

Wards: All

Officer Employment Procedure Rules

Report by the Solicitor to the Council

1.0 Summary

- 1.1 This report seeks Members approval of revised Officer Employment Procedure Rules, arising from the introduction of new legislation.

2.0 Background

- 2.1 The Local Authorities (Standing Orders) (England) (Amendments) Regulations 2015 came into force on 11th May 2015. To comply with the statutory provisions of this new legislation, it is necessary for the Councils to make amendments to their Standing Orders.
- 2.2 The Regulations simplify and localise the disciplinary process for the Statutory Officers within the Council; the Head of Paid Service (Chief Executive), the Chief Finance Officer and the Monitoring Officer.
- 2.3 The Head of Paid Service, Chief Finance Officer and Monitoring Officer have statutory responsibilities to discharge to their Councils, which they discharge in a political environment. As a result in the 2001 Regulations statutory protection was introduced, requiring the appointment of a designated independent person (DIP) to investigate any allegation of misconduct against these Officers. The recommendation of the DIP was binding upon the Council. The intention of the 2001 legislation was to ensure that the Councils' Statutory Officers could discharge their duties without any fear of being influenced by Elected Members and being dismissed without good reason.
- 2.4 In practice the appointment of the DIP was found to be expensive and complex; it placed the employer at a disadvantage as the Councils were bound by the DIP's recommendation and lost any discretion.
- 2.5 The 2015 Regulations aim to simplify, as well as localise, the disciplinary process for the Councils' Statutory Officers by removing the requirement for the DIP to be appointed. In place of the former process, a decision to dismiss a Statutory Officer will now be taken transparently by the Council.
- 2.6 Under the new 2015 Regulations when considering any misconduct and disciplinary action against a Statutory Officer, the Councils must appoint an independent panel (IP), comprising of at least 2 members, to be selected from the Councils' Independent Persons appointed for the purposes of the Members' conduct regime

and standards issues. If there are insufficient persons to form an IP, then Independent Persons from other Local Authorities will be invited to form an IP.

- 2.7 The role of the IP will be to investigate the alleged misconduct of a Statutory Officer. The IP will have access to all documents they reasonably require and are able to question any Officers and Members of the Council. The IP will prepare a report of their findings, with advice and recommendations for any action.
- 2.8 The report may initially be considered by the Joint Senior Staff Committee (JSSC), but should either the recommendation of the Panel or of the JSSC be to dismiss the Officer, then the matter must be considered transparently by a meeting of both full Councils. Such a meeting must be held within 20 working days of the IP being formed.
- 2.9 The Councils when considered whether to dismiss a Statutory Officer or not must take into account the report of the IP, their advice and recommendations and any verbal or written submissions presented by the Statutory Officer or their representative. The decision whether to dismiss such an Officer or not must be taken by both full Councils and will be decided in accordance with the Councils' usual decision making and voting procedures.

3.0 Proposals

- 3.1 Local Authorities are required to modify their Standing Orders to implement the regulations no later than the first Ordinary Meeting of the Councils after the regulations come into force.
- 3.2 Consequently, the Councils' Officer Employment Procedure Rules (which forms part of the Standing Orders within the Councils' Constitutions) have been amended to incorporate the Regulations, and can be found at Appendix 1. Further minor consequential amendments will be required to the Constitutions to reflect changes to the Articles and the terms of reference of the Staff Committees. The Monitoring Officer intends to use her existing delegated authority to make such minor consequential amendments.
- 3.3 A resolution is sought from the Councils' Joint Governance Committee for them to recommend the adoption of the amendments to the Officer Employment Procedure Rules to Adur District Council and Worthing Borough Council at their respective meetings in July 2015.

4.0 Legal

- 4.1 The Councils currently have 3 Independent Persons appointed by section 28(7) Localism Act 2011 to deal with Member Code of Conduct and Standards issues. Such Members would be invited to form an Independent Panel in line with the 2015 Regulations.
- 4.2 The Local Authorities (Standing Orders) (England) Regulations 2001 provided statutory protection against dismissal for the Head of Paid Service, Chief Finance Officer and Monitoring Officer by:
 - the appointment of the DIP,

- the requirement that the recommendation of the DIP be binding upon the Council, and
- the requirement that the dismissal of the Head of Paid Service must be approved by full Council.

- 4.3 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 continue to provide statutory protection to such Officers but also localise and simplify the process by:
- The appointment of a IP
 - The requirement that the recommendations of the IP must be taken into account
 - The requirements that the dismissal of any of the 3 Statutory Officers must be decided by full Council.

5.0 Financial implications

- 5.1 The Regulations limit the remuneration that should be paid to independent persons on the panel to the level of the remuneration which they would normally receive as an independent person in the conduct regime. This approach should ensure that the new process will not involve high costs. If the potential costs of any such dismissal cannot be funded from within existing budgets then additional resources will be requested at the appropriate time.

6.0 Recommendation

- 6.1 That the Committee recommends to Adur District Council that the revised Officer Employment Procedure Rules at Appendix 1 of this report be adopted as part of the Council's Standing Orders within its Constitution with effect from 24th July 2015.
- 6.2 That the Committee recommends to Worthing Borough Council that the revised Officer Employment Procedure Rules at Appendix 1 of the report be adopted as part of the Council's Standing Orders within its Constitution with effect from 24th July 2015.

Local Government Act 1972 Background Papers:

The Constitution of Adur District Council
The Constitution of Worthing Borough Council

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Schedule of Other Matters

1.0 Council Priority

1.1 Adaptable Councils

2.0 Specific Action Plans

2.1 The proposals are aimed at localising and simplifying the procedure for dealing with alleged misconduct and disciplinary action against the Councils' Statutory Officers.

3.0 Sustainability Issues

3.1 [Details of any sustainability issues, checklist to be completed and submitted to Community Wellbeing]

4.0 Equality Issues

4.1 No issues identified

5.0 Community Safety Issues (Section 17)

5.1 No issues identified

6.0 Human Rights Issues

6.1 No issues identified

7.0 Reputation

7.1 Dealing with disciplinary action against Statutory Officers by full Council enhances transparency and public confidence in the Councils and therefore has reputational benefits.

8.0 Consultations

8.1 Consultation with Unison has taken place.

9.0 Risk Assessment

9.1 If the Council were to fail to adopt rules incorporating this new legislation they would be in breach of the law, and at risk of an Employment Claim and Judicial Review of their procedures.

10.0 Health & Safety Issues

10.1 No issues identified

11.0 Procurement Strategy

11.1 No issues identified

12.0 Partnership Working

- 12.1 A decision to dismiss a Statutory Officer would need to be considered by both Councils, although they make their own decision independent of one another; they should not be bound nor influenced by each others decision on the proposed dismissal.

OFFICER EMPLOYMENT PROCEDURE RULES

1.0 INTRODUCTION

1.1 Definitions

In these Rules:

- 1.1.1 “The 2001 Regulations” means the Local Authorities (Standing Orders) (England) Regulations 2001; “the 2015 Regulations” means the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 1.1.2 “Appointor” means, in relation to the appointment of a person as an Officer of the Authority, the Authority or, where a Committee, Sub-Committee or Officer is discharging the function of appointment on behalf of the Authority, that Committee, Sub-Committee or Officer, as the case may be;
- 1.1.3 “Disciplinary Action” in relation to an Officer of the Council means any action occasioned by alleged misconduct which, if proven, would, according to the Council’s usual practice, be recorded on the member of staff’s personal file. This includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Authority has undertaken to renew such a contract;
- 1.1.4 “Dismissor” means, in relation to the dismissal of an Officer of the Authority, the Authority or, where a Committee, Sub-Committee or another Officer is discharging the function of dismissal on behalf of the Authority, that Committee, Sub-Committee or other Officer, as the case may be;
- 1.1.5 “Head of Paid Service” means the Officer designated under Section 4(1) of the Local Government and Housing Act 1989;
- 1.1.6 “Chief Finance Officer” means the Officer having responsibility, for the purposes of Section 151 of the Local Government Act 1972, for the administration of the Council’s financial affairs;
- 1.1.7 “Monitoring Officer” means the Officer designated under Section 5(1) of the Local Government and Housing Act 1989;
- 1.1.8 “Directors” means those Officers who shall report directly to the Chief Executive and shall have managerial responsibility for a directorate consisting of not less than 5 services;
- 1.1.9 “Statutory Chief Officer” means, for the purposes of these provisions, the Chief Finance Officer;
- 1.1.10 “Non-Statutory Chief Officer” means a person for whom the Head of Paid Service is directly responsible or a person who, with respect to all or most of the duties of their post, is required to report directly or is directly accountable to either the Head of Paid Service or to the Council itself or any Committee or

Sub-Committee of the Council; except a person whose duties are solely secretarial or clerical or are otherwise in the nature of support services;

1.1.11 “Deputy Chief Officer” means a person who, with respect to all or most of the duties of his post, is required to report directly or is directly accountable to one or more of the Statutory or Non-Statutory Chief Officers; except a person whose duties are solely secretarial or clerical or are otherwise in the nature of support services;

1.1.12 “Joint Senior Staff Committee” means a Committee set up in accordance with the Adur District Council and Worthing Borough Council Joint Committee Agreement dated 27th July 2007, as amended from time to time. For the purposes of these Procedure Rules, at least one Member of the Executive of each Council must be a Member of this Committee;

1.1.13 “Joint Senior Staff (Appeals) Committee” means a Committee set up in accordance with the Adur District Council and Worthing Borough Council Joint Committee Agreement dated 27th July 2007, as amended from time to time. For the purposes of these Procedure Rules, at least one Member of the Executive of each Council must be a Member of this Committee.

1.2 General

Other than as set out elsewhere in these Officer Employment Procedure Rules, the function of recruitment, appointment, disciplinary action and dismissal in respect of all staff other than the Head of Paid Service, the Chief Finance Officer, the Monitoring Officer and the Directors will be discharged, on behalf of the Council, by the Head of Paid Service or an Officer nominated by the Head of Paid Service. Such functions will be carried out in accordance with the Council’s Staffing Policies, as adopted from time to time.

1.3 Posts

For ease of reference, the posts which fall under the relevant definitions in these Officer Employment Procedure Rules, at the time of writing, are as follows:

Definition	Relevant Post
Head of Paid Service	Chief Executive
Statutory Chief Officer	Chief Finance Officer
Monitoring Officer	Solicitor to the Council
Non-Statutory Chief Officers	Directors Head of Communications Head of Organisational Development
Deputy Chief Officers	All staff direct reports of: Directors Chief Finance Officer Head of Communications Head of Organisational Development

2.0 RECRUITMENT

2.1 Declarations

A candidate for any employment with the Council, or a staff member involved in a transfer, promotion or disciplinary matter, shall disclose whether he/she is related to, or cohabits with, any Member or other Officer who may have an influence on the decision. Failure to make such a disclosure may result in any appointment being rescinded and, in the case of an employee, disciplinary action.

The requirements of any Code of Conduct relating to Members' interests shall apply to the appointment, transfer, promotion, discipline and other matters relating to staff.

2.2 Support for Appointment

Canvassing of any Member of the Council, or any person appointed to discharge any function in relation to a Committee or Officer of the Council shall disqualify the candidate concerned in such canvassing for that appointment. The purport of this paragraph shall be included in any form of application issued in relation to any proposed appointment.

A Member of the Council shall not solicit for any person any appointment under the Council and shall not provide any written testimonial of a candidate's ability, experience or character for submission to the Authority.

All vacancies on the Council's staffing establishment that are to be filled shall be advertised internally.

2.3 Confidentiality

The Council, the Cabinet, a Committee, a Sub-Committee or a Panel shall, unless there are exceptional circumstances which dictate otherwise, resolve to exclude the press and public under Section 100A of the 1972 Act where matters relating to the appointment, promotion, dismissal or discipline, severance, salary or conditions of an individual member of staff are to be discussed.

2.4 Recruitment of Head of Paid Service, Statutory Chief Officer, Non-Statutory Chief Officers, Deputy Chief Officers and Monitoring Officer.

2.4.1 Where the Council proposes to appoint a Head of Paid Service, Monitoring Officer, Statutory Chief Officer, Non-Statutory Chief Officer or Deputy Chief Officer, and it is not proposed that the appointment will be made exclusively from among their existing Officers, the Head of Paid Service or his/her delegate will:

- (a) draw up a statement specifying:
 - (i) the duties of the Officer concerned; and
 - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) advertise the post in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

(c) send a copy of the statement mentioned in paragraph (a) above to any person on request.

2.4.2 Where a post has been advertised as provided in paragraph 2.4.1, the Joint Senior Staff Committee or Head of Paid Service, or his /her delegate, in accordance with paragraph 3 below, will:

(a) interview all qualified applicants for the post; or

(b) select a short list of such qualified applicants and interview those included on the short list; or

(c) if no qualified person has applied, the Council will make further arrangements for advertisement in accordance with paragraph 2.4.1(b).

3.0 APPOINTMENT

3.1 Power to Appoint

3.1.1 Subject to paragraph 3.1.2 and 3.2 below, the Joint Senior Staff Committee will be responsible for the function of the appointment of the Head of Paid Service, Chief Finance Officer, Monitoring Officer and Directors.

3.1.2 The power to approve the appointment of the Head of Paid Service, Chief Finance Officer and Monitoring Officer shall be exercised by Full Council, subject to the consultation required under paragraph 3.2.2 where, for the purposes of this paragraph, “the Committee” is to be read as “Full Council”.

3.1.3 The Head of Paid Service, or an Officer nominated by him, shall be responsible for the function of the appointment of Non-Statutory Chief Officers, other than the Directors, and Deputy Chief Officers.

3.2 Consultation Procedure for Appointment

3.2.1 Except as provided for in paragraph 3.1.2, paragraph 3.2.2 applies to the appointment of Non-Statutory Chief Officers and Deputy Chief Officers.

3.2.2 An offer of appointment to any of those Officers must not be made by the Appointor until:

(a) The Appointor has notified the Monitoring Officer of the name of the person to whom the Appointor wishes to make the offer and any other particulars which the Appointor considers are relevant to the appointment;

(b) The Monitoring Officer has notified every Member of the Executive of the Council of:

- (i) the name of the person to whom the Appointor wishes to make the offer;
 - (ii) any other particulars relevant to the appointment which the Appointor has notified to the Monitoring Officer; and
 - (iii) 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 Monitoring Officer; and
- (c) either:
- (i) the Executive Leader has, within the period specified in the notice under sub-paragraph (b) (iii), notified the Monitoring Officer that neither he/she nor any other Member of the Executive has any objection to the making of the offer; or
 - (ii) the Monitoring Officer has notified the Appointor that no objection was received by him/her within that period from the Executive Leader; or
 - (iii) the Appointor is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.

3.3 Appointment of Senior Officers

Post	Appointment	Conditions
Head of Paid Service	Joint Senior Staff Committee	Requires approval of Full Council
Chief Finance Officer	Joint Senior Staff Committee	Requires approval of Full Council
Monitoring Officer	Joint Senior Staff Committee	Requires approval of Full Council
Directors	Joint Senior Staff Committee	Requires consultation with the Executive
Non-Statutory Chief Officers (other than Directors)	Head of Paid Service, or Officer nominated by him	Requires consultation with the Executive
Deputy Chief Officers	Head of Paid Service, or Officer nominated by him	Requires consultation with the Executive

4.0 Disciplinary Action

4.1 Investigation of alleged misconduct

- 4.1.1 This paragraph applies to Disciplinary Action in respect of the Head of Paid Service, Statutory Chief Officer, Monitoring Officer, Non-Statutory Chief Officers and Deputy Chief Officers, subject to the express provisions in paragraph 4.2 relating to the Head of Paid Service, Monitoring Officer and Chief Finance Officer.
- 4.1.2 Subject to paragraph 4.2 the Joint Senior Staff Committee will investigate and consider any alleged misconduct in respect of the Head of Paid Service, Chief Finance Officer, Monitoring Officer, or the Directors and decide upon any Disciplinary Action to be taken, as necessary, in accordance with any Council Staffing Policies which have been adopted by the Council from time to time.
- 4.1.3 Subject to paragraphs 4.1.2 and 4.2 the Head of Paid Service or his/her nominated representative will investigate any alleged misconduct in respect of Non-Statutory Chief Officers other than Directors, and Deputy Chief Officers and decide upon any disciplinary action to be taken, as necessary, in accordance with any Council Staffing Policies which have been adopted by the Council from time to time.

4.2 Head of Paid Service, Monitoring Officer and Chief Finance Officer

- 4.2.1 The Council's Head of Paid Service, Monitoring Officer and Chief Finance Officer cannot be dismissed by the Authority unless the procedure set out in paragraph 4.2 is complied with.
- 4.2.2 Where an allegation of misconduct in respect of the Head of Paid Service, Monitoring Officer or Chief Finance Officer requires an investigation, an Independent Panel will be formed for this purpose.
- 4.2.3 Pending the report of such an Independent Panel the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer may be suspended by the Joint Senior Staff Committee whilst the alleged misconduct by the Officer is investigated. Any such suspension will be for a maximum period of two calendar months and will be on full pay.
- 4.2.4 In consulting an Independent Panel to deal with such allegations of misconduct, the Joint Senior Staff Committee will invite Independent Persons who have been appointed for the purposes of the Members' Conduct Regime under Section 28(7) of the Localism Act 2011 to form an Independent Panel. An Independent Panel will be formed if two or more Independent Persons accept the invitation. If it has not been possible to appoint such a Panel following invitations to the Council's appointed Independent Persons, then further invitation may be made to Independent Persons appointed by another Council.
- 4.2.5 The role of the Independent Panel is to:-

- (a) Investigate the alleged misconduct;
- (b) Prepare a report setting out the conclusions of their investigation, and any advice, views or recommendations as to any proposed disciplinary or other action, including dismissal.

4.2.6 In carrying out their investigation the Panel may:-

- (a) Inspect any documents relating to the conduct of the relevant Officer which are in the possession of the Council, or which the Council has the power to authorise them to inspect; and
- (b) Require any member of staff or Member of the Council to answer questions concerning the conduct of the relevant Officer.

4.2.7 If the recommendation of the Independent Panel is disciplinary action, other than dismissal, the Panel will report back to the Joint Senior Staff Committee who will consider the report and may impose disciplinary action other than dismissal.

4.2.8 Where the independent Panel recommends dismissal, or the Joint Senior Staff Committee recommends dismissal, the matter must be dealt with by a meeting of the Full Council. At least 20 working days after the Independent Panel has been appointed, a meeting of each Full Council (Adur District Council and Worthing Borough Council) will be held.

4.2.9 The Council Meeting must receive the report of the Independent Panel. Before taking a vote at such a Council Meeting on whether or not to approve such a proposed dismissal, the Council must take into account:

- (a) Any advice, views or recommendations of the Panel;
- (b) The conclusions of any investigation into the alleged misconduct;
- (c) Any representations from the relevant Officer, or their representative.

4.2.10 A Head of Paid Service, Chief Finance Officer or Monitoring Officer attending a Council Meeting where proposed disciplinary action against them is being considered, is entitled to make both verbal and written representations to Council, as is their representative, who may be a colleague, a Union representative, a companion or a Lawyer.

4.3 Disciplinary Action of Senior Officers

Post	Investigation	Notes	Appeal
Head of Paid Service	Independent Panel	Decision to dismiss must be taken by Council	None

Chief Finance Officer	Independent Panel	Decision to dismiss must be taken by Council	None
Monitoring Officer	Independent Panel	Decision to dismiss must be taken by Council	None
Directors	Joint Senior Staff Committee	Decision to dismiss may be taken by Joint Senior Staff Committee, in consultation with the Executive	Joint Senior Staff (Appeals) Committee
Non-Statutory Chief Officers (other than Directors)	Head of Paid Service or Officer nominated by him	Decision to dismiss may be taken by Joint Senior Staff Committee, in consultation with the Executive	Joint Senior Staff Committee
Deputy Chief Officers	Head of Paid Service or Officer nominated by him	Decision to dismiss may be taken by Joint Senior Staff Committee, in consultation with the Executive	Joint Senior Staff Committee

5.0 Dismissal

5.1 Power to Dismiss

5.1.1 Full Council will be responsible for the function of dismissal of the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer.

5.1.2 Subject to paragraph 5.2, the Joint Senior Staff Committee will be responsible for the function of dismissal of a Director.

5.1.3 Subject to paragraph 5.2, the Head of Paid Service, or an Officer nominated by him, shall be responsible for the function of dismissal of Non-Statutory Chief Officers, other than Directors, and Deputy Chief Officers.

5.2 Consultation Procedure for Dismissal

5.2.1 Paragraph 5.2.2 applies to the dismissal of the Non-Statutory Chief Officers and Deputy Chief Officers.

5.2.2 Notice of the dismissal of any of those Officers in paragraph 5.2.1 must not be made by the Dismissor until:

- (a) the Dismissor has notified the Monitoring Officer of the name of the person whom the Dismissor wishes to dismiss and any other particulars which the Dismissor considers are relevant to the dismissal;
- (b) the Monitoring Officer has notified every Member of the Executive of the Council of:
 - (i) the name of the person whom the Dismissor wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the Dismissor has notified to the Monitoring Officer; and
 - (iii) the period within which any objection to the dismissal is to be made by the Executive Leader on behalf of the Executive to the Monitoring Officer; and
- (c) either:
 - (i) the Executive Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the Monitoring Officer that neither he/she nor any other Member of the Executive has any objection to the dismissal;
 - (ii) the Monitoring Officer has notified the Dismissor that no objection was received by him/her within that period from the Executive Leader; or
 - (iii) the Dismissor is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.

5.3 Appeals

5.3.1 Non-Statutory Chief Officers, other than Directors, and Deputy Chief Officers who feel that the outcome of Disciplinary Action against them is wrong or unjust may appeal in accordance with any relevant Council Staffing Policies to the Joint Senior Staff Committee.

5.3.2 In relation to Directors, paragraph 5.3.1 shall be amended to read the Joint Senior Staff (Appeals) Committee.

5.3.3 The Head of Paid Service, Chief Finance Officer and Monitoring Officer shall have no right of appeal within the Councils.