

Report to the Council

Date: 21 December 2017

Subject: Senior Management Selection and Appeal Panels

Report of Head of Paid Service: Glen Chipp (Ext 4080)

Recommending:

Senior Management Selection Panel

- (1) That a Selection Panel be established on the basis of:
 - (i) A pro rata membership of at least seven members of the Council from Political Groups as follows:

Conservative: 4

Loughton Residents: 2

Liberal Democrats: 1
 - (ii) The membership to include at least one member of the Cabinet;
 - (iii) The selected members to undertake prior Recruitment and Selection training as required by Part 4 of the Constitution;
- (2) That the Council Appoint a Chairman and Vice Chairman of the Selection Panel;
- (3) That the Selection Panel's Terms of Reference/Delegations be as follows:

"In accordance with the Officer Employment Procedure Rules set out in Part 4 of the Council's Constitution:

 - (i) To undertake the recruitment and selection of Chief Executive and Chief Officer positions as necessary;
 - (ii) To appoint to the proposed Chief Officer positions subject to the Objection Procedure.
 - (iii) To recommend the appointment (if necessary) of the Chief Executive to the Council subject to the Objection Procedure.
 - (iv) To undertake the functions of the redundancy panel procedure including:
 - Ensuring that those affected are informed and consulted
 - Considering proposals to make any Chief Officer post holders redundant
 - Taking into account consideration of alternative proposals from those affected by such proposals
 - Whether alternative positions may be available; and

(v) Consequent on (iv) above, notifying the Executive and making recommendations to Council accordingly; and

(vi) To make recommendations to the Council on designations of the statutory officers positions and their deputies as necessary.”

Senior Management Appeals Panel

(4) That an Appeals Panel be established on the basis of:

(i) A pro rata membership of at least seven members of the Council from Political Groups that are not members of the Selection Panel as follows:

Conservative: 4

Loughton Residents: 2

Liberal Democrats: 1;

(ii) The membership to include at least one member of the Cabinet;

(iii) The selected members to undertake prior Appeals training;

(5) That the Council Appoint a Chairman and Vice Chairman of the Appeals Panel;

(6) That the Appeals Panel’s Terms of Reference/Delegations be as follows:

“In accordance with the Officer Employment Procedure Rules set out in Part 4 of the Council’s Constitution:

(i) Hear and adjudicate appeals made by Chief Officers on any determination of redundancy made by the Selection Panel and recommend to Council on the dismissal (or otherwise) of those Officers”

(7) That for the purposes of these Panels, the Chief Executive be the ‘Proper Officer’ as defined in the Officer Employment Procedure Rules or, subject to (3)(i) above, another officer nominated by him.

1. (Head of Paid Service) The Cabinet, at its meeting on 7 December 2017, received a report which brought forward a funding proposal which supports the Transformation Programme: People Strategy. The Council is seeking to create a Common Operating Model (COM) for its workforce following a review of management structures by the Local Government Association (LGA).

2. In order to implement the new Common Operating Model, the Cabinet have considered the additional resources that will be required and these will form part of onward Budget considerations.

3. The restructuring work will also consider the future requirements for the Council in terms of its chief officer positions. In Part 4 of the Councils Constitution, the Officer Employment Procedure Rules (attached at Appendix 1) set out the methods of appointment

for the positions of Chief Officer's and above and also the procedures for any potential redundancy.

4. The rules set out the requirements for an appointment panel, made up of seven Councillors (to include at least one members of the Executive), to undertake interviews and make appointments to Chief Officer positions subject to objection procedures.

5. The Panel will also undertake the role of redundancy panel as set out on recommendation (3)(iv) above and, if necessary, make recommendations on appointments to the statutory positions to the full Council.

6. Posts of Chief Officer and above are not subject to the Council's normal redundancy and redeployment procedures. There is therefore a need to set up a second Panel of seven members (again including at least one member of the Executive and with distinct membership) to deal with this element.

7. Based upon current political groupings, a seven member Panel would have pro rata membership as follows:

Conservative: 4
Loughton Residents: 2
Liberal Democrats: 1

8. The Council are requested to make those appointments at this meeting and to make appointments to the positions of Chairman and Vice Chairman of each Panel.

9. The restructuring of the Council below the Chief Officer level is a matter for the Head of the Paid Service to determine.

OFFICER EMPLOYMENT PROCEDURE RULES

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OFFICER EMPLOYMENT PROCEDURE RULES

A. DEFINITIONS AND RESPONSIBILITIES

1. Definitions

In these rules:

- (a) "the 1989 Act" means the Local Government and Housing Act 1989;
- (b) "the 2000 Act" means the local Government Act 2000;
- (c) "*the 2011 Act*" means *the Localism Act 2011(b)*;
- (d) "*chief financial officer*", "disciplinary action", "*head of the authority's paid service*" and "*monitoring officer*" have the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;
- (e) "Chief Executive" means the most senior officer of the Council in terms of managerial status and may include any person designated as Head of Paid Service pursuant to s4 of the Local Government and Housing Act 1989 and Deputy Chief Executive shall be construed accordingly;
- (f) "Chief Financial Officer" means the individual who has responsibility for financial administration pursuant to and for the purposes of s151 of the Local Government Act 1972;
- (g) "Chief Officer" means
 - (i) Chief Executive, ~~Director of Communities, Director of Governance, Director of Neighbourhoods, Director of Resources;~~
 - (ii) Further for the purposes of these Rules alone the Chief Financial Officer and Monitoring Officer, Deputy Financial Officer and Deputy Monitoring Officer are included within the definition of Chief Officer;
 - (iii) Further this definition will also include any post which is subsequently created to these Rules and whose terms of appointment expressly state that these Rules will apply as if to a Chief Officer.
- (h) "Executive" and "Executive Leader" have the same meaning as in Part 1A of the 2000 Act;
- (i) "Member of Staff" means a person appointed to or holding a paid office or employment under the authority;
- (j) "Pro Rata Rules" mean the principles set out in s15 of the 1989 Act;
- (k) "Proper Officer" means an officer appointed by the authority for the purposes of the relevant provisions in these Rules;
- (l) "The Rules" means the Officers Employment Rules;
- (m) "independent person" means a person appointed under section 28(&) of the 2011 Act;

- (n) "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;
- (o) "the Panel" means a committee appointed by the authority under the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;
- (p) "relevant meeting" means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and
- (q) "relevant officer" means the chief finance officer, head of the authority's paid service or monitoring officer as the case maybe.

2. Responsibility for Appointment, Dismissal and Disciplinary Action

- 2.1 Save as otherwise provided for by these Rules and subject to the exceptions in sub paragraphs 2.2 and 2.3 below, the 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, by the Chief Executive or by a Member of Staff nominated by him.
- 2.2 The exceptions referred to in sub paragraph 2.1 are as follows:
 - (a) the Chief Officers of the Council as defined above; and
 - (b) any person appointed in pursuance of Section 9 of the 1989 Act (assistants for political groups).
- 2.3 Nothing in paragraph 2.2 above shall prevent a person from serving as a member on any panel, committee or sub-committee established by the authority to consider an appeal by:
 - (a) another person against any decision relating to the appointment of that other person as a Member of Staff of the authority; or
 - (b) a Member of Staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that Member of Staff.

B. RECRUITMENT

3. Recruitment and Appointment – General Requirements

3.1 Declarations

- 3.1.1 The Council will draw up a statement requiring any candidate for appointment as a Member of Staff 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 Member of Staff of the Council; or of the partner of such persons.
- 3.1.2 No candidate so related to a councillor or a Member of Staff will be appointed without the authority of the relevant Chief Officer of the service to which that candidate has applied or a Member of Staff nominated by him/her for this purpose.

3.2 Seeking Support for Appointment

- 3.2.1 The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council.
- 3.2.2 No councillor will seek support for any person for any appointment with the Council.
- 3.2.3 The Council will disqualify any applicant who directly or indirectly seeks the support of any Member of Staff for any appointment with the Council save where the applicant is an existing Member of Staff and seeks a reference from another Member of Staff in support of such application.
- 3.2.4 The content of Rule 3.2 shall be included in any recruitment information.

4. Recruitment of Chief Officers

- 4.1 Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing Members of Staff, the Council will:
 - (a) Draw up a statement specifying (i) the duties of the Chief Officer role concerned; and (ii) any qualifications or qualities to be sought in the person to be appointed;
 - (b) 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
 - (c) Make arrangements for a copy of the statement mentioned in Rule 4.1 (a) to be sent to any person on request.

5. Appointment of Chief Executive

- 5.1 The full Council will approve the appointment of the Chief Executive following the recommendation of such an appointment by a panel of seven councillors allocated between political groups in accordance with the Pro Rata Rules who will interview applicants for this position. Such a panel shall include at least one Executive member.
- 5.2 All councillors appointed to such a panel is required to have undertaken recruitment and selection training before taking part in interviews.
- 5.3 The appointment panel will not seek the approval of the full council for the proposed appointment until it has complied with the procedure at Rule 8 below.

6. Appointment of other Chief Officers.

- 6.1 A panel of not less than seven councillors allocated between political groups in accordance with the Pro Rata Rules will interview and, where authorised following the procedure referred to in Rule 8, appoint to these positions. Such a panel shall include at least one Executive member.
- 6.2 All councillors appointed to such a panel are required to have undertaken recruitment and selection training before taking part in interviews.

7. Appointments of Assistants to Political Groups

- 7.1 Appointments of assistants to a political group shall be made in accordance with the wishes of that political group.

8. Objection by the Executive – Appointment of Chief Officers

- 8.1 In relation to any proposed appointment for any Chief Officer post an offer of appointment should not be made until the Proper Officer has been notified of the name of the person that is proposed is to be offered such position and any other particulars which are considered to be relevant to the appointment and the Proper Officer has notified every member of the Executive of the authority of:

(a) the name of the person to whom it is proposed to make the offer;

(b) any other particulars relevant to the appointment which have been 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

- 8.2 Upon such notification having been made then the appointment will only be offered if:

(a) the Executive Leader has, within the period specified above notified the appropriate appointment panel or individual 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 appropriate appointment panel, that no objection was received by him within that period from the Executive Leader; or

(c) the relevant appointment panel is satisfied that any objection received from the Executive Leader within that period is not material or is not well founded.

C. DISCIPLINARY ACTION

9. Disciplinary Action

9.1 Suspension

- 9.1.1 Any Chief Officer may be suspended whilst an investigation takes place into alleged misconduct.

- 9.1.2 The Chief Executive, in consultation with the Monitoring Officer and the Chief Financial Officer as appropriate, shall have delegated authority to suspend a Chief Officer where, in his/her opinion the presence at work of the Chief Officer concerned could compromise an investigation of any alleged misconduct, for a maximum period of 10 working days. Any decision to suspend any Chief Officer for a longer period shall be taken by a Panel of councillors comprising not less than seven Councillors allocated between political groups in accordance with the pro rata rules and convened within the 10 day period of the temporary suspension.

- 9.1.3 The Leader of the Council, in consultation with the Monitoring Officer and the Chief Financial Officer, shall have delegated authority to suspend the Chief Executive for a maximum period of 10 working days where, in his/her opinion the presence at work of the Chief Executive could compromise the investigation of any alleged

misconduct. Any decision to suspend the Chief Executive for a period of more than 10 working days up to a maximum of 2 months shall be made by a Panel of not less than 7 Councillors allocated between political groups in accordance with pro rata rules.

9.1.4 Any assistant to a political group may be suspended by the leader of that political group.

9.1.5 Any suspension will be on full pay and for a period of not more than two months and shall be kept under constant review.

9.2 Dismissal

9.2.1 A relevant officer may not be dismissed by an authority unless the procedure set out in paragraphs 9.2.1 (i) – (vi) is complied with.

- (i) The Council will invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two independent persons to the Panel.
- (ii) “Relevant independent person” means any independent person who has been appointed by the Council or, where there are fewer than this, such independent persons as have been appointed by another authority or authorities as the Council considers appropriate.
- (iii) Subject to 9.2.1 (iv) the Council must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance 9.2.1 (i) in accordance with the following priority order;-
 - (a) a relevant independent person who has been appointed by the Council and who is a local government elector;
 - (b) any other relevant independent person who has been appointed by the Council;
 - (c) a relevant independent person who has been appointed by another authority or authorities.
- (iv) The Council is not required to appoint more than two relevant independent persons in accordance with paragraph (iii) but could if it wished.
- (v) The Council must appoint any Panel at least 20 working days before the relevant meeting.
- (vi) 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.

9.3 Councillors

9.3.1 Councillors will not be involved in the disciplinary action against any member

of staff below Chief Officer level, (except relevant officers referred to in paragraph 1(q)) except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the Council's disciplinary, capability and related procedures, as adopted from time to time or as otherwise provided for by these Rules.

9.3.2 Other Councillors may participate in such proceedings where there is a right of appeal to members in respect of disciplinary action.

10. Disciplinary Panels

10.1 Disciplinary Action short of dismissal in respect of the Chief Executive, Monitoring Officer and Chief Financial Officer may be made by a Committee comprising not less than seven councillors allocated between political groups in accordance with the Pro Rata Rules and including at least one member of the Executive to consider the report on any disciplinary matters.

10.2 The full Council will approve the dismissal of the Chief Executive, Monitoring Officer and Chief Financial Officer following the recommendation of such a dismissal by the Panel referred to in 9.2.1 and Committee referred to in 10.1 provided that

(i) such dismissal is in accordance with any recommendation made in the report produced by the Panel referred to in paragraph 9.2.1 above;

and

(ii) the procedure referred to in paragraph 11 below has been complied with.

10.3 Disciplinary Action, including dismissal, in respect of any individuals in the positions of Chief Officers, other than the Chief Executive, Monitoring Officer and Chief Financial Officer, may be taken by a panel of seven councillors allocated between political groups in accordance with the Pro Rata Rules including at least one member of the Executive and provided that the procedure referred to in paragraph 11 below has been complied with.

10.4 Disciplinary Action, including dismissal, in respect of any assistants to political groups, may be taken by a panel made up of not less than three councillors from that political group (unless there are less than three councillors affiliated to that party when the panel should be made up of all councillors affiliated to that party).

11. Objection by the Executive - Dismissal

11.1 In relation to any proposed dismissal of an individual in a Chief Officer post notice of dismissal should not be given until the Proper Officer has been notified of the name of the person that is proposed is to be dismissed and the reasons for the proposed dismissal and the Proper Officer has notified every member of the executive of the authority of:

(a) the name of the person it is proposed to dismiss;

(b) the reasons for the proposed dismissal;

(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.

11.2 No notice of dismissal or recommendation for dismissal as the case may be shall be given until either -

(a) the Executive Leader has, within the period specified above notified the panel proposing to dismiss that neither he nor any other member of the Executive has any objection to the proposed dismissal;

(b) the Proper Officer has notified the panel that no objection was received by him within that period from the Executive Leader; or

(c) the relevant panel is satisfied that any objection received from the Executive Leader within that period is not material or is not well founded.

12. Redundancy Procedures

12.1 The Epping Forest District Council Redundancy and Redeployment Policy and Procedure does not apply to Chief Officers. However the principles referred to within that policy will be adhered to so far as is appropriate when considering a potential redundancy situation affecting any individuals who hold any of the above posts and whether to dismiss any such person. The Epping Forest District Council Policy for Redundancy and/or Early Retirement shall apply in full to Chief Officers.

12.2 A panel of members comprising not less than seven councillors allocated between political groups in accordance with Pro Rata Rules including at least one member of the Executive will consider whether any persons holding any post referred to in 12.1 above shall be made redundant when it appears there is a need to consider such matters (“the Redundancy Panel”).

12.3 The Redundancy Panel will, in addition to any other steps that appear to them to be appropriate as referred to in the Redundancy and Redeployment Procedure, be responsible to ensure that:

(a) any individuals that may be affected by any decisions relating to redundancy are informed at an early stage of the fact that they may so be affected and the reasons for this. Thereafter any such individuals should be kept informed of relevant information pertaining to the redundancy decision making process as it continues.

(b) individuals are meaningfully consulted during the redundancy process and, in particular, sufficient information is given to them such as to enable them to understand why such redundancies are being considered and an opportunity is given to those individuals to comment on such information and make alternative proposals with a view to avoiding redundancy.

(c) that consideration is given to whether any alternative positions may be available to the affected individuals.

The Redundancy Panel shall ensure that notification is given to the Executive of any proposed decision to dismiss by reason of redundancy in accordance with paragraph 11 above. Such notification is to be made before the Redundancy Panel notifies the individual concerned that it is proposed to recommend to the Council to make that individual redundant in accordance with paragraph 12.5 below.

12.4 If the Redundancy Panel decides that a notice of redundancy should be issued to any individual then it should inform the individual concerned of its intention to recommend the Council to do so and inform that individual that they have a right to appeal and the Panel should set a reasonable period for the individual to make such an appeal.

- 12.5 If the individual does not appeal within the set timescale then the full Council will approve the dismissal of the individual concerned following the recommendation of the Redundancy Panel.
- 12.6 If the individual does appeal within the set timescale then a Redundancy Appeal Panel will be appointed which will consist of not less than seven councillors, drawn from political groups in accordance with Pro Rata Rules and including at least one member of the Executive, who will hear and adjudicate upon the appeal.
- 12.7 If the appeal is dismissed then the full Council will approve the dismissal of the individual concerned following the recommendation of the Redundancy Appeal Panel.