

Corporate Governance and Standards Committee

Report of the Executive Head of Governance

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Date: 4 June 2015

Dismissal arrangements for Statutory Officers

Executive Summary

1. The purpose of this report is to revise the Employment Procedure Rules set out in Part 4 of the Constitution. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amend the procedure to be followed for dismissing a statutory officer of the Council i.e. the Head of Paid Service, the Chief Finance Officer (s151 officer) and the Monitoring Officer (the 'relevant officers').
2. The current requirement imposed on the Council to appoint a "designated independent person" before it could dismiss or discipline its Head of Paid Service, Chief Finance Officer (s151 officer), or Monitoring Officer has been replaced with a new requirement to appoint an independent Panel as and when required for the purposes of advising the Council on matters relating to the dismissal of one or more of the relevant officers. The Panel must have at least two members, being Independent Persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2015.

Recommendation to Council

The Committee recommends to Council:

1. that the Officer Employment Procedure Rules contained within the Council's Constitution be revised as set out in Appendix 1 hereto with immediate effect.
2. That the role of the Independent Persons be revised to include reference to their new responsibilities as a co-opted member of an independent dismissal advisory Panel and that the current allowance paid shall incorporate such duties.
3. That the Monitoring Officer be given delegated authority in consultation with the Leader to make any further revisions to the Officer Employment Procedure Rules as may be necessary to fully implement the requirements of the Local Authorities

(Standing Orders) (England) (Amendment) Regulations 2015.

Reason for Recommendation:

To ensure compliance with the Local Authorities (Standing Orders) (England) Amendment) Regulations 2015

1. Purpose of Report

- 1.1 The purpose of this report is to make recommendations for the revision of the Employment Procedure Rules set out in Part 4 of the Constitution so as to establish a process for the formation of a Dismissal Advisory Panel reflecting the new mandatory statutory requirements contained in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. These regulations amend the procedure to be followed for dismissing a statutory officer of the Council i.e. the Head of Paid Service, the Chief Finance Officer (s151 officer) and the Monitoring Officer (the 'relevant officers').
- 1.2 The requirement imposed on the Council to appoint a "designated independent person" before it could dismiss or discipline its Head of Paid Service, Chief Finance Officer (s151 officer), or Monitoring Officer has been replaced with a new requirement to appoint an independent Panel as and when required for the purposes of advising the Council on matters relating to the dismissal of one or more of the relevant officers. The Panel must have at least two members, being Independent Persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2015.

2. Background

- 2.1 Special arrangements for disciplinary action, including dismissal, for a council's statutory officers have been in place for some years in local government in recognition of the sensitivity of their roles in a political environment. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force on 11 May 2015 and the Council is required to incorporate in its standing orders the amendments relating to its dismissal procedure concerning the relevant statutory officers.
- 2.2 The Department for Communities and Local Government states that these Regulations are designed to "simplify and localise the disciplinary process for the most senior officers of a council i.e. the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. They remove the requirement that a Designated Independent Person be appointed to investigate and make a binding recommendation on disciplinary action against these senior staff.'
- 2.3 An independent panel replaces the Designated Independent Person process and the full Council may not dismiss a relevant officer unless the procedure laid down in these new regulations is complied with.
- 2.4 The Department for Communities and Local Government accepted following consultation on the draft regulations that there was a continuing need for the relevant officers to have additional statutory protection as they discharge

statutory responsibilities to their councils and discharge these in a political environment.

- 2.5 The rationale therefore behind the specific but changed statutory protection afforded to the Head of Paid Service, the Chief Finance Officer (s151 officer) and the Monitoring Officer is that such officers in the proper exercise of their statutory duties are required to 'speak truth to power' in the public interest without fear or favour. This is required even where, for example, such advice would be potentially unpopular and may represent clear dissent from any prevailing political leadership's views.
- 2.6 The public interest requires professional advice to be given even if there is a danger of such advice being wrongly misconstrued (e.g. as being undermining disloyal, insubordinate or politically motivated). Such advice does not of course have to be accepted by Members if there is good reason not to do so.
- 2.7 However, if such officers omit, in whole or in part, to exercise properly their statutory duties due to risk of detriment, the interests of the Council and the public are not served, and the public pay the cost. The limited statutory protection is thus designed to be in everyone's interests, and relevant officers can still be legitimately held to account where it is appropriate in the public interest.

3. Action

- 3.1 The Council is required to amend its Constitution including its standing orders.
- 3.2 The Council must appoint a Panel (meeting as and when required) being a committee appointed by the Council under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of the relevant officers of the Council. It will be subject to all the legal requirements of a committee including the proportionality rules.
- 3.3 The Panel must consist of at least two Independent Persons being persons appointed under section 28(7) of the Localism Act 2011 and, where there are fewer than two such persons, the Panel may consist of such Independent Persons as have been appointed by another authority or authorities as the council considers appropriate.
- 3.4 The Council is not required to appoint more than two relevant Independent Persons to the Panel but may do so. Currently the Council has three Independent Persons.
- 3.5 Subject to the requirement to have two relevant Independent Persons, the Council must appoint to the Panel such relevant Independent Persons who have accepted an invitation. Invitations should therefore be sent in accordance with the following priority order:
 - An Independent Person who has been appointed by the council and who is a local government elector within the council's area;

- Any other Independent Person who has been appointed by the council ; and
- An Independent Person who has been appointed by another council or councils.

3.6 Should any Panel be required to be appointed, the Council must appoint the Panel at least 20 working days before full Council holds its meeting at which full Council takes a vote on whether or not to approve dismissal, taking into account in particular –

- (a) any advice, views or recommendations of the Panel;
- (b) the conclusion of any investigation into the proposed dismissal; and
- (c) any representations from the relevant officer.

3.7 Local authorities must modify their standing orders to give effect to the new arrangements. It is therefore proposed that the paragraph set out in Appendix 1 of this report be added as new paragraph 8 to the Officer Employment Procedure Rules in Part 4 of the Constitution.

3.8 Guidance has not yet been received from the Department of Communities and Local Government regarding the practical implications of putting into place the new arrangements. The Local Government Association is also expected to provide advice on the matter. In addition, your officers therefore propose that delegated authority be given to the Monitoring Officer in consultation with the Leader to make any further amendments to the Officer Employment Procedure Rules as may be required to implement fully the new arrangements, as may be necessary following receipt of this guidance.

4. Financial Implications

4.1 Under the 2015 Regulations any remuneration allowances or fees paid by the Council to an Independent Person appointed to the Panel must not exceed the level of remuneration, allowance or fees payable to that Independent Person in respect of that person's role as Independent Person under the Localism Act 2011.

4.2 Travel expenses of Independent Persons are reimbursed at the same rate as set out in the Members' allowance Scheme. These new duties can be included in these arrangements.

4.3 The cost of appointing the panel and their expenses can be contained within existing budgets.

5. Legal Implications

5.1 The legal implications are set out in the body of this report.

6. Human Resource Implications

- 6.1 Convening the independent dismissal advisory Panel would be undertaken within existing resources. The Council must also consider what consequential changes need to be agreed in relation to any relevant contracts of employment.

7. Risk management implications

- 7.1 The implications regarding risk are apparent from the report in that the Council must follow the statutory process and exercise its powers reasonably and for a proper purpose. If the Council does not implement these revised regulations at its next Council meeting it will be in breach of the requirements set out in the regulations.

8. Human Rights Act implications

- 8.1 Panel arrangements are designed to respect an Individual's right to a fair hearing.

9. Equality Act implications

- 9.1 This report deals with internal and procedural matters only.

10. Conclusion

- 10.1 The Council is required to amend its Constitution including standing orders in the light of The Local Authorities (Sanding Orders) (England) (Amendment) Regulations 2015 SI No. 881 no later than the first ordinary meeting of the authority falling after 11 May 2015.

11. Background Papers

SI 2015 No. 881 the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

12. Appendices

Appendix 1 - Officer Employment Procedure Rules revisions