

**Managing the Relationship
Between a Local
Authority's Elected Members
and its Chief Executive**

July 2002

In this report we use the following terms with the meaning shown:

“council” – means the governing body of a local authority (i.e. the elected members in their collective, corporate form).

“elected member” – means an individual elected to be a member of a council.

“recruitment” – means finding and appointing someone.

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Foreword

In 1994, we expressed concern that, over the preceding five years, high turnover among chief executives had created significant costs for regional and territorial local authorities,¹ and had led to a loss of skills and experience at the most senior level of local authority administration.²

In that five-year period, 36 of 86 councils had replaced their chief executive. Over the last three years alone, turnover has been even higher, with over half of all councils replacing their chief executives since the local authority elections in 1998. Only a handful of those chief executives have taken up chief executive positions in another local authority.

The chief executive is a key figure in a local authority. Positive working relationships between the elected members and the chief executive – based on mutual trust – are critical to the proper functioning of a local authority. We have seen indications in recent years that relationships between councils and their chief executive have deteriorated. The current high turnover of chief executives may be one symptom of this deterioration.

In our 1994 report, we expressed the view that a council should ideally retain its chief executive for at least five years. Since that time, the responsibilities of a local authority chief executive have become more complex and even more wide-ranging. These factors give further weight to that argument.

The advice we provided in our 1994 report on management of the employment relationship between the council and its chief executive is still relevant. In conducting this exercise we have sought the views of elected members and chief executives on a number of issues associated with different aspects of their relationship.

¹ In this report we use the term “local authorities” to refer to city, district, and regional councils.
² The Audit Office: *The Employment of Local Authority Chief Executives*, September 1994, ISBN 0 477 02846 2.

The key aspect that we examined was how elected members and their chief executive manage their relationship in the grey area between governance and administration. Difficulties in managing that part of the relationship appear to be a common cause of problems between councils and their chief executive. We suggest ways in which this situation might be improved.

We are grateful to elected members and local authority chief executives for their contribution to this report. We hope that the report will help elected members and chief executives to find their own understanding of their respective roles and develop the mutual trust necessary to work together in the interests of their communities.

K B Brady
Controller and Auditor-General

24 July 2002

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1

Introduction

- 1.1 In this report we:
- have updated our 1994 examination of local authority employment practices; and
 - provide guidance for managing the relationship between elected members and their chief executive.
- 1.2 While we provide good practice guidelines, our purpose is not to set out a step-by-step recruitment and employment manual. Rather, our aim is to identify issues to which elected members and chief executives need to give attention for the effective management of their relationship.
- 1.3 In preparing this report we have drawn on the results of a survey of elected members and chief executives, designed to examine the effectiveness and efficiency of local authorities' activities bearing on the employment of their chief executive. We sent a questionnaire to all mayors/chairpersons and chief executives of local authorities. We also randomly selected for survey two elected members from each local authority.
- 1.4 We piloted our questionnaire with three local authorities, and sought comments from Local Government New Zealand (LGNZ), the Society of Local Government Managers (SOLGM), and the Department of Internal Affairs (DIA). We were also assisted by a project advisory group made up of experts in the field of local government and by our own Local Government Advisory Group.
- 1.5 The overall response rate from mayors/chairpersons, elected members and chief executives was over 75% – reflecting a keen interest in promoting effective working relationships between elected members and their chief executive.
- 1.6 The survey covered:
- The formal processes for –
 - recruiting the chief executive; and
 - setting and reviewing the chief executive's standards of performance;
 - how the relationships between the chief executive and the council and individual elected members were working; and
 - what issues or difficulties were arising in the relationship between elected members and the chief executive.

1.7

We have grouped the content of this report into three topic areas:

- In Parts 2 to 4 we discuss the concerns that prompted us to undertake this exercise. We outline the principles which should underlie the employment relationship between the council and its chief executive. We then examine the respective roles of elected members and chief executives, and outline our expectations of the minimum requirements for effective management of the relationships between them.
- In Parts 5 and 6 we recommend what we believe to be best practice for recruiting the chief executive, and for setting and reviewing the chief executive's standards of performance. We also discuss the implications of the statutory requirement for councils to advertise the chief executive position every five years.
- In Parts 7 to 10 we examine those aspects of the relationship between elected members and their chief executive that are most commonly responsible for creating friction in the relationship. We recommend what we believe to be good practice for effective management of the relationship between elected members and the chief executive.

2

Why We Addressed this Subject

Changed Circumstances Since 1994

- 2.1 The chief executive is a key figure in a local authority's administration. Positive working relationships between the elected members and the chief executive – based on mutual trust – are critical to the proper functioning of the local authority.
- 2.2 Since our 1994 report we have seen indications of growing tension in the relationships between elected members and chief executives. Increasingly, friction (or outright conflict) has arisen in the course of recruiting the chief executive.
- 2.3 In our view, the following developments over recent years have contributed to the growing tension:
- The preponderance of newly-elected councillors. Each election since 1989 has resulted in about one-third of all mayors being replaced. In 1998, over 40% of elected representatives had not previously held the position that they were elected to.
 - The new planning regime from 1997-98 that required councils to make strategic long-term decisions. Some councillors have commented to us that this commitment to a long-term direction limits their council's discretion and increases managerial discretion among its executive officers.
 - The apparent increase of factionalism within councils. A policy that is adopted by majority vote and continues to be opposed by the minority can, when the chief executive comes to implement the policy, result in the minority regarding the chief executive as partisan and 'taking sides' against the minority.
 - The implications of the clarification of the five-year advertising requirement for the chief executive position.
- 2.4 Other contributors to the growing tension seem to have been:
- poor management of how the chief executive is recruited and performance standards are set and reviewed;
 - the absence of a central source of advice and guidance (which the State Services Commission can provide in the central government sector) on the recruitment and performance review processes and other aspects of the employment relationship; and
 - a failure on the part of both elected members and the chief executive to observe the distinctions between governance and management.

Implications of the Five-year Advertising Requirement

- 2.5 We explain the “five-year advertising requirement” in paragraphs 3.14-3.17 on pages 20-21.
- 2.6 The fixed term nature of the chief executive’s employment agreement can deter councils from raising performance concerns with their chief executives until the agreement is about to end – rather than at the time when such concerns first arise. As a result, chief executives don’t have the opportunity to address performance issues during their term of appointment.
- 2.7 The statutory requirement to advertise the chief executive position no less frequently than five-yearly can influence the behaviour of a council and its incumbent chief executive. In 1999 the Solicitor-General gave us his view of the intent of the five-year advertising requirement (see paragraph 3.17 on page 21). Since that time, local government has seen a significant rate of turnover in chief executives.
- 2.8 A consequence of the high turnover has been the loss of experienced chief executives and their replacement by managers from outside the local government sector. The responses we received from the new chief executives suggest that they are not so concerned about the impact on them and their career prospects of the five-year advertising requirement.

Factionalism

- 2.9 The diverse interests and objectives of individual elected members can make it difficult for a council to adopt a unified approach to managing the relationship with its chief executive.
- 2.10 In some circumstances, this diversity and the relationships between the elected members may create factions within the council. Disagreements among elected members and the formation of factions can strain the council’s relationship with its chief executive, leading to major tensions and disagreements.

Chief Executive Recruitment and Performance

- 2.11 A poorly managed appointment and subsequent performance review can strain a relationship between employer and employee. Often, concerns about the appointment and performance of chief executives are raised informally rather than in the appropriate forum.
- 2.12 When a council does not follow formal procedures for reviewing performance the chief executive could be led to assume that, over successive review periods, they are performing well. Only at the end of the term of appointment would the chief executive become aware that they will not be re-appointed.

- 2.13 In government departments, the recruitment of chief executives (and their subsequent performance review) is managed by a single central agency – the State Services Commission. This arrangement helps to promote a common understanding of performance expectations and standards across the sector, and ensures that a consistent set of appointment and review procedures is followed.
- 2.14 In contrast, the employment relationships between councils and their chief executives are not governed by a common set of understandings and procedures. Instead, councils approach their responsibilities as employer of the chief executive in different ways.

Distinguishing Between Governance and Management

- 2.15 Establishment of distinct boundaries between, and expectations about, the respective roles of the governing body and the chief executive (and any other senior executive officers) promotes clear accountabilities. However, the actions of both elected members and chief executives can blur these boundaries. Fundamental conflicts over roles can have damaging consequences for the relationships between elected members and chief executives.
- 2.16 Councils are made up of elected members who have a variety of policy aims, personal interests, and working practices. Therefore, councils may not have a coherent and consistent approach to their responsibilities, or a shared understanding of the boundaries between the roles of governance and management. Chief executives must learn to work with elected members who may have very different objectives and ways of working.

3

Principles for the Relationship

The Legal Framework

- 3.1 There are three aspects to the legal framework governing a local authority's employment relationship with its chief executive.
- 3.2 First, every employment relationship is:
- underpinned by an employment agreement; and
 - subject to the Employment Relations Act 2000.
- 3.3 Secondly, the powers of a local authority to employ staff (including its chief executive) are contained in, and governed by, Part VIA of the Local Government Act 1974.
- 3.4 Thirdly, other generic legislation (for example, the Fair Trading Act 1986 and the Privacy Act 1993) can also affect an employment relationship.

General Employment Law Principles

- 3.5 An employment relationship is fundamentally governed by the common law of contract. Under the common law, the parties to an employment agreement have mutual obligations of trust and confidence in their dealings with each other. These obligations are an implied term of any employment agreement.
- 3.6 But the special nature of the employment relationship means that an extensive body of additional rules and procedures also governs it. Most of these are found in the Employment Relations Act. That Act makes an employment agreement the central vehicle for defining the employment relationship. It also requires the parties to the relationship to deal with each other in good faith.
- 3.7 The duty of good faith is a reciprocal duty, owed by each party to the other. The Act does not define what it means to act in "good faith". However, in the context of individual (as opposed to collective) employment agreements, it says that "good faith behaviour" is consistent with the implied term of mutual trust and confidence.³
- 3.8 The Employment Relations Act also encourages parties to maintain good relationships and voluntarily resolve any disputes that arise during the employment relationship. An employer must observe certain requirements of procedural fairness when dealing with a dispute or any other employment issue.

³ Section 60(c)(ii), Employment Relations Act.

Part VIA of the Local Government Act

- 3.9 Part VIA of the Local Government Act governs the employment of all local authority staff. It empowers a local authority to appoint such staff as are necessary to assist the authority in the performance of its functions and the exercise of its powers.⁴
- 3.10 Appointing a chief executive officer (or a group of senior executive officers) is a function of the local authority itself.⁵ All other staff are appointed by the chief executive, unless the local authority has decided that particular appointments are to be made by a specified senior executive officer.⁶

“Good Employer” Obligations

- 3.11 Part VIA was inserted into the Local Government Act in 1989. It contains provisions which are very similar to those in the State Sector Act 1988 relating to the employment of staff in the public service and the education sector.
- 3.12 In particular, section 119F of the Local Government Act requires a local authority (and those responsible for selecting and managing employees) to operate a personnel policy that complies with the principle of being a “good employer”. An employer can satisfy “good employer” obligations by complying with generally accepted employment practices. These include:
- a fair and transparent recruitment and appointment process;
 - a clear and comprehensive employment agreement – with express provisions regarding termination and redundancy;
 - regular reviews of performance against measurable benchmarks; and
 - a clear and well-documented process for resolving disputes.
- 3.13 Further discussion of these practices can be found in our May 2002 report *Severance Payments in the Public Sector*.⁷

The Five-Year Advertising Requirement for Chief Executives

- 3.14 The “five-year advertising requirement” refers to the combined effect of sections 119E and 119I of the Local Government Act.

⁴ Section 119B(1), Local Government Act.

⁵ Section 119C(1), Local Government Act.

⁶ Section 119B(4), Local Government Act.

⁷ ISBN 0 477 02895 0.

3.14 Section 119E says:

Every officer appointed under section 119C of this Act⁸ shall be appointed for a term of not more than 5 years; but shall be eligible for reappointment from time to time.

3.15 Section 119I says:

Where it is proposed to fill a position that is vacant or is to become vacant...the local authority shall, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

3.16 Until 1999, it was generally thought that a local authority could reappoint its chief executive before the expiry of a five-year term without having to advertise the position. In 1999, we became concerned that this understanding may have been incorrect because of the relationship between section 119E and sections 119H and 119I. The latter sections require a local authority to make appointments on merit and, wherever practicable, to notify vacancies in a manner that enables suitably qualified persons to apply.

3.17 We asked the Solicitor-General for an opinion on the matter. The Solicitor-General concluded that the combined effect of the relevant sections means that a local authority must notify the position of chief executive when it becomes vacant at the expiry of a term of appointment or when the chief executive is being replaced (e.g. as a result of resignation).

3.18 Validating legislation was necessary to address the problem of chief executive appointments which had been renewed, in accordance with the previous understanding of the law, without advertising. The Local Government (Validation of Reappointments) Act 2000 validated:

- any appointment that had been renewed before 8 September 1999 without having been advertised; and
- the appointment of any chief executive who had held the position for more than 5 years.

⁸ Section 119C deals with the appointment of a chief executive or a group of senior executive officers.

Other Relevant Legislation

Fair Trading Act 1986

- 3.19 The Fair Trading Act 1986 makes it unlawful to engage in misleading or deceptive conduct in relation to offers of employment. Misleading advertising of a position may therefore breach the Act. **A council should have regard to the implications of the Act when advertising a chief executive position.**

Privacy Act 1993

- 3.20 The purpose of the Privacy Act 1993 is to promote and protect individual privacy and – in particular – to establish principles on:

- the collection, use and disclosure of information relating to individuals; and
- individuals' access to, and correction of, information held about them by an agency.

- 3.21 **A council should ensure that it complies with the Act when it collects, uses, or discloses information relating to the employment of staff. A breach of the Act can result in legal action including (in some cases) an award of damages.**

- 3.22 **In particular, a council is likely to have access to confidential information when it recruits, or reviews the performance of, its chief executive. Such information must be treated with special care.**

Human Rights Act 1993

- 3.23 **The Human Rights Act 1993 makes it unlawful (with certain exceptions) to discriminate in employment matters.**

- 3.24 **The Act lists a number of circumstances in which discrimination in employment can occur. It is also unlawful to advertise a position in a manner that indicates an intention to discriminate on any of those prohibited grounds.**

4

The Roles of the Chief Executive and the Elected Member

What the Local Government Act Says

- 4.1 The Local Government Act contains a number of provisions that can be considered to bear on the roles of chief executive officer and elected member. What might be regarded as the ‘foundation’ provisions are section 37K – which specifies the purposes of local government – and section 223C – which directs every local authority to conduct its affairs in a particular manner. (See also paragraphs 4.5 and 4.6 on the next two pages.)
- 4.2 There are a number of provisions in the Local Government Act that relate directly to the position of chief executive (and any other appointed “senior executive officer”). But there are none that indicate as directly what an elected member should do in the discharge of that position.

Chief Executive

- 4.3 The chief executive is:
- the principal administrative officer (section 119C(1)(a));
 - responsible to the local authority for employing staff and negotiating their terms of employment (section 119C(2));
 - expected to be a person who (section 119C(3)) –
 - (a) can discharge the specific responsibilities placed on [her or him];*
 - (b) will imbue the employees...with a spirit of service to the community;*
 - (c) will be a responsible manager;*
 - (d) will maintain appropriate standards of integrity and conduct among employees...;*
 - (e) will ensure that the local authority is a good employer; and*
 - (f) will promote equal employment opportunities.*
- 4.4 The chief executive has four particular responsibilities (section 119D) for:
- (a) implementing the decisions of the local authority;*
 - (b) providing advice to members of the local authority and any community boards;*
 - (c) ensuring that all the functions, duties and powers delegated to him or her or to any person employed by the local authority, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised;*

(d) ensuring the effective, efficient, and economic management and planning of the local authority.

Elected Member

4.5 An elected member needs to be familiar with and responsive to the purposes of local government specified in section 37K – in particular, those purposes that affect the way that the local authority interacts with its community:

(a) Recognition of the existence of different communities in New Zealand:

(b) Recognition of the identities and values of those communities:

(c) Definition and enforcement of appropriate rights within those communities:

(d) Scope for communities to make choices between different kinds of local public facilities and services:

(e) For the operation of trading undertakings...on a competitively neutral basis:

(f) For the delivery of appropriate facilities and services on behalf of central government:

(g) Recognition of communities of interest:

(h) For the efficient and effective exercise of the functions, duties, and powers of the components of local government:

(i) For the effective participation of local persons in local government.

4.6 An elected member also needs to act in a way that contributes to the proper conduct of the local authority's affairs in accordance with section 233C – in particular that:

(a) ...business is conducted in a manner that is comprehensible and open to the public:

(b) Clear objectives are established for each of [the local authority's] activities and policies:

(c) Conflicting objectives and conflicts of interest are resolved in a clear and proper manner:

(d) So far as is practicable, ...regulatory functions are separated from...other functions:

(e) ...performance is regularly measured...in relation to stated objectives and is capable of being so measured...:

(f) ...local communities, and where appropriate, central Government, are adequately informed about the activities of the local authority or community board:

4.7 On taking office every elected member must sign a declaration that they will put the interests of the local authority ahead of any special interests they may represent within their district.

Our Understanding of the Chief Executive's Role

4.8 Based on the functions and responsibilities described in paragraphs 4.3 and 4.4, our understanding of the role of the chief executive is that it is to:

- provide leadership to the administration of the local authority's affairs, bringing to bear the characteristics specified in section 119C(3);
- act as the link between the elected members in their governance capacity and the executive and administrative staff;
- discharge the particular responsibilities set out in section 119D; and
- discharge whatever other responsibilities have been delegated to her or him by the council.

4.9 Councils rely heavily on the advice they receive from their chief executive. Accordingly, it is essential that the council and the chief executive function as a team in an environment of mutual respect and trust.

Our Understanding of the Elected Member's Role

4.10 Based on the legislative provisions referred to in paragraphs 4.5 and 4.6 and the point made in paragraph 4.7, our understanding of the role of an elected member is that it is to:

- represent residents and other members of the local community (consistent with sections 37K and 223C);
- set the strategic direction for the local authority and determine policies consistent with that strategic direction;
- delegate the management and administration of the local authority to the chief executive; and
- monitor and evaluate the performance of the local authority against council policies and plans.

- 4.11 Elected members are expected to make important decisions about the governance of the local authority – dealing with a wide range of policy matters that are often complex, subjective, or unfamiliar – requiring careful judgement. These tasks pose a significant challenge for individual members and for councils as governing bodies.

The Views of Elected Members and Chief Executives

- 4.12 We asked elected members and chief executives how they saw the respective roles. The views of both groups were similar:

- elected members are responsible for governance and for setting policies for the local authority; and
- chief executives are responsible for administration of the local authority.

- 4.13 Many respondents noted that policy formulation requires significant input from both the chief executive and staff.

- 4.14 These are some of the problem areas between the roles that elected members and chief executives identified:

- *Border-line between governance and management is probably the most difficult issue, there is sometimes the feeling that council only gets told what management wants them to know.*
- *Councillors trying to be managers instead of focussing on policy and strategy and chief executives and staff trying to develop policy.*
- *Councillor's role is policy and communication. Chief executives implement the policies. Councillors tend to micro-manage - not strategic.*
- *Needs to be a 'board to chief executive' type relationship but depends on the skills set of councillors.*
- *Potential for difficulty ... if the chief executive becomes too politically aligned with one political faction.*
- *Chief executive sets out to instruct and inform councillors on how they should act, an impertinence, it should if anything be the other way.*
- *Difficulties occur when chief executive is evasive and lacks integrity.*
- *Chief executive organises and carries out such projects with little input on how from councillors when councillors would rather use different techniques.*
- *Councillors should be able to work together with the chief executive without personalities surfacing.*
- *Councillors owning up to their responsibilities to respect staff.*
- *Personalities cause the most difficulty.*

Our Views

- 4.15 Legally, a council is a single, homogeneous entity. In practice, it is made up of elected members who may have quite different views and objectives, and represent quite different constituencies. Elected members and chief executives need to be aware of these differences.
- 4.17 An important feature of the relationships between elected members and the chief executive is distinguishing the council's governance role and the chief executive's management role. Sometimes, the two roles are not easily separated, and it is up to the council and the chief executive to develop an understanding of their separate responsibilities.
- 4.18 Making such a distinction is particularly difficult where the council and the chief executive share responsibilities or have overlapping interests, and where the boundaries between governance and management are blurred. Difficulties seem to be most apparent in relation to:
- the management of staff (see Part 8 on pages 61-66);
 - responsibility for policy development (see Part 9 on pages 67-75); and
 - management and reporting by the chief executive (see Part 10 on pages 77-84).
- 4.19 **Both elected members and the chief executive must continually monitor their relationships, identify issues affecting the governance-management separation, and identify and resolve potential conflicts.**

5

Recruiting the Chief Executive

The Importance of Doing It Well

- 5.1 Choosing who is to be chief executive is one of the most important decisions that a council is required to make. The role of the chief executive as the council's primary adviser, senior manager, and employer of staff is critical to ensuring that the business of the local authority is conducted lawfully, effectively, and efficiently.
- 5.2 The importance of the role and responsibilities of the chief executive make it essential that the task of recruiting the chief executive is undertaken thoroughly and professionally. The recruitment process should give all elected members confidence that the appointee has the appropriate knowledge, skills, and attributes to fulfil the requirements of the position. The recruitment process must also be fair and impartial to ensure that all applicants are treated equally.
- 5.3 The recruitment process can generate conflict and division in situations where one or more elected members:
- do not agree on how the new chief executive should be recruited;
 - have a sense of being excluded from participation in the process, or feel that their participation has been restricted;
 - have a limited understanding of the knowledge, skills, and attributes required of the chief executive, or fail to agree on these job requirements;
 - do not agree about, or are not fully aware of, the chief executive's role; or
 - have different views on the priorities envisaged for the chief executive.
- 5.4 Conflict and division arising from the recruitment process can influence the attitude of elected members towards the new chief executive, because (for example):
- some elected members may see the successful candidate as being politically aligned with a particular faction within the council, such that they do not feel confident in seeking the new chief executive's advice;
 - the chief executive's remuneration may be viewed as excessive;
 - the subsequent performance of the chief executive may not be seen as warranting a bonus payment; and
 - public comment on matters relating to the employment of the chief executive may bring the council into disrepute.

Using Consultants or Advisers

- 5.5 Most councils told us that they had used consultants or advisers to:
- advertise the position and seek candidates;
 - determine the remuneration package to be offered;
 - short-list applicants; and
 - interview and assess the short-listed applicants.
- 5.6 Commonly, councils had negotiated directly with preferred candidates, although some councils had engaged consultants to assist.

The Views of Elected Members and Chief Executives

- 5.7 We sought the views of elected members on their satisfaction with the recruitment process, and the views of chief executives about their experiences of the process.

Elected Members

- 5.8 Most mayors/chairpersons and over two-thirds of other elected members were satisfied with the recruitment process and their participation in it. The comments quoted below illustrate some of the ways in which elected members participated in recruitment of the chief executive:
- *Council was involved in selection process, all candidates addressed council and [councillors] recommended individually their choice to subcommittee. Consultants were hired to guide the process and interview referees.*
 - *Took part in full council vote between the final two candidates.*
 - *Council delegated the short-listing to a subcommittee in liaison with a recruitment agency; the agency described the process to be undertaken and council as a whole agreed to follow the process through.*
 - *Informally asked to give an opinion of the CE.*
 - *No involvement, not a member of the Sub-Committee, only approved recommendation at council.*
 - *I had no involvement except a vote on delegated sub-committee's recommendation to full council.*
- 5.9 Elected members suggested the following ways to improve the recruitment process:
- *A small group met the short listed candidates. I feel councillors could have had that opportunity.*

- *There was no real opportunity as a council to discuss job description, personal qualities etc.*
- *Would have liked to have seen the applications of those selected by hired advisers to be interviewed. Sub-Committee shuts out other councillors and is not open to new ideas and concepts.*
- *Would like council as a whole to interview short-listed candidate(s) and establish chemistry.*

Chief Executives

5.10 The employment agreements for half of the chief executives had been negotiated on the basis of their predecessor's agreement. The rest had new agreements.

5.11 Most chief executives reported that the council had:

- reviewed the employment agreement/contract;
- developed job specifications and personal attributes; and
- considered the remuneration range and package to be offered.

5.12 Chief executives made the following comments on their experiences of the recruitment process:

- *Process went well – deadlines were set and kept to.*
- *No problems apart from lack of confidentiality.*
- *External agent used had limited local body experience.*
- *Final interview with full council was well managed and challenging. Feedback from recruitment consultant could have been transparent, I was not provided with a copy of their report.*
- *Was badly managed, lengthy and did not have the required initial planning.*
- *Handled professionally by an experienced HR consultant.*
- *Poorly conducted – left me with bad feelings. Too many people involved. Poor consultant.*

Our Views

5.13 We discuss in the following paragraphs the main issues that emerged from our survey. We also suggest best practice.

Participation of Elected Members

- 5.14 A recruitment process in which all elected members participate, and in which they can all have confidence, lays the foundation for a constructive and harmonious future relationship with the new chief executive. **All elected members should agree to what recruitment process is to be used, and take part in the council's deliberations on position requirements, performance expectations, and remuneration.**
- 5.15 Some councils may find it efficient to delegate aspects of the process to a committee made up of elected members. However, this approach should be taken only with the full agreement of all members, and should allow all members to take part in key council decisions on the process to be followed and on the terms of the chief executive's employment agreement.
- 5.16 **The full council should agree on:**
- **the recruitment process, who is responsible for managing different stages, and the assistance that the council requires;**
 - **the job description, the key result areas, the performance agreement, and the values and behaviours the chief executive will be expected to display and promote in the organisation;**
 - **the personal characteristics, knowledge, skills, and attributes required;**
 - **remuneration;**
 - **the terms of the employment agreement; and**
 - **the methods of short-listing and appointment.**

Using a Consultant or Adviser

- 5.17 In many cases, elected members will not have experience of, or training in, the role of employer. Therefore, the council may engage a consultant or adviser to help it recruit the chief executive. Using a consultant or adviser can provide elected members with a valuable source of advice, and provide assurance about the recruitment process.
- 5.18 The benefits of a thorough and professionally-managed recruitment process – that results in appointment of a suitable chief executive who will meet the council's needs – may well outweigh the costs of engaging a consultant or adviser.

- 5.19 Using external assistance can also add an important perception of independence and impartiality – helping to avoid suggestions that factions within the council have unduly influenced the recruitment process.
- 5.20 A consultant or adviser can help the council to formulate:
- performance expectations, key result areas, and the values that the chief executive is expected to display and promote; and
 - competencies – including qualifications, experience, knowledge, skills, and attributes.
- 5.21 **A council should give careful thought to its choice of a recruitment consultant or adviser. The person should have the confidence of all elected members and be able to demonstrate their ability to obtain the best outcome for the council. The person should also have relevant experience in recruiting senior managers, and an understanding of:**
- **the local government sector;**
 - **the statutory responsibilities of a local government chief executive; and**
 - **the community’s expectations of public bodies.**
- 5.22 **A council should avoid using its own staff to manage the recruitment process where they may face conflicting loyalties – especially when the incumbent chief executive is applying for the position. Nevertheless, staff may be able to advise the council on:**
- **the attributes sought from a consultant or adviser and the best way to choose that person;**
 - **the role and terms of reference for the consultant; and**
 - **the performance expected of the consultant – including the timetable, key milestones, and reporting requirements to the council.**
- 5.23 **The council and the consultant should agree on the terms of the engagement before embarking on the recruitment process.**

Determining the Chief Executive's Remuneration

- 5.24 The council needs to ensure that the remuneration package for the chief executive:
- is affordable;
 - is appropriate to the position; and
 - will attract suitable candidates.
- 5.25 The Local Government Act requires annual reports of local authorities to contain details of the chief executive's remuneration. **The council should be confident that it can publicly justify the remuneration package negotiated with the successful applicant.**
- 5.26 **Councils should consider taking independent advice (including on external market benchmarks) to confirm the appropriateness of the remuneration package and terms of appointment for the chief executive.**

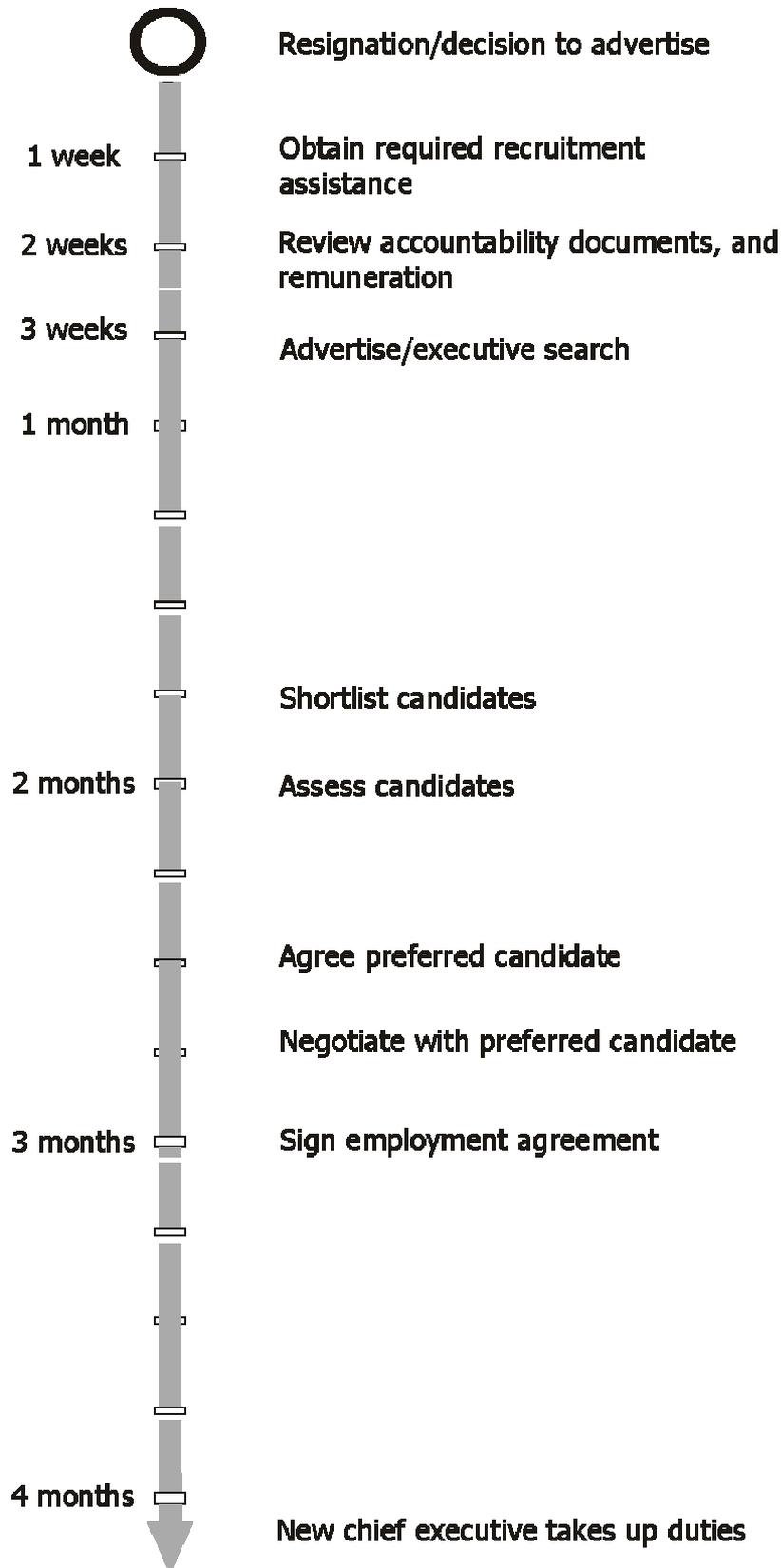
Handling Confidential Information

- 5.27 **Every elected member (and anyone else who has access to it) should treat as confidential all personal or other sensitive information provided or obtained in the course of recruitment.**
- 5.28 Maintaining confidentiality reflects on:
- the credibility and integrity of the process and its outcome; and
 - the council's reputation as an employer.

Deciding When to Recruit

- 5.29 It can take at least four months to recruit a chief executive. This length of time can be a problem when it coincides with local elections. Figure 1 on the opposite page illustrates a typical timeline.
- 5.30 **Where possible, a council should avoid recruiting a chief executive in the few months immediately preceding or following local elections.**

Figure 1
Typical Timeline for Recruiting a Chief Executive



5.31 Figure 2 below illustrates two possible scenarios that can arise when a chief executive appointment is made during or close to local elections. Both scenarios show how the outcomes of the recruitment process may be compromised by changes resulting from the election.

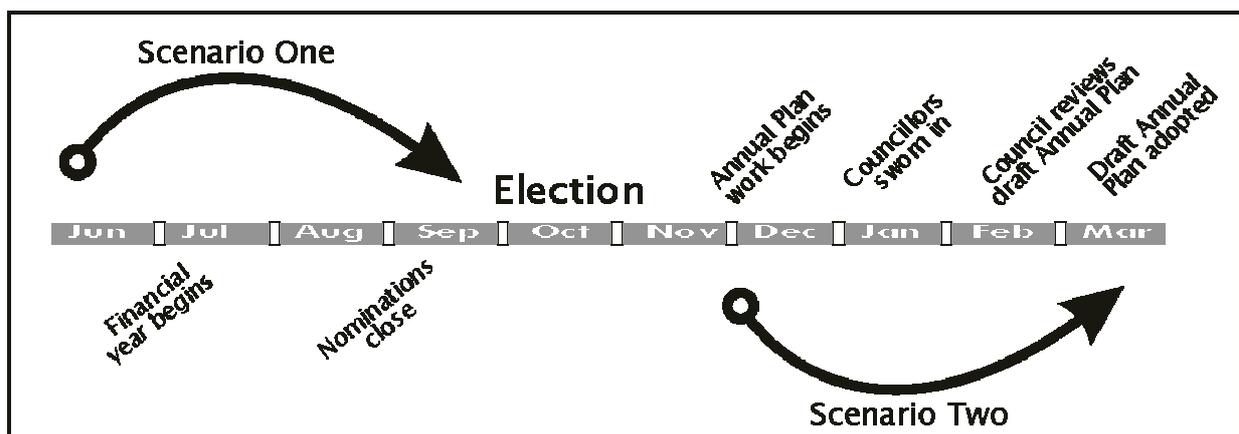
5.32 **Scenario 1** illustrates a situation in which recruitment takes place a few months before an election. The new chief executive is appointed by a council which is nearing the end of its term of office. A possibility is that newly elected members regard the new chief executive:

- as a product of, and associated with, the previous council; and, therefore
- with suspicion and distrust.

5.33 In **Scenario 2**, recruitment takes place after an election. In this scenario an incoming, newly elected council must appoint a new chief executive without having had the opportunity to formulate its own objectives and plans for the local authority. Nor will such a council have had the time to determine its requirements for, and expectations of, the chief executive. Having been in office for only a short time, the council may not be well placed to select the most suitable applicant for the position.

5.34 We suggest that councils consider the most appropriate time to recruit a new chief executive, avoiding where possible periods immediately preceding or following an election.

Figure 2
Avoiding Election Time When Recruiting



6

The Five-year Advertising Requirement

The Impact of the Requirement

- 6.1 We asked elected members and chief executives for their views on the impact of the five-year advertising requirement on the relationship between council and chief executive. We also asked chief executives whether the requirement had influenced their perception of job security with the local authority or their future career path.
- 6.2 Over 40% of elected members thought that the five-year advertising requirement had had an impact on the council's relationship with its chief executive. About half of the respondents did not think that the requirement had had an impact.
- 6.3 Chief executives were less likely than elected members to think that the advertising requirement had affected their relationship. Almost 60% of chief executives said they did not think there had been an impact, while just under 30% took the opposite view.

The Views of Elected Members and Chief Executives

- 6.4 We received a number of comments about such impacts from both elected members and chief executives. Analysis of those comments revealed a number of common issues:
- to meet the five-year advertising requirement, a council must incur significant advertising and recruitment costs – even where its preference may be to reappoint the incumbent;
 - advertising the chief executive's position can create uncertainty for the rest of the local authority's staff, as well as distrust between the council and the chief executive;
 - uncertainty about the outcome may induce a chief executive to consider other employment options as the end of the five-year term approaches, to avoid the loss of personal reputation that might result from not being reappointed;
 - the requirement has led to the loss of senior management expertise from the local government sector;
 - the incumbent chief executive may be deterred from giving the council free and frank advice for fear of jeopardising their prospects of being reappointed; and
 - the chief executive's dedication, loyalty, and commitment may suffer.

6.5

These are some of the comments made by elected members:

- *Notification is an irresponsible and expensive way of enabling councillors not to take seriously their roles as responsible employers. If the Chief Executive is not performing they should be dealt with at the time rather than when a 5-year term falls due.*
- *Makes positive change of Chief Executive possible without incurring excessive costs.*
- *Apprehension that good Chief Executives will be lured to other authorities/organisations in the 4th year.*
- *It is a key to maintaining performance and accountability for elected councils.*
- *Councils should have the right to extend [the] Chief Executive's contract after 5 years. Compulsory advertising is a cost that the ratepayer does not need.*
- *Recent exodus of highly qualified Chief Executives around the country has done nothing for the stability of local government in this area.*
- *Creates uncertainty in relationship particularly if [the] Chief Executive is performing to an acceptable standard.*
- *... now becoming a training ground or step up the corporate ladder for executives. Dedication and commitment quite possibly have become casualties of [the] process.*

6.6

We received a range of views from chief executives – many of which focused on the disruption created by the requirement and the associated costs, and on their willingness to offer free and frank advice as the end of the five-year term approached. A positive view was that the requirement made the chief executive more accountable to the council.

6.7

The following comments illustrate the range of views expressed by chief executives:

- *By politicisation of the CE role there is a reduction in the quality of advice, its independence and the nature of the relationship.*
- *CEOs more political, rather than managing. High turnover of CEOs changes organisation's stability & forward direction. Corporate knowledge is lost.*
- *Always looking behind you rather than 'pushing the envelope'.*
- *Almost total exposure to whims and prejudices. Allows performance issues to be avoided and dealt with unfairly and without integrity.*
- *Creates political CE who focuses on short term and in last year on reappointment.*
- *Lack of certainty in career planning for Ces, adding to staff retention problems in small rural authorities.*
- *Focuses the mind on the job. Raises awareness of need to maintain good relationships and performance with the elected members.*
- *I need to perform. I am concerned that my independent unbiased advice may get me into trouble and may be viewed as unhelpful. Less inclined to be loyal.*

- 6.8 The five-year advertising requirement also had an impact on the willingness of incumbents to reapply for their positions. Both recently appointed and longer-serving chief executives stated that they did not intend reapplying for their positions under the requirement.
- 6.9 Younger chief executives were concerned about disruption for their families. Longer-serving chief executives – some of whom said that they might want to remain in the position, but for less than another five years – felt their council could not justify incurring the expense of recruitment for less than a full five-year term.
- 6.10 The five-year advertising requirement may also have had an impact on tenure. We carried out our survey two years after release of the Solicitor-General’s opinion. Over that two-year period, a significant number of chief executives had been replaced.
- 6.11 Those chief executives recruited or reappointed over that period were aware of the five-year advertising requirement, but were willing to adjust their career expectations. Some chief executives said that they were not planning to remain with their local authority (or even in local government) for longer than five years. The following comments illustrate this attitude:
- *I like it. Opens up options for career growth. Only people to be worried are those who are not good at their job.*
 - *Looking to move overseas or changing career before contract renewal.*
 - *Will not risk reapplying when contract expires. Don't want to hit the job market...as a failed CE.*
 - *I feel insecure. Probably become a nomad, always supposing I can find a council.*
 - *I am not looking to stay here forever.*
 - *No point in working till I'm very tired just to get removed after 5 years.*
 - *Wouldn't now risk becoming a CE from 2nd-tier LG position.*
 - *I am young ... and I am simply not prepared to have to apply for my own job every five years for the rest of my career.*
- 6.12 As noted earlier, many chief executives told us that the advertising requirement had not affected their relationship with the council. However, the comments quoted above suggest that the requirement is having an effect on the way in which chief executives view their jobs, their perceptions of job security, and their future career intentions.

Our Views

Impact of the Five-year Advertising Requirement

- 6.13 Some turnover is inevitable, and can bring new expertise into the sector. But over half of all local authorities have replaced their chief executive since the 1998 local elections, with only a handful of those taking up chief executive positions elsewhere in local government. This level of turnover can lead to a serious depletion in the pool of skills and experience at the most senior level of administration in the local government sector.
- 6.14 Two years ago we estimated the average cost of advertising and recruitment at between \$25,000 and \$30,000.⁹ The cost of all 86 local authorities going through this process every five years is significant – totalling between \$2.2 million and \$2.6 million for local government as a whole over a five-year period.
- 6.15 We expect that a council would want the chief executive to hold office for at least five years. But we have concluded from the responses to our survey that the five-year advertising requirement is contributing to a trend for chief executives to hold office for less than five years.
- 6.16 In our view, there may be room for allowing flexibility to cater for other (genuinely desirable) circumstances. The Local Government Bill as introduced into Parliament continues the five-year requirement unchanged. At the time of writing, the Bill is still under consideration by the Local Government and Environment Select Committee.

Compliance with the Requirement

- 6.17 **All councils should ensure that their advertising and recruitment for the chief executive's position comply with the letter and intent of the statutory requirement.**
- 6.18 **Before the end of the incumbent chief executive's term the council should advertise the position widely so as to reach as many suitable candidates as possible. The council should assess all applicants in an open and fair manner.**
- 6.19 We have noted instances where the council failed to demonstrate its commitment to an advertising and recruitment consistent with the legislation. Two examples are:
- With the clear intention of reappointing the incumbent, the council advertised the chief executive position on a very limited basis, thereby restricting opportunities for outsiders to apply for the position and, in effect, pre-empting the outcome of the recruitment process.

⁹ *Second Report for 2000*, parliamentary paper B.29[00b], page 34.

- The council made it clear to potential applicants that their application would not be considered.

6.20 **Near the end of a five-year term, the council should engage in a genuine process of seeking expressions of interest in the position and of assessing applications. The position should be advertised widely and applications sought – in accordance with practice for the recruitment of local authority chief executives, senior management positions in local government, and executive management positions in central government and the private sector.**

6.21 **The council should give all applicants the opportunity to be considered for the position, avoiding any suggestion of pre-determining the outcome of the recruitment process, and ensuring that it can justify its choice. The council should exclude from consideration only those applicants who clearly lack the competencies to meet the requirements of the position.**

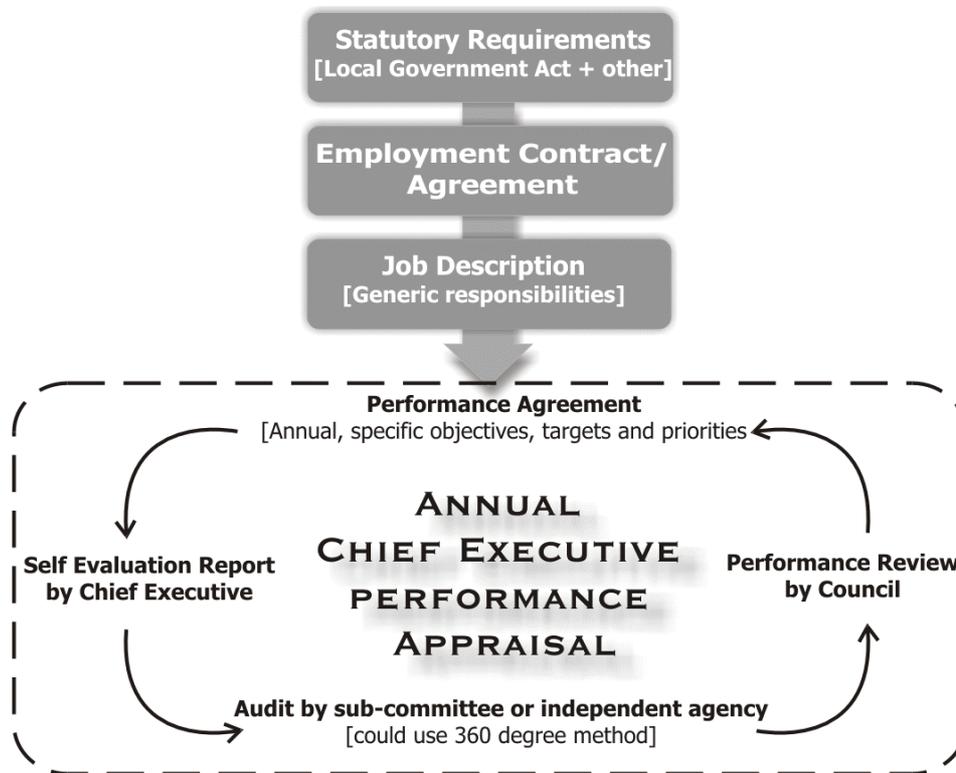
7

Specifying Expectations and Reviewing Performance

The Performance Review Framework

- 7.1 The employment relationship between a council and its chief executive should be based on an agreed and clearly understood set of expectations about performance. We said in paragraph 5.16 (on page 36) that the full council should agree on:
- the job description;
 - the key result areas; and
 - the values and behaviours that the chief executive will be expected to display and promote in the organisation.
- 7.2 In paragraph 4.3 (on page 25) we quoted the statutory expectations of the characteristics that the chief executive should be expected to have, and in paragraph 4.4 (on pages 25-26) we quoted some specific statutory responsibilities placed on the chief executive.
- 7.3 The council should articulate these expectations clearly, comprehensively, and in writing in:
- the employment agreement; and
 - the performance agreement – so as to provide the basis for regular reviews of performance.
- 7.4 The performance agreement should cover all aspects of the chief executive's role and the council's priorities, and specify the chief executive's specific responsibilities for:
- advising the council;
 - undertaking long-term planning;
 - leading the local authority and managing its day-to-day activities;
 - employing staff; and
 - promoting the values of the organisation.
- 7.5 Figure 3 on the next page outlines a suggested process for reviewing the chief executive's performance.

Figure 3
A Suggested Process for Reviewing the Chief Executive's Performance



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- 7.6 A framework and formal process for regularly reviewing the chief executive's performance enables concerns to be raised and dealt with before they can have a serious impact on the chief executive's relationship with the council. The council as a whole should take part in the review.
- 7.7 An agreed performance review framework that draws on objective information about the chief executive's performance, and a process which involves the council as a whole, will minimise the likelihood of divisions within the council when individual elected members:
- perceive that other members have a better opportunity to influence the review process;
 - comment on the chief executive's performance in inappropriate forums, rather than within the formal performance review;
 - disagree with the council's assessment of the chief executive's performance;
 - view increases to the chief executive's remuneration as excessive; or
 - disagree with the decision to pay, or the amount of, any performance-related bonus payment.

7.8 The council should consult appropriately and observe its obligations as a good employer. It could compromise the review process if it fails to:

- seek the views of the chief executive; or
- seek feedback from other parties who may be in a position to comment on the chief executive's performance.

7.9 Compromising the chief executive's performance review could result in the chief executive being:

- unclear about the council's priorities and expectations;
- unwilling or unable to identify and address weaknesses in their performance; and
- given grounds for raising a personal grievance or other employment dispute.

What We Asked About Reviewing Performance

7.10 We asked elected members:

- for their views on the process used to review the performance of their chief executive;
- whether their council found the employment agreement, job description, and performance agreement useful tools for reviewing performance;
- whether the process could be improved; and
- whether they were adequately informed about the agreement and performance expectations.

7.11 We asked elected members and chief executives:

- about those values and behaviours which should guide the chief executive in performing their duties; and
- whether, as part of performance review, the council assessed whether the chief executive had displayed the appropriate values and behaviours in carrying out their duties.

7.12

We asked chief executives:

- about their performance review process and whether it worked well;
- about grievance and termination provisions in their employment agreement; and
- whether the employment agreement provided an entitlement to compensation if they were not reappointed at the end of their term of appointment.

The Views of Elected Members and Chief Executives

Views on Performance Review

7.13

Most elected members were satisfied that the employment agreement, job description, and performance agreement were useful benchmarks for managing their relationship with the chief executive. However, some elected members identified other difficulties:

- *Councillors are not experienced in performance management matters. As Mayor it becomes my job to drive the process and keep minutes etc. It would be far easier for all concerned to hand the whole process over to someone who specialised in that line of work.*
- *Takes more than a formal process to have a good management relationship with [the] chief executive.*
- *Very difficult to evaluate performance measures, very contentious and debatable process.*

7.14

Elected members also identified other channels for communicating expectations to their chief executive and giving feedback on performance:

- *Weekly meetings between chief executive and Mayor, while quarterly meetings with Performance Review Sub-Committee.*
- *All councillors interviewed, concerns raised, performance ranked.*
- *Chief executive reports to each council meeting and whenever necessary. Chief executive happy to answer questions and meet councillors individually.*
- *Continuous monitoring of progress of annual plan and chief executive's annual objectives.*

7.15 Most chief executives said that they were happy with the process. However, they also made a number of observations, of which the following are representative:

- *Councillors need to understand what a performance review is, what they need to do to conduct a review and what they expose themselves to if they don't follow processes they've agreed to.*
- *[There is] always a link to pay and bonuses, which influences some councillors' view of performance.*
- *Subjective and open to political whim.*

Specifying Performance Measures

7.16 We asked chief executives how their performance expectations were specified and measured. Responses included the following comments:

- *Council had no-one to help them do this, they are not experts at it, less scrupulous chief executives could manipulate this.*
- *Council assessment will always be largely subjective therefore trying to tie it up with numbers based on audited measures could lead to conflict.*
- *Council often wants to measure 'political' success, restricts scope to management which causes tension and mistrust.*
- *Councillors prefer to have generalised measures, can only be valued from personal perception rather than actual results. Personalities have an influence.*
- *Expectations are largely subjective and not easily measured, will be based on perceptions at the time.*
- *Written by myself, 'tweaked' in a minor way by employment committee – might be more helpful for council to employ some advice.*

Promoting Appropriate Values and Behaviours

7.17 Almost 90% of mayors/chairpersons and 70% of elected members noted that their council assessed whether their chief executive displayed appropriate values and behaviours in carrying out their duties.

7.18 We also asked elected members whether the performance agreement (or other accountability documents) specified the values and behaviours which the chief executive was expected to display in their day-to-day work, and promote throughout the local authority. Comments from elected members suggested that, generally, the performance agreement specifies these expectations. The following comments reflect the range of views expressed:

- *At [the] time of recruitment selection this is spelt out, subsequent changes are less clearly signalled.*
- *Challenge to get unanimity among councillors.*
- *Evolving area, we are on track.*

- *This is specifically detailed in [the] chief executive's performance agreement, which we appraise annually.*
- *There is agreement between [the] chief executive and council on expectations.*
- *Expectations are becoming clearer but feedback from citizens still show shortcomings.*
- *Values are not strongly defined, nor are expected behaviours, seem to 'fall out' of the character and style of the person selected as chief executive.*
- *[the Council] does – further comment is made during the Annual Review process.*
- *Values and behaviour clearly expressed in key result areas and organisational values identified.*
- *Believe one of the major advantages of a small district council is the ability to make it easy for CEs and councillors to own the vision, goals and strategies.*

7.19 We also asked chief executives where the council specified its expectations of their values and behaviours. Almost 40% of chief executives were not able to identify a document in which such expectations were specified.

Grievance Provisions

7.20 We asked whether employment agreements contained grievance provisions. Chief executives responded that most agreements specified grounds for dismissal, but in relation to grievances most referred simply to the standard provisions prescribed by the Employment Relations Act 2000.

7.21 Most employment agreements did not provide for entitlement to financial compensation for non-reappointment. Where an agreement did contain such a provision, the compensation figure ranged from three months' to twelve months' salary.

Our Views

Participation of Elected Members

7.22 **The council as a whole should agree on:**

- **the objectives, targets, and priorities for the chief executive, and the values and behaviours that they are expected to display in their work and promote throughout the local authority;**
- **the process for reviewing the chief executive's performance;**
- **the means by which all elected members may express their views on the chief executive's performance;**

- **changes to key result areas and performance targets; and**
- **changes to the job description, conditions of employment, or remuneration.**

7.23 **The council and the chief executive should agree on the relationship between performance review and any bonus payments or other incentives. The full council should consider any proposal to change the chief executive's remuneration or pay a performance bonus.**

Specifying Expectations of the Chief Executive's Performance

7.24 **Setting the expectations of performance for the chief executive requires the council to:**

- **specify expected achievements and key result areas;**
- **define (in consultation with the chief executive) standards against which performance can be measured;**
- **reach agreement with the chief executive on any bonus to be payable should the performance standards be met or exceeded; and**
- **identify the values and behaviours to be displayed in their daily work and promoted throughout the local authority.**

7.25 All respondents noted how difficult it was to develop measures against which to assess the chief executive's performance in a meaningful and objective way.

7.26 Respondents' comments suggest that councils find it difficult to define the values and behaviour expected of the chief executive. Models of values and behaviours relevant to local government (drawing on work already undertaken in the public sector) would help councils to define their expectations.

Negotiating Performance Expectations with a New Council

7.27 Chief executives are likely to have to work for more than one council, and with many different elected members, over the course of their employment with a local authority. A chief executive needs to win the confidence and trust of newly elected members by demonstrating:

- responsiveness to the strategic objectives of the new council; and
- commitment to giving effect to its priorities.

- 7.28 **Newly elected members too need to be mindful that the chief executive has an established employment relationship with the council – evidenced by at least an employment agreement. If the council wants to make changes in policy direction or emphasis that affect the employment relationship, the changes should be made in a manner that is fair, transparent, and agreed by both parties.**

Obtaining Feedback on the Chief Executive's Performance

- 7.29 **Performance reviews should be carried out in a fair and transparent manner. For its part, the council could draw on various sources of information about the chief executive's performance – including elected members, staff, members of the community, and the council's business partners.**
- 7.30 **However, before approaching third parties for information the council should consider any sensitivity in doing so (such as the risk of upsetting a professional or manager/team member working relationship) and, if necessary, take independent advice. An example of where caution should be exercised is when the so-called "360-degree feedback" method of assessing performance is used.¹⁰**
- 7.31 **In obtaining information from third parties, the council should also (in terms of the principle of fairness) do so with the knowledge of the chief executive, who should be given the opportunity to consider and comment on the information. For that reason, the council needs to consider carefully whether it will obtain and use information from sources who want the information treated as confidential.**

The Chief Executive Reviewing Their Own Performance

- 7.32 **The chief executive may review their own performance, having regard to the circumstances encountered during the review period. This self-review is an essential component of performance review – because it ensures that the chief executive has the opportunity to provide their own perspective, and lends balance to the process. A council should therefore encourage its chief executive to review their own performance.**

¹⁰ The "360 degree feedback" entails obtaining assessments of the person's performance from people other than the person's immediate superior, including the person's staff.

Using an Adviser or Consultant

- 7.33 **A council should consider using an adviser or consultant to help:**
- **set objective and comprehensive performance measures;**
 - **review performance against these measures;**
 - **review remuneration, including any bonus or other incentive component;**
 - **gather views on performance; and**
 - **ensure that the review process is fair and impartial, and has the full confidence of all elected members and the chief executive.**

Fairness

- 7.34 Performance reviews can be carried out in different ways and at different intervals. **The employment agreement should specify how often reviews are to take place and in what manner.**
- 7.35 **The council should tell the chief executive of any concerns it has about their performance. The chief executive should be given the opportunity to respond to any criticisms of their performance and propose remedial action to address concerns.**
- 7.36 Ongoing feedback to the chief executive should ensure that performance reviews do not raise concerns or issues of which the chief executive is unaware. **The council should raise any performance concerns when they first emerge, because this will make it possible to take remedial action before the concerns become major issues.**
- 7.37 **The council and the chief executive should keep a signed, written record of every performance review.**

Terminating the Chief Executive's Contract

- 7.38 **A council considering terminating the chief executive's employment should:**
- **take legal advice on the options available and the risks associated with each option; and**
 - **ensure that it acts lawfully and fairly throughout the process.**

- 7.39 Negotiations over performance matters can sometimes result in a severance agreement, under which the chief executive agrees to resign in return for certain compensation. Severance agreements pose risks for public sector organisations, because of the need for organisations to justify their actions to the public, and the obligation to avoid unnecessary or unreasonable expense.
- 7.40 For a detailed expression of our views on the subject, the reader is referred to our May 2002 report *Severance Payments in the Public Sector*.¹¹

¹¹ ISBN 0 477 02895 0, also available on our web site www.oag.govt.nz.

8

How the Chief Executive Manages Staff

Obligations and Responsibilities

- 8.1 Section 119C(2) of the Local Government Act makes the chief executive responsible for employing staff on behalf of the local authority and negotiating their terms of employment (see paragraph 4.3 on page 25).
- 8.2 As the person responsible for selecting and managing the local authority's employees, the chief executive is also subject to the Act's "good employer" obligations (see paragraphs 3.11-3.13 on page 20).
- 8.3 It is important to maintain a positive relationship between elected members and the chief executive in respect of the chief executive's employment responsibilities. That objective can be undermined by:
- lack of understanding, or acceptance, of the nature of the council's and the chief executive's responsibilities; and
 - elected members becoming inappropriately involved in the chief executive's responsibilities by, for example –
 - attempting to give orders to staff;
 - trying to influence a staff appointment; or
 - publicly criticising, or expressing concerns about, staff or management.
- 8.4 Unclear reporting lines can lead to staff and elected members:
- attempting to deal with or influence matters without regard to formal decision-making and management systems;
 - facing obstacles to the timely flow of information; and
 - debating aspects of the chief executive's performance outside the prescribed performance review process.

What We Asked About Staff Management

- 8.5 We asked elected members how:
- the chief executive kept the council informed on staffing matters and whether this information met their decision-making needs; and
 - they obtained information that needed to be prepared by staff, and about channels for raising issues about the performance or conduct of individual staff members.

- 8.6 We asked chief executives what staffing matters they informed the council about.

The Views of Elected Members and Chief Executives

Staff Remuneration

- 8.7 Most mayors/chairpersons – but only a third of other elected members – knew how the chief executive reviewed the performance of staff and set staff remuneration levels. Chief executives said that, generally, they informed elected members about general staffing matters such as capability and needs, and about issues concerned with industrial negotiations.
- 8.8 However, chief executives were less likely to inform elected members about:
- comparisons between remuneration levels for local authority staff and other groups in the marketplace;
 - systems for determining incentive payments and bonuses; and
 - matters relating to the code of conduct and standard employment agreements.

Means of Informing Elected Members

- 8.9 The main channels through which chief executives informed elected members on staffing matters were:
- informal meetings;
 - full council or council committee meetings; and
 - memos or written reports.
- 8.10 Most elected members told us that if they wanted to raise an issue about a staff member's performance or conduct they did so directly with the chief executive. If they wanted information on non-staff matters that needed to be prepared by particular staff, most would either approach the staff member concerned or pursue the matter through the chief executive or second tier manager.

Our Views

- 8.11 Staffing is an area of administration to which the separation between the “governance” and “management” roles (see paragraphs 2.15-2.16 on page 15, and paragraphs 4.17-4.19 on page 29), and the existence of mutual trust and respect (see paragraphs 10.1-10.6 on page 79), are most necessary.
- 8.12 With that necessity, together with the two responsibilities mentioned in paragraphs 8.1 and 8.2 (on page 63), in mind, in our view the council can expect the chief executive to provide it with information on staff employment and management:
- relevant to the exercise of the chief executive’s responsibility under section 119C(2); and
 - in order to enable the council to be accountable to the community for its decisions on policies, plans, and budgets.
- 8.13 Subjects on which the chief executive could provide useful information about the responsibility for employing and managing the local authority’s staff include:
- staffing capability and needs;
 - planned significant changes in organisation structure;
 - the conduct of industrial negotiations and progress with such negotiations;
 - remuneration trends, such as comparisons between remuneration levels for local authority staff relative to other groups in the marketplace;
 - systems for determining incentive payments and bonuses;
 - the code of conduct and standard employment agreements;
 - health and safety (especially workplace risk management and accidents);
 - equal employment opportunities programmes;
 - risks arising from personal grievance claims; and
 - other key human resource indicators.
- 8.14 To meet its governance responsibilities for policies, plans, and budgets, the council should be able to express its views about staff policy and general staff management issues, and the chief executive should take account of those views. However, in purporting to meet those governance responsibilities the council should not:

- encroach on matters relating to the employment of staff that are the exclusive preserve of the chief executive – including who is or who is not to be employed and their terms of employment; and
- expect to be given information about the selection and management of individual employees within the chief executive’s responsibility.

8.15 The obligation to comply with the “good employer” principles rests with the local authority as well as those responsible for selecting and managing staff. As such, elected members individually must ensure that they meet the obligations of a good employer. Those obligations and the Privacy Act preclude elected members from discussing in public concerns or issues about staffing matters.

9

Sharing Responsibility for Policy Development

The Roles of Elected Members and Staff

- 9.1 As we have explained in Part 4, the role of the elected member includes (in our view) to “set the strategic direction for the local authority and determine policies consistent with that strategic direction” (paragraph 4.10 on page 27). For that reason, the elected members should feel that they have ownership of, and should accordingly take responsibility for, the policies determined by the council.
- 9.2 Nevertheless, the chief executive has a statutory responsibility to provide advice to elected members (paragraph 4.4 on pages 25-26). In our view, this means that:
- the council should obtain and consider the chief executive’s advice on matters of policy; and
 - the chief executive should feel able to offer advice to the council on matters of policy, or suggest new or revised policies, without the need for an invitation to do so.
- 9.3 Staff may, on occasions, present reports to the council or provide advice that can be seen as:
- promoting staff views without regard to an existing council policy;
 - providing unbalanced views or supporting particular partisan views; or
 - attempting to pre-empt the elected members’ role to determine policy.
- 9.4 Such reports or advice can frustrate elected members and lead to their dissatisfaction with, and loss of confidence in, staff. That situation could become an obstacle to the effective creation and implementation of council policy. Frustrated elected members could also distance themselves publicly from council decisions or become unduly critical of staff.
- 9.5 We reiterate what we say in paragraph 4.9 (on page 27) – it is essential that the council and the chief executive (and other staff) function as a team in an environment of mutual respect and trust.

What We Asked About Policy Development

- 9.6 We asked elected members to tell us:
- how they were consulted during the policy development process;
 - whether they accepted shared responsibility for council policy which might be controversial;

- whether they felt they had sufficient opportunity to contribute to policy development to allow them to fulfil their policy role; and
- of any concerns they had about the policy development process.

9.7 We also asked how controversial decisions were managed, and whether elected members were committed to the council's strategic direction and policies.

9.8 We asked chief executives whether elected members took an active role in considering the strategic direction of the council and in developing policy. We enquired as to when elected members became involved in developing new policies and reviewing strategy.

The Views of Elected Members and Chief Executives

Satisfaction with Policy Processes

9.9 About 90% of elected members were satisfied that they had sufficient opportunity to help develop council policy. Nevertheless, the following comments illustrate the range of issues that elected members felt could arise in the course of developing policy:

- *Often feel that staff/CE have already made policy and then lead elected members' debate to fit desired outcome. Long-term documents leave little room for elected members' input.*
- *Disruptive councillors' opinions are not sought.*
- *There are matters where information that would lead to alternative policies [is] not always canvassed.*
- *Councillors are not encouraged to initiate policy changes. Changes are workshopped by staff and stakeholders/consultants intensively before presentation to councillors. Creates imbalance in knowledge and understanding.*
- *It is difficult to get detail that some councillors may require at times, especially financial.*
- *Have concerns when council agrees on a particular course of action and delegates authority to implement said action and something different results.*
- *Time constraints mean decisions are sometimes rushed and not fully developed.*
- *If a councillor is not on a Committee when a staff member has put forward a policy proposal, it's difficult to have meaningful input.*

9.10 Various suggestions were made to improve understanding of policies and promote debate:

- *Councillors have ample opportunity to pre-discuss policy development, deliberative or discussion sessions are held regularly just for this purpose.*

- *From time to time workshops are held offsite to brainstorm the future direction of council. Group Managers and councillors attend these workshops with the opportunity for early input in the process.*
- *All strategies and policies are developed through councillor and senior staff workshops.*
- *I would like an appropriate question time regularly at council meetings once per month.*

9.11 About 80% of chief executives said they thought that elected members took an active role in considering council policies and strategic direction.

9.12 However, comments from chief executives suggested that elected members were most likely to avoid participating in this process because they were unwilling to address longer-term matters of policy and strategic direction. For example:

- *Financial and strategic issues most problematic.*
- *Councillors fail to understand [the] relevance of policy. Once they are involved in [the] debate then they are okay.*
- *Accepting need to change and provide direction, innovation and leadership to the community.*
- *Many councillors have difficulties with strategic issues – more comfortable with short-term timeframes (three years).*
- *Challenge detail rather than concepts.*

Dealing With Controversial Decisions

9.13 These are some of the responses to our enquiry as to whether elected members shared responsibility for council policy which might be controversial:

- *Some still coming to terms with need for individual and collective responsibility.*
- *After some training.*
- *Some try to use community group or media to re-litigate.*
- *Always the temptation to distance themselves from [the decision] for political reasons.*
- *Anything controversial we usually discuss and present a united front.*
- *Councillors are there for their own agendas.*
- *Newer councillors do not like to accept the rap for unpopular but necessary decisions.*
- *Vested interest continues to disregard public consultation process and denigrate decisions of council.*
- *Sometimes people grandstand.*
- *Councillors are quick to disassociate themselves.*

- 9.14 Chief executives observed that some elected members who disagreed with council decisions were inclined to respond negatively – sometimes with direct consequences for council management and staff:
- *Abstain or vote against the decision then anecdotal evidence suggests they bad-mouth the organisation in public.*
 - *Convey view to media and to other stakeholders suggesting staff are not supporting council policy, which can build a wave of resentment. This requires a lot of corrective strategies and can make the situation worse at times.*
 - *They usually blame the staff for exercising hidden agendas.*
 - *Undermining, leaking reports, legal opinions involved in Court action against corporate body of the council when decisions go against them, there is no 'corporate' ownership or loyalty.*
- 9.15 All elected members – whether satisfied or dissatisfied with their input to policy determination – appeared to be involved in formulating policy to the same extent. Elected members said that they needed to be involved in the policy process from an early stage. Chief executives also recognised this point, noting that staff commonly organised workshops for elected members on policy issues that were at an early stage of development.
- 9.16 Elected members reported that the most common response by an elected member dissatisfied with a council policy decision was to make public statements to distance their own position from that of their colleagues. The tenor of other responses included a dissatisfied member:
- ‘blaming’ a staff member for implementing a council policy, either in public (in a public forum or meeting) or to the media, or in private (such as when contacted by a ratepayer); and
 - submitting a Notice of Motion to a council meeting knowing that it would have insufficient support to overturn the council’s decision.

Our Views

The Statutory Duty to Advise

- 9.17 **To meet the statutory responsibility to advise the council under section 119D of the Local Government Act, the chief executive should ensure that reports are:**
- **timely – raising issues as they emerge and giving elected members sufficient time to consider options;**
 - **accurate and impartial – covering the full range of views, and discussing them with reference to supporting data without prejudice or bias;**

- **relevant – identifying the impact of issues in relation to the council's strategic intent and work programmes; and**
- **focused – presenting for consideration the critical policy options, costs and consequences in a simple and understandable way.**

9.18 **Senior staff must comply with council policy, but may suggest alternatives (or new policies) for consideration, based on their professional judgement. However, in making suggestions staff must ensure that they have:**

- **considered all options available to the council;**
- **put all options to the council;**
- **evaluated the costs and benefits of all the options; and**
- **investigated thoroughly and obtained supporting data for all options.**

9.19 In considering policy options, elected members and the chief executive need to recognise their respective roles and responsibilities. The chief executive:

- has the role of providing objective policy advice and analysing the costs and benefits of options; and
- should recognise that elected members have the right to identify policy options and to have views different from those of management.

9.20 On occasions, an elected member performs different roles at the same time – for example, as a councillor and as a ward representative or advocate for a special interest group within the local community. In these circumstances the elected member may feel that the chief executive's advice to the council is not being sufficiently responsive to the interests of the group that the member represents.

9.21 **However, in accordance with the declaration that every member must sign on taking office, elected members are obliged to put the interests of the local authority ahead of any special interests they may represent within the city, district, or region. Elected members must recognise that the chief executive faces this same obligation in providing advice to the council.**

9.22 Where the council is made up of members with mixed or opposing views, staff can sometimes find themselves unfairly suspected of being partisan in their views and in the advice that they provide to the council. **Local authority staff are expected to perform their duties in an impartial manner. Elected members should, for their part, respect the integrity of staff and avoid involving them in political debates that may take place within the council.**

Participation of Elected Members in Policy Development

- 9.23 **The views of elected members must be taken into account when policy is first being developed. In particular, elected members should be involved in identifying policy options. Elected members and staff should recognise that they may have different views on how best to achieve the council's aims.**
- 9.24 **When there is a significant change in the membership of the council, the chief executive and staff should at an early stage find out the policy aspirations of newly elected members.** Workshops or planning sessions may be useful forums in which to share and consider a variety of ideas and perspectives on policy matters.
- 9.25 The chief executive and staff are under an obligation to give effect to council policies. This obligation can place staff in an invidious position when elected members continue to question council policies. In such circumstances, dissenting members may view the chief executive as the proponent of a policy with which they fundamentally disagree.

Giving Effect to Council Policies and Monitoring their Impact

- 9.26 **For the purposes of monitoring the impact of council policies, elected members need information on the outputs that have been produced and on the outcomes that have been achieved. The information should take the form of a comparison of expected outputs and outcomes with actual outputs and outcomes, based on objective measures.**
- 9.27 **In consultation with the chief executive, the council should establish a programme for reviewing council policies and priorities so that it can consider:**
- **the continuing validity of existing policies and priorities; and**
 - **whether new needs require modified or new policies and priorities.**

Informing the Community

- 9.28 The council has an obligation to seek the views of its constituents and keep them informed of significant policy developments. It should inform ratepayers and special interest groups about the implications of policies, and give such groups the opportunity to make their views known to elected members – and, thus, influence council decisions.

- 9.29 Elected members, the chief executive, and staff all have a role in informing constituents. **However, the chief executive and staff should present the policies as those of the council as a whole, and avoid presentation in a manner that makes them appear to be advocates for the policies.**
- 9.30 Elected members should similarly avoid representing a policy as associated personally either with them – if the policy was their idea – or with the chief executive/staff – if that was where the policy originated.

10

**How the Chief Executive
Interacts with Elected Members
On a Daily Basis**

A Working Relationship Based on Respect and Trust

- 10.1 A council cannot be expected to employ a chief executive whom it neither respects nor trusts. And a chief executive can manage effectively only when she or he has the managerial freedom to give effect to council decisions and implement council policies.
- 10.2 Maintaining a constructive relationship between elected members and the chief executive requires each to have a clear understanding of the other's role – in particular, the difference between governance and management (see paragraphs 4.15-4.19 on page 29) – and effective communication between them.
- 10.3 Nevertheless, elected members and the chief executive have to work together every day. In these conditions, each needs to be aware of the distinction between governance and management without being inflexible about where they see the boundary between the respective roles. Elected members and the chief executive should maintain regular communication to address any emerging tensions in the relationship.
- 10.4 The chief executive is frequently having to make judgements about which matters should and should not be raised with the council, and how elected members should be informed. In making these judgements the chief executive needs guidance from the mayor/chairperson or chairpersons of standing committees.
- 10.5 A lack of advice and support from the council can result in the chief executive being insufficiently aware of the council's information needs.
- 10.6 Where the council (as the chief executive's employer) is struggling to work as a coherent entity, suspicion and distrust can arise when:
- the chief executive and mayor/chairperson are seen as being too close to the chief executive;
 - the chief executive and staff fail to discuss meeting agendas or emerging issues with the mayor/chairperson and chairpersons of committees; or
 - the chief executive is seen as being more accessible and responsive to some elected members than others.

What We Asked About Working Relationships

- 10.7 We asked chief executives how they decided whether to brief the council about a particular matter.

- 10.8 We asked elected members whether:
- accountability documents (such as the performance agreement or employment agreement) defined the circumstances in which the chief executive should brief elected members; and
 - they felt that the advice they received was timely and considered.

The Views of Elected Members and Chief Executives

Knowing What to Brief the Council About

- 10.9 In considering whether to brief the council about a particular matter, chief executives most commonly draw on:
- discussion with staff;
 - advice from the mayor/chairperson; and
 - their own judgement.
- 10.10 Other sources of guidance include:
- fellow chief executives;
 - informal discussions with elected members;
 - the media; and
 - LGNZ, SOLGM, trade journals, briefings from government departments, public and private sector reports, various stakeholder contacts, and Members of Parliament.

Elected Member Satisfaction with Advice from the Chief Executive

- 10.11 About 80% of elected members told us that the chief executive and staff gave them full and well-considered advice, and said that issues requiring council consideration were raised in a timely manner. More than one in five elected members were of the view that performance documentation failed to define clearly the circumstances in which the chief executive should brief the council.
- 10.12 Of the one in five elected members, nearly three-quarters thought that the performance expectations of the chief executive failed to specify clearly those issues on which they wished to be briefed, and they also felt that they did not receive advice that was fully considered and timely.

10.13 The following comments reflect some of the concerns that elected members had about the timeliness of advice to the council and the quality of that advice:

- *Too often management have to be requested to brief council on a particular issue, there is no strong culture of being proactive in providing briefings to council on sensitive or complicated issues.*
- *We have had some concerns over timely advice lacking when it was required prior to council's public comments.*
- *More scope for options to be presented.*
- *Appears sometimes as though issues haven't been fully discussed by management and a fragmented view is given to council.*
- *Competence of staff varies from department to department which reflects on the advice given and the results achieved.*
- *I think the advice could occasionally come earlier, information needs can sometimes be anticipated.*
- *Information often seems to reflect preconceived ideas, assistance sometimes seems reluctant.*
- *Sometimes I feel there is not enough warning so I can do my homework.*

10.14 These comments illustrate the importance of giving elected members sufficient time to consider and read briefing material.

Our Views

Reporting to the Council

10.15 **Elected members should receive both financial and non-financial information about the implementation and impact of council policies (see paragraph 9.26 on page 74). The elected members should provide feedback to the chief executive on the content and presentation of such reports. Additionally or alternatively, the chief executive could consider asking elected members at regular intervals for their views on the quality of the reports.**

10.16 General performance measures of report quality can be included among the performance expectations set for the chief executive and other managers. The council could set specific performance measures for reports on particular policies.

10.17 **The chief executive should provide (at least quarterly) concise and comprehensive progress reports on implementation of the local authority's Annual Plan. These reports should identify significant variances in achievement from the targets and objectives in the Plan, together with commentary on:**

- **reasons for the variances;**
- **remedial actions taken; and**

- **the likely results at the end of the Plan period.**

The Role of the Mayor/Chairperson in Reporting to the Council

- 10.18 Under the Local Government Act the mayor/chairperson has the same status as any other elected member, except that they have the duty to preside at council meetings. Although the Act gives mayors/chairpersons no specific powers in that capacity, mayors (at least) are elected with the expectation that they take a broad leadership role both in public and within their local authorities.
- 10.19 The mayor/chairperson (presiding member of the governing body and ‘politician’) and the chief executive (senior executive manager and administrator) commonly represent the political and managerial arms of the local authority in public forums, and need to have a close working relationship. Often, the chairpersons of standing committees also need to have a close working relationship with the chief executive.
- 10.20 Therefore, the mayor/chairperson and (when appropriate) chairpersons of standing committees have a responsibility to facilitate the council’s relationship with the chief executive. In particular, these office-holders should have regard to the statutory obligations of the chief executive and promote respect for the chief executive’s role as the council’s chief adviser and administrative leader.
- 10.21 **The mayor/chairperson and chairpersons of standing committees can help to do this by:**
- **Chairing meetings effectively so that debates are orderly and constructive – allowing a range of views to be aired as well as staff advice to be given due consideration. Elected members should be able to question and debate options so that the council is able to reach an agreed position on the basis of broad support.**
 - **Providing the chief executive with day-to-day support and feedback, to help the chief executive better meet the council’s reporting and information needs.**
 - **Showing leadership and encouraging effective teamwork within the council – by supporting all elected members and giving them access to information to help them better fulfil their role and understand the business of the local authority.**
- 10.22 On employment matters, the chief executive is accountable, not to the mayor/chairperson or any other individual elected member, but to the local authority as a whole (see paragraph 8.1 on page 63).

Timeliness of Advice

- 10.23 Elected members should have adequate time to consider advice and form their views. Elected members are also under an obligation to consider carefully and make themselves familiar with information provided by the chief executive or other staff. The views of elected members could usefully be sought on how much time they need in which to consider:
- council agendas and papers;
 - reports on the Annual Plan and Long-term Financial Strategy; and
 - policy development and review processes.
- 10.24 **The chief executive and staff should respond to requests from elected members in a timely and helpful manner. For various reasons, it may not be possible to answer every request for information – for example, the information may:**
- **not be immediately available;**
 - **be too costly to gather; or**
 - **materially affect the delivery of work programmes, particularly where many requests are made or where a large volume of information is sought.**
- 10.25 **The chief executive and the council should agree on:**
- **when and for what reasons the chief executive may refuse a request for information;**
 - **priorities for responding to requests; and**
 - **the conditions under which information is to be provided.**
- 10.26 **The chief executive should treat all requests for information in a fair and equitable manner:**
- **ensuring that all elected members have access to information necessary to their role; and**
 - **avoiding any perception of favouring one member over another.**
- 10.27 **The chief executive should endeavour to anticipate issues affecting the operations of the local authority that the council might need to consider. This system of ‘early warning’ enables the council to give timely consideration of emerging issues as they arise.**

Information Protocol

- 10.28 Communities expect their local authorities to be well managed and run in a cost-effective manner. If elected members are to provide the necessary assurance to their communities about the performance of the local authority, they must be kept appropriately informed by the chief executive.
- 10.29 Elected members need access to information on a wide range of subjects, and often need to discuss ratepayer issues with members of staff. The chief executive needs to ensure that elected members have appropriate access to such information, and that they are readily able to raise any concerns they may have about the administration of the local authority.
- 10.30 **However, elected members seeking information should have regard to the need for local authority staff to have clear lines of responsibility, and should ensure that all demands they make on staff time take account of the staff member's work programme and priorities. The chief executive and elected members should develop a protocol which outlines:**
- **how elected members should raise issues or seek information about matters of local authority administration;**
 - **the manner in which such requests should be made; and**
 - **the channel to be followed.**
- 10.31 **This protocol should:**
- **be understood and accepted by both elected members and staff;**
 - **enable elected members to have ready access to timely and accurate information that meets their needs;**
 - **be explicit about the channels through which elected members must convey their requests (such as only through the chief executive or other identified senior manager);**
 - **enable staff to be clear about their work priorities and reporting responsibilities; and**
 - **provide for effective co-ordination for dealing with issues and problems raised by elected members.**