

# **Report of the Deputy Monitoring Officer to the meeting of Governance and Audit Committee to be held on 26 June 2015.**

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**Subject:**

**Amendments to the Constitution.**

**Summary statement:**

**This Report provides details of proposed amendments to the Constitution for recommendation to Council following the introduction of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015. These Regulations change the statutory disciplinary process for the Head of Paid Service, Monitoring Officer and Chief Finance Officer.**

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## 1. SUMMARY

- 1.1 This Report provides details of proposed amendments to the Constitution for recommendation to Council following the introduction of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015. These Regulations change the statutory disciplinary process for the Head of Paid Service, Monitoring Officer and Chief Finance Officer.

## 2. BACKGROUND

- 2.1 The Local Government and Housing Act 1989 requires every relevant authority to designate one of its officers as Head of the Council's Paid Service, one of its officers as the Monitoring Officer, and one of its officers as the Chief Finance Officer. Article 14 of the Council's Constitution designates the post of Chief Executive as Head of the Council's Paid Service, the post of City Solicitor as Monitoring Officer, and the post of Director of Finance as the Council's Chief Finance Officer.
- 2.2 The Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 ("the 2015 Regulations") were made on 25 March 2015 and came into force on 11 May 2015. The Regulations amend the Local Authorities (Standing Orders)(England) Regulations 2001 in relation to the disciplinary process for the Chief Executive (as the Authority's Head of Paid Service), the City Solicitor (as the Council's Monitoring Officer), and the Director of Finance (as the Council's Chief Finance Officer).
- 2.3 Previously under the Local Authorities (Standing Orders)(England) Regulations 2001 ("the 2001 Regulations") no disciplinary action in respect of the Head of Paid Service, Monitoring Officer, or Chief Finance Officer, could take place, other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). Disciplinary action was defined as:

*"any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Authority, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff 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 Authority has undertaken to renew such a contract".*

- 2.4 The 2001 Regulations also stipulated that any suspension for the purposes of investigating the alleged misconduct must be on full pay and be for no longer than two months unless specifically extended following a recommendation from the DIP. In addition under the 2001 Regulations the dismissal of the Head of Paid Service, (but not the Monitoring Officer or Chief Finance Officer), had to be approved by the Authority itself; that is, at a meeting of full Council.
- 2.5 The 2015 Regulations remove the mandatory requirement that a DIP should be



appointed and remove the requirement that a suspension should be for no longer than two months unless specifically extended by the DIP.

- 2.6 The 2015 Regulations also introduce new provisions in respect of dismissal of the Head of Paid Service, Monitoring Officer, and Chief Finance Officer. The 2015 Regulations retain the definition of disciplinary action as set out in paragraph 2.3 above.
- 2.7 Pursuant to the 2015 Regulations dismissal of the Head of Paid Service, Monitoring Officer, or Chief Finance Officer must be approved by full Council, before notice of dismissal is given.
- 2.8 If the dismissal is for disciplinary action as defined in paragraph 2.3 above, that is alleged misconduct or for any reason other than “redundancy, permanent ill health, or infirmity of mind or body” or failure to renew a fixed term contract unless the Council has undertaken to renew such a contract, before the taking of a vote at the Council meeting on whether or not to approve such a dismissal, the Authority must take into account: -
- a) any advice, views or recommendations of a Panel (see section 3 below);
  - b) the conclusions of any investigation into the proposed dismissal; and
  - c) any representations from the officer concerned.
- 2.9 The 2015 Regulations require the Council to incorporate the new provisions into its constitution and modify its existing provisions so as to conform to the new provisions by no later than the first ordinary meeting of Council falling after 11 May 2015. The first ordinary meeting of Council after 11 May is 14 July 2015.

### **3. OTHER CONSIDERATIONS**

#### **3.1 Establishment of a Panel**

Where there is a proposal to dismiss the Head of Paid Service, Monitoring Officer, or Chief Finance Officer, for alleged misconduct or any reason “other than redundancy, permanent ill health, or infirmity of mind or body”, or failure to renew a contract of employment for a fixed term for such a person, unless the Authority has undertaken to renew such a contract, the Council is required to form a Panel.

The 2015 Regulations define “the Panel” as “a committee appointed by the Authority under Section 102(4) of the Local Government Act 1972 for the purposes of advising the Authority on matters relating to the dismissal of relevant officers of the Authority”.

#### **3.2 Options with regard to the Composition of the Panel**

It is not clear whether the Panel is required to be made up only of independent persons or whether the Panel is required to also include elected members. The Local Government Association has asked the Department for Communities and



Local Government (DCLG) to clarify the position. The 2015 Regulations prescribe that the Council is not required to appoint more than two independent persons to the Panel but may do so. The Constitution may need to be further amended when clarification is provided.

3.3 There are three possible alternatives: -

3.3.1 Council appoint a new committee - "The Chief Officer Disciplinary Committee". The Committee to include two independent persons when considering whether to recommend to full Council, for a reason detailed in paragraph 3.1 above, the dismissal, of the Head of Paid Service, the Monitoring Officer, or the Chief Finance Officer

or

3.3.2 Council extend the composition of Staffing Committee and widen its functions to address the changes made by the 2015 Regulations

or

3.3.3 Council appoint a Panel made up of independent persons only, which is to be convened when either the Chief Officer Disciplinary Committee (if one is appointed) or Staffing Committee is to recommend to Council, for a reason detailed in paragraph 3.1 above, the dismissal of the Head of Paid Service, Monitoring Officer, or Chief Finance Officer.

3.4 This Report proposes that the Constitution be amended to include a new committee; "the Chief Officer Disciplinary Committee". (Option 3.3.1 above). The proposed composition, quorum, and functions of this Committee are set out in Appendix A to this Report. It is proposed: -

3.4.1 that the Committee hears all disciplinary matters in respect of Strategic Directors, Directors, Deputy Directors, and Assistant Directors, under the Officer Employment Procedure Rules. In such circumstances there is no requirement for independent persons to be on the Committee save where the Committee is considering whether to dismiss the Director of Finance. Presently the Constitution is not explicit as to whether a Committee of Elected Members hears disciplinary cases against Assistant Directors and Deputy Directors. The proposed clarification reflects the provisions of the JNC for Chief Officers of Local Authorities, which are the applicable terms and conditions for Assistant Directors and Deputy Directors.

3.4.2 that the Committee hears all disciplinary matters in respect of the City Solicitor, Director of Finance and the Chief Executive.

3.4.3 that ordinarily the Committee shall comprise five members of Council with the quorum being three members at least one of whom must be a member of the Executive.



- 3.4.4 that where the Committee is considering whether to recommend to Council the dismissal of the Head of Paid Service (Chief Executive), the Monitoring Officer (City Solicitor), or the Chief Finance Officer (Director of Finance), the Committee comprises five members of Council, at least one of whom must be a member of the Executive, and two independent persons appointed in accordance with the 2015 Regulations. Including the independent persons as members of the Committee, enables the independent persons to hear all the evidence at the disciplinary hearing stage, which should enable them to be better informed to advise and make recommendations to full Council, should the Committee recommend dismissal.
- 3.5 An alternative to appointing a new committee (Chief Officer Disciplinary Committee) would be to extend the composition of Staffing Committee and to widen its functions. (Option 3.3.2 above). However, the advantage of having a separate Chief Officer Disciplinary Committee would be that it would enable Staffing Committee, rather than the Employee Appeals Panel as currently, to hear appeals in relation to disciplinary sanctions short of dismissal brought by the Chief Executive, Strategic Directors, City Solicitor, Directors, Deputy Directors, and Assistant Directors, and against dismissal in respect of Strategic Directors, Directors (other than the Director of Finance), Deputy Directors and Assistant Directors. Staffing Committee in those circumstances would need to comprise different members from those sitting as the Chief Officer Disciplinary Committee.
- 3.6 If a separate Panel made up only of independent persons is appointed, (option 3.3.3 above) that Panel would only be involved where the Council Committee hearing the disciplinary case was recommending dismissal of either the Chief Executive, Monitoring Officer, or the Chief Finance Officer. However, the Panel would in that case only receive and consider the written evidence and recommendations of the Committee. The independent persons would be better informed if they heard all the evidence during any disciplinary hearing, including from the officer facing the allegations, which would be the position if the independent persons were members of the Committee.
- 3.7 A proposed new Article 12B Chief Officer Disciplinary Committee is set out in Appendix A to this Report.
- 3.8 If it is agreed to recommend to Council to appoint a Chief Officer Disciplinary Committee, the functions of Staffing Committee will also require amendment to reflect the functions of the new committee. The opportunity has, in addition, been taken to propose to amend the functions to clarify Staffing Committee's role in relation to grievances brought by certain Senior Officers of the Council. The proposed amended Article 12A, Staffing Committee, is set out in Appendix B to this Report.
- 3.9 In addition, it is necessary to amend the Officer Employment Procedure Rules to incorporate the provisions of the 2015 Regulations and to reflect the functions of the new Chief Officer Disciplinary Committee, if approved, and corresponding functions of Staffing Committee. The opportunity has also been taken to reorder the Rules to



make it clear that the provisions under the headings, “Attempts to Influence an Appointment” and “Candidates Related to Members and Officers” apply to all recruitment. In addition on Council “Application for employment” forms, reference is now made to “Senior Officer”, which includes an Assistant Director, rather than “Top Management” and the Rules have been amended to reflect this. Presently the Rules are not explicit as to whether a Committee of Elected Members hears disciplinary cases against Assistant Directors and Deputy Directors. The proposed amendments reflect the provisions of the JNC for Chief Officers of Local Authorities, which are the applicable terms and conditions for Assistant Directors and Deputy Directors.

- 3.10 The opportunity has also been taken to clarify that the Rules do not apply when appointing Strategic Directors, Directors, or the City Solicitor on an interim basis from among the Council’s existing officers to cover “acting up” arrangements, for example, where an officer is off work through ill-health, or has left or is temporarily in another position. The proposed amendment makes it clear that such interim appointments can be made for up to 6 months duration. In addition reference to the Council’s Pay Policy Statement has also been included in the Rules. The proposed amendments to those Rules are set out in Appendix C.
- 3.11 It is also necessary to amend the functions of the Council as set out in Article 4; such proposed amendments are set out in Appendix D. The opportunity has also been taken to amend the functions to include those detailed in the Council’s Pay Policy Statement.

### 3.12 **Appointment of the Independent Persons**

The 2015 Regulations state that 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. The Regulations make clear that the Local Authority should invite independent persons who have been appointed for the purposes of the Members’ Standards regime under Section 28(7) of the Localism Act 2011.

- 3.13 The 2015 Regulations state that the Council must appoint to the Panel two or more independent persons who have accepted an invitation to join the Panel in accordance with the following priority order: -
- An independent person who has been appointed by the Authority and who is a local government elector.
  - Any other relevant independent person who has been appointed by the Authority.
  - A relevant independent person who has been appointed by another authority or authorities.
- 3.14 The 2015 Regulations require a Panel to be established at least 20 working days in advance of the Council meeting which is to consider whether to approve a proposal to dismiss the Chief Executive, Monitoring Officer, or Chief Finance Officer. It is considered advisable to establish a standing committee (be it the Chief Officer



Disciplinary Committee, amended composition and functions of Staffing Committee, both with independent persons appointed as members, or a Panel made up of independent persons only) so that it is always available, should the need arise.

3.15 It is therefore necessary to appoint two independent persons to fulfil this role. As Bradford Council has only one independent person appointed, options available for securing those individuals to serve on the Committee are: -

3.15.1 Approach the existing City of Bradford Metropolitan District Council independent person who has indicated he would be happy to serve in this capacity if required. He has also confirmed he is a local government elector in this area.

3.15.2 Approach other local authority's independent persons to serve for City of Bradford Metropolitan District Council if needed.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

4.1 The 2015 Regulations make provisions limiting the remuneration that should be paid to independent persons on the Panel to the level of remuneration that they would normally receive as an independent person in their role under the Members' Standards regime. The Council does not pay any allowances to the independent person on Standards Committee.

#### **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

5.1 In amending the Constitution to accommodate the 2015 Regulations, the risk of any failure to comply with the 2015 Regulations is minimised.

#### **6. LEGAL APPRAISAL**

6.1 The detail of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 are as set out in this Report.

6.2 The 2015 Regulations require the Council to incorporate the new provisions into its Constitution and modify the existing provisions in the Constitution so as to conform to the 2015 Regulations. These amendments must be incorporated no later than the first ordinary Council meeting held after 11 May 2015.

#### **7. OTHER IMPLICATIONS**

7.1 There are no equality and diversity, sustainability, community safety or Human Rights Act implications in this Report.

#### **7.2 TRADE UNION**

In its guidance the Local Government Association has asked authorities to note that they are seeking to amend, through collective agreement, the model disciplinary procedures detailed in the Joint Negotiating Committee's Conditions of Service





(which includes the DIP process) for Chief Executives, thereby potentially removing any need to make changes at a local level.

## **8. NOT FOR PUBLICATION DOCUMENTS**

8.1 None.

## **9. RECOMMENDATIONS**

9.1 That Governance and Audit Committee recommend to Council for approval: -

9.1.1 That a Chief Officer Disciplinary Committee be established with the composition, quorum, and functions as set out in Appendix A to this Report.

9.1.2 Amendments to Article 12A (Staffing Committee) of the Constitution as set out in Appendix B to this Report.

9.1.3 Amendments to the Officer Employment Procedure Rules as set out in Appendix C to this Report.

9.1.4 Amendments to Article 4 of the Council's Constitution as set out in Appendix D to this Report.

9.1.5 That Mr Mohammed Shakeel be invited to serve as an independent person on the Chief Officer Disciplinary Committee, and if he accepts to be appointed to serve on that Committee.

9.1.6 That the Deputy Monitoring Officer, in consultation with the Chair of Governance and Audit Committee be authorised to identify suitable independent persons appointed by other authorities for appointment to the Chief Officer Disciplinary Committee and bring a further report to Council for the purpose of making the appointments.

## **10. APPENDICES**

Appendix A – Proposed new Article 12B “Chief Officer Disciplinary Committee”.

Appendix B – Proposed Amendments to Article 12A of the Constitution.

Appendix C – Proposed Amendments to the Officer Employment Procedure Rules.

Appendix D – Proposed Amendments to Article 4 of the Constitution.

## **11. BACKGROUND DOCUMENTS**

11.1 The Local Government Association Advisory Bulletin Number 624 Changes to Statutory Dismissal Procedures for Heads of Paid Service, Monitoring Officers, and Section 151 Finance Officers, circulated on 8 May 2015.

<http://www.local.gov.uk/documents/10180/6869714/ab624.pdf/7e871fd2-dd02-463a-a880-9c3352162bc0>

