

# **WAVERLEY BOROUGH COUNCIL**

**EXECUTIVE - 7 JULY 2015**

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**Title:**

**NEW DISCIPLINARY REGULATIONS FOR STATUTORY OFFICER POSTS**

**[Portfolio Holder: Cllr Robert Knowles]  
[Wards Affected: All]**

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**Summary and purpose:**

To amend the Council's relevant Procedure Rules in the light of the new Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which affect disciplinary procedures for the statutory positions of Head of Paid Service, Chief Finance Officer and Monitoring Officer.

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**How this report relates to the Council's Corporate Priorities:**

This report does not directly relate to the Council's Corporate Priorities but is a statutory requirement and will form part of the Council's overall governance and standards framework.

**Financial Implications:**

There are no direct financial implications relating to this report.

**Legal Implications:**

If the Council does not reflect these changes in the Procedure Rules at its next meeting, it will be in breach of the requirements set out in the Regulations that these amendments are to be in place by a specified date, which could lead to challenge or direction from central government, with the potential damage to the Council's reputation.

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**Introduction**

1. The procedures in respect of any disciplinary matters which arise in relation to a statutory officer post are covered by the National Conditions of Service for Local Chief Executives.
2. On 26 March 2015, the Department for Communities and Local Government (CLG) tabled the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 with the requirement that they are to come into force "no later than the first ordinary meeting of the authority falling after 11 May 2015". Therefore the Regulations must be considered by the Council on 21 July 2015.
3. Following approval from Council, the Council's three Statutory Officers, (Head of Paid Services, Section 151 Chief Finance Officer, Monitoring Officer) will be informed of the new Disciplinary Regulations. However, the change to the employees' contracts of

employment will not be implemented until there has been an agreed change to the national collective agreement which will formally amend the National Conditions of Service for Local Chief Executives. It should be noted that the Regulations do not apply to the Deputy Monitoring Officer or Deputy Section 151 Officer, who are deputies appointed by the statutory postholder and not statutory postholders themselves.

4. In summary, the changes are as follows:

- Regulation 2 removes the provisions in the 2001 Regulations relating to the statutory “designated independent person” required to be appointed by a local authority before it could dismiss or discipline its Head of Paid Service, Monitoring Officer or Chief Finance Officer.
- It makes new provision about the procedure to be followed in such cases, which authorities are required to include in their Procedure Rules.
- In place of the DIP process, the decision should be taken by Full Council 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.
- The Regulations envisage that the Panel will consist of a minimum of two independent persons, who are appointed under section 102(4) of the Local Government Housing Act 1972. Proportionality rules apply to such committees therefore the Panel will need to consist of at least 5 local authority elected members in addition to the two (or more) ‘neutral’ independent persons.
- It also requires that the authority, when setting up its panel for the purpose of advising on matters relating to the dismissal of a relevant officer, invite at least two ‘independent persons’ who have been appointed under section 28(7) of the Localism Act 2011. Waverley, as part of its shared arrangements with Mole Valley, Guildford and Spelthorne Borough Councils, has already appointed two independent persons under this legislation and expects to recruit further independent persons if plans to extend this arrangement to other Surrey Councils go ahead.

### **Current Position**

5. The disciplinary processes that would currently apply to this Council’s statutory officers are those agreed through the collective agreement of the Joint Negotiating Committee for Local Authority Chief Executives. These processes are contractual and can only be altered by national collective agreement.
6. The current process is, briefly, that the Council appoints a statutory Designated Independent Person to investigate the disciplinary allegation and present a report to the Investigating and Disciplinary Committee, which has delegated powers to receive the report and take a decision on the outcome.
7. The 2015 regulations amend the disciplinary framework set out in the Local Authorities (Standing Orders) (England) Regulations 2001 with the intention of streamlining and simplifying the process, rather than changing it in response to any particular legal issues with the current process. However, the changes are currently being disputed

by ALACE (Association of Local Authority Chief Executives, the trade union for local authority Chief Executives and Chief Officers).

### **New Position**

8. The Regulations state that a New Independent Panel process must be followed before a statutory officer can be dismissed, in respect of disciplinary action.
9. If the maximum potential sanction for the disciplinary action in question is likely to fall below dismissal, the Panel process does not have to be followed. Therefore, there is an option to either:
  - use the new Independent Panel process for all statutory officer disciplinary matters; or
  - retain the current statutory Designated Independent Person process outlined above for such statutory officer disciplinary matters.
10. Panel members are appointed for the purposes of the member code of conduct under Section 28 of the Localism Act 2011. The 2015 Regulations envisage that the Panel will consist of a minimum of two independent persons, who are appointed under section 102(4) of the Local Government Housing Act 1972. Proportionality rules apply to such committees therefore the Panel would need to consist of at least 5 local authority elected members in addition to the two (or more) 'neutral' independent persons. The LGA are seeking clarification on this point.
11. The LGA's initial view is that local authorities will have to invite "relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two". "Relevant Independent Person" means any independent person who has been appointed by the Council under Section 28 of the Localism Act, or where there are fewer than two, independent persons appointed at other local authorities. The LGA's initial view is that councils will have to invite all their independent persons and then appoint in accordance with the priority order and set out the selection criteria for who will be appointed if more than two local independent persons accept the invitation.
12. The role descriptions for the existing Independent Persons are currently being revised to incorporate the new responsibilities resulting from these regulations and the current appointees will be advised of them in due course. It is envisaged that the Designated Independent Persons will act as a central resource to be drawn upon by appropriate officers depending on the nature of the issue at hand and whether it falls under Section 28 of the Localism Act or under these new regulations.
13. The Regulations provide that, in place of the Designated Independent Person (DIP) process, the decision should be taken in a transparent way by Full Council, who must approve any decision to dismiss before notice of dismissal is given to the officer.
14. Whilst some authorities will include the Regulations in their Procedure Rules, the Waverley constitution does not require this level of detail and therefore the suggested references only relate to Articles 4 (The Council), Article 9 (The Standards Panel) and Article 12 (Officers), as well as Part 3 relating to the Responsibility for Functions – as attached as Annexe 1.

15. In the event that the Panel needs to be convened, it is proposed that the Council uses its Appeals Panel which is already constituted, politically proportionate and acts as a pool from which the required five elected members could be drawn, in addition to the two Independent Persons.

### **Conclusion**

16. The Council is obliged to adopt the changes outlined in the new Regulations.
17. No overall change to the standards regime is envisaged.
18. If the Council does not implement these changes at its next available meeting it will be in breach of the requirements set out in the Regulations, which could lead to challenge or direction from central government, with the potential damage to the Council's reputation.

### **Recommendation**

It is recommended that the Executive recommends to Council that

1. the Council's relevant Procedure Rules be amended in the light of the new Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, as summarised within this report and set out in detail in Annexe 1; and
2. the Council reappoints its existing two Independent Persons, namely Tony Allenby and Vivienne Cameron) for the purposes of conducting hearings required under these regulations.

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### **Background Papers**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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