

# **Cherwell District Council**

## **Council**

**19 May 2015**

<p><b>Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 – Mandatory Standing Orders re Dismissal of Statutory Officers</b></p>
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### **Report of Head of Law and Governance**

This report is public

#### **Purpose of report**

To enable the Council to comply with the legal obligation imposed upon it to incorporate new constitutional provisions dealing with the dismissal of statutory officers for alleged misconduct, to approve the composition of the required Panel to be introduced as part of the process and to delegate authority to appropriate officers to appoint the Panel and arrange meetings (if necessary).

#### **1.0 Recommendations**

The meeting is recommended:

- 1.1 To approve the inclusion of the procedure at Appendix 1 as part of the Officer Employment Procedure Rules in the Council's constitution and note that the Head of Law and Governance has exercised his delegated authority to make consequential amendments to the constitution as necessary to reflect the requirements contained in the Local Authorities (Standing Order) (England) (Amendment) Regulations 2015 ("the 2015 Regulations).
- 1.2 To approve the constitution of the Panel as solely comprising the independent persons appointed by this Council and South Northamptonshire Council pursuant to section 28(7) of the Localism Act 2011.
- 1.3 To delegate authority to the Head of Law and Governance (or one of the Deputy Monitoring Officers should the Head of Law and Governance be the subject of the relevant disciplinary action) to appoint the Panel and convene meetings of it in the event that this ever becomes necessary.
- 1.4 To note that the Head of Transformation will automatically amend the Joint Local Discipline and Dismissal Guide for Statutory Officers and that she has already taken steps to amend the contracts of employment of the statutory officers as necessary to reflect the changes introduced by the 2015 Regulations.

## **2.0 Introduction**

- 2.1 The 2015 Regulations repeal the previous statutory requirement, when the Council is taking disciplinary proceedings against any of the statutory officers (the Head of Paid Service, the Section 151 Officer and the Monitoring Officer), to appoint a Designated Independent Person to conduct an investigation and make a binding recommendation to the Council on the action to be taken. They require each principal council to adopt standing orders as part of their constitution which reflect the provisions set out in the Schedule to the Regulations.
- 2.2 Those provisions include the mandatory appointment of a Panel whose role is to give advice, views and recommendations to Full Council which must be taken into account before a decision is taken. The Council must appoint to the Panel at least two independent persons who have been appointed by it or any other Council as part of the member standards regime introduced by the Localism Act 2011.
- 2.3 The 2015 Regulations necessitate changes to other parts of the constitution and to the relevant HR policy i.e. the Joint Local Discipline and Dismissal Guide for Statutory Officers and the contracts of employment of the three statutory officers..

## **3.0 Report Details**

- 3.1 Prior to the enactment of the 2015 Regulations it was not possible for the Council to take disciplinary action against one of the statutory officers without the prior appointment of a Designated Independent Person to investigate and make a binding recommendation on the disciplinary sanction (if any) to be taken.
- 3.2 It is a requirement of the 2015 Regulations that, at the first meeting of each principal council following 11 May 2015, the current standing orders relating to disciplinary action against statutory officers are modified so that they refer to the new procedure introduced by the Regulations.
- 3.3 That procedure, drafted to reflect the fact that the statutory officers are employed by either this Council or South Northamptonshire Council and placed at the disposal of the non-employing authority under the section 113 agreement between the two Councils (and in respect of the Monitoring Officer only also placed at the disposal of Stratford on Avon District Council), is at Appendix 1 and Council is recommended to adopt it as part of the Officer Employment Procedure Rules in the constitution..
- 3.4 The Head of Law and Governance has delegated authority to amend the constitution to reflect legislative changes and has accordingly made a number of consequential amendments to the constitution to reflect the 2015 Regulations.
- 3.5 The 2015 Regulations introduce a Panel as part of the disciplinary process. Its role is to offer advice, views and recommendations to Full Council which it must take into account before determining what course of action to take against the relevant statutory officer. This Panel must comprise at least two of the independent persons appointed by the Council or any other council as part of the member standards process pursuant to section 28(4) of the Localism Act 2011. The Panel comprises a committee of the Council but, as it is only advisory in nature, it does not have to include elected members.

- 3.6 It is evident from the Government's explanatory memorandum to the 2015 Regulations that the Panel is meant to be an independent check on the overall process to replace the previous more stringent check provided via the role of the Designated Independent Person. Taking this, and the fact that the Joint Commissioning Committee will have the role of investigating or overseeing any disciplinary investigation that might arise, into account it is recommended that there is no elected member representation on the Panel and that it solely comprises the independent persons appointed by both this Council and South Northamptonshire Council (currently three in number, one being appointed by this Council, one by South Northamptonshire Council and one by both). Appendix 1 is drafted on the assumption that this recommendation is accepted.
- 3.7 Clearly it is anticipated that the need for the Panel to meet would be ad hoc and, hopefully, rare. Accordingly it is recommended that the Head of Law and Governance is given delegated authority to appoint and convene the Panel should it ever become necessary. In the event that the Head of Law and Governance is the subject of the disciplinary action this power would be exercised by one of the deputy monitoring officers.
- 3.8 The current relevant HR policy (the Joint Local Discipline and Dismissal Guide for Statutory Officers) is drafted on the basis of the now repealed process involving the appointment of a Designated Independent Person. Accordingly it will be necessary to amend this policy to reflect the requirements of the 2015 Regulations. Therefore by virtue of the fact that this is a regulatory change and neither Council has any discretion around whether or not to adopt it, members of Full Council are asked to note that the Head of Transformation will automatically be making the necessary consequential changes to this policy. For the same reason she has also implemented the necessary changes to the contracts of employment of the three statutory officers, the information relating to which can be found on the personal files of the respective employees.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 It is necessary for the Council to adopt amended standing orders to reflect the 2015 Regulations. It is appropriate for the required Panel to comprise independent persons only for the reasons set out in paragraph 3.6 above. Consequential changes are necessary to other parts of the constitution, the relevant HR policy and the employment contracts of the three statutory officers.

## **5.0 Consultation**

None

This is a mandatory legal requirement.

## **6.0 Alternative Options and Reasons for Rejection**

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To accept the recommendations.

Option 2: To reject the recommendations – this is not recommended as the first recommendation reflects a legal requirement and the remainder are considered sound for the reasons stated in section 3 above.

Option 3: To amend the recommendations – this is not recommended as the first recommendation reflects a legal requirement and the remainder are considered sound for the reasons stated in section 3 above.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 The removal of the requirement to appoint a Designated Independent Person means that, should disciplinary action ever be taken against a statutory officer, the Council would avoid the expense involved which could have been considerable. In the event that the Panel is convened the Council would be limited to paying each independent person no more than the amount currently paid to them for their standards role. This is £708 pa and would be met from existing democratic budgets.

Comments checked by:

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### **Legal Implications**

- 7.2 These are fully set out in the detail of the report.

Comments checked by:

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## **Decision Information**

### **Wards Affected**

All

### **Links to Corporate Plan and Policy Framework**

Sound budgets and a customer focused Council

### **Lead Councillor**

Councillor Barry Wood, Leader of the Council

## Document Information

<b>Appendix No</b>	<b>Title</b>
1	Appendix to Officer Employment Procedure Rules
<b>Background Papers</b>	
None	
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## APPENDIX 1

1. In the following paragraphs—
  - (a) “*the 2011 Act*” means the Localism Act 2011
  - ;
  - (b) “*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;
  - (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 Council’s area in accordance with the Representation of the People Acts;
  - (e) “*the Panel*” means a committee appointed by the Council under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of relevant officers of the Council;
  - (f) “*relevant meeting*” means a meeting of the Council 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 Council’s paid service or monitoring officer, as the case may be.
2. A relevant officer may not be dismissed by the Council unless the procedure set out in the following paragraphs is complied with.
3. The Council 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 Council or, South Northamptonshire 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.
5. Subject to paragraph 6, the Council 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 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.
6. The Council is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

7. The Council 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 Council 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 Council 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.