

Employment Committee

Meeting to be held on 17 July 2015

Electoral Division affected: None

Changes to the Designated Independent Person (DIP) Dismissal Procedures Applying to Senior Officers of the Council

(Annexes 1 and 2 refer)

Contact for further information:

Chris Mather, 01772 533559, Democratic Services

Chris.mather@lancashire.gov.uk

Executive Summary

This report sets out the mandatory changes to the Council's procedures that must be followed for the dismissal of the Head of the Paid Service (the Chief Executive), the Monitoring Officer and the Chief Finance Officer (the S151 officer).

Recommendation

The Committee is asked to consider the report and submit recommendations to the Full Council on changes to the Council's procedures for the dismissal of the Head of the Paid Service, the Monitoring Officer and the Chief Finance Officer.

Background and Advice

The Committee at its meeting on 11 May 2015 was informed that The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 were due to come into effect on 11 May 2015.

It was noted that the effect of the Regulations would essentially remove the requirement that a Designated Independent Person (DIP) be appointed to investigate and make a binding recommendation on disciplinary action against the Council's statutory officers – the Head of the Paid Service (the Chief Executive), the Monitoring Officer and the Chief Finance Officer (the S151 officer) and introduce instead a requirement to involve independent persons in the process. The requirement that Full Council must approve the dismissal of the Head of the Paid Service has also been extended to cover the Monitoring Officer and the Chief Financial Officer.

The existing process of appointing a DIP and undertaking an investigation is considered to be bureaucratic, complex, time consuming and expensive. The Local Government Association 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.

The intention of the new Regulations is to simplify and localise the current disciplinary process for the statutory officers. Having removed the requirement to appoint a DIP, the Regulations now provide that a decision to dismiss must 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; and
- any representations from the officer concerned.

The new process applies to dismissals 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 local authority has undertaken to renew such a contract.

If the 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 conduct regime applying to Elected Members 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. The Regulations require the Council to 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; and
- an independent person who has been appointed by another Council or Councils

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.

However, whilst the Regulations suggest that the panel need only be made up of two independent persons the Regulations define "the panel" as a committee appointed by the authority under section 102(4) of the Local Government Act 1972. This means that normal proportionality rules apply to such committees, meaning that subject to any waiver, in addition to the two or more 'neutral' independent persons, the panel would need to include at least five additional members of the County Council. The Local Government Association has asked the Department for Communities and Local Government to clarify this apparent inconsistency to confirm whether the intention is that the panel need only be made up of independent persons. North West Employers has recently circulated the following comments made by DCLG:

“Regarding the point about political balance on the independent panel, whilst it is not for the Department to provide legal advice or interpret Regulations – this is for the Courts – our informal view is that a council may appoint non-members to an

advisory committee, and that such advisory committees may consist wholly of persons who are not members of the authority.”

The DCLG advice suggests that either two (or more) independent persons can form the panel alone **or** be added to a panel of elected members. This still leaves the exact constitution of the panel and its relationship with any standing committee that has responsibility for disciplinary matters for authorities to determine.

Whilst the legal position has not therefore been clarified, it would be an option (1) for the panel to be established simply as an advisory committee consisting of just independent persons. The alternative option (2) would be for the independent persons to be appointed to a committee of the Council e.g. Conduct Committee.

Under either option (1 or 2) it is proposed that the Employment Committee would discharge the role of an investigation and disciplinary committee. It is also proposed that the independent persons already appointed to determine complaints concerning Elected Members under the Code of Conduct would invited to serve on the "panel" established under option 1 or 2.

Under option 2 the Terms of Reference of the Employment Committee and the Conduct Committee would need to be amended, as set out at Annexes 1 and 2, to reflect the proposed new process as follows:

Employment Committee:

- To screen potential disciplinary/dismissal issues to consider whether any investigation should be undertaken and whether the relevant officer should be suspended;
- To organise the investigation, including appointing an investigator.
- To review the results of the investigation to consider what disciplinary action, if any, is appropriate, after hearing the views of the officer, and report its recommendations.
- Where the Committee is minded to recommend dismissal, to refer the matter to the Conduct Committee for it to provide its advice, views and recommendations to the Employment Committee.
- If having considered those views the Committee recommends dismissal then this must be referred to Full Council for them to decide.
- Where the Employment Committee decides that action short of dismissal, or no disciplinary action at all is appropriate, to put that in place as appropriate, without any referral to the Conduct Committee or the Full Council.

Conduct Committee:

- Membership of the Conduct Committee would be extended to comprise at least two voting co-opted Independent Persons solely for the purpose of

considering the proposed dismissal of the Head of the Paid Service, the Monitoring Officer and the Chief Finance Officer, and submitting views on the proposal to the Employment Committee for them to consider which are then reported to Full Council for determination.

- It is proposed to invite the three independent persons who have been appointed by the County Council for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to serve on the Conduct Committee for the purpose of considering and submitting views on the proposed dismissal of Head of the Paid Service, the Monitoring Officer and the Chief Finance Officer.
- The Conduct Committee would only be involved where the Employment Committee has decided to propose the dismissal of the Head of the Paid Service the Monitoring Officer and the Chief Finance Officer.

Under option 1 the role of the Employment Committee, as set out above, would remain the same but the Conduct Committee would not have a role in the new disciplinary process. Where the Employment Committee is minded to recommend dismissal, the matter would be referred to an advisory committee consisting of just independent persons for it to provide its advice, views and recommendations to the Committee.

The Regulations require the changes to be approved no later than the first ordinary meeting of the Full Council after its Annual General Meeting.

Consultations

The statutory officers will be informed of the changes to the current DIP process.

Implications:

This item has the following implications, as indicated:

Risk management

Changes to dismissal procedures for the Council's statutory officers are a mandatory requirement that the Council must adopt.

Financial

The Local Government Association estimate that the minimum legal cost of appointing a DIP is £100k excluding the cost of undertaking the actual investigation, preparing the case or briefing lawyers.

The Committee will note that whilst the removal of the need to appoint a DIP would result in a saving, it is likely that the Council would still incur costs in obtaining external legal advice to support any investigations and consequential disciplinary action.

Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Directorate/Tel
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N/A

Reason for inclusion in Part II, if appropriate

N/A