

REPORT FOR: COUNCIL

Date of Meeting:	24 September 2015
Subject:	Arrangements for the dismissal of/disciplinary action against the Head of Paid Service and Chief Officers
Responsible Officer:	Hugh Peart Director of Legal and Governance Services
Exempt:	No
Wards affected:	None
Enclosures:	Appendix 1 – Proposed Terms of Reference of Statutory Chief Officers Disciplinary Panel Appendix 2 – Other proposed constitutional changes

Section 1 – Summary and Recommendations

This report sets out proposed amendments to the Constitution in order to comply with new Regulations regarding arrangements for considering the dismissal of the Monitoring Officer, Head of Paid Service and Chief Finance Officer (s.151 officer). It also recommends changes to the constitution to allow for action short of dismissal to be taken against chief officers by the Chief Officer Employment Panel and for an appeal to full Council.

Recommendation:

It is recommended that Council:

1. Appoints a Committee under Section 102(4) of the Local Government Act 1972 with terms of reference and membership as set out in Appendix 1.
2. Appoints the Leader of the Council, Deputy Leader of the Council and Leader of the Opposition Group to the Committee

3. Appoints the Leader of the Council as Chair of the Committee
4. Agrees amendments to the terms of reference of the Chief Officer Employment Panel and to the functions and terms of reference of full Council as set out in Appendix 2.
5. Agrees other consequential and additional changes to the Constitution as set out in Appendix 2.

Section 2 – Report

Background

The Local Authorities (Standing Orders) (England) Regulations 2001 set out provisions in relation to the disciplining and dismissal of the head of paid service, monitoring officer and chief finance officer (“the relevant officers”). In particular, up until recent changes, they provided for the appointment of a designated independent person (DIP) to investigate allegations made against these officers and to provide a binding recommendation in respect of any disciplinary action to be taken against them.

The Local Authorities (Standing Orders) (England) Regulations 2015 amend the Regulations to remove the requirement of a DIP and to make the following provisions which must be adopted by the Council:

- 1) Only full Council may approve the dismissal of a relevant officer (at present the Chief Officer Employment Panel has the power to dismiss all Chief Officers whereas the power to confirm the dismissal of the Head of Paid Service lies with full Council);
- 2) A panel must be set up under the provisions of s.102(4) of the Local Government Act 1972 at least 20 working days before the meeting of full Council with the function of advising the authority on matters relating to the dismissal of relevant officers;
- 3) The ‘independent persons’ appointed for the purposes connected with standards complaints against members must be invited to be on the panel with a view to appointing at least two such persons;
- 4) Before voting on dismissal, full Council must take into account:
 - 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.

The requirement to go through the process set out in 2 to 4 above apply where disciplinary action is to be taken against the officer. This excludes dismissal by reason of redundancy, expiry of a fixed term contract and permanent ill-health.

The legislation does not deal with action short of dismissal. At present there are no provisions in the constitution to deal with the possibility of imposing a lesser sanction. The proposed terms of reference allow for a lesser sanction but, as it does not have decision-making powers, it is proposed that the Panel makes a recommendation to the Chief Officers’ Employment Panel (COEP) for decision with a right of appeal to Council.

Similarly, the COEP does not currently have a power to impose a lesser disciplinary sanction on other chief officers and therefore it is proposed that its terms of reference be amended to allow for this possibility and also that an appeal can be made to full Council against dismissal or any other disciplinary sanction.

The Panel

The legal requirement is only for the panel to be set up at least 20 working days before the meeting of full Council which considers dismissal. However, it is proposed that a panel is provided for in the Constitution so that, should it be needed, a meeting of full Council is not required for the purpose of setting up a panel, particularly as it is advisable to avoid delay in a disciplinary process.

The regulations also only require that independent persons should sit on the panel. However, they do not preclude elected members also sitting on the panel.

It is therefore proposed that Council set up a Statutory Officers Disciplinary Panel with the terms of reference set out in Appendix 1 and a membership of three elected members being the Leader of the Council, Deputy Leader of the Council and Leader of the Opposition Group and two independent persons, to be invited as and when required. The option for a panel without members was considered but is not recommended because it is considered that members should be involved in any decisions relating to the employment of these Chief Officers.

Contractual issues

Notwithstanding the position under the Regulations, procedures incorporating the need for an investigation are part of the relevant officers' contracts and this cannot be affected by changes to the Constitution.

Procedures are incorporated into individual contracts of employment by way of the JNC for Chief Executives and JNC for Chief Officers collective agreements. Therefore, these procedures still have to be followed. It is not proposed to seek to negotiate locally to change these procedures and in any event the Chief Officers' procedure is broadly in line with the new arrangements for the Monitoring Officer and Chief Finance Officer in respect of dismissal. However, the contractual procedure for Chief Officers also requires a panel of at least three elected members to decide on disciplinary action against Chief Officers and a right of appeal. The proposed amendments to the COEP terms of reference and provisions in respect of full Council fulfil these requirements.

National negotiations are currently taking place on the revision of the Chief Executives' model procedure which currently includes provision for the Designated Independent Person. Any changes will be automatically incorporated into the contract of the Chief Executive.

The principal difference between the new statutory procedure and the existing JNC for Chief Executives' procedure is the requirement for a Designated Independent Person who is to be appointed by the Secretary of State in default of agreement between the parties. It is now unlikely that the Secretary of State would agree to appoint a DIP and the parties would have to agree on a course of action if this was the case. It is expected that the new JNC procedure will include alternative arrangements and therefore this will not be an issue in the long term.

The contractual procedure for the Chief Executive also provides that a Committee should be able to take action short of dismissal. Under the proposals in this report the COEP can do this following a recommendation from the new Panel. It is not considered that this additional

stage would prejudice the position of an officer. The contractual procedure also allows for the Chief Executive to appeal to an Appeals Committee against action short of dismissal. It is considered that an appeal to full Council will fulfil this requirement.

Consequential and additional amendments to the constitution

Changes required to the terms of reference of Council and the Chief Officers' Employment Panel and to the Chief Officers Employment Procedure Rules are at Appendix 2.

Changes to the Committee Procedure Rules are also recommended. It is not in accordance with natural justice for speakers to be restricted in proceedings which affect employment rights and therefore it is proposed that the normal closure time of 10.30 is disapplied as well as time restrictions on speeches. Provision is also made for the officer and a person representing them under the statutory right to be accompanied at such a hearing to speak during the meeting and for questions to be put to the officer by members.

Legal comments

The provisions of the Regulations must be adopted by the Council no later than the first ordinary meeting of the Council after 11 May 2015.

The Regulations do not require an investigation to be carried out, although Council must take into account any investigation which has taken place. In order for the Council to show that a dismissal is fair it must be able to show that a reasonable investigation has been carried out and therefore the terms of the reference incorporate provision for investigation.

Another element of showing that a dismissal is fair is a right of appeal. The Regulations make this problematic as the decision is effectively to be taken by full Council and there is therefore no 'higher' body to consider an appeal. However, if as proposed the officer has the opportunity to make representations to the Disciplinary Panel and then to full Council, this effectively gives the officer the two stage process which is required for a fair procedure.

An officer has a statutory right to be accompanied at an appeal and that person has a legal right to address the hearing.

Financial Implications

No additional financial resources are required.

Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

Equalities implications

Was an Equality Impact Assessment carried out? No

Council Priorities

Having legally compliant processes in relation to the employment of senior staff is important in ensuring that the Council can concentrate on its priorities.

Section 3 - Statutory Officer Clearance

Name:.....Dawn Calvert	<input checked="" type="checkbox"/>	Chief Financial Officer
Date:15.09.15.....		
Name:Caroline Eccles.....	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date:15.09.15.....		

Ward Councillors notified:	NO
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Section 4 - Contact Details and Background Papers

Contact: Caroline Eccles, Senior Lawyer – Employment and Governance, tel: 0208 424 7580

Background Papers:

JNC for Chief Officers of Local Authorities - Constitution, Conditions of Service and Salaries

http://www.local.gov.uk/c/document_library/get_file?uuid=5edc27fb-ceb3-44d9-afa2-766c948df233&groupId=10180

JNC for Local Authority Chief Executives – National Salary Framework and Conditions of Service Handbook

http://www.local.gov.uk/c/document_library/get_file?uuid=9c0cff8a-3b6c-46c2-8e85-4d5db120865d&groupId=10180

If appropriate, does the report include the following considerations?

1.	Consultation	N/A
2.	Priorities	N/A

Appendix 1

Proposed terms of reference of Statutory Chief Officers Disciplinary Panel

The Panel has the following powers in respect of matters which might lead to the dismissal of, or disciplinary action against, the Chief Finance Officer, Monitoring Officer or Head of Paid Service except in relation to matters concerning redundancy, the expiry of a fixed term contract or permanent ill health:

1. To arrange for the investigation of the matter;
2. To consider the investigation report and representations (including in person) by the officer;
3. To make recommendations to Council in relation to the dismissal of the officer; and
4. Where the panel decides it to be appropriate, to make recommendations to the Chief Officers Employment Panel for action short of dismissal or to confirm that the matter should not progress further

Membership

The Panel shall consist of three elected members and two independent persons appointed by the Council under section 28(7) of the Localism Act who will be invited to a Panel meeting as and when required.

Appendix 2 – Other changes to the Constitution

Chief Officers Employment Panel

- (a) To make recommendations to Council on the appointment ~~of or dismissal of~~ the Head of Paid Service;
- (b) To appoint and dismiss Chief Officers excluding the dismissal of the Chief Financial Officer and Monitoring Officer.
- (c) To make recommendations to Council on the dismissal of the Head of Paid Service, Chief Finance Officer or Monitoring Officer in cases of redundancy, permanent ill health or the expiry of a fixed term contract.
- (d) To consider recommendations from the Statutory Chief Officers' Disciplinary Panel and decide whether to impose a disciplinary sanction in accordance with such a recommendation.
- (~~b~~)(e) To consider whether to impose a disciplinary sanction on a chief officer other than where a recommendation from the Statutory Chief Officers' Disciplinary Panel is required.

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Council

Article 4

Amendment to 4.02

4.02 (m) confirming the appointment of the Head of Paid Service or the dismissal of the Head of Paid Service, Chief Finance Officer or Monitoring Officer;

Insertion of new provision

Deciding whether to reject or uphold an appeal against a disciplinary sanction (including dismissal) imposed on an officer by the Chief Officers' Employment Panel.

Part 3A – Terms of Reference – Full Council

Amendment to (n)

(n) confirming the appointment of the Head of Paid Service or the dismissal of the Head of Paid Service, Chief Finance Officer or Monitoring Officer;

Insertion of new provision

Deciding whether to reject or uphold an appeal against a disciplinary sanction (including dismissal) imposed on an officer by the Chief Officers' Employment Panel.

Procedure Rules

Chief Officers Employment Procedure Rules

Paragraph 9

The dismissal of the Head of Paid Service, Chief Finance Officer or Monitoring Officer requires the approval of full Council before a notice of dismissal can be given.

Paragraph 7

Deletion of the following paragraph:

(F) Independent Person

No other disciplinary action may be taken in respect of the Head of Paid Service, the Monitoring Officer or Chief Finance Officer except in accordance with a recommendation in a report made by a designated independent person appointed in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001.

Council Procedure Rules

9. Duration of Meetings

9.1 Commencement and Closure

Meetings of the Council will commence at 7.30 pm and close at 10.30 pm, except as determined under Rule 9.2 or where the Council is:

(a) considering whether to confirm the dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer, or

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(b) considering whether to uphold an appeal against a disciplinary sanction (including dismissal) imposed on an officer by the Chief Officer Employment Panel.

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9.2 Varying the Closure Time

9.2.1 A meeting of the Council shall terminate in the manner set out in Rule 9.3 unless:

9.2.1.1 the business of the meeting has been completed before 10.30 pm; or

9.2.1.2 by resolution passed before the closure time, the Council resolves to extend the meeting beyond that time, in one of the following ways, which must be specified by resolution:

(a) to continue in the normal manner and complete the business remaining on the summons; or

(b) to determine a later time by when the meeting must close and, if the business is not completed by that later time, resolve that it be then put to the vote without debate or deferred to another meeting, as appropriate.

9.2.2 For the avoidance of doubt, a meeting may use the provisions within 9.2.1.2(b) above more than once in any meeting, provided that the motion to extend the closure time is moved before the time for the closure of the meeting or before the end of the period by which the meeting has already been extended.

9.2.3 In considering whether (a) and (b) above are expedient, the Council will have regard to not prejudicing third party rights or interests affected by the remaining business on the summons.

16. Rules Of Debate

16.4 Content and Length of Speeches

16.4.1 This Rule does not apply to motions moved under Rule 15, which must (except as stated in Rule 15) be moved and seconded without speeches.

16.4.2 Speeches must be directed to the question under discussion or to a personal explanation or point of order.

16.4.3 Subject to sub-paragraph 16.4.4 the speech of a proposer of a motion or of an amendment shall not exceed five minutes and no other speech shall exceed three minutes.

16.4.4 The Mayor may allow speeches to continue for a longer period where he/she considers that it is the wish of the Council that they should do so.

16.4.5 Rule 16.4.3 does not apply where the Council is:

(a) considering whether to confirm the dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer, or

(b) considering whether to uphold an appeal against a disciplinary sanction (including dismissal) imposed on an officer by the Chief Officer Employment Panel.

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Insert new rule 14 as follows:

14. Items affecting the employment of officers

14.1 This rule applies during consideration of an appeal from an officer arising out of a decision made by the Chief Officers Employment Panel or a recommendation to dismiss made by the Statutory Chief Officers Disciplinary Panel.

14.2 The officer who is the subject of the item and a person accompanying him or her under the statutory right to be accompanied has the right to speak in relation to the item.

14.3 Rule 12 (Questions without notice) shall apply with a modification that questions may also be asked of the officer who is the subject of the item.