

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

25 JUNE 2015

**REPORT OF CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION

Leader of the Council – Councillor Cook

THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT) REGULATIONS 2015

1. Summary

The report provides details of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (“the 2015 Regulations”) and the changes that they make to the disciplinary procedure introduced by the Local Authorities (Standing Orders) (England) Regulations 2001 (“the 2001 Regulations) for Local Authorities’ Head of Paid Service; Section 151 (Chief Finance) Officer; and Monitoring Officer.

2. Recommendations

It is recommended to Council that:-

1. The revised Employee Employment Procedure Rules appended to the report be approved.
2. The Monitoring Officer, in consultation with the Leader of the Council, be authorised to make any consequential amendments to Council Procedure Rules and any other parts of the Constitution arising as a result of the 2015 Regulations.
3. A further report or reports be submitted to Cabinet and Council regarding the establishment of a Panel as required by the 2015 Regulations, and in relation to the other issues specified in the report, particularly the preferred approach for dealing with disciplinary matters resulting in a potential dismissal under the 2015 Regulations.

3. Reasons for the Recommendations

To ensure compliance with the requirements of the 2015 Regulations and the establishment of an appropriate disciplinary process for protected officers as a result of the new arrangements introduced by the Regulations. .

4. Members’ Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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DETAIL

The 2001 Regulations

1. The 2001 Regulations introduced statutory protection for Local Authorities’ Head of Paid Service; Section 151 (Chief Finance) Officer and Monitoring Officer (“the Protected Officers”) in the form of the requirement to appoint a Designated Independent Person (“DIP”) to investigate any allegation of misconduct against the protected officers.
2. Disciplinary action in this context, includes dismissal, but extends to “any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority, be recorded on the member of staff’s personal file....”

3. The DIP must be a person agreed between the relevant protected officer and the authority or where such agreement cannot be reached, a person nominated by the Secretary of State.
4. Any suspension of a protected officer for the purposes of investigating the alleged misconduct must be on full pay, and be for no longer than two months, unless specifically extended, following a recommendation by the DIP.
5. No disciplinary action can be taken in respect of these officers, other than in accordance with a recommendation in a report made by a DIP.
6. Where, like Stockton, a Leader and Cabinet executive model of governance is operating, the dismissal of the Head of Paid Service (but not the other Protected Officers) must be approved by the authority (full Council) itself.
7. The Council's current Council Procedure Rules and Employee Employment Procedure Rules reflect these requirements and contain appropriate provisions regarding, for instance, the appointment of a DIP.

The 2015 Regulations

8. The new Regulations amend the 2001 Regulations, and in particular remove the statutory requirement for the appointment of a DIP.
9. In addition, the 2015 Regulations require any proposed dismissal of a Protected Officer (and not just the Head of Paid Service) to be by way of a vote at a meeting of the Council, provided full Council takes into account:-
 - Any advice, views or recommendations of a (to be established) independent panel ("the Panel"),
 - The conclusions of any investigation into the proposed dismissal; and
 - Any representations from the Protected Officer concerned.
10. The Panel that must be established must include at least two independent persons appointed under Section 28(7) of the Localism Act 2011. This concerns the local authority member code of conduct regime. The council currently has three independent persons for this purpose. Their terms of office expire on the 7 July and a new appointment process is presently underway. The intention is for Council to appoint new independent persons at its meeting on the 22 July.
11. The Council is required to invite the relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.
12. The Council must then appoint to the Panel such relevant independent persons who have accepted the invitation in accordance with the following order of priority:-
 - A relevant independent person appointed by the Council, and who is a local government elector,
 - Any other relevant independent person appointed by the Council;
 - A relevant independent person who has been appointed by another authority or authorities.

13. Only two independent persons need to be appointed to the Panel, but more than two can be appointed if the Council so wishes.
14. The 2015 Regulations are silent on Panel membership, other than indicating the requirements to appoint at least two independent persons.
15. The explanatory memorandum to the Regulations refers to the (independent) Panel being formed if two or more independent persons accept the invitations and to the independent persons fulfilling the role of the proposed new Panel.
16. This suggests that only independent persons will make up the membership of the Panel.
17. However, the Regulations provide that the Panel is a committee of the Council (under Section 102(4) of the Local Government Act 1972). This should mean that the Panel is subject to the normal proportionality rules, which in turn means that in addition to at least the two independent persons, the Panel would need to include at least five local authority elected members (four controlling group members, to achieve a majority on the Panel, and one other group member).
18. The Panel should also be able to include other co-opted, non-elected persons with voting rights, should the Council so wish.
19. The Panel must be in place at least 20 working days before a meeting at which the Council decides whether or not to approve a dismissal.
20. However, establishing the Panel could take some time and rather than await the onset of a disciplinary action requiring the Panel to be in place, it is recommended that a standing panel is established, that would then be ready to act, if needed.
21. That said, given the uncertainty about the options available for the Panel's membership, it is recommended that we hold off establishing the Panel until the DCLG has provided some clarity in that respect.
22. The LGA has indicated that they have asked DCLG to confirm if it would be possible for the Panel to be made up of independent persons only, or if other persons such as elected members can also be appointed.
23. When clarification has been received, options/proposals for the establishment of the Panel will be brought back to Cabinet/Council for consideration.
24. In the meantime, the Council's independent persons will be briefed and their views about being appointed to the Panel will be obtained before Cabinet's meeting.

Standing Orders

25. The 2015 Regulations require local authorities to amend their standing orders to give effect to the new arrangements.
26. This must be done "no later than the first ordinary meeting of the authority after the 11 May 2015". This is, therefore the first, immediate priority.

27. This means that the Council's revised standing orders (our Employee Employment Procedure Rules) must be approved by full Council at its first ordinary meeting on the 22 July 2015.
28. A copy of the proposed revised "standing orders" is attached at the **Appendix** to this report for Cabinet's considerations prior to full Council.
29. There are also some consequential amendments required to the Council Procedure Rules, but these are minor and the Monitoring Officer could be authorised to make these and any other necessary changes arising from the 2015 Regulations, in consultation with the Leader.

Other Issues

30. There are a number of other issues that require further consideration and that will also need to be the subject of a further report or reports to Cabinet and Council., These are not however matters that are required to be reported to and determined by Council by the 22 July 2015 statutory deadline.
31. In terms of the disciplinary/dismissal procedure, some of the key issues are as follows:-
 - Who will assess whether a potential disciplinary issue (in respect of a Protected Officer) requires investigation;
 - (and if so) who will determine whether the relevant protected officer should be suspended and on what terms;
 - How will any investigation be organised and particularly who will appoint the investigator;
 - Who will "hear" the matter by reviewing the results of an investigation and hearing the views of the Protected Officer.
 - Who will make the "decision" to dismiss?
32. The new Regulations say little, if anything, about these matters. An "investigation" is referred to and it is implicit that one will have to be carried out. An investigation is also an essential element of a fair dismissal.
33. There is no requirement however in the 2015 Regulations for these parts of the disciplinary process to be the responsibility of the statutory Panel. The Panel's only statutory role is to consider any proposed dismissal to provide "any advice, views or recommendations" in that respect for full Council.
34. Proposals regarding a preferred approach to these matters will, therefore, need to be developed and reported back to Cabinet and Council as soon as reasonably practicable.
35. The LGA has, for instance, suggested a separate committee to carry out these functions, with the statutory Panel only being involved at the stage where a recommendation of dismissal has arisen from the investigation and hearing process.

36. Other procedural issues concern the right of appeal against dismissal and the “executive objections” procedure.
37. If the full Council meeting is regarded as taking the decision to dismiss, rather than reviewing that decision and deciding whether or not to approve it, there would be no one with power to consider an appeal and to overturn a dismissal decision. The answer to this may be to treat full Council as the appellate body, with the (initial) decision maker regarding dismissal being the statutory Panel or other Committee.
38. As regards the “executive objections” procedure, the new statutory arrangements do not remove the requirement for any notice of dismissal not to be issued until Members of the executive have had a chance to object through the executive Leader. This procedure would, therefore, have to be followed either before or after full Council has made its decision.
39. Finally, where the previous DIP protections and procedure are contractual terms in Protected Officers’ contracts of employment, those protections and procedures will still have to be applied, save the extent that applying them would result in the requirement of the 2015 Regulations not being met.
40. The LGA has indicated that it is seeking to amend the DIP model procedures in the Joint Negotiating Committee conditions of Service Handbook for Chief Executives, through collective agreement. This would avoid the need for changes to individual contracts of employment locally.
41. When reporting back to Cabinet and Council about these various matters, any consequential changes to our Employee Employment Procedure Rules or any other parts of the Constitution will also be highlighted. This would not breach the requirement of the 2015 Regulations regarding the timescale for changes to Standing Orders.

FINANCIAL AND LEGAL IMPLICATIONS

Financial

42. One of the drivers of the new arrangements is the concern that the DIP process has been too complex and expensive. However, it is unclear at this stage whether or not the new arrangements will prove to be any less expensive. At this point in time there are however no financial implications arising directly from the report.

Legal

43. The Council must have amended its standing orders to comply with the requirements of the 2015 Regulations by no later than the 22 July 2015.

RISK ASSESSMENT

44. The risks of not complying with the new requirements is low given the reporting process proposed. The risks associated with any new disciplinary procedures consequential upon the 2015 Regulations will be assessed as part of the proposed further reports to Cabinet and Council.

COUNCIL PLAN IMPLICATIONS

45. Organisational and operational effectiveness.

EQUALITY IMPACT ASSESSMENT

46. It is not considered that an assessment will be required.

CONSULTATION

47. Protected Officers and Members have been consulted through the report to Cabinet and the proposed report to Council.

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<u>Background Papers:</u>	None
<u>Ward(s) and Ward Councillors:</u>	Not Ward Specific
<u>Property Implications:</u>	None