

IMPLEMENTATION EXECUTIVE
7 MAY 2008

STAFFING POLICY COMMITTEE
7 MAY 2008

**RECRUITMENT PROCESS : PRINCIPLES AND PROCESS FOR MAKING
APPOINTMENTS TO TWO TOP TIERS**

Purpose of Report

1. To resume consideration of the principles and process for making appointments to the two top tiers having regard to :-
 - 1.1 Legal advice relating to the rights of displaced District Council Chief Executives.
 - 1.2 The draft Staffing Regulations.
 - 1.3 The outcome of the evaluation exercise undertaken to compare the roles of senior managers in District Councils with those in the County Council.

Legal Advice

2. The posts of Chief Executive in the District Councils will cease on 31st March, 2009.
3. The Staffing Regulations will provide a right for District Council Chief Executives to be transferred to the employment of the new Council at vesting day. As their post of Chief Executive will have ceased, they will be displaced and potentially facing dismissal on the grounds of redundancy unless suitable alternative employment is available and can be offered to them.
4. The County Council has sought the advice of leading Counsel. In essence he has advised that :-
 - 4.1 Displaced District Council Chief Executives should be included in prior consideration for suitable Corporate Director posts.
 - 4.2 Failure to do so will expose the County Council to claims for unfair dismissal and Compensation which may well succeed.
5. This being so, paragraph 1.3.2 of the Appendix previously circulated continues to apply. It states :-

“ Where a post of Corporate Director in the County Council or Chief Executive in the District Council disappears or is fragmented, and the job holder is displaced and potentially redundant, identify possible suitable alternative employment as a means of reducing the risk of redundancy dismissal. Ring fence any potentially suitable

alternative employment identified to the displaced Corporate Director(s) in the County Council and Chief Executives in the District Councils.”

Comparability Exercise

6. Paragraph 2.2.2 of the previously circulated Appendix, relating to the appointment of Service Directors in the new organisation states :-

“ Where a post of Assistant Director in the County Council or Director in a District Council disappears or becomes fragmented, and the job holder is displaced and potentially redundant, identify possible suitable alternative employment as a Service Director as a means of avoiding redundancy dismissal. Ring fence the appointment to the displaced Assistant Director(s) in the County Council and displaced Directors in the District Councils, who are facing redundancy and for whom by reference to previous job content (e.g. range of responsibilities and job size) to qualification, skills and experience necessary to perform the role and to their pay and their place in the organisational structure the identified post would appear suitable alternative employment.”

7. Representations have been made by, and on behalf of, some District Council Directors that :-

7.1 their equation with post of Assistant Director in the County Council; and

7.2 their consequent omission from prior consideration for a post of Corporate Director

potentially infringes their employment rights.

8. A job evaluation exercise has been conducted. It has sought to evaluate the different roles and score them accordingly. The outcome and consequent legal advice will be made available at the Implementation Executive. This will influence whether the proposed arrangements to give prior consideration to displaced District Council Directors for posts of Service Directors remains appropriate or needs to be revised.

Staffing Regulations

9. It is understood that :-

9.1 Draft Staffing Regulations will be published week commencing 6th May and be the subject of a two week period of formal consultation.

9.2 The Minister intends making an announcement to and laying the draft Regulations before Parliament on or about the 20th May.

9.3 There will then be a period of three weeks before the Regulations become enacted (i.e. about mid June).

10. An advanced copy of the draft Staffing Regulations has recently been sent to the leader of the JIT. The Regulations are likely to provide :-

10.1 All employees of authorities which will cease to exist on 1st April, 2009 and who are in post immediately prior that date for transfer to the new unitary authority with TUPE protection.

- 10.2 New unitary authorities are required to appoint a Chief Executive by means of open competition by April 2010.
- 10.3 Displaced Chief Executives of continuing authorities will be eligible for redundancy compensation.
- 11. The Draft Regulations are also likely to be accompanied by Ministerial Guidance setting out the Government's view on the appointment to senior management board posts.
- 12. The Draft Regulations are also likely to give the Implementation Executive responsibility for appointing to posts of Corporate Director (of which there are two vacant in the new structure) and possibly Service Directors (of which there are eleven vacant in the new structure).
- 13. There is much that remains unclear about the remit and accountability of the Implementation Executive to make these appointments. However, in view of the desirability of proceeding to make top tier appointments as soon as possible, it is proposed that the Implementation Executive establish a mechanism for this.
- 14. There are seventeen members of the Implementation Executive. Participation by all members in the selection would be unwieldy. The Implementation Executive has the power to appoint a sub committee for this purpose. Having regard to the size and composition of the Implementation Executive, and the need for speed and efficiency, the sub committee could be, say, eight (i.e. four District Councillors and four County Councillors, with the County Council having a casting vote) or a smaller number, say, five (e.g. three County Council and two District Council). For the efficient and speedy conduct of the forthcoming selection, whomsoever is appointed to the sub committee will need to be readily available, particularly if the remit extends to appointments of Service Directors.
- 15. Any appointment made in the next few weeks prior to the Regulations becoming enacted, would be "subject to ratification following enactment". The alternative (i.e. await enactment) would set back the process and does not provide the certainty which staff are seeking.

Recommendation

- 16. The Implementation Executive is asked to :-
 - 16.1 Endorse and recommend to the County Council principles and process for appointments to two top tiers.
 - 16.2 Agree the size and composition of an appointments sub committee.

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