

Chichester District Council

CABINET

5 January 2016

Disciplinary action against statutory officers: The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

1. Contacts

Cabinet Member:

Bruce Finch, Cabinet Member for Support Services,
Tel: 07751 3351903 E-mail: bfinch@chichester.gov.uk

Report Author:

Paul Over, Executive Director,
Tel: 01243 534639 E-mail: pover@chichester.gov.uk

2. Recommendations to the Council

2.1. That the revised Disciplinary Procedure for the Chief Executive, Head of Finance and Governance and Monitoring Officer be approved.

2.2. That the terms of reference of the Investigation and Disciplinary Committee be revised to read as follows:-

To consider allegations relating to the conduct or capability of the Chief Executive, the Chief Finance Officer and the Monitoring Officer and to take action in accordance with the Council's approved Disciplinary procedure for these officers, *including negotiation of a settlement agreement and (in the case of the Chief Executive only) suspension and disciplinary action short of dismissal.*

2.3. That the following be added to the powers of the Chairman, and in his absence the Vice-Chairman, in Article 5 of Part 2 of the Constitution:-

The Chairman of the Council has the power to suspend the Chief Executive in an emergency whereby his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Council.

3. Background

3.1. In March 2015 the Government published Regulations requiring local authorities to amend their Standing Orders about disciplinary procedures for three statutory officers: Head of Paid Service; the Chief Finance Officer and the Monitoring Officer¹, referred to hereafter as "protected officers". The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force on

¹ Referred to at CDC as the Chief Executive, Head of Finance and Governance and Monitoring Officer

11 May 2015. Proposed amendments to the relevant Standing Orders were submitted and agreed at Cabinet on the 7 July 2015. Please refer to that report for full details. Council subsequently passed the amendments at their meeting on 14 July 2015.

- 3.2. The previous Standing Orders required that the Council should take no disciplinary action against any of these protected officers other than in accordance with a recommendation by a Designated Independent Person (DIP) appointed to investigate the allegations against them.
- 3.3. The new Standing Orders replaced this protection with a requirement that only the Full Council can dismiss any of these protected officers and, before doing so, they must: consider the advice of an Independent Panel; the conclusions of any investigation into the proposed dismissal and any representations from the relevant officer. They are no longer, however, required to follow the independent advice.
- 3.4. Whilst the Standing Orders were amended so as to comply with the Regulations it was agreed that updating the Disciplinary Procedure for the protected officers should be deferred. This was to allow the outcome of national negotiations between the Local Government Association and the Association of Local Authority Chief Executives (ALACE), and possibly other bodies via the Joint Negotiating Committee for Chief Executives in relation to nationally agreed terms and conditions that impact on chief executives' contracts of employment, to be concluded. It is now understood that national negotiations on these matters are not expected to be resolved for some time.

4. Outcomes to be achieved

- 4.1. To ensure that the Council's policy in this regard fully conforms to the Regulations and the Council's revised Standing Orders.

5. Proposal

- 5.1. As a result of the above considerations, it is proposed that in line with guidance provided by the regional body for local government, South East Employers, the new procedure, set out in the Procedure attached as an Appendix, should be formally adopted.
- 5.2. It is proposed that the members of the Independent Panel participate in meetings of the Investigating & Disciplinary Committee (IDC) to ensure that the Panel has confidence in any investigation.
- 5.3. The LGA advise that, in the case of dismissal, the protected officers' right of appeal is covered by the requirement that Full Council must consider representations from the officer concerned alongside the results of the investigation and the advice of the Panel.
- 5.4. It is also suggested that some adjustments to the powers of the IDC and of the Chairman and Vice-Chairman of the Council are made to cover particular circumstances that could arise from the revised procedure.

6. Alternatives that have been considered

- 6.1. Compliance with the regulations is mandatory. However, there are choices to be made in terms of the procedure to be adopted in order to comply with the Regulations, including a decision as to whether or not to continue with an Investigatory & Disciplinary Committee. The procedure proposed in this report includes an IDC which is consistent with the advice received from the LGA and is in accordance with the Council's resolved position on this matter determined at their July 2015 meeting.

7. Resource and legal implications

- 7.1. If disciplinary action had been required under the previous procedure, the costs of appointing a DIP and other costs would have been found from reserves, as no budget provision is made. Whilst the one of the intentions of these Regulations is to reduce such costs, it is unclear whether these would in fact be reduced should an investigation have to take place and where a suitable external investigating officer needed to be appointed and paid for.
- 7.2. The Regulations make a provision limiting the remuneration that should be paid to independent persons on the panel to the level of the remuneration which they would normally receive as an independent person in the conduct regime. The Council currently pays its independent persons a modest annual allowance.

8. Consultation

- 8.1. Before making the regulations the Government sought the views of the LGA, Lawyers in Local Government (formerly Association of Council Secretaries and Solicitors), the Society of Local Authority Chief Executives (SOLACE), the ALACE, the Taxpayers' Alliance, the Chartered Institute of Public Finance and Accountancy (CIPFA), the Centre for Public Scrutiny (CfPS), the District Councils' Network and the Association of Democratic Services Officers (ADSO). There was, we understand, no consultation via the JNC for Chief Executives prior to the Regulations being introduced.
- 8.2. The Executive Director wrote to the protected officers in June 2015 about the new procedures and requested that comments were submitted. They have been further advised that the new Policy is being submitted to this Cabinet. Any comments received will be reported orally to Cabinet.
- 8.3. The independent persons appointed by the Council for the Standards regime, who would be invited to form the Independent Panel, were briefed in June 2015. Both are willing to form an Independent Panel if invited to do so. They also indicated that they have the skills required to scrutinise or conduct an investigation themselves.

9. Community impact and corporate risks

- 9.1. There is a continuing risk that present or future independent persons appointed by the Council may not in practice accept invitations or be available to form a panel. The Council would seek to appoint alternative independent persons in

these circumstances. The independent persons might require independent professional advice to support their work on the Panel that would incur cost.

10. Other Implications

Crime & Disorder	None
Climate Change	None
Human Rights and Equality Impact: The new procedure has a neutral impact on the staff concerned in terms of these areas.	None
Safeguarding	None

11. Appendix

11.1. Appendix: Disciplinary Procedure for the Chief Executive, Section 151 Officer and Monitoring Officer

12. Background Papers

12.1. None.