

Southend-on-Sea Borough Council

Agenda
Item No.

23

Report of Corporate Director for Corporate Services

to
Council
on
23rd July 2015

Report prepared by: John Williams,
Head of Legal & Democratic Services

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

Part 1 Public Agenda Item

1. Purpose of Report

To propose minor changes to the Constitution to comply with the requirements of the Local Authorities (Standing Orders) (England) Regulations 2015 (“the 2015 Regulations”) re dismissal procedures for the Head of Paid Service, Chief Finance Officer and Monitoring Officer.

2. Recommendations

- 2.1 To agree the changes to the Officer Employment Procedure Rules set out in Appendix 1 to comply with the requirements of the Local Authorities (Standing Orders) (England) Regulations 2015 and that Part 4(h) of the Constitution be amended accordingly.
- 2.2 To establish a new Disciplinary Advisory Panel as required by the 2015 Regulations comprising the two Independent Persons who have been appointed under S.28(7) of the Localism Act 2011 with the terms of reference set out in Appendix 2 and that Part 3 Schedule 2 of the Constitution be amended by the addition of a new paragraph 9.7.
- 2.3 To agree consequential changes to the following parts of the Constitution as set out in Appendix 3:
 - (a) Part 2 Article 4 – The role of the full Council;
 - (b) Section 6.5.3 of Part 3 Schedule 2 – The terms of reference of the Appointments and Disciplinary Committee; and
 - (c) Such other changes as the Head of Legal and Democratic Services deems necessary to ensure compliance with the 2015 Regulations.

3. Background

- 3.1 The Council is under a statutory duty to designate officers to hold the posts of Head of Paid Service, Chief Finance Officer and Monitoring Officer (“the Statutory Officers”).

The Council has designated the Chief Executive to be the Head of Paid Service, the Head of Finance & Resources to be the Chief Finance Officer and the Head of Legal & Democratic Service to be the Monitoring Officer.

- 3.2 Each of these 3 posts carries specific statutory responsibilities and Local Authorities have been required since 2001 (by virtue of the Local Authorities Standing Orders (England) Regulations 2001 “the 2001 Regulations”) to follow special procedures to investigate any allegation of misconduct against these Statutory Officers. The requirements of the 2001 Regulations are incorporated in the Council’s “Officer Employment Procedure Rules” in Part 4(h) of the Constitution.

In particular the 2001 Regulations:

- Prevented disciplinary action (defined as “any action occasioned by alleged misconduct ...” but not redundancy or ill-health or failure to renew a fixed term contract) against any of the Statutory Officers, other than in accordance with a recommendation in a report made by a Designated Independent Person (“DIP”); and
 - Required the full Council to approve any dismissal of the Head of Paid Service.
- 3.3 The Government considered the DIP procedure to be overly complex and expensive. The 2015 Regulations, which came into force on 11th May 2015, now attempt to simplify the process:
- (a) The statutory requirement for a DIP in order to take disciplinary action generally against any of the Statutory Officers is now removed;
 - (b) There is no longer any statutory protection for the Statutory Officers where disciplinary action short of dismissal is proposed; and
 - (c) New rules are introduced in respect of the dismissal of any of the Statutory Officers following disciplinary action. The key element of these new rules is that the dismissal of a Statutory Officer must be approved by full Council which must first consider:
 - (i) The conclusions of the investigation into the proposed dismissal. This will necessarily involve the engagement of an appropriate investigator and then a disciplinary hearing conducted by the Appointments and Disciplinary Committee with a recommendation being made to full Council to dismiss. It would be quite impractical for the full Council to conduct the disciplinary hearing;

(ii) The recommendations of a new Panel which must include at least two Independent Persons who have been appointed under S.28(7) of the Localism Act 2011 in connection with the Members' Code of Conduct. This Panel will meet after the process in (i) has been completed and the Panel will consider the views and papers relating that process (Therefore if the Appointments and Disciplinary Committee was not recommending dismissal the Panel would not need to be involved); and

(iii) Any representations from the Statutory Officer.

3.4 The DCLG has just confirmed that in its view the new Panel is an advisory committee and so can consist of simply the two Independent Persons, which is the most expedient course of action.

3.5 Unfortunately there is a lack of clarity over certain aspects of the 2015 Regulations, for example:

- how disciplinary hearings should be dealt with;
- how appeals should be dealt with;
- the fact that the 2015 Regulations do not override any contractual employment provisions.

However, the DCLG is not proposing to repeal or amend the 2015 Regulations. Accordingly the Council must implement the 2015 Regulations at the first ordinary Council meeting after 11th May 2015, which is this Council on 23rd July 2015.

The DCLG has said it intends to review the operation of the 2015 Regulations in 6-9 months.

3.6 The recommendations in section 2 of this report will enable the Council to meet its statutory obligations. These recommendations involve:

- (a) Amendments to the Officer Employment Procedure Rules as per **Appendix 1**.
- (b) The establishment of a new Disciplinary Advisory Panel consisting of the two Independent Persons who have been appointed under S.28(7) of the Localism Act 2011, with the terms of reference set out in **Appendix 2** which will be added as new paragraph 9.7 in Part 3 Schedule 2 to the Constitution. One of the Independent Persons has confirmed that she will accept the new responsibilities and it is hoped the other one will also agree when she returns from holiday. If one or both of the Independent Persons was not able to take part in a Disciplinary Advisory Panel then the Council would look to invite Independent Person(s) from another authority to form the Panel as set out in the 2015 Regulations.

- (c) Consequential changes to the role of the full Council in Part 2 Article 4 and to section 6.5.3 of the terms of reference of the Appointments and Disciplinary Committee in Part 3 Schedule 2 as per **Appendix 3**.

4. Corporate Implications

4.1 Contribution to Council's Vision & Corporate Priorities

Becoming an excellent and high performing organisation

4.2 Financial Implications

None

4.3 Legal Implications

Amending the Constitution is a function reserved to the Council and the changes are required to comply with the 2015 Regulations.

4.4 People Implications

None

4.5 Property Implications

None

4.6 Consultation

Internal consultation

4.7 Equalities and Diversity Implications

None

4.8 Risk Assessment

N/A

4.9 Value for Money

N/A

4.10 Community Safety Implications

None

4.11 Environmental Impact

None

5. Background Papers

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

6. Appendices

Appendix 1 – Proposed changes to the Officer Employment Procedure Rules (Part 4h of the Constitution).

Appendix 2 – Proposed terms of reference of the new Disciplinary Advisory Panel (Part 3 Schedule 2 of the Constitution)

Appendix 3 – Proposed changes to Part 2 Article 4 and paragraph 6.5.3 of Part 3 Schedule 2 of the Constitution.

Changes to the Officer Employment Rules in Part 4(h) of the Constitution

(Words deleted are struck through and new provisions are underlined)

4. Appointment and Dismissal of Head of Paid Service, Corporate Directors and Heads of Service

(1) Where the Appointments and Disciplinary Committee or a sub-committee is discharging, on behalf of the Council, the function of the appointment or ~~dismissal~~ of an officer designated as the Council's Head of Paid Service, the full Council must approve that appointment before an offer of appointment is made or, ~~as the case may be, must approve that dismissal before notice of dismissal is given.~~ (See also paragraph 8 in this section.)

(2) Where the Appointments and Disciplinary Committee or a sub-committee is discharging, on behalf of the Council, the function of disciplinary proceedings in respect of an officer designated as the Council's Head of Paid Service, Chief Finance Officer or Monitoring Officer, the full Council must approve a dismissal before notice of dismissal is given (See also the additional requirements in paragraph 8 in this section.)

~~(2)~~(3) Where the Appointments and Disciplinary Committee or a sub-committee is discharging, on behalf of the Council, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3.2, at least one member of the Executive must be a member of that committee or sub-committee. (See also paragraph 8 in this section.)

6. Dismissal of Head of Paid Service, Corporate Directors and Heads of Service

Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3.2 must not be given until:

(a) the dismissor (i.e. the Appointments and Disciplinary Committee) has notified the Proper Officer of the name of the person who it wishes to dismiss (in the case of the Head of Paid Service, Chief Finance Officer or Monitoring Officer subject to the procedure set out in paragraph 8 of this section and the approval of the Council) and any other particulars which it considers are relevant to the dismissal;

(b) the Proper Officer has notified the Leader and every member of the Cabinet of:

(i) the name of the person who the dismissor wishes to dismiss;

- (ii) any other particulars relevant to the dismissal which the dismissor has notified to the Proper Officer; and
 - (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the Proper Officer; and
- (c) either:
- (i) the Leader has, within the period specified in the notice under subparagraph (b) (iii), notified the dismissor that neither he nor any other member of the Cabinet has any objection to the dismissal;
 - (ii) the Proper Officer has notified the dismissor that no objection was received by him within that period from the Leader; or
 - (iii) the dismissor (or in the case of the proposed dismissal of the Head of Paid Service, Chief Finance Officer or Monitoring Officer, the full Council) is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

8. Disciplinary Action – Head of Paid Service, Monitoring Officer and Chief Finance Officer

- ~~(a) No disciplinary action in respect of the Head of the Council's Paid Service, its Monitoring Officer or its Chief Finance Officer, except action described in paragraph 8(b), may be taken by the Council, or by a committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001 (investigation of alleged misconduct).~~
- (b)(a)** The Head of Paid Service, Monitoring Officer or Chief Finance Officer may be suspended by the Appointments and Disciplinary Committee for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.
- (b)** Full Council must decide whether or not to approve the dismissal of the Council's Head of Paid Service, Chief Finance Officer or Monitoring Officer and before taking the vote the Council must take into account:
- (i) any advice, views or recommendations of the Disciplinary Advisory Panel;
 - (ii) the conclusions of any investigation into the proposed dismissal (including the recommendations of the Appointments and Disciplinary Committee); and

(iii) any representations from the relevant officer.

Note:

- (i) These Rules incorporate the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001 and 2015
- (ii) The “Proper Officer” referred to in these Rules means the Chief Executive & Town Clerk, save where the post concerned is the Chief Executive, when it shall be the Monitoring Officer.

New paragraph 9.7 of Part 3 Schedule 2 to the Constitution re establishment of the new Disciplinary Advisory Panel

9.7 Disciplinary Advisory Panel

9.7.1 Membership

The 2 Independent Persons who have been appointed under S.28 (7) of the Localism Act 2011.

If one or both of these Independent Persons was not able to take part in a Disciplinary Advisory Panel then another Independent Person would need to be appointed or an Independent Person(s) from another authority would be invited to form the Panel as specified in the Local Authorities (Standing Orders) (England) Regulations 2015 .

Substitutes: n/a

Proportionality: n/a

9.7.2 Quorum

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9.7.3 Terms of Reference

- (a) To give advice, views or recommendations to full Council when it is considering whether or not to approve the dismissal of the Head of Paid Service, Chief Finance Officer or Monitoring Officer.
- (b) In giving advice to full Council, the Panel shall have regard to the views of the Appointments and Disciplinary Committee which will already have been involved in the process and the relevant papers.
- (c) The Panel must be appointed at least 20 days before a meeting of full Council to consider whether or not to dismiss the Head of Paid Service, Chief Finance Officer or Monitoring Officer.

9.7.4 Status of Meetings

Private

9.7.5 Reports to

Council

Consequential Change to Article 4 of Part 2 of the Constitution

The addition of a new Council function (i):

- (i) Taking the decision to dismiss the Head of Paid Service, Chief Finance Officer or Monitoring Officer in accordance with the Officer Employment Procedure Rules in **Part 4(h)**

Consequential change to the terms of reference of the Appointments and Disciplinary Committee in section 6.5.3 of Part 3 Schedule 2

(Words deleted are struck through and new provisions are underlined)

- (d) Subject to (e) below, to investigate and take disciplinary action in respect of misconduct of the Head of Paid Service (~~subject to Council approval~~), Corporate Directors and Heads of Service. (Appeals will go to the Appeals Committee)³.
- (e) ~~To receive and consider reports from an independent person designated to investigate allegations of misconduct against the Council's Head of Paid Service the Monitoring Officer or Chief Finance Officer.~~
Full Council must decide whether or not to approve the dismissal of the Council's Head of Paid Service, Chief Finance Officer or Monitoring Officer and the procedures set out in the Officer Employment Procedure Rules in **Part 4(h)** must be followed, including consideration the recommendations of the Appointments and Disciplinary Committee.