



**TRAFFORD  
COUNCIL**

## **REVISED AGENDA PAPERS FOR EMPLOYMENT COMMITTEE**

**Date: Monday, 9 September 2019**

**Time: 5.00 p.m.**

**Place: Committee Rooms 2 and 3, Trafford Town Hall, Talbot Road, Stretford,  
M32 0TH**

<b>A G E N D A</b>	<b>PART I</b>	<b>Pages</b>
<b>8. CONSTITUTIONAL REVIEW: RECRUITMENT AND EMPLOYMENT PROCEDURES</b>		<b>1 - 24</b>

To consider a report of the Corporate Director of People.

**SARA TODD**  
Chief Executive

### Membership of the Committee

Councillors J. Bennett (Chair), A.M. Whyte (Vice-Chair), D. Acton, A. Akinola, M. Cordingley, J. Holden, P. Lally, B. Rigby and R. Thompson.

### Further Information

For help, advice and information about this meeting please contact:

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## TRAFFORD COUNCIL

**Report to:** Employment Committee  
**Date:** September 2019  
**Report for:** Decision  
**Report of:** Corporate Director for Governance and Community Strategy

### 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 the Employment Committee:

- Approves the Constitutional amendments as set out in the report; and
- Recommends the amendments, as set out in the report, to Standards Committee and Council for approval and adoption.

### Contact person for access to background papers and further information:

Name: Dominique Sykes  
Extension: 3120

Background Papers: None

## **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.

## **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.

### **Other Options**

The Employment Committee may wish to propose variations to the proposed amendments recommended by ES.

### **Reasons for Recommendations**

The recommendations are set out at the start of this report.

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**SCHEDULE ONE**

**SUGGESTED AMENDMENTS TO THE CONSTITUTION.**

**AMENDMENTS TO PART 2 OF THE CONSTITUTION – FULL COUNCIL RESPONSIBILITIES.**

Amend Article 4, Part 2 of the Constitution to refer to the Council's Pay Policy in 4.01 and add to Article 4.02 "approval of payments of salary and benefit packages or termination payments in excess of 100,000."

**AMENDMENTS TO PORTFOLIOS: Scheme of Delegation**

**Structure (Officers – Article 12, Part 2)**

- Head of Paid Service will determine, publicise and amend the officer structure of the Council in accordance with Council and Joint Negotiating Committee ( JNC) Conditions of Service and Council and national policies and procedures.
- Head of Paid Service will provide a regular report (at least annually) to ~~Full Council or to~~ Employment Committee and/or to Council on the manner in which the discharge of the Council's functions is coordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

**Leader's Portfolio (Part 3)**

- To review, with Chief Executive or in the absence of the Chief Executive the Proper Officer, management arrangements of the Council
- Subject to policies and legislation, overall direction of all HR matters
- To have responsibility for CE's Functions – determination of how and by whom Executive Functions are exercised

**Proper Officer and Deputies – The Local Authorities (Standing Orders) (England) Regulations 2001**

- Constitution Part 3, Appointment of Officers - Proper Officer in accordance with The Local Authorities (Standing Orders) (England) Regulations 2001 is the Chief Executive: Officer for receiving notification of proposed appointment of certain officers, notifying executive members of that proposed appointment and for receiving and notifying of objections to the proposed appointment. The Chief Executive is officer is the ~~P~~proper ~~O~~fficer unless otherwise determined referred to in the Officer Employment Procedure Rules set out in Part ~~43~~ of the Constitution.
- Constitution Part 3, Appointment of Officers (14): In event of ~~an officer-P~~proper ~~O~~fficer being for any reason unable to act, carry out functions or the post being vacant the Chief Executive or in their the Chief Executive's absence, ~~Director of Legal~~ the Monitoring Officer, or in absence of both the Chief Executive and the Monitoring Officer, the Chief Finance Officer to act in proper officer's stead.
- Constitution Part 4, Officer Employment procedure Rules (9): For the purposes of these Officer Employment Procedure Rules the Proper Officer shall be the ~~H~~head of Paid Service except:

- –where the dismissal relates to the Head of Paid Service when the Proper Officer shall be the Monitoring Officer, or in the Monitoring Officer's absence, the Chief Finance Officer to act in the Proper Officer's stead.

**Chief executive – Scheme of Delegation (Part 3).**

- Undertake all matters associated with the professional management of the Council
- Is responsible for the overall direction of all human resource matters.
- Is responsible for the administration and implementation of the Council's organisational, employee development and human resource plans.
- Before referring any matters deemed by the Chief Executive to be of strategic significance to Employment Committee for consideration and/or determination the Chief Executive shall consult with, and obtain views of the Executive.

**Corporate Directors - Scheme of Delegation (Part 3).**

- In relation to any matters delegated to them, to take any action which is calculated to facilitate or is conducive or incidental to the discharge of the Council's functions within their service area.

**Corporate Director People (HR) – Scheme of Delegation (Part 3)**

- Service Review Directorate wide service reviews and development of corporate proposals – including decisions relating to the creation/re-grading and deletion of posts above Band 12.
- In exceptional circumstances, ~~d~~Decisions on proposals affecting ~~Director~~Statutory and non Statutory Chief Officer or Deputy Chief Officer level posts – (exceptional circumstances to be determined by the Proper Officer in consultation with the Chair of the Employment Committee);:
- Other than in exceptional circumstances, decisions on proposals affecting Statutory and non Statutory Chief Officer or Deputy Chief Officer~~Director-~~ level posts are subject to the prior approval of the Proper Officer and the Employment Committee.
- Decisions in exceptional circumstances decisions in respect of the preparation of the statement of duties and qualifications, advertisement and appointment of internal and external candidates to the role of statutory and non-statutory Chief Officers or Deputy Chief Officers in accordance with Joint Negotiating Committee (JNC) Conditions of Service and Council and government policies and procedures (exceptional circumstances to be determined by the Proper Officer in consultation with the Chair of the Employment Committee) :
  - Appointments of internal candidates may be on an interim or a permanent basis;
  - Appointments of external candidates shall be on an interim basis only.
  - All decisions shall be reported to the Employment Committee prior to reporting to Full Council.
- Directorate wide reviews and development of corporate proposals
- Decisions on proposals affecting Director level posts are subject to the prior approval of the Chief Executive and the Employment Committee.

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**Comment [SD1]:** Now contained above

**Comment [SD2]:** Now contained above

- ~~Decisions relating to salary packages for new posts above £100k, such decisions shall then be subject to full Council approval. In addition, decisions relating to any severance arrangements agreed in line with the relevant policies that exceed £100k, such decisions shall then be subject to full Council approval.~~ The Council will approve all salary and termination packages for Chief Officer posts in excess of £100,000.

**Corporate Director T&R:** It is proposed that this section should now form part of the Corporate Director of People's portfolio.

- Authority, after consultation where appropriate with the Portfolio Holder, chairman of the Employment Committee, Trade Unions and staff representatives, to approve revisions and amendments which are not significant to corporate human resources strategies and policies in so far as they relate to the appointment, terms and conditions of employment and dismissal of staff.
- ~~Excluding those policies which must be approved by Full Council, the A~~ authority to approve all other corporate human resources strategies, policies and procedures.
- ~~Responsibility for all Service Reviews — including the creation/re-grading and deletion of posts above Band 12;~~
- ~~Responsibility for directorate wide reviews and the development of corporate and cross cutting proposals.~~

**Comment [SD3]:** Now contained above

In the absence of a Corporate Director for ~~T&R~~People, the ~~CE~~ Proper Officer would assume the responsibilities.

**CONSTITUTION PART 4: Officer Employment Procedure Rules**

**3. Definition of Head of ~~Paid Service~~ Chief Officer**

Throughout these Officer Employment Procedure Rules the term "~~Head of Service~~ Chief Officer" shall include all officers employed on ~~Joint Negotiating Committee (JNC) National Salary Framework~~ Framework and Conditions of Service Handbook for Chief Officers.

Constitution Part 4: Officer Employment Procedure Rules	
<p><b>Recruitment of Head of Paid Service, <del>Chief Officers and Directors and Heads of Service</del></b></p>	<p>(1) Where the Council proposes to appoint a Head of Paid Service, <del>Chief Officer or Director or Head of Service</del> <b>and it is not proposed that the appointment be made exclusively from among their existing officers</b>, the Council will:</p> <p>(a) draw up a statement specifying:</p> <p>(i) the duties of the officer concerned; and</p> <p>(ii) any qualifications or qualities to be sought in the person to be appointed;</p> <p>(b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to</p>

	<p>apply for it; and                  (c) make arrangements for a copy of the statement mentioned in paragraph 1(a) to be sent to any person on request.                  (2) Where a post has been advertised as provided in (1) (b), the Council's <u>Appeal and Appointments and Appeals Committee Panel</u> shall –                  (a) interview all qualified applicants for the post, or                  (b) select a shortlist of such qualified applicants and interview those included on the shortlist.                  (3) Where no qualified person has applied, the Council shall make further arrangements for advertisement in accordance with (1)(b).</p>
<p><b>Appointment of Head of Paid Service</b></p>	<p>1) <u>The Executive Notice and Objection Process must be followed before the appointment is referred to full Council for approval.</u></p> <p><u>(2) The full Council must approve the appointment of the Head of Paid Service before an offer of appointment is made following the recommendation of such an appointment by an Appeal and Appointments and Appeals Panel/ Appointment Committee. An Appointment Committee must include at least one member of the Executive.</u></p> <p><u>(2) An offer of appointment must not be made by or on behalf of the Appointment Committee ("the Committee") until the Executive Notice and Objection Process has been followed.</u></p>
<p><b>Executive Notice and Objection Process: The Local Authorities (Standing Orders) (England) Regulations 2001</b></p>	<p><u>The Executive Notice and Objections process shall be as follows:</u></p> <p>a) the Proper Officer <del>has</del> shall been notified of the name of the person to whom the <u>Appeal and Appointments Committee Panel Committee</u> wishes to make the offer <u>of an appointment</u> and any other particulars which the <u>Appeal and Appointments Committee Panel Committee</u> considers are relevant to the appointment;                  (b) the Proper Officer has notified every member of the Executive of                  (i) the name of the person to whom the offer <u>of an appointment</u> is to be made and any other relevant particulars notified to the Proper Officer; and                  (ii) 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 Proper Officer; and</p>

Comment [SD4]: Now above.

	<p>(c) either –</p> <p>(i) the Executive Leader has, within the period specified under (2)(b)(ii), notified the <u>Proper Officer Committee</u> that neither (s)he nor any other member of the Executive has any objection to the making of the offer;</p> <p>(ii) the Proper Officer has notified the <u>Proper Officer Appeal and Appointments Committee Panel Committee</u> that no objection was received by him/her within that period from the Executive Leader; or</p> <p>(iii) the <u>Proper Officer Committee</u> is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.</p>
<p><b>Appointment of Corporate Directors and Directors</b></p>	<p><u>Other than in exceptional circumstances (exceptional circumstances to be determined by the Proper Officer in consultation with the Chair of the Employment Committee) :</u></p> <p>(1) <del>(1) An -Appeal and Appointments Committee Panel A Member Appointment Committee</del> will appoint Statutory and Non-Statutory Chief Officers and Deputy Chief Officers, as defined in the Local Government and Housing Act 1989, (definitions set out below) <u>in accordance with Joint Negotiating Committee (JNC) Conditions of Service and Council and government policies and procedures. That Appointment Committee must include at least one member of the Executive.</u></p> <p><i>Definitions:</i></p> <p><i>Statutory Chief Officer – director of children’s services, director of adult social services and officer with responsibility for the administration of the Council’s financial affairs</i></p> <p><i>Non-Statutory Chief Officer – a person for whom the Head of Paid Service is directly responsible; a person who, as respects all or most of their duties (excluding secretarial/clerical duties), is required to report directly to or is directly accountable to the Head of Paid Service or the Authority itself</i></p> <p><i>Deputy Chief Officer – a person who, as respects all or most of their duties (excluding secretarial/clerical duties), is required to report directly to or is directly accountable to the one or more of the chief officers</i></p> <p>(2) An offer of appointment must not be made by or on behalf of the <u>Appeal and</u></p>

**Comment [SD5]:** See TOR for A&A Panel

	<p>Appointments Committee Panel Committee until the Executive Notice and Objection Process has been followed.</p> <p>(2)(3) All decisions shall be reported to the Employment Committee prior to reporting to Full Council.</p>
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### Constitution Part 3: Functions

#### TERMS OF REFERENCE

##### EMPLOYMENT COMMITTEE

The Employment Committee shall consist of at least 7 members and be established in accordance with the political balance of the Council and shall have a quorum of 3 members to include at least one member of the Executive.

The Employment Committee shall meet at least quarterly and also when convened by the Director for Governance and Community Strategy Monitoring Officer.

##### Terms of Reference

1. To determine and keep under review collective and corporate terms and conditions of employment.
2. To approve the Council's draft Pay Policy Statement prior to recommendation ferral to Full Council for approval and adoption.
3. To keep under review the consistent and lawful application of the Councils Pay Policy and publication requirements in respect of transparency of pay, termination payments and audit responsibilities.
4. Except in exceptional circumstances, (To approve the job description, salary and benefits for Chief Officers prior to appointment.
  - (exceptional circumstances to be determined by the Proper Officer in consultation with the Chair of the Employment Committee) :
5. To approve any decisions for the re engagement or reemployment of former Chief Officers.
6. To consider and determine decisions about the recovery of exit payments or overpayment of pension for Chief Officers.
- 1.7. To consider any matter referred to the Committee by the Head of Paid Service or Corporate Director Resources of People.
- 2.8. To consider, approve and adopt any new or significant revision to existing corporate human resources strategies and policies in so far as they relate to the appointment, terms and conditions of employment and dismissal of staff.
9. To determine any other matters relating to the appointment, terms and conditions of employment, severance and dismissal of staff which are neither covered by policies of the Council, required to be decisions of Full Council nor delegated to Officers under the Scheme of Delegation.
10. To review proposals for severance payments in excess of £100,000 prior to consideration of the proposals by Full Council.

Delegation

The Executive Member with responsibility for Strategic HR and the Corporate Director Resources of People will notify/keep the Employment Committee informed of all other relevant HR related issues, as required.

In exercising the above powers and responsibilities, the Employment Committee shall have delegated power (subject to Council Procedure Rule 9 - Call-in of Decisions taken under Delegated Powers) to make decisions on behalf of the Council, except for any matter where:

- **the Head of the Paid Service determines the matter should be considered by full Council, or**
- the Council has resolved to determine the matter

[Note: The Committee may itself determine not to exercise its delegated powers and instead make recommendations to Council]

### Constitution Part 3: Responsibility for Council Functions

#### Appointment and Appeals Panel (Employment Matters)(the "Panel")

To act as the Council's appeals body regarding appeals other than those for which specific arrangements have been established.

All elected members of the authority shall be eligible to be appointed as a Panel member. Smaller numbers of members will constitute individual panels.

The Appointment and Appeals Panel shall be constituted by the Monitoring Officer, unless a matter relates to the appointment, terms and conditions of employment, severance or dismissal of the Monitoring Officer in which case it shall be constituted by the Proper Officer, in accordance with relevant conditions of service and employment procedures, including Joint Negotiating Conditions (JNC) of Service in respect of Chief Officers.

Unless otherwise determined by the Monitoring Officer, all Panels constituted for the purposes of staff appointments and related matters shall be constituted in ~~proportion~~ accordance with the political balance of the Council and will have a membership of at least 3, except when constituted for Investigating and Disciplinary functions when the minimum shall be 5.

The Panel shall:

- ~~to~~ act as the Council's appeals body regarding appeals other than those for which specific arrangements have been established;
- ~~be To be~~ (except in exceptional circumstances) be responsible for staff appointments and related matters regarding short-listing and interview of external and internal applicants and appointments of Corporate Directors and Directors (Statutory and Non Statutory Chief Officers and Deputy Chief Officers as defined in the Officer Employment Procedure Rules) in accordance with the Officer Employment Procedure Rules
- short-listing applicants and appointments of Joint Council / Trafford Clinical Commissioning Group Director level posts. Appointment panels to consist of one member from each political party and 2 from the Governing Body;
- ~~To~~ except in exceptional circumstances, approve the interim ~~and~~ appointment of Chief Officers.
- ~~To~~ act as an investigatory and disciplinary Panel in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001, as amended in 2015 and JNC Conditions of

Service and the Appendix to the Officer Employment Procedure Rules .

- Be responsible for appeals in accordance with the disciplinary and grievance procedures
- Be responsible for appeals by employees against grading

For meetings of Appointment and Appeal Committees the quorum shall be as follows:

(i) for a committee comprising 3 members the quorum shall be 2

(ii) for a committee comprising 5 members the quorum shall be 3

(iii) in all other cases the quorum shall be 4



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**SCHEDULE TWO: PROPOSED AMENDMENTS**

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**OFFICER EMPLOYMENT PROCEDURE RULES**

**6. Disciplinary action**

**(1) Suspension of Head of Paid Service, Section 151 Chief Finance Officer and Monitoring Officer**

~~The Head of Paid Service, Monitoring Officer and Chief Finance Officer ("the relevant officer(s)") may be~~ suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. ~~The Appointment Committee and Appeals Panel will make any decision to suspend the relevant officer (s) and/or authorise any investigation in accordance with the appropriate JNC Conditions of Service Handbook.~~

**Comment [ES1]:** This changes the current procedure from a decision of the Leader to make it consistent with the requirements in the JNC Handbook and to avoid any suggestion of bias or lack of transparency.

**(2) Disciplinary action against the Head of Paid Service, Monitoring Officer and Section 151 Chief Finance Officer**

No other disciplinary action may be taken in respect of any of the officers described in (1) above except in accordance with a recommendation in a report made by a disciplinary panel under the Local Authorities (Standing Orders) (England) Regulations 2001 as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. The Disciplinary and Dismissal Procedure for Head of Paid Service, Monitoring Officer and Section 151 Chief Finance Officer is set out as an appendix to these Officer Employment Procedure Rules. The procedures in the relevant JNC Conditions of Service Handbook must also be followed to the extent practicable.

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**(3) Disciplinary action against officers below deputy chief officer.**

Disciplinary action in respect of officers below the level of Deputy Chief Officer will be taken by the Chief Executive or their nominated senior officer. Councillors will not be involved in the disciplinary action against any officer below ~~Head of Service~~ Deputy Chief Officer level except where such involvement is necessary for any investigation or inquiry into alleged misconduct.

**7. Dismissal**

**(1) Head of Paid Service**

- (a) Subject to 8(2) the full Council must approve the dismissal of the Head of Paid Service before notice of dismissal is given following the recommendation of dismissal by ~~a committee or sub-committee of the Council~~ the Appointment and Appeals Panel. ~~That committee or sub-committee must include at least one member of the Executive.~~ The requirements in the relevant JNC Conditions of Service Handbook, summarised in Appendix 1, must also be followed. In this Constitution, to the extent that there is any conflict or ambiguity between such Handbook and the other contents of this Appendix, the latter will prevail.

(b) ~~Notice of the dismissal of the Head of Paid Service must not be given by or on behalf of the committee or sub-committee Appointment and Appeals Panel ("the Committee Panel") until -~~

- (i) the ~~Committee Panel~~ has notified the Proper Officer that they wish to dismiss the Head of Paid Service and of any particulars which the ~~Committee Panel~~ considers are relevant to the dismissal;
- (ii) the Proper Officer has notified every member of the Executive
  - a) that the ~~Committee Panel~~ wishes to dismiss the Head of Paid Service and of any other particulars relevant to the dismissal which the ~~Committee Panel~~ has notified to the Proper Officer; and
  - (b) of the period within which any objection to the dismissal is to be made, by the Executive Leader on behalf of the Executive to the Proper Officer; and
- (iii) either -
  - (a) the Executive Leader has, within the period specified in the notice under (1)(b)(ii) above, notified the ~~Committee Panel~~ that neither (s)he nor any other member of the Executive has any objection to the dismissal;
  - (b) the Proper Officer has notified the ~~Committee Panel~~ that no objection was received by him/her within that period from the Executive Leader; or
  - (c) the ~~Committee Panel~~ is satisfied that any objection from the Executive Leader within that period is not material or well founded.

(2) **Directors and Heads of Service**

- (a) A Committee, sub-committee or another officer may discharge the function of the dismissal of a director or head of service. If a committee or sub-committee is discharging the function that committee or sub-committee must include at least one member of the Executive.
- (b) Notice of the dismissal of a director or head of service must not be given by a committee, sub-committee or officer ("the Committee") until the procedure set out in 7(1)(b)(i), (ii) and (iii) above has been followed.

(3) **Officers below Head of Service**

Dismissal of officers below head of service (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and shall not be made by Councillors.

8. **Appeals**

- (1) Nothing set out above shall prevent a councillor from serving as a member of any committee or sub-committee established by the Council to consider an appeal by -
  - (a) another person against any decision relating to the appointment of that person as an officer of the Council; or

- 
- 
- (b) an officer of the Council other than the Head of Paid Service against any decision relating to the dismissal or, or. taking disciplinary action against, that officer.
- (2) Prior to a meeting of full Council to approve the dismissal of the Head of Paid Service a ~~committee-panel~~ to consider any appeal by the Head of Paid Service must be established. The Members appointed to that appeal ~~committee-panel~~ must not attend or participate in that part of the Council meeting which considers the dismissal of the Head of Paid Service.

## Appendix to the Officer Employment Procedure Rules

### Disciplinary and Dismissal Procedure for Head of Paid Service, Monitoring Officer and Section 151 Chief Finance Officer

Employment Committee on 10 August 2015 adopted the procedure, as provided for in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, as follows:

1. Where an allegation of potential misconduct is made against the Head of Paid Service, Monitoring Officer or Chief Finance Officer (the 'protected officers'), then the Head of Paid Service, Leader of the Council, in conjunction with the Corporate Director of HR People (and Monitoring Officer or Section 151 Chief Finance Officer where an allegation relates to the Head of Paid Service), where the allegation is not related to them will consider whether the issues require investigation and, where this is the case, determine the most appropriate person to conduct the investigatory process.
2. This will ordinarily be an external, independent investigator, with the relevant background, skill set and experience to conduct investigations of this nature. The independent investigator will, to the extent practicable, undertake their investigation in accordance with the ACAS Code of Practice.
3. The Leader of the Council, Head of Paid Service (or Monitoring Officer or Section 151 Chief Finance Officer where an allegation relates to the Head of Paid Service) (appropriate) and the Corporate Director of HR People, will consider whether suspension is appropriate or whether there are any other suitable alternative ways of managing the situation. Where suspension is deemed appropriate, the Corporate Director of HR Place will ensure that agreed-normal Council suspension protocols are followed.
4. The findings from the investigation will be presented to a Panel established in accordance with the relevant JNC Conditions of Service Handbook; this Panel must consist of a least 2 independent persons, who must be drawn from those appointed under section 28(7) of the Localism Act 2011. In addition, the Panel will comprise of Elected Members who will ordinarily be members of the Employment Committee and will be politically balanced in line with the rules of proportionality. The Panel will be advised by the Corporate Director of HR People (or their representative).
5. The 'protected officers' are entitled to be given an opportunity to make personal representations to the Panel and have the right to be accompanied by their Trade Union representative or a work colleague if they so wish.

**Comment (ES2):** the Leaders role has been removed here on the basis that employment matters should not be an executive function and since the Leader or Deputy is likely to be involved in any decisions at a later stage.

6. The Panel will consider the conclusions of the investigation and any representations from the protected officer concerned.
7. Where it is considered by the Panel that no action or action short of dismissal should take place, then the Panel can progress in confirming the outcome of the Panel meeting and there is no requirement to put the matter forward for an authority vote.

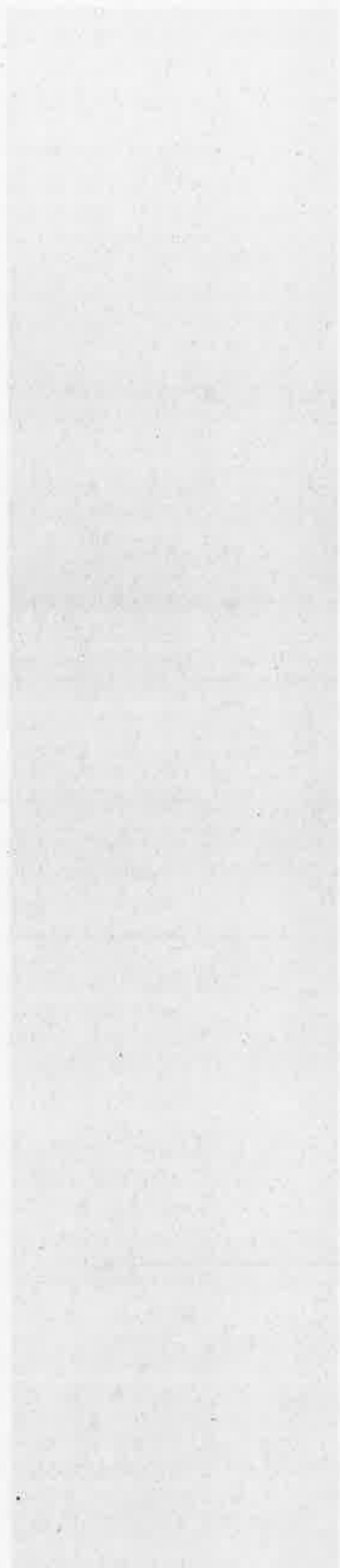
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8. Where the Panel determines that action short of dismissal is the appropriate sanction, the protected officer has the right of appeal to a politically-balanced Appeals Committee ordinarily made up of members of the Employment Committee, who were not involved in the Panel meeting. The appeal hearing will take the form of a review of the case and the decision that was taken by the Panel. The protected officer will be invited to make their verbal/written representations to the Appeals Committee for consideration. Where the protected officer chooses to present verbally, representatives from the Panel will also be in attendance. The Appeals Committee will be advised by the Corporate Director of HR People (or their representative). All relevant parties will be provided with the relevant documentation in advance of the Appeals Committee.
9. Where the proposal is to dismiss, the Executive Objections Procedure will be followed prior to the matter going forward to full Council.
10. On receipt of any objections, it is for the Panel to decide whether they are material and well-founded. If they are, then the Panel will need to consider the effect of the objection and act accordingly. For example, this may require further investigation.
11. Where there are no objections or any objection is deemed as not material or well-founded, the matter will then be considered at full Council, who will vote at a meeting on whether to approve the proposal to dismiss. There must be an interlude of at least 20 working days between the full Council meeting and the date of the original Panel meeting.
12. At their meeting, full Council will consider the original investigation report and the recommendations of the Panel, along with any verbal/written representation from the protected officer. Where the protected officer chooses to present verbally, representatives from the Panel will also be in attendance. All relevant parties will be provided with the relevant documentation in advance of full Council.
13. The decision of Council will be by way of a majority vote and will be final.
14. Where a decision to dismiss is approved by Council, then the protected officer has no further right of appeal.
15. It is in the interests of all parties that the process should be conducted expeditiously, but fairly and that any delays in the procedure are avoided, wherever possible.

16. This process will also be adopted in cases where there are issues in relation to capability, which are not resolved through the provision of additional guidance, training, development and support.



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**'Protected Officers' Disciplinary and Dismissal Procedure Flowchart**

The following flowchart provides a summary of the procedure:

**Initial Action**

The Leader of the Council, Head of Paid Service (or Monitoring Officer or Section 151 Chief Finance Officer where allegations relate to the Head of Paid Service appropriate) and the Corporate Director of HR People appoints an independent investigator

The independent investigator undertakes an investigation in line with ACAS Code of Practice and produces a report with detailed findings

**Panel Hearing**

A Panel, comprising of 2 independent persons, together with Elected Members who will ordinarily be members of the Employment Committee and the Corporate Director of PeopleHR (or their representative in an advisory capacity), hears the case, including representations from the protected officer

Any recommendation on no action or action short of dismissal can be confirmed by the Panel without any referral to full Council.

**Appeals Committee**

The protected officer has a right of appeal against a sanction of action short of dismissal to an Appeals Committee ordinarily made-up of Employment Committee members who were not involved in the Panel meeting. The



Trafford Council

Appeals Committee will review the case and the decision made, together with verbal/written representation from the protected officer and the Panel.





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**Executive Objections Procedure**

Where the proposal is to dismiss, the Executive Objections Procedure will be followed before the proposal being considered by Council

Under the Executive Objections Procedure, members of the Executive have a chance to object to the proposed dismissal. If there are no objections or it is deemed that any objection is not material or well-founded, then the proposal to dismiss can proceed.

It is for the Panel to decide whether any objections are material and well-founded. If they are, then the Panel will need to consider the effect of the objection and act accordingly. For example, this may require further investigation.

**Full Council**

Where the proposal is to dismiss, full Council considers all written documentation relating to the case for dismissal, including the advice, views and recommendation from the Panel, together with verbal/written representation from the protected officer and the Panel. An interlude is required of at least 20 working days between the original Panel meeting and the full Council meeting.

Council votes on whether or not to dismiss (majority vote) and their decision will be final.

