

**RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL**

**MUNICIPAL YEAR 2014-2015**

**CORPORATE GOVERNANCE &  
CONSTITUTION COMMITTEE  
18 SEPTEMBER 2014**

**Agenda Item No. 3**

**REPORT OF THE DIRECTOR OF  
LEGAL AND DEMOCRATIC SERVICES**

**PROPOSED AMENDMENTS TO THE  
CONSTITUTION – APPOINTMENTS  
COMMITTEE TERMS OF REFERENCE  
AND OFFICER EMPLOYMENT  
PROCEDURE RULES**

**1. PURPOSE OF REPORT**

To enable the Committee to consider proposed amendments to the Constitution required as a result of changes to the Local Authorities (Standing Orders) (Wales) Regulations 2006 (the ‘Standing Orders Regulations’) dealing with senior officer appointments and dismissals.

**2. RECOMMENDATIONS**

2.1 To note the amendments made to the Standing Orders Regulations.

2.2 To recommend to Council the approval of the amendments to:

- (i) the Officer Employment Procedure Rules as set out in Appendix 1 to this report; and
- (ii) the terms of reference of the Appointments Committee as set out in Appendix 2 to this report

in order to reflect the legislative amendments to the Standing Orders Regulations.

**3. BACKGROUND**

3.1 The Council is required by law to adopt Standing Orders governing the recruitment, appointment and dismissal of its staff (and other matters) in accordance with the Standing Orders Regulations. The Officer Employment Procedure Rules (set out in Part 4 of the Council’s Constitution) are the Standing Orders adopted by the Council for this purpose.

3.2 The 2006 Regulations make specific provisions for “Chief Officers” and “Deputy Chief Officers”, defined in the Standing Orders Regulations as follows:

“Chief Officer” includes the Head of Paid Service and Monitoring Officer, Section 151 Officer, Director of Social Services & Chief

Education Officer (“statutory chief officers”), and any person who reports directly to the Head of Paid Service (“non-statutory chief officers”); and

“Deputy Chief Officer” includes any person who reports directly to a statutory chief officer or a non-statutory chief officer, as defined above (except for secretarial, clerical and support staff).

- 3.3 Under the Council’s current senior management structure, the statutory references to “Chief Officer” would include the Council’s Chief Executive, the Monitoring Officer, the Group Directors and all Directors/Heads of Service who report directly to the Chief Executive. Any other Director/Head of Service is a “Deputy Chief Officer” for the purposes of the Standing Orders Regulations.
- 3.4 The Welsh Ministers have amended the Standing Orders Regulations by the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014 (“the Amendment Regulations”). The amendments came into effect on 1<sup>st</sup> July 2014.
- 3.5 The key changes made by the Amendment Regulations are as follows:
  - (i) To require public advertisement of all vacancies for a ‘Chief Officer’ (as defined as in paragraph 3.2 above), where the annual remuneration is £100k or more, except for temporary appointments made for no longer than 12 months. This change removes the option for such posts to be filled internally, i.e. from existing employees, without external advert. The Welsh Government takes the view that it is no longer appropriate for such senior posts to be appointed without public advertisement.
  - (ii) Full Council must now determine the level, and any change in the level, of the remuneration paid to ‘Chief Officers’ (as defined in paragraph 3.2 above). This change therefore removes the ability for such decisions to be delegated to a Committee or sub-committee of Members for officers who fall within the definition of ‘Chief Officers’ as was previously allowed.
  - (iii) To extend the statutory employment protection currently available to the Head of Paid Service, the Monitoring Officer and the Section 151 Officer to the Head of Democratic Services post established under the 2011 Local Government (Wales) Measure. This employment protection requires certain procedures to be followed, including the involvement of a ‘designated independent person’, in the event of an investigation into allegations of misconduct.
  - (iv) To add the statutory Head of Democratic Services post to the list of those senior officers (being Chief Officers and Deputy Chief Officers) whose appointment or dismissal should be conducted

by a Committee or Sub-Committee of Members (which must include at least one Cabinet member, but not more than half of the Committee / Sub-Committee may be Cabinet members). The Appointments Committee currently discharges the function of appointments on behalf of Council, so its terms of reference require amendment to include responsibility for the appointment of the statutory Head of Democratic Services. Members will note that the Democratic Services Committee has statutory responsibility to *designate* a Council officer / post as the Head of Democratic Services. No change is being made to the Democratic Services Committee's responsibility for designating the Head of Democratic Services, as this is distinct from the function of appointment or dismissal.

- 3.7 The Council's Officer Employment Procedure Rules and the Appointments Committee terms of reference (set out in Part 4 and Part 3 of the Constitution respectively) both now require amendment to reflect the legislative changes. The recommended amendments are shown in Appendix 1 (amended Officer Employment Procedure Rules) and Appendix 2 (amended Appointments Committee terms of reference).
- 3.8 There is also an ideal opportunity to further amend the Appointments Committee terms of reference to deal with proposed changes in the terms and conditions of an employee already appointed in post as well as the ability to consider proposals for regrading or regrading applications made by an employee (subject to the approval of full Council being required in respect of any determination or variation of the remuneration of Chief Officers (as defined in the Standing Orders Regulations)). The Committees terms of reference are currently silent on these points so it is considered this addition would clarify the position.
- 3.9 Members are therefore asked to note the amendments to the Standing Orders Regulations and consider the proposed amendments outlined in both Appendix 1 and 2 and recommend their approval to full Council.



**APPENDIX 1**

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**OFFICER EMPLOYMENT PROCEDURE RULES**

**Interpretation**

**For the purposes of these Rules:**

- “Chief Officer” has the same meaning as in the Local Authorities (Standing Orders)(Wales) Regulations 2006, namely, the Head of Paid Service; the Monitoring Officer; a statutory chief officer mentioned in paragraph (a), (c) or (d) of section 2(6) of the Local Government and Housing Act 1989 (which includes the Chief Finance Officer); or a non-statutory chief officer within the meaning of section 2(7) of the same 1989 Act
- “Deputy Chief Officer” has the same meaning as in Section 2(8) of the Local Government and Housing Act 1989, being a person who, as respects 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 for secretarial, clerical and support staff)

**1. Recruitment and Appointment**

(a) Declarations

- (i) The Council will draw up a statement requiring any candidate for appointment as an employee to state in writing whether they are the:

- |  |                                  |
|--|----------------------------------|
| <input type="checkbox"/> Parent        | <input type="checkbox"/> Brother |
| <input type="checkbox"/> Grandparent   | <input type="checkbox"/> Sister  |
| <input type="checkbox"/> Partner       | <input type="checkbox"/> Uncle   |
| <input type="checkbox"/> Child         | <input type="checkbox"/> Aunt    |
| <input type="checkbox"/> Stepchild     | <input type="checkbox"/> Nephew  |
| <input type="checkbox"/> Adopted Child | <input type="checkbox"/> Niece   |
| <input type="checkbox"/> Grandchild    |                                  |

of an existing Councillor or employee of the County Borough Council; or of the partner of such persons.

- (ii) No candidate so related to a Councillor or employee will be appointed without the authority of the relevant Chief Officer or an Officer nominated by him/her.

(b) Seeking support for appointment

- (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. This rule will be included in any recruitment information.
- (ii) No Councillor will seek support for any person for any appointment with the Council.

## 2. **Appointments**

Where the Council proposes to appoint a Chief Officer (as defined above), and it is proposed that the remuneration of the Chief Officer post be £100,000 or more per annum, the Director of Human Resources must:

- (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) make arrangements for the post to be publically advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request unless the proposed appointment is for a period of 12 months or less
- (d) Where a post has been advertised as provided in paragraph 2(b), the Council must -
  - (i) interview all qualified applicants for the post, or
  - (ii) select a short list of such qualified applicants and interview those included on the short list.
- (e) Where no qualified person has applied, or if the Council decides to re-advertise the appointment, the Council may make further arrangements for advertisement in accordance with paragraph 2(b).

## 3. **Appointment of Chief Officers**

Full Council must approve the appointment of the Head of Paid Service and other Chief Officers following the recommendation by a Committee or Sub-Committee of the Council. That Committee or Sub-Committee must include at least one Member of the Executive but no more than half must be Members of the Executive.

## 4. **Appointment of Deputy Chief Officers and Head of Democratic Services**

A Committee or Sub-Committee of the Council will appoint persons to these posts. That Committee or Sub-Committee must include at least

one Member of the Executive but no more than half must be Members of the Executive.

5. **Appointments to Head of Service - Level 1-2 and Heads of Service (Soulbury)**

Appointment to these posts is the responsibility of the Head of Paid Service and other Chief Officers in conjunction with the Director of Human Resources.

6. **Other Appointments**

Appointment to these posts is the responsibility of senior managers, or their nominated representative(s).

**N.B. Honorarium payments/acting up appointments can be agreed by senior managers who are employed on chief officer terms and conditions of employment, or their nominated representative(s). However, such arrangements should not exceed a period of 6 months. Any extension to these arrangements must be made in conjunction with the Director of Human Resources.**

7. **Remuneration of Chief Officers**

Any decision to determine or vary the remuneration of Chief Officers (or those to be appointed as Chief Officers) must be made by full Council.

**Disciplinary Matters**

8. **Head of Paid Service (Chief Executive), Monitoring Officer, Chief Finance Officer & Head of Democratic Services**

**General**

8.1 The principles of natural justice and of good management practice must govern the conduct of any proceedings against the Head of Paid Service, Chief Finance Officer, Monitoring Officer or Head of Democratic Services (a 'relevant officer') on the grounds of either alleged misconduct (i.e. 'discipline') or alleged inability to carry out the role of a relevant officer (i.e. 'capability'). The Council should have full regard to the principles and standards set out in the ACAS Code of Practice on Disciplinary Procedures.

8.2 No disciplinary action (other than action to which the sub-paragraph 8.2.1 below applies) in respect of a relevant officer may be taken by the Council, or by a committee, a sub-committee, a joint committee on

which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a “designated independent person” under regulation 9 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 (investigation of alleged misconduct).

- 8.2.1 The action to which this paragraph applies is suspension of the relevant officer for the purpose of investigating the alleged misconduct occasioning the action; provided such suspension is on full pay and terminates no later than the expiry of two months beginning on the day on which the suspension takes effect.

### **Disciplinary Procedure**

The disciplinary procedure is as follows:-

- 8.3 An Investigation Committee of 3 Members, the Leader of the Council and the Cabinet Member with responsibility for Human Resources, together with such other nominated Members as are needed to satisfy the political balance requirements of the Local Government and Housing Act 1989 shall be empowered to suspend from duty the aforementioned officers in accordance with sub-paragraph 8.2.1 above pending investigation of an allegation of misconduct.
- 8.4 The Investigation Committee must, within 1 month of its appointment, consider the allegation of misconduct and decide whether it should be further investigated.

For the purpose of considering the allegation of misconduct, the Investigation Committee:

- (a) may make such enquiries of the relevant officer or any other person it considers appropriate;
  - (b) may request the relevant officer or any other person it considers appropriate to provide it with such information, explanation or documents as it considers necessary within a specified time limit; and
  - (c) may receive written or oral representations from the relevant officer or any other person it considers appropriate.
- 8.5 (a) Where it appears to the Investigation Committee that an allegation of misconduct by the relevant officer should be further investigated, it must appoint the “designated independent person”.
- (b) The designated independent person who is appointed –
- (i) must be such person as may be agreed between the Council and the relevant officer within 1 month of the date on which the requirement to appoint the designated independent person arose; or
  - (ii) where there is no such agreement, must be such person as is nominated for the purpose by the Welsh Ministers.

- (c) The designated independent person –
- (i) may direct –
    - that the Council terminate any suspension of the relevant officer;
    - that any such suspension is to continue after the expiry of the 2 month period referred to in paragraph 8.2.1
    - that the terms on which any such suspension has taken place are to be varied in accordance with the direction; or
    - that no steps (whether by the Council or any committee, sub-committee or officer acting on behalf of the Council) by way of disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence, or with the agreement, of the designated independent person, are to be taken before a report is made under sub-paragraph (iv);
  - (ii) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Council, or which the Council has power to authorise the designated independent person to inspect;
  - (iii) may require any member or member of staff of the Council to answer questions concerning the conduct of the relevant officer;
  - (iv) must make a report to the Council –
    - stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct against the relevant officer; and
    - recommending any disciplinary action which appears appropriate for the Council to take against the relevant officer, and
  - (v) must no later than the time at which the report is made under sub-paragraph (iv), send a copy of the report to the relevant officer.
- (d) Subject to paragraph (e), the relevant officer and Investigating Committee, after consulting the designated independent person, attempt to agree a timetable within which the designated independent person is to undertake the investigation.
- (e) Where there is no agreement under paragraph (d), the designated independent person must set a timetable as that person considers appropriate within which the investigation is to be undertaken.
- (f) The Council must consider the report prepared under paragraph

(c)(iv) within 1 month of receipt of that report.

(g) The Council must pay reasonable remuneration to a designated independent person appointed by the investigation committee and any costs incurred by, or in connection with the discharge of functions under this regulation.

8.6 For the purposes of this Rule 8, any officer who was a relevant officer at the time of the alleged misconduct or when the reason for the proposed dismissal occurred (but is no longer so), shall be regarded as a relevant officer.

9. **Other Chief Officers, Deputy Chief Officers and Heads of Service Level 1-2, Heads of Service (Soulbury)**

**Introduction**

The following procedures relating to discipline and capability apply to Chief Officers (with the exception of a relevant officer), Deputy Chief Officers and Heads of Service Level 1-2 and Head of Service (Soulbury). In cases of gross misconduct, it may not be necessary to operate all stages of the disciplinary procedure.

**Disciplinary Procedure**

1. The Head of Paid Service should undertake a preliminary investigation of any disciplinary complaint against an officer. If appropriate, because of prior personal involvement by the Head of Paid Service or for other special reasons the Council may instead arrange for the preliminary investigation to be undertaken by another suitable Chief Officer.
2. Prior to the appointment of an Investigating Committee, , the Leader of the Council and an appropriate Cabinet Member together with such other nominated members as are needed to satisfy the political balance requirements of the Local Government and Housing Act 1989, shall be empowered to suspend from duty the officer concerned.

(Full details of the procedure are contained within the Disciplinary Policy for chief officers).

10. **Other Positions**

Power to suspend and discipline employees below the level of those outlined in Rule 8 and 9 above is the responsibility of senior managers who are employed on chief officer terms and conditions of employment.

In addition, officers at Grade 15 are authorised to give warnings up to a final written level but cannot dismiss from service.

(Full details of the procedure are contained within the Disciplinary Policy for Council Employees).

### **Grievance Matters**

11. **Head of Paid Service (Chief Executive), Monitoring Officer, Chief Finance Officer and Head of Democratic Services**

Full details are contained within the Grievance procedure for Head of Paid Service (Chief Executive), Monitoring Officer, Chief Finance Officer and Head of Democratic Services.

12. **Other Chief Officers, Deputy Chief Officers and Heads of Service Level 1-2, Heads of Service (Soulbury)**

Full details are contained within the Grievance Procedure for chief officers.

13. **Other Positions**

Power to determine upon grievances below chief officer level is the responsibility of senior managers who are employed on chief officer terms and conditions of employment.

### **Management & Control of Sickness Absence**

14. **Head of Paid Service (Chief Executive), Monitoring Officer, Chief Finance Officer and Head of Democratic Services**

The procedure for capability in terms of medical fitness will be in accordance with the Council's Sickness Absence Procedures. In the case of permanent ill-health an independent person need not be appointed.

15. **Other Chief Officers, Deputy Chief Officers and Heads of Service Level 1-2, Heads of Service (Soulbury)**

The procedure for capability in terms of medical fitness will be in accordance with the Council's Sickness Absence Procedures.

16. **Other Positions**

Power to determine upon sickness absence matters below chief officer level is the responsibility of senior managers who are employed on chief officer terms and conditions of employment.

In addition, officers at Grade 15 are authorised to give warnings up to a final written level but cannot dismiss from service.

**N.B. Any request received in relation to extending an employees sickness pay entitlement will be determined upon by the Chief Executive/Group Director, in conjunction with the Director of Human Resources.**

**Managing Change**

17. Senior managers who are employed on chief officer terms and conditions of employment are authorised to consult with trade unions on managing change issues e.g. restructures, regradings, employee transfers, in conjunction with the Director of Human Resources.

**APPENDIX 2**

**Extract from Constitution, Part 3 - Appointments Committee Terms of Reference – Recommended amendments**

**5. Appointments Committee  
Terms of Reference**

**Appointments**

- 5.1 To discharge the functions of the Council in respect of the appointment of Chief Officers and Deputy Chief Officers (as defined in the Local Authorities (Standing Orders) (Wales) Regulations 2006 (the '2006 Regulations') and the statutory Head of Democratic Services in accordance with the Officer Employment Procedure Rules and any other relevant Council policies and procedures.

**Employment Conditions**

- 5.2 (a) to consider and determine policy and issues arising from the terms and conditions of Chief Officers and Deputy Chief Officers (as defined in the 2006 Regulations), subject to the approval of full Council in respect of any determination or variation of the remuneration of Chief Officers (as defined in the 2006 Regulations); and
- (b) to consider requests for regrading of Chief Officers and Deputy Chief Officers (as defined in the 2006 Regulations) whether by way of appeal by an employee against a decision to refuse the regarding application or decide applications for regrading which are supported, subject to the approval of full Council in respect of any determination or variation of the remuneration of Chief Officers (as defined in the 2006 Regulations)

**Powers Delegated to Chief Officers**

- 5.3 All operational and management requirements arising from the Committees Terms of Reference.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

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PROCEDURE RULES**

**Appendices**

- Appendix 1 Officer Employment Procedure Rules  
– recommended amendments
- Appendix 2 Terms of Reference – Appointments Committee  
– recommended amendments

**Background papers**

The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations  
2014