

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

8.1 AMENDMENTS TO COUNCIL CONSTITUTION

i) Disciplinary Procedures Chief Executive, Monitoring Officer and S151 Officer

1. Background

- 1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which come into force on 11 May 2015, are aimed at simplifying the disciplinary process for the statutory officers of the Council i.e. the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. They remove the requirement that a Designated Independent Person (DIP) be appointed to investigate and make a binding recommendation on disciplinary action against these statutory officers.
- 1.2 The Regulations provide that, in place of the DIP process, the decision will be taken transparently by full Council, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.
- 1.3 In the case of a proposed disciplinary action against one of these statutory officers, the Council is required to invite independent persons who have been accepted in accordance with the procedure set out in paragraph 2.3 of the report.

RECOMMENDATIONS: That the Head of Democratic Services be authorised to make the following *amendments* to the Constitution to give effect to the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015:

Article 4 - The Full Council

4.04 Terms of Reference

- (k) To confirm the appointment or dismissal of the Head of the Paid Service;
- (l) To confirm the dismissal of the Monitoring Officer and the Chief Finance Officer*

(Renumber the remaining provisions accordingly).

Part 3 - Scheme of Delegation to Officers:

Proper Officers for the Purposes of the Constitution:

- 9. Officers who will issue and accept invitations from independent persons to constitute and administer a Panel in accordance with Section 102(4) of the Local Government Act 1972 for the purposes of*

advising the Council on matters relating to the dismissal of the Head of the Paid Service, the Monitoring Officer or the Chief Finance Officer:

Head of Human Resources and Head of Democratic Services.

Part 4 (F) Officer Employment Procedure Rules:

11. Disciplinary Action Against the Council's Statutory Officers (*as prescribed by Schedule 3 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015*);

(a) No disciplinary action in respect of the Council's Chief Executive, its Monitoring Officer or its Chief Finance Officer (as defined in Regulation 2 of the Local Authorities [Standing Orders] [England] Regulations 2001), except action described in paragraph (b) below, may be taken by the Council, or by a Committee, a Sub-Committee, a Joint Committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with *the following procedure*: ~~a recommendation in a report made by a designated independent person under Regulation 7 of the above-mentioned Regulations (Investigation of alleged misconduct).~~

i) The Head of Democratic Services and the Head of Human Resources acting on behalf of the Council will invite relevant independent persons to be considered for appointment to an Independent Panel, with a view to appointing at least two such persons to the Panel.

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

iii) Subject to paragraph iv), the Council must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph i) in accordance with the following priority order—

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

iv) The Council is not required to appoint more than two relevant independent persons in accordance with paragraph iii) but may do so.

v) The Panel must be appointed at least 20 working days before the meeting of the Council to consider whether or not to approve a proposal to dismiss the Chief Executive, Monitoring Officer or

Chief Finance Officer.

- vi) Before Full Council votes on whether or not to approve a dismissal, it must take into account, in particular—***
 - any advice, views or recommendations of the Panel;***
 - the conclusions of any investigation into the proposed dismissal; and***
 - any representations from the Chief Executive, Monitoring Officer or Chief Finance Officer, as appropriate.***

- vii) Any remuneration, allowances or fees paid by the Council to an independent person appointed to the Panel must not exceed the level of remuneration paid to the Standards Committee Independent Person.***

In paragraph a) “disciplinary action” means ‘any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Council, be recorded on the member of staff’s personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract.

- (b) The action mentioned in paragraph (a) above is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.**

2. Information

- 2.1** The statutory officers of a Council i.e. the Head of Paid Service, the Monitoring Officer, and the Chief Finance Officer, have statutory responsibilities to discharge to their Councils. Since they work with and report to the elected Members, they discharge these responsibilities in a political environment. As a result, statutory protection requiring an appointment of a Designated Independent Person (DIP) to investigate any allegation of misconduct against these officers was introduced in 2001. No disciplinary action in respect of the officers may be taken other than in accordance with a recommendation in a report made by the DIP. The intention of this provision was to ensure that the officers could discharge their duties without any fear of being influenced by elected Members and being dismissed without good reason.

- 2.2** Concerns have been expressed that the DIP process was in practice complex, time consuming and expensive, placing Councils as the employer at a great disadvantage in comparison to the position of the employee, particularly given that the recommendation of the DIP had to be followed. In addition there have been some suggestions that some Councils prefer to negotiate severance payments rather than go through the formal DIP process.

- 2.3 The new Regulations aim to simplify, as well as localise, the disciplinary process for the statutory officers by removing the bureaucratic and mandatory requirement that a DIP should be appointed. In the case of a proposed disciplinary action against one of the statutory officers, the Council is required to invite independent persons who have been appointed for the purposes of the Members' conduct regime under section 28(7) of the Localism Act 2011, to form an independent panel. An independent panel will be formed if two or more independent persons accept invitations to participate and Councils should issue invitations in accordance with the following priority order:
- an independent person who has been appointed by the Council and who is a local government elector,
 - any other independent person who has been appointed by the Council, such as the Chairman of the Audit Committee,
 - an independent person who has been appointed by another Council or Councils. These requirements allow local people to be involved in the disciplinary process for senior officers and makes Councils more accountable to their community.
- 2.4 Full Council must consider any advice, views or recommendations from the independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned, before making a final decision on the matter.
- 2.5 The 2015 Regulations also make a provision limiting the remuneration that should be paid to independent persons on the panel to the level of the remuneration which they would normally receive as an independent person in the conduct regime. The conduct regime remuneration is a modest annual allowance or small meeting fee, and this approach ensures that the new process will not involve high costs.

3. Legal Implications

- 3.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amend the 2001 Regulations by removing the Designated Independent Person procedure. The report sets out in detail the replacement procedure which full Council is required to approve and which will necessitate consequential amendments to the Council's Constitution. The 2015 Regulations come into force on 11 May 2015 and therefore full Council approval is required no later than its first ordinary meeting falling after this date.

4. Financial Implications

- 4.1 None arising from this report. Remuneration for members of an independent Panel would be met from existing resources.

8.2 APPOINTMENT OF CABINET

Members are asked to note the appointment by the Leader of the Council of the Deputy Leader and Cabinet for 2015/2016 as follows:

Position/Portfolio	Councillor
Deputy Leader and Education and Children's Services	David Simmonds
Central Services	Scott Seaman-Digby
Finance, Property and Business Services	Jonathan Bianco
Community, Commerce and Regeneration	Douglas Mills
Planning, Transportation and Recycling	Keith Burrows
Social Services, Health and Housing	Philip Corthorne

In addition, Members are asked to note that responsibility for Council Communications will become part of the Cabinet Portfolio of the Leader of the Council w.e.f 14 May 2015.