

<b>1.</b>	<b>Meeting:</b>	<b>Council</b>
<b>2.</b>	<b>Date:</b>	<b>3<sup>rd</sup> June 2015</b>
<b>3.</b>	<b>Title:</b>	<b>Changes to Disciplinary Procedures for Senior Officers</b>
<b>4.</b>	<b>Directorate:</b>	<b>Resources</b>

## 5. Summary

- (a) To inform Council of changes to staff and disciplinary procedures in respect of the Head of Paid Service, the S151 Officer and the Monitoring Officer positions.
- (b) For Council to approve modifications to the Council's Standing Orders to include the provisions referred to above.

## 6. Recommendations

- a) that Council notes the changes to staff and disciplinary procedures in relation to the statutory officers referred to in paragraph 5 (a) above;
- b) that the Council's Standing Order 31 be removed and replaced with the standing order in the schedule to this report;
- c) that Council names the Independent panel, the 'Senior Officers Independent Disciplinary Panel';
- d) that Council decides whether to establish the Independent Panel as a 'Standing' Committee of the Council; and
- e) that Council determines the size of the Panel to be three members and two Independent Persons.

## 7. Proposals and Details

### The Law

- 7.1 The Local Government and Housing Act 1989 requires local authorities to designate one of their officers as the “head of paid service” and one of their officers as “monitoring officer”. Section 151 of the Local Government Act 1972 requires authorities to have an officer with responsibility for financial administration, commonly known as the “Section 151 Officer”.
- 7.2 Section 28(6) of the Localism Act 2011(the Act) requires local authorities to have in place arrangements under which allegations against any of these three officers can be investigated and decided upon. The authority is currently required by the Act to appoint a Designated Independent Person (DIP) whose views are to be sought and taken into account by the authority before it makes a decision.
- 7.3 The Secretary of State has power under regulations made under the Local Government and Housing Act 1989 to require local authorities to adopt prescribed procedural standing orders. The Secretary of State has now issued new regulations which have the effect of requiring the Council to adopt new standing orders which have the effect of removing the requirement for a DIP.
- 7.4 In place of the requirement for a DIP the decisions in relation to disciplinary processes for the three officers will be taken, transparently by full Council. Council must consider any advice, views or recommendations from the Independent Panel, the conclusions of any investigation into the proposed dismissal and any representations from the officer concerned.
- 7.5 The Council is required to invite Independent Persons who have been appointed to the Standards Committee to form part of the Independent Panel. The Council’s two current Independent Persons, Phil Beavers and David Roper-Newman, have agreed to join the Panel. In light of this it would be appropriate for the total membership of the Panel to be 5 and so an additional 3 members will be required. The Panel will be a committee of the Council, and it is suggested it be named ‘The Senior Officers Independent Disciplinary Panel’.
- 7.6 The regulations also limit the remuneration to be paid to Independent Persons on the Panel to the level of remuneration which they would normally receive as an independent person in the conduct regime. At present in Rotherham this amount is an annual payment of £710. Council resolved, on 22<sup>nd</sup> May 2015, following considerations of a report by the Independent Remuneration Panel to set the allowance at ..... To be completed following Council’s decision.
- 7.7 These modifications to Standing Orders must be made no later than at the first ordinary Council meeting held after the May 2015 elections. The proposed modified standing orders are contained in the Appendix.

### Process

- 7.8 As the Panel has to be constituted as a committee, political proportionality rules will apply. The Council is requested to decide whether a ‘Standing’ Committee should be

established.

7.9 The advantages of establishing such a committee are;

- i. The Panel must be appointed at least twenty days before the Council meeting considering the dismissal. Therefore if there is a 'Standing' committee, this can be established quickly.
- ii. A process for investigating and considering any proposals to dismiss one of the officers will need to be agreed and a 'Standing' committee could decide these issues in advance of any cases arising, and agree terms of reference for the Committee.

7.10 The disadvantage would be that it is highly unlikely that such a 'Standing' Committee would meet on a regular basis.

7.11 In addition the Contracts of Employment for the officers must now be changed to reflect the provisions of the Standing Orders. Failure to do this could result in the Council complying with the regulations but still being found to have breached the officer's contracts. Changing the Contracts of Employment will mean consulting with the officers and agreeing new contracts.

7.12 If a Panel is established it is clear that the regulations do not envisage that the Panel will necessarily carry out any investigation itself. Ultimately therefore, it may be that an external investigator will need to be appointed to advise the panel before they report to the Council meeting.

## **8. Finance**

8.1 The appointment of a Designated Independent Person in cases in Rotherham has not proved to be costly. The requirement for this appointment has now been removed. Payment to an Independent Person on the Independent Panel is limited to the level of remuneration which they would normally receive as an Independent Person in the standards regime. In Rotherham this is presently an annual payment of £710. Council on 22nd May 2015 resolved that the allowances should be...to be completed. However if an investigation into any issues relating to any of the three officers is needed and an independent investigation is required, then this may have financial repercussions.

## **9. Risks and Uncertainties**

9.1 These are statutory provisions which may, in future, be tested in court proceedings.

## **10. Background Papers and Consultation**

(1) Relevant legislative documents

(2) Consultation was carried out by the Government before these provisions were introduced.

- (3) As the regulations were introduced with little notice consultation with the officers involved has not been possible and this will be commenced as soon as possible.

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### 30 Appointment of chief officers

(1) Subject to standing order 30A, where the Council proposes to appoint a chief officer, and it is not proposed that the appointment be made exclusively from among its existing officers, the Council shall establish a panel of members ("the Appointments Panel") to carry out the steps specified in sub-paragraphs (2) and (3) and appoint the chief officer.

(2) The Appointments Panel shall –

(a) draw up a statement specifying –

- (i) the duties of the officer concerned, and
- (ii) any qualifications or qualities to be sought in the person to be appointed;

(b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

(c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

(3) Where a post has been advertised as provided in sub-paragraph (2) (b), the Appointments Panel shall –

(a) interview all qualified applicants for the post; or

(b) select a short list of the qualified applicants and interview those included on the short list; or

(c) make further arrangements for advertisement, in accordance with sub-paragraph (2) (b), where no qualified person has applied for the post.

(4) In this standing order "chief officer" means any of the officers specified in paragraphs (a) to (d) of standing order 30A (2).

### 30A Appointment, dismissal and disciplinary proceedings against a member of staff

(1) Subject to sub-paragraphs (2) and (7), the function of appointing, dismissing and taking disciplinary action against a member of staff must be discharged on the Council's behalf by the Chief Executive, who is designated under section 4 (1) of the Local Government and Housing Act 1989 (designation and reports of head of paid service) as the head of the authority's paid service, or by an officer nominated by him.

(2) Sub-paragraph (1) shall not apply to the appointment or dismissal of, or disciplinary action against –

(a) the Chief Executive;

(b) a statutory chief officer within the meaning of section 2 (6) of the Local Government and Housing Act 1989 (politically restricted posts);

(c) a non-statutory chief officer within the meaning of section 2 (7) of the 1989 Act;

(d) a deputy chief officer within the meaning of section 2 (8) of the 1989 Act; or

(e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

(3) Where a committee, sub-committee or an officer is discharging on the Council's behalf the function of appointing the Chief Executive, the Council must approve that

appointment before an offer of appointment is made to him/her.

(4) Where a committee or a sub-committee is discharging on the Council's behalf the function of appointing any officer referred to in paragraph (a), (b), (c) or (d) of sub-paragraph (2), at least one member of the Cabinet must be a member of that committee or sub-committee.

Where a committee, or sub-committee is discharging on the council's behalf the function of dismissing any officer referred to in paragraph (b) (c) or (d) of sub-paragraph (2), at least one member of the cabinet must be a member of that committee or sub-committee.

(5) An offer of appointment as an officer referred to in paragraph (a), (b), (c) or (d) of sub-paragraph (2) must not be made by the Council, a committee, sub-committee or an officer of the Council ("the appointor") until –

(a) the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;

(b) the proper officer has notified every member of the Cabinet of –

- (i) the name of the person to whom the appointor wishes to make the offer;
- (ii) any other particulars relevant to the appointment which the appointor has notified to the proper officer;
- (iii) the period within which any objection to the making of the offer is to be made by the Leader on the Cabinet's behalf to the proper officer; and

(c) either –

- (i) the Leader has, within the period specified in the notice under paragraph (b)(iii), notified the appointor that neither he/she nor any other member of the Cabinet has any objection to the making of the offer;
- (ii) the proper officer has notified the appointor that no objection was received by him/her within that period from the Leader; or
- (iii) the appointor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

(6) Notice of the dismissal of an officer referred to in paragraph (b), (c) or (d) of sub-paragraph (2) must not be given by the Council, a committee, sub-committee or an officer of the Council ("the dismissor") until –

(a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;

(b) the proper officer has notified every member of the Cabinet of –

- (i) the name of the person whom the dismissor wishes to dismiss;
- (ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer;
- (iii) the period within which any objection to the dismissal is to be made by the Leader on the Cabinet's behalf to the proper officer; and

(c) either –

- (i) the Leader has, within the period specified in the notice under paragraph (b)(iii), notified the dismissor that neither he/she 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/her within that period from the Leader; or
- (iii) the dismissor is satisfied that any objection received from the Leader within that

period is not material or is not well-founded.

(7) Nothing in sub-paragraph (1) shall prevent a person from serving as a member of any committee or sub-committee established by the Council to consider an appeal by –

(a) another person against any decision relating to the appointment of that other person as a member of staff of the Council; or

(b) a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

(8) In this standing order –

“disciplinary action” means in relation to a member of staff any action occasioned by alleged misconduct which, if proved, would according to the Council’s usual practice 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 Council has undertaken to renew such a contract;

“member of staff” means a person appointed to or holding a paid office or employment under the Council; and

“proper officer” means the officer appointed by the Council for the purposes of this standing order.

### **31 Disciplinary action against the Chief Executive (Head of Paid Service), the Monitoring Officer or the Chief Finance Officer**

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**);

(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**);

(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(**d**) 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.”