

HR Committee

6th March 2017



Report of: Interim Service Director Human Resources, Change and Communications

Title: Disciplinary Procedures for the Chief Executive and Chief Officers

Ward: N/A

Officer Presenting Report: Sandra Farquharson (Interim Head of HR)

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Recommendation

That the Committee recommends to the Full Council:

1. That the Council's Constitution (Part 3, Section 1, Paragraph (j)) be amended to read: *"Confirming the appointment of the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer, and confirming the dismissal of the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer"*.
2. That the Terms of Reference of the Human Resources Committee be amended to replace the final two sentences of "Overview" with *"In accordance with the Officer Employment Procedure Rules to act as the Investigating and Disciplinary Committee in relation to the Chief Executive and Chief Officers"*, and the following to be added to "Functions": *"To hear and determine matters of discipline in relation to the Chief Executive and Chief Officers, including taking action up to and including dismissal. Where dismissal is the outcome in relation to the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer the Committee will recommend this to the Full Council for a final decision"*.
3. That the membership of the Human Resources Committee be amended to include at least one member of the executive, which is required when it is acting as the Investigating and Disciplinary Committee in relation to the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer.
4. That an Independent Panel be established as a committee of the Council appointed under section 102(4) of the Local Government Act 1972 comprising only independent persons (at least two) appointed under Section 28(7) of the Localism Act 2011 for the following purpose: *"To review the decision of the Investigating and Disciplinary Committee to dismiss the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer, and to provide comments on this recommendation to the Full Council for a final decision"*.

That the Committee adopts:

- The Model Disciplinary Procedure of the Joint Negotiating Committee for Local Authority Chief Executives (as detailed in the sections headed “procedure” in Appendix A to this report) in relation to matters of discipline of the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer, noting that throughout the appendices A, Ai, Aii and Aiii “chief executive” should be construed to include not only the Head of Paid Service but also the Monitoring Officer and the Chief Financial (Section 151) Officer.
- The Model Procedure of the Joint Negotiating Committee for Chief Officers of Local Authorities in relation to matters of discipline of all other Chief Officers (as detailed in Appendix B to this report).

That the Committee repeals the Council’s Disciplinary Policy for 1st and 2nd Tier Officers.

That the Committee notes:

- That the sections headed “guidance” in Appendix A to this report are not part of the procedure but may be taken into account.
- That a separate report on the procedure to be followed in relation to grievances raised against or by the Chief Executive will be brought to the Committee’s next meeting.
- That the Officer Employment Procedure Rules (in the Council’s Constitution) will be updated as necessary in order to reflect the agreed position.

Summary

The purpose of this report is to amend the Council’s Constitution and procedures in line with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and in light of recommendations from the Joint Negotiating Committee of Local Authority Chief Executives.

The significant issues in the report are:

- Are detailed under “Recommendations” above.

Policy

1. The Council’s approach to disciplinary action and dismissal of the Head of Paid Service, the Monitoring Officer, the Chief Financial (Section 151) Officer and other Chief Officers is set out in the Officer Employment Procedure Rules, which form Part 4(F) of the Council’s Constitution.
2. The contract of employment of the Chief Executive explicitly incorporates the terms and conditions of the Joint Negotiating Committee on Local Authority Chief Executives (JNC).

Consultation

3. Internal

This matter has been considered by the HR Committee on three previous occasions. This present report reflects the model procedure and associated guidance issued by the JNC in October 2016, which was subsequent to the Committee’s consideration of this matter at its meeting on 22nd September 2016. The relevant minute is as follows:

“The Committee received a report from the Service Director, Human Resources and Workplace. The report proposed how the Council should implement the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. The Committee is asked to recommend the proposed amendments of the Council’s Constitution to Full Council.

The Committee RESOLVED:

(i) To approve the recommendations to Full Council as set out in the report.

4. External

None.

Context

5. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the Regulations) came into force in May 2015 and brought in a new disciplinary/dismissal procedure for local authorities’ heads of paid service, monitoring officers and chief financial (Section 151) officers (protected officers). The Regulations removed the statutory requirement for the appointment of a Designated Independent Person (DIP), and introduced new rules that require any decision to dismiss a protected officer to be taken by the Full Council by way of a vote after consideration of any advice, views or recommendations from a Panel containing at least two independent members appointed under the Localism Act 2011, the conclusions of any investigation into the proposed dismissal and any representations from the officer concerned.
6. The new process applies to dismissals for any reason “other than redundancy, permanent ill-health or infirmity of mind or body, but not because of the failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract”. However, unlike the DIP process, it does not apply to disciplinary action short of dismissal.
7. Initial changes to the Officer Employment Procedure Rules were made at the Full Council’s Annual Meeting in May 2015 in order to meet tight timescales imposed by the legislation, but further refinement is necessary in light of the publication by the JNC of the model procedure and associated guidance.

Proposal

8. As identified under “Recommendations” above.

Other Options Considered

9. To recommend the Council’s own procedure based on earlier advice from the Local Government Association as considered by the HR Committee at its meeting on 22nd September 2016, but the JNC Model Procedure has in effect superseded this.

Risk Assessment

10. The risk of not approving the Recommendations is that there will be no compliant process in place to deal with matters of discipline in relation to the Chief Executive and Chief Officers.

Public Sector Equality Duties

- 11a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.
- 11b) No equality impact assessment has been undertaken because these changes are required by the law and contract of employment.

Legal and Resource Implications

Legal

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Advice provided by x (y), z.

Financial

(a) Revenue

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(b) Capital

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Advice provided by x (y), z.

Land

Not applicable.

Personnel

High ethical standards are critical to maintaining public confidence in local government. Holders of public office are accountable for their decisions and actions to the public. It is important to have a mechanism in place to prevent misconduct and to deal with it effectively. These Disciplinary Procedures are as set out in the JNC Model Procedure and associated guidance.

Sandra Farquharson
Interim Head of Human Resources
04/03/2017

Appendices:

- A – Model Disciplinary Procedure for the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer
- Ai – Model Disciplinary Procedure flowchart
- Aii – Model Disciplinary Procedure (relationship with sickness procedure) flowchart
- Aiii – Model Disciplinary Procedure (relation with capability/performance management) flowchart
- Aiv – Proper procedure ready reckoner for the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer
- B – Model Disciplinary Procedure for all other Chief Officers

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None.