

# Taunton Deane Borough Council

## Full Council – 11 July 2017

### Statutory Protection for Statutory Officers

This matter is the responsibility of Executive Councillor R Parrish

Report Author: Assistant Chief Executive and Monitoring Officer

#### 1 Executive Summary / Purpose of the Report

This report recommends changes to the statutory protection arrangements to be applied where the Council is proposing to dismiss the Head of Paid Service, the Section 151 Officer or the Monitoring Officer. It seeks to bring the constitutional provisions into line with the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015 (the Regulations).

#### 2 Recommendations

2.1 That Council approves amendments to the disciplinary provisions to be applied where the Council proposes the dismissal of a post-holder holding the position of Head of Paid Service, the Section 151 Officer or Monitoring Officer.

2.2 That Council grant delegated authority to the Assistant Chief Executive and Monitoring Officer, in consultation with the Portfolio Holder for Corporate Resources to make the necessary amendments to the Constitution and HR procedures to give effect to recommendation 2.1.

#### 3 Risk Assessment

##### Risk Matrix

Description	Likelihood	Impact	Overall
The Council is currently not complying with the requirements of the regulations in relation to the disciplinary and dismissal procedures for the statutory officer posts and could leave itself open to claims being made on the basis of a flawed/non-compliant dismissal process	3	4	12
<i>The report proposes making amendments to the process to make the Council legally compliant</i>	1	4	4

## Risk Scoring Matrix

<b>Likelihood</b>	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
<b>Impact</b>							

<b>Likelihood of risk occurring</b>	<b>Indicator</b>	<b>Description (chance of occurrence)</b>
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

## 4 Background and Full details of the Report

### Statutory Protection for the Head of Paid Service, Section 151 Officer and Monitoring Officer

- 4.1 The Local Authority (Standing Orders) (England) (Amendment) Regulations 2015 amended the statutory protection provisions that apply to the posts of Head of Paid Service, the Section 151 Officer and Monitoring Officer. Since the implementation of the Regulations, Council has deferred making any changes pending a review by the Somerset Monitoring Officers Group because of concerns over the requirements of the Regulations.
- 4.2 Counsel's opinion has been obtained, guidance has been received from the Local Government Association and from the recently published Joint Negotiating Committee for Local Authority Chief Executives' National Salary Framework & Conditions of Service Handbook. This has enabled a set of proposals to be developed in conjunction with Councils across Somerset so that the Council can be confident that it meets the requirements of the Regulations in so far as they can be understood or interpreted.
- 4.3 The history behind this issue is contained in the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015 which amended the statutory protection

provisions that apply to the posts of Chief Executive, Chief Finance Officer and the Monitoring Officer.

4.4 As a reminder the problem areas of the Regulations are:

- (a) The replacement of the requirement to appoint a Designated Independent Person (DIP) to advise the Council on any allegation of misconduct with a provision that a dismissal decision can only be taken by Full Council, after consideration of the advice, views or recommendations from a Panel which includes a minimum of two Independent Persons (IPs). This significantly reduced the statutory protection provisions for these post-holders but as this was provided for by the Regulations the Council has no choice but to bring its constitutional arrangements into line.
- (b) The requirement to involve local IPs in a panel appointed by the Council to advise on Member conduct issues raised concerns because of a concern about potential conflict between the two sets of regulations detailing their roles. There was also a lack of clarity about elected member involvement in a panel involving IPs.
- (c) The fact that the DIP process is often incorporated into statutory officers' contracts of employment and where this is the case amendments could be required to the contractual arrangements to bring them in line with the Regulations.

4.5 In detail the Regulations

- (a) Require a minimum of two IPs to be appointed to a Panel (being a Committee of the Authority) to consider a dismissal proposal. The Panel can comprise more than 2 IPs and there is the ability to involve IPs appointed by neighbouring councils on the Council's Panel in addition to those appointed by the Council.
- (b) Removed all statutory protection for disciplinary action against these statutory post-holders short of dismissal.
- (c) Require the Panel involving the IPs to be appointed at least 20 working days before the meeting of the Authority which is to consider any proposal to dismiss the Officer.
- (d) Require a Council before it votes on whether or not to approve such a dismissal, to take into account, in particular:-
  - any advice, views or recommendations of the Panel involving the IPs;
  - the conclusions of any investigation into the proposed dismissal; and
  - any representations from the relevant Officer.
- (e) IPs who take part in a Panel can be paid an additional allowance which must not exceed what they are currently paid for their role as an IP advising on complaints against Members.

4.6 There was much detail missing from the regulations including:

- (a) The numbers or voting membership of the Panel – including whether councillors need to or should be involved.
- (b) The absence of any requirement for it to be a standing committee, or for its members to receive any training.

- (c) The absence of any requirement to provide independent legal advice or support to the Panel, even where this is requested.
- (d) The absence of any requirement to allow the officer who is subject to the proposed dismissal to be able to attend or make representations to the Panel.

4.7 It is important in the absence of such provisions that the Council's arrangements should provide for best practice in such situations to ensure that the officer concerned gets a fair hearing. The recommendations below therefore include provisions beyond what is provided for in the Regulations.

#### Current Constitutional provisions:

4.8 The 'Officer Employment Procedure Rules' Section of the Constitution sets out the current arrangements for dealing with dismissal or disciplinary action in regard to the Head of Paid Service, the Section 151 Officer and the Monitoring Officer. The changes proposed to the dismissal provisions for the statutory posts which are the subject of this report will therefore require amendments to this Section of the Constitution.

4.9 Counsel's advice provided helpful guidance and confirmation on the following matters:

- The involvement of IPs in the process, where it was confirmed that there is no conflict between the two sets of Regulations that apply to their roles. This leaves the Council free to include its IP and the Deputy IP in the Panel arrangements. The view of officers is that the Panel should comprise of a minimum of 3 IPs so there is a need for the Council to have access to other locally appointed IPs as provided for by the Regulations.
- The inclusion of elected members in a panel including IPs. On this issue the Government's intention is that the Panel advising the Council on a proposed dismissal of one of these statutory post-holders should only comprise of IPs.

4.10 Outside of this the Council is free to put in place provisions that best fit its local circumstances and culture. The Local Government Association has also issued helpful guidance which accords with the proposals set out in this paper.

4.11 Proposed dismissal of the Head of Paid Service, the Section 151 Officer and Monitoring Officer recommendations

In view of the above, the proposals set out below detail the proposed provisions that will be recommended to all six Somerset Councils, as well as those recommendations specific to the Council's arrangements.

#### All Councils

- (a) The six Councils agree to form a Somerset IP 'pool' from which IPs would be invited to form an IP Panel to advise a Council on a proposed dismissal of a Head of Paid Service, Section 151 Officer or Monitoring Officer. Invitations to IPs to participate in a Panel will be issued in accordance with the Regulations.

- (b) It is proposed that at least three IPs need to convene in order for a Panel meeting to be quorate. *The legislation requires a minimum of 2 IPs to participate in a Panel but allows more to be appointed.*
- (c) An IP Panel should appoint its own chairman for the duration of a dismissal process.
- (d) IP Panel meetings will have professional officer support available to advise on process.
- (e) The IP Panel will report its recommendations direct to Full Council. The Panel's role will be separate from any elected member involvement in the process in advance of consideration by Full Council.
- (f) The officer who is the subject of the proposal dismissal shall be given the opportunity to make representations to the IP Panel before it makes its recommendations to Full Council in addition to his/her right to make representations to Full Council before a decision on a proposed dismissal is made.

#### Local Provision

- 4.12 In view of the current partnership arrangements for the sharing of staff with West Somerset Council(WSC), it is proposed that the Leader and/or relevant portfolio holder of WSC will have the right to present the Council's views on the matter in writing or in person to the IP Panel before it makes its recommendations to Full Council.

#### Remuneration of IPs

- 4.13 It is further recommended that IPs used on an IPs Panel should be entitled to claim expenses for attending meetings of the Panel in accordance with the Scheme of Members' Allowances and shall receive a one off payment per involvement in a Panel equivalent to 20% of their annual co-opted members' allowance paid by their respective Council.

#### Conclusion

- 4.14 Members will be aware that Council – at its meeting held on 14 July, 2015 - has previously deferred making any changes to the constitutional arrangements in relation to the statutory protection provisions for the posts of Head of aid Service, Section 151 Officer and Monitoring Officer because of concerns over the requirements of the 2015 Regulations.
- 4.15 The Council has chosen not to give effect to the Regulations since their implementation in the hope that the government would respond to the many concerns submitted nationally about the contents and implications of the regulations. No changes have been made or appear to be planned by the government and in the interests of moving this issue forward to enable the Council to comply with the Regulations the advice of Counsel has been sought on the options.
- 4.16 At all stages of these considerations the intention has been to agree with a unified approach across Somerset Councils in so far as is possible as the Regulations apply to all Councils and a successful solution for each Council is dependent on a degree of collaboration within Somerset.

- 4.17 This paper sets out recommendations for revised arrangements that Council can be confident meet the requirements of the Regulations and which provide consistent arrangements across the 6 councils where it makes sense to do so. Similar reports will be taken through other Somerset Councils.

## **5 Links to Corporate Aims / Priorities**

- 5.1 The proposals set out in the report are necessary to ensure that the Council is compliant with the relevant Regulations relating to this matter.

## **6 Finance / Resource Implications**

- 6.1 The only financial implications associated with agreeing the recommendations is that in the event of the proposed Independent Panel being convened then there would be some modest expenses to cover as referenced in Section 4.

## **7 Legal Implications**

- 7.1 The proposals set out in the report are necessary to ensure compliance with the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015.

## **8 Environmental Impact Implications**

- 8.1 None in respect of this report.

## **9 Safeguarding and/or Community Safety Implications**

- 9.1 None in respect of this report.

## **10 Equality and Diversity Implications**

- 10.1 *The three aims the authority must have due regard for are:-*

- *Eliminate discrimination, harassment, victimisation;*
- *Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- *Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

*There are no direct equality and diversity implications in respect of this report.*

## **11 Social Value Implications**

- 11.1 None in respect of this report.

## **12 Partnership Implications**

- 12.1 As can be seen the proposal does demonstrate partnership working with other local authorities in Somerset to agree a mechanism to draw on a pool of Independent Persons to form a Panel as required.

## **13 Health and Wellbeing Implications**

13.1 Consideration has been given to :

- *People, families and communities taking responsibility for their own health and wellbeing;*
- *Families and communities are thriving and resilient; and*
- *Somerset people are able to live independently.)*

13.2 There are no health and wellbeing implications in respect of this report.

#### 14 Asset Management Implications

14.1 None in respect of this report.

#### 15 Consultation Implications

15.1 The issue has been discussed on a regular basis at meetings of the Somerset Monitoring Officers Group who have collaborated to develop the proposal put before Council and progress was reported to an earlier Council meeting in July 2015.

15.2 The affected post-holders have been kept informed of developments.

#### Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No (**
- **Full Council – Yes**

Reporting Frequency :  Once only  Ad-hoc  Quarterly

Twice-yearly  Annually

#### Contact Officers

Name	Bruce Lang	Name	
Direct Dial	01984635200	Direct Dial	
Email	bdlang@westsomerset.gov.uk	Email	

Name		Name	
Direct Dial		Direct Dial	
Email		Email	