



Disciplinary Procedures for Senior Officers

SUMMARY

- 1.1 New regulations have come into effect which aim to simplify the processes for dismissing senior council staff (Head of Paid Service, Monitoring Officer, and the Chief Finance Officer). The purpose of this report is to adopt the new process for the disciplining and dismissal of senior staff.
- 1.2 Existing processes are viewed as complex and expensive, potentially placing councils, as employers, at a disadvantage in comparison to the position of the employee.
- 1.3 Under the new process, Council must invite at least two Independent Persons to be members of a panel. Council must then take into account any recommendation of that panel before it takes a final decision to dismiss a senior employee.
- 1.4 The Regulations came into force on 11 May 2015, but with provision that modifications should be agreed at the first ordinary Council meeting held after the 7 May 2015 elections. The Council meeting on 22 July 2015 is that first ordinary meeting.

RECOMMENDATIONS

- 2.1 To approve that the Council Constitution be amended to give effect to the new arrangements for the disciplining and dismissal of senior staff as set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881).

REASONS FOR RECOMMENDATION

- 3.1 To ensure compliance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

SUPPORTING INFORMATION

Background

- 4.1 Certain senior officers of a council (Head of Paid Service, Monitoring Officer and Chief Finance Officer) have statutory responsibilities to discharge. Since they work with and report to the elected members, they discharge these responsibilities in a political environment. As a result, statutory protection requiring an appointment of a Designated Independent Person (DIP) to investigate any allegation of misconduct against these senior officers was introduced in the 2001 Regulations.
- 4.2 Prior to 2001, a similar provision, but only in relation to the Head of Paid Service, was included in the Local Authorities (Standing Orders) Regulations 1993 (S.I. 1993/202). The DIP is appointed early in the procedure, when it appears to a council that an allegation of misconduct by the relevant officer requires investigation. No disciplinary action in respect of these most senior officers may be taken other than in accordance with a recommendation in a report made by a Designated Independent Person.
- 4.3 In practice, often the DIP appointed by councils is a barrister with experience of employment law. The intention of this provision 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.
- 4.4 The DIP process in its application to councils is in practice complex and expensive. It is felt that it has placed councils as the employer at a great disadvantage in comparison to the position of the employee.
- 4.5 The new Regulations are intended to 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 Council, which 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, while retaining independent scrutiny.
- 4.6 In the case of a proposed disciplinary action against one of the most senior officers, the council is now required to invite independent persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to form an independent panel. An independent panel will be formed if two or more independent persons accept the invitations, and councils should issue invitations in accordance with the following priority order:
 1. an independent person who has been appointed by the council and who is a local government elector
 2. any other independent person who has been appointed by the council
 3. an independent person who has been appointed by another council or councils.

- 4.7 The Regulations provide that the Panel is to be a committee of the authority and so it is subject to all the legal requirements for committees, including the proportionality rules.
- 4.8 It is not intended that Council itself carries out the disciplinary hearing so this will have to be delegated from Council to the relevant committee, sub-committee or officer – this could be the same Panel, although the regulations are unclear about who will have responsibility for doing so – and then report to Council with its recommendation, which would include the views of the Independent Persons.
- 4.9 The Regulations also make a provision limiting the remuneration that should be paid to independent persons to a modest annual allowance or small meeting fee. This approach ensures that the new process will not involve high costs.
- 4.10 The Regulations provide for the new arrangements for taking disciplinary action against the most senior council staff to be given effect by councils modifying their standing orders. Provision is made for councils to make this modification no later than at the first ordinary council meeting held after the 7 May 2015 elections. To achieve this the Regulations come into force on 11 May 2015.

OTHER OPTIONS CONSIDERED

- 5.1 None.

This report has been approved by the following officers:

Legal officer	Janie Berry, Director of Legal and Democratic Services
Financial officer	Not applicable
Human Resources officer	Not applicable
Estates/Property officer	Not applicable
Service Director(s)	Janie Berry, Director of Legal and Democratic Services
Other(s)	Not applicable
For more information contact:	David Walsh 01332 643655 david.walsh@derby.gov.uk
Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Local Authority Dismissal Procedures for Senior Officers

IMPLICATIONS

Financial and Value for Money

- 1.1 It is anticipated that the new process will reduce the cost of cases of dismissal of senior officers. Remuneration will be limited to a modest annual allowance or small meeting fee for independent panel members. This approach ensures that the new process will not involve high costs.

Legal

- 2.1 The council will comply with the requirement to adopt these processes at the first ordinary meeting after the Local Elections on 7 May 2015 should the proposals be approved.

Personnel

- 3.1 The procedures will have an impact on the statutory officers detailed in paragraphs 1.1 and 4.1 of the main report.

IT

- 4.1 None.

Equalities Impact

- 5.1 None.

Health and Safety

- 6.1 None.

Environmental Sustainability

- 7.1 None.

Property and Asset Management

- 8.1 None.

Risk Management

- 9.1 There is a risk that the council will not have the appropriate procedures in place in the event that they are required unless the proposed changes are adopted.

Corporate objectives and priorities for change

- 10.1 None.

Local Authority Dismissal Procedures for Senior Officers

Provisions to be incorporated into the standing orders in respect of disciplinary action

1. In the following paragraphs—

(a) “the 2011 Act” means the Localism Act 2011;

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

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.

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.

5. Subject to paragraph 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.

6. An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so. 4

7. The authority must appoint any Panel at least 20 working days before the relevant meeting.

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.

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."