

Agenda item:

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

Date of meeting: 26th June 2015
7th 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

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. The tracked changes version is attached as Appendix 2. 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 3.

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 - Tracked Changes Version of Proposed Officers' Employment Procedure Rules from Part 3D of the Constitution

Appendix 3 - 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 |
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The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: Name and Title