

# **Report to Constitution Working Group**

**Date of meeting: 30 June 2015**

**Portfolio:** Technology and Support Services

**Subject:** Disciplinary Arrangements for Relevant Officers

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**Committee Secretary:** Mark Jenkins (01992564607)



**Epping Forest  
District Council**

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## **Recommendations/Decisions Required:**

- (1) That the Council be recommended to adopt the proposed amended Officer Employment Procedure Rules, subject to any comments or amendments.

## **Report:**

### **Background**

1. There have been changes to the statutory disciplinary and dismissal procedures applying to heads of paid service, monitoring officers and chief financial officers (the 'relevant officers'), whereby a new process has replaced the current statutory Designated Independent Person (DIP) process.
2. The legislation requires the Council to have amended its standing orders at or before the authority's first ordinary meeting falling after this year's annual meeting. The first Council meeting will be held on 28 July 2015.

### **Designated Independent Person Process (DIP)**

3. The Designated Independent Person (DIP) statutory procedures set out in the Local Authorities (Standing Orders) (England) Regulations 2001 required that no disciplinary action in respect of a protected officer could take place other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). This process has been amended

### **The New Process**

4. The new process is set out in the schedule to the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which amend the 2001 Regulations. As well as removing the statutory require for a DIP in order to take disciplinary action generally the regulations include new rules in respect of dismissal.
5. The key elements of the new process are that
  - (i) The dismissal of a relevant officer must be approved by way of a vote at a meeting of the authority, who instead of only being able to take action in accordance with DIP recommendations, will be able to dismiss provided they take into account:

- any advice, views or recommendations of a panel (the Panel),

- the conclusions of any investigation into the proposed dismissal; and
  - any representations from the protected officer concerned.
- (ii) The process set out above for the authority itself to approve dismissal has been extended to cover the chief finance officer and monitoring officer.
- (iii) It will not apply to disciplinary action short of dismissal
- (iv) The Council is required to set up a Panel and appoint two relevant independent persons to this Panel

### **The Panel: Constitution and Formation**

6. The Panel must include at least two independent persons, who are defined in the Regulations as a person appointed under section 28(7) of the Localism Act 2011. Section 28 deals with the member code of conduct regime, the Council has appointed persons under that section. However, these independent persons will need to be invited onto the Panel, which they may refuse. The Council could appoint other suitably experienced/qualified independent persons for the Panel or use an independent person appointed by another authority.

7. The 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 be subject to the Council's pro rata rules.

8. The Local Government Association (LGA) are clarifying with the DCLG whether it would be possible for the Panel to be made up of independent persons only. To date no further advice has been published.

### **The Executive Objections Procedure**

9. This remains as the current section 11 of the Officer Employment Procedure Rules whereby the notice of dismissal must not be issued until the dismissor "discharging the function of dismissal" has notified the "proper officer" (as defined by the authority) of the name of the person the dismissor wishes to dismiss, along with relevant particulars.

10. Members of the executive then have a chance to object through the elected executive leader. If there are no objections or the dismissor is satisfied that any objection is not material or well founded, then the dismissal can proceed.

### **Further Guidance**

11. Unfortunately the new Regulations provide little detail of how the new process will operate in practice and there are a number of gaps within the legislation regarding the composition of the Panel, ensuring a fair investigation, contractual issues and appeal rights for relevant officers.

12. Therefore the Constitution has been amended in accordance with Schedule 3 of the 2015 Regulations. Once further advice is available from the LGA a Guidance Note will be submitted to the Constitution Working Group for consideration.

13. The amendments to the Constitution are in italics and bold.

### **Reason for decision:**

There have been changes to the statutory disciplinary and dismissal procedures applying to heads of paid service, monitoring officers and chief financial officers (the 'relevant officers'), whereby a new process has replaced the current statutory Designated Independent Person process. The Council is required to amend the Constitution to implement the new Regulations at the Council meeting of 28 July 2015.

Officers will provide further guidance once gaps in the legislation has been clarified by the LGA.

**Options considered and rejected:**

Not to apply the Regulations. This would mean that the Council has not complied with its responsibilities under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

**Consultation undertaken:**

None

**Resource implications:**

There are no resource implications.

**Due Regard Record:**

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

The Council is amending the Constitution in accordance with new Regulations and no equality implications have been identified.