

**Ward: All**

**Portfolio:** Finance, Governance and Corporate Services

**FROM:** Monitoring Officer

**Date: 12 December 2016**

**SUBJECT: STATUTORY PROTECTION FOR STATUTORY OFFICERS**

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<b>Report Sign off</b>	<b>Seen by:</b>	<b>Name</b>	<b>Date</b>
	Legal	Donna Nolan	29/11/16
	Finance	Paul Deal	29/11/16
	Chief Executive Officer	Stuart Brown	29/11/16
<b>Summary:</b>	<p>This report recommends changes to the statutory protection arrangements to be applied where the Council is proposing to dismiss the Chief Executive, the Chief Finance Officer (also known as the Section 151 Officer) or the Monitoring Officer. It seeks to bring the constitutional provisions into line with the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015 (the Regulations).</p> <p>It includes associated updates considered appropriate to the wider constitutional provisions dealing with matters of redundancy, dismissal or disciplinary action in regard to Strategic Leadership Team Officers (Chief Officers).</p>		
<b>Recommendation:</b>	<p>Council is asked to approve:</p> <ol style="list-style-type: none"><li>1. Amendments to the disciplinary provisions to be applied where the Council proposes the dismissal of a post-holder holding the position of Chief Executive, Chief Finance Officer, Monitoring Officer or Chief Officer.</li><li>2. Delegated authority is granted to the Deputy Chief Executive and Monitoring Officer, in consultation with the Leader and Portfolio Holder for Finance, Governance and Corporate Services to make the necessary amendments to the Constitution and HR procedures to give effect to recommendation 1.</li></ol>		
<b>Direct and/or indirect impact on service delivery to our customers and communities</b>	<p>A robust constitution and compliance with statutory regulations has a positive impact on our customers and communities.</p>		

<b>Financial Implications:</b>	There are no direct financial consequences associated with agreeing these recommendations.
<b>Legal Implications:</b>	The Constitution is the key legal and governance document which guides all actions of the Council. The Council is not currently complying with the requirements of the Regulations in relation to the disciplinary and dismissal procedures for the posts of Chief Executive, Chief Finance Officer and Monitoring Officer and it is important that the Council introduces local provisions to comply with the requirements of the regulations. Clear legally compliant provisions within the Constitution reduce the risk of successful claims being made on the basis of a flawed / non-compliant dismissal process.
<b>Equalities Implications:</b>	The Council's duty under Section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions on the provision of services. There are no such decisions proposed in this report. There are no direct impacts on sustainability, health and safety, or community safety as a result of this report
<b>Risk Assessment and Adverse Impact on Corporate Actions:</b>	See Legal Implications above.

## BACKGROUND

1. Statutory Protection for the CEO, Section 151 Officer and Monitoring Officer
  - 1.1 The Local Authority (Standing Orders) (England) (Amendment) Regulations 2015 amended the statutory protection provisions that apply to the posts of Chief Executive, Chief Finance Officer and Monitoring Officer. Since the implementation of the Regulations, Council has deferred making any changes pending a review by the Somerset Monitoring Officers Group because of concerns over the requirements of the Regulations.
  - 1.2 Counsel's opinion has been obtained, guidance has been received from the Local Government Association and from the recently published Joint Negotiating Committee for Local Authority Chief Executives' National Salary Framework & Conditions of Service Handbook. This has enabled a set of proposals to be developed in conjunction with Councils across Somerset so that Council can be confident that it meets the requirements of the Regulations in so far as they can be understood or interpreted.
  - 1.3 The history behind this issue is contained in the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015 which amended the statutory protection provisions that apply to the posts of Chief Executive, Chief Finance Officer and the Monitoring Officer.
  - 1.4 As a reminder the problem areas of the Regulations are:
    - (a) The replacement of the requirement to appoint a Designated Independent Person (DIP) to advise the Council on any allegation of misconduct with a provision that a dismissal decision can only be taken by Full Council, after consideration of the advice, views or recommendations from a Panel which includes a minimum of two Independent Persons (IPs). This significantly reduced the statutory protection provisions for these post-holders but as this was provided for by the Regulations the Council has no choice but to bring its constitutional arrangements into line.
    - (b) The requirement to involve local IPs in a panel appointed by the Council to advise on Member conduct issues raised concerns because of a concern about potential conflict between the two sets of regulations detailing their roles. There was also a lack of clarity about elected member involvement in a panel involving IPs.
    - (c) The fact that the DIP process is often incorporated into statutory officers' contracts of employment and where this is the case amendments could be required to the contractual arrangements to bring them in line with the Regulations.
  - 1.5 In detail the Regulations
    - (a) Require a minimum of two IPs to be appointed to a Panel (being a Committee of the Authority) to consider a dismissal proposal. The Panel can comprise more than 2 IPs and there is the ability to involve IPs appointed by

neighbouring councils on the Council's Panel in addition to those appointed by the Council.

- (b) Removed all statutory protection for disciplinary action against these statutory post-holders short of dismissal.
- (c) Require the Panel involving the IPs to be appointed at least 20 working days before the meeting of the Authority which is to consider any proposal to dismiss the Officer.
- (d) Require a Council before it votes on whether or not to approve such a dismissal, to take into account, in particular:-
  - any advice, views or recommendations of the Panel involving the IPs;
  - the conclusions of any investigation into the proposed dismissal; and
  - any representations from the relevant Officer.
- (e) IPs who take part in a Panel can be paid an additional allowance which must not exceed what they are currently paid for their role as an IP advising on complaints against Members.

1.6 There was much detail missing from the regulations including:

- (a) The numbers or voting membership of the Panel – including whether councillors need to or should be involved.
- (b) The absence of any requirement for it to be a standing committee, or for its members to receive any training.
- (c) The absence of any requirement to provide independent legal advice or support to the Panel, even where this is requested.
- (d) The absence of any requirement to allow the officer who is subject to the proposed dismissal to be able to attend or make representations to the Panel.

It is important in the absence of such provisions that the Council's arrangements should provide for best practice in such situations to ensure that the officer concerned gets a fair hearing. The recommendations below therefore include provisions beyond what is provided for in the Regulations.

#### Current Constitutional provisions:

Section 19.5 and Appendix K of the Constitution sets out the current arrangements for dealing with dismissal or disciplinary action in regard to the Head of Paid Service, the Chief Financial Officer and the Monitoring Officer. The changes proposed to the dismissal provisions for the statutory posts which are the subject of this paper and Chief Officers will require amendments to Appendix K.

1.7 Counsel's advice provided helpful guidance and confirmation on the following matters:

- The involvement of IPs in the process where it was confirmed that is no conflict between the two sets of Regulations that apply to their roles. This leaves the Council free to include its IP and the Deputy IP in the Panel arrangements. The view of officers is that the Panel should comprise of a minimum of 3 IPs so there is a need for the Council to have access to other locally appointed IPs as provided for by the Regulations.
- The inclusion of elected members in a panel including IPs. On this issue the Government's intention is that the Panel advising the Council on a proposed dismissal of one of these statutory post-holders should only comprise of IPs.

Outside of this the Council is free to put in place provisions that best fit its local circumstances and culture. The Local Government Association has also issued helpful guidance which accords with the proposals set out in this paper.

1.8 Proposed dismissal of the Chief Executive, Chief Finance Officer and Monitoring Officer recommendations

In view of the above, the proposals set out below detail the proposed provisions that will be recommended to all six Somerset Councils, as well as those recommendations specific to the Council's arrangements.

#### All Councils

- (a) The six Councils agree to form a Somerset IP 'pool' from which IPs would be invited to form an IP Panel to advise a Council on a proposed dismissal of a CEO, Section 151 Officer or Monitoring Officer. Invitations to IPs to participate in a Panel will be issued in accordance with the Regulations.
- (b) It is proposed that at least three IPs need to convene in order for a Panel meeting to be quorate. *The legislation requires a minimum of 2 IPs to participate in a Panel but allows more to be appointed.*
- (c) An IP Panel should appoint its own chairman for the duration of a dismissal process.
- (d) IP Panel meetings will have professional officer support available to advise on process.
- (e) The IP Panel will report its recommendations direct to Full Council. The Panel's role will be separate from any elected member involvement in the process in advance of consideration by Full Council.
- (f) The officer who is the subject of the proposal dismissal shall be given the opportunity to make representations to the IP Panel before it makes its recommendations to Full Council in addition to his/her right to make representations to Full Council before a decision on a proposed dismissal is made.

## Dismissal of other Chief Officers

- (g) It is proposed to update the Constitution to provide for any proposed dismissal of a Chief Officer (who is not a Statutory Officer) to be determined by Full Council on the recommendation of the Special Members Panel. The exception to this is where the dismissal is the result of redundancy (including voluntary), permanent ill health or infirmity of mind or body.

## Remuneration of IPs

It is further recommended that IPs used on an IPs Panel should be entitled to claim expenses for attending meetings of the Panel in accordance with the Scheme of Members' Allowances and shall receive a one off payment per involvement in a Panel equivalent to 20% of their annual co-opted members' allowance paid by their respective Council.

## **CONSTITUTION**

It is recommended that the Constitutional amendments, and the necessary changes to the HR procedures are delegated to the Deputy Chief Executive and Monitoring Officer in consultation with the Leader and Portfolio Holder for Finance, Governance and Corporate Services.

## **OPTIONS CONSIDERED**

2. The only other realistic option is to make no changes to the current constitutional provisions which would mean that the Council would continue to be non-compliant with the regulations and over time this presents an unacceptable position in terms of risk.

## **CONSULTATIONS UNDERTAKEN**

3. The issue has been discussed on a regular basis at meetings of the Somerset Monitoring Officers Group, the Standards Committee and Full Council Meetings.
- 3.1 Changes to contracts of employment require consultation and agreement therefore the matter has been discussed with the Chief Executive, Section 151 Officer and Monitoring Officer and revised contracts will be issued, where necessary, to the current post holders. Appropriate discussions will also be held with relevant trade unions and the IPs appointed by the six Councils.

## **RECOMMENDATIONS**

That Council is asked to approve:

1. Amendments to the disciplinary provisions of the Constitution to be applied where the Council proposes the dismissal of a post-holder holding the position of Chief Executive, Section 151 Officer, Monitoring Officer or Chief Officer.

2. Delegated authority is granted to the Deputy Chief Executive and Monitoring Officer, in consultation with the Leader and Portfolio Holder for Finance, Governance and Corporate Services to make the necessary amendments to the constitution and HR procedures to give effect to recommendation 1.

## **REASONS FOR RECOMMENDATIONS**

Members will be aware that Council has previously deferred making any changes to the constitutional arrangements in relation to the statutory protection provisions for the posts of Chief Executive, Section 151 Officer and Monitoring Officer because of concerns over the requirements of the 2015 Regulations.

The Council has chosen not to comply with the Regulations since their implementation in the hope that the government would respond to the many concerns submitted nationally about the contents and implications of the regulations. No changes have been made or appear to be planned by the government and in the interests of moving this issue forward to enable the Council to comply with the Regulations the advice of Counsel has been sought on the options.

At all stages of these considerations the intention has been to agree with a unified approach across Somerset Councils in so far as is possible as the Regulations apply to all Councils and a successful solution for each Council is dependent on a degree of collaboration within Somerset.

This paper sets out recommendations for revised arrangements that Council can be confident meet the requirements of the Regulations and which provide consistent arrangements across the 6 councils where it makes sense to do so. Similar reports will be taken through other Somerset Councils during the autumn/winter.

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### **Background Papers**