

## **STATUTORY OFFICER PERSONNEL COMMITTEE: TRAINING IN THE ROLE OF THE COMMITTEE**

### **1 PURPOSE**

- 1.1 Annual Council on 9 July 2020 constituted a standing Statutory Officer Personnel Committee and Independent Persons Panel with the composition and Terms of Reference set out in Appendix 1.
- 1.2 Members are being trained in the processes involved should the need arise for this Committee to operate as an Investigation and Disciplinary Committee as required by the Chief Executives' Terms and Conditions of Service Handbook in respect of Statutory Officers.

### **2 REASONS FOR TRAINING**

- 2.1 To ensure that the Council can deal with discipline and severance of statutorily protected Chief Officers in line with the Local Authority (Standing Orders) (England) Regulations 2001, as amended in 2015, relatively quickly, should the need arise.

### **3 STATUTORY OFFICER DISCIPLINE**

- 3.1 In July 2020 Annual Council created a standing Statutory Officer Personnel Committee (and Independent Persons Panel) to deal with severance, discipline and other employment matters relating to Chief Officers, defined in the Council's Constitution as the three Statutory Officers i.e. the Managing Director as Head of Paid Service; the Monitoring Officer; and the Chief Finance Officer. The Statutory Officers cannot be dismissed without a resolution of Full Council that has considered a report from an Independent Persons Panel prior to making a decision to dismiss.
- 3.2 The terms of reference for the Statutory Officer Personnel Committee and Independent Persons Panel are set out in Appendix 1 to this report.
- 3.3 Staff matters below Chief Officer level are delegated to the Managing Director (MD) (or Assistant Directors below him) under paragraph 3.2 of the Scheme of Delegation to Officers of Council and Executive Functions (Part C) of the Constitution. The MD also has powers as Head of Paid Service to determine and issue general guidelines to officers regarding training, conditions of service, pay awards, *"rewards, health and safety, employment relations, discipline and dismissals"*.
- 3.4 Under the Joint Negotiating Committee (JNC) Chief Executives' Terms and Conditions of Service Handbook and the Local Authority (Standing Orders) (England) Regulations 2001, as amended in 2015, there is a model procedure to follow in relation to Statutory Officer discipline, capability and grievance.

The statutory protection does not apply to genuine restructuring and redundancy, ill-health or expiry of a fixed term contract where there is no expectation of renewal.

- 3.5 In summary, that process (provided any allegations are not clearly unfounded, trivial, or better dealt with through some other process) involves initial fact finding; then the appointment of an independent investigator who will produce a report; and then there may be a hearing of the Committee, in line with the Council's disciplinary procedures. If there is a recommendation to dismiss a Statutory Officer, the Independent Persons Panel needs to meet to consider the position and prepare a report for Full Council. The Panel could meet concurrently with this Committee for the hearing if that would be appropriate and to expedite matters. The Statutory Officer is also entitled to put forward representations as to why they should not be dismissed.
- 3.6 There is no appeal from a dismissal by Full Council, but if action short of dismissal is resolved by Full Council or where the result of a disciplinary hearing by this Committee is appealed in respect of action short of dismissal then it is considered that the Licensing and Appeals Committee would consider the appeal.
- 3.7 The procedure is set out in more detail in Appendix 2. A representative from Bevan Brittan LLP will take Members through the process at the meeting.

#### **4 SUSPENSION OR GARDEN LEAVE**

- 4.1 The Handbook sets out procedure and guidance in relation to decisions about suspension. The procedure suggests that suspension will not always be appropriate, as there may be alternative ways of managing any investigation. The guidance suggests that the Committee will need to consider whether it is appropriate to suspend where, if an allegation is proved, it would amount to gross misconduct. It recognises it may be necessary in other cases if the continuing presence at work of the individual might compromise the investigation or impair the efficient exercise of the Council's functions
- 4.2 The report to the Committee will need to set out reasons why suspension might be appropriate and give examples of ways in which any investigation might be compromised or the efficient exercise of the Council's functions may be impaired. The Statutory Officer would have the opportunity to present information to the Committee before any decision is taken to suspend. The guidance also says that suspension should be reviewed after it has been in place for two months.
- 4.3 Whilst the Handbook procedure states that an elected Member should hold the delegated power to suspend a Statutory Officer immediately in an emergency if an exceptional situation arises whereby allegations of misconduct are such that the officer's remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority a single Member would not generally have the legal

power to do this and would need to seek authority for such a decision to be confirmed retrospectively. We would normally suggest that an officer be authorised to suspend the Statutory Officer, subject to consultation with the relevant Chairman.

- 4.4 However, the Handbook recognises that suspension is a serious step and should be managed well and that it is potentially damaging for the reputation of the officer and the Authority. The Handbook process is complex and extremely time consuming. It is therefore inevitable that suspension will be far from a neutral act and will often be for several months.
- 4.5 The guidance suggests that careful consideration should be given to alternatives before suspending; for example, by alternative working arrangements such as working from home or working in some other way that protects the Statutory Officer and the Authority from further allegations of a similar nature. Suspension should be a last resort, particularly where a suspension which is later viewed by a Tribunal as unnecessary and avoidable could be seen as strong evidence of heavy handedness or unfair treatment.
- 4.6 The guidance also suggests that a suspension protocol should be put in place to manage the suspension and the investigation. This can include access to work placed material and witnesses, a nominated individual to keep in touch with the suspended employee and with responsibility for their ongoing welfare.

## **5 SEVERANCE**

- 5.1 Any Committee that deals with Statutory Officer disciplinary matters would usually also be able to authorise severance of Chief Officers and Senior Officers – in many cases one process leads to another.
- 5.2 Government guidance in February 2013 updating the 2012 Openness and Accountability In Local Pay statutory guidance under section 40 of the Localism Act 2011 suggests that posts remunerated in excess of £100,000 should be considered and approved by Full Council, before appointment and also that Full Council should be given the opportunity to vote before large severance packages beyond a particular threshold are approved in respect of staff leaving the organisation. This threshold has also been set at £100,000 by the Secretary of State.
- 5.3 The transparency provisions of the Accounts and Audit Regulations 2015 also require senior officer settlement details to be included in summary form within the Council's annual accounts.
- 5.4 In this regard Members may be aware that HM Treasury has recently issued the government's response to the consultation on the exit pay cap and laid the draft implementing regulations in Parliament to cap any severance payments (including pension strain costs) at £95,000 – which is lower than the £100,000 above. The draft regulations will need to be debated in Parliament before they come into force.

- 5.5 The draft regulations say that they come into effect 21 days after the regulations are made. Since Parliament has already gone into recess, this is unlikely to happen before October 2020; however, the intention to bring these regulations into effect is another relevant consideration which needs to be taken into account in the decision-making before that date, when considering the level of any severance payment.

## **6 RISK IMPLICATIONS**

- 6.1 The Handbook and the JNC Secretaries suggest that Councils should deal with Statutory Officer discipline and related matters as quickly as possible. Delay can cause matters to deteriorate and can be a drain on the public purse if officers are suspended on full pay or take sickness absence and procedures are not pursued swiftly.

## **7 RESOURCE IMPLICATIONS**

- 7.1 The Committee (and the Independent Persons Panel) should have access to sufficient resources available to appoint an independent investigator and secure legal and financial support for any decisions required from time to time. Such resourcing implications will need to be supported by the Chief Finance Officer or her Deputy from time to time.

## **8 LEGAL IMPLICATIONS**

- 8.1 The legal implications are set out in the body of the report.

## **9 EQUALITY AND DIVERSITY IMPLICATIONS**

- 9.1 All matters would be dealt with in accordance with the principles of natural justice and fairness. There are no impacts (either positive or negative) on protected groups as defined under the Equality Act 2010.



Angela Law  
Assistant Director, Legal & Democratic

**Background Papers:-**

None.

For further information please contact:

Sonia Worthington (Principal Democratic & Corporate Services Officer) on:-

Phone: 01701 318141

Email: [Sonia.Worthington@Rochford.gov.uk](mailto:Sonia.Worthington@Rochford.gov.uk)

**APPENDIX 1: TERMS OF REFERENCE**

<b>COMMITTEE</b>	<b>MEMBERSHIP</b>	<b>FUNCTION</b>
Statutory Officer Personnel Committee	9 Members of the Authority to include at least one Executive Member, maximum three	<p>To be the Committee responsible for Statutory Officer discipline (relating to the Head of Paid Service; the Monitoring Officer; and the Chief Finance Officer), to have the powers of the Investigation and Disciplinary Committee in the JNC Chief Executives' Terms and Conditions of Service Handbook and the Local Authorities (Standing Orders)(England) Regulations 2001, including for capability and grievances;</p> <p>To appoint independent investigators and independent advisors, as required;</p> <p>To suspend a Statutory Officer, if considered appropriate;</p> <p>To determine disciplinary and other action as considered appropriate;</p> <p>To agree severance terms for Statutory Officers and Senior Officers, including where any severance package exceeds £100,000 and members consider that it would be appropriate for the Committee to decide rather than report to Full Council.</p> <p><b>NB</b> Any appeal against disciplinary action short of dismissal shall be considered by the Licensing and Appeals Committee. There is no appeal against a decision of Full Council to dismiss a Statutory Officer.</p>
Independent Persons Panel	Minimum of 2 Independent Persons appointed by the Council under section 28(7) Localism Act 2011 and, if at the relevant time there are fewer than two such Persons who are able to attend, then Independent Persons appointed by another neighbouring Council shall be invited to attend	<p>In accordance with paragraph 6 of the Officer Employment Procedure Rules:</p> <ul style="list-style-type: none"> <li>• To hear, consider, ask questions and comment in respect of Council procedures on Statutory Officer discipline (relating to the Head of Paid Service; the Monitoring Officer; and the Chief Finance Officer) that could lead to dismissal; and</li> <li>• Make a report and recommendation to Full Council in accordance with the Council's policies and Officer Employment Procedure Rules.</li> </ul> <p>The Panel shall have access to external legal and professional advice as necessary, via the Monitoring Officer (or Deputy as appropriate).</p> <p>For the avoidance of doubt the Independent Persons Panel may, if considered expedient, meet concurrently with the Investigation and Disciplinary Committee hearing of a matter set out above; or may meet separately.</p>

**APPENDIX 2: HEADLINE PROCEDURE**

The Local Authorities (Standing Orders) (England) Regulations 2001 as amended in 2015 (Regulations) apply where there is the potential for a Statutory Officer to be dismissed (effectively for anything other than redundancy, ill health or expiry of a fixed term contract where there is no expectation of renewal).

Statutory Officers also have the benefit of the complex procedure negotiated by the LGA and ALACE contained in the JNC Chief Executives' Handbook (Handbook), usually incorporated into contracts of employment. (Note: although the Handbook refers to disciplinary grievance and capability matters – it would also cover dismissals for some other substantial reason).

**The procedure must at all times comply with the principles of natural justice and may be departed from in the interests of fairness.**

1. Formulate the allegations and share with the relevant officer and ask for their views.
2. Share the outline process with the officer with a view to seeking agreement.
3. If the matter is clearly unfounded, trivial, or best dealt with through some other procedure it will not proceed to the Committee.
4. Call a meeting of the Committee to consider the allegations and the evidence in support (usually an initial fact finding report, or it could for example be a grievance hearing report).
5. If the Committee considers the allegations cannot be dismissed, it must inform the protected officer in writing of the allegations and provide any evidence the Committee is to consider. The officer is provided with the opportunity to attend the meeting to respond in person and to put forward any evidence in response in writing. The decision to call witnesses at this stage is the Committee's.

At the meeting, the Committee decides whether:

- a. To take no further action;
- b. To provide an informal un-recorded oral warning; or
- c. There is a case to answer which requires further investigation and if the allegations are upheld would result in a sanction greater than an oral warning, in which case the Committee will agree to the appointment of an independent investigator; and
- d. To suspend or not to suspend the officer, although suspension may take place sooner if considered urgent [NB Grounds: where the continuing presence at work compromises an investigation; or impairs the efficient exercise of the Council's functions.]

The statutory officer may be accompanied should they choose to attend.

6. Decision notified to protected officer in writing.



7. An officer, usually the Monitoring Officer (or a Deputy), will make arrangements to secure and commission the independent investigator normally from a list held by the Joint Secretaries in consultation with the statutory officer, to undertake the investigation. The names of 3 suggested investigators will be provided with a view to the protected officer choosing one.
8. If agreement on the identity of the investigator is not resolved within [14] days the Monitoring Officer will appoint one of the Council's choosing.
9. The Monitoring Officer will provide the independent investigator with the terms of reference and information about the evidence and potential witnesses/sources of evidence on behalf of the Committee. The independent investigator then collects the evidence and prepares an investigation report interviewing all relevant parties. Note the Terms of Reference may be updated should additional allegations be brought forward.
10. The investigation report is circulated to the Committee and the officer.
11. The Committee meets to consider the investigator's report. Unless the officer is exonerated by the report the Committee must hold a hearing. The independent investigator and the statutory officer should attend the hearing and they are afforded the opportunity to summarise their case and call and question relevant witnesses, depending upon the allegations. The statutory officer may bring a 'friend' or representative to the hearing, which should be conducted in accordance with the ACAS code of practice. The Committee should afford the officer the opportunity to challenge the recommendations of the independent investigator, before a decision is made.

*[N.B. If the potential outcome of the process is that the Committee will recommend to full Council the dismissal of the officer, the Independent Persons must be involved as they will have to provide a report with their view as to whether dismissal is the right sanction to full Council at a later stage in the process (see 13 below). Prior to producing their report, there must be a meeting where they can hear from the protected officer; and the independent investigator (if required). In these circumstances, therefore, the Committee can invite the members of the Independent Persons Panel to the hearing at this stage under the Council's constitution. Alternatively under the Regulations if dismissal is proposed by the Committee the Independent Persons Panel can then meet separately and invite the statutory officer, the Committee (usually its Chair) and the independent investigator (if required) so that they can hear from all, ask questions and then prepare their report (see below).]*

12. The Committee hearing has three options, to decide that there is:
  - a. No case to answer;
  - b. Disciplinary action short of dismissal; or
  - c. Recommendation to Council for dismissal.



The procedure that follows depends on the option chosen: points 13 – 18 apply to a recommendation to dismiss and point 19 to a decision of disciplinary action short of dismissal.

13. Where the recommendation is for dismissal, this proposal needs to go before the Independent Persons Panel – for the Panel to prepare its report (unless the Panel met concurrently with the hearing). Both parties should be present or represented. The Panel may receive any oral representations from the officer, in which case it should invite any response on behalf of the Committee to the points made, and may ask questions of either party. The Panel should review the decision and prepare a report for Council. This report should contain a clear rationale if the Panel disagrees with the recommendation of the Committee to dismiss.
14. The Committee and Independent Persons' Panel reports go to full Council.
15. The statutory officer, independent investigator and the Independent Persons Panel are invited to attend Full Council (which acts as a final right of appeal against dismissal). The officer has the opportunity to be accompanied by a representative and put forward their case before a decision is made.
16. If the proposal of the Committee is to dismiss, the executive objection procedure is undertaken (Council Officer Employment Procedure Rules) under which the Leader is invited to put forward any objections from Cabinet members. The Council will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, then the Council could commission further investigation (by the Independent Investigator or via the Committee or other means) and receive a report if required.
17. Council decides to confirm or reject the recommendation to dismiss and could impose a lesser sanction.
18. Officer notified in writing of dismissal or other outcome.
19. If the Council or the Committee decision is action short of dismissal, the protected officer may appeal to the Licensing and Appeals Committee. The Licensing and Appeals Committee will consider the report of the Independent Investigator and any other relevant information considered by the Committee. The Statutory Officer will have the opportunity to appear at the meeting and state their case. The Licensing and Appeals Committee decision is then communicated to the officer and is final.