

WORKING PAPER: General Purposes Committee

SUBJECT: Clarification of prescribed standing orders and procedures relating to the dismissal of statutory officers.

BACKGROUND:

1. On 17 June 2015 Council considered a report setting out the need to modify the Council's Prescribed Standing Orders and Standing Orders Relating to Staff as a result of changes required by Regulations.
2. The government made these legislative changes requiring the Council to amend its standing orders insofar as they relate to disciplinary action against, and the dismissal of, the Council's Head of Paid Service, Monitoring Officer and Chief Finance Officer.
3. Council approved the changes and recommendations and these were incorporated into the Constitution (Part 4.8) together with the report and appendices as the latter set out procedural considerations and model standing orders.
4. It was acknowledged within the legal and statutory implications of that report that ALACE, the group representing senior officers in local government, has serious reservations about the "lack of rigour in the thinking around the process and the inappropriateness of some of the specific requirements".
5. Since the original report was presented to Council the Joint Negotiating Committee for Chief Executives of Local Authorities (JNC) has been updating the Chief Executives' Handbook.
6. Attached is the original advice circular from the JNC from which it will be noted that having consulted the DCLG the JNC has accepted that it is possible that the Panel can comprise only independent persons provided that is what the authority resolves.
7. However, after subsequent negotiations between DCLG and JNC the latest position is as follows. There are no more outstanding points of principle between the two organisations and the details are being finalised. The main sticking point was the independent panel as ALACE's view was that the panel should be formed entirely of independent persons. It has now been agreed between both organisations that the new independent panel should consist of at least two independent persons.
8. LGA and ALACE are now waiting for a response from CLG about a potential conflict of wording between the Localism Act 2011 and the 2015 Regulations. The LGA have requested a very minor change to the appointment provisions in the Localism Act but CLG's line to date has been that it is for the Courts to provide clarity.
9. If CLG do not provide a formal response, I understand it is likely that the updated handbook will be issued in October. At this point, we will have a clear picture of the nationally agreed procedures.
10. Whilst it is down to individual authorities to agree the way forward it is recommended that the Council adopt the national model process.

DECISION: as the final details have yet to be circulated, Members are asked to give the Director of Corporate Services, in consultation with the Leader, the delegation to

incorporate the revised national model procedure into Part 4.8 of the Officer Employment Procedure Rules within the Constitution.

Mark Radford

Director of Corporate Service and Monitoring Officer

Appendix I:JNC letter dated 5 May 2016

Joint Negotiating Committee
for Chief Executives of Local Authorities

To: Chief Executives in England (copies for the Finance Director and HR Director) (Wales and N Ireland for information only)

Regional Directors

Members of the Joint Negotiating Committee

5 May 2016

Dear Chief Executive,

CHIEF EXECUTIVES' HANDBOOK

You will be aware that The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 replaced the statutory Designated Independent Person (DIP) provisions with an Independent Panel process.

The JNC has been working over recent months to update the Chief Executives' Handbook so that it reflects the new statutory process and we hope to issue the revised version in the coming weeks.

In the meantime, we wish to bring to your attention one key change that will be a feature of any joint agreement and therefore you should consider reflecting this in your Council's Standing Orders / Constitution (as appropriate). The Regulations provide that where there is a proposal to dismiss the Head of Paid Service, Monitoring Officer or Finance Officer the authority must appoint a Panel, and take into account any advice, views or recommendations of that Panel. The Panel should be a committee of the Council, appointed under section 102(4) of the Local Government Act 1972 and should contain at least two independent persons appointed under s.28(7) of the Localism Act 2011.

There has been some uncertainty as to whether this requirement incorporated the need to maintain political balance in this committee, ie. that the requisite number of councillors should also be appointed. Having consulted DCLG the JNC has accepted that it is possible that the Panel can comprise only independent persons provided that is what the authority resolves and therefore in the national model process the Independent Panel shall comprise only independent persons (at least two) appointed under S28(7) of the Localism Act 2011. In other words, no elected members should sit on the Panel.

If, following a disciplinary investigation, there is a recommendation to dismiss the Chief Executive, the reports of the Investigating & Disciplinary Committee and the Independent Investigator should then be sent to the Independent Panel for its consideration prior to advising the Council.

We are aware that many councils will shortly be convening an Annual General Meeting of the full Council so you may wish to use that opportunity to update the

Council's Standing Orders / Constitution accordingly. However, should a disciplinary process be underway before then you should continue to use your current procedures.

Yours faithfully,

Sarah Messenger Amar Dave

Joint Secretaries

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