

LONDON BOROUGH OF WALTHAM FOREST

Committee/Date:	Council 9 July 2015
Report Title:	Employment Procedure Rules
Directorate:	Legal and Governance
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Wards affected:	None specifically
Public Access	Open
Appendices	Appendix A – Proposed Employment Procedure Rules Appendix B – Terms of Reference of the Independent Panel for Statutory Officer Dismissals

1. SUMMARY

- 1.1. This report sets out the proposed amendments to the Council's Employment Procedure Rules ("EPRs") in Part 8 of the Constitution to reflect changes made by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations").

2. RECOMMENDATION

- 2.1 For the reasons set out in this report, Council is requested to:
- (a) adoption of the amended Employment Procedure Rules as set out in **Appendix A**.
 - (b) agree the establishment of an Independent Panel as an advisory committee of the Council with the terms of reference set out in **Appendix B**;
 - (c) delegate to the Chief Operating Officer (or her nominee) the authority to make arrangements for the appointment of independent panel members and to appoint those members and to amend any HR policies as appropriate to reflect these changes and to provide training to the new independent panel members
 - (d) amend the Members Allowance Scheme so that independent panel members are paid at the same rate as the current independent member appointed for the purposes of the Code of Conduct.

3. BACKGROUND

- 3.1. The Council's Employment Procedure Rules set out various arrangements in respect of the employment of senior officers. Currently, these provisions include mandatory standing orders in

relation to the disciplining and dismissal of the three statutory officers; the Chief Executive, Monitoring Officer and Chief Finance Officer. The current Rules are based on the Local Authorities (Standing Orders) (England) Regulations 2001 and provided that an independent investigator must be appointed if it is proposed to discipline or dismiss a statutory officer. The 2015 Regulations revoke these provisions as CLG considered they were expensive and unnecessary and introduced a purportedly simpler procedure that must be adopted by all local authorities. The Regulations came into force on 11th May 2015 and must be agreed at a Council's first ordinary Council meeting after this date.

4. PROPOSALS

4.1. In summary, the Regulations require:

4.1.1. Full Council will make the final decision to confirm the dismissal of statutory officers and this decision cannot be delegated to a committee.

4.1.2. Where it is proposed to dismiss an officer, a panel of independent members must act as an advisory committee whose recommendations must be considered by full Council (provision is also made to limit the expenses of panel members).

4.1.3. Independent members are appointed in accordance with the requirements of s.28 of the Localism Act 2011, i.e. those for the Code of Conduct for Councillors.

4.1.4. The Council must also take into account any investigation report and any submissions made by the affected officer.

4.2. The previous protection for disciplinary action short of dismissal is removed and the independent panel has no statutory role. This does not affect the processes relating to any other senior officers.

4.3. The proposed amendments to the EPRs are set out in Appendix A and the Committee is proposed to recommend these recommendations to full Council. Some additional amendments to update the EPRs are also set out in Appendix A.

The Disciplinary Process & Role of the Independent Panel

4.4. If the Council is proposing to discipline or dismiss a statutory officer, the following process will be followed:

4.4.1. A Staffing Committee sub-committee will decide whether or not a matter will be investigated and appoint an investigator;

4.4.2. The Staffing Committee will receive the report and having considered the relevant evidence and any representations made

by the officer will make recommendations whether or not to discipline or dismiss the officer

- 4.4.3. If a decision is made to discipline but not dismiss the officer, the sanctions will be implemented subject to an appeal to a different sub-committee of the Staffing Committee;
 - 4.4.4. If there is a recommendation to dismiss the officer, a meeting of the independent panel will be held to consider the matter and to make its recommendations to full Council;
 - 4.4.5. Following 4.4.4., no less than 20 days after the independent panel meeting the dismissal is referred to full Council to confirm the decision whether or not to dismiss taking into account the investigation, the independent panel's views and any representations made by the officer.
- 4.5. It is proposed that a Panel of three members will be established and it is proposed that the current independent member, Daniel Fluskey, is invited to be part of the Panel following the process below. The Terms of Reference of the Panel are set out at Appendix B. It will form an advisory committee of the Council comprising only independent members. Independent members cannot be: current members, coopted members or officers of the authority; or a relative or close friend of a member or officer; or a member of the authority in the previous 5 years. Panel member applicants should be appointed on merit and relevant experience (e.g. of HR and disciplinary processes) but the Council is also obliged to invite successful applicants who are borough residents at first instance. The Chief Operating Officer will arrange for training of the panel members in Council disciplinary procedures for senior staff.
- 4.6. It is recommended that Mr Fluskey is invited to be appointed as an independent panel member and the Director of Governance will write to him. Further appointments can only be made after an externally advertised recruitment process, the applicant has submitted an application to the Council and a majority of Council members (i.e. 31) have approved the appointment at full Council. The Audit and Governance Committee is therefore asked to recommend to full Council that the Chief Operating Officer is delegated authority to undertake this exercise and recommend appointees to full Council.
- 4.7. Finally, the regulations limit the payment of expenses to independent members to those currently paid to independent members appointed under s.28 of the Localism Act 2011. It is recommended that this level of payment is agreed, which is approximately £700 pa.

5. CONSULTATION

- 5.1. This report has been prepared in consultation with Human Resources.

6. IMPLICATIONS

6.1. Finance, Value for Money and Risk

6.1.1. The costs of the change will be met within existing budgets. Part of the Government's logic is that it will reduce the costs of the previous process, which required the appointment of an independent investigator.

6.2. **Legal**

6.2.1. The body of the report contains the legal implications. The regulations are mandatory and so the Council has no option but to adopt the new regime as part of its Constitution. The Council is, pursuant to section 9P of the Local Government Act 2000, under a statutory obligation to keep the Constitution up to date. The regulations must be adopted at the next Full Council meeting, as it is the first ordinary meeting after 11th May 2015. The process outlined will also ensure compliance with employment law.

6.3. **Equalities and Diversity**

6.3.1. The regulations are mandatory and must be adopted.

BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)

None