

Merton Council

Standards and General Purposes Committee

23 July 2020

Supplementary Agenda

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COMMITTEE: STANDARDS & GENERAL PURPOSES

Date:

Wards: All

Subject: Local Government and Social Ombudsman Report – Enforcement Agents

Lead officer: Caroline Holland, Director of Corporate Services

Lead member: Councillor Mark Allison

Contact officer: David Keppler Head of Revenues and Benefits

Recommendations:

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1. Standards & General Purposes Committee to consider the contents of this report regarding the Local Government and Social Care Ombudsman (LGSCO) decision and report.
 2. Standards & General Purposes Committee to advise if it requires an update report on the improvement action plan.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report advises Standards & General Purposes Committee of the recent LGSCO report and decision against the council regarding the enforcement service. It outlines the detail of the service, the complaint and the improvement action plan.

2 DETAILS

- 2.1. In 2005 the council implemented an in house bailiff team with the objectives of improving services to customers, being a cost neutral service, allowing more control over recovery practices, restricting escalating fees that were being passed onto residents and reducing costs on the use of private contractors.
- 2.2. The in house bailiff team initially started with the collection of council tax and business rates debts and then expanded to include the collection of parking warrants.
- 2.3. At the time the legislation governing bailiff activities was the Distress for Rent Act 1988.
- 2.4. In July 2013, a shared service was entered into with the London Borough of Sutton (LB Sutton) for the recovery of council tax, business rates and parking warrants. Merton remained the lead authority.
- 2.5. In April 2014 the Taking Control of Goods Act was introduced, with the intention of simplifying the fee structure and making clear the practices and charging of fees by bailiffs (from this act known as Enforcement Agents). The Act clarified arrangements for when and how enforcement could take place, vulnerability of customers, recourse or remedies to decisions and training.

- 2.6. The new legislation created three separate stages, 1. Compliance Stage (where debtors could resolve cases before an Enforcement Agent became involved) 2. Enforcement Stage (where an Enforcement Agent will become involved and look to collect the debt) 3. Sale and Disposal Stage (where the Enforcement Agent looks to remove goods for sale at public auction)
- 2.7. All Enforcement Agents already in employment were trained on the new legislation and also received a higher level of training than required within the legislation.
- 2.8. In addition, Enforcement Agents have to obtain a certificate from a County Court every two years and have to satisfy the judge that they are 'fit and proper' to be awarded the certificate. Members of the public can challenge an Enforcement Agents suitability to be certificated through the courts.
- 2.9. Over the past few years the team have grown due to increase in workload, specifically the increase in the Merton's parking warrants due to the implementation of the ANPR project.
- 2.10. There are currently thirteen Enforcement Agents supported by five admin officers and a manager.
- 2.11. The tables below show the debt and fees collected for the past four years for both Merton and Sutton (2016/17, 2017/18, 2018/19 and 2019/20).

Merton	Debt collected £m	Fees collected £m
Council Tax	£7.138	£2.015
Business Rates	£2.923	£0.294
Parking PCN's	£2.476	£2.446
Total	£12.537	£4.755

Sutton	Debt collected £m	Fees collected £m
Council Tax	£4.629	£1.338
Business Rates	£0.834	£0.075
Parking PCN's	£0.487	£0.626
Total	£5.950	£2.039

- 2.12. The tables below show the number of cases dealt with and the number of cases paid in full for the past four years for both Merton and Sutton. (2016/17, 2017/18, 2018/19 and 2019/20)

Merton	Cases dealt with	Cases paid in full	% paid in full
Council tax	20,155	10,529	50.2
Business rates	1,227	665	54.9

Parking	53,189	14,160	26.6
Total	74,471	25,354	34.1

Sutton	Cases dealt with	Cases paid in full	% paid in full
Council tax	10,891	5,522	50.7
Business rates	414	195	47.1
Parking	11,047	2,810	25.4
Total	22,352	8,527	38.1

- 2.13. Due to the nature of the work the service receives a number of complaints each year, some escalate beyond the initial stage of local resolution and some to the LGSCO. The table below shows the number of complaints over the past full four financial years.

Year	Stage 1	Stage 2	Ombudsman	Total
2016/17	20 + 9 split with another service	4 + 1 split with another service	2	36
2017/18	25 & 10 split	6 + 2 split	0	43
2018/19	33 + 37 split	17 + 2 split	8	97
2019/20	24 + 9 split	7 + 1 split	2	43

- 2.14. For the four year period 2016/17 to 2019/20 there were 219 complaints, in the same period the service dealt with 96,823 cases which equates to 0.23% of cases had a complaint. Each year the complaints are reviewed for trends and actions taken to try to address them. We have recently amended the information on the website in relation to fees charged when a Penalty Charge Notice (PCN) debt is reduced following a number of complaints.
- 2.15. In September 2018 a complaint from a LB Sutton resident regarding the handling of a number of debts for both Merton and LB Sutton was escalated to the LGSCO. This complaint had previously been through both stage one and two of Merton's complaints procedure. The council provided responses and copy documentation to the LGSCO.
- 2.16. The Ombudsman's initial draft findings identified a number of issues with the way the case was dealt with and notified the council that they were likely to report against Merton due to a "catalogue of failings".

- 2.17. The failings included, not issuing or serving the correct documentation, Enforcement Agents not being contactable or responding promptly to contact, not issuing documents in envelopes to protect privacy, failing to outline storage costs when a vehicle was removed, not considering the vehicle as a 'tool of the trade' and not signposting to where to challenge such a decision, not undertaking a valuation of the vehicle upon seizure, no 'time to pay' policy and the collection of fees for multiple debts.
- 2.18. The council acknowledges that there were errors in the way the case was dealt with but also disputed parts of the report including the notices issued, at the time of the recovery there was no way for the Enforcement Agent to 'prove' a notice had been issued. This has been resolved by issuing mobile hardware and the point regarding multiple fees is defended by the council and an industry expert.
- 2.19. After several communications between Merton and the LGSCO, both parties agreed on the report and findings. This report was due to be published prior to the covid19 crisis but delayed due to the suspension of all cases by the LGSCO from 23 March 2020 until 29 June 2020.
- 2.20. The LGSCO will now publish the report on 23 July 2020. As lead authority, Merton is responsible for publishing and make the report available to the public, issue a press release and present to Standards & General Purposes Committee. The actual LGSCO report cannot be published until the day of the Committee meeting because it is embargoed. The proposed report is attached in full as Appendix 1.
- 2.21. An initial report and improvement plan was taken to CMT on 22 October 2019
- 2.22. The service improvement plan has been implemented to incorporate areas identified within the findings and conclusions – Appendix 2. The following has been implemented:
- Refresher training has been delivered to all Enforcement Agents, office staff and complaints staff by an industry expert
 - New processes and procedures implemented with relation to third party claims, moving to Sale and Disposal stage, issuing Notice of Sale documents and vehicle valuations.
 - Vulnerability training delivered to all Enforcement Agents.
 - Review and re-issue of all policies and procedures
 - Daily monitoring of work, documentation and camera footage to ensure policies and procedures are being adhered to.
 - Review of all complaints by the Enforcement Manager and Head of Service
 - Health Check and report undertaken by industry expert
 - Wi-fi printers installed in all Enforcement Agent vans
 - Scanning Apps installed for all Enforcement Agents

- Body Worn Camera policy reviewed and all Enforcement Agents are instructed to use these at all times now (previously it was if they felt threatened) - a review is underway on Body Worn camera's with the Parking Services section with the intention of agreeing a council policy and re-procurement for new cameras
- 2.23. In mid-March 2020, all enforcement visits were suspended due to the covid19 crisis. The Government issued legislation to cease all enforcement visits but to allow texts and letters to be issued. The Enforcement Agents have stopped all action and were all re-deployed on shielding and other duties.
- 2.24. In June 2020 the Enforcement Manager and support team were all furloughed. Over the next two months it is hoped that the following will have been implemented:
- 2.25. In July 2020 the two external Enforcement Agents used started to re-issue letters and text messages to existing customers.
- 2.26. The Government have announced that enforcement visits, that follow social distancing arrangements, can re-commence from 24 August 2020.
- 2.27. Any decision to re-commence enforcement visits will be made by CMT/members after that date and will take into account the needs of residents still requiring shielding duties
- 2.28. All procedures and documentation will be reviewed and issued prior to any recommencement of enforcement visits following Government guidance and industry best practice
- 2.29. Additional training for Enforcement Agents will be delivered to cover the new procedures, Government guidance and best practice before recommencement of enforcement visits.
- 2.30. The shared service board has asked for a review of the service to ensure it is fit for purpose. There has been a reduction in work over the past year and this is likely to continue over the short to medium term. The review will need to look at working levels, running costs of the service, staffing levels and likely performance and income levels.

3 ALTERNATIVE OPTIONS

- 3.1. An option would be to stop providing an in-house enforcement service and to use external contractors for all debts. The formal contract with LB Sutton for the shared service would need to be terminated and TUPE would apply if external contractors were procured. There is likely to be redundancy costs for staff not transferred if alternative employment was not found.
- 3.2. Using an external contractor is likely to attract costs, in cases where an Enforcement company has undertaken work and the council decides that they do not want enforcement action progressed it will be charged for fees already incurred. We also found that external contractors would often collect the fees and then pass the case back with the debt outstanding. (This was part of the reason the in-house service was introduced)

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. LB Sutton have been consulted with regarding the LGSCO complaint and report.

5 TIMETABLE

- 5.1. The improvement action plan is attached as Appendix 2 which has timescales detailed.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The LGSCO has recommended the council offsets £500 against the outstanding parking debt for distress and time and trouble. The council decided to increase this to £574 to leave a zero balance outstanding on the debt. This will be funded from the Enforcement service budget.
- 6.2. As detailed in 2.11 above, the in-house Enforcement service collects a large amount of unpaid debt for both Merton and Sutton council. Collectively in the last full four financial years (2016/17 to 2019/20) over £18.4 million in debt has been collected.
- 6.3. The service currently employees nineteen, many of which live locally to Merton and LB Sutton. Currently the team have two staff who started as Modern Apprentices and are now employed full time and another who has just commenced his Modern Apprenticeship.
- 6.4. Data from the cameras will now be stored for two months. In the event of a complaint, the data will be stored until it has exhausted the complaints process. Camera functionality and data storage will be reviewed to see if anything needs to be amended.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Enforcement Agents are legislated by the Taking Control of Goods Act 2013.
- 7.2. Debtors have recourse to decisions made by Enforcement Agents through the courts.
- 7.3. Enforcement Agents are issued their certificate every two years by a Judge in the County Court.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Whilst the council has to undertake all reasonable steps to collect unpaid debt owed it has to ensure that it is done in a fair and transparent manner and that all staff collecting debts are aware of the impact of debt on vulnerable clients.
- 8.2. The Taking Control of Goods Act details how Enforcement Agents should deal with vulnerable clients. All Enforcement Agents have received training on dealing with vulnerable clients and have all attended Dementia Awareness training.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purpose of this report

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Undertaking enforcement work can be challenging and at times the Enforcement Agents can face aggression and possible violence against them. In the past our Enforcement Agents have been assaulted and Police have been called to attend incidents.
- 10.2. All Enforcement Agents should wear Body Worn Camera's and Stab vests which have been supplied. The recent change of policy regarding Body Worn Camera's should now see the Enforcement Agents recording all visits and engagements with debtors
- 10.3. All Enforcement Agents carry an Ipad with case details, there is a Panic button on the system which if triggered sends text messages to office staff. All Enforcement Agents use council supplied vans which have GPS tracking, this enables the office staff to identify if an Enforcement Agent has not moved position for a given period of time which would result in a phone call to the Enforcement Agent to ensure everything is alright.
- 10.4. The van tracking enables the office staff to contact Enforcement Agents in close proximity to any potential incident so that support can be requested.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – LGSCO Report Recommendations and Findings.
- Appendix 2 – Improvement Action Plan

12 BACKGROUND PAPERS

- 12.1.

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**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
London Borough of Merton
(reference number: 18 010 732)**

2 July 2020

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms J The complainant

Report summary

Enforcement Agents

Ms J complains about the actions of 'Merton Enforcement Agents', an enforcement service operated by the Council that acts for it and the London Borough of Sutton Council. The agents collected three debts from Ms J on behalf of the two Boroughs. Ms J complains:

- she could not contact an enforcement agent employed by the Council;
- the Council did not help when she asked for time to pay her debts;
- the agent discussed her debt improperly with her brother and unreasonably put pressure on him to pay her debt;
- the agent twice wrongly seized Ms J's car which she says was essential to her employment as a 'tool of the trade'; and
- failed to issue her the correct notices when it seized her car.

Finding

Fault found causing injustice.

Recommendations

To remedy the injustice caused, the Council has agreed to:

- apologise to Ms J accepting the findings of this investigation;
- provide a financial remedy to Ms J worth £1,050 to reflect her distress, time and trouble; this includes £550 to reflect the value of her car when sold at auction;
- provide a clear breakdown of a sum still owing for one of her debts and allow Ms J to put forward a payment plan to clear the debt;
- provide updates on the implementation of a service improvement plan; this will include details of its policy explaining how it will treat requests to its enforcement service from debtors requesting 'time to pay' at whatever stage they are made; also, its process and new policy for the use of body worn cameras; and
- provide an update on proposals to introduce a new policy for collection of multiple debts.

The complaint

1. We have called the complainant 'Ms J'. She complains about the actions of 'Merton Enforcement Agents', an enforcement service operated by the Council that acts for it and the London Borough of Sutton Council. The agents collected three debts from Ms J on behalf of the two Boroughs. Ms J complains:
 - she could not contact an enforcement agent employed by the Council;
 - the Council did not help when she asked for time to pay her debts;
 - the agent discussed her debt improperly with her brother and unreasonably put pressure on him to pay her debt; she understands the agent also blocked in her car on the driveway of her home, which drew attention to their actions;
 - the agent twice wrongly seized Ms J's car which she says was essential to her employment; the agent should not have seized it as it was a 'tool of the trade'; and
 - failed to issue her the correct notices when it seized her car a second time; it did not tell her its estimated value of her car or the date, time and place of the proposed sale.
2. Ms J says because of the Council's actions she suffered avoidable distress, including the loss of her car. Ms J was self-employed and relied on her car to visit clients. Following its seizure, she could not work for four months. Ms J says the resultant loss of income caused hardship to her and her dependent son as they incurred other debts and she struggled to meet costs such as school meals. Ms J says these circumstances caused her to feel suicidal at times.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

How we considered this complaint

5. Before issuing this report we considered:
 - Ms J's written complaint to us and further information she provided with later emails;
 - information provided by the Council in reply to written enquiries; and
 - relevant law and guidance as referred to in the text below.
6. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

Relevant legal and policy considerations

7. Certified enforcement agents (or bailiffs) are appointed under Part 3 of the Tribunal, Courts and Enforcement Act 2007. In certain circumstances they can take control of goods and sell them to settle a debt. Local authorities can employ their own enforcement agents, as in this case, or contract with outside companies. The powers used by enforcement agents are common to both and subject to regulation.

The Taking Control of Goods Regulations 2013

8. The Taking Control of Goods Regulation 4 places some limits on what goods an agent can potentially seize. It says: *“the following goods of the debtor are exempt goods— (a) Items or equipment (for example, tools, books, telephones, computer equipment and vehicles) which are necessary for use personally by the debtor in the debtor’s employment, business, trade, profession, study or education, except that in any case the aggregate value of the items or equipment to which this exemption is applied shall not exceed £1,350”*.
9. Regulation 7 requires the Council to send the debtor notice in writing when it begins enforcement. The notice requires the Council to include details of the debt and contact arrangements for both the agent and their office. It also requires the agent give notice of any costs added to the debt.
10. Regulation 16 sets out ways in which an agent can secure goods they have taken control of. Regulation 18 provides additional information on actions an agent must take when seizing a vehicle by clamping it. When doing so, the agent must allow at least two hours before removing the vehicle for storage.
11. Regulation 30 requires an agent to provide a notice when they have taken control of goods. The notice must give details including of the debt owed and describing what goods are in the agent’s control. It should also include details of *“the date and time by which any sum outstanding must be paid to prevent controlled goods being sold”*.
12. Regulation 32 requires an additional notice where goods are removed for sale. The Regulation says the notice must include the daily or weekly storage charge payable.
13. Regulation 35 requires an agent to make a written valuation of controlled goods. They must provide that to the debtor.
14. Regulation 38 requires the agent to give the debtor seven days’ notice of the time and place where goods will be sold.

The Taking Control of Goods (Fees) Regulations 2014

15. Enforcement agents can charge fees for taking recovery action. There are up to three stages involved in enforcement. First there is the compliance stage. This covers all activities up to the point an agent makes a first visit to the debtor’s home or premises. Second, there is the enforcement stage. This covers all activity undertaken by an agent between visiting the debtor’s home or premises up to, but not including, attending to remove goods or selling them on the premises. The third and final stage is the sale or disposal stage. This covers all activities from the first visit for the purpose of transporting goods for sale onwards. Costs for each of the three enforcement stages are £75, £235 and £110 respectively. Agents can also add charges for storage and for costs associated with the sale of goods.

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16. Regulation 11 refers to circumstances where a debtor has multiple debts being collected by the same agent. It says the agent can exercise enforcement powers on more than one debt at the same time. This means an agent can take control of goods in relation to all such enforcement powers on the same occasion and sell or dispose of goods taken on the same occasion. The agent may charge a compliance fee on each debt. But the enforcement fee *“may be recovered only once”*. The Regulation also says the agent *“must, as far as practicable minimise the disbursements recoverable from the debtor [...] by dealing with the goods taken into control pursuant to the instructions together and on as few occasions as possible”*.
 17. Regulation 14 of the Fees Regulations also requires an enforcement agent to provide the debtor with a statement following sale of goods. This should explain how they have distributed proceeds of sale against the debt. It should include details of the application of funds and any disbursements.

National Standards for Enforcement Agents

18. Enforcement Agents must also follow national standards set out in the Taking Control of Goods National Standards. These say that where agents have multiple warrants for a single debtor they *“must take control of goods and sell or dispose of these goods on the same occasion except where not practical to do so”*.
19. The national standards also say that enforcement agents should *“so far as it is practical”* avoid disclosing the purpose of their visit to anyone but the debtor or their appointed representative. Also, they *“must not act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently”*.
20. National standards also say that agents should provide *“clear and prompt information to debtors”* when asked to.

Other considerations

21. The County Court can resolve certain disputes about an enforcement agent’s actions. This includes circumstances where an agent removes goods the debtor considers exempt (for example ‘tools of the trade’). The Civil Procedure Rules set out a procedure a debtor can follow. It requires them to put their case to the agent, which can then either accept or reject the debtor’s argument. If the agent rejects the debtor’s argument then the debtor can ask the Court to rule on the matter.
22. The Government publishes guidance on ‘Good practice in the collection of council tax arrears’ (DCLG publication 2013). This says that *“it is important councils are sympathetic to those in genuine hardship”*. It says they *“should be willing at any point in the process [to] work with bill payers to agree affordable and sustainable payment plans”*.
23. Enforcement agents are not required to wear body cameras. But the Council’s website says its agents *“wear uniform which has a Merton Logo, carry their council ID, certificate, and letter of authority to act, and use a body worn camera”*. It says, *“video footage is stored for 14 days prior to deletion, however in some instances where the information is required for evidential purposes it may be stored beyond this time”*.
24. The Protection of Freedoms Act 2012 makes it an offence to immobilise (wheel clamp) a vehicle without lawful authority or *“restrict the movement of a vehicle by any means”*. Where an enforcement agent immobilises a vehicle, their lawful

authority comes from the Tribunal, Courts and Enforcement Act 2007 and associated Regulations referred to above.

Key facts

25. In January 2018 the Council asked its enforcement service to collect a debt owed by Ms J for an unpaid penalty charge notice for a road traffic offence. We will call this debt number 1. The service wrote to Ms J and applied a compliance fee of £75.
26. The Council did not receive a response. So, an enforcement agent visited Ms J's house on 23 February 2018. She was not at home. He left a document headed "*important notice*". This set out the details of Ms J's debt and added the enforcement fee of £235. The notice left a space for the agent to complete details of their name and contact number but these were left blank. The reverse of the notice contained two telephone numbers for making payment of the debt as well as details of how to pay online.
27. On 12 March 2018 the Council received an instruction to collect a council tax debt of £927 Ms J owed to the London Borough of Sutton. We will call this debt number 2. It says it wrote to Ms J and added £75 compliance fee to the debt. It has not provided us with a copy of that letter.
28. The Council's notes say the agent visited Ms J's home again on 22 March, 20 April and 13 June 2018. The Council says Ms J was not at home on any of these occasions but that its agent left notices or letters at her home on each visit. Ms J has no record of these. The Council cannot provide copies. It says the notices or letters are hand-written at the time of visit.
29. On 20 April 2018, following one of the visits to Ms J's home referenced above the Council added the £235 enforcement fee to debt number 2. It has not provided us with a copy of any notice given to Ms J explaining it had added this fee to her debt.
30. On 29 June 2018, the enforcement agent went to Ms J's home. She was not at home but her car was on the driveway. The agent clamped the car.
31. Ms J's brother was at home. Ms J reports him saying the agent first parked across the driveway of the property, effectively 'blocking in' Ms J's car. The agent says they cannot recall where they parked. The agent spoke to Ms J's brother telling him the purpose of his visit. Ms J says the agent put pressure on her brother to pay her debt. The Council says this was not the case and Ms J's brother offered to pay the debt. The agent's notes say he told Ms J's brother "*£513 needs to be paid*". However, Ms J's brother could not find the money. So, after waiting three hours, the agent removed Ms J's car. He took the car to an auctioneer.
32. The Council says its agent had a body worn camera. But he did not have his camera with him on 29 June 2018. The Council says at the time its procedural advice to agents was only to switch on their cameras if they were in a "*confrontational situation*".
33. After seizing Ms J's car the agent left a notice headed "*notice after entry or taking control of goods*". This said Ms J owed £1,750. This figure combined the amounts owed (including fees) for debts number 1 and 2. It included a £110 sale fee. The notice left with Ms J did not contain details of any storage charges for the car.
34. This notice included the agent's contact details. Ms J said she tried to contact the agent repeatedly on his mobile phone. We do not have details of how many times

she called. But the Council does not dispute the following transcript of the agent's voicemail message which Ms J provided to us:

- *"Hello, you are through to Mr [...]Merton Enforcement voice message. At present, I am unable to take your call. Please note that my busy work schedule may not allow me to answer any voicemail or text messages that you leave although I will attempt to do so. Should you consider your situation in need of urgent attention please continue to try and make contact with me, as I will continue to take enforcement action even if you have left a message for me."*

35. Ms J said she also tried calling the Council enforcement service office but was told she needed to speak to the agent.
36. Ms J complained to the Council on 2 July 2018. She said the agent should not have taken her car as it was a 'tool of the trade'. Ms J explained that her job involved travelling throughout the UK meeting clients in their homes to undertake assessments. She gave an example of a forthcoming appointment she had some 95 miles from her home address. She said *"I am unable to earn a living without my car"*. Ms J also explained her job was a source of income for her and her child, who would suffer by consequence if she could not retain employment.
37. Ms J also explained she owed another council tax debt to the London Borough of Sutton and was in a payment arrangement with a separate enforcement agent instructed by that authority to collect that debt. Ms J said she wanted to clear her other debts once she had finished paying that agent.
38. The Council says it was too late for Ms J to make a payment arrangement although she could have done so earlier had she responded to the notices sent to her from January 2018. On 2 July 2018 the Council confirmed to Ms J by email that she owed £623 including costs associated with debt number 1. The same email advised Ms J the Council was also collecting debt number 2 and she owed £1,237 (including costs) for that. It also advised her of the storage costs for the car (£20 a day plus VAT). It said it had removed her car in its recovery of debt number 1 only. The email said Ms J's car was not exempt from removal. It provided no reasons for this statement. In a reply to this email sent the same day Ms J again asked the Council to let her make a payment arrangement to clear her debts.
39. In general comments on the complaint, the Council has confirmed that it has no written policy for responding to requests for 'time to pay' debts or where debtors have multiple debts. It also says it would not combine recovery action to minimise enforcement fees where the debtor has not made a payment arrangement with it.
40. On 5 July 2018 Ms J made a complaint about the agent's actions. This included a complaint about discussing debt number 1 with her brother. Ms J also said notices pushed through the door had not been in envelopes and so also compromised her privacy. She asked the Council to explain why it did not consider her car a tool of the trade.
41. Ms J also appealed the original penalty charge notice giving rise to debt number 1. On 9 July 2018 the Council recorded it would keep the case on hold to await the appeal but a note dated 20 July said the auctioneer was *"authorised to sell on 30 July 2018"*. The Council recognises this was an error. Ms J's appeal was not decided until 23 July 2018, when it failed. The Council separately recorded taking the hold off recovery of the debt on 25 July. We have not seen any record of the Council communicating to Ms J when it took recovery of debt number 1 off hold.

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42. On 27 July 2018 Ms J raised the funds to release her car from the auctioneer's including the storage costs. This involved her paying off debt number 1, but debt number 2 remained unpaid.
43. On 30 July 2018, Ms J volunteered to make a payment arrangement of £100 a month. The Council accepted this offer and sent Ms J a schedule of payments, with the first payment being due on 14 August 2018. It explained the arrangement applied to debt number 2 only. Ms J failed to make any payments in accord with this arrangement.
44. In between, on 16 July 2018, the Council had obtained a warrant for another penalty charge notice Ms J incurred in February 2018. We will call this debt number 3. They sent a letter to Ms J advising this and added the £75 compliance fee to the debt.
45. The agent returned to Ms J's home on 21 September 2018 and seized her car in respect of debt number 3. They again took it to an auctioneer. They left a "*notice that goods have been removed for storage or sale*" with Ms J. The notice gave details of the auction house where they took the car. It also added £110 describing this as an expense for a 'tow truck'. It said the total charge owing was £623 and included details of ongoing storage charges at £20 per day (plus VAT).
46. Council records show Ms J made a complaint about the agent's actions on 21 September 2018. Her complaint covered most of the matters summarised in paragraph 1, although Ms J did not raise at that time the allegation the agent had 'blocked in' her car on the driveway of her home in June 2018.
47. The auctioneer sold Ms J's car on 8 October 2018. The sale raised £550. The Council wrote to Ms J with these details on 12 November 2018. It also said that she still had a debt of £858. The Council provided no breakdown of this amount. Before this, Ms J received no notice advising her of the date of the proposed sale of her car. She also received no estimate of the car's value. Separately the Council has said that Ms J still owes £535 in respect of debt number 2. Ms J says the London Borough of Sutton adjusted the debt while the Council was seeking recovery, which explains why this reduced.
48. On 9 October 2018 the Council replied to Ms J's complaint. Among other matters it said:
- it did not consider the agent's voicemail unhelpful; saying it could not take a view on this;
 - the agent "*had to pass on*" details of Ms J's debt to her brother as he was the only person at home on 29 June 2018;
 - it accepted the loss of Ms J's car would have "*adverse effects*" for her and for her child, but she could do her job using public transport instead;
 - the notice left by the agent on 29 June "*would have advised*" of the storage costs; and
 - the Council would not consider entering a payment plan with a debtor once it seized a vehicle for sale. It said had Ms J contacted it earlier it may have considered a payment arrangement.
49. The letter concluded saying the Council considered "*correct procedures have been followed*".
50. In January 2019 Ms J made a separate complaint about the seizure and sale of her car in September 2018. Ms J said the Council had failed to give her notice of

time and place of the sale of her car. It had also failed to send her notice of the valuation of her car. Ms J pointed out these were requirements of the Taking Control of Goods Regulations.

51. In its reply the Council said it had sent Ms J a notice of when the sale of her car would take place. It did not answer the point that it did not provide her with a valuation but subsequently commented in reply to our enquiries that; *“legislation does not prescribe the valuation to be provided to the charge payer”*. However, the Council has since reconsidered this point and now accepts this was wrong. It agrees that it should have provided valuations to Ms J in this case.

Findings

52. This complaint reveals a catalogue of failings by the Council which showed insufficient regard for the Regulations which govern how its enforcement agents should collect debts as well as good practice. We set these out in the sub-paragraphs below.
- The ‘important notice’ the agent posted through Ms J’s door in February 2018 in respect of debt 1 was not required by Regulation. But it was left incomplete. The agent failed to leave any contact number. That was fault.
 - We note the difficulties Ms J encountered in contacting the enforcement agent. We cannot say how often Ms J tried to contact the enforcement agent or if she contacted the Council’s service direct and could not speak to anyone about her case. We do not have any evidence to show Ms J made the calls stated and the Council has no notes to confirm this. But the Council does not dispute the agent had a voicemail message in the terms Ms J described. That was unacceptable. Their voicemail suggested they were frequently uncontactable and would not routinely return calls. This would be a breach of the National Standards. These expect agents to give information ‘promptly’ to debtors when required. We consider that must include calling someone back if unavailable or providing an alternative contact number. Not doing so here was fault.
 - The Council cannot demonstrate that it served proper notice on Ms J of debt number 2 which the London Borough of Sutton asked it to collect on its behalf. It has not shown that it served a valid notice either at the compliance stage or when it added enforcement fees. Ms J says she received no such paperwork and the Council has not provided copies of the same. It is fault if the Council cannot provide an audit trail showing it has served the correct notices.
 - We note that by the time the agent attended in June 2018 to clamp and then remove Ms J’s car they were collecting two debts (numbers 1 and 2 referred to above). Regulation 11 of the Fees Regulations places an expectation on the Council to limit costs to debtors when agents collect multiple debts wherever practicable. The point is also explained in the national standards. It was clearly practicable here for the Council to charge only one enforcement fee as after 12 March 2018 it collected both debts 1 and 2 simultaneously. The same agent carried out the same visits at the same time. Yet the Council chose to add another enforcement fee when it began collecting debt number 2. We consider that practice wrong and it justifies another finding of fault.
 - When the agent visited Ms J’s home on 29 June 2018 Ms J’s brother would understandably want to know the reason for his interference with his sister’s car. We consider the agent could reasonably explain that he was collecting a debt. However, we do not consider the agent should have given Ms J’s brother details of the debt. Their notes show they did this. They should also have put

their notices in envelopes. Their actions did not respect Ms J's privacy and so did not comply with the national standards. That was fault.

- We note the confusing notice left with Ms J after the agent seized her car. It combined debts numbered 1 and 2. But later the Council said the seizure was in respect of debt number 1 only. We also note the Council provided contradictory amounts of how much Ms J owed in the notice left on 29 June and in the information it gave her on 2 July. That was fault.
- The notice left with Ms J after the agent seized her car also failed to identify the storage costs associated with seizure. Ms J learnt of these in her contact with the Council over the following days but they should have been on the notice. That was a breach of the Regulations and fault.
- After the Council seized Ms J's vehicle, she contested it had no right to do so arguing it was exempt from seizure as 'a tool of the trade'. We consider Ms J made a strong case her car was essential to her job. We accept the Council may have reasonably wanted more details about Ms J's use of the car. But the evidence shows it was immediately dismissive and provided no reasons for not considering it a tool of the trade. That was fault.
- We also note the law provides for a hearing in Court for a ruling on the question of whether an agent has seized exempt goods. The Council would know this. But there is no suggestion Ms J knew of the procedure. So, when Ms J challenged the Council on the removal of her car it should have signposted her to that procedure. Its failure to do so was fault. It also justifies us taking a view on these matters as it would be unreasonable for us to expect Ms J to have used the 'alternative remedy' of proceedings in the county court to challenge the agent's seizure of her car.
- We have not seen any evidence the Council undertook a valuation of Ms J's car in June 2018 or sent a copy of that to her as required by the Taking Control of Goods Regulations. That was fault.
- By early July 2018 the Council knew Ms J had multiple debts. Not only the three debts it was collecting but a fourth debt that Ms J made it aware of. We accept that Ms J could have done more up to that point to engage with the Council, even if frustrated in contacting the agent. But we consider that at whatever stage a debtor contacts a Council good practice is to consider seriously any offers to repay a debt even if this will take time. Government guidance reinforces this approach. The Council does not have to take any 'time to pay' offer at face value. It can reasonably ask for more information about a debtor's circumstances such as their income and expenses. It can reasonably have a policy which seeks to balance the needs of the creditor with the debtor. But the Council had no such policy in this case. That was fault.
- We note the Council did ultimately accept a 'time to pay' proposal made by Ms J on 30 July 2018, having previously said it would not. We do not find fault in the Council failing to check the affordability of that arrangement as Ms J made the proposal. Although the Council could have chosen to do so, given its knowledge Ms J had multiple debts, including debt 3 which it was also collecting. We do not see any reason why the Council should have excluded debt 3 from the arrangement and the Council further compounded Ms J's debt problems by adding another enforcement fee in respect of debt 3. We have explained above why we consider the Council was at fault for combining the enforcement fees on debt numbers 1 and 2. Once Ms J had cleared debt 1 a

similar consideration applies for the Council's simultaneous collection of debts 2 and 3. The Council could have combined the enforcement fees for these debts also; leaving her to pay two enforcement fees overall. Failing to combine in this way was again fault.

- The Council was also at fault for taking a hold off recovery of debt 1 on 20 July 2018 before Ms J's appeal against her PCN had been heard. It was also fault for the Council not to have kept a record of telling Ms J it had taken the account off hold.
 - After Ms J recovered her vehicle it was taken a second time this time in respect of debt number 3. The Council again failed to give Ms J its valuation of her car. That was again fault.
 - The Council failed to give Ms J notice of when the vehicle would be sold. This is a requirement. Failure to serve such a notice was fault.
 - It is evident from the Council's records Ms J complained about the seizure of her car before it was sold. The reply she received to that complaint was inadequate. It did not pick up on the various failures to follow regulations or national standards we have highlighted above. It did not provide an evidence based assessment for why Ms J could use public transport to do her job. The reply suggested a failure to look objectively at Ms J's complaint. That was fault.
 - After sale of the car, the Council failed to give Ms J adequate explanation of the costs it recovered and how it apportioned those. The letter it sent to Ms J on 12 November 2018 is insufficient in understanding how a debt of £623 at the point of the notice for sale increased to £1408 (as there is still £858 outstanding). The failure to provide Ms J with a proper breakdown of costs was another breach of the Regulations and merits another finding of fault.
 - When Ms J pursued her complaint about the second seizure of her car the Council again offered an inadequate reply. It is particularly worrying that even when pointed by Ms J to Regulations it clearly did not follow, the Council failed to recognise this. We recognise that it has since accepted it did not provide a valuation of Ms J's car as required. But that was still fault.
53. This case also shows how, as a matter of good practice, agents should use body cameras given to them which can later provide irrefutable evidence about their conduct. It is unfortunate in this case the agent had a camera but did not use it. We cannot say therefore whether they put any pressure on Ms J's brother to pay her debt. But we accept at the time these events took place the agent was under no requirement to have their camera switched on as there was no local or national guidance requiring this. We stop short therefore of saying this was fault.
54. We also make no finding of fault in response to the complaint the agent parked across Ms J's driveway as stated by her brother. There is not enough evidence to make this finding as the account of Ms J's brother and the Council's agent do not agree. However, we note it would be fault if the agent acted as described. We consider it would be unlawful under the Protection of Freedom Act 2012. As an agent's lawful authority to seize a vehicle does not include this method of restricting its movement.
55. It is noted that without a satisfactory explanation for why Ms J still owes the amounts quoted on debt number 3 we cannot say if there is any further fault in that calculation.

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56. We have gone on to consider the consequences of these faults to Ms J. We consider she has been caused injustice by the Council's actions as follows.
- It added at least one enforcement fee of £235 to her debts that it did not need to do (once debt 1 was settled it could have added a second fee in collection of debts 2 or 3 which remained outstanding).
 - It denied Ms J the right to argue that removal of her car was unlawful as an exempt 'tool of the trade' by failing to signpost her to the Court procedure to argue such cases. We consider on balance it is likely that Ms J's car was a 'tool of the trade' and worth less than £1350. So it would not have been seized had Ms J been signposted to appeal.
 - It caused Ms J unnecessary distress through its agent's message discouraging contact and their conduct in discussing the detail of her debt with her brother.
 - It has put Ms J to considerable unnecessary time and trouble through its poor quality notices, confusing notices and failure to serve notice where applicable. Its poor record keeping will have contributed to that.
57. We set out below what we consider will be a fair and proportionate remedy for this injustice. In doing so we have taken account that in all cases where enforcement agents become involved in collection of debt there is an inherent distress caused to the debtor. Also that with prompter action Ms J may have been able to limit some of the distress caused in this case by raising her circumstances sooner with the Council, which may have led it to look upon a time to pay arrangement more sympathetically.
58. In considering the remedy to this complaint, we have also taken account that since we issued a draft of this report the Council has acknowledged many of the criticisms made above. We welcome this and that it has drawn up a service improvement plan and shared a copy of that with us. This says it will introduce, or is in the process of introducing:
- a policy for considering payment arrangements at all stages of the enforcement process;
 - a more comprehensive procedure to cover the removal and sale of vehicles, including having an adequate audit trail to show it has served all proper notices;
 - improved technological support for its agents, such as mobile printers and scanning tools to show it has served proper notices;
 - refresher training for its enforcement agents and complaints staff to ensure greater awareness of where debtors can use Court procedures to challenge seizures of goods said to be exempt (for example, where they are considered a tool of the trade or said to belong to a third party);
 - a new policy for the use of body worn cameras; and
 - improved quality checks of enforcement agents' actions, especially cases where they have clamped or seized vehicles.
59. The Council also says that it will implement a 'more formal policy' on how it will collect multiple debts in future; including those owed to different creditors.

Agreed action

60. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
61. In addition to the requirement above, to remedy the injustice identified in paragraph 56, the Council has agreed that within three months of a final report on this case it will:
- provide an apology to Ms J accepting the findings of this investigation;
 - provide a financial remedy to Ms J worth £1,050. This is comprised of an amount of £500 to reflect Ms J's distress, time and trouble. A further £550 reflects the value of her car when sold at auction. The Council has said it will write off all sums owing on debt 3, which total £574. So, this will leave it with a balance to pay Ms J of £476. The Council has indicated it will offset this against a further outstanding debt owed to it by Ms J, which has not been the subject of this investigation. We agree to this approach subject to the Council providing Ms J with a clear record showing how it has offset the debt;
 - provide a clear breakdown of the sum still owing on debt 2 and allow Ms J to put forward a payment plan to clear the debt. The Council can reasonably take instructions from London Borough of Sutton and ask for evidence in support of any proposals Ms J makes. This would include asking her to detail her income and expenses or other debts she may have;
 - provide a further update on its implementation of its service improvement plan. This should include details of its policy explaining how it will treat requests to its enforcement service from debtors requesting 'time to pay' at whatever stage they are made in its process. Also, its new policy for the use of body worn cameras; and
 - provide an update on its proposals to introduce a new policy for collection of multiple debts referred to in paragraph 59 above.

Final decision

62. We find fault by the Council causing injustice to Ms J. The Council has agreed to take the action described in paragraph 61 to remedy that injustice. This will provide a satisfactory remedy to the complaint.
63. Notwithstanding this remedy, we have published this report because we consider it in the public interest to do so, given the injustice caused to the complainant.

Enforcement Service Improvement Plan

Action	Responsible	Date	Progress
Critically review case and identify issues to address	GS & DK	15 Oct 19	Completed - training provided, action plan drafted, new process on vehicles removed, review of policies and procedures required, HoS to review all complaints, EA spoken with
Devise policy for payment arrangements at all stages	GS	30 Oct 19	Completed
Review and devise procedure for removal and sale of vehicles – ensuring adequate audit trail of paperwork is in place	GS & SD	20 Sept 19	Completed- to include white board in office showing all removals, dates documents sent etc - Implemented
Review and devise procedure and policy for moving cases to Sale and Disposal stage	GS & DK	30 Oct 19	Completed - All EA's advised of procedure, and on going monitoring and checking undertaken – 1.11.19
Introduce office information board for all removals	GS	20 Sept 19	Implemented
Implement remote printers for enforcement agents	GS & SD	15 Nov 19	Completed - SRF raised and testing ongoing – 15.10.19 – Implemented 18.11.19
Implement scanning app on Ipads	SD	15 Nov 19	Implemented 18.11.19
Refresher training for all Enforcement Agents	DK	15 Oct 19	Completed - Undertaken 9 October 19
Training for office staff and complaints staff	DK	15 Oct 19	Completed - Undertaken 7 October 19
Arrange external health check of procedures and documentation	DK	15 Nov 19	Completed - Visit arranged for 28 Oct 19 – report received 19.11.19 –
Review policy for CCTV body worn camera's in conjunction with Parking Services	DK	31 Oct 19 28 Feb 20	Enforcement Policy reviewed and amended 30 September 19 – all EA's advised Further review with Parking services to be undertaken – EA's have been advised of expected use – revised completion date set

Decision on procurement of CCTV body worn camera's in conjunction with Parking Services	DK	31 March 20	Tender exercise underway – tender closing date 9 July 20
Review and publish policy for body worn camera's	DK	18 Oct 19	Completed - Following training – policy reviewed decision regarding publication required – awaiting agreement from IG team. EA already advised must use them all the time
Issue updated instructions/guidance to Enforcement Agents on procedures/processes	GS	30 Nov 19	This has been ongoing but complete manual given to all EA's 2.12.19
Review all procedures and policies	GS & SD	30 Nov 19	Following health check – completed and manual given to EA's on 2.12.19
Review sample cases where vehicle has been sold	SD	31 Oct 19	Completed 20.11.19 and ongoing
Investigate and implement import of all documents and emails on to case management system	SD	31 Oct 19 31 Jan 20	EA's now using printers and scanning documents. Ipad requested for office to scan documents – Not been achieved due to technical issues
Implement new monitoring arrangements of all enforcement agents	GS, SD & DK	1 Nov 19	Commenced 1.11.19 – and ongoing
Review sample cases where vehicle clamped	SD	31 Oct 19	Completed – further reminder sent to all EA's regarding getting documents scanned/returned
All complaints to be reviewed by Enforcement manager and Head of Revenues and Benefits	GS & DK	20 Sept 19	Commenced
Apply for membership of CIVEA (Civil Enforcement Association)	DK	31 Jan 20 30 Oct 20	Not progressed yet – review required – revised completion date set
Review training requirements post Covid19	DK & GS	1 Sept 20	Enforcement Manager currently furloughed so deadline may change

Review procedures post Covid19 incorporating new statutory requirements	GS	1 Sept 20	Enforcement Manager currently furloughed so deadline may change
Deliver training post Covid19	GS	1 Oct 20	Enforcement Manager currently furloughed so deadline may change
Issue new procedures post Covid19 before re-commencement of enforcement work	GS	1 Oct 20	Enforcement Manager currently furloughed so deadline may change
Review service and staffing structure post Covid19 as requested by Shared Service Board	DK	1 Oct 20	Review likely workload and impact on staffing structure

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Committee: Standards and General Purposes Committee

Date: 28 July March 2020

Subject: Proposed Review of the Council's Constitution and interim Amendments to the Appointments Committee Terms of Reference and the Employee Procedure Rules

Lead officer: Louise Round, Managing Director South London Legal Partnership

Lead member: Councillor Mark Allison, Deputy Leader and Cabinet Member for Finance

Contact officer: Louise Fleming, Senior Democratic Services Officer

Recommendations:

- A. That the Committee recommends that Council approves the amended Terms of Reference for the Appointments Committee and Officer Employment Procedure Rules, as set out in Appendices 1 and 2 respectively;
 - B. That Council be recommended to delegate authority to the Monitoring Officer to amend the Council's constitution to incorporate any direct or consequential changes resulting from the approval of recommendation A above; and
 - C. That the Committee agrees to commence a review of the Council's constitution and appoints a working group of members to carry out that review in conjunction with the Monitoring Officer.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. At its meeting in March, this Committee deferred a report recommending some changes to the Council's processes for appointing chief officers, partly because they wanted further to consider the suggestion that the final decision on the appointment of the Monitoring Officer should lie with the Appointments Committee. Currently, although the position is not entirely clear cut, that decision lies with full Council if the salary package exceeds £100,000. The recommendations followed the recent appointment of the Managing Director of the South London Legal Partnership when it became apparent that the current procedure rules were ambiguous. Other recommended changes included formalising the custom and practice of establishing a panel of the Appointments Committee dealing with chief officer appointments to make it clear in that committee's terms of reference that there is the power to establish a sub-committee for that purpose.
- 1.2. Some limited changes to the employment procedure rules and terms of reference of the Appointments committee are still being recommended for submission to Council at this stage, in order to ensure that the process is clear for any future appointments. However, the previous proposal to change the decision-making body for monitoring officer appointments is being put on hold pending a wider review of the constitution.

2 DETAILS

Appointments committee

- 2.1. The Council has established an Appointments Committee for the purposes of interviewing chief officers. In some cases, the Committee is authorised to make the appointment itself and in the case of the Chief Executive, it can only recommend that appointment to full Council. It has been custom and practice for the appointment of the Monitoring Officer also to be approved by full Council although the constitution is somewhat ambiguous in this respect.
- 2.2. The Committee also considers the terms and conditions on which officer level and above. The terms of reference are set out in Part 3B, paragraph 1.2 of the Council's Constitution.
- 2.3. The Appointments Committee meets prior to the commencement of the recruitment process to agree the job description, person specification, timetable for recruitment. Custom and practice in Merton has been to establish a panel of members to carry out the shortlisting and interviews, with the Appointments Committee meeting at the end of the process to ratify the decision of the panel. It is legally possible for that panel to make the final decision in respect of some appointments but a formal sub-committee must be established if this is to happen. Depending on the appointment in question, it may be appropriate for the decision to be made by such a smaller group of members.
- 2.4. It is therefore proposed to amend the terms of reference of the Appointment Committee to allow for the establishment of a sub-committee for the purposes of shortlisting and interviewing candidates for chief officer positions. The sub-committee would also have delegated authority to make the final appointment, without requiring the parent committee to meet again to ratify the decision. In the event of the appointment of the Chief Executive, the sub-committee would make a recommendation to Council, as required by statute to appoint the Head of Paid Service. This will also be the case in relation to the appointment of the Monitoring Officer, although this is not a legal requirement. There would be no absolute requirement for the Appointments Committee to establish a sub-committee for specific individual appointments, if it considered it wished to reserve the appointment to itself.
- 2.5. A committee or sub-committee responsible for shortlisting and interview panels must, as a matter of law, have at least one member of the Cabinet sitting. Ideally, the membership should be the same at each stage and the strenuous efforts should be made to ensure the panel is diverse. The sub-committee should as far as practicable reflect the overall political balance of the council. In the event of a joint appointment with a neighbouring borough, an amended process would need to be agreed with that borough.

- 2.6. No member should sit on such a committee or sub-committee without first having received appropriate recruitment and selection training by HR.

Officer Employment Procedure Rules

- 2.7. The Council's Officer Employment Procedure Rules are set out at Part 4H of the Council's constitution. The Officer Employment Procedure Rules have been amended to reflect the proposed changes to the process and the Appointments Committee Terms of Reference and are attached at Appendix 2. A number of other drafting changes have been for clarity but they do not substantively change the process to be followed. As currently drafted, there were inconsistencies between the terms of reference of the Appointments Committee and the Employment Procedure Rules.

Proposed Review of the Constitution

- 2.8. While considering these parts of the constitution and in other contexts, it has become apparent to the Monitoring Officer that some provisions of the constitution are not as clear as they can be. Ad hoc amendments made from time to time have not always taken account of knock on consequences elsewhere in the document. It is good governance for a Council to review its constitution at regular intervals. Elsewhere on this agenda is a report on a proposed new national model code of conduct for members and any consideration of whether to adopt the new model code could therefore take place in the context of a wide constitutional review.

It is not suggested that the constitutional review should seek fundamentally to change the overarching governance structures and decision-making processes of the council; the purpose of any review would be to ensure that the constitution reflects recent legislative change, is easy to use, publicly accessible and allows the Council to take sound decisions without risk of challenge.

- 2.9. As a minimum, the review should consider the following:

Is the constitution internally coherent?

Is the structure right and does it work (length/articles/summary etc.)?

Are the rules of procedure for the conduct of meetings clear and do they reflect actual practice?

Are complaints and other processes clear, including in relation to standards complaints?

Have new legislative requirements been incorporated?

Are all "local choice" functions, e.g. outside appointments or secondments under s.113 LGA 1972, allocated?

Are the schemes of delegation up to date, understandable and all encompassing?

- 2.10. In order to ensure that a revised draft constitution has cross party support, a small member working group is being proposed to work with the Monitoring Officer and colleagues from Democracy Services to agree a draft for approval by this committee and then onward submission to the full Council.

3 ALTERNATIVE OPTIONS

- 3.1. There are no alternative options proposed.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. None for the purposes of this report.

5 TIMETABLE

- 5.1 Subject to consideration by the Standards and General Purposes Committee, it is proposed to report the amended Terms of Reference and Employee Procedure Rules to Council when it next meets.

- 5.1. The member working group would sit through the Autumn and Winter with a view to a revised version being approved by full Council on 3 February 2021, in good time for the new municipal year.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None for the purposes of this report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The procedure complies with the statutory and regulatory requirements relating to the appointment of the head of paid service, statutory chief officers, non-statutory chief officers and deputy chief officers.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. All appointments must be made on merit and taking account of the protected characteristics.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purposes of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None for the purposes of this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – Revised Appointments Committee Terms of Reference
- Appendix 2 – Revised Officer Employment Procedure Rules and Appointments Committee procedure

12 BACKGROUND PAPERS

12.1. None

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Part 4 – H

OFFICER EMPLOYMENT PROCEDURE RULES

Any mandatory standing orders issued in respect of senior appointments will be incorporated into these rules, as they become available.

References to Chief Officers and Deputy Chief Officers in these rules shall be construed in accordance with the provisions of section 2 of the Local Government and Housing Act 1989 and shall include both statutory and non statutory chief officers as defined by that section. A list of all employees falling within the definition of deputy chief officer shall be maintained by the Head of Human Resources.

For the purposes of these rules, the Proper Officer shall be the Head of Democracy Services

For the avoidance of doubt, the following provisions of these rules do not apply to the appointment of officers on an interim basis.

1. Recruitment and Appointment

(a) Declarations

The Council will draw up a statement requiring any candidate for appointment as an officer to state, in writing, whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.

Where a candidate has declared such a relationship, any offer of employment shall be subject to approval by the relevant Chief Officer or his/her nominee.

(b) Seeking support for appointment

The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor or officer for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

No councillor or officer will seek support for any person for any appointment with the Council.

2. Recruitment of the Chief Executive Paid Service and Chief Officers

- 2.1 Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, 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 (a) to be sent to any person on request.
- 2.2 For any new appointment where the salary is £100k per annum or more approval should be obtained from Full Council prior to the commencement of the recruitment process

3. **Appointment of Chief Executive and the Council's Monitoring Officer**

- 3.1 Full Council must, before an offer of appointment is made, approve the appointment of the Chief Executive and the Monitoring Officer, following the recommendation of such an appointment by the Council's Appointments Committee or Sub Committee. That Committee must include at least one member of the Cabinet.
- 3.2 Full Council may only make or approve the appointments of the Chief Executive and the Monitoring Officer where no material or well-founded objection has been made by any member of the Cabinet (see paragraph 6 below).

4. **Appointment of Chief Officers**

- 4.1 The Appointments Committee or Sub-Committee (the appointer) will appoint Chief Officers. That committee must include at least one member of the Cabinet.
- 4.2 An offer of employment as a Chief Officer or the Monitoring Officer shall only be made where no material or well-founded objection from any member of the Cabinet has been received (see Para 6 below). ~~Or if the salary package of the post is higher than £100,000, then, in line with the Council's pay policy statement if the will be reported to full Council for approval.~~
- 4.3 ~~Where the salary package relating to a post exceeds £100,000, prior approval from full Council must be obtained before that post is advertised but with the exception of the Chief Executive and the Monitoring Officer, the actual appointment to that post does not require Council approval.~~

5. Other Appointments

- 5.1 Appointment of officers at or below deputy chief officer (other than assistants to political groups and an assistant to the Mayor and the Monitoring Officer) is the responsibility of the Head of Paid Service or his/her nominee(s), (the appointer) and may not be made by members. However, appointments of deputy chief officers are subject to the procedure set out in paragraph 6, even though the appointment is being made by officers.

6. Offers of Appointment

- 6.1 An offer of an appointment to the following posts shall comply with the following provisions of this rule:

- a) the Chief Executive;
- b) the Director of Communities and Housing*;
- c) the Director of Children, Schools and Families*;
- d) the Director of Public Health*;
- e) the Director of Corporate Services*;
- f) the Director of Environment and Regeneration**;
- g) a deputy chief officer (including the post designated as the Council's Monitoring Officer);

* statutory chief officer

** non statutory chief officer

- 6.2 Such an appointment shall not be made by the appointor until

- a) the appointer has notified the Proper Officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
- b) the Proper Officer has notified every member of the Cabinet of the authority of –
 - (i) the name of the person to whom the appointor wishes to make the offer;
 - (ii) any other particulars relevant to the appointment ; and
 - (iii) the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Proper Officer; and
- c either –
 - (i) the Leader has, within the period specified in the notice under subparagraph (b)(iii), notified the Proper Officer that neither he nor any

other member of the Cabinet has any objection to the making of the offer; and

- (ii) the Proper Officer has notified the appointor that no objection has been received by him within that period from the Leader; or
- (iii) the appointor is satisfied that any objection received from the Leader within that period is not material or is not well-founded

6.3 Appointment of an assistant to a political group under section 9 of the Act shall be made in accordance with the wishes of that group.

6.4 No appointment of an assistant to a political group under section 9 of the Local Government and Housing Act 1989 shall be made until the Council has allocated such a post to each of the political groups that qualify for one.

6.5 No post as an assistant to a political group under section 9 of the Local Government and Housing Act 1989 shall be made in respect of any party group which does not qualify for one under that Act.

6.6 Determination of qualification for posts under section 9 of the Local Government and Housing Act 1989 shall be the responsibility of the Monitoring Officer.

6.7 No more than one post as a political assistant shall be allocated to any one political group.

7. Suspension

The Chief Executive, the Chief Finance Officer, and the Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months beginning on the day on which the suspension takes effect.

8. Disciplinary action

8.1 No disciplinary action to dismiss may be taken in respect of the Chief Executive, the Director of Corporate Services (s.151 officer) or the Monitoring Officer except after having taken into account any advice, views or recommendations of a panel, the conclusions of any investigation and any recommendations of the relevant officer i.e. as set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

8.2 **Involvement of Councillors.** Subject to paragraph 8.1 above in the case of the Monitoring Officer, Councillors will not be involved in the disciplinary action against any officer at or below Deputy Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct.

9. Dismissal

- 9.1 Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the dismissal of an officer designated as the Council's Chief Executive, the Council must approve that dismissal before notice of dismissal is given to him/her.
- 9.2 Where a committee or a sub-committee of the Council is discharging, on behalf of the Council the function of the dismissal of any officer referred to in paragraph 6.1(a-f) or the Monitoring Officer, at least one member of the Cabinet must be a member of the committee or sub-committee.
- 9.3 Notice of the dismissal of an officer referred to in paragraph 6.1 must not be given by the dismissor until:
- (a) the dismissor has notified the Proper Officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
 - (b) the proper officer has notified every member of the Cabinet of:
 - (i) the name of the person who the dismissor wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the dismissor has notified to the Proper Officer ; and
 - (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the proper officer; and
 - (c) either:
 - (i) the Leader has, within the period specified in the notice under sub-paragraph (b)(iii) notified the dismissor that neither he nor any other member of the Cabinet has any objection to the dismissal;
 - (ii) the Proper Officer has notified the dismissor that no objection was received by him within that period from the Leader; or
 - (iii) the dismissor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.
- 9.4 Termination payments – for Chief Officers, termination payments are subject to approval by the Standards General Purposes Committee and all severance packages over £100,000 shall be reported to full Council for approval.

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1.2 Appointments Committee

(a) **Membership:** 10 Members

(b) **Functions:**

- (i) To recommend the appointment of a Chief Executive and Head of Paid Service and the Monitoring Officer to the Council
- (ii) To interview and appoint Chief Officers, ~~and officers at director level or equivalent, including the Monitoring Officer as defined by the Officer Employment Procedure Rules~~ and to approve statements specifying:
- the duties of the officer concerned;
 - any qualifications or qualities to be sought in the person to be appointed;
 - to 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;
 - to make arrangements for a copy of the statements mentioned in sub paragraph (ii) to be sent to any person on request; and
 - to make arrangements to shortlist applicants for these posts and agree the assessments to be taken by shortlisted applicants.
- (iii) To determine the terms and conditions on which officers hold office (including the terms of dismissals), restructures, exits, statutory discretion relating to termination payments, reorganisations involving changes to staff responsibilities at Deputy Chief Officer and above.
- (iv) All other staffing matters that have not been delegated to any other decision maker
- (v) To establish a sub-committee to perform any of these functions as appropriate

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