

| <b>MERSEYSIDE FIRE &amp; RESCUE AUTHORITY</b> |   |                       |                   |
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| <b>MEETING OF THE:</b>                        | <b>URGENCY COMMITTEE</b>  |                       |                   |
| <b>DATE:</b>                                  | <b>4<sup>TH</sup> FEBRUARY 2020</b>                                   | <b>REPORT NO:</b>     | <b>CFO/009/20</b> |
| <b>PRESENTING OFFICER</b>                     | <b>RIA GROVES</b>   |                       |                   |
| <b>RESPONSIBLE OFFICER:</b>                   | <b>RIA GROVES</b>   | <b>REPORT AUTHOR:</b> | <b>RIA GROVES</b> |
| <b>OFFICERS CONSULTED:</b>                    | <b>MIKE PILKINGTON</b>  |                       |                   |
| <b>TITLE OF REPORT:</b>                       | <b>AUTHORITY'S STATUTORY/RELEVANT OFFICERS DISCIPLINARY PROCEDURE</b> |                       |                   |

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| <b>APPENDICES:</b> | <b>APPENDIX A:</b> CFO/042/15<br><b>APPENDIX B:</b> <b>TERMS OF REFERENCE</b> <i>(A FULL COPY OF THE CONSTITUTION WILL BE AVAILABLE FOR MEMEBERS TO REVIEW AT THE MEETING)</i><br><b>APPENDIX C:</b> <b>STATUTORY OFFICERS DISCIPLINARY PROCEDURE</b> |
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### **Purpose of Report**

1. To request that Members, approve revisions to the Authority's Statutory Officers Disciplinary Procedure in order to reflect The Local Authority (Standing Order) (England) (Amendment) Regulations 2015 Considerations; and associated changes to the Constitution in order to establish the required procedural governance. The report and amended procedure will also address any outstanding actions from report CFO/042/15 (Appendix A).

### **Recommendation**

2. That Members:
  - (a) Approve revisions to the Authority's Constitution in order to extend the terms of reference of the Audit Committee to include its role as Investigation and Discipline Committee (IDC) (Appendix B).
  - (b) Approve the revised Statutory Officers Disciplinary Procedure (Appendix C)
  - (c) Request that the Monitoring Officer/Acting Monitoring Officer writes to the Independent Member to invite them to become part of the Independent Panel and if accepted note that this would result in them being omitted from the IDC.
  - (d) Approve the establishment and make up of an Independent Panel as detailed in the report.

- (e) Request that the Monitoring Officer/Acting Monitoring Officer writes to Local Authority colleagues in order to establish a pool of Independent Persons who could be utilised to make up the Independent Panel if required.

## **Introduction and Background**

3. On the 26th May 2015 the Authority approved the incorporation of The Local Authorities (Standing Orders) Regulations (England) (Amendment) Regulations 2015 ('2015 Regulations') as far as possible as a matter of good practice as a result of paper CFO/042/15. (Appendix A)
4. Since the implementation of the new 2015 Regulations further guidance has been issued in the form of a Model Disciplinary Procedure which address the requirements of the 2015 Regulations. The Model Disciplinary Procedure, while similar to the 2015 Regulations are not directly applicable to fire and rescue authorities however it was considered appropriate that the Authority's disciplinary procedure be comparable to those across the sector for Statutory Officers as the Model Procedure for Chief Executives has been adopted across England.
5. Subsequently the processes for this Authority have been reviewed and this paper now proposes revisions to enable procedures comparable to those across England in adherence with the 2015 Regulations to be adopted.
6. This report and the revised procedure (Appendix C) provides procedural clarity should a formal complaint be made against one of the Authority's Statutory Officers.

## **Proposed Changes - AUDIT COMMITTEE**

7. It is recommended that the Audit Committee acts as the IDC and the Terms of Reference for the Committee are amended to include the following additional terms:

### 15.3 Discipline Procedures for Statutory & Relevant Officers

- (a) To act as Investigating and Disciplinary Committee where an allegation is made against the Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer, Monitoring Officer or Treasurer in line with the Authority's policy for Discipline Procedures for Statutory Officers.
- (b) To determine whether any allegation of misconduct by a statutory / relevant officer should be investigated by an independent investigator;
- (c) To determine whether the statutory / relevant officer subject to the allegation should be suspended while the investigation is conducted;
- (d) To appoint the independent investigator subject to the involvement of the statutory / relevant officer;

- (e) Appoint Independent Members to the Independent Panel.
- (f) To consider the outcome of any resultant investigation and representations from the statutory / relevant Officer and either:
  - (i) determine there is no case to answer;
  - (ii) determine a sanction short of dismissal; or
  - (iii) recommend dismissal to the full Authority

- 8. For ease of reference a full amended Terms of Reference are set in Appendix B to this report.

### **INDEPENDENT PANEL**

- 9. Members will recall that (Appendix A) further to the adoption of the 2015 Regulations by the Authority the dismissal of Statutory Officers must now be taken by the full Authority. Prior to making any such decision the Authority must invite at least two Independent Persons to be members of an Independent Panel for the purposes of dealing with disciplinary action against any of the Statutory Officers and to take into consideration any recommendation of the Panel.
- 10. The appointment of the Independent Persons must be made at least 20 working days before the meeting of the Authority is convened to consider whether or not to approve a proposal to dismiss any of the Statutory Officers.
- 11. It is recommended that the Independent Panel should be established comprising of 3 Independent Persons. Further clarification on the guidance was provided in respect of the Independent Panel and as such the Independent Panel comprising solely of independent persons was recommended so that independent scrutiny can be attained before the relevant authority takes the final decision on a proposal to dismiss. The proposal is therefore to follow that approach as this emphasises the independence of the Independent Panel while still ensuring Member involvement at every other stage of the process.
- 12. If the establishment of the Independent Panel is approved to ensure legal and procedural efficacy, authority is sought from Members for the Monitoring Officer or their equivalent authorised deputy to invite the current Independent Persons to serve on the Independent Panel. The Authority currently have one Independent Person.
- 13. If established the Authority will be required to co-opt 2 further Independent Persons to the Independent Panel.
- 14. To ensure there is no undue delay in appointments, procedure and practice in dealing with disciplinary matters, the 2015 Regulations do permit the use, in priority order, of other Independent Persons. The order is as follows:

- (1) An Independent Person who has been appointed by the Authority and who is a local government elector;
  - (2) Any other Independent Person who has been appointed by the Authority, and
  - (3) Any Independent Person who has been appointed by another Authority or Authorities
15. In accordance with the 2015 Regulations invitations can be extended to other Independent Persons of other local authorities across Merseyside as an approach to pool Independent Persons as and when required. It is recommended that the Monitoring Officer or their equivalent authorised deputy be authorised to make these invitations to ensure there are no undue delays in any disciplinary matters in the event the Authority does not have the required 2 Independent Persons appointed at any given time.
16. In this event it is proposed that the Audit Committee, acting as the IDC be authorised to formally appoint such Independent Person(s) to the Independent Panel, as required.
17. Any remuneration, allowances or fees paid by the Authority to an Independent Person appointed and co-opted to the Independent Panel pursuant to the Regulations would be in accordance with the Members Scheme of Allowances.
18. It is proposed that the same remuneration, allowances or fees are paid to an Independent Person who has been appointed by another Authority who is invited to the Independent Panel when convened as necessary as those appointed directly by the Authority.
19. At the Authority meeting, the Members must take into account any advice, views or recommendations of the Independent Panel as well as the conclusions of any investigation and any representations made by the relevant officer concerned.
20. A new draft procedure has been created by the People and Organisational Development department for the Statutory Officers Disciplinary Procedure taking into account the new proposed process contained in Appendix C.
21. It is recommended that this revised procedure is adopted by the Authority.
22. Standing Order 36 of the Constitution (Disciplinary Action) applies the disciplinary procedures to the Authority's three statutory posts (Chief Fire Officer, Monitoring Officer and the Treasurer) as well as the Deputy Chief Fire Officer defined as "the Relevant Officer". It is also proposed to amend Standing Order 36 to extend the definition of "Relevant Officer" to include the Assistant Chief Fire Officer (role re-introduced in 2019) to be consistent with the agreed Principal Officer posts and management structure identified within Article 3 of the Constitution in addition to the necessary draft amendments to reflect the proposed change in the disciplinary procedure contained in Appendix B.

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**Equality and Diversity Implications**

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23. Any investigation would take place with Equality and Diversity in full consideration.

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**Staff Implications**

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24. If the recommendations are approved the new procedure would apply to all Principle and Statutory Officers.

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**Legal Implications**

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25. The recommendations address the implementation of the 2015 Regulations and nationally approved guidance as detailed within the report.
26. The proposed procedure has been nationally agreed and endorsed to mitigate the risk to the Authority within an employment tribunal however this does not remove the risk altogether with a hearing of the full Authority to determine whether to dismiss a Relevant Officer is also in effect a right of appeal. This is on the basis that the relevant officer has previously had the opportunity to put their case to the Investigating and Disciplinary Committee and the Independent Panel.
27. Standing Order 36 would require amendment as proposed in Appendix B if the recommendations are approved.

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**Financial Implications & Value for Money**

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28. If the recommendations are approved and in the event an independent investigator was appointed the costs associated would be at the approved NJC consultancy hourly rate.
29. There will be minimal costs associated with the appointment of further independent persons which would follow current allowances of £50 per meeting attended and travel expenses.
30. These costs can be contained within the Democratic Services budget

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**Risk Management, Health & Safety, and Environmental Implications**

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31. The process outlined in this report and recommended for adoption are compliant with the 2015 Regulations and nationally agreed Joint Negotiating Committee for Local Authority Chief Executives and is being applied to the two other relevant statutory officers protected by the 2015 Regulations as well as all Principal Officers. This mitigates the risk to the Authority from a procedural perspective in terms of dealing with disciplinary issues involving statutory officers.

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32. Compliance with the 2015 Regulations and subsequent guidance will give confidence to the communities of Merseyside that the full Authority is involved in any disciplinary issue regarding statutory officers

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#### **BACKGROUND PAPERS**

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

The Joint Negotiating Committee for Chief Executives of Local Authorities Model Disciplinary Procedures and Guidance

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#### **GLOSSARY OF TERMS**