

POLICY FINANCE AND ADMINISTRATION COMMITTEE

26 SEPTEMBER 2017

REPORT OF THE SOLICITOR TO THE COUNCIL

DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

1.0 PURPOSE OF REPORT

- 1.1 To consider a revised disciplinary procedure for the Head of Paid Service, Chief Finance Officer and the Monitoring Officer as required under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

2.0 RECOMMENDATIONS

- 2.1 **To consider and adopt the revised disciplinary procedure which applies to the position of Chief Executive as set out in Appendix A and B which includes the current guidance issued from time to time by the Joint National Committees;**
- 2.2 **Subject to the approval of 2.1 above that the disciplinary procedure referred to in 2.1 is used as the reference guide in circumstances where disciplinary action against the Chief Finance Officer or Monitoring Officer is contemplated;**
- 2.3 **To recommend to Council the appointment of an Investigating and Disciplinary Committee which is politically balanced and comprising of 5 members whose terms of reference are set out in Appendix C**
- 2.4 **To recommend to Council that the terms of reference of the Appeals Committee are amended as set out in Appendix D**

3.0 KEY ISSUES

- 3.1 The 2015 Regulations required, that no later than the first ordinary meeting of the authority after 11 May 2015, the authority must have, in respect to disciplinary action against its Head of Paid Service, Chief Finance Officer or Monitoring Officer amend its standing orders to comply with the revised arrangements.
- 3.2 Full Council on 22 July 2015 revised its Officer Employment Procedure Rules to conform with the 2015 Regulations, and delegated authority to the Policy, Finance and Administration Committee to consider a detailed disciplinary and dismissal procedure for the statutory officers. It was noted at paragraph 6.4 that such a detailed procedure should be considered following the conclusion of the Joint National Committee for Chief Executives of Local Authorities (JNC) negotiations and further advice from the Local Government Association.
- 3.3 The JNC has now published an updated version of the Chief Executives' Handbook which includes a Model Procedure for dealing with disciplinary matters

which incorporates the new statutory process. Whilst the new procedure applies specifically Chief Executives it is envisaged that the procedure could also be used as a framework for the statutory officers. It is recommended that the same procedure is used for all the statutory officers.

- 3.4 The Model Disciplinary Procedure and Guidance is attached in its entirety at Appendix A. in summary the 2015 Regulations provide that the dismissal of the statutory officers can only take place if the proposal to dismiss is approved by way of a vote at a meeting of the authority, after they have taken into account:
- Any advice, views or recommendations of a panel (the Independent Panel)
 - The conclusions of any investigation into the proposed dismissal and
 - Any representations from the statutory officer concerned.
- 3.5 Disciplinary action in relation to a member of staff of a local authority is defined in the 2015 Regulations as “ any action occasioned by alleged misconduct which, if proved, would according to the usual practice of the authority 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 authority has undertaken to renew such contract”.
- 3.6 The definition of disciplinary action would include other reasons for dismissal such as capability or some other substantial reason including a breakdown in trust and confidence between the statutory officer and the authority. Attached as Appendix X is flow diagram setting out the circumstances that could potentially result in dismissal and whether they are covered by the Model Procedure. These include dismissal for misconduct, capability – performance, capability-ill health (long term or frequent intermittent absence) or some other substantial reason.
- 3.7 The 2015 Regulations and the Model Procedure provides for a specific role for the Investigating and Disciplinary Committee (IDC), the Appeals Committee, the Independent Panel and the Council.

The IDC is a politically balanced standing committee of council and it is recommended that it is comprised of five members. The JNC Guidance states that the committee should be in a position to take decision as a matter of urgency and meet at very short notice to consider allegations and whether there is a case to answer and also to consider whether to suspend the statutory officer. However, this is a committee of council and the usual rules relating notice of meetings apply and will need to be complied with.

The IDC will need to be appointed by full Council and its proposed terms of Reference are set out in Appendix X to be recommended to Council for approval. These include the initial consideration of the allegations and the appointment of and consideration of any report of the Independent Investigator into any allegations. The role of the Independent Investigator is set out in more detail in Appendix (x). The Independent Investigator will be appointed from a list maintained by the NJC in accordance with their adopted procedure. This procedure is set out in more detail in paragraph 6 of the guidance in Appendix

The IDC will also need to have the delegated powers to suspend the Chief

Executive and the other statutory officers. Consideration will also need to be given to giving the Chairman of the IDC delegated authority to suspend the Chief Executive or the statutory officers, in cases of urgency. Any suspension must be reviewed after two months.

The Model Procedure also requires the appointment of an Appeals Committee to consider any appeal against disciplinary action (short of dismissal) made by the statutory officers. The remit of the Appeals Committee is to hear the appeals and to confirm the action, to impose no sanction or a lesser action. The Council already has an Appeals Committee, made up of five members, which is politically balanced and as such it is proposed that its Terms of Reference are updated to include hearing of appeals.

In circumstances where there is a recommendation to dismiss, the recommendation has to be considered by an Independent Panel, made up of at least two Independent Persons who have been appointed under Section 28(7) of the Localism Act 2011. The Panel will need to meet at least 20 days prior to the Council meeting which considers the recommendation. The details of the process are set out in the flowchart in Appendix B.

Where there is a proposal to dismiss this must be considered, and if appropriate, approved by Council before notice of dismissal is issued. The Council must therefore consider the proposal and reach a decision before the statutory officer can be dismissed. The Council can reject the proposal and can decide on an appropriate course of action, or in the case of misconduct or other reason, such as capability can refer the matter back to the IDC to determine the sanction.

As set out earlier in the report, there is a right of appeal against sanctions short of dismissal, which will be to the Appeals Committee. With respect to a proposal to dismiss the hearing by the council, prior to making a decision fulfils the appeal function and there is no separate right of appeal.

- 3.8 Consideration need to be given to the management of access to the procedure and ensuring that any complaints relating to the Chief Executive (or the Chief Finance Officer or Monitoring Officer) and ensuring that any issues that are raised are considered in accordance with the appropriate procedure. Not all issues that are raised will engage the formal process. Therefore a process will need to be implemented to filter out complaints which are clearly unfounded or trivial or should be dealt with under a different procedure such as the Council's grievance procedure. It is therefore recommended that for allegations raised regarding the Chief Executive should be raised with the Deputy Chief Executive in the first instance. Any referrals to the IDC will be in consultation with the Chairman of the IDC.
- 3.9 Whilst the Model Procedure relates to the Chief Executive, the Joint Negotiating Committee for Local Authority Chief Officers has issued a revised Conditions of Service Handbook on 8 August 2017 and this recommended that the Model Procedure should be used as a reference guide for dealing with allegations against the Chief Finance Officer or the Monitoring Officer. It is also recommended that allegation against these officers should be raised with the Chief Executive in the first instance on the basis set out in paragraph 3.8 above.

4.0 POLICY AND CORPORATE IMPLICATIONS

- 4.1 The Council amended its standing orders in line with the 2015 Regulations and following the conclusion of the national negotiation regarding JNC terms and conditions is in a position to adopt a revised disciplinary procedure for statutory officers.

5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

- 5.1 The Council needs to ensure that its employment procedures are legally sound to protect both officers and the authority. The Council could be vulnerable to employment claims if its procedures are not legally compliant.

6.0 LEGAL IMPLICATIONS/POWERS

- 6.1 In accordance with the 2015 Regulations the Council updated its Standing Orders to reflect the new provisions relating to statutory officers. It was decided to defer considering any detailed disciplinary/dismissal procedures until the outcome of the national negotiations relating to JNC terms and conditions, which affected a significant number of statutory officers.

- 6.2 Those negotiations have now concluded and in October 2016 the Joint Negotiating Committee for Chief Executives of Local Authorities issued an updated Handbook with a Model Procedure for dealing with disciplinary issues which incorporated the new statutory process. It is recommended that the model procedure is followed, however it is recognised that each local authority has discretion as to how far the guidance should be followed. Whilst the model procedure applies to Chief executive Officers the it could also be used as a framework for statutory chief officers as recommended in 2.3.

7.0 COMMUNITY SAFETY

- 7.1 None as far as this report is concerned.

8.0 EQUALITIES

- 8.1 An Equalities Impact Assessment will need to be undertaken and is being explored.

9.0 **RISKS**

9.1

L I K E L I H O O D	A	Very High				
	B	High				
	C	Significant				
	D	Low				
	E	Very Low		1		
	F	Almost Impossible				
			Negligible 1	Marginal 2	Critical 3	Catastrophic 4
		IMPACT				

Risk No	Risk Description
1	Procedures are not legally sound and officers and the authority are not protected leaving the Council vulnerable to employment claims

10.0 **CLIMATE CHANGE**

10.1 None as far as this report is concerned

11.0 **CONSULTATION**

11.1 None as far as this report is concerned

12.0 **WARDS AFFECTED**

12.1 All wards

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Appendices : Appendix A
Appendix B
Appendix C
Appendix D

Background Papers:

Reference : X:\Cttee, Council & Sub Cttees\Policy Finance & Administration Committee\2017-18\26 September 2017