

Ward: All

Elected Member Involvement in the Appointment and Discipline of the Councils' Senior Officers

Report by the Monitoring Officer

1.0 Summary

- 1.1 The Monitoring Officer has undertaken a review of the Councils' existing arrangements for the recruitment, appointment, discipline and dismissal of its Senior Officers and, with a view to ensuring an efficient, streamlined, independent and fair process, has made proposals for change.
- 1.2 If the proposals are adopted by the Councils, they will be subject to consultation with Unison, and consequential changes will need to be made to the Officer Employment Procedure Rules and the Terms of Reference of Staffing Committees within the Councils' Constitutions. Further, it is likely that the Committee structure will change, with the abolition of the Joint Senior Staff (Appeals) Committee. Further, consequential changes will need to be made, by Human Resources Officers, to the Councils' Recruitment & Selection and Disciplinary Policies.

2.0 Background

- 2.1 The Councils have discretion to decide upon their own procedures relating to the appointment and dismissal of some Senior Officer posts, whereas arrangements relating to other posts are set out in statute.
- 2.2 The Councils have set out the procedures relating to the appointment and dismissal of its Senior Officers in the Officer Employment Procedure Rules, which form part of the Constitution. The Rules were last updated in July 2015 when changes were imposed by legislation, primarily relating to the posts of s151 Officer and Monitoring Officer.
- 2.3 The current procedures provide for Officers to deal with the recruitment, appointment, discipline and dismissal, of some Senior Officers, whilst such matters relating to other Senior Officers are within the remit of the Councils' three Staffing Committees:
 - the Joint Staff Committee;
 - the Joint Senior Staff Committee; and
 - the Joint Senior Staff (Appeals) Committee.

2.4 There is a lack of consistency in the current arrangements.

3.0 Legislative Constraints

3.1 Statutory Officers

The posts of Head of Paid Service, s151 Officer (Chief Finance Officer) and Monitoring Officer (Solicitor to the Council) are defined in the *Local Government and Housing Act 1989* as being the posts of the Councils' "Statutory Officers".

Legislation, in particular the *Local Authorities (Standing Orders)(England) Regulations 2001 and 2015*, set out the mandatory requirements relating to the appointment and dismissal of the Councils' Statutory Officers which requires such decisions to be the responsibility of the full Council. There is therefore no discretion in terms of procedures and arrangements relating to the Statutory Officers.

The Councils' current arrangements in respect of Statutory Officers comply with legislative requirements and there are no proposals for change.

3.2 Chief Officers and Deputy Chief Officers

Certain postholders within the Councils' Senior Officer structure are defined as "Chief Officers" and "Deputy Chief Officers". These definitions are set out in statute in the *Local Authorities (Standing Orders)(England) Regulations 2001 and 2015*, and the Councils have no discretion in their interpretation.

3.2.1 Chief Officers are defined as those postholders who are direct reports of the Councils' Chief Executive, (other than those holding purely administrative roles). For Adur and Worthing Councils this would include the following posts:

- Director of Digital & Resources;
- Director of Communities;
- Director of Customer Services;
- Director of Economy;
- Head of Communications; and
- Head of Policy.

3.2.2 Deputy Chief Officers are defined as those who are direct reports of those directly reporting to the Councils' Chief Executive, so direct reports of Chief Officers (other than those holding purely administrative roles). Based on the current staff structure for Adur and Worthing Councils' the Deputy Chief Officers would be:

- Head of Culture;
- Head of Place and Investment;
- Head of Growth;
- Head of Housing;
- Head of Wellbeing;
- Head of Environment;
- Head of Revenues and Benefits;
- Head of Waste and Cleansing;
- Head of Customer Contact and Engagement;

- Head of Building Control and Land Charges;
- Head of Digital and Design;
- Head of Human Resources and Organisational Development;
- Head of Business and Technical Services;
- The Scrutiny Officer (by virtue of being a direct report of the Director of Digital and Resources);
- All direct reports of the Head of Communications.

Due to the Councils' current structure this results in a disparity and lack of consistency in the grade and seniority of staff being defined as Chief Officers and Deputy Chief Officers. For example, a grade 4 direct report of the Head of Communications would be defined by legislation as a Deputy Chief Officer, as would a grade 13 Head of Service.

Please see appendix 1 to this report.

4.0 Current Arrangements

	Appointment & Dismissal	Appeal against Dismissal
Chief Officers - Directors	JSSC *	JSS(A)C *
Chief Officers - non Directors	HofPS *	JSSC *
Deputy Chief Officers	HofPS *	JSSC *

JSSC = Joint Senior Staff Committee

JSS(A)C = Joint Senior Staff (Appeals) Committee

HofPS = Head of Paid Service (or an Officer nominated by Him)

* = subject to Statutory consultation with the Executives.

4.1 Statutory Officers: Head of Paid Service, s151 Officer and Monitoring Officer

The Councils' current procedures provide that the appointment of the Head of Paid Service is dealt with by the Joint Senior Staff Committee (JSSC), who must make a recommendation as to appointment, to Full Council, who are ultimately responsible for making such an appointment.

Similarly, disciplinary action in respect of the Head of Paid Service must be considered by JSSC, who must receive a report from a panel of the Councils' Independent Persons if they are considering dismissal, before making a recommendation to Full Council, who are responsible for the ultimate decision.

Since legislative changes were introduced in 2015, recruitment and dismissal of the s151 Officer and Monitoring Officer, the Councils' two other statutory post holders, must now also be considered by JSSC, who must make a recommendation to Full Council, having considered a report from the panel of Independent Persons in the case of dismissal, for a decision.

4.2 Chief Officers

4.2.1 Chief Officers - Directors

Current procedures provide that the appointment of Directors is dealt with by JSSC. There is no requirement for approval of the appointment by Full Council. JSSC are however statutorily bound to undertake consultation, via the Monitoring Officer, with both Executives.

Similarly, disciplinary action, including dismissal, of Directors is currently dealt with by JSSC, who have the power to dismiss Directors without the involvement of a panel of Independent Persons, or Full Council approval, provided they comply with statutory consultation with the Executives.

Directors currently have a route of appeal against dismissal by JSSC, to the Joint Senior Staff (Appeals) Committee (JSS(A)C).

4.2.2 Chief Officers - Non-Directors

Current procedures provide that the Head of Paid Service, or an Officer nominated by him, is responsible for the appointment of Chief Officers who are non-Directors. Such appointment is subject to statutory consultation with both Councils' Executives.

The discipline, and dismissal, of Chief Officers who are not Directors, is also currently dealt with by the Head of Paid Service, or an Officer nominated by him, again subject to consultation with the Executives.

There is a route of appeal against dismissal from the dismissing Officer to JSSC.

4.3 Deputy Chief Officers

Current procedures provide that the appointment of a Deputy Chief Officer is dealt with by the Head of Paid Service, or an Officer nominated by him, subject to the requirements as to statutory consultation with both Councils' Executives.

Also, the dismissal of Deputy Chief Officers is dealt with by the Head of Paid Service, or an Officer nominated by him, subject to consultation with the Executives.

Deputy Chief Officers have a route of appeal against dismissal from the dismissing Officer to JSSC.

5.0 Proposals and Options

5.1 Statutory Officers

There are no proposed amendments to the current procedures relating to the Councils' Statutory Officers.

5.2 Chief Officers and Deputy Chief Officers

The Council does have discretion as to its own internal arrangements for the appointment and dismissal of Chief Officers and Deputy Chief Officers, subject to the mandatory consultation with the Executives.

5.2.1 Option 1: The Status Quo

	Appointment & Dismissal	Appeal against Dismissal
Chief Officers - Directors	JSSC *	JSS(A)C *
Chief Officers - non Directors	HofPS *	JSSC *
Deputy Chief Officers	HofPS *	JSSC *

There is a lack of consistency in the current arrangements in that Chief Officers are treated differently, depending on whether they are Directors or non-Directors; this may or may not be considered desirable.

Responsibility of Members for the appointment and dismissal of Director Chief Officers, and the determination of appeals of all Chief Officers and Deputy Chief Officers, could be considered onerous in terms of Member time. This is particularly the case should a dismissal lead to an internal appeal, an appeal to the Employment Tribunal, and potentially an appeal to the Employment Appeals Tribunal, where Members of the Staffing Committees would be required to act as witnesses for the Councils.

It could further be argued that having such matters dealt with by the staffing committees leads to a lack of agility in decision-making by having to comply with statutory time frames for arranging meetings and issuing agendas and reports; if such decisions were in the Officer arena they could potentially be made more quickly. Possibly having one decision-maker rather than a panel of 6 would be more efficient, but it could be said that a panel provides less risk of bias and greater impartiality.

There is a further difficulty with the current arrangements in that if a Director is dismissed by the JSSC and appeals against the decision to the JSS(A)C, every Member of the appeal committee would be conflicted as the current composition of the two committees is the same: the Leader, the Deputy Leader and the Leader of the opposition (or next largest Group). If the status quo is maintained, some thought needs to be given to the appointments to these two committees.

5.2.2 Option 2: All matters dealt with by the Head of Paid Service

	Appointment & Dismissal	Appeal against Dismissal
Chief Officers - Directors	HofPS *	HofPS *
Chief Officers - non Directors	HofPS *	HofPS *
Deputy Chief Officers	HofPS *	HofPS *

An alternative to the current arrangements would be for all matters relating to the appointment and dismissal of all Chief Officers and Deputy Chief Officers to be dealt with by the Head of Paid Service, or an Officer nominated by him.

Members of the Councils would still be involved in such decision-making as it is a statutory requirement that the appointing or dismissing Officer would need to consult, via the Monitoring Officer, with Members of both Councils' Executives before confirming such appointment or dismissal. In the case of a Chief Officer or Deputy Chief Officer appointment, it is proposed that the applications and/or CV's, together with all supporting documentation, of all applicants reaching the final round of the selection process, be provided to the Executive to ensure that meaningful consultation can be undertaken.

If Members are minded to agree with the proposal for appointment and dismissal of all Chief Officers and Deputy Chief Officers to be the responsibility of the Head of Paid Service, or an Officer nominated by him, then it is further proposed that there be a route of appeal against a decision to dismiss to another Officer, being the Head of Paid Service, or an Officer nominated by him. Clearly any Officer hearing an appeal would need to be independent of the dismissing Officer; the appeal Officer would either be the Head of Paid Service or an Officer nominated by him, of whom he is satisfied as to competency and independence. In some circumstances this could lead to the Head of Paid Service nominating an external expert to hear an appeal, such as an Officer from Solace or a Chief Executive from another Authority, to avoid conflicting internal Officers and to ensure independence and fairness in the process. The rules of natural justice would continue to apply to any process and the Officer would be entitled to a fair and impartial hearing, with the right to be heard and/or represented.

5.2.3 Option 3: All appointments and dismissals dealt with by the Head of Paid Service with a route of appeal to the Joint Senior Staff Committee

	Appointment & Dismissal	Appeal against Dismissal
Chief Officers - Directors	HofPS *	JSSC *
Chief Officers - non Directors	HofPS *	JSSC *
Deputy Chief Officers	HofPS *	JSSC *

An alternative option would be for the Head of Paid Service, or an Officer nominated by him, to be responsible for the appointment and dismissal of all Chief Officers and Deputy Chief Officers, with a route of appeal against dismissal for all such Officers, to the Joint Senior Staff Committee.

Members would still be involved in the appointment process of all such Officers due to the consultation requirements with the Executive. Members would retain the responsibility of determining any appeals against dismissal.

5.2.4 Option 4: All appointments and dismissals dealt with by the Joint Senior Staff Committee with a route of appeal to the Joint Senior Staff (Appeals) Committee

	Appointment & Dismissal	Appeal against Dismissal
Chief Officers - Directors	JSSC *	JSS(A)C *
Chief Officers - non Directors	JSSC *	JSS(A)C *
Deputy Chief Officers	JSSC *	JSS(A)C *

If this option is preferred, some changes will need to be made to the appointment of Members to the two staffing committees to ensure lack of conflict.

This option would result in a considerable increase in workload of Members sitting on the Joint Senior Staff Committee and likely increased costs of Democratic Services and Legal Officers supporting that Committee.

5.2.5 Option 5: All appointments and dismissals to be dealt with by the Head of Paid Service with a route of appeal for Chief Officers to the Joint Senior Staff Committee.

	Appointment & Dismissal	Appeal against Dismissal
Chief Officers - Directors	HofPS *	JSSC *
Chief Officers - non Directors	HofPS *	JSSC *
Deputy Chief Officers	HofPS *	HofPS *

An alternative option would be for the Head of Paid Service or an Officer nominated by him to deal with appointments and dismissals of all Chief Officers and Deputy Chief Officers, with Chief Officers having a route of appeal against dismissal to the Joint Senior Staff Committee and Deputy Chief Officers having a route of appeal to the Head of Paid Service or an Officer (independent of the dismissing Officer) nominated by him.

5.2.6 Option 6: Appointments and dismissals of Chief Officers to be dealt with by the Joint Senior Staff Committee with a route of appeal to the Joint Senior Staff (Appeals) Committee, and appointments and dismissals of Deputy Chief Officers to be dealt with by the Head of Paid Service with a route of appeal to the Joint Senior Staff Committee.

	Appointment & Dismissal	Appeal against Dismissal
Chief Officers - Directors	JSSC *	JSS(A)C *
Chief Officers - non Directors	JSSC *	JSS(A)C *
Deputy Chief Officers	HofPS *	JSSC *

6.0 The Councils' Staffing Committees

6.1 The Joint Staff Committee

This is a joint Committee governed by the Joint Committee Agreement and established under *s101 Local Government Act 1972*. It comprises 6 Elected Members; 3 from Adur and 3 from Worthing. Its terms of reference include:

- the power to determine the terms and conditions on which all staff (other than the Statutory Officers) hold office, including employment procedures.
- the making of agreements with other Local Authorities for the placing of staff for the disposal of those other Authorities, to the extent that it relates to the discharge of non Executive functions.
- functions relating to Local Government pensions.

6.2 The Joint Senior Staff Committee

This is a joint Committee governed by the Joint Committee Agreement and established under *s101 Local Government Act 1972*. It comprises 6 Elected Members (3 from Adur and 3 from Worthing) and must include at least one Executive and one non Executive Member from each Council. Its current terms of reference include:

- the power to appoint and dismiss Directors.
- the appointment, discipline and dismissal of the Statutory Officers and the making of recommendations to full Council for determination.
- the determination of appeals against dismissal of non-Director Chief Officers and Deputy Chief Officers.

6.3 The Joint Senior Staff (Appeals) Committee

This is a joint Committee governed by the Joint Committee Agreement and established under *s101 Local Government Act 1972*. It comprises 6 Elected Members (3 from Adur and 3 from Worthing) and must include at least one Executive and one non Executive Member from each Council. Its current terms of reference include:

- the determination of appeals against dismissal by Director Chief Officers.

It should be noted that depending on which option at paragraph 5 is adopted by the Councils there will be consequential changes required to the terms of reference of the staffing Committees, and the Monitoring Officers seeks authority in this report to implement such changes to the Constitution.

In particular it should be noted that if option 2, 3 or 5 from paragraph 5 is adopted by the Councils it would result in the abolition of the Joint Senior Staff (Appeals) Committee as it would no longer have any function or purpose.

7.0 Legal

7.1 The Local Authorities (Standing Orders) (England) Regulations 2001 set out the statutory procedures relating to the appointment and dismissal of Chief Officers and Deputy Chief Officers of a Local Authority.

7.2 The Local Authorities (Standing Orders) (England) Regulations 2015 set out the statutory procedures relating to the appointment and dismissal of a Local Authority's Statutory Officers.

8.0 Financial implications

8.1 There are no financial implications arising from this report other than a potential saving arising from less Staffing Committee meetings; reduced staff resource for such committees and reduced printing and postage costs.

8.0 Recommendation

The Joint Governance Committee is recommended to:

8.1 Determine which option in paragraph 5 of this report is their preferred option;

8.2 To recommend to both Councils the adoption of their preferred option, subject to consultation with Unison; and

8.3 To recommend to both Councils that they delegate the authority to the Monitoring Officer to implement the adopted option and in particular to make consequential changes to the Officer Employment Procedure Rules and the terms of reference of the Staffing Committees in each Council's Constitution.

Local Government Act 1972

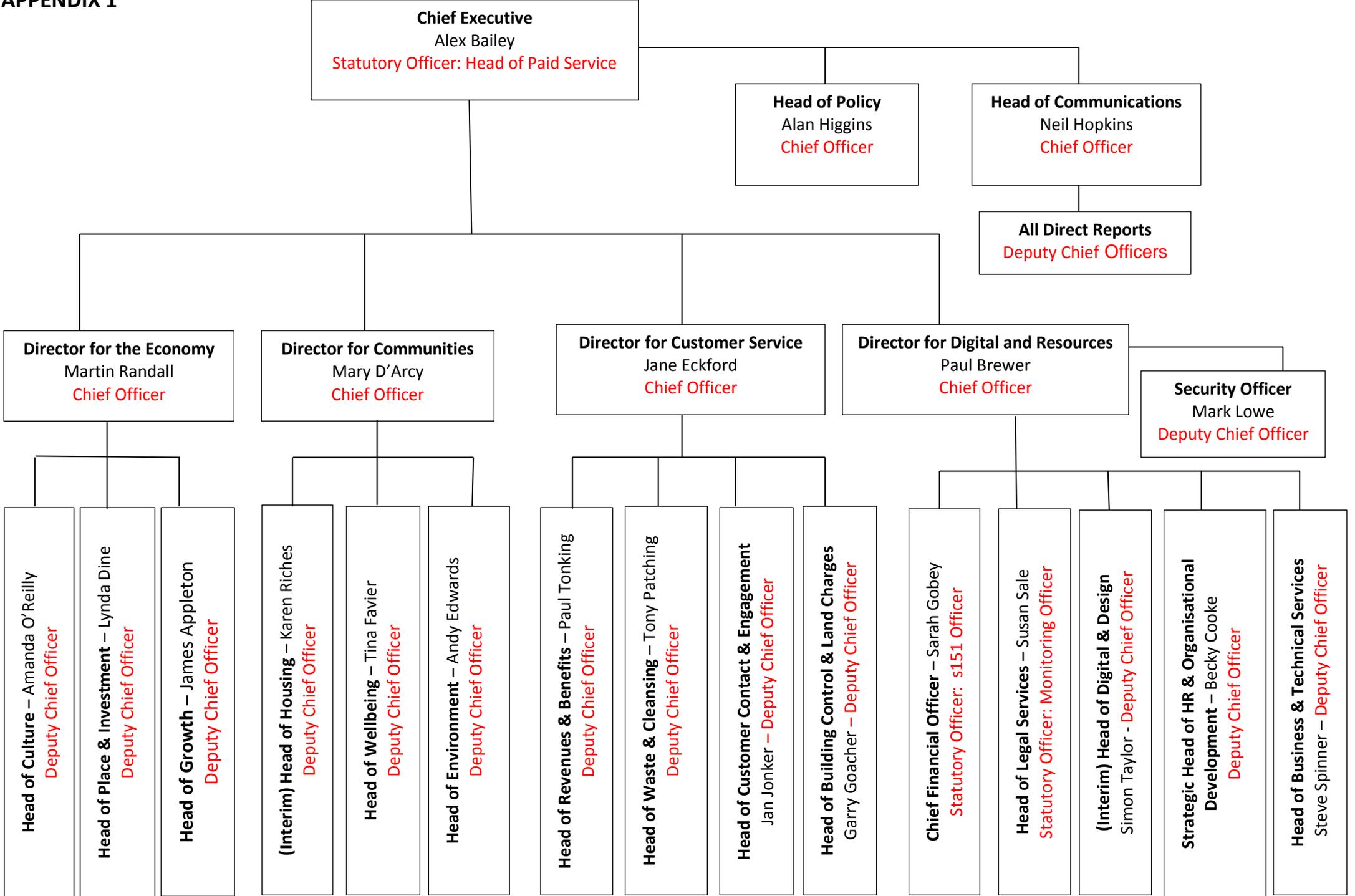
Background Papers:

Officer Employment Procedure Rules
Worthing Borough Council Constitution

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APPENDIX 1



Chief Executive
Alex Bailey
Statutory Officer: Head of Paid Service

Head of Policy
Alan Higgins
Chief Officer

Head of Communications
Neil Hopkins
Chief Officer

All Direct Reports
Deputy Chief Officers

Director for the Economy
Martin Randall
Chief Officer

Director for Communities
Mary D'Arcy
Chief Officer

Director for Customer Service
Jane Eckford
Chief Officer

Director for Digital and Resources
Paul Brewer
Chief Officer

Security Officer
Mark Lowe
Deputy Chief Officer

Head of Culture – Amanda O'Reilly
Deputy Chief Officer

Head of Place & Investment – Lynda Dine
Deputy Chief Officer

Head of Growth – James Appleton
Deputy Chief Officer

(Interim) Head of Housing – Karen Riches
Deputy Chief Officer

Head of Wellbeing – Tina Favier
Deputy Chief Officer

Head of Environment – Andy Edwards
Deputy Chief Officer

Head of Revenues & Benefits – Paul Tonking
Deputy Chief Officer

Head of Waste & Cleansing – Tony Patching
Deputy Chief Officer

Head of Customer Contact & Engagement
Jan Jonker – Deputy Chief Officer

Head of Building Control & Land Charges
Garry Goacher – Deputy Chief Officer

Chief Financial Officer – Sarah Gobey
Statutory Officer: s151 Officer

Head of Legal Services – Susan Sale
Statutory Officer: Monitoring Officer

(Interim) Head of Digital & Design
Simon Taylor - Deputy Chief Officer

Strategic Head of HR & Organisational Development – Becky Cooke
Deputy Chief Officer

Head of Business & Technical Services
Steve Spinner – Deputy Chief Officer

Schedule of Other Matters

1.0 Council Priority

- 1.1 Matter considered and the issue of Joint Officer Employment Procedure Rules and Joint Staffing Committees relates to the Council priorities relating to partnership working.

2.0 Specific Action Plans

- 2.1 Matter considered and no issues identified

3.0 Sustainability Issues

- 3.1 Matter considered and no issues identified

4.0 Equality Issues

- 4.1 Matter considered and no issues identified

5.0 Community Safety Issues (Section 17)

- 5.1 Matter considered and no issues identified

6.0 Human Rights Issues

- 6.1 Every individual has the right to a fair hearing and it is considered that the proposals comply with the principles of natural justice and the Human Rights Act.

7.0 Reputation

- 7.1 Matters considered and no issues identified

8.0 Consultations

- 8.1 The proposals are subject to consultation with Unison.

9.0 Risk Assessment

- 9.1 Matter considered and no issues identified

10.0 Health & Safety Issues

- 10.1 Matter considered and no issues identified

11.0 Procurement Strategy

11.1 Matter considered and no issues identified

12.0 Partnership Working

12.1 The Joint Staffing Committees operate under the Joint Committee Agreement and support the principles of partnership working.