

Corporate Governance and Standards Committee Report

Ward(s) affected: All

Report of Director of Corporate Services

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## **Amending the Constitution: Disciplinary Arrangements for Statutory Officers and Minor Matters**

### **Executive Summary**

The purpose of this report is to propose amendments to the Constitution required by new legislation and to deal with two minor issues that have been highlighted.

### **Recommendations to Committee**

The Committee is asked to recommend to Council (9 December 2015)

- (1) That the protection afforded to the Council's Statutory Officers (the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer: "the Relevant Officers") should apply to disciplinary action as it does to dismissal.
- (2) That the amendments to the Constitution set out in the appendices to this report, as required to implement the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations"), be approved.
- (3) That the Monitoring Officer be authorised to make the necessary Constitutional amendments to deal with the minor matters referred to in this report (harmonising the value of contracts which require the Council's seal; and including email within the scope of ordinary correspondence).

### Reasons for Recommendation:

To implement the Regulations and to improve the Constitution.

## **1. Purpose of Report**

- 1.1 To agree that provisions relating to the dismissal of the Council's Relevant Officers should also apply to disciplinary action against those Officers.
- 1.2 To approve amendments to the Constitution to incorporate the Regulations.
- 1.3 To approve minor changes to the Constitution: one dealing with discrepancies in the value of contracts which require the Council's Seal; and the other to include email in provisions relating to ordinary letters.

## **2. Strategic Framework**

- 2.1 It is a legal requirement to incorporate the Regulations within the Constitution.
- 2.2 As the present arrangements relating to the Relevant Officers apply to both disciplinary action and dismissal, it is suggested that the Council's responsibilities as an employer and the need to have Relevant Officers who can "speak truth to power", are best served by continuing to have the same arrangements in place for disciplinary action and dismissal
- 2.3 Correcting errors in the Constitution, and keeping it up to date, are important elements of the Council's Governance.

## **3. Background**

- 3.1 On 7 July 2015, the Council received a report on the Regulations<sup>1</sup>.
- 3.2 It was resolved:
  - (1) That the Officer Employment Procedure Rules contained within the Council's Constitution be revised, as set out in the Appendix to the report submitted to the Council, 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 authorised, in consultation with the Leader of the Council and the Chairman of the Corporate Governance and Standards Committee, to make such 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.
- 3.3 The 7 July report flagged-up that consideration would need to be given as to whether the arrangements for the dismissal of the Relevant Officers should also apply to disciplinary action against those Officers; although the Regulations have

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<sup>1</sup> [Item 10: Dismissal Arrangements for Statutory Officers](#)

many references to “disciplinary action”, they only apply in respect of dismissal.

- 3.4 The report concluded by proposing that the Monitoring Officer be authorised (in consultation with the Leader of the Council and the Chairman of the Corporate Governance and Standards Committee) to make such amendments to the Constitution as may be required to fully implement the Regulations. The final version of the Constitution including all the matters referred to above was to be reported to Full Council: that is the purpose of this report.
- 3.5 As a result of work being done on the Constitution, the Monitoring Officer has also been made aware of a discrepancy in the Constitution and an improvement that could usefully be made.

### The Regulations

- 3.6 As referred to in the 7 July report, Relevant Officers are afforded special protection because they carry out sensitive roles in a political environment; they are required to “speak truth to power”, “without fear of favour”, even when such advice may be unpopular and at odds with the prevailing views of the Political Leadership.
- 3.7 This basic rationale for protecting the Relevant Officers has not changed. Accordingly, whilst no longer required, it is proposed that the same protection should exist in relation to disciplinary action as it does to dismissal.
- 3.8 Such an approach would also be in accordance with the Council’s responsibilities as a good employer by recognising the potentially difficult role undertaken by the Relevant Officers
- 3.9 This approach does not undermine the Regulations as the fundamental change they created still applies. In the past, a Relevant Officer could only be disciplined/dismissed **in accordance with** the recommendation of a designated independent person; whereas now Full Council only has **to take account of** the advice, views and recommendations of a Panel which includes at least two independent persons.
- 3.10 The Council does have the option of only applying the Regulations to the dismissal of the Relevant Officers; but this option is not recommended for the reasons given in paragraphs 3.7 to 3.9 above.
- 3.11 As mentioned above, these changes to the Constitution had to be made in consultation with the Leader of the Council and the Chairman of the Corporate Governance and Standards Committee. A draft version of this report and appendices were submitted to those councillors both of whom were content with them.

### Minor Amendments to the Constitution

- 3.12 The Monitoring Officer is aware of two minor issues with the Constitution. It would be useful to resolve these now.

- 3.13 The first is that Procurement Procedure Rule 19 provides for the sealing of contracts with a value of £100,000 or more, whereas Article 15 of the Constitution (Finance, Contracts and Legal Matters) provides for sealing where a contract amounts to or exceeds £50,000 in value. It is proposed that the requirements for a contract to be sealed are harmonised to where the value amounts to or exceeds £100,000.
- 3.14 The second is that in places, the Constitution refers to “letters”; it is suggested that to bring the Constitution up to date and to keep it relevant, in the context of ordinary correspondence the expression “letter(s)” in the Constitution should be expanded to “letter(s) or email(s)”.

#### **4. Financial Implications**

- 4.1 No financial implications arise from this report, save for the potential for claims against the Council should correct employment procedure rules not be followed

#### **5. Legal Implications**

- 5.1 These are inherent within the report.

#### **6. Human Resource Implications**

- 6.1 These are inherent within the report; and the employment contracts of the Head of Paid Service/Chief Finance Officer and Monitoring Officer will need to be amended to reflect the changes.

#### **7. Conclusion**

- 7.1 In relation to disciplinary action against the Relevant Officers, the appendices to this report shows (via tracked changes) the proposed amendments to be made to the Constitution. Members are asked to approve these amendments.
- 7.2 In relation to the minor amendments, Members are also asked to agree them.

#### **8. Background Papers**

- 8.1 Report to Council on 7 July 2015: “Dismissal Arrangements for Statutory Officers”

#### **9. Appendices**

Appendix 1 – Amendments to Part 3 – Responsibility for Non-Executive Functions (Employment Committee)

Appendix 2 – Amendments to terms of reference of the Employment Committee

Appendix 3 – Amendments to Part 4 – Officer Employment Procedure Rules