

| MERSEYSIDE FIRE AND RESCUE AUTHORITY | | | |
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| MEETING OF THE: | AUTHORITY | | |
| DATE: | 26 MAY 2015 | REPORT NO: | CFO/042/15 |
| PRESENTING OFFICER | MONITORING OFFICER | | |
| RESPONSIBLE OFFICER: | JANET HENSHAW | REPORT AUTHOR: | JANET HENSHAW |
| OFFICERS CONSULTED: | CHIEF FIRE OFFICER | | |
| TITLE OF REPORT: | THE LOCAL AUTHORITIES (STANDING ORDERS) REGULATIONS (ENGLAND) (AMENDMENT) REGULATION 2015: STATUTORY OFFICER DISCIPLINARY PROCEDURES | | |

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| APPENDICES: | APPENDIX A: LETTER TO CHIEF EXECUTIVES FROM DCLG DATED 25TH MARCH 2015 APPENDIX B: THE LOCAL AUTHORITIES (STANDING ORDERS) REGULATIONS (ENGLAND) (AMENDMENT) REGULATIONS 2015 |
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Purpose of Report

1. To inform Members about new Regulations in force relating to disciplinary procedures for statutory officers.

Recommendation

2. That Members;
 - a. Approve compliance with the Local Authorities (Standing Orders) Regulations (England) (Amendment) Regulations 2015 as far as possible as a matter of good practice
 - b. Approve the establishment of an Independent Panel with the appointment of a further Independent Person as described in paragraphs 8 and 14 below
 - c. Request the Director of People and Organisational Development to draft a new Procedure for Disciplinary Processes for Statutory Officers.
 - d. Request that the Monitoring Officer present a further report later in the year should any revisions be necessary in light of emerging good practice

Introduction and Background

3. In February 2013 and March 2014 proposals were put forward by the Department for Communities and Local Government (DCLG) to remove the requirements for a designated independent person (DIP) to be appointed to investigate allegations of misconduct for the Head of Paid Service (HoPS), Finance Officer (FO, often referred to as Section 151 officer) and Monitoring Officer (MO).
4. DCLG believes that through the earlier consultation processes there was consistent support for the removal of the DIP procedure as this was seen as bureaucratic and costly. New Regulations have been published which remove the requirement for certain Authorities to have such a process in place.
5. DCLG has laid Regulations in parliament, which provide for the new arrangements for taking disciplinary action against the specified statutory officers to be given effect by Authorities modifying their standing orders no later than at the first ordinary council meeting held after 7th May 2015 elections. To achieve this, the Regulations came into force on 11th May 2015.
6. Any decision to dismiss one of the above officers must now be taken by the full Authority, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.
7. Authorities are now required to invite independent persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to form an independent panel. An independent panel will be formed if two or more independent persons accept the invitations, and Authorities should appoint in accordance with the following priority order;
 - a an independent person who has been appointed by the Authority and who is a local government elector,
 - b any other independent person who has been appointed by the Authority, and
 - c an independent person who has been appointed by another Authority or Authorities.
8. The DIP process is referred to in the national terms and conditions of chief executives (usually the HoPS) and the FO and MO contracts usually cross refer to this aspect of the chief executive terms and conditions. Due to this, in many cases the DIP process is often incorporated into personal contracts and will need to be amended accordingly.
9. These Regulations do not specifically apply to Fire and Rescue Authorities however there are elements of confusion aligned to this in that the letter from DCLG (attached as Appendix A to this report) refers to the application of the Regulations to "Principal Councils" whilst the Regulations themselves (at Appendix B) apply to "Local Authorities" and "Relevant Authorities" and there are different definitions for each – none of which, in these Regulations, includes Fire and Rescue Authorities.

10. However, the Local Government and Housing Act 1989, which provides for the mandatory creation of three statutory officer posts, does apply to Fire and Rescue Authorities.
11. There are other elements of inconsistency or lack of clarity in the Regulations and the accompanying guidance in that;
 - a The Regulations refer to cases of dismissal only, whereas the guidance refers to disciplinary action. The DIP process incorporated any disciplinary action that was likely to be greater than an informal warning. It is thought that the intention of the Regulations is for an independent panel to be required only in the cases of potential dismissal
 - b There is no requirement for the independent panel to make a recommendation of sanction(s) to the Authority and so varying practice may arise,
 - c There is no restriction on the option for council to apply a more severe sanction than may be recommended by an independent panel (currently it cannot exceed the DIP recommendation).
 - d Panel members are appointed for the purposes of the member code of conduct under section 28 of the Localism Act, so they may well not have the relevant expertise to carry out an investigation and report. The Regulations are silent on who carries out an investigation or how it is commissioned and so these are issues that Authorities will have to determine. As the investigation is a key part of a disciplinary process, a proper and thorough investigation will still be required.
12. Despite these inconsistencies and confusion about the application of the Regulations, it is proposed that Merseyside Fire and Rescue Authority accepts the Regulations as far as possible as good practice. The only other option would be to retain the current procedures (involving a DIP) which would mean that the Authority would have inconsistent practices.
13. It is further proposed that an Independent Panel be formed to be convened as and when required and other Local Authorities in Merseyside contacted regarding other independent persons who could possibly be approached under the Regulations as described in Paragraph 8c above. The latter may prove difficult as attempts to “share” such independent persons for the purposes of the Member Code of Conduct were unsuccessful. In this case the Authority would have to advertise as it currently has only one Independent person.
14. It is proposed that the People and Organisational Development Department (POD) is requested to draft a revised procedure which will retain the Monitoring Officer as an Investigator for these purposes. Should the investigation conclude that dismissal is a potential outcome then this will be referred to an Independent Panel who will have the responsibility for recommending an appropriate sanction.

15. Should the investigation conclude that action short of dismissal is a potential outcome then this will be referred to the Chief Fire Officer for a decision. Should the matter relate to the Chief Fire Officer then this too would be referred to the Panel in these circumstances.
16. Should Members approve the Recommendations of this report, the Constitution would need to be amended to reflect these arrangements.
17. All authorities are responding to this legislation very urgently and it is likely that sector best practice will emerge across the next few months. It is therefore recommended that this approach is reviewed closely and subsequent revisions brought back to the Authority later this year if required

Equality and Diversity Implications

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

Staff Implications

19. These Regulations affect only statutory officers and all are aware of the previous Regulations in respect of specific disciplinary action which is contained within their contract of employment.

Legal Implications

20. The Authority Constitution would require amendment in respect of Standing Order 36 and the Terms of Reference for the Audit sub Committee.

Financial Implications & Value for Money

21. Any costs associated with the appointment of a DIP would be avoided should Members accept the Recommendations of this report. There will be small costs associated with the appointment of another independent person which would follow current payments agreements of £50 per meeting attended and travel expenses.

Risk Management, Health & Safety, and Environmental Implications

22. There are no direct implications for risk management or health and safety contained within this report.

Contribution to Our Mission: *Safer Stronger Communities – Safe Effective Firefighters*

23. Compliance with these Regulations will give confidence to the communities of Merseyside that the full Authority is involved in any disciplinary issue regarding statutory officers.

BACKGROUND PAPERS

GLOSSARY OF TERMS
