

# REPORT FOR DECISION



<b>DECISION OF:</b>	<b>Council</b>
<b>DATE:</b>	<b>20 July 2017</b>
<b>SUBJECT:</b>	<b>Senior Officer Disciplinary Issues</b>
<b>REPORT FROM:</b>	<b>Human Resources &amp; Appeals Panel</b>
<b>CONTACT OFFICER:</b>	<b>Pat Jones-Greenhalgh, Interim Chief Executive</b>
<b>TYPE OF DECISION:</b>	<b>COUNCIL</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	<b>The Council will confirm that this paper is within the public domain</b>
<b>SUMMARY:</b>	This report summarises the work of the Human Resources and Appeals Panel’s meeting on the 28 February 2017 and the 19 and 20 June 2017. It sets out the background information upon which the meetings took place and advises Council of the procedures followed. Following the resignation of two senior officers, the report is for information and to note.
<b>OPTIONS &amp; RECOMMENDED OPTION</b>	Members are asked to note the report.
<b>IMPLICATIONS:</b>	
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework?      Yes
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	<p>Financial implications of this matter are outlined at Section 2.0 of the report.</p> <p>Costs which are an additional budgetary pressure for the Council (to date) are as follows;</p> <ul style="list-style-type: none"> <li>• Acting up arrangements (incl employer oncosts) £56,524</li> </ul>

	<ul style="list-style-type: none"> <li>Investigation Costs £183,636</li> </ul> <p>These costs will be funded from earmarked reserves – total £240,160.</p>
<b>Health and Safety Implications</b>	Members of staff were offered appropriate support throughout the process
<b>Statement by Executive Director of Resources</b>	Legal / HR advice has been sought at every stage of this process and is set out in the reports. An external legal advisor will be in attendance at the meeting of the Council
<b>Equality/Diversity implications:</b>	No
<b>Considered by Monitoring Officer:</b>	The process followed was in accordance with the relevant legislative and contractual requirements, both in terms of the process and consequential actions. Independent legal advice was provided at appropriate stages throughout. Members must be aware that further legal action could still be forthcoming and any debate and subsequent decision(s) must take this into account, in order to ensure neither the Council nor any other person is prejudiced.
<b>Wards Affected:</b>	All
<b>Scrutiny Interest:</b>	Overview & Scrutiny

**TRACKING/PROCESS**

**DIRECTOR:**

Chief Executive/ Strategic Leadership Team	Cabinet Member/Chair	Ward Members	Partners
Scrutiny Committee	Cabinet/Committee	Council	
		<b>20.7.17</b>	

## **1.0 BACKGROUND**

- 1.1 On the 28 February 2017 the Human Resources and Appeals Panel ("the Panel") met to consider the Report received from Malcolm Newsam CBE into the conduct of an historic children safeguarding investigation. Mr Newsam found that the Council's procedures were robust, but that there had been serious failings to follow the procedures in a timely and effective manner and he made recommendations for a disciplinary investigation into the three senior officers. On 28 February 2017 the Panel confirmed the suspension of three senior officers pending a formal disciplinary investigation in accordance with those recommendations. It resolved to appoint an external independent investigator to undertake that task. Following a procurement exercise, on 10 March 2017 the Council appointed Charles Bourne QC, a barrister and Deputy High Court Judge, specialising in local government and employment law, to undertake that investigation. His terms of reference are set out in the attached reports.
- 1.2 Mr Bourne's report, running to one hundred pages, was received by the Council on 1 June 2017 and the Panel met on the 19 and 20 June 2017 to consider its contents. In addition to three members of the Council (Councillor Jackie Harris (Chair), Councillor Tony Cummings and Councillor Andrea Simpson), the Panel included three independent persons appointed in accordance with the provisions of the Local Authority's (Standing Orders) Regulations 2015. As Mr David Gremson, the Independent Person appointed by this Council had declined to act, the independent persons were appointed from neighbouring authorities. Immediately prior to the first day of the meeting, the Chief Executive of the Council, Mike Owen tendered his resignation with immediate effect.
- 1.3 The Panel heard detailed evidence from Mr Bourne, Mr Newsam, Councillor Shori and the officers and their representatives.
- 1.4 The resignation meant that the Panel was not able to consider the disciplinary allegations made against Mr Owen though the Panel did take into account the evidence of his conduct contained in the Newsam and Bourne reports.
- 1.5 In relation to one senior officer, the Panel concluded that it could resolve the disciplinary allegations within its own terms of reference. As the disciplinary allegations relating to that officer were resolved by the Panel under its delegated powers, there should be no further discussion or debate relating to them. That Officer continues to enjoy the trust and confidence of the Council. As a decision under delegated powers it is not open for the Council to review.
- 1.6 In relation to the Executive Director for Children, Young People and Culture, Mark Carriline, the Panel concluded that the allegations against Mr Carriline were made out on the evidence and that the finding should be one of serious misconduct. Having regard to the evidence of the Leader of the Council and of the nature of the failings identified, the Panel concluded that the Council could no longer have trust and confidence in Mr Carriline's ability to perform the functions of his office and accordingly that he should be dismissed. The Panel made recommendations to this effect.
- 1.7 Following confirmation of that decision in writing to Mr Carriline, he tendered his resignation with immediate effect. This means that as Mr Carriline is no longer

an employee of the Council, it is no longer necessary for Council to consider the recommendations from the Panel.

- 1.8 However, the findings of the Newsam Report and the Bourne Report highlight a serious failure by these two former officers to follow the Council's established procedures. Having carefully considered the evidence the Panel concluded that Mr Owen and to a lesser extent, Mr Carriline, had been influenced in their actions by ulterior motives. Mr Owen demonstrated a misguided desire to 'help' the former Leader which manifested itself by inappropriate briefings, a desire to control the proper flow of information and a failure to adhere to the Council's policies and procedures. The Panel concluded that this was a misguided attempt to protect the former administration and its leader from public scrutiny in the run up to the 2015 elections. In relation to Mr Carriline, the Panel found that he was overly compliant to the wishes of the former Chief Executive and became inadvertently tainted by Mr Owen's ulterior motive, and in doing so Mr Carriline lost sight of his statutory duties.
- 1.9 The Council is invited to note the investigatory process and the outcome of the Newsam and Bourne Reports and the deliberations and outcome of the Panel meetings.

## **2.0 FINANCIAL IMPLICATIONS**

- 2.1 The law requires that suspended officers must be paid their normal salary and benefits during those periods of suspension. The two officers who resigned were entitled to and were paid in accordance with their contracts up to the date of their resignation. These costs (gross pay with employers oncosts) totalled £77,912 in respect of Mr Owen, and £64,094 in respect of Mr Carriline.
- 2.2 Both Mr Owen and Mr Carriline were aged over 55 at the date their employment terminated. In accordance with the Local Government Pension Scheme Rules each was entitled to elect to take the pension which had accrued during their Local Government service. The Local Government Pension Scheme Rules do not require the employer's consent for early payment of their pensions in these circumstances - but importantly, where a pension is taken early without employer consent, the benefits payable are subject to actuarial reduction for early release. This means that the payment of those pensions is at no cost to the Council and reflects only the contributions which have been made during their respective service. The pension benefits are paid by the Greater Manchester Pension Fund and not by Bury Council.
- 2.3 The Council has also retained external legal advice in relation to the governance and procedures from Gowling WLG (UK) LLP.
- 2.4 The costs of the investigations to date amount to £183,636.
- 2.5 Members will appreciate that it was not possible to undertake these investigations from within internal resources and given the seniority of those individuals involved, and the complexity of the law, the investigations costs are justified.

### **3.0 CONCLUSION**

3.1 Members are invited to consider the contents of this report and its background papers.

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#### **List of Background Papers:**

Redacted HR & Appeals Report – 28 February 2017  
Redacted Newsam Report  
Redacted HR & Appeals Report – 19-21 June 2017  
Redacted Bourne Report

#### **Contact Details:**

Pat Jones-Greenhalgh, Interim Chief Executive