

 Brent	<p align="center">Full Council</p> <p align="center">22 June 2015</p> <p align="center">Report from the Chief Operating Officer</p>
For Action	Wards Affected: ALL
<p>New statutory rules relating to the dismissal of certain statutory officers</p>	

1.0 Summary

- 1.1 This report explains changes to the law relating to the dismissal of certain statutory officers. It seeks Council's approval to establish a new panel and to amend Standing Orders. Council is asked to note that the disciplinary and dismissal procedures for the officers concerned will also be reviewed and approved by the General Purposes Committee.

2.0 Recommendations

- 2.1 That the Council establish a Dismissal Advisory Panel, comprising three independent persons appointed to deal with Member Code of Conduct complaints under the Localism Act 2011, to fulfil the role of 'the Panel' referred to in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 2.2 That the Council approve the terms of reference of the Dismissal Advisory Panel set out at paragraph 3.15 and that the establishment of the Panel be included in the Constitution.
- 2.3 That the Chief Operating Officer be authorised to explore the possibility of sharing independent persons appointed by other councils, whether or not on a reciprocal basis, and report to the General Purposes Committee for its approval.
- 2.4 That the proposed amendments to Standing Orders as set out at paragraph 3.17 be approved and that the Monitoring Officer be authorised to make any

further consequential changes to the Constitution to reflect the new statutory framework.

- 2.5 That the Council notes that the disciplinary and dismissal procedures for the roles of Chief Executive, Monitoring Officer and Chief Finance Officer will be reviewed by the General Purposes Committee to reflect the new arrangements.

3.0 Background

- 3.1 The Regulations relating to disciplinary action regarding the Chief Executive, Chief Finance Officer and Monitoring Officer have recently been changed.
- 3.2 Previously, no disciplinary action could be taken in respect of the Chief Executive, Monitoring Officer or Chief Finance Officer other than in accordance with a recommendation contained in a report made by a designated independent person (DIP) under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001.
- 3.3 Staffing issues are non-executive functions and, as such, they fall within the General Purposes Committee's (GPC) powers or the Chief Executive's as Head of Paid Service. GPC can carry out any non-executive functions of the Council which are not the responsibility of any other person or committee or sub-committee.
- 3.4 This means that, in practical terms, GPC acts as the Council's investigation and disciplinary committee in relation to these three statutory roles and would be the committee that any allegations of misconduct are referred to. GPC would decide whether there is a case to answer, whether to appoint an investigator and whether to suspend the officer concerned during the investigation.
- 3.5 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the 2015 Regulations), which came into force on 11 May 2015, amend The Local Authorities (Standing Orders) (England) Regulations 2001 in the following way.
- 3.6 The amendment removes the requirement for a DIP i.e. an independent person, often a barrister, appointed to investigate and make a binding recommendation on disciplinary action against the Head of Paid Service (i.e. in Brent, the Chief Executive); the Monitoring Officer (i.e. in Brent, the Chief Legal Officer) and the Chief Finance Officer.
- 3.7 According to the Government's Explanatory Memorandum to the 2015 Regulations, the DIP process is, in practice, complex, protracted and expensive and places councils at a great disadvantage, particularly given that the recommendation of the DIP must be followed.
- 3.8 The 2015 Regulations stipulate that, as from 11 May 2015, dismissal decisions (other than for reasons of redundancy and ill-health) will be taken by

Full Council who must consider, amongst other things, any advice, views or recommendations from a panel. This statutory role of the panel will be in addition to the requirement to properly investigate any allegation in accordance with established principles of employment law. The 2015 Regulations stipulate that the panel is required to be appointed at least 20 working days before the Full Council meeting but the timing of the panel's meeting is not mentioned.

- 3.9 The flow chart attached to this report as Appendix 1 outlines the key stages of the new procedure and, in particular, shows the stage at which the panel is required to play its role.
- 3.10 The Council is required to invite independent persons, appointed to deal with Member Code of Conduct complaints under the Localism Act 2011, to sit on the panel with the view to appointing at least two such persons.
- 3.11 The Council will be required to invite independent persons to form part of a panel in the following priority order:
- an independent person who has been appointed by the Council and who is registered as a local government elector in the borough of Brent;
 - any other independent person who has been appointed by the Council; and
 - an independent person who has been appointed by another council or other councils.
- 3.12 The Council has appointed one independent person to deal with Member Code of Conduct complaints but the 2015 Regulations explicitly allow the Council to utilise independent persons appointed by other councils. This is why it is proposed that the Chief Operating Officer be authorised to explore the possibility of sharing independent persons appointed by other councils with a view to establishing a pool of 5 independent persons from which 3 can be selected to form a panel. Such a shared system may be a more cost effective and efficient use of a limited number of independent persons.
- 3.13 The 2015 Regulations limit the remuneration that can be paid to independent persons on the panel to the level of the remuneration which they would normally receive for their Member Code of Conduct role. The issue of fees will be addressed through the pooling arrangements which it is proposed that the Chief Operating Officer be authorised to explore and report to the General Purposes Committee for its approval.
- 3.14 According to the 2015 Regulations, the panel will be an advisory panel established under s102(4) of the Local Government Act 1972. The DCLG recommends that the panel consist of independent persons only. According to the DCLG, this is necessary to ensure independent scrutiny and the involvement of non-elected persons in the disciplinary process.

- 3.15 In light of these changes, it is proposed that the Council establish a Dismissal Advisory Panel with the following terms of reference and that the Constitution be amended accordingly.

“Dismissal Advisory Panel

Membership

The Panel comprises 3 independent persons appointed under s28(7) of the Localism Act 2011 and in accordance with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (‘the 2015 Regulations’).

The Panel shall be appointed at least 20 working days before any meeting of Full Council to consider whether or not to approve a proposal to dismiss the Chief Executive, Monitoring Officer or Chief Finance Officer for any reason other than redundancy, permanent ill-health or infirmity of mind or body.

Terms of reference

The function and remit of the Panel are as set out in the 2015 Regulations. Accordingly, the Panel can give advice, express its views and make recommendations to Full Council before it meets to consider whether or not to approve a proposal to dismiss the Chief Executive, Monitoring Officer or Chief Finance Officer.”

- 3.16 As the Council is not in a position yet to appoint to the panel the outcome of the arrangements approved by the General Purposes Committee will be subsequently reported to Full Council for appointments to be made.
- 3.17 The Council is also required to modify its standing orders to implement these changes no later than the first ordinary meeting of the Council after 11 May 2015 i.e. this meeting. The proposed amendments to Standing Orders are set out below for approval.

“78. Disciplinary action against the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer

- (a) *Except as described in paragraph (b) below, no disciplinary action (as defined in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001) may be taken in respect of the Chief Executive, Monitoring Officer or Chief Finance Officer other than in accordance with Standing Order 79 ~~with a recommendation contained in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001.~~*
- (b) *The Chief Executive, Monitoring Officer and Chief Finance Officer may be suspended by the General Purposes Committee for the purpose of investigating the alleged misconduct occasioning the action. That suspension will be on full pay and will if it lasts ~~no~~ longer than two months from the date*

it took effect, it will be reviewed by the General Purposes Committee.

79. Dismissal from Senior Management Posts

(a) Any proposal to dismiss a person from any of the posts mentioned in Standing Order 77(b) ~~or (e)~~ shall be notified to the Director Human Resources and Administration together with any other particulars that the person or body proposing the dismissal considers are relevant to the dismissal and no notice of dismissal shall be given unless the following paragraphs have been complied with.

(b) The Director Human Resources and Administration shall forthwith notify ~~to~~ every member of the Cabinet:-

(i) the name of the person whom it is intended to dismiss;

(ii) any other particulars relevant to the dismissal which have been notified to the ~~Operational~~ Director Human Resources and Administration; and

(iii) the period within which any objection to the dismissal is to be made by the Leader of the Cabinet on behalf of the Cabinet to the ~~Operational~~ Director Human Resources and Administration.

(c) The Leader shall within the period specified in the notice ~~from the Operational Director Human Resources~~ notify ~~the person or body proposing the dismissal and~~ the Director Human Resources and Administration of any objection which the Leader or any other member of the Cabinet has to the proposed dismissal.

(d) If no such objection is received by the Director Human Resources and Administration, ~~or the person proposing the dismissal~~ the Director Human Resources and Administration may proceed to give notice of the dismissal to the employee. If an objection is made the person or body proposing the dismissal shall consider whether to proceed with the dismissal. If satisfied that the objection is not material or is not well founded then the Director Human Resources and Administration may proceed to give notice of the dismissal to the employee.

(e) In the case of the dismissal of the Chief Executive, Monitoring Officer or the Chief Finance Officer, the proposed dismissal must be approved at a meeting of Full Council before notice of dismissal is given.

(f) Before the taking of a vote at any such meeting Full Council must take into account, in particular:

(i) any advice, views or recommendations of the Dismissal Advisory Panel;

(ii) the conclusions of any investigation into the proposed dismissal; and

~~(e)~~(g) (iii) any representations from the officer concerned."

- 3.18 Members are asked to note that the disciplinary and dismissal procedures for the roles of Chief Executive, Monitoring Officer and Chief Finance Officer will also be reviewed by the General Purposes Committee to reflect the new arrangements.

4.0 Financial Implications

- 4.1 Any financial implications are limited to any fees payable to independent persons in the event that it is necessary for the Dismissal Advisory Panel to meet.

5.0 Legal Implications

- 5.1 These are addressed in the body of the report.

6.0 Diversity Implications

- 6.1 None.

Background Papers

None.

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