

<b>COUNCIL</b>		
<b>Report Title</b>	<b>The JNC Framework for Statutory Officers</b>	
<b>Key Decision</b>	<b>N/A</b>	
<b>Ward</b>	<b>All</b>	
<b>Contributors</b>	<b>Deputy Monitoring Officer</b>	
<b>Class</b>	<b>Part 1</b>	<b>Date 10 October 2018</b>

### 1. **Summary**

This report proposes that the Council notes the National Salary Framework and Conditions of Service Handbook agreed by the National Joint Negotiating Committee for Local Authority Chief Executives (the JNC Framework). It suggests that it adopts the procedures set out in that document, amends the terms of reference of the Appointments Committee so that it carries out the function of a Standing Investigating and Disciplinary Committee for the purposes set out in the Framework and appoints members to it. It also proposes an Appeals Committee.

### 2. **Purpose**

The purpose of this report is to ensure that the Council has in place a formal mechanism to consider any disciplinary and/or capability matters pertaining to the Chief Executive, Monitoring Officer and Director of Finance.

### 3. **Recommendation**

That the Council:-

- (1) notes and adopts the disciplinary procedures set out in the JNC Framework which now appears at Appendix 1 in respect of the Chief Executive, Monitoring Officer and Director of Finance ;
- (2) amends the terms of reference of the Appointments Committee as set out in Appendix 2 so that it also operates as a Standing Investigating and Disciplinary Committee consisting of 5 members to carry out the disciplinary functions proposed for it in the JNC Framework at Appendix 1; and appoints members to that Committee;

(3) subject to the approval of 3.1 and 3.2 above, to establish an Appeals Committee consisting of 5 members to carry out the functions proposed for it in the JNC Framework appearing at Appendix 1, with the terms of reference appearing at Appendix 3 and to appoint members to that Committee.

(4) agrees that the Council's Constitution be amended accordingly.

#### 4. **Background**

4.1 The Local Authorities (Standing Orders) (England) Regulations 2001 as amended in 2015, require that a Council must take into account any advice, views or recommendations of an Independent Panel before a Chief Executive, Monitoring Officer or Director of Finance (s151 officer) can be dismissed on any ground other than redundancy, permanent ill health or the expiry of a fixed term contract. Changes were made to the Council's employment procedure rules as set out in the Constitution following amendment to the Regulations to reflect the current legal position but procedures were not put in place to give effect to those new provisions.

4.2 In 2016, the Joint Negotiating Committee for Local Authority Chief Executives agreed the JNC Framework appearing at Appendix 1 to provide a procedure for Councils to follow in deciding whether a proposal to dismiss might be presented to the Independent Panel. It is a comprehensive and detailed procedure and is summarised in diagrammatic form at page 76 et seq of Appendix 1. The document also sets out a model grievance procedure. Though the Framework refers specifically to Chief Executives, the Local Government Association suggests that it would be best practice also to use the disciplinary procedures set out in the Framework for the Director of Finance and Monitoring Officer.

4.3 If the Council agrees to adopt the JNC Framework, it will need to appoint a Standing Investigating and Disciplinary Committee. The Framework suggests that the Committee, which must be politically balanced, consist of 5 members, and where a Council operates a Mayor and Cabinet structure, at least one of those must be an executive member.

4.3 If a matter comes before a Standing Investigating and Disciplinary Committee and, following investigation in accordance with the JNC Framework, it decides on action short of dismissal, the Framework provides for a right of appeal to an Appeals Committee. The Framework states that this Committee should also consist of 5 members, at least one of whom should be a member of the Executive. The members of the Appeals Committee should not also be members of the Standing Investigating and Disciplinary Committee.

4.4 Members of both the Standing Investigating and Disciplinary Committee and the Appeals Committee must take care to avoid any conflict of interest and not take part in consideration of any matter where a conflict arises.

## 5 **Legal implications**

5.1 The legal provisions referred to in the body of the report correctly reflect the statutory provisions.

5.2 Generally, the Council's employment contracts include a general provision that the terms and conditions will be those nationally negotiated. For example, the Chief Executive's contract of employment states as follows:-

“The general terms and conditions relating to this post will be those recommended by the Joint Negotiating Committee for Chief Executives of Local Authorities as supplemented by agreements reached locally through the Council's negotiating Committees. However, in the case of doubt, inconsistency or ambiguity the terms of this Contract shall prevail. None of the Council's policies, procedures, guidelines, schemes or codes are part of your terms and conditions of employment except as expressly stated to be such in this Contract.”

5.3 To date, there has been no agreement reached locally through the Council's negotiating Committees to supplement the JNC Framework.

5.4 The JNC Framework states in the Introduction to its Appendix 5 that the procedure set out in the Framework should be followed except in so far as the parties agree locally to vary them. The Council is asked to agree to adopt the JNC Framework so that there can be no confusion about the procedure to be followed in relation to any disciplinary, capability or grievance matter relating to the Chief Executive, Monitoring Officer or Director of Finance, and to appoint the decision making committees needed to consider any such issues.

5.5 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, provide that some decisions relating to employment matters, are executive functions, whilst others are non-executive functions. Regulation 2 and Schedule 1 paragraph 1 37 provide that the power to appoint staff and to determine the terms and conditions on which they hold office (including procedures for their dismissal) shall be non-executive functions. The establishment of committees, is a function for the Council, as are appointments to any committee in accordance with the wishes of the political groups to reflect the political balance on the Council.

5.6 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil

partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

5.7 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and
- other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

5.8 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Council, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

5.9 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-actcodes-of-practice-and-technical-guidance/>

However, there are no specific equalities implications arising from this report.

## 6. **Financial implications**

There are no specific financial implications arising from this report.

The terms of reference of the Appointments Committee shall read as follows:-

- The recruitment and selection of chief officers and deputy chief officers (excluding the head of paid service) in accordance with regulations relating to such appointments in force from time to time.
- To assist the Council in the appointment of the Head of Paid Service as the Council shall request from time to time, save that by law this appointment is by law a decision for the full Council.
- To agree the terms and conditions of employment of the Head of Paid Service as well as the monitoring of his/her performance against targets set for the Head of Paid Service by the Mayor.
- In respect of the Chief Executive, Director of Finance and Monitoring Officer, to act as the Standing Investigating and Disciplinary Committee in accordance with the National Joint Committee for Local Authority Chief Executives National Salary Framework and Conditions of Service Handbook or such other national agreement in place from time to time (the Framework).
- To consider whether, in respect of the Chief Executive, Director of Finance or Monitoring Officer there is a case to answer in respect of any substantive allegation made relating to his/her conduct or capability and any other substantial issue that requires investigation
- To appoint Independent Investigator(s) in accordance with the Framework, where the Committee is satisfied that there is a case to answer.
- To receive the findings of the Independent Investigator and to decide what action, if any, should be taken as a result of the outcome of the investigation. Such action might be informal resolution, further investigation, a proposal to dismiss or some other action short of dismissal.
- Where the Committee decides to make a proposal to dismiss, to refer the matter for consideration by an Independent Panel constituted in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 as amended, or such other relevant legislation in place from time to time.
- The Committee may, where it considers it necessary to do so, suspend the Chief Executive, Monitoring Officer or Director of Finance whilst any investigation in to his/her conduct or capability is ongoing. In exceptional cases, in accordance with the Framework in place from time to time, the power to suspend the Chief Executive is delegated to the

Chair of the Appointments Committee, and the power to suspend the Director of Finance or Monitoring Officer is delegated to the Chief Executive. Where there is any such suspension by the Chair or Chief Executive, it must be reported to the Committee without delay.

- To do all things necessary to enable the Committee to carry out the above functions effectively
- The quorum for the Appointments Committee shall be 3.
- The membership of the Appointments Committee when it sits as the Standing Investigating and Disciplinary Committee shall include at least one executive member.
- Except when the Appointments Committee carries out any function of the Standing Investigating and Disciplinary Committee in accordance with the Framework, the Mayor will be invited to attend all meetings of the Appointments Committee and shall be entitled to contribute to discussion in that forum, should he do so, though he may not be a member of, nor vote at any meeting of the Appointments Committee.

The terms of reference of the Appeals Committee

- to consider appeals by the Chief Executive against decisions of the Standing Investigating and Disciplinary Committee which fall short of a proposal to dismiss;
- To decide whether the action proposed by the Standing Investigating and Disciplinary Committee should be confirmed, or to impose a lesser or no sanction
- to do all things necessary to enable it to fulfil those functions effectively.

The committee shall consist of 5 members at least one of whom must be a member of the Executive.

The quorum shall be 3.