



Report – Policy and Resources Committee

Appointment of High Officers

*To be presented on Thursday 24th May, 2012
To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

Summary

1. This paper reports the outcome of a review of the appointment of the City Corporation's High Officers and, in particular, their election by the Court of Common Council. It follows the discussion which took place at the Court in January about the appointment process at the time of the appointment of the Comptroller and City Solicitor. Some Members queried whether the current process was satisfactory and whether the Court should be given a choice of candidates.
2. Your Policy and Resources Committee has considered the current arrangements in detail and has concluded that as the Appointment Panel is properly constituted by an appointing Committee under the authority of the Court, the Panel is empowered to assess candidates and present a candidate(s) to the Court for appointment. That candidate(s) should appear before the Court and have the ability to address Members. The Establishment Committee (under the urgency procedures) concurs with this view.

Recommendations

It is recommended that:-

- 1) the current practice of an Appointment Panel being appointed to carry out the recruitment and interview process and then make a recommendation to the Court be maintained;
- 2) the preferred candidate(s) be required to appear before the Court of Common Council and address Members accordingly; and
- 3) the current arrangements for a question and answer session in the Court be dispensed with in future.

Main Report

Background

1. There are five City Corporation High Officers who are appointed by the Court of Common Council. These are:-
 - a. Town Clerk and Chief Executive
 - b. Chamberlain
 - c. Commissioner of the City of London Police
 - d. Comptroller
 - e. Remembrancer

The Commissioner of the City of London Police requires Royal Assent and the exercise of the Remembrancer's parliamentary functions also requires Parliamentary Assent.

2. The current procedure for appointing these Officers is for an Appointment Panel to be formed to interview and assess candidates and then for the suitable candidate(s) to be put before Court and elected by ballot. There is no formal decision regarding how many candidates the Court can consider for these posts. Over the last few years the assessment process has become more rigorous and, for a variety of reasons, appointment panels have deemed one person suitable for appointment and submitted only that individual to the Court.
3. At the Court on 19 January, at the time of the appointment and election of the Comptroller and City Solicitor, several Members expressed concern over the process, including whether a presentation and set questions from the floor was a satisfactory means of assessing candidates. Some Members were also concerned about the Court being presented with only one candidate and questioned whether Members should have a choice. However, this was not an overwhelming view and other opinions were expressed including that the Court is too large to carry out any 'interview'.
4. Whilst the discussion at Court on 19 January concluded with the acceptance of the process for the appointment of the Comptroller and City Solicitor it was agreed that the matter should be reviewed and the outcome reported to the Court.

The Current Position

5. The general principle of the Court of Common Council making the final decision on the appointment and election of the High Officers should be maintained. All Members should continue to be involved in the process in a meaningful way.
6. No decision has ever been taken that only one candidate would be presented to the Court. However, over the years employment law, in particular discrimination in recruitment, has changed and now includes gender, ethnic

origin and age. We need to follow a rigorous process and this means that we have to have the assessment of the candidates and the final choice documented in the event of challenge. It is most common in demonstrating a fair and rigorous process that employers are most vulnerable. The City Corporation's process needs to balance those legal requirements with the long-standing election of these senior posts by the Court.

7. If two candidates are assessed as "equal" then a secret ballot by the Court to determine the appointment might be able to be justified but it would still be difficult for us to evidence on the basis on which the final decision was made. Ultimately, should a challenge occur, an Employment Tribunal may wish to see those who made that decision and of course it would be impossible for the whole of the Court to attend.
8. If candidates are put forward to simply provide a "choice", it would be even more difficult to justify a selection on the basis of a presentation, four questions and a secret ballot. Neither of course is it practicable for 125 Members to be involved in a meaningful way in the whole recruitment process.
9. The issues described above arise from the so-called "reverse burden of proof" in discrimination cases now set out in the Equality Act 2010. The Act makes provision for nine "protected characteristics" namely age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation. In proceedings for unlawful discrimination s.136 of the Act provides:-
 - (a) If there are facts from which the court or tribunal could decide, in the absence of any other explanation that an employer contravened the Act, the court or tribunal must hold that the contravention occurred.
 - (b) This does not apply if the employer shows (on a balance of probabilities) that he did not contravene the position.
10. Thus, if the claimant can prove, on a balance of probabilities, that there are facts from which the tribunal could conclude that unlawful discrimination has occurred the burden shifts to the employer to prove that there is an adequate explanation.
11. The provision arises because it is unusual to find direct evidence of unlawful discrimination. Hence employers are well advised to ensure that their recruitment decisions are clearly based on an assessment of skills, experience and an ability to undertake the role in question.
12. Notwithstanding this, and bearing in mind the views expressed by some Members in January, consideration has been given to how the recruitment process might be enhanced to give more Members an opportunity to play a meaningful part.
13. For appointments that involve Members, the formal recruitment panel is usually no more than about 7 or 8 individuals which is probably the optimum number that would reasonably be expected to serve. Any more and it would be difficult for all panel members to ask questions and the process becomes

unwieldy for both the candidate and the panel. The Appointment Panel Members are required to dedicate approximately two days to this process.

14. The Comptroller & City Solicitor has advised that under s.7 of the Local Government and Housing Act 1989 every appointment made by the City Corporation in its capacity as a local authority, police authority and port health authority must be made on merit. The City Corporation has a broad discretion as to the processes it adopts to appoint its officers as long as the appointments are made on merit.
15. It has been suggested that one way of involving more Members might be to allow a specified number to participate in the assessment of candidates in addition to the Appointment Panel. The idea being that these Members would act in an advisory capacity only. They would have the opportunity to see each of the shortlisted candidates and their views and conclusions would be used to inform the Appointment Panel. However, your Committee feels that, on balance, this would complicate the process unnecessarily. In reaching this conclusion the Committee was mindful of the fact that the Appointment Panel is already a properly appointed body, constituted by the appointing Committee under the authority of the Court. This view is supported by the Establishment Committee.
16. As part of the review, consideration was also given to whether a presentation and set questions from the floor was a satisfactory means of assessing candidates. The Committee felt that whilst it is important for the Court to be able to hear a presentation from the candidate(s) to help make a decision on whether the individual has the necessary characteristics, the question and answer session is not so meaningful. This part of the process does not add any value and we concluded that it should therefore be dispensed with.

Conclusion

17. Your Committee is therefore of the view that the current practice of an Appointment Panel being appointed to carry out the recruitment and interview process and make a recommendation to the Court should be maintained. The practice of the preferred candidate being required to appear before the Court of Common Council should also continue and the candidate should also be required to address Members accordingly. Given that the question and answer session adds very little value to the process that practice should now be dispensed with.

All which we submit to the judgement of this Honourable Court

DATED this 3rd May 2012

SIGNED on behalf of the Committee

Mark Boleat
Chairman of the Policy and Resources Committee