

C7. EMPLOYMENT PROCEDURE RULES – EMPLOYMENT COMMITTEE

General Notes

- i. These Rules shall be regarded as Standing Orders of the Council for the purposes of The Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') and Local Authorities (Standing Orders) (England)(Amendment) Regulations 2015 ('the 2015 Regulations').
- ii. Full Council has delegated to the Employment Committee (“the Committee”) the responsibilities set out in these employment procedure rules.
- iii. On 19 September 2023, the Secretary of State for the Department of Levelling Up, Housing and Communities (DLUHC) announced the government's proposals by way of statutory Directions to appoint Commissioners who are responsible for governance, scrutiny of strategic decision making, finance, and senior appointments
- iv. The Directions make clear that powers to appoint and dismiss officers in the top three tiers have been granted to Commissioners. Commissioners have chosen to operate these powers in a flexible way with most processes being in accordance with these Employment Procedure Rules where Commissioners exercise an oversight role but the right is reserved to fully operate the power on a case by case or class of post basis
- v. The Employment Committee comprises 7 Councillors chaired by the Leader of the Council and including an appropriate cabinet member or lead member depending upon the specific issue being dealt with. The Committee shall discharge the following functions.
- vi. For the purposes of these rules:
 - “Officer” means an employee of Birmingham City Council, regardless of whether they are employed on a permanent or fixed term (“interim”) basis.
 - “Governance Statutory Chief Officer” means the Chief Executive Officer (Head of Paid Service designated under section 4(1) of the Local Government and Housing Act 1989), the Chief Financial Officer (designated under section 151 of the Local Government and Housing Act 1989) and the City Solicitor and Monitoring Officer (designated under section 5(1) of the Local Government and Housing Act 1989).
 - “Statutory Chief Officer” means the Governance Statutory Chief Officers as well as the Scrutiny Officer (designated under section 9FB of the Local Government Act 2000), the Strategic Director Children and Families, Strategic Director Adult Social Care, and the Director of Public Health.
 - “Non-Statutory Chief Officer” means any other Officer who reports directly to the Chief Executive Officer.

- “Deputy Chief Officer” means any Officer who reports directly to a Governance Statutory Chief Officer, Statutory Chief Officer or Non-Statutory Chief Officer. This does not include Officers whose role is to provide administrative and/or secretarial support.
- vii. The Secretary of State for Levelling Up, Housing and Communities has appointed Commissioners in relation to Birmingham City Council for the purposes of the Directions made on 5 October 2023 under section 15(5) and (6) of the Local Government Act 1999 (“the Commissioners”). The role of Commissioners in employment matters is included in these rules.

A. Appointment and Dismissal

1. Subject to paragraph 4 and paragraph 5 below, the Committee shall be responsible for the appointment and dismissal (including dismissal by reason of redundancy) of the Governance, Statutory and Non-Statutory Chief Officers.
2. In the case of appointments, subject to paragraphs 4 and 5 below, the Committee may, with the approval of the Chief Executive Officer or their nominated deputy, agree to make a permanent appointment of an existing member of staff by way of redeployment, or agree to a temporary appointment for a fixed term of not normally more than 12 months.
3. Where an appointment is not made in accordance with paragraph 2 Officers will prepare a job description and person specification, determine the arrangements for recruitment to the post, shortlist, and conduct selection processes to determine those candidates who would be suitable for appointment. Those candidates will be presented to the Committee who will nominate up to five members (one of whom must be a member of the Cabinet) to conduct final interviews and decide, if appropriate, which candidate will be offered the role.
4. No offer of appointment shall be provided (including by way of an appointment pursuant to paragraph 2) or notice of dismissal issued until the proposed action (including the name and any other particulars the Committee consider relevant) has been notified to every member of the Cabinet and that either:
 - (a) Within the period specified in the notification no objection has been made by the Leader on behalf of the Cabinet to the proposed action; or
 - (b) The Committee is satisfied that any objection made is not material or is not well founded; or
 - (c) The Leader has, within the period specified in the notification, notified the Committee that neither they nor any member of the Cabinet has any objections.
5. No offer of appointment may be issued to any Governance Statutory Chief Officer post without the approval of the Full Council.

6. No notice of dismissal may be issued to any Governance Statutory Chief Officer without the approval of the Full Council. Before approving a proposal to dismiss the Full Council must consider:
 - Any views submitted under paragraph 5,
 - Any advice, views or recommendations of the Employment Committee,
 - The conclusions of any investigation, and
 - Any representations from the relevant Officer.
7. Appointments to the role of Director of Public Health must be made jointly with the Secretary of State for Health. No notice of dismissal may be issued to the Director of Public Health until the Secretary of State for Health has been consulted, as required by s.73A of the National Health Service Act 2006.

Conditions of Service

8. The Committee shall exercise all necessary functions required by the JNC Conditions of Service including the exercise of any discretions or determining any issue in relation to those Conditions of Service in so far as they relate to Governance, Statutory and Non-Statutory Chief Officers.
9. The appraisal of the Chief Financial Officer, City Solicitor and Monitoring Officer, Statutory and Non-Statutory Chief Officers shall be conducted by the Chief Executive Officer. The appraisal of the Chief Executive Officer shall be conducted by the Leader of the Council with input from a senior elected member from each political group.

Capability and Disciplinary Action

10. The Committee may take any capability or disciplinary action short of dismissal against the Governance Statutory Chief Officers short of dismissal. The Chief Executive Officer may take any capability or disciplinary action short of dismissal against any other Statutory and/or Non-Statutory Chief Officer. There is no requirement to consult the Cabinet or seek approval of the Full Council for action taken pursuant to this paragraph.
11. The Committee may approve the suspension of a Governance Statutory Chief Officer, Statutory and/or Non-Statutory Chief Officer for an initial period of up to two months to enable an investigation to be undertaken to help determine what disciplinary action, if any, is appropriate. The Committee may extend the period of suspension if it considers that to be necessary. Any suspension shall be on full pay.
12. If an exceptional situation arises where allegations of misconduct are such that their remaining at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Council, then the power to suspend may be exercised by the Chair of the Committee, subject to a decision to suspend being ratified by the Committee within 7 days of the decision.

13. Any action taken pursuant to paragraph 11 will be dealt with by the Committee in accordance with the appropriate Birmingham City Council Capability or Disciplinary Procedure.

Appeals against disciplinary or capability action

14. Any appeal from a Governance Statutory Chief Officer against action short of dismissal and any appeal from a Statutory and/or Non-Statutory Chief Officer against dismissal will be considered by an Appeals Committee established by the Full Council comprising three members of the Council who have not had any prior involvement in the case including at least one member of the Cabinet ("the Appeals Committee"). The role of the Appeals Committee will be to review the case and the decision taken by the Employment Committee and either confirm the action taken or to award no sanction or a lesser sanction. The decision of the Appeals Committee will be final.
15. In the event the Full Council dismisses a Governance Statutory Chief Officer there is no further right of appeal.
16. Appeals against action short of dismissal from a Statutory or Non-Statutory Chief Officer will be considered by a panel of three members of the Employment Committee appointed by the Chair not previously involved.

Agreement of Special Severance payments

17. Special Severance payments, as defined at Annex A to these Rules, will be approved according to the following process:
 - payments of £100,000 and above must be approved by a vote of full council, as set out in the Localism Act 2011,
 - payments of £20,000 and above, but below £100,000, must be personally approved and signed off by the Chief Executive Officer, with a clear record of the Leader's approval and that of any others who have signed off the payment,
 - payments below £20,000 must be approved according to the local authority's scheme of delegation. It is expected that local authorities should publish their policy and process for approving these payments.

Other Officers

18. The functions of appointment, dismissal, suspension and taking capability and/or disciplinary action against any Officer other than a Governance Statutory Chief Officer, Statutory and Non-Statutory Chief Officer may be discharged by the Chief Executive Officer or any other Officer in accordance with the relevant Birmingham City Council policy and/or procedure as in force at that time.

19. No elected member may participate in any appointment, dismissal, suspension or in any action taken against any Officer at Deputy Chief Officer level or below.

The Role of Commissioners

The Directions make clear that powers to appoint and dismiss officers in the top three tiers have been granted to Commissioners. Commissioners have chosen to operate these powers in a flexible way with most processes being in accordance with these rules where Commissioners exercise an oversight role but the right is reserved to fully operate the power on a case by case or class of post basis

20. The Commissioners shall exercise all functions relating to the appointment and dismissal of persons to positions the holders of which are to be designated as Governance Statutory Chief Officers and the Scrutiny Officer, and the designation of those persons as Governance Statutory Chief Officers and the Scrutiny Officer, to include:
 - (a) The functions of designating a person as a Governance Statutory Chief Officer and Scrutiny Officer and removing a person from a statutory office, and
 - (b) The functions under section 112 of the Local Government Act 1972 of:
 - (i) Appointing and determining the terms and conditions of employment of an officer of the Authority, insofar as those functions are exercised for the purpose of appointing a person as an Officer of the Authority principally in order for that person to be designated as a Governance Statutory Chief Officer or Scrutiny Officer, and
 - (ii) Dismissing any person who has been designated as a Governance Statutory Chief Officer or Scrutiny Officer from his or her position as an officer of the Authority.
21. The Commissioners shall exercise all functions to determine the Officer structure for Governance Statutory Chief Officers, Statutory and Non-Statutory Chief Officers and Deputy Chief Officers, to determine the recruitment processes and then to recruit relevant staff to those positions.
22. The Commissioners shall exercise all functions pertaining to the development, oversight and operation of any performance management framework for Governance Statutory Chief Officers, Statutory and Non-Statutory Chief Officers and Deputy Chief Officers.

Substitution

23. A member may substitute another member to serve on an Appeals Committee, a selection panel constituted under paragraph 4 or appeals panel constituted under paragraph 16, or a so long as they have received the appropriate training.

B. Terms and Conditions of Employment

The Committee shall:

1. Determine the terms and conditions on which employees hold office as set out in the Birmingham City Council Contract of Employment (“the Birmingham Contract”).
2. Approve the Council's pay and grading structure,
3. Approve adoption of any council-wide pay increase for JNC level officers,
4. Approve the remuneration of the Chief Executive Officer,
5. Approval and oversight of any performance related pay system and awards related to the Chief Executive Officer,
6. Determine policy in relation to the release of pension benefits (LGPS and TPS) where employer discretion/consent is required,
7. Recommend to Full Council for approval an Annual Pay Policy Statement as required by section 38 of the Localism Act 2011 for each financial year having regard to any guidance issued or approved by the Secretary of State.

Annex A

Definition of Special Severance Payments

Special Severance Payments are payments made to employees, officeholders, workers, contractors, and others outside of statutory, contractual or other requirements when leaving employment. Which types of payments are Special Severance Payments will vary according to an employee’s particular circumstances, and therefore the examples below are illustrative only.

The following types of payments are likely to constitute Special Severance Payments:

- a) any payments reached under a settlement agreement between the employer and employee to discontinue legal proceedings without admission of fault,
- b) the value of any employee benefits or allowances which are allowed to continue beyond the employee’s agreed exit date,
- c) write-offs of any outstanding loans,

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- d) any honorarium payments,
- e) any hardship payments,
- f) any payments to employees for retraining related to their termination of employment.

The following types of payments may constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

- a) pay or compensation in lieu of notice where the amount of the payment is not greater than the salary due in the period of notice set out in the employee's contract,
- b) pension strain payments arising from employer discretions to enhance standard pension benefits (for example under Regulation 30(5) where the employer has waived the reduction under Regulation 30(8) or because of the award of additional pension under Regulation 31),

The following do not constitute Special Severance Payments:

- a) statutory redundancy payments,
- b) contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise,
- c) severance payments made in accordance with that local authority's policy adopted pursuant to Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006,
- d) a strain cost paid to the relevant LGPS administering authority under LGPS Regulation 68(2) which results from a LGPS member's retirement benefits becoming immediately payable without reduction under Regulation 30(7), or under Regulation 30(6) where the employer has waived the reduction under Regulation 30(8),
- e) payment for untaken annual leave,
- f) payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation,
- g) payments made as part of the ACAS Early Conciliation process,
- h) payments made to compensate for injury or death of the worker,
- i) payments made in consequence of the award of ill-health retirement benefits under Regulation 35 of the LGPS Regulations.

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