

HAMBLETON DISTRICT COUNCIL

Report To: Council
23 May 2017

From: Chief Executive

**Subject: THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT)
REGULATIONS 2015 – INVESTIGATION OF STATUTORY OFFICERS**

All Wards
Scrutiny Committee

1.0 BACKGROUND:

1.1 The purpose of the report is to bring to Members' attention recent explanatory guidance on the provisions of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the "2015 Regulations") and its implications on the Council's current arrangements. The report also recommends to Council amendments to the Disciplinary Committee and seeks approval for a new Appeals Committee.

2.0 CURRENT POSITION:

2.1 As Members are aware the 2015 Regulations simplify and localise the disciplinary process for Statutory Officers (i.e. primarily the Head of Paid Service/Chief Executive, but also as recommended by the Local Government Association, the Chief Finance Officer and the Monitoring Officer). They removed the previous requirement that a Designated Independent Person be appointed to investigate and make a binding recommendation on disciplinary action against these Statutory Officers.

2.2 The 2015 Regulations provide that any decision to dismiss a Statutory Officer must be taken transparently by Full Council, which in reaching its decision 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.

2.3 As a result of the 2015 Regulations the Council appointed a Disciplinary Committee to advise and make recommendations to Council on matters relating to the proposed dismissal of a Statutory Officer. The Disciplinary Committee currently comprises seven Members and two Independent Persons.

3.0 INVESTIGATIONS AND DISCIPLINARY COMMITTEE PROPOSALS:

3.1 Further recent clarification has been produced concerning the scope of the 2015 Regulations and the role and membership of a Disciplinary Committee appointed to deal with relevant allegations against Statutory Officers.

3.2 In summary the recent guidance advises that a Disciplinary Committee should receive relevant complaints against Statutory Officers, be able to determine whether or not they require investigation, appoint an independent investigator to carry out an investigation if appropriate or necessary, impose sanctions less than dismissal (against which there must be a right of appeal to an Appeals Committee – to which I shall turn below), and if, following an investigation it proposes dismissal, to seek the views of Cabinet, and the Independent Persons (a minimum of two sitting separately as a Panel) before making any final proposals to dismiss to Full Council, which in the event would act as an appellate panel and final decision maker.

- 3.3 The guidance makes clear that where a council operates executive arrangements at least one member of the Disciplinary Committee should be a Member of Cabinet. It also clarifies that the Independent Panel need only be appointed by the Disciplinary Committee in circumstances where the Committee is considering a recommendation of dismissal. In circumstances where a lesser sanction or indeed no action is proposed then there are no requirements for the Independent Panel to meet, hence there is no need for the Independent Persons to be standing members of the Committee.
- 3.4 In the circumstances it is proposed that the Disciplinary Committee is renamed the Investigations and Disciplinary Committee. It is suggested that this title better reflects the expanded role of the Committee.
- 3.5 In recognition of this expanded role it is proposed that the following functions be delegated to the Investigations and Disciplinary Committee in place of the current more narrow terms of reference, namely
- to receive complaints relating to the conduct or capability of the Statutory Officers;
 - where appropriate to conduct investigations into these complaints including, where appropriate or necessary, to appoint an Independent Investigator;
 - to take any actions short of dismissal against a Statutory Officer;
 - as and when necessary to appoint an Independent Panel comprising a minimum of two Independent Persons to consider and report the Panel's findings and recommendations to the Committee in the event that the Committee decides to propose a sanction of dismissal against a Statutory Officer;
 - to seek the views of Cabinet in the event that the Committee proposes a sanction of dismissal against a Statutory Officer;
 - to advise and make recommendations to Full Council concerning the proposed dismissal of Statutory Officers.
- 3.6 As there is no requirement to consult the Independent Panel, save and except where a dismissal is proposed, and even then the matter is referred by the Committee to the Panel which then undertakes its own consideration independent of the Committee, it is proposed that the membership of the Investigations and Disciplinary Committee itself should be limited to seven Members of the Council, one of whom must be a Member of Cabinet.

4.0 APPEALS COMMITTEE

- 4.1 As stated above, where following an investigation the Investigations and Disciplinary Committee proposes dismissal of a Statutory Officer, this must be referred to Full Council to make the decision, which could conceivably decide not to dismiss. The Statutory Officer would be entitled to make representations to Full Council. In these circumstances Full Council would act as an appeals body, thus ensuring the Statutory Officer has a right of appeal/redress, which in turn would ensure the process is fair and complies with the rules of natural justice.
- 4.2 However, if action is taken which is less than dismissal, there is no requirement to refer the decision to Full Council. In those circumstances, and to ensure a fair process, the Statutory Officer must be entitled to a right of appeal to an Appeals Committee. There is currently no committee with specific responsibility for hearing appeals by Statutory Officers against sanctions imposed which are less than dismissal.

- 4.3 It is proposed, therefore, than a new Appeals Committee is appointed comprising seven Members. The guidance to the 2015 Regulations makes it clear that those must not be Members who sit on the Investigations and Disciplinary Committee, and that one Member of the Appeals Committee must be a Member of Cabinet. The terms of reference of the Appeals Committee could be:-

Matters which may be determined by the Appeals Committee

- to hear and determine appeals by Statutory Officers against sanctions less than dismissal imposed by the Investigations and Disciplinary Committee

5.0 MEMBERS' ALLOWANCES:

5.1 It is normal practice for the Chairmen of Committees to have a Special Responsibility Allowance. However, the Scheme of Allowances cannot be altered without consideration of a report from the Council's Remuneration Panel.

5.2 It is therefore recommended that the Council's Remuneration Panel be asked to consider whether an allowance is appropriate for the Chair of the Appeals Committee.

6.0 FINANCIAL IMPLICATIONS:

6.1 Having an extra Committee will have minimal financial implications unless a Special Responsibility Allowance is approved. However, the three Independent Persons would each be entitled to an annual allowance, which is currently £233 per annum, together with travel expenses for attending any Independent Panel. This can be met from within the Members' Allowances budget.

7.0 LEGAL IMPLICATIONS:

7.1 The appointment of an Appeals Committee is a requirement to ensure fairness and compliance with the rules of natural justice.

8.0 RISK ASSESSMENT:

8.1 Failure to appoint the Appeals Committee would deny the Statutory Officers a right of appeal. This would be procedurally unfair and leave any decision reached by the Investigations and Disciplinary Committee subject to challenge in the courts and/or tribunal.

9.0 RECOMMENDATIONS:

9.1 It is recommended that:-

- (1) the Disciplinary Committee be renamed the Investigations and Disciplinary Committee;
- (2) the membership of the Investigations and Disciplinary Committee be varied as set out in paragraph 3.6 of this report;
- (3) the functions set out in paragraph 3.5 of this report be delegated to the Investigations and Disciplinary Committee;
- (4) an Appeals Committee be appointed with the membership and terms of reference set out in paragraph 4.3 of this report;
- (5) Members of the Appeals Committee be appointed in accordance with the wishes of the political groups;

- (6) the Remuneration Panel be asked to advise on whether a Special Responsibility Allowance should be paid to the Chairman of the Appeals Committee;
- (7) the Investigations and Disciplinary Committee and the Appeals Committee be formally appointed at the annual meeting of Council;
- (8) the Director of Law and Governance be given authority to make any consequential changes to the Constitution.

DR JUSTIN IVES

Background papers: The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

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