

Agenda item: 

**Title of meeting:** Governance & Audit & Standards (G&A&S)  
Full Council

**Date of meeting:** 26<sup>th</sup> June 2015  
7<sup>th</sup> July 2015

**Subject:** Changes to the designated independent person dismissal procedures

**Report From:** Director of HR, Legal & Performance

**Report by:** Paddy May, Corporate Strategy Manager

**Wards affected:** All

**Key decision:** No

**Full Council decision:** YES

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**1. Purpose of report**

- 1.1. To inform members of a change to the procedures that must be followed for the dismissal of designated posts (Head of Paid Service, Monitoring Officer or Chief Finance Officer) using a designated independent person and to seek, from G&A&S, a recommendation to council to amend the Council's *Officers' Employment Procedure Rules in Part 3D of the Constitution* to reflect these new procedures. Members are also asked to agree that a copy of the report should be sent to Employment Committee for information.

**2. Recommendations**

- 2.1. That the new process for dismissal of a designated person (set out in paragraphs 4.1-4.3) be noted.
- 2.2. That Full Council agrees that the Officers' Employment Procedure Rules in Part 3D of the Constitution be amended to reflect the change in process. The proposed changes are attached as Appendix 1
- 2.3. That the Director of Legal, HR and Performance be tasked with the creation of any such panel if it is required
- 2.4. That this report be sent to Employment Committee for information.

**3. Background**

- 3.1. The Heads of Paid Service, the Monitoring Officers and the Chief Finance Officers (S151 officer) all have statutory responsibilities to discharge to their councils. As they work with, and report to elected members, they discharge

these responsibilities in a political environment. Any allegation of misconduct against any of these officers has to be undertaken by a Designated Independent Person (DIP) and no disciplinary action can be taken other than that which has been recommended in a report by the DIP.

- 3.2. The purpose of this requirement is to ensure that these officers can discharge their duties without any fear of being influenced by elected members or of being dismissed without good reason. However there is concern that the process of appointing a DIP and undertaking an investigation is bureaucratic, complex, time consuming and expensive. The Local Government Association (LGA) has estimated that the minimum legal cost of this process is £100k (excluding the cost of undertaking the actual investigation, preparing the case or briefing lawyers). In practice most local authorities appoint a barrister with experience of employment law as their DIP.

#### **4. The proposed new arrangements**

- 4.1 The intention of the new regulations is to "simplify and localise the disciplinary process for the most senior officers". The requirement to appoint a DIP will be removed and instead a decision will be taken by Full Council who must consider:
- any advice, views or recommendations from an independent panel
  - the conclusions of any investigation into the proposed dismissal
  - any representations from the officer concerned.
- 4.2 If a council wishes to undertake a disciplinary process against the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer it must invite independent persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to form an independent panel. A panel will be formed if two or more independent persons accept the invitations. Councils should issue invitations in accordance with the following priority order:
- an independent person who has been appointed by the council and who is a local elector
  - any other independent person who has been appointed by the council
  - an independent person who has been appointed by another council or councils
- 4.3 The regulations limit the remuneration that should be paid to the independent persons on the panel to the level that they would receive as an independent person in the conduct regime. It is suggested that this will significantly reduce the costs of any process. The revised arrangements are to come into force by councils modifying their standing orders. Within Portsmouth our process is described in our "Officers' Employment Procedure Rules in Part 3D of the Constitution" rather than in our standing orders. Councils should make this modification no longer than at the first ordinary council meeting held after the 7 May election. This is the first meeting after the Council's Annual Meeting. For Portsmouth, this means that the recommended changes should be taken to the Council meeting scheduled for 7 July 2015.
- 4.4 The wording of the Officers' Employment Procedure Rules in Part 3D of the Constitution, including the proposed changes that will need to be made, is

attached as Appendix 1. In terms of the need to set up any such panel it is recommended that this responsibility should not rest with any of the posts that could be affected by this change in process. On this basis it is proposed that the Director of HR, Legal and Performance should have the responsibility to set up any panel that needs to be created.

4.5 There are a number of concerns that have been raised about these new requirements and these are detailed in Appendix 2.

**5. Reasons for recommendations**

5.1 The City Council is required to modify the procedures for taking disciplinary action against the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer. There is a requirement that the Council takes a report to the first Ordinary Council meeting after the elections to approve the changes to Standing Orders (or in Portsmouth's case the Officers' Employment Procedure Rules in Part 3D of the Constitution).

**6. Equality impact assessment (EIA)**

6.1 A preliminary EIA has been completed, indicating that there is no requirement for a full EIA at this stage.

**7. City Solicitor comments**

7.1 All legal comments are contained within the body of the report.

**8. Head of finance's comments**

8.1 No specific budget provision exists for such an event and should this situation arise, costs would represent a call on contingency.

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Signed by: Jon Bell, Director of HR, Legal & Performance Improvement

**Appendices:**

Appendix 1 - Proposed Officers' Employment Procedure Rules from Part 3D of the Constitution

Appendix 2 - Issues that have been raised nationally about the new process

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by: Name and Title

**Officers' Employment Procedure Rules in Part 3D of the Constitution****Part 3D - Officers' Employment Procedure Rules <sup>1</sup>**

These rules determine procedures to be followed in the recruitment of senior officers of the council and in any disciplinary action which may become necessary and the involvement of Members in such matters. Further details of the disciplinary process for senior officers are contained in relevant policies agreed by the Employment Committee.

1. Recruitment and appointment
  - (a) Declarations
    - i) The council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are related to, or in a relationship with, any existing councillor or employee of the council; or of the partner of such persons.
    - ii) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.
  - (b) Seeking support for appointment.
    - i) Subject to paragraph (iii), 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) Subject to paragraph (iii), no councillor will seek support for any person for any appointment with the council.
    - iii) Nothing in paragraphs (i) and (ii) above will preclude a councillor from giving a written reference for a candidate for submission with an application for appointment.
2. Recruitment of head of paid service and chief officers

Where the council proposes to appoint 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 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;
  - (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request;
3. Where a post has been advertised as provided in paragraph 2(b), the council shall -
  - (a) interview all qualified applicants for the post, or
  - (b) select a short list of such qualified applicants and interview those included on the short list.
4. Where no qualified person has applied the council shall make further arrangements for advertisement in accordance with paragraph 2(b),
5. The council may authorise a chief officer to carry out any or all of the steps in paragraphs 2, 3 and 4 above and unless the council otherwise directs, the chief executive is authorised to carry out those steps in respect of any chief officer post.

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<sup>1</sup> Last updated on [to be added]

## 6. **Appointment of head of paid service**

- (a) The arrangements for the appointment of the head of paid service (the chief executive) are reserved to the council<sup>2</sup>.
- (b) Where the Employment Committee or an appointments sub committee is acting on behalf of the authority, the full council must approve the appointment before an offer of appointment is made.<sup>3</sup>
- (c) The council may only make or approve the appointment of the head of paid service where no well-founded objection has been made by any member of the Cabinet.

## 7. **Appointment of chief officers**

- (a) The arrangements for and appointment of all chief officers and staff on the Joint National Council for Chief Officers conditions of service is delegated to the Employment Committee who are authorised to delegate any such process and appointment (including the terms of any contract for such appointment) to an 'appointments sub committee', which shall comprise such members as the Employment Committee thinks fit, but must include at least one member of the Cabinet.
- (b) An offer of employment under (a) above must not be made by the Employment Committee or the appointments sub committee until —
  - (i) the chief executive has been notified of the names of the shortlisted candidates together with any particulars considered relevant to the proposed appointment;
  - (ii) the chief executive has notified every member of the Cabinet of —
    - the names of the shortlisted candidates;
    - any particulars relevant to the proposed appointment of any of the shortlisted candidates;
    - the period within which any objection to the making of any offer is to be made by the Leader of the Council on behalf of the Cabinet; and
  - (iii) either —
    - The Leader has, within the period specified, notified the committee that the Cabinet has no objection to the making of any offer;
    - the chief executive has notified the committee that no objection was received from the Leader within the period specified; or
    - the committee is satisfied that any objection received from the Leader of the Council within the period specified is not material or is not well-founded.

## 8. **Other appointments**

- (a) Officers other than head of paid service and chief officers  
Appointment of officers on any other scheme of condition of service is the responsibility of the relevant chief officer or his/her nominee, and may not be made by councillors.

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<sup>2</sup> The head of paid service (usually referred to as the Chief Executive) is a statutory appointment pursuant to section 4 of the Local Government and Housing Act 1989.

<sup>3</sup> Paragraph 4 of Part 2 of Schedule 1 of the Local Authorities (Standing Orders) (England) Regulations 2001(as amended).

9. **Disciplinary action of Relevant Officers**

- (a) **Suspension.** The head of paid service, monitoring officer and chief finance officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. - *NB It is arguable (but not entirely clear) that the 2015 regulations require this paragraph to be removed.*
- (b) councillors will not be involved in disciplinary action against any officer other than those employed on the Joint National Council for Chief Officers conditions of service.

10. **Dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer**

- (a) In this paragraph 10:
- "the 2011 Act" means the Localism Act 2011;
  - "independent person" means a person appointed under section 28(7) of the 2011 Act;
  - "local government elector" means a person registered as a local government elector in the council's area
  - "The Panel" means a committee appointed by the council for the purposes of advising the council on matters relating to the dismissal of the head of paid service, the monitoring officer or the chief financial officer;
  - "relevant meeting" means a meeting of the full council to consider whether or not to approve a proposal to dismiss the head of paid service, the monitoring officer or the chief financial officer
- (b) Where the Employment Committee or a committee acting on its behalf is discharging on behalf of the council the function of dismissal of an officer designated as the head of paid service, as the monitoring officer or as the chief finance officer, the full council must approve that dismissal before notice of dismissal is given to that person.  
The head of paid service, monitoring officer or chief finance officer may not be dismissed unless the procedure set out in the following paragraphs 10(b) (i) to (vi) is complied with:
- (i) The council 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
  - (ii) In paragraph (i) "relevant independent persons" means any independent person who has been appointed by the council, or where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the council considers appropriate.
  - (iii) Subject to paragraph (iv), the council must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph (i) in accordance with the following priority order-
    - (1) a relevant independent person who has been appointed by the council and is a local government elector;

- (2) any other relevant independent person who has been appointed by the council;
- (3) a relevant independent person who has been appointed by another authority or authorities.
- (iv) the council is not required to appoint more than two relevant independent persons in accordance with paragraph (iii) but may do so.
- (v) The council must appoint any Panel at least 20 working days before the relevant meeting.
- (vi) Before the taking of the vote at the relevant meeting on whether or not to approve such a dismissal, the full council must take into account, in particular-
  - any advice, views or recommendations of the Panel;
  - the conclusions of any investigation into the proposed dismissal; and
  - any representations of the officer whose dismissal is being considered at the meeting
- (vii) Any remuneration, allowances or fees paid by the council 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.

**11. Dismissal of other Senior Officers**

- (a) councillors will not be involved in the dismissal of any officer other than those who are employed on the Joint National Council for Chief Officers conditions of service.
- (b) Where the Employment Committee or a committee acting on its behalf is discharging the function of dismissal of an officer on the Joint National Council for Chief Officers Conditions of Service, at least one member of the Cabinet must be a member of that committee.
- (c) Notice of the dismissal of an officer on the Joint National Council for Chief Officers Conditions of Service must not be given by the council, the Employment Committee, a sub committee or officer until —
  - (i) the chief executive has been notified of the name of the person whom it is proposed to dismiss and any particulars which are considered relevant to the dismissal;
  - (ii) the chief executive has notified every member of the Cabinet of —
    - the name of the person whom it is proposed to dismiss;
    - any particulars relevant to the proposed dismissal;
    - the period within which any objection to the proposed dismissal is to be made by the Leader of the Council on behalf of the Cabinet; and
  - (iii) either —
    - The Leader has, within the period specified, notified the committee or officer taking the decision that the Cabinet has no objection to the dismissal;
    - the chief executive has notified the committee or officer taking the decision that no objection was received from the Leader within the period specified; or
    - the committee or officer is satisfied that any objection received from the Leader of the Council within the period specified is not material or is not well-founded.



*(These Rules incorporate where required within paragraphs 6, 7, 8, 9, 10 and 11, the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001)(as amended).*

NOTE:

The term chief officer includes Directors.

## Appendix 2

### Issues that have been raised nationally about the new process

- 1) **Distinguishing between dismissal and disciplinary action**
  - a. The regulations state that the new independent panel process must be followed before a Chief Officer can be dismissed. No such obligation applies to other disciplinary action sanctions (unlike the current DIP process). However the view is that it is not often that a disciplinary process will be followed which will not have dismissal as a possible sanction.
  
- 2) **Expertise of the independent panel members**
  - a. It is thought that panel members appointed for the purpose of the members code of conduct under S28 of the Localism Act may well not have the necessary expertise to carry out the investigation and report. The authority will still need to ensure that a proper investigation is carried out as part of the process and so may need to appoint a DIP type person to undertake this role.
  
- 3) **Invites to the independent panel**
  - a. The regulations state that the authority must invite "relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two". It is thought that authorities will have to invite all their independent persons and then appoint in accordance with the priority order set by the regulations. An authority could have a panel larger than 2 and so the authority can decide on the size and the selection criteria (as long as it is line with the recommendations).
  
- 4) **Recommending a level of sanction**
  - a. There is no sanction recommendation requirement so the panel could opt out. Full Council could also decide on a more serious sanction than the panel recommended although this might cause a problem in any future tribunals.
  
- 5) **Who advises the panel?**
  - a. The regulations do not state who should advise the panel and so an authority may want to set up an advice system involving an external independent adviser.