

COUNCIL

7 JULY 2015

REPORT OF MONITORING OFFICER

A.8 AMENDMENTS TO CONSTITUTION – CHANGES TO THE OFFICER EMPLOYMENT PROCEDURE RULES

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To advise Members of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which came into force on 11 May and introduce new arrangements for dealing with disciplinary cases involving dismissal of the Council's Statutory Officers: Head of Paid Service, the Chief Finance Officer and the Monitoring Officer ("the relevant officers").

To approve to changes to the Officer Employment Procedure Rules (Part 5 of the Constitution) to give effect to these new dismissal arrangements.

Recommend that the Human Resources Committee would form the Independent Panel together with the Independent Persons to consider potential dismissal of the relevant officers if required and in accordance with the Regulations.

Authorise the Monitoring Officer to make any further changes to bring the Constitution fully into line with the relevant Regulations in consultation with the Manager of Human Resources relating to the Council's Statutory Officers.

EXECUTIVE SUMMARY

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("2015 Regulations") have amended the statutory process to be followed and now require mandatory referral to an internal advisory Independent Panel of persons appointed by the authority, who will make recommendations to full Council.

Every Council is obliged by virtue of the 2015 Regulations to take a report to its first Council meeting after its Annual Meeting in May 2015, to amend its Standing Orders (in the Council's case the Officer Employment Procedure Rules within Part 5 of the Constitution) to make changes to the procedure for dismissing its Statutory Officers. The Monitoring Officer has delegated powers to amend the Constitution to take account of legislative or operational changes, however under the Local Government Act 1972, only full Council can change Standing Orders. Any amendments to its Standing Orders will therefore be incorporated into the Council's Constitution.

The Manager of Human Resources has delegated power to amend Human Resources Policies and Procedures, therefore these will need to be amended to reflect any changes required as a result of the 2015 regulations and changes to the Standing Orders approved by Council.

RECOMMENDATIONS

It is recommended that:

- (a) Council notes the contents of the Report and the legislative requirement to amend its Standing Orders to make changes to the dismissal procedure in relation to the Council's Statutory Officers;
- (b) The Council's Human Resources Committee will form the Independent Advisory Panel under the Regulations, together with the Independent Persons;
- (c) The terms and reference of the Human Resources Committee are amended to include the function of an Independent Panel;
- (d) The Officer Employment Procedure Rules are amended as set out in Appendix A;
- (e) Authority is delegated to the Monitoring Officer to amend the Council's Constitution in accordance with the Regulations and any necessary consequential changes applying to the Articles, Terms and Reference and Procedure Rules relating to dismissal of relevant Officers;
- (f) The Human Resources Policies and Procedures are amended, as necessary, to reflect any changes required based on the principles in this report; and
- (g) The Independent Persons shall be paid an annual allowance of £100 plus expenses for this additional but mandatory role.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Organisational Values expect all Councillors and staff to uphold and promote the values of personal integrity, honesty and respect for others and reflect the equality of individuals.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Any changes to the procedures can be implemented within the Council's existing budget and resources.

Risk

If the Council decided not to make the necessary changes to its Standing Orders, Constitution, Procedure Rules and Policies, this would have a detrimental impact on the Council's reputation regarding effective governance and lawful decisions. Any dismissals of the Statutory Officers would also be subject to legal challenges through an Employment Tribunal for failure to comply with legislative requirements resulting in associated financial costs implications.

LEGAL

The legal requirements and implications are set out within the content of the report.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

The content of this report does not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Special arrangements for appointment of and dismissal of the Council's Statutory Officers have been in place in local government since Local Authorities (Standing Orders) (England) Regulations 2001 introduced a degree of statutory protection. The Officers who were afforded this protection were the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer. The rationale for this protection was based on the fact that these officers have specific statutory duties and personal obligations to ensure that a Council acts lawfully and has effective governance in place, which have the potential to put them in difficult situations by raising matters bringing them into conflict with their employer, the local authority.

On 25 March 2015, the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (*SI 2015/881*) were made, which amend the Local Authorities (Standing Orders) (England) Regulations 2001 (*SI 2001/3384*).

The main changes made by the amended Regulations are:

- (a) There is no longer a requirement for a report from a designated independent person recommending disciplinary action against the Head of the Paid Service, the Chief Finance Officer or the Monitoring Officer before such action is taken.
- (b) Dismissals of the Head of Paid Service, Chief Finance Officer or the Monitoring Officer must be approved by full Council before notice of dismissal is given – previously it was only the dismissal of the Head of Paid Service that required approval of full Council.
- (c) In considering any decision to dismiss, full Council must consider any advice, views or recommendations from a Panel established to advise the Council on matters relating to the dismissal of the relevant officers ("the Panel"), the conclusions of any investigation into the proposed dismissal and any representations from the relevant officer concerned.

CURRENT POSITION

The 2015 Regulations require the Council to amend its Standing Orders (specific requirements within the Constitution) and procedures to ensure that disciplinary action involving dismissal of any of the authority's Statutory Officers cannot be taken until comments, views or recommendations are received from an Independent Panel. The final decision whether to dismiss or not must be made by the full Council.

Due to the legislative timescale it has not been possible to take these proposals to the Human Resources Committee, as it would have been in the normal course of events for staff related matters.

In the case of proposed disciplinary action, involving dismissal, against any of the Statutory Officers (Chief Executive, Section 151 Officer and Monitoring Officer) the Council is required, before making any decision, to invite Independent Persons, who have been appointed for the purposes of the Members' conduct regime introduced under the Localism Act 2011, to form an Independent Panel. An Independent Panel must be formed of two or more Independent Persons who accept the invitation in the following particular priority order:

- (a) a relevant Independent Person who has been appointed by the Council and who is a local government elector;
- (b) any other Independent Person who has been appointed by the Council; and
- (c) an Independent Person who has been appointed by another Council or Councils.

The authority must appoint the Independent Panel at least 20 working days before the meeting of the Council to consider whether, or not, to approve a proposal to dismiss the relevant post-holder and take account of their recommendations. The Panel's views, advice and recommendations and subsequent consideration by full Council, must follow on from the conclusions of any investigation into the proposed dismissal and any representations from the Statutory Officer, both of these steps follow usual employment law provisions and obligations, which remain unchanged by the 2015 Regulations.

The 2015 Regulations state that it is to be a Panel drawn from the Council in accordance with the Local Government Act 1972 which means it must comply with certain legal requirements. As by law, it is an advisory panel under Section 102(4) of the 1972 Act, therefore, this can either be a panel consisting of solely independent (non-elected) members appointed for that purpose, or include elected members. If elected members are included then the political proportionality rules will apply to any elected members on the Panel, unless full Council votes unanimously that proportionality will not apply. In considering the composition of any Panel the principles of natural justice and employment law considerations have to borne in mind.

By virtue of Section 13(3) and (4) of the Local Government and Housing Act 1989 Independent Persons who are appointed to an advisory Panel have the right, alongside any elected members to vote on matters at that Panel.

As the requirements to change Standing Orders are set down in the 2015 Regulations, the Council does not have the option not to comply with the Regulations; however it does have the choice on how the Panel will be formed with the Independent Persons. This Council has delegated staff related matters to the Human Resources Committee and therefore, it is proposed that the Committee will form the Independent Panel together with the Independent Persons, in accordance with the legislation.

Currently, the Council appoints two Independent Persons under the Localism Act 2011 (Section 28(7) refers) for the purposes of its standards framework with respect to Members and their Code of Conduct. The two current Independent Persons are both local government electors and have been consulted on the extension of their role.

The Council's Statutory Officers have been notified of the impact of the 2015 Regulations and consulted on the proposed changes. The Manager of Human Resources will formally write to these Officers to inform them of the policy and procedural changes which affect the dismissal process however, the terms and conditions of their contracts of employment with the Council remain unaffected.

The provisions which must be incorporated into the Council's Standing Orders are set out in Appendix A of the report.

As a result of the new statutory requirements, changes are not only required to the Council's Standing Orders but also within its own disciplinary procedures and it is proposed that the Manager of Human Resources will exercise their delegated authority and ensure that the Council's Human Resources Policies and Procedures are amended accordingly.

The 2015 Regulations also allow an allowance to be paid to any Independent Persons appointed to the Panel. The regulations state that this allowance cannot be more than the allowance paid to the Independent Persons for their 'member conduct' role. The implication is that they shall receive two separate allowances, and this will be included within the Council's Scheme.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Appendix A - Officer Employment Procedure Rules:

Officer Employment Procedure Rules:

2. DISCIPLINARY CASES INVOLVING THE COUNCIL'S STATUTORY OFFICERS: HEAD OF PAID SERVICE, THE CHIEF FINANCE OFFICER AND THE MONITORING OFFICER:

2.1 In the following paragraphs—

- (a) "the 2011 Act" means the Localism Act 2011;*
- (b) "chief finance officer", "disciplinary action", "head of the authority's paid service" and "monitoring officer" have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;*
- (c) "independent person" means a person appointed under section 28(7) of the 2011 Act;*
- (d) "local government elector" means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts;*
- (e) "the Panel" means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;*
- (f) "relevant meeting" means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and*
- (g) "relevant officer" means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.*

2.2 A relevant officer may not be dismissed by the authority unless the procedure set out in the following paragraphs is complied with.

2.3 The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

2.4 In paragraph 2.3 "relevant independent person" means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

2.5 Subject to paragraph 2.6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 2.3 in accordance with the following priority order—

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;*
- (b) any other relevant independent person who has been appointed by the authority;*
- (c) a relevant independent person who has been appointed by another authority or authorities.*

2.6 The authority is not required to appoint more than two relevant independent persons in accordance with paragraph 2.5 but may do so.

2.7 The authority must appoint any Panel at least 20 working days before the relevant meeting.

2.8 Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—

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

- 2.9. *Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.*