

IN THE MATTER OF:

NORTHAMPTONSHIRE POLICE, FIRE AND CRIME PANEL

OPINION

INTRODUCTION & SUMMARY

1. I am asked to provide an opinion to the Monitoring Officer (MO) of West Northamptonshire Council (WNC) who is the host authority for the Northamptonshire Police, Fire and Crime Panel (the Panel) which is a joint committee of WNC and North Northamptonshire Council (NNC). Advice is sought in respect of a decision of the Northamptonshire Police, Fire and Crime Commissioner (PFCC) to appoint Nicci Marzec (NM) as Head of Paid Service (HPS) of Northamptonshire Fire and Rescue Service (NFRS) on an interim basis. The Chief Fire Officer (CFO) has resigned and performs the role of HPS. NM is the Chief Executive and Monitoring Officer of the office of the PFCC.
2. In writing this advice, I have been provided with a copy of e-mail correspondence between NM and [REDACTED] who is the Head of Legal Services at East Midlands Police Service.
3. The decision to appoint NM has been controversial and the Panel have sought advice in respect of it. I am instructed that the PFCC is seeking to find a resolution to this matter and therefore requested permission for this advice to be shared with him. I am therefore writing this advice with the knowledge that it may be viewed by the PFCC. However, I need to be clear that my instructions are from the MO only and while it may be shared, my responsibility is solely to the MO for this advice.
4. The question is a narrow one in that it concerns whether or not the PFCC is required to have a confirmation meeting with the Panel in respect of the appointment of NM. [REDACTED] and NM do not consider that it is necessary. For the reasons set out below, I respectfully take a different view and consider that it is necessary. In summary, this is because statute specifically defines the role and functions of the CFO and the scheme of governance of the NFRS expressly makes provision for the role of the CFO.

Therefore, it is my view that because NM is performing those functions that this means that a confirmation meeting is necessary.

FACTS

5. The facts may be stated briefly. On 7th July 2023 the CFO resigned suddenly and without warning. I am instructed that there is no Deputy CFO (DCFO) but the DCFO will commence employment on 17th July 2023. I am instructed that the PFCC immediately made the decision (with the benefit of the legal advice referred to above) to the CFO on an interim basis. The PFCC telephoned the chair and deputy chair of the Panel and informed them what he had decided shortly before releasing the information to the press. The decision has been controversial and generated discussion in the press.
6. In the correspondence with [REDACTED] NM states:

“We are now putting in interim management arrangements for the service post his departure which will effectively see me take on the responsibility of Head of Paid Service for the OPFCC and Monitoring Officer for the OPFCC and NFRS. Then, within the service I will delegate the operational fire responsibilities for on call and emergency response cover to the DCFO who will start in post on 17th July and the two ACFOs who are already in post.”

The correspondence further states that NM will temporarily suspend delegated authority to authorise expenditure without PFCC counter signature for matters related to NFRS.

LEGISLATION/GOVERNANCE

7. The appointment of a CFO is provided for in the *“The Fire and Rescue Authority (Police and Crime Commissioner) (Application of Local Policing Provisions, Inspection, Powers to Trade and Consequential Amendments) Order 2017”* (the Order). Article 3 of the Order provides that *“An Authority must comply with articles 4 to 14 in appointing a person to be chief fire officer.”* Authority is defined as *“a fire and rescue authority created by an order under section 4A of the FRS Act 2004”*. The FRS is the Fire and Rescue Services Act 2004. Section 4A of the FRS 2004 provides for the Secretary of State to have power to make an order to provide for the police and crime commissioner to be the Fire and Rescue Authority. CFO is defined as *“the*

person with responsibility for managing the fire and rescue service.” The Fire and Rescue Service is defined by reference to provisions under the FRS 2004 and other legislation.

8. Article 4(1) provides that *“An Authority must not appoint a person to be chief fire officer unless the end of the confirmation process has been reached.”* For convenience I shall describe the process by reference to this case. Under article 5, The PFCC should notify the Panel of the proposed appointment including details of:

(a) the name of the person whom the Authority is proposing to appoint (“the candidate”);

(b) the criteria used to assess the suitability of the candidate for the appointment;

(c) why the candidate satisfies those criteria; and

(d) the terms and conditions on which the candidate is to be appointed.”

9. Article 6 requires the Panel to review the proposed appointment and make a report (including a recommendation in respect of the appointment) to the PFCC. The report must be made within 3 weeks (excluding any pre-election period) and must be published. The Panel may veto an appointment within the three weeks if two-thirds of the Panel vote to veto. Before making the report the Panel must hold a confirmation hearing and invite the candidate to attend to answer questions (article 8). If there is no veto then the PFCC may accept or reject the recommendation of the Panel and inform them of his decision (article 9). If there is a veto then the candidate may not be appointed (article 10).

10. There is no case law which cites the Order.

11. NFRS has a Corporate Governance Framework (CGF). The introduction and background states:

“The purpose of this Scheme of Corporate Governance is to set out how the Police Fire and Crime Commissioner (PFCC) and the Chief Fire Officer conduct their functions, in accordance with the Statutory Framework, Principles of Good Governance and Governance Framework as contained in

the Statement of Corporate Governance, by identifying the key enablers which underpin the seven Good Governance Core Principles as adapted by the PFCC and the Chief Fire Officer.”

12. The CGF also provides:

“1.5.7.3 The Chief Fire Officer has the delegated authority of Head of Paid Service for Fire and Rescue.

“3.3. Delegations to the Chief Fire Officer

3.3.1 Delegations

3.3.1.1 To undertake the role as Head of Paid Service for the Fire and Rescue Service”

“In the absence of the PFCC CFO his/her roles and responsibilities may be fully exercised by the Deputy PFCC CFO.”

ANALYSIS

13. In the correspondence, [REDACTED] puts it this way:

“In terms of your role, I would confirm that, if you are simply acting as Head of Paid Staff on an interim basis pending the appointment of a permanent Head, then it should not be necessary for you to have to undergo a confirmation hearing. That is because you will be appointed to act as rather than to be the Head.”

14. I respectfully take a different opinion to [REDACTED].

15. For me, the starting point for this matter is that CFO is defined in law as *“the person with responsibility for managing the fire and rescue service.”* There is a clear scheme of delegation for the CFO to be the HPS. NM states an intention to *“delegate”* the responsibility to the DCFO/ACFO. In my opinion NM can only delegate responsibility if she has responsibility to begin with and looking at the statute/CGF, if she has responsibility for NFRS then this would meet the statutory definition of CFO. If the statutory definition of CFO is met, then the Order applies.

16. I have considered an alternative view, namely that expressed by [REDACTED]. In my opinion, the difficulty with this view is that if someone is acting as HPS then they have responsibility as HPS and if they delegate responsibility they must have responsibility. Therefore, if someone is performing all of the functions of the CFO then the Order applies. If this was not the position then it would be possible for an Authority to essentially bypass the statutory scheme by making appointments which are described as “interim” or “acting as”. There is no provision in the statutory scheme for such a process. Essentially, Parliament has deliberately legislated to provide a process for the role of CFO and expressly given them functions and this expressly includes the confirmation process included by statute. In the absence of the CFO the DCFO has delegated powers. In this case the DCFO was absent as well and therefore there was a short period where there was no CFO or DCFO but I do not consider that this means that an interim appointment could be made without a confirmation meeting, particularly as this went beyond the DCFO commencing employment.
17. I am grateful for the instructions and I am happy to advise further as requested.

RUSSELL HOLLAND

NO.5 CHAMBERS

17th July 2023