

**20 May 2015**

## **Annual Council**

### **Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 – Dismissal Advisory Panel**

**Report of:** *David Lawson – Head of Legal Services*

**Wards Affected:** *All*

**This report is:** *Public*

#### **1. Executive Summary**

- 1.1 The purpose of this report is to revise Part 3.1 and Part 4.7 of the Constitution so as to establish an advisory committee reflecting the new mandatory standing orders. These amend the procedure to be followed for dismissing a statutory officer of the Council i.e. the Head of Paid Service, the Chief Finance Officer (Section 151 Officer) and the Monitoring Officer (the relevant officers).
- 1.2 The requirement imposed on the Council to appoint a “designated independent person” before it could dismiss or discipline its Head of Paid Service, Chief Finance Officer (Section 151 Officer), or Monitoring Officer, has been replaced with a new requirement to appoint an independent Panel as and when required for the purposes of advising the Council on matters relating to the dismissal of one or more of the relevant officers. The Panel must have at least two members, being independent persons who have been appointed for the purposes of the members’ conduct regime under section 28(7) of the Localism Act 2011.

#### **2. Recommendation(s)**

- 2.1 That the Council’s Constitution be revised as set out in Appendix A hereto with immediate effect.**
- 2.2 That the current allowance paid to an independent person shall incorporate the duties under the Dismissal Advisory Panel.**

#### **3. Introduction and Background**

- 3.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 come into force on 11 May 2015 and the Council is

required to incorporate in its standing orders the amendments relating to dismissal procedure concerning the relevant officers.

- 3.2 According to the Department for Communities and Local Government, these Regulations are designed to 'simplify and localise the disciplinary process for the most senior officers of a council i.e. the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. They remove the requirement that a Designated Independent Person be appointed to investigate and make a binding recommendation on disciplinary action against these senior staff'.
- 3.3 An independent panel replaces the Designated Independent Person process, and a relevant officer may not be dismissed by the full Council unless the procedure laid down in these Regulations is complied with.
- 3.4 The Department for Communities and Local Government accepted after consultation the continuing need for the relevant officers to have additional statutory protection as they discharge statutory responsibilities to their Councils and discharge these responsibilities in a political environment.
- 3.5 The rationale therefore behind the specific but changed statutory protection afforded to the Head of Paid Service, the Chief Finance Officer ('Section 151 Officer', and the Monitoring Officer is that such officers, in the proper exercise of their statutory duties, are required to 'speak truth to power' in the public interest without fear or favour. This is required even where, for example, such advice would be potentially unpopular and may represent clear dissent from any prevailing political leadership's views.
- 3.6 The public interest requires professional advice to be given even if there is a danger of such advice being wrongly misconstrued (e.g. as being undermining, disloyal, insubordinate or politically motivated). Such advice does not of course have to be accepted by Members if there is good reason not to do so.
- 3.7 If however such officers omit, in whole or part, to properly exercise their statutory duties due to risk of detriment, the interests of the Council and the public are not served, and the public pay the cost. The limited statutory protection is thus designed to be in everyone's interests, and relevant officers can still be legitimately held to account where it is appropriate in the public interest.

#### **4. Issue, Options and Analysis of Options**

- 4.1 The Council is required to amend its Constitution including its standing orders.
- 4.2 The Council must appoint a Panel (meeting as and when required) being a committee appointed by the Council under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of relevant officers of the Council.
- 4.3 The Panel must consist of at least two independent persons being persons appointed under section 28(7) of the Localism Act 2011 and, where there are fewer than two such persons, the Panel may consist of such independent persons as have been appointed by another authority or authorities as the Council considers appropriate.
- 4.4 The Council is not required to appoint more than two relevant independent persons to the Panel but may do so. Currently, the Council has three independent persons – all of whom have confirmed their willingness to serve on the Panel – namely Mr John Boylin, Mr Mike Hawkins and Mr Steve Marsh who were appointed by the Extraordinary Council on 7 April 2014 for a period terminating post the first Council after the 2016 municipal elections.
- 4.5 Subject to the requirement to have two relevant independent persons, the Council must appoint to the Panel such relevant independent persons who have accepted an invitation.
- 4.6 Should any Panel be required to be appointed, the Council must appoint the Panel at least 20 working days before full Council holds its meeting at which full Council takes a vote on whether or not to approve dismissal, taking 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.

## **5. Reasons for Recommendation**

- 5.1 The Council is required to amend its Constitution including standing orders in the light of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 SI No. 881.

## **6. Consultation**

- 6.1 None.

## **7. References to Corporate Plan**

7.1 This report underpins the Modern Council corporate priority.

## **8. Implications**

### **Financial Implications**

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8.1 Under the 2015 Regulations any remuneration, allowances or fees paid by the Council to an independent person appointed to the Panel must not exceed the level of remuneration, allowance or fees payable to that independent person in respect of that person's role as independent person under the Localism Act 2011.

8.2 At the Extraordinary Council meeting held on 7 April 2014 Council agreed that three independent persons be appointed under the Localism Act 2011 and that an annual allowance of £500 be paid to an independent person on a pro-rata 12 month basis. These duties can be included in this existing allowance.

### **Legal Implications**

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8.3 The legal implications are set out in the body of this report except that the Council must also consider what consequential changes need to be agreed in relation to any relevant contracts of employment.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

8.4 The implications regarding risk are apparent from the report in that the Council must follow the statutory process and exercise its powers reasonably and for a proper purpose.

## **9. Background Papers** (include their location and identify whether any are exempt or protected by copyright)

9.1 Letter to Chief Executives from the Department of Communities and Local Government dated 25 March 2015

## **10. Appendices to this report**

- Appendix A

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