

**Title of meeting:** Employment Committee

**Date of meeting:** 4 December 2018

**Subject:** Senior Management Structure - Support Services

**Report by:** Chief Executive

**Wards affected:** N/A

**Key decision:** No

**Full Council decision:** No

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**1. Purpose of report**

- 1.1 To advise the Employment Committee of the implications, options and process to meet the Administration's intention to secure £100,000 p.a. net savings from the senior management of the Council's support services.

**2. Recommendations**

- 2.1 It is recommended that Members:
- I. Note the rationale and implications set out in the report and its appendices and agree or amend the proposed senior management options set out at Appendix 1 for formal consultation with staff affected and trades unions and advise the staff who will be placed 'at risk' as a consequence.
  - II. Agree to consider responses to the proposed structure at a subsequent meeting, and following their consideration of those responses, to implement a new structure in accordance with the guidance set out at section 5.
  - III. Agree to adopt the proposed consultation and selection methods as set out in the report.

**3. Background**

- 3.1 Members are aware that the number of senior management posts has been significantly reduced in response to cuts in the Council's budget. In addition, the Council's senior managers have taken on considerable additional responsibilities, both as a result of a depletion of their number and in taking on additional roles for other councils and agencies which has generated considerable income to the Council.
- 3.2 The Council's Support Services are essential to the smooth-running of the rest of the Council and include a number of Statutory roles and responsibilities. The Support services are currently arranged, as follows, under three Directorates:

**Director of Finance and Information Technology (s151 Officer)**

- Finance
- IT
- Procurement

**Director of HR, Legal and Performance**

- HR
- Strategy
- Audit
- Legal

**Director of Community and Communication**

- Revenues and benefits
- Communications
- Democratic (including elections)
- Information governance (including data protection, FOI)
- Customer Services, Help Desk
- Voluntary Sector

These Directors in turn, until recently, reported to the Deputy Chief Executive and Monitoring Officer. It is envisaged that the role of Deputy Chief Executive is a continuing role within the new structure to facilitate the role of Chief Executive. But for the purposes of this report it may be necessary to realign those services which report to the post holder.

- 3.3 Included in the Administration's published budget is the intention to make an annual saving of £100,000 p.a. net in the senior management in Support Services. Under the Council's Constitution, the senior management structure lies in the jurisdiction of the Employment Committee, not the Chief Executive nor the Cabinet. It will therefore be necessary for the Employment Committee to agree any change to the senior management structure to accommodate this element of the Administration's proposed budget. Members have asked the Chief Executive to present proposals that could achieve the savings proposed.
- 3.4 Members are advised that an application for voluntary redundancy has been received from one of the Directors in support services. The on-going annual revenue savings associated with this are set out in the Financial Implications at section 10 below, and the initial costs together with ongoing savings are set out in confidential Appendix 2. The decision whether to accept the request for voluntary redundancy rests with the Employment Committee. In coming to its decision, the Committee has an obligation to consider whether accepting the voluntary redundancy would meet the business need and avoid the need for compulsory redundancy, whilst delivering the functions above. However as there has been no consultation with the other "at risk" support services Directors on any reconfigured services, it is recommended that the Committee should also consider whether to invite other Directors affected by the proposals so they are able to consider whether they would also wish to apply for voluntary redundancy. This will ensure fairness and transparency. Should there be no other applications for voluntary redundancy from the "at risk" group, Employment Committee could also consider

extending this offer to the wider Director group in an attempt to mitigate compulsory redundancies. The overriding factor would be to ensure that business needs are met and the organisation retains the staff with the skills needed to deliver services going forward.

#### **4. Considerations and Options**

- 4.1 Members need to consider the following drivers in deciding their preferred approach, recognising that they are determining the structure and the form of a significant part of the organisation, not the selection of individuals to fill the roles:
- Member priorities - where we need to maintain capacity and retain our talent
  - Which areas are not political priorities - where we can seek to cut management capacity
  - Where Members are prepared to take greater risk - where we can seek to reduce our management and operational capacity
  - Where Members are most risk adverse - where we need to ensure we have an appropriate level of expert capacity and resilience.
- 4.2 In addition to these considerations, before making decisions about the structure, Members note that:
- 'Senior' management (ie at Director level) is only part of the management structure of the organisation and shouldn't be looked at in isolation
  - Sufficient corporate governance needs to be retained at the appropriate level of influence
  - Consideration needs to be given to the impact of changes on the Council's ability to generate income, support existing arrangements and attract further grant and growth
  - Integration of services is important in improving service design and delivery and in saving money
  - Sufficient senior management capacity is necessary to deliver priority strategies, drive change and respond to likely changes in legislation and policy.
- 4.3 Members will recall that in the Annual Audit Letter for the year ended 31 March 2015, the council's External Auditor (Ernst & Young LLP) commented as follows: *"...the Council is taking sensible steps to become more financially independent of central government and commercial in the way that it operates, in response to the financial challenges it faces. However, we expressed a number of concerns about whether (inter alia):*
- *There is sufficient management capacity to deliver such a significant change programme in the wake of previous and planned reductions in staff levels; and*
  - *Services were receiving appropriate central support to identify remedial plans, where they are forecasting demand-led overspends."*

Ernst & Young LLP

<https://www.psa.co.uk/wp-content/uploads/AAL/2015/Portsmouth%20City%20Council.pdf>

- 4.4 Balanced against the advice of the external auditor, the Administration has given careful consideration to its priorities in determining its budget proposals for 2019-20. These reflect the Administration's priorities for the Council in the context of a need to respond to further and significant reductions in central government grant and the demand and costs of services the Council is responsible for, including adults and children's social care where there are projected overspends and no sign of any proportionate response from Central government.
- 4.5 Members appreciate that without reductions in the scope and responsibilities of the organisation, cuts to senior management will be likely to have implications for uplifting grades across other posts under the Council's job evaluation system as well as the capacity of the remaining staff. This reduces the net impact of any saving from deleting a senior management post. The indicative savings set out in the Financial Implications at section 10 seek to anticipate this in general terms; the precise implications will not be known until any revised structure is complete.
- 5. Options for senior management savings in Support Services**
- 5.1 Effective and efficient support services are essential to enable the Council to deliver its front line functions, control its finances, support and develop its staff, and manage its considerable corporate governance responsibilities, such as budgeting, public and democratic accountability and scrutiny.
- 5.2 The Council is required to appoint to the roles of Monitoring Officer and s151 Officer, positions currently held by the Deputy Chief Executive and a support service Director respectively. Whilst these roles can be provided in other ways such as through joint working with other authorities, these are roles that carry particular responsibility and where there are expectations of qualification and experience. The Portsmouth post holders have also been appointed by Gosport Borough Council, and for the purposes of s151, to the Isle of Wight Council and Solent LEP as well. The Council is compensated by these Councils for these arrangements which in effect subsidises the cost of their employment by the Council.
- 5.3 This Council has retained its support services in-house and trades with a number of other organisations including Gosport Borough Council, Portsmouth CCG, Solent Healthcare Trust and Solent LEP. Portsmouth's Internal Audit service provides a service to 11 other organisations. The support services provided externally are currently to a value of £5m per annum. This represents a significant business on its own and Members have not shown any appetite for seeking an externalised provision, but rather a desire to seek greater income through traded services. Discussions are ongoing with a number of councils.
- 5.4 Internally, the support services are organised on a broadly centralised model, with staff embedded within other services where this is advantageous. Decentralisation of support services to the directorates is generally not recommended as the residual support services and the respective IT systems could not support this - it would increase costs, reduce flexibility and reduce corporate grip at a time when budget discipline and focus is paramount. However, there remains scope for

greater responsibility to be taken by managers within the other services, with fewer but more expert staff within the support services.

- 5.5 Whilst reductions in senior staff will inevitably reduce the capacity, knowledge and experience of the organisation, Members have indicated that this is an area where they feel comfortable that the number of Directors could be reduced whilst still maintaining adequate management oversight and control of risk. Should members wish to re-organise, consolidation is recommended by combining the range of activities and responsibilities currently covered by four Directors, therefore reducing overall headcount.
- 5.6 As set out in the Financial Implications at section 10 it can be reasonably assumed that a reduction by one Director within Support Services will secure an annual saving of in the region of £76,000, a significant saving but below the net saving of £100,000 sought by the Administration within its budget proposals. Therefore, to secure the full saving required, it would be necessary for two posts to be removed from the establishment. This would clearly place greater strain on the remaining capacity within the Council, and its ability to meet its obligations to its customers who rely on Portsmouth CC senior management. It will therefore be necessary for the Employment Committee to determine whether it seeks the removal of one or two Director posts, or whether the Committee wishes to advise the Cabinet to address its budget savings in another way.
- 5.7 In order to assist the Committee's deliberations, Appendix 1 sets out indicative arrangements that could meet the scenario of a reduction by either one or two Directors. Clearly, the number of possible permutations is huge, and the re-allocation of the span of duties need not necessarily be limited to the remaining Director posts; some of the roles could be allocated to other Directors or to the Chief Executive. What the Committee needs to do at this stage is to determine what range of alternatives it wishes to consult on; depending on the consideration of the feedback on that consultation it may then reasonably make a decision about which final structure to adopt.

## **6. Process**

- 6.1 The adoption of the proposed structure contained within this report will have direct implications for a number of staff as a consequence of change to the existing senior management structure, putting their posts 'at risk'. The Council has an obligation to consult unions and employees to ensure a fair redundancy procedure.
- 6.2 In accordance with the Council's Workforce Organisational Change policy, the unions and those staff directly affected have been advised, at the earliest opportunity, that the posts are at risk under the proposals being considered.
- 6.3 Members need to decide the approach that best meets the needs and circumstances of the Council over the next few years. This report offers arrangements that the Committee is advised to consult upon with staff and the unions. Please refer to Appendix 3 for the full details of the consultation process.

6.4 The length of the consultation period is legally determined by the number of staff potentially at risk of redundancy across the Council as a whole. As there are fewer than 100 potential redundancies across the organisation the minimum consultation period required will be 30 days during which time further proposals may be put forward.

6.5 At the end of the consultation period, the Committee will be required to consider any representations received during the consultation period, prior to endorsing or modifying the proposed senior management structure.

## 7. **Appointment to New Structure**

7.1 There is a process which Members must follow in making decisions in relation to appointments to new staffing structures and this supports the Council's redeployment policy and existing practice. It is recommended that Members adopt the following principles:

- Appointment to any new posts be sought through an internal ring-fencing selection process in line with existing redeployment policy.
- **Job Matching** - Where Director posts are substantially performing the role proposed in the new structure
- **Ring Fencing** - Applications be restricted to Director posts that are at risk of redundancy **or** performing a part of the role.

7.2 In line with our policies and practice, the Employment Committee should ring-fence the recruitment process, inviting only staff identified as being 'at risk' to apply. If Members adopt this appointment method, the timescale set out within Appendix 3 provides a guide to the proposed timeline.

## 8. **Equality impact assessment**

8.1 A preliminary Equalities Impact Assessment has been undertaken.

## 9. **Legal implications**

9.1 The implications outlined in the report, whilst preliminary, are such that a redundancy process (a potentially statutorily fair reason for dismissal) will need to be considered as against a background of structural change. The key factors to avoid claims of unfair dismissal either based upon a redundancy situation not existing or flaws in the process of selection are at this point as follows:

- The burden is upon the Council to establish that the jobs no longer exist.
- The process of consultation and procedure will need to be clearly established before anyone is dismissed. Whilst the Council might be able to show that the jobs are redundant, the dismissals might be unfair if the consultation, selection and criteria used are flawed.
- Any process which is followed must be consistent with the Council's existing policies

- Consultation will need to be meaningful and engaged early enough to avoid any applications to the Employment Tribunal for protective payment awards; the current time frame would be 30days.
- The key to avoid claims is to map accurately the structure re-profiling, engage early, consult throughout and be able to objectively justify selection, as any Tribunal will be concerned about decisions being fair and reasonable in all the circumstances having due regard to the size and nature of the undertaking. Taking into account these considerations, Members are strongly advised to adopt the principles set out above. It is imperative that the Council is seen to act in an open fair transparent way which is consistent with its usual practices. Failure to do so would open up the real possibility of claims against the Council which taking into factors such as age, loss of pension rights, the salaries of the post holders and loss of employment rights, would be substantial.

## **10. Director of Finance's comments**

- 10.1 The financial implications arising from the implementation of any of the changes contained within this report will relate to the estimated costs of redundancies and the ongoing savings arising from a reduction in Director posts, together with any estimates of additional costs that will be necessary where staff are required to take on additional duties.
- 10.2 Whilst it will be for Members to determine the final structure, in terms of in-year and future savings, the savings arising from the reduction of one Director post in a full year and ongoing is estimated at £76,000 (excluding any redundancy and pension strain costs which would be dealt with in confidential session). Any delay to the implementation of the proposed redundancy will serve only to reduce the level of savings achieved. This is because any delayed savings considerably outweigh the reductions in the redundancy costs which would occur.

## **11. Conclusions**

- 11.1 Austerity is not yet over for local government. The Council can be expected to face several more years of significant cuts to its central government grant and some huge challenges, which if unmet will place even greater pressure on costly remedial services. However, Members are aware that cutting management does not necessarily reduce costs. City councils are obliged to deliver a broad range of services (over 1200 statutory services), and others they choose to provide. The Council must ensure that it can offer the support services necessary to enable the front-line services to deliver as efficiently as possible and meet the standards of accountability, democracy, transparency and prudence demanded of it.
- 11.2 The Council has made savings of £98m over the last eight years, largely achieved by increases in efficiency and effectiveness. In very few areas has the Council actually stopped providing services, but has expected more from less, often with increasing expectations in terms of service quality and the ability to do new things. The Council needs to ensure that its senior management structure is capable of

delivering on this change agenda, and that its expectations are tempered by reduced capacity.

- 11.3 Recognising that significant reductions have been made in capacity over the last ten years, the proposals contained in this report set out where reductions to the amount and configuration of senior management in Support Services could be considered by Members to deliver the Administration's proposed budget cuts.

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Signed by:

**Appendices:**

- Appendix 1 - Potential Reconfiguration of Support Services Director posts
- Appendix 2 - Exempt Appendix - personal financial data
- Appendix 3 - Proposed Consultation Process

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:



### Potential Reconfiguration of Support Services Director Posts

There are a large number of potential combinations of services across the residual Support Services directors, as well as possibilities to align some of those services to other Directors or the Chief Executive direct. The following two options illustrate to members how the alignments could work, utilising the post of Deputy Chief Executive as fulfilling a Director role.

<b>Possible permutation with deletion of one Director post</b>		
<b>Director 1</b>	<b>Director 2</b>	<b>Director 3</b>
Legal Services	Customer Services, Help Desk	Finance
Democratic Services and Elections	Communications	Audit
HR	IT	Procurement
Voluntary Sector	Information Governance (data protection, FOI)	Revenues and Benefits
	Strategy (policy)	

<b>Possible permutation with deletion of two Director posts *</b>	
<b>Director 1</b>	<b>Director 2</b>
HR,	Finance
Legal	Audit
Democratic Services and Elections	Revenues and benefits
IT	Procurement
Customer Services, Help Desk	
Strategy (policy)	

\*Under this configuration it is recommended that Voluntary Sector be aligned to another Director - either one of the two Social Care Directorates or Cultural Services. Consideration should also be given to aligning Communications and/or Strategy with the Chief Executive direct, as the workloads are excessive.

The roles of Monitoring Officer and s151 Officer are Statutory roles determined by Full Council. Once the Employment Committee has determined how many posts it wishes to retain, and undertaken consultation, consideration will need to be given to where these functions best sit in the new structure.

## Proposed Consultation Process

### 1 Process

- 1.1 If Members agree to the recommendations of this report, this will enable a formal period of consultation to commence.

### 2 Purpose of Collective Consultation

- 2.1 Informing and consulting with the workforce is essential for the success of any organisation. The aim is to allow employees to influence the employer's decision

- 2.2 Consultation is not simply the act of passing information on or presenting employees with decisions that have already been agreed. It is a process by which management and trade unions or ( employee representatives) are able to discuss and examine issues of mutual concern, with the outcome resulting in employees having had the opportunity to influence the decision making process by considering and feeding back on the organisation's proposal. The business reason for not accepting a proposal needs to be compelling and able to demonstrate all suggestions have been taken into account during the consultation period.

- 2.3 In order to ensure the consultation process is meaningful the organisation should be clear on:
- The business rationale behind the proposed dismissals
  - That while the organisation will make the final decision, representatives will have a full opportunity to comment on the proposal.
  - Management will listen, engage and consider views of employees when making decisions, demonstrating genuine opportunity to influence the outcome.

### 3 Statutory Consultation

- 3.1 Collective consultation must take place in good time. The statutory timetable for consultation should be regarded as a minimum and is as follows:

<b>Number of employees it is proposed to be dismissed at establishment over 90 day period.</b>	<b>Minimum consultation period before first dismissal takes effect.</b>
20 - 99	30 days
100 or more	45 days

The employer should not issue notices of termination until the consultation process has been completed.

- 3.2 For the purposes of consultation, the employer must provide the appropriate representatives with certain information in writing. This includes:
- The reasons for the proposed redundancies
  - Numbers and description of posts affected
  - Proposed method of selecting the employees who may be dismissed.
  - Proposed method of carrying out the dismissals, taking account of any agreed procedure including the period of time which the dismissals are to take effect.

Consultation should include exploring ways of avoiding potential dismissals, reducing the number of employees to be dismissed and mitigating the consequences of the dismissals. Consideration to accept applications for voluntary redundancy should be undertaken.

- 3.3 The Employment Appeals Tribunal (EAT) has set out principles for ensuring fairness of redundancy dismissals. Whilst the principles were formulated in relation to consultation where the employees are represented by a trade union, employers should also apply them when consulting individually, whether or not a union is involved. The principles include:
- The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the organisation or elsewhere.
  - The employer should begin consultation when proposals are at a sufficiently formative stage to enable the consultation to be meaningful. This should be at an early enough stage so that all options can be explored with employees including whether or not the need for redundancies can be avoided.

#### **4 Information and Consultation Methods**

4.1 Whilst the Employment Committee is concerned with the recruitment and dismissal of officers at Head of Service level and above, the proposal for the senior management structure is of a wider interest to the Council's staff and unions.

4.2 Employers can inform and consult using a variety of communication and information methods, depending in part on the size and structure of the organisation. Whatever method is used, Members should take into account the following factors:

- The information should be clear, easy to understand and concise.
- Presented objectively so that employees are encouraged to make proposals without being influenced by the employer's view.
- Relevant and open to consultation.
- Should aim to provide regular and systematic updates to ensure employees know when to expect them.

- Approach should be consistent when providing information. Particular care should be taken when different sources cascade the information.
- Employers should be transparent when giving information

- 4.3 Members may wish to give due consideration to previous methods of internal communications successfully utilised to ensure meaningful consultation with the Council staff and unions. These included:
- Providing an outline of proposals and link to the full report published on PCC Intranet site
  - Utilising Consult HR inbox to receive any staff suggestions on the proposal.
  - Proposal information included in Team Brief (monthly update sent to all managers for discussion at team meetings).

- 4.4 In addition, the Chief Executive personally briefed the Corporate Management Board and the Third Tier Managers on the proposed changes, highlighting where they could make representations.

An email address was created to receive any representations on the proposal and Directors and Heads of Service also collated representations they received.

## **5 Determination of a redundancy Selection pool**

- 5.1 Where it has been established circumstances are likely to result in a job loss or Job losses and there are consequent redundancies, management will normally create a 'pool' of employees from which the selection is to be made.
- 5.2 Redundancy is potentially a fair reason for dismissal under section 98 of the Employment Rights Act 1996. An employer must show that it has acted reasonably and adopted a fair procedure, this requires consideration of the appropriate pool of employees from which the selection for redundancy is made. An organisation is afforded a degree of flexibility when defining the redundancy pool. However, to ensure the fairness of any dismissals the employer must demonstrate that it took a reasonable approach.
- 5.3 Should Members be minded to approve the recommendation to change the senior management structure they will need to ensure the selection criteria applied to the pool of staff at risk of redundancy is objective and applied in a fair and consistent way.

### **Considerations**

- What is the purpose of the post selected, how many other posts also fit this purpose.
- When recruiting is the same criteria applied in the selection process.
- Could a post holder act as a substitute for another post holder
- If one post is not considered part of the pool what excludes it.  
[Employment Tribunals tend to look at title, salary, level of responsibility and require a substantial difference for exclusion purposes]

5.4 The organisation should look at the day to day activities of the post holders and the terms of their employment. Focus should be on the reality of the work they actually undertake rather than what their contract says in theory is required to be undertaken. Consideration also needs to be applied as to whether an individual's skills are interchangeable with other employees, so a wider selection pool may be required. It is not necessary to determine a redundancy selection pool where only one job role is redundant, and there is only one employee carrying out that role. However this will only apply where the role is unique within the business. If there are other roles that are similar across the organisation or that require similar skills and qualifications ie leadership and management, consideration will need to be undertaken to decide whether it is appropriate to include the employees in those roles into a pool for selection.

## **6 Next steps**

6.1 Dependent upon the decision of the Employment Committee, having fully considered the responses to consultation [regarding the proposal to reduce the number of senior management posts]. One or more Director posts may be redundant and the post holders at risk of redundancy. Members will need to consider whether to:

- 'Slot - in' where Directors are substantially performing the role proposed in the structure
- Ring fence recruitment to those post holders at that level who are at risk or performing a part of the role.

6.2 There is a proper process to go through to guide members' decision in relation to making appointments to new staffing structures and this supports the Council's redeployment policy and existing practice.

### **Principles**

The process of movement of employees from existing to new structures should be achieved as effectively as possible through a fair procedure which includes:

- Identification of Job Matching
- Ring fencing of recruitment

### **Job Matching**

Broad criteria should focus on purpose of the role taking into account skills, experience, knowledge and level of responsibility

### **Ring Fencing**

If through a reduction of the number of posts in the new structure there are more people than posts, appointment should be considered through the ring fence selection process.

6.3 The Employment Committee should elect to ring fence the recruitment process, inviting only staff identified as being at risk to apply. In addition this will ensure compliance with existing redeployment policy and practice utilised across the Council.

6.4 Where any post profile is significantly revised as part of the restructure, this should be evaluated under the Council's Job Evaluation process.

## 7 Timeline

7.1 Assuming that appointments to any new posts are sought through an internal ring fence process (in line with existing redeployment policy). The timescale set out below is a guide to the potential timelines.

Senior Management Consultation	Days
Consultation	30 days
Collate response and prepare report	3 days
Report to committee	1 day
Special Employment Committee (if appropriate)	1 day
Communication and job matching	1 days
Selection and redundancy communication	2 days
Notice periods* (3 calendar months)	Up to 93 days
Total	131 days

N.B \* Contracts provide for pay in lieu of notice if this is required to achieve an earlier date for implementation of new structure.