

CHANGES TO THE OFFICER EMPLOYMENT PROCEDURE RULES IN RESPECT OF DISCIPLINARY ACTION

1 SUMMARY

- 1.1 This report is to advise Council of the legislative changes relating to the disciplinary action against, or the dismissal of, the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer.

2 INTRODUCTION

- 2.1 Parliament has approved changes to the Local Authorities (Standing Orders) (England) Regulations 2001. The Regulations set out the provisions the Council is required to have in its Constitution. Amending these regulations will result in changes having to be made to the Officer Employment Procedure Rules in the Constitution.
- 2.2 The changes are to the rules relating to disciplinary action against, or the dismissal of, the Head of Paid Service, Chief Finance Officer and Monitoring officer.
- 2.3 The reasons put forward by the Government for the changes are as follows:-

“There have been for some time concerns that the Designated Independent Person (DIP) process in its application to councils is in practice complex and expensive. It has placed councils as the employer at a great disadvantage in comparison to the position of the employee, particularly given that the recommendation of the DIP must be followed. The Local Government Association Group has estimated that the minimum legal cost of the process is £100,000, excluding the cost of the investigation, preparing the case and briefing lawyers. The DIP process is time consuming particularly where the council and the senior officer concerned could not agree on a DIP, where the process can take over 15 months to reach completion.

In addition, where there are disciplinary actions against these most senior officers, there have been some suggestions that some councils prefer to negotiate severance payments rather than go through the formal DIP process. This is evidenced in the House of Commons Communities and Local Government Committee’s report, which highlights the view of the Local Government Association witness that undertaking a performance management process for top staff can currently be “very damaging and timing consuming.” The Government believes that such a process is not appropriate as it defeats the purpose of having the DIP process in place. Councils ought to act in the best interest of local taxpayers and not be paying inflated sums to senior officers in order to avoid taking the costly and bureaucratic DIP route.

These Regulations simplify, as well as localise, the disciplinary process for the most senior officers by removing the bureaucratic and mandatory requirement that a DIP should be appointed. In place of the DIP process, the decision will be taken transparently by full council, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned. This means that councils can consider and decide the best disciplinary process that will deliver value for money for their local taxpayers, whilst retaining independent scrutiny.”

3 THE PREVIOUS PROCESS

3.1 The 2001 Regulations contained these provisions:-

- No disciplinary action could be taken against the Head of Paid Service, Chief Finance Officer or Monitoring Officer other than in accordance with a recommendation in a report made by a ‘designated independent person’.
- The designated independent person was such person as may be agreed between the Council and the relevant officer. If there was no agreement, the designated independent person would be nominated by the Secretary of State.
- The designated independent person had statutory investigative powers, including access to documents and a right to require members of staff to answer questions.
- The Council could suspend relevant officers for the purpose of investigating alleged misconduct but only for a period of up to two months. The designated independent person had power to extend or to revoke periods of suspension.
- The designated independent person was required to make a report stating whether (and, if so, to what extent) the evidence supported any allegation of misconduct, and recommending any disciplinary action that appeared to them to be appropriate.
- A decision to dismiss the Head of Paid Service could only be taken by Full Council.

4 THE NEW PROCESS

- 4.1 The previous process was revoked entirely. The new rules do the following:-
- They remove the role of the designated independent person.
 - They apply only to the dismissal of the Head of Paid Service, Chief Finance Officer and Monitoring Officer and not to disciplinary action short of dismissal.
 - They remove the restriction on suspension of these officers during investigation of misconduct.
 - They state that before Council considers whether to dismiss these officers, it must convene a panel made up of Councillors and at least two 'independent persons'. These are the same independent persons appointed under the Localism Act to advise on standards issues. If the Council cannot recruit two independent persons to the panel it has appointed, it may invite independent persons appointed by another Council.
 - The Council can appoint more than two independent persons to a panel and there are no rules on the number of councillors on the panel.
- 4.2 There are no changes to paragraph 6 (c) of the Officer Employment Procedure Rules in relation to disciplinary action against any officer below Chief Officer.

5 RISK IMPLICATIONS

- 5.1 In amending the Constitution to accommodate the Regulations, the risk of any failure to comply is minimised.

6 RESOURCE IMPLICATIONS

- 6.1 There are no resource implications.

7 LEGAL IMPLICATIONS

- 7.1 The Regulations require that the Council amends its procedures.

8 EQUALITY AND DIVERSITY IMPLICATIONS

- 8.1 None.

9 RECOMMENDATION

It is proposed that Council **RESOLVES** to amend the Officer Employment Procedure Rules in accordance with the Appendix to this report.



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Background Papers:-

None.

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Paragraph 6 of the Officer Employment Procedure Rules will be replaced with the following:-

6. Disciplinary Action against Chief Finance Officer, Head Of Paid Service and Monitoring Officer

6.1 In the following paragraphs—

(a) “*the 2011 Act*” means the Localism Act 2011(b);

(b) “*chief finance officer*”, “*disciplinary action*”, “*head of the authority's paid service*” and “*monitoring officer*” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;

(c) “*independent person*” means a person appointed under section 28(7) of the 2011 Act;

(d) “*local government elector*” means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts;

(e) “*the Panel*” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;

(f) “*relevant meeting*” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and

(g) “*relevant officer*” means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.

6.2 A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

6.3 The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

6.4 In paragraph 3 “*relevant independent person*” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

6.5 Subject to paragraph 2.6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order:-

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;
 - (b) any other relevant independent person who has been appointed by the authority;
 - (c) a relevant independent person who has been appointed by another authority or authorities.
- 6.6 An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.
- 6.7 The authority must appoint any Panel at least 20 working days before the relevant meeting.
- 6.8 Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular:-
- (a) any advice, views or recommendations of the Panel;
 - (b) the conclusions of any investigation into the proposed dismissal; and
 - (c) any representations from the relevant officer.
- 6.9 Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel 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 2011 Act.
- 7. Disciplinary Action and Dismissal of any officer below Chief Officers.**
- 7.1 Councillors will not be involved in the disciplinary action against any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to Members in respect of disciplinary action.
- 7.2 Councillors will not be involved in the dismissal of any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to Members in respect of dismissal