

## **Meeting of the Council – 22<sup>nd</sup> February 2010**

### **Report of the Chief Executive**

### **Amendments to the Constitution - Remodelling of Council Services and Structures – Directorate of Corporate Resources**

#### **Purpose of Report**

1. To seek the approval of the Council to amend the Constitution as a consequence of the ongoing remodelling of Council Services and Structures and to consider the designation of statutory officers as required by the Local Government Act 1972, the Local Government and Housing Act 1989 and the Council's Constitution.

#### **Background**

##### **Monitoring Officer and Section 151 Officer**

2. Under Section 5 of the Local Government and Housing Act 1989, the Council has a duty to designate an officer as the Monitoring Officer. In his capacity as Interim Director, Philip Tart was designated as the Monitoring Officer on 1<sup>st</sup> December, 2008. With effect from 4<sup>th</sup> January, 2010, Philip Tart was appointed to the substantive post of Director of Corporate Resources. The Council is therefore recommended to confirm the designation of this post-holder as the Council's Monitoring Officer. The Interim Assistant Director (Legal and Democratic Services) continues to undertake the role as Deputy Monitoring Officer.
3. On 26<sup>th</sup> January, 2010, the Appointments Committee approved proposals for the appointment of an Officer and a Deputy with responsibility for the proper administration of the Council's financial affairs under Section 151 of the Local Government Act, 1972. The Committee agreed a recruitment process for a new post of Treasurer. In due course, the person appointed will be recommended to the Council for designation as the Council's Section 151 Officer. Arrangements for the designation of the Deputy Section 151 Officer will also be included in the future report to the Council.

##### **Amendments to the Constitution**

4. As a consequence of the ongoing remodelling of Services, two specific documents within the Constitution require amendment, namely Article 12 (Officers) and Part 4 (Officer Employment Procedure Rules). The proposed amendments to these documents are shown in Appendices 1 and 2. These changes are largely to reflect new post titles. However, in the case of the Officer Employment Procedure

Rules, it is necessary to clarify that the post of Treasurer, although not a Director, will be a Member-level appointment to be made by the Appointments Committee. This is consistent with the approach previously taken in view of the recommended designation of the post holder as the Council's Section 151 Officer.

5. With effect from the date of the appointment of an Officer to the new post of Treasurer, it will also be necessary to delete all existing references in the Constitution to the post of Director of Finance. It is proposed that the Director of Corporate Resources be authorised to make any further direct or consequential amendments to the Constitution arising from the remodelling of Council Services and Structures and the formation of the Directorate of Corporate Resources.

### **Finance**

6. The financial implications of the ongoing remodelling of Council Services and Structures are reflected in the Council's overall budget process for 2010/11.

### **Law**

7. Under Section 5 of the Local Government and Housing Act 1989, the Council has a legal duty to designate an officer as the Monitoring Officer. Section 151 of the Local Government Act 1972 requires the Council to appoint an Officer with responsibility for the proper administration of the financial affairs of the Council. The requirement to designate these posts is also included in the Council's Constitution adopted in accordance with the provisions of Part II of the Local Government Act 2000.

### **Equality Impact**

8. The proposals in this report are consistent with the Council's Equality and Diversity Policies.

### **Recommendations**

9. That Philip Tart, Director of Corporate Resources, be designated as the Monitoring Officer pursuant to Section 5 of the Local Government and Housing Act 1989 and that the Interim Assistant Director (Legal and Democratic Services) continue to undertake the role as the Deputy Monitoring Officer.
10. That the amendments to Article 12 of the Constitution (Officers), as set out in Appendix 1, be approved subject to all amendments relating to the new post of Treasurer becoming effective from the date of the appointment of an Officer to that substantive post.
11. That all references in the Constitution to the post of Director of Finance be deleted and replaced with reference to the new post of Treasurer, with effect from the date of the appointment of an Officer to that substantive post.

12. That the amendments to the Officer Employment Procedure Rules, as set out in Appendix 2, be approved with immediate effect.
13. That the Director of Corporate Resources be authorised to make any further direct or consequential amendments to the Constitution arising from the remodelling of Council Services and Structures and the formation of the Directorate of Corporate Resources.
14. That a report be submitted to a future meeting of the Council on the formal designation of the person appointed to the post of Treasurer as the Officer responsible for the proper administration of the financial affairs of the Council under, and in accordance with, Section 151 of the Local Government Act, 1972 and the associated arrangements for the designation of a Deputy Section 151 officer.

*John Polychronakis*

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**John Polychronakis**  
**Chief Executive**

ARTICLE 12 - OFFICERS

12.01 Management Structure

- (a) **General.** The full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Directors.** The full Council will engage persons for the following posts, who will be designated Directors.

<u>Post</u>	<u>Functions and Areas of Responsibility</u>
Chief Executive (and Head of Paid Service)	Overall corporate management and operational responsibility (including overall management responsibility for all officers).  Provision of professional advice to all parties in the decision making process.  Together with the monitoring officer, responsibility for a system of record keeping for all the Council's decisions.  Representing the Council on partnership and external bodies (as required by statute or the Council).  Together with the Leader, promoting high ethical standards for members and officers, particularly through training, and setting an example in their conduct and performance of their functions.
Director of Corporate Resources	<b>Corporate</b> Resources and Monitoring Officer.
<del>Director of Finance</del>	<del>Finance and Section 151 duties.</del>
Director of Children's Services	Children and Young People.
Director of Adult, Community and Housing Services	Adult, social and welfare services, community and housing services.
Director of the Urban Environment	Planning, regeneration, leisure, culture, environmental services, engineering, highways and transportation and Local Agenda 21.



- (c) **Head of Paid Service, Monitoring Officer and Section 151 Officer.** The Council will designate the following posts as shown:

<u>Post</u>	<u>Designation</u>
Chief Executive	Head of Paid Service
Director of Corporate Resources	Monitoring Officer
<b><i>Treasurer</i></b>	<b><i>Section 151 Officer (responsible for the proper administration of the Council's financial affairs)</i></b>

Such posts will have the functions described in Article 12.02 - 12.04 below.

- (d) **Structure.** The Chief Executive will determine and publicise a description of the overall Directorate structure of the Council showing the management structure and deployment of officers. This is set out at Part 8 of this Constitution.

#### 12.02 Functions of the Chief Executive

- (a) **Discharge of functions by the Council.** The Chief Executive will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Chief Executive may not be the Monitoring Officer but may hold the post of ***Treasurer*** if a qualified accountant.

#### 12.03 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up to date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the Chief Executive and ***Treasurer***, the Monitoring Officer will report to the full Council or to the Cabinet in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.

- (d) **Receiving reports.** The Monitoring Officer will receive and act on reports made by Ethical Standards Officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The Monitoring Officer will conduct investigations (including matters referred by Ethical Standards Officers) and make reports or recommendations in respect of them to the Standards Committee.
- (f) **Proper Officer for Access to Information.** The Monitoring Officer will ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available as soon as possible.
- (g) **Advising whether Cabinet decisions are within the policy framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the policy framework.
- (h) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Policy Framework issues to all Councillors.
- (i) **Restrictions on posts.** The Monitoring Officer cannot be the *Treasurer* or the Chief Executive.

#### 12.04 Functions of the *Treasurer*

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the Chief Executive and the Monitoring Officer, the *Treasurer* will report to the full Council or to the Cabinet in relation to an executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The *Treasurer* will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The *Treasurer* will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The *Treasurer* will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and Policy Framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- (e) **Advising whether Cabinet decisions are within the budget.** The *Treasurer* will advise whether decisions of the Cabinet are in accordance with the budget.

12.05 Duty to Provide Sufficient Resources to the Monitoring Officer and **Treasurer**

The Council will provide the Monitoring Officer and the **Treasurer** with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.06 Conduct

Officers will comply with the Code of Conduct for Employees and the Protocol on Member/Officer Relations set out in Part 6 of this Constitution.

12.07 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules set out in Part 4 of this Constitution.



OFFICER EMPLOYMENT PROCEDURE RULES

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Rule

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## OFFICER EMPLOYMENT PROCEDURE RULES

### 1. Recruitment and Appointment

#### 1.1. Declarations.

- (a) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.
- (b) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant Director or an officer nominated by them.

#### 1.2. Seeking support for appointment.

- (a) 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.
- (b) No councillor will seek support for any person for any appointment with the Council.

### 2. Recruitment of Chief Executive, Directors *and Designated Statutory Officers*

#### 2.1. Where the Council proposes to appoint a Chief Executive, a Director ***or any posts which are proposed to be designated as the Monitoring Officer or Section 151 Officer***, and it is not proposed that the appointment will be made exclusively from amongst their existing officers, the Council will:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in (a) to be sent to any person on request.

### 3. Appointment of Chief Executive

#### 3.1 Subject to paragraph 3.2, the full Council will approve the appointment of the Chief Executive following the recommendation of such an appointment by the Appointments Committee. The Appointments Committee must include at least one Cabinet Member.

3.2 An offer of an appointment as Chief Executive must not be made until:

- (a) The **Assistant Director (Human Resources and Citizenship)** has been notified of the name of the person to whom the offer is to be made and any other particulars which the Appointments Committee consider are relevant to the appointment.
- (b) The **Assistant Director (Human Resources and Citizenship)** has notified every Cabinet Member of:
  - (i) the name of the person to whom the offer is to be made.
  - (ii) any other particulars relevant to the appointment which the Appointments Committee have notified to the **Assistant Director (Human Resources and Citizenship)**; and
  - (iii) the period within which any objections to the making of the offer is to be made by the Leader on behalf of Cabinet Members to the **Assistant Director (Human Resources and Citizenship)**; and
- (c) either:
  - (i) The Leader has within the specified period notified the **Assistant Director (Human Resources and Citizenship)** that neither the Leader nor any other Cabinet Member has any objection to the making of the offer;
  - (ii) The **Assistant Director (Human Resources and Citizenship)** has notified the Council that no objection was received within the specified period from the Leader; or
  - (iii) The Council is satisfied that any objection by the Leader within the specified period is not material or is not well-founded.

#### 4. **Appointment of Directors and Designated Statutory Officers**

4.1. Subject to paragraph 4.2, the Appointments Committee will appoint Directors. **The Appointments Committee will also make appointments to any posts that are proposed to be designated as the Monitoring Officer or Section 151 Officer.** The Appointments Committee must include at least one Cabinet Member.

4.2. An offer of appointment as **an Officer referred to in paragraph 4.1 above** must not be made until:

- (a) The **Assistant Director (Human Resources and Citizenship)** has been notified of the name of the person to whom the offer is to be made and any other particulars which the Appointments Committee consider are relevant to the appointment.
- (b) The **Assistant Director (Human Resources and Citizenship)** has notified every Cabinet Member of:
  - (i) the name of the person to whom the offer is to be made;

- (ii) any other particulars relative to the appointment which the Appointments Committee have notified to the **Assistant Director (Human Resources and Citizenship)**; and
  - (iii) the period within which any objection to the making of the offer is to be made by the Leader on behalf of Cabinet Members to the **Assistant Director (Human Resources and Citizenship)**; and
- (c) either:
- (i) the Leader has within the specified period notified the **Assistant Director (Human Resources and Citizenship)** that neither the Leader nor any other Cabinet Member has any objection to the making of the offer;
  - (ii) the **Assistant Director (Human Resources and Citizenship)** has notified the Appointments Committee that no objection was received within the specified period from the Leader; or
  - (iii) the Appointments Committee is satisfied that any objection submitted by the Leader within the specified period is not material or is not well-founded.

## 5. Appointment of Deputy Directors

- 5.1 A Deputy Director is an officer who, as respects all or most of the duties of their post, is required to report directly, or is directly accountable, to a Director. This includes an Assistant Director.
- 5.2 Subject to paragraph 5.3, the appointment of Deputy Directors is the responsibility of the Chief Executive or their nominee, and may not be made by Councillors. **For the purpose of these Rules, this does not include any post that is proposed to be designated as the Monitoring Officer or the Section 151 Officer, where the appointment shall be made by the Appointments Committee.**
- 5.3 An offer of an appointment as a Deputy Director must not be made until:
- (a) The **Assistant Director (Human Resources and Citizenship)** has been notified of the name of the person to whom the offer is to be made and any other particulars which the Chief Executive or their nominee consider are relevant to the appointment;
  - (b) The **Assistant Director (Human Resources and Citizenship)** has notified every Cabinet Member of:
    - (i) the name of the person to whom the offer is to be made;
    - (ii) any other particulars relevant to the appointment which the Chief Executive or their nominee have notified to the **Assistant Director (Human Resources and Citizenship)**; and

(iii) the period within which any objection to the making of the offer is to be made by the Leader on behalf of Cabinet Members to the **Assistant Director (Human Resources and Citizenship)**; and

(d) either:

- (i) the Leader has within the specified period notified the **Assistant Director (Human Resources and Citizenship)** that neither the Leader nor any other Cabinet Member has any objection to the making of the offer;
- (ii) the **Assistant Director (Human Resources and Citizenship)** has notified the Chief Executive or their nominee that no objection was received within the specified period from the Leader; or
- (iii) the Chief Executive or their nominee is satisfied that any objection submitted by the Leader within the specified period is not material or is not well-founded.

## 6. Other Appointments

6.1. **Officers below Deputy Director.** Appointments of officers below Deputy Director (other than assistants to political groups) is the responsibility of the Chief Executive or their nominee, and may not be made by Councillors.

6.2. **Assistants to Political Groups.** Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

## 7. Disciplinary Action

7.1. **Suspension.** The Chief Executive, Monitoring Officer and **Section 151 Officer** may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.

7.2. **Independent person.** No other disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by a designated independent person.

7.3. **Dismissal.** In this paragraph "dismissor", in relation to the dismissal of an officer, means the Council or a duly authorised committee or officer. Notice of the dismissal of a Chief Executive, Director or Deputy Director **and Designated Statutory Officers**, must not be given by the dismissor until:

- (a) the dismissor has notified the **Assistant Director (Human Resources and Citizenship)** 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 **Assistant Director (Human Resources and Citizenship)** has notified every Cabinet Member 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 **Assistant Director (Human Resources and Citizenship)**; and
  - (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of Cabinet Members to the **Assistant Director (Human Resources and Citizenship)**; and
- (c) either -
- (i) the Leader has within the specified period notified the dismissor that neither the Leader nor any other Cabinet Member has any objection to the dismissal;
  - (ii) the **Assistant Director (Human Resources and Citizenship)** has notified the dismissor that no objection was received within the specified period from the Leader; or
  - (iii) the dismissor is satisfied that any objection received from the Leader within the specified period is not material or is not well-founded.

## 8. **Involvement of Councillors**

- 8.1. Councillors will not be involved in the disciplinary action against any officer below Director, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to members in respect of disciplinary action.
- 8.2. Councillors will not be involved in the dismissal of any officer below Director, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to members in respect of dismissals.