


Non-Executive Report to the: Council 22 nd July 2015	 TOWER HAMLETS
Report of: Interim Monitoring Officer and Service Head, Human Resources and Workforce Development	Classification: Unrestricted
Amended Regulations: Dismissal Process for Statutory Officers	

Originating Officer(s)	Anna Finch-Smith & Meic Sullivan-Gould
Wards affected	All wards

Summary

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into effect on 11th May 2015. The Regulations require local authorities to amend their rules with regards to the dismissal of statutory officers at the first ordinary Council meeting after that date.

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

The new Regulations do not have any effect to change the employment protections for statutory officers that were established by Direction 4, issued by the Secretary of State on 17th December 2014.

Recommendations:

The Council is recommended to:

1. Note the new process for dismissal of a statutory officer.
2. Agree that the Officer Employment Procedure Rules in Part 4 of the Constitution be amended to reflect the change in process. The proposed changes are attached as Appendix 1.
3. Agree that a further report should be considered by the Human Resources Committee that deals with the detail of the process and makes proposals on the outstanding issues as identified in this report.

1. REASONS FOR THE DECISIONS

- 1.1 The Council is required to change its procedure for dismissal of statutory officers. There is a requirement that the Council takes a report to the first Ordinary Council meeting after 11th May 2015 to approve the changes to Standing Orders (in the Council's case the Officer Employment Procedure Rules in Part 4 of the Constitution).

2. ALTERNATIVE OPTIONS

- 2.1 There are no alternative options as this is a legislative requirement.

3. DETAILS OF REPORT

Current Position

- 3.1 The Head of Paid Service, Monitoring Officer and Chief Financial Officer all have statutory responsibilities to discharge to their Councils. As they work with, and report to Elected Members, they discharge these responsibilities in a political environment.
- 3.2 At present, no disciplinary action in respect of a protected officer can take place other than in accordance with the recommendation of a report by the Designated Independent Person (DIP).
- 3.3 The rationale for the current process was that statutory protections, in addition to the standard protections, were desirable to ensure these officers can discharge their duties without fear of being influenced by Elected Members or of being dismissed without good reason.
- 3.4 In December 2014 the Secretary of State made Directions in respect of the London Borough of Tower Hamlets under the provisions of the Local Government Act 1999. The Directions included a requirement that the prior written agreement of the DCLG Commissioners is required prior to any appointment, suspension or dismissal of a statutory officer and to any removal of that designation from an officer of the Council. This restriction will, unless terminated previously, apply until 31st March 2017.
- 3.5 Many local authorities have found the procedure resulted in high costs and delay, e.g. in appointing the DIP (who must be agreed between the officer and the authority – where there is no agreement, a person will be nominated by the Secretary of State). The Local Government Association has estimated that the minimum legal cost of this process is £100k (excluding the costs of undertaking the actual investigation, preparing the case or briefing lawyers).

New Position

- 3.6 The intention of the new Regulations is to “simplify and localise” the statutory procedure in respect of the dismissal of statutory officers. The requirement to

appoint a DIP has been removed. Any decision to dismiss a statutory officer will be taken by the Council, who must consider:

- any advice, views or recommendations from an independent panel
- the conclusions of any investigation into the proposed dismissal
- any representations from the officer concerned.

3.7 If the Council wishes to undertake disciplinary action against the Head of Paid Service, Monitoring Officer or Chief Financial Officer, which may result in dismissal, it must invite independent persons who have been appointed under section 28(7) of the Localism Act 2011 to form an independent Panel. Section 28 of the Localism Act deals with the member code of conduct, and the appointment of independent persons to deal with standards matters. The Council must appoint at least two independent persons to the independent Panel.

3.8 Under the invitation and acceptance process indicated in the Regulations the Authority should invite all of its independent persons to be on the Panel. If there are fewer than two it must invite such independent persons appointed by other authorities as it considers appropriate. Having made the invitations the Authority must appoint in the following order for those that accept the invitation:

- an independent person who has been appointed by the Council and who is a local elector
- any other independent person who has been appointed by the Council
- an independent person who has been appointed by another Council or Councils

3.9 The Regulations do not limit the number of independent persons who could be on the Panel. Therefore, the Authority could, if it wanted to, appoint more than two independent persons to the Panel, if more than two accept the invitation, provided the authority complies with the order of appointment requirements.

3.10 The Panel must be in place at least 20 working days before the meeting at which the decision to dismiss will be taken

3.11 The Regulations say that the Independent Person's remuneration, fees or allowances must not exceed the level of those payable to that person in their role as an Independent Person under the Localism Act 2011.

3.12 The revised arrangements will come into force by Councils modifying their Standing Orders. The Council's process is described in the Officer Employment Procedure Rules in Part 4 of the Constitution.

3.13 The new arrangements must be made no later than at the first Ordinary Council meeting held after 11th May 2015. This is the first meeting after the Council's Annual Meeting. There is guidance that has been provided by the LGA with regards to interim arrangements should a disciplinary issue arise before the new regulations are in place.

- 3.14 The wording of the Officer Employment Procedure Rules in Part 4 of the Constitution, including the proposed changes that need to be made, is attached at Appendix 1.
- 3.15 Even though there is a legislative requirement to make these amendments to the Constitution, there are a number of areas related to the process that are still to be defined. These include issues such as training for Independent Persons; the investigation process; an appeals process; and whether only Independent Persons are to sit on the Panel. The LGA has written to the DCLG for further clarification on some of these areas.
- 3.16 The Council's practice has been to use the model disciplinary procedure set out in the JNC Conditions of Service. As a result of the legislative changes, the JNC are negotiating changes to the model procedure to reflect the new Regulations. The Council could decide to use the new JNC model procedure or could produce its own.
- 3.17 Given that there are still areas to be further defined, it is recommended that the Human Resources Committee be asked to consider a further report on these areas once issues have been resolved with the DCLG and further advice is received from the LGA.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 There are no immediate significant financial implications arising directly from the proposals in this report. As suggested at paragraph 3.5 of the report, the previous rules applying to the process had the potential to give rise to significant costs which may be reduced under the new procedures.

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. The report accurately summarises the effect of the new Regulations.
- 5.2 The new process applies to dismissals for any reason other than redundancy, permanent ill-health or infirmity of mind or body. It does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract. The new process does not apply to disciplinary action short of dismissal.
- 5.3 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. It is understood that the Committee would be subject to the Council's standing orders.

- 5.4 The Regulations say very little about conducting an investigation into disciplinary allegations which might lead to dismissal (there is no specific requirement in the Regulations for the Panel or any other party to carry out an investigation). However, it remains the case under general employment law principles that an essential part of a fair dismissal is that a fair and objective investigation is carried out. Further the Regulations do refer to “any investigation” in the sense that the authority must take into account the conclusions of any investigation before approving a proposal to dismiss, so it seems implicit that an investigation will be carried out. In order to be a fair procedure, any dismissal process would also need to provide opportunities for the protected officer to make representations about the allegations and to be accompanied to a meeting at which their dismissal is being considered.
- 5.5 The proposed amendments to the Officer Employment Procedure Rules are in line with the Regulations. However, it should be noted that the Regulations provide little detail of how the new process will operate in practice. For this reason, the report recommends that a further report will be considered at the HR committee as to how the new process should work in this authority and in particular how to ensure the effective running of a disciplinary/ dismissal process such as conducting an investigation into disciplinary allegations and operating a disciplinary committee type system; consideration of how and when the disciplinary recommendations should be made to the Panel, and any other appropriate delegation.
- 5.6 With regard to those decisions about the detail of the process, it should be noted that if the Authority approves a proposal to dismiss, then it will either action the dismissal itself, or where the power has been delegated to a committee or otherwise, then that committee can action dismissal by issuing a notice. In the case of this authority, which operates a Mayor and cabinet executive system at least one member of the authority’s executive would have to be on any such committee (as set out in paragraph 4(2) of Part 1 and Part 2 of Schedule 1 of the 2001 Regulations). Further, the new procedure does not remove the requirement on an Authority operating a Mayor and cabinet executive to follow the executive objections procedure set out in schedule 1, part I, paragraph 6 and part II, paragraph 6 of the 2001 Regulations and which are currently set out under section 9 of the Council’s Officer Employment Procedure Rules.
- 5.7 On 17 December 2014, the Secretary of State for Communities and Local Government issued directions to the Council under section 15 of the Local Government Act 1999, including the appointment of Commissioners. Direction 4 requires that prior written agreement of the Commissioners must be obtained to any dismissal suspension of a person who has been designated as a statutory officer. The statutory officers referred to in this report will fall within those directions and therefore, written agreement would have to be provided by the Commissioners prior to any notice of dismissal being given.

6. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

6.1 There are none.

7. RISK MANAGEMENT IMPLICATIONS

7.1 The adoption of the revised procedures recommended in this report mitigate any risk of non-compliance by the Council with the new legal framework in relation to this matter.

8. CRIME AND DISORDER REDUCTION IMPLICATIONS

8.1 There are none.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1 - Section 4.9 of the Constitution - Officer Employment Procedure Rules

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- None

Officer contact details for documents:

- N/A