

## Agenda Item

### CAMBRIDGE CITY COUNCIL

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REPORT OF: Head of Legal Services

TO: Civic Affairs Committee 26/6/2015

WARDS: None directly affected

### **CHANGES TO THE OFFICER EMPLOYMENT PROCEDURE RULES IN RESPECT OF DISCIPLINARY ACTION**

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#### **1 INTRODUCTION**

- 1.1 Parliament has approved changes to the Local Authorities (Standing Orders) (England) Regulations 2001. The Regulations set out provisions we are required to have in our Constitution. Amending regulations mean we have to make changes to the Officer Employment Procedure Rules in the Constitution.
- 1.2 The changes are to the rules relating to disciplinary action against, or the dismissal of, the head of paid service, chief financial officer and monitoring officer.
- 1.3 The reasons put forward by the Government for the changes are set out in section 5 of this report.

#### **2. RECOMMENDATION**

- 2.1 That Council is asked:
  - a) To amend the Officer Employment Procedure Rules in accordance with Appendix 1 to this report.
  - b) To amend the terms of reference of the Employment (Senior Officer) Committee in accordance with Appendix 2 to this report.

- c) To authorise the Head of Human Resources to convene a panel of “independent persons”, as and when required by the Local Authorities (Standing Orders) (England) Regulations 2001 and to determine its procedure.

### **3. THE PREVIOUS RULES**

#### **3.1 The 2001 Regulations contained these provisions:**

- No disciplinary action could be taken against the head of paid service, chief financial officer or monitoring officer other than in accordance with a recommendation in a report made by a “designated independent person”.
- The designated independent person was such person as may be agreed between the Council and the relevant officer. If there was no agreement, the designated independent person would be nominated by the Secretary of State.
- The designated independent person had statutory investigative powers, including access to documents and a right to require members of staff to answer questions.
- The Council could suspend relevant officers for the purpose of investigating alleged misconduct but only for a period of up to two months. The designated independent person had power to extend or to revoke periods of suspension.
- The designated independent person was required to make a report stating whether (and, if so, to what extent) the evidence supported any allegation of misconduct, and recommending any disciplinary action that appeared to them to be appropriate.
- A decision to dismiss the head of paid service could only be taken by full Council.

### **4. THE NEW RULES**

#### **4.1 The previous rules are revoked entirely, apart from the requirement that a decision to dismiss the head of paid service could only be taken by full Council. The new rules do the following:**

- They remove the role of the designated independent person.

- They apply only to the dismissal of the head of paid service, chief financial officer and monitoring officer and not to disciplinary action short of dismissal.
- They remove the restriction on suspension of these officers during investigation of misconduct.
- They extend the provision that only full Council can dismiss the head of paid service to include the dismissal of the head of paid service and monitoring officer. (In fact, the Council's current employment procedure rules already make this a Council decision for all three officers.)
- They state that, before Council considers whether to dismiss these officers, it must convene a panel made up at least two "independent persons" to offer advice to the Council. These are the same independent persons appointed under the Localism Act to advise on standards issues. If the Council cannot recruit two independent persons to the panel it has appointed, it may invite independent persons appointed by another council.
- The panel of independent persons would review any recommendation for dismissal made by the Employment (Senior Officer) Committee and its advice would be considered by full Council before a decision on the recommendation is made.
- The Council can appoint more than two independent persons to a panel.
- Although the Regulations are not clear on this point, the DCLG has advised that the panel is to be made up solely of independent persons, with no councillor representation.

## **5. THE REASONS FOR THE CHANGES**

- 5.1 An Explanatory Memorandum to the new Regulations sets out the policy justification for the changes. It states:

*There have been for some time concerns that the DIP process in its application to councils is in practice complex and expensive. It has placed councils as the employer at a great disadvantage in comparison to the position of the employee, particularly given that the recommendation of the DIP must be followed. The Local Government Association Group has estimated that the minimum legal cost of the*

*process is £100,000, excluding the cost of the investigation, preparing the case and briefing lawyers. The DIP process is time consuming particularly where the council and the senior officer concerned could not agree on a DIP, where the process can take over 15 months to reach completion.*

*In addition, where there are disciplinary actions against these most senior officers, there have been some suggestions that some councils prefer to negotiate severance payments rather than go through the formal DIP process. This is evidenced in the House of Commons Communities and Local Government Committee's report, which highlights the view of the Local Government Association witness that undertaking a performance management process for top staff can currently be "very damaging and timing consuming." The Government believes that such a process is not appropriate as it defeats the purpose of having the DIP process in place. Councils ought to act in the best interest of local taxpayers and not be paying inflated sums to senior officers in order to avoid taking the costly and bureaucratic DIP route.*

*These Regulations simplify, as well as localise, the disciplinary process for the most senior officers by removing the bureaucratic and mandatory requirement that a DIP should be appointed. In place of the DIP process, the decision will be taken transparently by full council, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned. This means that councils can consider and decide the best disciplinary process that will deliver value for money for their local taxpayers, whilst retaining independent scrutiny.*

## **6. THE EMPLOYMENT (SENIOR OFFICER) COMMITTEE**

6.1 The Council established this committee in 2013 to deal with employment matters relating to senior officers. Its terms of reference include disciplinary action in relation to the head of paid service, chief financial officer and monitoring officer.

6.2 Some changes to the terms of reference of the Committee are needed to reflect the new regulations. The principal changes are:

- The removal of references to the "designated independent person" and

- The requirement for a recommendation to dismiss one of the three statutory officers to be considered by the Independent Panel before the recommendation goes before full Council.

## 7. CONSULTATIONS

7.1 The Chief Executive (Head of Paid Service), and the Head of Finance (Chief Financial Officer). The Head of Human Resources has also been consulted. The author of this report is the Monitoring Officer.

## 8. OPTIONS

8.1 The changes to the Council's Employment Procedure Rules are mandatory. The Council has discretion over the membership of the Employment (Senior Officer) Committee, including a power to require attendance by more than two "independent persons".

## 9. IMPLICATIONS

- (a) **Financial Implications** There are no direct financial implications. Section 5 of this report sets out a Government view that the new rules will be cheaper to operate than the old rules.
- (b) **Staffing Implications** These are addressed in the body of the report.
- (c) **Equality and Poverty Implications** The rules still provide greater protection for the three "statutory officers" than for other employees. The justification for this (as set out in the Explanatory Memorandum) is that these officers have statutory duties that they must discharge personally but within a political environment. The intention is to ensure that these officers can discharge their duties without any fear of being influenced by elected members and being dismissed without good reason.
- (d) **Environmental Implications** Nil: the proposals have no climate change impact
- (e) **Procurement** There are no procurement implications.
- (f) **Consultation and communication** No further consultation or communication is proposed beyond consideration of the recommendations at Civic Affairs and full Council. The recommended

changes will be included in the Council's Constitution, which is published on the Council's website and available for inspection.

(g) **Community Safety** There are no community safety implications.

**BACKGROUND PAPERS:** The following are the background papers that were used in the preparation of this report:

Letter to Chief Executives from the Department of Communities and Local Government dated 25 March 2015

Text of an email from Tayo Peters, DCLG, to the Association of Democratic Services Officers Forum.

The Local Authorities (Standing Orders) (England) Regulations 2001

The Local Authorities (Standing Orders) (England) (Amendment)

Regulations 2015 and Explanatory Memorandum

To inspect these documents contact Simon Pugh, Head of Legal Services on (01223) 457401 or [simon.pugh@cambridge.gov.uk](mailto:simon.pugh@cambridge.gov.uk). Simon Pugh is also the author and contact officer for queries on this report.

## Appendix 1: Changes to the Officer Employment Procedure Rules

### DELETE:

#### 2 Disciplinary Action Against Chief Finance Officer, Head Of Paid Service And Monitoring Officer

- 2.1 In paragraph 2.2, "chief finance officer", "council manager", "disciplinary action", "head of the authority'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.
- 2.2 No disciplinary action in respect of the head of the authority's paid service (unless he is also a council manager of the authority), its monitoring officer or its chief finance officer, except action described in paragraph 2.3, may be taken by the authority, or by a committee, a sub-committee, a joint committee on which the authority is represented or any other person acting on behalf of the authority, 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).
- 2.3 The action mentioned in paragraph 2.2 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.

### REPLACE WITH:

#### 2. Disciplinary Action Against Chief Finance Officer, Head Of Paid Service And Monitoring Officer

- 2.1 In the following paragraphs—

(a) "*the 2011 Act*" means the Localism Act 2011(b);

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

(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.
- 2.2 A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.
- 2.3 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.
- 2.4 In paragraph 3 “*relevant independent person*” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.
- 2.5 Subject to paragraph 2.6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—
- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;
- (b) any other relevant independent person who has been appointed by the authority;
- (c) a relevant independent person who has been appointed by another authority or authorities.
- 2.6 An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.
- 2.7 The authority must appoint any Panel at least 20 working days before the relevant meeting.
- 2.8 Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—
- (a) any advice, views or recommendations of the Panel;
- (b) the conclusions of any investigation into the proposed dismissal; and
- (c) any representations from the relevant officer.
- 2.9 Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act

## Appendix 2.

### The Employment (Senior Officer) Committee: Terms of Reference

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|---------------------|--|
| Appointed by:       | From time to time in accordance with the wishes of the political groups.   |
| Membership:         | (a) 6 members allocated between political groups in accordance with the rules on political balance set out in the Local Government and Housing Act 1989  |
| Chair/Vice Chair:   | To be appointed by the members of the Committee.   |
| Decision making:    | By the majority of members present and voting. The Chair has a casting vote if required.   |
| Terms of Reference: | <ol style="list-style-type: none"> <li>1. To deal with the recruitment to the post of Chief Executive and to recommend a selected applicant to Council for appointment.</li> <li>2. To recruit, appoint, take disciplinary action against and dismiss Directors</li> <li>3. To suspend and keep under review the Chief Executive, Directors, the Monitoring Officer or section 151 Chief Finance Officer whilst an investigation takes place into alleged misconduct.</li> <li><del>4. To appoint a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001</del></li> <li>4. To take disciplinary action <u>short of dismissal</u> against the Chief Executive, the Monitoring Officer or section 151 Chief Finance Officer. <del>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.</del></li> <li>5. To consider and if necessary recommend to Council to dismiss or terminate the employment of the Chief Executive, the Monitoring Officer or section 151 Chief Finance Officer.</li> </ol> |

Note: The committee will be governed by the provisions contained within Part 4I of the Constitution (Officer Employment Procedure Rules)