

**HUMAN RESOURCES COMMITTEE
15 NOVEMBER 2016**

JOINT REPORT OF CHIEF EXECUTIVE AND MONITORING OFFICER

**A.4 AMENDMENTS TO CONSTITUTION – CHANGES TO THE OFFICER EMPLOYMENT
PROCEDURE RULES**

(Report prepared by Anastasia Simpson and Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To recommend that a Sub-Committee Panel of the Human Resources Committee is constituted to form part of the recruitment, dismissal and disciplinary process for the appointment of Senior Officers. This includes the Chief Executive and other Statutory Chief Officers (Section 151 and Monitoring Officer post), Chief Officer posts (Corporate Directors/certain Heads of Service) and all Deputy Chief Officers (Heads of Service).

EXECUTIVE SUMMARY

This report recommends that a Panel would undertake the final interview of those applicants for Senior Officer posts who have successfully been shortlisted and undertaken the necessary technical interviews and assessments. The Panel would be a formally constituted sub-committee of the Human Resources Committee, established by the Council. It is proposed that the Panel shall comprise of three members, at least one is required by the legislation to be a member of the Cabinet, to be appointed by the Leader at the appropriate time however, it is suggested that this could be the relevant Portfolio Holder for the service concerned. The Panel shall also include the Chairman (or Vice Chairman) of the Human Resources Committee and a named committee member from an opposition group (full Council will appoint the named individual).

The Panel would be supported by the Head of Paid Service (Chief Executive) as the designated Proper Officer (as defined in the Local Authorities (Standing Orders) Regulations 2001) and the Head of People, Performance and Projects (or an officer delegated to act in their absence). If the appointment relates to the Chief Executive, the Head of People, Performance and Projects will be the designated Proper Officer and support the Panel with an external adviser. Committee Services will in consultation with and on behalf of the Chairman of the Human Resources Committee form the necessary Sub-Committee Panel, in accordance with the recommendations of this report, as and when a Senior Officer recruitment, dismissal or disciplinary process occurs.

In terms of the decision making process the sub-committee must take into account the views and professional advice given by the relevant officers before an offer of appointment can be made. No offer of appointment shall be made to an applicant for a post referred to above until the following actions have also been completed:

- a) The appointing committee has notified the Head of People, Performance and Projects of the name of the person to whom the post is to be offered and any other matter relevant to the appointment.
- b) The Head of People, Performance and Projects has notified all members of the Cabinet of the name of the person to whom the post is to be offered and any other matter the committee regards as relevant to the appointment
- c) The period for objections by Cabinet members to making the offer by the person

concerned has expired; this period will be three days. Any objection to the appointment shall be communicated to the Head of People, Performance and Projects through the Leader of the Council. The appointing committee shall determine whether the objection is valid and the offer of appointment should be made.

In the case of the posts of Chief Executive and Monitoring Officer, the full Council must approve the appointment before an offer is made.

RECOMMENDATIONS

It is recommended that the Human Resources Committee recommends to Council that:

- (a) a Sub-committee of Human Resources Committee is formed to act as a Panel and to discharge the functions as set out in this report;**
- (b) The terms and reference of the Human Resources Committee are amended to include the function of the Sub- committee Panel;**
- (c) the requirements of political balance are dispensed for the Sub-Committee Panel;**
- (d) Authority is delegated to the Monitoring Officer to amend the Council's Constitution in accordance with the formation of the Human Resources Sub-Committee and any necessary consequential changes applying to the Articles, Terms and Reference and Officer Employment Procedure Rules relating to the appointment and dismissal of relevant Officers; and**
- (e) The Human Resources Policies and Procedures are amended, as necessary, to reflect any changes required based on the principles in this report.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Organisational Values expect all Councillors and staff to uphold and promote the values of personal integrity, honesty and respect for others and reflect the equality of individuals.

Reviewing and proposing changes to the Council's procedures, processes and constitutional requirements reflecting best practice demonstrates good governance.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Any changes to the procedures can be implemented within the Council's existing budget and resources.

Risk

If the Council decided not to make the necessary changes to its Standing Orders, Constitution, Procedure Rules and Polices, this would have a detrimental impact on the Council's reputation regarding effective governance and lawful decisions. Any legal challenges regarding recruitment could be taken through an Employment Tribunal for failure to comply with legislative and best practice requirements resulting in associated

financial costs implications.

LEGAL

The legal requirements and implications are set out within the content of the report and the recommendations comply with the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001.

Due to the nature of the Sub-Committee which solely relates to the appointment and dismissal of Senior Officers, to be either appointed to or dismissed from politically restricted posts, it is suggested that full Council dispenses with the requirements of political balance for the Sub-Committee. This is achieved if there is a nem con vote (i.e. a vote where nobody objects) of all members to that effect at full council in accordance with section 17(1)(b) of Local Government and Housing Act 1989.

Any decision made by the Panel in its function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, acting as the employer and therefore maybe challenged through the Employment Tribunal.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

The content of this report does not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Constitution was recently updated following changes to the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which came into force on 11 May 2015, which introduced new arrangements for dealing with disciplinary cases involving dismissal of the Council's Statutory Officers: Head of Paid Service, the Chief Finance Officer and the Monitoring Officer ("the relevant officers"). At this time it was agreed by Council that the Human Resources ("HR") Committee would form the Independent Panel together with the Independent Persons to consider potential dismissal of the relevant officers if required and in accordance with the Regulations.

Following this constitution update, the Monitoring Officer and Head of People, Performance and Projects have undertaken a subsequent review looking at the processes for the recruitment and disciplinary action of other Senior Officer roles within the Council.

General Recruitment Requirements

The Council has an adopted recruitment policy including safer recruitment guidelines which detail the arrangements for the recruitment and appointment of staff within Tendring District Council.

Where the Council proposes to appoint an officer the Council makes arrangements for the post to be advertised in such a way as to bring it to the attention of persons who are

qualified to apply for it and send details to be sent to any person on request. All posts are advertised on the Council's intranet and/or website.

The processes include that candidates for a job have to disclose in writing at the time of application whether to the best of their knowledge, they are related to any councillor or senior officer. Anyone who fails to do this shall not be considered for appointment and if appointed may be dismissed. Similarly any councillor and senior officer shall make known any relationship with a candidate of which he is aware. In the case of appointments where members are involved in the process, a councillor shall take no part in the appointment if she or he has had a relationship with the candidate.

Staff below Head of Service (Deputy Chief Officer)

The appointment of staff below Deputy Chief Officer shall be the responsibility of the Chief Executive or an officer nominated by him.

Council's Statutory officers (Chief Executive, Monitoring Officer and Section 151 Officers)

Special arrangements for appointment of the Council's Statutory Officers have been in place in Local Government since Local Authorities (Standing Orders) (England) Regulations 2001 introduced a degree of statutory protection. The Officers who were afforded this protection were the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer. The rationale for this protection was based on the fact that these officers have specific statutory duties and personal obligations to ensure that a Council acts lawfully and has effective governance in place, which have the potential to put them in difficult situations by raising matters bringing them into conflict with their employer, the local authority.

In the case of the Chief Executive and Monitoring Officer, the full Council must approve the appointment before an offer of appointment is made.

This report has been prepared to ensure that the Council adheres to the requirements of the Local Authorities (Standing Orders) Regulations 2001 and that recruitment legislation and best practice is followed when recruiting Senior Officers to the Council, including the Head of Paid Service (Chief Executive) and other Statutory Chief Officers and Deputy Chief Officers. The creation of a sub-committee of the HR Committee will ensure that the Council fulfils its statutory obligations.

The Head of People, Performance and Projects has delegated power to amend Human Resources Policies and Procedures, therefore these will need to be amended to reflect any changes required as a result of the formation of the Human Resources Sub-Committee. The constitution will also need to be amended to reflect the changes to the HR Committee and the creation of the sub-committee.

CURRENT POSITION

At the current time the full Human Resources Committee would need to be part of the recruitment process for any Senior Officer appointment within the Council. This does not follow usual recruitment practices and could be deemed to be an unfair process by candidates. If the whole Committee were required to be present there would also be a number of practical considerations which could hamper recruitment timescales and decision making.

An HR Sub-Committee meets the requirements of the Local Authorities (Standing Orders) Regulations 2001 and would be easier to co-ordinate working through recruitment processes and timescales. It also ensures that there is a fair process allowing both a member of a minority group and a Cabinet member to be directly involved in the final recruitment and selection processes.

As a result of the establishment of a sub-committee of the HR Committee, changes are not only required to the Council's Standing Orders but also within its own recruitment procedures and it is proposed that the Head of People, Performance and Projects will exercise their delegated authority and ensure that the Council's Human Resources Policies and Procedures are amended accordingly.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

None
