

DECISION NOTICE - RE-ENGAGEMENT OF DEPUTY CHIEF FIRE OFFICER

HUMBERSIDE FIRE AUTHORITY - 25 SEPTEMBER 2020

MINUTE 108/20

SUCCESSION PLANNING - The Chief Fire Officer/Chief Executive submitted a report detailing issues of succession planning and, in particular, the role of Deputy Chief Fire Officer.

While the Deputy Chief Fire Officer had not yet formally submitted his intention to retire, the Authority was asked to consider three options for filling the post when it became vacant. Option A in the report was moved, seconded and subjected to a recorded vote. The motion passed with 15 votes in favour and one against:

Resolved - That the Deputy Chief Fire Officer, following his retirement, be re-appointed on a fixed-term basis until April 2024.

REASON FOR DECISION

In the interest of public safety it was felt appropriate by the Authority to offer to re-appoint the Deputy Chief Fire Officer following his retirement, and that the likelihood of him being successful if he reapplied if the post was advertised, and the associated costs with therefore running a full selection process, was a compelling reason not to go out for open competition. This would be for a fixed term until April 2024 to allow for the delivery of the next Strategic Plan, and to allow continuity following the termination of the Chief Fire Officer's contract in October 2022.

The Authority determined that the Deputy Chief Fire Officer retiring soon would create a number of risks for the Authority, as set out below:

- (i) Instability in the Service and particularly the incident command structure during the continuing COVID-19 pandemic and the second wave of the pandemic modelled on behalf of the UK Government.
- (ii) Running a recruitment exercise to replace the Deputy Chief Fire Officer would provide opportunity for internal candidates to progress but would also be destabilising for Strategic Leadership Team (SLT) during that period.
- (iii) A recruitment campaign would be costly and may not achieve many high-quality external applicants due to the significant number of senior officers retiring, or recently retired across the UKFRS, and the ongoing changes to pensions. Also, successful external applicants may well be of similar seniority and length of service and therefore have a similar incentive to retire one year later.
- (iv) Prior to, and since, the Director of People and Organisational Development exiting the Service the Deputy Chief Fire Officer has had a much more hands on involvement in how we look after our staff (the people strand of HMICFRS inspection and the only area we were judged as needing to improve) due to his role line managing the Director of People and Organisational Development. Currently we are operating a trial with an interim Director of People and Organisational Development two days a week with the Deputy Chief Fire Officer taking a very active, and direct, lead in the implementation of the People elements of the Service Improvement Plan. This has raised the profile of that work and is having the benefit of stability as we get ready for the HMICFRS COVID Inspection in the next few months and our second full HMICFRS Inspection next year.
- (v) The Chief Fire Officer will complete his contract in October 2022, 17 months before the end of Strategic Plan which is currently being consulted upon. The Executive Director of Corporate Services now only works for the Service three days a week due

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to the successful collaboration with the Office of the Police and Crime Commissioner. There is an issue of 'corporate memory' to consider.

- (vi) There is work underway within NFCC to develop a robust mechanism for direct entry of Senior staff from a non-FRS background and that may provide the Authority with options to consider in readiness for the Chief Fire Officer's retirement in October 2022, as it is likely to encourage a greater diversity of applicants. However, it will not be in place before the Deputy Chief Fire Officer will retire, and it is likely that even if the Authority decided to go down that route there would be significant lead in periods for ensuring the necessary competence in incident command. A recruitment process prior to that work being completed and agreed may increase the potential gender balance if there were external applicants, however internally all those who would be eligible to apply are male.
- (vii) The Service is currently undertaking a review of incident command structures, which will come to the Authority in due course. The Chief Fire Officer will not be recommending that the role of the Deputy Chief Fire Officer will be removed and may recommend that an Assistant Chief Fire Officer post be re-introduced. That would provide progression opportunities for internal operational Directors, as it assumed that the post would be created by removing a Directors post and therefore would be only available to internal candidates. That would require work to grow the Executive Group (currently Chief Fire Officer, Deputy Chief Fire Officer and part time Executive Director of Corporate Services) and would benefit from a stable team during that period.

The introduction to the National Framework does describe the delineation between the Government and Fire Authorities where it states, "*The National Framework will continue to provide an overall strategic direction to fire and rescue authorities, but Whitehall will not run fire, and fire and rescue authorities and their services remain free to operate in a way that enables the most efficient and effective delivery of their services, drawing upon their considerable skills and experience to best reduce the risks from fire. Ultimately, it is to local communities, not Government, that fire and rescue authorities are accountable.*" Therefore, while the Government clearly lay out the parameters in which the Authority can act, there is a clear expectation that the Authority will draw upon its skills and experience to determine the options to approve within those parameters.

The Framework also states that the principal fire officer posts must be open to competition nationally and that '*while the above requirements only extend to principal fire officers, we expect fire and rescue authorities to have regard to this principle when re-appointing at any level*'. Members considered this latter point previously when taking the decision to allow the re-appointment of firefighters to aid efficient workforce planning.

There was a legal argument to suggest that following the framework and precluding the re-appointment of any member of staff, even though an open competition, could put the Authority at risk of being taken to an Employment Tribunal on grounds of age discrimination. Whilst being seen to have followed the National Framework would be a mitigation, the case would be against the Authority as the employer not the Government and so a positive outcome could not be guaranteed.

Whilst legal advice suggests it not to be the case, the Authority have had written confirmation from the previous Fire Minister, who published the framework, that if an open competition was adopted the requirement to preclude retired principal officers being appointed would not apply.

It was also the case that if an external applicant who was beyond their minimum retirement age was successful in the post of Deputy Chief Fire Officer there would be nothing the Authority could do to stop them retiring from their current Service prior to taking up the

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appointment with HFRS and therefore resulting in the Authority appointing a retiree in any case.

Humberside Fire Authority's Pay Policy Statement, and the 1992 Firefighters Pension Scheme Rules, both allow re-appointment so long as the person's pension is abated. That means that the person would not receive their monthly pension in addition to their salary, and that the Authority would not need to pay pension contributions for that person. If, for example, the Deputy Chief Fire Officer was re-appointed, either directly or through an open competition, there would be a financial saving to the Authority of around £21,000 a year and an even larger saving to the wider public purse.

The Authority considered three options before making its decision to approve Option 1:

1. Re-appoint the Deputy Chief Fire Officer

The Authority could decide that in the interest of public safety it is appropriate to offer to re-appoint the Deputy Chief Fire Officer following his retirement, and that the likelihood of him being successful if he reapplied if the post was advertised, and the associated costs with therefore running a full selection process, was a compelling reason not to go out for open competition. If this was approved then it is recommended that it be for a fixed term until April 2024 to allow for the delivery of the next Strategic Plan, and to allow continuity following the termination of the Chief Fire Officer's contract in Oct 2022.

2. Advertise the role as an open competition and allow retirees to apply

The Authority could advertise the role as an open competition, but allow any retired principal officers to apply for the role and be appointed if successful. If the successful appointee is someone who has retired then it is recommended that an appointment be for a fixed term until April 2024 to allow for the delivery of the next Strategic Plan, and to allow continuity following the termination of the Chief Fire Officer's contract in Oct 2022.

3. Advertise the role as an open competition, but not allow retirees to apply

The Authority could advertise the role as an open competition, but not allow retired principal officers to apply for the role. It is not recommended that this option is chosen due to the legal and reputational risk to the Authority of a potential claim that the Authority was discriminatory towards individuals with protected characteristics as laid out in the Equalities Act, namely age.