

12. DISMISSAL OF CERTAIN OFFICERS (TR)

1. Purpose of the report

To approve the arrangements in place to deal with allegations regarding the conduct and behaviour of Chief Officers as defined in Part 5 of Standing Orders. This therefore includes the Chief Executive, the Section 151 Officer, the Monitoring Officer and the three non-statutory Chief Officers.

Key Issues

- **The Authority has previously amended its Standing Orders to reflect the Statutory requirements of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015. At that time it was recognised that further changes may be required once guidance had been issued by the Joint Negotiating Committee for Local Authority Chief Executives (JNC).**
- **The JNC has now issued a model procedure so the Authority is asked to adopt an amended version of the model that reflects local circumstances and the structural differences between a National Park Authority and a Local Authority.**
- **Although the JNC model procedure refers specifically to the Chief Executive it is proposed that this Authority's procedure applies to all post holders identified as Chief Officers in Part 5 of Standing Orders.**
- **The Authority is also asked to set up and agree the terms of references for an Investigating and Disciplinary Committee, an Appeals Committee and Independent Panel as identified in the procedure.**

2. Recommendations(s)

- 1. To adopt the Disciplinary Procedure and Guidance for the Chief Executive, Statutory Officers and Non-Statutory Chief Officers as set out in Appendix 1.**
- 2. To establish an Investigating and Disciplinary Committee comprising of six Members with the terms of reference set out in paragraph 14.**
- 3. To appoint 6 Members to the Investigating and Disciplinary Committee (3 Local Authority and 3 Secretary of State Members).**
- 4. To amend the Terms of Reference of the Appeals Panel as set out in paragraph 17.**
- 5. To establish an Independent Panel comprising of the Authority's two Independent Persons appointed in accordance with provisions within the Localism Act 2011 with the terms of reference set out in paragraph 20.**
- 6. To add the following paragraph to the Emergency Delegation in paragraph 7.A-3 of Part 7 of Standing Orders as set out in paragraph 26.**
- 7. To amend Standing Order 1.17 in Part 1 of Standing Orders as set out in paragraph 31.**
- 8. To amend paragraph 5.6 of Part 5 of Standing Orders as set out in paragraph 34.**

How does this contribute to our policies and legal obligations?

3. In accordance with the Local Authorities (Standing Orders)(England) Regulations 2001, amended by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015, the Authority must have measures in place to protect the Chief Executive and other statutory Chief Officers in the event of receiving allegations which if proved may result in the dismissal of a protected officer. The proposals in this report meet these requirements.
4. In the case of this Authority it is proposed that these measures are used for any allegation relating to an officer identified as a Chief Officer in part 5 of Standing Orders. It therefore includes the holders of statutory Chief Officer roles such as the Head of Paid Service, the Section 151 Officer and the Monitoring Officer as well as the three Directors identified as non-statutory Chief Officers. Throughout the report and procedure these post holders are referred to as Relevant Officers. In accordance with Standing Orders only a meeting of the Authority can make a decision to appoint or dismiss a Relevant Officer and this power cannot be delegated.

Background Information

5. On 5 June 2015 the Authority approved amendments to Part 5 of Standing Orders to reflect provisions within The Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015. These 2015 Regulations required the Authority to amend its Standing Orders where they referred to the process for the dismissal of certain officers to make sure that they made reference to the involvement of a Panel which includes two independent persons. The amendments had to be agreed at the first ordinary meeting of the Authority after the regulations came into force and were mandatory so the Authority had no discretion on whether to approve the proposed changes.
6. The 2015 Regulations did not provide any detail on how the new process would work in practice. Therefore at the time of making the changes the Authority noted that, following the close of national negotiations on the conditions of employment for relevant officers, a further report would be brought to the Authority on the process to be followed when considering dismissal of a relevant officer and, if needed, make further changes to the terms of reference for the relevant committee and the job description for the Independent Persons. These negotiations have been completed and the revised conditions of service published, hence this report.

Proposals

7. In principle it is for each local authority to determine its procedures and practical arrangements for the handling of grievances, taking into account the relevant considerations in general employment law. However, in the case of a chief executive, there are particular factors which may need to be borne in mind in the case of a grievance against a chief executive or a grievance brought by a chief executive, so the Joint Negotiating Committee for Local Authority Chief Executives (JNC) has produced model procedures for use in such circumstances.
8. Best practice suggests that, even if the relevant authorities decide to use the model, it should be formally adopted so that all parties are clear about the composition, terms of reference, quorum of a Panel beforehand so that these decisions are not been made or revisited in the middle of dealing with a live case. It is recommended that to meet the requirements of the 2015 Regulations the Authority adopts the procedures and guidance document set out in Appendix 1. This document reproduces the model procedures and guidance with only minor amendments to make them relevant to the

Authority.

9. In its guidance the JNC make it clear that because of the potential adverse impact on the reputation of the Relevant Officers and the Authority, local authorities should try to resolve any issues relating to behaviour or capabilities of a Relevant Officer informally. The JNC have indicated that they are willing to facilitate requests for informal discussions from either party and act as impartial conciliators. However it is recognised that there will be circumstances where issues either cannot be resolved informally or due to the nature of the allegations the informal approach is not appropriate and in these circumstances the formal procedure proposed in this report would be used.
10. Under the new 2015 Regulations and the model procedures the Authority must have the following in place:
 - An Investigating & Disciplinary Committee (IDC)
 - An Appeals Committee
 - An Independent Panel

Investigating & Disciplinary Committee (IDC)

11. The purpose of the IDC is to consider and make decisions on matters which could result in disciplinary action against a Relevant Officer. In this context disciplinary action is defined as “any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Authority, be recorded on the member of staff’s personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract.”
12. The 2015 Regulations state that the IDC should be politically balanced and able to take decisions and agree appropriate actions as a matter of urgency, having to meet at very short notice to consider allegations and to consider whether suspension of a Relevant Officer might be appropriate.
13. Although the responsibilities of the IDC can be delegated to an existing Committee that has delegated authority to deal with other matters it is proposed that a separate Committee be established to fulfil this role. It is suggested that when appointing Members to this Committee the Authority needs to consider whether it is appropriate to appoint the Chairs and Vice-Chairs of Standing Committees to avoid allegations that there is a conflict of interest if the allegations relate to an officer with whom they have an ongoing close working relationship.
14. It is proposed that the following terms of reference be added to Part 4 of Standing Orders:

“H. Investigating and Disciplinary Panel (IDC)

To act as the Investigating and Disciplinary Committee for considering and making decisions on allegations of misconduct relating to a Relevant Officer, defined as a Chief Officer in Part 5 of Standing Orders including;

- Considering allegations relating to the conduct or capability of the Relevant Officer, deciding whether there is a case to answer and determining whether further formal action is required.
- Considering whether to suspend the Relevant Officer while an investigation takes place and during the investigation reviewing whether this suspension

should continue.

- When deemed necessary, to appoint appropriate external consultant(s) able to represent, advise and support the Committee and the Authority during the process.
- Appointing an Independent Investigator to look into the allegations and agree the terms of reference for the investigation and the timescales involved.
- Appointing the Independent Panel to consider and comment on any proposal to dismiss the Relevant Officer.
- Considering the report of the Independent Investigator and, after the proposed action has been considered by an Independent Panel, making a recommendation to the Authority if there is evidence to support the allegations and they are serious enough to warrant dismissal.
- Where, following investigation, there is evidence to support the conduct or capability allegations but they are not deemed serious enough to warrant dismissal, the Committee may approve alternative disciplinary action.
- To consider proposals for a mutual termination of the Chief Executive's contract, initiate negotiations on the terms of that termination, consider proposals arising from the negotiations and make a recommendation to the Authority, having regard to any relevant legislation or regulations such as Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

As the IDC, the Committee can make most decisions relating to disciplinary issues arising as a result of investigations into the conduct of a Relevant Officer. But, as matters relating to the appointment and dismissal of a Chief Officer must be reserved to a meeting of the Authority, if it concludes that there is evidence to support the allegations and they are serious enough to warrant dismissal it can only make a recommendation to the Authority.”

Appeals Panel

15. In this context an appeals process must be in place to consider any appeals by a Relevant Officer against decisions of the Authority or the Committee. Where the Committee has made a recommendation to the Authority suggesting that dismissal is appropriate the JNC guidance states the Authority meeting will also fulfil the appeal function as the Authority will simply review the evidence presented and invite the Relevant Officer to make representations before making its decision.
16. With regard to any disciplinary action other than dismissal it is proposed that the terms of reference of the existing Appeals Panel be amended so that the pool of Members can be used to consider appeals against the decisions of the Committee relating to any disciplinary action other than dismissal. Having a pool to choose from avoids potential conflicts of interest and helps to arrange meetings in relatively short timescales.
17. To implement this it is proposed that the following be added to the terms of reference for the Appeals Panel:

“To hear appeals from the Chief Executive, Statutory Officers and Non-Statutory Officers against disciplinary action taken against them short of dismissal and decide either to confirm the action or to impose no sanction or a lesser sanction”

Independent Panel

18. Where, following receipt of the report of an Independent Investigator, the Committee intends to make a recommendation to the Authority that a Relevant Officer be dismissed the proposal must go before a meeting of the Independent Panel before the recommendation is made. In accordance with the model procedure the Authority's two Independent Persons appointed under the Localism Act 2011 to carry out this role.
19. The Independent Panel must be appointed at least 20 days before the meeting of the Authority at which the recommendation for dismissal is to be considered.
20. It is proposed that the terms of reference for the Independent Panel are as follows:

“I. INDEPENDENT PANEL

To offer any advice, views or recommendations it may have to the Authority on the conclusions of the Authority's Investigating and Disciplinary Committee where the Committee intends to make a recommendation to a meeting of the Authority that a Relevant Officer should be dismissed.

If the Panel is recommending any course of action other than that the Authority should approve the dismissal, then it should give clear reasons for its point of view.

The Membership of the Panel will be made up of the Authority's two Independent Persons appointed under the Localism Act 2011. Where one or both of the Authority's Independent Persons are unable to act an independent person who has been appointed by another Local Authority or National Park Authority may be invited to join the Authority's Panel.

The Independent Panel must be appointed at least 20 days before the meeting of the Authority Council at which the recommendation for dismissal is to be considered.”

21. It is likely that Independent Panel members will be unfamiliar with their role under the 2015 Regulations and with matters relating to the working environment of a Relevant Officer. Accordingly, Panel members will be given appropriate training for the role the Panel is to fulfil where it is likely that they will be asked to become involved in a proposal to dismiss a Relevant Officer.
22. The role of the Panel is to offer any advice, views or recommendations it may have to the Authority on the proposal for dismissal. The Panel will receive the IDC proposal and the reasons in support of the proposal, the report of the Independent Investigator and any oral and/or written representations from the Relevant Officer. The Independent Investigator may be invited to attend to provide clarification if required. The Panel will be at liberty to ask questions of either party.
23. The Panel will then formulate any advice, views or recommendations it wishes to present to the Authority. If the Panel is recommending any course of action other than that the Authority should approve the dismissal, then it should give clear reasons for its point of view.
24. The job description for the Independent Persons has previously been amended to reflect this additional role.

Suspension of the a Relevant Officer

25. Section 3 of Appendix 1 provides guidance on the suspension of a Relevant Officer before or during an investigation into allegations. The procedure emphasises that suspension is not always appropriate and suggests that, based on the potential

reputational damage to the Authority and the post-holder, there may be alternative way of managing an investigation that avoids suspension. However the procedure does recognise that there will be circumstances where it is in the best interests of the Authority to suspend the Relevant Officer pending an investigation.

26. The procedure and the terms of reference of the IDC give it the power to suspend and it is suggested that in most cases it should make the decision. However the procedure recognises that suspension may be necessary in an emergency when an exceptional situation arises whereby allegations of misconduct are such that the Relevant Officer's remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Authority. For such events it is suggested that delegation be given to an officer. Therefore it is proposed that the existing urgency delegation in Part 7 of Standing Orders be amended to include an additional paragraph as follows:

“(d) The Head of Human Resources, in consultation with the Chair of the Authority and (as appropriate) the Chief Executive or the Monitoring Officer, will be authorised to act where the urgent decision relates to the immediate suspension of the Chief Executive, a statutory officer or non-statutory chief officer following receipt of allegations of misconduct by the Relevant Officer which are such that his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Authority and it is not possible to delay that decision until a meeting of the Investigating and Disciplinary Committee can take place. Any decision to suspend under this delegation should be reviewed by the Investigating and Disciplinary Committee on the earliest date on which a quorate meeting of the Committee can be convened.”

Appointment of an Independent Investigator

27. While the decision to appoint an Internal Investigator and the terms of reference for the investigation rests with the Committee, the model procedure requires that the investigator is selected from the list maintained by the National Joint Secretaries. These potential investigators will have been selected for their suitability and experience for this area of work. They will be offered on a 'taxi-rank' basis subject to their availability within the desired timescales, and should have not have material connections with the Authority or the Relevant Officer or any connection to the allegations.
28. When approached the National Joint Secretaries will provide the Authority with the top three names from the list (if in exceptional circumstances three names are not available, both local parties will agree to choose from a shorter list). If these are acceptable to the Authority, the Relevant Officer will be invited to select one of the names. The only acceptable reason for not selecting from the names supplied being conflict of interest. If an appointment is not agreed by the Relevant Officer within 14 days of the date of the names being supplied, the Authority will be at liberty to select an Investigator from the names supplied.

Notice of Motion

29. Standing Order 1.14 gives all Members the opportunity to give notice in writing at least 10 days before an Authority meeting that they wish to move a motion at the meeting. There are currently no restrictions on the scope of a motion other than it being relevant to some matter in relation to which the Authority has powers or duties, or which affects the Peak District National Park.
30. In light of the model procedure and the risks of prejudicing a live investigation it is suggested that Standing Order 1.17, Scope of Motions be amended as set out below to allow the Director of Corporate Strategy and Development or their Deputy to reject a motion if it relates to an ongoing investigation relating to the conduct or capability of an

employee of the Authority.

31. It is proposed the following paragraph be added:

“The Director of Corporate Strategy and Development, or their Deputy, may reject a motion if it relates to an ongoing investigation relating to the conduct or capability of an employee of the Authority.”

Chief Officers and Statutory Officers

32. In making amendments to Part 5 of Standing Orders (Chief Officers) in June 2015 the section on Disciplinary action was amended to reflect the 2015 Regulations.

33. Although the model procedures issued by the Joint Negotiating Committee for Local Authority Chief Executives only refer to the Chief Executive and Head of Paid Service in the case of the Authority the definition of a Chief Officer extends to Statutory Officers such as the Head of Paid Service, Section 151 Officer, Monitoring Officer and non-statutory Chief Officers. As mentioned previously the proposals in this report therefore apply to all these post holders.

34. On the basis of these proposals is also suggested that paragraph 5.6 of Part 5 of Standing Orders itself be further amended to read as follows:

- (1) Any allegations made relating to the conduct or capability of the Chief Executive, Monitoring Officer, Chief Finance Officer or other non-statutory Chief Officer should be referred to a Committee or Sub Committee which has been given delegated authority to act as the Investigating & Disciplinary Committee (IDC). This Committee will determine whether the allegations warrant further investigation and if appropriate appoint an Independent Investigator to look into the allegations and make recommendations.
- (2) At the time of considering the allegations the IDC may make a decision to suspend the officer during the investigation. Any such suspension shall be on full pay and shall be reviewed by the IDC no more than two months after the day on which the suspension takes effect.
- (3) Any decision to take disciplinary action (within the meaning of Part II of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) which would result in the dismissal of the Authority's Head of Paid Service, Monitoring Officer or Chief Finance Officer or non-statutory Chief Officer may only be taken by the Authority, and only after the allegations have been investigated by an Independent Investigator and the proposed action considered by an Independent Panel appointed by the Authority including at least 2 Independent Persons appointed under section 28(7) of the Localism Act 2011. The Independent Panel must be appointed at least 20 working days before the meeting of the Authority which is to consider whether or not to approve a proposal to dismiss a Relevant Officer.
- (4) Before the taking of a vote at a relevant meeting on whether or not to approve such a dismissal, the Authority must take into account:
 - (a) any advice, views or recommendations of the Independent Panel
 - (b) the conclusions of the Independent Investigation into the proposed dismissal
 - (c) any representations from the Relevant Officer.
- (5) Any decision to take disciplinary action short of dismissal may be made by the

Committee or Sub Committee designated as the IDC and does not have to be considered by the Independent Panel. In this case the Relevant Officer has the right to appeal against the decision by referring it to the Authority's Appeals Panel

Are there any corporate implications members should be concerned about?

Financial:

35. No direct costs relating to these proposals. If an allegation is received funding would need to be identified to meet the costs of appointing an Independent Investigator, any external advice and expenses incurred by Members and the Independent Persons.

Risk Management:

36. Although the Authority could have adopted the model procedure without amendment this report sets out proposals to modify the procedure to reflect the Authority's local circumstances and structures and therefore should avoid any ambiguity should the procedure and guidance be used.

Sustainability:

37. No significant issues

Equality:

38. This procedure makes sure that all Relevant Officers are treated and fairly and equally regardless of their personal circumstances. It also recognises that reasonable adjustments need to be made where the circumstances around an investigation relate to ill health or incapacity as well as changes to the health and wellbeing of the Relevant Officer during the course of an investigation

39. Background papers (not previously published)

None

40. Appendices

Appendix 1 - Disciplinary Procedure and Guidance for the Chief Executive, Statutory Officers and Non-Statutory Chief Officers. (Includes appendix A and B)

Report Author, Job Title and Publication Date

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