

PLYMOUTH CITY COUNCIL

Subject: Proposed Changes to Standing Orders in respect of Employment of the Chief Executive, Section 151 Officer and Monitoring Officer

Committee: Council

Date: 22 June 2015

Cabinet Member: Councillor Smith

CMT Member: Lesa Annear, Strategic Director for Transformation and Change

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Key Decision: No

Part: I

Purpose of the report:

The purpose of this report is to inform Members of the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and propose amendments to the Council's Employment Standing Orders to comply with them.

The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:

No direct link but the Council is being open and transparent about its actions

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

This proposal will affect the composition of the Appointment Panel when considering disciplinary matters concerning the Chief Executive, Section 151 Officer and Monitoring Officer. It will require changes to the terms and conditions of those staff and changes to the arrangements with the designated Independent Persons with responsibility for advising in respect of Standards Issues.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

None identified

Equality and Diversity:

There are no apparent equalities implications resulting from the new regulations

Recommendations and Reasons for recommended action:

1. The Panel recommends that Council amends the Employment Standing Orders and the Appointment/Appeals/Disciplinary Panel’s terms of reference in the Constitution to comply with the requirements of the new regulations, as shown in the Appendix (highlighted in red).
2. The Panel recommends that Council delegates the function of dealing with any disciplinary matters concerning the Chief Executive or Section 151 Officer or Monitoring Officer to the Chief Officer Disciplinary Panel and, where considered appropriate, to make a recommendation for dismissal to Council.
3. The Panel recommends that Council designates the people who carry out the role of Independent Persons for the Standards Regime as suitable to act as Independent Persons for this purpose, subject to their agreement; and instructs the Monitoring Officer to put suitable arrangements in place.
4. The Assistant Director for Human Resources and Organisational Development takes the necessary action to agree variations to the contracts of employment of the affected staff.

The reasons for these actions and recommendations are contained in the body of the report.

Alternative options considered and rejected:

None. The proposed changes are a result of the new regulations.

Published work / information:

Plymouth City Council’s constitution

Sign off:

Fin DJN 1516.05	Leg LT/23086/0 515	Mon Off LT/DVS/2 3-086	HR MF 29.5.2015	Assets	IT	Strat Proc
Has the Cabinet Member(s) agreed the content of the report? Yes						

1. Background

- 1.1 The recent Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require local authorities to amend their Standing Orders to incorporate new arrangements for disciplinary action against the Chief Executive, Monitoring Officer and the Section 151 Officer.
- 1.2 The regulations state that Council is required to change its standing orders to reflect these new requirements at the first full Council meeting following the AGM i.e. on 22 June 2015.
- 1.3 At present the law requires a Designated Independent Person (DIP) to investigate allegations of misconduct by the Chief Executive, Monitoring Officer and the Section 151 Officer. Those officers may be suspended on full pay whilst the allegations are investigated. No further disciplinary action may be taken in respect of those officers unless it's in accordance with a recommendation in the report of the Designated Independent Person.

2.0 Effect of the regulations

- 2.1 In future, any final decision to dismiss the Chief Executive, Monitoring Officer or Section 151 Officer must be taken by full Council, unless the reason for the dismissal is as a result of permanent ill health, redundancy or a failure to renew a fixed term contract. Before taking that decision, Council must invite at least two Independent Persons to be members of a Panel to consider the matter, and Council must take into account any recommendation of that Panel before taking a final decision to appoint or to dismiss.
- 2.2 The Regulations limit the remuneration that should be paid to the Independent Persons on the panel to the level of the remuneration which they would normally receive as an Independent Person in the standards regime, i.e. a modest annual allowance or small meeting fee.

3.0 Recommendations

- 3.1 The Monitoring Officers of Devon County Council and Cornwall Council carry out the role of Designated Independent Person for the standards regime for the Council which involves providing an independent view, which must be taken into account by the Monitoring Officer before he makes a decision on a standards complaint which is being formally investigated. It is recommended that they are approached to see whether they would also be prepared to be designated to carry out the role of Designated Independent Person for this regime. This has the advantage of using people who are familiar with the roles played by these senior staff within local government and an understanding of the legal requirements involved in the process. An alternative would be for Council to advertise and appoint to such a role when required, to avoid these costs unless they become necessary and to ensure that the people appointed are available at the time required.
- 3.2 Whilst, in theory, it would be possible for Council to carry out the disciplinary process at what would presumably be an extraordinary meeting of Council; the rules of debate for full Council combined with the need for flexibility of dates would make holding a hearing of this nature impracticable. Therefore, it is proposed that Council delegates this function to the Chief Officer Disciplinary Panel which could then report to full Council with their recommendation, which would include the views of the Independent Persons.
- 3.3 The current disciplinary process is incorporated into the officers' contracts of employment, so it will be necessary to agree variations to such contracts to be able to comply with the new Regulations, without giving rise to claims for breach of contract.

- 3.4 The Panel is required to be a committee of Council, so it is subject to normal proportionality rules. The Regulations provide that the authority does not have to appoint more than two Independent Persons, but may do so if it wishes.
- 3.5 Currently, there are 7 Members on the Panel. The Independent Persons would be additional members, without voting rights.
- 3.6 On 5 June, the Appointments Panel considered this report and recommended that Council should accept the report's recommendations subject to a clarification of section 3.4 (*subsequently amended.*)
- 3.7 On 8 June, the Constitutional Review Group (CRG) considered this report with section 3.4 amended as above. The CRG recommended that Council should accept the report's recommendations.

EMPLOYMENT STANDING ORDERS

1. Appointing the Chief Executive

- 1.1 The Chief Executive is appointed by Council on the recommendation of the Appointments Panel. At least one member of the Cabinet must be a member of the Appointments Panel **but the majority of members must not be Cabinet members.**
- 1.2 Before the Chief Executive is appointed, the Assistant Director for Human Resources and Organisational Development must tell Cabinet who the Appointments Panel wants to appoint and anything else which is relevant to the appointment.
- 1.3 The appointment can go ahead if the Cabinet agrees or if it makes no objection by a deadline set by the Assistant Director for Human Resources and Organisational Development or if Council does not consider any objection made by the cabinet relevant and justified.

2. Appointing the Directors, Assistant Directors and Heads of Service

- 2.1 Directors and Assistant Directors are appointed by the Appointments Panel. At least one member of the Cabinet must be a member of the Appointments Panel, **but the majority of members must not be Cabinet members.**
- 2.2 Before a Director or an Assistant Director is appointed, the Assistant Director for Human Resources and Organisational Development must tell the Cabinet whom the Appointments Panel wants to appoint and anything else which is relevant to the appointment.
- 2.3 The appointment can go ahead if the Cabinet agrees or if it makes no objection by a deadline set by the Assistant Director for Human Resources, Organisational Development or if the Appointments Panel does not consider any objection made by the Cabinet relevant and justified.

3. Dismissing the Chief Executive, Directors and Heads of Service

- 3.1 **The Chief Executive, Section 151 Officer and Monitoring Officer are dismissed by Council following a report and recommendation from the Chief Officers' Disciplinary Panel, unless the reason for dismissal is ill health retirement or redundancy in which case decision to dismiss is determined by the Chief Officers Disciplinary Panel. The Panel must be politically proportionate and include the relevant cabinet member but the majority of members cannot be cabinet members.**
- 3.2 **When dealing with cases of misconduct by the Chief Executive Section 151 Officer or Monitoring Officer the Panel must also include two Designated Independent Persons and the report of the Panel to Council must include their views as well as any recommendation from the Panel.**
- 3.3 **The Assistant Chief Executive, Directors and Assistant Directors are dismissed by the Chief Officers' Disciplinary Panel, which must be politically proportionate and include at least one Member of the Cabinet but the majority of members should not be Cabinet members.**

3.4 Before a dismissal, the Assistant Director for Human Resources and Organisational Development must tell the Cabinet whom the Panel wants to dismiss and anything else which is relevant to the dismissal.

3.5 The dismissal can go ahead if the Cabinet agrees or if it makes no objection by a deadline set by the Assistant Director for Human Resources and Organisational Development or if the Chief Officers' Investigating Panel does not consider any objection relevant or justified.

4. Appointing Political Assistants

Appointments of Political Assistants will follow the wishes of their political groups.

5. Councillors not to be involved in appointing or dismissing other officers

Councillors will not be involved in appointing or dismissing anyone except the Chief Executive, Directors and Assistant Directors other than those who report to the Director for Public Health and Political Assistants. Other officers are appointed and dismissed by their Assistant Directors or their nominees. All Officers except Political Assistants must be appointed on merit.

~~6. The Head of Paid Service, Responsible Finance Officer and Monitoring Officer can only be disciplined if an independent investigator recommends it. They can be suspended on full pay for up to two months while an independent investigator carries out an investigation.~~

6. Recruitment and selection procedure

All appointments must follow the Council's recruitment and selection procedure.

7. Advertising the positions of Chief Executive, Directors and Assistant Directors

When the Council wants to appoint a Chief Executive, Director or Assistant Director (and it is not proposed that the appointment be made exclusively from the existing officers), it will produce a statement specifying the duties of the post and any qualifications or qualities to be sought in the person to be appointed and send them to anyone who asks. The post will be advertised in a way which will bring it to the attention of suitable applicants.

8. Relationships with Councillors and officers

Candidates must disclose on their application form whether they are related to any Councillor, officer, Councillor or officer's partner as their partner, parent, child, stepchild, adopted child, grandparent, grandchild, brother, sister, uncle, aunt, niece or nephew.

If a candidate declares a relationship with a Councillor, officer or their partner, their appointment must be approved by the appropriate Head of Service (if they have declared a relationship with the Head of Service or their partner, it must be approved by the appropriate Director).

9. Lobbying

Councillors and officers must not lobby for or against candidates.

The Council will disqualify candidates who lobby Councillors or officers or get other people to lobby them. Candidates will be warned about this in the recruitment literature.

CHIEF OFFICER APPOINTMENTS, APPEALS and DISCIPLINARY PANELS

I. FUNCTIONS

- 1.1 Undertaking the selection process for the appointment, and formulating recommendations to the Council in relation to:
- the appointment and dismissal of the Head of the Paid Service;
 - the designation of an officer to act as Monitoring Officer and Responsible Finance Officer (Section 151 Officer);
 - the appointment/dismissal of Monitoring Officer and Responsible Finance Officer;

in accordance with legislation, Council policies, conditions of service and the appropriate procedures set out in the employment standing orders;

- 1.2 Undertaking the selection, appointment and dismissal processes for any staff where so required by law;

(It should be noted that the Chief Executive as head of paid service, or a person nominated by him, has powers to appoint all other staff).

- 1.3. Hearing and determining any appeals by staff under the Council's approved Human Resources policies and procedures including through any appointed Sub-Committee.
- 1.4 Determining terms and conditions for staff employed on the JNC terms and conditions for Chief Officers.

2. PROCEDURES

- 2.1 The Panels shall be politically balanced and include the relevant Cabinet member when required. **The majority of members on the Panel cannot be members of the Cabinet. When acting as a Disciplinary Panel in respect of a proposal to dismiss the Chief Executive or Section 151 Officer or Monitoring Officer for reasons other than ill health retirement or redundancy the Panel will also include two Designated Independent Persons appointed for this purpose.**
- 2.2 A Panel which hears an appeal will not include members of the Panel which made the original decision.

Appointment of substitute members

- 2.3 Any member of the Council may act as substitute on a Panel provided that they have completed the Council's relevant human resources training/ briefing.

3. GENERAL

The Panels are convened from time to time as required by the Assistant Director for Human Resources and Organisational Development.