

## **Formal Investigation - Terms of Reference**

You have been appointed by Surrey Heath Borough Council ("the Council") to conduct an independent investigation in connection with the alleged decision by the former Leader of the Council, Moira Gibson, to award and backdate an "Additional Duties Allowance" to the Council's Chief Executive, Karen Whelan.

### **Status of Investigation**

This investigation is to be carried out on the instructions of the Council's interim Deputy Chief Executive, Tim Pashen, following concerns expressed by a cross party group of elected members. The Council's interim Deputy Chief Executive, reserves the right to amend or vary these TOR, in agreement with Group Leaders, at any time if he feels it necessary to do so.

Once you have produced your report, please provide a copy to the interim Deputy Chief Executive, who is your instructing officer on this matter and your key point of contact throughout. At the same time a copy must be issued to each of the Group Leaders.

### **Aim**

The purpose of the investigation will be to gather information in a fair and impartial way in order to produce a written report into the alleged decision to award and backdate an "Additional Duties Allowance" to the Chief Executive.

We would like the investigator to investigate and make recommendations to enable the Council to make an informed decision as to the appropriate next steps.

### **Terms of Reference**

You are requested to carry out a fair, impartial and confidential investigation into the alleged decision taken by the former Leader of the Council, Moira Gibson, to award and backdate an "Additional Duties Allowance" to the Council's Chief Executive, Karen Whelan.

The following questions should be addressed within the report:

1. Did the then Leader, Moira Gibson, have the legal and/ or constitutional authority to make the agreement in January 2019 to award the Chief Executive an Additional Duties Allowance of £15,000 per annum? Please also consider the fact that it was purportedly backdated to October 2016 and advise on the legal or constitutional position regarding that.
2. As part of considering the lawful/ constitutional authority point set out in Q1 above, if this was an executive decision, did Moira Gibson have the prior authority of the Executive or Full Council to make that agreement and/or were any other members of the Executive aware of the proposed decision?
3. Were proper lawful and constitutional governance processes followed in the making of that agreement and decision? This should include reviewing compliance with all constitutional procedures including (but not limited to) relevant financial regulations.

4. Did the alleged decision made by Moira Gibson comply with the Council's Pay Policy?
5. Is there any aspect of the making of the agreement or its ratification that in your view is contrary to good practice?
6. Were there any breaches of the Member and Officer Protocol in relation to the decision or any failures to act with due propriety by any party be that Member, Chief Officers or staff past or present?
7. If you are of the view that there was a want of authority or a failure to follow proper lawful governance and constitutional processes, or this was contrary to good practice, what would you advise that the Council does in terms of constitutional revisions or similar in light of any findings that are made in the report?
8. Are there any other recommendations that you wish to make to the Council in respect of further investigations, which may be required, whether by the Council or by third parties or other bodies?
9. If you are of the view that there was a want of authority or a failure to follow the law and/ or proper constitutional governance processes or acts contrary to good practice, would you advise if:
  - a. The decision should be frozen pending further review and a decision being made in accordance with the proper decision making processes?
  - b. Any monies awarded as a result of this decision should be repaid?
  - c. The Council or any Statutory Officer of the Council should take any steps as a result?
10. Please also advise of any other recommendations that you have not already covered in your report for any changes to governance arrangements.

We have also identified the following areas that we would like the report to cover:

- the timeline and circumstances leading up to the award of the alleged "Additional Duties Allowance";
- any advice by and given to Moira Gibson or the Chief Executive, Karen Whelan, relating to the alleged decision to award the "Additional Duties Allowance";
- the nature of any correspondence or other dialogue on or connected to this matter as between the Chief Executive, legal or other advisors and Moira Gibson or any other Councilors.

Your report should also cover any other related issues that we have not specified but that come to light as a result of the investigation.

Your report should also set out:

- the methodology that you adopted in carrying out the investigation;
- who instigated the proposed award and on what basis (e.g. the Exceptional Payments Policy);
- who approved the award, what forms were signed and who checked them;
- what failures, if any, were there that led to this award not being questioned at an earlier stage;
- the policies and procedures you have reviewed as part of your investigation;
- the key evidence that you gathered and the sources you gathered it from;
- any findings of fact that you have had to make as part of your investigation (e.g. if there is a conflict of evidence) and the reasons for these findings;
- your conclusions and recommendations including as to whether any further action is appropriate.

Appended to your report should be written records of all interviews that you have conducted with witnesses and copies of all the documents that you have considered as part of your investigation.

### **Witnesses and Evidence**

Our expectation is that you will conduct initial interviews with Moira Gibson and the Chief Executive, Karen Whelan together with other relevant senior officers. Tim Pashen will provide you initially with a number of documents, including email correspondence, but would ask that as part of the initial steps of your investigation that you identify any other relevant witnesses, as well as information or documentation, which will be pertinent to the issues, which you need.

You should after that initial stage provide the interim Deputy Chief Executive, Tim Pashen, with a detailed timeline setting out your assessment of the work entailed and the time anticipated, as well as your requirements in terms of witnesses you wish to interview and documents you require.

You will be expected to inform all witnesses at the outset of their witness interview that:

- their evidence may be appended to the investigation report and may be referred to in the report;
- that their evidence may be referred to in other interviews carried out
- that any documents provided to you by them during the course of the investigation may be appended to the investigation report and may be referred to in the report;

- that their evidence may be used in other internal processes that are triggered as a result of the investigation and external legal proceedings.

### **Confidentiality**

We request that you keep strictly confidential the documents and all information you obtain during your investigation and do not disclose any information to anyone else without prior written permission from interim Deputy Chief Executive, Tim Pashen.

Our expectation is that your report will be made public by us in due course, in whole or in part, and you should assume it will be public.