

## TRAFFORD COUNCIL

**Report to:** Employment Committee  
**Date:** 10<sup>th</sup> August 2015  
**Report for:** Approval  
**Report of:** Lisa Hooley, Acting Director of HR

### Report Title

**Proposed Disciplinary and Dismissal Procedure for the Head of Paid Service, Monitoring Officer and Section 151 Chief Finance Officer (Statutory Officers)**

### Recommendation(s)

**It is recommended that Employment Committee:**

- 1. Approves the proposed Disciplinary and Dismissal Procedure for Statutory Officers.**

### Background Information

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| Relationship to Corporate Priorities                | N/A  |
| Financial   | None   |
| Legal Implications                                  | This change is as a result of a regulatory amendment and its compliance is therefore required by statute   |
| Equality/Diversity Implications                     | None   |
| Sustainability Implications                         | None   |
| Staffing/E-Government/Asset Management Implications | Whilst the statutory amendments will be automatically incorporated into employment contracts, consultation on the revised process has been undertaken with officers directly affected by the changes, in line with routine Council procedures. |
| Risk Management Implications                        | The risk associated with this matter relates to non-compliance from a legal perspective, as referred to above.   |
| Health and Safety Implications                      | None   |

#### **1.0 Background and Context**

- 1.1** The Local Authorities (Standing Order) (England) (Amendment) Regulations 2015 came into force on 11<sup>th</sup> May 2015.
- 1.2** These Regulations introduce significant changes regarding the dismissal of statutory officers of a Council i.e. the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (Section 151); sometimes referred to as the 'protected officers'.

- 1.3 Further to a report to 15<sup>th</sup> July 2015 Council, which detailed the key changes (attached at Appendix 1 for reference) under the amended regulations, the Council's Standing Orders and Constitution have been revised to reflect the changes.
- 1.4 A draft Disciplinary and Dismissal Procedure for Statutory Officers, which sets out the high-level process / principles, was developed in line with these amended regulations and a period of consultation has taken place with the 'protected officers'.
- 1.5 Further to the consideration and incorporation of their feedback, a proposed, final Disciplinary and Dismissal Procedure for Statutory Officers is attached at Appendix 2, for review and approval at Employment Committee.

## **2.0 Conclusion and Recommendations**

- 2.1 Employment Committee is recommended to approve the proposed Disciplinary and Dismissal Procedure for Statutory Officers (at Appendix 2).

### Key Changes under the Amended Regulations

- Under the previous Regulations, local authorities were required to appoint a designated independent person ("DIP") to investigate all allegations of misconduct involving statutory officers, before any disciplinary action could be taken; furthermore, any decision to dismiss the Head of Paid Service had to be taken by full Council,
- In 2013, the DCLG commenced consultation on the removal of the DIP process on the basis that it was bureaucratic and time-consuming.
- Following on from the consultation, a set of amended Regulations were published at the end of March 2015; these Regulations removed the requirement for a DIP to be appointed and instead established a new procedure for dismissing statutory officers.
- This new procedure essentially extends the requirement for full Council to take the decision to dismiss any of the statutory officers (i.e. it is no longer limited to the Head of Paid Service) and most importantly, sets out a requirement that this decision must be taken following consideration of recommendations made by a relevant 'Panel', which includes Independent Persons (IPs).
- The Regulations provide that this 'Panel' should be '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'; this committee would be subject to the usual legal requirements for proportionality and must comprise 'at least two' IPs.
- These IPs must be appointed under the provisions of section 28(7) of the Localism Act 2011 (established for the purposes of the 'member conduct' regime) and must not be remunerated at a higher level than that which they would have been in undertaking their role as an Independent Person in the conduct regime. This is to ensure that the new process incurs minimal cost.

**Trafford Council**

**Proposed Disciplinary and Dismissal Procedure for Head of Paid Service,  
Monitoring Officer and Section 151 Chief Finance Officer**

It is proposed that the Council adopts a procedure as provided for in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, as follows:

1. Where an allegation of potential misconduct is made against the Head of Paid Service, Monitoring Officer or Chief Finance Officer (the 'protected officers'), then the Leader of the Council, in conjunction with the Director of HR (and Head of Paid Service, where the allegation is not related to them) will consider whether the issues require investigation and, where this is the case, determine the most appropriate person to conduct the investigatory process.
2. This will ordinarily be an external, independent investigator, with the relevant background, skill set and experience to conduct investigations of this nature. The independent investigator will undertake their investigation in accordance with the ACAS Code of Practice.
3. The Leader of the Council, Head of Paid Service (where appropriate) and the Director of HR, will consider whether suspension is appropriate or whether there are any other suitable alternative ways of managing the situation. Where suspension is deemed appropriate, the Director of HR will ensure that agreed suspension protocols are followed.
4. The findings from the investigation will be presented to a Panel; this Panel must consist of a least 2 independent persons, who must be drawn from those appointed under section 28(7) of the Localism Act 2011. In addition, the Panel will comprise of Elected Members who will ordinarily be members of the Employment Committee and will be politically balanced in line with the rules of proportionality. The Panel will be advised by the Director of HR (or their representative).
5. The 'protected officers' are entitled to make personal representations to the Panel and have the right to be accompanied by their Trade Union representative or a work colleague if they so wish.
6. The Panel will consider the conclusions of the investigation and any representations from the protected officer concerned.
7. Where it is considered by the Panel that no action or action short of dismissal should take place, then the Panel can progress in confirming the outcome of the Panel meeting and there is no requirement to put the matter forward for an authority vote.
8. Where the Panel determines that action short of dismissal is the appropriate sanction, the protected officer has the right of appeal to a politically-balanced Appeals Committee ordinarily made up of members of the Employment

Committee, who were not involved in the Panel meeting. The appeal hearing will take the form of a review of the case and the decision that was taken by the Panel. The protected officer will be invited to make their verbal/written representations to the Appeals Committee for consideration. Where the protected officer chooses to present verbally, representatives from the Panel will also be in attendance. The Appeals Committee will be advised by the Director of HR (or their representative). All relevant parties will be provided with the relevant documentation in advance of the Appeals Committee.

9. Where the proposal is to dismiss, the Executive Objections Procedure will be followed prior to the matter going forward to full Council.
10. On receipt of any objections, it is for the Panel to decide whether they are material and well-founded. If they are, then the Panel will need to consider the effect of the objection and act accordingly. For example, this may require further investigation.
11. Where there are no objections or any objection is deemed as not material or well-founded, the matter will then be considered at full Council, who will vote at a meeting on whether to approve the proposal to dismiss. There must be an interlude of at least 20 working days between the full Council meeting and the date of the original Panel meeting.
12. At their meeting, full Council will consider the original investigation report and the recommendations of the Panel, along with any verbal/written representation from the protected officer. Where the protected officer chooses to present verbally, representatives from the Panel will also be in attendance. All relevant parties will be provided with the relevant documentation in advance of full Council.
13. The decision of Council will be by way of a majority vote and will be final.
14. Where a decision to dismiss is approved by Council, then the protected officer has no further right of appeal.
15. It is in the interests of all parties that the process should be conducted expeditiously, but fairly and that any delays in the procedure are avoided, wherever possible.
16. This process will also be adopted in cases where there are issues in relation to capability, which are not resolved through the provision of additional guidance, training, development and support.

## 'Protected Officers' Disciplinary and Dismissal Procedure Flowchart

The following flowchart provides a summary of the proposed procedure:

**Initial Action**  
The Leader of the Council, Head of Paid Service (where appropriate) and the Director of HR appoints an independent investigator



The independent investigator undertakes an investigation in line with ACAS Code of Practice and produces a report with detailed findings



**Panel Hearing**  
A Panel, comprising of 2 independent persons, together with Elected Members who will ordinarily be members of the Employment Committee and the Director of HR (or their representative in an advisory capacity), hears the case, including representations from the protected officer



Any recommendation on no action or action short of dismissal can be confirmed by the Panel without any referral to full Council.



**Appeals Committee**  
The protected officer has a right of appeal against a sanction of action short of dismissal to an Appeals Committee ordinarily made up of Employment Committee members who were not involved in the Panel meeting. The Appeals Committee will review the case and the decision made, together with verbal/written representation from the protected officer and the Panel.



## Executive Objections Procedure

Where the proposal is to dismiss, the Executive Objections Procedure will be followed before the proposal being considered by Council



Under the Executive Objections Procedure, members of the Executive have a chance to object to the proposed dismissal. If there are no objections or it is deemed that any objection is not material or well-founded, then the proposal to dismiss can proceed.



It is for the Panel to decide whether any objections are material and well-founded. If they are, then the Panel will need to consider the effect of the objection and act accordingly. For example, this may require further investigation.



## Full Council

Where the proposal is to dismiss, full Council considers all written documentation relating to the case for dismissal, including the advice, views and recommendation from the Panel, together with verbal/written representation from the protected officer and the Panel. An interlude is required of at least 20 working days between the original Panel meeting and the full Council meeting.



Council votes on whether or not to dismiss (majority vote) and their decision will be final.