

## AGENDA ITEM

### FOR PUBLICATION

#### **RULES OF PROCEDURE – DISCIPLINARY ARRANGEMENTS FOR STATUTORY OFFICERS**

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MEETING:	COUNCIL
DATE:	22 JULY, 2015
REPORT BY:	EXECUTIVE DIRECTOR
WARD:	ALL
COMMUNITY ASSEMBLIES:	ALL
KEY DECISION REFERENCE:	NON-KEY 39

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**Background Papers:** The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

[http://www.legislation.gov.uk/ukxi/2015/881/pdfs/ukxi\\_20150881\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/881/pdfs/ukxi_20150881_en.pdf)

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#### **1.0 PURPOSE OF REPORT**

1.1 To inform Members of legislative changes relating to disciplinary action in respect to dismissal of statutory officers and to approve amendments to the Council's Employment Procedure Rules (Part 4 of the Constitution) required as a result of the changes.

#### **2.0 RECOMMENDATIONS**

2.1 That the Council:

- (a) Notes the legislative changes to the disciplinary procedures in respect of statutory officers; and

(b) Approves and adopts the Council's Constitution with the proposed amendment to the Council's Rules of Procedure.

(c) Receives further reports as necessary.

### **3.0 BACKGROUND**

3.1 The Local Authorities (Standing Orders) (England) Regulations 2001 set out the statutory requirements for the process of recruiting, appointing, disciplining and dismissing a local authority's head of paid service, monitoring officer and chief finance officer (the statutory officers).

3.2 In exercising their functions, the statutory officers work in a political environment and so the 2001 Regulations afforded them protection by requiring that disciplinary procedures incorporated the mandatory appointment of a designated independent person (DIP) to investigate any allegation of misconduct and to provide a binding recommendation on disciplinary action against them. The arrangements were designed to provide objectivity and impartiality to the disciplinary process.

### **4.0 2015 REGULATIONS**

4.1 In 2013, the Department for Communities and Local Government (DCLG) consulted on proposals to remove the DIP from the disciplinary process for these officers. The rationale for the proposed changes was that the DIP process was bureaucratic and time consuming and often led to local authorities making inflated severance payments in order to avoid the need to follow the DIP process.

4.2 Although the consultation gave rise to concerns being expressed about the dilution of the protection of the statutory officers, The Local Authorities (Standing Orders) (England) (Amendment) Regulations were brought into force on 11th May 2015. These Regulations set out a new procedure which must be undertaken should disciplinary action be taken in respect of these officers and remove the requirement for a DIP to be appointed.

4.3 Some details need clarification and the LGA is seeking this from DCLG. Further reports might be necessary as a result.

## **5.0 NEW STATUTORY PROCEDURE**

- 5.1 The new procedure requires that any disciplinary sanction involving dismissal of a statutory officer should be determined by Full Council, which must consider:
- any advice, views or recommendations of an Independent Panel,
  - the conclusion of any investigation into the proposed dismissal and
  - any representations from the statutory officers concerned.
- 5.2 The Panel must include at least two “independent persons”.
- 5.3 It was initially proposed by the DCLG that the independent persons should be those appointed to the Independent Remuneration Panel. However, this has been reconsidered by the DCLG and the independent persons who should be invited to be available to be appointed to the Panel are those who have been appointed to assist the Standards Committee in maintaining the high ethical standards of Councillors.
- 5.4 The Regulations state that any remuneration, allowances or fees paid to independent persons appointed to the Panel must not exceed the level of remuneration, allowances or fees normally payable in respect of their role assisting the Standards Committee.
- 5.5 The independent persons must be invited to join the Panel in the following priority order:
- (a) A relevant independent person who has been appointed by the authority and who lives within the authority’s area;
  - (b) Any other relevant independent person who has been appointed by the authority and lives outside the authority’s area;
  - (c) A relevant independent person who has been appointed by another authority or authorities.

- 5.6 The Panel must be convened at least 20 working days before the relevant meeting of the Council at which the decision regarding disciplinary action is to be taken.
- 5.7 The Panel is an advisory committee for the purposes of Section 102(4) of the Local Government Act 1972. Such an advisory committee

*may consist of such persons (whether members of the appointing authority or authorities or not) appointed for such term as may be determined by the appointing authority or authorities.*

It is proposed that the Panel, should be known as the Statutory Officers Disciplinary Panel, and (subject to any further DCLG clarification) should include three Elected Members (politically balanced) and two independent persons. The appointment of panel members would occur as and when the panel is required to be convened. It is suggested that the panel members should be drawn from Employment and General Committee and/or Appeals and Regulatory Committee.

All members of the Panel including those who are not Elected Members will have voting rights.

- 5.8 The new Regulations require the Council to amend its Standing Orders at its first ordinary meeting after 11th May and it is proposed that the Council's Rules of Procedure (Part 4 of the Constitution) be amended as set out in the Appendix to this report.
- 5.9 The Council has agreed to have a maximum of three Independent Persons to give their views on standards matters, though currently has two appointed and a further applicant will shortly be interviewed.
- 5.10 The Independent Persons have been consulted to find out their views on whether they are prepared to take on this additional and unanticipated responsibility and none have expressed any objection. However, the legislation includes provision for using Independent Persons from neighbouring

authorities if necessary and/or appointing further Independent Persons.

- 5.11 The role of an Independent Person at the Council is unsalaried. However an Independent Person receives a sum of £50 for up to 4 hours work, and £100 for 4 hours and over, up to a maximum of £500 per person per annum. This is payable in recognition of the role undertaken. They also are also entitled to reasonable expenses claimed for travel and subsistence when meetings have been attended, but otherwise, the work is entirely voluntary.

## **6.0 FURTHER ISSUES**

- 6.1 Various issues in respect of these new regulations remain under consideration by the DCLG and further guidance is awaited.
- 6.2 For example, it is unclear who should undertake the disciplinary investigation in the absence of a DIP and the nature of the appeals process. The LGA is taking up these and other issues with the DCLG.
- 6.3 Therefore, while Council must consider and adopt amended standing orders in order to comply with the timescale stipulated in the Regulations, it may be necessary for further reports to be brought to Council for further consideration in due course.

## **7.0 LEGAL CONSIDERATIONS**

- 7.1 The amendments proposed in the report are as required by The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 7.2 In addition, these proposals require a change to the Council's Rules of Procedure and so require consideration and approval by the Council.

## **8.0 OTHER CONSIDERATIONS**

- 8.1 In preparing this report, the relevance of the following factors have also been considered: financial, equality and diversity and human resources.

## **9.0 RECOMMENDATIONS**

9.1 That the Council:

- (a) Notes the legislative changes to the disciplinary procedures in respect of statutory officers; and
- (b) Approves and adopts the Council's Constitution with the proposed amendment to the Council's Rules of Procedure.
- (c) Receives further reports as necessary.

## **10.0 REASONS FOR RECOMMENDATION**

10.1 To put in place arrangements required by The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

MICHAEL RICH  
EXECUTIVE DIRECTOR

You can get more information about this report from  
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## APPENDIX

### RULES OF PROCEDURE

#### Disciplinary Arrangements for Statutory Officers

#### **Revised paragraph 5(a) of the Employment Procedure Rules within the Council's Rules of Procedure (Part 4, page 140 of the Constitution)**

##### 5. Disciplinary Action

###### (a) Procedure

###### (i) 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, known as the Statutory Officers Disciplinary Panel, 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;

g) "relevant officer" means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.

(ii) A relevant officer may not be dismissed by the Council unless the procedure set out in the following paragraphs is complied with.

(iii) The Council must convene the Statutory Officers Disciplinary Panel which shall comprise at least three members drawn from the members of Employment and General Committee and/or Appeals and Regulatory Committee and shall be politically balanced.

(iv) The Council must also 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.

(v) In paragraph (iv), “relevant Independent Person” means any Independent Person who has been appointed in accordance with Section 28(7) of the Localism Act 2011.

(vi) The Council must appoint to the Panel at least two such relevant Independent Persons who have accepted an invitation issued in accordance with paragraph (iii) in accordance with the following priority order:

(a) a relevant Independent Person who has been appointed by the Council and who lives within the Council’s area.

(b) any other relevant Independent Person who has been appointed by the Council but lives outside the authority’s area.

(c) a relevant Independent Person who has been appointed by another authority or authorities.

(vii) The Council must appoint any Panel at least 20 working days before the relevant meeting.

(viii) Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal (which decision must be made by the Council itself), the Council must take into account, in particular:

(a) any advice, views or recommendations of the Panel;

(b) the conclusions of any investigations into the proposed dismissal; and



(c) any representations from the officer subject to the disciplinary proceedings.