

REPORT TO: COUNCIL

Date: 20th November 2019

TOPIC: CHANGES TO CONSTITUTION

REPORT BY: MONITORING OFFICER

1 INTRODUCTION

- 1.1 This report recommends minor changes to the Constitution, in particular the Employee Procedure Rules. The changes are to bring the Constitution into line with the relevant legislation and to correct an error that had arisen in the version presented to Council for adoption.

2 RECOMMENDATIONS

- 2.1 That the amended Officer Employment Rules attached as an Appendix are adopted as part of the Constitution.
- 2.2 That reference to Chief Officers is removed from the Functions of the Appointments Committee under Annexe 1 of Part 3 of the Constitution.
- 2.3 That 3.16 of the Scheme of Officer Delegations is amended to:-

“To appoint, discipline and/or dismiss officers in accordance with Council policies and procedures, including the power to nominate any other officer to undertake such powers, except where that power is reserved to a Committee or to Full Council under the Officer Employment Procedure Rules set out within Part 4 of the Constitution.”

- 2.4 That the Contract Procedure Rules be amended by the addition of the wording in para 4.6 below.

3 REASONS FOR RECOMMENDATIONS

- 3.1 To bring the Constitution back into line with legislation, to ensure consistency and to correct an error.

4 REPORT

- 4.1 A report was taken to Full Council on the 25th February 2019 which highlighted some changes that had been made to the Constitution under delegated powers. One such change was to make it clear that Independent Persons were

only required to sit on the Appointments Committee when dealing with the dismissal of the Head of Paid Service, Chief Financial Officer and Monitoring Officer. Those changes were intended to bring the wording of the Constitution into line with the legislation. However those changes did not come through very clearly when the new Constitution was subsequently adopted earlier this year.

- 4.2 In particular, the Officer Employment Rules, which are set out in Part 4 of the Constitution, still included a procedure which called for 2 Independent Persons to be included when dismissing other Chief Officers.
- 4.3 Those Rules also currently state that the appointment and dismissal of other Chief Officers is a function of Full Council. Chief Officers are defined as including those that report direct to the Head of Paid Service/Chief Executive and so, given the current structure of the Council, would include officers sitting below Head of Service level. It is not appropriate that those officers should be the subject of what is a more stringent recruitment process and so changes are also proposed to ensure that the higher level of scrutiny is reserved to the statutory chief officers namely the Head of Paid Service, Monitoring Officer and Chief Financial Officer.
- 4.4 A revised version of the Officer Employment Rules is therefore attached as an Appendix to this report and the recommendation is that these are adopted.
- 4.5 It is also recommended that consequential changes are made to the Scheme of Officer Delegations and Appointments Committee functions to make it clear that the function of appointment and disciplinary action/dismissal of officers is the role of the Head of Paid Service other than as provided for under the Officer Employment Rules.
- 4.6 The final recommendation is in respect of the Contract Procedure Rules in part 4 of the Constitution. Due to a printing error, when the Constitution went to Full Council for adoption, some wording was omitted. After paragraph 24.1(d)(ii), the following words should be included:-
- “(iii) does not shift the economic balance in favour of the supplier,*
- (iv) does not extend the scope of the contract considerably, or*
- (v) put in place a new contractor other than where this is allowed pursuant to paragraph 24.1(c), and/or*
- (e) the value of the modification (or the cumulative modifications where there is more than one) is less than:-*
- (i) the relevant procurement threshold provided by the regulations, and*
- (ii) 10% of the initial contract value for services or supplies contracts or 15% of the initial contract value for works contracts*
- Provided also that the modifications do not alter the overall nature of the contract”*

5 RESOURCE IMPLICATIONS

5.1 There are no resource implications.

6 CONSTITUTIONAL CONTEXT

| Article or Appendix and paragraph | Referred or delegated power? |
|-----------------------------------|------------------------------|
| Part 3 Annexe 1 | Delegated |

7 STATEMENT OF CONFIDENTIALITY

7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

8 BACKGROUND PAPERS

8.1 The following background papers were used in the preparation of this report:

- Constitution
- Disciplinary Policy
- Regulations

The background papers are available for inspection and kept by the author of the report.

9 STATEMENT OF INTERNAL ADVICE

9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and Officers.

Author: Trevor Blatchford (Monitoring Officer) Date: 8th November 2019

Appendix

OFFICER EMPLOYMENT PROCEDURE RULES

This part deals with the appointment and dismissal of staff.

PRESCRIBED STANDING ORDERS

These Rules incorporate the standing orders prescribed under the Local Authorities (Standing Orders)(England) Regulations 2001 as amended

DEFINITIONS

“Chief Officer” means the Statutory Chief Officers, Non Statutory Chief Officers and the Deputies of those persons as defined within s2 of the Local Government and Housing Act 1989

“Chief Financial Officer” shall mean any officer appointed under s151 of the Local Government Act 1972

“Head of Paid Service” shall mean the officer appointed under section 4(1) of the Local Government and Housing Act 1989

“Independent Persons” means a person appointed by the Council under s28(7) of the Localism Act 2011

“Monitoring Officer” means any officer appointed under s5 of the Local Government and Housing Act 1989

“Proper Officer” means the Human Resources Manager

“Relevant Independent Person” means an Independent Person appointed by the Council or where there are fewer than two such persons, such Independent Persons as have been appointed by another authority.

1. **RECRUITMENT AND APPOINTMENT**

1.1 **Declarations**

1.1.1 The Council has drawn up procedures which include a requirement that any candidate for an appointment as an Officer must state in writing whether they have any relationship with any councillor or officer of the Council;

1.1.2 No candidate so related to a Councillor or an Officer will be appointed without the authority of the Head of Paid Service or where the relationship is between the candidate and the Head of Paid Service, the authority of the Proper Officer.

1.2 **Seeking support for appointment**

1.2.1 The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

- 1.2.2 No Councillor or employee of the Council will seek support for any person for any appointment with the Council.

2. **RECRUITMENT OF CHIEF EXECUTIVE/HEAD OF PAID SERVICE AND CHIEF OFFICERS**

Where the Council proposes to appoint a Chief Executive/Head of Paid Service or a Chief Officer, including on a joint basis with another public body, and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will:

2.1 draw up a statement including the following:

- 2.1.1 the duties of the Officer concerned; and
- 2.1.2 any qualifications or qualities to be sought in the person to be appointed;
- 2.2 make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- 2.3 make arrangements for a copy of the procedures mentioned in paragraph 1 to be sent to any person on request.

3. **PROCEDURE FOR RECRUITMENT OF HEAD OF PAID SERVICE MONITORING OFFICER AND CHIEF FINANCIAL OFFICER**

- 3.1 The appointment of the Head of Paid Service, Monitoring Officer and Chief Financial Officer shall be the responsibility of the Full Council following a recommendation on the appointment from the Appointments Committee.
- 3.2 The Appointments Committee or a Sub Committee of it shall carry out the interview process and will make a recommendation on the appointment to the Full Council.
- 3.3 In respect of the appointment of the Monitoring Officer and Chief Financial Officer, the interview process shall be chaired by the Head of Paid Service or a person nominated by him.

4. **PROCEDURE FOR THE DISMISSAL OF HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCIAL OFFICER**

- 4.1 The dismissal for disciplinary reasons of the Head of Paid Service, Monitoring Officer and Chief Financial Officer shall be the responsibility of Full Council.
- 4.2 Before taking a decision, Full Council shall receive advice from a panel consisting of the Appointments Committee or a Sub Committee of it, two or more Relevant Independent Persons and such other persons as may be considered appropriate by Full Council (“the Panel”)

- 4.2 The Panel must be appointed at least 20 working days before the meeting of Full Council at which a decision is to be made as to whether to dismiss the officer.
- 4.3 The Council shall appoint to the Panel the Relevant Independent Persons in accordance with the following priority order:-
- (a) A relevant Independent Person who has been appointed by the authority and who is a local government elector,
 - (b) Such other Relevant Independent Person appointed by the Council,
 - (c) A Relevant Independent Person appointed by another authority.

5. **RESPONSIBILITY FOR RECRUITMENT OR DISMISSAL OF OTHER OFFICERS**

- 5.1 The function of the appointment and dismissal of and taking disciplinary action against any other officer will be discharged by the Head of Paid Service subject to any delegations contained within Part 3 of this Constitution, and shall not be the responsibility of Councillors.
- 5.2 Councillors will not be involved in disciplinary action against any Officer below Chief Officer except where such involvement is necessary for any investigation or inquiry or where the Council's procedures as adopted from time to time allow a right of appeal to Councillors.

6. **SUSPENSION**

- 6.1 The Head of Paid Service, the Chief Finance Officer, or the Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct. The suspension will be on full pay and must terminate no later than 2 months after the suspension takes effect.

7. **APPEALS**

None of the above shall prevent a Councillor serving as a member of an appeals committee or body established to consider an appeal by:

- 7.1 any person against any decision relating to the appointment of that person as a member of staff of the authority; or
- 7.2 a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff unless the dismissal relates to a capability issue, misconduct, some other substantial reason, some other statutory enactment or planned retirement where the member of staff has less than six months notice – in these instances the appeal shall be conducted by a senior officer.