

Report of the County Solicitor

***Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.***

**Recommendation**

The Committee is asked to review the Report to ensure compliance with the Joint Negotiating Committee for Chief Executives of Local Authorities (Model Disciplinary Procedure and Guidance) and review the considerations for change (a composite list outlined at Section 7) and determine any changes accordingly.

**1. Introduction**

- 1.1 In May 2019, the Council received a letter from the Joint Negotiating Committee for Chief Executives of Local Authorities reminding Councils, as they entered a new civic year and would therefore be making appointments to various committees, of the requirements as set out in the Model Disciplinary Procedure and Guidance in the JNC Conditions of Service Handbook.
- 1.2 They reported there had been instances in recent months of some Councils not having the appropriate structures and standing committees in place in order that potential disciplinary issues could be quickly considered. Accordingly, the Council has reviewed its own structures and standing committees in light of these requirements.
- 1.3 All Councils in England should establish:
  - An Investigating and Disciplinary Committee (IDC) (JNC Handbook para 1.2.2)
  - An Appeals Committee (see para 1.2.3)
  - An Independent Panel (see para 1.2.4)
  - An elected Member with the designated power to suspend the Chief Executive immediately in an emergency (see para 3)

**2. Investigating and Disciplinary Committee**

**What is Required**

- 2.1 The purpose of the Investigating and Disciplinary Committee is to investigate allegations made relating to (i) Chief Executive conduct; (ii) Chief Executive capability; or (iii) some other substantial issue that requires investigation (as well as determine whether an investigation is needed).
- 2.2 If the Committee determines that an investigation is needed it will also need to appoint an Independent Investigator and consider any report of that Independent Investigator.
- 2.3 The Committee then must decide whether to impose no sanction, impose a sanction short of dismissal or recommend dismissal to the Independent Panel and commence a dismissal process.
- 2.4 The Committee must be a standing Committee appointed by the Council and can undertake other functions as well. It must be politically balanced and include at least one Member of the Cabinet.

- 2.5 It is suggested it is comprised of 5 Members.

#### **What is in place**

- 2.6 The Corporate Disciplinary and Dismissal Policy refers to (in the case of the Chief Executive) the (currently named) Appointments and Remuneration Committee as having the role of reviewing the information reported and if necessary gathering further information in order to determine whether a full investigation and suspension are appropriate.
- 2.7 The Policy also states that the Appointments and Remuneration Committee has delegated authority to consider whether it is appropriate to suspend a Protected Officer (the Chief Executive, Monitoring Officer or Chief Finance Officer)....or to the Chair in cases of emergency (see Section 4).
- 2.8 The Appointments and Remuneration Committee is appointed by the Council and has 5 Members. It includes three Members of the Cabinet and the Leaders of the Labour and Liberal Democrat groups. The current allocations are in line with the political balance calculations.
- 2.9 The terms of reference of the Appointments and Remuneration Committee are clear in that they include *'To discharge the duties of the Council and determine, as appropriate, any disciplinary matters short of dismissal in relation to those Senior Officers at (a) above governed by and in accordance with the Council's Chief Officer Employment Procedure Rules'*.

#### **Considerations for change**

- 2.10 It would appear that the title of the (currently named) Appointments and Remuneration Committee is not reflective of its entire role. Whilst the terms of reference are clear that it is within the remit to deal with disciplinary matters (short of dismissal), the Committee is asked whether a Committee name of Appointments, Remuneration and Chief Officer Investigatory Committee would be more appropriate.
- 2.11 If the above is agreed, then the Chief Officer Procedure Rules will need to reflect the revised name. They are compliant in all other areas.
- 2.12 The Council schedule currently shows the currently named Appointments and Remuneration Committee as locally balanced, however, this can be reflected on the schedule as politically balanced.

### **3. Appeals Committee**

#### **What is Required**

- 3.1 The purpose of the Appeals Committee is to hear appeals against action taken by the Investigating and Disciplinary Committee on Sanctions (except for dismissal) and then decide whether to confirm the sanction; impose no sanction; or impose a lesser sanction.
- 3.2 It has a fairly limited role, however the decision of the Appeals Committee is final.
- 3.3 The Committee must be politically balanced and include at least one Member of the Cabinet.
- 3.4 Again, it is *suggested* it is comprised of 5 Members, but they cannot be Members who are Members of the Investigating and Disciplinary Committee.

#### **What is in place**

- 3.5 The Corporate Disciplinary and Dismissal Policy refers to a detailed appeals process against action short of dismissal as outlined above. It highlights that the 'Appeals

Committee' should comprise the Chair of the County Council together with two members of the Cabinet and two other Members, the composition of the Committee to include a representative from each of the political party groups and excluding any Members previously involved.

#### **Considerations for change**

- 3.6 Whilst the Corporate Disciplinary and Dismissal Policy is fully compliant in the recognition of requiring an Appeals Committee, the Council has not formally constituted an Appeals Committee.
- 3.7 The Council will need to appoint such a Committee as a belt and braces approach with the suggestion it be called Appeals (Chief Officer) Committee, so not to be confused with the Appeals (Transport) Committee.

#### **4. An Independent Panel**

##### **What is Required**

- 4.1 The purpose of the Independent Panel is to review a recommendation of the Investigating and Disciplinary Committee proposing dismissal of the Chief Executive and any representations made by the Chief Executive.
- 4.2 Its role is also to provide advice, views or recommendations via a report to Council before a Chief Executive can be dismissed, for any reason other than redundancy, permanent ill-health or the expiry of a fixed term contract, unless the authority has undertaken to renew that fixed term contract.
- 4.3 It *should* be comprised of at least two independent persons who have been appointed by the Council, for the purposes of the Council Members' conduct regime under *section 28(7) of the Localism Act 2011*.
- 4.4 They also must be appointed at least 20 days before the meeting of the Council at which a recommendation for dismissal is to be considered.

##### **What is in place**

- 4.5 The Corporate Disciplinary and Dismissal Policy refers to such a panel (at least two independent persons, who are defined in the Regulations as a person appointed under section 28(7) of the Localism Act 2011) and mirrors the approach as outlined above (for example ensuring the Panel is in place at least 20 working days before the hearing and that the Independent Panel should review the Investigation Report and provide a view and advice to the Authority).
- 4.6 The Annual Council meeting appoints Independent Persons under s28(7) of the Localism Act 2011 and The Local Authorities (Standing Order) (England) (Amendment) Regulations 2015, specifically referencing the consideration of complaints under the Council's Standards/Conduct Regime and Dismissal of certain Statutory Chief Officers.

#### **Considerations for change**

- 4.7 This section is fully compliant, however, consideration may wish to be given to referencing the role of the Independent Person under the terms of reference for the currently named Appointments and Remuneration Committee in the Constitution.

## **5. Elected member with the designated power to suspend the Chief Executive**

### **What is Required**

- 5.1 An elected Member with the delegated power to suspend the Chief Executive immediately in an emergency or if an exceptional situation arises whereby allegations of misconduct by the Chief Executive are such that his continued presence at work pose a serious risk to the health and safety of others or the resources, information or reputation of the authority.
- 5.2 It is suggested that this power is held by the Chair of the Investigating and Disciplinary Committee.

### **What is in place**

- 5.3 The [corporate disciplinary and dismissal policy](#) for chief officers and heads of service states the Chair of the currently named Appointments and Remuneration Committee shall have delegated to them the power to suspend a Protected Officer immediately in an emergency if an exceptional situation arises whereby allegations of misconduct are such that the Officer's remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Authority.

### **Considerations for change**

- 5.4 Whilst the Policy is clear, it is felt that the Constitution (the Terms of Reference of the currently named Appointments and Remuneration Committee) reflect this power of the Chair.
- 5.5 It would also be beneficial for the Corporate Disciplinary and Dismissal Policy to be available via a link from the currently named Appointments and Remuneration Committee terms of reference.

## **6. Process / Flowchart**

- 6.1 For ease of reference, a flow chart relating to the whole discipline process is attached as Appendix 1 to this Report.

## **7. Considerations for Change / Amendments (Full List)**

### Constitution

- 7.1 To consider renaming the Appointments and Remuneration Committee as the Appointments, Remuneration and Chief Officer Investigatory Committee, so the title is more reflective of its entire role in discipline matters.
- 7.2 If the above is agreed, then the Chief Officer Procedure Rules will need to reflect the revised name. They are compliant in all other areas. It would also seem appropriate to hyperlink from the Chief Officer Procedure Rules to the Corporate Disciplinary and Dismissal Policy for Chief Officers and Heads of Service.
- 7.3 To amend the Terms of Reference of the currently named Appointments and Remuneration Committee to reflect the power to suspend of the Chair of the Committee.
- 7.4 To hyperlink from the (currently named) Appointments and Remuneration Committee terms of reference to the Corporate Disciplinary and Dismissal Policy.
- 7.5 Consideration to be given to referencing the role of the Independent Person under the terms of reference for the currently named Appointments and Remuneration Committee in the Constitution.

- 7.6 To ensure that the Appeals (Chief Officer) Committee is reflected under section 3 of the Constitution (Terms of Reference for all Committees).

#### Committee Structure / Council Schedule of Committees

- 7.7 The Council schedule shows the currently named Appointments and Remuneration Committee as locally balanced, however, this can be reflected on the schedule as politically balanced.
- 7.8 The Council needs to appoint an Appeals (Chief Officer) Committee.

#### Other

- 7.9 Ensure the relevant webpage on inside Devon contains the updated JNC handbook <https://inside.devon.gov.uk/task/employee-conduct/discipline/> (currently refers to Sept 2009).
- 7.10 Ensure the current Corporate Disciplinary and Dismissal Policy for Chief Officers and Heads of Service contains the date of the new Regulations (e.g. See paragraph 1).
- 7.11 HR will need to review the current Corporate Disciplinary and Dismissal Policy for Chief Officers and Heads of Service to ensure any other changes in the new JNC booklet are fully reflected in the Policy.

### **8. Conclusion / Summary**

- 8.1 After a review of current processes, it was evident that the Council was compliant with the vast majority of requirements as outlined in the Joint Negotiating Committee for Chief Executives of Local Authorities (Model Disciplinary Procedure and Guidance). The suggestions made at section 7 of the Report seek to strengthen and clarify roles and responsibilities. Whilst the circumstances in which such processes would be used are rare, nonetheless, this Report seeks to identify where procedures can be bolstered and asks Members to consider the changes suggested.

### **9. Financial considerations**

- 9.1 No financial implications have been identified.

### **10. Risk management considerations**

- 10.1 No unmanageable risks have been identified.

### **11. Equality, Environmental Impact and Public Health Considerations.**

- 11.1 No equality, environmental, climate change impact or public health implications have been identified.

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#### **Electoral Divisions: All**

Local Government Act 1972: List of Background Papers:  
None

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## Appendix 1 – Flow Chart

### Disciplinary Procedure for Chief Executive and Protected Officers

