

## **CONSTITUTION COMMITTEE – 25<sup>TH</sup> JUNE 2015**

### **REPORT OF THE CHIEF EXECUTIVE**

### **PROPOSED AMENDMENT TO THE OFFICER EMPLOYMENT PROCEDURE RULES**

#### **Purpose**

1. This report concerns new regulations which amend the rules and procedures for the dismissal of Head of the Paid Service, the Monitoring Officer and Chief Financial Officer.

#### **Background**

2. As part of the arrangements introduced in 2001, the Head of Paid Service, the Monitoring Officer and Chief Finance Officer were given statutory protection through the requirement to appoint a Designated Independent Person (DIP) to investigate any allegation of misconduct. The intention of this provision was to ensure that these officers could discharge their statutory responsibilities without any fear of being influenced by elected members and being dismissed without good reason.
3. The DIP would be appointed early in the process when it appeared to a Council that an allegation of misconduct by the relevant officer required investigation. No disciplinary action could be taken other than in accordance with the recommendations of the report of the DIP.

#### **New Regulations**

4. The Local Authorities (Standing Order) England) (Amendment) Regulations 2015 were laid before Parliament on 25<sup>th</sup> March and came into effect on 11<sup>th</sup> May 2015. Local Authorities are required to make the necessary changes to their procedures as soon as possible after this date.
5. These new regulations remove the requirement to appoint a DIP. Instead the regulations require:-
  - a) the Council to establish a Panel to advise the Council on matters relating to the dismissal of the Head of the Paid Service, the Monitoring Officer or Chief Financial Officer;
  - b) the full Council to approve a notice to dismiss these officers.

6. The Regulations provide that the Council must invite in accordance with the following priority order:-
  - i) an independent person who has been appointed by the Council and who is a local government elector;
  - ii) any other independent person who has been appointed by the Council;
  - iii) an independent person appointed by another authority.

with a view to appointing not less than two such people to the Panel.

7. The Council currently has three independent persons appointed to deal with member conduct issues. Whilst it would be possible to call upon these people to serve on any Panel, it would alter the basis of their appointment from advising on standards issues in the context of a regime with little in the way of sanctions to operating in the context of disciplinary action and employment law. It would therefore be appropriate to approach these persons to ascertain whether they would be willing to take on this additional responsibility. In the event that one or more of these persons indicate they are not willing to do so it will be necessary to start a recruitment process.

#### **Appointment of an Independent Investigating Officer**

8. The Employment Committee will need to start the disciplinary process against the officers covered by these regulations based on advice it receives. Given that the officers concerned are three of the most senior officers of the Council it would be somewhat difficult for a serving officer of the Council to be asked to investigate any alleged misconduct. Accordingly the proposed changes to the Officer Employment Procedure Rules contain a provision to enable the Employment Committee to appoint an Independent Investigating Officer to advise it on an appropriate course of action.

#### **Additional Concerns regarding the new Regulations**

9. Members should be aware that across the local government sector there are concerns relating to the implementation and operation of these regulations. The first of these relates to the requirement that a notice to dismiss must be approved by the full Council which then raises the question as to which members could then deal with any appeal against dismissal. The second relates to the dual role of the Independent Persons on the Panel. Such persons are to be drawn from persons appointed to deal with 'Standards related issues'. As such these persons will need to develop a closely working relationship with the Monitoring Officer and it is these same persons who could then be asked to advise on disciplinary matters relating to the same Monitoring Officer. The third concerns the role of the Council meeting itself. The Council would be required to act in a quasi-judicial capacity, may need to consider evidence and representations and would need to meet in private. These and other concerns have been highlighted and it is hoped that at some point guidance will emerge on these points.

## **Revised Officer Employment Procedure Rules**

10. Attached are proposed amendments to Part 4 H Rule 11 of the Officer Employment Procedure Rules to give effect to the new regulations.

## **Consideration by the Employment Committee**

11. The Employment Committee at its meeting on 18<sup>th</sup> June will be considering this matter and the views of the Committee will be reported at the meeting.

## **Recommendations**

12. Subject to any comments received from the Employment Committee, the Constitution Committee is recommended to agree:-
  - a) That the proposed changes to Rule 11 of the Officer Employment Procedure Rules be referred to the County Council for final approval;
  - b) That the Monitoring Officer be authorised to discuss with the existing independent persons the implications of the new regulations and their willingness to take on this new responsibility;
  - c) That in the event that one or more of the existing independent members decline to undertake the new role the Monitoring Officer be authorised to undertake a recruitment exercise for new independent persons and report the outcome to the Council for approval.

## **Equalities and Human Rights Implications**

There are no discernible implications arising from the recommendations in this report.

## **Officers to contact**

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## **List of Appendices**

Appendix A – Proposed Amendments to the Officer Employment Procedure Rules

**Suggested Revision to Part 4H of the Constitution**

**Rule 11 – Officer Employment Procedure Rules**

1. No action may be taken by the Employment Committee – except for suspension – relating to the dismissal of either the Head of the Paid Service, the Monitoring Officer or the Chief Finance Officer other than in accordance with The Local Authorities (Standing Order) (England) (Amendment) Regulations 2015) and as set out below.
2. In respect of the proposed dismissal of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer, the Employment Committee may appoint an Independent Investigating Officer (IIO) to examine the circumstances of the case and to advise the Committee on any action to be taken.
3. Where consideration is being given to the dismissal of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer a Panel (comprising an Advisory Committee established under section 102(4) of the Local Government Act 1972) will be set up which shall include at least two Independent Persons who have consented so to serve from amongst those previously appointed by the County Council or by another Council under Section 28(7) of the Localism Act 2011 and which shall meet at least 20 working days before any meeting of the County Council at which any proposed dismissal is to be considered
4. The Employment Committee will, having considered the advice of any Independent Investigating Officer appointed, make a recommendation to the Council for consideration, including any terms for cessation of employment.
5. Any proposal to dismiss the Head of the Paid Service, the Monitoring Officer or the Chief Finance Officer other may only be taken by the Council following consideration of
  - a. any advice, views or recommendations from the Panel set up under paragraph 3 above
  - b. the conclusions of any investigation into the proposed dismissal : and
  - c. any representations from the officer concerned