

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Mark Stinson – Assistant Director for Governance and Monitoring Officer

To: South Holland District Council Wednesday, 22 September 2021

(Author: Mark Stinson – Assistant Director for Governance and Monitoring Officer)

Subject South and East Lincolnshire Councils Partnership - Joint Committees and other constitutional matters

Purpose: To consider proposed amendments to the Constitution as a result of the Council's previous decision to form a Strategic Alliance with Boston Borough Council and East Lindsey District Council.

Recommendation(s):

- 1) That the Appointments and Disciplinary Committee be renamed the Chief Officer Employment Panel, the terms of reference be changed to those set out in section one of Appendix A to this report, but the membership be unchanged;
- 2) That the Appointments and Disciplinary Appeals Committee be renamed the Chief Officer Employment Appeals Panel, the terms of reference be changed to those set out in section two of Appendix A to this report, and the size of the Panel be reduced from four to three members;
- 3) That an Independent Panel be established as a standing committee of the Council, with the terms of reference set out in section three of Appendix A, and its membership be the Independent Person of this Council appointed under section 27 of the Localism Act 2011 together with the Independent Person appointed by Boston Borough Council and East Lindsey District Council under the same statutory provision;
- 4) That, in respect of any complaint against a Chief Officer or Deputy Chief Officer which may potentially lead to any action for misconduct, capability, or for some other substantial reason, each statutory officer be authorised to act as an initial 'filter' to determine whether such complaint should progress to the Chief Officer Employment Panel or instead be determined through another process, except in any matter that relates to their own conduct;
- 5) That the Council's Democratic Services Team, working with the Councillor Development Working Group, ensure that members (and Independent Persons) serving on the Chief Officer Employment Panel, Chief Officer Employment Appeals Panel and Independent Panel receive suitable training;
- 6) That all Officers employed by South Holland District Council, East Lindsey District Council or Boston Borough Council, who are shared pursuant to the s113 Agreement between those Councils, be granted or re-granted delegated authority to act as officers of South Holland District Council in accordance with the Constitution and the schedule of specific delegations and the Monitoring Officer be authorised to make such amendments to post titles and areas of responsibility set out in those documents as the Monitoring Officer considers appropriate;

- 7) That the Head of the Paid Service be granted delegated authority to approve temporary short-term arrangements, in consultation with the Leader of the Council, to place staff of this authority at the disposal Boston Borough Council and/or East Lindsey District or to agree the placing of staff of those authorities at the disposal of this authority pending a Full Council decision on permanent arrangements;
- 8) That, subject to consultation with the Council's Insurers, an indemnity be provided to officers and members in accordance with (or materially in accordance with) Appendix B to this report; and
- 9) That the Monitoring Officer be authorised to amend the Constitution accordingly to reflect any of the matters referred to in recommendations 1-8 above.

1.0 **BACKGROUND**

- 1.1 At its meeting on 29 July 2021, Full Council approved the business case for and entry into the South and East Lincolnshire Councils Partnership. This report sets out a number of initial constitutional changes that are needed in order to implement that decision fully.
- 1.2 The constitutional changes proposed, together with the reasons for the proposed changes, are as follow:

Chief Officer Employment Panel and associated procedures

- 1.2.1 Changes are needed to the committees/panels responsible for recruitment & discipline and appeals. In addition, it is necessary to appoint a new 'Independent Panel'. The changes are needed in order to reflect how recruitment and discipline of shared Chief Officers and shared Deputy Chief Officers will be managed between the three authorities. As part of the process of negotiating the Memorandum of Agreement, external legal advice was sought on various matters, including recruitment and discipline procedures.
- 1.2.2 The advice identified the need for each Council's Panel to be responsible only for recruitment and discipline of those Chief and Deputy Chief Officers employed by that individual Council. However, the advice recognised the importance of consultation in respect of recruitment and discipline of shared officers. Accordingly, we are advised that the three Panels should come together informally ahead of such decisions for the non-employing councils to provide feedback to the employing Council (or, in the case of action against statutory officers, for any Independent Investigator to consult the non-employing councils).
- 1.2.3 In preparing terms of reference for these bodies, consideration has been given to the Joint Negotiating Committee ("JNC") Conditions of Service 'model procedure', together with external legal advice and the Standing Orders relating to Staff and the Local Authority (Standing Orders) (England) Regulations 2001 (as amended) ("the 2001 Regulations"). Formal

appointment of an Independent Panel is a key requirement of the JNC Conditions of Employment model procedure for the Chief Executive/Head of Paid Service. The model is also suitable for any action against a Monitoring Officer or Section 151 Officer and this is therefore recommended. In accordance with the 2001 Regulations, it is proposed that the Independent Panel comprises the Independent Person (appointed under the Localism Act 2011 for standards matters) of each of the three Councils. All three Independent Person have been consulted and are comfortable with the proposal.

- 1.2.4 It is proposed that the membership of the renamed Chief Officer Employment Panel remains unchanged. In the case of the renamed Chief Officer Employment Appeals Panel, however, it is recommended that the membership is reduced from four members to three (to reflect advice that such Panels should comprise an odd number of either three or five members). This will mean removing a Conservative Group seat from the Panel (at present the Conservative Group has three seats but has not yet nominated the members who are to occupy those seats).
- 1.2.5 Some potential complaints against a Chief Officer or Deputy Chief Officer would not be appropriate for referral to the Chief Officer Employment Panel (where, for example, they should be dealt with under grievance procedures or as corporate complaints). It is therefore necessary to have a 'filter' mechanism in place and it is proposed that this be undertaken by any of the three statutory officers – though clearly no statutory officer can act as a filter in any complaint against himself/herself.
- 1.2.6 Should there ever be a need for the Chief Officer Employment Panel, Chief Officer Employment Appeals Panel, or Independent Panel to consider the conduct of a Chief Officer or Deputy Chief Officer, it will be necessary to ensure that all involved have received up-to-date training in this area. It would also be appropriate for those involved in recruitment to receive suitable training.

Officer Delegations

- 1.2.7 Shared officers are, in law, employed by only one of the three councils, but are designated as officers of all three councils. As such, existing delegations will need to be amended to reflect changes in post titles, changes in areas of responsibility and the fact that employees of one council will be carrying out delegated functions under the constitutions of the other two councils. It is therefore proposed that Council agrees to amend the delegations to reflect the new management structure and authorises the Monitoring Officer to amend the Constitution and the schedule of specific delegations accordingly to reflect this and to reflect new post titles and areas of responsibility.
- 1.2.8 Further sharing of officers, as part of discrete service reviews, will require a business case and subsequent Council decisions. It would, however, be expedient for the Head of Paid Service to have the ability to make temporary

short-term staffing/support arrangements across the three councils, in consultation with the Leader of the Council. A specific delegation to the Head of Paid Service is therefore proposed for this purpose.

Officer and Member Indemnities

1.2.9 The legal advice, commissioned as part of the work on the Memorandum of Agreement, recommended that (subject to the agreement of the Council's insurers) each Council should provide an indemnity to its officers and members against any costs, claims and expenses arising as a result of the strategic partnership. The indemnity protects officers and members where they have acted reasonably (so would not protect an officer or a member who had acted fraudulently, recklessly or criminally). A form of indemnity, as drafted by Eversheds, is enclosed at Appendix B to this report.

2.0 OPTIONS

2.1 Do nothing – this is not recommended as a failure to adopt the necessary changes to the constitution will seriously fetter the ability of the Senior Leadership Team and members to make the Partnership a success. Failure to have suitable recruitment and disciplinary procedures and suitable delegations in place will leave the Council at risk of legal challenge.

2.2 Adopt the proposed amendments to the Constitution, but with changes.

3.0 REASONS FOR RECOMMENDATION(S)

3.1 To enable a swift and legally compliant implementation of the South and East Lincolnshire Councils Partnership.

4.0 EXPECTED BENEFITS

4.1 The proposed changes will enable a robust process for recruitment and discipline, will ensure that appropriate delegations are in place to enable the Senior Leadership Team to operate in accordance with the business plan approved by members, and an appropriate indemnity will protect officers and members from personal liability (except in the limited circumstances set out in paragraph 1.2.9 above and Appendix B attached).

5.0 IMPLICATIONS

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Constitutional & Legal**

- 5.1.1 The proposals in respect of recruitment and discipline are compliant with the Standing Orders relating to Staff and the Local Authority (Standing Orders) (England) Regulations 2001 (as amended) and are in accordance with external legal advice. Delegations to officers are in accordance with s101(1)(a) Local Government Act 1972. The provision of indemnities to officers and members are in accordance with the Local Authorities (Indemnities for Members and Officers) Order 2004.

5.2 **Contracts**

- 5.2.1 Robust recruitment and disciplinary procedures are an important part of the employment contract between the Council and its officers.

5.3 **Corporate Priorities**

- 5.3.1 The changes proposed in this report are designed to enable successful delivery of the South and East Lincolnshire Councils Partnership.

5.4 **Equality and Diversity/Human Rights**

- 5.4.1 Having a fair, robust and consistent recruitment and disciplinary process is an important tool to assist the Council in meeting its employment obligations to all staff who are subject to that process. Adoption of these changes will help to mitigate the risk of breach of the Council's equality duty to its officers.

5.5 **Financial**

- 5.5.1 There are no significant anticipated financial implications arising from this report. There may be some additional insurance costs as a result of the proposed indemnity, and should the Independent Panel be required to meet, there will be some additional cost in terms of payment to the Independent Persons. There will also be some training costs in respect of the training referred to at paragraph 1.2.6 above.

5.6 **Risk Management**

- 5.6.1 All of the proposals in respect of recruitment and discipline, and amendment to delegations, help to mitigate the risk of subsequent legal challenge. The use of an indemnity will mitigate the risks to officers and members personally.

5.7 **Staffing**

- 5.7.1 Implications for staff are set out in the body of the report.

6.0 **WARDS/COMMUNITIES AFFECTED**

- 6.1 The South and East Lincolnshire Strategic Partnership will deliver services across all wards and communities in the Council's area, and across the areas of the other two councils.

7.0 **ACRONYMS**

7.1 JNC – Joint Negotiating Committee

Background papers:- None (but see previous Council reports)

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Key Decision: N

Exempt Decision: N

This report refers to a Mandatory and Discretionary Services

Appendices attached to this report:

Appendix A Proposed Terms of Reference for the Chief Officer Employment Panel, Chief Officer Employment Appeals Panel, and the Independent Panel

Appendix B Proposed officer/member indemnity

APPENDIX A

Section 1

Chief Officer Employment Panel

The Panel shall comprise three members, be politically balanced and shall include at least one member of the Executive.

The Quorum of the Panel is 3 and named substitutes are permitted.

The Panel has the following terms of reference:

1. The making of recommendations to the Full Council on (i) the appointment of the Head of the Paid Service, the Monitoring Officer and the Section 151 Officer; and (ii) proposed dismissal of any of those officers in respect of misconduct, capability or for some other substantial reason. When dealing with potential dismissal of a statutory officer the Panel will carry out the necessary hearing in accordance with the model disciplinary procedure for the time being approved as part of the Joint Negotiating Committee ("JNC") Conditions of Service and prepare a report to the Full Council which report will be accompanied by the findings of the Independent Panel.
2. The taking of disciplinary or capability action, short of dismissal, against the Head of the Paid Service, the Monitoring Officer and the Section 151 Officer, in accordance with the JNC model disciplinary procedure.
3. Where required or recommended by the JNC model disciplinary procedure, the commissioning of an investigation by an Independent Investigator appointed in accordance with that procedure, including the setting of terms of reference for the investigation.
4. The consideration of any independent investigation in respect of a statutory Chief Officer.
5. Consideration of any submissions made by executive members following the 'Executive Objections Procedure' (under which the Proper Officer must notify all members of the Executive of any proposed dismissal and allow an opportunity for objections to be submitted) and the consideration of any reasonable representations submitted to the Panel by the Chief Officer Employment Panels of Boston Borough Council and East Lindsey District Council.
6. The appointment of any other Chief Officer or Deputy Chief Officer (this includes the Chief Executive where the post of Chief Executive is separate from the Head of Paid Service).
7. The dismissal of, or the taking of any action against any non-statutory Chief Officer or Deputy Chief Officer (this includes the Chief Executive where the post of Chief Executive is separate from the Post of Head of Paid Service) on the grounds of misconduct, capability or for some other substantial reason.
8. The suspension of any statutory Chief Officer, non-statutory Chief Officer or Deputy Chief Officer and the keeping under review of any such suspension. In exceptional circumstances, the Chairman of the Panel may authorise suspension where s/he considers such action necessary and urgent.

9. Approving staffing policies in respect of redundancy, early retirement and discretionary compensation.

NOTE:

- a) Subject to (b) below, where any current or prospective (as the case may be) Chief Officer, or Deputy Chief Officer is shared with East Lindsey District Council and Boston Borough Council, by way of an agreement under s113 of the Local Government Act 1972, but is employed or to be employed by this Council, the members of this Panel shall meet informally with members of the Chief Officer Employment Panels of those two councils prior to any decision being made by this Panel on the appointment, disciplining or dismissal of such officer. Whilst the final decision on any such appointment, disciplining or dismissal of any such officer shall be the sole decision of this Panel, it shall have regard to any reasonable representations made by the members of the other two Panels.
- b) Where any decision (or recommendation to Full Council) to be made by this Panel relates to the disciplining or dismissal of a statutory Chief Officer, there shall be no consultation directly with the other Panels but any Independent Investigator shall be advised of the shared management arrangements and shall have the opportunity to seek feedback from either of the other councils as s/he sees fit.
- c) Subject to (d) below, where any current or prospective (as the case may be) Chief Officer or Deputy Chief Officer is shared or to be shared with East Lindsey District Council and Boston Borough Council, by way of an agreement under s113 of the Local Government Act 1972, but is employed or to be employed by one of the other Councils, the members of this Panel shall meet informally with members of the Chief Officer Employment Panels of those two councils prior to any decision being made by the Panel in question on the appointment, disciplining or dismissal of such officer. Whilst the final decision on any such appointment, disciplining or dismissal of any such officer shall be the sole decision of that other Panel, the members of this Panel shall provide such representations to the other Panel as this Panel considers reasonable.
- d) Where any decision (or recommendation to Full Council) to be made by the other Panel relates to the disciplining or dismissal of a statutory Chief Officer, there shall be no consultation directly with this Panel but any Independent Investigator shall be advised of the shared management arrangements and shall have the opportunity to seek feedback from this Council as s/he sees fit

In the exercise of these functions the Panel must act in accordance with Standing Orders relating to Staff and the Local Authority (Standing Orders) (England) Regulations 2001 (as amended) including;

- (a) Head of the Paid Service** - No offer of appointment may be made until the proposed appointment has been approved by the Full Council and until notice of the proposed appointment has been given by the Proper Officer to the Cabinet Members and the Leader has not reported any material and well-founded objections within the time given for response. No notice of dismissal may be issued until the proposed dismissal has been approved by the Full Council, taking into account the recommendation of the Independent Panel, and until notice of the proposed dismissal has been given by the Proper Officer to the Cabinet Members and the Leader has not reported any material and well-founded objections within the time given for response.

- (b) Monitoring Officer and Section 151 Officer** - No offer of appointment may be made until notice of the proposed appointment has been given by the Proper Officer to the Cabinet Members and the Leader has not reported any material and well-founded objections within the time given for response. No notice of dismissal may be issued until the proposed dismissal has been approved by the Full Council, taking into account the recommendation of the Independent Panel, and until notice of the proposed dismissal has been given by the Proper Officer to the Cabinet Members and the Leader has not reported any material and well-founded objections within the time given for response.
- (c) Other Chief Officers and Deputy Chief Officers (this includes the Chief Executive where the post of Chief Executive is separate from the Post of Head of Paid Service)** – no offer of appointment may be made nor notice of dismissal issued until notice of the proposed appointment or dismissal has been given by the Proper Officer to the Cabinet Members and the Leader has not reported any material and well-founded objections within the time given for response.

(Pursuant to decisions of Breckland District Council at its meeting on 8.4.21 and SHDC at its meeting on 28.4.21 this Council's Independent Person will be Breckland District Council's second Independent Person for the purposes of that Council's disciplinary procedures against statutory Chief Officers until such time as Breckland District Council may make alternative arrangements)

(Any remuneration, allowances or fees paid to an independent person appointed to the Independent Panel must comply with Standing Order no. 60A.)

Section 2

Chief Officer Employment Appeals Panel

The Panel shall comprise three members, be politically balanced and shall include at least one member of the Executive.

No member of the Chief Officer Employment Panel shall be appointed to this Panel.

1. Determining appeals in respect of decisions of the Chief Officer Employment Panel relating to the dismissal of any Chief Officer or Deputy Chief Officer (other than the Head of the Paid Service, Monitoring Officer or Section 151 Officer).
2. Determining appeals in respect of decisions of the Chief Officer Employment Panel relating to action short of dismissal in respect of any Chief Officer or Deputy Chief Officer including the Head of Paid Service, Monitoring Officer or Section 151 Officer.

Note: In the exercise of these functions the Committee must act in accordance with Standing Orders relating to Staff and the Local Authority (Standing Orders) (England) Regulations 2001 (as amended)

Section 3

Independent Panel

The membership of the Independent Panel shall comprise the Independent Person appointed by this Council pursuant to s28(7) of the Localism Act 2011 together with the Independent Persons of East Lindsey District Council and Boston Borough Council.

The Independent Panel shall consider any proposal to dismiss a statutory Chief Officer, including the Independent Investigator's report, in accordance with the model disciplinary procedure and at least twenty days prior to any decision of the Full Council relating to dismissal of the Statutory Chief Officer.

The Panel shall prepare its own report to Full Council setting out its findings.

APPENDIX B

1. In accordance with the provisions of the Local Authorities (Indemnities for Members and Officers) Order 2004, the Council indemnifies its employees and Members against the costs claims and expenses arising as a result of the strategic alliance between Boston Borough Council, East Lindsey Borough Council and South Holland District Council (“ the three Councils”) .
2. The Council will not itself make any claim against its employees or Members in relation to any costs or expenses for which they are indemnified.
3. The indemnity is effective to the extent that the employee or Member in question:-
 - a) believed that the action, or failure to act, in question was within the powers or duties of one of the three Councils, or
 - b) where that officer or Member the action or failure to act forms part of or arises from powers or duties placed upon the officer or Member as a consequence of any function being exercised by that officer or Member at the request of or with the approval of one of the three Councils or for the purposes of one of the three Councils and
 - c) in each case, provided that the officer or Member is exercising delegated authority to act in accordance with the arrangements for the strategic alliance in accordance with Sections 101 and/or 113 of the Local Government Act 1972 or Section 9E of the Local Government Act 2000.
4. The indemnity shall not apply in relation to any action by or failure to act by the Member or officer which:-
 - (i) constitutes a criminal offence or
 - (ii) is the result of fraud or other deliberate wrongdoing or recklessness on the part of the Member or employee.
5. The indemnity may be available for the purposes of the defence of any criminal proceedings brought against the Member or employee and any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence. An indemnity in these circumstances may only be given with the approval of the Council’s Monitoring Officer and in accordance with an appropriate agreement about the terms and duration of the indemnity, requirement for its recovery and subject to the terms about reimbursement where there is a finding that the Member or officer is convicted of a criminal offence or there is a failure by the Member to comply with the Code of Conduct, in accordance with Article 8 of the 2004 Order.
6. No indemnity shall be provided in relation to criminal acts, intentional wrongdoing, fraud, recklessness or in relation to bringing (but not the defence) of defamation proceedings.