenges, during the relatively short duration of the interim appointment. These include the medium-term financial plan, and they will also be required to represent the Council with our external auditors in relation to the issues arising from the Wales Audit Office Public Interest Report, which are the subject of an on-going investigation by Avon and Somerset Police and under the Council's Disciplinary procedures. Hence experience as a Section 151 Officer or as a Monitoring Officer/Legal has been identified as highly desirable. Once an option is agreed by Members, the Interim Chief Executive would then be asked to review our existing Corporate Management Team arrangements to ensure there is sufficient capacity to face the challenges ahead.
- 4.12 For the purpose of determining how the Council might demonstrate that it can satisfy the requirement to advertise the role, the Council's legal advisers have also specifically considered the scope of the advertisement exercise that would need to be undertaken and have noted the following points:-
- 4.12.1 The Regulations do not specify the nature or extent of the advertisement exercise that is required.
- 4.12.2 Further, the Regulations do not require that the advertisement shall reach "all" persons who might be qualified to apply.
- 4.12.3 There is a well-established custom and practice within Local Government in Wales of engaging Interims to undertake Chief Officer roles, via the WLGA, under consultancy arrangements. Recent examples include:-
- Director of Education, Cardiff City Council
 - Director of Education, Denbighshire County Council
 - Chief Officer posts, Blaenau Gwent County Borough Council.
 - Director of Education, Pembrokeshire County Council
- 4.13 The Council sought to understand from WLGA how its engagement arrangements met with and complied with the 2006 Regulations and the Councils Officer Employment Rules. The Chief Executive of the WLGA explained that:-
- They engage a number of "suitably qualified" consultants, as "Associates" pursuant to a Framework Agreement.
 - Councils notify WLGA when they require to engage an interim, and
 - WLGA makes contact with the Associates on its Framework, and sometimes with SOLACE UK (who have compiled a similar list of Associates) and puts forward a recommendation (of usually one but not more than 2 candidates) which a Council then accepts or rejects. We understand that when, as in this case, an engagement needs to take place urgently, this is believed to be a more effective recruitment route than national advert, as it is more likely to come to the attention of those who have indicated that they are available to undertake an engagements at short notice, which is an essential requirement in this case.

- 4.14 The Council's Legal advisers have confirmed that there is no case law precedent that has determined how a Court would interpret "advertise in such a way as is likely to bring it to the attention of persons who are qualified to apply for it". However they are satisfied that the arrangements that the WLGA described, as set out above, would seem to reasonably satisfy the relevant legislative and constitutional requirements in the current circumstances as they appear to draw the attention of the vacancy to the attention of those qualified to apply.
- 4.15 On Wednesday, 3rd July 2013, the Chief Executive of WLGA, Mr Steve Thomas, was invited by the Acting Deputy Chief Executive, Mrs Sandra Aspinall, to produce a list of suitably qualified candidates. He identified 3 candidates, who had undertaken Interim Head of Paid Service roles, or been employed as a Head of Paid Service in the recent past. This information was provided to the Council that day. Further, the Chief Executive of WLGA wrote to the Acting Deputy Chief Executive of the Council to confirm that he had made contact with SOLACE about the Interim role, in effect drawing the Councils requirement for an Interim Head of Paid Service to the attention of those who are qualified to apply for it. The Chief Executive of the WLGA has also confirmed that the approach adopted by the WLGA is one that is followed throughout the United Kingdom. In England "Solace Enterprises" undertake a similar process to the one followed by WLGA.
- 4.16 I am concerned to ensure that the Council is not exposed to a risk of challenge in relation to its efforts to comply with the 2006 Regulations and the Councils Officer Employment Rules, and I was therefore advised to bring to Council's attention that consideration should be given to:-
- Instruct WLGA to re-issue its advertisement to Associates on its own Framework and to SOLACE UK indicating that the deadline for expressions of interest to be submitted, with CVs, will be 12 noon on Wednesday 17 July 2013.
 - Convene the Appointments Committee to consider expressions of interest on Thursday 18 July 2013 and make a recommendation to the Council for an appointment to the role.
 - Arrange for the recommendation of the Appointments Committee to be considered by the full Council at its meeting on Tuesday 23 July 2013.
 - Affirm that the Acting Deputy Chief Executive will continue to undertake the responsibilities of the Head of Paid Service until the formal appointment of an Interim Head of Paid Service pursuant to the arrangements set out above.
- 4.17 In light of the detailed legal advice I have received, the recommendations contained in Section 9 of this report replace the proposals I put forward in my statement issued to Members on the 9th July.

5. EQUALITIES IMPLICATIONS

- 5.1 All Local Authorities are subject to the public sector equality duty in the Equalities Act 2010. This requires that Local Authorities, "shall, in carrying out its functions, have due regard to the need to promote equality of opportunity between, men and women, persons of different racial groups, and disabled persons and others, respectively".
- 5.2 Not following an external complete recruitment process for the Interim role could leave the Council open to criticism that it has not had adequate regard to the need to promote equal opportunity.
- 5.3 It must be noted however that the duty is not an absolute one and simply requires the Council to "have due regard" to the need to promote equality of opportunity. An element of balancing the need to promote equality of opportunity with other needs of the Council is therefore permissible.

6. FINANCIAL IMPLICATIONS

- 6.1 Estimated financial implications are set out in section 4 of the report. Until an option is agreed by Members it is difficult to set out exact costs. Calculations in respect of options 1, 2 and 4 include employers national insurance and superannuation costs. Option 3 is based on a daily rate charge of between £800 and £1,100.

7. PERSONNEL IMPLICATIONS

- 7.1 As set out in this report

8. CONSULTATIONS

- 8.1 The views of the following consultees have been taken into account in the preparation of this report:

Cabinet Member for Human Resources
Acting Deputy Chief Executive
Acting Director of Corporate Service / Section 151 Officer
Acting Director of Social Services
Deputy Monitoring Officer
Head of Legal Services
Head of HR and Organisation Development

9. RECOMMENDATIONS

- 9.1 It is recommended that the recruitment of an interim Head of Paid Service should proceed as set out in option 4 of this report (paragraph 4.4). The Council instructs WLGA to re-issue its advertisement to Associates on its own Framework and to SOLACE UK indicating that the deadline for expressions of interest to be submitted, with CVs, will be 12 noon Wednesday, 17th July 2013.
- 9.2 Convene an Appointments Committee to consider expressions of interest on Thursday, 18th July 2013 and make a recommendation to the Council for an appointment to the role.
- 9.3 Arrange for the recommendation of the Appointments Committee to be considered by the Full Council at its meeting on Tuesday, 23rd July 2013.
- 9.4 Affirm that the Acting Deputy Chief Executive will continue to undertake the responsibilities of the Head of Paid Service until the formal appointment of an Interim Head of Paid Service pursuant to the arrangements set out above.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 In my opinion the recommendations will enable the Council to recruit the most appropriate candidate in the shortest possible timeframe whilst complying with the requirements of the 2006 Regulations

11. STATUTORY POWER

- 11.1 Local Government Act 2000 and the Local Authorities (Standing Orders) (Wales) Regulations 2006

Author: Leader of Council
Consultees: Cabinet Member for Human Resources; Acting Deputy Chief Executive; Acting Director of Corporate Service / Section 151 Officer; Acting Director of Social Services; Deputy Monitoring Officer; Head of Legal Services; Head of HR and Organisation Development

Appendices:
Appendix 1 Statement by the Leader of Council