

## County Council

17 June 2015



### **Changes to the Constitution – Compliance with New Regulations for the dismissal of senior officers**

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## **Report of Colette Longbottom, Head of Legal and Democratic Services**

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### **Purpose of the Report**

1. To propose amendments to the Constitution following the publication of new regulations regarding local authorities' procedures for disciplining and dismissing Senior Officers.

### **Background**

2. The Head of Paid Service, the Chief Finance Officer and the Monitoring Officer have statutory responsibilities to discharge in their roles to their councils. As they work with and report to elected members these responsibilities are discharged in a political environment and consequently they have a statutory protection that requires the appointment of a Designated Independent Person ("DIP") to investigate any allegation of misconduct against these senior officers was introduced in the Local Authorities (Standing Orders) (England) Regulations 2001.
3. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the 2015 Regulations) came into force on 11 May 2015 with the aim of simplifying and localising more the disciplinary process. Instead of the DIP process, the final decision to dismiss any statutory officer must now be taken by Full Council, and before taking that decision, Council must invite at least two independent Persons to be members of a Panel and Council must take into account any advice, views or recommendations of that Panel before taking a decision to dismiss.

### **Independent Persons**

4. In the case of proposed disciplinary action against a statutory officer, the Council is required to invite the independent persons who have been appointed for the purposes of the member's Code of Conduct regime to become part of the advisory Panel. The two or more independent persons should be issued with invitations in the following priority order:
  - an Independent Person who has been appointed by the Council and who is a local government elector

- any other Independent Person who has been appointed by the Council; and
  - an Independent Person who has been appointed by another council or councils
5. The Regulations limit the remuneration that should be paid to independent persons on the panel to the level of remuneration which they would normally receive as an independent person in the Code of Conduct regime.
  6. The Council appointed two independent Persons under the members Code of Conduct regime in 2012. They have been notified of the widening of their role under the 2015 Regulations including that they may be approached by other local authorities in the region to be appointed to their panels in accordance with the priority order outlined in paragraph 4.

### **The Panel**

7. The Panel is a committee of the Council and the Chief Officer Appointments Committee is the Committee to which the independent persons will be co-opted to.
8. The Regulations are silent upon whether the independent persons must be voting members of the Panel but the purpose of their inclusion would appear to be negated if they did not have votes.

### **Changes to the Constitution**

9. The functions of Full Council contained in Part 3, Section A of the constitution require amendment and the proposed changes are shown highlighted in Appendix 2.
10. The functions of the Chief Officer Appointments Committee contained in Part 3, Section A of the constitution currently have designated responsibility for the dismissal of the chief officers should the need ever arise and will therefore also require amendment and the proposed changes are shown highlighted in Appendix 3.
11. The Officer Employment Rules contained in Part 4 of the constitution require amendment and the proposed changes are shown highlighted in Appendix 4.
12. Constitution Working Group agreed at its meeting on 29 May 2015 to recommend that Council agree the changes proposed to the Constitution.

### **Recommendations and reasons**

13. To approve the proposed changes to the Constitution to incorporate the new disciplinary procedures for Head of Paid service, Chief Finance Officer and Monitoring Officer introduced by the 2015 Regulations.

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## **Appendix 1: Implications**

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**Finance** – None specific within this report

**Staffing** – None specific within this report

**Risk** - None specific within this report

**Equality and Diversity / Public Sector Equality Duty** - None specific within this report

**Accommodation** - None specific within this report

**Crime and Disorder** - None specific within this report

**Human Rights** - None specific within this report

**Consultation** - None specific within this report

**Procurement** - None specific within this report

**Disability Issues** – None specific within this report

**Legal Implications** – Implementation of the proposed changes to the constitution will ensure that the Council complies with its statutory obligations.

## Appendix 2: Functions of Full Council

Council Body	Membership	Functions
Full Council	All 126 Members	<ol style="list-style-type: none"> <li>1. Subject to any provision of regulations under section 20 (joint exercise of functions) of the 2000 Act, the functions of -               <ol style="list-style-type: none"> <li>(a) making arrangements for the discharge of functions by a joint committee or officer under section 101(5) of the 1972 Act; and</li> <li>(b) making appointments under section 102 (appointment of committees) of the 1972 Act.</li> </ol> </li> <li>2. Functions relating to elections as set out in Section D of Schedule 1 to the 2000 Regulations</li> <li>3. Functions relating to name and status of areas and individuals as set out in Section E of Schedule 1 to the 2000 Regulations.</li> <li>4. Functions relating to changing governance arrangements as set out in Section EA of Schedule 1 to the 2000 Regulations.</li> <li>5. Making an order giving effect to recommendations made in a community governance review under section 86 (reorganisation of community governance) of the 2007 Act.</li> <li>6. Functions relating to community governance as set out in Section EB of Schedule 1 to the 2000 Regulations.</li> <li>7. Power to make, amend and revoke byelaws.</li> <li>8. Promotion or opposition of local or personal Bills.</li> <li>9. Power to make standing orders.</li> <li>10. Power to make standing orders as to contracts.</li> <li>11. Powers in relation to staff under section 112 of the 1972 Act unless delegated to a committee or an officer.</li> <li>12. Duty to make arrangements for the proper administration of the Council's financial affairs.</li> <li>13. Appointment of "proper officers" for particular purposes under the 1972 Act.</li> <li>14. Duty to designate an officer as the head of the council's paid service and to designate an officer as the monitoring officer and to provide them with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.</li> <li>15. Dismissal of Statutory Officers in accordance with the procedure set out in the Officer Employment Procedure Rules.</li> <li>16. Functions relating to sea fisheries</li> </ol>

### Appendix 3: Chief Officer Appointments Committee

<p>Chief Officer Appointments Committee</p>	<p>11 Members of the Council including the Leader and Deputy Leader</p> <p>2 voting co-opted Independent Persons to be appointed in the case of proposed disciplinary action against a Statutory Officer</p>	<p>Appointment and dismissal of the Chief Executive (subject to confirmation by the full council) and chief officers and associated functions under Section 112 of the Local Government Act, 1972 in relation to those officers.</p> <p>Dismissal of Chief Officers, subject to the provisions contained in the Officer Employment Procedure Rules regarding the dismissal of Statutory Officers.</p> <p>Appointment and dismissal of the Director of Public Health (committee to act as advisory appointments committee, the appointment is subject to the approval of the Secretary of State for Health)</p> <p>To make recommendations to Full Council regarding a decision to dismiss a Statutory Officer</p>
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## **Appendix 4: Officer Employment Procedure Rules**

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### **1. Recruitment and appointment**

#### **(a) Declarations**

- (i) The Council has drawn up procedures which include a requirement that any candidate for an appointment as an officer must state in writing whether they have **any** relationship with any councillor or officer of the Council;
- (ii) No candidate so related to a Councillor or a senior officer will be appointed without the authority of the relevant Chief Officer or an officer nominated by him.

#### **(b) Seeking support for appointment**

- (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) No Councillor will seek support for any person for any appointment with the Council.

### **2. Recruitment of Chief Executive and Chief Officers**

Where the Council proposes to appoint a Chief Executive or a chief officer and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will:

- (a) draw up a statement including the following:
  - (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 procedures mentioned in paragraph (1) to be sent to any person on request.

### 3. **Appointments and Dismissals**

#### 1. **Chief Officers**

In this paragraph –

“the Committee” means the Chief Officer Appointments Committee.

“Statutory Officers” means the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer

“the proper officer” means the Head of Legal and Democratic Services

“relevant independent persons” means any independent person who has been appointed by the authority under s28(7) of the Localism Act 2011 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.

- (a) The appointment and dismissal of the Chief Executive, Chief Officers and any assistant for political groups (appointed in pursuance of Section 9 of the Local Government Housing Act 1989) is the responsibility of the Committee, subject to paragraph e) which sets out the procedure to be followed for the dismissal of a Statutory Officer as defined in this Paragraph.
- (b) At least one member of the Executive must be a member of the Committee.
- (c) Where the Committee is proposing to appoint ~~or dismiss~~ the Chief Executive, the County Council must approve that appointment before the offer of appointment is made ~~or must approve that dismissal before notice of dismissal is given.~~
- (d) The Committee shall not make an offer of appointment in relation to any of the officers named in (a) above (apart from an assistant for political groups) until;
  - (1) The Committee has notified the proper officer of the name of the person to whom the Committee wishes to make the offer and any other particulars which the Committee considers are relevant to the appointment;
  - (2) The proper officer has notified every member of the Executive of the authority of:
    - (i) The name of the person to whom the Committee wishes to make the offer;
    - (ii) Any other particulars relevant to the appointment which the Committee has notified to the proper officer; and

- (iii) The period within which any objection to the making of the offer is to be made by the Executive Leader on behalf of the Executive to the proper officer; and
- (3) Either:
  - (i) The Executive Leader has, within the period specified, notified the Committee that neither he nor any other member of the Executive has any objection to the making of the offer;
  - (ii) The proper officer has notified the Committee that no objection was received by him within that period from the Executive Leader; or
  - (iii) The Committee is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.

(e) A Statutory Officer may not be dismissed unless the following procedure is complied with;

- (i) The Council must invite relevant independent persons to be considered for appointment to the Committee, with a view to appointing at least two such persons to the Committee.
- (ii) The Council must appoint to the Committee such relevant independent persons who have accepted an invitation issued in accordance with 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 relevant independent person who has been appointed by the Council
  - c. A relevant independent person who has been appointed by another authority or authorities.
- (iii) The Council is not required to appoint more than two relevant independent persons but may do so.
- (iv) The Committee must convene at least 20 working days before a meeting of the Full Council to consider whether or not to approve a proposal to dismiss a statutory officer.
- (v) Before the taking of a vote at a meeting of the Full Council on whether or not to approve such a dismissal, the Council must take into account, in particular –
  - a. Any advice, views or recommendations of the Committee



- b. The conclusions of any investigation into the proposed dismissal; and
  - c. Any representations from the Statutory Officer
- (vi) Any remuneration, allowances or fees paid by the Council to an independent person appointed to the Committee must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as an independent person under the Localism Act 2011.
- (f) Notice of the dismissal of an officer named in (a) above must not be given by the Committee until –
- (1) The Committee has notified the proper officer of the name of the person who the Committee wishes to dismiss and any other particulars which the Committee considers are relevant to the dismissal;
  - (2) The proper officer has notified every member of the Executive of the Authority of:
    - (i) The name of the person who the Committee wishes to dismiss;
    - (ii) Any other particulars relevant to the dismissal which the Committee has notified to the proper officer; and
    - (iii) The period within which any objection to the dismissal is to be made by the Executive Leader on behalf of the Executive to the proper officer; and
  - (3) Either –
    - (i) The Executive Leader has, within the period specified, notified the Committee that neither he nor any other member of the Executive has any objection to the dismissal;
    - (ii) The proper officer has notified the Committee that no objection was received by him within that period from the Executive Leader; or
    - (iii) The Committee is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.
- (g) Where a member of the Executive attends the Committee set up to deal with a particular appointment or dismissal then such attendance shall constitute notice of and compliance with the requirements of (d) and (e) above.

## 2. **Director of Public Health**

- a) The appointment of the Director of Public Health who is appointed in pursuance of Section 73A(7) of the National Health Service Act 2006 (inserted by section 30 of the Health and Social Care Act 2012) is the responsibility of the Chief Officer Appointments Committee acting as the Advisory Appointments Committee, subject to the approval of the appointment by the Secretary of State for Health.
- b) The Committee will be chaired by the cabinet member of the Health and Wellbeing Board and also include the following
  - (i) An external professional assessor appointed after consultation with the Faculty of Public Health and agreed by Public Health England
  - (ii) The chief executive of the Council or his/her nominated deputy
  - (iii) Senior NHS representation
  - (iv) The Public Health England Regional Director, or another senior professionally qualified member of Public Health England acting on his/her behalf
  - (v) And in the case of appointments to posts which have either teaching or research commitments, or both, the committee should also include a professional member nominated after consultation with the relevant university
- c) Under the current Faculty of Public Health guidance, the overall balance on the Committee is required to have a local and a professional majority.
- d) The Council is required to seek advice and recommendations from Public Health England on the membership of the Committee, including the assessor. It is for the council to decide whether both a medical assessor and non-medical assessor are required.
- e) Assessors must be geographically distant and will normally be from outside the area of the Public Health England Unit where the post is being advertised to maximise objective assessment.
- f) The Council will advise the Secretary of State for Health of their preferred candidate and confirmation of their professional competence, compliance with statutory regulation and necessary registration to undertake the role.
- g) The Advisory Appointments Committee may terminate the appointment of the Director of Public Health following prior consultation with the Secretary of State for Health.

### 3. **Other Officers**

- (a) Appointment and dismissal of officers below Chief Officer is the responsibility of the Chief Executive or his nominee, and may not be undertaken by councillors.
- (b) Councillors will not be involved in disciplinary action against any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct or where the Council's disciplinary, capability and related procedures, as adopted from time to time, allow a right of appeal to Members.

### 4. **Disciplinary Action**

In this paragraph –

“disciplinary action” includes proposed dismissal for any reason other than redundancy, permanent ill-health or failure to renew a fixed term contract, planned retirement and early retirement and unsatisfactory probationary periods.

#### (a) **Written Procedures**

- (i) Disciplinary action against the ~~Chief Officers referred to in 3(a) above~~ and against the Monitoring Officer will be taken in accordance with the County Council's Chief Officer Procedures, subject to paragraph 1(e).
- (ii) Disciplinary action against all other officers will be taken in accordance with the County Council's Local Disciplinary Policy Procedure and Toolkit.

#### ~~(b) **Independent Person**~~

~~No disciplinary action may be taken under 4(a)(i) above except in accordance with a recommendation in a report made by a designated independent person.~~

#### (be) **Suspension**

An officer named in 3(a) above and the Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct. The suspension will be on full pay.

### 5. **Appeals**

None of the above shall prevent a Councillor serving as a member of an appeals committee or body established to consider an appeal by:

- (i) any person against any decision relating to the appointment of that person as a member of staff of the authority; or
- (ii) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff unless the dismissal relates to a capability issue, misconduct, some other substantial reason, some other statutory enactment or planned retirement where the member of staff has less than six months' notice – in these instances the appeal shall be conducted by a senior officer.

## **6. Appointment of Political Assistants**

For the purposes of Section 9(2)(d) of the Local Government and Housing Act 1989 (the 1989 Act):

- (a) no appointment shall be made to any post allocated to a political group until the Council has allocated a post to each of the groups which qualify for one;
- (b) no political group shall be allocated a post unless it qualifies for one under the 1989 Act; and
- (c) no political group shall be allocated more than one post.