

## STANDING ORDERS RELATING TO STAFF

Meeting **24 September 2019**

Report Author **Monitoring Officer**

Portfolio Holder **n/a**

Status **For Recommendation**

Classification: **Unrestricted**

Ward: **n/a**

### **Executive Summary:**

The attached report was withdrawn from Council in July 2019 after a last minute change was proposed in advance of the meeting. The changes required detailed consideration and it was apparent that the whole report might fall if not withdrawn.

The Committee is asked to undertake consider that change to the Standing Orders Relating to Staff, as presented to Council in July 2019.

The proposed change related to the process to ensure that only allegations of misconduct that came within the meaning of disciplinary action as defined in the Local Authorities (Standing Orders) (England) Regulations 2001 were dealt with by the Investigating and Disciplinary Committee.

The purpose of this step is to stop frivolous complaints or those which are clearly unfounded, or trivial or can best be dealt with under some other procedure, being brought to the Committee.

### **Recommendation(s):**

The CRWP consider the final draft standing orders relating to staff and whether any further changes should be made.

### **CORPORATE IMPLICATIONS**

|                                      |                                                                                                                                                                      |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Financial and Value for Money</b> | There are no financial implications in respect of this report.                                                                                                       |
| <b>Legal</b>                         | The Council is under a legal duty to adopt Standing Orders relating to staff which comply with the Local Authorities (Standing Orders) (Amendment) Regulations 2015. |
| <b>Corporate</b>                     | The Council is vulnerable to claims if its processes do not comply fully with the legislation.                                                                       |

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|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| <b>Equality Act 2010 &amp; Public Sector Equality Duty</b>                                                | Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it. |   |
|                                                                                                           | Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.                                                                                                                                                                                                                                                                                                                                                                      |   |
|                                                                                                           | Please indicate which aim is relevant to the report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |   |
|                                                                                                           | Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | X |
|                                                                                                           | Advance equality of opportunity between people who share a protected characteristic and people who do not share it                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | X |
| Foster good relations between people who share a protected characteristic and people who do not share it. | X                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |   |
| There are no direct equalities implications.                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |   |

|                                                     |  |
|-----------------------------------------------------|--|
| <b>CORPORATE PRIORITIES (tick those relevant) ✓</b> |  |
| A clean and welcoming Environment                   |  |
| Promoting inward investment and job creation        |  |
| Supporting neighbourhoods                           |  |

|                                                 |   |
|-------------------------------------------------|---|
| <b>CORPORATE VALUES (tick those relevant) ✓</b> |   |
| Delivering value for money                      |   |
| Supporting the Workforce                        | X |
| Promoting open communications                   |   |

## 1.0 Introduction and Background

- 1.1 The attached report was submitted to Council in July 2019. It was apparent that an additional detailed amendment was likely to be proposed despite the Standing Orders having been agreed by both the Constitutional Review Working Party and the Standards Committee.
- 1.2 I felt that the Council was not the proper forum for such detailed consideration and that it was better that the Standing Orders be brought back to this committee rather than risk them not being approved at Council.

## 2.0 The Current Situation

- 2.1 The proposed change relates to the process for ensuring that allegations of misconduct came within the definition of disciplinary action in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001. The mechanism is

to filter out frivolous complaints or those which are clearly unfounded, or trivial or can best be dealt with under some other procedure.

2.2 The Regulations define “disciplinary action”: *‘in relation to a member of staff of a local authority means any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority, be recorded on the member of staff’s personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract; ‘*

2.3 The current proposals say that the Chief Executive will determine whether allegations against the Chief Financial Officer or Monitoring Officer are ‘disciplinary matters’. In respect of complaints against the Chief Executive, the Monitoring Officer will make that determination.

2.4 The JNC for Chief Executives (p. 31)says:

*Authorities will therefore need to consider what constitutes an ‘allegation’ made relating to the conduct or capability of the chief executive and what it considers are other substantial issues requiring investigation. Clearly the route for complaints against the council and the chief executive and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied. Ideally, procedures need to be in place which can filter out and deal with ‘allegations’ against the chief executive which are clearly unfounded, or trivial or can best be dealt with under some other procedure.*

*For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the council’s general complaints procedure. If the matter is a grievance from a member of staff directed against the chief executive, it may be appropriate to first deal with it through the council’s grievance procedure. Of course if the matter were a serious complaint against the chief executive’s personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the disciplinary procedure.*

*An authority will need to put into place arrangements that can manage the process. In particular - that records are kept of allegations and investigations and that there is a clear route into the disciplinary procedure. It could be, for example, that in the case of allegations against the chief executive, the monitoring officer and the Chair of the IDC would oversee referrals to that Committee.*

2.5 The report and appendices which went to Council are attached. The filtering process is in the diagram in appendix 3.

### **3.0 Options**

3.1 To agree the Standing Orders as drafted.

- 3.2 An alternative would be to make the determination by the Chief Executive or Monitoring Officer, but only after consultation with the Chair of the General Purposes Committee.
- 3.3 The disadvantage of this approach is firstly, that the Chair of the GPC would (prior to the meeting) have made a determination that there was a case to answer and would have therefore pre-determined the matter.
- 3.4 A more fundamental concern is that the purpose of the 2015 Regulations is to provide a process for dealing with serious allegations against Statutory Officers, whilst providing protection to those officers from politically motivated and spurious allegations to which those postholders are inevitably subject. This is because those officers have a duty to 'speak truth unto power' and are therefore at risk of a political backlash on rare occasions.
- 3.5 Given that situation, it would not be appropriate for politicians to decide whether politically motivated or spurious allegations should or should not be considered under the disciplinary procedures. This would effectively undermine the special protection given to Statutory Officers and remove the first layer of protection.
- 3.6 Any recommended changes must comply with the Local Authorities (Standing Orders) (Amendment) Regulations 2015.

#### **4.0 Next Steps**

- 4.1 Subject to any recommendations from this Committee the Standing Orders may have to go through the Standards Committee prior to approval by Council.

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| Contact Officer: | Tim Howes, Monitoring Officer   |
| Reporting to:    | Madeline Homer, Chief Executive |

#### **Annex List**

|         |                                                                        |
|---------|------------------------------------------------------------------------|
| Annex 1 | Report to Council in July 2019                                         |
| Annex 2 | Amendments to TOR (presented at Council in July 2019)                  |
| Annex 3 | Officer Employment Procedure Rules (presented at Council in July 2019) |
| Annex 4 | Procedure Flowchart (presented at Council in July 2019)                |

#### **Corporate Consultation**

|                |                                             |
|----------------|---------------------------------------------|
| <b>Finance</b> | N/A                                         |
| <b>Legal</b>   | Tim Howes, Director of Corporate Governance |