

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

EXECUTIVE COMMITTEE

30 APRIL 2013

1. **RECRUITMENT AND SELECTION FOR THE POST OF DEPUTY CHIEF FIRE OFFICER**

Joint report of the Chief Fire Officer and the Clerk and Monitoring Officer.

RECOMMENDED

THAT the Committee approves the proposal to recommence the recruitment and selection process for the post of Deputy Chief Fire Officer and that the post be advertised externally to enable a wider range of applicants to apply.

2. **PURPOSE OF REPORT**

This report is submitted to advise the Committee on the outcome of the review into why the previous advert for the above post received a limited response and to inform the Committee of the intention to recommence the recruitment and selection process.

3. **BACKGROUND**

- 3.1 The former Deputy Chief Fire Officer retired from the Service on 30 September 2011. Initially the Chief Fire Officer took the decision not to fill the resulting vacancy pending a review into the number of Principal Officer posts needed and the roles that they should undertake.
- 3.2 As an interim measure an additional Assistant Chief Fire Officer was temporarily appointed for a 4 month period with effect from 1st October 2011.
- 3.3 Subsequently, the Executive Committee at its meeting held on 7th November 2011, gave its approval for the commencement of the recruitment and selection process for the vacant post of Deputy Chief Fire Officer. It had been determined that for the efficient running of the service there remained the requirement

for the post of Deputy Chief Fire Officer. The Executive Committee further resolved that the Chief Fire Officer should submit a report to a future meeting of the Fire Authority regarding the size and structure of the Principal Officer team.

- 3.4 On 2nd December 2011 the Principal Officers' Staffing Committee was informed that seven applications had been received in response to the advertisement for the DCFO post. Members were previously informed that the selection process was to involve longlisting and initial interview by a panel consisting of the Chief Fire Officer, the Director of Human Resources and the Director of Resources.
- 3.5 Having considered the applications it was the view of the officer panel that the limited applications did not provide a sufficiently wide enough pool of applicants from which to shortlist and subsequently appoint. The officers did not therefore conduct longlist interviews.
- 3.6 The Committee approved the recommendation to suspend the selection process. It was further resolved that the Chief Fire Officer and the Director of Human Resources conduct a review to seek to ascertain why the advert received a limited response.
- 3.7 In March 2012 the Principal Officers Staffing Committee appointed two Assistant Chief Fire Officers as it had been determined that the need for those posts remained in order for the efficient running of the service. As the review of the Principal Officer team was continuing, it was subsequently determined that each of the Assistant Chief Fire Officers should 'act up' to cover the vacant DCFO post on a rotating six monthly basis. This arrangement commenced in June 2012 and currently remains in place.
- 3.8 As instructed by the Principal Officers' Staffing Committee the CFO and the Director of Human Resources investigated the reasons for the limited response to the advert for the DCFO vacancy which appeared in November 2011. The findings were as follows:
- Concerns relating to relocation costs, the time it would take to sell a property and not wanting to move the family
 - Prospective applicants feeling that they were not quite ready for the promotion to a Deputy role in a Metropolitan Service

- Conversely, the timing of the advert meant that there were other Principal Officer posts also being, or about to be, advertised in a number of other Services. This meant that individuals did not want to be seen to be looking widely as they felt this would reflect negatively on them and their perceived level of commitment. Individuals did not want to do anything to harm what they felt were good internal prospects for promotion.
- The tax liability that would be incurred following a promotion as a result of the firefighters' pension scheme
- Prospective applicants would have welcomed the opportunity to come and look around and speak to us in order to make a decision on whether to apply
- Other Principal Officer posts also received limited responses. For example the CFO post within South Yorkshire advertised at a salary of £142,000 plus car received two applicants.
- Given the CSR implications for the Metropolitan Services there is a view that the challenges this brings may have deterred applicants.
- A number of comments were received that individuals did not know that we had advertised for a DCFO. This could have been because they were not looking or the advert was not appropriately profiled.
- Services were also specifically asked whether there were any reputation issues which were likely to have had an adverse affect. Pleasingly, no such issues were reported.

4. **OPTIONS CONSIDERED FOR THE RECRUITMENT AND SELECTION PROCESS**

4.1 **Appoint on a fixed term basis:** In June 2012 the Fire Authority approved the revised structure for the Principal Officers team as part of the wider management review. Appointing a DCFO on a fixed term basis internally or externally serves only to prolong instability within the Service at a key strategic level. Additionally, there are significant tax implications which arise for individuals in the firefighters' pension scheme who undertake temporary promotions. This may lead to individuals choosing not to apply for the post so as to avoid the additional tax burden.

4.1.1 Previously where WMFS has sought applications externally on a fixed term basis, the host FRS has raised issues relating to pension fund liabilities. That is, should the employee subsequently retire and receive a pension based on the

enhanced salary they received during the fixed term period, which organisation is responsible for funding the pension. On the basis of such liabilities permission to apply for fixed term appointments has previously been withheld by other FRSs.

4.1.2 In deciding whether to appoint on an external fixed term basis the information gathered relating to the previous limited response to the DCFO advert should be considered (see paragraph 3.8 above). For instance issues have been raised relating to relocation costs. An external fixed term employee would be required to meet the cost of additional temporary housing/accommodation requirements as they would be required to reside within the boundaries of West Midlands.

4.1.3 A slight variation on the option of appointing on an internal fixed term basis is to continue the existing arrangement between the two ACFO's. This however is less than ideal and was put in place as a relatively short term solution until the outcome of the CSR for years 2013/2015 was known. Whilst undertaking their six month rotating period in the DCFO role the employees are not being given the opportunity to establish themselves in their substantive roles which they were appointed to in March 2012. Additionally, the arrangement means that there is a chain of further temporary appointments beneath the DCFO which all means that a number of other managers are not in their substantive roles. The removal of the temporary arrangements will enable the Service to properly implement the management review which was agreed by the Fire Authority at its meeting in February.

4.1.4 In view of the above issues appointing on a fixed term basis or continuing the existing arrangement is not considered a desirable option.

4.2 Ring fence the recruitment process to internal candidates:

As stated in 3.7 above, the arrangement currently in place is for the two Assistant Chief Fire Officers (ACFO) appointed in March 2012 to cover the DCFO vacancy on a six month rotating basis. In order to provide continuity it is an option to ring fence the appointment process to the two ACFO's. There are however potentially significant equalities implications in taking this option as it may leave the Service open to Employment Tribunal claims of indirect discrimination under section 19 of the Equalities Act 2010.

- 4.2.1 The ACFOs are both white and male. Applying a provision, criterion or practice of ring fencing the vacancy to the two existing ACFO's excludes women and people from Black and minority ethnic backgrounds from applying. The Equality Act 2010 states that indirect discrimination may occur when an employer applies an apparently neutral provision, criterion or practice which puts workers sharing a protected characteristic at a particular disadvantage.
- 4.2.2 Guidance from the Equality and Human Rights Commission (EHRC) is that the phrase 'provision, criterion or practice' should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A provision, criterion or practice may also include decisions to do something in the future – such as a policy or criterion that has not yet been applied.
- 4.2.3 Indirect discrimination occurs where the provision, criterion or practice puts or would put people who share the worker's protected characteristic at a particular disadvantage when compared with people who do not have that characteristic. The Act also states that it puts or would put the particular worker at that disadvantage. This allows challenges to provisions, criteria or practices which have not yet been applied but which would have a discriminatory effect if they were.
- 4.2.4 EHRC guidance states that 'disadvantage' could include denial of an opportunity or choice, deterrence, rejection or exclusion. A disadvantage does not have to be quantifiable and the worker does not have to experience actual loss (economic or otherwise). It is enough that the worker can reasonably say that they would have preferred to be treated differently.
- 4.2.5 In cases where it is less obvious how people sharing a protected characteristic are put (or would be put) at a disadvantage, statistics are often used to demonstrate that a disadvantage exists. Looking at the relevant pool, a comparison is made between the impact of the provision, criterion or practice on people without the relevant protected characteristic, and its impact on people with the protected characteristic.

- 4.2.6 Additionally, the Service has recently, through its Scrutiny Committee, agreed a positive action strategy. This strategy sets out that an objective for the service is to seek to increase the representation of women and Black and minority ethnic people within senior management. Ring fencing the vacancy in the way described above will not enable the Service to seek to achieve this key objective.
- 4.2.7 In order to successfully defend a claim based indirect discrimination, WMFS would need to show that the provision, criterion or practice (that is ring fencing the vacancy) is a proportionate means of achieving a legitimate aim. It is not wholly clear whether seeking to objectively justify this action on the basis of maintaining continuity would be successful at an Employment Tribunal if challenged, particularly as both internal employees if unsuccessful would remain as ACFOs on the Corporate Board. Ring fencing tends to be used and objectively justified where a potential redundancy situation exists. In such a situation ring fencing can mitigate the need for an employee to be made redundant. This is not the case in this situation.
- 4.2.8 A variation on the option of ring fencing the vacancy would be to advertise the post internally and it being open to any employee to apply. However, given the specific requirements of the role the only realistic applicants would be the two ACFOs. Additionally, there are no women or Black and Minority ethnic employees who substantively occupy strategic management posts within WMFS.
- 4.2.9 Whilst the above points set out the potential risks of ring fencing the recruitment process to internal candidates, it is also seen as acceptable practice by (for example) ACAS, to carry out recruitment based on internal applicants first. The risks of ring fencing the recruitment to internal candidates will only materialise into a successful claim if the Authority cannot demonstrate good business reasons for considering internal candidates first. Potentially good business reasons might be: the adverse cost of carrying out external recruitment, seeking to avoid the relocation costs of an external appointee, having to wait for such an appointee's notice period to expire, retention/promotion of existing staff (which in turn links to), staff morale and seeking to enhance a known and existing skills set. The risk of challenge should be balanced with the person specification the Authority is

looking to recruit to, that is (and as referred to earlier) the number of potentially suitable candidates, even on a National level, is quite small. As mentioned, there is an obligation to consider internal applicants in the context of a redundancy scenario, but while a redundancy scenario is not in effect here, the same principle may nonetheless apply.

4.2.10 While there are advantages in considering external applicants along with internal applicants, the decision is understood as one for the Authority.

4.3 **Advertising the vacancy externally:** This is the preferred option as it enables the Service to select from the widest range of applicants. This would include any internal applicants who chose to apply. Whilst there is no guarantee that the Service will attract a large diverse group of candidates this option has numerous advantages over the previous options. The risks of potential challenge to the process are significantly reduced. This option allows consideration to be given to issues of continuity and enables such consideration to be balanced against other essential requirements such as securing the best person from a wide pool of talented candidates, being able to benchmark and assess the talent that exists across the sector and to consider how the ideas, experience and innovation of others compares against our internal candidates. This option sends out the correct message both internally and across the sector.

5. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment has been carried out. The issues from this assessment are detailed within the main body of the report in paragraph 4.2 above.

6. **LEGAL IMPLICATIONS**

The legal implications are detailed within paragraph 4.2 above.

7. **FINANCIAL IMPLICATIONS**

The cost of the recruitment of the Deputy Chief Fire Officer

would be met from existing budgets

8. **ENVIRONMENTAL IMPLICATIONS**

None identified

BACKGROUND PAPERS

Report to Executive Committee 10 October 2011

Report to Executive Committee 7 November 2011

Report to Principal Officers Strategic Committee 2 December 2011

Report to Fire Authority 25 June 2012

Equality Act 2010

Equality and Human Rights Commission Statutory Code of Practice
2010

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