

PART 4D - OFFICER EMPLOYMENT RULES

1. Appointment of Officers

- 1.1 The council may appoint such officers as it thinks necessary for the proper discharge of such of its (or another authority's) functions as falls or is agreed to be discharged by it⁶.
- 1.2 Every appointment of a person to a paid office or employment by the council must be made on merit⁷.
- 1.3 There are regulations establishing various mandatory standing orders (procedure rules) giving effect to obligations or restrictions on delegation of authority to bring these principles into effect. These rules are set out below⁸.

2. Statutory Chief Officers, Chief Officers, Deputy Chief Officers and Other Officers

2.1 Local government employment rules differentiate between categories of officers, including:

- (a) Statutory Chief Officers
- (b) Governance Statutory Chief Officers
- (c) Chief Officers
- (d) Deputy Chief Officers and
- (e) other statutory officers
- (f) proper officers

2.2 Statutory Chief Officers are:

- (a) Head of Paid Service (LGHA 1989, s.4)
- (b) Monitoring Officer (LGHA 1989, s.5)
- (c) Chief Finance Officer (LGA 1972, s.151)
- (d) Director of Children's Services (Children Act 2004, s.18)
- (e) Director of Adult Social Services (Local Authority Social Services Act 1970, s.6(A1))
- (f) Director of Public Health (National Health Service Act 2006, s.73A(1))

2.3 Governance Statutory Chief Officers are the first three in the above list. They have additional statutory employment protection due to the nature of their roles, including the involvement of an independent third-party in any proposed disciplinary investigation⁹.

2.4 Non-Statutory Chief Officers¹⁰ are:

- (a) a person for whom the Head of Paid Service is directly responsible
- (b) a person who reports directly or is directly accountable to the Head of Paid Service

⁶ [Local Government Act 1972, s 112](#)

⁷ [Local Government and Housing Act 1989, s 7](#)

⁸ [Local Authorities \(Standing Orders\) Regulation 1993, SI 1993/202](#)

[Local Authorities \(Standing Orders\) \(England\) Regulations 2001, SI 2001/3384](#)

⁹ [Local Authorities \(Standing Orders\) \(England\) Regulations 2001](#) as amended by the [Local Authorities \(Standing Orders\) \(England\) \(Amendment\) Regulations 2015](#)

[SI 2001/3384, reg 6](#)

[Local Government Act 2000, s 9FB](#)

¹⁰ [Local Government and Housing Act 1989, s.2\(7\)](#)

- (c) any person who reports directly or is directly accountable to the local authority itself or any committee or sub-committee of the authority; but
- (d) excludes any person whose duties are solely secretarial or clerical or are otherwise in the nature of support services.

2.5 Deputy Chief Officers are people who report directly or are directly accountable to one or more of the statutory or non-statutory chief officers, subject to the same exclusion concerning administrative and support staff¹¹.

2.6 Other Statutory and Proper Officers

2.7 Proper Officers are officers appointed by the council to discharge particular statutory functions but are not necessarily chief officer posts in their own right (see Part 3 Section 12).

3. **Who Makes the Decision?**

3.1 Where Executive arrangements are in place, the appointment of staff, including their dismissal and the terms and conditions upon which they are appointed, is a Non-Executive function. This means that these decisions are either taken by Full Council itself, a committee or an officer, although there are a number of exceptions to this, as outlined below¹².

4. **Role of Councillors**

4.1 The appointment or dismissal of the Head of Paid Service may only be made by a meeting of the Full Council, which may either be direct or as confirmation of a recommendation from a committee or sub-committee of the council¹³.

4.2 Full Council has delegated authority to the Appointments and Employment Committee in respect of Governance Statutory Chief Officers and Directors (see Part 3 Section 6).

4.3 Delegated authority is granted to the Chief Executive as Head of Paid Service for the appointment, dismissal, determining any capability issue and taking any disciplinary action taken in respect of all other staff positions. Appeals against dismissal can be made to councillors.

4.4 Unlike the Head of Paid Service, there is no statutory requirement for Full Council to approve appointment of statutory posts, but this is common practice in respect of the Monitoring Officer and Chief Finance Officer posts across many authorities, including the Isle of Wight, and is a requirement in this Constitution (see Part 3 Section 6). Dismissal of the Monitoring Officer and Chief Finance Officer may by law only be made by a meeting of Full Council, which may either be direct or as a confirmation of a recommendation from a committee or sub-committee of the council (see 10.6 below).

Involvement of the Leader and Cabinet

4.5 The Leader and Cabinet are involved in decisions to appoint or dismiss Governance Statutory Chief Officers and Directors in two distinct ways:

¹¹ [Local Government and Housing Act 1989, s 2\(8\)](#)

¹² [Local Authorities \(Functions and Responsibilities\) \(England\) Regulations 2000, SI 2000/2853, Sch 1, para 37 LGA 1972, s 101](#)

¹³ [SI 2001/3384, Sch 1, para 4](#)

- (a) where a committee or a sub-committee of the council is discharging, on behalf of the authority, the function of appointment or dismissal, at least one member of the Cabinet must be a member of that committee or sub-committee
- (b) before an offer of appointment or notice of dismissal is issued, Cabinet members must be informed of the prospective decision and the Leader may make representations concerning their 'material and well founded' objection to the decision maker¹⁴

5. **Role of Head of Paid Service**

5.1 The Head of Paid Service undertakes three distinct roles in this process:

- (a) decision maker on posts other than Governance Statutory Chief Officers and Directors (and the responsible officer concerning the grant and supervision of exemptions from political restriction)¹⁵
- (b) principal advisor on staffing matters to the council and/or the appropriate committee or sub-committee (except where there would be a conflict of interest in respect of their own pay and conditions of service)
- (c) responsible for issuing a formal 'section 4' report¹⁶, informing the council of proposals concerning:
 - (i) the manner in which the discharge by the authority of its different functions is co-ordinated
 - (ii) the number and grades of staff required by the authority for the discharge of its functions
 - (iii) the organisation of the authority's staff; and
 - (iv) the appointment and proper management of the authority's staff

5.2 Subject to Rules 6 and 13, the functions of appointment and dismissal of, and taking disciplinary action against, an officer of the council must be discharged, on behalf of the authority, by the Head of Paid Service, or by an officer nominated by them and not by members of the council.

5.3 The Head of Paid Service has authorised all Directors to carry out on their behalf the functions of appointment and dismissal of, and taking disciplinary action against, officers.

6. **Rule 5 shall not apply to the appointment or dismissal of, or disciplinary action against:**

- (a) the Head of Paid Service
- (b) the Monitoring Officer
- (c) the Chief Finance Officer
- (d) Directors
- (e) Political Assistants¹⁷
- (f) the consideration of grievance and disciplinary appeals relating to Governance Statutory Chief Officers and Directors in cases of dismissals that arise out of disciplinary or capability proceedings

¹⁴ [SI 2001/3384, Sch 1, Pts I, II](#), paras 5, 6

¹⁵ [LGHA 1989, s 3](#)

¹⁶ [LGHA 1989, s 4](#)

¹⁷ [LGHA 1989, s.9](#)

7. Recruitment and Appointment of Officers

7.1 Declarations

- (a) The council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are related to an existing councillor or officer of the council, or of the partner of such persons.
- (b) No candidate so related shall be appointed without the authority of the relevant chief officer.

7.2 Seeking support for appointment

- (a) Subject to paragraph (c) below, the council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the council.
- (b) Subject to paragraph (c) below, no councillor will seek to support any person for appointment with the council.
- (c) Nothing in this Rule will prevent a councillor from giving a written reference for a candidate for submission in connection with an application for appointment.

8. Recruitment of Statutory Chief Officers, Non-Statutory Chief Officers and Deputy Chief Officers

8.1 Where the council proposes to appoint a Statutory Chief Officer, a Non-Statutory Chief Officer, or a Deputy Chief Officer, and it is not proposed that the appointment will be made exclusively from among their existing officers, the council will:

- (a) Draw up a statement specifying:
 - (i) the duties of the post
 - (ii) any qualifications or qualities required
- (b) Arrange 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
- (c) Arrange for a copy of the statement mentioned in Rule 8.1(a) to be sent to any person on request

8.2 Where a post has been advertised as provided in Rule 8.1(b), the council shall:

- (a) interview all qualified applicants for the post, or
- (b) select a short list of such qualified applicants and interview those included on the short list

8.3 Where no suitably qualified person has applied, the post may be re-advertised in accordance with Rule 8.1(b).

8.4 When a Statutory Chief Officer (other than a Governance Statutory Chief Officer), a Non-Statutory Chief Officer, or a Deputy Chief Officer ceases to hold that post or is likely to be absent for any length of time, the Head of Paid Service, after consultation with the Leader, may appoint someone to act temporarily in that capacity and determine the salary to be paid. Similarly, the Head of Paid Service may, after consultation with the Leader, appoint an interim senior manager to undertake a specific role that does not currently exist in the Establishment and determine the rate of remuneration.

9. **Appointment or Dismissal of Governance Statutory Chief Officers and Directors**

- 9.1 No offer of an appointment or notice of dismissal may be made to a Governance Statutory Chief Officer or a Director until:
- (a) the Council, the Appointments and Employment Committee (or other responsible body or officer) has notified the Monitoring Officer of the name of the person to be offered the appointment or given notice of dismissal and any other particulars the committee considers relevant
 - (b) that information has been sent by the Monitoring Officer to the Leader and all members of the Cabinet with a date and time by which any objection to the making of the offer or issuing of the notice can be made by the Leader
 - (c) the Monitoring Officer has confirmed that the date and time for objection by the Leader has elapsed and either:
 - (i) in the case of a Governance Statutory Chief Officer, Full Council has confirmed the appointment or dismissal after consideration of any such objection and resolving that it is not material or not well-founded or
 - (ii) in all other cases, no such objection has been made or the Appointments Committee has considered any such objection and has resolved that the objection is not material or not well-founded

10. **Dismissal of a Governance Statutory Chief Officer**

- 10.1 No dismissal may be taken in respect of a Governance Statutory Chief Officer other than in accordance with the following procedure:
- 10.2 The council will appoint the Investigating and Disciplinary Committee who will determine if a full investigation is required and if so will appoint an independent investigator. The Investigatory and Disciplinary Committee will determine what action, if any, is required. If the Committee makes a recommendation to Full Council for dismissal, such recommendation shall be first considered by an Independent Panel.
- 10.3 The council will appoint the Independent Panel for the purposes of advising the council on matters relating to the dismissal of a Governance Statutory Chief Officer.
- 10.4 The council will appoint to the Independent Panel three independent persons appointed under section 28 of the Localism Act 2011 who have accepted an invitation in accordance with the following priority order:
- (a) an independent person who has been appointed by the council and who is a local government elector;
 - (b) any other independent person who has been appointed by the council;
 - (c) an independent person who has been appointed by another authority or authorities.
- 10.5 Before the taking of a vote at the relevant meeting on whether or not to approve a dismissal, Full Council must take into account, in particular:
- (a) any advice, views or recommendations of the Independent Panel
 - (b) the conclusions of any investigation into the proposed dismissal and
 - (c) any representations from the relevant officer
- 10.6 Full Council will abide by the recommendations of the Independent Panel unless there are exceptional reasons to justify departing from them.

- 10.7 A Governance Statutory Chief Officer may only be dismissed on the vote of two-thirds of all the members of Full Council, i.e. not just those present and voting.
- 10.8 All suspended officers shall be on full pay during the investigation of the alleged misconduct, which must be completed no later than two months after the suspension takes effect.

11. Appeals

- 11.1 If any decision to dismiss an officer is taken by Full Council, it is not possible to provide an internal appeal process against the dismissal. Instead, the officer may appeal to an appeals panel formed from a neighbouring local authority under sharing arrangement in accordance with s.101 Local Government Act 1972.
- 11.2 Any other appeal by an officer must be lodged with the Head of Paid Service within 10 working days of written confirmation to the officer of the dismissal or disciplinary action and must include a written statement of the grounds on which the appeal is made.
- 11.3 Appeal hearings shall be considered by the Appointments and Employment Sub-Committee in the case of all employees (except Governance Statutory Officers appealing against action short of dismissal in which case it shall be the Appeals Committee) and shall not include members involved in the decision to dismiss or take disciplinary action.

12. Appointment and Dismissal of the Director of Public Health

- 12.1 In circumstances where the council wishes to appoint a Director of Public Health (rather than operate a shared service with another appointing authority), the Head of Paid Service or their nominee shall:
- (a) liaise with the Faculty of Public Health regarding the production or updating of the statement specifying:
 - (i) the duties of the post; and
 - (ii) all necessary areas of professional and technical competence
 - (b) arrange for the post to be externally advertised to bring it to the attention of suitably qualified persons (unless applicants are to be sought only from among the council's existing staff);
 - (c) share the statement with the Public Health England Regional Director, on behalf of the Secretary of State for Health;
 - (d) arrange for the statement in paragraph (a) above to be sent to any person on request.
- 12.2 The Head of Paid Service or their nominee shall arrange for an Advisory Appointments Committee to be established to undertake the selection and appointment process for the Director of Public Health. In so doing, the advice and recommendations of Public Health England on the membership of the Advisory Appointments Committee, including the assessor, shall be sought. It is for the council to decide whether both a medical assessor and non-medical assessor are required.
- 12.3 The Advisory Appointments Committee will be chaired by the Cabinet Member on the Health & Wellbeing Board and will include:
- (a) the Head of Paid Service or their nominee
 - (b) an external professional assessor (appointed following consultation with the Faculty of Public Health and agreed by Public Health England)

- (c) a senior NHS representative
 - (d) the Public Health England Regional Director, or another senior professionally qualified member of Public Health England acting on their behalf.
- 12.4 The overall balance of the Advisory Appointments Committee is required to have a local and professional majority, although assessors must be geographically distant and normally from outside the Isle of Wight.
- 12.5 In all cases, either all qualified applicants or a selected shortlist will be interviewed by members of the Advisory Appointments Committee with the Head of Paid Service (or other chief officer as determined by the committee) acting as adviser to the Advisory Appointments Committee.
- 12.6 Where no suitably qualified person has applied, the post may be re-advertised.
- 12.7 No offer of appointment for the Director of Public Health may be made until approval has been received from the Secretary of State for Health.
- 12.8 Following approval from the Secretary of State for Health on the Advisory Appointments Committee's selection decision, no offer of an appointment to the Director of Public Health post may be made until:
- (a) the Proper Officer has recorded the name of the person to be offered the appointment and any other particulars the Advisory Appointments Committee considers relevant to the appointment;
 - (b) that information has been sent by the Proper Officer to the Leader and all members of the Cabinet with a date and time by which any objection to the making of the offer can be made by the Leader;
 - (c) the Proper Officer has confirmed that the date and time for objection by the Leader has elapsed no such objection has been made or the Advisory Appointments Committee has considered any such objection and has resolved or decided that the objection is not material or not well-founded.
- 12.9 Consultation with the Secretary of State for Health is required prior to the dismissal of the Director of Public Health