

**Council****24 June 2015****Report of the Director of Human Resources and Organisational Development  
and Head of Law and Governance****Dismissal of Statutory Officers - Mandatory Standing Orders****1. Introduction**

- 1.1 The purpose of this report is to inform members of the introduction of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the Regulations) which require amendments to be made to the Council's Constitution in order to reflect new provisions in respect of the dismissal of certain statutory officers, namely the Head of Paid Service, Chief Finance Officer and Monitoring Officer and to recommend appropriate amendments to implement these requirements. The Regulations require the changes to the Constitution to be agreed no later than the first ordinary Council meeting after the Annual Meeting.
- 1.2 The Regulations replace the existing Designated Independent Person (DIP) procedures which the Government considered to be bureaucratic and time consuming and to lead some authorities to make excessive severance payments to senior officers rather than take the costly DIP route. Although there had been consultation in respect of amending the DIP procedures, the particular form of the legislation that has been introduced was laid before Parliament without notice or further consultation. There is little detail in the Regulations as to how the new process will work in practice and it is understood that the Local Government Association (LGA) has sought further clarification from the Department for Communities and Local Government (DCLG) on the operation of the revised procedures. A further report will be presented to members if it is necessary to revise the arrangements in the light of any additional guidance received.

**2. The Existing Requirements**

- 2.1 The current provisions in the Constitution reflect the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001, before they were amended by the more recent Regulations. These required that the final decision to dismiss the Head of Paid Service had to be by full Council and the Council could only take disciplinary action in respect of any of the three statutory officers in accordance with a report and recommendations of a DIP. The DIP had to be agreed between the Council and the officer concerned or in default, appointed by the Secretary of State. They would often be a barrister with experience of employment law, who was usually appointed early in the procedure.
- 2.2 The rationale for the current provisions is that the officers work in a political environment and may be required to give unpopular advice or make statutory reports in respect of actions which the Council has taken or proposes to take. In these circumstances, it is desirable for there to be

additional statutory protection against disciplinary action to ensure that these officers can discharge their duties without fear of being dismissed without good reason.

### **3. The New Requirements**

3.1 The Regulations remove the requirement to appoint, or to act in accordance with, the report and recommendations of a DIP and require that:

3.1.1 the final decision to dismiss any of the statutory officers must be by resolution of full Council;

3.1.2 the Council must appoint a Committee (referred to in the Regulations as “the Panel”) which must include at least two “Independent Persons”;

3.1.3 before taking a vote on whether to approve the dismissal of a statutory officer, Council 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 statutory officer who is the subject of the proposed dismissal

3.2 Although the Regulations do not set out how an investigation should be conducted; in order to demonstrate that a fair and objective process has been carried out it will be necessary for the Council to carry out a full and fair investigation. It will most likely be necessary to appoint an external investigator, who should be appropriately qualified and experienced.

3.3 The Independent Persons to be invited to join the Panel are such persons as have been appointed as Independent Persons under the Localism Act 2011 for the purposes of the Members’ ethical standards / code of conduct regime. Members will recall that the Council currently has appointed one Independent Person in connection with the code of conduct regime. It will therefore be necessary for an invitation to join any Panel to be extended to an Independent Person from another authority.

The invitation to take part in a Panel must be sent in the following priority order:

3.3.1 an Independent Person who has been appointed by the Council and who is a local government elector;

3.3.2 any other Independent Person who has been appointed by the Council;

3.3.3 an Independent Person who has been appointed by another Council or Councils.

The Panel must be in place by no later than 20 working days before the full Council meeting at which the decision whether or not to approve a proposal to dismiss a statutory officer will be taken.

3.4 The Regulations limit the remuneration that may be paid to the Independent Persons to the level they would normally receive as Independent Persons

under the Members' Code of Conduct regime. It is likely that the payment of any remuneration to the Independent Persons for participating in the process will be on a sessional / hourly rate basis but discussions are ongoing with regional colleagues to achieve a consensus in relation to this. It is therefore recommended that Council grants delegated authority to the Head of Law and Governance, in consultation with the Leader, to determine the level of remuneration to be paid to the Independent Persons when they are involved in disciplinary proceedings involving a statutory officer.

- 3.5 DCLG has confirmed that the Panel should be comprised of only Independent Persons and it is therefore proposed that the Panel be established as a new committee to be called the Dismissal Advisory Committee, with the Terms of Reference set out in Appendix 1.
- 3.6 The Human Resources Committee will remain responsible for undertaking the disciplinary hearing in relation to allegations made against a statutory officer however, where the Committee considers it appropriate to dismiss such an officer, it will now make a recommendation to full Council. Where the Committee considers that disciplinary action short of dismissal is appropriate (for example a final written warning) there is no requirement to refer the matter to full Council.
- 3.7 As the Dismissal Advisory Committee is to provide advice to the full Council meeting that will consider a recommendation to dismiss a statutory officer, it will be necessary for the Independent Persons to observe the disciplinary hearing undertaken by the Human Resources Committee and to have access to all the papers provided to that Committee.
- 3.8 The Executive Objection procedure in respect of Chief Officer dismissals will continue to apply. This means that where the Human Resources Committee resolves to recommend to full Council that a statutory officer be dismissed, notice will still have to be given to all members of the Executive, who will have a prescribed period within which to submit any objections or representations, which must be considered by the full Council meeting when it considers the recommendations of the Human Resources Committee and the advice of the Dismissal Advisory Committee.
- 3.9 In some cases, the DIP procedures will be incorporated into the terms and conditions of statutory officers' contracts and the statutory changes will not, of themselves, remove that contractual entitlement. Further clarification is awaited from the LGA in respect of this.

#### **4 Amendments to the Constitution**

- 4.1 Article 12.07 of the Constitution provides that the recruitment, selection and dismissal of employees will comply with the Employment Procedure Rules (EPRs) set out in Part 4 of the Constitution. Rules 7 (b) and (c) and 9 (d) and (e) of the EPRs set out the current provision in respect of suspension and discipline of Chief Officers, including the DIP procedure.

It is proposed that these Rules be amended as set out in Appendix 2 to this report, together with other consequential amendments to the Constitution, as set out in the Recommendations, in order to reflect the new requirements.

## **5 Recommendations**

5.1 That Council establishes a Dismissal Advisory Committee with the Terms of Reference set out in Appendix 1.

5.2 That Council authorises the Head of Law and Governance, in consultation with the Leader, to:

5.2.1 Amend Article 4 of the Constitution to provide that the dismissal of the Head of Paid Service, Chief Finance Officer and Monitoring Officer is a function of full Council.

5.2.2 Amend the Employment Procedure Rules as set out in Appendix 2.

5.2.3 Amend Part 3 of the Constitution - "Responsibility for Functions" to include the Dismissal Advisory Committee

5.2.3 Make such other minor or consequential amendments to the Constitution as are considered appropriate in order to comply with the requirements of the Regulations and to reflect the proposals set out in this report.

5.2.4 Determine the level of remuneration, allowances or fees to be paid to an Independent Person who is appointed to the Dismissal Advisory Committee, such remuneration, allowances or fees not to exceed the level payable to the Independent Person in respect of that person's role as Independent Person under the Localism Act 2011.

## **Background Papers**

Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

**Dismissal Advisory Committee**

Membership – Two Independent Persons appointed in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended).

Terms of Reference

To provide advice to Full Council on matters relating to a proposal to dismiss the Head of Paid Service, the Monitoring Officer or Chief Finance Officer on the grounds of conduct, capability or some other substantial reason.

**Delete Rule 7 (b) and (c) and Rule 9 (d) and (e) of the Employment Procedure Rules, insert the following paragraphs in Rule 7 and renumber the remainder of that Rule accordingly:**

- (b) Suspension – Chief Officers may be suspended on full pay whilst an investigation takes place into alleged misconduct. The Head of Paid Service may be suspended by the Human Resources Committee. Other Chief Officers (including the Chief Finance Officer and the Monitoring Officer) may be suspended by the Head of Paid Service.
- (c) In the following paragraphs -
- “Independent Person” means a person appointed under section 28(7) of the Localism Act 2011;
- “Statutory Officer” means the “Head of Paid Service”, “Chief Finance Officer” or “Monitoring Officer” as the case may be.
- (d) The Head of Paid Service may take disciplinary action (except for dismissal) against any Chief Officer and Deputy Chief Officer.
- (e) Subject to the provisions below, the Human Resources Committee may take disciplinary action (except for dismissal) against a Statutory Officer and may take disciplinary action (including dismissal) in respect of any other Chief Officer and Deputy Chief Officer.
- (f) A Statutory Officer shall only be dismissed by a resolution of Council and Council must approve that dismissal before notice of dismissal is given to the officer concerned.
- (g) A Statutory Officer may not be dismissed unless the following procedure is complied with.
- i. The Director of Human Resources and Organisational Development must invite relevant Independent Persons to be considered for appointment by the Council to the Dismissal Advisory Committee, with a view to appointing two such persons to the Committee.
  - ii. The Council must appoint to the Dismissal Advisory Committee such relevant Independent Persons who have accepted an invitation issued in accordance with this paragraph in 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.
- iii The Council will normally appoint two Independent Persons to the Dismissal Advisory Committee but may appoint more if it so determines.
- iv. The Dismissal Advisory Committee must be appointed at least 20 working days before a meeting of the full Council to consider whether or not to approve a recommendation of the Human Resources Committee to dismiss a Statutory Officer.
- v. Where the Human Resources Committee is dealing with disciplinary action against a Statutory Officer, the Independent Persons who are to sit on the Dismissal Advisory Committee will be invited to attend and observe the proceedings of the Human Resources Committee.
- vi. Before the taking of a vote at a meeting of the full Council on whether or not to approve such a dismissal, the Council must take into account, in particular-
- any advice, views or recommendations of the Dismissal Advisory Committee;
  - the conclusions of any investigation into the proposed dismissal; and
  - any representations from the Statutory Officer.
- (h) Any remuneration, allowances or fees paid by the Council to an Independent Person appointed to the Dismissal Advisory Committee 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 Localism Act 2011.

