

Committee: Standards and General Purposes Committee

Date: 28 July March 2020

Subject: Proposed Review of the Council's Constitution and interim Amendments to the Appointments Committee Terms of Reference and the Employee Procedure Rules

Lead officer: Louise Round, Managing Director South London Legal Partnership

Lead member: Councillor Mark Allison, Deputy Leader and Cabinet Member for Finance

Contact officer: Louise Fleming, Senior Democratic Services Officer

Recommendations:

- A. That the Committee recommends that Council approves the amended Terms of Reference for the Appointments Committee and Officer Employment Procedure Rules, as set out in Appendices 1 and 2 respectively;
 - B. That Council be recommended to delegate authority to the Monitoring Officer to amend the Council's constitution to incorporate any direct or consequential changes resulting from the approval of recommendation A above; and
 - C. That the Committee agrees to commence a review of the Council's constitution and appoints a working group of members to carry out that review in conjunction with the Monitoring Officer.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. At its meeting in March, this Committee deferred a report recommending some changes to the Council's processes for appointing chief officers, partly because they wanted further to consider the suggestion that the final decision on the appointment of the Monitoring Officer should lie with the Appointments Committee. Currently, although the position is not entirely clear cut, that decision lies with full Council if the salary package exceeds £100,000. The recommendations followed the recent appointment of the Managing Director of the South London Legal Partnership when it became apparent that the current procedure rules were ambiguous. Other recommended changes included formalising the custom and practice of establishing a panel of the Appointments Committee dealing with chief officer appointments to make it clear in that committee's terms of reference that there is the power to establish a sub-committee for that purpose.
- 1.2. Some limited changes to the employment procedure rules and terms of reference of the Appointments committee are still being recommended for submission to Council at this stage, in order to ensure that the process is clear for any future appointments. However, the previous proposal to change the decision-making body for monitoring officer appointments is being put on hold pending a wider review of the constitution.

2 DETAILS

Appointments committee

- 2.1. The Council has established an Appointments Committee for the purposes of interviewing chief officers. In some cases, the Committee is authorised to make the appointment itself and in the case of the Chief Executive, it can only recommend that appointment to full Council. It has been custom and practice for the appointment of the Monitoring Officer also to be approved by full Council although the constitution is somewhat ambiguous in this respect.
- 2.2. The Committee also considers the terms and conditions on which officer level and above. The terms of reference are set out in Part 3B, paragraph 1.2 of the Council's Constitution.
- 2.3. The Appointments Committee meets prior to the commencement of the recruitment process to agree the job description, person specification, timetable for recruitment. Custom and practice in Merton has been to establish a panel of members to carry out the shortlisting and interviews, with the Appointments Committee meeting at the end of the process to ratify the decision of the panel. It is legally possible for that panel to make the final decision in respect of some appointments but a formal sub-committee must be established if this is to happen. Depending on the appointment in question, it may be appropriate for the decision to be made by such a smaller group of members.
- 2.4. It is therefore proposed to amend the terms of reference of the Appointment Committee to allow for the establishment of a sub-committee for the purposes of shortlisting and interviewing candidates for chief officer positions. The sub-committee would also have delegated authority to make the final appointment, without requiring the parent committee to meet again to ratify the decision. In the event of the appointment of the Chief Executive, the sub-committee would make a recommendation to Council, as required by statute to appoint the Head of Paid Service. This will also be the case in relation to the appointment of the Monitoring Officer, although this is not a legal requirement. There would be no absolute requirement for the Appointments Committee to establish a sub-committee for specific individual appointments, if it considered it wished to reserve the appointment to itself.
- 2.5. A committee or sub-committee responsible for shortlisting and interview panels must, as a matter of law, have at least one member of the Cabinet sitting. Ideally, the membership should be the same at each stage and the strenuous efforts should be made to ensure the panel is diverse. The sub-committee should as far as practicable reflect the overall political balance of the council. In the event of a joint appointment with a neighbouring borough, an amended process would need to be agreed with that borough.

- 2.6. No member should sit on such a committee or sub-committee without first having received appropriate recruitment and selection training by HR.

Officer Employment Procedure Rules

- 2.7. The Council's Officer Employment Procedure Rules are set out at Part 4H of the Council's constitution. The Officer Employment Procedure Rules have been amended to reflect the proposed changes to the process and the Appointments Committee Terms of Reference and are attached at Appendix 2. A number of other drafting changes have been for clarity but they do not substantively change the process to be followed. As currently drafted, there were inconsistencies between the terms of reference of the Appointments Committee and the Employment Procedure Rules.

Proposed Review of the Constitution

- 2.8. While considering these parts of the constitution and in other contexts, it has become apparent to the Monitoring Officer that some provisions of the constitution are not as clear as they can be. Ad hoc amendments made from time to time have not always taken account of knock on consequences elsewhere in the document. It is good governance for a Council to review its constitution at regular intervals. Elsewhere on this agenda is a report on a proposed new national model code of conduct for members and any consideration of whether to adopt the new model code could therefore take place in the context of a wide constitutional review.

It is not suggested that the constitutional review should seek fundamentally to change the overarching governance structures and decision-making processes of the council; the purpose of any review would be to ensure that the constitution reflects recent legislative change, is easy to use, publicly accessible and allows the Council to take sound decisions without risk of challenge.

- 2.9. As a minimum, the review should consider the following:

Is the constitution internally coherent?

Is the structure right and does it work (length/articles/summary etc.)?

Are the rules of procedure for the conduct of meetings clear and do they reflect actual practice?

Are complaints and other processes clear, including in relation to standards complaints?

Have new legislative requirements been incorporated?

Are all "local choice" functions, e.g. outside appointments or secondments under s.113 LGA 1972, allocated?

Are the schemes of delegation up to date, understandable and all encompassing?

- 2.10. In order to ensure that a revised draft constitution has cross party support, a small member working group is being proposed to work with the Monitoring Officer and colleagues from Democracy Services to agree a draft for approval by this committee and then onward submission to the full Council.

3 ALTERNATIVE OPTIONS

- 3.1. There are no alternative options proposed.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. None for the purposes of this report.

5 TIMETABLE

- 5.1 Subject to consideration by the Standards and General Purposes Committee, it is proposed to report the amended Terms of Reference and Employee Procedure Rules to Council when it next meets.

- 5.1. The member working group would sit through the Autumn and Winter with a view to a revised version being approved by full Council on 3 February 2021, in good time for the new municipal year.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None for the purposes of this report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The procedure complies with the statutory and regulatory requirements relating to the appointment of the head of paid service, statutory chief officers, non-statutory chief officers and deputy chief officers.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. All appointments must be made on merit and taking account of the protected characteristics.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purposes of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None for the purposes of this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – Revised Appointments Committee Terms of Reference
- Appendix 2 – Revised Officer Employment Procedure Rules and Appointments Committee procedure

12 BACKGROUND PAPERS

12.1. None

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