

Report to: **Governance Committee**

Date: **28 April 2015**

By: **Assistant Chief Executive**

Title of report: **Amendments to Constitution – Disciplinary process for senior officers**

Purpose of report: **To consider proposals to amend the Council’s Constitution, in accordance with Regulations, to localise the disciplinary process for the posts of the Head of Paid Service, the Monitoring Officer and Chief Finance Officer.**

RECOMMENDATION: The Committee is recommend to recommend the County Council:

- 1) to agree to the Constitution being amended to reflect the provisions of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 in relation to the disciplinary process for the posts of the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer; and**
 - 2) to delegate authority to the Assistant Chief Executive to make all necessary changes to the Constitution to give effect to this decision**
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1. Supporting Information

1.1 The Local Authorities (Standing Orders) (England) Regulations 2001 introduced a degree of statutory protection in relation to particular officers of the Council. The officers who were afforded this protection were the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. The rationale for this protection was based on the fact that these officers have statutory duties and obligations which have the potential to bring them into conflict with their employer, the local authority. In March 2013 the Committee considered a report on the Government’s draft regulations to remove the existing statutory Designated Independent Person procedures.

1.2 The Committee agreed that the Council should respond to the consultation from the Department for Communities and Local Government expressing the view that a requirement for a Designated Independent Person to investigate allegations of misconduct by senior officers should be retained.

1.3 Following the consultation, The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 are due to come into force on 11 May 2015. The Regulations amend and localise the disciplinary process for the posts of the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. The Regulations remove the requirement that a Designated Independent Person be appointed to investigate and make a binding recommendation on disciplinary action against these senior staff.

1.4 In place of the Designated Independent Person Process, the decision will be taken by the Full Council, who must consider any advice, views or recommendations

from an independent panel (see paragraph 1.5), the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.

1.5 In the case of a proposed disciplinary action against the Head of Paid Service, the Monitoring Officer or Chief Finance Officer, the Council is required to invite independent persons who have been appointed for the purposes of the members' conduct regime introduced under the Localism Act 2011 to form an independent panel. An independent Panel will be formed of two or more independent persons who accept the invitation in the following priority order:

- (a) a relevant independent person who has been appointed by the council and who is a local government elector;
- (b) any other independent person who has been appointed by the council; and
- (c) an independent person who has been appointed by another council or councils

1.6 The authority must appoint the Panel at least 20 working days before the meeting of the council to consider whether or not to approve a proposal to dismiss the relevant postholder.

1.7 The provisions to be incorporated into the Council's Standing Orders are set out in Appendix 1 of the report

1.8 It is therefore necessary to amend the Constitution to reflect the Regulations

3. Recommendations

3.1 The Committee is asked to recommend the asked to agree to recommend the County Council to agree to the Council's Constitution being amended in order to ensure that the authority complies with recent Regulations

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Background Documents

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

APPENDIX 1

Provisions to be incorporated in standing orders in respect of disciplinary action

1. 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.

2. A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

3. The authority 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.

4. In paragraph 3 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

5. Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;
- (b) any other relevant independent person who has been appointed by the authority;
- (c) a relevant independent person who has been appointed by another authority or authorities.

6. An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

7. The authority must appoint any Panel at least 20 working days before the relevant meeting.

8. Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—

- (a) any advice, views or recommendations of the Panel;
- (b) the conclusions of any investigation into the proposed dismissal; and
- (c) any representations from the relevant officer.

9. Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act."