

15 July 2015

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Changes to the Officer Employment Procedure Rules		
Wards affected	Not applicable		

This report requests Council to amend the Officer Employment Procedure Rules in relation to disciplinary action against the Council's statutory officers

1. Decision Required

- 1.1 To amend the Officer Employment Procedure Rules in accordance with Appendix 1 to this report.
- 1.2 That the Monitoring Officer be given authority to make any consequential amendments to the Constitution.

2. Background

- 2.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which came into force on 11 May 2015 make changes to the Local Authorities (Standing Orders) (England) Regulations 2001. The 2015 Regulations contain provisions which require the Council to amend its Officer Employment Procedure Rules contained in the Constitution.
- 2.2 The changes are to the rules relating to disciplinary action against, or the dismissal of, the head of paid service, chief finance officer and monitoring officer.
- 2.3 The reasons put forward by the Government for the changes are set out in paragraph 4 of this report.
- 2.4 The 2001 Regulations contained the following provisions:
 - No disciplinary action could be taken against the head of paid service, chief finance officer or monitoring officer other than in accordance with a recommendation in a report made by a designated independent person (DIP).
 - 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.

3. The 2015 Regulations

3.1 The previous rules set out 2.4 above are revoked entirely. 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 finance 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 authority's head of paid service, chief finance officer and monitoring officer.
- They state that, before Council considers whether to dismiss these officers, it must convene a panel made up of councillors and at least two independent persons. 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 Council can appoint more than two independent persons to a panel and there are no rules on the number of councillors on the panel.

3.2 The Council at its Annual Meeting on 22 May 2013 appointed Sarah Greatorex and Barbara Pears for term of 4 years as its independent persons under the Localism Act 2011.

4. The reasons for the changes

4.1 An Explanatory Memorandum to the 2015 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.

4. Strategic Plan References

- 4.1 The manner in which Council governs its business is an underpinning mechanism in the Council's Strategic Plan aims to set out the direction and future potential for our Borough.

5. Financial Considerations

- 5.1 No direct implications.

6. Equality, Diversity and Human Rights Implications

- 6.1 An Equality Impact Assessment Statement has been prepared on the Constitution and is available on the Council website. The following link is to the Equality Impact Assessment: <http://www.colchester.gov.uk/CHttpHandler.ashx?id=2287&p=0>

7. Publicity Considerations

- 7.1 All amendments to the Council's Constitution and will be published on the Council's website.

8. Consultation, Community Safety, Health and Safety and Risk Management Implications

- 8.1 No direct implications.

Appendix 1: Changes to the Officer Employment Procedure Rules

DELETE:

2. Disciplinary action against the Head of Paid Service, Monitoring Officer and Chief Finance Officer

- (11) No disciplinary action (within the meaning of Regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001) in respect of the Head of Paid Service (unless he/she is also a council manager of the Authority), the Monitoring Officer or the Chief Finance Officer, except the action described in Rule 2(12) may be taken by the Council or any a committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a designated independent person under Regulation 7 of those Regulations.
- (12) The Head of Paid Service will initiate any investigation to suspend any of the officers referred to in Rule 2(11) and to appoint a designated independent person as required by Regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001 provided that if the investigation relates to the Head of Paid Service, the investigation will be initiated by the Head of Corporate Services.
- (13) The action mentioned in Rule 2(11) 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 place.

REPLACE WITH:

2. Disciplinary action against the Head of Paid Service, Monitoring Officer and Chief Finance Officer

- (11) 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 head of the authority’s paid service, chief finance officer, or monitoring officer, as the case may be.

- (12) A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.
- (13) 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.
- (14) In Rule 2 (13) relevant independent persons 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.
- (15) Subject to Rule 2 (16), the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with Rule 2 (13) 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.
- (16) An authority is not required to appoint more than two relevant independent persons in accordance with Rule 2 (15) but may do so.
- (17) The authority must appoint any Panel at least 20 working days before the relevant meeting.
- (18) 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.
- (19) 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.