

TRAFFORD COUNCIL

Report to: Council
Date: 9th October 2019
Report for: Decision
Report of: Monitoring Officer

Report Title

Constitutional Review: Recruitment and Employment Procedures

Summary

A review of the Council's constitution in respect of HR procedures has been undertaken. This report provides members with details of the outcome of that review.

Recommendation(s)

It is recommended that Council:

- Notes the Employment Committee's and the Executive's approval of the constitutional amendments as set out in the report; and
- Approves the constitutional amendments as set out in the report.

Contact person for access to background papers and further information:

Name: Dominique Sykes
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Background Papers: None

Implications:

Relationship to Policy Framework/Corporate Priorities	N/A
Relationship to GM Policy or Strategy Framework	N/A
Financial	None Arising from the report
Legal Implications:	<p>An independent review of the constitution was undertaken by Eversheds Sutherlands. The proposed amendments incorporate relevant legislative updates.</p> <p>The proposed amendments also reflect standards adopted by the Joint Negotiation Committee's (the national negotiating body for the pay and conditions of service of chief executives in England and Wales) Conditions of Service</p>

Equality/Diversity Implications	None Arising from the report
Sustainability Implications	None Arising from the report
Resource Implications e.g. Staffing / ICT / Assets	None Arising from the report
Risk Management Implications	None Arising from the report
Health & Wellbeing Implications	None Arising from the report
Health and Safety Implications	None Arising from the report

1.0 Background

- 1.1 On 25 July 2018 Council considered a report relating to the Appointment of an Interim Chief Executive and Appointments to the Corporate Leadership Structure. In the course of debate on the report and subsequent to the meeting a number of questions were raised in relation to the procedures for the appointment of senior officers.
- 1.2 It was acknowledged that the Council's constitution, in respect of Human Resources procedures, such as recruitment, appointment, disciplinary and dismissal requirements, together with relevant associated documents, could be clarified further and that the constitution and associated documents would benefit from a general update in respect of current working procedures within Human Resources and relevant legislative changes.
- 1.3 As a result of the queries raised and in order to provide assurance to members generally on this point, external solicitors at Eversheds Sutherlands ("ES") were appointed to review and reconcile the requirements in respect of the appointment of senior officers to ensure they are consistent throughout the Constitution and associated documents and in accordance with legal obligations.
- 1.4 On the 10 September 2019, the Employment Committee considered and approved the constitutional amendments as set out in the report, with a recommendation to Council.
- 1.5 On the 25 September 2019, the Executive considered and approved the constitutional amendments as set out in the report, with a recommendation to Council.

2.0 Review Scope and Summary.

- 2.1 ES have undertaken a review of the following:-

2.1.1 Extracts from Part 4 of the Constitution, which includes:-

- 2.2.1.1 the terms of reference for the Employment Committee;
- 2.2.1.2 the terms of reference for the Appointments Committee;
- 2.2.1.3 officer delegations;

- 2.2.1.4 Full Council functions;
- 2.2.1.5 the Officer Employment Rules and Procedures.

2.2.2 The Council's 2019 Pay Policy Statement Report.

- 2.2 Upon conclusion of the review, ES have advised that the wording in the Constitution and the Officer Procedure Rules correctly reflected both relevant legal legislation and set out sound HR recruitment and appointment procedures.
- 2.3 They did however identify a number of areas where the procedures could be clarified or streamlined, or where it did not accurately reflect practice and procedure. A number of amendments were suggested by ES and the full details of these, together with further changes identified following their review are attached at Schedule 1 and 2 to this report. A summary of the amendments is contained in the report below.
- 2.4 The proposed amendments are largely intended to:
 - 2.3.1 improve clarity and consistency of terminology and referencing;
 - 2.3.2 ensure that those who apply the HR recruitment and appointment procedures are alerted to other relevant documents;
 - 2.3.3 improve clarity around roles and responsibilities; and
 - 2.3.4 assist in the application of complex requirements and procedures for the appointment and rare dismissal of Chief Officers.

3. Summary of Recommended Amendments

3.1 Constitution, Part 4: Officer Employment Procedure Rules

- 3.1.1 It is proposed that these are updated to clarify that there is no requirement to draw up a statement of duties/qualifications or advertise externally where internal candidates only are being considered for promotion to a Chief Officer Post, in accordance with the Council's Succession Planning Policy, which was approved in 2016, or in other exceptional circumstances (e.g. urgent interim roles, restructuring, cost savings).
- 3.1.2 It is proposed that legislative references are updated to reflect the changes introduced since 2015 in respect of the procedures for disciplinary and dismissal procedures for Chief Officers.
- 3.1.3 In the Officer Employment Procedure Rules, (Appendix 1) it is proposed that the role of the Leader is removed in making decisions about whether matters of concern should be investigated. This proposed amendment reflects the principle that decisions about HR matters should not be an Executive function and it also ensures that the procedures as set out in the Joint Negotiation Committee's (the national negotiating body for the pay and conditions of service of chief executives in England and Wales) Conditions of Service

Handbook (“JNC Conditions of Service”), which expect the independent investigatory committee to have a role in determining whether or not a matter should be investigated, are reflected. The views of the Leader would however be one of the factors to be considered by the Investigatory Committee in reaching that decision. It is proposed that an initial view about possible alternatives or conciliation would be led by officers prior to serious issues being referred to the independent committee.

3.2 Constitution, Part 2 Article 4: Full Council.

3.2.1 It proposed that the Pay Policy is added to the list of those policies which require full Council approval. This proposed amendment reflects current legislative requirements. The Pay Policy has as a matter of course always been referred to Council in accordance with the statutory requirements. This amendment will simply reference the Pay Policy in the list of policies requiring Council approval.

3.2.2 It is also proposed that wording is added to require full Council approval of any termination payments in excess of 100k, with a referral to the Employment Committee in the first instance. This proposed amendment reflects current legislative requirements.

3.2.3 The relevant legislation which sets out the requirements above is Section 40, Localism Act 2011 as supported by the Code of Practice for Local Authorities on Data Transparency and further guidance, Openness and Accountability in Local Pay; Guidance under Section 40 Localism Act 2011.

3.3. Constitution, Part 3: Officer Delegations

3.3.1 Additional wording is proposed to the responsibilities of the Corporate Director of People to provide a role for dealing with internal promotions to Chief Officer posts in accordance with the Council’s Succession Planning Strategy or at times of urgency. The Appointments and Appeal Panel will continue to lead on this in ordinary circumstances but, it is proposed that the Corporate Director of People should be provided with clear delegated authority to take preparatory steps for preparing job descriptions and advertisement and also to finalise appointments where there is insufficient time to set up an Appointments and Appeals Panel in exceptional cases.

3.3.2 It is also proposed that the Chair of the Employment Committee and the Chief Executive (or other Proper Officer – *see proposed amendments*) are given an explicit role in the determination of what constitutes “exceptional circumstances”.

3.4 Constitution, Part 3: Employment Committee

3.4.1 It is proposed that the Employment Committee's terms of reference are amended to provide the Committee with:

- a role in approving salary and benefits for Chief Officers; and
- an overarching role in ensuring compliance with the Council's duties in respect of transparency about public sector pay and termination costs.

These proposed changes provide a role for the Employment Committee:

- in considering the annual pay policy;
- in circumstances where termination payments will exceed 100k (subject to Full Council approval); and
- in decisions about senior officers returning to work for the Council after receiving a termination payment.

3.4.2 The above proposed amendments will enable decisions to be made as a consequence of the current Public Sector Exit Payments (Limitation) Bill 2017-19 which is a piece of legislation which is likely to be enacted in the next few months. It will also ensure there is a place for consistent decision making about this in accordance with the current Pay Policy and Pension Regulations.

3.4.3 It is proposed that the Employment Committee should have a membership of at least 7 and that there should be meetings on a quarterly basis in addition to ad hoc meetings.

3.5 Constitution, Part 3: Appointment and Appeals Panel ("Panel")

3.5.1 There are a number of proposed amendments which seek to improve clarity: around terminology; and of the relevant links to the Officer Employment Procedure Rules.

3.5.2 It is proposed that amendments are made to make it clear the Panel has a role in appointing Chief officers or dealing with disciplinary matters.

3.5.3 It is proposed that the correct constitution of a Panel is clearly determined.