

# ARUN DISTRICT COUNCIL

## REPORT TO CONSTITUTION WORKING PARTY ON 9 SEPTEMBER 2019

<b>SUBJECT:</b>	<b>Constitutional Amendments – Officer Employment Rules</b>
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<b>DATE:</b>	August 2019
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### EXECUTIVE SUMMARY:

This report sets out the outcomes of a review of the Officer Employment Procedure Rules which sit at Part 6, Section 7 of the Constitution. The review has taken account of changes to legislation since the Rules were originally drawn up; best practice; and Joint Negotiating Committee (JNC) guidance. The report also reflects consequential changes needed elsewhere in the Constitution.

### RECOMMENDATIONS:

It is recommended to Full Council that:

- (1) The proposed changes to the Constitution at Part 6 [Procedure Rules (Other)], Section 7 [Officer Employment Rules] as set out in the replacement text at Appendix 1, as attached to the minutes, be approved;
- (2) Article 4, paragraph 2.0(o) be amended to add the words shown in bold below:  
“Approving the dismissal **in a disciplinary matter** of the Head of Paid Service (Chief Executive), Directors, Section 151 Officer and Monitoring Officer based on a recommendation from the Statutory Officers’ Investigatory and Disciplinary Committee;
- (3) Article 4, paragraph 2.0(p) be amended to remove the words crossed through and add the words shown in bold:  
“Approving terminations of service of the Head of Paid Service (Chief Executive) ~~and Directors~~ in respect of early/~~flexible~~ retirement and/or redundancy within the framework of restructuring proposals, **and any changes to the postholder’s terms and conditions in response to a request for flexible retirement.**
- (4) Amend Part 4 (Officer Scheme of Delegation), Section 2 (Chief Executive and Directors), paragraph 2.0 (Chief Executive) to add a further paragraph as shown in bold to read:
  - a. **Settlement Agreements**
    - i. **to agree terms for Settlement Agreements up to a cost to the Council of £50,000 in consultation with the Section 151 Officer;**

- ii. **to agree terms for Settlement Agreements up to a cost to the Council of £95,000 in consultation with the Leader of the Council, Leader of the Opposition and Section 151 Officer; and**
- iii. **to submit a report to Full Council for consideration on settlements of more than £95,000.**

(5) Amend Part 4 (Officer Scheme of Delegation), Section 3 (Group Heads), paragraph 2.1 (Group Head of Corporate Support) to replace the word “Compromise” with “Settlement” in the title and text; and amend the figure of “£10,000” to read “**£25,000**”. To also replace the last sentence with the words “**Settlements of more than £25,000 may be considered by the Chief Executive or Full Council dependent on their value as confirmed in Part 4 (Officer Scheme of Delegation, Section 2 (Chief Executive and Directors) and Article 4 (Functions of Full Council).**”

(6) Amend Article 4 (Functions of Full Council) to add a further paragraph as shown in bold to read:

- a. **Approving Settlement Agreements of more than £95,000.**

(7) Amend Part 3 (Responsibility for Functions), paragraph 8.6 (Staff Appeals Panel) as shown crossed through and in bold below:

- a. *At the 1<sup>st</sup> bullet point* - Any financial settlement up to a limit of ~~£10,000~~ **£25,000** for an individual claim to a compensatory payment. All financial claims relating to a regrading claim require a decision of Full Council where a supplementary estimate is needed; and
- b. *At the 2<sup>nd</sup> bullet point* – “The non financial terms for a confidentiality agreement or ~~compromise~~ **settlement** agreement to settle a matter.”

(8) The Group Head of Council Advice & Monitoring Officer be authorised to make any further consequential changes to the Constitution.

## **1.0 BACKGROUND**

- 1.1 The Constitution Working Party has been leading on a major review of the Constitution since 2017. The aim of the review has been for any revisions to create simplicity and ease of reading based on best practice used elsewhere.
- 1.2 The majority of the review has now been completed and one of the key remaining areas for consideration is the Officer Employment Rules which sit within the Other Procedure Rules at Part 6 of the Constitution. These have not been reviewed for some years and a complete re-write has been required to take account of the latest legislation, JNC guidance and best practice.
- 1.3 The conclusions of the review have highlighted further areas within the Constitution relating to employment procedures where consequential changes are required to reflect latest guidance and its application.

## **2.0 PROPOSALS**

- 2.1 **Recommendation 1** - It is proposed that the existing text at Part 6, Section 7 is replaced with a new section as set out in Appendix 1. Commentary is provided to explain a number of the changes being made to existing practices.
- 2.2 **Recommendation 2** - The first of the consequential changes, is an anomaly which has been identified from this review in the wording of Article 4, paragraph 2.0(o) which confirms that approval of the dismissal of officers in the position of Head of Paid Service, Director, Section 151 Officer and Monitoring Officer will be a Full Council decision based on the recommendation of the Statutory Officers' Investigatory and Disciplinary Committee. The Statutory Officers Committee only deals with disciplinary matters relating to the conduct and/or capability of these officers. Therefore other reasons for dismissal such as redundancy and early retirement would not be applicable. For clarity, recommendation (2) proposes a change to the wording to the Article to rectify this anomaly.
- 2.3 **Recommendation 3** - A further area identified as part of this review is the current wording of Article 4, paragraph 2.0(p) which requires approval of terminations of service of the Head of Paid Service and Directors in respect of early/flexible retirement and/or redundancy within the framework of restructuring proposals. Whilst it is recognised that any decision about the role of the Head of Paid Service (Chief Executive) should remain a Full Council decision, the Chief Executive and Human Resources Manager have both raised concerns at the inclusion of this provision for Directors. Any redundancy would be of a post and not an individual, and likely to be the subject of a wider report to the Council about the restructure of a service, therefore still involving all Councillors in any decision. Further paragraph 5.4 of the Officer Procedure Rules confirms the consultation procedure required with Cabinet Members. The Working Party is therefore being asked to recommend that this Article is amended to refer to only the Head of Paid Service in future. In addition, the remaining text in this Article does not correctly reflect that a request for flexible retirement would not be approval of a termination of service, rather a change to the terms and conditions of the postholder. The recommendation therefore also seeks the Working Party's support to changing this text in relation to the Head of Paid Service.
- 2.4 **Recommendations 4, 5 & 6** - The final issue where a consequential change is being proposed relates to arrangements for Settlement Agreements (formerly known as Compromise Agreements) and compensatory payments to staff. Currently, the Officer Scheme of Delegation at Part 4, Section 3, paragraph 2.1.6 confirms that the Group Head of Corporate Support has authority to agree terms for Settlement Agreements up to a cost to the Council of £10,000 in consultation with the Chief Executive. Settlements of more than £10,000 will be considered by Full Council. The Staff Appeals Panel also have authority to authorise the terms to settle any employment related dispute with the Council up to a limit of £10,000 as confirmed in Part 3 (Responsibility for Functions), paragraph 8.6. Where the Panel's settlement requires a supplementary estimate to meet the costs of the payment, a Full Council decision is required.
- 2.5 Settlement Agreements, as they are referred to in the legislation, need to comply with the provisions of Section 111A of the Employment Rights Act 1996 if they are to be legally binding. Section 111A provides for the confidentiality of discussions in connection with any settlement agreement by making evidence of such discussions inadmissible in any subsequent proceedings. The purpose of this provision is to encourage the use of settlement agreements as a way of handling potentially difficult employment situations and may be proposed prior to undertaking any formal process. They can assist to avoid costly legal and disciplinary proceedings. This is recognised by ACAS in their statutory code of practice relating to such agreements. This code is taken into account by Tribunals in

relevant cases. The risk of such confidentiality being breached in the context of operating the current requirement for reporting agreements of more than £10,000 to the Council for decision is a relevant matter for the Council to consider in the context of this proposal.

- 2.6 The confidentiality provisions in Section 111A of the Employment Rights Act 1996 do not prevent matters being raised subsequently at a Tribunal if they relate to an automatically unfair reason for dismissal such as whistleblowing, union membership or asserting a statutory right. Neither do they prevent disclosure where claims are made on grounds other than unfair dismissal such as claims of discrimination, harassment, victimisation or other behaviour prohibited by the Equalities Act 2010.
- 2.7 Having reviewed current provisions within the Constitution for Compromise Agreements, it is proposed that the authority delegated to officers is extended to:
- a) allow the Chief Executive to be able to agree the terms of Compromise Agreements up to a cost to the Council of £50,000 in consultation with the Section 151 Officer; and up to 95,000 in consultation with the Leader of the Council, Leader of the Opposition and the Section 151 Officer;
  - b) allow the Group Head of Corporate Support’s level of delegation to be increased from £10,000 to £25,000;
  - c) and for settlements of more than £95,000 to be considered by Full Council;
- 2.8 **Recommendation 7** - Having reviewed current provisions within the Constitution for compensatory payments, it is also proposed that the level of settlement that the Staff Appeals Panel can agree should be increased to £25,000 on the same provisions as currently.
- 2.9 The proposals being put forward in this report work within the statutory guidance issued by the Secretary of State under Section 40 of the Localism Act 2011 which require that:
- a) for new appointments of over £100,000 they allow the Full Council an opportunity to vote on the salary package – this is confirmed in the Officer Employment Rules at paragraphs 2.3 and 2.4; and
  - b) severance packages for staff leaving the organisation in excess of £100,000 need to be subject to a Full Council vote – this is confirmed in the proposals at paragraph 2.7 above.

### 3.0 OPTIONS

- a) To approve the recommendations to Full Council, as set out in the report
- b) To not approve the recommendations
- c) To make alternative proposals for consideration by Full Council

### 4.0 CONSULTATION:

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		✓
Relevant District Ward Councillors		✓
Other groups/persons (please specify) <ul style="list-style-type: none"> <li>• Chairman and Vice-Chairman of the Working Group</li> </ul>	✓	

**Item 18 – Minute 6 Refers**

<b>5.0 ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail below)</b>	<b>YES</b>	<b>NO</b>
Financial	✓	
Legal	✓	
Human Rights/Equality Impact Assessment		✓
Community Safety including Section 17 of Crime & Disorder Act		✓
Sustainability		✓
Asset Management/Property/Land		✓
Technology		✓
Other (please explain)		✓

**6.0 IMPLICATIONS:**

The proposals for Compromise Agreements would still require adherence to the Financial Rules and sign off by the Section 151 Officer.

**7.0 REASON FOR THE DECISION:**

To update the Constitution to meet latest legislation and best practice.

**8.0 BACKGROUND PAPERS:**

Arun's Constitution

<https://www.arun.gov.uk/constitution>

Secretary of State guidance under Section 40 of the Localism Act 2011

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85886/Final\\_Supplementary\\_Pay\\_Accountability\\_Guidance\\_20\\_Feb.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85886/Final_Supplementary_Pay_Accountability_Guidance_20_Feb.pdf)