

## GOVERNANCE COMMITTEE

<b>Subject Heading:</b>	<b>Staff Employment Procedure Rules</b>
<b>SLT Lead:</b>	<b>Andrew Blake-Herbert,</b> Chief Executive
<b>Report Author and contact details:</b>	<b>John William Jones,</b> Deputy Director of Legal and Governance and Monitoring Officer
<b>Policy context:</b>	<b>Governance</b>
<b>Financial summary:</b>	<b>None</b>

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

Communities making Havering	[]
Places making Havering	[]
Opportunities making Havering	[]
Connections making Havering	[]

### SUMMARY

This report seeks approval for proposed changes to Part 5 of the Constitution which contains the Staff Employment Procedure Rules (the Rules). The changes update, improve and recast generally the Rules.

## **RECOMMENDATIONS**

That the Committee:

1. consider and comment on the draft Rules attached at **Appendix 2**;
2. decide which, if any, of the deputy chief officer posts set out in **Appendix 3** should be delegated to officers to appoint to;
3. decide if the decision to take disciplinary action against or dismiss deputy chief officers should be delegated to officers; and
4. recommend to Council that the draft Rules (whether as proposed or as amended by the Committee) be approved and that the Monitoring Officer be authorised to update the Constitution and make consequential changes.

## **REPORT DETAIL**

### **1. Background**

- 1.1 All local authorities are required by law to incorporate into their constitutions, as standing orders, rules relating to the employment of officers. These rules include the appointment, the taking of disciplinary action and dismissal of officers and are currently found in the Local Authorities (Standing Orders) Regulations 1993 as amended and the Local Authorities (Standing Orders) (England) Regulations 2001 as amended (the Regulations). Whilst the Regulations impose on local authorities certain mandatory rules, there is freedom and flexibility for local authorities to otherwise adopt their own procedures.
- 1.2 In summary, the Regulations set out the following:
  - 1.2.1 The appointment of the Chief Executive (as Head of Paid Service) is a decision that must be approved by full Council;
  - 1.2.2 The appointment of other chief officers or deputy chief officers may be Member (sitting as a committee) or officer level decisions;
  - 1.2.3 Disciplinary action and dismissal of chief officers and deputy chief officers may be Member (sitting as a committee) or officer level decisions;

- 1.2.4 Specific rules for taking disciplinary action against or the dismissal of the Head of Paid Service (Chief Executive), Chief Finance Officer (Chief Operating Officer) and Monitoring Officer (Deputy Director of Legal and Governance);
- 1.2.5 Specific rules for the appointment of political assistants;
- 1.2.6 Proposals to appoint, take disciplinary action or dismiss chief officers or deputy chief officers are subject to a process whereby Cabinet Members may object. If there is an objection, the decision maker must consider the objection and can only proceed if the objection is not material or well founded.
- 1.2.7 All matters relating to the employment of officers below deputy chief officers, are the responsibility of the Chief Executive (as Head of Paid Service).
- 1.3 Chief officers include statutory director posts and those reporting to the Chief Executive. Deputy chief officers are those reporting to chief officers. Clerical staff are excluded from these definitions.
- 1.4 At its meeting on 8 January 2020, the Committee deferred consideration of the proposals set out in this report and requested that the changes between the current and proposed Rules be spelt out and reasons be given for any substantive changes.
- 1.5 The Rules have been recast i.e. the current and proposed versions are two completely different documents as opposed to being two versions of the same document. Therefore, although using the 'Track Changes' or 'Compare' functions in Word would not be helpful, the changes have been tracked and explained below.

## **2. Key Considerations and Proposals**

- 2.1 As well as updating the current Rules attached at **Appendix 1** by removing references to obsolete job titles and generally improving the wording and formatting of the text, the draft Rules attached at **Appendix 2**, if approved, will have the following key effects:
  - 2.1.1 Members will continue to be responsible for appointing all chief officers (i.e. members of the Senior Leadership Team; the Monitoring Officer and the Director of Public Health) (see Table 1 below);
  - 2.1.2 Members will also continue to be responsible for appointing deputy chief officers graded at G15 or above (see Table 1 below);
  - 2.1.3 Members will no longer be responsible for appointing deputy chief officers graded below G15 (see **Appendix 3** for an up to date list of such posts which is likely to vary from time to time). The draft Rules seek to take a more nuanced approach to the appointment

of deputy chief officers and draw a distinction based on pay grades. Therefore they take into account factors such as the seniority and role of the officer, the nature and importance of the responsibilities exercised as well as other relevant factors. This would mean that Members are responsible for appointing the top two tiers of officers which is considered to be more appropriate both in terms of the level of Member involvement and the number of posts concerned. Greater delegation of appointment decisions would result in more cost effective and efficient appointment decision making processes. Ultimately, however, it is for Members to decide if the dividing line for Member and officer decision-making in respect of deputy chief officers should be adjusted and, if so, whether it should be adjusted in line with the proposals in this report;

- 2.1.4 The Chief Executive (or his/her nominee) will be responsible for the appointment of deputy chief officers graded below G15 (see **Appendix 3**);
- 2.1.5 The Chief Executive (or his/her nominee) will be responsible for interim, temporary or fixed term appointments but subject to the requirements and limits specified (see paragraphs 2.17-2.20 of the draft Rules). The current Rules do not incorporate the officer delegated authority granted by the Committee on 30 August 2017 to make temporary appointments. Currently, authority is directly conferred upon the Chief Executive only to make temporary chief officer and deputy chief officer appointments for up to 12 months. An extension has to be agreed by the Appointments Sub-Committee and cannot extend beyond a further 6 months. It is proposed to incorporate these delegations into the draft Rules (see **Appendix 2**) but subject to the following changes: para. 2.17 (Deputy Chief Officers) – directly confer authority upon the relevant chief officer as well as the Chief Executive and remove the limit of 12 months; and para. 2.18 – the limit on the ability of the Appointments Sub-Committee to extend temporary appointments is not mentioned because in practice, this is for decision on a case by case basis. Also, the duty to notify Members of temporary chief officer appointments and timescales for a permanent appointment is a new and additional safeguard.
- 2.1.6 Members will be responsible for the dismissal or the taking of disciplinary action against the Chief Executive or a chief officer only. Currently, Members are also responsible for the dismissal or the taking of disciplinary action against deputy chief officers too.
- 2.1.7 Confirm, in accordance with HR Policies and Procedures and employment law, that an officer assessed as having 'direct non-competitive assimilation to a post' (see para. 2.10) does not need to be appointed by Members. This covers circumstances where, in

the event of a re-structure, assimilation is uncontested (i.e. there are sufficient suitable alternative posts for displaced officers). In these circumstances, the Council is required to offer a displaced 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 officer's post.

2.1.8 The Chief Executive may make minor changes to the Rules (see para. 1.3).

2.2 The following table sets out the chief officer and deputy chief officer posts which, under the revised Rules, Members would be responsible for appointing to.

**Table 1**

<b>Member chief officer/deputy chief officer appointments</b>
Chief Executive
Chief Operating Officer (Chief Finance Officer)
Monitoring Officer (Deputy Director of Legal and Governance) (this is a oneSource role)
Director of Adult Services
Director of Children's Services
Director of Regeneration Programme Delivery
Director of Housing Services
Director of Neighbourhoods
Director of Public Health
Assistant Director, Education
oneSource Executive Director and oneSource Directors (via the oneSource Joint Committee)

2.3 The following table seeks to compare the current (see **Appendix 1**) and proposed (see **Appendix 2**) versions of the Rules:

<b>Current Rules</b>	<b>Comments (para. numbers are to the draft Rules – see Appendix 2)</b>
Para. 1 (Seeking support for appointment)	Replaced by para. 2.3 & 2.4
Para. 2 (Declarations)	Replaced and amended by para. 2.1 and 2.2
Para. 3 (Recruitment)	Replaced by para. 2.5
Para. 4 (Appointment of Head of Paid Service)	Replaced by para.2.6
Para. 5 (Appointment of Deputy Chief Executives, Chief Finance	Replaced and amended by para. 2.9 (noting, in particular, the

Officer, Monitoring Officer, Assistant/Deputy Directors and Heads of Service	exclusion of deputy chief officers at G14 or below), 2.11, 2.12, 2.15 and Appendix 1
Para. 6 (Appointment of Director of Public Health)	Replaced by para. 2.13
Para. 7 (Appointment of oneSource Directors)	Replaced by para. by 1.2.1
Para.8 (Assistants to political groups)	Replaced by para. 2.16
Para. 9 (Disciplinary action)	Replaced by para. 3.5
Para.10 (Suspension)	Replaced and amended by para. 3.4. The decision to suspend rests with the Committee only
Para.11 (Independent person)	Replaced by para. 3.5 and 3.3
Para.12 (Dismissal)	Replaced by para. 3.3
Para.13 (Role of the Cabinet)	Replaced by para. 4 – see definition of “Committee”
Para.14 (Appointment process)	Replaced by para. 2.12 and Appendix 1
Para.15 (Dismissal process)	Replaced by para. 3.7 and Appendix 1
Para.16 (Dismissal of Head of Paid Service, Chief Finance Officer and Monitoring Officer)	Replaced by para.3.5
Para.17 (Independent Persons)	Replaced by para. 3.5 (as necessary)
Para.18 (Appointment of Panel)	Replaced by para. 3.6
Para.19 (Determination of Proposal to Dismiss)	Replaced by para. 3.5
Para.20 (Remuneration of Independent Persons)	Deleted – this is stated in the 2001 Regulations (see para. 1.1.3)
Para.21 (Capability process)	Deleted – unnecessary and/or covered by para. 1.2.2
Para.22 (Grievance process)	
Para.23 (Bullying and Harassment process)	

- 2.4 Member decision making in relation to employment matters is undertaken by the Appointments Sub-Committee. However, in relation to the oneSource Executive Director and oneSource Directors, decision making at Member level is via the oneSource Joint Committee.
- 2.5 The Committee is asked to recommend to Council that the draft Rules be approved (whether as proposed or as amended by Members) and that the Monitoring Officer be authorised to update the Constitution and make consequential changes.

<b>IMPLICATIONS AND RISKS</b>
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**Financial implications and risks:**

None in relation to this report.

**Legal implications and risks:**

These are incorporated into the report.

**Human Resources implications and risks:**

These are incorporated into the report.

**Equalities implications and risks:**

Under section 149 of the Equality Act 2010, the Council has a duty when exercising its functions to have “due regard” to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

“Due regard” is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the council is properly aware of the effects and has taken them into account, the duty is discharged.

There are no direct equality implications resulting from the proposed changes to the Rules but the Council’s policies, procedures and practices are designed to achieve equality of treatment and a level playing field.

**Background Papers**

None.