Revised Officer Employment Procedure Rules - Dismissal and Disciplinary Arrangements for Senior Statutory Officers

Report to: Council
Ward(s): All
Key Decision: N/A
Appendix 1: Model Procedure Flow Diagram
Appendix 2: Revised Officer Employment Procedure Rules
Appendix 3: Political Group nominations to serve on the Investigating and Disciplinary Committee and Appeals Committee (To Follow)
Joint Negotiating Committee (JNC) Model Procedures and Guidance
Joint Negotiating Committee (JNC) for Local Authority Chief Executives National Salary Framework and Conditions of Service Handbook updated 13 October 2016
Joint Negotiating Committee (JNC) for Local Authority Chief Officers National Salary Framework and Conditions of Service Handbook updated 8 August 2017
The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

Papers relied on:

RECOMMENDATIONS
That full Council agrees:

- To establish an Investigating and Disciplinary Committee (IDC) to deal with disciplinary matters relating to the relevant officers. This committee is to be a politically balanced committee of seven Members, at least one of whom is to be a member of the Cabinet.

- To establish an Appeals Committee (AC) to deal with disciplinary matters short of dismissal relating to the relevant officers. This committee is to be a politically balanced committee of seven Members, at least one of whom is to be a member of the Cabinet.

- To establish an Independent Panel comprising at least two people appointed under section 28 Localism Act 2011 to advise Council in the event of a recommendation from the Independent Disciplinary Committee to dismiss a relevant officer.

- That the Investigating and Disciplinary Committee (IDC) will have delegated responsibility for the suspension of “the relevant officers.” In the event of the
need for urgency, this function to be delegated to the Chair of the IDC.

- That in the case of a complaint against a relevant officer, the decision whether to refer the matter to the Investigating and Disciplinary Committee (IDC) will be delegated to the Monitoring Officer or Chief Finance Officer in the case of a complaint against the Head of Paid Service, and delegated to the Head of Paid Service in the case of a complaint against the Monitoring Officer or the Chief Finance Officer. In the absence of the statutory officer that holds the relevant delegation the Deputy Chief Executive will also authorised to deal with these matters.

- That the relevant officers will be given the same right to be accompanied at any disciplinary hearing as all Basingstoke and Deane employees. Additionally, this will include the right to be accompanied by a legal representative at their own cost.

- To adopt the revised Officer Employment Procedure Rules set out at Appendix 2.

- That the Deputy Monitoring Officer be authorised to make all other necessary and consequential amendments to the constitution to give effect to these recommendations.

- That the Head of Human Resources and Organisational Development be authorised to arrange appropriate mandatory training for members serving on the Investigating and Disciplinary Committee and Appeals Committee and the Independent Persons serving on the Independent Panel

- To reappoint Sian Campbell as an Independent Person under section 28(7) of the Localism Act 2011 for a new two year term office expiring in February 2020.

- That the Investigation and Disciplinary Committee and Appeals Committee be appointed and seats thereon allocated to political groups in accordance with the rules of proportionality and that appointments be made to Committees in accordance with the nominations received from political groups (To Follow-Appendix 3).

- To vary the terms of reference of the Appeals Panel appointed by the Human Resources Committee in so far as they relate to the relevant officers.

**Background, corporate objectives and priorities**

This report accords with the council’s Policy and Budget Framework and supports the development of an effective and efficient council.
Glossary of terms

<table>
<thead>
<tr>
<th>Term</th>
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<tr>
<td>DIP</td>
<td>Designated Independent Person</td>
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<td>JNC</td>
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<td>IDC</td>
<td>Investigating and Disciplinary Committee</td>
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1 Executive Summary

1. The statutory officers of the council, the Head of Paid Service (Chief Executive), the Section 151 Officer (Executive Director of Finance and Resources and the Monitoring Officer (Head of Law and Governance and Monitoring Officer), have duties to advise and protect the council as a corporate body. In carrying out their duties at times they may be required to provide advice to members that is not welcome or popular, or to take such action in connection with that advice in order to fulfil their statutory responsibilities. Accordingly these three statutory posts are protected by law under specific regulations from unwarranted political interference in carrying out their proper duties. In the event that disciplinary action is contemplated against a statutory officer members will need to ensure that they understand the procedure to be used complies with the regulatory requirements and the relevant terms and conditions of employment.

1.2 The Local Authority (Standing Orders)(England)(Amendment) Regulations 2015 amended the previous legislation to change the statutory process for dismissing the Head of Paid Service, Monitoring Officer and Chief Finance Officer (“the relevant officers”). Previously no disciplinary action could be taken against a relevant officer other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). The 2015 Regulations abolished the role of the DIP and outlined a new process to be followed and to be incorporated into Council constitutions.

1.3 The Council was advised of the new regulations at its meeting on 10 December 2015 and approved changes to the Officer Employment Procedure Rules in the Constitution. These changes were published on the 20 December 2017. They provide an outline of the new requirements but no detail as to how the rules will be progressed and which members will be responsible for doing this.

1.4 The purpose of this report is to advise members of the nationally negotiated and agreed Model Disciplinary Procedure and Guidance which incorporate the relevant statutory requirements, agreed by the Joint Negotiating Committee (JNC) for Local Authority Chief Executives issued in October 2016 and incorporated into the contractual terms and conditions of employment for Local
Authority Chief Executives. Additionally the August 2017 Chief Officers’ JNC contains a modified procedure for Monitoring Officers and Section 151 Officer, indicating that the relevant provisions of the Chief Executives’ Handbook can be used as a reference guide in such circumstances. This Model Procedure for Chief Executives has been adopted across England and it is now recommended to this Council to govern any future disciplinary procedures for the relevant Statutory Officers employed here.

1.5 This will require the Council to agree new procedures and establish a standing Investigating and Disciplinary Committee (IDC), an Appeal Committee (AC), together with an Independent Panel. Officers will also require authorisation to amend the Constitution to give effect to these changes and arrange appropriate mandatory training for members of the new committees and the persons that will comprise the Independent Panel.

1.6 This report provides procedural clarity in the processes to be followed in the event that a formal written complaint is to be made against one of the council’s statutory officers. As in any employment situation mediation by agreement should be considered prior to the commencement of formal action, however it is important that members have clarity in relation to the matters covered in this report so that the council complies with the relevant regulations and terms and conditions of employment.

1.7 This report which seeks to ensure that the council complies with its legal obligations has been considered by the Constitution Working Party at its meeting on 13 February 2018. Any recommendations from the Working Party will be included in the Council Updates Report.

2 The Proposal

2.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amended the Local Authorities (Standing Orders) (England) Regulations 2001 by changing the statutory process for dismissing the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (“the relevant officers”).

2.2 Previously no disciplinary action could be taken against a relevant officer other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). The 2015 Regulations abolished the role of the DIP and outlined a new process involving independent persons and that only Full Council may approve the dismissal of a statutory officer i.e. Head of Paid Service (Chief Executive), Section 151 Officer (Executive Director of Finance and Resources) and Monitoring Officer (Head of Law and Governance and Monitoring Officer).

2.3 In the absence of any guidance from the Joint Negotiating Committee on Local Authority Chief Executives Terms and Conditions of Service (JNC), the Council was unable to introduce detailed procedures to deal with any disciplinary action against relevant officers when it adopted the new Officer Employment Procedure Rules in December 2015. This situation can now be rectified as Guidance and a Model Procedure was published in October 2016, and in August 2017 Chief Officer JNC identified that Chief Executives JNC Handbook can be used in such
circumstances for Chief Officers that held the statutory posts of Section 151 Officer and Monitoring Officer. These model procedures have been adopted by councils across England. They spell out in detail the process to be followed and the member structure to support the process.

2.4 The JNC is the negotiating body for the Local Government Association (LGA) representing employer local authorities and the Association of Local Authority Chief Executives (ALACE) representing officers (union side). The JNC has recently agreed a model procedure to reflect the changed Regulations and this has now been incorporated into the nationally agreed contractual conditions of service handbook for local authority chief executives. Whilst the JNC Conditions of Service are incorporated in all the statutory officers' contracts of employment, the model procedure requires to be adopted by Full Council to ensure that the council does not breach contractual conditions of employment in the event that disciplinary action is contemplated or pursued against a statutory officer.

2.5 The key features of the model procedure are set out in the diagram at appendix 1 and are as follows:

(a) The procedure involves four stages: an Investigating and Disciplinary Committee (IDC), an Appeals Committee, the Independent Panel and the Council.

(b) The IDC is a politically balanced committee comprising seven members, at least one of whom will be a member of the Cabinet. Arrangements for flexibility will be required, including the use of reserve members or substitutes, in the event that a member of the IDC has a conflict of interest in the matter to be considered. If it decides to progress a complaint, it will appoint an independent investigator from a list held by the JNC.

(c) The Appeals Committee is a politically balanced committee comprising seven members at least one of whom will be a member of the Cabinet. It hears appeals against action short of dismissal and decides either to confirm the action, impose no sanction or a lesser sanction.

(d) The Independent Panel comprises at least two independent persons appointed by the Council or another council for the purposes of hearing complaints under the Members' standards regime.

(e) The Independent Panel is only used if the IDC, having received the report of the independent investigator and held a hearing, is minded to recommend dismissal to full Council. If the recommendation is for a lesser sanction such as a written warning, the IDC has the power to impose this without referring to either the Independent Panel or full Council. The relevant officer can then appeal the sanction to the Appeals Committee.

(f) If the IDC recommendation is dismissal, the Cabinet will be given the opportunity to make any objections that are both material and well founded. Following this, the Independent Panel will hold a hearing where it will listen to both the chair of the IDC and the relevant officer and will then give their advice/views/recommendations to Council.
(g) The matter then goes to full Council for a decision. This is in effect an appeal hearing for the relevant officer who is allowed to put his or her case to council before a decision is taken.

3. Proposed changes

3.1 Given that the relevant officers will have JNC terms and conditions referred to in their contracts of employment which could potentially lead to a breach of contract argument if Council did not follow the JNC model, it is recommended that the Council adopts the structures of the model procedures and applies it to all three relevant officers. It usefully consolidates the requirements for an independent view with the practical experience of local Members familiar with the services, workings and duties of the Council.

3.2 The existing Appeals Panel which is a sub-committee of the Human Resources Committee does not sit easily within the model structure. A sub-committee reports to its parent committee and not directly to Council as envisaged in the model.

3.3 It is proposed that the model structure is followed and that a stand-alone IDC is set up that reports directly to Council and a separate stand-alone Appeals Committee is set up. Each committee would comprise seven Members; be politically balanced; and would include at least one member of the Cabinet.

3.4 It is further proposed that the existing Independent Persons appointed by the Council under section 28(7) Localism Act 2011 to support the Standards Committee become the Independent Panel. It will be necessary to increase the number of Independent Persons to support these new arrangements as there are currently only two people in post. These are Christopher Eele and Judith Curson. Their terms of office expire on 22 October 2019. It is proposed that Council agrees to reappoint the Independent Person (Sian Campbell) whose term of office expired on 22 October 2017 for a new two year term whilst we undertake a recruitment process to appoint additional persons.

3.5 The model procedure envisages the IDC deciding on whether to suspend a relevant officer. It also recommends that due to the need for speed and the difficulties in calling together a committee at short notice, there needs to be an arrangement in place to deal with suspensions that are urgent. It is recommended that the Chair of the IDC be given these powers in relation to a relevant officer in accordance with the JNC Conditions. Any suspension then has to be reviewed every two months by the independent investigator.

3.6 Not all complaints about a relevant officer should lead to a referral to an IDC. Some may be more appropriately dealt with under for example, a service’s complaints procedure. A complaint will have to be in writing and clearly set out the basis of the complaint. There needs to be a process to redirect complaints to the appropriate quarter or to filter out those that have no merit. It is proposed that in the case of a complaint against the Chief Executive (Head of Paid Service), the Executive Director of Finance and Resources (Section 151
Officer) will decide whether a complaint should go to the IDC. In the case of complaints against the Head of Law and Governance and Monitoring Officer or the Executive Director of Finance and Resources (Section 151 Officer), the delegation should be to the Chief Executive (Head of Paid Service). In the absence of the statutory officer holding the relevant delegation the Deputy Chief Executive will also be authorised to decide whether a complaint should go to the IDC.

3.7 The model procedure allows the relevant officer to be accompanied at any disciplinary meetings. However this is wider than the statutory right given to all employees to be accompanied by a trade union official or work colleague. The model proposes that the relevant officer be accompanied by a person of their choice (including a lawyer) at their own cost. Given the reputational and career implications for a relevant officer going through these procedures it is recommended that the Council adopts this approach.

4. Corporate Implications

Legal implications

4.1 The recommendations take into account the Human Rights Act and existing law on the right to be accompanied at a disciplinary hearing. The model procedure provides that the hearing at full Council to determine whether to dismiss a relevant officer is in effect a right of appeal. This is on the basis that the relevant officer has previously had the opportunity to put their case to the Investigating and Disciplinary Committee and the Independent Panel. This procedure however has not been tested in the courts. The fact that the process has been agreed nationally by the employer side and trade union side mitigates the risk but it does not remove it altogether.

4.2 The standard contract of employment for the relevant officers refers to the JNC agreed conditions of service handbook for local authority Chief Executives. A failure to implement a disciplinary procedure based on the model could be a breach of contract.

4.3 A member who has made a complaint would not be able to serve on the IDC or Appeals Committee considering that complaint due to the common law rules of bias.

Financial implications

4.4 There are significant costs associated with the process once it is initiated but at this stage there are no significant financial implications.

Risk management

4.5 A risk assessment has been completed in accordance with the council’s risk management process and has identified no significant (Red or Amber) residual risks that cannot be fully minimised by existing or planned controls or additional procedures.
4.6 The process outlined in this report and recommended for adoption are compliant with the 2015 Regulations and nationally agreed Joint Negotiating Committee for Local Authority Chief Executives and is being applied to the two other relevant statutory officers protected by the 2015 Regulations. This mitigates any risk to the council in this regard.

**Equalities implications**

4.7 No impact assessment has been carried out, but all relevant officers will be treated in accordance with equalities principles.

**Consultation and communication**

4.8 The relevant officers have been consulted about the changes in procedure outlined in this report. The current Chief Executive, Monitoring Officer and Chief Finance Officer have contracts of employment which refer to the JNC terms and conditions of service. Failure to progress disciplinary action against a statutory officer in accordance with a procedure based on the nationally agreed JNC terms and conditions of service could constitute a breach of employment contract.

**HR implications**

4.9 The relevant officers in post have been consulted on the proposed new structure.

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