

REPORT OF THE MONITORING OFFICER

**CONSTITUTION AMENDMENTS – PROPERTY, PROCUREMENT,
EMPLOYMENT AND OTHER MATTERS**

AGENDA ITEM: 9

1. Reason for this Report

- 1.1 To recommend to the Committee various amendments to the Constitution following:
- (i) the Task & Finish Review of Property and Procurement Decision Making Arrangements;
 - (ii) changes in the senior management structure, which need to be reflected in the Employment Procedure Rules; and
 - (iii) other amendments required to ensure the Constitution complies with current legislation and matters of record.

2. Background

- 2.1 At its meeting on 18th September 2013 the Committee resolved to set up a Task and Finish Group to consider Decision Making Arrangements in respect of property and procurement and to report back to this Committee.
- 2.2 A Task & Finish Group was established, comprising Councillors Cook, Cowan and Marshall of the Committee, and met on 3 occasions during the period October to December 2013. The Review's Terms of Reference and methodology were reported in the verbal update to the last Committee meeting and are appended at **Appendix A**.
- 2.3 During the Review, evidence was heard from:
- Cabinet Member, Finance & Economic Development, Councillor Goodway
 - Director for Communities, Sarah McGill
 - Section 151 Officer, Marcia Sinfield
 - Strategic Estates Manager, Charles Coates
 - Procurement Officer, Steve Robinson
 - Internal Audit and Risk Manager, Derek King
 - Director for Childrens Services, Tony Young, accompanied by 2 Childrens Services officers

- 2.4 The Task and Finish meeting on 2 December 2013 agreed proposed changes in respect of property and procurement as set out in this report.
- 2.5 Following the introduction of the revised senior management structure last year, references to previous post designations in the Employment Procedure Rules require updating to reflect current post designations and legislation, together with consequential amendments to the employment delegations.
- 2.6 Certain other amendments are also required to the Scheme of Delegations to reflect recent legislative changes and current matters of record.

3. TASK & FINISH REVIEW OF DECISION MAKING ARRANGEMENTS

- 3.1 The Task and Finish Group discussed and considered various issues relating to property and procurement transactions, informed by detailed reports, officer briefings and oral evidence. Notes of the meetings, along with the reports considered are available as background papers to this report. During discussions, two common issues emerged in relation to property and procurement, those being (i) Member involvement; and (ii) financial thresholds for officer delegations. These issues are addressed below in section 4 (Property Decisions) and section 5 (Procurement Decisions).

3.2 Individual Cabinet Member Decision Making

Members discussed the option of individual Cabinet member decision making. Some concern was expressed about individual decision making not having the benefit of collective Cabinet support, but it was also noted that full Cabinet decision making involves administrative costs and that Cabinet agendas are already very full. The Monitoring Officer suggested that an analysis could be undertaken with the Leader, of Cabinet agendas for the last 6 months to assess whether all business submitted in fact required Cabinet consideration. Other Members noted that Cardiff had previously delegated decision making to individual Cabinet Members (in or around 2002), and indicated that they would like the Committee to consider this issue further. The Committee is invited to give any views on whether it wishes to consult with the Leader as to further action of individual Cabinet Member decision making.

4. PROPERTY DECISIONS

- 4.1 Members took the view that the thresholds for officer delegations relating to property matters (currently up to £5 million) should be reduced, in line with the recommendations of the recent WLGA Peer Review. They were also concerned to strengthen the Member consultation requirements so as to ensure that Ward Members and relevant Cabinet Member/s are aware of land related proposals within their areas of responsibility. Members acknowledged the distinction between Operational Land (held to facilitate the delivery of Council services, e.g. schools, nurseries, libraries, community centres and parks etc) and Non-Operational Land (held for investment and development

purposes), and the need for Non-Operational Land to be dealt with on a commercial basis to ensure value for money.

Proposed Revised Arrangements

4.2 The Task & Finish Group propose the following revised arrangements, subject to review after one year, for consideration:

4.3 Cabinet Decisions

Cabinet approval to be required for any transaction:

- (i) valued over £1 million; including the taking, granting or restructuring of leases at rents exceeding £1 million;
- (ii) involving closure of direct services to the public;
- (iii) where a Ward Member or Cabinet Member consultee (see consultation provisions in paragraph 4.5 below) objects to the proposal;
- (iv) if the best offer for a disposal is determined by more than price alone; or
- (v) where the decision is not covered by an officer delegation – see paragraph 4.6 (i) and (ii) below.

4.4 Key changes to current arrangements in this regard are:

- (i) Reducing the threshold for Cabinet decision from £5 million to £1 million;
- (ii) Giving the relevant Cabinet Member/s and Ward Members consulted on specific proposals (please see paragraph 4.5 below) the right to request that a decision be referred to the Cabinet
- (iii) Requiring any proposed disposal where the best offer is determined by more than price alone be approved by the Cabinet (currently, this is a Director level delegation for disposals valued up to £1 million).

4.5 Member Consultation

It was proposed that Ward Members and ‘Relevant Cabinet Members’ (to include the Cabinet Member for Finance, as well as any other relevant Cabinet Portfolio holder/s) should be consulted on all proposed transactions. However, in recognition of the prejudice and disproportionate delay this could create for certain types of transactions, e.g. Non-Operational Land disposals which must be dealt with on a commercial basis, and lower value routine transactions, the Monitoring Officer’s advice is that Members should consider extending the consultation requirements as follows:

- (iv) Relevant Cabinet Member/s and Ward Members to be consulted on Operational Land disposals valued up to £1 million, except for routine transactions valued up to £100K
- (v) Relevant Cabinet Member/s to be consulted on Non-Operational Land disposals and any land acquisitions, except for routine transactions valued up to £100K
- (vi) To give the Cabinet and Ward Members consulted (as above) a 7 working day consultation period, during which they may object and request that the matter be referred to Cabinet. (Currently, the consultation period is not specified in the Disposals Policy approved in January 2011, and the right to refer the decision to Cabinet is given to Ward Members in respect of Operational Land disposals only.)
- (vii) All land transactions, except for routine transactions valued up to £100K, to require advice from the s.151 officer and Monitoring Officer.

4.6 Director's Delegation

The Director for Economic Development to be authorised to approve any transaction valued up to £1 million, subject to Member consultation and statutory officer advice as set out in paragraph 4.5, and provided that:

- (i) For disposals, the offer must not be less than 10% below the valuation price;
- (ii) For acquisitions, the Council's offer must be no more than market value; and
- (iii) If an objection is received from the Cabinet Member or Ward Member within the 7 working day consultation period, following consultation with the Cabinet Member the matter will be referred to the Cabinet for decision.
- (iv) The Director's delegation may be sub-delegated to the Corporate Property & Estates Manager in respect of transactions valued at less than £100K

4.7 Key proposed changes to current arrangements being:

- (i) To reallocate the (FS) property delegations previously assigned to the Corporate Director, Resources, to the Director for Economic Development, who is now responsible for Strategic Estates under the new senior management arrangements

- (ii) To confirm that the £1 million threshold applies to acquisitions as well as disposals, and to Operational as well as Non-Operational Land
- (iii) To extend Member consultation requirements, and give Member consultees a right to request that the matter be referred for a decision to Cabinet, as noted above
- (iv) To remove the Service Area Directors' delegation (CD8) to authorise disposals & acquisitions valued up to £5million, and instead require any transactions valued over £1 million to be approved by the Cabinet.
- (v) To apply the provisos regarding valuation / market value which currently apply to the Director's £5 million delegation (CD8) to the reduced £1 million Director's delegation

4.8 Members are invited to consider the above recommendations, make any appropriate comments and agree any proposed changes to the current arrangements.

4.9 The revised arrangements, if approved, will need to be reflected in amendments to the Land Procedure Rules and the Scheme of Delegations. The Constitution Committee has delegated authority to approve changes to the Land Procedure Rules, subject to the advice of the section 151 officer. Amendments to the Scheme of Delegations will require the approval of full Council.

4.10 The Committee is recommended to instruct the Monitoring Officer to draft the necessary amendments to the Land Procedure Rules and the Scheme of Delegations for approval at the next Committee meeting, and subsequent recommendation of the amended Scheme of Delegations to full Council.

5. PROCUREMENT DECISIONS

5.1 Members noted the advice from the Internal Audit and Risk Manager and the Procurement Officer that the Council has strong governance and controls in place. The Contract Standing Orders and Procurement Rules and Financial Procedure Rules provide the framework for ensuring that public money is spent with demonstrable probity and in accordance with the Council's policies; and the procurement processes and procedures that support this framework have been strengthened over the last 18 months through the work of the Procurement and Internal Audit teams.

5.2 The Procurement Officer confirmed that the Council's Contract Standing Orders and Procurement Rules are scheduled for review in 2014. The revised Rules will reflect the outcome of the Constitution Committee's review of decision making arrangements and delegation levels, together with the

Welsh Procurement Policy Statement principles and the WLGA Guidance on Contract Procedure Rules, which aims to bring greater standardisation across Wales.

Proposed Revised Arrangements

5.3 In light of the robust governance and controls already in place the Task and Finish Group propose that no changes should be made to the current delegation thresholds, those being:

- Over £5 million - Cabinet decision
- Up to £5 million - Chief Executive, Corporate Director & Directors
- Up to £1 million - Assistant Director / Chief Officer
- Up to £250K - Operational Manager

5.4 However, various recommendations were made, aimed at increasing Cabinet Member involvement and improving transparency in relation to potentially significant procurements in Cardiff, namely:

- (i) A Procurement Forward Plan to be reported to Cabinet on an annual basis setting out all proposed procurements over £150,000 for the next financial year, with quarterly update reports to include new procurements and to report any issues of concern.
- (ii) On considering the Procurement Forward Plan, the Cabinet to reserve decisions on any procurements considered to be high risk and or sensitive, irrespective of value; and any such reservation to Cabinet to be noted in the Procurement Forward Plan.
- (iii) All Director level decisions, specifically, (a) procurements valued between £1 million and £5 million; and (b) any variation requiring approval by a Director (threshold values are set out in the Contract Rules, Rule 25, and vary depending on the type of contract) to be subject to consultation with Relevant Cabinet Members (the Cabinet Member for Finance, as well as any other relevant Cabinet Portfolio holder); and in the event of an objection from such Cabinet Member, the decision to be referred to Cabinet.
- (iv) Directors to ensure that the Cabinet Member/s with relevant portfolio responsibility are kept informed of the progress of all procurements contained in the Procurement Forward Plan; and that local councillors are engaged in the procurement process if there are specific ward issues.
- (v) An annual Procurement Report to be submitted to Cabinet, providing an overview of procurements undertaken in the previous financial year and reflecting any lessons learnt from major procurements (valued over £2 million).
- (vi) Quarterly Procurement Compliance reports to be provided to the Cabinet Member for Finance and the Senior Management Team.

Thornhill Road Childrens Home

- 5.5 The Task and Finish Group also heard evidence in respect of problems which had arisen in relation to commissioning works at Thornhill Road Childrens Home. It was suggested that the problems centred on contract management issues, and were therefore within the scope of the Review. The Audit Committee had proposed a review to identify lessons learnt from this case, and it was agreed that this issue could be incorporated into the Constitution Committee Review.
- 5.6 Members heard evidence from the Director for Childrens Services and 2 Childrens Services officers, and discussed the issues raised. Key observations were as follows:
- (i) The problem centred on the specification of the Council's requirements, which was not fit for purpose. This emphasised the importance of ensuring any contract specification is supported by a robust business case, based on sound professional advice, and that there must be good project management arrangements in place.
 - (ii) It was noted that the senior managers involved at the time are no longer employed by the Council and the highlighted weaknesses in the Council's arrangements have now been addressed.
 - (iii) The revised Contract Rules should consider whether any relevant provisions, e.g. regarding development of specifications, project management arrangements etc, should be strengthened.
 - (iv) Arrangements for management of capital projects should be reviewed and improved. Officers were asked to consider and report on this to the Audit Committee for their consideration of whether anything further is required.
- 5.7 Some of the recommendations set out in paragraph 5.4 above, if approved, will need to be reflected in amendments to the Contract Rules and the Scheme of Delegations, whilst others will be matters of practice, best reflected in procurement procedures and guidance.
- 5.8 As noted in paragraph 5.2 above, the Contract Rules are currently being reviewed. The revised Rules are due to be reported back to this Committee for approval in or around the summer of 2014. The Committee is recommended to instruct the Procurement Officer to bring back a report to the Committee in or around the summer of 2014, with draft revised Contract Rules incorporating the changes recommended by the Committee, supplemented by revised procurement procedures and guidance, as appropriate.
- 5.9 Any amendments to the Scheme of Delegations recommended by the Committee will require the approval of full Council. The Committee is recommended to instruct the Monitoring Officer to draft the necessary amendments to the Scheme of Delegations for approval at the next Committee meeting, and subsequent recommendation for approval to full Council.

6. EMPLOYMENT PROCEDURE RULES / DELEGATIONS

- 6.1 The Employment Procedure Rules (“the EPR”) currently refer to the historic designations of ‘Chief Operating Officer’ and ‘Corporate Chief Officer’. These references need to be updated following the revised senior management structure approved in October 2012 and implemented in 2013. The provisions of the Employment Procedure Rules also need to reflect the statutory requirements set out in the Local Authorities (Standing Orders) (Wales) Regulations 2006 (“the 2006 Regulations”).
- 6.2 The 2006 Regulations require local authorities to adopt standing orders governing the appointment and dismissal of, and disciplinary action against, staff. Different arrangements are imposed for ‘Chief Officers’ and ‘Deputy Chief Officers’ (both statutorily defined), officers below ‘Deputy Chief Officer’ and certain Statutory Officers (Head of Paid Service, Section 151 Officer and Monitoring Officer).
- 6.3 It is recommended that, to ensure compliance with the 2006 Regulations, the EPR should be amended to refer to the same terminology as the Regulations, i.e. ‘Chief Officer’ and ‘Deputy Chief Officer’, and to include the statutory definitions. A couple of other minor drafting improvements are also proposed. The recommended amendments to the Employment Procedure Rules are shown in **Appendix B** to this report.
- 6.4 The 2006 Regulations provide that the appointment, dismissal and discipline of:
- (i) Chief Officers and Deputy Chief Officers must be discharged by Council or a Committee; and
 - (ii) All other officers (i.e. officers below Deputy Chief Officer) must be discharged by the Head of Paid Service or his nominee.
- 6.5 It should be noted that the statutory definitions are wider than the designations under the Council’s management structure, that is:
- “Chief Officer” includes the Head of Paid Service and Monitoring Officer, Section 151 Officer, Director of Social Services & Chief Education Officer (“statutory chief officers”), and any person who reports directly to the Head of Paid Service (“non-statutory chief officers”); and
- “Deputy Chief Officer” includes any person who reports directly to a statutory chief officer or a non-statutory chief officer, as defined above.
- 6.6 Applying the Regulations to the Council’s current management structure, means that the appointment, dismissal and discipline of the senior management team, i.e. the Chief Executive, Corporate Director for Resources, and all Directors, Assistant Directors and Chief Officers must be discharged by Council or a Committee. The Council has already delegated the appointment of these senior officers to the Appointments Committee. However, in order to fully comply with the requirements of the 2006

Regulations, it is recommended that the terms of reference of the Appointments Committee should be amended to (i) expressly refer to the terminology used in the 2006 Regulations (Chief Officers and Deputy Chief Officer, as statutorily defined); and (ii) include responsibility for discipline and dismissal, as required under the Regulations.

6.7 Officer delegations also require amendment to reflect the statutory requirement of the 2006 Regulations that the Head of Paid Service (or his nominee) must deal with all appointment, dismissal and discipline functions relating to all other officers (ie. officers below Deputy Chief Officer). The necessary amendments are:

- (i) Amendment of the Chief Executive's delegation reference CE2 (in Section 4E of the Scheme of Delegations) to cover the full range of HR functions for which he is statutorily responsible; and
- (ii) Amendment of the Director and Assistant Director delegations reference CD1 and CO1 to reflect their statutory authority, as nominees of the Head of Paid Service, to exercise the full powers of the Head of Paid Service with respect to HR functions within their directorates, and delete the stated exceptions which are not compliant with the 2006 Regulations.

6.8 The recommended amendments to the Scheme of Delegations in respect of the Appointments Committee (reference paragraph 6.6 above) and the HR officer delegations (reference paragraph 6.7 above) are shown in **Appendix C** to this report.

7. OTHER DELEGATIONS

Statutory Officers

7.1 By law the Council is required to appoint a number of Statutory Officers, including the:

- Head of Paid Service
- Section 151 Officer
- Monitoring Officer
- Head of Democratic Services
- Director of Social Services
- Chief Education Officer

7.2 The functions and responsibilities of the Statutory Officers are prescribed by law, and should be reflected in the Scheme of Delegations, so that the allocation of responsibility for these statutory functions is clear. It is recommended that the Monitoring Officer be instructed to amend the Scheme of Delegations to this effect.

Scrap Metal Dealers

7.3 The Scrap Metal Dealers Act 2013 repealed the earlier 1964 Act in relation to the licensing of scrap metal dealers. Whilst the functions under the 1964 Act

were non-executive functions allocated in Cardiff to the Public Protection Committee, the Public Protection Committee is not authorised to exercise functions of the 2013 Act, pending further legislation to confirm responsibility for these functions. It is understood that further legislation is anticipated, but until then, the law requires that the functions of the 2013 Scrap Metal Dealers Act must be regarded as executive functions, to be exercised (or delegated) by the Cabinet.

- 7.4 The Scheme of Delegations requires amendment to reflect this legislative change, that is, to remove the licensing of scrap metal dealers from the list of non-executive functions allocated to the Public Protection Committee (Annex 1 to the Scheme of Delegations). This amendment may be made under the Monitoring Officer's delegated authority (Constitution Committee 08/09/08) to make amendments to the Constitution to reflect legislative changes. Members are invited to note the amendments to be made by the Monitoring Officer in this respect.

School Organisation Proposals

- 7.5 The School Standards and Organisation (Wales) Act 2013 makes new provision regarding school organisation proposals. New Functions Regulations (SI 2013/2438) have been issued in respect of certain functions under this Act, namely,
- (i) local authority approvals under section 51 of the Act; and
 - (ii) local authority determinations under section 53 of the Act.
- 7.6 The new Regulations make these local choice functions, which the Council must allocate as either Cabinet or Council functions. It is recommended that responsibility for these functions should rest with the Cabinet, and Committee is recommended to instruct the Monitoring Officer to amend the Scheme of Delegations accordingly, subject to the approval of Council.

8. Legal Implications

The relevant legal provisions are set out in the body of the report.

9. Financial Implications

There are no direct financial implications arising from the recommendations of the report.

Recommendations

The Committee is recommended to:

- (i) Note the observations and recommendations made by the Task & Finish Group review of decision making arrangements, as set out in sections 3, 4 & 5 of this report;
- (ii) Consider whether it wishes to further review the option of individual Cabinet Member decision making, as noted in paragraph 3.2 of the report;

- (iii) Agree the revised arrangements in respect of property decision making, subject to any further changes the Committee thinks appropriate, and review after one year, and instruct the Monitoring Officer to draft any necessary amendments to the Land Procedure Rules and the Scheme of Delegations, for the Committee's approval at its next meeting, and subsequent recommendation of the amended Scheme of Delegations to full Council.
- (iv) Agree the revised arrangements in respect of procurement decision making, subject to any further changes the Committee thinks appropriate, and review after one year, and:
 - (a) instruct the Monitoring Officer to draft any necessary amendments to the Scheme of Delegations, for the Committee's approval at its next meeting, and subsequent recommendation of the amended Scheme of Delegations to full Council; and
 - (b) instruct the Procurement Officer to incorporate any recommended changes within the revised Contract Rules, procurement procedures and or guidance, as appropriate, for the Committee's approval in or around the summer of 2014.
- (v) Agree, subject to the approval of Council, the recommended changes to:
 - (a) the Employment Procedure Rules, as set out in **Appendix B**; and
 - (b) the Scheme of Delegations, Appointments Committee Terms of Reference and HR officer delegations, as set out in **Appendix C**.
- (vi) Instruct the Monitoring Officer to amend the Scheme of Delegations to:
 - (a) reflect the allocation of the functions and responsibilities of the Statutory Officers as set out in paragraphs 7.1 & 7.2 ;
 - (b) note the change in responsibility for the licensing of scrap metal dealers as set out in paragraphs 7.3 & 7.4; and
 - (c) allocate responsibility to the Cabinet for local authority approvals and determinations pursuant to sections 51 and 53 respectively of the School Standards and Organisation (Wales) Act 2013.

Marie Rosenthal
County Clerk and Monitoring Officer
14 January 2014

Appendices

Appendix A - Task & Finish Review of Decision Making - Terms of Reference & Methodology

Appendix B - Employment Procedure Rules – Recommended amendments

Appendix C - HR Delegations – Recommended amendments

Background papers

Reports to, and Minutes of, Constitution Committee – Delegations Review,
 Reports to, and Notes of, Task & Finish Group meetings on 28/10/13, 11/11/13 &
 02/12/13

CONSTITUTION COMMITTEE

PROCUREMENT & PROPERTY DECISION MAKING REVIEW, October 2013

TASK & FINISH GROUP

(Councillor Ralph Cook, Councillor Cowan & Councillor Marshall)

Terms of Reference

To review the Council's decision making arrangements relating to procurement and property matters and recommend any necessary changes to those arrangements to ensure that decision making:

1. is lawful;
2. is efficient and effective;
3. is governed by a coherent framework of delegations, procedure rules and guidance;
4. involves Members appropriately;
5. is transparent and subject to rigorous scrutiny and accountability;
6. reflects the Council's new officer management structure;
7. reflects the recommendations of the Corporate Peer Review (specifically paragraph 3.12 on Governance);
8. is clearly explained in a Guide to Decision Making for Members and Officers, supported by training and dissemination; and
9. facilitates new ways of working, eg. Cardiff Business Council.

Relevant documents

Scheme of Delegations

Contract Standing Orders and Procurement Rules

Land Procedure Rules

Property Disposal Strategy

Financial Procedure Rules

Scrutiny Procedure Rules

Guide to Streamlined Decision Making (September 2006)

Methodology

October 2013	Officers meeting	Discuss proposed terms of reference and methodology for review
October 2013	T&F Meeting 1	Agree terms of reference and methodology; Familiarisation with existing framework
November 2013	T&F Meeting 2	Evidence from decision makers, Cabinet Members, Directors and any other relevant persons
December 2013	T&F Meeting 3	Consider changes and agree recommendations to Committee
December 2013	Officer meeting	To review processes, procedures & guidance
December 2013	Senior Management Team	Briefing on proposed changes
January 22 nd 2014	Constitution C'ttee	Seek approval of recommended changes
February 2014	Officer meeting	To agree communications and training

Outcomes

1. Up to date Officer Scheme of Delegations
2. Up to date Guide to Decision Making
3. Clarification on Member involvement in procurement and property decision making
4. Updated Land Procedure Rules

Linked projects

Review of Contract Standing Orders and Procurement Rules
"Passport to Procurement" training
Decision publication requirements – Scrutiny Procedure Rules
Community Asset Transfers – draft strategy

Interpretation

For the purposes of these Rules:

“Chief Officer” has the same meaning as in the Local Authorities (Standing Orders)(Wales) Regulations 2006, namely, the Head of Paid Service; the Monitoring Officer; a statutory chief officer mentioned in paragraph (a), (c) or (d) of section 2(6) of the Local Government and Housing Act 1989; or a non-statutory chief officer within the meaning of section 2(7) of the same 1989 Act

“Deputy Chief Officer” has the same meaning as in Section 2(8) of the Local Government and Housing Act 1989, being a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers

1. Recruitment and appointment

These rules do not apply to school-based employees, who are subject to separate procedures.

(a) Declarations

- (i) With the intention of ensuring that employment processes are fully informed and transparent, the Council requires any candidate for appointment as an officer to state in writing whether they are related to or have any close personal association with any member or senior employee of the Council.
- (ii) Deliberate omission to make such a disclosure would disqualify the candidate, and if the omission is discovered after appointment, the candidate will be liable to dismissal.

(b) Seeking support for appointment

- (i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor or employee for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) Subject to paragraph (iii), no Councillor will seek support for any person for any appointment with the Council. A member or an employee will not try to improperly influence the choice of a candidate for any appointment

- (iii) The impartiality of employees must be preserved. Accordingly Members must not give written references to support a candidate seeking employment with the Council.

2. **Recruitment of ~~Chief Executive, Chief Operating Officers, Corporate Chief Officers and~~ Chief Officers**

- (a) A vacancy for the post of ~~Chief Executive, Chief Operating Officer, Corporate Chief Officer or~~ Chief Officer must be reported to the Council or body delegated to do so which will consider whether the post should be filled, and if so, the terms and conditions of employment and method of appointment.
- (b) Where the appointment is not to be made from existing employees, the Council will arrange for the following to be prepared:-
- (i) A statement of the duties of the officer concerned and the required qualifications or qualities to be sought in the person appointed, which is sent to any person on request;
- (ii) Advertising of the post to bring it to the attention of people who are qualified to apply.
- (c) Following advertisement, the Council will arrange for either all qualified candidates to be interviewed; or a shortlist to be prepared of qualified applicants and those candidates interviewed. If no suitably qualified person has applied, or if the Council decides to re-advertise the appointment, the post will be re-advertised in accordance with paragraph (b) above.

3. **Appointment or Dismissal of ~~Chief Executive, Chief Operating Officers, Corporate Chief Officers and~~ Chief Officers and Deputy Chief Officers**

- (a) The appointment or dismissal of ~~the Chief Executive, Corporate Directors and~~ Chief Officers or a Deputy Chief Officer will be made by the Council or by a Committee of Members delegated by the Council to make the appointment or dismissal, which Committee must contain at least one Cabinet member, but not more than half of the members of that Committee shall be Cabinet members.
- (b) Where a committee is discharging on behalf of the Council the function of the appointment or dismissal of the Chief Executive, the Council shall approve that appointment before an offer of appointment is made, or as the case may be, must approve that dismissal before notice of dismissal is given.

4. **Other appointments**

- (a) **Officers below Deputy Chief Officer.** The appointment of officers below Deputy Chief Officer (other than assistants to political groups) must be discharged ~~on behalf of the Council,~~ by the Chief Executive or by an officer nominated by the Chief Executive. All Council employees shall be appointed in accordance with the Councils Recruitment and Selection Policy.

- (b) **Assistants to political groups.** Any appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

5. **Disciplinary Action**

Head of Paid Service, Monitoring Officer & Chief Finance Officer

- (1) No disciplinary action in respect of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (except action described in (2) below), may be taken by the Council or on its behalf, 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.
- (2) The action mentioned in the above paragraph is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension will be on full pay and will terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.
- (3) Where it appears that an allegation of misconduct which may lead to disciplinary action has been made against the Council's Head of Paid Service, its Monitoring Officer, or its Chief Finance Officer, ("the relevant officer"), as the case may be, the Council shall appoint a committee ("an investigation committee") to consider the alleged misconduct.
- (4) The investigation committee must consist of a minimum of 3 members of the Council, be politically balanced (in accordance with section 15 of the Local Government and Housing Act 1989); and must, within 1 month of its appointment, consider the allegation of misconduct and decide whether it should be further investigated.
- (5) For the purpose of considering the allegation of misconduct, the investigation committee may make such enquiries of the relevant officer or any other person it considers appropriate; 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 may receive written or oral representations from the relevant officer or any other person it considers appropriate.
- (6) Where it appears to the investigation committee that an allegation of misconduct by the relevant officer should be further investigated, it shall appoint a person ("the designated independent person") for the purposes of these Rules.
- (7) The designated independent person who is appointed shall be such person as may be agreed between the Council and the relevant officer within 1 month of the date on which the requirement to appoint the designated independent person arose; or where there is no such agreement, shall be such person as is nominated for the purpose by the National Assembly for Wales.

- (8) The designated independent person –
- (a) may direct:
 - (i) that the Council 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 (2) above);
 - (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 by the Council or on its behalf 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 Council, or which the Council has power to authorise the designated independent person to inspect;
 - (c) may require any Member or member of staff of the Council to answer questions concerning the conduct of the relevant officer;
 - (d) shall make a report to the Council –
 - (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 Council to take against the relevant officer; and
 - (e) shall 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.
- (9) Subject to paragraph (10), the relevant officer and the Council shall, after consulting the designated independent person, attempt to agree a timetable within which the designated independent person is to undertake the investigation.
- (10) Where there is no agreement under paragraph (9), the designated independent person shall set a timetable as that person considers appropriate within which the investigation is to be undertaken.
- (11) The Council shall consider the report prepared under paragraph (8)(d) within 1 month of receipt of that report.
- (12) The Council shall 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 Rule.

| **Dismissal and or Disciplinary Action - Other Employees**

- (a) The Chief Executive, or an officer nominated by the Chief Executive, is responsible ~~to the Council~~ for the ~~discipline and dismissal of, and taking disciplinary action against, other~~ employees below Deputy Chief Officer (other than assistants for political groups), in accordance with ~~the Council's Discipline~~ any relevant Council Policy and ~~associated~~ procedures.
- (b) Councillors will not be involved in any disciplinary action of any officer other than the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer, as set out above, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, or where a right of appeal to members is allowed in respect of dismissal or demotion.

6. **Right of Appeal**

Any employee who has been dismissed with or without notice or relegated must be informed immediately of the right of appeal, in line with the Council's agreed Disciplinary Policy and Procedures, which may confirm the action taken, withdraw it or substitute another disciplinary penalty.

APPENDIX C

AMENDMENTS TO DELEGATIONS – CORRECTIONS TO REFLECT THE STANDING ORDERS REGULATIONS 2006 (SI 2006/1275)

Appointments Committee (convened as and when required)

To ~~discharge the functions of the authority in respect of the appointment and dismissal of Chief Officers and Deputy Chief Officers (as defined in the Local Authorities (Standing Orders)(Wales) Regulations 2006), in accordance with the Employment Procedure Rules and any other relevant Council policies and procedures. shortlist, interview, make the appointments of any officer at Chief Officer / Assistant Director level and above and conclude contractual matters with the successful applicants on behalf of the Council.~~

Chief Executive's Delegations (Section 4E of the Scheme)

CE2 To be Head of Paid Service ~~and discharge the functions of appointment and dismissal of, and taking disciplinary action against, any member of staff, in accordance with the Council's HR and financial procedures and subject to appropriate consultation as outlined therein, except where such functions have been reserved to the Appointments Committee.~~

Directors' & Chief Officers' Delegations (Sections 4B and 4C of the Scheme)

CD1 & CO1 (identical terms):

Authority to manage the human resources within their area of responsibility, including the appointment, establishment, salary/grade, training, terms and conditions of employment, health and safety, discipline, suspension and dismissal of staff, in accordance with the Council's HR and financial procedures and subject to appropriate consultation as outlined therein, ~~except where any proposal:-~~

~~(1) involves the probability of redundancies and/or cannot be implemented within existing budgets, and/or~~

~~has significant effects on the employment of existing staff in that or any other Council Service Area~~

~~(Note: in relation to the above it remains the Council's policy to avoid compulsory redundancies where possible. Officer delegations can only be discharged within the Council's Human Resources policies and procedures).~~

Qualification: This may not be further delegated.