

Report to Constitution Working Group

Date of meeting: 12 March 2020



**Epping Forest
District Council**

Subject: Officer Employment Procedure Rules

Officer contact for further information: Paula Maginnis (01992) 564536

Democratic Services Officer: Vivienne Messenger (01992) 564265

Recommendations/Decisions Required:

- (1) **That the Working Group consider revised Officer Employment Procedure Rules; and**
 - (2) **That, subject to recommendation (1) above, a report be made to the Council recommending the incorporation of the revised Officer Employment Procedure Rules within the Constitution.**
1. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the Regulations) made changes to matters relating to the dismissal of the three statutory Officers; the Head of Paid Service; Monitoring Officer and Section 151 Officer (Relevant Officers). The intention of this provision is to ensure that these officers can discharge their duties without any fear of being unduly influenced or being dismissed by the authority without good reason. The changes required amendments to the constitution and the establishment of a process at the Council which encompassed the new procedures and clarified which officers/committees would be responsible at any stage of the process if required.
 2. Every Council is required to appoint a Head of Paid Service, a Monitoring Officer, and a Chief Finance Officer (section 151) Officer. Each of these posts carries specific statutory responsibilities. As these post holders operate in a sensitive environment, Councils have been required to follow special procedures to investigate disciplinary matters regarding officers holding these positions.
 3. Prior to the 2015 Regulations, procedures were governed by statutory Designated Independent Person (DIP) provisions. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 replaced the statutory DIP provisions with an Independent Panel process.
 4. The Council made the required amendments to the Constitution at the time to reflect the changes in the Regulations.
 5. The Chief Executives' Conditions of Service Handbook was updated to reflect the changes made to the regulations in which a revised (disciplinary) model procedure was set out (13 October 2013). The Chief Officers' handbook, published in August 2017, has also now been updated to reflect the changes made to the regulations, and refers officers to the model set out in the Chief Executive's handbook as a reference guide for the dismissal process.

Main Changes

6. The 2015 Regulations amended the dismissal process for the relevant officers to require that a relevant officer may not be dismissed by an authority unless the matter has been considered by a standing Investigating and Disciplinary Committee (IDC). The IDC is to be politically balanced with at least five members. The Senior Management Selection Panel established in December 2017 already fulfils the redundancy panel functions of the existing Officer Employment Procedure Rules and it is suggested that the Terms of Reference of the Panel should therefore be extended to encompass the new requirements of the 2015 Regulations in terms of the establishment of the Investigating and Disciplinary Committee. Appointment to membership of the Committee could therefore continue to be made as part of the annual appointments process.
7. The 2015 Regulations also amended the dismissal process for the relevant officers by removing the requirements for a Council to appoint a Designated Independent Person and act in accordance with any recommendations made by them. The new regulations provide that a Council must appoint an Independent Panel made up of a minimum of two independent persons (IPs) appointed under section 28 of the Localism Act 2011 (in relation to standards complaints against members), whose advice, views and recommendations should be considered before any decision by the full Council to dismiss a relevant officer can be made.
8. The Independent Panel must be appointed at least 20 days before the Council meeting at which dismissal is considered. The independent persons can refuse to accept an invitation to sit on an Independent Panel and should either of the IP's not be available to sit on an Independent Panel when needed it would be necessary for the Council to appoint additional independent persons from other local authorities, to ensure that a Panel of the required number of at least two IP's is appointed. The Panel can only be appointed by the full Council.
9. The Council currently already has three Independent Persons appointed under section 28 of the Localism Act 2011 in relation to standards complaints, two of whom were appointed in December 2018 on the basis that they may also be required to form part of a Panel that would consider disciplinary action against the most senior officers of the authority. In order to meet the appointment requirements of Independent Panel, it is suggested that it might be appropriate for the Council to formally appoint the three Independent Persons to membership of the Panel as part of the annual appointments process, so that the Panel remains available at all times.
10. To give effect to the above, the Working Group is requested to recommend to the Council that the Officer Employment Procedure Rules set out in Part 4 Constitution be revised as highlighted in Appendix 1 to this report and by the following specific provision relating to the Independent Panel:

‘The Independent Panel shall consist of the Council’s independent persons appointed under section 28(7) of the 2011 Act provided that at least two such independent persons are willing to sit on the Panel. If they are not then, ...’
11. The revised Officer Employment Procedure Rules are set out at Appendix 1 to this report. No changes are required to other elements of the Officer Employment Procedure Rules (particularly Section C (Disciplinary Action) – Suspension) as the current provisions remain in line with the 2015 Regulations.
12. The proposal regarding the establishment of a panel of independent Persons and using the model disciplinary procedure will ensure the organisation is best placed to manage any matters relating to the potential dismissal of the Chief Executive Officer, Monitoring

Officer and Section 151 Officer in the unlikely event that such circumstances should occur.

13. The Working Group is requested to consider the revised Officer Employment Procedure Rules.

Resource Implications:

The recommendations of this report seek to ensure that the Council's Constitution remains fit for purpose.

Legal and Governance Implications:

The Council's Constitution sets out procedures and rules for the operation of its functions and responsibilities.

Safer, Cleaner, Greener Implications:

There are no implications arising from the recommendations of this report in respect of the Council's commitment to the Climate Local Agreement, the corporate Safer, Cleaner, Greener initiative, or any crime and disorder issues within the district.

Consultation Undertaken:

The proposed revisions to the Officer Employment Procedure Rules have been subject to consultation with the Monitoring Officer.

Background Papers:

None

Risk Management:

The Council's Constitution sets out procedures and rules for the operation of its functions and responsibilities.

Equality:

There are no equality implications arising from the recommendations of this report.