

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO COUNCIL

16 JULY 2014

REPORT OF THE MONITORING OFFICER

AMENDMENT TO THE CONSTITUTION – OFFICER EMPLOYMENT PROCEDURE RULES

1. Purpose of Report

- 1.1 To propose amendments to the Constitution relating to the process of appointing, dismissing and conducting disciplinary investigations of certain officers of authority.

2. Connection to Corporate Improvement Plan / Other Corporate Priority

- 2.1 The Constitution governs the operation of the Authority and thereby connects to the Corporate Improvement Plan and all Corporate Priorities.

3. Background

- 3.1 The Local Authorities (Standing Orders) (Amendments) (Wales) Regulations 2006 require Local Authorities to include within their standing orders provisions covering the appointment of chief officers, recording of votes and the signing of minutes, provisions related to staff in Local Authorities with different types of executive or alternative arrangements, and disciplinary action against certain senior post holders.

4. Current situation / proposal

- 4.1 The Local Authorities (Standing Orders) (Amendment) (Wales) Regulations 2014 came into force on 1st July 2014 and amend the 2006 Regulations relating to the process for appointing, dismissing and conducting disciplinary investigations of certain officers of authorities. They impose new requirements for procedures for determining the level of remuneration to be paid to chief officers.
- 4.2 Under the 2014 Regulations, the role of Head of Democratic Services will be given the same status as the Head of Paid Service, Monitoring Officer and Chief Finance Officer as regards the process under which authorities can take disciplinary action against them and how any allegation of misconduct is to be dealt with.
- 4.3 Further amendments are made to extend the protections given by officers in relation to whom disciplinary action is proposed where the officer was, but at the time of the proposed disciplinary action no longer is, an officer with protected status and the alleged misconduct, or, as the case may be, the reason for the proposal for dismissal, occurred during the period when the officer was an officer with protected status.

- 4.4 The 2006 Regulations make provision relating to the process for recruiting and appointing chief officers. Under the 2014 Regulations, where an authority now proposes to appoint a chief officer and it is proposed to pay the chief officer annual remuneration of £100,000 or more, the post must be publicly advertised. The only exception to this requirement is where annual remuneration for a chief officer role was £100,000 or more and the appointment were to be made for a period of no longer than 12 months. This exception will be useful in emergencies or if there were unforeseen departures. The requirement for public advertisement is intended to ensure that able candidates from outside the organisation have the opportunity to gain the position if found to be the most suitable.
- 4.5 Additional provision is made in the 2014 Regulations relating to remuneration of chief officers' pay. Any decision to determine or vary the remuneration of chief officers (or those to be appointed) must be made by full council, without the possibility of delegating it to a committee of the Council.
- 4.6 The posts of Monitoring Officer and Head of Democratic Services are now added to the list of those who are not subject to appointment or dismissal by the Head of Paid Service (or another officer designated to them) and whose appointment or dismissal should be conducted by a committee, and that any committee or sub-committee of the authority charged with this responsibility must include at least one member of the executive.
- 4.7 It is proposed that Council approve amendments to the Officer Employment Procedure Rules within the Constitution as set out in **Appendix 1** using tracked changes to conform with the amendments made by the 2014 Regulations.

5. Effect upon Policy Framework& Procedure Rules

- 5.1 None.

6. Equality Impact Assessment

- 6.1 There are no equality implications.

7. Financial Implications

- 7.1 There are no financial implications directly arising from this report.

8. Recommendation

- 8.1 It is recommended that Council approve the amendments to the Officer Employment Procedure Rules within the Constitution as set out in **Appendix 1** of the report.

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Background Documents

None

Appendix 1

Officer Employment Procedure Rules

1. Interpretation

- (1) “Chief Officer” means:
Head of the Authority’s Paid Service (Chief Executive);
Corporate Director - Children;
Corporate Director - Communities;
Corporate Director - Wellbeing;

Assistant Chief Executive - Legal & Regulatory Services and Monitoring Officer;
Corporate Director - Resources;
Chief Finance Officer / Section 151 Officer.
Deputy Section 151 Officer

2. Declarations

- (1) The authority 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 authority; or of the partner of such persons;
 - (a) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.
- (2) Seeking support for appointment: -
 - (a) Subject to sub-paragraph (c) below, the authority will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the authority. The content of this sub-paragraph will be included in any recruitment information;
 - (b) Subject to sub-paragraph (c) below, no Councillor will seek support for any person for any appointment with the authority;
 - (c) Nothing in sub-paragraphs (a) and (b) above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

3. Appointments

- (1) The authority must take the steps set out in sub-paragraph (2) where it proposes to appoint a chief officer and the remuneration which it proposes to pay to the chief officer is £100,000 or more per annum. –
- (2) The steps are to-
 - (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 publicly advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
 - (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.
- (3) Where sub paragraph (1) applies, the authority is not required to take the steps set out in sub-paragraph (2)(b) if it proposes to appoint the chief officer for a period of no longer than 12 months.
- (4) (a) Where a post has been advertised as provided in paragraph 2(b), the authority must–

(i) interview all qualified applicants for the post, or

(ii) select a short list of such qualified applicants and interview those included on the short list.

(b) Where no qualified person has applied, or if the authority decide to re-advertise the appointment, the authority may make further arrangements for advertisement in accordance with paragraph 2(b).

4. Appointment of Chief Officers and Heads of Service.

(1) The authority will appoint Chief Officers, Heads of Service and the Head of Democratic Services.

(2) 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. The power to approve the appointment of the head of the authority's paid service must be exercised by the authority itself and accordingly section 101 of the Local Government Act 1972 (arrangements for discharge of functions by local authorities) does not apply to the exercise of that power.

(3) Where a committee or sub-committee of the authority is discharging, on behalf of the authority the function of the appointment of Chief Officer, Head of Service or Head of Democratic Services –

(a) at least one member of the executive must be a member of that committee or sub-committee; and

(b) not more than half of the members of that committee or sub-committee are to be members of the executive of the authority.

(4) The authority must determine the level, and any change in the level, of the remuneration to be paid to a Chief Officer.

5. Appointment of Assistants to Political Groups.

The appointment of assistants to political groups shall be made in accordance with the wishes of the political groups concerned.

6. Appointment of Officers other than Chief Officers and Heads of Service.

The function of appointment of members of staff of the authority, other than Chief Officers, Heads of Service, and the Head of Democratic Services, must be discharged, on behalf of the authority, by the officer designated as the head of the authority's paid service or by an officer nominated by the head of the authority's paid service.

7. Disciplinary Action and Dismissal.

(1) **Chief Officers and Heads of Service**

(a) Disciplinary action against and dismissal of Chief Officers, Heads of Service, and Head of Democratic Services, must be discharged by the authority.

(b) 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, the authority must approve that dismissal before a notice of dismissal is given. The power to approve the dismissal of the head of the authority's paid service must be exercised by the authority itself and accordingly section 101 of the Local Government Act 1972 (arrangements for discharge of functions by local authorities) does not apply to the exercise of that power.

(c) Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the dismissal of Chief Officers, Heads of Service, Head of Democratic Services-

(i) at least one member of the executive must be a member of that committee or sub-committee; and

(ii) not more than half of the members of that committee or sub-committee are to be members of the executive of the authority.

(2) **Head of Paid Service, Monitoring Officer, Chief Finance Officer.**

(a) No disciplinary action (other than action to which paragraph (c) applies) in respect of the Head of Paid Service, its Monitoring Officer, its Chief Finance Officer, its Head of Democratic Services or any other officer referred to in paragraph (b) may be taken by the authority, or by a committee, a sub-committee, a joint committee on which the authority is represented or any other person acting on behalf of the authority, other than in accordance with a recommendation in a report made by a designated independent person under regulation 9 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 (investigation of alleged misconduct).

(b) An officer in relation to whom disciplinary action is proposed where-

(i) the officer was, but at the time of the proposed disciplinary action no longer is, an officer referred to in (a); and

(ii) the alleged misconduct or, as the case may be, the reason for the proposal for dismissal, occurred during the period when the officer was an officer referred to in paragraph (a).

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

(3) **Officers other than Chief Officers , Heads of Service and Head of Democratic Services .**

(a) The function of 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 as the head of the authority's paid service or by an officer nominated by the head of the authority's paid service..

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(b) Paragraph (a) does not apply to the dismissal of, or disciplinary action against, an officer in relation to whom disciplinary action is proposed-

(i) who was, but at the time of the proposed disciplinary action no longer is, a Chief Officer, Head of Service, Head of Democratic Services, and

(ii) where the alleged misconduct, or, as the case may be, the reason for the proposal for dismissal occurred during the period when the officer was an officer referred to in (i).

(c) Nothing in paragraph (a) prevents a person from serving as a member of any committee or sub-committee established by the relevant authority to consider an appeal by a member of staff of the relevant authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

8. Head of Paid Service, Monitoring Officer, Chief Finance Officer, Head of Democratic Services - Investigation of alleged misconduct.

(1) Where it appears to the authority that an allegation of misconduct which may lead to disciplinary action has been made against a relevant officer, the authority must appoint a committee ("an investigation committee") to consider the alleged misconduct. A 'relevant officer' for this purpose is-

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

(b) its monitoring officer; or

(c) its chief finance officer,

(d) its head of democratic services or

(e) an officer who was, but at the time the investigation committee is appointed no longer is, an officer referred to in sub-paragraphs (a) to (d) where the alleged misconduct occurred during the period when the officer was an officer referred to in those sub-paragraphs.

(2) The investigation committee must:

(a) consist of a minimum of 3 members of the authority;

(b) be politically balanced in accordance with section 15 of the Local Government and Housing Act 1989 Act; and

must, within 1 month of its appointment, consider the allegation of misconduct and decide whether it should be further investigated.

(3) For the purpose of considering the allegation of misconduct, the investigation committee:

(a) may make such enquiries of the relevant officer or any other person it considers appropriate;

(b) may request the relevant officer or any other person it considers appropriate to provide it with such information, explanation or documents as it considers necessary within a specified time limit; and

(c) may receive written or oral representations from the relevant officer or any other person it considers appropriate.

- (4) Where it appears to the investigation committee that an allegation of misconduct by the relevant officer should be further investigated, it must appoint a person ("the designated independent person") for the purpose of paragraph 7 (2) (a).
- (5) The designated independent person who is appointed—
- (a) must be such person as may be agreed between the authority and the relevant officer within 1 month of the date on which the requirement to appoint the designated independent person arose; or
 - (b) where there is no such agreement, must be such person as is nominated for the purpose by the Welsh Ministers.
- (6) The designated independent person—
- (a) may direct—
 - (i) that the authority terminate any suspension of the relevant officer;
 - (ii) that any such suspension is to continue after the expiry of the period referred to in paragraph 7 (2) (b);
 - (iii) that the terms on which any such suspension has taken place are to be varied in accordance with the direction; or
 - (iv) that no steps (whether by the authority or any committee, sub-committee or officer acting on behalf of the authority) by way of disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence, or with the agreement, of the designated independent person, are to be taken before a report is made under sub-paragraph (d);
 - (b) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the authority, or which the authority has power to authorise the designated independent person to inspect;
 - (c) may require any member or member of staff of the authority to answer questions concerning the conduct of the relevant officer;
 - (d) must make a report to the authority—
 - (i) stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct against the relevant officer; and
 - (ii) recommending any disciplinary action which appears appropriate for the authority to take against the relevant officer, and
 - (e) must no later than the time at which the report is made under sub-paragraph d), send a copy of the report to the relevant officer.
- (7) Subject to paragraph (8), the relevant officer and the authority must, after consulting the designated independent person, attempt to agree a timetable within which the designated independent person is to undertake the investigation.
- (8) Where there is no agreement under paragraph (7), the designated independent person must set a timetable as that person considers appropriate within which the investigation is to be undertaken.

(9) The authority must consider the report prepared under paragraph (6) (d) within 1 month of receipt of that report.

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