

## COUNCIL – 14 JULY 2015

### STATUTORY OFFICERS - CONSTITUTION

Report by the County Solicitor and Monitoring Officer

#### Introduction

1. The Government has issued Regulations to change the procedures which must be followed if a Council wishes to discipline or dismiss its statutory officers – that is, the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. As such, councils are required to adopt the new procedures no later than the first ordinary meeting of the Council in the current Council year.

#### Background

2. The senior officers of a council – i.e. the head of paid service, the monitoring officer and the chief finance officer – have statutory responsibilities to discharge to their councils. Since these postholders work with, and report to, elected members, they clearly work within a political environment. As a result, regulations were introduced in 2001 to afford statutory protection for these officers whereby a Designated Independent Person was to be appointed to investigate any allegation of misconduct against these senior officers. Under those regulations, no disciplinary action could be taken other than in accordance with a recommendation of a Designated Independent Person. The intention was to ensure that these officers could discharge their duties without any fear of being influenced by elected members and being dismissed without good reason.
3. Concerns that this procedure was complex, expensive and time consuming led to a review and consultation across local government. As a result, the Government has issued new regulations which seek to simplify and localise the disciplinary process for the most senior officers by removing the mandatory requirement that a DIP should be appointed. In place of the DIP, the regulations now place the decision transparently with Full Council which must consider any advice, views or recommendations from an **independent panel**.
4. Ordinarily, such Constitutional matters would also have been referred in advance to the Council's Audit & Governance Committee to enable the Committee to add any comments for Council's consideration. In this case, the requirement that every principal authority's Full Council meeting must each approve the changes to the regulations left no issue for discretion or comment. As such, the matter is therefore a procedural item for Council alone to consider.

## **Revised procedure – an independent panel**

5. The new regulations now require full council to have regard to the advice, views or recommendations of an independent panel, the conclusions of any investigation into the proposed dismissal and any representations from the officer concerned. This intention is that councils can consider and decide the best disciplinary process that will deliver value for money whilst retaining independent scrutiny.  
Setting up a panel
6. The regulations specify that when disciplinary action is proposed against of the three senior officers, the council must convene a panel in a specific manner. In short, the council must invite the independent persons appointed by it for the purposes of the members' conduct regime under Section 28(7) of the Localism Act 2011 to form an independent panel. A panel will be formed if two or more independent persons accept the invitations.
7. However, the invitations must also be issued in the following priority order:
  - An independent person appointed by the council and who is a local government elector
  - Any other independent person who has been appointed by the council
  - An independent person who has been appointed by another council or councils.
8. The purpose of this requirement is to allow local people to be involved in the disciplinary process for senior officers, making councils more accountable to the community.
9. Whilst remuneration can be made available to such independent persons, this is limited to the level of remuneration which they would normally receive as an independent person in the conduct regime, which is modest.
10. Councils are required to give effect to the new regulations in their standing orders. The Monitoring Officer has delegated power to amend the Constitution to meet statutory requirements. However, this matter is referred to Full Council for formal approval and to give visibility to the new procedures.

## **Legal implications**

11. The Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 require the Council to adopt the provisions into the Constitution.

## **RECOMMENDATION**

12. **Council is RECOMMENDED to note the changes to the statutory procedure and to ask the Monitoring Officer to amend the Council's Constitution accordingly.**

**PETER CLARK**  
Chief Legal Officer and Monitoring Officer

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