


Non-Executive Report of the:  <b>General Purposes Committee</b>  25 <sup>th</sup> January 2017	
<b>Report of:</b> Zena Cooke, Corporate Director Resources	<b>Classification:</b> Unrestricted
<b>Designated Independent Person (DIP) Update</b>	

<b>Originating Officer(s)</b>	Stuart Young, Interim Divisional Director, HR and Transformation
<b>Wards affected</b>	All wards

### Summary

A report was presented to Full Council in July 2015 to amend the constitution following the implementation of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, which came into effect on 11<sup>th</sup> May 2015. The Regulations required local authorities to amend their rules with regards to the dismissal of statutory officers.

The Regulations changed the existing statutory procedure in respect of the dismissal of a Head of Paid Service, Monitoring Officer and Chief Financial Officer. They removed from the disciplinary process the previous requirement for a Designated Independent Person but introduced a new requirement to include Independent Persons (currently appointed as part of the Standards regime in a Panel).

There were still outstanding issues as to how the new process would work and it was agreed a further report would be brought to GP Committee once work had been done nationally to update the Chief Executive and Chief Officer handbooks and model disciplinary processes. This report gives an update on that process.

### Recommendations:

The GP Committee is recommended to:

1. Note the contents of the report and agree to adopt the model disciplinary procedure and flow diagram, and the grievance procedure as set out in the Chief Executive Handbook.
2. Agree that a further report be considered by GP Committee upon the national changes being made to the Chief Officers Handbook

## **1. REASONS FOR THE DECISIONS**

- 1.1 The decision is needed as further guidance has now been received in the form of an updated Chief Executive Handbook with an updated model disciplinary procedure.

## **2. ALTERNATIVE OPTIONS**

- 2.1 An alternative option would be to wait until the Chief Officers Handbook (with its own model disciplinary procedure) has also been updated before a model procedure is agreed. It is not known when this will be agreed but it is being worked on at present.
- 2.2 A further option would be to not adopt either model procedure and produce our own disciplinary procedure for statutory officers that takes into account the legislative changes, though the model procedures will be best practice and will answer some of the outstanding queries about how the process would best work.

## **3. DETAILS OF REPORT**

- 3.1 Further to an update in a JNC circular dated 5<sup>th</sup> May 2016 (reported to the GP Committee as part of a Senior Management Update / Recruitment to Vacancies report in June 2016) a further circular was issued on 13<sup>th</sup> October 2016 (Appendix 1).
- 3.2 The circular stated that an updated edition of the Chief Executives Handbook (Appendix 2), in which the Model Procedure (Appendix 5 of the Handbook) and Flow Diagram (Appendix 5a-c of the Handbook), for dealing with matters of discipline incorporates the new statutory process is now in place with effect from 13<sup>th</sup> October 2016.
- 3.3 The Model Grievance Procedure (Appendix 7 of the Handbook) has also been revised in order to make it more consistent with practice in authorities. The handbook has also been updated throughout to ensure that all references to external organisations, hyperlinks and emails etc. are correct.
- 3.4 Whilst the new disciplinary procedure applies specifically to Chief Executives, it could also be used as a framework for statutory chief officers, though the Chief Officers National Secretaries will be updating the separate chief officers' handbook in due course.
- 3.5 The JNC has raised with the Department for Communities and Local Government (CLG) an apparent conflict between the Local Authorities (Standing Orders) (England) Regulations 2001 (as now amended by the 2015 Regulations) with the fundamental requirements of the Localism Act 2011. The apparent conflict arises in relation to the Panel that is now required under the Standing Orders Regulations 2001.

- 3.6 That Panel is a committee of the authority under section 102(4) of the Local Government Act 1972, and must contain at least two relevant independent persons, an independent person being a person appointed under section 28(7) of the Localism Act 2011, i.e. an independent person appointed to advise the authority on elected member conduct issues. The JNC's concern is that their appointment to a Panel may debar them from being an independent person, under section 28(7).
- 3.7 The example given in the circular takes the case where a council constitutes a Panel using, say, two independent persons which it has appointed itself under section 28(7) of the Localism Act, as the Panel is a committee of the council, it is their understanding that the independent persons' status is that of co-opted members of that committee, and so of the authority. It is that co-opted status that potentially then debars them from being reappointed an independent person under section 28(7) for that council.
- 3.8 Although the Standing Order Regulations 2001 allow the appointment of relevant independent persons who have been appointed by another council, which would not therefore raise the issue identified above, it is clear that under the Regulations the priority is to be given to independent persons appointed by the same council as is considering the conduct of its designated officer.
- 3.9 In response to the JNC raising this issue, the CLG informed them that it does not give legal advice and does not give an opinion on legislation as that is a matter for the courts. However, its informal view was that once a person is appointed as an independent person in accordance with the provisions of the 2011 Act, they may act on the Panel without ceasing to be an independent person. This is because at the time of their appointment as an independent person, they would not have been a member of a committee, including a Panel, and so not have had co-opted status in the past five years.
- 3.10 If though, a former independent person who had also been a member of a Panel sought re-appointment as an independent person under the provisions of the Localism Act 2011, then they would be prevented from being re-appointed until five years after the end of their tenure on the Panel since this is considered to be a committee of the local authority.
- 3.11 Whilst the Joint Secretaries are not entirely convinced by all the points made by the CLG, they do not think there is any value in pursuing it further. They believe that independent persons being invited to be a member of a Panel for the council, of which they would thereby become subject to this possible future disqualification, should be made aware of that possibility at the time the invitation is made.
- 3.12 The handbook now refers to a list of Independent Investigators to be maintained by the National Secretaries: the process for selecting and training these people has started and further advice will be issued in due course.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 There are no direct financial implications arising from the recommendations within this report.

#### **5. LEGAL COMMENTS**

- 5.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (“the Regulations”) amend the Local Authorities (Standing Order) England Regulations 2001 and require local authorities to amend their standing orders to incorporate new arrangements for dismissal of the Head of Paid Service, the Monitoring Officer and the section 151 Chief Finance Officer.
- 5.2 The independent Panel which is required to be established under the new process is to be an advisory committee appointed by the Council under section 102(4) of the Local Government Act 1972.
- 5.3 The report accurately summarises the effect of the Regulations and the potential difficulties relating to the appointment of an Independent Person to an Independent Panel constituted as an advisory committee of the authority under section 102(4) of the Local Government Act 1972.
- 5.4 To comply with general employment law principles an essential part of a fair dismissal is that a fair and objective investigation is carried out. In addition the Regulations specify that the authority must take into account the conclusions of ‘any investigation’ before approving a proposal to dismiss. In order to be a fair procedure, any dismissal process should also provide opportunities for the officer to make representations about the disciplinary allegations and to be accompanied to a meeting at which their dismissal is being considered.
- 5.5 The proposed model disciplinary procedure complies with the Regulations, general employment law requirements and will require further amendments to the Council’s Constitution if adopted.
- 5.6 Members should also note that Direction 4 issued on 17 December 2014 by the Secretary of State for Communities and Local Government (under section 15 of the Local Government Act 1999) remains in force and requires the prior written agreement of the Commissioners before any dismissal or suspension of a person who has been designated as a statutory officer.

#### **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 A nationally agreed disciplinary procedure will have been developed with equality and diversity issues in mind.

**7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 Adopting a nationally agreed model disciplinary procedure that reflects best practice helps provide best value for the council in terms of dealing with any future disciplinary matters.

**8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 There are no implications.

**9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 Adopting a model disciplinary procedure agreed nationally reduces any likely risk to the council.

**10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 There are no implications.

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**Linked Reports, Appendices and Background Documents**

**Linked Report**

- None

**Appendices**

- Appendix 1 – JNC for Chief Executives Circular 13<sup>th</sup> October 2016
- Appendix 2 – JNC for Chief Executives Handbook – Updated 13<sup>th</sup> October 2016

**Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report**

- None

**Officer contact details for documents:**

- Stuart Young, Interim Divisional Director, HR and Transformation– 0207 364 5918