

Somerset West and Taunton Council

Council – 16th July 2019

Constitution Report

This matter is the responsibility of Executive Councillor for Corporate Resources

Report Author: Christine Fraser, Head of Performance and Governance

1 Executive Summary / Purpose of the Report

To update part of the Constitution.

2 Recommendations

That the Council resolves to make the following amendments to the Constitution:

- 1) The terms of reference for the Employment Committee are removed from the Constitution
- 2) The revised Officer Employment Procedure Rules (attached at Appendix A) are approved

3 Risk Assessment

- 3.1 Failure to have an appropriate a workable Constitution could impact on the Council's ability to operate in an economic, efficient and effective manner.

4 Background and Full details of the Report

- 4.1 As part of the work completed by Officers and the Shadow Council prior to the inception of Somerset West and Taunton Council on 1st April 2019, a new Constitution was drafted. At the time of drafting it was confirmed that this was a starting point and that the document would be a 'living' document and reviewed and updated on a regular basis.
- 4.2 The Officers Employment Procedure Rules have now been reviewed to ensure that the appointments process to Senior Officer posts is appropriate. Members are included in the process of appointing Senior Officers but the final decision will rest with the Chief Executive (with the exception of the statutory posts which are a Council decision).
- 4.3 The revised Officer Employment Procedure Rules are attached as Appendix A

5 Links to Corporate Aims / Priorities

- 5.1 Having effective and efficient governance arrangements is a fundamental element of being a 'well managed' council

6 Finance / Resource Implications

6.1 None arising from this report

7 Legal Implications

7.1 The proposed changes have been discussed with SHAPE Legal and they have confirmed that they meet legislative requirements

8 Environmental Impact Implications (if any)

8.1 None arising from this report

9 Safeguarding and/or Community Safety Implications (if any)

9.1 None arising from this report

10 Equality and Diversity Implications (if any)

10.1 None arising from this report

11 Social Value Implications (if any)

11.1 None arising from this report

12 Partnership Implications (if any)

12.1 None arising from this report

13 Health and Wellbeing Implications (if any)

13.1 None arising from this report

14 Asset Management Implications (if any)

14.1 None arising from this report

15 Data Protection Implications (if any)

15.1 None arising from this report

16 Consultation Implications (if any)

16.1 The Audit, Governance and Standards Committee considered this report on 26th June 2019 and supported the recommendations.

16.2 Recommended that the Audit, Governance and Standards Committee recommended the following amendments:-

- a) The terms of reference for the Employment Committee were removed from the Constitution;
- b) The revised Officer Employment Procedure Rules were approved; and
- c) The Chief Executive Officer was added to the list of panel members in section 4.2 of the report.

Democratic Path:

- **Audit, Governance and Standards Committee – Yes**
- **Cabinet/Executive – No**
- **Full Council – Yes**

Reporting Frequency: Updates to the Constitution will be as and when appropriate

List of Appendices

Appendix A	Constitution – Officer Employment Procedure Rules
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Contact Officers

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Officer Employment Procedure Rules

1. Recruitment and Appointment

1.1. Declarations

1.1.1. The Council will draw up a statement requiring any candidate for appointment as an Officer to state in writing whether they are related to an existing Councillor or Officer of the Council; or the partner or ex-partner of such a person.

1.1.2. No candidate so related to a Councillor or an Officer will be appointed without the authority of the relevant Senior Officer (as set out in Appendix A) or an Officer nominated by him/her.

1.2. Seeking Councillor Support for Appointment

1.2.1. Subject to paragraph 1.2.3 below, the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

1.2.2. Subject to paragraph 1.2.3 below, no Councillor will seek support for any person for any appointment with the Council.

1.2.3. Nothing in paragraphs 1.1.1 and 1.1.2 above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

1.3. Senior Officer Posts Covered by These Rules

1.3.1 Except where stated in these rules, Parts 2 to 8 apply to the following posts: Chief Executive, Monitoring Officer, Section 151 Officer, Director, Heads of Functions and any other posts who are /become permanent members of the Senior Leadership Team. For the purposes of these rules, these posts will be referred to as 'Senior Officer Posts'. The current list of posts is set out at Appendix A but failure to include a post on this list will not exclude it from the provisions of these rules.

2. Recruitment

2.1. Where the Council proposes to recruit and appoint to a Senior Officer Post and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will:

- a) Draw up a statement specifying:
 - i. The duties of the post concerned; and
 - ii. Any qualifications or qualities to be sought in the person to be appointed;
 - iii. 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; and
 - iv. Make arrangements for a copy of the statement mentioned in paragraph (2.1.1) to be sent to any person on request.
- b) The Head of Performance and Governance is responsible for keeping this list up to date in the light of changes to the Council's organisational structure.

3. Appointment of Chief Executive (Head of Paid Service)

3.1 An appointment panel will be appointed by the Proper Officer.

3.2 The appointment panel shall include:-

- (a) The Chair or Vice Chair of the Scrutiny Committee or the Chair or Vice Chair of a Regulatory Committee;
- (b) The Leader and two other Members of the Executive;

(c) The Chair or Vice Chair of the Council. The above representatives may appoint a substitute as necessary and that all the above, where possible, should reflect the political balance of the Council.

- 3.3 The Proper Officer communicates the panel's recommendations to each Member of the Executive giving a deadline for responses.
- 3.4 If no Member of the Executive objects, the recommendation then goes forward before the Council for approval.
- 3.5 If any Member of the Executive objects they must notify the Leader. The Leader is then required to consult the Executive. If the Executive wishes to pursue the objection the Leader notifies the Proper Officer. The Proper Officer then reconvenes the appointment panel to consider whether the objection is material and well founded. Following this process the appointment panel either reconsiders its recommendation or affirms its recommendation. Any revised recommendation is subject to the process above.
- 3.6 The appointment panel's recommendation is placed before the Council for approval prior to any offer being made.

4. Appointment to Other Senior Officer Posts (including the Section 151 Officer and Monitoring Officer)

- 4.1 An appointment panel will be appointed by the Proper Officer.
- 4.2 The appointment panel shall include:-
 - (a) The Chair or Vice Chair of the Scrutiny Committee or the Chair or Vice Chair of a Regulatory Committee;
 - (b) The Leader and one Member of the Executive
 - (c) The Chief Executive Officer
- 4.3 The Chief Executive to make the appointment having consulted the members of the panel.

- 4.4 In the case of the S151 Officer and Monitoring Officer, Full Council will confirm their appointment.

5. Other Appointments Below Senior Officer Posts

- 5.1 **Officers not covered by these Rules:** Other than statutory assistants to political groups, all other appointments are the responsibility of the Chief Executive as Head of Paid Service, or her/his nominees, and may not be made by Councillors.

- 5.2 **Assistants to political groups.** Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

***Note:** The Council is not able to make any political assistant appointment until the Council has allocated posts to all political groups which qualify for one. The Council is required to consider the allocation of a political assistant to a political group in accordance with the relevant regulations. Non-qualifying groups are not allowed political assistants. More than one advisor per group is not permitted.*

6. Disciplinary Action Against and Dismissal of the Head of Paid Service, Monitoring Officer or Section 151 Officer ('the Statutory Officers').

- 6.1 A Disciplinary Panel will be appointed by the Proper Officer.

- 6.2 The Disciplinary Panel shall include:-

(a) The Chair or Vice Chair of the Scrutiny Committee or the Chair or Vice Chair of a Regulatory Committee;

(b) The Leader and two other Members of the Executive;

(c) The Chair or Vice Chair of the Council. The above representatives may appoint a substitute as necessary and that all the above, where possible, should reflect the political balance of the Council.

- 6.3 The Disciplinary Panel has power to decide whether to investigate any allegation of misconduct by a Statutory Officer, all matters relating to the conduct of the

investigation (save as set out in 6.4) and may suspend the Statutory Officer on full pay whilst any investigation and/or any subsequent disciplinary process takes place.

- 6.4 Where the Statutory Officer is the Chief Executive the Disciplinary Panel will follow the procedures set out in the Joint Negotiating Committee for Local Authority Chief Executives National Salary Framework & Conditions of Service Handbook regarding the appointment of its' Independent Panel and any Independent Investigator and review of any suspension.
- 6.5 The Disciplinary Panel will consider the investigation report, any other evidence it considers relevant and the Officer will have an opportunity to state their case.
- 6.6 The Disciplinary Panel will consider whether disciplinary action is needed and, if so, the appropriate sanction. Where the proposed sanction is less than dismissal, the Panel will instruct Officers to implement any sanctions.
- 6.7 Where required, an Appeals Panel will consider an appeal against a disciplinary sanction. Where the Statutory Officer concerned is the Chief Executive, an Appeals Panel will be convened (which will be a politically balanced Panel of five members who are not members of the Disciplinary Panel and will include at least one Member of the Executive). The Appeals Panels purpose is to hear appeals against action taken short of dismissal and to take a decision either to confirm the action or to impose no sanction or a lesser sanction.
- 6.8 Where the Panel proposes dismissal:
 - a) A Statutory Officer Independent Panel (the SOI Panel) consisting of at least three Standards Regime Independent Persons drawn from the pool of Independent Persons of the principal councils in Somerset will be established to consider the matter and report its recommendations direct to Full Council.
 - b) The SOI Panel's recommendations will be independent of and separate to any recommendations made by the Disciplinary/Appeals Panel;

- c) The SOI Panel must be established at least 20 working days before the Full Council meeting scheduled to consider any proposal to dismiss a Statutory Officer.
- d) Full Council will decide whether or not to approve the dismissal taking into account: the investigation and its conclusions; the SOI Panel's recommendations and the recommendations of the Disciplinary/Appeals Panel, together with any representations by the relevant Statutory Officer. Statutory Officers will be allowed to attend this meeting and address Council. Following consideration Full Council should either confirm or reject the recommendation to dismiss. It may at this stage impose a lesser sanction. This stage in the process constitutes any Statutory Officer's final right of appeal against any decision to dismiss. The detailed process for considering such matters will be in accordance with such arrangements agreed by the Council subject to relevant statutory requirements.

7. Disciplinary Action Against and Dismissal of Other Senior Officers ('Non-Statutory Officers')

- 7.1 The Disciplinary Panel has power to decide whether to investigate any allegation of misconduct by a non-Statutory Senior Officer, all matters relating to the conduct of the investigation and may suspend the non-Statutory Senior Officer on full pay whilst any investigation is undertaken and/or any determine any subsequent disciplinary process that takes place.
- 7.2 The Disciplinary Panel has power to impose any sanction up to and including dismissal, subject to Section 8 below.
- 7.3 Where required, the Disciplinary Panel will consider an appeal against a disciplinary sanction or dismissal of a non-Statutory Senior Officer.

8. Executive Objections to Appointments or Dismissals

- 8.1. Where a Panel makes the decision to appoint or dismiss a Senior Officer Post any Executive member has the right to object before an appointment is made or a notice of dismissal is given.
- 8.2 The Chief Executive will inform all Executive members about the proposed appointment or dismissal in writing. The Chief Executive will advise:
 - a) The name of the person who is the subject of the proposed appointment or dismissal
 - b) Any other particulars relevant to the appointment or dismissal which the Panel has notified to the Chief Executive
 - c) That objections must be received within five working days; and
 - d) That any objections must be made to the Leader of the Executive.
- 8.3. The appointment or dismissal can only be made if:
 - a) There is no objection from the Members of the Executive within five working days; or
 - b) An objection is received and considered by the Panel but is not considered to be material or well founded.

9. Organisational Restructuring

- 9.1 Restructuring within a single Function Area is the responsibility of the relevant Head of Function or Director following consultation with the Chief Executive and all other Heads of Function/Director.
- 9.2 Restructuring involving more than one Function Area is the responsibility of the Chief Executive following consultation with all Heads of Function/Director.
- 9.3 Restructuring that affects all Function Areas is the responsibility of the Chief Executive, following consultation with all Heads of Function/Director, subject to the approval of the Executive.

9.4 Restructuring/changes to the senior management structure/senior officer posts is the responsibility of the Chief Executive, subject to the relevant requirements set out in these procedural rules.

10. Annual Pay Policy Statement

10.1 Section 38 of the Localism Act 2011 requires the Council to prepare and publish a pay policy statement for the following financial year. The statement will set out the authority's policies relating to remuneration of chief Officers and its lowest paid Officers; and the relationship between the remuneration of its chief Officers and that of its employees who are not chief Officers.

10.2 The annual pay policy statement for the following financial year will be adopted by Council before the end of March of each year. The Council has the power to amend the statement in-year.

APPENDIX A

APPLICABLE POSTS

Chief Executive

Section 151 Officer

Monitoring Officer

Executive Director and Deputy Chief Executive

Head of Customer

Head of Strategy

Head of Localities

Head of Communications and Engagement

Head of Performance and Governance

Head of Commercial, Investment and Change