

Agenda Item	4
Report No	AS/1/21

THE HIGHLAND COUNCIL

Committee: Audit & Scrutiny Committee

Date: 28th January 2021

Report Title: Internal Audit Review

Report By: Corporate Audit Manager

1. Purpose/Executive Summary

- 1.1 This presents the Internal Audit report relating the review of the recruitment process for the Executive Chief Officer of Education & Learning.

2. Recommendations

- 2.1 The Committee is invited to consider the report together with the External Audit opinion provided as **Appendix 1** to the report.

3. Implications

- 3.1 Risk – any risks identified from Internal Audit reviews are addressed through recommendations for improvement.
- 3.2 There are no Legal, Resource, Community (Equality, Poverty, Rural and Island), Climate Change/ Carbon Clever or Gaelic implications arising from the audit report.

Designation: Corporate Audit Manager

Date: 18th January 2021

Author: Donna Sutherland

Background Papers:

Internal Audit Final Report

Resources & Finance

Review of recruitment process for Executive Chief Officer of Education & Learning

Description	Priority	No.
Major issues that managers need to address as a matter of urgency.	High	4
Important issues that managers should address and will benefit the Organisation if implemented.	Medium	1
Minor issues that are not critical but managers should address.	Low	0

Distribution:

Chief Executive
ECO of Performance & Governance
ECO of Resources & Finance
Head of Corporate Governance, Performance & Governance
Interim Head of Human Resources, Resources & Finance
External Audit

Audit Opinion

The opinion is based upon, and limited to, the work performed in respect of the subject under review. Internal Audit cannot provide total assurance that control weaknesses or irregularities do not exist. It is the opinion that **Limited Assurance** can be given in that weaknesses in the system of controls are such as to put the system objectives at risk, and/or the level of non-compliance puts the system objectives at risk.

Report Ref: HRF30/004
Draft Date: 21/12/20 (to External Audit)
12/01/21 (to Officers)
Final Date: 19/01/21

1. Introduction

- 1.1 This unplanned audit review has been undertaken at the request of the Council Leader following questions raised by Members about the appointment of a Consultant to fill the vacant post of the Executive Chief Officer (ECO) of Education & Learning (referred to as the ECO post) on an interim basis.
- 1.2 The Terms of Reference for this review were set out in an e-mail to all Members on 12/08/20 from the ECO of Performance & Governance on behalf of the Leader.
- 1.3 This review concentrated upon the timeline of events from December 2019 when a second attempt was made to recruit to the post of ECO of Education & Learning through to August 2020 when the Consultant departed. Details of the timeline of events is provided at Appendix 1.
- 1.4 A number of Officers and Members (attended Recruitment Panel and/ or Members Gold Meetings) were interviewed during this review and they are listed at Appendix 2. In addition, information has been gathered from review of e-mails provided by Officers, reports to Council and Committees as appropriate, reports and minutes from the Recruitment Panel, Member Gold Covid-19 meeting minutes and the Weekly Strategic Meeting minutes.

2. Main Findings

- 2.1 *Review of process for recruitment and appointment of Consultant*

There were 2 unsuccessful attempts at recruiting an ECO of Education & Learning; in the summer of 2019 when the 8 newly created ECO posts were advertised and then on its own in December that year. The Recruitment Panel met on 08/01/20 to discuss the second round of applications, and as a result of insufficient qualifying candidates, agreed to pause the recruitment process and to carry over one application for interview when this resumed. The Panel minutes also show that a report covering a review of the job description and salary, recruitment strategy and timeline for growing own talent would be submitted to the next meeting in 2/3 weeks time.

This was done and a report by the Interim Head of Human Resources (HR) was considered by the Recruitment Panel. The Panel minutes record that they noted the alternative cover arrangements were working well, there would be a review of the overall recruitment package and job specification for the post, proposals for the development of internal talent and agreed to procure the services of a head hunting agency to assist with the recruitment process for the ECO post.

It is evident from the interviews undertaken with Officers and Members that both sets of Panel minutes do not fully reflect what was discussed at the meetings. Interviews with Members who took part in the Panel meetings has revealed disagreement with what was discussed and agreed at the meetings. All acknowledged that the previous two attempts at recruitment had been unsuccessful and a different approach was required. The majority of Members acknowledged that it was agreed that an agency would be approached to assist with recruiting an interim candidate for a period of 6 -12 months which accords with the timeline for the growing of internal candidates referred to in the Interim Head of HR's report. They also acknowledged that they were informed by the Chief Executive that this action would come at significant cost as such candidates would be expensive. Officers were of the view that other internal options were available at much less cost to the Council, but these were not pursued.

The normal minute style for the Recruitment Panel is to record decision points and does not reflect any wider discussions as it is a public document. This meant it was not clear who was responsible for the decision to recruit a Consultant and the potential costs involved (See Action Plan ref H1).

Furthermore, it should be noted that this decision was made before the Covid-19 pandemic affected Council operations and was not made under emergency powers. During interviews most Members were of the view that the pandemic further illustrated the need to fill the ECO post given the importance of ensuring the safe reopening of schools.

The involvement of Members in the recruitment process changed several times as shown in the timeline of events at Appendix 1. Under the Council's Scheme of Delegation, the appointment of

ECOs rests with Council which agreed to delegate this to a Recruitment Panel. However, this applies only to permanent appointments. In the case of interim appointments, which includes Consultants, this responsibility is delegated to the Head of HR and the ECO of Finance and Resources. The Interim Head of HR was involved in the recruitment process and the consultancy agreement was authorised by the ECO of Finance and Resources. Therefore, it is considered that the Scheme of Delegation was followed for the recruitment and appointment process.

There is no prescribed process within the Council for the recruitment of interim staff and it is considered that this contributed to the confusion regarding the role of Members (see Action Plan ref H2).

Recruitment was undertaken using a Crown Office Framework for Executive staff which lists several agencies. This process accords with the requirements of Contract Standing Orders. However, no contract award notice was published which is required for any call-offs exceeding £50k (see Action Plan ref M1).

HR have produced a Recruitment & Selection Policy and supporting guidance, which covers the role of Officers with no detailed guidance covering Members. Instead section 11.4 of the guidance states "*Lead Officers involved in constituting appointment panels that involve input from elected members should obtain specialist advice from HR.*" The current practice is that proposals for the recruitment process for senior Council Officer posts are submitted to Council for its approval at the time (see Action Plan ref H3).

2.2 *Examine job description and whether this was delivered*

The Interim Head of HR provided a copy of the standard job description for the ECO of Education & Learning to the recruitment agency in March 2020 to assist with identifying suitable candidates. This was amended as a result of the Covid-19 pandemic and the closure of schools with the core remit set out as "to continue to close the attainment gap including the new attainment gap caused by Covid-19, ensure safe return of pupils to schools, and to drive forward education transformation".

During the pandemic the plans for schools had to be changed as the Scottish Government's guidance changed from provision of blended learning to the full reopening of schools. In accordance with the final guidance, the phased reopening of schools across Highland commenced from 12/08/20 with the plan to have all pupils returned by 18/08/20.

Whilst the safe return of pupils was delivered, due to the early departure of the Consultant, the other parts of the core remit were not achieved.

2.3 *Establish Circumstances that led to departure of Consultant*

The Consultant commenced at the end of May 2020 with the expectation that the appointment period would last for 6 – 12 months. The agency agreement allowed for earlier termination whereby either party could give 1 months' notice and several Members were clear, as identified during their interviews, that such flexibility existed with using a Consultant.

The decision to appoint a Consultant and the leaking of the daily rate paid attracted a great deal of adverse press reports. Some of these reports included criticism from Members about the decision to recruit a Consultant and the associated cost. Whilst scrutiny of decision making is an important part of Members' duties, there were comments made in the press, during Committee meetings and through social media directed at the post holder by name and his daily rate which could be considered as breaches of the Code of Conduct for Members (see Action Plan ref H4). It was established from the interviews that Member behaviour was one of the factors in the departure of the Consultant.

Whilst there were no management issues with the Consultant's performance, as a result of the above, the situation had become untenable impacting on delivery of the work on education transformation and savings. Further issues with travel complications associated with lockdown and Covid-19 restrictions have also been cited as factors. Therefore, it was mutually agreed that the appointment would be ceased, in accordance with the agency agreement terms, at the end of August 2020.

2.4 *Consideration of whether value for money (VFM) was obtained*

The fees paid amounted to £70,200 and the comparable cost including on-costs for a permanent ECO is just under £39,630. Therefore, there was an additional cost of just over £30,500.

The consultancy ended prematurely which impacted upon the Consultant's ability to fulfil the prescribed core remit. Together with the fact that only one of three core tasks were completed, this means that it cannot be properly assessed whether VFM was obtained. The safe reopening of Schools was achieved and led by the Consultant, supported by Council staff and successful cross-service working. This was one of the key priorities within the Council's recovery plan. This plan was managed using the Programme Management Office technique and the resources were provided from existing staff with the appropriate project management skills. This option, of undertaking this task in-house, at no additional cost, was considered as part of the process but not progressed as outlined at paragraph 2.1 above.

3. Conclusion

3.1 The decision to recruit a Consultant as the Interim ECO of Education & Learning occurred before the Covid-19 pandemic affected Council operations. Whilst the recruitment process was temporarily paused when schools had to be closed, the view expressed by the Members Gold Group was that the pandemic made it more critical that an ECO was in post to deal with education matters in what was a rapidly changing situation in response to guidance issued by the Scottish Government.

Whilst there is no clear consensus from Members as to what was discussed at the Recruitment Panel meetings, all have referred to matters discussed which do not appear in the minutes. It is acknowledged that this was the established practice, but if the minutes had fully recorded what was discussed then this audit review may not have been necessary.

No breaches of Council policies or the Scheme of Delegation has occurred. However, Contract Standing Orders were not fully adhered to as a contract award notice was not published.

A number of areas for improvement have been identified with regard to processes for the recruitment and appointment of interim staff, and the role of Members in the permanent recruitment of senior Council officers (Heads of Service and above). There is a need to change governance arrangements with improved minute taking of decision-making meetings.

4. Action Plan

Ref	Priority	Finding	Recommendation	Management Response	Implementation	
					Responsible Officer	Target Date
H1	High	The Recruitment Panel meetings minutes of 08/01/20 and 14/02/20, in line with long standing practice, do not fully reflect what was discussed by the Officers and Members present.	<p>There is need to ensure that more detailed minutes are recorded in any decision-making meetings. This will ensure that there is improved governance and transparency over decisions. This should also include details of where Officer recommendations are not agreed, and that Members are fully informed of the associated risks with such decisions.</p> <p>For confidential matters, it is recommended that the full minute is not published and instead the relevant action points are extracted for the public minute.</p>	A reviewed protocol will be put in place prior to any future meetings of the Recruitment Panel. This will ensure that all relevant decisions are made by the Panel and these are fully minuted.	Head of Corporate Governance	31/03/21
H2	High	There is no specific process in place for the recruitment and appointment of senior interim staff including where this involves Consultants.	<p>A policy should be introduced for the appointment of all interim staff which sets out:</p> <ul style="list-style-type: none"> • The justification for the appointment including the benefits and rationale for the decision; • Any other options that were considered and why these were considered unsuitable; • The potential cost and identification of an appropriate budget to meet this; • How the agreed outcomes will be delivered, and the 	A policy guidance document will be developed outlining the process to recruit senior interim staff to demonstrate value for money.	Interim Head of HR	31/03/21

Ref	Priority	Finding	Recommendation	Management Response	Implementation	
					Responsible Officer	Target Date
			<p>arrangements for measuring and monitoring these;</p> <ul style="list-style-type: none"> • What evaluation will be undertaken at the end of such appointments to establish if the anticipated benefits were realised and to inform future arrangements. 			
H3	High	There is no detailed guidance setting out the role of Members in the appointment of senior Council Officers.	Guidance should be produced by Human Resources that covers the role of Members in the recruitment and appointment of senior Council Officers (currently Head of Service level and above). This should ensure clarity of the roles of Officers including provision of professional advice, the process to be followed for the shortlisting and interviewing of candidates including scoring and records maintained which will support any decisions made.	Guidance will be produced by HR outlining the role of Members and Officers in the recruitment of senior Officers and process for these appointments.	Interim Head of HR	31/03/21
H4	High	Member behaviour is considered to be one of the factors in the early departure of the Consultant.	Management should take the necessary action to ensure that Members are made aware of the need to fully comply with the Code of Conduct for Members. This should include reminders and refresher training as required. Any breaches of the Code should be addressed as appropriate.	The Members Learning & Development programme has relevant content to address this and the refreshed programme is currently being implemented. Roll out has been delayed due to COVID-19 and therefore the timeline will be kept under review.	ECO of Performance & Governance	31/08/21

Ref	Priority	Finding	Recommendation	Management Response	Implementation	
					Responsible Officer	Target Date
M1	Medium	Section 4.10 of Contract Standing Orders states "where a call-off exceeding £50k is being made via a framework agreement a contract award notice shall be published through Public Contracts Scotland". Whilst the consultancy agreement was expected to exceed £50k, no such contract award notice was published.	<p>It should be ensured that Officers are fully aware of the requirements of Contract Standing Orders and compliance with these in the future.</p> <p>Advice should be sought from the Commercial and Procurement Shared Service whether a retrospective contract award notice should be published.</p>	<p>HR will liaise with procurement colleagues to determine the need to promote further procurement training.</p> <p>Refreshed procurement training is being provided for all Managers which will include ensuring awareness of Contract Standing Orders and the need for compliance.</p> <p>In the interim a briefing will be provided to all Managers reminding them of this requirement whilst the training is being rolled out.</p>	Interim Head of HR	31/03/21
					ECO of Finance & Resources	31/12/21
					ECO of Finance & Resources	31/01/21

Timeline of key events

Date	Event
27/06/19	<p>Council meeting Report HC28/19 Transitional Management Arrangements</p> <p>Included update on progress with recruitment to ECO posts – key points:</p> <ul style="list-style-type: none"> • Adverts closed 20th June • Proposed interviews for Education ECO in first week of July • Recruitment undertaken by Recruitment Panel of 10 Members comprising of Convener; Leader; Depute Leader; 3 Strategic Chairs plus 2 members of the Opposition; Leader of Scottish Conservative and Unionist Group and Leader of the Labour Group. Given the number of ECO posts being recruited in a very short timescale substitutes from respective Groups allowed.
December 2019	National recruitment advert for ECO post which resulted in 7 applications being received.
08/01/20	<p>Recruitment Panel meeting to consider applications for post of ECO for Education and Learning. Agreed:</p> <ol style="list-style-type: none"> i. the recruitment process for the ECO - Education & Learning be paused for the time being; ii. that candidate number 1 would be informed that while the recruitment process had been paused, the Panel would interview the candidate when the recruitment process recommenced; and iii. a report be submitted to the next meeting, in approximately 2/3 weeks time, that would cover a review of the job description/person specification, recruitment strategy, salary and timeline for 'Grow your own talent' for the ECO – Education & Learning.
11/02/20	Weekly Strategic Meeting minute which recorded that there was a confidential discussion on the way forward for the recruitment of the ECO Education post.
14/02/20	<p>Recruitment Panel meeting which considered the report from Interim Head of HR and they:</p> <ol style="list-style-type: none"> i. NOTED that alternative arrangements to cover the Executive Chief Officer –Education and Learning post were working well; ii. AGREED to procure the services of a head hunting agency in order to assist with the recruitment process for an Executive Chief Officer – Education & Learning; iii. NOTED that there would be a review of the overall recruitment package, Job Specification and Person Specification for the post; and iv. NOTED proposals for the development of internal talent.
18/02/20	Weekly Strategic Meeting minute which recorded that there was a confidential discussion on the status of the recruitment of the ECO Education post.
05/03/20	Interim Head of HR contacted Gatenby Sanderson to discuss requirements for Interim ECO for Education and Learning.

Date	Event
10/03/20	<p>Weekly Strategic Meeting (WSM) minute which recorded that:</p> <p>The Chief Executive provided a verbal update on the status recruitment of the ECO Education post. She advised that it was intended to bring someone in on a temporary contract to build capacity within Education. This person would focus on key tasks. AGREED the costs for this temporary position should come from the funds earmarked for the ECO Education post which has been vacant.</p> <p>It was also AGREED that it would be helpful to compare costs of this temporary post with the full-on costs of a permanent ECO Education post.</p> <p>(note that this was on the agenda for the WSM of 17/03/20 but this meeting was then cancelled due to the pandemic).</p>
06/03/20	5 CVs were provided by Gatenby Sanderson which contained daily rates. Following review by Officers, 2 candidates were selected for interview.
10/03/20	Interim Head of HR contacted Gatenby Sanderson to obtain information on potential costs of Consultants. At this point were looking at start date after Easter.
12/03/20	Council meeting. Recruitment Panel meetings of 08/01/20 and 14/02/20 were noted and no comments were made at the meeting.
16/03/20	Announcements to Country by Prime Minister and Scottish First Minister about contact and travel restrictions.
17/03/20	Council and Committee meetings postponed for March and April.
19/03/20	Member Gold Covid-19 Group established comprising of: Members - Convener, the Leaders of the Administration Groups/ Parties, and the Official Opposition Group (nb Joint Leaders), Budget Leader. Officers - Chief Executive and ECO of Performance and Governance.
20/03/20	Member Gold Covid-19 Group agreed to pause recruitment process following Scottish Government instruction to close schools.
13/04/20	Member Gold Covid-19 Group agreed that an Appointments Panel be formed, albeit on a reduced scale, for the Interim Chief Officer Education.
21/04/20	Member Gold Covid-19 Group agreed that in place of the shortened Appointments Panel, that the Chief Executive and the Chairman of Education would make the appointment on the basis that it would be for a fixed term only.
23/04/20	<p>2 candidates were interviewed remotely. Panel consisted of Chief Executive, Interim Head of HR, Chief Officer - Resources for Care and Learning, and Councillor J Finlayson, Education Committee Chair.</p> <p>An interview pack was previously circulated to the Panel consisting of the candidate CVs, their daily rates and planned questions.</p> <p>One candidate was selected and accepted the interim post.</p>
22/05/20	Council press release announcing appointment of Interim ECO of Education and Learning who would take up post at end of the month.

Date	Event
30/07/20	Announced that Consultant would leave post at the end of August following the return of pupils to schools.
12/08/20	Phased reopening of schools commenced.
End of August 20	Consultant left post.

List of Officers and Members interviewed

Officers

Donna Manson, Chief Executive
Kate Lackie, ECO of Performance & Governance
Elaine Barrie, Interim Head of Human Resources

Members

Councillor B Lobban, Council Convener (Chair of Recruitment Panel and Members Gold Group)
Councillor A Christie, Deputy Leader (Recruitment Panel and Members Gold Group member)
Councillor I Cockburn, then Joint Leader of the Opposition (Members Gold Group member)
Councillor M Davidson, Council Leader (Recruitment Panel and Members Gold Group member)
Councillor J Finlayson, Education Committee Chair (Recruitment Panel member)
Councillor J Gray, Labour Party Leader (Recruitment Panel and Members Gold Group member)
Councillor A Jarvie, Conservative Party Leader (Recruitment Panel member)
Councillor G Mackenzie, Audit & Scrutiny Chair, (Recruitment Panel member)
Councillor A Mackinnon, Chair of Corporate Resources & Budget Leader (Recruitment Panel and Members Gold Group member)



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19 January 2021

Dear Evelyn

Internal Audit Review of recruitment process for Executive Chief Officer of Education and Learning

Internal audit has completed a review of the recruitment arrangements for the Executive Chief Officer (ECO) of Education and Learning at the request of Elected Members. The work was undertaken through interviews and review of documentation, including the Scheme of Delegation between October 2020 and December 2020.

Following conversations with the Corporate Audit and Performance Manager, it was agreed it would be helpful for us, in our capacity as external auditors, to undertake a short independent review of the internal audit working papers and conclusions.

We did not re-perform the work of internal audit. We focused on the interview notes and the conclusions drawn by internal audit in their final report. Below we have summarised our comments on the findings and associated action plan.

Summary of findings

Based on our review we note:

- Individuals identified who were involved in the recruitment and subsequent decision making have been interviewed by internal audit.
- Internal audit has undertaken a review of the documentation available to confirm the controls in place for example scheme of delegation.
- The scope as agreed has been performed by internal audit.
- Based on a review of the interview notes differing individuals had different understandings of what happened when and why. Due to an absence of audit evidence, it is difficult to reach a factual conclusion.
- The onset of the global Covid-19 pandemic early to mid-March resulted in changed governance and decision making, which was necessary due to the external climate at the time.

- There is an opportunity to strengthen the recording of decisions, including better evidencing discussions and decisions that are made during private meetings.
- The importance of considering value for money and recording that assessment.

Conclusion

The actions set out in the report will support the Council in ensuring going forward a clear process is in place for senior officer recruitment and this is fully understood. This should include an end-to-end overview of the arrangements including decision making. Lastly, where an appointment is not made, the procedure should set out what alternative arrangements should be considered, including use of a consultant and assessment of best value to the Council.

We believe the internal audit report closes off the discussion with future actions agreed to protect the Council going forward. The way forward is now for Officers to take agreed actions to get a revised, clear, process in place and ensure the lessons captured by internal audit are actioned.

Within our 2020/21 External Audit report we will work with Internal Audit to assess the implementation of the recommendations.

Yours sincerely



Joanne E Brown

Partner Public Sector Audit