

Crawley Borough Council

Report to Governance Committee 22 June 2015

Disciplinary Arrangements for Statutory Officers

Report of Ann-Maria Brown, Head of Legal & Democratic Services and Lucasta Grayson,
Head of People and Technology – **LDS/104**

1. Purpose

- 1.1 To update Members of the Committee on the changes that are being made to Disciplinary Arrangements for Statutory Officers and to seek a view from the Committee on the proposals for the establishment of an Independent Panel.

2. Recommendations

- 2.1 **The Committee is invited to consider and to provide a view on the proposals for the establishment of an Independent Panel.**

3. Reasons for the Recommendations

- 3.1 The report outlines changes to the statutory disciplinary and dismissal procedures for the Council's Statutory Officers.

4. Background

- 4.1 The Statutory Officers of a Council, i.e. the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer, have statutory responsibilities to discharge to their Councils. Since they work with and report to the elected Members, they discharge these responsibilities in a political environment. As a result, statutory protection requiring an appointment of a Designated Independent Person (DIP) to investigate any allegation of misconduct against these Statutory Officers was introduced by Regulations in 2001.
- 4.2 The current process adopted by the Council to reflect the Standing Orders set out in the 2001 Regulations for the provision for disciplinary action, dismissal and the appointment of the Head of the Paid Service, the Monitoring Officer and Chief Finance Officer were incorporated into the Council's Constitution. This is currently addressed through the Terms of Reference and Functions of the Appointments and Investigating Committee and through the Employment Procedure Rules. The current process for disciplinary action including dismissal for all of the Statutory Officers includes consideration of a Report from a Designated Independent Person by a panel of Members (3) drawn from the Appointments and Investigating Committee followed by a recommendation to the Council if the matter relates to the dismissal of the Head of the Paid Service. The Designated Independent Person is

usually a barrister, and the current process is that no disciplinary action in respect of these Statutory Officers may be taken other than in accordance with a recommendation ie a report made by a Designated Independent Person (DIP).

- 4.3 **The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015** which came into force on 11th May have amended the statutory process to be followed, by removing the requirement for an independent investigation and report by a Designated Independent Person. The new rules replace this with a referral to an internal panel of persons appointed by the Authority.

The new Regulations therefore seek to introduce a new streamlined procedure while attempting to retain some sort of independent check within the system. This is broadly done by giving the “Independent Person” (IP) appointed to support the Members’ Conduct Framework a role in the disciplinary process for the Statutory Officers.

The Regulations introduce new mandatory Standing Orders which all Councils will have to put into their Constitution to replace arrangements relating to the previous framework.

The Regulations provide that 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 by the officer concerned. In the case of a proposed disciplinary action against one of the Statutory Officers, the Council is required to invite Independent Persons who have been appointed for the purposes of the Members Conduct Regime under Section 28 (7) of the Localism Act 2011 to form an Independent Panel.

Under the new Officer Disciplinary Procedures set out in the Regulations, the Council must invite at least two Independent Persons to be on the Panel. Such a Panel has to be convened giving 20 days notice. Independent Persons are to be invited in a particular order. First priority is to be given to an Independent Person appointed by the Council who is also an elector in that Council’s area. If that provides insufficient numbers or the invite is refused, the Council should then invite any other Independent Person it has appointed. And finally, it can then approach and invite Independent Persons from other authorities.

The Regulations provide that the Panel is to be a Committee of the Council, the Panel could consist solely of Independent Members appointed for that purpose. It could also include elected Members. If the Panel includes elected Members, then the political proportionality rules will apply to any elected Members on the Panel.

The Regulations also allow an allowance to be paid to any Independent Person appointed to the Panel. This allowance cannot be more than the allowance paid to the Independent Person for their Member conduct role.

5. Description of Issue to be resolved

The legislation itself does not provide much, if any detail of how the process will work in practice. The LGA has sought clarification from the Department of Communities and Local Government (DCLG) on the new requirements and discussions are being held with the JNC for Chief Executives of Local Authorities regarding amendments to the Model Disciplinary Procedure incorporating a DIP process. The Regulations are not clear in terms of the intended composition of the Panel and whether that would only include the Independent Persons or elected Members. A further dimension to

that is that, at some local authorities DIP procedures have been incorporated into the Terms and Conditions of Employment of the three Statutory Officers; the changes set out in the 2015 Regulations do not of themselves remove that contractual entitlement, therefore the current DIP process will have to run alongside procedures in the new Regulations.

The Regulations provide that the Standing Orders have to be put in place at or before the Council's first Ordinary Meeting after the AGM.

6. Information & Analysis Supporting Recommendation

In order to implement the new Standing Orders, views of the Committee are sought on the nature of this Independent Panel.

Currently under the umbrella of the Terms of Reference and functions of the Appointments and Investigating Committee, a panel of Members (3) one of whom must be a Cabinet Member, will make a decision on a disciplinary matter involving a Statutory Officer having taken into account the report of the DIP, with a recommendation being made to the Council in the case of the Head of the Paid Service for a decision to dismiss.

It is proposed that this Panel of three members drawn from the Appointments and Investigating Committee continue under the new arrangements. In particular where the Panel intends to approve a dismissal, the Panel will make a recommendation for approval to the Council together with giving details of the recommendation to an Independent Panel. An Independent Panel will be convened to offer advice, views or recommendations to the Member Panel and the Council on a proposed course of action, including any proposal for dismissal.

The composition and Terms of Reference of the Independent Panel could be as follows:-

A Panel comprising of two independent persons who are appointed to advise the Council on Standards matters (Code of Conduct), or who advise another Council on Standards matters (Code of Conduct). The Panel membership must be agreed 20 days prior to a meeting and will be arranged by the Head of Legal and Democratic Services or in the case of any action against that officer, by the Deputy Monitoring Officer.

Terms of Reference

1. To investigate proposed disciplinary action against the Chief Executive or the Head of Legal and Democratic Services or the Head of Finance, Revenues and Benefits
2. To offer advice, views or recommendations to the Member Panel of the Appointments and Investigating Committee and the Council on the proposed course of action, including any proposal for dismissal.

The Council currently has two independent persons whose term of office is to July 2015 and July 2016. Dr Barry Jones whose term of office terminates in July has indicated that he would be agreeable to serving a further term of office for one year.

7. Implications

The legal implications are addressed in this report. There are no equality issues arising from this report.

8. Background Papers

There are no Background Papers.

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