



# NORWICH City Council

**Committee name:** Council

**Committee date:** 28/11/2023

**Report title:** Constitution Update: Statutory Officers

**Portfolio:** Councillor Kendrick, Cabinet member for resources

**Report from:** Head of HR and organisational development

**Wards:** All Wards

## **OPEN PUBLIC ITEM**

### **Purpose**

The purpose of this report is to seek amendments to the statutory officer dismissal process in the constitution. For clarity, the Council has no present concerns regarding the performance of the statutory officers, and these changes are being made to align to the recommended model statutory officer dismissal procedures in the national terms and conditions of employment for chief executive's (the JNC Chief Executive handbook).

### **Recommendation:**

It is recommended that Council adopts the Constitution amendments as included at Appendix 1

### **Policy framework**

The council has five corporate priorities, which are:

- People live independently and well in a diverse and safe city.
- Norwich is a sustainable and healthy city.
- Norwich has the infrastructure and housing it needs to be a successful city.
- The city has an inclusive economy in which residents have equal opportunity to flourish.
- Norwich City Council is in good shape to serve the city.

This report meets the Norwich City Council is in good shape to serve the city.

### **Report details**

1. Councils have three statutory officers:

- a. The Head of Paid Service, which is the Council's Chief Executive, who has responsibility for staffing of the Council
  - b. The s.151 Officer, the Council's Chief Finance Officer, who has responsibility for ensuring the proper financial administration of the Council
  - c. The Monitoring Officer, the Council's Head of Legal and Procurement, who has responsibility for ensuring the Council's decision making is lawful
2. Statutory officers have historically had specific legal protection. This helps ensure that they can conduct their roles independently. In the scenario that a statutory chief officer believes it necessary to report that the actions of their Council are irresponsible or unlawful, the Council cannot simply dismiss them or seek to repress their views. Nonetheless, the law still allowed that if there was concern that a statutory officer committed an act of misconduct or was no longer capable to perform their role, sound procedures were in place to address this.
3. Until 2015, the law required that if the Council sought to take disciplinary proceedings against a statutory officer, this would be investigated by an independent person who would make recommendations on the action to be taken. This was seen by the government as time-consuming and costly, and so new regulations were introduced.
4. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amended the Local Authorities (Standing Orders) (England) Regulations 2001 by removing the requirement for a report by a designated independent person. Instead where dismissal (through misconduct or capability) of a statutory officer is being considered, the Council must appoint a Panel, which includes at least 2 independent persons, to advise the Council. The Council then considers the recommendations of the Committee and determines whether the statutory officer should be dismissed. At present, this Panel would be the Council's Personnel Appeals Committee.
5. The Independent Persons would be individuals who also advise on complaints against Councillors. As the Council has one independent person, we would seek a second individual who is an Independent Person at another Council.
6. Norwich City Council, as with many authorities, applied the 2015 regulations as required into its constitution. The personnel appeals committee would meet with two independent persons and then make a referral to Council as to whether the officer should be dismissed.
7. For a number of reasons, the 2015 regulations have proved problematic, most notably that:
  - a. The regulations do not have a lot of detail, such as requiring for an investigation to be held, and therefore do not lend themselves to a full and fair process which could expose councils to unfair dismissal claims. It also does not cover matters such as suspension.
  - b. Whilst the constitution may set out a procedure, officers have contracts of employment which refer to the model procedures in the national terms

and conditions of employment. The national bodies that negotiate senior officer terms and conditions of employment have revised the model procedures to both align to the 2015 regulations, but also give a fair and transparent process for all sides.

8. With this in mind, it is proposed that the Council now aligns its statutory officer dismissal process to the national chief executive contractual terms (the JNC Chief Executive handbook). This provides that:
  - a. Where there are concerns about a statutory officer's conduct, the first step is to try to work to resolve this on an informal basis rather than taking a formal disciplinary route.
  - b. If it cannot be resolved, then it is referred to a committee of Councillors to review the matter and determine if an investigator is to be appointed and whether it would be appropriate for the officer to be suspended during the period of the investigation. If suspension was deemed necessary, this would be a neutral act intended to protect both parties during that time.
  - c. Where the committee determines the issue should be the subject of a full investigation, they shall be responsible for appointing an investigator who in appropriate cases will be an independent investigator, selected from the list maintained by the National Joint Secretaries. Once appointed it shall be the responsibility of the investigator to investigate the issue/allegation and to prepare a report stating in their opinion whether (and, if so, the extent to which) the evidence the investigator has obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and recommending any disciplinary action (if any is appropriate) or range of actions which appear to the investigator to be appropriate for the Council to take against the Statutory Officer.
  - d. The committee would receive the investigator's report. If following receipt of the report the Committee consider that dismissal is not appropriate (such as no case to answer or a lesser sanction) they can take that decision – albeit it would normally be expected for a hearing to take place. The officer can appeal to an appeals committee if they disagree with a sanction other than dismissal.
  - e. If the committee's recommendation is for dismissal, the matter is then referred to a panel of two independent persons to consider, before being referred to council.
  - f. It is a statutory requirement that Full Council must approve the proposed dismissal of a Statutory Officer before dismissal (with or without notice) is confirmed to them. Consequently there is no right of appeal as it would not be possible to offer a fair appeal, by virtue of the requirement for Full Council to approve the recommendation to dismiss, as every councillor would already be familiar with the issues, and had of necessity participated in the decision to dismiss.
9. In making these proposals, it is suggested that the Council's Personnel Appeals Committee will serve as the committee who will consider and review disciplinary matters and make referrals to Council.

10. The proposed constitutional amendments are included at Appendix 1 to this report. As members will note, the proposal is more straightforward than previous constitution wording in that it recommends the Council follow the process outlined in the Chief Executive handbook. This means if minor changes are made to the handbook to comply with latest case law this can readily be accommodated into the Council's process without the need for it to return to Council for further approval.

## Consultation

11. The Chief Executive and Monitoring Officer have been consulted on the proposal and are supportive of it. The Monitoring Officer's contract has different terms, however if these proposals are agreed by Council, the Monitoring Officer will write to the Head of HR and Organisational Development to confirm her agreement to this.

12. The incoming Director of Finance and Section 151 officer's contract will be aligned to this proposal.

## Implications

### Financial and resources

13. Any decision to reduce or increase resources or alternatively increase income must be made within the context of the council's stated priorities, as set out in its Corporate Plan 2022-26 and budget.

14. There are no proposals in this report that would reduce or increase resources.

## Legal

15. These proposals have been designed to ensure they are compliant with the Local Authorities (standing order)(England) regulations 2015, and to align to contractual obligations with the statutory officers.

## Statutory considerations

Consideration	Details of any implications and proposed measures to address:
Equality and diversity	It is not considered that there are specific equality and diversity impacts arising from this proposal.
Health, social and economic impact	None
Crime and disorder	None
Children and adults safeguarding	None
Environmental impact	None

## Risk management

Risk	Consequence	Controls required
The Council does not have appropriate processes in place, or contractual processes do not align with constitutional processes	In the event these processes are required, the Council could be at risk of challenge to its decision	Revision of the constitution in line with the proposals in this report.

## Other options considered

16. The other option would be to request that the statutory officer contracts were aligned to the current constitutional procedures.
17. As highlighted, the current constitution procedures are based on the 2015 regulations. These have a number of weaknesses that if used, could result in the Council facing claims of unfair dismissal.

## Reasons for the decision/recommendation

18. This recommendation is made to ensure the Council is compliant with its legal obligations as well as ensuring its procedures are fair and proportionate.

**Background papers: None**

**Appendices:**

**Appendix 1 Constitutional Amendments proposed**

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## **Appendix 1: Constitutional Amendments proposed**

### **To remove the following section of the Officer Employment Rules:**

21. No disciplinary action or dismissal in respect of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer, except action described in paragraph 28 (below) may be taken by the council, or by a committee, a sub-committee, or a joint committee on which the council is represented or any other person acting on behalf of the council, until the procedure, set out in paragraphs 22 to 28 (below), has been complied with.

22. The authority will invite relevant independent persons (meaning persons appointed under section 28(7) of the Localism Act 2011) to be considered for appointment to the Personnel Appeals Panel, with a view to appointing at least two such persons to the panel.

23. The “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

24. The authority must appoint to the panel at least two such relevant independent persons who have accepted an invitation issued in accordance with the following priority order:

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;
- (b) any other relevant independent person who has been appointed by the authority;
- (c) a relevant independent person who has been appointed by another authority or authorities.

25. The authority must appoint any panel at least 20 working days before the relevant meeting. The panel will make a recommendation to Full Council for decision.

26. Before the taking of a vote at the relevant meeting on whether or not to approve disciplinary action or dismissal, the Council must take into account, in particular:

- (a) any advice, views or recommendations of the panel;
- (b) the conclusions of any investigation into the proposed dismissal; and
- (c) any representations from the relevant officer.

27. Statutory Chief Officers may only be dismissed on the vote of two-thirds of all the members of Full Council, i.e. not just those present and voting.

28. The action mentioned in paragraph 21 is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the date on which the suspension takes effect

29. If any decision to dismiss an officer is taken by Full Council, it is not possible to provide an internal appeal process against the dismissal. Instead, the officer may appeal to an appeals panel formed from a neighbouring local authority under sharing arrangement in accordance with s.101 Local Government Act 1972.

**To be replaced with:**

1. Should there be the need to consider disciplinary action against the Statutory Chief Officers (the Head of Paid Service, Monitoring Officer or s.151 Officer), this shall be undertaken following the procedure as set out in the JNC Chief Executive handbook
2. For this purpose, the Personnel Appeals Panel shall act as the Investigating and Disciplinary Committee.
3. In the event that the Personnel Appeals Panel considers it necessary to recommend the dismissal of a Statutory Officer, the Council's Independent Persons, or in the event the Council has only one Independent Person, the Independent Person and an Independent Person from another local authority, shall meet to determine their views on the matter. Their views shall be provided to the Council meeting determining the matter.
4. In the event that the Personnel Appeals Panel recommends that the officer is subject to disciplinary action short of dismissal, the officer has a right of appeal. Any appeal shall be considered by the Personnel Appeals Panel, which shall be made up of Councillors as notified by group leaders that were not part of the original Panel that made the recommendation for disciplinary action.