



GOVERNANCE COMMITTEE

Subject Heading:

SLT Lead:

Report Author and Contact Details:

Policy Context:

Financial Summary:

Staff Employment Procedure Rules

Andrew Blake-Herbert

Chief Executive

Ben Plant

Director of HR and Organisational
Development

ben.plant@onesource.co.uk

Looqman Desai

Interim Principal and Corporate
Governance Lawyer

looqman.desai@onesource.co.uk

Governance

None

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 of proposed changes to Part 5 of the Constitution, which contains the Staff Employment Procedure Rules (“the Rules”). The proposed changes are designed to update and generally improve the Rules.

RECOMMENDATIONS

That the Committee:

1. consider and comment on the proposed Rules attached at **Appendix B**
2. decide which Deputy Chief Officer posts should be appointed to by members and which, if any, should be appointed to by officers (four options are presented at **Appendix C**)
3. decide if the decision to take disciplinary action against or dismiss Deputy Chief Officers should be made by members or delegated to officers
4. recommend to Council that the proposed Rules (whether as they are set out at **Appendix B** or as amended by the Committee) be approved and that the Monitoring Officer be authorised to update the Constitution and make all necessary 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 against, and the 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”). While the Regulations impose certain mandatory rules on local authorities, there is freedom and flexibility for local authorities to otherwise adopt their own procedures.
- 1.2 In summary, the Regulations set out the following requirements:
 - 1.2.1 the appointment of the Chief Executive (as the Head of Paid Service) is a decision that must be approved by Full Council
 - 1.2.2 the appointment of other Chief Officers and Deputy Chief Officers may be decisions for members (sitting as a committee) or officers
 - 1.2.3 disciplinary action against and dismissal of Chief Officers and Deputy Chief Officers may be decisions for members (sitting as a committee) or officers

Governance Committee, 13 January 2021

- 1.2.4 specific rules apply to the taking of disciplinary action against and the dismissal of the Head of Paid Service, the Chief Financial Officer (ie. s151 officer) and the Monitoring Officer
 - 1.2.5 specific rules apply to the appointment of political assistants
 - 1.2.6 proposals to appoint, take disciplinary action against, or dismiss Chief Officers or Deputy Chief Officers are subject to a process whereby Cabinet Members may object; if an objection is received, the decision-maker must consider the objection and can only proceed if the objection is not material or well-founded
 - 1.2.7 all decisions relating to the employment of officers below the level of Deputy Chief Officer are the responsibility of the Chief Executive as the Head of Paid Service
- 1.3 Chief Officers include statutory officers and those reporting directly to the Chief Executive. Deputy Chief Officers are those reporting into Chief Officers. Administrative 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 with reasons provided for any substantive change.
 - 1.5 The Rules have been recast, which is to say the current and proposed versions are two different documents. For this reason, it is not possible to use the “track changes” functionality in Word to highlight the differences. However, the changes are explained in detail at 2.9 below.

2 Key Considerations and Proposals

- 2.1 The current Rules are attached at **Appendix A**. The proposed Rules are attached at **Appendix B**. The Rules have been rewritten to improve the wording and formatting of the text, to remove obsolete job titles, and to provide greater clarity. If these new Rules are approved, they will have the following effects:
 - 2.1.1 Members will continue to be responsible for appointing all Chief Officers. In practice, this is the following roles in the senior management structure:
 - Chief Executive
 - Chief Operating Officer (Chief Financial Officer, ie. s151 officer)
 - Deputy Director of Legal and Governance Services (Monitoring Officer; appointment is made via the oneSource Joint Committee)
 - Director of Adult Services
 - Director of Children’s Services
 - Director of Regeneration Programmes

Governance Committee, 13 January 2021

- Director of Housing Services
- Director of Neighbourhoods
- Director of Public Health
- Executive Director of oneSource (appointment is made via the oneSource Joint Committee)

- 2.1.2 Members will be responsible for appointing whichever Deputy Chief Officer roles it is decided by the Committee should be subject to member appointment. This provision is addressed further at 2.3 – 2.5 below.
- 2.1.3 The Chief Executive (or his/her nominee) will be responsible for interim, temporary or fixed-term appointments to Chief Officer and Deputy Chief Officer roles, subject to the requirements and limits specified in paragraphs 2.17 – 2.20 of the proposed Rules. This is a new provision as the current Rules do not incorporate the delegated authority to make such appointments that was agreed by the Committee on 30 August 2017. In addition, the proposed Rules: explicitly confer this authority upon the relevant Chief Officer in the case of temporary appointments to Deputy Chief Officer roles; require the Chief Executive, upon making a temporary appointment, to notify the Appointments Sub-Committee in writing of the timescales for making a permanent appointment; and, in cases where it is proposed to extend a temporary appointment beyond one year, require approval of the extension from the Appointments Sub-Committee.
- 2.1.4 Members will be responsible for taking disciplinary action against the Chief Executive or a Chief Officer only. Currently, members are also responsible for taking disciplinary action against and dismissal of Deputy Chief Officers. This provision is addressed further at 2.6 – 2.8 below.
- 2.1.5 In accordance with the Council's HR policies and employment law, any Chief Officer or Deputy Chief Officer assessed as having "direct non-competitive assimilation into a post" does not need to be appointed by members (see para. 2.10 of the proposed Rules at Appendix B). This covers circumstances where an officer is at risk of redundancy, a new or vacant post provides suitable alternative employment, and assimilation into the role is uncontested.
- 2.1.6 The Chief Executive may make minor changes to the Rules to ensure they remain accurate and up to date – for example, by updating job titles or grades to reflect changes to the Council's management structure as and when they occur.
- 2.2 Under the proposed Rules, member decision-making in relation to employment matters will continue to be the responsibility of the Appointments Sub-Committee, other than in the case of the Executive Director of oneSource and the oneSource Directors, where member decision-making will continue to be via the oneSource Joint Committee.

Governance Committee, 13 January 2021

Appointments to Deputy Chief Officer posts

- 2.3 A Deputy Chief Officer is any non-administrative role reporting into a Chief Officer. The Regulations allow appointments to these roles to be made by either members (sitting as a committee) or officers.
- 2.4 Over time, as the Council has delayed its management structure, the number of posts that are defined as a Deputy Chief Officer has grown. It is therefore appropriate for members to consider whether they wish to continue appointing to all of these roles or whether it would be preferable to delegate some of these appointments to officers. The following four options are set out at **Appendix C** for the Committee's consideration:
- Option 1: members appoint to all Deputy Chief Officer positions
 - Option 2: members appoint to all Deputy Chief Officer positions where the postholder is employed on Chief Officer terms and conditions (ie. roles graded G13 and above)
 - Option 3: members appoint to all Deputy Chief Officer positions graded G14 and above
 - Option 4: members appoint to all Deputy Chief Officer positions graded G15 and above
- 2.5 The proposed Rules will be updated to reflect the decision of the Committee prior to the Rules being put to Council for consideration.

Taking disciplinary action against and dismissing Deputy Chief Officers

- 2.6 The Regulations allow the taking of disciplinary action against and the dismissal of Deputy Chief Officers to be decisions for members (sitting as a committee) or officers.
- 2.7 The proposed Rules have been drafted to delegate responsibility for these functions to the Chief Executive as the Head of Paid Service. This drafting reflects the following factors: as the Council has delayed, the number of posts defined as a Deputy Chief Officer has grown; greater delegation of the disciplinary and dismissal process should result in faster, more efficient decision-making; and these responsibilities sit well with the Head of Paid Service given the postholder's responsibility for the management and co-ordination of the Council's employees. However, ultimately it is for members to decide if this is an appropriate and desirable delegation. Alternative options the Committee may wish to consider include:
- maintaining members' existing responsibility for taking disciplinary action against and dismissing all Deputy Chief Officers
 - aligning the responsibility for disciplinary action and dismissal with the responsibility for appointment – ie. where members make the appointment to a Deputy Chief Officer role, they also have responsibility for disciplinary action and dismissal

Governance Committee, 13 January 2021

- 2.8 Subject to the Committee's decision, the proposed Rules will be updated as required before they are put to Council for consideration.

Detailed comparison of the current and proposed Rules

- 2.9 The following table compares the current Rules at **Appendix A** with the proposed Rules at **Appendix B**.

Current Rules	Comments (para. numbers are to the draft Rules – see Appendix 2)
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 Officer, Monitoring Officer, Assistant/Deputy Directors and Heads of Service)	Replaced by para. 2.9 (subject to the Committee's consideration of the list of Deputy Chief Officers), 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
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)

Governance Committee, 13 January 2021

Current Rules	Comments (para. numbers are to the draft Rules – see Appendix 2)
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)	

IMPLICATIONS & RISKS

Financial implications and risks:

N/A

Legal implications and risks:

These are incorporated into the body of the report.

Human Resources implications and risks:

These are incorporated into the body of 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 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 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.

Governance Committee, 13 January 2021

There are no direct equality implications arising 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