



## GOVERNANCE COMMITTEE

30<sup>th</sup> August 2017

### Subject Heading:

1. Amendments to the Chief Officer Appointments Process to reflect non-permanent appointments.
2. Amendments to the process for making appointments to Chief Officer posts as a consequence of a senior management restructure or realignment
3. Proposed change of terminology

### SLT Lead:

**Andrew Blake Herbert, Chief Executive and Head of Paid Service**

### Report Author and contact details:

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### Policy context:

***The Councils Constitution sets out in Part 3: Responsibility for Functions, Section 1.2: Functions delegated to general council committees, that the Appointments Sub-Committee will appoint senior officers i.e. Director, Assistant Director and Head of Service (where reporting directly to the Director). However, there is no reference made regarding where the responsibility lies for senior officer appointments made on a temporary basis (i.e. interim, temporary or fixed term) either to cover a permanent post or for an appointment to a temporary/fixed term post at this level.***

### Financial summary:

There are no financial implications arising from these proposed changes to procedures. However implementation of them may have financial implications which should be fully assessed prior to any decision being taken.

**The subject matter of this report deals with the following Council Objectives**

Havinging will be clean and its environment will be cared for	<input type="checkbox"/>
People will be safe, in their homes and in the community	<input type="checkbox"/>
Residents will be proud to live in Havering	<input checked="" type="checkbox"/>

**SUMMARY**

Responsibility for the permanent appointment of senior officers that fall under the JNC for Chief Officers' term and conditions of employment (i.e. Directors, Assistant Directors and Heads of Service) is delegated to the Appointment Sub-Committee under the Councils Constitution – Part 3 – Responsibility for Functions, Section 1.2 – Functions delegated to general council committees.

However, the Constitution is silent on where responsibility lay for non-permanent appointments (i.e. interim, temporary or fixed term) to these posts. Following the recent changes to the reformed intermediaries legislation (known as IR35) it became necessary to cover two key senior posts at very short notice on a fixed term contract basis. Due to the urgency of the situation, the Chief Executive sought the permission of the Appointment Sub-Committee members to make these fixed term appointments (of 12 months) without the need for an Appointment Sub-Committee Panel.

No objections to this proposal were received from members, so the two fixed term appointments (of 12 months) were made to the Head of Communications and Section 151 Officer posts.

It is recognised that there may be occasions in the future where non-permanent appointments to this level of post may be necessary. Therefore, Part 3, Section 1.2 of the Councils Constitution should be amended to clarify the responsibility for non-permanent appointments.

In addition, it is proposed that the process for making appointments to Chief Officer posts as a consequence of a senior management restructure or realignment is reviewed and amended to ensure that it remains fit for purpose.

Finally, it is proposed that the terminology used in Part 3, Section 1.2 of the Council's Constitution is simplified and standardised so that job titles such as Director, Assistant Director and Head of Service are replaced with the generic terms of Chief/Deputy Chief Officer and/or officers that fall under the JNC for Chief Officers term and conditions of employment. This will result in fewer amendments as a result of job tittle changes in the future.

## RECOMMENDATIONS

That Members:

1. Agree to the proposals set out in paragraphs 7-9 of this report for non-permanent appointments to senior posts that fall under the JNC for Chief Officers' term and conditions of employment. The proposed changes to the Staff Employment Procedure Rules are shown as track changes in the document attached as Appendix 1.
2. Agree to the changes proposed set out in paragraphs 12-15 of this report to the process for making appointments to Chief Officer posts as a consequence of a senior management restructure or realignment and that the policy set out in Appendix 2 is amended as appropriate.
3. Agree to the amendment in terminology used in Part 3, Section 1.2 of the Councils Constitution and the Staff Employment Procedure Rules in Part 4 of the Constitution to replace job titles such as Director, Assistant Director and Head of Service with the generic terms of Chief/Deputy Chief Officer and/or officers that fall under the JNC for Chief Officers terms and conditions of employment as shown in track changes in the documents attached as Appendix 1.
4. Agree that the constitutional changes in recommendations 1 and 3 above be reported to Council for final agreement and for the authority to be given to the Monitoring Officer to make those changes to the Constitution.

## REPORT DETAIL

- 1. Amendments to the Chief Officer appointments process to reflect non-permanent appointments**
2. The Council's Constitution sets out in Part 3: Responsibility for Functions, Section 1.2: Functions delegated to general council committees that the Appointments Sub-Committee will appoint senior officers, including Chief Officers and Deputy Chief Officers. The processes are set out in further detail in the Staff Employment Procedure Rules in Part 4 of the Constitution.
3. However, there is no reference made regarding responsibility for non-permanent appointments (i.e. interim, temporary or fixed term) to these senior posts.
4. As a result of the recent changes to the reformed intermediaries legislation (known as IR35) which came into force in the public sector on the 6<sup>th</sup> April 2017, it became necessary to take urgent action in respect of two key

senior posts – the Head of Communications and the Section 151 Officer posts, both of which were being covered by interim arrangements.

5. In order to comply with the IR35 legislation at short notice and to ensure that both critical posts remained covered, it became necessary to offer fixed term contracts to both of the current interims.
6. No objections to this proposal were received from members, so the two fixed term appointments (of 12 months) were made to the Head of Communications and Section 151 Officer posts.
7. It is recognised that there may be occasions in the future where non-permanent appointments to this level of post may be necessary. Therefore, Part 3, Section 1.2 of the Councils Constitution should be amended to clarify the responsibility for non-permanent appointments
8. It is proposed that the Staff Employment Procedure Rules should be amended to reflect the following:
9. Responsibility for the appointment of Chief Officers on a temporary basis (including 'Acting Up' or 'Secondment' arrangements), covering either a permanent or temporary post for a period of **up to a maximum of 12 months** is delegated to the Head of Paid Service. Any extension to the temporary arrangement beyond the initial 12 month period will require the approval of the Appointment Sub-Committee and in the case of temporary/fixed term employment contracts this will be limited to a further maximum period of 6 months.
10. Responsibility for the appointment of Chief Officers on a temporary basis (including 'Acting Up' or 'Secondment' arrangements), covering either a permanent or temporary post for a period of **more than 12 months** will be a matter for the Appointment Sub-Committee.
- 11. Amendments to the process for making appointments to Chief Officer posts as a consequence of a senior management restructure or realignment.**
12. At the meeting of the Appointments Committee on 20<sup>th</sup> May 2008, and as a precursor to the Senior Management Realignment in that year, members approved a report on the process for making appointments to Chief Officer posts as a consequence of a senior management realignment (extract from that report attached at Appendix 2).
13. As this process was agreed by members some 9 years ago, it has been reviewed to ensure that it remains fit for purpose and the following amendments are proposed:
14. Voluntary Redundancy – that requests for voluntary redundancy made by Chief Officers are considered and approved by the Head of Paid Service

after consultation with the Director of HR&OD and Director of Legal or their designated officers.

15. Assimilation Process – clarification that in circumstances where assimilation is uncontested (i.e. there are sufficient suitable alternative posts for displaced Chief Officers), decisions relating to the appointment of Chief Officers are delegated to the Head of Paid Service after consultation with the Director of HR&OD or their designated officer. This is because the Council is required to offer a displaced Chief Officer any suitable alternative employment that may be available or which may become available as a consequence of any re-organisation giving rise to the abolition of the chief officers post.
16. Assimilation Process – in circumstances where assimilation is contested (i.e. there are insufficient suitable alternative posts for displaced Chief Officers), the decision relating to whether a one or two stage appointment process is required is delegated to the Head of Paid Service after consultation with the Director of HR&OD or their designated officer. All decisions on final appointments in these circumstances will be made by the Appointment Sub-Committee.
17. Redeployment – in circumstances where the Director of HR&OD (or other designated officer) has formed the view that suitable alternative employment may be available, the decision relating to whether a one or two stage appointment process is required is delegated to the Head of Paid Service after consultation with the Director of HR&OD or their designated officer. All decisions on final appointments in these circumstances will be made by the Appointment Sub-Committee. Appointments in these circumstances will be subject to a 28 day trial period as required in law.

#### **18. Proposed change of terminology**

19. It is proposed that the terminology used in the Terms of Reference to this Committee and the Staff Employment Procedure Rules of the Council's Constitution are simplified and standardised so that job titles such as Director, Assistant Director and Head of Service are replaced with the generic terms of 'Chief/Deputy Chief Officer and/or officers that fall under the JNC for Chief Officers terms and conditions of employment'. This will result in fewer amendments as a result of any job title changes in the future.

### **IMPLICATIONS AND RISKS**

#### **Financial implications and risks:**

There are no financial implications or risks arising from these proposed changes to procedures. However it is noted that the implementation of these proposals (i.e.

appointment of senior officers/approval of voluntary redundancies) will have financial implications. The financial implications of individual decisions should be assessed on a case by case and raised through the appropriate channels. Funding should be confirmed prior to any decision being implemented.

**Legal implications and risks:**

With regards the proposed changes to the process for making appointments to Chief Officer posts as a consequence of a senior management restructure or realignment, the Council must comply with all legal requirements and conditions of service currently in force when considering assimilations and potential redundancies. Failure to do so may lead to an Employment Tribunal complaint as well as significantly increasing the risk that an Employment Tribunal will make an adverse finding against the Council, resulting in additional expenditure.

The Local Authorities (Standing Orders) (England) Regulations 2001 as amended (2015) provide for different appointment and dismissal arrangements in relation to senior officer posts; the Head of Paid Service, Statutory Chief Officers ( e.g. Children and Adult services Directors), non Statutory Chief Officers (officers reporting to the Head of Paid Service) Deputy Chief Officers (reporting directly to a Chief Officer) and officers directly accountable to the Council or its Committees. Those arrangements are reflected in the Staff Employment Procedure Rules. The JNC terms and conditions of employment for Chief Officers only applies to this group of officers and accordingly the change to the terminology in the Rules will avoid amendments where job titles of senior staff are changed. It is advised that the proposed amendments in relation to non-permanent appointments of senior officers provide useful clarity on the process to be applied.

**Human Resources implications and risks:**

The implications for individual employees are set out in the body of this report. The decision has no human resource implications for the wider workforce nor for the Council as a whole.

**Equalities implications and risks:**

The process adopted for selecting chief officers for appointment or for redundancy must be applied in a consistent and non-discriminatory basis and must be free from any unlawful bias on the founs of gender, race, disability, age or other protected characteristic or material factor set out in the relevant employment and equalities legislation.

**BACKGROUND PAPERS**

**None**