

Proposed Amendments to the Constitution

Please note proposed amendments are in bold and italics.

Staff Employment (Appeals) Committee – Amended Terms of Reference

Terms of Reference and Powers

- (a) To take disciplinary action involving dismissals at ~~Corporate~~ ***Executive Director*** level and deal with appeals relating to grievance, grading and discipline relating to the same Directors.
- (b) To assess and determine ex-gratia payments where the relevant ~~Corporate~~ ***Executive*** Director is unable to determine the claim on behalf of the member of staff concerned
- (c) To act in disciplinary cases involving Chief Officers and other posts as required by legislation with a further panel of ~~3~~ ***5*** different councillors acting as an appeal committee in such cases ***(NB It should noted that the arrangements at paragraphs (d) to (f) below apply to disciplinary action in relation to a statutory officer (defined as the Head of Paid Service, Monitoring Officer and Chief Finance Officer)***
- (d) To consider and determine whether a Statutory Officer should be suspended (or continue to be suspended) either immediately, or following a preliminary investigation into their conduct, and to formally review any suspension after it has been in place for two months in consultation with the Independent Investigator and after taking into account any representations by the Officer. Suspension will not be appropriate in every case as this will depend on the nature of the allegations or seriousness of the issue and before suspending a Statutory Officer careful consideration should be given to whether it is necessary or if there are any suitable alternative ways of managing the situation.***
- (e) The Chair of the Committee may determine, in consultation with the Monitoring Officer or a Deputy Monitoring Officer, that a decision on the suspension of the Head of Paid Service is required at very short notice and before the Committee can meet since his or her continued presence at work poses a serious risk to the health and safety of others or to the resources, information or reputation of the Council. Any decision to suspend must be reviewed by the Committee as soon as it is practicable to do so. Other Statutory Officers may be suspended by the Head of Paid Service, in circumstances where a decision is required at very short notice for the reasons outlined above, but will be reviewed by the Committee as soon as practicable.***

(d) To consider and determine disciplinary action in relation to a Statutory Officer in accordance with the Local Authorities (Standing Orders) Regulations 2001 (as amended) and JNC Model Disciplinary Procedure

(e) To act as the final internal appeal body to hear and determine appeals in respect of action short of dismissal of a Statutory Officer (NB this would be a further panel of members acting as an appeal committee)

e) (f) To make recommendations to Council regarding the dismissal of a Statutory Officer (Head of Paid Service, the Monitoring Officer or the Chief Finance Officer) for capability, conduct or for some other substantial reason

Composition: Members will be drawn from a panel of 20 members (to include 4 Cabinet Members) announced as such a panel at the commencement of the municipal year.

Council will also appoint a Standing Chair of the Committee who will be responsible for the suspension of the Head of Paid Service at in consultation with the Monitoring Officer or Deputy Monitoring Officer in the event that a suspension at very short notice is required.

The Standing Chair need not chair each individual Employment (Appeals) Committee and in those instances as Chair will be elected as the first item of business.

Any hearing in respect of a Statutory Officer or other Officers will consist of five members drawn from the approved Panel and appointed on a politically balanced basis, and which must include one member of Cabinet.

Members should have received appropriate training and development before sitting to hear any matter and may not sit if they have a conflict of interest in relation to the matter before them. They should take early advice on this point.

If the Committee hears a matter which may result in the dismissal of a Statutory Officer then the Dismissal Advisory Committee must be convened.

Officer Employment Procedure Rules – Amended Procedure Rules

6. Disciplinary action

- (1) Suspension. The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended by **the Employment (Appeals) Committee** whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer ~~than~~ **must be reviewed by the Committee** after two months **in consultation with the Independent Investigator and after taking into account any representations by the Officer. If a decision on suspension is required at very short notice since his or her*****

continued presence at work poses a serious risk to the health and safety of others or to the resources, information or reputation of the Council then the Head of Paid Services may be suspended by the Leader Chair of the Employment (Appeals) Committee following consultation with the Monitoring Officer or Deputy Monitoring and the Chief Finance Officer or Monitoring Officer may be suspended by the Head of Paid Service. Any immediate suspensions will reviewed by the Employment Appeals Committee) as soon as practicable.

Other Chief Officers (including the Monitoring Officer and the Chief Finance Officer) may be suspended by the Head of Paid Service.

- (2) Independent person. No other disciplinary action may be taken in respect of the Head of Paid Services, the Monitoring Officer or the Chief Finance Officer except in accordance with a recommendation in a report carried out by an independent investigator appointed by the Council.
- (3) Councillors will not be involved in the disciplinary action against any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to members in respect of disciplinary action.
- (4) The Head of Paid Service may take disciplinary action (including dismissal) against any Chief Officer, with the exception of the Monitoring Officer and the Chief Finance ***Officer which must be referred to the Employment (Appeals Committee) and dealt with in accordance with the Local Authorities (Standing Orders) Regulations 2001 (as amended) and JNC Model Disciplinary Procedure.***

Officer Employment Procedure Rules

9. Statutory provisions relating to senior officers –proposed changes

The following rules apply as a requirement of The Local Authorities (Standing Orders) (England) Regulations 2001 ***as amended*** and shall take precedence over any local rule whether in this Constitution or otherwise.

~~**Head of Paid Service, Chief Finance Officer & Monitoring Officer**~~

- (1) ~~In paragraph 2, the following paragraphs "chief finance officer", "council manager", "disciplinary action", "head of the council's paid service" and "monitoring officer", have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 and "designated independent person" has the same meaning as in regulation 7 of those Regulations.~~

- (2) ~~No disciplinary action in respect of the head of the Council's paid service (unless they are also a council manager of the Council), its monitoring officer or its chief finance officer, except action described in paragraph 3, may be taken by the Council, or by a committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001 (investigation of alleged misconduct).~~

- (3) ~~The action mentioned in paragraph 2 is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.~~

Chief and Deputy Chief Officers

9.1 Interpretation

"the 1989 Act" means the Local Government and Housing Act 1989;

"the 2000 Act" means the Local Government Act 2000;

"disciplinary action" has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;

"Executive" and "Executive leader" have the same meaning as in Part 1A of the 2000 Act;

"member of staff" means a person appointed to or holding a paid office or employment under the Council; and

"proper officer" means an officer appointed by the Council for the purposes of the provisions in this Part.

"chief finance officer", "disciplinary action", "head of the council's paid service" and "monitoring officer", have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001

9.2 Subject to subparagraphs **9.3** and **9.8** the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the Council must be discharged, on behalf of the Council, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the Council's paid service or by an officer nominated by him.

9.3 Subparagraph **9.2** shall not apply to the appointment or dismissal of, or disciplinary action against:

- (a) the officer designated as the head of the Council's paid service
- (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts)
- (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act
- (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act, or
- (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

9.4 Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the appointment or dismissal of an officer designated as the head of the Council's paid service, the Council must approve that appointment before an offer of appointment is made to that person or, as the case may be, must approve that dismissal before notice of dismissal is given to that person.

9.5 *Where the committee, sub – committee or officer is discharging, on behalf of the council, the function of the dismissal of an officer designated as the head of the Council's paid service, as the Council's chief finance officer or as the Council's monitoring officer, the Council must approve that dismissal before notice is given to that person*

9.6 Where a committee or a sub-committee of the Council is discharging, on behalf of the Council, the function of the appointment or dismissal of any officer referred to in sections (a), (b), (c) or (d) of subparagraph **9.3**, at least one member of the Cabinet must be a member of that committee or sub-committee.

9.7 In this paragraph, "appointor" means, in relation to the appointment of a person as an officer of the Council, the

Council or, where a committee, sub-committee or officer is discharging the function of appointment on behalf of the Council, that committee, sub-committee or officer, as the case may be.

9.8 An offer of an appointment as an officer referred to in sections (a), (b), (c) or (d) of subparagraph **9.3** must not be made by the appointor until:

(a) the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer, and any other particulars which the appointor considers are relevant to the appointment

(b) the proper officer has notified every member of the Cabinet of the Council of:

(i) the name of the person to whom the appointor wishes to make the offer;

(ii) any other particulars relevant to the appointment which the appointor has notified to the proper officer; and

(iii) the period within which any objection to the making of the offer is to be made by the Executive Leader on behalf of the Cabinet to the proper officer, and

(c) either -

(i) the Executive Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither the Leader nor any other member of the Cabinet has any objection to the making of the offer

(ii) the proper officer has notified the appointor that no objection was received by the proper officer within that period from the Cabinet Leader, or

(iii) the appointor is satisfied that any objection received from the Cabinet Leader within that period is not material or is not well-founded.

(1) In this paragraph, "dismissor" means, in relation to the dismissal of an officer of the Council, the Council or, where a committee, sub-committee or another officer is discharging the

function of dismissal on behalf of the Council, that committee, sub-committee or other officer, as the case may be.

- (2) Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph **9.3** must not be given by the dismissor until:
 - (a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal
 - (b) the proper officer has notified every member of the Cabinet of the Council of:
 - (i) the name of the person who the dismissor wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and
 - (iii) the period within which any objection to the dismissal is to be made by the Cabinet Leader on behalf of the Cabinet to the proper officer, and
 - (c) either -
 - (i) the Cabinet Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither the Leader nor any other member of the Cabinet has any objection to the dismissal
 - (ii) the proper officer has notified the dismissor that no objection was received by the proper officer within that period from the Cabinet Leader, or
 - (iii) the dismissor is satisfied that any objection received from the Cabinet Leader within that period is not material or is not well-founded.

Nothing in subparagraph **9.2**. shall prevent a person from serving as a member of any committee or sub-committee established by the Council to consider an appeal by:

- (a) another person against any decision relating to the appointment of that other person as a member of staff of the Council, or
- (b) a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

9.9 In the following paragraphs:

a. "The 2011 Act" means the Localism Act 2011

c. "independent person" means a person appointed under section 28(7) of the 2011 Act

d. "local government elector" means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts

e. "the Panel" means 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

f. "relevant meeting" means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer and

g. "relevant officer" means the chief finance officer, head of the authority's paid service or monitoring officer as the case may be.

9.10 A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

9.11 The authority 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.

9.12 In paragraph 9.11 "relevant independent person" 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 Council, or Councils, as the Council considers appropriate.

9.13 Subject to paragraph 9.14 the Council must appoint to the Panel such relevant independent persons who have accepted an

invitation issues in accordance with paragraph 9.11 in accordance with the following priority order:

- (a). a relevant independent person who has been appointed by the Council and who is a local government elector***
- (b). any other relevant independent person who has been appointed by the Council***
- (c) a relevant independent person who has been appointed by another Council or Councils***

9.14 A Council is not required to appoint more than two relevant independent persons in accordance with paragraph 9.11 but may do so

9.15 The Council must appoint any Panel at least 20 working days before the relevant meeting

9.16 Before the taking of the vote at the relevant meeting on whether or not to approve such a dismissal, the Council must take into account in particular:

- (a). any advice, views or recommendations of the Panel***
- (b). the conclusion of any investigations into the proposed dismissal***
- (c). any representations from the relevant officer***