

REPORT REFERENCE NO.	DSFRA/19/16
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	28 JUNE 2019
SUBJECT OF REPORT	PROCESS FOR COMPLAINTS AGAINST PROPER OFFICERS – FURTHER CONSIDERATIONS
LEAD OFFICER	CHIEF FIRE OFFICER
RECOMMENDATIONS	<p><i>That the Authority considers this report with a view to approving:</i></p> <ul style="list-style-type: none"> (a) <i>the proposal in paragraph 3.1 to change in name of the Chief Fire Officer's Appraisals Panel to the Appraisals and Disciplinary Committee, with the additional terms of reference as proposed;</i> (b) <i>Assessment Criteria for use in the initial stages of dealing with any allegation of misconduct by a statutory officer, as indicated paragraphs 3.2 and 3.3;</i> (c) <i>establishment of an Appeals Committee as outlined in paragraphs 3.3 and 3.4;</i> (d) <i>that the functions of independently reviewing any recommendation of dismissal made by the Appraisals and Disciplinary Committee and providing advice, views and recommendations to the Authority prior to any such dismissal be exercised by the one (or both, once appointed) Independent Person(s).</i> (e) <i>that the Monitoring Officer be delegated authority, following consultation with the Authority Chair, to suspend the Chief Fire Officer immediately in an emergency or if an exceptional situation arises whereby allegations of misconduct by the Chief Fire Officer are such that their continued presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Authority</i> (f) <i>the amendment to the Scheme of Delegations as set out at paragraph 3.10.</i>
EXECUTIVE SUMMARY	This report addresses issues relating to the Authority's approved procedures relating to allegations of misconduct by its statutory officers.
RESOURCE IMPLICATIONS	Nil.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing equalities and human rights legislation

APPENDICES	A. Procedure for investigating allegations of misconduct by the Head of Paid Service (Chief Fire Officer), Monitoring Officer and Chief Finance Officer (Treasurer) B. Appraisals and Disciplinary Committee – Terms of Reference
LIST OF BACKGROUND PAPERS	The Local Authorities (Standing Orders) (England) Regulations 2001 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 The Joint Negotiating Committee for Chief Executives of Local Authorities Model Disciplinary Procedures and Guidance

1. INTRODUCTION AND BACKGROUND

1.1. At its annual meeting on 28 May 2015, the Authority approved the following change to its Standing Orders in relation to a procedure for investigating allegations of misconduct by any of the Authority's statutory officers i.e. the Head of Paid Service (Chief Fire Officer), the Monitoring Officer and the Chief Finance Officer (Treasurer) (Minute DSFRA/5(b) refers):

Standing Order 45 – Disciplinary Action – Head of Paid Service (Chief Fire Officer), Monitoring Officer and Chief Finance Officer (Treasurer)

- (1). No disciplinary action in respect of the head of the Authority's paid service (the Chief Fire Officer), its monitoring officer or its chief finance officer (the Treasurer), except action described in (2) below, may be taken by the Authority, or by a committee, a sub-committee, a joint committee on which the Authority is represented or any other person acting on behalf of the Authority, other than in accordance with a recommendation in a report made by a designated independent person under the Authority's approved procedure for investigating allegations of misconduct by these officers.
- (2). The action mentioned in paragraph (1) is suspension of the officer concerned 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 day on which the suspension takes effect.

1.2. The Authority's approved procedures, as referenced at Standing Order 45(1) and as also approved by the Authority at its annual meeting on 28 May 2015, are set out in Appendix 1 to this report.

1.3. The revision to the Standing Orders and the approved procedures were derived from the Local Authorities (Standing Orders) (England) Regulations 2001, as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (collectively referred to as "the Regulations"). Although these Regulations are not directly applied to combined fire and rescue authorities, it was nonetheless considered appropriate that the Authority's disciplinary procedures should be comparable with those required for county and unitary authorities.

1.4. At the time of the Amendment Regulations in 2015, the Joint Negotiating Committee for Chief Executives of Local Authorities (JNC) issued a Model Disciplinary Procedure and Guidance compliant with the amended regulations. It should be noted that, as with the Regulations, the Model Disciplinary Procedure and Guidance is not directly applicable to combined fire and rescue authorities but similarly it would seem appropriate that the Authority's disciplinary procedures should be comparable.

1.5. In May 2019, the JNC wrote to the Chief Executives of relevant authorities (**note:** this does not include combined fire and rescue authorities) inviting them to consider, at the start of a new municipal year, that they had compliant processes in place to address disciplinary issues for statutory officers. Against this backdrop, the processes for this Authority have been reviewed and this paper now proposes revisions to provide procedures comparable with those in place for county and unitary authorities.

2. REQUIRED ARRANGEMENTS FOR COUNTY AND UNITARY AUTHORITIES

2.1. The JNC advocates that County and unitary authorities should establish:

1. an Investigating and Disciplinary Committee whose role is:

- a. to determine whether an allegation against a statutory officer should be investigated;
 - b. if so, to appoint (in agreement with the statutory officer against whom the allegation is made) a designated independent person to undertake the investigation;
 - c. consider the outcome of the resultant investigation report and determine whether any sanction, short of dismissal, should be imposed.; or
 - d. to recommend dismissal. It should be noted that the Regulations require that a decision to dismiss a statutory officer should only be undertaken by the full authority.
 2. an Appeals Committee whose role is to consider appeals against any sanction (other than dismissal) imposed by the Investigating and Disciplinary Committee and to determine whether the sanction should be confirmed, a lesser sanction should be imposed or no sanction at all be imposed (note: the decision of the Appeals Committee is final);
 3. an Independent Panel whose role is:
 - a. to review any recommendation of the Investigating and Disciplinary Committee proposing dismissal of the statutory officer alongside any representations made by the statutory officer in question; and
 - b. to provide advice, views or recommendations to the authority before a statutory officer is dismissed for any reason other than redundancy, ill-health or the expiry of fixed-term contract (unless the authority has undertaken to renew the fixed-term contract)
 4. an elected Member with designated power to suspend the Chief Executive immediately in an emergency or if an exceptional situation arises whereby allegations of misconduct by the Chief Executive are such that their continued presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority.
- 2.2. This report now proposes amendments as required to the Authority's procedures to align with the above requirements of county and unitary authorities.
- ### **3. PROPOSED PROCESS**
- #### **Appraisals and Disciplinary Committee**
- 3.1. The Authority already has a Panel in place to deal with appraisals of the Chief Fire Officer and any performance issues relating to other Executive Board officers. Given this, it is suggested that, rather than establish a completely new Investigating and Disciplinary Committee, the functions of such a Committee could be discharged by modifying the title of the Chief Fire Officer's Appraisals Panel to the "Appraisals and Disciplinary Committee" and amending its Terms of Reference by the addition of the following:
 7. to determine, in the first instance, whether any allegation of misconduct by a statutory officer should be investigated;
 8. to determine whether the statutory officer subject to the allegation should be suspended while the investigation is conducted;
 9. to agree with the statutory officer subject to the allegation the designated independent person to investigate the allegation;
 10. to consider the outcome of any resultant investigation and either:

- a. determine a sanction short of dismissal; or
- b. recommend dismissal to the full Authority.

For ease of reference, full amended Terms of Reference are set out at Appendix B to this report.

3.2. There could also be benefit in having an approved assessment criteria to assist in determining whether or not an allegation of misconduct by a statutory officer should be investigated. In this respect, it is suggested that the following (adapted from the assessment criteria used for Member Code of Conduct complaints) might be adopted:

In determining whether an allegation of misconduct by a statutory officer should be investigated in accordance with the Authority's approved procedures, it may be decided to take no action if one or more of the following applies:

1. insufficient information has been provided on which to base a decision on whether the allegation should be investigated;
2. the allegation appears to be simply malicious or "tit-for-tat";
3. the allegation is about something that happened six months or more ago and it would be unfair, unreasonable or otherwise not in the public interest to pursue the matter unless it is felt that there are exceptional reasons to pursue it;
4. it would otherwise be inappropriate to expend the Authority's resources on determining the allegation, having regard to its circumstances, any previous related complaint and the public interest.

3.3. The Authority may also wish to consider additional or alternative initial assessment criteria.

Appeals Committee

3.4. It is recommended that the Authority considers establishing an Appeals Committee with delegated power to consider appeals against any sanction (other than dismissal) imposed by the Appraisals and Disciplinary Committee and to determine whether the sanction should be confirmed, a lesser sanction should be imposed or no sanction at all be imposed. Any such decision of the Appeals Committee would be final.

3.5. It is proposed that this Committee should comprise of four Members and, as required by Standing Orders, should be politically balanced.

Independent Panel

3.6. The Regulations stipulate that this should comprise a minimum of two Independent Persons as defined in Section 28(7) of the Localism Act 2011.

3.7. While the Regulations do not apply directly to combined fire and rescue authorities, this Authority, at its last meeting, agreed to authorise the Clerk to seek to appoint two Independent Persons as part of revised standards arrangements. It is proposed, therefore, that the functions of independently reviewing any recommendation of dismissal made by the Appraisals and Disciplinary Committee and providing advice, views and recommendations to the Authority prior to any such dismissal be exercised by the one (or both, once appointed) Independent Person(s).

Elected Member with Power, in an emergency, to suspend the Chief Fire Officer

3.8. There is a degree of constitutional difficulty in this for the Authority in that, under existing legislation, it is unable to delegate any matters to a single Member but may only do so to either an officer or a Committee.

- 3.9. To overcome this, it is proposed that an equivalent provision (which would mirror urgency procedures already provided for in Standing Orders) would be to delegate to the Monitoring Officer – following consultation with the Authority Chair – the power to suspend the Chief Fire Officer immediately in an emergency or if an exceptional situation arises whereby allegations of misconduct by the Chief Fire Officer are such that their continued presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Authority.
- 3.10. Linked to this and by way of a tidying-up exercise, should the above be approved then it is also recommended that the Authority's existing Scheme of Delegations in terms of the power of the Chief Fire Officer to effect staff suspensions be amended as indicated below (in ***bold, italics***):

4.18 The power in paragraph 4.17 above shall NOT include any matter:

- (i) relating to the posts of ***Deputy Chief Fire Officer and Assistant Chief Fire Officer***
- (ii) ***relating to statutory posts of Monitoring Officer and Chief Financial Officer (other than suspension of these Officers in accordance with Standing Orders);***
- (iii) arising from a proposal for major restructuring;
- (iv) which is a major change in the Authority's or Service's policies, procedures or practices; and
- (v) under the Superannuation Acts relating to the payment of enhancement of pensions.

4. CONCLUSION

- 4.1. While it may be unlikely that the Authority will have to address any issues of misconduct by its statutory officers, it is entirely appropriate that it should have robust but proportionate processes in place to do so should the need arise. The Authority is therefore asked to consider this report with a view to approving:
- (a) the proposal in paragraph 3.1 to change in name of the Chief Fire Officer's Appraisals Panel to the Appraisals and Disciplinary Committee, with the additional terms of reference as proposed;
 - (b) Assessment Criteria for use in the initial stages of dealing with any allegation of misconduct by a statutory officer, as indicated paragraphs 3.2 and 3.3;
 - (c) establishment of an Appeals Committee as outlined in paragraphs 3.3 and 3.4;
 - (d) that the functions of independently reviewing any recommendation of dismissal made by the Appeals and Disciplinary Committee and providing advice, views and recommendations to the Authority prior to any such dismissal be exercised by the one (or both, once appointed) Independent Person(s).
 - (e) that the Monitoring Officer be delegated authority, following consultation with the Authority Chair, to suspend the Chief Fire Officer immediately in an emergency or if an exceptional situation arises whereby allegations of misconduct by the Chief Fire Officer are such that their continued presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Authority;

(f) the amendment to the Scheme of Delegations as set out at paragraph 3.10.

LEE HOWELL
Chief Fire Officer

APPENDIX A TO REPORT DSFRA/19/16

PROCEDURE FOR INVESTIGATING ALLEGATIONS OF MISCONDUCT BY THE HEAD OF PAID SERVICE (CHIEF FIRE OFFICER), MONITORING OFFICER AND CHIEF FINANCE OFFICER (TREASURER)

- (1). Where it appears to the Authority that an allegation of misconduct by:
 - (a) the head of the Authority's paid service (the Chief Fire Officer);
 - (b) its Monitoring Officer; or
 - (c) its Chief Finance Officer (Treasurer),as the case may be, requires to be investigated, the Authority must appoint a person ("the designated independent person") for the purposes of this Standing Order.
- (2). The designated independent person must be such person as may be agreed between the Authority and the relevant officer or, in default of such agreement, nominated by the Secretary of State.
- (3). The designated independent person:
 - (a) may direct:
 - i. that the Authority terminate any suspension of the relevant officer;
 - ii. that any such suspension must continue after the expiry of the period referred to in Standing Order 43(2);
 - iii. that the terms on which any such suspension has taken place must be varied in accordance with the direction; or
 - iv. that no steps (whether by the Authority or any committee, sub-committee or officer acting on behalf of the Authority) towards disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence, or with the agreement, of the designated independent person, are to be taken before a report is made under sub-paragraph (d);
 - (b) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Authority, or which the Authority has power to authorise him to inspect;
 - (c) may require any member of staff of the Authority to answer questions concerning the conduct of the relevant officer;
 - (d) must make a report to the Authority—
 - i. stating his opinion as to whether (and, if so, the extent to which) the evidence he has obtained supports any allegation of misconduct against the relevant officer; and
 - ii. recommending any disciplinary action which appears to him to be appropriate for the Authority to take against the relevant officer; and
 - iii. must no later than the time at which he makes his report under sub-paragraph (d), send a copy of the report to the relevant officer.
- (4). The Authority will pay reasonable remuneration to a designated independent person appointed by it and any costs incurred by him in, or in connection with, the discharge of his functions under this procedure.

APPENDIX B TO REPORT DSFRA/19/16

APPRAISALS AND DISCIPLINARY COMMITTEE

Matters with Delegated Power to Act

1. To undertake an annual appraisal process for the Chief Fire Officer, including the setting of objectives for the forthcoming year;
2. To commission any external advice as is felt appropriate to facilitate the annual appraisal process;
3. To approve any developmental action (including associated costs) as may be identified from the annual appraisal process;
4. To address and resolve any in-year performance issues that may arise;
5. To address and resolve any performance issues relating to other Service Executive Board officers as might be referred to the Panel from time to time by the Chief Fire Officer.
6. To provide in the first instance for membership of Appointments Panels for the posts of Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer, Treasurer and Clerk.
7. to determine, in the first instance, whether any allegation of misconduct by a statutory officer should be investigated;
8. to determine whether the statutory officer subject to the allegation should be suspended while the investigation is conducted;
9. to agree with the statutory officer subject to the allegation the designated independent person to investigate the allegation;
10. to consider the outcome of any resultant investigation and either:
 - a. determine a sanction short of dismissal; or
 - b. recommend dismissal to the full Authority.