

## Council

20 March 2018

### Constitution Updates

#### Recommendations

- (1) That the changes to Employment Standing Orders 6 and 7 and the changes in the arrangements for the Appointments, Disciplinary and Disciplinary Appeals Sub-Committees are approved as set out in the attached appendix.
- (2) That the Joint Managing Director (Resources) be authorised to take any necessary steps to implement the changes and amend the constitution to reflect those changes.

#### 1.0 Key Issues

- 1.1 As a result of amendments to the law changes are required to the arrangements for the Appointments, Disciplinary and Disciplinary Appeals Sub-Committees and Officer Employment Standing Orders 6 and 7. The changes only relate to proposals to dismiss the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer ('the Statutory Officers'). The main change is that a Panel of Independent Persons must be convened to consider any recommendation made by a Disciplinary Sub-Committee to dismiss a Statutory Officer, before any notice of dismissal is given.

#### 2.0 Employment Standing Orders

- 2.1 The Head of Paid Service, Monitoring Officer and Chief Finance Officer all had certain statutory protections against dismissal due to the nature of their roles within the local authority. These statutory protections were changed by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. The JNC for Local Authority Chief Executives have since updated the Chief Executives' Handbook to reflect changes to the statutory provisions for dealing with matters of discipline. The handbook includes a model disciplinary procedure to be followed when an allegation is made relating to the conduct or capability of a Head of Paid service or there is some other substantial issue that requires investigation, except where parties locally have agreed to vary it.
- 2.2 The Council's existing procedures have been reviewed to reflect the legal changes to the disciplinary processes, in the light of the model procedure suggested in the Chief Executives handbook.

### 2.3. The main changes are

- a) the period for which a Statutory Officer may be suspended is not limited but that it shall be reviewed every two months;
- b) the Head of Paid Service or the Monitoring Officer may suspend another Statutory Officer in an emergency;
- c) provisions relating to the dismissal of the Head of Paid Service apply equally to the Monitoring Officer and Chief Finance Officer;
- d) no notice of dismissal of a Statutory Officer may be given by the Council before the recommendation of the Disciplinary Sub-Committee to dismiss has been considered by an Independent Panel of at least two Independent Persons\*; and
- e) where a Disciplinary Sub-Committee is considering the proposed dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer it must include at least one Cabinet member.

\*Independent Persons are persons appointed under section 28(7) Localism Act 2011 for the purposes of the Code of Conduct for Members.

### 3.0 Timescales associated with the decision and next steps

Council decisions have immediate effect.

#### Background papers

None

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The report was circulated to the following members prior to publication:

Local Member(s): N/A  
Other members: N/A

## 9.2 APPOINTMENTS, DISCIPLINARY AND DISCIPLINARY APPEALS SUB-COMMITTEES

### 9.2.1 Composition

At least three elected members drawn from a pool of members agreed by the Staff and Pensions Committee to sit as and when required. The [Head of Paid Service or the Monitoring Officer if appropriate](#)~~chief executive~~ will make arrangements for the sub-committee with membership being proportionate to the representation of the political groups and individual members on the council and nominated by the leaders of the political groups.

### 9.2.2 Dismissal of Statutory Officers

[Where a Disciplinary Sub-Committee is considering the proposed dismissal of the head of paid service, monitoring officer or chief finance officer it must include at least one Cabinet member.](#)

~~When a recommendation to dismiss dealing with any proposal to dismiss the head of paid service, monitoring officer or chief finance officer is made by the Disciplinary Sub-Committee, the sub-committee will also include at least 2 independent persons appointed under section 28(7) Localism Act 2011. the Head of Paid Service or the Monitoring Officer will convene a panel of at least two independent persons appointed under section 28(7) Localism Act 2011 to consider the proposed recommendation of the Disciplinary Sub-Committee prior to any recommendation for dismissal being made to Council.~~

## SECTION 2 – OFFICER EMPLOYMENT STANDING ORDERS

### 6. Disciplinary Action

(a) With the statutory exceptions set out below, disciplinary action in relation to officers is governed by the council's agreed procedures.

(b) In relation to the head of paid service, monitoring officer and chief finance officer ("Statutory Officers") the following restrictions apply: -

- ~~They~~ Statutory Officers can be suspended on full pay ~~for up to two months~~ whilst an investigation into alleged misconduct takes place, such suspension to be reviewed after two months and every month thereafter.
- In an emergency, the Head of Paid Service or the Monitoring officer may suspend a Statutory Officer. In other cases, only the Disciplinary Sub-Committee may suspend a Statutory Officer.
- ~~but no other~~ No disciplinary action may be taken in respect of ~~any of these officers~~ a Statutory Officer except in accordance with a recommendation in a report made by a designated independent ~~person~~ investigator.

(c) Councillors will not be involved in disciplinary action against any officer below strategic director except where such involvement is necessary for any investigation or inquiry into alleged misconduct, or where the council's disciplinary, capability and related procedures, as adopted from time to time, allow a right of appeal to members in respect of disciplinary action.

#### **7. Dismissal of ~~Head of Paid Service~~ Statutory Officers**

Where ~~a committee or sub-committee of the council~~ the disciplinary sub-committee is carrying out the function of dismissing ~~the head of paid service~~ Statutory Officer, it must include at least one cabinet member.

Notice of dismissal of ~~the head of paid service~~ Statutory Officer shall only be given where no well- founded objection has been received from any cabinet member.

No notice of dismissal of a Statutory Officer may be given by the council before the proposal has been considered by an Independent Panel of at least two members appointed under section 28(7) Localism Act 2011.

No notice of dismissal may be given without the prior approval of the council.