

Agenda Item No.9 (a)

DERBYSHIRE COUNTY COUNCIL

COUNCIL

3rd June 2015

Report of the Strategic Director of Corporate Resources

**RULES OF PROCEDURE –
DISCIPLINARY ARRANGEMENTS FOR STATUTORY OFFICERS**

1. Purpose of the report

To inform Members of legislative changes relating to disciplinary action in respect of statutory officers and to approve amendments to the Council's Officer Employment Procedure Rules required as a result of the changes.

2. Information and Analysis

The Local Authorities (Standing Orders) (England) Regulations 2001 set out the statutory requirements for the process of recruiting, appointing, disciplining and dismissing a local authority's head of paid service, monitoring officer and chief finance officer (the statutory officers).

In exercising their functions, the statutory officers work in a political environment and so the 2001 Regulations afforded them protection by requiring that disciplinary procedures incorporated the mandatory appointment of a designated independent person (DIP) to investigate any allegation of misconduct and to provide a binding recommendation on disciplinary action against them. The arrangements were designed to provide objectivity and impartiality to the disciplinary process.

In 2013, the Department for Communities and Local Government (DCLG) consulted on proposals to remove the DIP from the disciplinary process for these officers. The rationale for the proposed changes was that the DIP process was bureaucratic and time consuming and often led to local authorities making inflated severance payments in order to avoid the need to follow the DIP process.

Although the consultation gave rise to concerns being expressed about the dilution of the protection of the statutory officers, The Local Authorities (Standing Orders) (England) (Amendment) Regulations were

brought into force on 11th May 2015. These Regulations set out a new procedure which must be undertaken should disciplinary action be taken in respect of these officers and remove the requirement for a DIP to be appointed.

The new procedure requires that any disciplinary sanction should be determined by Full Council, which must consider any advice, views or recommendations of an Independent Panel, the conclusion of any investigation into the proposed dismissal and any representations from the statutory officers concerned. The Panel must include at least two “independent persons”. It was initially proposed that the independent persons should be those appointed to the Independent Remuneration Panel. However, this has been reconsidered by the DCLG and the independent persons who should be invited to be available to be appointed to the Panel are those who have been appointed to assist the Standards Committee in maintaining the high ethical standards of Councillors.

It is stipulated in the Regulations that any remuneration, allowances or fees paid to independent persons appointed to the Panel must not exceed the level of remuneration, allowances or fees normally payable in respect of their role assisting the Standards Committee. This is currently £125 per meeting, training event or hearing attended together with reimbursement of travel expenses at HMRC rates (currently 45p per mile).

The independent persons must be invited to join the Panel in the following priority order:

- (a) A relevant independent person who has been appointed by the authority and who lives within the authority’s area;
- (b) Any other relevant independent person who has been appointed by the authority and lives outside the authority’s area;
- (c) A relevant independent person who has been appointed by another authority or authorities.

The Panel must be convened at least 20 working days before the relevant meeting of the Council at which the decision regarding disciplinary action is to be taken.

The Panel is an advisory committee for the purposes of Section 102(4) of the Local Government Act 1972. Such an advisory committee “*may consist of such persons (whether members of the appointing authority or authorities or not) appointed for such term as may be determined by the appointing authority or authorities*”. It is proposed that the Panel, to be known as the Statutory Officers Disciplinary Panel, should include

three Elected Members (politically balanced) and two independent persons. The appointment of Panel Members would occur as and when the Panel is required to be convened.

All members of the Panel including those who are not Elected Members will have voting rights.

The new Regulations require the County Council to amend its Standing Orders at its first meeting after 11th May and it is proposed that the Council's Rules of Procedure (Part 4 of the Constitution) be amended as detailed in the appendix attached.

However, a number of issues in respect of these new regulations remain under consideration and further guidance is awaited. For example, there remain concerns with regard to who should undertake the disciplinary investigation in the absence of a DIP and the nature of the appeals process. The LGA is taking up these and other issues with the DCLG. Therefore, whilst this matter is brought for consideration of the Council in order to comply with the timescale stipulated in the Regulations, it may be necessary for further reports to be brought to Council for further consideration.

The proposed change to the Rules of Procedure was considered by the Standards Committee on 12th May 2015. The Committee supported the recommendations contained in this report.

3. Legal considerations

The amendments proposed in the report are as required by The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. In addition, these proposals require a change to the Council's Rules of Procedure and so require consideration by the Standards Committee and approval by the Council.

4. Other Considerations

In preparing this report, the relevance of the following factors have also been considered: financial, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

5. Background Papers

File held by the Director of Human Resources.

6. Officer Recommendations

That the Council:

- (i) Notes the legislative changes to the disciplinary procedures in respect of statutory officers; and
- (ii) approves and adopts the proposed amendment to the Council's Rules of Procedure.
- (iii) Receives further reports as necessary

JUDITH GREENHALGH

STRATEGIC DIRECTOR OF CORPORATE RESOURCES

APPENDIX 1

RULES OF PROCEDURE – Disciplinary Arrangements for Statutory Officers

**Revised paragraph 6(b) of the Employment Officer Procedure Rules
within the Council's Rules of Procedure(page 144 of the Constitution)**

6. Disciplinary Action

(b) Procedure

- (i) In the following paragraphs:
 - a) “the 2011 Act means the Localism Act 2011;
 - b) “chief finance officer”, “disciplinary action”, “head of the authority’s paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders)(England) Regulations 2001;
 - c) “independent person” means a person appointed under section 28(7) of the 2011 Act;
 - d) “local government elector” means a person registered as a local government elector in the register of electors in the authority’s area in accordance with the Representation of the People Acts;
 - e) “the Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;
 - f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and
 - g) “relevant officer” means the chief finance officer, head of the authority’s paid service or monitoring officer, as the case may be.
- (ii) A relevant officer may not be dismissed by the Council unless the procedure set out in the following paragraphs is complied with.

- (iii) The Council must convene the Statutory Officers Disciplinary Panel and must invite relevant Independent Persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.
- (iv) In paragraph (iii), “relevant Independent Person” means any Independent Person who has been appointed in accordance with Section 28(7) of the Localism Act 2011.
- (v) The Council must appoint to the Panel at least two such relevant Independent Persons who have accepted an invitation issued in accordance with paragraph (iii) in accordance with the following priority order:
 - (a) a relevant Independent Person who has been appointed by the Council and who lives within the Council’s area
 - (b) any other relevant Independent Person who has been appointed by the Council but lives outside the authority’s area
 - (c) a relevant Independent Person who has been appointed by another authority or authorities
- (vi) The Council must appoint any Panel at least 20 working days before the relevant meeting.
- (vii) Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal (which decision must be made by the Council itself), the Council must take into account, in particular:
 - (a) any advice, views or recommendations of the Panel;
 - (b) the conclusions of any investigations into the proposed dismissal; and
 - (c) any representations from the officer subject to the disciplinary proceedings.