

North Tyneside Council

Report to Council

Date: 18 June 2015

ITEM 4

Title: Revised Dismissal
Procedures for Statutory
Officers

Portfolio(s): Deputy Mayor

Cabinet Member(s): Councillor B
Pickard

Report from Service Area: Law and Governance

Responsible Officer: Vivienne Geary, Head of Law and Governance (Tel: (0191) 643 5339)

Wards affected: All Wards

PART 1

1.1 Purpose:

To amend the Authority's arrangements relating to the dismissal of the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (the Statutory Officers) for capability, conduct or some other substantial reason.

The amendments are required by the Local Authorities (Standing Orders) (Amendment) Regulations 2015 (the 2015 Regulations).

1.2 Recommendation(s):

It is recommended that Council:

1. adopt the changes to the Authority's Constitution as set out in Appendix 1 to this report by:
 - a) amending the terms of reference of the Appointments and Disciplinary Committee to require a recommendation proposing the dismissal of a Statutory Officer for capability, conduct or for some other substantial reason to be referred to Full Council;
 - b) amending the Officer Employment Rules of Procedure to take account of the above changes;
 - c) providing for the Authority's Independent Persons to attend and observe any disciplinary hearing involving a Statutory Officer undertaken by the Appointments and Disciplinary Committee;
 - d) establishing a Dismissal Advisory Committee comprising the Authority's Independent Persons with responsibility for providing advice to Full Council on matters relating to a proposal to dismiss a Statutory Officer;

2. appoint Mr G Clark and Ms S Gardner, the Authority's Independent Persons, as the members of the Dismissal Advisory Committee;
3. grant delegated authority to the Head of Law and Governance in consultation with the Elected Mayor and Strategic Manager Finance to determine, following consultation with the other Authorities in the region, the level of remuneration to be paid to the Independent Persons when acting in disciplinary proceedings involving a Statutory Officer; and
4. grant delegated authority to the Head of Human Resources to seek the agreement of the Statutory Officers to a variation of their contracts of employment in so far as such contracts are incompatible with the 2015 Regulations.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 18 May 2015.

1.4 Council Plan and Policy Framework

This report does not relate to any of the priorities in the 2014/18 Our North Tyneside Plan.

1.5 Information:

Background – The Previous Arrangements

- 1.5.1 The Local Authorities (Standing Orders) (England) Regulations 2001 required every Authority to incorporate into its Constitution provisions which ensured that:
 - a) the final decision to dismiss the Head of Paid Service had to be taken by a Full Council meeting; and
 - b) the Authority could only take disciplinary action in respect of any of the three statutory officers (the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer) in accordance with the report and recommendations of a Designated Independent Person (a "DIP").
- 1.5.2 The appointment of the DIP had to be agreed between the Authority and the Statutory Officer who was subject to disciplinary proceedings, or in default appointed by the Secretary of State. The DIP had to be appointed as soon as the Authority identified that there was a matter which might result in disciplinary action, and the DIP's approval was required to extend the suspension of a Statutory Officer beyond two months.
- 1.5.3 The Government has been concerned that the requirement for and the involvement of the DIP made it very difficult for employing Authorities to dismiss a Statutory Officer for misconduct, and that it also led to excessive severance/settlement payments to remove a Statutory Officer from their post.

The New Requirements

- 1.5.4 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the 2015 Regulations) amend the 2001 Regulations. The main changes provided by the 2015 Regulations are that –

- i. the final decision to dismiss any of the Statutory Officers must be by resolution of full Council;
- ii. the requirement to appoint, or to act in accordance with the report and recommendations of a DIP is removed;
- iii. the Authority must appoint a Committee to provide advice to the Full Council on a recommendation relating to dismissal of a Statutory Officer. This Committee must be made up of at least two "Independent Persons"; and
- iv. before taking a vote on whether to approve a proposal to dismiss a Statutory Officer, the Full Council must take into account, in particular—
 - (a) any advice, views or recommendations of the Committee detailed above;
 - (b) the conclusions of any investigation into the allegations against the Statutory Officer; and
 - (c) any representations from the Statutory Officer who is the subject of the proposed dismissal.

1.5.5 The 2015 Regulations provide little detail on how the new process will operate in practice and there remain issues that will require clarification. Discussions have been ongoing with neighbouring authorities in relation to the implementation of the changes required by the 2015 Regulations and at a national level the Local Government Association has written to the Government seeking further advice and clarification on the operation of the revised arrangements. The consultations with neighbouring authorities have identified a wish to have a consistent and similar approach to the application of the new arrangements in our region.

1.5.6 Despite the issues regarding the operation of the revised arrangements the Authority is required to amend the Constitution to give effect to the Regulations at its first Council meeting following the 2015 elections. The proposed amendments to the Constitution set out in Appendix 1 will allow the Authority to be compliant with the requirements of the Regulations as amended.

1.5.7 When additional guidance and advice emerges a further report to Council may be necessary to undertake additional changes to the arrangements the Authority has in place.

The Dismissal Advisory Committee

1.5.8 The 2015 Regulations require that the Authority appoints a Committee for the purpose of advising the Authority on matters relating to the dismissal of Statutory Officers. The Authority must ensure this Committee is in place at least 20 working days before the Full Council meeting at which the decision whether or not to approve a proposal to dismiss a Statutory Officer will be taken. It is proposed that this Committee be called the "Dismissal Advisory Committee" and be established as a standing committee of the Authority. The Terms of Reference of this Committee are set out in Appendix 1.

1.5.9 The Disciplinary Advisory Committee must be made up of at least two Independent Persons, who are defined in the Regulations as a person appointed under section 28(7) of the Localism Act 2011.

“The Independent Persons”

- 1.5.10 As detailed above the 2015 Regulations require the appointment of at least two Independent Persons to the Committee. These are the same "Independent Persons" whom the Authority is required to appoint for the purpose of standards proceedings in respect of complaints of member misconduct under the Code of Conduct for Members. The Regulations set out how such Independent Persons are to be invited to join the Committee. Where an Authority has fewer than two Independent Persons available, an Independent Person appointed by another Authority could sit on the Dismissal Advisory Committee.
- 1.5.11 The Authority's two Independent Persons have indicated that they are willing to undertake the additional duties imposed by the 2015 Regulations and to sit as members of the Dismissal Advisory Committee.
- 1.5.12 The Authority may resolve to remunerate the Independent Persons appointed to the Committee but this 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 in respect of standards complaints under the Code of Conduct.
- 1.5.13 It is likely that the payment of any remuneration to the Independent Persons for participating in the Committee will be on a sessional/hourly rate basis but discussions are ongoing with regional colleagues to achieve a consensus in relation to remuneration.
- 1.5.14 It is therefore recommended that Council grants delegated authority to the Head of Law and Governance in consultation with the Elected Mayor and the Strategic Manager Finance to determine, following consultation with the other Authorities in the region, the level of remuneration to be paid to the Independent Persons when they are actively involved in disciplinary proceedings involving a Statutory Officer.

The effect of the changes on the Authority's Constitution

- 1.5.15 In addition to the new terms of reference for the Dismissal Advisory Committee, amendments will be necessary to the Officer Employment Procedure Rules and to the terms of reference of the Appointments and Disciplinary Committee. The required amendments to the Constitution to comply with the new Regulations are set out in Appendix 1 to this report.
- 1.5.16 The Authority currently has an Appointments and Disciplinary Committee (chaired by the Elected Mayor) with (inter alia) responsibility for dealing with issues of conduct in relation to the Chief Executive and Heads of Service.
- 1.5.17 The changes provided by the 2015 Regulations mean that in respect of the Authority's Statutory Officers the decision to dismiss one of those Officers can only be taken by a Full Council meeting. The changes do not affect other Heads of Service and the Committee will be able, under its current terms of reference, to dismiss these Officers without reference to Full Council.
- 1.5.18 The Appointments and Disciplinary Committee remains responsible for undertaking the disciplinary hearing in relation to allegations made against a Statutory Officer (in the same way as other Heads of Service) however the Committee will, where it considers it appropriate (after hearing all the evidence) to dismiss a Statutory Officer, make a recommendation for dismissal to Full Council. Where the Committee considers disciplinary action less than dismissal is appropriate (for example, a final written warning) there is no requirement for this decision to be referred to Full Council.

- 1.5.19 It will be the role of the Dismissal Advisory Committee to provide independent advice to the Full Council meeting that will consider the recommendation of the Appointment and Disciplinary Committee to dismiss a Statutory Officer. For this purpose it will be necessary for the Independent Persons to observe the disciplinary hearing undertaken by the Appointments and Disciplinary Committee and have access to all the papers presented to that Committee.
- 1.5.20 The proposed amendments to the Authority's Constitution have been considered by the Constitution Task Group.

Contracts of Employment

- 1.5.21 The 2008 JNC Conditions of Service for Local Authority Chief Officers are incorporated into the terms and conditions of service of a Monitoring Officer and a Chief Finance Officer. The 2009 JNC Conditions of Service for Local Authority Chief Executives are incorporated into the terms and conditions of service of a Head of Paid Service/Chief Executive. Both Conditions of Service include a model disciplinary procedure which includes the requirement for the appointment of a DIP, a requirement for an Investigating and Disciplinary Committee comprising a recommended 5 members, and the limitation to disciplinary action in accordance with the report and recommendation of the DIP. Whilst this is a model disciplinary procedure, it is considered that it has become incorporated into the relevant officers' terms and conditions of employment.
- 1.5.22 The enactment of the 2015 Regulations does not automatically remove these features from current terms and conditions of employment. As a result a dismissal conducted in accordance with the 2015 Regulations may be in breach of the relevant officer's contract of employment. Accordingly, it is necessary for the Authority to write to each relevant officer and seek their agreement to a variation of their contract of employment in so far as such contracts are incompatible with the 2015 Regulations.

The Executive Objection Procedure

- 1.5.23 The Executive Objection Procedure, set out in Schedule 3 to the 2001 Regulations, remains in force. So, where the Appointments and Disciplinary Committee resolves to recommend to the Full Council meeting that a Statutory Officer be dismissed, notice will still have to be given to all members of the Executive, and the Elected Mayor then has a prescribed period to submit any objections or representations, which must be considered by the Full Council meeting when it considers the recommendation of the Appointments and Disciplinary Committee and advice of the Dismissal Advisory Committee.

1.5 Decision options:

The following decision options are available for consideration by Council:

Option 1

To adopt the amendments to the Authority's Constitution as set out in Appendix 1.

Option 2

To reject the amendments to the Authority's Constitution and request Officers to undertake additional work on the proposed amendments.

Option 1 is the recommended option.

1.6 Reasons for recommended option:

Option 1 is recommended for the following reasons:

The Authority is required to adopt the changes to its Constitution in relation to its arrangements relating to the dismissal of Statutory Officers at its first ordinary Council Meeting following the recent Local Government elections in May 2015.

1.7 Appendices:

Appendix 1: Proposed Changes to the Constitution.

1.8 Contact officers:

Stephen Ballantyne – Lawyer Specialist: Governance and Employment, tel. (0191) 643 5329

Alison Campbell – Senior Business Partner, tel. (0191) 643 7038

1.9 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015
- (2) Local Government Association Advisory Bulletin No.624
- (3) The Authority's Constitution

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There would be additional resources implications relating to the payment of remuneration to the Independent Persons appointed to the Committee when it considers disciplinary action in respect of a Statutory Officer. These additional costs can be met from existing budgets within Customer Liaison and Member Services.

2.2 Legal

The legal implications of the requirements of the 2015 Regulations are set out in the body of this report.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

The proposed changes to the Authority's Constitution have been considered by the Constitution Task Group.

The relevant recognised Trade Unions have been advised of the requirements of the 2015 Regulations and the proposed amendments to the terms and conditions of employment of the Statutory Officers.

2.3.2 External Consultation/Engagement

Discussions have been ongoing with neighbouring authorities in relation to the implementation of the changes required by the 2015 Regulations and at a national level the Local Government Association has written to the Government seeking further advice and clarification on the operation of the revised arrangements. The consultations with neighbouring authorities have identified a wish to have a consistent and similar approach to the application of the new arrangements in our region.

2.4 Human rights

There are no human rights implications arising directly from this report.

2.5 Equalities and diversity

There are no equalities and diversity implications arising directly from this report.

2.6 Risk management

The Authority is required by the 2015 Regulations to amend its procedures in relation to disciplinary action taken against a Statutory Officer. Failure to implement the required changes would mean the Authority was not in compliance with the requirements of the 2015 Regulations.

2.7 Crime and disorder

There are no crime and disorder implications arising directly from this report.

2.8 Environment and sustainability

There are no environment and sustainability implications arising directly from this report.

PART 3 - SIGN OFF

- Deputy Chief Executive
- Head(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy

1. Revised Terms of Reference for the Appointments and Disciplinary Committee.
2. Revised Officer Employment Rules of Procedure.
3. Proposed Term of Reference for the Dismissal Advisory Committee.