

Members' Code of Conduct Committee

25 April 2017



Title	Changes to the Constitution – Chief Officers Disciplinary Procedures		
Purpose of the report	To make a recommendation to Council		
Report Author	Gillian Hobbs		
Cabinet Member	Councillor Ian Harvey	Confidential	No
Corporate Priority	This item is not in the current list of Corporate priorities but still requires a Cabinet decision		
Recommendations	<p>The Members Code of Conduct Committee is asked to recommend Council to agree:</p> <p>(i) to amend the Officer Employment Procedure Rules relating to disciplinary action by reference to the Model Discipline Procedure and Guidance as set out at Appendix 2;</p> <p>(ii) the appointment of:</p> <p style="padding-left: 40px;">(a) Investigating and Disciplinary Committee</p> <p style="padding-left: 40px;">(b) Independent Panel</p> <p>with the Terms of Reference as set out at Appendix 4 and</p> <p>(iii) amendments to the Terms of Reference of the Staffing and Appeals Committee; and</p> <p>(iv) to amend the introduction to the Scheme of Delegations as set out at Appendix 5.</p>		
Reason for Recommendation	<p>The Council is required to maintain a Constitution and Standing Orders setting out how the Council will operate and take decisions.</p> <p>The Joint Negotiating Committee for Local Authority Chief Executives <i>Model Discipline Procedure and Guidance</i> incorporates the new statutory process for taking disciplinary action against Council Statutory Officers.</p>		

1. Key issues

- 1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ('the Regulations') provided for new arrangements for taking disciplinary action against Council Statutory Officers by replacing investigation by a Designated Independent Person (DIP) of an allegation of misconduct against these senior officers, with an Independent Panel process.
- 1.2 The Council employs three Statutory Officers, as follows:

Mr Roberto Tambini	Head of Paid Service
Mr Terry Collier	Chief Finance (S151) Officer
Mr Michael Graham	Monitoring Officer

- 1.3 The Independent Panel comprises Independent Persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011.
- 1.4 At its meeting on 16 July 2015 the Council agreed the appointments of 5 Independent Persons to support both the Council's Code of Conduct and Statutory Officer procedure rule requirements.
- 1.5 The Council also authorised the Monitoring Officer to make consequential amendments to the Officer Employment Procedure Rules within the Constitution arising from 'the Regulations'. Whilst a general authority was given in order to incorporate the necessary changes, no detailed guidance was made available at that time in order to marry the statutory provisions with the contractual provisions under which Chief Officers served.
- 1.6 The Joint Negotiating Committee for Local Authority Chief Executives (JNC), which is the body responsible for Chief Officer Conditions of Service undertook a thorough consideration of the statutory changes. In October 2016 it published a *Model Discipline Procedure and Guidance* (**Appendix 1 – available in the Members' Room**) incorporating the new statutory process, in the latest edition of the Chief Executives Handbook.
- 1.7 The Local Government Association (LGA) and the Association of Local Authority Chief Executives and Senior Managers (ALACE) through the JNC for Chief Executives have commended this model procedure because:
 - The procedure and guidance have been drawn-up in light of the experience of the Joint Secretaries in their involvement with individual cases;
 - Its variants apply to constitutions with council leader / cabinet executives, mayor/cabinet executives and those councils operating a committee system.

2. Options analysis and proposal

- 2.1 It is proposed at this time to adopt the JNC *Model Discipline Procedure and Guidance* as the process by which this Council deals with matters of discipline, capability, redundancy and other dismissals against the Chief Executive.
- 2.2 Whilst the model procedure applies specifically to chief executives, it is proposed that this also be used as a framework for the Council's statutory chief officers.
- 2.3 The Officer Employment Procedure Rules have been updated to incorporate reference to the model procedure for dealing with disciplinary action, and are attached as **Appendix 2**.
- 2.4 The model procedure can be modified by mutual agreement to suit the particular circumstances of a case, but not so as to contradict the requirements of the Regulations. There is an obligation on both the authority and its chief executive to give fair consideration to reasonable proposals from the other party to modify the model procedure to suit local circumstances.

- 2.5 In order to use the model procedure, the Council needs to consider appointing appropriate committees with their delegated powers, before incidents which might engage the procedure arise.
- 2.6 A key feature of the model procedure is the specific roles envisaged to be undertaken by an Investigating and Disciplinary Committee (IDC), the Staffing and Appeals Committee, the Independent Panel and the Council.
- 2.7 A requirement for any disciplinary process is to carry out an investigation of the allegations to establish the facts of the case and to collate evidence for use in the disciplinary hearing. In the case of a chief officer, it will normally be necessary to engage an independent person for this purpose, and this person is referred to in the model procedure as the Independent Investigator. The JNC has agreed arrangements to enable the speedy appointment of a competent and experienced person to perform this role, with the assistance of the Joint Secretaries.
- 2.8 A model flowchart which shows the involvement of each body in the disciplinary procedure is attached at **Appendix 3**.
- 2.9 The proposed Terms of Reference for the Independent Panel, in accordance with 'the Regulations', and for both the Staffing and Appeals Committee and Investigating and Disciplinary Committee in accordance with those envisaged by the model procedure, are attached at **Appendix 4**.
- 2.10 Council approval is required for the proposed appointments of Committees with their delegated powers as set out in this report. However, there can be changes in legislation necessitating changes to the Constitution which do not alter the nature of existing delegations. In order to facilitate efficient decision making, it is therefore proposed to give the Head of Corporate Governance authority to amend delegations to reflect changes in legislation, or references to legislation, in those cases where such changes do not alter the nature of the existing delegations. The proposed amendment is shown in the Introduction to the Scheme of Delegations attached as **Appendix 5**.

3. Legal Implications

- 3.1 The recommendations within this report will ensure that the Council meets the requirements of the Regulations.
- 3.2 It is important to have robust and thorough procedures in place should the Council need to take disciplinary proceedings against one of its Statutory Officers. Members may be aware of a recent case in a neighbouring local authority which sought to dismiss the Chief Executive and Monitoring Officer and there was considerable disruption to Council business as a result.

4. Financial implications

- 4.1 There are no financial implications arising from the changes outlined in this report.

Background papers: There are none.

Appendices:

Appendix 1 (*Available in the Members' Room*) – Joint Negotiating Committee for Local Authority Chief Executives Model Discipline Procedure and Guidance

Appendix 2 – Officer Employment Procedure Rules – Constitution Part 4(f)

Appendix 3 – Model Disciplinary Procedure flowchart

Appendix 4 - Terms of Reference – Part 3(b) of the Constitution

Appendix 5 – Introduction to the Scheme of Delegations–Constitution Part 3 (a)