

Ward: All

## **Elected Member Involvement in the Appointment and Discipline of the Councils' Senior Officers**

### **Report by the Solicitor to the Council and Monitoring Officer**

#### **1.0 Summary**

- 1.1 The Monitoring Officer has undertaken a review of the Councils' existing arrangements for the recruitment, appointment, discipline and dismissal of its Senior Officers and, with a view to ensuring an efficient, streamlined, independent and fair process, has made proposals for change.

If the proposals are adopted by the Councils, they will be subject to consultation with Unison, and consequential changes will need to be made to the Officer Employment Procedure Rules and the Terms of Reference of Staffing Committees within the Councils' Constitutions. Further, it is likely that the Committee structure will change, with the abolition of the Joint Senior Staff (Appeals) Committee. Further, consequential changes will need to be made to the Councils' Recruitment & Selection and Disciplinary Policies.

#### **2.0 Background**

- 2.1 The Councils have set out the procedures relating to the appointment and dismissal of its Senior Officers in the Officer Employment Procedure Rules, which form part of the Constitution. The Rules were last updated in July 2015 when changes were imposed by legislation. The current procedures provide for Officers to deal with the recruitment and appointment, discipline and dismissal, of Senior Officers in some circumstances, whilst such matters relating to other Officers are within the remit of the Councils' three Staffing Committees; the Joint Staff Committee, the Joint Senior Staff Committee and the Joint Senior Staff (Appeals) Committee.

#### **2.2 Head of Paid Service**

The Head of Paid Service is the Councils' Chief Executive and is a statutory post.

The Councils' current procedures provide that the appointment of the Head of Paid Service is dealt with by the Joint Senior Staff Committee (JSSC), who must make a recommendation as to appointment, to Full Council, who are responsible for making such an appointment. Similarly, disciplinary action in respect of the Head of Paid Service must be considered by JSSC, who must receive a report from a panel of the

Councils' Independent Persons if they are considering dismissal, before making a recommendation to Full Council, who are responsible for the ultimate decision.

### 2.3 Chief Finance Officer and Monitoring Officer

Since legislative changes were introduced in 2015, recruitment and dismissal of the Chief Finance Officer and Monitoring Officer, the Councils' two other statutory post holders, must now also be considered by JSSC, who must make a recommendation to Full Council, having considered a report from the panel of Independent Persons in the case of dismissal, for a decision.

### 2.4 Chief Officers

Chief Officers are defined as those postholders who are direct reports of the Councils' Chief Executive, other than administrative staff. For Adur and Worthing Councils' this would include the 4 Director posts, and the posts of Head of Communications and Head of Policy.

#### 2.4.1 Chief Officers - Directors

Current procedures provide that the appointment of Directors is dealt with by JSSC. There is no requirement for approval of the appointment by Full Council. JSSC are however statutorily bound to undertake consultation, via the Monitoring Officer, with both Executives. Similarly, disciplinary action, including dismissal, of Directors is currently dealt with by JSSC, who have the power to dismiss Directors without the involvement of a panel of Independent Persons, or Full Council approval, provided they comply with statutory consultation with the Executives. Directors currently have a route of appeal against dismissal by JSSC, to the Joint Senior Staff (Appeals) Committee (JSS(A)C).

#### 2.4.2 Chief Officers - Non-Directors

Current procedures provide that the Head of Paid Service, or an Officer nominated by him, is responsible for the appointment of Chief Officers who are non-Directors. Such appointment is subject to statutory consultation with both Councils' Executives. The discipline, and dismissal, of Chief Officers who are not Directors, is also currently dealt with by the Head of Paid Service, or an Officer nominated by him, again subject to consultation with the Executives. There is a route of appeal against dismissal from the dismissing Officer to JSSC.

### 2.5 Deputy Chief Officers

Deputy Chief Officers are defined as those who are direct reports of those directly reporting to the Councils' Chief Executive, other than administrative staff. For Adur and Worthing Councils' they would include Heads of Service (other than Head of Legal and Head of Finance) and direct reports of the Head of Policy and Head of Communications.

Current procedures provide that the appointment of a Deputy Chief Officer is dealt with by the Head of Paid Service, or an Officer nominated by him, subject to the

requirements as to statutory consultation with both Councils' Executives. Also, the dismissal of Deputy Chief Officers is dealt with by the Head of Paid Service, or an Officer nominated by him, subject to consultation with the Executives, with a route of appeal against dismissal from the dismissing Officer to JSSC.

### **3.0 Proposals**

#### **3.1 The Councils' Statutory Officers**

Procedures relating to the appointment and dismissal of the Councils' three Statutory Officers (the Head of Paid Service/Chief Executive, the Chief Finance Officer and the Monitoring Officer) are provided for in statute. The Councils' current procedures comply with legislative requirements and therefore no proposals for change are made in respect of the Statutory Officers.

#### **3.2 Chief Officers**

##### **3.2.1 Chief Officers - Directors**

Legislation provides that the appointment and dismissal of Directors may be dealt with either by a Committee of Elected Members of the Councils, or by the Head of Paid Service or an Officer nominated by him. The Councils have chosen, to date, to deal with such appointments by way of JSSC. However, it is considered that such employment matters could be dealt with more swiftly and efficiently by the Head of Paid Service, or an Officer nominated by him, whilst retaining independence and fairness in the procedure. The Monitoring Officer therefore proposes that the appointment and/or discipline, including dismissal of Directors, be dealt with by the Head of Paid Service, or an Officer nominated by him, without the involvement of the JSSC. Members of the Councils would still be involved in such decision-making as it is a statutory requirement that the appointing or dismissing Officer would need to consult, via the Monitoring Officer, with Members of both Councils' Executives before confirming such appointment or dismissal.

If Members are minded to agree with the proposal for appointment and dismissal of Director Chief Officers to be the responsibility of the Head of Paid Service, or an Officer nominated by him, then it is further proposed that there be a route of appeal against a decision to dismiss to another Officer, being the Head of Paid Service, or an Officer nominated by him. Clearly any Officer hearing an appeal would need to be independent of the dismissing Officer; the appeal Officer would either be the Head of Paid Service or an Officer nominated by him, of whom he is satisfied as to competency and independence, and could, in some circumstances, include an external expert if appropriate.

The rules of natural justice would continue to apply to any process and the Officer would be entitled to a fair and impartial hearing, with the right to be heard and/or represented.

##### **3.2.2 Chief Officers - Non-Directors**

The current recruitment and dismissal of such Officers is dealt with by the Head of Paid Service or an Officer nominated by him. However, there is currently a route of appeal against such dismissal to JSSC. It is proposed that the route of appeal against such decisions be to the Head of Paid Service or an Officer nominated by him, enabling the dismissal to be dealt with by a Director, with appeal to the Chief Executive or an alternative independent Director, if appropriate. This would negate the need for the holding of a JSSC meeting to deal with such appeals, but would retain Member involvement, via the statutory consultation process with both Councils' Executives.

### 3.3 Deputy Chief Officers

Currently appointment and dismissal of Deputy Chief Officers is dealt with by the Head of Paid Service or an Officer nominated by him, but with a route of appeal against dismissal to JSSC. The Monitoring Officer further proposes that the route of appeal be to the Head of Paid Service or an Officer nominated by him, allowing for dismissal to be dealt with by a Director, with a route of appeal to the Chief Executive, or another independent Director, if appropriate. Again this would negate the need for JSSC to hear such an appeal, whilst retaining Member involvement through the statutory consultation process with each Council's Executive.

### 3.4 Staffing Committees

The Council currently has three Staffing Committees:-

1. The Joint Staff Committee - this Committee has the power to determine the terms and conditions upon which staff (other than the three Statutory Officers) hold office.
2. Joint Senior Staff Committee - this Committee, if the proposals in this report are accepted, would continue to deal with recruitment and disciplinary matters in respect of the three Statutory Officers, subject to Full Council approval. But its workload would be reduced by no longer dealing with the appointment and dismissal of Chief Officers who are Directors, or appeals against dismissal from Chief Officers who are non-Directors and Deputy Chief Officers.
3. The Joint Senior Staff (Appeals) Committee - if the proposals in this report are accepted, the Council would no longer require a Joint Senior Staff (Appeals) Committee.

- 3.5 Should the proposals in this report be accepted, it would reduce the number of Staffing Committees required by the Council and the number of meetings of such Committees. This is likely to lead to a small saving as such Committees can be time-consuming and costly to resource. It is also likely to lead to such employment matters being dealt with more swiftly and efficiently, without the need to convene Committees, publish agenda and reports. It would however ensure Member involvement continues via the statutory provisions relating to consultation. It would enable a fair and impartial process of dealing with employment matters for Senior

Officers, whilst retaining Member involvement, and a route of appeal to the appropriate level. If accepted, the proposals could lead to minor alterations to political balance. The proposals are subject to consultation with Unison.

#### **4.0 Legal**

- 4.1 The Local Authorities (Standing Orders) (England) Regulations 2001 set out the statutory procedures relating to the appointment and dismissal of Chief Officers and Deputy Chief Officers of a Local Authority.
- 4.2 The Local Authorities (Standing Orders) (England) Regulations 2015 set out the statutory procedures relating to the appointment and dismissal of a Local Authority's statutory Officers.

#### **5.0 Financial implications**

- 5.1 There are no financial implications arising from this report other than a potential saving arising from less Staffing Committee meetings.

#### **6.0 Recommendations**

The Joint Governance Committee is recommended:-

- 6.1 To recommend to both Adur District Council and Worthing Borough Council that the Councils' Officer Employment Procedure Rules be amended to provide for the appointment, discipline and dismissal of Chief Officers who are Directors, to be dealt with by the Head of Paid Service or an Officer nominated by him.
- 6.2 To recommend to Adur District Council and Worthing Borough Council that the Officer Employment Procedure Rules be amended to provide that Chief Officers who are Directors have a route of appeal against dismissal to the Head of Paid Service or an Officer nominated by him.
- 6.3 To recommend to Adur District Council and Worthing Borough Council that the Officer Employment Procedure Rules be amended to provide that Chief Officers who are non-Directors have a route of appeal against dismissal to the Head of Paid Service or an Officer nominated by him.
- 6.4 To recommend to Adur District Council and Worthing Borough Council that the Officer Employment Procedure Rules be amended to provide that Deputy Chief Officers have a right of appeal against dismissal to the Head of Paid Service or an Officer nominated by him.
- 6.5 To recommend to both Adur District Council and Worthing Borough Council that the Councils' Joint Senior Staff (Appeals) Committee be abolished.
- 6.6 To recommend to Adur District Council and Worthing Borough Council that the Monitoring Officer be delegated to make consequential changes to the Councils' Constitutions, including changes to the Terms of Reference of the Staffing Committees.

**Local Government Act 1972**

**Background Papers:**

Officer Employment Procedure Rules  
Worthing Borough Council Constitution

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## **Schedule of Other Matters**

### **1.0 Council Priority**

- 1.1 Matter considered and the issue of Joint Officer Employment Procedure Rules and Joint Staffing Committees relates to the Council priorities relating to partnership working.

### **2.0 Specific Action Plans**

- 2.1 Matter considered and no issues identified

### **3.0 Sustainability Issues**

- 3.1 Matter considered and no issues identified

### **4.0 Equality Issues**

- 4.1 Matter considered and no issues identified

### **5.0 Community Safety Issues (Section 17)**

- 5.1 Matter considered and no issues identified

### **6.0 Human Rights Issues**

- 6.1 Every individual has the right to a fair hearing and it is considered that the proposals comply with the principles of natural justice and the Human Rights Act.

### **7.0 Reputation**

- 7.1 Matters considered and no issues identified

### **8.0 Consultations**

- 8.1 The proposals are subject to consultation with Unison.

### **9.0 Risk Assessment**

- 9.1 Matter considered and no issues identified

### **10.0 Health & Safety Issues**

- 10.1 Matter considered and no issues identified

### **11.0 Procurement Strategy**

- 11.1 Matter considered and no issues identified

### **12.0 Partnership Working**

12.1 The Joint Staffing Committees operate under the Joint Committee Agreement and support the principles of partnership working.