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Southend-on-Sea City Council

Executive Director (Strategy, Change and Governance):

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05 January 2024

AUDIT COMMITTEE - WEDNESDAY, 10TH JANUARY, 2024 SUPPLEMENTARY REPORT PACK – AGENDA ITEM 13 – INTERNAL AUDIT REPORT ON APPOINTMENTS AND DISCIPLINARY COMMITTEE

Please find enclosed, for consideration at the next meeting of the Audit Committee taking place on Wednesday, 10th January, 2024, the following report that was unavailable when the agenda was printed.

Agenda No	Item
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13	<u>Internal Audit Report on Appointments and Disciplinary Committee (Pages 3 - 14)</u>
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Report of the Executive Director (Finance & Resources)

Rob Harris
Principal Democratic Services Officer

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Meeting: Audit Committee
Date: 10 January 2024
Classification: Part 1
Key Decision: No
Title of Report: **Internal Audit report on the Appointments & Disciplinary Committee**

Executive Director: Joe Chesterton: Executive Director (Finance & Resources)
Report Author: Andrew Barnes: Head of Internal Audit and Counter Fraud
Executive Councillor: Cllr Moyies: Cabinet Member for Public Health, Adult Social Care & Constitutional Affairs

1. Executive Summary

1.1 The purpose of this item is to report jointly to the Audit Committee and the Appointments and Disciplinary Committee the findings of the audit review requested by the Appointments and Disciplinary Committee at its meeting on 27 July 2023.

2. Recommendations

2.1 **That the Audit Committee and Appointments and Disciplinary Committee notes the findings of the audit review requested by the Appointments and Disciplinary Committee at its meeting on 27 July 2023, and endorses the recommendations made in the internal audit report.**

3. Background

3.1 At the meeting of the Appointments and Disciplinary Committee on 27 July the Committee requested that an audit review be conducted to determine if governance of the process leading to the recommendation in the report it had received on 27 July was robust, and whether sufficient information was presented to the committee on Wednesday 21st June 2023 to enable it to reach a proper decision.

3.2 Internal Audit have undertaken that review, and the findings, conclusions and recommendations are included in the report at **Appendix 1**.

4. Reason for decision

4.1 **Internal audit is an assurance function providing assurance to assist the Audit Committee to effectively discharge its responsibilities as per its Terms of Reference. Internal audit have undertaken the review requested of it by the Appointments and Disciplinary Committee and is reporting the results of that work.**

5. Other options

5.1 None.

6. Financial implications

6.1 None arising from this piece of internal audit work.

7. Legal implications

7.1 None arising from this piece of internal audit work.

8. Policy context

8.1 None.

9. Carbon impact

9.1 None.

10. Equalities

10.1 None.

11. Consultation

11.1 No external consultation required.

12. Contribution to the Council's aims and objectives

12.1 Audit work provides assurance and identifies opportunities for improvement that contribute to the delivery of all Corporate Plan objectives.

13. Risk assessment

13.1 No additional risks arising from this piece of internal audit work.

14. Value for money

14.1 No value for money opportunities arising from this piece of internal audit work.

15. Report Authorisation

This report has been approved for publication by:		
	Name:	Date:
S151 Officer	Joe Chesterton	5/1/2024
Monitoring Officer	Kim Sawyer	4/1/2024
Executive Director	Joe Chesterton	5/1/2024
Relevant Cabinet Member	Cllr James Moyies	5/1/2024

16. Appendices

- 16.1 **Appendix 1:** Internal Audit report on the Appointments and Disciplinary Committee

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Internal Audit Services

Report

Appointments and Disciplinary Committee

Reference Number: 23-40

Date Issued: December 2023

Audit Team

Audit Manager

Andrew Barnes

Distribution List

Director of Legal Services

Kim Sawyer

Executive Director (Finance & Resources)

Joe Chesterton

Chief Executive

Rob Tinlin

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Appointment and Disciplinary Committee

Objective

The Audit and Disciplinary Committee agreed an audit review will be conducted to determine if governance of the process leading to recommendation in the report made to it on 27th July was robust, and whether sufficient information was presented to this committee on Wednesday 21st June 2023 to enable it to reach a proper decision.

Overall, the arrangements in place to mutually agree with the Chief Executive termination of their employment were appropriately planned, with suitable external legal advice obtained. Although there were instances where this advice was not followed in its entirety, this was not significant to the overall conclusion and decision that was reached.

At the meeting on 21st June 2023, there was no formal report about this issue with verbal information presented to the Appointments & Disciplinary Committee. The Committee considered that they were being asked to reach a decision in relation to an employment issue, however without a formal item on the agenda, or a written report, the Committee was not appropriately convened to make any decision on this issue. As a result there are a number of lessons to be learned in respect of decision making by the Committee.

Scope

The scope has been set by the Committee as outlined in the objectives set out above.

Recommendations are only made where they are necessary to further mitigate risks identified. Therefore, they should be implemented by the date agreed unless there is a good operational reason why this is not practical.

Governance arrangements of the decision to replace the Chief Executive and Monitoring Officer

In May 2023 a new Cabinet was formed following the elections. After a period of investigation and consideration of the functioning of the Council, and what was required going forward, it was agreed informally by the new Cabinet that the Chief Executive would be asked to step down from his appointment.

An Executive Director arranged for the appointment of a specialist external legal advisor to support the Council through the process.

An action plan with timetable was prepared in consultation with the external advisor to ensure that the appropriate people were engaged with and advised at the appropriate time in the process. This also identified potential risks that could arise as the process was worked through, and potential responses to those risks should they arise.

An initial conversation took place with the former Chief Executive. The contents of that conversation are confidential as they relate to the rights of the CEO as an employee of Southend City Council and are protected by an agreement reached mutually with the former Chief Executive.

Appointment and Disciplinary Committee

The former Chief Executive did take advice following the conversation and the next morning confirmed that he would enter into a 'protected conversation'. Following this confirmation from the Chief Executive, negotiations were successfully completed utilising the advice from the external legal advisor, with the results and outcome of those negotiations reported to the meeting of the Appointments and Disciplinary Committee (A&DC) meeting on 27th July.

The A&DC approved the proposed terms and severance payments agreed in principle with the officers, and it was within their delegated constitutional power to do so.

Therefore, the decision to mutually agree with the Chief Executive termination of his employment was appropriately governed and approved, in accordance with the Council's Constitution.

However, some of the minutes of the A&DC meetings (including the meetings on 21st June and 27th July) have yet to be reported to and approved by the A&DC or reported onto Council. This represents a change in practice that has weakened the governance of the Committee and the approval of minutes of the previous meeting should happen consistently to ensure that there is clarity and agreement over the decisions that were made by the Committee.

Information presented to the Appointments and Disciplinary Committee on 21st June to enable it to reach a proper decision

The A&DC was meeting on 21st June to interview for, consider and approve the proposed appointment to two director posts. This business was undertaken and the two appointments were made and approved.

The Leader was Chairing the meeting and once the business that the AD&C had been convened for was completed, the Leader raised a further matter in confidence for consideration by the Committee. Matters can be raised verbally where the Committee need to be briefed on upcoming issues. As the Committee were already convened for the above purpose and because this was a significant matter of some urgency the Leader briefed the Committee on events that day. Whatever the Committee believed, this could not amount to a formal decision as there was no item on the agenda, or written report provided. The discussion took place informally and after the close of the business of the Committee and therefore no formal decision making could occur.

Given the terms of the settlement agreement, no additional information is provided in this report about the nature and details of the discussion that occurred in June 2023 as this is a confidential employment matter.

The minutes of the meeting record this confidential discussion between the Leader and the members of the Committee as a briefing of the Committee. There is some confusion arising between what the Committee thought the purpose of that meeting was and therefore whether that process was appropriate.

Appointment and Disciplinary Committee

As a result there are a number of lessons to be learned:

- Although the Constitution does allow for the Chair of the meeting to allow or introduce additional items of business, this option should only be pursued in very exceptional circumstances. Any meeting of the Committee should ordinarily be provided with a written report at least 5 clear working days in advance of a meeting with appropriate information to take any decisions that are being asked of it.
- Where additional items of business are to be introduced, the necessary subject matter expert officers to support the additional business should be in the meeting to facilitate the discussion and conclusion of that additional business.
- Non-subject matter expert Officers that are in the meeting should seek to provide advice to the Chair that additional items of business need the appropriate support and guidance from relevant subject matter expert officers, so that the meeting is provided with the support that it requires to make an appropriate decision, and where that has not been achieved to prevent the item from being discussed by the Committee.
- The Members of any committee asked to consider additional items of business are empowered not to do so, without the necessary report, evidence, support and guidance from relevant subject matter expert officers, and that if they are asked to do so they decline, and request that the meeting be reconvened with the appropriate information and support available.

In undertaking this review, I have also sought the opinion of the Director of Legal & Democratic Services who holds the Monitoring Officer role. Her opinion is as follows:

As Monitoring Officer, I concur with the Internal Auditor that the governance of the process leading to the recommendation in the report in July 2023 was overall robust. By the request from the Committee, there was some confusion about what the Committee were being advised in June 2023, what powers the Committee were exercising and whether they were making a decision or receiving a briefing about an ongoing and developing situation.

The Committee are asking whether the process was robust. Some improvements are proposed by the Auditor. The process improvements do not impact the soundness of the decision made by the Committee in July 2023.

Decision of the Committee in July 2023

At Southend Council an agreement for mutual termination of employment was reached in a confidential settlement agreement in July 2023. In my opinion as Monitoring Officer the process followed did not give rise to any concerns. The process was lawful and proper.

The process is set out in the Council's constitution (Part 3 & Part 4(h) Officer Employment Procedure Rules) and in statute. The process was outlined in the exempt report to Committee on 27 July 2023. The Committee agreed those recommendations.

Appointment and Disciplinary Committee

Decision of the Committee in June 2023

A month earlier, in June 2023 the Committee was in the very early stages of that process. The minutes of the meeting record that the Chair (the Leader) briefed the Committee informally and in confidence on the process and on discussions with the CEO. Despite the request by the Appointments and Disciplinary Committee to receive reassurance on whether a 'proper decision' was reached, no formal decision was made, or could be made, by the Committee at that point in the process.

Given that the discussion on 21 June occurred in exempt session (Part 2), no further comment is made regarding that briefing of the Committee. Should the Audit Committee wish to discuss the details of that meeting further, it is requested that the Committee agrees to enter exempt session (Part 2).

Other internal audit observations

The Chief Executive appointment and approval process is particularly important in a finely politically balanced council and it is important that appointments in that situation are made in collaboration between the main political groups and that all parties agree that they have found the right person for the role

As has been demonstrated in the most recent recruitment process, it is better to involve all the political Group Leaders to appoint, set and review the objectives for the Chief Executive in collaboration, so that in the event of political control changing hands there remains some stability for the Chief Executive. That group of members can also be used to discuss and try to agree any course of action that needs to be taken in respect of the Chief Executive should any issues arise.

Whilst the Leader did discuss with other members of his own group and the Cabinet about requesting the Chief Executive to step down, it would have been better to also discuss and obtain the agreement of the other Group Leaders so as to achieve cross party agreement in advance of progressing with any action.

Reporting

The report has been:

- discussed and agreed with the Director of Legal Services
- discussed and agreed with the Interim Chief Executive.

The results of this audit work will be reported to the Audit Committee in January 2024.

Appointment and Disciplinary Committee

Revisiting this report

Senior management will monitor and sign off this action plan as part of the Department's performance management process. Internal Audit will revisit this report to check that the actions agreed have been implemented properly.

Corporate Links

Priority A transforming council delivering efficient, cost-effective services.

This report can be provided in alternative formats such as Braille, audiotape or in large print. Translations of this document in alternative languages are also available.

DRAFT FOR DISCUSSION PURPOSES ONLY

Appendix 1: Appointments and Disciplinary Committee Action Plan

	Management Action Required	Benefit	Lead officer	When
R1	<p>Re-introduce the discipline of consistently providing approval of minutes for the previous meeting of the A&DC on an ongoing basis.</p> <p>If there is not a meeting of the A&DC scheduled in the foreseeable future circulate the draft minutes by email and obtain approval from the Members of the A&DC outside of the meeting schedule.</p>	<p>Documented and agreed minutes of meetings provide a clear decision-making audit trail to clarify the decision that was taken by the Committee and support the rebuttal of any challenge to those decisions.</p>	<p>Robert Harris (Principal Democratic Services Officer)</p>	<p>January 2024</p>
R2	<p>Update the Constitution to reflect that where a Committee Chair wants to introduce an additional item of business, they need to have appropriate support and advice from suitable subject matter expert officers, and for them to be in the meeting to enable them to do so.</p> <p>If appropriate support cannot be provided in time, then the meeting will need to be reconvened at a time when that support can be in place to consider the further business.</p>	<p>Clarity of circumstances in which additional items of business may be put before a meeting will enable all Members to be clear about the arrangements that need to be fulfilled to enable this to happen.</p>	<p>Kim Sawyer (Director of Legal Services)</p>	<p>March 2024</p>
R3	<p>Use the A&DC, as that involves all the political Group Leaders, to set and review the objectives for the Chief Executive in collaboration and raise any performance related issues with the Chief Executive.</p>	<p>Involvement of all political Group Leaders will reduce the risk of the Chief Executive being perceived to side with the Administration and enable all Groups to have an input to feedback on delivery of the role, resulting in confidence in the event of change in political control.</p>	<p>Kim Sawyer (Director of Legal Services)</p>	<p>March 2024</p>

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