

STATES OF JERSEY



CHIEF EXECUTIVE OFFICER – RECRUITMENT PROCESS: COMMENTS (P.73/2021) :COMMENTS

Presented to the States on 10th September 2021
by the States Employment Board

STATES GREFFE

COMMENTS

Introduction

The States Employment Board (the ‘Board’) is required to undertake the recruitment to the vacant Chief Executive Officer (the ‘Chief Executive’) of the States of Jersey. The authority to do so is set out in the [Employment of the States of Jersey Employees \(Law\) 2005](#).

The Law was amended in 2017 by the States ([P.11/2017](#) inserting [Article 26AA](#) within the Law) by a standing vote to ensure the objective appointment of the Chief Executive Officer and avoid the politicisation of a role required to provide objective and independent advice to the Council of Ministers and to be accountable to the Public Accounts Committee for the administration of the wider States of Jersey public service. The Board have undertaken an objective and open competition, in doing so they have made a lawful decision to appoint the next Chief Executive Officer.

The Board is concerned that such a Proposition seeks to circumvent lawful process and decisions of the States Employment Board and the implications this has for the application of any future law where Members wish to exempt certain situations on an *ad hoc* basis. This is a serious abuse of our democratic authority, that will result in the deterioration of good governance, impacting on the reputation of the Island to govern itself well, to high standards.

The Board rejects the Proposition on the grounds that:

- (i) It has undertaken its duties, as required by the States Assembly and by the Law and made a lawful appointment. The Proposition requests the Board to halt a lawful process, for which it is the body required to undertake such a process.
- (ii) The Law was amended in 2017 to ensure the appointment of the Chief Executive Officer was free from political interference or favour, given the unique and special role the position has as Chief Executive to the Council of Ministers, Head of Public Service (across all States entities) and Principal Accountable Officer.
- (iii) An open competition has been undertaken, for which the interim Chief Executive did not apply; and a well-qualified and experienced candidate has been selected. An offer was made and accepted. Heads of Terms have been exchanged and agreed. The terms of the contract have been agreed.
- (iv) The appointment of the substantive Chief Executive Officer will provide the longer-term stability that the Proposition has stated is required, including ensuring the transition to the next Council of Ministers who will benefit from the substantive appointment being able to support the development and delivery of their Common Strategic Plan and their Government Plan, with the accountability to ensure the public service delivers the next government’s policy agenda.
- (v) The Proposition requests that the contract of the interim Chief Executive is extended, which would most likely result in the interim post holder remaining in post for a period of 2-years, doubling the length of the current contract.

The States Employment Board

The duties and powers of the States Employment Board are set out in the Employment of States of Jersey Employees (Jersey) Law 2005.

Within the 2005 Law, the Board is incorporated as a body corporate with the power to enter into contracts of employment.

It is the solely responsibility of the States Employment Board to appoint a Chief Executive Officer, this matter is solely the domain of the Board.

Article 26AA of the 2005 Law prescribes the involvement of the Board and the Jersey Appointments Commission, and their respective responsibilities when recruiting to the Chief Executive Officer position.

The recruitment to the position is also subject to the Code of Practice on recruitment issued by the Board and the guidance of the Jersey Appointments Commission.

The Role of the Chief Executive Officer

The Chief Executive Officer is:

- The Head of Public Service and Chief Executive Officer to the Council of Ministers ([Employment of States of Jersey Employees \(Jersey\) Law 2005, Part 1, Article 3](#))
- Principle Accountable Officer ([Public Finance Law 2019, Articles 38 and 39](#))

The position and designations set out in legislation are not aligned to political terms or any particular Council of Ministers.

The designation as the Head of the Public Service requires the role to be free from political involvement or bias, as the public service includes bodies that are not part of the Executive functions of Government.

The public service must endure and serve those who are democratically elected without bias. This means they are appointed and serve irrespective of the electoral cycle, those in office and without favour.

The role, as Chief Executive Officer of the Council of Ministers, is as principal adviser to the CoM, and to ensure that the policy of the Council at that time is properly informed and delivered.

As Head of Paid Service, the role provides leadership across all States entities, and ensures that the Codes and policies of the States Employment Board are complied with. As Principal Accountable Officer, the role ensures the highest standards of governance, probity, and custodianship of public finances.

The suggestion of the proposition is that the role should be filled after the General Election in 2022. There is no rationale or reason given for this part of the proposition and it is the Board's view that the proposition proposes to politicise the appointment of the role of Chief Executive Officer.

The Interim Chief Executive

The interim Chief Executive was selected in the same way as the substantive appointment as required by Article 26AA of the 2005 Law.

The role was advertised openly, and expressly as an interim position.

The Board deliberately and purposefully decided in November 2020 to recruit an interim Chief Executive and at the same time begin the process for the recruitment to the substantive recruitment. In their deliberations they did so with the considerations of the stability of the public service and the best interests of the Island in mind. The role and horizon of focus for an interim executive is very different to the requirements of the permanent role.

The interim Chief Executive took up post on the 1st March 2021 and agreed the contract termination date of 28th February 2022. The end date of the contract is set.

The proposed extension of the role is problematic for the following reasons:

- i. The proposition is written 5 months since the start of the interim Chief Executive and being debated 7 months into his contract. The proposition suggests that after six months there has not been sufficient time to measure to assess the overall performance of the interim Chief Executive to consider if the contract should be extended. And if extended, it is likely to be until March 2023 to allow for a full recruitment process to be completed.
- ii. Should a recruitment process take place after the elections in 2023, the next Council of Ministers and the next States Employment Board will have potentially greater disruption as a change of Chief Executive would occur within the first year of the cycle, a critical time to establish any necessary change in direction, policies and strategies and embed the agenda of the CoM into the public service. It is the view of the Board that having a Chief Executive in place for the new CoM's arrival, will ensure that the partnership between the political leadership and the leadership of the public service would be strengthened by common endeavour – and therefore accountability for delivery – with the new Chief Executive in post.

The Board reminds the States Assembly that in the debate for P.59/2019, Deputy Morel states:

Whether justified, or not, whether the Government of Jersey likes it, or not, the tax-paying public is concerned that consultants are being appointed without appropriate process, without fair comparison with similarly competent Islanders, or Island-based businesses.....

Hansard 16 July 2019

This proposition suggests the extension of the interim contract, that was not advertised for anything other than an interim period, that has been agreed to be no more than 12 months. To do so would do would make the appointment entirely without an appropriate process.

With the extension, the interim post holder would likely be in post for at least 2-years, almost as long as his permanent predecessor.

The Board express their thanks to the interim Chief Executive, who is ably meeting his brief for the interim period.

The Appointments Process

The Proposition acknowledges that the interim Chief Executive is indeed a good appointment. This validates the method that has been used to select a permanent Chief Executive having used the same panel, head-hunters and tests for each of the candidates.

In addition, the permanent appointment also included the opportunity for a number of States Members from the Council of Ministers and the States Employment Board to have conversations with each of the candidates and to provide their views to the selection panel.

The interim Chief Executive did not put himself forward for consideration for the permanent role.

The appointment process began in November 2020. The Board were advised of and considered their duties set out in the Employment of the States of Jersey Employees (Jersey) Law 2005. Alongside this, the Jersey Appointments Commission guidance also sets out how the appointment should be undertaken.

At this point, the reports from the [Comptroller and Auditor General](#) (published 20th May 2021) or the [Public Accounts Committee](#) (published 16th August 2021) were not even underway, yet alone published. The closing dates for applications was on 21st May 2021.

Nonetheless, the recommendations from these reports, and the lessons learned report commissioned internally by the Board, assures us that we have not made the same errors in this appointment as the previous Board did in their appointment of the Chief Executive in 2017.

With this in mind, the Proposition requests the Board to complete a ‘lessons learned’ review. This is now done and invalidates the request within the Proposition.

The Proposition

The Proposition was lodged on 30th July 2021. The successful candidate was selected, and agreed heads of terms, on 20th July 2021.

The Proposition is easily broken into three components

- a) To request the SEB to halt the process of the recruitment of the substantive Chief Executive

This is requesting that the States Assembly, through their request, interferes in a lawful appointment of the Board. Should the Proposition be successful, and the Board accept the States Assembly decision, the Board will be left open to a potential judicial review to ask the courts to intervene to instruct the Board to complete its lawful duty. Effectively the impasse between the States Assembly and the Board would most likely require determination by the courts about the lawful action to take. The Board is of the view that it has acted lawfully and reasonably.

- b) Extend the current interim Chief Executive until after the General Election expected in June 2022

The Board and interim Chief Executive have agreed a fixed-term contract until 28th February 2022. A candidate has been selected, offered and terms agreed for the substantive appointment. There is no requirement to extend the contract beyond the agreed termination date.

- c) Complete the recommendations of the C&AG report and PAC recommendations, alongside undertaking a 'lessons learned' from the previous appointment process.

Of the 24 recommendations accepted, 18 have been completed, 5 are on track to be completed and 1 (duplicated in both reports) relates to legislative changes that do not interfere in the current recruitment process.

None of the outstanding recommendations relate to the appointment of the Chief Executive, or correlate to the issues of the exit of the previous Chief Executive or the risks of appointing the next Chief Executive.

The 'lessons learned' report has been completed and accepted by the Board. Of the nine lessons learned, the Board are satisfied that they have undertaken the recruitment process lawfully, and that the circumstances that arose in 2017 have not been repeated. Within the report of the Proposition, the Board is not persuaded by any of the arguments put forward. More than half of the rationale presented related to the termination agreements of the previous Chief Executives and the circumstances of the exit arrangements for the most recent permanent Chief Executive. Where recommendations have been made by the C&AG or PAC, we have acted. There are no outstanding matters related to the appointment process, or learning from the previous appointment process, that concern the Board.

The Proposition turns to the leadership and stability of the public service. The Board is of the opinion that it is in the best interests of the Island and public service that a permanent appointment is made at the earliest opportunity. Having a permanent Chief Executive is preferable to uncertainty of the end date of the interim position.

Whilst we agree that the current interim Chief Executive is doing a good job, he is doing what the Board has asked of him and is now focussing on ensuring a smooth transition to the permanent Chief Executive.

Financial and manpower implications

The abortive costs for the process would be in the region of £70,000 to cover the fees for the head-hunters, who are paid on successful appointment (which has been done), recruitment advertising and costs for those participating in the recruitment.

Significant senior officer time is also provided supporting the recruitment process.

Conclusion

The Board is unable to agree with the Proposition.

The consequences of such a proposal are:

Reputational: the ability of the Board to undertake its lawful duties without interference reflects on the governance of the island as a whole. Given the internal search, the interference in a lawful process will impact on our reputation for good governance. Our ability to attract any candidate of international standing where we require such skills, and they are not a viable on island, will be diminished.

Legal: If requested, and the Board undertakes the actions set out in the Proposition, there is a significant chance of a legal challenge by parties seeking the courts to insert a decision to instruct the Board to undertake their duties lawfully and conclude the appointment.

Stability: The public service deserves to have a permanent leader in post at the earliest opportunity. The position is not a political one and must not and should not be aligned to any political cycle or administration.

Financial: The costs to recruit to a Chief Executive Officer are not insubstantial. Whilst there will be further elaboration during the debate, the States Employment Board trust that Members consider these comments helpful and urge Members not to support the proposition.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]:

These comments were submitted to the States Greffe after the noon 10 September 2021 deadline, as set out in Standing Order 37A, due to multiple work commitments by the presenting Department.