

Council - 22nd March 2010

CHELTENHAM BOROUGH COUNCIL

REPORT OF REVIEW

WORKING GROUP

Review Working Group

Councillor T. Cooper

Councillor D. Hibbert

Councillor P. Massey

Mr. G. Mitchell

11TH MARCH 2010

CONTENTS, APPENDICES AND GLOSSARY OF TERMS

CONTENTS	Page No.
1. Introduction	3-4
2. Background	5-6
3. KPMG Review	7
4. Appointment / Recruitment	8-18
5. Dispute Resolution	19-26
6. Conclusions	27-28
7. Recommendations	29-31

APPENDICES

Appendix 1 – Review of KPMG Recommendations by Review Working Group

GLOSSARY OF TERMS

Statutory Officers means, in the Cheltenham context, the Head of Paid Service, the Section 151 Officer and the Monitoring Officer

Chief Officers means the Strategic Directors and the Chief Executive

Head of Paid Service means, in the Cheltenham context, the Chief Executive

Section 151 Officer means, in the Cheltenham context, the Chief Finance Officer

Monitoring Officer means, in the Cheltenham context, the Borough Solicitor and Monitoring Officer

JNC Panel means the Committee which was set up in 2003 specifically to deal with matters in relation to the former Managing Director

JNC Disciplinary Committee means the standing Committee which was erected in 2005 to deal with any disciplinary or grievance issues relating to statutory Officers

1. INTRODUCTION

1.1 At an Extraordinary Meeting of the Council on the 3rd August 2009, the Council considered a motion which acknowledged the anger and disappointment of many of the residents of Cheltenham at the financial cost and the damage to the reputation of the town following the failure of the Council to win the legal action against Mrs. Christine Laird. The Council recognised that a situation like this should not be allowed to arise again and resolved:-

“To appoint a working group of 3 members to review reports from an independent auditor, and the Council’s Monitoring Officer, and to recommend changes to the Constitution and working practices that aim to correct flaws in process that these reports may identify. The group should operate by consensus and may co-opt up to two independent members who are not councillors or officers of CBC.”

1.2 The Council also resolved that the Group should:-

- a) Work in conjunction with KPMG and review their report once any court action is completed in relation to the litigation against Mrs Laird.
- b) Review current recruitment and appointment processes to ensure that best practice is now followed and that the risk to the Council in future appointments is minimised.
- c) Review a report of the Monitoring Officer on internal processes for handling dispute procedures with particular focus on the roles and actions of Officers and Members in those processes.
- d) Recommend changes to the constitution, working practices and code of conduct that arise out of their review.
- e) Comprise one member from each political group.
- f) Aim to report back to Council as soon as possible.

1.3 Councillors Cooper, Hibbert and Massey were appointed to be members of the Working Group.

1.4 The Review Working Group has met on 10 occasions, its first meeting having taken place on the 10th September 2009. Representatives from KPMG have attended some of the meetings in order for the Working Group to be able to fulfil the requirements of 1.2 a) above. On the 29th October 2009, Mr. Gordon Mitchell was co-opted onto the Working Group. Mr Mitchell has worked at a senior level in various local authorities over a number of years, having been Chief Executive for over 10 years. He currently works as a consultant primarily in the field of organisational efficiency and change. Mr. Mitchell has undertaken interim management roles in which capacity he worked for a period of 10 months in 2008/09 as Interim Chief Executive for Tewkesbury Borough Council, leading the Council’s Improvement Programme. He is also a non executive Director on a number of Trusts and Boards, both locally and elsewhere.

1.5 The Chairman of the Audit Committee was invited to attend meetings of the Working Group at which representatives of KPMG were present and also attended the meeting on the 5th March 2010 at which the recommendations from the KPMG report were reviewed.

- 1.6 One of the early tasks of the Working Group was to determine the scope of its review within the broad terms of reference which were set by the Council. The scope of the review, as agreed by the Working Group, comprises in addition to the review of the KPMG report the following:-

Purpose of Review

- The review is intended to ensure that any deficiencies in the Council's processes or procedures are identified and measures put in place to address them.
- The review is not intended to
 - Consider the evidence which was presented to the High Court
 - Review any individual's conduct
- The review includes assessment of reasonableness (in a legal sense) of decisions taken but it is not the role of the Working Group to substitute its own decision for decisions previously taken

Recruitment /Appointment

- Are the Council's Recruitment and Appointment processes robust and fit for purpose? In particular:-
 - Is the application form comprehensive and fit for purpose?
 - Are offers of employment made appropriately (verbal/written offers)?
 - Are the conditions of contract necessary and appropriate to safeguard Council and Employee?
- Is the pre-employment process robust and fit for purpose?
 - Longlisting/Shortlisting
 - References
 - Advice on medical clearance
 - Other pre-employment checks
 - Qualification
 - Other clearances
- Are probation periods effectively monitored and reviewed?
- Are the Council's induction processes adequate and robust?
- Are the Council's absence management processes adequate, fair and robust?
- Consideration of examples of best practice (national/regional examples)

Dispute Resolution Procedures

- Are the Council's procedures for determining disputes robust, fit for purpose and clear?
 - Is the process whereby complaints by or against officers clear and adequate
 - Is there a process whereby complaints can be efficiently, effectively and fairly dealt with:-
 - Member complaint against Officer
 - Officer complaint about Member
 - In-house or external independent determination
- Analysis to be carried out by MO to include:-
 - All currently available processes / procedures /mechanisms (including disciplinary action/grievances) for complaints to be made and determined:-
 - Member/Officer
 - Officer / Officer
 - Officer / Member
 - Any deficiencies in availability or process
 - Any recommended amendments (removal / addition / alteration etc.)

2. BACKGROUND

- 2.1 This section summarises the relevant background in order to provide context for the Working Group's report.
- 2.2 It is clear from the chronology of events that very soon after the former Managing Director commenced employment with Cheltenham Borough Council, difficulties arose in working relationships between the Managing Director and Members of the Council. This was notwithstanding that the recruitment pack which was provided stated that the post was suitable for a candidate who "must be able to engender trust from the leader, cabinet, scrutiny and overview committees and area committees" and further that "All members, regardless of political party or whether they are on the executive or "back bench" must be confident that they are being properly advised".
- 2.3 The full Council made the appointment of the Managing Director at the end of a fairly extensive interview and assessment process - three candidates were short-listed for selection. The short-list was drawn by an Appointment Sub-Committee from a longer list of candidates who had been through the interview and assessment process, but the Sub-Committee did not recommend a preferred candidate. The Council then made its decision based on feedback from the sub-committee and individual candidate presentations with questions and answers. On the 4th January 2002, the Council agreed to offer the post to the former Managing Director by a narrow margin (18:17).
- 2.4 From as early as May 2002, relationships between the Managing Director and some members were severely strained. There followed a period of disagreements between various parties (the Managing Director, the Council, some individual Members and some individual Officers) which continued for some three years, punctuated by formal decisions on various points of grievance / complaint. The dispute, with its attendant publicity, involving the Council's most senior Officer who held the statutory designation of Head of Paid Service, had a seriously detrimental affect on the Council; both its staff and its membership. The dispute touched practically all of the avenues for dispute resolution which were available to the parties concerned. These included instigation by the Council of the statutory procedure for the appointment of a Designated Independent Person under the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001. The Managing Director's contract was determined by the Council in August 2005 as a result of operation of the law (frustration of contract). The Council, in March 2006, approved the early retirement of the postholder on the grounds of ill-health which was applied retrospectively from the date upon which the Contract was formally terminated.
- 2.5 Following the termination of the Contract, and in the light of information which had become available during the course of the various aspects of the dispute, the Council commenced Court proceedings against both the former Managing Director and her former employer, Rhondda Cynon Taf Council (RCT Council). These proceedings arose, respectively, from possible misrepresentations within the pre-employment medical questionnaire and the formal reference for suitability for the post. Further detailed consideration of evidence, once the formal Court proceedings had been commenced led to the discontinuation of the case against RCT Council with each party bearing its own costs. However, the case against the former Managing Director proceeded to trial. The trial lasted for some 38 days and although the Council was unsuccessful, Justice Hamblen confirmed that the claim brought by the Council was "fit for trial". The process leading to the decision to take and subsequently continue the

High Court litigation against the former Managing Director is the subject of separate review by the Council's external auditors, KPMG. The role of the Working Group in this regard is to work in conjunction with KPMG and to review its report.

- 2.6 The Council is determined to ensure that lessons are learned from its experience of the failure to win the High Court action for fraudulent or negligent misrepresentations in a job application which it commenced against its former Managing Director. The Council sought damages which eventually amounted to £982,000.00 In addition to paying its own costs of the case, the Council was ordered to pay 65% of the former Managing Director's costs. This cost has yet to be quantified. An appeal challenging the costs Order and seeking an increase in the amount of costs payable by the Council was dismissed by the Court of Appeal.
- 2.7 The Working Group has considered relevant parts of the judgment (and costs judgment) of Mr. Justice Hamblen. The Judge recognised that this was a "novel case" and, in rejecting an argument for the Council to reimburse total or even indemnity costs, confirmed that all of the points taken by the Council were "fit for trial".
- 2.8 The Working Group has carefully scrutinised relevant parts of the Court Judgment and the detailed chronology of events considered within it. The Group wished to understand whether there were weaknesses in processes or procedures operated by the Council at that time which might have contributed to the protracted nature of the dispute and to the failure of the Council to prove its case in the High Court. In accordance with the mandate from the Council, the Working Group has confined its work to the terms of reference as originally set out. It has examined the processes and procedures which were in place at the time, rather than itself having re-evaluated the evidence presented to the High Court.
- 2.9 The Working Group has concentrated its effort on reviewing the Dispute Resolution procedures which are in place and also the Recruitment / Appointment / Employment procedures and to recommend to the Council action to be taken to address the deficiencies which the Working Group has subsequently identified.

3. KPMG REVIEW

- 3.1 The Public Interest Report issued by KPMG was reviewed by the Working Group in accordance with the wishes of the Council.
- 3.2 The Working Group would like to thank KPMG for this thoroughly researched report. It is clear and constructive and the recommendations are comprehensive.
- 3.3 The Working Group acknowledges the areas for improvement which have been identified and welcomes the opportunity for the Council to respond by the preparation of a comprehensive action plan, which will strengthen the Council's decision-making and governance procedures.
- 3.4 All recommendations with the exception of Recommendation 26 were accepted by the Working Group to be worthy either of further consideration following a detailed analysis or were matters of good governance/practice which should be introduced as a matter of course. The Working Group felt the recommendations 1-25 broadly fell into 2 categories, as follows:
1. Those recommendations which require further consideration in the context of a comprehensive review of the Council's constitution. It is therefore, recommended that the Borough Solicitor undertakes a comprehensive review of the Council's Constitution by the end of September 2010 for consideration by the Staff and Support Services Committee.
 2. Those recommendations which suggest changes to procedure which represent good practice and governance, are operational matters and do not require a decision of the Council in order to be implemented. Therefore, the Working Group is recommending that the Assistant Chief Executive
 - produces an appropriate and comprehensive guidance note for the Senior Leadership Team and Service Managers, on decision-making practices and procedures.
 - revises the corporate report template and
 - introduces operational procedures within the Democratic Services Unitto secure the improvements to processes and procedures which have been identified by the KPMG report and which fall within the remit of the corporate management of the authority
- 3.5 As far as recommendation 26 is concerned, the Working Group does not recommend that this be accepted. It is felt that Members of the Council are well aware of the statutory provisions regarding methods of voting which are reflected within the Council's Constitution. These provisions set out the circumstances in which a recorded vote may be requested and that any member has the right to require that his / her vote (or abstention) be recorded in respect of any decision made by the Council or of a Committee / Sub-Committee of which he/she is a voting member.
- 3.6 The Working Group's detailed response to the recommendation of KPMG is attached as Appendix 1.

4. APPOINTMENT /RECRUITMENT

4.1 In order for the Working Group to determine whether or not the Council's current appointment and recruitment procedures are robust, fit for purpose and clear, the Council's current and previous appointment and recruitment processes were considered in full. This included considering a comparison between what was in place in 2001/02 and the current position, and taking into account the changes which had taken place in the meantime. The following areas were specifically considered and examined:-

1. the processes and procedures to recruit and appoint the former Managing Director
2. the employment application form, and whether it is comprehensive and fit for purpose
3. offers of employment and whether these are made appropriately (written/verbal)
4. the conditions of contract and their appropriateness to safeguard the Council and the relevant employee
5. the pre-employment process and whether it is fit for purpose
6. whether probation periods are effectively monitored and reviewed
7. whether the induction processes are adequate and robust
8. whether the Chief Executive appraisal process is fit for purpose
9. whether the absence management processes are fair and robust
10. examples of best practice (national/regional)

The Working Group carefully considered the procedures and the mechanisms which are currently in operation, in order to decide whether any further measures should be recommended to be put in place to address any perceived shortcomings and to make sure that the procedures are robust, fit for purpose and clear.

4.2 The Working Group was mindful of the importance of the former Managing Director's role as Head of the Council's Paid Service and the critical importance of the post to the Council.

4.3 The Managing Director's post was described in the recruitment details as being responsible for the provision of leadership to the management of the Council's entire staff (including two other statutory Officers). At the same time the post holder was expected to provide the interface between staff and Members of the Council as well as providing high level advice and guidance to the Council, through its Cabinet, Committees and senior membership. The post was described as being suitable for a candidate who "must be able to engender trust from the leader, cabinet, scrutiny and overview committees and area committees. All members, regardless of political party or whether they are on the executive or "back bench" must be confident that they are being properly advised.

4.4 The Working Group was made aware of the statutory and constitutional requirements regarding the appointment of Statutory and Chief Officers (Head of Paid Service, Chief Finance Officer, Monitoring Officer or a Director) which are contained within the Council's

Constitution at Part 4F "Employment Rules", reflecting the requirements of The Local Authorities (Standing Orders) (England) Regulations 2001.

- 4.5 The power to approve the appointment or dismissal of the Head of Paid Service must, by regulation, be exercised by the Authority itself and cannot be delegated to a Committee (or Cabinet) or a Member.
- 4.6 The Contractual provisions which are relevant are the Joint Negotiating Committee (JNC) for Local Authority Chief Executives (National Salary Framework and Conditions of Service) 2009 and contract of employment. These provisions are incorporated within the Contract of Employment of Heads of Paid Service (Managing Director/Chief Executive). Authorities are at liberty to amend certain aspects of the JNC conditions but this is relatively unusual except insofar as some minor variations to reflect local circumstances. The current CBC Chief Executive as well as the previous Managing Director have the JNC conditions incorporated in their contracts. The version of JNC conditions applicable during the employment of the Managing Director was issued in 1998. However, these were amended in September 2009. The 2009 version is considerably more detailed and comprehensive than the 1998 version which was in existence at the time of the former Managing Director's appointment.
- 4.7 The Working Group considered the chronology of the appointment process for the former Managing Director which can be summarised as follows:-
 1. November 2001 - CBC commenced its formal recruitment for the post of Managing Director when the position was advertised externally. The post of Managing Director included the statutory designation of Head of the Council's Paid Service.
 2. Applications were invited for the post and short listed candidates were called for interview which took place over the period 2nd-4th January 2002.
 3. 4th January 2002 – Council meeting was held and the appointment was agreed. Mrs Laird was offered the post of Managing Director.
 4. 7th January 2002 - a letter of offer was sent expressing the offer to be conditional upon medical clearance being obtained.
 5. 9th January 2002 – a letter was sent by the former Managing Director confirming acceptance of the offer subject to the terms and conditions outlined.
 6. 14th January 2002 - the Council confirmed that medical clearance had been given and that it would now proceed with the appointment.
 7. 4th February 2002 - Mrs. Laird took up post of Managing Director.
 8. 2nd August 2002 – date of formal contract of employment (signed September 2002).

4.8 The Council's Recruitment Process

- 4.8.1 As previously stated the statutory requirements which apply to the appointment of a Chief Officer are set out within the Council's constitution. Where it is not proposed to appoint exclusively from within its own officers, the Council is required to draw up a job and person specification, make arrangements for the job to be

advertised, and to provide a copy of the job and person specification to any person on request. The Council approves the appointment of Chief Officers.

- 4.8.2 When making arrangements to recruit a Managing Director in late 2001, the Council secured the support of the South West Employers Organisation to assist with the appointment. It is usual for appointments at this level to be supported by external advisors, although there was no information available to the Working Group to enable it to understand the basis upon which the decision to use SW Employers had been made. The agreed method of securing a supplier for recruitment support at Chief/Deputy Chief Officer level is to follow the rules governing procurement. Whilst there is no reason to suggest that the correct rules were not followed, the Council does not retain files on the appointment of SW Employers in this matter.
- 4.8.3 The Working Group was made aware that the Human Resources function at the time had a very 'hands off' role regarding recruitment, with appointments being handled by managers – in the case of the former Managing Director, the process was administered by the Borough Solicitor.
- 4.8.4 The Council's Recruitment Policy and Practice Guide, was devised originally in 1994 and revised in 1999. A major audit and review took place in 2003, and as a result a new approach was implemented in 2004.
- 4.8.5 When commencing the process for the appointment of the current Chief Executive in 2006, consultants (Tribal Resourcing) were appointed following procurement rules. The process involved convening an appointment sub-committee of the Council, long list, short list, informal Member engagement, technical assessment, leadership and personality profiling, and interview. The sub-committee short-listed three candidates who then presented to a meeting of the Council.
- 4.8.6 The Council decided that the voting on the appointment of the Chief Executive would be by secret ballot. In making the appointment, it was further resolved that *"Human Resources be instructed to ensure the proper administration of the offer of appointment and the subsequent induction process"*.
- 4.8.7 The appointment of the former Managing Director (and the current Chief Executive) was made by full Council. The appointment sub-committee did not recommend one preferred candidate to Council, in either case. Instead, in both cases, three candidates were brought forward for Council selection which was made based on feedback from the sub-committee, individual candidate presentation and "Question and Answer" session. With no clear preferred candidate recommended by the sub-committee, there is a risk that an incoming Chief Executive may not carry the confidence of the majority of Members. In addition, this does not reflect best practice in demonstrating a fair recruitment process.
- 4.8.8 If the Council is invited to make a selection from a number of short listed candidates rather than receiving a recommendation from the Sub-Committee as to the candidate recommended to the Council for appointment, at the end of a comprehensive recruitment and selection process, the opportunity for a narrow margin of approval could present itself again. A close vote with a narrow majority does not necessarily deliver the cross-party political support which the Group

considered to be an essential pre-requisite of such an important statutory role. Whilst it is legally sound for a decision on an appointment to be made on the basis of a straightforward majority vote, however narrow, the Working Group considered it preferable given the nature and importance of the role, to explore the possibility of amending Council processes aimed to secure the utmost confidence among elected Members in any appointment to a Statutory Officer role (Head of Paid Service, Chief Finance (S151) Officer, Monitoring Officer).

- 4.8.9 The Working Group considered it to be appropriate for the Council to consider making amendments to its Standing Orders (Rules of Procedure) to require that appointment of Officers to statutory roles should be approved by 2/3rds of the Members who are present and voting at the meeting. This is set out in Recommendation 5 (Section 7).
- 4.8.10 The decision-making process for appointments at Chief Officer level (and Monitoring Officer/Chief Finance Officer) described in para 4.6.7 is currently in place and the Working Group is of the view that changes should be made to reflect best practice.
- 4.8.11 One of the amendments which is being recommended by the Working Group relates to the Terms of Reference of the Appointments Committee which is set up to carry out the short-listing and interview process for Chief Officer posts. In order that the process whereby appointments are made by the Council reflect best practice, it is recommended that in respect of future appointments, the Appointments Committee recommends its preferred candidate to the Council for appointment rather than to present a number of candidates to the Council for a choice to be made. This is set out at Recommendation 4 (Section 7).
- 4.8.12 A further concern identified by the Working Group relates to the choice of dates for the interview and appointment process when recruiting Chief Officer and Statutory Officer posts which require to be appointed by the full Council. As can be seen from the chronology at paragraph 4.5, the appointment of the former Managing Director by the Council took place on 4th January 2002 (following interviews over the period 2nd-4th January) when a number of Members of the Council were unable to attend the Council meeting due to holiday commitments over the New Year period. In view of the importance of such appointments to the Council, and in order to provide fairness to candidates during the interview period, the Council is asked to give careful consideration to the timing of future interviews and appointment processes to avoid dates when are likely to be significant Member absences. This is set out at Recommendation 3 (Section 7).
- 4.8.13 Whilst revisions to the appointment and recruitment practice which have been made since 2002 have led to a vastly improved system whereby clear standards, processes, and procedures are currently in place for recruitment, the Working Group considered that as a matter of good practice, the Council should put in place a protocol for the recruitment of Chief Officers. The protocol would set out how the Council would endeavour to ensure the appointment of a candidate with the personal attributes most likely to succeed against the requirements of the role (e.g.: competency based). There are examples in existence of the use of such protocols by other public authorities and could be developed specifically for Cheltenham Borough Council in order to demonstrate the Council's intentions as

to how it will manage the recruitment process for Chief Officer/Statutory Officers and in particular:

- Whether external agencies will be engaged to manage the recruitment process
- How advertising for the vacancy will take place
- How the feedback to successful and unsuccessful candidates (both internal and external) will take place
- Guidelines for making conditional offers of employment
- Timescale for making written offer of employment
- Timescale for issue of contract of employment
- How the final selection process will involve partners and employees
- Details of the process which will be undertaken to obtain medical clearance for the employment of the successful candidate
- Details of the induction process which are relevant to a senior position

This forms the basis of Recommendation 1 (Section 7)

4.9 Application Form

4.9.1 The version of the application form used in the recruitment of the former Managing Director was the standard form in place at the time. Since then, the application form has been reviewed on many occasions, and is now reviewed by the HR Section on an annual basis and at any time when changes in legislation dictate.

4.9.2 The Working Group is satisfied that the current application form is fit for purpose and is not recommending any amendment.

4.10 References and Offers of Employment – written/verbal

4.10.1 References

At the time of the former Managing Director's appointment, it was usual for managers rather than the corporate HR team, to seek references and then determine if an offer should be made. References were sought and obtained for the former Managing Director, and were deemed to be satisfactory. At the time, there was no standard approach in place for references and therefore, reliance was placed upon a letter of reference giving the referee licence to interpret the Job Description and Person Specification. This clearly does not tailor the reference to the specific requirements of the role, a deficiency which has now been addressed and a new process was set in place in 2003.

4.10.2 Referees are now required to complete a form which is prepared by the authority and which describe the applicant's suitability for the role in detail. This approach

- a) enables the Council to better manage the reference process;
- b) reduces the risk of misinterpretation by the referee;
- c) helps mitigates the risk of non-disclosure to the Council of information that could affect the prospective employee's ability to carry out the role.

- 4.10.3 Since the full review of recruitment practice in 2003, the standard is that two satisfactory references must be obtained, one of which must be from the current/most recent employer. These will be obtained, in respect of short listed candidates, in time for the formal interview process to enable matters raised in references to be explored openly with candidates during the selection process. This would represent a fair process and best practice.
- 4.10.4 Consequently, the Working Group is satisfied that the process for obtaining references is robust and fit for purpose and no amendments are suggested.
- 4.10.5 Offers of Employment – verbal/written

One of the issues to be determined by the Court was the date upon which the contract of employment of the former Managing Director was concluded. There had been a verbal offer made immediately after the Council meeting (04/01/02) which was followed by a written offer (07/01/02) and written acceptance (09/01/02). The written offer was conditional upon medical clearance being obtained whereas it was claimed that the verbal offer did not refer to medical clearance. It was clear from the documentation provided within the recruitment pack that medical clearance would be required. The Court did not accept that the oral offer amounted, in the circumstances, to a binding contract. It is clear that verbal offers must be followed up with written offers to include all relevant terms and conditions as was the case in 2002. A further written confirmation that any outstanding conditions (e.g. medical) have been satisfied must be sent. The Contract of Employment is then formulated once any conditions of the offer or of the acceptance have been satisfied.

- 4.10.6 The Council's procedure is that written offers are, where appropriate, stated to be conditional and that a further letter is sent once all conditions are satisfied. This process was not successfully challenged and neither was it criticised by the Court. The Working Group does not propose any amendment in this regard.
- 4.10.7 Whilst the above sets out the components for the formation of a valid Contract of Employment between the parties, there is a legal requirement under the Employment Rights Act 1996 for employers to provide employees with a Statement of Particulars of Employment within a period of 2 months from the date of commencement of employment. It was a matter of concern to the Working Group that, in the case of the former Managing Director, the formal Contract of Employment and written Statement of Particulars was not agreed until September 2002 and was then backdated to August 2002, a situation which is not considered to be satisfactory in respect of any post, least of all the Council's most senior employee; Head of Paid Service. The Working Group is, therefore, recommending that a target is set for the issue of formal Contracts of Employment and that the target is 28 days from commencement of employment but, in any event, within the statutory deadline of 2 months. (In making this recommendation, it is recognised that there might be disagreement by the employee as to the terms which might result in delay outside of the Council's control). This is Recommendation 6 (Section 7).

4.11 Conditions of Contract

- 4.11.1 The JNC terms and conditions have recently (2009) been considerably enhanced and expanded upon, with revised disciplinary procedures and grievances and model procedures agreed in the light of leading Counsel's opinion and the experience of Joint Secretaries' involvement in individual cases.
- 4.11.2 The current Chief Executive's contract contains a clause that reflects the JNC terms, and those are binding unless any relevant subsequent legislation comes into force in which case this legislation takes precedence.
- 4.11.3 The current JNC conditions include recommended Protocols for Joint Secretary Conciliation advising that all possible steps are taken to avoid formal disciplinary action which should be used as a last resort. In the event that informal resolution, through the conciliation procedure set out or otherwise does not succeed, the JNC recommends a model disciplinary procedure and a model grievance procedure. The Council can, of course, determine its own procedures which would then need to be consulted upon and incorporated into the employment contract.
- 4.11.4 The findings within the Court case judgement appear to have been taken into account by the JNC in drafting the revised JNC conditions.
- 4.11.5 The Working Group was satisfied that the Council's Conditions of Contract for Chief Executives (incorporating the JNC Conditions) are comprehensive but are kept under review. No amendments are suggested in respect of Conditions of Contract.

4.12 Pre-employment

- 4.12.1 The Managing Director appointment appears to have followed a standard recruitment process, supported by South West Employers. However, it is not clear as to the thoroughness of the assessments as to leadership, personality profiling or technical assessment.
- 4.12.2 The Council's current practice is to secure expert consultancy support – as was the case in the recruitment of the current Chief Executive. The procedure adopted included assessment of applications from a long list to provide a short list. Those short listed candidates would then be subjected to technical assessment, personality and leadership style assessment, final selection process which would also include significant councillor, partner and employee involvement. This is in line with best practice.
- 4.12.3 Qualification evidence and eligibility to work in the UK would also be obtained. It is not always clear which particular qualifications are critical for the role and need to be verified. Original documents are required.
- 4.12.4 Everything – often excepting medical clearance - would be known prior to any recommendation for appointment, which would then be subject to medical and any other clearances not obtained such as Criminal Records Bureau checks.
- 4.12.5 It is essential that, in order to secure the most suitable candidates to the Council's senior officer appointments, that thorough and relevant job related person profiling

should take place to ensure that competency-based appointments are made. The Working Group, therefore, recommends that this should be included as a matter of course where appointments to Chief Officer and Statutory Officer posts are concerned. Recommendation 2 (Section 7).

4.13 Medical Clearance

- 4.13.1 The Occupational Health assessment for fitness form used at the time of the appointment of the former Managing Director was not adequately drafted for the Council's purposes. The Court judgement described the form to be a poorly drafted questionnaire and consequently that it was not unreasonable for the former Managing Director to have answered as she did. The Court said that it was for CBC to make sure the wording was clear and unambiguous.
- 4.13.2 The Council has, since 2002, secured the services of another provider for Occupational Health advice. A completely new form has been introduced and used effectively since, with modifications made on advice from the provider. The wording for health declaration is much more specific on this form and avoids the ambiguity over interpretation that featured in the court action.
- 4.13.3 As part of a group of five districts within the County, the Council reviewed arrangements for Occupational Health provision in 2009 and secured a new provider. With the recent procurement of a company (IMASS), as the Council's new Occupational Health provider, it is expected that medical clearances can be obtained much more quickly via a web-based system of referral, to enable any health issues to be flagged up prior to any recommendation for appointment. There will also be much more focus on the questions asked in relation to the demands of the role – this is best practice in occupational health pre-appointment medical screening.
- 4.13.4 The Court Judgement made it clear that the Disability Discrimination Act did not apply in Mrs Laird's case. However, the Working Group noted that the new Single Equality Bill (currently making its way through the parliamentary process) is likely to restrict the use of pre-employment questionnaires in order to strengthen protection for disabled people against discrimination. There are specific instances where questions can be used which are:-
- a. where the employer wants to make reasonable adjustments to enable the disabled person to participate in the recruitment process;
 - b. for monitoring diversity in applications for jobs;
 - c. where the employer is taking positive action towards disabled people in your workforce (for example, the Council is a Disability Symbol User).
- 4.13.5 The requirements of the new Bill will be fully addressed with the Council's new Occupational Health Provider, and any processes amended accordingly.
- 4.13.6 In the meantime, the Working Group is satisfied that the reviews of the medical form which have been undertaken since 2002 and the new contractual arrangement which has been entered into for the provision of Occupational Health advice has resolved the difficulties experienced by the Council in relation to the form, the subject of the High Court litigation. No further amendments are suggested to the Council's processes in this regard.

4.14 Probation

- 4.14.1 There was no probation approach operating at the time of the former Managing Director's appointment in respect of posts at that level. Therefore, there was no contractual requirement for the former Managing Director to serve any probationary period.
- 4.14.2 Advice from South West Employers is that it is neither appropriate nor practical to include, within the contract of a Head of Paid Service, the requirement to serve a probation period.

4.15 Induction

- 4.15.1 There is an effective induction process in place within the Council, including a central induction event that includes an introduction to the Council/ICT matters/Health and Safety). It is planned to use the e-learning facility on the Learning Gateway introduced in 2009, to further improve induction for new employees.
- 4.15.2 There is evidence on file that all the relevant areas to be covered during induction were carried out in respect of the Chief Executive's induction to the council.
- 4.15.3 The induction process, whilst continually under review by the HR Section, is comprehensive and no changes are recommended by the Working Group to this process.

4.16 Appraisal

- 4.16.1 One of the concerns which was considered by the Working Group was that the former Managing Director did not have ongoing annual appraisals in accordance with her Contract of Employment.
- 4.16.2 Appraisal at Chief Executive level has been fully reviewed and updated. An Appraisal takes place on a regular annual basis with a quarterly review. Appraisal is carried out with the Group Leaders, and an independent person has been appointed to facilitate. There is appraisal documentation on file that reflects that the performance appraisal process is being properly carried out (targets are set and reviewed, and a personal development plan is in place). This is in line with best practice and no amendment is recommended by the Working Group.

4.17 Absence Management

- 4.17.1 Since the former Managing Director's employment, the Council has completely reviewed its occupational health provision for employees. At that time there was no comprehensive approach to absence management. As a consequence, there were difficulties in the Council being able to secure occupational health advice regarding the former Managing Director.
- 4.17.2 A current (recently revised) absence management policy with comprehensive guidance is now in place. The guidance includes how to deal with refusal to give

consent to attend an occupational health referral appointment, as well as guidance on managing return to work following absence. Absence is regularly (monthly) monitored by Human Resources, and forms part of quarterly and annual performance reporting to Staff and Support Services Committee and senior management.

- 4.17.3 The new absence management policy will also benefit from the new occupational health assessment arrangements (referred to in para 4.11.3 above) and which enables medical assessments to be obtained more quickly via a web-based system of referral. This will need to be consistent with legislation as mentioned previously (Single Equalities Bill).
- 4.17.4 In providing clarity as to persons authorised to manage the absence of officers at specified levels, the current Absence Management policy is silent as to who is responsible for managing the absence of the Head of Paid Service (Chief Executive). It is therefore suggested that the Council considers amending the policy and guidance in this regard. This is proposed within Recommendation 11 (Section 7).
- 4.17.5 The new absence management policy is of significant benefit to the Council in providing comprehensive guidance for the management of absences at all levels. However, the Working Group considered that there are further steps which can be taken to address some of the difficulties encountered by the Council in managing the absence of its former Managing Director. In particular, there are a number of points which arise from the account of events contained within the judgment which are of concern to the Working Group. It is not evident that there is any mechanism currently in place to prevent recurrence. These particular concerns can be summarised as follows:-
1. It is clear that the Managing Director attended her workplace and also directly approached officers at a more junior level within the organisation. The former Managing Director requested information and documentation and sought to give instruction and amend documentation, despite being certified as being medically unfit for work. Furthermore, meetings were attended, both informal officer meetings and a formal Council meeting.
 2. There was no clarity as to who had responsibility for the carrying out of the former Managing Director's role during her absence from work due to illness, thus providing the opportunity for the circumstances described in 1. above.
- 4.17.6 The consequence of 1 and 2 above is that staff were uncertain as to who was "in charge" thus placing officers in a very difficult position and potentially compromises the Council's duty of care to its employees. The Working Group's view is that staff need to be clear as to who is responsible for carrying out the duties of the Head of Paid Service during any periods of sickness absence. Furthermore, it considered that guidance needs to be put in place to ensure that employees who are certified as being unfit for work are clear about the circumstances and purposes for which they can attend the workplace. These points are dealt with in Recommendations 10 and 11 (section 7).
- 4.17.7 The current Absence Management policy and guidance provides for instances where there is difficulty in obtaining consent for medical referral (either

examination or medical record disclosure) to assist in obtaining timely occupational health assessment in respect of any concerns about the medical fitness of any employee. However, the Working Group is aware of the difficulties and delays which were experienced in the case of seeking agreement from the former Managing Director for medical referral and disclosure of records. Given the critical importance to the Council of its Officers to be medically fit to carry out their responsibilities, the Working Group is of the view that the Council should explore the possibility of seeking ongoing consent from Officers on appointment (by instructing an occupational health practitioner) for the Council to seek medical referral / disclosure of records. Clearly, it is recognised that stringent safeguards must be in place to protect the employee. Clarity will be needed and agreement secured with the employee as to what circumstances would appropriately trigger the referral or access. This is set out as Recommendation 9 (Section 7).

4.18 Best Practice

4.18.1 The Working Group is satisfied that the Council's recruitment, and Occupational Health provision, procedures reflect best practice both regionally and nationally. The current recruitment approach seeks to ensure that the Council takes all possible steps to help mitigate the risks associated with recruitment, in particular at senior levels. There is no room for complacency, however, and implementing best practice is an ongoing process. The Human Resources Service participates in various communities of practice and uses these networks to keep abreast of developments and assist with new and revised policies:

- Chartered Institute of Personnel and Development,
- Public Sector People Managers Association,
- Gloucestershire HR Forum,
- Public Sector Employment Partnership.

4.18.2 Advice is taken from and there is regular contact with the Employers Organisation (their regular e-bulletins on latest case law and practice are particularly useful) and South West Regional Employers Organisation.

4.19 Regular Review

The Working Group recognised that, in order to remain effective, relevant and up to date and compliant with statutory requirements, all employment policies (including appointment, recruitment and dispute resolution) should be regularly reviewed and that the requirement for regular review should be formally recognised and endorsed by the Council. This is included as Recommendation 7 (Section 7).

5. DISPUTE RESOLUTION

- 5.1 In reviewing the internal processes for handling disputes, the Working Group examined whether the Council's procedures for resolving disputes are robust, fit for purpose and clear.
- 5.2 In the context of the events, the subject of the High Court Litigation against the Council's former Managing Director, the Working Group considered:
- the processes and procedures which were in place for the resolution of disputes between Members and Officers and between Officers and Officers during the course of the former Managing Director's employment with the Council
 - the types of dispute which arose during this period and the procedures utilised to resolve those disputes
 - amendments which have been made to those processes and procedures recognising that these must be appropriate for use at the most senior management level of the Council
- 5.3 The Working Group considered, on the basis of a detailed report and related documentation, whether or not there were further measures which should be recommended to be in place to address any perceived shortcomings so that the procedures are robust, fit for purpose and clear.
- 5.4 The Working Group noted that the High Court Judgment of 15th June 2009 recognised that this was a novel case. The case involved a dispute between a public body and its most senior employee, as more fully described in paragraph 4.2, who occupied one of three positions which the Authority is required to designate by statute, Head of Paid Service.
- 5.5 Extracts from the High Court Judgment, the chronology of employment and outline of events as relevant to the High Court litigation and to the scope of the Working Group were examined. The Working Group confined itself, however, to the detailed account of events as recorded in the judgment and has not itself undertaken any evaluation of the evidence presented to the Court.
- 5.6 Having studied the chronology of events and the High Court Judgment, the range of disputes in the case could be summarised as follows:
1. Dispute between the Managing Director and the Council / Members.
 2. Complaint about Managing Director by Member (Leader) of the Council.
 3. Complaint by Managing Director against Leader and other Members of the Council.
 4. Complaint by Statutory Officer (Monitoring Officer) against Managing Director.
 5. Complaint by Union against Managing Director.
 6. Complaint by members of staff (Directors and other) against Managing Director.

5.7 The procedures which were available and were invoked at the time to deal with the range of issues set out in 5.6 above were as follows:

1. Complaint about breaches of the Councillors Code of Conduct to Standards Board for England (Managing Director Complaint against Members). (item 1 in 5.6 above).
2. Grievance Procedure (Managing Director grievances against Leader and other Councillors). (item 3 in 5.6 above).
3. Complaint under the JNC procedure (Councillors complaints against Managing Director and also Group Director, Statutory Officer, Unison and individual member of staff complaint. (items 2, 4, 5 & 6 in 5.6 above).

5.8 The Working Group identified that there was consequential detriment to the following:-

- Staff morale.
- Council business.
- Reputation of the Council.

arising from the disputes described in 5.6 above and the processes which were invoked to resolve them

5.9 The formal procedures for dispute resolution within the Council in such circumstances have been supplemented by a Protocol for Member/Officer Relations. It is essential that all of the formal and informal mechanisms are relevant, robust, up to date and in line with best practice in order to ensure that disputes may be resolved in a timely, efficient and effective manner which creates an atmosphere within which formal resolution may be resolved, in which all parties are treated respectfully and which does not have an adverse impact either upon the Council's ability to conduct its business or on its reputation.

5.10 There are statutory and contractual provisions which apply in respect of the dispute resolution procedures set out in 5.7 above which have the effect of restricting the flexibility in the use of those procedures.

5.11 Relevant Statutory Provisions

5.11.1 Member Conduct Complaints

Complaints alleging a breach of Councillors' Code of Conduct are subject to the regime specified in the Local Government Act 2000 as modified by the Local Government and Public Involvement in Health Act 2007. The statutory process now requires all complaints to be made to the Local Standards Committee via the Monitoring Officer and an Assessment Sub-Committee carries out an initial assessment to determine whether or not further action needs to be taken in respect of a complaint. Further action includes referral to the Standards Board for England in respect of the more serious or locally sensitive complaints, or referral to the Monitoring Officer for investigation in respect of less serious complaints. The outcome of any investigation will be determined by the Standards Committee or the First-tier Tribunal (Local Government Standards in England) (formerly Adjudication Panel for England) as appropriate. Prior to May 2008, all complaints were made to the Standards Board for England to be assessed. Under that previous regime any complaints which required investigation would either be

referred to an Ethical Standards Officer centrally or, in the case of less serious matters, referred to the Monitoring Officer locally for investigation. Decisions, following investigation would be made by the Ethical Standards Officer, Standards Committee or the Adjudication Panel for England as appropriate.

5.11.2 Appointment / Dismissal of Head of Paid Service

The power to approve the appointment or dismissal of the Head of Paid Service must, by regulation, be exercised by the Authority itself and cannot be delegated to a Committee (or Cabinet) or a Member. The regulations require that where an authority wishes to take disciplinary action against its Head of Paid Service, the authority must appoint a Designated Independent Person (DIP) (either by agreement between the parties or, in default of agreement, by the Secretary of State) to investigate and report on whether any disciplinary action should be taken. Such action cannot be taken by the Local Authority without reference to a DIP thus affording statutory protection for Heads of Paid Service.

5.12 Relevant Contractual Provisions

5.12.1 Joint Negotiating Committee (JNC) for Local Authority Chief Executives (National Salary Framework and Conditions of Service)

These are incorporated within the Contract of Employment of Heads of Paid Service (Managing Director or Chief Executive). Authorities are at liberty to amend certain aspects of the JNC conditions but this is relatively unusual except insofar as some minor variations to reflect local circumstances. The current CBC Chief Executive as well as the previous Managing Director have the JNC conditions incorporated in their contracts. The JNC conditions applicable during the employment of the Managing Director was the 1998 version, however, this was amended in September 2009. The JNC conditions give guidance on the relevant procedure for disciplinary matters, the 2009 version of which is considerably more detailed and comprehensive than the 1998 version.

5.12.2 Cheltenham Borough Council Code of Conduct for Employees

This Code is specifically incorporated within the Contract of Employment of both the current Chief Executive and the former Managing Director and applies to all CBC employees.

The Code deals with personal interests of officers and encourages employees to take a similar approach to the requirements of members to disclose financial and non-financial interests. Whilst the requirement is that any interest where an employee's own interest and that of the authority might conflict, should be added to a register operated in each Directorate, there is no requirement within the Code for Officers to withdraw from any meeting at which decisions are to be taken on matters in which they have a conflict of interest (although it is arguably implicit).

5.12.3 Cheltenham Borough Council Grievance Procedure

This Procedure is specifically incorporated within the Contract of Employment of the current Chief Executive but was not specifically included within that of the former Managing Director.

5.13 Analysis of changes in the dispute resolution procedures available between 2002/04 and 2010

5.13.1 Complaints alleging breach of Member Code of Conduct

As set out in section 5.9, this is a statutory procedure to deal with complaints that any Councillor has failed to comply with the mandatory Code of Conduct. The procedure for dealing with any complaint is that there is an initial assessment of the complaint to determine whether or not the complaint, if proven would lead to a breach of the Councillor's Code of Conduct, and which should, in the circumstances of the case, be referred for investigation.

5.13.2 In 2003, Councillor conduct complaints were, in accordance with the relevant statutory procedure, made to the Standards Board for England for initial assessment. The complaints made at that time by the former Managing Director and Members were, following assessment, referred to an Ethical Standards Officer for investigation. However, following investigation in respect of the breaches referred, conclusion of the investigation by the Ethical Standards Officer found either that there was no evidence of failure to comply with the Code of Conduct or that no action needed to be taken.

5.13.3 As a result of changes made by the Local Government and Public Involvement in Health Act 2007, the statutory procedure for dealing with complaints that Councillors have failed to comply with their Code of Conduct are to be made in writing to the Monitoring Officer. Complaints are then referred to the Assessment Sub-Committee of the Standards Committee for determination as to whether there may have been a breach of the Code of Conduct which should be investigated. If action is required then the case can either be referred to the Monitoring Officer for investigation or, should there be circumstances which would mean that local investigation would not be appropriate, then the matter could be referred to the Standards Board for England. Guidance produced by the Standards Board for England provides examples of cases which are likely to be appropriately referred to the Standards Board for England and the circumstances where a complaint is raised by a Head of Paid Service against a Leader of the Council is likely to fall into the category of referred complaints.

5.13.4 The procedures for complaints to be made about the conduct of Councillors are statutory and there is no power or discretion for the Council to seek to deal with complaints of this nature by any other means.

5.13.5 JNC disciplinary procedure – complaints about the Managing Director (Head of Paid Service) by Leader of the Council, by Group Directors, by Monitoring Officer, by Unison and by member of staff

In accordance with the legal provisions, disciplinary action may only be taken against a Head of Paid Service following the recommendation of a DIP. In order to determine whether there is a "case to answer" by the Head of Paid Service, the JNC conditions of employment envisage that a Committee or Panel of Councillors is set up to hear the case and to determine whether the DIP procedure should be invoked.

- 5.13.6 The 1998 version of the JNC conditions which was in place at the time of complaints being made against the former Managing Director provided very limited guidance as to how this should be implemented. The Council did not have processes in place to enable disputes of the kind raised by the Leader of the Council against the Managing Director to be resolved. This is understandable and would no doubt have been the case in respect of most other Local Authorities. However, the Working Group considered that the fact that there was no clear indication as to exactly how the necessary Committee / Panel should be established, including the legal formalities, resulted in an unacceptable delay in bringing the matter to a resolution.
- 5.13.7 The formal complaint was made by the Leader of the Council on 22nd April 2003, but, as there was no mechanism in place to deal with this matter, it was not until the Council meeting on the 23rd October 2003 that a JNC Panel was set up to deal with the complaints. The Panel did not have its first meeting until 11th December 2003. A delay of 8 months in dealing with this matter is inconsistent with the guidance within the JNC conditions that such procedures should be “handled as quickly as is consistent with the need to investigate the case fully and to give the chief executive a fair opportunity to reply fully to the complaints”.
- 5.13.8 Amendments to the JNC disciplinary procedures were produced in 2009 which take into account various experiences of those Local Authorities who have had to invoke the JNC procedures and provide clearer guidance than was available in the 1998 version. In particular, enhancements have been made to the disciplinary procedures and grievances and model procedures have been agreed in the light of leading Counsel’s opinion and the experience of Joint Secretaries’ involvement in individual cases.
- 5.13.9 Whether dealing with disciplinary matters or grievances, the strong advice is that all efforts are made to resolve these differences informally. Although this echoes, previous advice, the difference is that the JNC conditions now include recommended Protocols for Joint Secretary conciliation. The JNC recognises the impact upon a Local Authority, its business and other staff, of formal action being taken against or by its Head of Paid Service and recommends that all possible steps are taken to avoid such action.
- 5.13.10 In the event that informal resolution through the conciliation procedure set out or otherwise is not successful, the JNC recommends a model disciplinary procedure and a model grievance procedure. The Council is, of course, at liberty to determine its own procedures.
- 5.13.11 The model disciplinary and grievance procedures are not vastly different from those which were actually adopted by the Borough Council in the case of the former Managing Director. The Council was found to have discharged those responsibilities fairly and properly, and the findings within the judgment will, no doubt, have been taken into account by the JNC in drafting the updated conditions.
- 5.13.12 The JNC stresses the importance of avoiding delay when embarking upon either the disciplinary or grievance procedures.

5.13.13 JNC Model disciplinary procedure

Recommends that Councils put in place an Investigating and Disciplinary Committee (not an Executive function) which is politically balanced, comprises 5 members with quorum and substitution rules to be considered carefully to avoid situations where there may be conflicts for nominated members of the Committee. It is further recommended that this Committee has a role in appointing a DIP and agreeing the investigation procedure as well as considering any DIP report.

5.13.14 JNC Model grievance procedure

Recommends a two stage grievance procedure (in accordance with ACAS advice), the first stage of which, following filtering by a nominated officer, is an investigation by the Monitoring Officer and then, if the grievance is unresolved it would proceed to a second stage which is the determination by a Grievance Committee. Whilst the JNC do not specify the size or constitution of the Grievance Committee it would seem appropriate for this to be of similar size and similarly constituted to the Investigating and Disciplinary Committee, although with different membership as the determination of the grievance may give rise to a disciplinary matter which would then have to be dealt with by the latter Committee.

5.13.15 The Working Group considers that the amendments which have been made to the JNC Conditions, in particular the disciplinary and grievance procedures, are now robust and have provided the clarity that was missing from the 1988 version of the Conditions which was in place at the time of the dispute, the subject of this report.

5.13.16 The Working Group noted that the Council has in place a JNC Disciplinary Committee which was established in 2005. However, its establishment and the drafting of its Function/Terms of Reference pre-date the revisions to the JNC disciplinary procedure. The Working Group is, therefore, recommending that the Council should review the Membership and Functions of the JNC Disciplinary Committee to ensure consistency with the 2009 version of the JNC Conditions.

5.13.17 CBC Grievance Procedures

In 2003 the Council had a grievance procedure in place for employees. The general approach was that a grievance should be resolved by the person who had supervisory or line management responsibility for the work. Under the procedure there was a process for dealing with exceptional circumstances, for example, if the problem, complaint or grievance directly concerned (a) the Chief Executive; (b) a Director; (c) a Head of Service; or (d) an employee senior to the aggrieved employee's line manager.

5.13.18 The policy did not however address what would happen if the problem, complaint or grievance directly concerned a member. Neither did it address the question of what would happen if the problem, complaint or grievance was raised by the Chief Executive.

5.13.19 In response to the grievances raised by the former Managing Director in 2003, the Council set up a Grievance Panel which was politically balanced and which considered the grievances raised by the former Managing Director against Members of the Council. At that time, the Council did not have a pre-existing

procedure in place to deal with these matters. The Council devised a specific procedure for the Panel to use in hearing the complaints. This provided a sound basis for the determination of such complaints and was considered in the High Court judgment to have been a fair process.

5.13.20 In 2007, the Council adopted a new grievance policy and procedure which addresses the question of the procedure to be adopted if a grievance directly concerns an elected member. The 2007 revision aims to promote effective employee relations by providing a mechanism for resolving grievances as swiftly and amicably as possible. The Policy recognises the need to take swift action balanced against thoroughness and fairness in resolving any grievances. Once again, the emphasis is upon informal settlement wherever possible, with a formal procedure set out for use where such resolution is not possible. The procedure set out within the policy includes best practice as advised by ACAS.

5.13.21 The grievance policy requires any concern to be raised initially with an employees' line manager and does not provide a means for the Chief Executive to raise a problem, complaint or grievance. However, this is as set out previously, now provided within the updated 2009 JNC Conditions.

5.13.22 The current grievance policy and procedure is complemented by the recently adopted Dignity at Work Policy and Procedure. The policy states that, in particular, the Council honours its duty of care to ensure employees are not harassed or bullied in the workplace.

5.12.23 The Dignity at Work Policy and Procedure provides a process for allegations of harassment or bullying in the workplace whether by an Officer or by an elected Member to be resolved. As with the grievance procedure, the emphasis is upon informal settlement wherever possible but nevertheless provides a formal process for use where necessary.

5.13.24 The Working Group is satisfied that the significant revisions and improvements which have taken place to the Grievance Procedure together with the newly adopted Dignity at Work Policy and Procedure provide robust and clear processes by which grievances and complaints of bullying/harassment can be resolved.

5.13.25 Employees Code of Conduct

The Code of Conduct which is incorporated into employees Contract of Employment (including the Chief Executive) deals with instances in which officers have an interest in the business of the Council and encourages the disclosure of financial and non-financial interests. Although there is a provision within the Code for any interest in which an employee's own interest might conflict with that of the authority registered within the department, there is no specific requirement set out in the Officer's Code to replicate the requirement of members to withdraw from any meeting at which that item of business is discussed, or not to seek to influence the matter in any other way. The High Court judgment records that the former Managing Director found it difficult to recognise the distinction between her personal interests and those of CBC and thus intervened a number of occasions, in her capacity as "head of paid service", in matters in which she had a personal interest, such as the JNC process. The Working Group has therefore recommended that the Council considers making appropriate amendments to the

Employees Code of Conduct to ensure that Officers who have an interest in any matter do not seek to participate in or influence a decision on that matter. This is set out in Recommendation 12 (Section 7).

5.13.26 Protocol for Member / Officer Relations

The Borough Council introduced a Protocol for Member / Officer Relations in 2001 and this provides in very general terms the expectations and behaviours which are expected of each role and of their interface. This is guidance which employees and Members would be expected to comply with in order to achieve good working relationships. However, there is no sanction for breach of this Protocol other than the formal mechanisms referred to above where appropriate. There is a section on complaints (13) that requires complaints against a Chief Executive to be referred to the Monitoring Officer which is clearly what happened in respect of the disputes between the Leader of the Council and the former Managing Director. The Protocol goes on to require that complaints against an Officer are to be referred to the Chief Executive, with no indication of what is to happen where the complaint is about the Chief Executive. The Protocol was of very little practical value in assisting with the resolution of disputes, the nature of which are set out in the relevant background.

5.13.27 The revised Protocol for Member / Officer Relations adopted in 2000 has updated and taken forward the 2001 Protocol, but the section dealing with complaints is substantially the same as in the earlier document. Clearly, as stated previously, the Protocol is complementary to the respective Codes of Conduct but is not, in itself, a document which can be relied upon to resolve disputes.

5.13.28 The Protocol was last revised in 2008. The Working Group considers that, as good and effective working relationships between Members and Officers of the authority are essential to both the effective decision making of the Council and to ensure protection of its reputation, that the Standards Committee should be asked to review the Protocol for Member / Officer Relations to ensure that it is in line with best practice. This is Recommendation 13 (Section 7).

6. CONCLUSIONS

- 6.1 Having reviewed the KPMG report, the Council's appointment, recruitment and dispute resolution procedures, it is clear that there have already been significant improvements in processes and procedures since the time of the appointment of and disputes concerning the former Managing Director. The KPMG report acknowledges both that the Council has made some improvements to its governance arrangements and that it is unlikely that the Council will have to deal with an issue of this nature and magnitude very frequently, but goes on to say that there are clear lessons to be learned from the process that was followed. Similarly, the Working Group has found that improvements have been made to the Council's recruitment and appointment processes and also to the dispute resolution procedures which have addressed areas of weakness identified by the Court, e.g.: the pre-appointment medical questionnaire.
- 6.2 The Working Group has confined its work, as set out in the motion to Council in August, to recommend changes to the constitution and working practices that aim to correct flaws in process which have been identified and which are aimed to prevent such a situation arising in future.
- 6.3 The Working Group is pleased to confirm that the following improvements have already been implemented:-
- Significant revisions to job application form, which is now reviewed annually and whenever necessitated by changes in circumstances e.g. new legislation
 - Significant revisions to pre-application medical questionnaire
 - Human Resources section now co-ordinates and has central role in appointments to all posts including Chief Officers / Statutory Officers
 - The JNC Conditions for Chief Executives / Heads of Paid Service have been revised to reflect statutory position and experience of authorities who have needed to rely upon them
 - Absence Management procedures have been revised
 - Revised arrangements have been put in place with effect from 1st April 2010 for CBC to obtain expert Occupational Health Physician advice. The new arrangements apply to
 - Assessment of medical fitness for employment
 - Assessment of medical fitness during employment e.g. in cases of long-term sickness
 - Corporate appraisal system has been revised to ensure that regular appraisals are carried out for each post (with Member involvement in appraisal of senior posts)
 - In-house grievance procedure has been re-written and supplemented with a Dignity at Work Policy
- 6.4 Generally, the effect of the reviews and revisions referred to above has been to ensure the robustness of both the Council's recruitment, appointment and employment processes and also the Dispute Resolution processes.
- 6.5 Notwithstanding the improvements referred to above, the Working Group was of the view that the Council should consider further amendments which can be summarised as follows:-

A Recommended changes to the Council's pre-appointment processes to require

- The adoption of a Protocol to manage the recruitment process for Chief and Statutory Officers and to give clear guidance as to the Council's recruitment processes, selection process and timescales and pre-contract arrangements e.g. medical clearance (Recommendation 1).
 - Competency assessment for recruitment of Chief and Statutory Officers (Recommendation 2).
 - Consideration as to the timing of commencement of critical elements of recruitment process for Chief and Statutory Officers (Recommendation 3).
- 6.6 Whilst the Working Group is satisfied that, having reviewed the recruitment and appointment processes and also the Dispute Resolution processes currently in place, that the procedures as supplemented by the amendments recommended, will provide robust and fit for purpose processes. The Council must be aware that there is always a need for continuous review and amendment in light of current circumstances, for example, when the provisions of the Equalities Bill (see paras 4.13.4 – 4.13.5) are enacted. This need for continual review is the subject of Recommendation 7.
- 6.7 In carrying out the task required by the Council and which is set out in more detail in Section 1 of this report, the Working Group has
- a) Worked in conjunction with KPMG and has reviewed their report as set out in Section 3, Recommendation 14 and Appendix 2.
 - b) Reviewed the current recruitment and appointment processes. This review is detailed in Section 4 of the report and has concluded that, reviews and revisions which have taken place together with the recommendations set out in Section 7 of the report, should ensure that the risk to the Council in future appointments is minimised.
- 6.8 The Council is asked to endorse the recommendations as set out in Section 7.

7. RECOMMENDATIONS

The Working Group recommends that the Council approves the following:-

A. Recommended changes to Council's pre-appointment processes

Recommendation 1

That the Council adopts a Recruitment Protocol for Chief Officers to include the Councils intentions as to how it will:-

- Manage the recruitment process for Chief Officer / Statutory Officers and in particular
 - Whether external agencies will be engaged to manage the recruitment process
 - How advertising for the vacancy will take place
 - How the feedback to successful and unsuccessful candidates (both internal and external) will take place
 - Guidelines for making conditional offers of employment
 - Timescale for making written offer of employment
 - Timescale for issue of contract of employment
- Include in the final selection process significant Councillor involvement as well as involvement from partners and employees
- The process which will be undertaken to obtain medical clearance for the employment of the successful candidate
- Induction processes as appropriate to a senior position

Recommendation 2

The Council includes, as part of the recruitment process for Chief Officers / Statutory Officers / Assistant Directors, a requirement for the candidates for the post to undertake relevant job related competency based person profiling (e.g. leadership / personality profiling)

Recommendation 3

When commencing a recruitment process for a Chief Officer / Statutory Officer, careful consideration should be given to the timing of the process and the date for the Council meeting to make the appointment to avoid dates where there are likely to be significant member absences due to holiday (e.g. avoid Christmas / New Year period).

B. Recommended changes to Council's appointment processes

Recommendation 4

That the Council sets up an Appointments Committee to make recommendations to the Council on appointments to posts which are required to be made by the Council with Terms of Reference which include recommending a preferred candidate to Council for approval following a full interview and assessment process being carried out by the Appointments Committee.

Recommendation 5

That the Council amends the Council Rules of Procedure to require that the appointment of any Statutory Officer (Head of Paid Service, Section 151 Officer and Monitoring Officer) should be approved by 2/3rds of the Members who are present at the meeting and voting.

Recommendation 6

That the Council sets a target of 28 days, from the date of the acceptance by the employee of the offer of employment, for the issue of an employee's Statement of Particulars of Employment.

Recommendation 7

That the Council's appointment / recruitment / absence management and dispute resolutions policies be reviewed regularly to ensure that they continue to be up to date, robust and fit for purpose.

C. Recommended changes to Council's procedures to ensure that disputes are resolved efficiently and effectively

Recommendation 8

That the Council reviews the membership and functions of the JNC Disciplinary Committee to ensure that they are consistent with the guidance in the 2009 version of the JNC for Local Authority Chief Executives (National Salary Framework and Conditions of Service).

Recommendation 9

That the Council explores the possibility and appropriateness of incorporating within the conditions of contract of Officers, an ongoing requirement for the Council (by instructing an occupational health practitioner) to have access to medical records, subject to safeguards and clarity as to what event would trigger that consent being used and subject also to legislation relating to disclosure of medical records.

Recommendation 10

That the Council introduces a procedure whereby nominated Officers deputise for Chief Officers / Statutory Officers during any extended absence e.g. sickness, and are given full authority to act in that capacity.

Recommendation 11

That the Council amends its guidance on managing sickness absence, to ensure that:

1. employees who are certified as being unfit for work are clear about the circumstances and purposes for which they can attend the workplace
2. guidance is in place to ensure that employees who are certified as being unfit for work do not issue inappropriate instructions or requests to other employees and the guidance should be such that employees who receive inappropriate instructions or requests are clear that they are able to refer these to their manager
3. the Council include in its guidance on managing absence, nominated post(s) with responsibility for managing any absence of the Chief Executive/Head of paid Service.

Recommendation 12

That the Council makes an appropriate amendment to the Employees Code of Conduct to ensure that Officers who have an interest in any matter which would, in the case of any Member of the Council, amount to a “prejudicial interest”, should not participate in or seek to influence the outcome of that matter.

Recommendation 13

That the Standards Committee be asked to undertake a review of the Protocol for Member / Officer Relations to ensure that it reflects best practice.

D. Recommended response to KPMG Recommendations

Recommendation 14

That the Council endorses the proposed actions set out in Appendix 1 to this report as its response to the KPMG Public Interest Report.

E. General

Recommendation 15

That authority be delegated to the Audit Committee to monitor implementation of the actions agreed by the Council.