

BOROUGH OF TELFORD & WREKIN

FULL COUNCIL 9th JULY 2015

IMPLEMENTATION OF NEW LEGISLATION AND CHANGES TO CONSTITUTION: DISMISSAL OF STATUTORY OFFICERS

REPORT OF PEOPLE SERVICES MANAGER, LEGAL SERVICES MANAGER AND AUDIT MANAGER

1.0 PURPOSE

- 1.1 This report proposes changes to the disciplinary process for, the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer, and is brought forward as a result of recent changes to legislation. The Council are being asked to approve the changes to the Constitution and agree the local arrangements for the Council in respect of the new requirements.
- 1.2 The report also details other minor Constitutional adjustments resulting from the Audit Committee meeting on 30 June 2015

2.0 RECOMMENDATIONS

2.1 That the Council's Constitution be amended to incorporate the new legislative requirements and that Council consider approving the proposed arrangement as detailed in Appendix 1 for the disciplining and dismissal of senior staff as set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881), ("the Regulations")

2.2 That the current Independent Persons engaged by the Council for member conduct issues be invited to fulfil the role of Independent Persons under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881), ("the Regulations").

2.3 The Council confirm agreement for the arrangements in Appendix1 to contain a panel made up of Independent Persons and that accordingly the requirement for political balance does not apply in accordance with the provisions in section 17 of the Local Government Act 1972.

2.4 That further reports be submitted to Council as national contractual and legislative issues are determined.

2.5 That the Constitutional Changes recommended by Audit Committee at its meeting of 30 June 2015 be approved.

3.0 SUMMARY

- 3.1 This report provides detail of changes required to council processes for the dismissal of Statutory Officers for reasons " other than redundancy permanent ill health or infirmity of mind or body and not including failure to renew a contract for a fixed term unless the authority has undertaken to renew such a contract". A proposal for adopting the statutory requirements is presented to the Council for consideration.

4.0 PREVIOUS MINUTES

4.1 Audit Committee 30 June 2015

5.0 INFORMATION

DISMISSAL OF STATUTORY OFFICERS

5.1 Since 2001 it has been accepted that the Head of Paid Services, the Chief Finance Officer and the Monitoring Officer (“statutory officers”) have statutory functions to discharge that can bring them into conflict with members and accordingly these officers have been given statutory protection requiring that any allegations of misconduct against these officers had to be investigated by a “Designated Independent Person”, (“a DIP”). No disciplinary action could be undertaken other than in accordance with a report from a DIP, generally a barrister with experience of employment law. This was designed to demonstrate independence in the process and counter any allegations of influence from elected members in respect of high level governance issues

5.2 The Government have recently published new regulations on local authorities' disciplinary procedures for removing a statutory senior officer. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881) (“the Regulations”) requires local authorities to amend their Standing Orders to incorporate the new arrangements for taking disciplinary action against statutory officers.

5.3 It is a statutory requirement that these be considered at the first Council meeting following the Annual General Meeting of the Council.

5.4 Changes have been introduced because the government were of the view that the previous process was time consuming and expensive and favoured statutory officers, leading to potentially inflated severance payments being offered in preference to the use of agreed process which was not in the best interests of local taxpayers.

5.5 The intention of the regulations is to localise and simplify the process. In summary, the new proposals remove the previous process involving the DIP. The new constitutional provisions have to establish a process whereby the decision must now be taken by full Council in the light of; advice from a panel which includes Independent Persons, the conclusions of an investigation and representations from the officer concerned.

5.6 The Independent Persons referred to in paragraph 5.5 above have already been appointed to be consulted in respect of the investigation into councillor complaints where there are allegations of a breach of the Members' Code of Conduct. Discussions have taken place with the Council's Independent Persons who have subsequently indicated their willingness to undertake this additional role.

5.7 The requirement for the Council to make changes at its first meeting after the Annual General Meeting means that a number of aspects which will impact upon local implementation remain unresolved because national decisions have not been taken. Some of these relate to contractual aspects which, for these officers, are determined nationally. Further, there is little by way of guidance to accompany the new rules.

5.8 The Regulations set out a process whereby, in the event that disciplinary proceedings are brought against statutory officers, Independent Persons will be invited to form a panel to provide advice, views or recommendations to full Council which must be taken into account before a vote of whether or not to approve a dismissal of a statutory officer is made.

5.9 The Regulations state that a panel must be made up of at least two Independent Persons. The panel will be an advisory committee which is constituted as a formal committee of the Council. The recommendations in Appendix 1 set out a model to allow the rules to be complied with and follow the intention behind the legislation, namely to have an independent review of the process and provide recommendation to the decision-making body accordingly. This has some similarities with the process that the Independent Persons are involved in relating to Councillor Conduct issues where they are consulted before the Standards Committee determines whether a breach of the Code of Conduct has taken place. However, there do seem to be alternatives to the proposal in appendix 1 which include having a panel which includes elected members (which would also presume to have a political balance to the panel as well as the Independent Person membership). This has not been proposed for two reasons; the Council's Personnel Committee will already be involved in the process and it maintains the independence of the panel. However, the Council needs to be aware of the options available.

5.10 It is intended that further adjustments will be presented to Council as issues are determined.

AUDIT COMMITTEE TERMS OF REFERENCE

5.11 There is a requirement in the Constitution for all Committees to annually review their terms of reference at their first meeting following Annual Council. The Audit Committee did this at their meeting on 30th June 2015.

5.12 The Audit Committee requires some changes to paragraphs 7 and 9 of their terms of reference to reflect the changes below and to allow the first Caldicott Guardian Annual Report to be presented to the 15th September 2015 Audit Committee:

- a) Paragraph 7. Meet privately with the external auditor as required.
- b) Paragraph 9 - That the Caldicott Guardian will present an Annual report to the Committee as part of good governance; and
- c) Paragraph 9 - That the Commercial Board has not met for a while and no longer exists and that oversight should be of commercial projects.

5.13 – The full details are shown in the Appendix to this report.

6.0 EQUAL OPPORTUNITIES

6.1 All Disciplinary issues will be managed with specific regard to equality legislation and principles.

7.0 ENVIRONMENTAL IMPACT

7.1 There are no environmental considerations in relation to the changes to national legislation.

8.0 LEGAL COMMENT

8.1 The regulations amend previous regulations made in 2001 in relation to these senior staff members. These are made in accordance with powers of the Secretary of State to require local authorities to adopt standing orders in relation to their staff.

8.2 The provisions apply to the statutory posts of Head of Paid Services, Chief Finance Officer and Monitoring Officer and the Council must make the changes to the constitution and other relevant procedures no later than the Council meeting on 9th July 2015.

8.3 The panel which includes the Independent Persons is a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the relevant officers of the authority. This means that the panel members can be made up solely of IP's and have voting rights but can only advise the Council. The proposal in Appendix 1 presumes that there are no elected members on the panel but that is a matter for full Council to decide. Further, political balance is assumed for the panel and accordingly recommendation 2.3 needs to be agreed by the Council without any member of the Council voting against the recommendation.

8.4 The Independent Person is a role established at section 28 of the Localism Act 2011. The role is subject to statutory criteria for eligibility and the appointments are made by full Council. The current Independent Persons for the Council were appointed in September 2012 and their term of office was extended by full Council on 5th March 2015 with a further review to take place in 2018. If one or both of the Independent Persons is not able to take part in the advisory committee, officers will look to invite Independent Person(s) from another authority to form the panel.

8.5 It should be noted that as the process proposed in this report relates to the Head of Paid Service, Monitoring Officer and Chief Finance Officer, the process for disciplinary and dismissal proceedings for other Directors of the Council is unchanged. This is reflected by the changes set out at Appendix 1 of this report.

8.6 Regarding the changes proposed for the terms of reference of the Audit Committee, it should be noted that the changes and additional responsibilities recommended in the report can be added to the remit of the work of the Committee if the Council considers it appropriate to do so. The proposals can help to ensure that the work of the Audit Committee assists the Council in meeting statutory obligations, in particular in relation to internal audit requirements (as set out in legislation such as The Accounts and Audit regulations 2015).

9.0 LINKS WITH CORPORATE PRIORITIES

9.1 The effective delivery of Council priorities requires legal management processes. This report ensures that disciplinary frameworks for Statutory Officers comply with national legislation.

10.0 OPPORTUNITIES AND RISKS

10.1 The key risk in connection with the recommendations in this report is that the Council fails to implement processes which comply with legislative requirements. The recommendations remove this risk and further reports will respond to expected developments in the near future.

11.0 FINANCIAL IMPLICATIONS

11.1 The new arrangements introduce an additional element into disciplinary matters relating to Statutory Officers. This may require some additional training for Independent Persons. It is not anticipated that the cost of this will be great as it can be delivered in house should any cases arise.

12.0 WARD IMPLICATIONS

12.1 None

13.0 BACKGROUND PAPERS

Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881), (“the Regulations”).

Localism Act 2011

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APPENDIX 1

Insert into the terms of reference for full **Council**:-

“The appointment or dismissal of the head of the authority’s paid service or the dismissal of the authority’s monitoring officer or chief finance officer”

Insert the following provisions into the **Officer Employment Procedure Rules**

Reference to the Local Authorities (Standing Orders)(England) Regulations 2001 be changed to included ... *“(as amended)”*

Section 6 - Disciplinary Action in respect of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer.

6.1 – no proposed amendments

6.2 – delete and replace with:-

No disciplinary action may be taken in respect of the Council’s designated Head of Paid Service, Monitoring Officer or Chief Finance Officer except after consideration of any advice, views or recommendations provided by the Panel

7.

7.1 delete and replace with: _

Full Council will decide whether or not to approve the dismissal of the Council’s designated Head of Paid Service, Monitoring Officer or Chief Finance Officer only after taking into account recommendations from the Personnel Committee and any advice, views or recommendations from the Panel and after hearing representations, if any, from the officer who is the subject of the disciplinary process

The Panel

Council to approve the creation of a Panel including 2 Independent Persons members for the purposes of giving advice, views or recommendations to full Council when considering whether or not to approve the dismissal of the Council’s designated Head of Paid Service, Monitoring Officer or Chief Finance Officer

Terms of Reference of the Panel

To give advice, views or recommendations to full Council when considering whether or not to approve the dismissal of the Council's designated Head of Paid Service, Monitoring Officer or Chief Finance Officer

When considering whether or not to give any advice, views or recommendations and what advice, views or recommendations to give the Panel shall have regard to the decision of the Personnel Committee and the hearing and background papers and the notes of any such hearing

The Panel will convene a meeting that will take place within 7 days of being appointed and they will be supported by representatives from People Services and Legal Services (or appropriately qualified external advisers in circumstances make it more appropriate)

The Panel must be appointed at least 20 days before a meeting of full Council to consider whether or not to approve a proposal to dismiss the Council's designated Head of Paid Service, Monitoring Officer or Chief Finance Officer.

Membership

Two Independent Persons as appointed by the Personnel Committee from time to time:-

- 1. At least one independent person appointed by Council in accordance with the provisions of s28(7) of the Localism Act 2011 who is registered as a local government elector in the register of electors in Telford & Wrekin in accordance with the Representation of the Peoples Acts – one of whom shall be appointed to be Chair of the Panel if ; and*
- 2. An independent person appointed by Council; and/or*
- 3. An independent person who has been appointed by another authority or authorities*

Allowances

No allowances are payable for this role.

Currently the independent persons receive no allowances to undertake their role and have been used rarely since they have been in role. Members need to consider whether or not the continuation of this arrangement is appropriate in the circumstances as the implications for the authority and the officers concerned are more serious than exist for members under the existing code of conduct regime. It is suggested that an allowance might be appropriate to cover the potential complexity of such matters and the requirement for regular refresher training to ensure that independent persons are competent to undertake this role. It is proposed that this issue be considered at a later stage when a clearer national position is available.

Insert into the terms of reference of the Council's **Personnel Committee**

The invitation of Independent Persons to be considered for appointment to the Panel; and

The appointment of 2 Independent Persons to a Panel to advise full Council whether or not to approve a proposal to dismiss the Council's designated Head of Paid Service, Monitoring Officer or Chief Finance Officer.

7.2 The dismissal of Directors must not be made until the Personnel Board:-

a) notify the Proper Officer of the name of the proposed dismissee and any other particulars which are considered relevant to the dismissal;
b) the Proper Officer has notified every member of the Leader and Cabinet Executive of:-

i) the name of the proposed dismissee;
ii) any other relevant particulars as notified to him/her;
iii) the period within which any objection to the making of the decision is to be made by the Leader on behalf of the Leader and Cabinet Executive to the Proper Officer.

And

c) either

i) the Leader, within the specified time period, notifies the Proper Officer that neither he nor any other member of the Leader and Cabinet Executive has any objection to the dismissal;
ii) the Proper Officer has notified the Panel no objection has been received; or
iii) the Panel is satisfied that any objection received from the Leader is not material or is not well founded.

Members will not be involved in the dismissal of any officer below Director except where such involvement is necessary for any investigation or inquiry into alleged misconduct or incapability

Paragraph 9 Personnel Committee Terms of Reference

Consider whether or not to suspend any statutory officer to enable investigations into allegations to take place, to consider disciplinary actions against statutory officers prior to submission to the Independent Persons appointed to the Council and recommendation to Full Council.

REVISED TERMS OF REFERENCE AUDIT COMMITTEE

PARAGRAPH 7

7. Meet privately with the external auditor as required.

PARAGRAPH 9

9. Consider the effectiveness of the Council's governance processes and their compliance with legislation and best practice including:

- a) the Council's Code of Corporate Governance;
- b) the Council's information security framework;
- c) receipt of the Caldicott Guardian's Annual report;
- d) oversight of Commercial projects;
- e) the management of opportunities and risks; and
- f) other corporate governance arrangements.