

GENERAL PURPOSES AND LICENSING COMMITTEE – 12 JUNE 2015

DISMISSAL AND DISCIPLINARY PROCEDURES – STATUTORY CHIEF OFFICERS

1. Introduction

- 1.1 The processes that must be followed before one of the Council's three "statutory officers" (the Chief Executive, Monitoring Officer, and Chief Finance Officer) can be disciplined or dismissed have historically been prescribed by the Government by means of Regulations that set out mandatory Standing Orders that Councils must adopt.
- 1.2 Currently, these Standing Orders specify the entire process that must be followed, placing responsibility on a (paid) Designated Independent Person (DIP) who has to be appointed to investigate any allegation of misconduct, make other decisions such as whether suspension of the officer's employment should continue, and report to the Council as to whether he or she considers allegations of misconduct to be supported and to recommend any disciplinary action.
- 1.3 The then Government was concerned about various aspects of this practice, including its complexity, expense and the time taken in such matters. The mandatory Standing Orders have therefore been amended with effect from 11 May 2015 and all Councils have to adopt new arrangements by the first ordinary Council Meeting that follows the Annual Meeting of the Council, i.e. by 13 July 2015.

2. Amended Regulations

- 2.1 The new version removes the mandatory requirement for a DIP to be appointed. The initial steps of any potential disciplinary procedure are no longer prescribed. Instead, the new Standing Order simply requires a decision on dismissal of one of the statutory officers to be taken by full Council, who must consider (a) any advice, views or recommendations from an Independent Panel [see below], (b) the conclusions of any investigation into the proposed dismissal, and (c) any representations from the officer concerned.
- 2.2 The Government's view is that this new process means Councils can consider and decide the best disciplinary process that will deliver value for money for their local taxpayers, whilst retaining independent scrutiny. The Government's full explanatory note can be found here:
http://www.legislation.gov.uk/uksi/2015/881/pdfs/uksiem_20150881_en.pdf
- 2.3 The Independent Panel has to include the Independent Persons appointed by the Council under section 28(7) of the Localism Act 2011 to consider complaints about Councillors (currently Mr David Hewitt and Mr David Nottage), or, if they, or either of them, does not accept an invitation to join the Panel, an independent person(s) appointed for the same purpose by another authority. The Council is not permitted to pay the Independent Persons additional fees for undertaking this duty.

- 2.4 For the dismissal stage 4, the persons who are to make up the remainder of the Panel are not specified in the new Standing Order. It is proposed that they are 3 members drawn from the General Purposes and Licensing Committee.

3. Amendment to Standing Orders

- 3.1 The new requirements are reproduced in full as Appendix 1 to this report. The Council is required to amend its Standing Orders to bring them into line with these requirements.

4. Procedures Prior to Panel Consideration

- 4.1 As stated in paragraph 2.1, the previous Regulations laid down procedures that had to be followed before the matter was formally considered by members. The new Regulations are silent on this, so the Council needs to formally adopt its own procedures. Suggested procedures are set out in Appendix 2 to this report. These are first being considered by IRC. Whilst the mandatory requirement for an independent person at all stages of the process has been removed, it is proposed to retain the appointment of an independent person only for the final stage of the disciplinary procedure, i.e. the decision to dismiss one of the statutory officers.

5. Financial Implications

- 5.1 One of the Government's stated aims in amending these Standing Orders is to make the process less expensive. Should it ever be necessary to instigate disciplinary action against one of the statutory officers, while any potential savings arising from the amended procedures cannot be quantified, the cost to the Council could well be less than if a Designated Independent Person had to be appointed and paid to carry out the previously prescribed duties throughout the whole process. Nevertheless an independent investigator will often have to be appointed and paid at some stage in the process bearing in mind the complexities of the issues that will invariably be involved.

6. Environmental, Crime and Disorder and Equality and Diversity Implications

- 6.1 There are none.

7. Recommendations to Council

- 7.1 *That Standing Orders for General Procedures be amended so as to remove references to a Designated Independent Person under Regulation 7 of the Local Authorities (Standing Order) (England) Regulations 2001, and to incorporate the provisions set out in the amended Schedule 3 to the Regulations (Appendix 1 to this report);***

- 7.2 *That the following be added to the General Purposes and Licensing Committee's Terms of Reference:***

"Through a Panel of 3 members of the Committee and two Independent Persons appointed under section 28(7) of the Localism Act 2011, to carry out

the functions required to be carried out under Schedule 3 to the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended).

The membership of the Panel is to be determined by the Chief Executive unless the Chief Executive is to be the subject of the Panel's consideration, in which case the membership is to be determined by the Monitoring Officer;”

7.3 That the disciplinary processes for the statutory Chief Officers prior to the Panel consideration be approved as set out in Appendix 2 to this report.

Further Information:

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Background Papers

Published Documents

SCHEDULE 3

Provisions to be incorporated in standing orders in respect of disciplinary action

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

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.

4. In paragraph 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.

5. Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 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.

6. An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

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

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.

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."

APPENDIX 2

Level of Employee Being Disciplined	Authority to Suspend	STAGE 1 ORAL WARNING	STAGE 2 WRITTEN WARNING	STAGE 3 FINAL WRITTEN WARNING	STAGE 4 DISMISSAL
Chief Executive	Leader	<p>Recommendation Leader</p> <p>Hearing Member Panel (3 members of Appeals Committee)</p> <p>Appeal Full Council</p>	<p>Recommendation Leader</p> <p>Hearing Member Panel (3 members of Appeals Committee)</p> <p>Appeal Full Council</p>	<p>Recommendation Leader</p> <p>Hearing Member Panel (3 members of Appeals Committee)</p> <p>Appeal Full Council</p>	<p>Recommendation Leader</p> <p>Final Decision Full Council (following appointment of Independent person to investigate and report to Full Council plus views of GP&L Panel)</p>
Executive Directors/Monitoring Officer	Chief Executive	<p>Hearing Chief Executive</p> <p>Appeal Member Panel (3 members of Appeals Committee)</p>	<p>Hearing Chief Executive</p> <p>Appeal Member Panel (3 members of Appeals Committee)</p>	<p>Hearing Chief Executive</p> <p>Appeal Member Panel (3 members of Appeals Committee)</p>	<p>Recommendation Chief Executive</p> <p>Final Decision Full Council (following appointment of Independent person to investigate and report to Full Council plus views of GP&L Panel)</p>