

Name of meeting: Corporate Governance & Audit Committee

Date: 15 September 2017

Title of report: Changes to the Procedures for the Dismissal of Statutory Officers

Purpose of report

To recommend changes to the Council's Constitution to reflect changes to legislation relating to the dismissal of statutory officers

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	N/A
The Decision - Is it eligible for "call in" by Scrutiny?	N/A
Date signed off by Director & name	
Is it also signed off by the Service Director for Finance, IT and Transactional Services?	
Is it also signed off by the Service Director - Legal Governance and Commissioning?	
Cabinet member portfolio	Graham Turner

Electoral wards affected: N/A

Ward councillors consulted: N/A

Public or private: Public

1. Summary

1.1 This committee previously received a report about the potential changes to the legislation relating to the dismissal of statutory officers in June 2015. The regulations amend the Local Authority's (Standing Orders) (England) Regulations 2001 in relation to the disciplinary process for statutory officers, namely the Chief Executive (the Authority's Head of Paid Service), the Service Director for Finance, IT and Transactional Services (as the Authority's Chief Section 151 Finance Officer) and the Service Director for Legal, Governance and Commissioning (as Monitoring Officer).

1.2 The regulations provide for new arrangements in the disciplinary process, in particular reference to a panel including Independent Persons before a decision is made.

1.3 The regulations will require changes to some of the following: -

- a) Changes to Personnel Committee terms of reference; or
- b) Establishing a new committee

- c) Changes to the Officer Employment Procedure Rules; and
- d) the possible establishment of a panel of independent persons.

1.4 The changes will provide clarity on the dismissal process for the relevant senior officers.

2. Information required to take a decision

2.1 It is a statutory duty of the Local Authority to designate officers to hold the statutory post of Head of Paid Service, Chief Finance Officer and Monitoring Officer. In this Council the Chief Executive is designated as Head of Paid Service, the Service Director for Finance, IT and Transactional Services is Chief Finance Officer, and the Service Director for Legal, Governance and Commissioning is Monitoring Officer. The three officers all discharge their statutory duties and responsibilities in a political environment.

2.2 Previously the statutory protection in 2001 legislation required an appointment of a designated independent person (DIP) to investigate any allegation of misconduct against the statutory post holders. Those regulations provided that no disciplinary action in respect of these statutory post holders could be taken other than in accordance with the recommendation in a report made by a DIP.

2.3 The 2015 regulations remove the mandatory requirements that a DIP should be appointed. In place of the DIP procedure the decision will be taken by full Council, which must consider any advice, views or recommendations from a panel, comprising independent persons, the conclusions of any investigation into the proposed dismissal and the representations from the officer concerned.

2.4 The regulations and their impact has been set out in an earlier report before Corporate, Governance and Audit in June 2015. As there was little information in the regulation as to how this would work in practice there were a number of questions raised by the LGA but there has not been any further information provided.

2.5 In the case of potential disciplinary action under the new regulations the Council is now required to form a panel comprising Independent Persons. The membership of the panel is formed if two or more independent persons accept invitation to serve on the panel.

2.6 Establishing the panel is only necessary in the event that disciplinary action is envisaged, but if this does happen, a panel has to be formed twenty days in advance of the relevant disciplinary meeting. Due to this it is proposed that full Council establish an independent panel and amend the constitution now so that it is always available should the need arise. The suggested terms of reference for this panel are set out in Appendix D.

Options with regard to the Composition of the Panel

2.7 It is not clear whether the Panel is required to be made up of only Independent persons or whether the panel is required to also include elected members.

There are two possible options:-

- A. Council appoint a new committee named the Statutory Officer Disciplinary Committee. The Committee would include two independent persons when considering whether to recommend dismissal to full Council.
- B. Council extend the composition of the Personnel Committee and widen its functions to address the changes made by the 2015 Regulations. In support and to reflect the requirements of the regulations the Council would appoint a Panel made up of Independent persons only, which is to be convened when Personnel Committee is considering whether to recommend dismissal to full Council.

Option A

- 2.8 In summary it is proposed the Statutory Officer Dismissal Committee will hear all disciplinary matters relating to 'disciplinary action' as defined in the 2015 regulations in respect of the Head of Paid Service, Monitoring Officer and Chief Finance Officer . It will comprise of five members of the Council, with the quorum being three members where at least one of whom must be a member of Cabinet.
- 2.9 Where the Committee is considering whether to recommend to Council the dismissal of the Head of Paid Service, Monitoring Officer or the Chief Finance Officer the committee will comprise 5 members of Council, at least one of whom must be a member of the Cabinet and two independent persons appointed in accordance with the 2015 regulations. This would enable the Independent person to be involved from a slightly earlier stage.
- 2.10 The advantage of this approach is that it is simple and the Independent persons are involved from an early stage. However, the disadvantage is that it does not build in a further opportunity for the officer to address or appeal the decision made which is contrary to employment practice. Investigations of misconduct at a senior level are often complex and involve an outside investigator. Although, having the Independent Panel involved from the beginning allows for transparency it leaves little in the way of appeal or to address any areas of concern from the officer point of view.

Option B

- 2.11 Kirklees already has a Personnel Committee and has within its current terms of reference the ability to consider and deal with disciplinary procedures in the case of officers above the level of Service Director as described, "*..1...Appointment of staff and determination of their terms and conditions of appointment, including disciplinary procedures and including negotiations and consultation with trade unions over issues relating to terms and conditions..*"
- 2.12 The committee could make a referral to full Council for a decision if dismissal is recommended. It is proposed that the role of Personnel

Committee be slightly expanded to include the terms of reference as set out at Appendix B in line with the regulations to include investigation and consideration of appropriate issues relating to the other two senior posts referred to, the Chief Finance Officer and Monitoring Officer.

- 2.13 This means that there would be referrals by the Personnel Committee to the Independent panel, who would review the recommendation and have full access to the written evidence and recommendations of Personnel Committee. The Independent Panel would conduct a full review following the recommendation from Personnel Committee and would have a further opportunity to hear from the relevant officers, investigator and employee and make recommendations to full Council for a decision where appropriate. The Independent Panel would require appropriate support in place to ensure they were properly independent. The Independent panel would be made up of three independent persons and they would be appointed in accordance with the 2015 regulations. The Regulations state how and in what order of priority independent persons are approached to form the membership of the panel. It is as follows:
- 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

Kirklees currently has one independent person; which may increase in the future if further recruitment is undertaken. If it has not increased then we are able to ask other Local Authorities to use theirs rather than appoint another one specifically to fulfil the role

- 2.14 In practice the referral to the Independent panel would take place before Council so their views can be taken into account by full Council before reaching a decision. This would also provide a mechanism for the statutory officer to appeal or challenge the investigation process so far and provide a second opportunity for the officer to have their views heard by the independent panel.
- 2.15 Once full Council has approved the dismissal following the decision to dismiss from the Personnel Committee and the Independent Panel, the regulations do not suggest there is a higher decision making body. It is for this reason that the decision to dismiss could be taken at the first stage by the Personnel Committee and the Independent Panel can in effect become the appeal stage. The officer will have had a further opportunity to state their case before any proposal to dismiss is made and then to address the authority before any decision to approve the dismissal is made.

Impact on Senior Officers

- 2.16 The changes in the legislation have been discussed with the relevant officers. They have been informed that the new procedure will be an implied term within their current contract and will take precedence over

the previous DIP procedure which may be referred to in their current terms and conditions. Once the changes are made it will become an express term and HR will confirm the amendment to their terms and conditions subject to approval of the changes by Council.

3. Implications for the Council

The regulations require that the Council changes its procedures.

3.1 Early Intervention and Prevention (EIP)

N/A

3.2 Economic Resilience (ER)

N/A

3.3 Improving Outcomes for Children

N/A

3.4 Reducing demand of services

N/A

3.5 Legal and Financial Implications

The regulations require the council to change its procedures.

4. Consultees and their opinions

Consultations have been carried out with the relevant officers involved who understand the requirements and have no objections to the proposed procedures.

HR and Head of Legal Services.

5. Next steps

Members are asked to consider each of the options and approve either Option A or B as a recommendation for Council to adopt.

If Committee approve Option A and the establishing of a new committee the suggested terms of reference, composition and functions of the committee are set out at Appendix A

If Committee approve Option B the extension of the role of Personnel Committee is agreed, it is necessary to amend the Personnel Committee terms of reference to reflect the changes as set out in Appendix B and to amend the Officer Employment Procedure Rules as set out in Appendix C.

A report will be taken to full Council on 11 October 2017 recommending one of the options with any feedback, comments or recommendations from this meeting will be included in that report. Following Council the necessary changes will be made to the Constitution to reflect the new process

6. Officer recommendations and reasons

- 6.1 Members are asked to recommend to full Council approval of **Option B** for the reasons already set out in this report at paragraph 2.14 and 2.15:

The reason for preferring Option B having considered a number of other Local Authorities procedures is because most have built in a three layer approach similar to Option B. This adds a further layer in terms of an appeal, as there is no reference to this in the regulations and provides a further opportunity for the Independent Panel to consider the decision from Personnel Committee with 'fresh eyes' in accordance with the regulations. It offers a simple and clear process in line with the intention of the Regulations and provides an opportunity for the officer to be heard before an Independent Panel prior to the recommendation to Council. This also places it in line with good practice in employment terms which requires an appeal process.

- 6.2 If **Option B is approved by members** amendments will be required to the Personnel Committees' terms of reference as set out at Appendix B to this report
- 6.3 Amendments to the Officer Employment Procedure as set out at Appendix C to this report.
- 6.4 That a panel be established to comprise a minimum of two Independent persons with terms of reference as set out in Appendix D
- 6.5 This Committee considers the requirements of the regulations as set out in the report and makes any comments/observations before the changes to the constitution are considered by Council.

7. Cabinet portfolio holder recommendation

Not applicable.

8. Contact officer

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9. Background Papers and History of Decisions

Changes to Statutory Process for Dismissal Procedures for Senior Officer dated 24 June 2015

Appendices:

Appendix A – Statutory Officer Dismissal Committee Terms of Reference

Appendix B - Personnel Committee Terms of Reference

Appendix C – Officer Employment Procedure Rules

Appendix D – Independent Persons Panel

10. Service Director responsible

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The Service Director recognises that she has a conflict of interest in relation to this report but responsibility primarily lies in her service.