

**AGENDA ITEM**

**REPORT TO COUNCIL**

**22 JULY 2015**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

**THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT)  
REGULATIONS 2015 (“the 2015 Regulations”)**

**SUMMARY**

This report provides details of 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”) in respect of a Local Authority’s Head of Paid Service; Chief Finance Officer and Monitoring Officer.

**RECOMMENDATIONS**

It is recommended that Council:-

1. Approves the revised Employee Employment Procedure Rules appended to the report;
2. Agrees that the Monitoring Officer, in consultation with the Leader of the Council, is 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; and that Council,
3. Agrees that 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 to dealing with disciplinary matters under the 2015 Regulations.

**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. The DIP had to be a person agreed between the relevant protected officer and the authority or where such agreement could not be reached, a person nominated by the Secretary of State.

3. 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) had to be approved by the authority (full Council) itself.
4. The Council's current Council Procedure Rules and Employee Employment Procedure Rules reflect these requirements and contain appropriate provisions regarding, the appointment of a DIP.

### **The 2015 Regulations**

5. The new Regulations amend the 2001 Regulations, and in particular remove the statutory requirement for the appointment of a DIP.
6. 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.
7. 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 appointed three independent persons for this purpose. Their terms of office expired on the 7 July and a new appointment process took place earlier this year. There is an item elsewhere on the agenda with recommendations regarding the appointment of new independent persons.
8. As regards the 2015 Regulations, 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.
9. The Council must then appoint to the Panel such relevant independent persons who have accepted the invitation in accordance with a specified order of priority.
10. Only two independent persons need to be appointed to the Panel, but more than two can be appointed if the Council so wishes. The 2015 Regulations are however silent on Panel membership, other than indicating the requirements to appoint at least two independent persons.
11. 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. This is not, however, made clear.
12. Given this uncertainty it is recommended that establishing the Panel is deferred until the Government has provided some clarity in that respect.

13. The Local Government Association has indicated that they have asked the Government 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.
14. When clarification has been received, options/proposals for the establishment of the Panel will be brought back to Cabinet/Council for consideration.

### **Standing Orders**

15. The 2015 Regulations require local authorities to amend their standing orders to give effect to the new arrangements. 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.
16. This means that the Council’s revised standing orders (our Employee Employment Procedure Rules) must be approved by full Council at the meeting this evening.
17. A copy of the proposed revised “standing orders” is attached at **Appendix 1** to this report for Council’s consideration.
18. There will also be 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**

19. 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 or determined by Council at tonight’s meeting.
20. 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?
21. 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.

22. 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.
23. 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.
24. Other procedural issues concern the right of appeal against dismissal and the "executive objections" procedure.
25. 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.
26. 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.
27. When reporting back to Cabinet and Council about these and any other matters, any further consequential changes to our Employee Employment Procedure Rules or any other parts of the Constitution will also be highlighted.

### **Cabinet**

28. At its meeting on the 25 June 2015 Cabinet considered a similar report and agreed with the approach recommended to Council. Details of Cabinet's decision are attached at **Appendix 2**.

## **FINANCIAL AND LEGAL IMPLICATIONS**

### **Financial**

29. 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 less or more expensive. At this point in time there are however no financial implications arising directly from the report.

### **Legal**

30. The Council must have amended its standing orders to comply with the requirements of the 2015 Regulations by no later than tonight's Council meeting.

## **RISK ASSESSMENT**

31. 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**

32. Organisational and operational effectiveness.

### **EQUALITY IMPACT ASSESSMENT**

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

### **CONSULTATION**

34. Protected Officers and Members have been consulted through the report to Cabinet and this 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              |