

Item

REVIEW OF OFFICER EMPLOYMENT PROCEDURE RULES

To:

Civic Affairs Committee 24/07/19

Report by:

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Wards affected:

All

1. Introduction / Executive Summary

- 1.1 This report asks Civic Affairs Committee to consider and recommend to Full Council changes to the Officer Employment Procedure Rules in relation to the level of post for which Executive Notification is required.
- 1.2 The Council's current Constitution (Part 41) requires that when considering the appointment or dismissal of a head of service, Director or Chief Executive level post, the Members of the Executive are consulted. The proposal is to amend the Constitution so that this process would in future only be required for Director and Chief Executive level posts.
- 1.3 Executive Notification is the process whereby each Member of the Executive is notified of the name and other particulars relevant to the appointment or dismissal to a post at Chief Executive, Strategic

Director or head of service level, including the Monitoring Officer and Section 151 Officer. This takes place prior to any offer of appointment or decision to dismiss being finalised. Each Member of the Executive is asked to respond to the Leader with any material or well-founded objection to the making of the offer of appointment or dismissal. Any objection will be assessed to determine if it is material or not well-founded.

- 1.4 The Executive notification process is an anomaly in that members of the Executive who are not involved in the decision making process for appointment of employees at head of service level and below, which is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors, can express a view on a candidate.
- 1.5 The Leader of the Council and a number of Executive Councillors have asked that the Executive Notification process for heads of service level posts be reviewed.

2. Recommendations

2.1 The Civic Affairs Committee is asked to approve and recommend to Full Council that the:

2.1.1 Part 41: Officer Employment Procedure Rules be amended to include the following statement:

Other Employees

Appointment of employees at head of service level and below is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.

2.1.2 Part 41: Officer Employment Procedure Rules be amended to include the following statement:

Director Posts

A committee of the Council appointed for that purpose will appoint Director level posts. The Executive Notification process will be undertaken for these roles.

- 2.1.3 The Head of Human Resources and Head of Legal Services be given delegated authority to update Constitution in Part 41: Officer Employment Procedure Rules to include the approved statements.
- 2.1.4 The Head of Human Resources and Head of Legal Services be given delegated authority to update the Constitution in Part 41: Officer Employment Procedure Rules to modify the remaining paragraphs to simplify and clarify the text in line with the practice of South Cambridgeshire and Huntingdonshire District Councils.

3. Background

- 3.1 The Constitution contains a section, Part 41: Officer Employment Procedure Rules (see Appendix 1) which relates exclusively to the appointment and dismissal of senior posts; Chief Executive, Monitoring Officer (Head of Legal), Section 151 officer (Head of Finance), Strategic Directors and Heads of Service.
- 3.2. There are currently 16 posts within scope of these procedure rules.
- 3.3. Appointment or dismissal of the Chief Executive must be agreed by Full Council following a recommendation from the Employment (Senior Officer) Committee (see Appendix 2). In the case of dismissal the Independent Persons would also make a recommendation.
- 3.4 Appointment of a statutory post (Monitoring Officer or Section 151 Officer) or Head of Service is delegated to the Chief Executive or their representative.
- 3.5 Dismissal of a statutory post (Monitoring Officer or Section 151 Officer) must be considered by the Employment (Senior Officer) Committee who would make a recommendation to Full Council. The Independent Persons would also make a recommendation.
- 3.6 Appointment or dismissal of a Strategic Director is determined by the Employment (Senior Officer) Committee.
- 3.7 In the case of appointment or dismissal for any of the above posts there is the additional stage of Executive Notification.
- 3.8 Each Council is required to have a section on Officer Employment Procedure Rules in its Constitution. The style and scope of these varies

in each Council but all must cover the Head of Paid Service, statutory posts (Monitoring Officer and Section 151 officer) and the most senior level posts. The Council's guidance is seven pages long and is written in the style of the originating legislation.

- 3.9 South Cambridgeshire District Council's Officer Employment Procedure Rules are three pages long, are clear and easy to read and cover the same matters as the City Council's.

There are differences in the level at which Executive Notification for appointment takes place, which is for the Head of Paid Service, Directors, Chief Financial Officer and Monitoring Officer only. Appointment of officers below Director is the responsibility of the Head of Paid Service or their nominee.

Executive Notification is required for the dismissal of the Head of Paid Service, Executive Directors, Monitoring Officer or Chief Finance Officer.

Dismissal of posts below Director is the responsibility of the Head of Paid Service or their nominee.

- 3.10 Huntingdonshire District Council's Officer Employment Procedure Rules are four pages long, are clear and easy to read and cover the same matters as the City Council's.

There are differences in the level at which Executive Notification for appointment takes place, which is for Head of Paid Service or Chief Officers only. Appointment of heads of service is the responsibility of the Head of Paid Service (Managing Director, or their nominee).

Dismissal of heads of service (other than statutory officers) is the responsibility of the Head of Paid Service (Managing Director, or their nominee).

Cabinet Notification is required for the dismissal of a Chief Officer, Monitoring Officer or Section 151 Officer.

- 3.11 It is proposed that Executive Notification be carried out for the appointment of Chief Executive and Director level posts only and for the dismissal of Chief Executive, Director, Monitoring Officer and Section 151 Officer posts only and that the Constitution be amended.

4. Implications

a) Financial Implications

There are no financial implications relating to this proposal.

b) Staffing Implications

This report relates to the Executive Notification process for the appointment or dismissal of senior officers.

c) Equality and Poverty Implications

There are no equality or poverty implications relating to this proposal.

d) Environmental Implications

There are no environmental implications relating to this proposal.

e) Procurement Implications

There are no procurement implications relating to this proposal.

f) Community Safety Implications

There are no community safety implications relating to this proposal.

Consultation and communication considerations

The Leader of the Council, Executive Councillors, the Chief Executive, Head of Legal and Head of Finance have been consulted about these proposals.

If approved the changes to Executive Notification will require the Constitution to be updated in Part 41: Officer Employment Procedure Rules.

5. Background papers

Background papers used in the preparation of this report:

- The Council's Constitution - <https://www.cambridge.gov.uk/media/6726/constitution-october-2018.pdf>
- The Constitution of South Cambridgeshire District Council <http://scambs.moderngov.co.uk/documents/s106709/08%20-%20Officer%20Employment%20Rules.pdf>

- The Constitution of Huntingdonshire District Council
<https://www.huntingdonshire.gov.uk/media/3744/constitution.pdf>

6. Appendices

Appendix 1 shows Part 41:Officer Employment Procedure Rules of the Council's Constitution.

Appendix 2 shows the terms of reference of the Employment (Senior Officer) Committee.

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact Deborah Simpson, Head of Human Resources, tel: 01223 - 458101, email: deborah.simpson@cambridge.gov.uk.

Part 4I: Officer Employment Procedure Rules

Recruitment and appointment

1. Standing Orders Regarding Appointment And Dismissal Of Staff

1.1 In this Part -

- "the 1989 Act" means the Local Government and Housing Act 1989;
- "the 2000 Act" means the Local Government Act 2000;
- "disciplinary action" has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;
- "executive" and "executive leader" have the same meaning as in Part II of the 2000 Act;
- "member of staff" means a person appointed to or holding a paid office or employment under the Council; and
- "proper officer" means an officer appointed by the Council for the purposes of the provisions in this Part.

1.2 Subject to paragraphs 1.3 and 1.7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the Council must be discharged, on behalf of the Council, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the Council's paid service or by an officer nominated by him.

1.3 Paragraph 1.2 shall not apply to the appointment or dismissal of, or disciplinary action against -

1. the officer designated as the head of the Council's paid service;
2. a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);
3. a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;
4. a deputy chief officer within the meaning of section 2(8) of the 1989 Act;
or
5. a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

1.4.1 Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the appointment or dismissal of an officer designated as the head of the Council's paid service, the Council must

approve that appointment before an offer of appointment is made to him or, as the case may be, must approve that dismissal before notice of dismissal is given to him.

1.4.2 Where a committee or a sub-committee of the Council is discharging, on behalf of the Council, the function of the appointment or dismissal of any officer referred to in sub-paragraph 1, 2, 3 or 4 of paragraph 1.3, at least one member of the executive must be a member of that committee or sub-committee.

1.5.1 In this paragraph, "appointor" means, in relation to the appointment of a person as an officer of the Council, the Council or, where a committee, sub-committee or officer is discharging the function of appointment on behalf of the Council, that committee, sub-committee or officer, as the case may be.

1.5.2 An offer of an appointment as an officer referred to in sub-paragraph 1,2,3, or 4 of paragraph 1.3 must not be made by the appointor until –

1. the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;

2. the proper officer has notified every member of the executive of the Council of –

a) the name of the person to whom the appointor wishes to make the offer;

b) any other particulars relevant to the appointment which the appointor has notified to the proper officer; and

c) the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the executive to the proper officer; and

3. either –

a) the executive leader has, within the period specified in the notice under sub-paragraph 2.b), notified the Cambridge City Council

appointor that neither he nor any other member of the executive has any objection to the making of the offer;

b) the proper officer has notified the appointor that no objection was received by him within that period from the executive leader; or

c) the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

1.6.1 In this paragraph, "dismissor" means, in relation to the dismissal of an officer of the Council, the Council or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the Council, that committee, sub-committee or other officer, as the case may be.

1.6.2 Notice of the dismissal of an officer referred to in sub-paragraph 1, 2, 3 or 4 of paragraph 1.3 must not be given by the dismissor until -

1. the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;

2. the proper officer has notified every member of the executive of the Council of -

a) the name of the person who the dismissor wishes to dismiss;

b) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and

c) the period within which any objection to the dismissal is to be made by the executive leader on behalf of the executive to the proper officer; and

3. either -

a) the executive leader has, within the period specified in the notice under sub-paragraph 2 c), notified the dismissor that neither he nor any other member of the executive has any objection to the dismissal;

b) the proper officer has notified the dismissor that no objection was received by him within that period from the executive leader; or

c) the dismissor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

1.7 Nothing in paragraph 1.2 shall prevent a person from serving as a member of any committee or sub-committee established by the Council to consider an appeal by –

1. another person against any decision relating to the appointment of that other person as a member of staff of the Council; or
2. a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

2 Disciplinary Action Against Chief Finance Officer, Head Of Paid Service And Monitoring Officer

2.1 In the following paragraphs—

- (a) “*the 2011 Act*” means the Localism Act 2011(b);
- (b) “*chief finance officer*”, “*disciplinary action*”, “*head of the authority's paid service*” and “*monitoring officer*” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;
- (c) “*independent person*” means a person appointed under section 28(7) of the 2011 Act;
- (d) “*local government elector*” means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts;
- (e) “*the Panel*” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;
- (f) “*relevant meeting*” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and
- (g) “*relevant officer*” means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.

2.2 A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

2.3 The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

2.4 In paragraph 3 “*relevant independent person*” means any independent person who has been appointed by the authority or, where there are

fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

- 2.5 Subject to paragraph 2.6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 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) any other relevant independent person who has been appointed by the authority;
 - (c) a relevant independent person who has been appointed by another authority or authorities.
- 2.6 An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.
- 2.7 The authority must appoint any Panel at least 20 working days before the relevant meeting.
- 2.8 Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—
- (a) any advice, views or recommendations of the Panel;
 - (b) the conclusions of any investigation into the proposed dismissal; and
 - (c) any representations from the relevant officer.
- 2.9 Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act

3. Declarations

- 3.1 The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.

3.2 No candidate so related to a councillor or an officer will be appointed without the Council of the relevant chief officer or an officer nominated by him/her.

4. Seeking support for appointment.

4.1 Subject to Rule 4.3, 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.

4.2 Subject to Rule 4.3, no councillor will seek support for any person for any appointment with the Council.

4.3 Nothing in Rules 4.1 and 4.2 above will preclude a councillor from giving a written reference for a candidate for submission with an application for appointment.

5. Recruitment of head of paid service and chief officers

5.1 Where the Council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

1. draw up a statement specifying:
 - a) the duties of the officer concerned; and
 - b) any qualifications or qualities to be sought in the person to be appointed;
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
3. make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.

6. Appointment of head of paid service

6.1 The full council will approve the appointment of the head of paid service following the recommendation of such an appointment by a committee or sub-committee of the Council. That committee or sub-committee must include at least one member of the executive.

- 6.2 The full Council may only make or approve the appointment of the head of paid service where no well-founded objection has been made by any member of the Executive.

7. Appointment of chief officers

- 7.1 A committee or sub-committee of the Council will appoint chief officers. That committee or sub-committee must include at least one member of the executive.
- 7.2 An offer of employment as a chief officer shall only be made where no well-founded objection has been received from the member(s) of the Executive who is (are) also a member of that committee or sub-committee.

8. Other appointments

- 8.1 Appointment of officers below chief officer (except political assistants to political groups) is the responsibility of the head of paid service or his/her nominee, and may not be made by councillors.

9. Dismissal

- 9.1 The head of the paid service, monitoring officer and chief finance officer can only be dismissed by the full council.

Employment (Senior Officer) Committee

Appointed by:	From time to time in accordance with the wishes of the political groups.
Membership:	6 members allocated between political groups in accordance with the rules on political balance set out in the Local Government and Housing Act 1989
Chair/Vice Chair:	To be appointed by the members of the Committee.
Decision making:	By the majority of members present and voting. The Chair has a casting vote if required.
Terms of Reference:	<ol style="list-style-type: none">1. To deal with the recruitment to the post of Chief Executive and to recommend a selected applicant to Council for appointment.2. To recruit, appoint, take disciplinary action against and dismiss Directors3. To suspend and keep under review the Chief Executive, Directors, the Monitoring Officer or section 151 Chief Finance Officer whilst an investigation takes place into alleged misconduct.4. To take disciplinary action short of dismissal against the Chief Executive, the Monitoring Officer or section 151 Chief Finance Officer.5. To consider and if necessary recommend to Council to dismiss or terminate the employment of the Chief Executive, the Monitoring Officer or section 151 Chief Finance Officer.6. To make recommendations to Council with regard to proposals for salary or severance packages of £100,000 or more

Note: The committee will be governed by the provisions contained within Part 4I of the Constitution (Officer Employment Procedure Rules)