Executive Summary

1.1 The purpose of this report is to agree a change the Employment Procedure Rules set out in Part 4 of the Constitution to reflect new arrangements for the disciplining and dismissing of senior officers i.e. the Head of Paid Service, the Chief Finance Officer (s151 officer) and the Monitoring Officer.

1.2 The current requirement imposed on the Council is to appoint a “designated independent person” before it could dismiss or discipline its Head of Paid Service, Chief Finance Officer (s151 officer), or Monitoring Officer. This has been replaced with a new requirement to appoint an independent Panel as and when required for the purposes of advising the Council on matters relating to the dismissal of one or more of the relevant officers. The Panel must have at least two Independent Persons who have been appointed for the purposes of the members’ conduct regime under section 28(7) of the Localism Act 2015.

Recommendation

That Full Council approves:

2.1 that the Officer Employment Procedure Rules contained within the Council’s Constitution be amended as set out in Appendix 1;
2.2 That the Head of HR and Organisational Development be given delegated authority to make any further revisions to the Officer Employment Procedure Rules and other changes as may be necessary to fully implement the new arrangements; and

2.3 That the role of Independent Persons appointed by the Council under s 28(7) Localism Act 2011 be amended to include reference to their new responsibilities on any panel made to consider the disciplining and/or dismissing of senior officers and that the current allowance paid shall incorporate such duties.

GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>The Local Authorities (Standing Orders) (England) (Amendment)</td>
<td>Regulations</td>
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<td>Regulations 2015</td>
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<td>Designated Independent Person</td>
<td>DIP</td>
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MAIN CONSIDERATIONS

3 Proposal

3.1 Every local authority is required to modify its Standing Orders to make changes to the procedure for disciplining and dismissing senior officers.

3.2 New regulations have come into effect to simplify the disciplinary procedures for the removal of a senior officer. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015(SI 2015/881) require local authorities to amend their standing orders to incorporate the new arrangement for taking disciplinary action against the most senior council staff. The Regulation removes the requirement that a Designated Independent Person be appointed to investigate and make a binding recommendation on disciplinary action against these senior staff.

3.3 The Government’s rationale for these changes was that the DIP process was bureaucratic and time consuming, and it often led to authorities making inflated severance payments to senior officers in order to avoid taking the DIP route.

3.4 The Government accepted following consultation on the draft regulations that there was a continuing need for the relevant officers to have additional statutory protection as they discharge statutory responsibilities to their councils in a political environment.

3.5 The new Regulations provide that the final decision to dismiss any statutory officer must be taken by full Council. In addition that before taking that decision, Council must appoint a Panel (meeting as and when required) being a committee appointed by the Council under section 102(4) of the Local Government Act 1972, for the purposes of advising the Council. A
Panel will be subject to all the legal requirements of a committee including the proportionality rules.

3.6 The Council must invite at least two Independent Persons being persons appointed under section 28(7) of the Localism Act 2011 to be members of the Panel and, the Council must take into account any recommendations of that Panel before taking a final decision to dismiss. Where there are fewer than two such persons, the Panel may consist of such Independent Persons as have been appointed by another authority or authorities as the council considers appropriate.

3.7 The Council must appoint to the Panel such relevant Independent Persons who have accepted an invitation. Invitations should therefore be sent in accordance with the following priority order:

- an Independent Person who has been appointed by the council and who is a local government elector within the council’s area;
- any other Independent Person who has been appointed by the council;
- an Independent Person who has been appointed by another council or councils.

3.8 The Council is not required to appoint more than two relevant Independent Persons to the Panel but may do so. Currently the Council has three Independent Persons.

3.9 To ensure that the new arrangements will not involve high costs, the Regulations limit the level of remuneration allowances or fees paid by the Council to an Independent Person appointed to a Panel. It must not exceed the level of remuneration, allowance or fees payable which they would normally receive as an Independent Person in respect of that person’s role in the member conduct regime under the Localism Act 2011.

3.10 Practical implications of putting into place the new arrangements may arise and therefore it is proposed that delegated authority be given to the Head of HR and Organisational Development to make any further amendments to the Officer Employment Procedure Rules as may be required to implement fully the new arrangements, as may be necessary.

4 Corporate Implications

4.1 Financial Implications

There are no direct financial implications arising from this report.

4.2 Risk Issues

Changes are needed to the scheme of delegation and other sections of the Constitution to implement the changes as detailed above.

4.3 HR Issues
The Council must consider what consequential changes need to be agreed in relation to any relevant contracts of employment.

4.4 Equalities
None.

4.5 Legal Implications
The legal implications are set out in the body of this report.

4.6 Any Other Implications
None.

5 Conclusion
5.1 This report seeks approval for the amendment of the Council’s Constitution to update the various sections as detailed above.
OFFICER EMPLOYMENT PROCEDURE RULES

1. RECRUITMENT AND APPOINTMENT

1.1 Declarations

a) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the relation of an existing councillor or any officer of the council who may be in a position to influence the appointment; or of the partner of such persons.

b) No candidate so related to a councillor or an officer will be appointed without independent authority of an appropriate chief officer.

1.2 Seeking support for appointment

a) The Council will disqualify any applicant who does not disclose a relationship specified in 1.1 (a) or who directly or indirectly seeks to gain an advantage and/or support from any person who may influence appointment to posts within the council. The content of this paragraph will be included in any recruitment information.

b) No councillor will canvas support for any person who is seeking appointment to a post with the council.

c) Nothing in paragraphs (a) and (b) above will preclude a councillor from giving a written reference for a candidate for submission with an application for appointment.

The Council will publish and follow an Equality and Diversity in Employment Policy in relation to the recruitment of all staff.

2. RECRUITMENT OF HEAD OF PAID SERVICE, DIRECTORS AND HEADS OF SERVICE

2.1 Where the Council proposes to appoint to the post of Head of Paid Service, Executive Director or Head of Service and it is not proposed that the appointment be made exclusively from among their existing staff, the council will:

(a) draw up a statement specifying:

   i) the duties of the officer concerned; and
   ii) any qualifications or qualities to be sought in the person to be appointed;
(b) make arrangements 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; and

(c) make arrangements for a copy of the statement mentioned in paragraph 1.1 a) to be sent to any prospective candidates together with any recruitment information including details within paragraph 1.2 a).

3. **APPOINTMENT OF HEAD OF PAID SERVICE AND EXECUTIVE DIRECTORS**

a) The Council will approve the appointment of the Head of Paid Service and Executive Directors following the recommendation of such an appointment by a Sub-Committee of Human Resources Committee which will be established for this purpose and will include between four and six councillors. The sub-committee will be proportionate and must also include at least one member of the Cabinet.

b) The Council may only make or approve the appointment of the Head of Paid Service or Executive Directors where no well-founded objection has been made by any member of the Cabinet.

4. **APPOINTMENT OF HEADS OF SERVICE**

The appointment of Heads of Service is the responsibility of the Head of Paid Service or his/her nominee. However, councillors will be given the opportunity to participate in the selection process.

5. **OTHER APPOINTMENTS**

a) **All other officers.** Appointment of all other officers (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by councillors.

b) **Assistants to political groups.** Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group and the law. The allocation of a post to a political group which does not qualify for one is prohibited and the allocation of more than one post to any one political group is prohibited.

6. **DISCIPLINARY ACTION**

a) **Suspension**

The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on normal pay and last no longer than two months.

b) Generally, Councillors will not be involved in the disciplinary action against any officer other than the Head of Paid Service, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the council’s disciplinary, capability and related procedures, as adopted from time to time, which may in some cases allow a right of appeal to councillors in respect of disciplinary action.
7. DISMISSAL

a) Councillors will not be involved in the dismissal of any officer, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the council’s disciplinary, capability and related procedures, as adopted from time to time, which may in some cases allow a right of appeal to councillors in respect of disciplinary action.

b) The Head of Paid Service, Monitoring Officer and/or Chief Financial Officer

(i) The Chief Executive/Head of Paid Service, Monitoring Officer and Chief Financial Officer (a ‘relevant officer’) may not be dismissed by the Council unless the procedure set out in Schedule 3 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 has been complied with.

(ii) The Council must invite any Independent Person appointed under the provisions of the Localism Act 2011 section 28(7) who has been appointed by the Council (or, where there are fewer than two such persons, such Independent Persons as have been appointed by another authority or authorities as the Council considers appropriate), to be considered for appointment to an independent Panel with a view to appointing at least two such persons to the Panel.

(iii) The Council must appoint to the Panel such relevant Independent Persons who have accepted an invitation issued in accordance with paragraph (ii) 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 within the authority’s area;

(b) any other Independent Person who has been appointed by the council; and

(c) an Independent Person who has been appointed by another council or councils.

(iv) The Council is not required to appoint more than two relevant Independent Persons but may do so.

(v) The Council must appoint any Panel at least 20 working days before the meeting of the Council to consider whether or not to approve a proposal to dismiss a relevant officer.
(vi) Before the taking of a vote at the meeting of the Council to consider whether or not to approve a proposal to dismiss a relevant officer the authority must take into account in particular:

(a) Any advice, views or recommendations of the Panel

(b) The conclusions of any investigation into the proposed dismissal; and

(c) Any representations from the relevant officer.