

## PLYMOUTH CITY COUNCIL

<b>Subject:</b>	Proposed Changes to Standing Orders in respect of Employment of the Chief Executive, Section 151 Officer and Monitoring Officer
<b>Committee:</b>	Full Council
<b>Date:</b>	21 November 2016
<b>Cabinet Member:</b>	Councillor Ian Bowyer, Leader of the Council
<b>CMT Member:</b>	Lesla Annear, Strategic Director for Transformation and Change
<b>Author:</b>	Linda Torney, Assistant Head of Legal Services
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<b>Ref:</b>	
<b>Key Decision:</b>	No
<b>Part:</b>	I

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### **Purpose of the report:**

The purpose of this report is to inform Members of changes to the terms and conditions of employment of the Chief Executive as agreed between the Local Government Association and the Association of Local Authority Chief Executives; and to propose amendments to the Council's Employment Standing Orders and Terms of Reference for the Chief Officer Appointments, Dismissals and Appeals Panels to comply with them.

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### **The Council Corporate Plan 2016 – 19:**

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

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

This proposal will affect the procedures adopted by the Chief Officer Dismissals and Appeals Panels when considering disciplinary matters concerning the Chief Executive, Section 151 Officer and Monitoring Officer. It will require changes to the terms and conditions of some of those staff.

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

None identified

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### **Equality and Diversity:**

There are no apparent equalities implications resulting from the new regulations

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**Recommendations and Reasons for recommended action**

It is recommended that:

1. Council amends the Employment Standing Orders in the Constitution to comply with the requirements of the new regulations (see Appendix 1).
2. Council amends the Terms of Reference for the Chief Officer Appointments Dismissals and Appeals Panels (see Appendix 2).
3. 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.

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**Alternative options considered and rejected:**

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

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**Published work / information:**

None

**Background papers:**

Title	Part I	Part II	Exemption Paragraph Number							
			1	2	3	4	5	6	7	

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**Sign off:**

Fin	akhI 617. 40	Leg	Lt/23 086/ 2	Mon Off	lt/23 086/ dvs	HR	DAI 1.11. 2016	Assets		IT		Strat Proc	
Originating SMT Member Dawn Auger													
Has the Cabinet Member(s) agreed the content of the report? Yes													

## **I. Background**

- 1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 required local authorities to amend their Standing Orders to incorporate new arrangements for disciplinary action against the Chief Executive, Monitoring Officer and the officer responsible for its financial affairs in accordance with section 151 of the Local Government Act 1972 (the 'Section 151 Officer').
- 1.2 Following the implementation of the regulations in 2015, the Joint Negotiating Committee for Chief Executives of Local Authorities notified the Council on 13 October 2016, that it had published a new handbook which sets out what have now become the conditions of service of employees engaged on terms as laid down by the Joint Negotiating Committee for Chief Executives of Local Authorities. This follows lengthy negotiations between the Local Government Association and the Association of Local Authorities Chief Executives. They recommend that the same procedures are adopted for the other statutory officers affected by the regulations namely the Section 151 Officer and the Monitoring Officer.
- 1.3 The Section 151 Officer and the Monitoring Officer have been consulted about these proposals pending the introduction of formal procedures by their relevant Negotiating Committees and are in continuing discussions with the Assistant Director of Human Resources and Organisational Development. It is recommended that Council approves the changes to their terms and conditions prior to conclusion of those discussions. Those changes will then come in to effect when they are accepted by the Joint Negotiating Committee or the officers concerned whichever happens first.

### **The agreed procedure**

- 1.4 The new agreed procedure has more stages than under the previous regulations and is shown in a diagram as Appendix 3. It involves an initial meeting of the Council's Dismissals Panel to consider the allegations, in light of the comments of the officer involved and make one of three recommendations namely to take no further action, to issue an informal unrecorded oral warning or to appoint an independent investigator (the 'investigator') to investigate matters further and deal with any ancillary matters. As it is in everyone's interests that both sides should have confidence in the independence and relevant competence of the Investigator, it has been agreed that the Joint Secretaries of the national negotiating committee will maintain a list of potential investigators. These have been selected for their suitability and experience for this work and will be offered on a 'taxi-rank' basis subject to their availability and assuming they do not have any conflict of interest.

### **The independent investigation**

- 1.5 The investigator then investigates the matter and prepares a report. The investigation may be a process of evidence gathering, hearing submissions etc. which will lead to the formulation of a report and recommendation for consideration. Alternatively the investigator may hear the case. If the investigator hears the case both parties will have the usual opportunities to present evidence and cross examine witnesses. At the hearing both parties are afforded the opportunity to be represented by an individual of their choice. Representation for the officer should be obtained at his / her expense. Irrespective of the manner in which the investigator investigates the case, on completion of their investigation he or she must prepare a report with recommendations and reasons for consideration by the Dismissals Panel.

### **The recommendation of the Dismissals Panel**

- 1.6 If the investigator has held a full hearing the Dismissals Panel will consider the investigator's report. They may decide to call witnesses for clarification. The officer and investigator should

attend this meeting and both parties be given the opportunity to summarise their case. If the investigator did not hear the case then the Dismissals Panel should give the officer the opportunity for a hearing and to call witnesses. The same rule regarding costs of representation would apply in this context. In both cases the Dismissals Panel will then decide whether they consider there is no case to answer, or whether to recommend disciplinary action short of dismissal or whether to recommend dismissal. A decision to take disciplinary action short of dismissal should be communicated in writing to the officer with reasons for the decision. The officer has the right of appeal to the Appeals Panel against this decision. If there is a recommendation to dismiss, the reports of the Dismissals Panel and the investigator should then be sent to the Independent Panel for its consideration.

### **The Independent Panel**

- 1.7 The Independent Panel acts as an advisory committee, and the Joint Negotiating Committee has agreed it should comprise the same people who are appointed to act as independent people in relation to the Council's standards regime for councillors. The Monitoring Officer has discussed this development with those people and they are willing to also undertake this role.

### **Council**

- 1.8 Following consideration by the Independent Panel a report should be presented to Council. This report should comprise the recommendation of the Dismissals Panel, the investigator's report and any comments on the recommendation for dismissal from the Independent Panel. In the light of this information Council should consider the recommendation to dismiss. Given the thoroughness and independence of the previous stages, in particular, the investigation of the Independent Investigator (where applicable), it will not be appropriate to undertake a full re-hearing of the case. Instead, consideration by the Council will take the form of a review of the case and the proposal to dismiss, and any advice, views or recommendations of the Independent Panel. The officer will have the opportunity to attend and be accompanied by their representative and to put forward his or her case before a decision is reached.
- 1.9 As the Standing Orders Regulations require that Council approves the dismissal before notice of dismissal is issued, there might be some concerns about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss. The model procedure therefore envisages that the council meeting fulfils the requirement for an appeal. Before Council takes a decision on the recommendation to dismiss it will take representations from the officer. The investigator may also be invited to attend to provide clarification if required. Those representations will constitute the appeals process. Following this consideration Council should either confirm or reject the recommendation to dismiss. It may at this stage impose a lesser sanction. This stage in the process constitutes the officer's final right of appeal

## **2.0 Recommendations**

It is recommended that:

- 2.1 Council amends its Employment Standing Orders and Terms of Reference for the Chief Officer Appointments Dismissals and Appeals Panels to avoid discrepancies between the relevant staff terms and conditions of service and the Council's procedures.
- 2.2 To avoid confusion the Chief Officer Appointments Dismissals and Appeals Panels are renamed as the Chief Officer Appointments Dismissals and Appeals Committees; and the new advisory panel required is called the Independent Advisory Panel.
- 2.3 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.