

29 June 2015

7.2 CA/048/15 AMENDMENT OF STANDING ORDERS REGARDING DISCIPLINARY ACTION

Decision

That Cabinet recommend Council to amend Part 4 of the Constitution 'Officer Employment Procedure Rules' as set out in the Appendix to this report pursuant to the provisions of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

Reason for Decision

To advise Members of the Cabinet of the requirement of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 to amend Standing Orders relating to the procedure to be followed before the Council can dismiss or discipline its Head of Paid Service, Chief Finance Officer or Monitoring Officer.

Implications

Financial

There are no financial implications arising from this report.

Value for Money

There are no value for money implications arising from this report.

Risk Implications

A risk assessment is not required.

Corporate Objectives

This report does not have implications for the Council's objectives.

Steve Baker introduced the report advising that the purpose of the report was to advise Members of the need to amend the Council's standing orders insofar as they relate to taking disciplinary action including dismissal against the Head of Paid Service, Chief Finance Officer and Monitoring Officer (collectively referred to as the statutory officers). He went on to advise that new regulations came into force in May of this year which amend the process for disciplining or dismissing a statutory officer.

Under the previous regulations the Council could not take disciplinary action against a statutory officer except in accordance with the recommendation in a report prepared by a designated independent person (commonly referred to as a DIP). Also, under the previous regulations the dismissal of the HOPS had to have the final approval of Council, whereas the dismissal of the CFO or MO could be delegated to a committee or sub-committee. The new regulations firstly remove the requirement to appoint a DIP and replace the DIP process with a new procedure and secondly the decision to dismiss a statutory officer, including the CFO and MO can only be taken by full Council.

Under the new procedure, the Council must appoint at least two independent persons to the committee which is advising the Council on matters relating to the dismissal of one of its statutory officers. These must be the independent person or persons appointed by the Council under the Localism Act for the purposes of dealing with standards complaints against members. Where the Council has only appointed one IP under the Localism Act it must appoint an IP from another authority to the committee.

Before Council can take a vote on whether to approve the dismissal of a statutory officer it must first take into account (but not necessarily follow) the advice, views or recommendations of the committee together with the conclusions of any investigation and any representations made by the statutory officer concerned.

The new regulations require Council's standing orders to be amended so as to incorporate these new provisions as set out in the schedule to the regulations.

He concluded by adding that he would like to add a second recommendation, as the whole of the Constitution has not yet been reviewed in detail to see whether any other changes are necessary as a result of these new regulations. He suggested that the additional recommendation should read – "That the Monitoring Officer be authorised by the Council to make any consequential amendments to the Constitution as may be necessary to give effect to the regulations referred to in recommendation 1 above".

Councillor Elliot asked if other Council's have similar Standing orders.

Steve Baker advised that the previous regulations prescribed the DIP process and all local authorities had to incorporate that DIP process in their Standing Orders, so every local authority has to go through the same process and noted that the County Council were currently receiving a similar report. He went on to advise that the regulations go on to say that the changes have to be adopted at the first ordinary meeting of the Council following the election, so they would need to go to Council in July for adoption.

Councillor Williams asked for confirmation that this is a statutory requirement and not discretionary.

Steve Baker confirmed this was the case and that we have to adopt the prescribed wording and went on to say that it is slightly controversial and has attracted some criticism from the LGA and also from ALACE as there are some gaps, for example it talks about inviting the independent person to be a member of the committee, but does not say what happens if they refuse to take part. It also refers to the Council taking into account any investigation that has been carried out, but does not state that an investigation has to be carried out, just that if there has been one it has to be taken into consideration.

Councillor Mrs Margaret Griffiths enquired if Steve Baker would recommend that when we next go out for an independent person that we actually go out for independent persons, or if it would be good to go for the one from another local authority.

Steve Baker advised that when we go out again, that it would be prudent to appoint, if we can, 2 independent persons. He went on to say that the other criticism of the process that has been raised is that the independent person has been appointed to play a role in standards complaints against Councillors under the Code of Conduct, so they have not necessarily got the expertise for this type of role. So in future when we are recruiting an independent person we would also need to take into account this new role.

The recommendation and the additional recommendation were agreed.

Consultation

There was no consultation.

Voting

None.

APPENDIX

PART 4 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 of 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 chief officer or an officer nominated by him/her.
- (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 will seek support for any person for any appointment with the Council.

2. Recruitment of Head of Paid Service and Chief Officers

Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, 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.

3. Appointment of Head of Paid Service

- (a) The full Council will approve the appointment of the Head of Paid Service before the offer of appointment is made following the recommendation of such an appointment by the Appointments Committee. The Appointments Committee must include at least one member of the Cabinet.
- (b) The full Council may only make or approve the appointment of the Head of Paid Service where no well-founded objection has been made by any member of the Cabinet.

4. Appointment of Chief Officers and deputy Chief Officers

- (a) The Appointments Committee will appoint Chief Officers and deputy Chief Officers. The Appointments Committee must include at least one member of the Cabinet.
- (b) An offer of employment as a Chief Officer or deputy Chief Officer shall only be made where no well-founded objection from any member of the Cabinet has been received.

5. Other appointments

- (a) **Officers below deputy chief officer.** Appointment of officers below deputy chief officer is the responsibility of the Head of Paid Service 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.

6. Disciplinary action

- (a) The terms of reference of the Appointments Committee include the dismissal of, and taking disciplinary action against, a Chief Officer or deputy Chief Officer. ~~including the power to appoint a designated independent person for the purpose of investigating and preparing a report into alleged misconduct or the taking of disciplinary action where the Chief Officer or deputy Chief Officer is the designated Head of Paid Service.~~ Where the Chief Officer or the deputy Chief Officer is the designated Head of Paid Service, Chief Finance Officer or Monitoring Officer full Council must approve the dismissal before notice of dismissal is given.
- ~~(b) The Chief Executive, in consultation with the Chairman of the Appointments Committee, shall appoint a designated independent person for the purpose of investigating and preparing a report into alleged misconduct or disciplinary action taken against the designated Chief Finance Officer or Monitoring Officer and to agree the terms of reference of such appointment.~~

- (b) The Appointments Committee may suspend a Chief Officer or deputy Chief Officer for a period of up to two months on full pay for the purpose of investigating alleged misconduct, or the taking of disciplinary action, where the officer under investigation or the subject of the disciplinary action is the designated Head of Paid Service.
- (c) The Chief Executive, in consultation with the Chairman of the Appointments Committee, may suspend a Chief Officer or deputy Chief Officer, including the designated Chief Finance Officer or Monitoring Officer, for a period of up to two months on full pay for the purpose of investigating alleged misconduct, or the taking of disciplinary action.
- (d) No other disciplinary action may be taken in respect of the designated Head of Paid Service, Chief Finance Officer or Monitoring Officer except in accordance with ~~a recommendation in a report made by a designated independent person.~~ the procedure set out in the schedule below.

7. Dismissal

Councillors will not be involved in the dismissal of any officer below deputy chief officer 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.

SCHEDULE

Procedure to be followed in the event that disciplinary action is taken in respect of the designated Head of Paid Service, Chief Finance Officer or Monitoring Officer

[inserted under regulation 6 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015]

1. In the following paragraphs –

- (a) “the 2011 Act” means the Localism Act 2011;
- (b) “the 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 advertising 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 officers” means the chief finance officer, head of 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 the independent person in respect of that person’s role as independent person under the 2011 Act”.