



Northumberland

County Council

COUNTY COUNCIL

DATE: 4 NOVEMBER 2020

UPDATE TO CONSTITUTION – OFFICER EMPLOYMENT PROCEDURE RULES AND STAFF APPEALS COMMITTEE

Report of the Service Director, Corporate Assurance

Report of Cabinet Member: Councillor Barry Flux, Business Chair

Purpose of report

The Council has recently sought additional support through Solace in appointing a Governance Team of external consultants to provide additional resources to the Authority on a number of governance issues it currently faces and as part of its new governance accountability framework. The team have been asked to assist in making a number of changes are to the Council's Constitution which it has become apparent are necessary in order to ensure compliance with the requirements of the Local Authorities (Standing Orders) (England) Regulations 2015, which have amended the 2001 Regulations, and also with best practice as set out in the JNC Guidance on the Model Disciplinary Procedure.

Recommendations

It is recommended that Council:

1. Approves the amendments to the Council's Constitution as set out in Appendix A to the report.
2. Agrees to formally adopt the procedures as set out in the JNC Model Disciplinary Procedure & Guidance as a framework in respect of the Head of Paid Service, Monitoring Officer and the Chief Finance Officer.
3. Agrees to appoint a Standing Chair of the Staff (Appeals Committee) and agrees that Councillor Jeff Watson should be appointed as the Standing Chair of the Staff (Appeals) Committee for the remainder of the civic year.
4. Agrees to increase the size of the current Panel from 16 to 20 (to include 4 Cabinet Members) and to make nominations to the additional vacancies.
5. Agrees that the Staff (Appeals) Committee should be re-designated as the Employment (Appeals) Committee.

6. Notes the appointment of Mr Paul Foote as the Council's Deputy Monitoring Officer on an interim basis.

Link to Corporate Plan

This report updates the County Council's Constitution which is a key governance document relevant to all the priorities included in the NCC Corporate Plan 2020-2021.

Key issues

A number of changes are required to the Constitution as currently drafted to ensure that procedures relating to statutory officers (namely the Head of Paid Service, Chief Finance Officer and Monitoring Officer) are in accordance with the most up to date national regulations covering these posts. To ensure that the Constitution reflects these nationally agreed standards, it is necessary to increase the size of the current Staff (Appeals) Committee from 3 to 5 in line with advice within the JNC Model Disciplinary Procedure and Guidance and to expand its current terms of reference and amend two separate sections of the Officer Employment Procedure Rules. This will update the rules on suspension and reflect the current requirements of the Regulations and the JNC Model Procedure. Council is also requested to appoint a Standing Chair of the Staff (Appeals) Committee and to agree to appoint Cllr Jeff Watson as the Standing Chair for the remainder of the civic year in order to bring continuity to the role.

Members are also asked to note the appointment of a Deputy Monitoring Officer on an interim basis to increase resilience and strengthen governance, enabling timely action to be pursued in instances where the Monitoring Officer is not available to act. This is good practice and reflective of the arrangements adopted in most local authorities in England.

Background

1. In 2015 new regulations were issued, which amended in part earlier regulations issued in 2001, and changed the process for disciplinary action against statutory officers (the Head of Paid Service, Chief Finance Officer and Monitoring Officer). All local authorities were required to amend their standing orders to comply with the revised arrangements.

2. The Council's Constitution was amended in part to take account of the new requirements of the regulations but a small number of anomalies remain. In particular in 2016 the Joint National Committee for Chief Executives of Local Authorities (JNC) issued a Model Disciplinary Procedure incorporating the new statutory process. Councils do have discretion in how far to follow the agreed guidance but the model procedure is considered to incorporate best practice and it is recommended that the Council formally adopts the procedure as a framework for all three statutory officer posts.

3. The Local Authorities (Standing Orders) (England) Regulations 2001 were amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and provide that the dismissal of a statutory officer in cases of disciplinary action may only take place if the proposal to dismiss is approved by full Council. Before taking a vote at Council the meeting must take into account any advice, views or recommendations of an Independent Panel, the conclusion of any investigation into the issues and any representations from the statutory officer.

4. A key feature of the model procedure is the role of the Investigating and Disciplinary Committee (IDC). This is recommended to be a politically balanced Committee of 5 members, which must include at least one cabinet member. It may need to meet at short notice to consider allegations, decide whether there is a case to answer and consider suspension of the officer. It is also possible that in some circumstances members may have a conflict of interest and so this needs to be considered in appointing to the Committee. At Northumberland CC this role is undertaken by the Staff (Appeals) Committee. Drawing down from a panel of members allows for flexibility if conflicts arise. The Committee also has an important role in appointing any Independent Investigator and considering the outcome of their investigation.

5. The model procedure also provides for an appeal mechanism where action short of dismissal (for example a written warning) is recommended. This should also be a politically balanced Committee of 5 members and include at least one cabinet member. This role will also be undertaken by the Staff (Appeals) Committee but with 5 different members hearing the appeal. The Committee will determine whether to confirm the recommended action, or to impose a lesser sanction, or no sanction.

6. The Regulations now specifically provide that the Council must also appoint an Independent Panel consisting of at least two independent persons appointed by the Council, or a neighbouring Council, under the Localism Act 2011. The Panel must meet at least 20 working days before any Council meeting. Before taking a vote at Council on any proposal to dismiss a statutory officer the meeting must take into account any advice, views or recommendations of the Panel. The Council's Dismissal Advisory Committee fulfils this role.

7. The model procedure makes a number of specific recommendations which would require amendments to the current provisions of the Constitution. The detailed amendments are set out in Appendix to this report but briefly provide as follows:

Current Provision	Proposed Amendment
<p>Committee Terms of Reference – Staff (Appeals) Committee – 3 members politically balanced</p> <p>This Committee has two specific roles under the JNC Guidance and acts as both the initial Investigating & Disciplinary Committee (IDC) and with differently constituted members it will also act as an Appeals Committee if required.</p>	<p>The JNC Model Procedure recommends that the Committee should be responsible for considering whether the Statutory Officer should be suspended and to undertake a formal review of any suspension after it has been in place for 2 months in consultation with the Independent Investigator and after taking into account any representations by the Officer.</p> <p>If there is the need for a suspension at very short notice (as their continued presence at work presents a serious risk) then the Chair of the Committee would be able to suspend the Head of Paid Service in consultation with the MO/Deputy MO and the Head of</p>

	<p>Paid Service would be able to suspend the MO and CFO. In all instances this should be reviewed by the Committee as soon as practicable.</p> <p>In order to identify the Chair of the Committee for these purposes Council is being requested to identify a Standing Chair.</p> <p>The Committee is responsible for considering and determining any disciplinary action against a Statutory Officer in accordance with the procedure in the Regulations & JNC Guidance and, as previously, will make a recommendation to Council regarding the potential dismissal of a statutory officer. This is required to be a Council decision.</p> <p>The Committee will also act as the final internal appeal body in respect of any recommended action against a statutory officer short of a recommendation for dismissal. In the interests of natural justice this would be undertaken by a different panel of members who had not sat on the original hearing.</p> <p>The JNC model procedure recommends that in both cases (IDC & Appeals) the committee should be a politically balanced committee of 5 members which must include one member of the Cabinet. This is an increase from the 3 set out in the current provisions.</p>
<p>Officer Employment Procedure Rules – Rule 6 Disciplinary Action</p> <p>The current rules provide that any suspension of a statutory officer will be on full pay and last no longer than two months.</p> <p>This was a requirement of the original Local Authority (Standing Orders) (England)</p>	<p>This was a requirement of the original Local Authority (Standing Orders) (England) Regulations 2001 but is not specifically set out in the amended regulations.</p> <p>However, the JNC Model Procedure provides that where an officer is suspended</p>

<p>Regulations 2001 but is no such timescales are specifically set out in the amended regulations.</p> <p>The rule as currently drafted provides that the Leader in consultation with the MO may suspend the Head of Paid Service whilst the Head of Paid Service may suspend the MO and CFO.</p>	<p>the suspension should be reviewed after 2 months and only continue after consultation with the Independent Investigator and taking into account any representations by the officer. The JNC Model Procedure recognises that it is in the interests of all parties that the proceedings are conducted as promptly as possible but that it is inappropriate to impose timescales which in practical terms might be difficult to achieve.</p> <p>The Rule has also been amended to reflect the role of the Staff (Appeals) Committee in suspending statutory officers and the role of the Chair of that Committee in suspending the Head of Paid Service. In agreeing this Council is also requested to approve the appointment of Councillor Jeff Watson as the Standing Chair of the Committee for the remainder of the civic year to provide continuity in the role.</p>
<p>Officer Employment Procedure Rules – Rule 9 Statutory provisions relating to senior officers</p> <p>This is a long section which sets out the provisions of the Local Authority (Standing Orders) (England) Regulations 2001 in detail but does not incorporate the changes brought in by the 2015 Regulations and so requires updating.</p>	<p>The original 2001 Regulations have been amended by the 2015 Regulations and this section requires a redraft to reflect the correct legal position as set out in the current regulations.</p> <p>The main changes are the deletion of the reference to an investigation by a Designated Independent Person (DIP) which no longer applies. Investigations are now undertaken by an Independent Investigator and the LGA maintains a list of suitable qualified persons. This is referred to in Rule 6 of the Employment Procedure Rules.</p> <p>The reference to suspension on full pay for a maximum of 2 months has also been deleted as this is no longer specified in the Regulations.</p> <p>A new section has been added to provide that only full Council may approve the dismissal of a statutory officer.</p>

	<p>The main change is the addition of the provisions which require at least 2 Independent Persons sitting as a Panel to meet at least 20 working days before any Council meeting. Before taking a vote at Council on any proposal to dismiss a statutory officer the meeting must take into account any advice, views or recommendations of the Panel, the conclusion of any investigation and any representations from the statutory officer.</p> <p>The Council's Dismissal Advisory Committee fulfils this role.</p>
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8. Council is requested to consider and approve the proposed amendments as set out fully in the Appendix to this report. Members are asked to note that further amendments to the Constitution may be necessary going forward from time to time to update procedures and comply with best practice.

9. Constitution Working Group

Members of the County Councils Constitution Working Group met to consider the proposed amendments on the 22 October 2020. Members raised a number of points and in particular asked for clarity on the role of any Standing Chair of the Committee and for reassurance on the circumstances in which a statutory officer could be suspended.

10. Following the meeting further amendments were made to the proposed Terms of Reference of the Staff (Appeals) Committee to clarify when a Statutory Officer might be suspended "at very short notice" (which is the wording in the JNC guidance) and the role of the Committee in determining whether to continue that initial suspension. An additional sentence has been added to highlight that suspension is not necessarily appropriate in every case and careful consideration should be given to whether it is necessary and whether there are any suitable alternative ways of managing the situation. This is also set out within the JNC Model Guidance.

11. Members suggested that the existing Panel of members should be increased from 16 to 20 (to include a total of 4 Cabinet members) and recognised that flexibility is required in order to be able to convene a meeting at short notice and to allow for instances where there might be a conflict of interest. As a result of Member comments the following guidelines have been added as a footnote to the amended terms of reference:

- That Council will appoint a Panel of 20 members to include a total of 4 Cabinet Members.
- Any hearing will consist of 5 members, drawn from approved Panel and appointed on a politically balanced basis, and which must include one member of the Cabinet.
- Members should receive appropriate training and development before sitting to hear any matter and may not sit if they have a conflict of interest in the matter before them. They should take early advice on this point.

- Council will appoint a Standing Chair of the Committee who will be responsible for the suspension of the Head of Paid Service in consultation with the Monitoring Officer or Deputy Monitoring Officer in the event this is required at very short notice.
- The Standing Chair need not chair each individual Staff (Appeals) Committee meeting and in those instances a Chair will be elected as the first item of business

12. Members also mentioned briefly in discussions that a new name for the Committee might be helpful as the acronym SAC is commonly used and it is therefore suggested that a simple change to Employment (Appeals) Committee would be appropriate.

13. Appointment of Deputy Monitoring Officer

Under section 5 of the Local Government and Housing Act 1989 the Council has a statutory duty to appoint a Monitoring Officer with responsibility for matters relating to the Council's Constitution and arrangements for effective governance. These include:

- To report on matters which he/she believes are, or are likely to be, illegal or amount to maladministration
- To be responsible for matters relating to the conduct of Councillors and officers
- To ensure the Council's Constitution is up to date and fit for purpose

14. The Council's Constitution provides that if the Monitoring Officer is unable to act on a matter in their statutory capacity then the matter should be discharged by a person designated by the Monitoring Officer as his deputy. (see Delegations to Officers Section 3 Conflicts of Interest).

15. Members are asked to note the appointment of Mr Paul Foote as one of the Council's Deputy Monitoring Officers on an interim basis to increase resilience and strengthen governance, enabling timely action to be pursued in instances where the Monitoring Officer is not available to act. This is good practice and reflective of the arrangements adopted in most local authorities in England.

16. Mr Foote is an experienced Monitoring Officer and has been recruited through Solace to assist the Council in this capacity.

Implications

Policy	The proposed amendments will align the Constitution with the latest guidance & legislation required to be followed in respect of the employment of the Council's Statutory Officers.
Finance and value for money	No direct costs will be incurred by updating the Constitution. Failure to make the required amendments could however result in adverse value for money implications for the Authority.
Legal	The Constitution requires a number of amendments to update it in accordance with the provisions of the amended Local Authorities (Standing Orders) (England) Regulations 2001 and the JNC Model Disciplinary Procedure.
Procurement	N/A

Human Resources	There are no additional staffing resources required as a result of the proposed amendments.
Property	N/A
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Risk Assessment	It is important that the Councils Constitution is up to date and reflects the latest legislation and best practice to minimise risk of challenge and reputational damage.
Crime & Disorder	N/A
Customer Consideration	N/A
Carbon reduction	N/A
Health and Wellbeing	N/A
Wards	All

Background papers:

Council Constitution
Local Authorities (Standing Orders) (England) Regulations 2001 and 2015
JNC Model Disciplinary Procedure and Guidance

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

	Full Name of Officer
Monitoring Officer/Legal	N/A
Executive Director of Finance & S151 Officer	Chris Hand
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