

BRISTOL CITY COUNCIL

HUMAN RESOURCES COMMITTEE

21st April 2016

Report of: Richard Billingham (Service Director: Human Resources)

Title: Changes to statutory disciplinary and dismissal procedures for protected officers

Ward: N/A

Officer Presenting Report: Richard Billingham

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RECOMMENDATION

That the Committee notes the requirement to bring in a new procedure for the disciplining and potential dismissal of the Head of Paid Service, Monitoring Officer and S151 Officer and recommends that the Full Council approves as part of the review of the constitution:

- a. The proposal to establish an ad hoc Statutory Officer Panel, to include 2 Independent Persons appointed under the Localism Act 2011.
- b. That the Panel will be politically balanced and will consist of 3 suitably trained members (one of which must be an executive member).
- c. The draft Terms of Reference for the Panel at Appendix 1.
- d. The consequential amendments to the Terms of Reference of the Full Council, Human Resources Committee and Appeals Committee at Appendix 2.

Summary

The purpose of this report is to propose how the Council should implement changes required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

The significant issues in the report are:

- Statutory disciplinary and dismissal procedures apply to local authorities' heads of paid service, monitoring officers and chief finance officers (the "protected officers").
- A new process has replaced the previous Designated Independent Person (DIP) process.
- The new process applies to dismissals 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 a contract". However, unlike the DIP process, it does not apply to disciplinary action short of dismissal.
- A protected officer cannot, in most cases, be dismissed unless the dismissal has been approved by full council by way of a vote.
- The legislation makes provision for a panel of at least two independent persons, which can advise the authority on the proposed dismissal.
- The regulations do not however provide much if any detail on how the new process will work in practice, including the setting up of the panel, and ensuring a fair investigation takes place prior to dismissal.
- Initial changes to the Council's Officer Employment Procedure Rules were made at last year's annual council meeting in order to meet the tight timelines imposed by the legislation, but further refinement is needed in order to ensure full compliance.

Policy

1. The Council's approach to disciplinary action and dismissal of its protected officers is set out in the Officer Employment Procedure Rules (OER), which forms Part 4(F) of the Council's Constitution.

Consultation

2. Internal

Consultation is expected with the Executive, Party Group Leaders, and the Head of Paid Service.

3. External

Advice/guidance has been taken from the Local Government Association.

4. Context

4.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the Regulations), came into force in May 2015 bringing in a new procedure for the disciplining and potential dismissal of the Head of Paid Service, Monitoring Officer and S151 Officer.

4.2 The Regulations removed the statutory requirement for the appointment of a Designated Independent Person (DIP), and introduced new rules which require any decision to dismiss a protected officer to be taken by the Full Council after consideration of:

- Any advice, views or recommendations from a Panel containing at least 2 Independent Members appointed under the Localism Act 2011
- The conclusions of any investigation into the proposed dismissal; and
- Any representations from the officer concerned.

4.3 The new process applies to dismissals for any reason other than redundancy or permanent ill-health, but does not include failure to renew a contract of employment for a fixed term (unless the authority has undertaken to renew the contract). However, unlike the DIP process, it does not apply to disciplinary action short of dismissal.

4.4 Unfortunately the Regulations provide little detail of how the new process will operate in practice and so this report suggests an appropriate procedure in line with initial advice/guidance from the Local Government Association. It should be noted that the LGA is still considering at a national level possible changes to the overall recommended procedure and so the Council's approved process may need to be kept under review.

4.5 It is recommended that the Council establishes a Statutory Officer Panel to commission the necessary investigation and make recommendations to the Full Council on any decision to dismiss.

Statutory Officer Panel

- 4.6 It is proposed that the Statutory Officer Panel would have responsibility to:
- Screen potential disciplinary/dismissal issues to consider if an investigation is required and whether the relevant protected officer should be suspended in the interim period
 - Organise the investigation itself, including confirmation of the appointment of a suitably qualified investigator.
 - Review the results of the investigation to consider what disciplinary action, if any, is appropriate, after hearing the views of the protected officer.
 - Refer any proposal to dismiss to the Full Council.
 - Action the dismissal by notifying the executive and if there is no material or well-founded objection, issue notice of dismissal
 - Where the Panel decides that action short of dismissal or no disciplinary action at all is appropriate, put that in place as appropriate.
- 4.7 Draft Terms of Reference for the Panel are attached at **Appendix 1**.
- 4.8 At least one member of the authority's executive would have to be on the Panel (in line with paragraphs 4(2) of Part 1 and Part 2 of Schedule 1 to the 2001 Regulations).

Independent Persons

- 4.9 The Regulations provide that the Panel must include at least two Independent Persons, appointed under section 28(7) of the Localism Act 2011. Section 28 deals with the member code of conduct regime, and the authority has already appointed one individual under that section. It is intended to canvass the individual to inquire if they are prepared to sit on the Panel. If fewer than two independent persons are in place, or available to act, then an Independent Person appointed by another authority under the 2011 Act can sit on the authority's Panel. The Council has the option to recruit an additional Independent Person or to rely on reciprocal arrangements with neighbouring councils.

- 4.10 Although the Regulations appear to suggest that the Panel needs only be made up of two independent persons, because the Panel falls into the category of a committee appointed by the authority under section 102(4) of the Local Government Act 1972, the normal proportionality rules apply. This means that in addition to the two or more “neutral” independent persons, the Panel would need to include local authority elected members (including a member of the executive). The current arrangement for other Chief Officer disciplinary hearings is a politically balanced panel of three suitably trained members, one of which must be an executive member, and it is suggested that this formula is adopted for the Statutory Officer Panel.
- 4.11 The authority must ensure that Panel is appointed at least 20 working days before the Full Council meeting at which the authority decides whether or not to approve a proposal to dismiss a protected officer.

Investigation

- 4.12 The Statutory Officer Panel would be responsible for the conduct of the investigation, including confirmation of the appointment of an appropriate and suitably qualified Investigating Officer and whether or not the relevant protected officer should be suspended, or continue to be, suspended. It should be noted that it may have been necessary for the Service Director Human Resources to suspend the protected officer as a precautionary measure. In the case of the Monitoring Officer or s151 Officer only, this decision would be taken in consultation with the Head of Paid Service. If any issue relates to the Head of Paid Service, then consultation will be with the Chair of the Human Resources Committee.
- 4.13 Following the investigation the Panel will consider any appropriate action, taking into account the contents of the investigation and any recommendations made by the Investigating Officer.
- 4.14 Although the decision to dismiss would not formally be taken by the Panel (since the Full Council must make the final decision) the intention would be for the Panel meeting to follow the format of a standard disciplinary hearing, at which the question of dismissal was in issue. The protected officer would be invited to attend the Panel meeting to put forward their views, and it would be treated as one at which the officer has the statutory right to be accompanied by a fellow worker, trade union official or a representative from a professional body or legal representative.

- 4.15 If the Panel recommends action short of dismissal then it will take the relevant action itself, without referring the matter to the Full Council. The Regulations do not provide for a right of appeal from the Panel decision, but to bring matters in line with the procedures for other officers and in the interests of natural justice, it is suggested that the Appeals Committee should hear any appeal and the terms of reference amended accordingly. Appendix 2 sets out the proposed amendment.
- 4.16 If the Panel recommends dismissal, then it will formally advise the Full Council of its recommendation for a final decision to be made.

Role of the Full Council

- 4.17 In the event that the Statutory Officer Panel recommends that dismissal is appropriate, then the matter would go forward to the Full Council to consider whether to approve the proposal to dismiss, having taken into account the advice of the Panel, the conclusions of any investigation and any representations from the protected officer concerned. It is anticipated that any meeting would be in exempt/closed session and would not be webcast.
- 4.18 The Regulations do not specifically give the protected officer the right to make representations at the Full Council meeting. However, because of the importance of the meeting, the LGA guidance recommends that the officer should be provided with the appropriate paperwork in advance of the meeting and be allowed to make written representations as well as invited to attend the meeting to make representations. The statutory right to be accompanied should also be applied.
- 4.19 As the Full Council itself has approved the dismissal, there is no one in the authority who has the power to overturn the dismissal decision, which raises appeal issues. However, if the approach outlined above is followed, then the Council's formal approval will effectively become the appeal stage, thus removing the need for a further appeal. Strictly speaking, this is not in line with standard employment law practices, but bearing in mind the Regulations' requirements, an employment tribunal may find that such an approach is fair, given that the officer will have had the opportunity to state their case before any proposal to dismiss is made, and then to address the authority before any decision to approve the dismissal is made.

- 4.20 The new procedure does not remove the requirement on authorities to follow the executive's objections procedure. In summary, members of the executive must be notified of the name of the person to be dismissed and the relevant particulars and have the opportunity to raise objections through the Mayor. If there are no objections or an objection is not "material or well founded" then the dismissal may proceed.
- 4.21 As the authority is being requested to delegate the action of dismissal to the Investigation and Disciplinary Panel then the Panel is to be treated as discharging the function of dismissal. This means the objections procedure will take place once the committee has made its dismissal recommendation and prior to the authority meeting.
- 4.22 In some authorities, the DIP processes are incorporated into chief officers' terms and conditions. However, this is not the case at Bristol because the Disciplinary Policy for 1st and 2nd Tier Officers is not contractual. This Policy, which needs updating, states that the Chief Executive (should read City Director) will be subject to the model disciplinary procedure within the Joint Negotiating Committee for Chief Executives of Local Authorities Conditions of Service Handbook. However, paragraph 15.16 of the Handbook states "where informal resolution is not possible the model procedures should apply unless alternative arrangements have been agreed locally" – and the new process could be argued to be locally-agreed alternative arrangements. Individual consultation will take place with the post holder in any event. For information, the Local Government Association is seeking to amend the JNC model procedures through collective agreement, thereby potentially removing any need for contractual change at local level.

5. Proposal

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- b. That the Panel will be politically balanced and will consist of 3 suitably trained members (one of which must be an executive member).
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6. Other Options Considered

There are a number of alternative structures and in particular the LGA recommends an option of an Investigation and Disciplinary Committee (which consists of elected members) and a separate Panel with Independent Persons; however this had the effect of duplicating the process at certain stages and is not therefore a recommended approach.

7. Risk Assessment

Not applicable, as these changes are required by law.

8. Public Sector Equality Duties

- a) 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.
- b) Not required as these changes are required by law.

Legal and Resource Implications

Legal

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force in May 2015 and introduced a new procedure for the disciplining and potential dismissal of the Head of Paid Service, Monitoring Officer and S151 Officer. The process now requires the Council to establish a Panel which must include at least two Independent Persons, appointed under section 28(7) of the Localism Act 2011 (which relates to the procedure for the investigation of complaints under the member code of conduct regime) and provides that any decision to dismiss must be made by the Full Council. The report sets out the requirements of the new process in detail and is in accordance with the legal requirements now in place for these Officers.

**(Advice provided by Caroline Elwood, Interim Service Manager
Legal (Place))**

Financial

(a) Revenue

Not applicable.

(b) Capital

Not applicable.

Land

Not applicable.

Personnel

As outlined above.

Appendices:

Appendix 1 – Draft Terms of Reference for the Panel

Appendix 2 - Consequential amendments to the Terms of Reference of Full Council, Human Resources Committee and Appeals Committee

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**Background Papers:**

LGA Advisory Bulletin no 624 “Workforce: Employment Relations”