

To: Council

Date: 20 July 2015

Report of: Monitoring Officer

Title of Report: New Procedures for the dismissal of Statutory Officers

Summary and Recommendations

Purpose of report: This report recommends changes to the Council's Constitution relating to changes to arrangements for the dismissal of statutory officers following new statutory provisions set out in the Local Authorities (Standing Orders)(England)(Amendment) Regulations ("the Regulations") which came into effect on 11th May 2015.

Policy Framework: N/A

Recommendations: Council is RECOMMENDED to:-

1. agree to amend the Terms of Reference of the Disciplinary Committee for chief executive, directors and heads of service as set out in the report;
2. agree that the Council's appointed Independent Persons be invited to advise the Disciplinary Committee whenever there is the prospect of dismissal of a statutory officer;
3. agree the proposed amendments to the Employment Rules in Part 20 of the Constitution; and
4. delegate authority to the Head of Law and Governance to make any consequential amendments that are required to be made to the Constitution to fully implement the requirements of the Regulations

Summary of report

1. Special statutory arrangements for disciplinary action against the Council's statutory officers have been in place for some years in recognition of the sensitivity of their roles in a political environment. The current legislation provides that no disciplinary action in respect of a "protected officer" (Head of Paid Service, Monitoring Officer or Chief Finance Officer) can take place other than in accordance with a recommendation in a report by a Designated Independent Person (DIP).
2. The Local Authorities (Standing Orders) (England) (Amendment) Regulations (the Regulations) were made on 25 March 2015 and came into force on 11 May

2015. These regulations change the statutory protection afforded to these officers.

3. The regulations remove the statutory requirement for a DIP in order to take disciplinary action against statutory officers. The regulations also introduce new rules in respect of dismissal of any of the statutory officers. The dismissal of any statutory officer will in future have to be approved by way of a vote at a meeting of full Council, which instead of only being able to take action in accordance with DIP recommendations will be able to dismiss provided account is taken of: any advice, views or recommendations of a panel; the conclusions of any investigation into the proposed dismissal; and any representations from the protected officer involved.
4. The Council is required to incorporate the requirements of the Regulations into its standing orders (the Officer Employment Rules within the Constitution) at the first ordinary meeting of the Council after 11th May 2015. In Oxford's case this means that in order to comply with the Regulations these amendments will need to be made at the Council meeting on 20th July 2015.

Background

5. The Government has indicated that the rationale for the proposed changes was that the existing DIP process was bureaucratic and time consuming and often led to authorities making inflated severance payments to senior officers in order to avoid the need to follow the DIP process. The Department for Communities and Local Government wrote to a limited number of stakeholders in 2013 seeking views on draft amendment regulations which would remove the requirement for a DIP.
6. The Local Authorities (Standing Orders) (England) (Amendment) Regulations were made on 25 March 2015 and came into force on 11 May 2015. The regulations remove the requirement for a DIP and provide that any decision to dismiss the relevant statutory officer must be taken by the full Council. The Council must consider any recommendations from an Independent Panel, the conclusions of any investigation into the proposed dismissal and any representations from the officer concerned. The Regulations go on to provide that, in consulting the Independent Panel, the Council "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".

Proposals

7. "Relevant Independent Persons" are defined as an independent person who has been appointed to the authority. It is proposed that the Independent Persons appointed to assist the Council's Standards Committee be approached in relation to this role. The four independent persons have been appointed to serve the Standards Committee for a term of five years until July 2017. This new role can be offered for the remainder of that term to the four existing independent persons but then re-advertised as a joint role for a full term.

8. It is proposed that in order to best facilitate the effective running of the disciplinary/dismissal process, such as conducting an investigation, the terms of reference of the Council's current Disciplinary Committee could be amended so that it has the following roles:
- To screen potential disciplinary/dismissal issues to consider whether they require investigation and whether the relevant protected officer should be suspended
 - To organise the investigation, including appointing an investigator
 - To review the results of the investigation to consider what disciplinary action if any is appropriate, after hearing the views of the protected officer, and report its recommendations
 - To consult the Independent Persons to the Committee whenever dismissal is the recommendation. The Committee would, after seeking the views of the Independent Persons, refer the matter to the Authority to vote on whether it approves the proposal to dismiss
 - Where the Disciplinary Committee decides that action short of dismissal, or no disciplinary action at all is appropriate, to arrange for that to be put that in place as appropriate, without any referral to the Independent Persons or the Authority.
9. A key benefit would be that the Independent Persons would only need to be involved where the Disciplinary Committee has decided to propose dismissal. The new process does not apply to disciplinary action short of dismissal but at the outset of many disciplinary issues it will be apparent that dismissal is a potential sanction meaning that the authority must be prepared for it to apply at a later stage.
10. The new requirements do not remove the need for authorities that operate a leader and cabinet executive to follow the executive objections procedure that is currently reflected in the Constitution in the Employment Rules in Part 20. In summary, the notice of dismissal must not be issued until the dismissor "discharging the function of dismissal" has notified the "proper officer" of the name or the person the dismissor wishes to dismiss, along with relevant particulars. Members of the executive then have a chance to object through the executive leader. If there are no objections or the dismissor is satisfied that any objection is not material or well founded, then the dismissal can proceed.
11. To ensure that the new process will not involve high costs, the Regulations limit the remuneration that should be paid to Independent Persons on the panel to the level of the remuneration which they would normally receive as an Independent Person in the conduct regime, i.e. a modest annual allowance or small meeting fee. The Independent Persons currently do not receive any payments for their involvement with the Council.

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Background papers: none

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