

COUNTY COUNCIL - 24 MARCH 2015

CHIEF EXECUTIVE AND HEAD OF PAID SERVICE

Report of the County Solicitor & Monitoring Officer

Introduction

1. At the Full Council meeting of the 17 February 2015 a decision was taken relating to the restructuring of the Senior Management Team of the Council resulting in the deletion of the post of Chief Executive and the resultant decision to give Joanna Simons notice of dismissal from that role by reason of redundancy, and consequently from the position of Head of Paid Service. Following that decision, a Notice of Dismissal was issued to the Chief Executive.
2. The rationale for the restructuring was set out in the earlier report of the County Solicitor and concerned the need to introduce a new operating model to address the serious funding challenges and embrace a more distributed model of managerial leadership.
3. Concerns were raised by some members regarding the legality of the process that was followed in the light of the Local Authorities (Standing Orders) (England) Regulations 2001. To address any uncertainty that may remain it is therefore important for this matter to be revisited at Full Council so there can be confidence in the integrity and transparency of the decision and to avoid legal challenges and the resultant costs and delays. As such, and acting in my duty as the Council's Monitoring Officer under the Local Government and Housing Act 1989¹, I am bringing this matter to Full Council for further consideration.
4. As a consequence, as this matter needs to be considered, the Leader has taken the opportunity to engage in wider consultation about the restructure proposals with a wider body of Members. This will allow the proposal to be reviewed in more detail, including consideration of any risks associated with adopting this new model of leadership.
5. This report therefore revisits these matters and also addresses concerns that were expressed about the procedures followed in taking the previous decision. The County Solicitor acting as Monitoring Officer wishes to

¹ Section 5 of the Local Government and Housing Act 1989: "it shall be the duty of the Monitoring Officer, if it at any time appears to him that any proposal, decision or omission of the authority...has given rise to or is likely to or would give rise to a contravention by the authority...of any enactment or rule of law...to prepare a report to the authority in respect to that proposal, decision or omission."

apologise to Full Council for the uncertainty caused by the procedure which was previously adopted and regards the procedure proposed in this report as the best means by which this matter can be properly considered by members.

Procedure

6. The Regulations provide, in short, that consideration can be made by Full Council or a Committee of Full Council as to whether to take forward a proposal to dismiss a person holding the role of Head of Paid Service. If a decision is taken to progress such a proposal, then before a Notice of Dismissal (for redundancy) is served, a notification procedure to the Leader and Cabinet must be undertaken. The Leader and Cabinet would then have an opportunity to express any objections to the proposal to dismiss. Those objections – or the absence of any objection - would then be referred back to the Committee or Full Council and a further decision taken whether to approve the Notice of Dismissal. If the matter were being considered by a Committee, the further approval of Full Council would be needed before notice could be given.
7. As was made clear in the earlier report, and for reasons of expediency, Full Council were being asked to take the decision to dismiss the Chief Executive and Head of Paid Service for reasons of redundancy and at the same time approve the Notice of Dismissal. Although notification to Cabinet had been undertaken and no objections had been received, arguably there should have been a two-stage process (i.e. a decision by Council to dismiss subject to view expressed by the executive, and then consideration of whether to approve that decision following notification to members of the executive). It had then been the intention that Cabinet would consider the most appropriate structure for the Council.
8. Some members raised concerns as to the lawfulness of process that was followed.

Rescission and potential restructure

9. This matter is therefore returning to Council under the Monitoring Officer's statutory powers. As such, it is therefore proposed by the County Solicitor (acting as Monitoring Officer) that the decision made on the 17 February 2015 be rescinded and that a process be agreed for the further consideration of the restructuring of the Council's Senior Management Team taking into account the views of Members and any risks that might arise as a consequence of any restructuring. The process should be inclusive, involving Cabinet, Audit & Governance Committee, Performance Scrutiny Committee, Remuneration Committee and Full Council; and it should clearly reflect the legal and constitutional requirements.
10. If, as a result of considering the restructuring of the Senior Management Team, it is decided to delete the Chief Executive's post, then the issue of the potential dismissal of the Chief Executive will arise, and at that point a

compliant process for dealing with that issue will be put in place, as explained under the “Staffing” heading below.

The proposed process for consideration of the potential restructuring

Restructure

11. The previous rationale for discussing a potential restructure is still valid i.e. the potential for achieving a new operating model that addresses the serious funding challenges facing the Council and which embraces a more distributed model of managerial leadership. Procedurally, however, the starting point for this is the Officer Employment Procedure Rules in the Council’s Constitution. These provide at Part 8.4(1)(d) that:

“General personnel policies, changes to overall establishments and grading structures, are the responsibility of the Cabinet, subject to any policy which for the time being the Council has directed should be reserved for its approval.”

and Part 8.4(2)(b):

“Major changes to Directorate structures and Establishments require the approval of the Cabinet.”

12. Cabinet have the option of considering the views of the Performance Scrutiny Committee and the Audit & Governance Committee prior to any Cabinet decision. The procedures for call-in would also exist, as normal. It is also considered that the risk assessment of any proposed, significant change to the staffing structure of the Council should be examined by the Audit & Governance Committee.
13. However, Cabinet cannot make the decision to dismiss and can only propose arrangements for a new structure. Cabinet must refer the staffing implications of any restructuring, including any redundancy decision, to a Committee of the Full Council to address.

Staffing

14. It is considered that the appropriate committee to consider the staffing implications of any proposed restructure agreed by Cabinet would be the Remuneration Committee.
15. The Remuneration Committee, as a committee of Full Council, has the ability to decide to take forward a proposal to give Notice to Dismiss the Chief Executive and to reallocate the Head of Paid Service role to another person. If it is decided to take forward that proposal it would have to take the following steps:
 - it would need to instruct the Proper Officer to notify the persons in Regulation 6 of the Standing Order Regulations (i.e. each member of the Executive) and the Proper Officer would then report back to the

- Remuneration Committee stating whether or not there had been any objections;
- after considering the Proper Officer's report, the Remuneration Committee would decide whether to proceed with the proposal to dismiss the Chief Executive and reallocate the post of Head of Paid Service;
 - if it decided to proceed, it would need Full Council's approval before giving Notice of Dismissal and it would then need to make consequential provision for the appointment to certain statutory posts including the Head of Paid Service and the Returning Officer, as previously set out in the original report to Council.

Summary

16. In summary, the proposed process for restructuring is:
- Cabinet to consider and agree any restructuring having regard to representations made by Performance Scrutiny Committee and Audit & Governance Committee;
 - Cabinet must refer the staffing implications to the Remuneration Committee;
 - Remuneration Committee can decide the staffing implications including any decision in principle to take forward the potential dismissal by reason of redundancy of the Chief Executive and the consequent reallocation of the role of Head of Paid Service;
 - if so, the Remuneration Committee will ask the Proper Officer to notify the Leader and Cabinet members of any such proposed dismissal by reason of redundancy and to report back to the Committee as to whether there were any objections and their nature;
 - Remuneration Committee, if it agreed with the proposal to dismiss by reason of redundancy the Chief Executive and Head of Paid Service, would then refer the matter to Full Council for approval of that dismissal;
 - if approval was given, the Remuneration Committee would issue a Notice of Dismissal by reason of redundancy.
17. A proposed timetable, reflecting the importance of wider involvement, is set out in the Annex to this report, culminating in a proposed extraordinary meeting of Council on 19 June 2015.

Financial, staff and legal implications

18. There are no financial or staffing implications in relation to the proposal to rescind the decision of Full Council; nor in the decision to reconsider that proposal through the Constitutional arrangements set out above.
19. Undertaking the proposed process for reconsideration will give constitutional and legal certainty to any decision taken to issue a Notice of Dismissal, if that is the decision proposed after reconsideration.

20. In terms of the proposal to restructure the Senior Management Team, the financial, staffing and legal implication will need to be set out and considered by Cabinet, and the Performance Scrutiny, Audit & Governance and Remuneration Committees.

RECOMMENDATIONS

21. **Council is RECOMMENDED to:**

- (a) **rescind the decision to issue a Notice of Dismissal to the Chief Executive and Head of Paid Service taken on the 17 February 2015;**
- (b) **agree to reconsider the proposal to restructure the Senior Management Team of the Council using the proposed process set out in paragraph 16;**
- (c) **agree the timeframe for reconsideration proposed in the Annex to this report;**
- (d) **delegate to the Remuneration Committee the power to issue a Notice of Dismissal of the Chief Executive and the Head of Paid Service subject to the approval of that decision by Full Council.**

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Background papers: None.

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