

## **Council – 13th July 2015**

### **New Statutory Procedures for Dismissal of Statutorily Protected Officers**

**Service:** Not applicable

**Wards:** Not applicable

#### **1. Summary**

- 1.1 To report to Council upon recent changes in legislation regarding the suspension, investigation and dismissal of the Council's Chief Executive, Monitoring Officer and Chief Finance Officer.

#### **2. Recommendations**

- 2.1 That Council approve the new Officer Employment Procedure Rules as set out in the Appendix to the report.
- 2.2 That Council delegates to the Appointments Board to receive reports from the Council's Head of Human Resources upon the Local Government Association JNC collective agreement negotiations regarding nationally agreed JNC Chief Executive terms and conditions.
- 2.3 That the appropriate amendments be made to the Council's Constitution to implement this decision.

#### **3. Report detail**

- 3.1 The three statutory officer's dismissal is subject to specific protected statutory protection, this protection is afforded because the three roles have specific legal duties imposed upon them to ensure the operational effectiveness of the Council, to maintain sustainable governance and lawfulness as well as the financial integrity of the Council.
- 3.2 Recent changes to the legislation that provides this protection requires Council to adopt new procedures by no later than the first ordinary meeting of the authority after the Annual meeting. These changes set out new provisions which are required by law to be adopted and to form part of the Council's constitution, which is set out in the **Appendix** to this report.

- 3.3 The changes remove what was called the Designated Independent Person process and utilises some of the provisions relating to Members Conduct issues as brought in by the Localism Act 2011, in that the need for a required Designated Independent Person to conduct an investigation into a statutorily protected officer has been replaced with a requirement to have a Panel comprising the independent persons appointed by the Council for the purpose of matters relating to the members conduct. The panel must comprise of at least two independent persons, one of whom can be an independent person appointed by another Council for its member conduct matters if the Council is unable to appoint two of its own independent persons.
- 3.4 Of the three officers affected by these changes the Chief Executive currently has provision within his contract of employment requiring a Designated Independent Person be appointed in relation to disciplinary matters as part of the national terms and conditions of employment for Chief Executives. The effect of this means that notwithstanding the changes in legislation the Chief Executives contract of employment grants him a legal right to the previous Designated Independent Person process.
- 3.5 The key distinctions between the new independent person process and the previous one are:
- 3.5.1 Under the previous process the officer concerned had to agree to the person who was appointed as the independent person. Whereas the new process imposes a panel of two persons Independent Persons that have already been appointed by the Council for the purposes of members conduct.
  - 3.5.2 The new process only requires the Council to have regard to the recommendation arising from the panel as opposed to the previous process by which Council had to follow any recommendation from the Independent Person.
  - 3.5.3 Under the previous process all disciplinary action against the officer concerned had to go through the designated Independent Person process and be reported to Council for a decision whereas under the new process only a proposal to dismiss has to go through the new independent Panel process and be referred to Full Council for decision.
- 3.6 Under point 3.5.3 above, it is proposed there is no practical distinction regarding the three statutory officers to be adopted in relation to investigations that may lead to a lesser sanction other than dismissal and to one that could result in dismissal. As matters sufficiently serious enough to justify disciplinary action against the statutory officers in any event require an investigation. Therefore the provisions within the Officer Employment

Procedure Rules reflect this in that the Independent Panel would review and make recommendations to the Appointments Board on all disciplinary matters with the level of investigation depending upon the nature, veracity and seriousness of the allegations. Where that recommendation is to dismiss that decision can only be made by Full Council leaving all other sanctions up to but not including dismissal to be determined by the Appointments Board. There would be a right of appeal against any sanction imposed by the Appointments Board.

#### **4. Staffing Issues**

- 4.1 The Chief Executive has a contractual entitlement to the former Designated Independent Person process under his contract of employment. The new legislative changes do not change or alter the contract of employment position. The issue of Chief Executives having the Designated Independent Person process written into their contracts of employment is common as it currently forms part of the JNC Chief Executive Terms and conditions, and as a result the Local Government Association is currently seeking to amend the JNC Chief Executive model terms and conditions through a negotiated national collective agreement. This may need to be reviewed at a later stage dependent upon the outcome of the national negotiations.

#### **5. Legal Issues**

- 5.1 The changes referred to above have been brought by The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 No 881.

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3rd July 2015

## Appendix

### 6 - Officer Employment Procedure Rules

#### 1. Recruitment and appointment

##### (a) Declarations

- (i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or the partner of such persons.
- (ii) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant Director or an officer nominated by him/her.
- (iii) Where a relationship to a relative, or persons referred to above, has been declared it shall be specifically drawn to the attention of the appointing panel.

##### (b) Seeking support for appointment

- (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) No Councillor, co-optee to a Council Committee or employee will seek to support any candidate for appointment. Councillors or co-optees to a Council Committee must not stand as referees for officers or candidates for appointment as officers of the Council.
- (iii) If a Councillor or senior officer becomes aware that they are related to someone who applies for a job with the Council, then they must notify in writing the Chief Executive and must not take part in the selection process. Senior Officer in this context means any first, second or third tier officer, any person with direct or indirect responsibility for the post which is the subject of the appointment or any person who is or would normally be involved in any way with the selection of the candidate. In such circumstances a Personnel Officer must scrutinise the shortlist to ensure that candidates are on the shortlist fairly and must also scrutinise the selection process adopted including the assessment/scoring of candidates before an appointment is made to the vacant post.

#### 2. Recruitment of Chief Executive and Executive Directors

Where the Council proposes to appoint the Chief Executive or an Executive Director the post will be advertised externally unless there are exceptional circumstances, the Council will:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and

- (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.

In carrying out the recruitment and selection process the Council, Committee or Sub-Committee will be guided by best practice on recruitment and selection and the advice of the Head of Personnel and Development. The Committee or Sub-Committee will have received training in equal opportunities in recruitment and selection.

### **3. Appointment of Chief Executive**

- (a) The Council will appoint the Chief Executive following the recommendation of such an appointment by a Committee or Sub-Committee of the Council. That Committee or Sub-Committee must include at least one Member of the Executive.
- (b) The Council may only make or approve the appointment of the Chief Executive where no well-founded objection has been made by any Member of the Executive.
- (c) The appointment of the Chief Executive will be in accordance with Schedule 1, Part II of the Local Authorities (Standing Orders) (England) Regulations 2001. (See Appendix)
- (d) No dismissal of the Chief Executive will take place until that dismissal has been approved by the Council and no offer of appointment will be made until the Proper Officer has followed the notification requirements set out in Schedule 1, Part II 5(2) and Schedule 3 of the said Regulations. (See Appendix)

### **4. Appointment of Directors and Assistant Directors**

- (a) A Committee or Sub-Committee of the Council will appoint Directors and Assistant Directors. That Committee or Sub-Committee must include at least one Member of the Executive.
- (b) An offer of employment as a Director or Assistant Director shall only be made where no well-founded objection from any Member of the Executive has been received.
- (c) The appointment of those staff will be in accordance with Schedule 1, Part 2 of the Local Authorities (Standing Orders) (England) Regulations 2001, and no offer of appointment will be made until the Proper Officer has followed the notification requirement set in Schedule 1, Part II 5(2) of the said Regulations.
- (d) The function of dismissal and taking of disciplinary action against Directors or Assistant Directors will be discharged by the Committee or Sub-Committee referred to in (a) above and no notice of dismissal must be given until:
  - (i) the Proper Officer has followed the notification procedure as set out

in Schedule 1, Part II 6(2) of the Local Authorities (Standing Order) (England) Regulations, 2001; (See Appendix)

- (ii) no well founded objection has been received from the Executive.

**5. Other appointments**

- (a) **Officers below Assistant Director** - Appointment of officers below Assistant Director (other than assistants to political groups and an assistant to the Mayor) is the responsibility of the Chief Executive or his/her nominee, and may not be made by Councillors.
- (b) **Assistants to political groups** - Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group provided that such is in compliance with any relevant statutory requirements.
- (c) Appointments shall otherwise be made in accordance with any scheme of recruitment and selection as may from time to time be approved or amended and adopted by the Council.
- (d) The function of dismissal of, and taking of disciplinary action against officers below Assistant Director will be discharged by the Chief Executive or his/her nominee.
- (e) **Appointment of Director of Public Health:** The Director of Public Health will be appointed by the Council in accordance with the requirements of the Health and Social Care Act 2012 and the relevant guidance issued by the Department of Health.

**6. Disciplinary action – statutorily protected officers**

- (a) **Suspension** - The Chief Executive may be suspended by the Appointments Board whilst an investigation takes place into alleged misconduct. Suspension of the Monitoring Officer and Chief Finance Officer shall rest with the Chief Executive pending an investigation into alleged misconduct. That suspension will be on full pay and last no longer than two months. The suspension period may only be extended beyond two months following a decision by the Appointments Board.
- (b) **Independent Panel** - No disciplinary action may be taken in respect of any of those officers (referred to in rule 6(a) above) except in accordance with a recommendation in a report made by a Panel, under Schedule 1 Part II and Schedule 3 of the Local Authorities (Standing Order) (England) Regulations, 2001 to the Appointments Board and the where there is no conflict the Councils Disciplinary Procedures.
- (c) **Decision making** - Any proposed disciplinary action of the said officers that is a lesser sanction than dismissal shall be determined by the Appointments Board and subject to appeal to the Councils Appeals Committee. Where the Appointments Board has determined dismissal of those officers is the appropriate action, that final decision shall only be undertaken by full Council upon recommendation from the Appointments Board in accordance with the provisions of Schedule 3 of the Local Authorities (Standing Order) (England) Regulations.

**7. Dismissal below Assistant Director**

- (a) Councillors will not be involved in the dismissal of any officer below Assistant Director 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 dismissals.

**8. Dismissal of the Director of Public Health – requirement for consultation with a the Secretary of State for Health**

- (a) No dismissal other than suspension may be taken in respect of the Director of Public Health, except following consultation with the Secretary of State.

**9. Implementation of the Officer Procedure Rules**

- (a) The detailed implementation of the Officer Procedure Rules will be in accordance with the policies approved by the Council and as set out in the Council's Personnel Guidance Manual.

NB In these procedure rules, the term Assistant Director means a person whose duties fall within the definition of a Deputy Chief Officer as defined by Section 2(8) of the Local Government and Housing Act 1989

## **Appendix**

### **Local Authorities (Standing Order) Regulations 2001, Part II and Schedule 3**

Authority with Leader and Cabinet Executive:

1. In this part:

“the 1989 Act” means the Local Government and Housing Act 1989;

“the 2000 Act” means the Local Government Act 2000;

“disciplinary action” has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;

“executive” and “executive leader” have the same meaning as in Part 1A of the 2000 Act;

“member of staff” means a person appointed to or holding a paid office or employment under the authority; and

“proper officer” means an officer appointed by the authority for the purposes of the provisions in this part.

2. Subject to paragraphs 3 and 7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority’s paid service or by an officer nominated by him.

3. Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against:

- (a) the officer designated as the head of the authority’s paid service;
- (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);
- (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;
- (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or
- (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

4. (1) Where a Committee, Sub-Committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the



authority's paid service, the authority must approve that appointment before an offer of appointment is made to that person

(1A) Where a Committee, Sub-Committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority's paid service, as the authorities chief finance officer, or as the authorities monitoring officer, the authority must approve that dismissal before notice is given to that person

(2) Where a Committee or a Sub-Committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) or paragraph 3, at least one member of the Executive must be a member that Committee or Sub-Committee.

5. (1) In this paragraph "appointor" means , in relation to the appointment of a person as an officer of the authority, the authority or, where a Committee, Sub-Committee or officer is discharging the function of appointment on behalf of the authority, that Committee, Sub-Committee or officer, as the case may be.

(2) An offer of appointment as an officer referred in sub-paragraph (a), (b), (c) or (d) of paragraph 2 must not be made by the appointor until:

- (a) the appointor has notified the proper officer of the name of the  
person to whom the appointor wishes to make the offer and any other  
particulars which the appointor considers are relevant to the appointment;
- (b) the proper officer had notified every member of the executive of the  
authority of:
  - (i) the name of the person to whom the appointor wishes to make the  
offer;
  - (ii) any other particulars relevant to the appointment which the appointor  
has notified to the proper officer; and
  - (iii) the period within which any objection to the making of the offer is to be  
made by the executive leader on behalf of the executive to the proper  
officer; and
- (c) either:
  - (i) the executive leader has, within the period specified in the notice  
under sub-paragraph (b)(iii), notified the appointor that neither he nor  
any member of the executive has any objection to the making of the  
offer;
  - (ii) the proper officer has notified the appointor that no objection was  
received by him within that period from the executive leader; or

- (iii) the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

6. (1) In the paragraph, “dismissor” means, in relation to the dismissal of an officer of the authority, the authority or, where a Committee or Sub-Committee or another officer is discharging the function of dismissal on behalf of the authority, that Committee, Sub-Committee or other officer, as the case may be.

(2) Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be given by the dismissor until:

- (a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
- (b) the proper officer has notified every member of the executive of the authority of:
  - (i) the name of the person who the dismissor wishes to dismiss;
  - (ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and
  - (iii) the period within which any objection to the dismissal is to be made by the executive leader on behalf of the executive to the proper officer; and
- (c) either:
  - (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he nor any other member of the executive has any objection to the dismissal;
  - (ii) the proper officer has notified the dismissor that no objection was received by him within that period from the executive leader; or
  - (iii) the dismissor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

7. Nothing in paragraph 2 shall prevent a person from serving as a member of any Committee or Sub-Committee established by the authority to consider any appeal by:

- (a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or
- (b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

## **SCHEDULE 3**

### **PROVISIONS TO BE INCORPORATED IN STANDING ORDERS IN RESPECT OF DISCIPLINARY ACTION**

#### **Regulation 6**

**1.** In the following paragraphs--

- (a) "the 2011 Act" means the Localism Act 2011;
- (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.

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

**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.

**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.

**5.** Subject to paragraph 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.** An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

**7.** The authority must appoint any Panel at least 20 working days before the relevant meeting.

**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.

**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."