

**REPORT TO THE EMPLOYMENT COMMITTEE OF 8 NOVEMBER
2017**

Meeting: Employment Committee
Date: 8 November 2017
Subject: Disciplinary Procedures for Statutory Officers
Report of: R Jenner, Service Manager – Human Resources
Portfolio Holder: Councillor Hadkiss
Status: Recommendation
Relevant Ward(s): All

1 Purpose Report

- 1.1 To consider a revised disciplinary procedure for the Head of Paid Service as required under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015
- 1.2 To recommend adoption of the same scheme for other Statutory Officers (Chief Finance Officer and Monitoring Officer)
- 1.3 To recommend adoption of the same scheme for the Corporate Director when they are not holding the post of Head of Paid Service (the post is rotated on a six monthly basis)

2 Recommendations:

- 2.1 To consider and recommend to Council the adoption of the revised disciplinary procedure which applies to the position of Head of Paid Service as set out in Appendix A and B which includes the current guidance issued from time to time by the Joint National Committees.

Subject to approval of recommendation 2.1 above

- 2.2 To recommend to Council that the disciplinary procedure referred to in 2.1 is used as the reference guide in circumstances where disciplinary action against the Corporate Director, 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.

3 Summary of Reasons for the Recommendations

3.1 To ensure compliance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

4 Impact on Communities

4.1 None as far as this report is concerned

5 Key Facts

5.1 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.

5.2 Council on 22 June 2015 revised its Officer Employment Procedure Rules to conform with the 2015 Regulations, and gave authority to the Employment Committee to consider a detailed disciplinary and dismissal procedure for the statutory officers. It was noted at paragraph 6.3 of the report dated 22 June 2017 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

5.3 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 to the Head of Paid Service it is envisaged that the procedure could also be used as a framework for the other statutory officers (S151 Officer and Monitoring Officer) and the Corporate Director. It is recommended that the same procedure is used for all the above.

5.4 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.

- 5.5 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”.
- 5.6 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 officers and the authority. Attached as Appendix B is a 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.
- 5.7 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.
- 5.8 The IDC is a politically balanced standing committee of council and it is recommended that it is comprised of five members. As this Council operates under executive arrangements it must consist of at least one member of the Executive. 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.
- 5.9 The IDC will need to be appointed by full Council and its proposed terms of reference are set out in Appendix C 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 A. 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 A
- 5.10 The IDC will also need to have the delegated powers to suspend the Head of Paid Service, Corporate Director, Chief Finance Officer (s151 Officer) and Monitoring Officer. Consideration will also need to be given to giving the Chairman of the IDC delegated authority to suspend the above officers, in cases of urgency. Any suspension must be reviewed after two months.
- 5.11 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 (It is recommended to include the other Corporate Director alongside the statutory postholders) The remit of the Appeals Committee is to hear the appeals and to confirm the action, to impose no sanction or a lesser action.

- 5.12 As with the IDC, the Appeals Committee is a politically balanced committee, which it is suggested is made up of 5 members, of which at least one member must be a member of the Executive. No member of the IDC can be a member of the Appeals Committee.
- 5.13 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.
- 5.14 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 or Corporate Director 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.
- 5.15 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 is by the council, prior to making a decision, fulfils the appeal function and there is no separate right of appeal.
- 5.16 Consideration need to be given to the management of access to the procedure and ensuring that any complaints relating to the Head of Paid Service, Corporate Director, 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 current Resolution Policy and Procedure. It is therefore recommended that allegations raised regarding the Head of Paid Service, should be raised with the Monitoring Officer) in the first instance. Any allegations against the Corporate Director, Chief Finance Officer, and Monitoring Officer should be raised with the Head of Paid Service in the first instance. Any referrals to the IDC will be in consultation with the Chairman of the IDC.

6 Legal Issues

- 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 and authorities should have full regard to the principles and standards set out in the ACAS Code of Practice on Disciplinary Procedures and the Council's current Disciplinary Policy and Procedure. Whilst the model procedure applies to Chief Executive Officers (In Harborough's structure this is the Head of Paid Service that is rotated between the Corporate Directors on a six monthly basis) then it could also be used as a framework for the statutory chief officers (Chief Finance Officer and Monitoring Officer) and Corporate Director as recommended in recommendation 2.2.

7 Resource Issues

- 7.1 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.

8 Equality Implications

- 8.1 The new statutory process has been designed around equalities. There are no further implications to consider.

9 Impact on the Organisation

- 9.1 None

10 Community Safety Implications

- 10.1 None as far as this report is concerned

11. Carbon Management Implications

- 11.1 None as far as this report is concerned

12. Risk Management Implications

- 12.1 The Council needs to ensure that it has legally sound employment procedures in place to ensure that officers are protected and the authority is not vulnerable to employment claims.

13 Consultation

13.1 If the revised disciplinary scheme is recommended to Council there will be the need to consult with the relevant officers and their representatives in respect of changes to their contract.

14 Options Considered

14.1 None

15 Background Papers

15.1 The Local Authorities (Standing Orders) (England) Regulations 2001 and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

Previous report(s): None

Information Issued Under Sensitive Issue Procedure:

Ward Members Notified:

Appendices:

Appendix: A Joint Negotiating Committee for Local Authority Chief Executives – National Salary Framework & conditions of Service Handbook

Appendix: B Flowchart

Appendix: C Terms of Reference – Investigating and Disciplinary Committee