

Report to: AUDIT COMMITTEE

Report of: Interim City Solicitor & Monitoring Officer and the Director Human Resources

Report Author: Assistant Director of Legal Services and DMO

Date of Decision: 28 July 2020

Subject: Process for the exit of Senior Officers

1 Purpose of Report

- 1.1 To inform Members of the process followed when Senior Officers leave the organisation and to provide assurance around the governance associated with any decisions taken especially where settlements are deemed appropriate

2 Decisions recommended

That Audit Committee:

- 2.1 Notes the process as outlined.

3 Process

- 3.1 The Joint Negotiating Committee (JNC) for Chief Officers of Local Authorities is the national negotiating body for the pay and conditions of service of chief officers in England and Wales and provides the basis for the appointment and exit of senior officers.

- 3.2 The governance relating to JNC officers is contained within Part C7 of the Constitution.
https://www.birmingham.gov.uk/downloads/file/13657/part_c_constitution

- 3.3 Senior officers leave the Council for many reasons:

Resignation

- 3.4 In certain circumstances senior officers may wish to resign from their role. The period of notice on either side is three months, but this can be changed by mutual agreement, and considering business reasons.

Retirement

- 3.5 Any employee age 55 or above can submit a request to leave the authority via voluntary early retirement. Pension estimates are usually provided via BCC internal pension team in liaison with West Midlands Pension Fund and are based on the accrual of pension benefits that the employee has contributed to the scheme and their

length of service, so they vary employee to employee. Authorisation is provided via the line manager and the JNC Panel for JNC officers.

Redundancy (compulsory and / or voluntary)

- 3.6 A situation may arise, where through an organisational restructure, or for some other reason, a senior officer's role may become redundant.
- 3.7 In this scenario, the City Council should consult with any senior officer affected at the earliest possible stage when there is a suggestion that the officer's post might be abolished or proposed for abolition.
- 3.8 If after such consultation a proposal is formulated to abolish the senior officer's post, and that is part of a proposal to dismiss 20 or more employees from one establishment within 90 days the procedure of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, requiring consultation with trade unions, should be followed, the required statutory information being sent to the senior officer and to each independent trade union recognised by the employers for collective bargaining purposes for the senior officer.
- 3.9 Where the provisions of the Act do not apply in any event a period of not less than twenty-eight days should be allowed for the individual consultation process. The senior officer and a trade union representative should also be afforded an opportunity of making oral representations to the Committee or Council meeting concerned before a final decision is made.
- 3.10 If following such consultations, it is decided that the post must nevertheless be deleted, the officer should be offered any suitable alternative employment that may be available, or which may become available in consequence of the re-organisation giving rise to the deletion of the senior officer's post.
- 3.11 Consideration should be given to the possible application of discretionary powers of premature retirement, and permissible enhancement of benefits or redundancy payments, and the possibilities of providing an alternative post or of extending the period of notice to assist the senior officer in finding other employment.
- 3.12 Where the senior officer in question is a Director Public Health in England then the redundancy must comply with section 73A of the National Health Act 2006, which provides that before terminating the appointment of its Director Public Health, a local authority must consult the Secretary of State for Health.
- 3.13 In certain instances, the Council may invite requests for voluntary redundancy/early retirement. This option would generally be during the budget process and would be administered via a corporate redundancy trawl.

Budgetary implications

- 3.14 Each service area will take heed of budgetary constraints and restrictions when considering redundancy and retirement of any JNC officer. Commercial considerations will be evaluated in order for service areas to make appropriate decisions which will also take a view of budgetary limitations within the service area.

Disciplinary proceedings

- 3.15 In circumstances where a senior officer is faced with allegations of misconduct, or gross misconduct, the ACAS Code of Practice requires there to be an investigation to establish the facts of the case before proceeding to the disciplinary hearing.

Suspension

- 3.16 Where the senior officer's continuing presence at work compromises the investigation or impairs the efficient exercise of the Council's functions, the officer may be suspended.
- 3.17 The employee will receive full pay whilst they are suspended and their employment rights will not be affected by the suspension. Unless there is a specific clause within the contract (which there isn't in Birmingham) most suspensions are on full pay, even when part of a disciplinary process. Whether payments such as overtime or commission are included depends on the precise wording of an employment contract.
- 3.18 The decision to suspend a Chief or Deputy Chief Officer shall be made by the Chief Executive (Head of Paid Service) in consultation with the Leader of the Council, Deputy Leader and HR Director. In practice, however it would be expected that the Opposition party leaders and the City Solicitor would also be consulted on such matters to ensure compliance of procedures and process is adhered to. Written notice stating the reasons for any such suspension shall be given at the earliest opportunity possible.
- 3.19 The decision to suspend the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Finance officer shall be made by the JNC Panel.
The responsibility for implementing the suspension of the Chief Executive will be the HR Director with the Leader of the Council and the responsibility for implementing the suspension of the Monitoring officer and Chief Finance officer will be the Chief executive and HR Director.
- 3.20 Prior to any suspension it is recommended that a fact finding or preliminary investigation is conducted in order to assess whether the suspension is justifiable / reasonable or proportionate. The preliminary investigation will also determine whether a question of discipline exists which, if established, could not be resolved informally.
- 3.21 The necessity for the senior officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided.
- 3.22 The responsibility to implement the suspension, or to implement action short of dismissal, shall be the responsibility of the Head of Paid Service or their designated nominee.

Investigation

- 3.23 The JNC believes that, for senior officers, an investigation should be carried out by an independent investigator.

- 3.24 Once appointed it will be the responsibility of the independent investigator to investigate the issue(s)/allegation(s) and to prepare a report stating whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct or incapability, and recommend any disciplinary action or range of actions as appropriate.
- 3.25 The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, availability of witnesses and evidence gathering. The independent investigator could decide to delegate some of the investigation work to an assistant. This should be agreed with the commissioning officer.
- 3.26 Based on the independent investigator's report the commissioning officer will determine if any disciplinary issues arise and, if necessary, meet with the officer and their representative to establish the disciplinary hearing process and in accordance with ACAS guidance. Alternatively, there could be a number of options available including action short of dismissal.

Dismissal

- 3.27 The JNC Panel may dismiss or take disciplinary action short of dismissal.
- 3.28 Membership of the JNC Panel shall comprise the Leaders of the three main political parties (or their nominees), and two other members subject to the proportionality rules. The Chair of the Panel will be the Leader of the Council or his/her nominated deputy. Please refer to the attached Appendix 1 which contains details of process and Appendix 2 which outlines a sample report.
- 3.29 Dismissal or disciplinary action short of dismissal can only take effect where no well-founded objection has been made by any member of the Cabinet. Any objection needs to relate to the Council's disciplinary, capability and related procedures and policies and be sent to the Director HR, which will then be presented as below to the JNC panel.
- 3.30 In the event that a reasoned objection is received, the Director of HR shall refer the matter to a specially convened meeting of the JNC Panel (the members of the specially convened Panel must be the same members who recommended the dismissal/disciplinary action) and the decision of this specially convened Panel will be final.
- 3.31 If the senior office raises a grievance during the disciplinary / capability process these should be dealt with in accordance with the Council's relevant procedures at the relevant time or as set out in the Chief Officer Handbook Joint Negotiation Committee in force at the relevant time.

Capability

- 3.32 Where appropriate, a preliminary investigation should be undertaken where there is any question or complaint regarding the capability of a senior officer.

- 3.33 If the Chief Executive, or his/her designated nominee, undertaking the preliminary investigation concludes that there is a question of substance as to the senior officer's capability, they should advise the senior officer informally of the nature of that question. There should be a full discussion covering:
- The reason for incapability;
 - Problem areas;
 - What needs to be done to improve performance, including any opportunities for training;
 - Time frames over which improvements should be shown;
 - When it is felt that there is no prospect of improving the senior officer's performance a satisfactory outcome may be achieved by the senior officer undertaking to see other employment, resigning or accepting retirement.
- 3.34 At capability hearings an officer subordinate to the senior officer may give evidence of fact. Where the parties disagree on technical or professional matters it may be useful to refer to an appropriately qualified independent third party.
- 3.35 Any time period should be sufficient to allow a reasonable opportunity for the senior officer to show either an improved performance or that the conclusion of the preliminary investigation was mistaken.

Informal conciliation

- 3.36 In general, informal conciliation is to be preferred to formal procedures if it can bring about a mutually agreed solution to the problems that have arisen. Such solutions should make it clear what specific changes in behaviour and/or performance are expected and within what timescales.
- 3.37 In certain circumstances it may be appropriate to enter into mediation with an independent mediator to reach a mutually agreed solution. This can include circumstances where a claim has been submitted through the Employment Tribunal.
- 3.38 If the parties are unable to reach a satisfactory conclusion, then in certain circumstances it may be appropriate to enter into discussions with ACAS. If these discussions lead to the termination of the senior officer's employment this could include a settlement. This could include situations where the officer has raised complaints with the disciplinary process and has issued, or threatened to issue, proceedings in the Employment Tribunal. In these circumstances it may be appropriate to consider settlement for commercial reasons, where the amount being claimed would exceed the costs and legal costs of defending. Settlement will not be appropriate for every case, and each case should be judged on its own merits before a final decision is made.
- 3.39 If a settlement agreement is required, this would be something that would be agreed in advance by the JNC panel and the parameters for the mediation set by the Panel.
- 3.40 The City Solicitor is authorised to settle proceedings up to the value of £500,000. Decisions above that figure would need to be signed off by the Chief Finance Officer and/ or the Chief Executive in consultation with the City Solicitor, within the parameters previously agreed by the JNC Panel.

3.41 The final sign off would then be concluded using a formal and confidential agreement (e.g. a COT3 agreement). This would set out the basis of the terms agreed between the parties and include details of the settlement amounts under each of the heads of term. It could also include such things as agreed media messages and references. Once finally concluded, the agreement would be signed off by the relevant Officer(s) in accordance with the Scheme of delegation contained within Part E of the constitution and is a legally binding document to all parties.

3.42 After the conclusion of any mediation including a settlement, the members of the JNC panel would be notified as would the External auditor.

4 Compliance Issues

4.1 Are Decisions consistent with relevant Council Policies, Plans or Strategies:
Yes.

4.2 Relevant Ward and other Members/Officers etc. have been consulted on this matter:
The Chair of Audit Committee has been consulted.

4.3 Relevant legal powers, personnel, equalities and other relevant implications:
Sections 3(3) and 3(4) of the Local Audit and Accountability Act 2014 require the Council to prepare financial accounts for each 12 month period ending 31 March.

4.4 Will decisions be carried out within existing finances and resources:
Yes.

Main Risk Management and Equality Impact Assessment Issues:

The Council is required to produce its annual accounts within statutory deadlines. The adoption of its accounting policies at an early stage will ensure that there are clear guidelines on recording accounting entries.

Contact Officers:

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The Joint Negotiation Committee (JNC) for Chief Officers of Local Authorities

The Joint Negotiating Committee (JNC) for Chief Officers of Local Authorities is the national negotiating body for the pay and conditions of service of chief officers in England and Wales.

The Local Authorities' side consists of elected members nominated by the Local Government Association and the Welsh Local Government Association. The Staff side consists representatives of GMB and UNISON.

The Joint Negotiating Committee (JNC) for Chief Officers of Local Authorities provide advice and guidance via an on-line 'Conditions of Service Handbook for local authority Chief Officers' known as the JNC Handbook. This is used for general principles, and it is also advised to set up sub-committees with local authorities to deal with employment matters.

Standing Orders and Delegations

The above rules shall be regarded as Standing Orders of the Council for the purposes of The Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') and Local Authorities (Standing Orders) (England)(Amendment) Regulations 2015 ('the 2015 Regulations').

Birmingham City Council has delegated to the Chief Officer and Deputy Chief Officer Appointments, Dismissals and Service Conditions Sub-Committee (the 'JNC Panel') the responsibilities set out in these employment procedure rules.

Composition of JNC Panel

Membership of the JNC Panel shall comprise the Leaders of the three main political parties (or their nominees), and two other members subject to the proportionality rules. The Chair of the Panel will be the Leader of the Council or his/her nominated deputy.

The quorum for each meeting of the JNC Panel is five Elected Members – cross party.

There may be circumstances when a decision of the JNC Panel may be agreed by all five members of that Panel in consultation with the Chief Executive and Director of Human Resources and Monitoring Officer or their nominated deputies without an actual meeting of that Panel taking place. The exercise of such decision shall be noted on the record of decision including setting out the reasons for the urgent circumstances.

Each time the Chief Officer and Deputy Chief Officer Appointments, Dismissals and Service Conditions Sub-Committee (the 'JNC Panel') meet there is an agenda, associated report(s), supporting appendices and minutes to record the decisions taken.

A typical sample template report is provided below at Appendix 2.

BIRMINGHAM CITY COUNCIL
REPORT TO COUNCIL BUSINESS MANAGEMENT SUB-COMMITTEE
CHIEF OFFICER AND DEPUTY CHIEF OFFICER APPOINTMENT AND
DISMISSALS

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| PUBLIC / PRIVATE REPORT |
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| Report to: | CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS APPOINTMENTS DISMISSALS AND SERVICE CONDITIONS SUB-COMMITTEE |
| Report of: | |
| Date of Meeting: | |

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| Subject: | |
| Relevant Committee Member(s) | |
| Relevant Chief Officers: | |

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| 1. | Purpose of Report: |
| 1.1 | |

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| 2. | Decision(s) Recommended: |
| 2.1 | That the Committee: |

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| 3. | Consultation: |
| 3.1 | |

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| 4. | Background and Context: |
| 4.1 | |

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| 5. | Options: |
| 5.1 | |
| 6. | Human Resource Implications: |
| 6.1 | |
| 7. | Financial Implications: |
| 7.1 | |

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| 8. | Legal Implications: |
| 8.1 | |
| 9. | Public Sector Equality Duty: |
| 9.1 | |
| 10. | Reason for Decisions: |
| 10.1 | |

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| Background documents (if any): |
| 1. |

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| Appendices (if any): |
| 1. |