

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

14 July 2015

Report of the Director of Central Services & Monitoring Officer

Part 1- Public

Matters For Decision

1 CHANGES TO CONSTITUTION - DISMISSAL OF STATUTORY OFFICERS

Members are asked to agree changes to the Constitution relating to the dismissal of statutory officers as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

1.1 Introduction

1.1.1 The coalition government made legislative changes which require the Council to amend its standing orders insofar as they relate to disciplinary action against and the dismissal of the Council's 3 statutory officers i.e. the head of paid service, monitoring officer and chief finance officer. The report identifies the necessary changes and recommends that the Council approves the appropriate amendments to the constitution.

1.2 Background

- 1.2.1 Since the Council commenced operating executive arrangements it has been a requirement of the Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') that the Council makes or modifies standing orders so that they include certain provisions relating to staff and other matters. The Officer Employment Rules contained within Part 4 of the Council's Constitution currently incorporate standing orders which comply with the requirements of the regulations.
- 1.2.2 The provisions required to be in the standing orders in relation to staff operated so as to require the council to appoint a "designated independent person" before it could discipline or dismiss its head of paid service, monitoring officer or chief finance officer.
- 1.2.3 On 25 March, in furtherance of a long standing commitment to do so, the Secretary of State for Communities and Local Government made the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which came into force on 11th May 2015 ('the 2015 Regulations'). The 2015 Regulations repeal the provisions of the 2001 regulations insofar as they relate to

the appointment of the “designated independent person” and make new provision about the procedure to be followed to dismiss a head of paid service, a monitoring officer or, a chief finance officer. These provisions must be incorporated into the Council’s standing orders “no later than the first ordinary meeting of the authority falling after 11th May 2015”.

- 1.2.4 The 2015 Regulations require that before dismissing one of the officers identified above, the Council must appoint a “panel” for the purpose of advising on matters relating to the dismissal of the relevant officer. The Council must invite independent persons who have been appointed under section 28(7) of the Localism Act 2011 to be considered for appointment to the panel, with a view to appointing at least two such persons to the panel. These independent persons are those appointed by the Council in connection with the procedures for dealing with alleged breaches of the Code of Conduct for members. Currently, the Council has 2 independent persons – David Ashton and John Gledhill.
- 1.2.5 The Department for Communities and Local Government have issued an explanatory memorandum to the 2015 Regulations which is attached as **Appendix 1**.
- 1.2.6 The governance consultancy firm Hoey Ainscough Associates Limited working with Wilkin Chapman Goolden solicitors have also produced a useful briefing note which expands on some of the implications of the 2015 regulations. A copy of this is attached as **Appendix 2**.

1.3 Legal Implications

- 1.3.1 The requirements of the 2015 Regulations are mandatory insofar as they relate to the adoption of the prescribed standing orders and therefore it is not possible to put options before the Council for consideration in this regard.
- 1.3.2 As will be noted from paragraph 28 of the briefing note at Appendix 2, the Council does have a choice as to whether it appoints a standing panel in pursuance of the standing orders or, whether it only appoints one if and when the need arises.

1.4 Financial and Value for Money Considerations

- 1.4.1 None.

1.5 Risk Assessment

- 1.5.1 The circumstances giving rise to the need to appoint the panel are likely to occur very infrequently, if at all. It is therefore not proposed that the Council should appoint a standing panel. In the event that one was to be needed, this would be the subject of a report to Council at the time.
- 1.5.2 There is also a fundamental legal difficulty in attempting to appoint a standing panel and this lies in the need to ensure that the panel is comprised of members

who are impartial. The nature of the positions to which the 2015 applies is such that there is a high probability that one or more members will themselves be involved in any disciplinary action whether as instigators of it or, as witnesses. Clearly, any member involved in this capacity could not sit on the panel. Therefore, until a particular issue arises and the circumstances are known, it would not be possible to identify which members could and (more importantly) could not, sit on the panel.

1.6 Equality Impact Assessment

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

- 1.7.1 Council is invited to **APPROVE** the amendments to the Officer Employment Procedure Rules set out at **Appendix 3** to give effect to the requirements of Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

Background papers:

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The Local Authorities (Standing Orders) (England)
(Amendment) Regulations 2015

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