

Constitution Committee

Agenda

Date:	Monday, 13th February, 2017
Time:	2.30 pm
Venue:	Council Chamber, Municipal Buildings, Earle Street, Crewe CW1 2BJ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and in the report.

It should be noted that Part 1 items of Cheshire East Council decision-making and overview and scrutiny meetings are audio recorded and the recordings will be uploaded to the Council's website.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**
2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Minutes of Previous meeting** (Pages 3 - 8)

To approve the minutes of the meeting held on 24th November 2016.

5. **Staffing Committee Terms of Reference** (Pages 9 - 18)

To report to the Committee for information the amended terms of reference of the Staffing Committee as approved by Council on 15th December 2016.

6. **New JNC Handbook for Chief Executives and Consequential Amendments to the Constitution** (Pages 19 - 58)

To consider a report which explains the changes made in the new JNC handbook for Chief Executives which reflect changes made to the statutory employment protections for the Head of Paid Service, Chief Finance Officer and Monitoring Officer. The report also recommends changes to the Constitution to comply with the new requirements.

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 24th November, 2016 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor M Beanland (Vice-Chairman)

Councillors G Baxendale, B Burkhill, M Deakin, S Edgar, H Gaddum,
S Hogben, D Mahon, N Mannion, R Menlove, G Williams, Rhoda Bailey (for
Cllr Brooks) and D Flude (for Cllr Jeuda)

Councillors in attendance

Councillors D Marren, M Simon and L Smetham

Officers

Brian Reed, Head of Governance and Democratic Services
Bill Norman, Director of Legal Services
Paul Mountford, Governance and Democratic Services
Mark Nedderman, Scrutiny Manager
Rachel Graves, Democratic Services Officer

Apologies

Councillors E Brooks and L Jeuda

18 DECLARATIONS OF INTEREST

Councillors Rhoda Bailey and Dorothy Flude declared non-pecuniary
interests in an item on the functions of the Public Rights of Way
Committee, as members of that committee.

19 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

20 MINUTES OF PREVIOUS MEETING**RESOLVED**

That the minutes of the meeting held on 15th September 2016 be approved
as a correct record.

21 OVERVIEW AND SCRUTINY COMMITTEES - REVIEW OF STRUCTURE

The Committee considered proposals to reduce the number of overview
and scrutiny committees to better align the committees to the corporate
and Cabinet structures.

The current overview and scrutiny structure comprising six committees did not align well with the new Cabinet portfolios. The result was that most portfolio holders were required to report to more than one committee. A better alignment of the overview and scrutiny structure linked to the new portfolios would provide greater clarity for the organisation as a whole, and would give each portfolio holder a single point of contact as far as overview and scrutiny was concerned.

A draft structure had been created comprising four committees. The Corporate Overview and Scrutiny Committee would retain its overarching responsibilities for the whole of the scrutiny function. With the exception of the Health Adult Social Care and Communities Overview and Scrutiny Committee, which would meet on a monthly basis, committees would meet formally on a bi-monthly basis, six times a year as they did now.

Councillor M Simon, the Chairman of the Corporate Overview and Scrutiny Committee, attended the meeting and spoke on this matter.

The Chairman thanked Councillor Simon and the scrutiny officers for their work on the restructuring of the overview and scrutiny committees.

RESOLVED

That it be recommended to Council that

(1) the overview and scrutiny committee structure be reduced from six to four committees as follows:

- Corporate (12 Members) (to include the chairmen and vice-chairmen of the other three overview and scrutiny committees)
- Environment and Regeneration (12 Members)
- Children and Families (12 Members)
- Health and Adult Social Care and Communities (15 Members)

(2) the terms of reference for each overview and scrutiny committee as set out in Appendix 1 to the report be approved;

(3) with the exception of the Health and Adult Social Care and Communities Overview and Scrutiny Committee, which will meet on a monthly basis, the meetings of the overview and scrutiny committees be held on an eight weekly cycle, subject to each Chairman being given flexibility to convene additional meetings as and when required depending on workload;

(4) regular mid-point meetings be disbanded;

- (5) the proposed overview and scrutiny arrangements be implemented with effect from 1st January 2017 and reviewed in due course; and
- (6) the Director of Legal Services be authorised to make such changes to the Council's Constitution as he considers are necessary to give effect to the wishes of Council.

22 CALENDAR OF MEETINGS FOR 2017-18

The Committee considered the draft Calendar of Meetings for 2017/18.

The Committee had regard to the revised overview and scrutiny committee arrangements to be recommended to Council. A revised draft calendar reflecting those arrangements was circulated at the meeting.

The officers reported a request by Finance officers to include two additional meetings of the Audit and Governance Committee to reflect and accommodate changes in the reporting deadlines for certifying the statement of accounts and the approval and publication of the audited accounts. The proposed dates for the additional meetings were 1st June and 3rd August 2017 and could be accommodated within the revised calendar.

The officers circulated a summary of the comments received regarding the draft calendar.

RESOLVED

That it be recommended to Council that the draft Calendar of Meetings for 2017-18, as amended to reflect the proposed overview and scrutiny structure, and with the inclusion of two additional Audit and Governance Committee meetings on the dates indicated, be approved.

23 NOMINATION OF MEMBERS TO COMMITTEES

The Committee considered proposals to simplify the process for the nomination of Members to the Council's committees.

Group Whips had indicated that the formalities and delays associated with the need to report to Council each time a change to a committee membership was required was unduly burdensome. The proposals in the report sought to simplify the process by requiring that the memberships of the Council's committees and sub-committees be established and changed, where required, by way of notification to the Head of Governance and Democratic Services by the Leader or Whip of the political group in question. This would include nominations to chairmanships and vice-chairmanships. The approach would provide more flexibility for the political groups, their Leaders and Whips, and for the officers involved in administering the Council's decision-making arrangements, but would not dilute the fundamental legal requirement that

the composition and term of office of each committee and sub-committee be agreed by Council.

The Annual Council meeting would continue to agree the numerical composition and term of office of each committee and sub-committee.

RESOLVED

That it be recommended to Council that

1. except for the Council's Cabinet and Cabinet committees and sub-committees, nominations to the Council's committees, sub-committees and decision-making bodies, and changes to such nominations, shall be notified to the Council by the Council's political Group Leaders or Group Whips, in accordance with the relevant numerical allocations made by Full Council to the committee, sub-committee or decision-making body in question;
2. such nominations or changes to nominations shall be made to the Head of Governance and Democratic Services in writing or by email, and shall thereafter be published on the Council's website;
3. Council note that the legislative requirements set out in the Legal Implications section of the report will not be affected by the recommendations of the report, and that the existing arrangements shall continue, by which the Council's Annual General Meeting agrees the political group or groups which will hold the chairmanships and vice-chairmanships of the Council's committees, sub-committees and decision-making bodies; and
4. the Director of Legal Services, in consultation with the Chairman and Vice-Chairman of the Constitution Committee, be authorised to make such changes to the Council's Constitution as he considers are necessary to give effect to the wishes of Council.

24 THE FUNCTIONS OF THE PUBLIC RIGHTS OF WAY COMMITTEE

The Committee considered a report on the functions of the Public Rights of Way Committee.

The Committee felt that the current arrangements for the Council's public rights of way functions worked well and were not in need of change.

RESOLVED

That no recommendations be made for changes to the existing public rights of way decision-making arrangements.

25 THE OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014

The Committee considered a report outlining the Openness of Local Government Bodies Regulations 2014 and related legislation in the context of contemporaneously recording, webcasting and offering social media commentary on the Council's decision-making meetings. The report also highlighted best practice developed by other authorities.

RESOLVED

That

1. the content and effect of the Openness of Local Government Bodies Regulations 2014, including the implications for councils contemporaneously recording, webcasting and delivering social media commentary in respect of their own decision making meetings, be noted; and
2. further work be undertaken to identify and evaluate the financial and other logistical implications of recording, webcasting and providing social media commentary in respect of the Council's decision-making meetings with a view to generating an options appraisal report and a draft policy (to address the potential pitfalls that may arise from the audio recording/webcasting of, and providing social media commentary on, Council meetings) for the Committee to consider.

26 FUTURE WORK PROGRAMME

The Committee noted that a report on the following would be submitted to a future meeting:

'Review of Delegations to Planning Committees and Planning Officers'

The meeting commenced at 2.00 pm and concluded at 3.43 pm

Councillor A Martin (Chairman)

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CONSTITUTION COMMITTEE – 13TH FEBRUARY 2017**Extract from the Minutes of the Council meeting on 15th December 2016****78 STAFFING COMMITTEE TERMS OF REFERENCE**

Consideration was given to a report recommending that Council amend the Terms of Reference of the Staffing Committee in relation to the approval of Human Resources Policies and Procedures and other matters, details of which were set out in the report. The Head of Legal Services and Monitoring Officer reported that the need for this report had been brought to his attention after the meeting of the Constitution Committee and he had, therefore, consulted the Chairman of the Constitution Committee, who had agreed that it could be reported directly to Council.

RESOLVED

That the terms of Reference of the Staffing Committee be amended as detailed in the updated and re-circulated Appendix to the report, with immediate effect.

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Cheshire East Council

Council

Date of Meeting: 15 December 2016

Report of: Director of Legal Services

Subject/Title: Staffing Committee – Terms of Reference

1. Report Summary

- 1.1. This report recommends that Council amends the Terms of Reference of the Staffing Committee in relation to the approval of Human Resources Policies and Procedures and other matters.

2. Recommendation

- 2.1. That the terms of Reference of the Staffing Committee be amended as detailed in the Appendix to this report, with immediate effect.

3. Other Option Considered

- 3.1. To retain the existing Terms of Reference. This is not recommended as the existing Terms of Reference do not comply with the Local Government Act 2000 (including the various Functions Regulations made under that Act) in relation to the approval of Human Resources Policies and Procedures; and do not comply with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) in relation to other matters.

4. Reasons for Recommendation

- 4.1. To ensure that the Council's Constitution complies with: the Local Government Act 2000 (and the Functions Regulations made under that Act) in relation to the approval of Human Resources Policies and Procedures; and, in relation to other matters, with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended).
- 4.2. Following consultation with the Chairman of the Constitution Committee, the Chairman of the Staffing Committee, and the Portfolio Holder with responsibility for Human Resources, this report has been brought direct to Council, without the normal step of referring it to the Constitution Committee.

5. Background/Chronology

- 5.1. This report recommends Council to change the Terms of Reference of the Staffing Committee in relation to the approval of Human Resources Policies and Procedures to ensure that the Council's Constitution complies with the Local Government Act 2000 (including the various Functions Regulations made under that Act); and the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended), in relation to other matters.
- 5.2. Since October 2015 the Council's Constitution has allocated responsibility for the approval of Human Resources Policies and Procedures to the Staffing Committee. Previously, the responsibility was allocated to the Portfolio Holder with responsibility for Human Resources. For the reasons set out in the following paragraphs, the October 2015 change in responsibility for the approval of Human Resources Policies and Procedures was legally unsound and it is recommended that it is reversed by Council.
- 5.3. The Local Government Act 2000 ('the 2000 Act') required larger local authorities to change their form of governance from the committee system to 'Executive Arrangements.' For most such authorities, including Cheshire East Council, this has meant adopting the Leader and Cabinet model of governance. The 2000 Act (and Statutory Instruments made under it) allocate responsibility for discharging an authority's 'functions' when operating Executive Arrangements.
- 5.4. Some functions are defined as 'Council functions' (or 'Council-side functions'). Council functions include the overwhelming majority of Town and Country Planning and Licensing matters. These are generally delegated to the authority's Planning and Licensing Committees (which are politically proportionate), or to officers under the Officer Scheme of Delegation.
- 5.5. Some functions are defined as 'Local Choice functions.' As the label implies, authorities may choose whether or not these functions are the responsibility of the Executive (Leader and Cabinet). That decision itself is a decision for the full Council. Under the Cheshire East Constitution, for example, functions relating to contaminated land (a Local Choice function) have been allocated to the Executive.
- 5.6. Council side and Local Choice functions are listed in a series of over a dozen Statutory Instruments made under the 2000 Act. These Statutory Instruments are referred to collectively as 'the Functions Regulations.'

- 5.7. Functions which are neither defined as Council functions nor as Local Choice functions in the Functions Regulations are, by default, the responsibility of the Executive (in Cheshire East, the Leader and Cabinet). Section 13 of the 2000 Act gives effect to this position by providing that:

'... any function of a local authority which is not specified in ... [the Functions Regulations] ... is to be the responsibility of an executive of the authority under executive arrangements.'

- 5.8. The authority's Staffing Committee is a committee established by Full Council and, as such, it is politically balanced. As a Council committee, Staffing Committee can only determine matters which are Council-side functions (as opposed to Executive (Cabinet) functions).
- 5.9. The power for local authorities to appoint staff is contained in section 112 of the Local Government Act 1972 ('the 1972 Act'). Officers appointed under this section 'shall hold office on such reasonable terms and conditions, including as to remuneration' as the appointing authority 'think fit' (section 112(2)).
- 5.10. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 and 2015) (together, 'The Standing Orders Regulations') require that the function of appointing, dismissing, or taking disciplinary action against an officer below deputy Chief Officer level must be discharged on behalf of the Council by the Head of Paid Service (the Chief Executive), or by an officer nominated by him. The Council's Staff Employment Procedure Rules are compliant with The Standing Orders Regulations.
- 5.11. Schedule 1 of the The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ('the 2000 Regulations') makes the power to appoint staff under section 112 of the 1972 Act a Council-side function. However, the 2000 Regulations contain no reference to the approval of Human Resources Policies and Procedures; nor do any of the other Functions Regulations.
- 5.12. The power to make Human Resources Policies and Procedures derives from section 111 of the 1972 Act - the power for local authorities to do:

'... any thing ... which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.'

None of the Functions Regulations refer to section 111 of the 1972 Act. Accordingly, the default position set out in section 13(2) of the 2000 Act (see paragraph 5.7) applies and the power to approve Human Resources Policies and Procedures must rest with the Executive.

- 5.13. Until October 2015 the Council's Constitution reflected this legal position and the relevant provision in the Terms of Reference of the Staffing Committee read as follows:

'5 To have the opportunity to review the Council's HR Policies and Procedures as required and to make recommendations to the Portfolio Holder. It is noted that the authority to approve HR Policies remains with the Executive.' (Underlining added)

- 5.14. In October 2015, as part of a wide-ranging review of the Constitution, the Terms of Reference of the Staffing Committee were revised. Most of the revisions reflected changes in legislation. For example, under section 38 of the Localism Act 2011, the Council must approve annually a Pay Policy Statement; and it was logical that the Committee's remit was expanded to allow it to make recommendations to Council regarding that Statement.

- 5.15. However, for reasons that are not clear, the Term of Reference relating to Human Resources Policies and Procedures was replaced with the following wording:

'6.1 To approve all human resources policies including pay and grading structures (except those that must be approved in law by the Council and the implementation of national terms and conditions which will be undertaken by the Chief Executive/Head of Paid Service), employees' terms and conditions of employment, including changes to those terms and conditions and to approve policies on how the Council exercises its functions under the Local Government Pension Scheme and any other relevant pension scheme.'

- 5.16. This Term of Reference is unlawful in two respects. First, it seeks to make an Executive function (the approval of Human Resources Policies and Procedures) a Council-side function and allocate it to the Staffing Committee. Second, it seeks to make the terms and conditions of all employees (and any changes to the same) the responsibility of the Committee, contrary to The Standing Orders Regulations.

- 5.17. The reference to functions under the Local Government Pension Scheme is unobjectionable. This is because functions relating to local government pensions are expressly made a Council-side function in Schedule 1 to the 2000 Regulations, so far as they relate to Regulations made under sections 7, 12, or 24 of the Superannuation Act 1972.

- 5.18. It is therefore recommended that the Terms of Reference of the Staffing Committee are revised as set out (as Track Changes) in the Appendix to this report. The recommended revisions include several other minor and typographical changes. The recommended revisions may be summarised as follows:

- 5.18.1. The current paragraph 6.1 is deleted in its entirety.

- 5.18.2. In relation to the approval of Human Resources Policies and Procedures, the wording previously adopted prior to October 2015 is reinstated, with the addition of the words 'and procedures' in the second sentence.
- 5.18.3. A new paragraph 6.5 is added to empower the Committee to exercise functions relating to local government pensions, so far as they relate to Regulations made under sections 7, 12, or 24 of the Superannuation Act 1972.
- 5.18.4. References to specific posts are updated to reflect the relevant current job titles.
- 5.18.5. Reference to 'Chief Education Officer' in section 2 is deleted. (This role ceased in England with the coming into force of the Children Act 2004 and the requirement within that legislation for all top tier authorities in England to appoint a Director of Children's Services.)

6. Wards Affected and Local Ward Members

- 6.1. None.

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. The recommendations are intended to ensure that Human Resources Policies and Procedures are approved in a lawful manner.

7.2. Legal Implications

- 7.2.1. These are set out in the body of this report.

7.3. Financial Implications

- 7.3.1. None.

7.4. Equality Implications

- 7.4.1. None.

7.5. Rural Community Implications

- 7.5.1. None.

7.6. Human Resources Implications

- 7.6.1. The recommendations are intended to ensure that Human Resources Policies and Procedures are approved in a lawful manner.

7.7. Public Health Implications

7.7.1. None.

7.8. Implications for Children and Young People

7.8.1. None.

7.9. Other Implications (Please Specify)

7.9.1. None.

8. Risk Management

8.1. A legal argument could be constructed to suggest that all Human Resources Policies and Procedures 'approved' by the Staffing Committee since October 2015 are invalid. Whilst such an argument might be unlikely to appeal to an Employment Tribunal, if Council approves the recommendation set out in this report, the risk can be eliminated by referring all such policies and procedures to the Portfolio Holder for formal approval.

9. Access to Information/Bibliography

9.1. All Acts of Parliament and Regulations referred to in this report are in the public domain and available at: <http://www.legislation.gov.uk/>

9.2. The Council's Constitution, including earlier iterations of the document are available on the authority's website at: http://www.cheshireeast.gov.uk/council_and_democracy/your_council/constitution.aspx

10. Contact Information

Contact details for this report are as follows:

Name: Bill Norman
Designation: Director of Legal Services
Tel. No.: 01270 685850
Email: Bill.Norman@cheshireeast.gov.uk

APPENDIX

STAFFING COMMITTEE (Terms of Reference)

8 Members

Statement of Purpose

1 The Staffing Committee is a key component of Cheshire East's corporate governance. It provides an independent and high level focus on Human Resources, Organisational Development and Health & Safety matters affecting the Council.

2 The purpose of the Staffing Committee is

(a) to provide independent assurance to the members of the adequacy of the HR service and staffing related matters,

(b) with regard to the Head of Paid Service, Monitoring Officer and **Section s151** Officer (Statutory Officers):

To undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules; and

Make a recommendation to the Council to approve the proposed appointment before an offer of appointment is made to that person.

(c) appoint/dismiss the Statutory Chief Officers, namely:

The **Executive** Director of **People and Deputy Chief Executive (Director of Children's Services** ~~(Chief Education Officer)~~;

Strategic Director of Adult Social ~~Services~~ **Care and Health (Director of Adult Social Services)**; and

Director of Public Health.

including undertaking the recruitment and selection process.

(d) to appoint/dismiss the Executive Director of ~~Place~~ **Economic Growth and Prosperity** including undertaking the recruitment and selection process.

(e) to approve "in year" salary or other benefit increased to the Head of Paid Service

Functions of the Committee

Recruitment and Selection

3 With regard to Statutory Officers:

To undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules; and

make a recommendation to the Council to approve the proposed appointment before an offer of appointment is made to that person.

4 To make a recommendation to the Council to approve the dismissal of any of the Statutory Officers prior to notice being given to that person, and provided that the procedure set out in the Staff Employment Procedure Rules has been complied with.

5. appoint/dismiss Statutory Chief Officers and the Executive Director of **Place** ~~Economic Growth and Prosperity~~.

HR Policies

~~6.1 To approve all human resources policies including pay and grading structures (except those that must be approved in law by the Council and the implementation of national terms and conditions which will be undertaken by the Chief Executive/Head of Paid Service), employees' terms and conditions of employment, including changes to those terms and conditions and to approve policies on how the Council exercises its functions under the Local Government Pension Scheme and any other relevant pension scheme. To have the opportunity to review the Council's HR Policies and Procedures as required and to make recommendations to the Portfolio Holder. It is noted that the authority to approve HR Policies and Procedures remains with the Executive~~

6.2 To make recommendations to Council in relation to the annual Pay Policy Statement and any amendments to such statement.

6.3 To make recommendations to Council in relation to decisions affecting the remuneration of any new post whose remuneration is or is proposed to be or would become £100,000 p.a. or more.

6.4 To make decisions in relation to proposed severance packages with a value of £100,000 or more.

~~6.5 to exercise the functions relating to local government pensions, so far as they relate to Regulations made under sections 7, 12, or 24 of the Superannuation Act 1972.~~

Appeals

7.1 For a Staffing Appeals Sub Committee:

to consider appeals from Staff in the following circumstances:

- Appeals against dismissal
- Appeals against grievance
- Appeals against policy (but only the first appeal where the appeals are based on the same issues/circumstances)

7.2 With effect from 1st January 2016, Members appointed to the Staff Appeals Sub Committee may only hear appeals if they have received the mandatory training on appeals procedures offered by the Council (tailored in accordance with the individual Member's existing knowledge and experience).

Organisational Performance

8 To receive regular updates on performance information in order to assess the effectiveness of current Human Resources Organisational Development and Health & Safety policies and practices .These will include as a minimum:

- Headcount Data
- Sickness Absence
- Turnover
- HR Casework (including disciplinary, grievance and capability)
- Health and Safety Accidents Records
- Health and Safety Training

CHESHIRE EAST COUNCIL**Constitution Committee**

Date of Meeting:	13 th February 2017
Report of:	Deputy Monitoring Officer
Portfolio Holder:	Councillor Paul Findlow – Corporate Policy & Legal Services
Subject/Title:	New JNC Handbook for Chief Executives and Consequential Amendments to the Constitution

1.0 Report Summary

1.1 The report explains the changes made in the new (October 2016) JNC handbook for Chief Executives which reflect changes made to the statutory employment protections for the Head of Paid Service, Chief Finance Officer (the Section 151 Officer) and Monitoring Officer who, together, are referred to as the “Protected Officers”. The report also recommends changes to the Constitution to comply with the new requirements.

2.0 Recommendations

2.1 That the Constitution Committee recommend to Council that:-

- a) The Staff Employment Procedure Rules be amended as set out in **Appendix 2**.
- b) The Terms of Reference of the Staffing Committee be amended as set out in **Appendix 3**.
- c) An Investigation and Disciplinary Committee (comprising 7 elected Members) be established with the terms of reference set out in **Appendix 4**
- d) A Disciplinary Appeals Committee (comprising 7 elected Members) be established with terms of reference as set out in **Appendix 5**.
- e) An Independent Persons Panel be established with the terms of reference set out in **Appendix 6**
- f) The Director of Legal Services and Monitoring Officer be authorised to invite the Council’s current Independent Persons (being those persons appointed to advise on member conduct complaints under the

Localism Act 2011) and if necessary one or more of the Independent Persons of neighbouring authorities (following consultation with the Monitoring Officers of those authorities), to be considered for appointment to the Independent Persons Panel.

- g) The Constitution Committee be authorised to confirm appointments to the Independent Persons Panel.
- h) The Constitution Committee be authorised to approve the payment of a reasonable and proper allowance/expenses for the work undertaken by those Independent Persons appointed to the Independent Persons Panel.
- i) The Director of Legal Services be authorised to make any further consequential amendments to the Constitution to ensure consistency with the above changes.

3.0 Reasons for the Recommendation

- 3.1 To comply with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015; and to ensure that the Council's constitution and procedures are consistent with the revised JNC handbook for Chief Executives (October 2016).

4.0 Wards Affected

- 4.1 All wards are affected.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications

- 6.1 None Identified.

7.0 Financial Implications

- 7.1 The administrative and legal costs of making the changes are limited and can be contained within existing budgets.
- 7.2 The cost of any committee/panel meetings will only arise if disciplinary proceedings are taken against a Protected Officer. Any such costs are likely to be met from existing budgets.

8.0 Legal implications

- 8.1 The changes are required to comply with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and to ensure consistency with the revised JNC handbook for Chief Executives (October

2016) and the Council's contractual obligations. External solicitors have advised on the constitutional and employment law issues, and have contributed to this report.

9.0 Risk Management

9.1 Failure to make the changes could leave the Council vulnerable to claims if its processes do not fully comply with the legislation and its contractual obligations.

9.2 These procedures are relatively new and untested. Issues may emerge in the context of national debate and negotiations or as individual cases come forward. It will be possible for changes to be made at a future date if necessary and any matters requiring attention will be reported to the Staffing Committee and/or to the Constitution Committee and/or Council.

10.0 Background and Options

Background

10.1 The Local Government Act 1972, the Local Government Finance Act 1988 and the Local Government and Housing Act 1989 require local authorities to designate officers as the "head of paid service", the "monitoring officer" and the officer "responsible for the administration of the authority's financial affairs" (called the "chief finance officer" or "section 151 officer"), each of whom has a personal statutory duty to report to Cabinet or Full Council in certain circumstances. Their duties are, in very broad terms, to prevent or highlight organisational, legal or financial problems. This Council has designated the Chief Executive, the Director of Legal Services and the Chief Operating Officer to these respective roles.

10.2 As a result of the personal duties upon them, the post holders have a degree of statutory protection from dismissal or other disciplinary action. Section 8 of the Local Government and Housing Act 1989 requires that local authorities must make the standing orders relating to staff that are specified in Regulations. Regulations were made in 1993 about the appointment of chief officers, and in 2001 about the appointment, discipline and dismissal of certain senior officers. Under the Local Authorities (Standing Orders) (England) Regulations 2001/3384, as amended, local authorities were required to adopt standing orders to provide that, beyond suspension on full pay for no more than two months, disciplinary action could not be taken in relation to the Head of Paid Service, the Chief Finance Officer, or the Monitoring Officer, unless it was recommended by a Designated Independent Person ("DIP") appointed to carry out an investigation.

10.3 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015/881 changed that protection. These regulations came into force in May 2015.

- 10.4 The Council's Staff Employment Procedure Rules have already been revised and are compliant with the 2015 Regulations. The current Staff Employment Procedure Rules are attached as **Appendix 1**.
- 10.5 Whilst the Staff Employment Procedure Rules already contain the information required by the Regulations, they do not yet specify the procedure which the Council will adopt if disciplinary action is to be taken against one of the Protected Officers. Nor does the constitution currently contain the "machinery" required to operate the new procedures. This is because there has been uncertainty as to how the legislation ought to be applied in practice.
- 10.6 The uncertainty that has existed, since the legislation changed in May 2015, over how the legislation will apply in practice stems from the fact that the previous DIP process was embedded within the terms and conditions for Chief Executives as set out in the JNC handbook. The JNC handbook has contractual effect where an authority has agreed to be bound by JNC terms and conditions. Thus there was, until recently, a scenario where the contractual obligations owed under JNC terms required different steps to be taken to those set out in the new regulations.
- 10.7 The JNC issued a revised handbook in October 2016 to resolve this ambiguity. The main purpose of the revised handbook is to reflect the changes in the law. Now that ambiguity has been resolved, the Council needs to adopt new processes in the light of the revised handbook.

The New Process - Dismissal

- 10.8 The 2015 Regulations replaced the previous DIP arrangements with a new system. There is now no requirement to appoint a DIP where disciplinary action against a Protected Officer is being considered. The law now requires that full Council must approve the dismissal of any of the Protected Officers (previously this had only applied to the head of paid service). So, Council must now approve a decision to dismiss any of the Protected Officers before notice of dismissal can be given.
- 10.9 The following procedure must be followed before a Protected Officer can be dismissed. The Council must invite a number of the independent persons appointed to advise on member conduct complaints under the Localism Act 2011 ("IPs") to be appointed to a Panel. If the Council has fewer than two IPs, it must extend the invitation to one or more IPs from another authority. If more accept the invitation than are needed, the appointments must give priority to IPs of the Council who are on the Council's electoral roll, then to IPs of the Council who are not, then to other authorities' IPs. At least two of those who have accepted must be appointed, but there is no upper limit. They can be paid an allowance or expenses, but no more than they would receive for their Localism Act work. The appointment must be made at least 20 days before Council takes a decision to approve the dismissal of a Protected Officer. At the full Council meeting, the authority must take into account any advice,

views or recommendations of the Panel as well as the conclusions of any investigation and any representations made by the officer concerned.

- 10.10 The JNC has sought clarification from DCLG on whether the Independent Persons Panel should be comprised solely of IPs or whether it can or should also include elected members. DCLG has indicated that the intention is that the Independent Persons Panel should consist solely of IPs. The proposal is to follow that approach.
- 10.11 This procedure only applies to dismissal on disciplinary grounds. Disciplinary action other than dismissal is not now covered by the Regulations.

The Model Disciplinary Procedure

- 10.13 The October 2016 handbook also contains a model disciplinary procedure. Whilst strictly speaking the procedure only applies to the head of paid service, best practice advice received from external solicitors is to apply the procedure to the other Protected Officers too (i.e. to the monitoring officer and Section 151 officer). That is reflected in the 13 October 2016 JNC Circular introducing the revised handbook. That is what this report proposes.
- 10.14 The main features of the model procedure are:
- a) That there should be a standing Investigation and Disciplinary Committee which oversees any disciplinary process and determines the outcome.
 - b) That any disciplinary investigation should be carried out by an Independent Investigator.
 - c) That there should be a Disciplinary Appeals Committee to consider any appeal against a decision of the Investigation and Disciplinary Committee to take any disciplinary action short of dismissal.
- 10.15 The model procedure suggests that any decision to suspend the head of paid service should be made by the Investigation and Disciplinary Committee, but that the power to make such a decision in urgent circumstances should be delegated. The model procedure suggests that the power should be delegated to the Chair of the Investigation and Disciplinary Committee. However, this is a council-side (as opposed to an Executive) function and thus may only be exercised by the full Council, a committee, sub-committee, or an officer (Local Government Act 1972, section 101). It cannot lawfully be delegated to a single Member.
- 10.16 Whilst a number of options have been considered as to where an urgency power might rest, the view is taken that in practice the difficulties in convening a quorate meeting of the Investigation and Disciplinary Committee to take an urgent decision on whether or not to suspend would

not be so insurmountable such that there arises a compelling case that there is in fact a need to delegate an urgency power to any other committee, sub-committee or an officer.

- 10.16 Where a decision to suspend has to be taken in respect of one of the other Protected Officers, in officer structure hierarchical terms it would not be extraordinary for that power to rest with the head of paid service. However, in keeping with the principle of a consistent application of the protections to all of the Protected Officers, it is proposed that the Investigation and Disciplinary Committee also be responsible for deciding whether or not to suspend the monitoring officer or the S151 officer. For the reasons set out above, it is also considered that there is no compelling case to delegate a power to suspend in urgent circumstances.
- 10.17 The model procedure suggests that any suspension of the head of paid service (and so, by extension, the monitoring officer and S151 officer) is reviewed after a period of two months by the Investigation and Disciplinary Committee. In doing so it should consult with the Independent Investigator and consider any representations from the officer concerned.
- 10.15 It is proposed that amendments are made to the Employment Procedure Rules to reflect the model procedure. The proposed amended Rules attached as **Appendix 2**.

The Investigation and Disciplinary Committee

- 10.16 It is proposed that an Investigation and Disciplinary Committee be established. This will determine any suspension of any of the Protected Officers. It will also determine whether any allegation against any of the Protected Officers warrants investigation. The Investigation and Disciplinary Committee may, if it considers it appropriate, appoint an Independent Investigator. The Committee will consider any report of the Independent Investigator and, if appropriate conduct a hearing. The Investigation and Disciplinary Committee may determine that no action should be taken, that some action short of dismissal should be taken, or that the officer should be dismissed. If the action is short of dismissal the officer may appeal to the Disciplinary Appeals Committee. If the action proposed is dismissal then the matter must be considered by the Independent Persons Panel, prior to consideration by full council.
- 10.17 If the Investigation and Disciplinary Committees decides that the officer should be dismissed it must ascertain if any cabinet member(s) object. The Committee will forward its proposal and the necessary information to the Independent Persons Panel. The Panel will consider the proposal and the necessary particulars and decide what advice, views or recommendations, if any, to make to full Council. Full Council will decide whether or not to dismiss the officer, having regard to any advice, views or recommendations of the Panel, the conclusions of any investigation, and any representations from the officer.

The Independent Persons Panel

- 10.18 It is recommended that a standing Independent Persons Panel should be established, comprising two IPs and a substitute IP, appointed in priority order in accordance with the Regulations. The substitute would take the place of any IP who was unable to participate because he or she was not available at the time, or had a personal conflict of interest. The Council currently has three IPs who it is recommended are invited to be considered for appointment. It is recommended that the Director of Legal Services is authorised to make that invitation, and to collaborate through consultation with the Monitoring Officers of neighbouring authorities (if needs be) from time to time in the event that a need is identified to appoint to the Panel a neighbouring authority's IP(s). It is recommended that the Constitution Committee is authorised to confirm such appointments.
- 10.18 The authority to deal with dismissal of chief officers is currently delegated to Staffing Committee. It is proposed that its terms of reference are amended to remove that power in relation to the Protected Officers and, instead, delegate it to the newly established Investigation and Disciplinary Committee, in accordance with the model procedure. The proposed Terms of Reference of the Staffing Committee are attached at **Appendix 3**. It is proposed that these are amended by removing paragraph 4. The proposed Terms of Reference for the Investigation and Disciplinary Committee, the Disciplinary Appeals Committee and the Independent Persons Panel are attached at **Appendices 4, 5 and 6 respectively**.
- 10.19 It is recommended, in accordance with the model procedure, that the Investigation and Disciplinary Committee will be comprised of 7 members on a politically proportionate basis. In line with the model procedure, at least one of the members of the committee shall be a member of the cabinet.
- 10.20 It is recommended the Council also established a Disciplinary Appeals Committee to consider any appeals against any decision by the Investigation and Disciplinary Committee to take action short of dismissal. The Disciplinary Appeals Committee will be comprised of 7 members, who were not members of the Investigation and Disciplinary Committee which made the decision being appealed, on a politically proportionate basis. In line with the model procedure, at least one of the members of the committee shall be a member of the cabinet.
- 10.22 The alternative to what is proposed would be for the Council to keep its current arrangements, but these do not set out how any disciplinary process against a Protected Officer will operate in practice. This could lead to difficulties should action be needed and may increase the risk of claims. The Council could seek local agreement to adopt a different process. However, the model procedure adopts a balanced approach to disciplinary process, adoption of which will ensure that the Council has a fair process which is unlikely to be susceptible to successful challenge. It

has taken over a year for the JNC to reach agreement on this process, any attempt to seek local agreement to a different process is likely to cause further delay and it may be difficult to reach agreement. Any alternative process would have to be fair and comply with employment law, so it would be unlikely to be radically different from the model procedure.

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APPENDIX 1 – CURRENT STAFF EMPLOYMENT PROCEDURE RULES

1 General

- 1.1 Staff within the organisation are employed, appointed, designated or engaged on behalf of the whole Council and not by parts of the organisation or individuals.
- 1.2 The employment, appointment, designation or engagement of all staff will be in compliance with the law and any policies and practices of the Council.
- 1.3 Persons employed, appointed, designated or engaged by contractors under specific agreements or contracts are not staff of the Council, but are employees engaged by the contractor.
- 1.4 The Council will provide the necessary resources to support the appointed officer structure.
- 1.5 Generally (except for certain senior staff appointments) the function of appointment and dismissal of, and taking disciplinary action against a member of staff of the Council must be discharged on behalf of the authority by the Head of the Paid Service or by an officer nominated by him/her.

2 Recruitment and Appointment of Staff

- 2.1 Subject to the provisions of these Procedures, the recruitment, designation and appointment of staff will be conducted in accordance with the law and the Council's policies and procedures.
- 2.2 Any candidate for any designation or appointment with the Council who knows that he/she is related to a Member or employee of the Council shall, when making application, disclose, in writing, that relationship to the Head of Human Resources. A person who deliberately fails to disclose such a relationship shall be disqualified from designation or appointment and, if designated or appointed, shall be liable to dismissal.
- 2.3 Every Member and employee of the Council shall disclose to the Head of Human Resources any relationship known to him/her to exist between him/herself and any person he/she knows is a candidate for a designation or appointment by the Council.
- 2.4 Any candidate for designation or appointment who directly or indirectly seeks the support of a Councillor or officer of the Council in any designation or appointment shall be disqualified and, if designated or appointed, shall be liable to dismissal. A Councillor shall not solicit for any person in respect of any designation or appointment with the Council, but may give a written testimonial of a candidate's ability, experience or character.
- 2.5 Persons shall be deemed to be related to a candidate or officer if they are a spouse, partner (i.e. member of a couple living together) parent, parent-in-law, grandparent, child, stepchild, adopted child, grandchild, child of partner, brother, sister, uncle, aunt, nephew or niece or the spouse or partner of any of the preceding persons.

- 2.6 In the case of a dispute under paragraph 2.5 above about the status of a relationship in relation to an appointment, the Head of Human Resources will rule and such ruling will be applied.
- 2.7 The Head of Human Resources will ensure that the provisions of these Rules are reflected, as appropriate, in application forms or in any accompanying detailed procedures for each post, following advertisement.

3 Responsibility of the Staffing Committee

- 3.1 The responsibilities of the Staffing Committee are set out in this Constitution within “Responsibility for Functions” and these Rules.
- 3.2 Subject to the provisions of these Rules, the Committee is also responsible for hearing and determining appeals as set out in the Staffing Committee terms of reference under the Council’s employment-related policies. In determining these matters the Committee will have regard to the appropriate provisions of this procedure. The Committee may agree to discharge some of these functions through a Sub-Committee.
- 3.3 Subject to any matters reserved to the Council, the Staffing Committee is responsible for the approval of corporate personnel policies and for determining and monitoring such policies and for the operational implementation of those policies.
- 3.4 The Cabinet Member with responsibilities for individual Departments or Services and the associated resources is required to ensure that corporate personnel policies and procedures are applied by the Council, including training, matters relating to discipline, workforce performance management, and grievance.

4 Appointment of Head of the Paid Service

- 4.1 The appointment of Head of the Paid Service is subject to specific requirements as set out below.
- 4.2 Where the Council proposes to appoint to the Head of the Paid Service, the Staffing Committee will oversee the arrangements for filling the vacancy. For this purpose the Committee shall include at least one Member of the Cabinet in its membership.
- 4.3 The Staffing Committee shall:
- draw up a statement specifying the duties of the officer concerned and any qualifications or guidelines to be sought in the person to be appointed;
 - 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 apply for it;
 - make arrangements for a copy of the statement mentioned above to be sent to any person on request;

- where a post has been advertised as required above, the Committee will select from the applications a short list of qualified candidates and will then interview those included in the short list.
- 4.4 Following the interview of candidates, the Committee will come to a view as to the most suitable person for the position.
- 4.5 The Committee must advise the Head of Human Resources of:
- the name of the person in question;
 - any other particulars which the Committee consider are relevant to the appointment.
- 4.6 Within two clear working days of receiving the notification in 4.5 above, the Head of Human Resources will notify each Member of the Cabinet of:
- the information notified under paragraph 4.5 above;
 - the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Head of Human Resources; such period shall not exceed five clear working days.
- 4.7 An offer of appointment must wait until:
- the Leader has, within the period of the notice under paragraph 4.6 above, notified the Committee through the Head of Human Resources that neither he/she nor any Member of the Cabinet has any objection to the making of the offer; or
 - the Head of Human Resources has notified the Committee that no objections have been received by her within the period of the notice under 4.6 above; or
 - the Committee is satisfied that any objection received from the Leader within the notice period is not material or is not well founded. In this regard, where necessary, the advice of the Director of Legal Services be sought.
- 4.8 Where following the above procedure there are no objections to the proposed appointment or any objections are not up-held, the Committee will recommend that person for appointment at the next meeting of the full Council or at a specially convened meeting of the Council. If the Council approve the recommendation, then a formal offer of appointment can be made.
- 4.9 Where following the interviews the Committee are of the view that there is no suitable candidate, it will re-advertise the post.
- 4.10 Where the Council do not approve the recommendation of the Committee, it shall indicate how it wishes to proceed.

5 Appointment/dismissal of Head of Paid Service, Statutory Chief Officers, Non-Statutory Chief Officers and Deputy Chief Officers

The requirements of the Local Authorities (Standing Orders)(England) Regulations 2001 as amended by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2014 and 2015 (“the Regulations”) will be adhered to in respect of those posts which fall within the definitions of Head of Paid Service, Statutory Chief Officer, Non-Statutory Chief Officer and Deputy Chief Officer. The requirements of the Regulations include the following, which is an extract from those Regulations:

Part II

Authority with Leader and Cabinet Executive

1

In this Part--

"the 1989 Act" means the Local Government and Housing Act 1989;

"the 2000 Act" means the Local Government Act 2000;

"disciplinary action" has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;

"executive" and "executive leader" have the same meaning as in Part II of the 2000 Act;

"member of staff" means a person appointed to or holding a paid office or employment under the authority; and

"proper officer" means an officer appointed by the authority for the purposes of the provisions in this Part.

2

Subject to paragraphs 3 and 7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1)

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of the 1989 Act (designation and reports of head of paid service) as the head of the authority's paid service or by an officer nominated by him.

3

Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against--

(a) the officer designated as the head of the authority's paid service;

(b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);

- (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;
- (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or
- (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

4

(1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority's paid service, the authority must approve that appointment before an offer of appointment is made to that person.

(1A) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief finance officer, or as the authority's monitoring officer, the authority must approve that dismissal before notice is given to that person.

(2) Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3, at least one member of the executive must be a member of that committee or sub-committee.

5

(1) In this paragraph, "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.

(2) An offer of an appointment as an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be made by the appointor until--

(a) the appointor has notified the proper 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 proper officer has notified every member of the executive of the authority 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 proper 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 proper officer; and

(c) either--

(i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he nor any other member of the executive has any objection to the making of the offer;

(ii) the proper officer has notified the appointor that no objection was received by him 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.

6

(1) In this paragraph, "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.

(2) Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be given by the dismissor until--

(a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;

(b) the proper officer has notified every member of the executive of the authority of--

(i) the name of the person who the dismissor wishes to dismiss;

(ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper 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 proper officer; and

(c) either--

(i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he nor any other member of the executive has any objection to the dismissal;

(ii) the proper officer has notified the dismissor that no objection was received by him 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.

7

Nothing in paragraph 2 shall prevent a person from serving as a member of any committee or sub-committee established by the authority to consider an appeal by--

(a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or

(b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

Schedule

1.

In the following paragraphs—

(a) “the 2011 Act” means the Localism Act 2011;

(b) “chief finance officer”, “disciplinary action”, “head of the authority’s paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;

(c) “independent person” means a person appointed under section 28(7) of the 2011 Act;

(d) “local government elector” means a person registered as a local government elector in the register of electors in the authority’s area in accordance with the Representation of the People Acts;

(e) “the Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;

(f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and

(g) “relevant officer” means the chief finance officer, head of the authority’s paid service or monitoring officer, as the case may be.

2.

A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

3.

The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

4.

In paragraph 3 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent

persons as have been appointed by another authority or authorities as the authority considers appropriate.

5.

Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—

(a) a relevant independent person who has been appointed by the authority and who is a local government elector;

(b) any other relevant independent person who has been appointed by the authority;

(c) a relevant independent person who has been appointed by another authority or authorities.

6.

An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

7.

The authority must appoint any Panel at least 20 working days before the relevant meeting.

8.

Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—

(a) any advice, views or recommendations of the Panel;

(b) the conclusions of any investigation into the proposed dismissal; and

(c) any representations from the relevant officer.

9.

Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act."

APPENDIX 2 - PROPOSED NEW STAFF EMPLOYMENT PROCEDURE RULES

1 General

- 1.1 Staff within the organisation are employed, appointed, designated or engaged on behalf of the whole Council and not by parts of the organisation or individuals.
- 1.2 The employment, appointment, designation or engagement of all staff will be in compliance with the law and any policies and practices of the Council.
- 1.3 Persons employed, appointed, designated or engaged by contractors under specific agreements or contracts are not staff of the Council, but are employees engaged by the contractor.
- 1.4 The Council will provide the necessary resources to support the appointed officer structure.
- 1.5 Generally (except for certain senior staff appointments) the function of appointment and dismissal of, and taking disciplinary action against a member of staff of the Council must be discharged on behalf of the authority by the Head of the Paid Service or by an officer nominated by him/her.

2 Recruitment and Appointment of Staff

- 2.1 Subject to the provisions of these Procedures, the recruitment, designation and appointment of staff will be conducted in accordance with the law and the Council's policies and procedures.
- 2.2 Any candidate for any designation or appointment with the Council who knows that he/she is related to a Member or employee of the Council shall, when making application, disclose, in writing, that relationship to the ~~Head of Human Resources~~Head of Strategic HR. A person who deliberately fails to disclose such a relationship shall be disqualified from designation or appointment and, if designated or appointed, shall be liable to dismissal.
- 2.3 Every Member and employee of the Council shall disclose to the ~~Head of Human Resources~~Head of Strategic HR any relationship known to him/her to exist between him/herself and any person he/she knows is a candidate for a designation or appointment by the Council.
- 2.4 Any candidate for designation or appointment who directly or indirectly seeks the support of a Councillor or officer of the Council in any designation or appointment shall be disqualified and, if designated or appointed, shall be liable to dismissal. A Councillor shall not solicit for any person in respect of any designation or appointment with the Council, but may give a written testimonial of a candidate's ability, experience or character.

- 2.5 Persons shall be deemed to be related to a candidate or officer if they are a spouse, partner (i.e. member of a couple living together) parent, parent-in-law, grandparent, child, stepchild, adopted child, grandchild, child of partner, brother, sister, uncle, aunt, nephew or niece or the spouse or partner of any of the preceding persons.
- 2.6 In the case of a dispute under paragraph 2.5 above about the status of a relationship in relation to an appointment, the Head of Strategic HR will rule and such ruling will be applied.
- 2.7 The ~~Head of Human Resources~~ **Head of Strategic HR** will ensure that the provisions of these Rules are reflected, as appropriate, in application forms or in any accompanying detailed procedures for each post, following advertisement.

3 Responsibility of the Staffing Committee

- 3.1 ~~In addition to these rules, the responsibilities of the Staffing Committee are set out in the Staffing Committee's Terms of Reference under the "Responsibilities for Functions" Section of this Constitution, within "Responsibility for Functions" and these Rules.~~
- 3.2 Subject to the provisions of these Rules, the Committee is ~~also~~ responsible for hearing and determining appeals as set out in the Staffing Committee terms of reference under the Council's employment-related policies. In determining these matters the Committee will have regard to the appropriate provisions of this procedure. The Committee may agree to discharge some of these functions through a Sub-Committee.
- 3.3 ~~(Subject to any matters reserved to the Council, the Staffing Committee is responsible for the approval of corporate personnel policies and for determining and monitoring such policies and for the operational implementation of those policies.)~~
- 3.4 The Cabinet Member with responsibilities for individual Departments or Services and the associated resources is required to ensure that corporate personnel policies and procedures are applied by the Council, including training, matters relating to discipline, workforce performance management, and grievance.

Comment [DD1]: Following changes approved at Council on 15 December 2016, Staffing Committee is no longer responsible for approving corporate personnel policies. That is a function of Cabinet. Its role in terms of monitoring the operation of HR policies is adequately dealt with in the Terms of Reference for Staffing Committee (see Appendix 3, Paragraphs 1, 2(a), 6.1 and 7) and need not be repeated here.

4 Appointment of Head of the Paid Service

- 4.1 The appointment of Head of the Paid Service is subject to specific requirements as set out below.
- 4.2 Where the Council proposes to appoint to the Head of the Paid Service, the Staffing Committee will oversee the arrangements for filling the vacancy. For

this purpose the Committee shall include at least one Member of the Cabinet in its membership.

4.3 The Staffing Committee shall:

- draw up a statement specifying the duties of the officer concerned and any qualifications or guidelines to be sought in the person to be appointed;
- 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 apply for it;
- make arrangements for a copy of the statement mentioned above to be sent to any person on request;
- where a post has been advertised as required above, the Committee will select from the applications a short list of qualified candidates and will then interview those included in the short list.

4.4 Following the interview of candidates, the Committee will come to a view as to the most suitable person for the position.

4.5 The Committee must advise the ~~Head of Human Resources~~Head of Strategic HR of:

- the name of the person in question;
- any other particulars which the Committee consider are relevant to the appointment.

4.6 Within two clear working days of receiving the notification in 4.5 above, the ~~Head of Human Resources~~Head of Strategic HR will notify each Member of the Cabinet of:

- the information notified under paragraph 4.5 above;
- the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the ~~Head of Human Resources~~Head of Strategic HR; such period shall not exceed five clear working days.

4.7 An offer of appointment must wait until:

- the Leader has, within the period of the notice under paragraph 4.6 above, notified the Committee through the ~~Head of Human Resources~~Head of Strategic HR that neither he/she nor any Member of the Cabinet has any objection to the making of the offer; or

- the ~~Head of Human Resources~~Head of Strategic HR has notified the Committee that no objections have been received by her within the period of the notice under 4.6 above; or
- the Committee is satisfied that any objection received from the Leader within the notice period is not material or is not well founded. In this regard, where necessary, the advice of the Director of Legal Services be sought.

- 4.8 Where following the above procedure there are no objections to the proposed appointment or any objections are not up-held, the Committee will recommend that person for appointment at the next meeting of the full Council or at a specially convened meeting of the Council. If the Council approve the recommendation, then a formal offer of appointment can be made.
- 4.9 Where following the interviews the Committee are of the view that there is no suitable candidate, it will re-advertise the post.
- 4.10 Where the Council do not approve the recommendation of the Committee, it shall indicate how it wishes to proceed.

5.0 ~~Appointment/~~Dismissal of Head of Paid Service, Statutory Chief Officers and Executive Director of Economic Growth and Prosperity, Non-Statutory Chief Officers and Deputy Chief Officers

5.1 The provisions of Clause 1.5 shall not apply to any proposal to dismiss the Head of Paid Service, Statutory Chief Officers or the Executive Director of Growth and ProsperityPlace. This shall be the responsibility of the Staffing Committee, save that any dismissal of Head of Paid Service, the Chief Finance Officer (Section 151 Officer) ofr Monitoring Officer must be approved by full Council, following a decision of the Investigation and Disciplinary Committee and consideration by the Independent Persons Panel. Any disciplinary action short of dismissal against the Head of Paid Service, Section 151 Officer, or Monitoring Officer shall be the responsibility of the Investigation and Disciplinary Committee.

5.2 For the avoidance of doubt, action short of dismissal against the Head of Paid Service, Section 151 Officer, or Monitoring Officer shall include a decision to suspend the same. Such a decision shall be the responsibility of the Investigation and Disciplinary Committee.

5.32 The Investigation and Disciplinary Committee is designated as the Committee discharging, on behalf of the Council, the function of dismissal of the Head of the Paid Service, Chief Finance Officer, or Monitoring Officer. The full Council must however approve that dismissal before notice of dismissal is given to him/her.

5.43 Notice of dismissal of the Head of the Paid Service, Chief Finance Officer, or Monitoring Officer must not be given until:

(a) the Investigation and Disciplinary Committee has notified the ~~Head of Human Resources~~ Head of Strategic HR that it wishes to dismiss the officer and any other particulars which the Investigation and Disciplinary Committee considers are relevant to the dismissal;

(b) the ~~Head of Human Resources~~ Head of Strategic HR has notified every member of the Cabinet of:

(i) the fact that ~~the Investigation and Disciplinary Committee~~ wishes to dismiss the officer;

(ii) any other particulars relevant to the dismissal which the Investigation and Disciplinary Committee has notified to the ~~Head of Human Resources~~ Head of Strategic HR;

(iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the ~~Head of Human Resources~~ Head of Strategic HR; and

(c) either –

(i) the Leader has within the period specified in the notice under subparagraph (b) (iii), notified the ~~Head of Human Resources~~ Head of Strategic HR that neither he/she nor any member of the Cabinet has any objection to the dismissal;

(ii) the ~~Head of Human Resources~~ Head of Strategic HR has notified the Investigation and Disciplinary Committee that no objection was received by him/her within that period from the Leader on behalf of the Cabinet to the ~~Head of Human Resources~~ Head of Strategic HR;

(iii) the Investigation and Disciplinary Committee is satisfied that any objection received from the Leader within that period is not well founded or material. In this regard, where necessary, the advice of the ~~Head Director of Legal Services and Monitoring Officer~~ (or, if appropriate an alternative legal adviser) should be sought.

5.53 Where following the above procedure there are no objections to the proposed dismissal or the objections are not upheld, the Investigation and Disciplinary Committee will:

(a) follow the procedure set out in paragraph 5.85; and

(b) recommend the dismissal to a meeting of the full Council.

5.65 (a) This procedure applies if the Investigation and Disciplinary Committee proposes disciplinary action involving the dismissal of the Head of Paid Service, Chief Finance Officer, or Monitoring Officer.

(b) Where this procedure applies, the Investigation and Disciplinary Committee will provide the Independent Persons Panel with the matters provided to members of the Cabinet and any other particulars relevant to the dismissal that the Investigation and Disciplinary Committee considers appropriate or that the Panel may reasonably require.

(c) The Independent Persons Panel will meet to consider what, if any, advice, views or recommendations to give to the full Council.

(d) The Council may pay such remuneration, allowances or fees to an Independent Person appointed to the Panel as it thinks appropriate but the payment must not exceed the level of remuneration, allowances or fees payable to that Independent Person in respect of his or her role as an independent person under the Localism Act 2011.

(d) Full Council will not meet to consider whether or not to approve the proposal of the Investigation and Disciplinary Committee to dismiss the officer until a period of at least 20 working days has elapsed from the appointment of the Independent Persons Panel.

(e) Before full Council takes a vote at a meeting on whether or not to approve such a dismissal, they must take into account, in particular—

(i) any advice, views or recommendations of the Independent Persons Panel;

(ii) the conclusions of any investigation into the proposed dismissal; and

(iii) any representations from the officer.

5.76 If the full Council approve the recommendation of the Investigation and Disciplinary Committee, then notice of dismissal can be issued. Where the

[full Council do not approve the recommendation, they shall indicate how they wish to proceed](#)

5.87 The requirements of the Local Authorities (Standing Orders)(England) Regulations 2001 as amended by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2014 and 2015 (“the Regulations”) will be adhered to in respect of those posts which fall within the definitions of Head of Paid Service, Statutory Chief Officer, Non-Statutory Chief Officer and Deputy Chief Officer. The requirements of the Regulations include the following, which is an extract from those Regulations:

Part II

Authority with Leader and Cabinet Executive

1

In this Part--

"the 1989 Act" means the Local Government and Housing Act 1989;

"the 2000 Act" means the Local Government Act 2000;

"disciplinary action" has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;

"executive" and "executive leader" have the same meaning as in Part II of the 2000 Act;

"member of staff" means a person appointed to or holding a paid office or employment under the authority; and

"proper officer" means an officer appointed by the authority for the purposes of the provisions in this Part.

2

Subject to paragraphs 3 and 7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority's paid service or by an officer nominated by him.

3

Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against--

(a) the officer designated as the head of the authority's paid service;

(b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);

(c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;

(d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or

(e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

4

(1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority's paid service, the authority must approve that appointment before an offer of appointment is made to that person.

(1A) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief finance officer, or as the authority's monitoring officer, the authority must approve that dismissal before notice is given to that person.

(2) Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3, at least one member of the executive must be a member of that committee or sub-committee.

5

(1) In this paragraph, "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.

(2) An offer of an appointment as an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be made by the appointor until--

(a) the appointor has notified the proper 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 proper officer has notified every member of the executive of the authority 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 proper 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 proper officer; and

(c) either--

- (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he nor any other member of the executive has any objection to the making of the offer;
- (ii) the proper officer has notified the appointor that no objection was received by him 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.

6

(1) In this paragraph, "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.

(2) Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be given by the dismissor until--

(a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;

(b) the proper officer has notified every member of the executive of the authority of--

- (i) the name of the person who the dismissor wishes to dismiss;
- (ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper 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 proper officer; and

(c) either--

- (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he nor any other member of the executive has any objection to the dismissal;

(ii) the proper officer has notified the dismissor that no objection was received by him 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.

7

Nothing in paragraph 2 shall prevent a person from serving as a member of any committee or sub-committee established by the authority to consider an appeal by--

(a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or

(b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

Schedule

1.

In the following paragraphs—

(a) “the 2011 Act” means the Localism Act 2011;

(b) “chief finance officer”, “disciplinary action”, “head of the authority's paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;

(c) “independent person” means a person appointed under section 28(7) of the 2011 Act;

(d) “local government elector” means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts;

(e) “the Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;

(f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and

(g) “relevant officer” means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.

2.

A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

3.

The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

4.

In paragraph 3 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

5.

Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;
- (b) any other relevant independent person who has been appointed by the authority;
- (c) a relevant independent person who has been appointed by another authority or authorities.

6.

An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

7.

The authority must appoint any Panel at least 20 working days before the relevant meeting.

8.

Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—

- (a) any advice, views or recommendations of the Panel;
- (b) the conclusions of any investigation into the proposed dismissal; and
- (c) any representations from the relevant officer.

9.

Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.”

Appendix 3 – Proposed Staffing Committee Terms of Reference

STAFFING COMMITTEE (Terms of Reference)

8 Members

Statement of Purpose

- 1 The Staffing Committee is a key component of Cheshire East’s corporate governance. It provides an independent and high level focus on Human Resources, Organisational Development and Health & Safety matters affecting the Council.

- 2 The purpose of the Staffing Committee is:-
 - (a) to provide independent assurance to the members of the adequacy of the HR service and staffing related matters,

 - (b) with regard to the Head of Paid Service, Monitoring Officer and Section 151 Officer (Statutory Officers):
 - To undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules; and

 - Make a recommendation to the Council to approve the proposed appointment before an offer of appointment is made to that person.

 - (c) appoint/dismiss the Statutory Chief Officers, namely:
 - The Executive Director of People and Deputy Chief Executive (Director of Children’s Services);
 - Strategic Director of Adult Social Care and Health (Director of Adult Social Services); and
 - Director of Public Health.including undertaking the recruitment and selection process.

 - (d) to appoint/dismiss the Executive Director of Place including undertaking the recruitment and selection process.

 - (e) to approve “in year” salary or other benefit increases to the Head of Paid Service

Functions of the Committee

Recruitment and Selection

3 With regard to Statutory Officers:

- To undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules; and
- make a recommendation to the Council to approve the proposed appointment

before an offer of appointment is made to that person.

~~4 To make a recommendation to the Council to approve the dismissal of any of the Statutory Officers prior to notice being given to that person, and provided that the procedure set out in the Staff Employment Procedure Rules has been complied with.~~

~~45.~~ To appoint/dismiss Statutory Chief Officers and the Executive Director of Place

HR Policies

~~56.1~~ To have the opportunity to review the Council's HR Policies and Procedures as required and to make recommendations to the Portfolio Holder. It is noted that the authority to approve HR Policies and Procedures remains with the Executive

~~56.2~~ To make recommendations to Council in relation to the annual Pay Policy Statement and any amendments to such statement.

~~56.3~~ To make recommendations to Council in relation to decisions affecting the remuneration of any new post whose remuneration is or is proposed to be or would become £100,000 p.a. or more.

~~56.4~~ To make decisions in relation to proposed severance packages with a value of £100,000 or more.

~~56.5~~ To exercise the functions relating to local government pensions, so far as they relate to Regulations made under sections 7, 12, or 24 of the Superannuation Act 1972.

Appeals

6.1 For a Staffing Appeals Sub Committee:

- to consider appeals from Staff in the following circumstances:-
 - Appeals against dismissal
 - Appeals against grievance
 - Appeals against policy (but only the first appeal where the appeals are based on the same issues/circumstances)

67.2 With effect from 1st January 2016, Members appointed to the Staff Appeals Sub Committee may only hear appeals if they have received the mandatory training on appeals procedures offered by the Council (tailored in accordance with the individual Member's existing knowledge and experience).

Organisational Performance

78 To receive regular updates on performance information in order to assess the effectiveness of current Human Resources Organisational Development and Health & Safety policies and practices .These will include as a minimum:

- Appeals against dismissal
- Headcount Data
- Sickness Absence
- Turnover
- HR Casework (including disciplinary, grievance and capability)
- Health and Safety Accidents Records
- Health and Safety Training

DRAFTING NOTE – Members may have recognised that the “base” text in this version of the Staffing Committee’s Terms of Reference (to which tracked changes are proposed) differs from the version of the Staffing Committee’s Terms of Reference that appears in the version of the Constitution that is available on line. This is because this version incorporates changes made to the Staffing Committee’s Terms of Reference at Council on 15 December 2016 which have not been included in the version of the constitution that appears on line.

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**APPENDIX 4 - INVESTIGATION AND DISCIPLINARY COMMITTEE –
DRAFT TERMS OF REFERENCE**

1.0 Scope

- 1.1 To consider allegations/issues regarding disciplinary matters relating to the designated statutory officers of the Council (the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer) (the 'DSOs') and to authorise initial investigation.
- 1.2 To appoint an Independent Investigator ("II") to investigate allegations of misconduct against any DSO of the Council and to commission reports from an II.
- 1.3 To determine appropriate action upon receipt of any preliminary investigation.
- 1.4 To decide whether to suspend a DSO and to review decisions taken to suspend a statutory officer.
- 1.5 To determine what action should be taken against a DSO following an investigation. This could include action short of dismissal or dismissal.

2.0 Membership of the Investigation and Disciplinary Committee

- 2.1 The Committee shall be politically balanced, shall consist of 7 Members of the Council and at least 1 member of the committee shall be a member of the Cabinet.

3.0 Procedure for Investigation and Disciplinary Committee

Investigation

- 3.1 It is in the interests of all parties that the proceedings be conducted expeditiously and fairly.
- 3.2 In the exercise of its function, the Committee is to receive and consider any complaint/allegations made. It may:
 - make such enquiries of the relevant officer or any other person as it considers appropriate
 - request additional information, explanations or documents from any person
 - Invite or receive representations from any person.
- 3.3 The Committee having carried out such steps as it considers appropriate and having heard representations from the DSO or his or her adviser shall decide whether the issues;

- a) require no further formal action, or
 - b) should be referred to an II
- 3.4 In considering whether the threshold in deciding to appoint an II has been met the Committee will assess whether:
- if the allegations are proved it would be such as to lead to the dismissal or other action which would be recorded on the DSO's personal file; and
 - there is evidence in support of the allegation/issue sufficient to require further investigation.
- 3.5 In deciding whether the threshold for the appointment of an II has been reached the Committee may carry out such preliminary investigations as it considers appropriate or necessary or authorise officers to do so. This shall be solely for the purpose of establishing whether or not the threshold for appointing an II to carry out an investigation has been met.
- 3.6 Before deciding to appoint an II or suspend a DSO the Committee shall invite the representations of the DSO unless it is impracticable to do so. The DSO shall have the right to be accompanied at the Committee Meeting.

Receiving the II's Report/ Hearing

- 3.7 The Committee should receive any report produced by an II in relation to a DSO within one month of the receipt of the report by the Council.
- 3.8 The DSO shall have the right to attend and be accompanied at the Committee Meeting which considers the II's report.
- 3.9 The Committee shall consider the II's report and shall invite representations from the DSO and/or his/her representative. The Committee may impose disciplinary sanctions as set out in the Council's disciplinary procedures, the JNC Terms and Conditions Handbook for Chief Officers and the JNC Terms and Conditions Handbook for Chief Executives. In conducting any hearing the Committee shall have regard to the model disciplinary procedure in the JNC handbook for Chief Executives.

Decision

- 3.10 If the Committee decides that the DSO shall be dismissed the Full Council shall consider the Committee's recommendation of dismissal. Prior to consideration by Full Council the Independent Persons Panel shall consider the matter and the Committee shall give all members of the Cabinet the opportunity to raise any objections to the decision. This process is governed by the Staff Employment Procedure Rules set out in this Constitution.
- 3.11 In the case of any disciplinary action other than dismissal the DSO may appeal to the Appeals Disciplinary Committee against the decision.

Suspension

- 3.12 If a DSO has been suspended for a period of 2 months (or in the case of a decision to suspend taken under urgency provisions) then the Committee shall review that suspension. In carrying out that review the Committee shall consider any representations made by the II and the DSO and/or his or her representative. Further reviews of suspension shall be carried out at appropriate periods thereafter.

Access to Information

- 3.13 The Council's Access to Information Procedure Rules shall apply to meetings of the Committee.

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APPENDIX 5 - DISCIPLINARY APPEALS COMMITTEE – DRAFT TERMS OF REFERENCE

1.0 Scope

- 1.1 To consider any appeals brought by the designated statutory officers of the Council (the Head of Paid Service, the Monitoring Officer or Chief Finance Officer/S151 Officer) (the 'DSOs') against any decision made by the Investigation and Disciplinary Committee to take disciplinary action against a DSO short of dismissal.

2.0 Membership of the Disciplinary Appeals Committee

- 2.1 The Committee shall be politically balanced, shall consist of 7 Members of the Council at least 1 member of the committee shall be a member of the Cabinet. No member who was a member of the Investigation and Disciplinary Committee making the decision which is the subject of the appeal may be a member of the Disciplinary Appeals Committee.

3.0 Procedure for the Disciplinary Appeals Committee

- 3.1 The DSO shall have the right to attend and be accompanied at the Committee Meeting which considers the appeal.
- 3.2 The Committee shall consider the appeal in accordance with the Council's normal procedure for dealing with appeals.

Access to Information

- 3.3 The Council's Access to Information Procedure Rules shall apply to meetings of the Committee.

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Appendix 6 - Proposed Terms of Reference of Independent Persons Panel

1.0 Introduction and Composition

- 1.1 The Independent Persons Panel is an advisory committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of the officers designated as the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer in accordance with Schedule 3 to The Local Authorities (Standing Orders) (England) Regulations 2001.
- 1.2 The Panel comprises two of the Independent Persons appointed under section 28(7) of the Localism Act 2011 (to advise on member conduct allegations) by the Council or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the Council considers appropriate.
- 1.3 The Panel will be appointed from those Independent Persons who have accepted an invitation to be considered for appointment, in accordance with the following priority order—
 - (a) an Independent Person who has been appointed by the authority and who is a local government elector in the Council's area;
 - (b) any other Independent Person who has been appointed by the authority;
 - (b) a Independent Person who has been appointed by another authority or authorities.
- 1.4 One or more reserve members will be appointed to the Panel from Independent Persons who have been appointed under section 28(7) of the Localism Act 2011 by the authority or by another authority or authorities. A reserve member will take the place of any member of the Panel who is unable to act for the duration of the Panel meeting in question, or any adjournment of it. If more than one reserve member is available for the meeting then selection will be by the alphabetical order of their surnames.
- 1.5 The appointment of a Panel Member to preside at the meeting will be the first item of business at each Independent Persons Panel meeting. Where there are equal votes cast at a meeting on any matter the Chairman may exercise a second or casting vote.
- 1.6 The quorum for a meeting shall be two members of the Panel.

2.0 Terms of reference

- 2.1 To advise the Council on matters relating to the dismissal of the officers designated as the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer.

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