

**Manchester City Council
Report for Resolution**

Report to: Personnel Committee – 7 March 2018

Subject: Disciplinary Procedure for the Chief Executive and Certain Statutory Officers

Report of: Director of HROD

Summary:

Changes made by The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 to matters relating to the potential dismissal of the Head of Paid Service, (Chief Executive), Monitoring Officer (City Solicitor) and Chief Finance (S151) Officer (City Treasurer) (Relevant Officers) have been incorporated into the Council's Constitution and new procedures are required to enable their implementation. This report recommends that the appended draft dismissal procedure for these officers be approved and that the Council be invited to agree amendments to the constitution in relation to the appointment of an Independent Panel comprising the Independent Persons to advise the Council in relation to dismissal. The report further recommends that power be delegated to the Director of HROD in consultation with the Executive Member for Finance and HR, or the Leader of the Council in his/her absence or inability to act, to suspend any relevant officer in accordance with the dismissal procedure.

Recommendations:

It is recommended that the Committee:

1. Agree the draft disciplinary procedure and process flow in Appendices A and B respectively which will apply to the three statutory officers identified in the report.
 2. Invite the Council to amend the constitution, as more particularly detailed in paragraphs 5.3 and 6.2 of the report in relation to the appointment of Independent Persons to an Independent Panel and in relation to the power to suspend any relevant officer respectively, when undertaking its annual review of the constitution.
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Wards Affected:

All

Financial implications for the revenue and capital budgets

There are no new financial consequences arising from the proposals within this report as the current budget reflects the proposed arrangements.

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Background documents (available for public inspection):

The Constitution of the Council

1. Background

- 1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the Regulations) made changes to matters relating to the dismissal of three statutory Officers, the Head of Paid Service, Monitoring Officer and Section 151 Officer (Relevant Officers). The intention of this provision is to ensure that these officers can discharge their duties without any fear of being unduly influenced or being dismissed without good reason. The changes required amendments to the constitution and the establishment of a process at the Council which encompassed the new procedures and clarified which officers/committees would be responsible at any stage of the process if required.

2.0 Background

- 2.1 Every Council is required to appoint a Head of Paid Service, a Monitoring Officer, and a Chief Finance (section 151) Officer. Each of these posts carries specific statutory responsibilities. As these post holders operate in a sensitive environment, Councils have been required to follow special procedures to investigate disciplinary matters regarding officers holding these positions.
- 2.2 Prior to the 2015 Regulations, procedures were governed by statutory Designated Independent Person (DIP) provisions. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 replaced the statutory DIP provisions with an Independent Panel process.
- 2.3 The Council made the required amendments to the Constitution at the time to reflect the changes in the Regulations and subsequently added the following power to the Personnel Committee terms of reference in anticipation of agreeing a disciplinary procedure:

To establish at the appropriate time two sub-committees to act as an investigating and disciplinary committee and an appeals committee in relation to disciplinary proceedings against the Chief Executive, the Monitoring Officer and the City Treasurer.

- 2.4 The Chief Executives' Conditions of Service Handbook (the Handbook) was updated to reflect the changes made to the regulations in which a revised (disciplinary) model procedure was set out. The Chief Officers' handbook, published in August 2017, has also now been updated to reflect the changes made to the regulations, and refers officers to the model set out in the Chief Executive's handbook as a reference guide for the dismissal process.

3.0 Main Changes

- 3.1 The 2015 Regulations amended the dismissal process for the relevant officers by removing the requirements for a Council to appoint a Designated Independent Person and act in accordance with any recommendations made by them. The new regulations provide that a Council must appoint an Independent Panel (the Panel) made up of a minimum of two independent

persons (IPs) appointed under section 28 of the Localism Act 2011 (in relation to standards complaints against members), whose advice, views and recommendations should be considered before any decision by the Council to dismiss a relevant officer can be made.

4.0 Disciplinary Procedure for Relevant Officers

- 4.1 After consideration of the model set out in the Chief Executives' Handbook, Legal colleagues adapted the model in collaboration with HROD, to be applied to all relevant officers at the Council. The resulting procedure clarifies which Committees and Officers would be responsible at the various stages see Appendix A and a process flow summarising the main stages is attached at Appendix B. Personnel Committee are recommended to approve the draft procedure and process flow in Appendices A and B respectively.

5.0 The Independent Panel

- 5.1 The Independent Panel must be appointed at least 20 days before the Council meeting at which dismissal is considered. The independent persons (IPs) can refuse to accept an invitation to sit on an Independent Panel. However, the Council's two IP's have both confirmed their willingness to sit on an Independent Panel should it be necessary in the future. However, should either of the IP's not be available to sit on an Independent Panel when needed it would be necessary for Full Council to appoint IP(s) at other local authorities, to ensure that a Panel of the required number of at least two IP's is appointed. The Panel can only be appointed by Full Council.
- 5.2 To give effect to the above the Committee is requested to recommend that Full Council amend Annex 2 of the Officer Employment Procedure Rules in part 4, section F of the constitution, by adding the following wording at the beginning of paragraph 4:

“The Independent Panel shall consist of the Council's independent persons appointed under section 28(7) of the 2011 Act provided that at least two such independent persons are willing to sit on the Panel. If they are not then, ...”

6.0 Delegation of Powers to Suspend

- 6.1 Ordinarily the Investigating and Disciplinary Sub-Committee (IDSC) of the Personnel Committee will consider whether it is appropriate to suspend a relevant officer. The Chief Executive's' Handbook however recommends that an Elected Member should hold the delegated power to suspend a Chief Executive in an emergency. Under section 101 of the Local Government Act 1972, Council may only delegate its non-executive functions to a committee, sub-committee or officer of the Council. Personnel matters are a non-executive function under the Local Authorities (Responsibilities and Functions) (England) Regulations 2000, so cannot be delegated to an elected member. In order to comply with the law and follow the spirit of the model procedure, it is proposed that the power to suspend a relevant officer be also given to the

Director of HROD in consultation with the Executive Member for Finance and HR, or the Leader of the Council in his/her absence or inability to act.

- 6.2 To give effect to the above the Committee is requested to recommend that Full Council amend Rule 8.1 of the Officer Employment Procedure Rules in part 4, section F of the constitution, by adding the following wording at the end of the rule:

“Any such suspension may be made by the Investigating and Disciplinary Sub-Committee of the Personnel Committee or by the Director of HROD in consultation with the Executive Member for Finance and HR, or the Leader of the Council in his/her absence or inability to act.

7.0 Implementation

- 7.1 Once agreed and finalised, a letter outlining the above changes to regulations and the new procedure will be distributed to the relevant Officers and incorporated into their contracts of employment.

8.0 Trade Union Comments

To follow

9.0 Comments of the Director of HROD

- 9.1 The updated procedure and, proposal re the establishment of a panel of independent Persons and proposed approach to suspending the Relevant Officers will ensure the organisation is best placed to manage any matters relating to the potential dismissal of the Head of Paid Service, (Chief Executive), Monitoring Officer (City Solicitor) and Chief Finance (s 151) Officer (City Treasurer) in the unlikely event that such circumstances should occur.

10.0 Conclusion

- 10.1 The Committee is recommended to agree the draft disciplinary procedure and process flow in Appendices A and B respectively which will apply to the three statutory officers identified in the report.
- 10.2 The Committee is requested to recommend that Full Council amend the constitution, as more particularly detailed in paragraphs 5.3 and 6.2 of the report, in relation to the appointment of independent persons to an independent panel and in relation to the power to suspend any relevant officer respectively, when undertaking its annual review of the constitution.
- 10.3 The procedure and related measures commended to Personnel Committee, if approved at Council, will ensure compliance with Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 relating to the potential dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance (s 151) Officer.

Disciplinary Procedure for the Head of Paid Service, (Chief Executive), Monitoring Officer (City Solicitor) and Chief Finance (s 151) Officer (City Treasurer)

1. Background

This disciplinary procedure is based on that set out in the Joint Negotiating Committee for Local Authority Chief Executives National Salary Framework and Conditions of Service Handbook (the JNC Handbook) as updated on 13 October 2016. It applies to Manchester City Council's (the Council) Chief Executive, Monitoring Officer and City Treasurer (the Relevant Officers).

2. Informal resolution

In accordance with recommendations in the JNC Handbook the Council and the Relevant Officer will seek an informal resolution before formal disciplinary proceedings are commenced. The Director of HROD will be responsible for seeking an informal resolution with the Relevant Officer. If informal resolution is not possible, the complaint/allegation will be referred to an investigating and disciplinary committee.

3. The investigating and disciplinary committee

The investigating and disciplinary committee of the Council will be a sub-committee of the Personnel Committee established to deal with formal disciplinary matters in respect of the Relevant Officers. The Investigating and Disciplinary Sub-committee (IDSC) will not be a standing committee but will be established as and when required by the Personnel Committee. Wherever possible, it will be politically balanced and comprise five members of the Personnel Committee including at least one member of the Executive.

4. Convening the IDSC

Once it is clear that informal resolution is not possible, the Director of HROD will inform the Chair of the Personnel Committee of the complaint/allegation made against the Relevant Officer and the failure to achieve an informal resolution. A meeting of the Personnel Committee will be convened at the earliest opportunity to establish the IDSC and the Disciplinary Appeals Sub-committee (see paragraph 12 below) and set a date for the meeting of the IDSC.

5. Consideration of allegations by IDSC

At the earliest opportunity, the Director of HROD should inform the Relevant Officer of the complaint/allegation, the evidence provided, the Relevant Officer's right to provide oral evidence to the meeting of the IDSC, the date and time of the meeting and other relevant matters. The Relevant Officer should also be asked for written representations for presentation to the IDSC in relation to the complaint/allegation. In the light of the representations and any oral evidence, having carefully considered the complaint/allegation, the IDSC may decide on one of the following actions:

- **OPTION 1 No further action**
This should be immediately communicated to the Relevant Officer and the complainant notified if necessary.
- **OPTION 2 Informal unrecorded oral warning**
If the matter is not serious but there is some minor fault or error on the part of the Relevant Officer then the IDSC can issue an informal unrecorded warning.
- **OPTION 3 Case to answer/further investigation required**
If the IDSC believes that the case cannot be dismissed and requires further investigation and that, if the allegations were to be upheld they would result in a sanction greater than an informal warning, the IDSC should appoint an independent investigator (Independent Investigator) and consider suspending the Relevant Officer during the investigation period.

6. **Suspension**

Ordinarily the IDSC will consider whether it is appropriate to suspend the Relevant Officer; this may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the Relevant Officer might compromise the investigation or impair the efficient exercise of the Council's functions, the Director of HROD in consultation with the Executive Member for Finance and Human Resources, or the Leader of the Council in his/her absence or inability to act, will have delegated authority to suspend the Relevant Officer. Suspensions should be reviewed after a period of two months as recommended by the JNC Handbook and only extended following consultation with the Independent Investigator and consideration of any objections/representations from the Relevant Officer.

7. **Appointment of the Independent Investigator**

The joint secretaries of the JNC (the Joint Secretaries) will maintain a rolling list of potential Independent Investigators. When approached by the Council, the Joint Secretaries will supply three names from the list and if they are acceptable to the IDSC, the Relevant Officer will be asked to choose one of the names. If the Relevant Officer will not agree a name within 14 days, the IDSC will be free to appoint their choice from the three names.

8. **Role of the Independent Investigator**

In practice it should be for the Independent Investigator to determine the process they will follow. The investigation process will be dependent upon the nature of the allegations and the availability of information. This could be a process of evidence gathering, including oral evidence from witnesses, hearing submissions etc. which will lead to the formulation of recommendations for consideration by the IDSC.

9. **The report of the Independent Investigator**

On completion of their investigation the Independent Investigator must prepare a report with recommendations and full rationale for submission to the IDSC.

10. Consideration and decision of the IDSC

The IDSC will then afford the Relevant Officer the opportunity to attend a full hearing to allow them to put their case and challenge the recommendations of the Independent Investigator, call witnesses, etc. At the hearing both parties will be afforded the opportunity to be represented by an individual of their choice, although representation for the Relevant Officer should be obtained at his/her expense.

11. Recommendations of the IDSC

Following either consideration of the report of the Independent Investigator or a full hearing of the case the IDSC can make one of the following five decisions:

- **OPTION 1 No case to answer**
Appropriate communication should be prepared in agreement with the Relevant Officer to ensure that as far as possible there is no damage to the post holder's reputation. The IDSC should consider reimbursement of any reasonable expenses incurred by the employee.
- **OPTION 2 Recommend informal resolution or other appropriate procedures**
This should be where the IDSC considers that informal resolution is now possible.
- **OPTION 3 Refer back to the Independent Investigator for further investigation and report**
This option should only be taken where the IDSC considers that further investigation is absolutely necessary to enable it to make its recommendation.
- **OPTION 4 Action short of dismissal**
A decision to take action short of dismissal should be communicated in writing to the Relevant Officer with its rationale. The Relevant Officer has the right of appeal to the Disciplinary Appeals Sub-committee (the DASC) against this decision.
- **OPTION 5 Recommendation to dismiss**
If there is a recommendation to dismiss, the reports of the IDSC and the Independent Investigator should then be sent to an independent panel (Independent Panel) for its consideration. The Relevant Officer may also submit written representations to the Independent Panel in advance of its consideration of the matter.

12. Disciplinary Appeals Sub-committee

The DASC will be a sub-committee of the Personnel Committee established to deal with appeals by the Relevant Officers against decisions of the IDSC to take action short of dismissal. The DASC will not be a standing committee but will be established as and when required by the Personnel Committee. Wherever possible, it will be

politically balanced and comprise three members of the Personnel Committee including at least one member of the Executive.

- **OPTION 1 Dismiss appeal and confirm sanction**
Appropriate communication should be prepared in agreement with the Relevant Officer to ensure that as far as possible there is no damage to their reputation. The decision to dismiss should be communicated in writing as soon as is practicable.
- **OPTION 2 Accept appeal in full**
This decision should be communicated in writing to the Relevant Officer with rationale.
- **OPTION 3 Accept appeal but impose a lesser sanction**
A decision to take action short of dismissal should be communicated in writing to the Relevant Officer with rationale.

13. Compliance with the Local Authorities (Standing Orders) (England) Regulations 2001 (the Regulations)

- 13.1 The Regulations provide for a consultation procedure with the members of the Executive where a Council proposes to dismiss a Relevant Officer. The consultation procedure is set out in Annex 3 of the Officer Employment Procedure Rules in the Council's Constitution. In order to comply with the Regulations and afford the IDSC the opportunity to take into account material objections to dismissal from members of the Executive, the consultation procedure will be carried out prior to the Independent Panel's consideration of the IDSC's recommendations. The Director of HROD shall inform the Proper Officer (currently the Deputy Chief Executive (People, Policy and Reform) of the IDSC's recommendation to dismiss and the Proper Officer will then begin the consultation procedure by informing members of the Executive that the IDSC has decided to recommend dismissal to the Council.
- 13.2 The Proper Officer shall inform the IDSC of the results of the consultation. If a member of the Executive has made an objection to dismissal, the IDSC shall meet to consider whether the objection should affect its recommendation to dismiss or whether other steps should be taken, for example, further investigation. The results of the consultation procedure and their effect, if any, on the IDSC's recommendation will be included in the information to be given to the Independent Panel.
- 13.3 The Relevant Officer shall be informed of what effect the consultation results have on the IDSC's recommendations.

14. Composition, role and process of the Independent Panel

The Independent Panel appointed by the Council will comprise at least two independent persons (provided with appropriate training and advised by the Director of HROD or his/her representative) as stipulated at Annex 2 to the Officer Employment Procedure Rules contained in the Council's Constitution. The

Independent Panel shall meet and receive oral representations from the Relevant Officer and responses to his/her representations from a representative of the IDSC who shall also attend the meeting. The Independent Panel may ask questions of either party. With the agreement of all parties, the Independent Panel may dispense with holding a meeting. The Independent Panel will review the decisions of the IDSC and prepare a report for Council. The Independent Panel report should comprise the recommendation of the IDSC, the Independent Investigator's report, any representations of the Relevant Officer, and any comments on the recommendations of the IDSC from the Independent Panel. Where the Independent Panel disagrees with the reason to dismiss, its report should contain a clear rationale for this.

15. **Report to full Council**

Following receipt of the Independent Panel's report, the Council should consider the recommendation to dismiss. The Relevant Officer will be provided with a final right to appeal against the decision and be allowed to attend and address the full Council meeting for this purpose. The Independent Investigator may be invited to attend to provide clarification if required. The IDSC should nominate one of its members to attend the meeting of full Council on its behalf. Following consideration of the Independent Panel's report, the Council will have three options:

- **OPTION 1 Confirm recommendation to dismiss**
The decision to dismiss should be communicated in writing as soon as is practical. .
- **OPTION 2 Reject recommendations to dismiss**
This decision should be communicated in writing to the Relevant Officer with rationale. Appropriate communication should be prepared in agreement with the Relevant Officer to ensure that as far as possible there is no damage to their reputation.
- **OPTION 3 Impose a lesser Sanction**
A decision to take action short of dismissal should be communicated in writing to the Relevant Officer with rationale. Appropriate communication should be prepared in agreement with the Relevant Officer to ensure that as far as possible there is no damage to their reputation.

16. **Dismissal**

If the Council decide to dismiss the Relevant Officer, it shall authorise the Director of HROD to effect the dismissal on the Council's behalf.

Disciplinary Procedure for the Chief Executive and Certain Statutory Officers

Appendix B

