

Report of the Deputy Monitoring Officer to the meeting of Council to be held on 14 July 2015.

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Subject:

Amendments to the Constitution.

Summary statement:

This Report provides details of proposed amendments to the Constitution following the introduction of the Local Authorities (Standing Orders) (England)(Amendment) Regulations 2015. These Regulations change the statutory disciplinary and dismissal process for the Head of Paid Service, Monitoring Officer and Chief Finance Officer. This Report also provides details of proposed amendments to clarify and update Articles 4 and 12A of the Constitution and the Officer Employment Procedure Rules. The contents of this Report were considered by Governance and Audit Committee on 26 June 2015. Governance and Audit Committee agreed the recommendations as set out in paragraph 9 of this Report.

This Report seeks a decision from Council on the recommendations of Governance and Audit Committee.

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1. SUMMARY

- 1.1 This Report provides details of proposed amendments to the Constitution following the introduction of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015. These Regulations change the statutory disciplinary and dismissal process for the Head of Paid Service, Monitoring Officer and Chief Finance Officer. This Report also provides details of proposed amendments to clarify and update Articles 4 and 12A of the Constitution and the Officer Employment Procedure Rules. The contents of this Report were considered by Governance and Audit Committee on 26 June 2015. Governance and Audit Committee agreed the recommendations as set out in paragraph 9 of this Report.
- 1.2 Governance and Audit Committee resolved that this Report be amended to make clear that membership of the proposed Chief Officer Disciplinary Committee would not attract a Special Responsibility Allowance under the Members' Allowances Scheme. (see paragraph 4.2 of this Report).
- 1.3 This Report seeks a decision from Council on the recommendations of Governance and Audit Committee as detailed in paragraph 9 of this Report.

2. BACKGROUND

- 2.1 The Local Government and Housing Act 1989 requires every relevant authority to designate one of its officers as Head of the Council's Paid Service, one of its officers as the Monitoring Officer, and one of its officers as the Chief Finance Officer. Article 14 of the Council's Constitution designates the post of Chief Executive as Head of the Council's Paid Service, the post of City Solicitor as Monitoring Officer, and the post of Director of Finance as the Council's Chief Finance Officer.
- 2.2 The Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 ("the 2015 Regulations") were made on 25 March 2015 and came into force on 11 May 2015. The Regulations amend the Local Authorities (Standing Orders)(England) Regulations 2001 in relation to the disciplinary and dismissal process for the Chief Executive (as the Authority's Head of Paid Service), the City Solicitor (as the Council's Monitoring Officer), and the Director of Finance (as the Council's Chief Finance Officer).
- 2.3 Previously under the Local Authorities (Standing Orders)(England) Regulations 2001 ("the 2001 Regulations") no disciplinary action in respect of the Head of Paid Service, Monitoring Officer, or Chief Finance Officer, could take place, other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). Disciplinary action was defined as:

"any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Authority, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member



of staff for any reason other than redundancy, permanent ill health, or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Authority has undertaken to renew such a contract”.

- 2.4 The 2001 Regulations also stipulated that any suspension for the purposes of investigating the alleged misconduct must be on full pay and be for no longer than two months unless specifically extended following a recommendation from the DIP. In addition under the 2001 Regulations the dismissal of the Head of Paid Service, (but not the Monitoring Officer or Chief Finance Officer), had to be approved by the Authority itself; that is, at a meeting of full Council.
- 2.5 The 2015 Regulations remove the mandatory requirement that a DIP should be appointed and remove the requirement that a suspension should be for no longer than two months unless specifically extended by the DIP.
- 2.6 The 2015 Regulations also introduce new provisions in respect of dismissal of the Head of Paid Service, Monitoring Officer, and Chief Finance Officer. The 2015 Regulations retain the definition of disciplinary action as set out in paragraph 2.3 above.
- 2.7 Pursuant to the 2015 Regulations dismissal of the Head of Paid Service, Monitoring Officer, or Chief Finance Officer must be approved by full Council, before notice of dismissal is given.
- 2.8 If the dismissal is for disciplinary action as defined in paragraph 2.3 above, that is alleged misconduct or for any reason other than “redundancy, permanent ill health, or infirmity of mind or body” or failure to renew a fixed term contract unless the Council has undertaken to renew such a contract, before the taking of a vote at the Council meeting on whether or not to approve such a dismissal, the Authority must take into account: -
- a) any advice, views or recommendations of a Panel (see section 3 below);
 - b) the conclusions of any investigation into the proposed dismissal; and
 - c) any representations from the officer concerned.
- 2.9 The 2015 Regulations require the Council to incorporate the new provisions into its constitution and modify its existing provisions so as to conform to the new provisions by no later than the first ordinary meeting of Council falling after 11 May 2015. The first ordinary meeting of Council after 11 May is 14 July 2015.

3. OTHER CONSIDERATIONS

3.1 Establishment of a Panel

Where there is a proposal to dismiss the Head of Paid Service, Monitoring Officer, or Chief Finance Officer, for alleged misconduct or any reason “other than redundancy, permanent ill health, or infirmity of mind or body”, or failure to renew a



contract of employment for a fixed term for such a person, unless the Authority has undertaken to renew such a contract, the Council is required to form a Panel.

The 2015 Regulations define “the Panel” as “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”.

3.2 Options with regard to the Composition of the Panel

It is not clear whether the Panel is required to be made up only of independent persons or whether the Panel is required to also include elected members. The Local Government Association has asked the Department for Communities and Local Government (DCLG) to clarify the position. The 2015 Regulations prescribe that the Council is not required to appoint more than two independent persons to the Panel but may do so. The Constitution may need to be further amended when clarification is provided.

3.3 There are three possible alternatives: -

3.3.1 Council appoint a new committee - “The Chief Officer Disciplinary Committee”. The Committee to include two independent persons when considering whether to recommend to full Council, for a reason detailed in paragraph 3.1 above, the dismissal, of the Head of Paid Service, the Monitoring Officer, or the Chief Finance Officer

or

3.3.2 Council extend the composition of Staffing Committee and widen its functions to address the changes made by the 2015 Regulations

or

3.3.3 Council appoint a Panel made up of independent persons only, which is to be convened when either the Chief Officer Disciplinary Committee (if one is appointed) or Staffing Committee is to recommend to Council, for a reason detailed in paragraph 3.1 above, the dismissal of the Head of Paid Service, Monitoring Officer, or Chief Finance Officer.

3.4 This Report proposes that the Constitution be amended to include a new committee; “the Chief Officer Disciplinary Committee”. (Option 3.3.1 above). The proposed composition, quorum, and functions of this Committee are set out in Appendix A to this Report. It is proposed: -

3.4.1 that the Committee hears all disciplinary matters in respect of Strategic Directors, Directors, Deputy Directors, and Assistant Directors, under the Officer Employment Procedure Rules. In such circumstances there is no requirement for independent persons to be on the Committee save where the Committee is considering whether to dismiss the Director of Finance.



Presently the Constitution is not explicit as to whether a Committee of Elected Members hears disciplinary cases against Assistant Directors and Deputy Directors. The proposed clarification reflects the provisions of the JNC for Chief Officers of Local Authorities, which are the applicable terms and conditions for Assistant Directors and Deputy Directors.

- 3.4.2 that the Committee hears all disciplinary matters in respect of the City Solicitor, Director of Finance and the Chief Executive.
 - 3.4.3 that ordinarily the Committee shall comprise five members of Council with the quorum being three members at least one of whom must be a member of the Executive.
 - 3.4.4 that where the Committee is considering whether to recommend to Council the dismissal of the Head of Paid Service (Chief Executive), the Monitoring Officer (City Solicitor), or the Chief Finance Officer (Director of Finance), the Committee comprises five members of Council, at least one of whom must be a member of the Executive, and two independent persons appointed in accordance with the 2015 Regulations. Including the independent persons as members of the Committee, enables the independent persons to hear all the evidence at the disciplinary hearing stage, which should enable them to be better informed to advise and make recommendations to full Council, should the Committee recommend dismissal.
- 3.5 An alternative to appointing a new committee (Chief Officer Disciplinary Committee) would be to extend the composition of Staffing Committee and to widen its functions. (Option 3.3.2 above). However, the advantage of having a separate Chief Officer Disciplinary Committee would be that it would enable Staffing Committee, rather than the Employee Appeals Panel as currently, to hear appeals in relation to disciplinary sanctions short of dismissal brought by the Chief Executive, Strategic Directors, City Solicitor, Directors, Deputy Directors, and Assistant Directors, and against dismissal in respect of Strategic Directors, Directors (other than the Director of Finance), Deputy Directors and Assistant Directors. Staffing Committee in those circumstances would need to comprise different members from those sitting as the Chief Officer Disciplinary Committee.
- 3.6 If a separate Panel made up only of independent persons is appointed, (option 3.3.3 above) that Panel would only be involved where the Council Committee hearing the disciplinary case was recommending dismissal of either the Chief Executive, Monitoring Officer, or the Chief Finance Officer. However, the Panel would in that case only receive and consider the written evidence and recommendations of the Committee. The independent persons would be better informed if they heard all the evidence during any disciplinary hearing, including from the officer facing the allegations, which would be the position if the independent persons were members of the Committee.
- 3.7 A proposed new Article 12B Chief Officer Disciplinary Committee is set out in Appendix A to this Report.



- 3.8 If it is agreed to recommend to Council to appoint a Chief Officer Disciplinary Committee, the functions of Staffing Committee will also require amendment to reflect the functions of the new committee. The opportunity has, in addition, been taken to propose to amend the functions to clarify Staffing Committee's role in relation to grievances brought by certain Senior Officers of the Council. The proposed amended Article 12A, Staffing Committee, is set out in Appendix B to this Report.
- 3.9 In addition, it is necessary to amend the Officer Employment Procedure Rules to incorporate the provisions of the 2015 Regulations and to reflect the functions of the new Chief Officer Disciplinary Committee, if approved, and corresponding functions of Staffing Committee. The opportunity has also been taken to reorder the Rules to make it clear that the provisions under the headings, "Attempts to Influence an Appointment" and "Candidates Related to Members and Officers" apply to all recruitment. In addition on Council "Application for employment" forms, reference is now made to "Senior Officer", which includes an Assistant Director, rather than "Top Management" and the Rules have been amended to reflect this. Presently the Rules are not explicit as to whether a Committee of Elected Members hears disciplinary cases against Assistant Directors and Deputy Directors. The proposed amendments reflect the provisions of the JNC for Chief Officers of Local Authorities, which are the applicable terms and conditions for Assistant Directors and Deputy Directors.
- 3.10 The opportunity has also been taken to clarify that the Rules do not apply when appointing Strategic Directors, Directors, or the City Solicitor on an interim basis from among the Council's existing officers to cover "acting up" arrangements, for example, where an officer is off work through ill-health, or has left or is temporarily in another position. The proposed amendment makes it clear that such interim appointments can be made for up to 6 months duration. In addition reference to the Council's Pay Policy Statement has also been included in the Rules. The proposed amendments to those Rules are set out in Appendix C.
- 3.11 It is also necessary to amend the functions of the Council as set out in Article 4; such proposed amendments are set out in Appendix D. The opportunity has also been taken to amend the functions to include those detailed in the Council's Pay Policy Statement.

3.12 **Appointment of the Independent Persons**

The 2015 Regulations state that the Council 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. The Regulations make clear that the Local Authority should invite independent persons who have been appointed for the purposes of the Members' Standards regime under Section 28(7) of the Localism Act 2011.

- 3.13 The 2015 Regulations state that the Council must appoint to the Panel two or more independent persons who have accepted an invitation to join the Panel in



accordance with the following priority order: -

- An independent person who has been appointed by the Authority and who is a local government elector.
- Any other relevant independent person who has been appointed by the Authority.
- A relevant independent person who has been appointed by another authority or authorities.

3.14 The 2015 Regulations require a Panel to be established at least 20 working days in advance of the Council meeting which is to consider whether to approve a proposal to dismiss the Chief Executive, Monitoring Officer, or Chief Finance Officer. It is considered advisable to establish a standing committee (be it the Chief Officer Disciplinary Committee, amended composition and functions of Staffing Committee, both with independent persons appointed as members, or a Panel made up of independent persons only) so that it is always available, should the need arise.

3.15 It is therefore necessary to appoint two independent persons to fulfil this role. As Bradford Council has only one independent person appointed, options available for securing those individuals to serve on the Committee are: -

3.15.1 Approach the existing City of Bradford Metropolitan District Council independent person who has indicated he would be happy to serve in this capacity if required. He has also confirmed he is a local government elector in this area.

3.15.2 Approach other local authority's independent persons to serve for City of Bradford Metropolitan District Council if needed.

4. FINANCIAL & RESOURCE APPRAISAL

4.1 The 2015 Regulations make provisions limiting the remuneration that should be paid to independent persons on the Panel to the level of remuneration that they would normally receive as an independent person in their role under the Members' Standards regime. The Council does not pay any allowances to the independent person on Standards Committee.

4.2 If it is agreed to establish a Chief Officer Disciplinary Committee, membership of such a committee does not attract a Special Responsibility Allowance under the Council's Members' Allowances Scheme.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

5.1 In amending the Constitution to accommodate the 2015 Regulations, the risk of any failure to comply with the 2015 Regulations is minimised.

6. LEGAL APPRAISAL

6.1 The detail of the Local Authorities (Standing Orders)(England)(Amendment)



Regulations 2015 are as set out in this Report.

- 6.2 The 2015 Regulations require the Council to incorporate the new provisions into its Constitution and modify the existing provisions in the Constitution so as to conform to the 2015 Regulations. These amendments must be incorporated no later than the first ordinary Council meeting held after 11 May 2015.

7. OTHER IMPLICATIONS

- 7.1 There are no equality and diversity, sustainability, community safety or Human Rights Act implications in this Report.

7.2 TRADE UNION

In its guidance the Local Government Association has asked authorities to note that they are seeking to amend, through collective agreement, the model disciplinary procedures detailed in the Joint Negotiating Committee's Conditions of Service (which includes the DIP process) for Chief Executives, thereby potentially removing any need to make changes at a local level.

8. NOT FOR PUBLICATION DOCUMENTS

- 8.1 None.

9. RECOMMENDATIONS

- 9.1 That Governance and Audit Committee recommend to Council for approval: -

9.1.1 That a Chief Officer Disciplinary Committee be established with the composition, quorum, and functions as set out in Appendix A to this Report.

9.1.2 Amendments to Article 12A (Staffing Committee) of the Constitution as set out in Appendix B to this Report.

9.1.3 Amendments to the Officer Employment Procedure Rules as set out in Appendix C to this Report.

9.1.4 Amendments to Article 4 of the Council's Constitution as set out in Appendix D to this Report.

9.1.5 That Mr Mohammed Shakeel be invited to serve as an independent person on the Chief Officer Disciplinary Committee, and if he accepts to be appointed to serve on that Committee.

9.1.6 That the Deputy Monitoring Officer, in consultation with the Chair of Governance and Audit Committee be authorised to identify suitable independent persons appointed by other authorities for appointment to the Chief Officer Disciplinary Committee and bring a further report to Council



for the purpose of making the appointments.

10. APPENDICES

Appendix A – Proposed new Article 12B “Chief Officer Disciplinary Committee”.

Appendix B – Proposed Amendments to Article 12A of the Constitution.

Appendix C – Proposed Amendments to the Officer Employment Procedure Rules.

Appendix D – Proposed Amendments to Article 4 of the Constitution.

11. BACKGROUND DOCUMENTS

11.1 The Local Government Association Advisory Bulletin Number 624 Changes to Statutory Dismissal Procedures for Heads of Paid Service, Monitoring Officers, and Section 151 Finance Officers, circulated on 8 May 2015.

<http://www.local.gov.uk/documents/10180/6869714/ab624.pdf/7e871fd2-dd02-463a-a880-9c3352162bc0>



Appendix A

PART 2

Article 12B Chief Officer Disciplinary Committee

12B.1 The Council will appoint a Chief Officer Disciplinary Committee.

Composition

12B.2 The Chief Officer Disciplinary Committee shall comprise 5 members of Council, at least one of whom must be a member of the Executive, unless Article 12B.3 applies.

12B.3 Where the Committee is considering whether to recommend the dismissal of the Head of Paid Service (Chief Executive), the Monitoring Officer (the City Solicitor), or the Chief Finance Officer (Director of Finance), the Committee shall comprise: -

12B.3.1 Five members of Council, at least one of whom must be a member of the Executive and

12B.3.2 Two Independent Persons appointed in accordance with the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015.

Quorum

12B.4 In relation to Article 12B.2 the quorum of the Committee shall be 3 members.

12B.5 In relation to Article 12B.3 the quorum of the Committee shall be 7 which must include the two Independent Persons.

Functions

12B.6 The Chief Officer Disciplinary Committee is authorised to discharge the following functions: -

12B.6.1 to suspend and keep under review the suspension of the Head of Paid Service, the Monitoring Officer, or the Chief Finance Officer under the Officer Employment Procedure Rules.

12B.6.2 to set up a full investigation if required under the Officer Employment Procedure Rules.

12B.6.3 to take disciplinary action¹ short of dismissal against the Head of Paid Service, the Monitoring Officer, or the Chief Finance Officer under the Officer Employment Procedure Rules.

12B.6.4 to make recommendations to Council as to the dismissal for disciplinary action¹ of the Head of Paid Service, the Monitoring Officer, or the Chief

¹ 'Disciplinary Action' has the meaning set out in the Local Authorities (Standing Orders)(England) Regulations 2001 (as amended) and as detailed in the Officer Employment Procedure Rules.

Finance Officer under the Officer Employment Procedure Rules. The advice, views, or recommendations of the Independent Persons on the Committee must be separately detailed in the recommendations.

12B.6.5 to dismiss for disciplinary action¹ or take disciplinary action short of dismissal¹ against Strategic Directors, Directors (other than the Director of Finance in relation to dismissal), Deputy Directors, or Assistant Directors under the Officer Employment Procedure Rules.

Appendix B

PART 2

Article 12A Staffing Committee

12A.1 The Council will appoint a Staffing Committee.

Composition

12A.2 The Staffing Committee shall comprise 5 members of Council at least one of whom ~~must~~ will be a member of the Executive.

Quorum

12A.3 The quorum of the Committee shall be 3 members.

~~Roles and Functions~~

12A.4 ~~The functions of the Committee are to:~~ Staffing Committee is authorised to discharge the following functions: -

12A.4.1 Recommend to Council the appointment ~~or dismissal~~ of the Head of the Paid Service (the Chief Executive) under the Officer Employment Procedure Rules.

~~12A.4.2 Deal with employment matters which may not be decided by Executive and which are not delegated to Officers.~~

12A.4.2 Appoint Strategic Directors, Directors, and the City Solicitor under the Officer Employment Procedure Rules. ~~or dismiss under the Officer Employment Procedure Rules:~~

~~12A.4.3.1 A Statutory Chief Officer~~

~~12A.4.3.2 A non-statutory Chief Officer~~

This function will normally be delegated to a sub-committee (an appointment panel).

12A.4.3 To make recommendations to Council as to the dismissal of the Head of Paid Service (Chief Executive), the Monitoring Officer (City Solicitor) or the Chief Finance Officer (Director of Finance), or to dismiss Strategic Directors, Directors (other than the Director of Finance), Deputy Directors or Assistant Directors for any reason not falling within the functions of the Chief Officer Disciplinary Committee. This function may be delegated to a sub-committee.

12A.4.4 Determine appeals brought by the Chief Executive against a grievance decision.

12A.4.5 Determine appeals under the Officer Employment Procedure Rules.

12A.4.6 Determine cases brought (by way of appeal or otherwise) by employees under agreed employment procedures ~~including appeals by a member of Top Management against a grievance decision~~ and the Access to Information Rules.

The function under Article 12A.4.6 will normally be delegated to the Employee Appeals Panel.

12A.4.7 Deal with any matter referred to the Committee under section 112 of the Local Government Act 1972.

12A.4.8 Deal with employment matters which may not be decided by Executive or the Chief Officer Disciplinary Committee and which are not delegated to Officers.

Staffing Committee – Sub-Committees

12A.5 The Committee shall appoint the Employee Appeals Panel.

Composition

12A.5.1 The Employee Appeals Panel shall comprise three members where possible including the Chair, drawn on a rota basis, and in compliance with Section 15 of the Local Government and Housing Act 1989, from a list of members appointed by the Staffing Committee.

Quorum

12A.5.2 The quorum of the Employee Appeals Panel shall be two members.

Functions

The Employee Appeals Panel is authorised to discharge the following functions: -

12A.5.3 ~~shall discharge the functions of~~ the functions of Staffing Committee in paragraph 12A.4.6.

12A.5.4 to sit as a Grievance Committee to consider a grievance brought by the Chief Executive.

Appendix C

PART 3H Officer Employment Procedure Rules

In these Rules 'chief officer' ~~and 'Top Management'~~ means the Chief Executive and Strategic Directors, Directors ~~or~~ and City Solicitor. 'Senior Officer' means Chief Officer as defined and Deputy Directors and Assistant Directors.

1 Attempts to Influence an Appointment

- 1.1 Candidates for any appointment will be disqualified if they directly or indirectly canvass members.
- 1.2 A member of Council shall not provide a reference for any candidate for appointment to the employment of the Council and must not in any way seek to influence improperly the choice of candidate for any appointment.
- 1.3 An officer who has agreed to act as a referee for a candidate may not take part in the recruitment process.

2 Candidates Related to Members or Officers

- 2.1 Candidates for any appointment with the Council must state in their application if a member or Senior Officer ~~of Top Management~~ is a relative. Anyone who fails to do this will be disqualified, or if appointed, liable to instant dismissal on grounds of gross misconduct.
- 2.2 Members and Senior Officers ~~of Top Management~~ must inform the appropriate Strategic Director, Director, City Solicitor, Deputy Director, or Assistant Director if they know that any candidate is related to them. The Strategic Director, Director, City Solicitor, Deputy Director, or Assistant Director must ensure that the appointing body is made aware of the relationship.
- 2.3 Members and Senior Officers ~~of Top Management~~ must inform the appropriate Strategic Director, Director or City Solicitor in writing if they know that a relative is appointed. The Strategic Director or Director will inform the Monitoring Officer who will record the appointment. ~~and report it to the Standards Committee.~~
- 2.4 All candidates must be made aware of the Rules contained in paragraph 2.
- 2.5 For the purposes of these Rules:
 - 2.5.1 "Relative" means spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons.
 - 2.5.2 "Partner" in paragraph 2.5.1 above means a member of a couple who live together.

Appointments to Chief Officer Posts

3 Chief Executive

- 3.1 Where there is a vacancy in the post of Chief Executive an appointment panel will be established by the Staffing Committee to decide how the post will be filled, including on what terms and conditions, advertising, short listing and interviewing.
- 3.2 The appointment panel ~~must shall~~ include at least one member of the Executive.
- 3.3 Where the appointment panel decides that the appointment will not be made exclusively from among the Council's existing officers, the panel shall:
- 3.3.1 Draw up a statement specifying the duties of the post and any qualifications or qualities to be sought in the person to be appointed.
 - 3.3.2 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.
 - 3.3.3 Make arrangements for a copy of the statement in paragraph 3.3.1 above to be sent to any person on request.
 - 3.3.4 Where a post has been advertised, the appointment panel shall either interview all qualified applicants for the post or select a shortlist of qualified applicants and interview those included on the shortlist.
- 3.4 Where the appointment panel has selected a candidate for appointment they must notify the proper officer of the name of that candidate together with any other relevant details.
- 3.5 The proper officer will send the information under paragraph 3.4 to every member of the Executive and will inform them of the timescale during which any objection to the proposed offer of appointment should be made to the Leader of Council.
- 3.6 The Council must approve the appointment of the Chief Executive. The Panel's recommendation for appointment will not be referred to the Council for a decision until one of the following is satisfied:
- 3.6.1 The Leader of Council has notified the appointment panel within the specified timescale that no member of the Executive has objected to the proposed offer of appointment.
 - 3.6.2 The proper officer has notified the appointment panel that s/he has received no objection from the Leader of Council within that **specified** timescale, **or**
 - 3.6.3 The appointment panel is satisfied that any objection received from the Leader of Council within the specified timescale is not material or well founded.

3.7 Full Council must also approve any salary package, as defined in the Council's Pay Policy Statement, of £100,000 per annum or more before it is offered in respect of a new appointment.

3.8 Where no qualified person has applied or where the panel is unable to make a recommendation for appointment the panel shall make further arrangements for advertisement in accordance with paragraph 3.3.2 above.

4 Other Chief Officers

4.1 If there is a vacancy in a chief officer post, other than that of Chief Executive, the Staffing Committee will decide whether to fill the post. If the Committee decides not to fill the post, it must determine how the duties of the post are to be carried out.

4.2 If the Staffing Committee decides to fill the post, the Committee must establish an appointments panel to make the appointment or delegate the power to make the appointment to the Chief Executive, or her/his nominee. Either the appointments panel, the Chief Executive, or her/his nominee, as the case may be, shall have full delegated powers to decide how the post will be filled, including on what terms and conditions, advertising, short listing and interviewing.

4.3 An appointment panel ~~must shall~~ include at least one member of the Executive.

4.4 Where the appointment panel, the Chief Executive or her/his nominee, decide that the appointment will not be made exclusively from among the Council's existing officers, the panel, Chief Executive or her/his nominee shall:

4.4.1 Draw up a statement specifying the duties of the post and any qualifications or qualities to be sought in the person to be appointed.

4.4.2 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.

4.4.3 Make arrangements for a copy of the statement in paragraph 4.4.1 above to be sent to any person on request.

4.4.4 Where a post has been advertised, the appointment panel, the Chief Executive or her/his nominee, shall either interview all qualified applicants for the post or select a shortlist of qualified applicants and interview those included on the shortlist.

4.5 Where the appointment panel, Chief Executive or her/his nominee, has selected a candidate for appointment they must notify the proper officer of the name of that candidate together with any other relevant details.

4.6 The proper officer will send the information provided under Paragraph 4.5 to every member of the Executive and will inform them of the timescale during which any objection to the proposed offer of appointment should be made to the Leader of Council.

- 4.7 No offer of appointment shall be made by the appointment panel, Chief Executive or her/his nominee, as the case may be, until one of the following is satisfied:
- 4.7.1 The Leader of Council has notified the appointment panel or Chief Executive or her/his nominee within the specified timescale that no member of the Executive has objected to the proposed offer of appointment.
 - 4.7.2 The proper officer has notified the appointment panel, Chief Executive or her/his nominee, that s/he has received no objection from the Leader of Council within that **specified** timescale, **or**
 - 4.7.3 The appointment panel, Chief Executive or her/his nominee, is satisfied that any objection received from the Leader of Council within the specified timescale is not material or well founded.
- 4.8 **Full Council must approve any salary package, as defined in the Council's Pay Policy Statement, of £100,000 per annum or more before it is offered in respect of a new appointment.**
- 4.9 Where no qualified person has applied, or where the Panel, Chief Executive or her/his nominee, is unable to make an appointment from the candidates that have been interviewed, the Panel, Chief Executive or her/his nominee, shall make further arrangements for advertisement in accordance with Paragraph 4.4.2 above.
- 4.10 **The provisions detailed in paragraphs 4.1 to 4.9 above do not apply where an interim appointment is to be made exclusively from among the Council's existing officers, and where that interim appointment is for a period not exceeding 6 months duration.**

5 Appointments to Other Officer Posts

- 5.1 The appointment of officers below Chief Officer is the responsibility of the Chief Executive or her/his nominee, and members may not make or be involved in such appointments.

6 Disciplinary Procedures

The Chief Executive (Head of Paid Service), Monitoring Officer, and Chief Finance Officer

- 6.1 For the purpose of these procedures, disciplinary action has the meaning set out in the Local Authorities (Standing Order)(England)(Regulations) 2001 (as amended), namely:

“any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill health, or infirmity of mind or body, but does not include failure to renew a contract of

employment for a fixed term unless the authority has undertaken to renew such a contract”.

~~7.1 The disciplinary procedures contained in the Joint Negotiating Committee (JNC) Agreement for Chief Executives will apply to the Chief Executive, Monitoring Officer and the Section 151 Officer.~~

6.2 The Chief Executive, Monitoring Officer or ~~Section 151~~ Chief Finance Officer (referred to below in each case as the “relevant statutory officer”) may be suspended on full pay ~~for a period not exceeding two months~~ for the purpose of investigating alleged misconduct by her/him. ~~Any period of suspension of longer than two months requires the agreement of the Independent Person.~~

6.3 Subject to the provisions set out below, the Chief Officer Disciplinary Committee may take disciplinary action short of dismissal against a relevant statutory officer or recommend to full Council that a relevant statutory officer be dismissed for disciplinary action as defined in paragraph 6.1 above.

6.4 Where a potential disciplinary matter in respect of the Chief Executive, Monitoring Officer or the ~~Section 151~~ Chief Finance Officer arises, the steps to be taken under the disciplinary procedure may be summarised as follows:

6.4.1 A preliminary investigation will be carried out by a group of not fewer than three elected members appointed by the Leader of Council.

6.4.2 If the preliminary investigation shows there is a case to answer, a full investigation will be set up and heard by the Chief Officer Disciplinary Committee. ~~Panel of the Staffing Committee acting as the Investigating Committee under the JNC agreement.~~

~~7.3.3 At this stage the Council and the officer concerned must agree the appointment of an Independent Person. If the parties cannot agree on an Independent Person, s/he will be appointed by the Secretary of State.~~

~~7.3.4 The role of the Independent Person is to prepare a report which must state her/his opinion as to whether (and if so the extent to which) the evidence s/he has obtained supports any allegations of misconduct against the chief officer and recommend the disciplinary action or range of actions which appear to her/him to be appropriate for the Council to take against the chief officer.~~

~~7.3.5 No disciplinary action within the meaning of regulation 2 of the Local Authorities (Standing Orders) Regulations 2001 in respect of the Chief Executive as Head of the Paid Service, the Monitoring Officer or the Section 151 Officer, apart from suspension for the purpose of investigation, may be taken by the Council or any of its committees or sub-committees, other than in accordance with a recommendation in a report made by a designated Independent Person under regulation 7 of those Regulations. Any such suspension will be on full pay and last no longer than two months.~~

~~7.3.3 Following the full investigation, the Chief Officer Disciplinary Panel recommends to the Staffing Committee a course of action, and no~~

~~disciplinary action may be recommended other than in accordance with a recommendation in the report of the Independent Person. The relevant officer may appeal against the recommendations by presenting a written submission when the matter is considered by the Staffing Committee, and has the right to attend the meeting and speak to the written submission. There is no further right of appeal.~~

- 6.4.3 Where, following the full investigation and hearing, the Staffing Chief Officer Disciplinary Committee ~~having considered the recommendation of the Panel and the Independent Person and any submissions made by the relevant officer~~ considers that dismissal is the appropriate course of action in respect of a relevant statutory officer they must notify the proper officer giving particulars, in addition to the person's name, that are relevant to the proposed dismissal.
- 6.4.4 The proper officer will send that information, including the person's name, to every member of the Executive and will inform them of the timescale during which any objection to the proposed dismissal should be made by the Leader of Council, on behalf of the Executive, to the proper officer.
- 6.5 The Staffing Chief Officer Disciplinary Committee ~~shall~~ must include at least one member of the Executive. Where dismissal is to be considered, the Chief Officer Disciplinary Committee must also include two Independent Persons appointed in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 6.6 ~~Where the person that is proposed to be dismissed is the Chief Executive, the Council must approve that dismissal.~~ Only full Council can approve the dismissal of the Chief Executive, Monitoring Officer, or Chief Finance Officer, and must do so before notice of dismissal (if required) is given. The Staffing Chief Officer Disciplinary Committee's recommendation for dismissal will not be referred to Council for a decision until one of the following is satisfied:
- 6.6.1 The Leader of Council has notified the Committee within the specified timescale that ~~neither s/he nor any other~~ member of the Executive has objected to the proposed dismissal, ~~or~~
- 6.6.2 The proper officer has notified the Committee that s/he has received no objection from the Leader of Council within that timescale, or
- 6.6.3 The Committee is satisfied that any objection received from the Leader of ~~the~~ Council within the specified timescale is not material or well founded.
- 6.7 Where the proposed dismissal is for disciplinary action as defined in paragraph 6.1 above, Council must take into account, in particular: -
- (a) any advice, views or recommendations of the Chief Officer Disciplinary Committee. The advice, views or recommendations of the Independent Persons on that Committee to be separately detailed;
 - (b) the conclusions of any investigation into the proposed dismissal; and

(c) any representations from the relevant statutory officer

before the taking of a vote at the meeting on whether or not to approve such a dismissal.

6.8 The Chief Officer Disciplinary Committee must be appointed by the Authority at least 20 days before the relevant meeting and must include two Independent Persons.

~~7.6 Where the person that is proposed for dismissal is the Monitoring Officer or the Section 151 Officer the Staffing Committee must not give notice of the dismissal until notification has been received under paragraph 7.5.1 or 7.5.2 or unless paragraph 7.5.3 applies.~~

6.9 In relation to action short of dismissal, the relevant statutory officer has a right of appeal to Staffing Committee. There is no right of appeal beyond this level.

Other Members of Top Management **Other Chief Officers, Deputy Directors, and Assistant Directors**

6.10 Where a potential disciplinary matter arises which concerns a Strategic Director, ~~or~~ Director, Deputy Director, or Assistant Director (referred to below in each case as the “relevant officer”), other than the Monitoring Officer or ~~Section 151~~ Chief Finance Officer the disciplinary procedures contained in the Joint Negotiating Committee (JNC) Agreement for Chief Officers will apply.

6.11 Subject to the provisions set out below, the Chief Officer Disciplinary Committee may dismiss for disciplinary action as defined in paragraph 6.1 above or take disciplinary action short of dismissal against Strategic Directors, Directors (other than the Director of Finance in relation to dismissal) Deputy Directors or Assistant Directors.

6.12 Where a potential disciplinary matter in respect of a ~~relevant officer member of Top Management~~ (other than the ~~Chief Executive~~, Monitoring Officer or ~~its Section 151~~ Chief Finance Officer) arises, the steps to be taken under the disciplinary procedures are:

6.12.1 When the matter involves a Strategic Director or Director (~~other than the Director of Finance~~) ~~not referred to in paragraph 7.7 or 7.8~~, the Chief Executive will undertake a preliminary investigation of the complaint. The preliminary investigation may in certain circumstances, including the prior involvement in the matter by the Chief Executive, be undertaken by another ~~Chief Officer Top Manager~~ or by not fewer than two elected members. Where the matter involves a ~~Deputy Director or Assistant Director an officer engaged under the terms of the JNC Agreement for Chief Officers~~, the Strategic Director will undertake a preliminary investigation of the complaint. This preliminary investigation may in certain circumstances, including the prior involvement in the matter by a Strategic Director, be undertaken by the Chief Executive, another ~~Chief Officer Top Manager~~ or by not fewer than two elected members. ~~This is an agreed local variation on paragraph 41(b)(1) of the JNC Agreement.~~

6.12.2 Unless the decision on the preliminary investigation is either that the complaint does not warrant a full investigation, or, if established, could be resolved informally, for example, through an unrecorded informal warning, **the matter** will be referred to the Chief Officer Disciplinary **Committee Panel**, acting as the Investigating Committee under the JNC Agreement **for Chief Officers**. The **Committee Panel shall must** include at least one member of the Executive and will have full delegated powers to act.

6.12.3 The employee will have a right of appeal against any disciplinary action to the Staffing Committee **who which shall must** include at least one member of the Executive. There is no right of appeal beyond this level.

6.13 Where the Chief Officer Disciplinary **Committee Panel** considers that dismissal is the appropriate course of action they must notify the proper officer giving particulars, in addition to the person's name, that are relevant to the proposed dismissal.

6.14 The Proper Officer will send that information, **including the person's name**, to every member of the Executive and will inform them of the timescale during which any objection to the proposed dismissal should be made by the Leader of the Council, on behalf of the Executive, to the proper officer.

6.15 The **Committee Panel** must not give notice of the dismissal until one of the following is satisfied:

6.15.1 The Leader of Council has notified the **Committee Panel** within the specified timescale that **neither s/he nor any other** member of the Executive has objected to the proposed dismissal,

6.15.2 The proper officer has notified the **Committee Panel** that s/he has received no objection from the Leader of Council within that timescale, **or**

6.15.3 The **Committee Panel** is satisfied that any objection received from the Leader of **the** Council within the specified timescale is not material or well founded.

7. Dismissal other than for Disciplinary Action (for example dismissal by reason of redundancy)

The Chief Executive, Monitoring Officer, and Chief Finance Officer

7.1 Only full Council can approve the dismissal of the Chief Executive, Monitoring Officer, or Chief Finance Officer ("relevant statutory officers") and must do so before notice of dismissal is given.

7.2 Where the Staffing Committee considers that dismissal is the appropriate course of action in respect of a relevant statutory officer, they must notify the proper officer giving particulars, in addition to the person's name, that are relevant to the proposed dismissal.

- 7.3 The proper officer will send that information including the person's name, to every member of the Executive and will inform them of the timescale during which any objection to the proposed dismissal should be made by the Leader of Council on behalf of the Executive, to the proper officer.
- 7.4 The Staffing Committee's recommendation for dismissal will not be referred to Council for a decision until either paragraph 6.6.1 or 6.6.2 or 6.6.3 is satisfied.

Other Chief Officers, Deputy Directors, and Assistant Directors ("relevant officers")

- 7.5 Where the Staffing Committee considers that dismissal is the appropriate course of action in respect of a relevant officer, they must notify the proper officer giving the particulars in addition to the person's name that are relevant to the proposed dismissal.
- 7.6 The proper officer will send that information, including the person's name, to every member of the Executive and will inform them of the timescale during which any objection to the proposed dismissal should be made by the Leader of the Council, on behalf of the Executive, to the proper officer.
- 7.7 The Committee must not give notice of the dismissal until one of the following is satisfied:
- 7.7.1 The Leader of Council has notified the Committee within the specified timescale that neither s/he nor any other member of the Executive has objected to the proposed dismissal,
 - 7.7.2 The proper officer has notified the Committee that s/he has received no objection from the Leader of Council within that timescale, or
 - 7.7.3 The Committee is satisfied that any objection received from the Leader of Council within the specified timescale is not material or well founded.

Appendix D

PART 2

Article 4 The Full Council

Definitions

4.1 The 'policy framework' means:

4.1.1 The following documents:

4.1.1.1 The Community Strategy

4.1.1.2 The Corporate Plan (incorporating the Best Value Performance Plan)

4.1.1.3 The Children and Young People's Plan (incorporating the Youth Justice Plan)

4.1.1.4 The Crime and Disorder Reduction Strategy (incorporating the Drug Action Team Strategy)

4.1.1.5 The Food Law Enforcement Plan

4.1.1.6 The Housing and Homelessness Strategy

4.1.1.7 Local Development Framework

4.1.1.8 The West Yorkshire Local Transport Plan

4.1.1.9 The Treasury Strategy Document

4.1.1.10 The Annual Investment Statement

4.1.2 Any strategy or plan following that the Council has determined must be adopted by the Council as part of the policy framework:

4.1.2.1 The Asset Management Plan

4.1.2.2 Procurement Strategy

4.1.2.3 The Youth Service Plan

4.1.2.4 The Climate Change Strategy

4.2 The 'budget' includes the allocation of financial resources to different services and projects, proposed contingency funds setting the level of Council Tax and decisions relating to the control of the Council's borrowing requirements, capital expenditure and the setting of any virement limits.

- 4.3 'Housing land transfer' means the approval or adoption of applications (whether in draft or otherwise) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

Functions of the Council

- 4.4 The Council alone may exercise the following functions:
- 4.4.1 Adopt or amend the Constitution, except where otherwise provided in the Constitution or by resolution of the Council.
 - 4.4.2 Approve the budget, policy framework and any application to the Secretary of State in respect of any housing land transfer.
 - 4.4.3 Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 3B of this Constitution, make decisions about any matter in the discharge of an executive function where the decision-maker is minded to take a decision that would not accord with the budget and/or the policy framework.
 - 4.4.4 Appoint the Leader of the Council.
 - 4.4.5 Agree or amend the terms of reference for committees, determine their composition and make appointments.
 - 4.4.6 Appoint chairs and deputy chairs to committees excluding area committees.
 - 4.4.7 Appoint representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council.
 - 4.4.8 Adopt the Members' Allowances Scheme under Article 2.7 and as set out in Part 5A of the Constitution.
 - 4.4.9 Change the name of the Council or the area, confer the title of honorary alderman or freedom of the city.
 - 4.4.10 ~~Confirm~~ Approve the appointment of the Head of Paid Service.
 - 4.4.11 Approve the dismissal of the Head of Paid Service, Monitoring Officer, and Chief Finance Officer.
 - 4.4.12 Approve the annual Pay Policy Statement under the Localism Act 2011.
 - 4.4.13 Approve proposed salary packages of £100,000 per annum or more for a new appointment and approve proposed severance packages for Chief

Officers of £100,000 or more in accordance with the Council's Pay Policy Statement and the Officer Employment Procedure Rules.

- 4.4.14 Promote or oppose the making of local legislation or private bills.
- 4.4.15 The local choice functions that the Council decides should be undertaken by itself and not the Executive.
- 4.4.16 All other matters which, by law, must be reserved to the full Council.

Council Meetings

- 4.5 There are three types of Council meeting:
 - 4.5.1 The Annual Meeting.
 - 4.5.2 Ordinary meetings.
 - 4.5.3 Extraordinary meetings.
- 4.6 Meetings will be conducted in accordance with the Council Standing Orders in Part 3A of this Constitution.