

**NORTH TYNESIDE MBC  
("The Council")**

**CHIEF EXECUTIVE  
("CEO")**

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**OPINION**

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INTRODUCTION

1. I am instructed to advise the Council. The Council operates an Elected Mayor and Cabinet Executive.
2. The Council currently has an interim CEO, pursuant to a contract for services. On 11 June 2012 the Cabinet determined that his contract for services should be extended to 31 May 2013.
3. On 4 July 2012 Full Council considered an amendment to a Motion which if passed would instruct the Head of Paid Service ("HPS") to commence without delay the recruitment process to make a permanent CEO appointment. The amendment was deferred until the next Meeting of Full Council on 26 July 2012 to enable legal advice to be taken.

ADVICE SOUGHT

4. I am asked to advise on four questions. I address them in the order in which they are raised in my Instructions.

FIRST QUESTION

5. I am asked whether there is a requirement to have a post of Chief Executive and/or HPS on an authority's senior management structure.

6. There is no requirement to have a post of CEO. There is no statutory provision which mandates such a role.

7. Moreover, if an authority chooses to have a CEO, there is no statutory provision which mandates that the CEO must be an officer of the authority in the sense of being engaged under a contract of service rather than a contract for services.

8. On the other hand, there is a requirement to have a HPS: Section 4 of the Local Government and Housing Act 1989.

9. Moreover, he or she must be one of the authority's "officers" designated as HPS. The individual must be engaged under a contract of service.

### SECOND QUESTION

10. Where, as currently in the Council's case, a post of CEO is in place on the Council's senior management structure, albeit that the CEO, as distinct from the separate HPS, is engaged on a contract for services, I am asked where, as between Full Council (and its Committees) and Cabinet, responsibility lies for determining whether:-

- (1) The post of CEO remains vacant, or
- (2) Is filled on a temporary or interim basis, and/or
- (3) A recruitment process is commenced with a view to making a permanent appointment to the post.

11. In my opinion, each of these is the responsibility of Cabinet. This is because the default position (under Section 13 of the Local Government Act 2000/Section 9D thereof as inserted by Section 21 of and Schedule 2 to the Localism Act 2011) applies.

12. The power to appoint staff is vested in Full Council: paragraph 31 of Part 1 of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations, together with Section 48(4) of the Local Government Act 2000 and Section 112 of the Local Government Act 1972. In my opinion, however, the power to appoint staff arises only once there is a vacancy to be filled, which will not be the case either if the post is not to be filled at all or it is to be carried out by someone under a contract for services. Put another way, it is for Cabinet to take decisions on the structure of the authority.

### THIRD QUESTION

13. I am asked whether Full Council has any responsibility or role in relation to any of the three matters in paragraph 10 above.

14. My answer is “No” as regards (1) and (2). These are matters exclusively for Cabinet for the above reasons.

15. As regards (3), in my opinion this is a matter for Full Council if and when Cabinet has determined that a permanent appointment is to be made. This is on the basis that it would be difficult to justify a permanent appointment being other than under a contract of service; and that it would be for Cabinet to determine when the permanent appointment would take effect.

#### FOURTH QUESTION

16. If a recruitment process is undertaken with a view to making a permanent appointment, I am asked what is the extent of Full Council’s role, and in particular:-

- (1) Whether it is open to delegate that responsibility to a Council Committee; and

- (2) If the designation of HPS is attached to the post of CEO, the responsibility for agreeing the appointment can be delegated to a Council Committee.

17. In my opinion:-

- (1) Responsibility to appoint a CEO can be delegated to a Council Committee; but
- (2) Full Council must approve the designation of a HPS.

18. I consider that the position is lawfully stated in the Council's Constitution as follows:-

“The Appointments and Disciplinary Committee is responsible for the appointment of the Chief Executive ... The Appointments and Disciplinary Committee must include at least one member of the Cabinet.

The full Council must approve the appointment of an Officer designated as Head of Paid Service.

An offer of employment as a Chief Executive ... shall only be made where:

- (a) the Elected Mayor and each Member of the Cabinet has been notified of the intention to make an offer of employment;
- (b) the Elected Mayor has been allowed a period of two working days in which to object/comment, on behalf of the Cabinet, to the making of the offer;
- (c) the Elected Mayor has either:
  - i) indicated that neither (s)he or any other member of the Cabinet has an objection to/any comments to an offer being made;
  - ii) not made an objection/any comments to an offer being made within the period allowed; or
  - iii) made an objection/comments and the officer or committee making the appointment is satisfied that the comments/objection is not material or is not well founded.”

CONCLUSION

19. My Instructing Solicitor should not hesitate to contact me to discuss any point that may arise.

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**JAMES GOUDIE QC**  
20 July 2012



**NORTH TYNESIDE MBC**  
**("The Council")**

**CHIEF EXECUTIVE**  
**("CEO")**

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**OPINION**

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SC  
20/07/12

Wendy Innes  
for Viv Geary  
North Tyneside MBC