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PUBLICATION

Independent Remuneration Panel for Wales: statutory guidance for the remuneration of chief executives

Updated guidance to the Panel to reflect the recent changes that have been made to section 143A .

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Background

This guidance to the Independent Remuneration Panel for Wales (“IRPW”) is issued under section 143A(6) of the Local Government (Wales) Measure 2011 and replaces all previous guidance issued. The IRPW must have regard to this guidance when exercising its functions under this section.

This guidance has been updated to reflect the recent amendments that have been made to section 143A.

The Local Government (Democracy) (Wales) Act 2013 (“the 2013 Act”) received Royal Assent on 30 July 2013. It inserted section 143A into the Local Government (Wales) Measure 2011 (“the Measure”) to extend the remit of the IRPW to include certain functions in relation to the salaries of ‘heads of paid service’ of qualifying relevant authorities. “Head of paid service” was defined in section 143A(7) as a head of paid service designated under section 4(1) of the Local Government and Housing Act 1989 (“the 1989 Act”) and “qualifying relevant authority” was (and still is) defined as a relevant authority (within the meaning of Part 8 of the 2011 Measure) which is required to produce a pay policy statement (within the meaning of section 43(1) of the Localism Act 2011).

Section 143A was modified by the Local Government (Wales) Act 2015. Amongst the changes, section 39 temporarily extended the remit of the IRPW under section 143A to include functions in relation to the salaries of chief officers of principal local authorities (county and county borough councils) in addition to heads of paid service. The definition of “chief officer” was taken from section 43(2) of the Localism Act 2011 and included various officers, including monitoring officers designated under section 5(1) of the 1989 Act, statutory chief officers specified in section 2(6) of that Act and non-statutory chief officers specified in section 2(7) of the 1989 Act.

As mentioned above, this modification was temporary. It only applied between 25 January 2016 and 31 March 2020.

The Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) further amended section 143A. Section 54 of that Act created the statutory role of the chief executive and since 5 May 2022, that section requires principal councils (county and county borough councils) to appoint one. Before 5 May 2022, the statutory role of head of paid service was often exercised by the officer more usually referred to as the chief executive or managing director. The 2021 Act clarified the position by replacing the statutory role of the head of paid service with the statutory role of the chief executive.

Section 143A was amended by the 2021 Act by replacing references to “head of paid service” with “chief executive”, in effect providing that the IRPW could make recommendations to a qualifying relevant authority about matters relating to the remuneration of the authority’s chief executive. As only principal councils are required to appoint a chief executive under section 54 of the 2021 Act, this in effect narrowed the remit of the IRPW’s functions.

Corporate joint committees (“CJCs”) are established by regulations made under the 2021 Act in Wales. Section 3 of the Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2021 requires CJCs to appoint a chief executive. Section 143A was further amended by those Regulations so that the definition of “chief executive” in section 143A(7) also covers chief executives appointed by CJCs.

Therefore, the current position is that section the IRPW can exercise its functions under section 143A in respect of the remuneration of chief executives of principal councils (county councils and county borough councils). The IRPW may also do the same in respect of CJCs and their chief executives. Section 143A does not currently enable the IRPW to exercise functions under that section in respect of any other body.

For the remainder of this guidance, the term “principal councils” is used to capture county and county borough councils only.

The IRPW’s responsibilities in relation to Chief Executives in Principal Councils and Corporate Joint Committees

Sections 141 to 160 of the 2011 Measure deal with local authority members’ and certain officers’ payments and pensions and the powers of the IRPW in relation to them.

Section 143A enables the IRPW to make recommendations, in relation to principal councils and CJs, on any policy in their Pay Policy Statement (“PPS”) which relates to the remuneration (the 2021 Act amended the definition of ‘salary’ in section 143A to ‘remuneration’, this puts the definition on the same basis as with elected members and recognises financial payments to officers extend beyond salary) of their chief executive. For the purpose of this guidance, “remuneration” includes payments made by a principal council and CJC to a chief executive who is not an employee of the council/CJC under a contract for provision of services, as well as remuneration made to an employed officer under an employment contract.

PPS are a requirement under the Localism Act 2011 (sections 38 to 43), to be published on an annual basis by principal councils and CJs (amongst other bodies which are not relevant for the purposes of this guidance). The purpose of the statement is to provide transparency with regard to a council/CJC’s approach to setting the pay of its employees, by identifying the methods by which salaries are determined. In particular, it must include:

- policies on all aspects and elements of the remuneration of chief officers

- the approach to the publication of, and access to, information relating to all aspects of the remuneration of chief officers
- the council's policy on the remuneration of its lowest paid employees
- the relationship between the remuneration of its chief officers and other employees

PPS are designed to cater for decision-making in relation particularly, to the pay of chief officers and the lowest paid staff. The position of the Welsh Government is decision-making on PPSs takes place in public, is open to scrutiny and is subject to a vote of all members of the relevant authority. This is reinforced by the Local Authorities (Standing Orders) (Wales) Regulations 2006 which requires principal councils to advertise publicly where it proposes to appoint a chief officer and the remuneration it proposes to pay in respect of that role is £100,000 or greater per annum.

In addition to making recommendations about any policy in the principal council/ CJC's PPS which relates to the remuneration of the chief executive, section 143A of the 2011 Measure also provides that the IRPW may make recommendations in respect of any proposal to change the remuneration of a chief executive. Principal councils and CJs are obliged to have regard to any recommendation the IRPW makes in relation to what is in their PPS concerning chief executives' pay.

Should a principal council or CJC wish to change the remuneration of their chief executive, it must consult the IRPW, unless the change being considered is commensurate with a general pay increase or reduction for "the authority's other staff". For the purposes of this guidance, "staff" can be interpreted as "officers", so does not include, for instance, teachers or front-line employees delivering services. The principal council and CJC must have regard to any recommendation of the IRPW when reaching its decision.

The IRPW may request any information it needs to assist it to reach a conclusion on the matter and the principal council and CJC will be obliged to

provide it. The IRPW may publish any recommendation it decides to make.

The IRPW's recommendation could express approval of the principal council and CJC's proposal, express criticism of or concerns, or recommend variations but it must have regard to this guidance issued by the Welsh Ministers when exercising functions under section 143A. It must also notify the Welsh Ministers of any recommendations made to principal councils and CJs under section 143A.

A principal council and CJC must then consider the IRPW's recommendation and, no later than 14 days after it has received it, notify the IRPW and the Welsh Ministers of its response to the recommendations. The principal council and CJC cannot then implement any changes to the chief executive's remuneration within eight weeks of notifying the Welsh Ministers unless the Welsh Ministers notify the principal council/CJC before that time that they will not be directing the principal council/CJC to reconsider their response.

Where a principal council/CJC is directed to reconsider its response as Welsh Ministers consider the response is inconsistent with the IRPW's recommendations, that reconsideration must be undertaken by the full council, not by the executive or a committee or sub-committee of the council.

The IRPW's deliberation

When considering the issue of chief executive's salaries, it is important that the IRPW fully appreciates it is in a fundamentally different position to that in relation to the remuneration of members of relevant authorities. In the latter situation, the IRPW is the final arbiter in the matter. The IRPW has the power to set precisely what a member should receive unless it confines itself to setting maxima instead. However, even in this situation it is the IRPW, not the relevant authority

or the Welsh Ministers, which has the power to make the decisions.

In contrast, in relation to chief executives, the IRPW's role is limited to taking a view and making a recommendation. Although the principal council/CJC concerned must have regard to the recommendation and can be directed by the Welsh Ministers to reconsider its decision, it is, even then, not obliged to follow it. The Local Authorities (Standing Orders) (Wales) Regulations 2006 require any such decision to be made through a vote of full council.

The IRPW, therefore, does not decide what an individual chief executive is paid. This should avoid any need for the IRPW to be pulled into negotiations with Trade Unions or professional associations, for instance. Although the possibility of a legal challenge to a recommendation by the IRPW cannot be ruled out, it is less likely because of the indirect nature of the IRPW's relationship to the final decision.

The IRPW is being asked to use its own experience and expertise to arrive at a recommendation in each case that arises. Principal councils and CJs are required to provide the IRPW with any information it may reasonably require in reaching a conclusion and that provides the IRPW with considerable power to gather necessary information. The sort of information the IRPW may require could include the following:

- papers or reports prepared by the Council/CJC in relation to the matter
- reports or other information provided to the Council/CJC by any consultancy, Trade Union or professional association
- details of the total remuneration package available, or under consideration, for the chief executive. This could include the length of contract on offer, pension arrangements, severance package, payments for any additional duties which are not included in the salary, performance bonuses, provision for annual and other leave, payment in kind (i.e. cars) and relocation costs
- information concerning the remuneration on offer to other principal council/CJC chief executives. (Note: the IRPW are not restricted to only requiring

- information from the principal council/CJC considering a variation in salary)
- details of agreements made at the National Joint Council level

Should there be a situation where, probably as a result of national negotiations, a pay award is made to chief executives across principal councils and CJsCs which differs from that awarded to other staff, the IRPW may consider joint or collective approaches from principal councils and CJsCs, rather than each council/CJC needing to separately engage with the IRPW. However, this does not fetter the ability of the IRPW to make different recommendations to different authorities if they feel so justified.

It is also likely the IRPW would wish to take into account more general data relating to prices and incomes, which it may well have available through its relevance to the remuneration of the members of relevant authorities.

The legislation does not restrict the IRPW to a purely reactive role. If it wished, the IRPW could use its power to make recommendations relating to provisions within principal councils/CJsCs' PPS irrespective of any proposal to vary the remuneration of a chief executive, provided the recommendation "related to" the remuneration. The IRPW would, however, need to consider whether it had the time and resource to carry out such an exercise and bear in mind that the policy driver behind the provisions in the 2013 Act was related to control over what were viewed as unacceptable decisions in relation to pay increases. Exercising the power in a way that was inconsistent with its purposes, could give rise to legal challenge. However, it does mean any individual or organisation could refer an issue concerning the chief executive's pay to the IRPW for its consideration and the IRPW could decide to act on that reference if it felt it necessary.

The IRPW needs to be consulted if there is a downward variation being proposed for a chief executive's pay (unless, as in the case of an increase, it is commensurate with a general approach to officers pay in that council/CJC). The IRPW is likely to take the same type of evidence requirements into account.

Finally, what factors should the IRPW take into account in reaching a recommendation? It is for the IRPW to make its own assessment of what factors are relevant to the exercise of its discretion in any particular case and how much weight is to be given to them. However, the following paragraphs cover what the Welsh Ministers consider to be key factors to be taken into account by the IRPW.

When recruiting chief executives, principal councils and CJs are obliged to consider what remuneration will be required to recruit and retain the most suitably qualified persons. The IRPW therefore needs to recognise the professional expertise and experience required for the post.

The IRPW will need to be sensitive to this but also take a balanced approach. Public acceptability is a legitimate factor for the IRPW to take into account, but it should not be given undue weight. Although perceived excesses in remuneration of politicians and public officials can give rise to public controversy, it is understandable any significant increase in pay for an already well-paid post may be criticised at a time when economic circumstances are challenging.

Remuneration levels for chief executives within comparable councils/CJs need to be taken into account. In addition, there is a tendency to set arithmetic limits on the differential between the highest and lowest paid staff in an organisation, as well as the differential between the highest and second highest paid. It will be for the IRPW to decide whether to take cognisance of this and how much weight to give it.

The IRPW will also be able to take into account whether the remuneration under consideration is reasonable for the area concerned.

In conclusion, the IRPW will want to satisfy itself the principal council/CJ concerned has made a clear business case for a proposed change and examined the options. The view of the IRPW should be taken at the end, not the beginning of the process, in order that the IRPW is able to see all the evidence

the council/CJC has taken into account in making its proposal. This will be particularly important when an urgent appointment is being considered. If the IRPW's view is required quickly, it will need to have all the background information readily available.

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