



LONDON BOROUGH OF TOWER HAMLETS

COUNCIL MEETING

WEDNESDAY 26th AUGUST 2015

APPOINTMENT OF CHIEF EXECUTIVE

**SUPPLEMENTARY REPORT OF THE SERVICE HEAD,
HUMAN RESOURCES AND WORKFORCE DEVELOPMENT**

CONSIDERATION FOR PUBLICATION

Pursuant to section 100B of the Local Government Act 1972, the Council may by resolution exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted, that if members of the public were present during that item there would be disclosure of exempt information.

Exempt information is defined in section 100I and, by reference, Schedule 12A of the Local Government Act 1972 (“the 1972 Act”). To be exempt, information must fall within one of the categories listed in paragraphs 1 to 7 of Schedule 12A, must not fall within one of the excluded categories in paragraphs 8 and 9 and the public interest in maintaining the exemption must outweigh the public interest in disclosing the information.

This report contains information falling within paragraph 1 of Schedule 12A to the 1972 Act, namely: “Information relating to any individual”. There is information in the report relating to Mr Will Tuckley, the recommended appointee for the Chief Executive’s role. This information is not information falling within paragraph 8 (information required to be reported by companies) or paragraph 9 (development for which the Council may give itself planning permission) of Schedule 12A.

There is a public interest favouring public access to local authority meetings reflected in the provisions of Part VA of the 1972 Act. Public access promotes accountability, transparency and public involvement. Mr Tuckley has indicated that he understands that the report should be dealt with in public, although this is based on the content of the report and not upon what may arise in any debate.

The report is concerned with unproven allegations against Mr Tuckley and the Council may take the view that a public discussion of those matters could prejudice the appointment process, which there is a clear public interest in completing. There is also the potential for personal data to be disclosed about Mr Tuckley in debate which may not be fair in all the circumstances and which may lead to complaint by the candidate, for example of breach of the data protection principles.

It is for the Council to determine whether the public interest favours dealing with this openly or in private session.

REASONS FOR URGENCY

The directions made by the Secretary of State on 29 April 2015, pursuant to section 15 of the Local Government Act 1999, require the Council to complete the appointment to the Chief Executive post by 27 August 2015. The information contained in this supplementary report was not available at the time of publication of the principal report dealing with the appointment and is considered relevant to the Council's consideration of the appointment.

1. PURPOSE OF THE REPORT

- 1.1 This report provides the Council with additional information which has been received that may be considered relevant to the decision whether to appoint Mr Will Tuckley as the Chief Executive of the authority.

2. RECOMMENDATION

- 2.1 The Council is recommended to consider the additional information provided in this report when deciding whether to confirm the appointment of Mr Will Tuckley as Chief Executive of the Authority and Head of Paid Service on a permanent basis, as recommended in the principal report.

3. BACKGROUND

- 3.1 On 20 August 2015, an email was sent to the Commissioners and the Mayor at a late hour stating that Mr Tuckley was the subject of an allegation to the Metropolitan Police that he was guilty of misconduct in public office. Misconduct in public office is a common law criminal offence which applies to a public officer who wilfully and without reasonable excuse or justification neglects to perform any duty he is bound to perform by common law or statute.
- 3.2 The complaint to the police against Mr Tuckley appears to be based on an allegation that Mr Tuckley refused to take appropriate action against a councillor in Bexley, following a complaint. In addition, the email sent to the Commissioners and the Mayor also refers to a failure to report the outcome of a fraud investigation to the police.

- 3.3 After receiving the emailed concerns of 20 August 2015, Mr Tuckley was asked to comment on the contents of the email. Mr Tuckley was aware that allegations had been made to the police but has stated that he has not been interviewed or required to provide a statement and had not been spoken to by the detective dealing with matter. He has heard nothing from the police since December 2014. Mr Tuckley has provided information as follows by way of response, which has been confirmed by the Leader of Bexley Council -
- (a) The complaint against the councillor was that the councillor, as chair of a committee, determined to go into closed session at a meeting in June 2013 and had the public removed without following due process. The standards complaint was dealt with by officers (not Mr Tuckley) who determined not to uphold the complaint, both in the first instance and following a review. A complaint was then made against the officer who carried out the review, which was investigated (not by Mr Tuckley) and not upheld. When further complaint was made, Mr Tuckley determined on 1 July 2014 that due process had been followed and declined to spend the authority's resources on a further review.
 - (b) The allegation of fraud referred to concerns the former leader of Bexley Council, whose time as leader overlapped with Mr Tuckley's period of office by a little over a month in about April 2008. The allegation of fraud concerned use of a purchasing card at the Greater London Authority when the former leader was Deputy Mayor of London. When the Deputy Mayor resigned from the GLA in July 2009, Bexley published the former Leader's expenses claims online and commissioned internal audit to look for any evidence of fraud or inappropriate use of a purchasing card at Bexley. The internal audit was reported to Bexley's Audit Committee in August 2009 and found no evidence of fraud. It was found that a sum (£2087) had been inappropriately claimed and Bexley has continued to try to recover this amount. No members have asked for or been provided with purchasing cards since the incident. Bexley issued a press release following public discussion of the report by its Audit Committee. The matter was brought to the attention of the District Auditor and the Monitoring Officer.
- 3.4 It is understood that the Metropolitan Police intend to seek advice from the Crown Prosecution Service to determine whether there is any case to answer, but no such advice has yet been sought. Certainly the Metropolitan Police have not determined to take any action against Mr Tuckley and the allegations remain merely allegations at this time. The Council has not been provided with any timeframe within which the Metropolitan Police may make a determination and nor is it likely to obtain this.
- 3.5 It is a matter for the Council to determine whether this information is sufficient to warrant it departing from or delaying the recommendation made by the Appointments Sub Committee. In this context, the following should be noted -

- (a) There are only allegations at this stage.
- (b) The Leader of Bexley Council has stated that she is not aware of anything in Mr Tuckley's personal or professional life that might bring reputational risk and has informed the recruitment consultants Penna that there is no disciplinary action outstanding or being taken.
- (c) As part of the technical assessment element of the recruitment process Mr Tuckley mentioned a website about Bexley Council ("Bexley is Bonkers", which the complainant is associated with) on which, from time to time numerous complaints, allegations and concerns have been raised, but reference was not made to any specific allegation.
- (d) The Commissioners have been consulted about the matters in this report and they have confirmed that they will remain satisfied should the Council proceed to confirm Mr Tuckley's appointment.

3.6 The Council has an Employee Code of Conduct which specifies that the public is entitled to demand the highest standards of conduct from all local government employees. A conviction for misconduct in public office would be likely to bring the Council into disrepute and place the individual in breach of the Code. That breach would then be dealt with in accordance with the procedures specified in the Council's Officer Employment Procedure Rules. If in the event that the allegations are investigated and as a result Mr Tuckley were to be both prosecuted and convicted, then the Council would deal with that occurrence in accordance with its HR policy relating to probationary periods and/or the Employee Code of Conduct and associated procedures.

3.7 The recommendation in the principal report is to confirm Mr Tuckley's appointment and this remains open to the Council. If the Council were concerned about the available information, it could refer the matter back to the appointments sub-committee for further consideration, however this would cause the Council to breach the Secretary of State's directions.

4. LEGAL CONSIDERATIONS

4.1 As set out in the principal report, the directions made by the Secretary of State require the Council to appoint to the new post of Chief Executive by 27 August 2015. If the Council fails to make an appointment, then it will be in breach of the directions and the Secretary of State may either seek to enforce the existing directions or make further directions.

4.2 The legislation governing the fair dismissal of an employee is contained within the Employment Rights Act 1996. An employee must have worked for their employer for a minimum period before they qualify for the right to claim unfair dismissal at a tribunal. If an employee started their job on or after 6 April 2012, the qualifying period is two years. Within the first two years of employment therefore the employee could be dismissed without acquiring the right to bring a

claim for unfair dismissal (although a breach of contract claim could still be brought if there is a breach of the contract terms within this period). To minimise the risk to the Council therefore the employee could be advised in writing that a prosecution or conviction within the first two years would be considered by the Council to be a terminating event which would entitle the Council to serve notice to terminate the contract of employment. The standard contract terms would also need to be varied to make provision for termination within the first two years on this basis.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

5.1 The financial considerations are addressed in the principal report.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 These considerations are addressed in the principal report.

7. BEST VALUE (BV) IMPLICATIONS

7.1 This is addressed in the principal report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 This is addressed in the principal report.

9. RISK MANAGEMENT IMPLICATIONS

9.1 If the Council does not make an appointment before 27 August 2015, then it will be in breach of the directions and may be subject to criticism and enforcement action by the Secretary of State.

9.2 If the Council determined not to appoint Mr Tuckley, then it may be subject to a claim by Mr Tuckley.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 This is addressed in the principal report.

11. EFFICIENCY STATEMENT

11.1 This is addressed in the principal report.

12. BACKGROUND DOCUMENTS

12.1 None.

13. APPENDICES ATTACHED

13.1 None.