

# **New Statutory Procedure for dismissing Statutory Officers**

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### **Purpose of Report**

This report asks the Council to make changes to the constitution to implement a new process for the dismissal of statutory officers (the Head of the Paid Service, the Section 151 Officer and the Monitoring Officer).

### **Background**

All local authorities have three key statutory officers, each of whom has personal responsibility for making reports to Council or the Cabinet in certain circumstances.

The Head of the Paid Service role is normally discharged by the Chief Executive, but at present it is being discharged by Margaret Lee under the arrangements approved by full Council in May 2015.

The Section 151 Officer role is discharged by Margaret Lee, the Executive Director for Corporate and Customer Services.

The Monitoring Officer role is discharged by Terry Osborne, the Director for Corporate Law and Assurance.

### **Current Position**

Since 1990, the procedure for appointing the Head of the Paid Service and for taking disciplinary action against or dismissing the Head of the Paid Service, the Section 151 Officer or the Monitoring Officer has been prescribed by regulations. The prescribed process had to be incorporated into the constitution. The current process is:

- The Council could suspend the Head of the Paid Service, Section 151 Officer or the Monitoring Officer.
- No dismissal or any other disciplinary action could be taken unless the action was in accordance with the recommendation of a 'Designated Independent Person'.

- The 'Designated Independent Person' had to be agreed between the Council and the relevant officer. If no agreement was possible then the Designated Independent Person was appointed by the Secretary of State.

This process using a Designated Independent Person has never had to be used by the Council, but some authorities which have used it have criticised the process as being slow and expensive.

Regulations also required the Council to make standing orders which require the hiring or dismissal of the Head of the Paid Service to be approved by full Council.

### **New Process**

The Local Authorities (Standing Orders) (England) Regulations 2015 change the requirements relating to disciplinary action or dismissal of one of the specified chief officers and removes the requirement to procure a report from a designated independent person. The Council is now required to make standing orders which instead provide:

- (a) that the appointment of the Head of the Paid Service must be approved by a resolution of full council;
- (b) a new process for dismissal of the Head of the Paid Service, Section 151 Officer or Monitoring Officer, who can now only be dismissed with the approval of a resolution of full Council;
- (c) that when considering any such dismissal, full Council must consider the advice, view or recommendations of a panel;
- (d) the panel must be an advisory committee (ie a committee without decision making powers) and the membership of the Panel must include at least two 'independent persons';
- (e) the Council must appoint 'independent persons' to the panel. The only people who qualify are people who have been appointed by the Council (or another council) for the purposes of advising in cases relating to the member code of conduct. At present the Council has two independent persons, Mr Norman Hodson and Mr Jonathan Swann. Both were appointed by full Council in October 2012. This will be a new role for the independent persons; their current role is restricted to dealing with the code of conduct for members.
- (f) In selecting independent persons the Council is required to prioritise Essex County Council appointed 'independent persons' who are local government electors in Essex. If for any reason the Council's appointed 'independent persons' are unable to attend then it is entitled to use independent persons appointed by another local authority.

### **Proposed Constitution of the Panel**

The Council can choose the size of the panel but as an Advisory Committee appointed under the Local Government Act 1972, the appointment of councillors to

the Panel is required, by the Local Government and Housing Act 1989, to be politically balanced. The independent persons are entitled to vote. Under the political balance rules the Conservative Group is entitled to a majority of the votes on the Panel. This means that, in this case, the Conservative Group is entitled to more seats than would be necessary to reflect proportionality.

Based on the current political make up of the Council, and the presence on the Panel of the two independent members, the political balance of the panel would be as follows:

<b>Size of Panel</b>	<b>Ind Person</b>	<b>Con</b>	<b>Lab</b>	<b>LD</b>	<b>UKIP</b>	<b>NAG</b>	<b>Green</b>	<b>Ind</b>
3	2	1	0	0	0	0	0	0
4	2	1	0 or 1*	0 or 1*	0	0	0	0
5	2	2	0 or 1*	0 or 1*	0	0	0	0
6	2	3	0 or 1*	0 or 1*	0	0	0	0
7	2	4	0 or 1*	0 or 1*	0	0	0	0
8	2	5	0 or 1*	0 or 1*	0	0	0	0
<b>9</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

\*Under these options, only one of the main opposition groups (Labour or Liberal Democrat) would be entitled to a seat despite both groups having the same number of members if the panel totalled 8 or fewer members. It is therefore recommended that the panel should consist of 9 members to provide for a seat for each of the main opposition parties.

In order to implement the regulations it is proposed that:

- (a) a new panel, to be called the Statutory Officer Advisory Panel be constituted;
- (b) the Panel will have nine members (seven councillors + two independent persons);
- (c) the Panel will be politically balanced;
- (d) if the ECC Independent persons cannot act for any reason then following consultation with those Independent Members, the Chief Executive is given authority to appoint substitute independent persons from other local authorities to the panel, with the Section 151 Officer being authorised to make appointments in the event of a conflict of interests preventing the Chief Executive from acting.

The Constitutional changes needed to implement the regulations are set out in the Annex to this report.

## **Other Issues**

The old statutory process applied to all disciplinary action, not just dismissals. The new process applies only to dismissals. The current disciplinary procedure for all other Chief Officers will in future apply to the statutory officers as well.

### **Recommended:**

That the Constitution be amended as set out in the Annex to this report.

- (1) After paragraph 6.1.3 (x) of the Constitution (functions of the Full council) insert a new paragraph 6.1.3(xi) and renumber the current (xi) to (xv) which reads

“Dismissal of the Head of the Paid Service, the Section 151 Officer or the Monitoring Officer.”

- (2) Amend paragraph 8.1.4 of the Constitution by adding in the underlined text as set out below to reflect the new procedure

#### **8.1.4 Committee to determine the Terms and Conditions of employment of Chief and Deputy Chief Officers**

Membership: Five Members of the Council to include the appropriate Cabinet Member.

- (i) subject to (iv) below to be responsible for the appointment and dismissal of Chief/Deputy Chief Officers and appeals against dismissal of such persons with the power:
  - (a) to appoint sub-committees of three Members to deal with particular appointments, dismissals or appeals; and
  - (b) to authorise the Chief Executive or his nominee to deal with a particular appointment or dismissal;
- (ii) to resolve any issue relating to the terms or conditions of employment of Chief/Deputy Chief Officers not already covered by the Council’s Officer Employment Procedure Rules; and
- (iii) to decide the level of performance pay to be awarded to the Chief Executive and members of the Corporate Leadership Team.
- (iv) The Committee is not authorised to dismiss the Head of the Paid Service, the Monitoring Officer or the Section 151 Officer.

- (3) Insert a new paragraph 8.1.10 in the Constitution to read as follows:

#### **8.1.10 Statutory Officer Advisory Panel**

Membership: Nine members, including Seven Members of the Council and two Independent Persons appointed in accordance with paragraph 22.6.1.

Where possible the Essex County Council Independent Persons are to be invited first.

- (i) To advise the Council on the dismissal of the officers who are for the time being designated as the Head of the Paid Service, the Monitoring Officer or the Section 151 Officer as set out in paragraph 22.6.1.

The Panel is an advisory committee constituted under s102(4) of the Local Government Act 1972. Accordingly it is not an ordinary committee for the purpose of the political balance rules.

- (4) Insert a new paragraph (ix) in 15.3.8 (delegations to the Director for Corporate Law and Assurance) as follows:

- (ix) Following consultation with the Council's Independent members, to appoint substitute Independent Persons to the Statutory Officer Advisory Panel where ECC appointed Independent Persons are unable to Act. If the Director is unable to discharge this delegation personally this delegation may be exercised by the Section 151 Officer see above.

- (5) Replace the current paragraphs 22.6.1 and 22.6.2 with the following text which is required by the new regulations:

#### **22.6.1 Dismissal of Statutory Officers**

- (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 paragraph 22.6.1 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.
  - (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.

(4) Renumber paragraph 22.6.3 as paragraph 22.6.2.

(5) Delete paragraph 22.8. This paragraph is made redundant by the new 22.6.1.

(6) Make the change required by the new regulations so that in paragraph 23.2 the paragraph which reads:

*'Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment or dismissal of an officer designated as the Head of Paid Service, the Council must approve that appointment before an offer of appointment is made to him, or as the case may be, must approve that dismissal before notice of dismissal is given to him'*

is replaced with the following text:

*'Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority's paid service, the authority must approve that appointment before an offer of appointment is made to that person.*

*Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief finance officer, or as the authority's monitoring officer, the authority must approve that dismissal before notice is given to that person. (Note: This paragraph is included in the constitution as required by law, but at ECC there is no committee, sub-committee or officer which is authorised to discharge this function.)'*