

REPORT TO:	Ethics Committee 19 February 2021
SUBJECT:	Statutory Chief Officer Disciplinary Procedure
LEAD OFFICER:	Katherine Kerswell, Interim Chief Executive
WARDS:	All
FINANCIAL IMPACT:	
There is no additional expenditure arising directly from the recommendations contained in this report.	

1. RECOMMENDATIONS

Members are recommended to:

- 1.1 Agree the process and procedure detailed in Appendix One of this report to apply to any future disciplinary/staffing issues that fall within the functions of the Appointments Committee under paragraphs 2.1(6) and (8) of Part 3 of the Constitution and as set out in this report.

2. EXECUTIVE SUMMARY

- 2.1 This report asks Members to consider and agree a Statutory Chief Officer Disciplinary Procedure that is the JNC Model Disciplinary Procedure, for adoption by the Appointments Committee. It is the procedure that must be followed in relation to disciplinary matters relating to statutory chief officers. The Committee is recommended to approve that Procedure for use in relation to such matters and to disciplinary matters against non-statutory chief officers that are referred to the Appointments (Investigating and Disciplinary) Sub-Committee by the Head of Paid Service, as outlined in the Procedure, for adoption by the Appointments Committee.

3. BACKGROUND

- 3.1 The Constitution currently makes provision for the Appointments Committee to consider disciplinary matters above a defined threshold that relate to the Head of Paid Service, Monitoring Officer and the Section 151 Officer, collectively known as the Statutory Chief Officers.
- 3.2 At its Annual Meeting on 21 May 2015, Council agreed that consideration of such issues should be in keeping with processes and procedures agreed by the Ethics Committee. At that meeting, Council also delegated responsibility to the Ethics Committee to agree those processes and procedures.

- 3.3 Members will be aware that the Council recently undertook a review of its policies and procedures in order to prudently and proportionately ensure that it was prepared for all eventualities arising from both the current management restructure and the independent investigation into corporate management actions, organisational systems and environment that was commissioned by the Council in response to the Report in the Public Interest.
- 3.4 This review has identified that the Ethics Committee has not previously exercised its delegated responsibility and this report seeks to remedy this by asking Members to consider and agree the proposed Disciplinary Procedure for Statutory Officers for adoption by the Appointments Committee.

4. STATUTORY CHIEF OFFICER DISCIPLINARY PROCEDURE

- 4.1 The Statutory Chief Officers of the Council, the Head of Paid Service (Chief Executive), the S151 Officer (Director of Finance, Investment and Risk) and the Monitoring Officer (Executive Director of Resources), have statutory duties to advise and protect the Council as a corporate body.
- 4.2 In carrying out their duties, at times they may be required to provide advice to members that is not welcome or popular, or to take such action in connection with that advice in order to fulfil their statutory responsibilities. Accordingly, these three statutory posts are protected by law under specific regulations from unwarranted political interference in carrying out their proper duties and enjoy statutory protection from any formal disciplinary action unless it is the result of the Model Disciplinary Procedure. The application of the Procedure is also a contractual entitlement of the Council's current Statutory Chief Officers.
- 4.3 In the event that disciplinary action is contemplated against a Statutory Chief Officer, the Appointments Committee is required to follow the procedure and process that has been agreed by the Ethics Committee. The Committee is recommended to approve the JNC Model Disciplinary Procedure, as set out in Appendix One, for this purpose. This will require the Appointments Committee to constitute an Appointments (Investigating and Disciplinary) Sub-Committee and an Appointments (Appeals) Sub-Committee.
- 4.4 Paragraph 2.1(8) of Part 3 (Responsibility for Functions) of the Council's constitution provides that the Appointments Committee is responsible for any matter not reserved to the Council or delegated to another Committee which pertains to a staffing matter and is referred to the Committee by the Head of Paid Service for consideration. Where such matters are disciplinary matters the Committee is recommended to agree that such matters may be referred direct to the Appointments (Investigating and Disciplinary Sub-Committee), as outlined in the Procedure.
- 4.5 The Committee is recommended to adopt the Joint Negotiating Committee (JNC) for Local Authority Chief Executives Model Disciplinary Procedure and Guidance detailed in Appendix 5 of the JNC for Chief Executives Handbook 2015 for any future disciplinary action against Statutory Chief Officers and to disciplinary matters against non-statutory chief officers that are referred to the Appointments (Investigating and Disciplinary) Sub-Committee by the Head of Paid Service, as outlined in the Procedure.

- 4.6 This Model Disciplinary Procedure and Guidance has been agreed by the Joint Negotiating Committee (JNC) for Local Authority Chief Executives and incorporated into the contractual terms and conditions of employment for Local Authority Chief Executives. A copy of the Model Disciplinary Procedure and Guidance and flow diagram is set out at Appendix 1 of this report.
- 4.7 Additionally the August 2017 Chief Officers JNC contains a modified procedure for Monitoring Officers and S151 Officers, that recommends that the Model Disciplinary Procedure for Chief Executives be referred to when considering disciplinary procedures for those roles. By custom and practice this has been the procedure used in recent cases in other local authorities in England involving either the S151 Officer or the Monitoring Officer.
- 4.8 This Model Procedure for Chief Executives is used across England and JNC recommends that it be applied to any future disciplinary procedures in respect of the Statutory Chief Officers. The Procedure also allows for the referral of disciplinary matters relating to non-statutory chief officers.

The Croydon Context

- 4.9 The Model Procedure describes an 'Investigating and Disciplinary Committee' to undertake and manage a number of elements of the disciplinary process. As the Council's Constitution places overall responsibility for disciplinary matters for the Statutory Chief Officers with the Appointments Committee, this body will be constituted as the Appointments (Investigating and Disciplinary) Sub-Committee.
- 4.10 Similarly, the Model Procedure requires an Appeals Committee to hear any appeals against disciplinary sanctions that fall short of dismissal. This body will be constituted as the Appointments (Appeals) Sub-Committee.
- 4.11 Both Sub-Committees will be politically balanced and comprise three Members, at least one of whom must be a Member of the Cabinet. Members cannot include the Leader of the Council and Members of the Appeals Sub-Committee cannot include Members that sat on the associated Investigating and Disciplinary Sub-Committee. Members of both Sub-Committees will be required to have received appropriate training before either Sub-Committee meets for the first time.

5. CONSULTATION

- 5.1 The recommendation detailed in this report reflects the Model Disciplinary Procedure detailed in the JNC for Chief Executives Handbook 2015 which has been subject to its own consultation.
- 5.2 The recommendation also reflects the Council's duties under the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended), which have also been subject to their own consultation.

6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 6.1 While there are no costs arising directly from the recommendations detailed in this report, any disciplinary matters that are presented for formal consideration to Members will incur significant additional costs relating to the remuneration of

independent investigators (at a daily rate set by the JNC for Chief Executives), external advice to Members and any necessary training for Members.

7. LEGAL CONSIDERATIONS

- 7.1 The Interim Director of Law & Governance comments that external legal advice has been sought on the content of this report and that advice is as follows:
- 7.2 The Committee noted that the process at Appendix 1 is the Model Disciplinary Procedure (detailed in Appendix 5 of the Joint Negotiating Committee (JNC) for Chief Executives Handbook 2015) and approves the process at Appendix 1 for the Appointments Committee to adopt once it has received and noted this report.

The procedure that Ethics Committee is being recommended to approve enables the Council to meet its relevant obligations under the 2001 Regulations.

8. HUMAN RESOURCES IMPACT

- 8.1 There are no additional human resources impacts beyond those detailed in the main body of this report.

Approved by: Sue Moorman, Director of Human Resources

9. DATA PROTECTION IMPLICATIONS

- 9.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

The recommendations contained in this report will not directly involve the processing of personal data.

Approved by Elaine Jackson, Interim Assistant Chief Executive

CONTACT OFFICER: Katherine Kerswell, Interim Chief Executive

APPENDICES TO THIS REPORT

Appendix 1 – JNC for Local Authority Chief Executives Model Disciplinary Procedure and Guidance

BACKGROUND DOCUMENTS: There are no unpublished documents on which this report has been based.