

Departmental reorganisation
and voluntary redundancy of
the chief executive

East Lothian Council



Prepared for the Accounts Commission
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The Accounts Commission

The Accounts Commission is a statutory, independent body which, through the audit process, assists local authorities in Scotland to achieve the highest standards of financial stewardship and the economic, efficient and effective use of their resources. The Commission has four main responsibilities:

- securing the external audit, including the audit of Best Value and Community Planning
- following up issues of concern identified through the audit, to ensure satisfactory resolutions
- carrying out national performance studies to improve economy, efficiency and effectiveness in local government
- issuing an annual direction to local authorities which sets out the range of performance information they are required to publish.

The Commission secures the audit of 32 councils and 41 joint boards (including police and fire and rescue services). Local authorities spend over £14 billion of public funds a year.

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Commission findings

The Commission has considered the Controller of Audit's report on departmental reorganisation and voluntary redundancy of the chief executive in East Lothian Council. The Commission accepts the report and endorses its overall conclusions.

The Commission believes that there are lessons to be learned for general application in such circumstances:

- Recognised best practice should be followed when councils make such decisions.
- Information provided to elected members should be sufficient and supported by professional advice.
- Members should be given sufficient time to consider the issues and should be provided with information on alternative options.
- The decision-making process should be transparent.
- The process for appointing a chief executive should demonstrate that the council appointed the best candidate. Given the critical importance of the post of chief executive to the good management of a council the public are more likely to have confidence that the best candidate has been appointed if the recruitment process is not restricted but open to all potential candidates.

The Commission wishes to stress the importance to good governance of local authorities of the Protocol on Relations between Members and Officers which is part of the National Code of Conduct for Councillors.

Summary

1. At a special meeting on 8 February 2007 to discuss budget and council tax proposals, East Lothian Council agreed to restructure its departments to release efficiency savings. As a consequence, the council agreed to the early retirement of its chief executive, John Lindsay, on the grounds of redundancy. The chief executive had reached the age of 60 and completed 42 years of service, so the decision to make him redundant did not increase his pension entitlement, but the council agreed to make a one-off redundancy payment to him which it calculated as approximately £149,000.
2. Having carefully considered the circumstances and available evidence, in my view the process by which the council made its decision fell a long way short of the standards expected of public bodies.
3. Because of the way in which the reorganisation and redundancy decisions were made, the council restricted applicants to replace the chief executive to internal candidates only. It would be better placed to demonstrate that it appointed the best candidate if it had invited applications from external candidates and conducted a full selection process.
4. In May 2007, the chief executive intimated that he was no longer volunteering to be made redundant and wished to continue in post. The council then announced that: it would reach a negotiated settlement with the chief executive; that he would not return to work before he is due formally to retire on 31 July 2007; and that the director of Corporate Finance and IT would be acting chief executive.
5. As a result of my enquiries, the council is currently considering the legal position on the proposed redundancy payment. I am monitoring the position and may report on that specific point in due course.

Background

6. At a special meeting on 8 February 2007 to discuss budget and council tax proposals East Lothian Council agreed to restructure its departments by merging the departments of the chief executive, and Corporate Finance and IT to form a new Corporate Services department. The council considered a report on the reduction in the number of departmental directors' posts from five to four, as a way of releasing efficiencies as part of budget proposals designed to contain council tax increases. As a consequence of the reorganisation, the council agreed to the voluntary redundancy and early retirement of its chief executive on the grounds of efficiency.
7. The report presented to the council on 8 February 2007 indicated that the chief executive would not compete for the new post and would volunteer to stand down, taking voluntary redundancy. The director of Corporate Finance and IT would therefore become the director of Corporate Services (designate) and would undertake a service review to identify further potential for service improvements, and operational and financial efficiencies.
8. The new chief executive was recruited internally from the four remaining directors and will take up post on 1 August 2007.
9. On 15 May 2007, the chief executive intimated that he was no longer volunteering to be made redundant and wished to continue as chief executive. On 18 May 2007, the council announced that it is in the process of reaching a negotiated settlement with the chief executive and that he will not return to work before he is due formally to retire on 31 July 2007. The council also announced that its director of Corporate Finance and IT would take up the post of acting chief executive from 21 May 2007.
10. As a result of my enquiries, the council is currently considering the legal position on the proposed redundancy payment. I understand that the council has sought independent legal advice to inform its discussions. I am monitoring the position and may report again in due course.
11. The council's external auditors have investigated this issue as part of their annual audit work. I have agreed the factual accuracy of my report and discussed my findings with the council's chief executive and acting chief executive.

The process by which the council made its decisions did not accord with best practice

12. East Lothian Council is accountable to the public for the stewardship of funds under its control. It is for the council to consider whether value for money is achieved, and elected members need access to good quality and timely information to help them assess the options available and take decisions which are in the best interests of the communities they serve. Open and transparent decision-making is central to good governance and Best Value.
13. The Accounts Commission has set out specific guidance on senior officers' early retirement and redundancy in its 1997 report *Bye Now, Pay Later? – The management of early retirement in local government*. This concluded that there is merit in certain decisions, such as those involving chief executives and other heads of service, being reviewed by an independent external body or consultant before the final decision is made. This would help to ensure that decisions are properly made and to reassure the public where large sums of money are involved.

The information provided to elected members was limited and was not supported by professional advice

14. The merger of departments, and the chief executive's consequent voluntary redundancy, was not identified as an agenda item in its own right, but discussed and agreed as part of the council's 2007/08 budget proposals. The estimated net costs in 2007/08 (£62,000) and net savings in future years (£381,000 over five years) arising from the proposal are included in the paper submitted to the council on the merger. However, the information provided on these figures was insufficient and the specific effect on the budget for 2007/08 is not clear from the papers provided to elected members.
15. The efficiency calculations prepared by the council reflect the amount saved in moving from five to four directors based on a director's salary. The chief executive advised me that in his view there will be further savings from the decision to merge departments, but I am not aware of any further analysis of other costs or savings, or of the non-financial implications which may arise. This will depend on the outcome of the proposed service review, the purpose of which is to identify further potential for service improvements along with operational and financial efficiencies.
16. There is limited evidence that the council sought professional legal and HR advice before taking the decision. The report presented to the council meeting on 8 February 2007 states that the council solicitor had been consulted and considered the proposal to be competent in terms of the legislation and the council's Standing Orders. This advice is contained in an e-mail from the council solicitor to the head of Personnel Services. The chief executive sought advice from the head of Personnel

Services on a possible merger of the two departments but this is not documented. No other advice was sought or offered from internal sources and no external advice was sought.

Members were given insufficient time to consider the issue and were not provided with information on alternative options

17. The paper on the merger and redundancy was tabled at the budget setting meeting, so members had insufficient time to consider the matter. The papers tabled were presented to members at 8:30am on the morning of 8 February 2007. The council meeting commenced at 10 am. The chief executive informed me that there are no constraints on what can be brought forward at the budget meeting and that it was acceptable to bring forward the proposed departmental organisation at that time and in this way. In my view, it was entirely inappropriate given the nature of the paper recommending a reduction in the number of council departments and the appointment of a new chief executive from the four remaining directors.
18. Tabling the paper in this way contravenes the council's Standing Orders in my view. The budget meeting on 8 February 2007 was a special meeting of the council. Standing Order 7(i) states that at a special meeting of the council only business specified may be transacted and there is no mention on the agenda of the paper titled 'Formation of New Corporate Services Department'. Council officers take a different view and believe that there was no breach of Standing Orders arising from tabling the report at the meeting.
19. The decision to proceed with the merger was taken without considering options other than the one set out in the paper and how the proposed new structure would meet the council's business needs. Further information on alternative options and on the business case for the proposal would have enabled elected members' to make a more informed decision.
20. In any event, I would have expected the decision to merge departments to result from the planned service review, which should have identified a range of options for consideration; the implications for individual post-holders would have followed from that. This was not the sequence of events in the current case.

There was a lack of transparency in the decision making process

21. The duties of openness and transparency that must apply to everyone in local government service are of the utmost importance in the case of chief officers. In particular, chief officers should observe, and be seen to observe, the highest standards of openness and transparency in relation to council decisions in which they have a personal interest.

22. Documentation of the discussion and decision making process is sparse. According to the minutes of the Corporate Management Team and the Policy Forum, this matter was not formally discussed by senior officers or elected members prior to its presentation to council.
23. The first record of the proposal for restructuring and the voluntary redundancy of the chief executive is contained in the report submitted to the special Council meeting on 8 February 2007. This was tabled as a report by the chief executive (per head of Personnel Services) and director of Corporate Finance & IT (per head of Corporate Finance) and the head of Personnel Services introduced the report. The chief executive and the acting chief executive are of the view that this was an effective means of distancing themselves from the decision from which they would benefit. In my opinion this was insufficient and they should have declared an interest and taken the steps necessary to demonstrate the highest standards of openness and transparency.
24. A further consideration relates to the basis on which the changes were presented as constituting a financial saving for the council. That saving would be realised only if the replacement chief executive was selected from among the existing directors. This reinforces my view that there was potential for a conflict of interest between the chief executive's position and that of the council.
25. Overall, in my view the process through which the merger and redundancy was determined did not meet the standards expected of good governance and Best Value. It lacked:
 - full and documented professional advice
 - due consideration, in terms of the quality of information available to elected members to inform their decision making and the timescale within which the decision was taken
 - robust and rigorous options appraisal
 - transparency and openness.
26. The lack of due process and adequate consideration of the impact of the merger and the suitability of the new structure raise doubts over whether the planned efficiency savings will be achieved. There is also the question of possible additional costs which may arise from the restructuring which will only become clear when the service review is complete, and tasks such as job sizing are carried out.

The way in which the council appointed the new chief executive makes it difficult for it to demonstrate that it appointed the best candidate

27. The post of chief executive is critical to the effective function of the authority and as such it is in the best interests of all concerned to attract the best candidate for the job. In order to achieve this, in my

view where there is a vacancy the post should generally be widely advertised and open to all suitably qualified candidates. Those candidates who meet the initial selection criteria should then be subject to further examination to assess their competence and experience with a view to selecting the best candidate for the job.

28. The council's Standing Orders require that chief officers be appointed through public advert, other than in the case of departmental restructuring. Its Recruitment and Selection Policy and Procedure requires employees to be drawn from the widest possible employment through external advertisement and the assessment of competencies and experience. Suspension of the policy in whole or in part is allowed where appropriate when the council, its departments or services are being restructured, subject to the approval of the head of Personnel Services in writing. There is no evidence that written approval was provided in the current case.
29. As a result of the decision on departmental restructuring in February 2007, through which the efficiency gains identified would only arise if the new chief executive was appointed internally, the post was opened only to the four remaining directors, each of whom was invited to submit an application. This resulted in applications from two candidates.
30. The final selection process consisted of a pre-interview assessment (an in-tray exercise) and a presentation and competency based interview with a panel comprising seven cross party elected members. The panel was advised by the head of Personnel Services and an external independent adviser.
31. This appears to accord with the council's Standing Orders and policy and I understand it is common practice within the council where there is internal restructuring. Notwithstanding, in my view the overall process by which the new chief executive was appointed does not accord with Best Value or best practice and with the expectations for openness and transparency required in appointing the most senior member of council staff.
32. In the event, the director of Corporate Finance and IT was appointed as the new chief executive.
33. The decision on departmental reorganisation, and the consequent need to secure the efficiency savings required to make this financially viable, meant the recruitment process was highly restricted and excluded external candidates. The council would be better placed to demonstrate that the best candidate for the job was appointed if it had invited applications from external candidates and conducted a full selection process.

Overall conclusions

34. The purpose of this report is to provide an independent opinion on key issues arising from the council's decisions to reorganise its departments and, consequently, to agree to the early retirement of its chief executive on the grounds of redundancy and to the appointment of the new chief executive from the remaining directors.
35. Having carefully considered the circumstances and available evidence, in my view the process by which the council made its decision fell a long way short of the standards expected of public bodies.
36. As with other parts of the public sector councils look to achieve efficiency savings, including through restructuring and reorganisation. I accept that this was the context for the decisions at East Lothian Council. However, I am concerned about the lack of openness and transparency in the way in which important matters involving departmental restructuring and changes at senior officer level were brought to the council and the timing. I also have concerns about the lack of information available to elected members to assist their consideration and to support them in their scrutiny role.
37. There may be circumstances in which councils make internal appointments to secure financial efficiencies but cost is only one factor in assessing Best Value. This is particularly so in appointing a chief executive because of the critical nature of the role. Public sector organisations that invite applications from external candidates and conduct a full selection process are in a stronger position to demonstrate that they have appointed the best candidate as chief executive and achieved Best Value.
38. Overall therefore, in my opinion, the process by which East Lothian Council agreed to merge departments and appoint a new chief executive did not meet the standards expected of good governance and Best Value.
39. As part of its planned work programme, Audit Scotland is currently completing an audit of Best Value and Community Planning at East Lothian Council. I will be submitting my Best Value report to the Accounts Commission in the usual way in due course. Issues arising from my investigation into the departmental reorganisation and voluntary redundancy of the chief executive will be reflected in that report, in the context of the council's overall response to its Best Value responsibilities.

CAROLINE GARDNER
CONTROLLER OF AUDIT
15 June 2007

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