



Investigation and Disciplinary Committee

Date:	Monday, 20 August 2012
Time:	4.00 pm
Venue:	Committee Room 2 - Wallasey Town Hall

Contact Officer: Mark Delap
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AGENDA

1. APPOINTMENT OF CHAIR

The Committee is invited to appoint a Chair and Vice-Chair for the remainder of the municipal year.

2. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members are asked to consider whether they have any disclosable pecuniary or non pecuniary interests in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

3. EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC

The public may be excluded from the meeting during consideration of the following item(s) of business on the grounds that they involve the likely disclosure of exempt information.

RECOMMENDATION – That in accordance with section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by the relevant paragraphs of Part 1 of Schedule 12A (as amended) to that Act. The public interest test has been applied and favours exclusion.

4. UPDATE IN RELATION TO THE SUSPENSION OF COUNCIL OFFICERS (Pages 1 - 16)

5. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR

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WIRRAL COUNCIL

INVESTIGATION AND DISCIPLINARY COMMITTEE

20 AUGUST 2012

SUBJECT:	STATUTORY INVESTIGATION PROCESS
WARD/S AFFECTED:	ALL
REPORT OF:	HEAD OF HUMAN RESOURCES AND ORGANISATIONAL DEVELOPMENT
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to update the Investigation and Disciplinary Committee (I&DC) on the suspension of the Council's three current Statutory Officers, the preliminary investigation and to seek agreement on the way forward:

The Acting Chief Executive (and Head of Paid Service);
The Director of Law, HR and Asset Management (and Monitoring Officer);
and
The Acting Director of Finance (and Section 151 Officer).

- 1.2 The report is exempt by virtue of paragraph 9.4 Part 1 of the Local Government Act 1972; information relating to an individual.

2. BACKGROUND

- 2.1 On 13 March 2012, the Council received a draft of the Audit Commission's Report into the Highways and Engineering Services Contract Award and Management.
- 2.2 On 26 March 2012, the Director of Technical Services was suspended from work whilst the Council investigated his role in relation to the issues raised in the report. This matter is being dealt with under the appropriate procedure for a Chief Officer, which is different to the procedure for a Statutory Officer.
- 2.3 On 8 June 2012, the Council received the final version of the Audit Commission's Report into the Highways and Engineering Services Contract Award and Management which was a Public Interest Report (PIR). The PIR raises serious concerns about the adequacy of the Council's Corporate Governance arrangements.
- 2.4 On 27 June 2012, The Leader of the Council, in discussion with the Conservative and Liberal Democrat Group Leaders took the decision, under delegated authority and after taking external legal advice, to suspend the above mentioned Statutory Officers whilst an investigation took place.

- 2.5 On 28 June 2012, the Acting Chief Executive (and Head of Paid Service), the Council's Director of Law, HR and Asset Management (and Monitoring Officer) and Acting Director of Finance (and Section 151 Officer) were suspended from work.
- 2.6 Council on the 16 July 2012 received a report into the statutory investigation process in relation to the Council three Statutory Officers: The Acting Chief Executive (and Head of Paid Service); the Director of Law, HR and Asset Management (and Monitoring Officer) and the Acting Director of Finance (and Section 151 Officer).
- 2.7 Council resolved the following in relation to the statutory investigation process:

1.	Given the concerns in the Public Interest Report considered at Item 7, concerning the statutory roles of the Chief Executive and Head of Paid Service, Director of Finance and Section 151 Officer and Director of Law, HR and Asset Management and Monitoring Officer and the key roles they would need to play in responding on behalf of the Council to the Public Interest Report and the personal and professional difficulties in them continuing in their roles during an investigation, confirms that the three Officers named should be suspended whilst investigation is undertaken. It is noted that the Council has taken legal advice on these matters.
2.	Notes the current position set out in the Public Interest Report in relation to the three Statutory Chief Officers named below: <ul style="list-style-type: none"> – Acting Chief Executive (Director of Finance); – Deputy Director of Finance (and S151 Officer); and – Director of Law, HR and Asset Management (and Monitoring Officer).
3.	Notes that all matters arising from the potential action against council officers will be dealt with in strict confidence.
4.	Agrees that an Investigation and Disciplinary Committee be established in accordance with the Terms of Reference set out in Appendix One of the report and that the Council's Constitution be amended accordingly; and that these matters be referred to the Committee henceforth.
5.	Formally commissions a preliminary investigation in accordance with the Terms of Reference set out in Appendix Two of this report.
6.	Authorises the Head of Human Resources and Organisational Development to appoint Mr Richard Penn to undertake the preliminary investigation, referred to in the Report which shall be considered by the Investigation and Disciplinary Committee.

7.	Authorises the Acting Director of Law, HR and Asset Management to appoint Eversheds LLP as legal advisers to the Council in relation to all legal issues arising from the PIR and associated actions, including disciplinary action, upon such terms that are considered appropriate and necessary
10 (e)	Also Recommended: Chris Hyams also as Proper Officer for the purposes of any employment related matters arising out of or in connection with the PIR.

2.8 The Terms of Reference for the I&DC is attached at Appendix One. The Terms of Reference for the preliminary investigation is attached at Appendix Two.

3. PROCEDURE FOR INVESTIGATING STATUTORY OFFICERS

3.1 For Statutory Chief Officers, the process for the investigation of potential disciplinary issues and any subsequent disciplinary hearing must comply with provisions set out in the Local Authorities (Standing Orders) (England) Regulations 2001 and also with reference to the model disciplinary procedure and guidance set out in the JNC Conditions for Local Authority Chief Executives National Salary Framework and Conditions of Service Handbook (JNC Handbook).

3.2 The keys stages of the investigation and, if appropriate, disciplinary process are as follows:

a) A preliminary investigation is commissioned by the Council and an Investigating Officer appointed. The preliminary investigation must ensure Statutory Officers have the opportunity to make representations and provide relevant evidence.

An Investigating and Disciplinary Committee (I&DC) receives the preliminary investigation report and considers its findings. On 16 July 2012, Council was requested to approve arrangements for the establishment of the I&DC (see Paragraph 5). All Statutory Chief Officers can make representations at the I&DC meeting.

b) The I&DC decide whether:

- The concerns raised require no further formal action under the procedure; or
- The concerns raised should be referred to a Designated Independent Person (DIP)

If the I&DC consider that there is a potential case to answer, a Designated Independent Person must be appointed to undertake a further, detailed investigation.

- c) The nomination for a Designated Independent Person must be agreed between the I&DC and each Statutory Officer (if there is a failure to agree, the matter is referred to Secretary of State to nominate a Designated Independent Person).

The Designated Independent Person will undertake investigation and produce a report setting out his/her findings and recommendations for action that the I&DC may take.

- d) The I&DC will consider the report of the Designated Independent Person and also give each Statutory Chief Officer the opportunity to state his case before making a decision. In accordance with the JNC Handbook, having considered any other associated factors the Investigating and Disciplinary Committee may:

- Take no further action;
- Recommend informal resolution or other appropriate procedures;
- Refer back to the Designated Independent Person for further investigation and report;
- Take disciplinary action against the Statutory Officer short of dismissal; or
- Recommend dismissal of the Statutory Chief Officer to the Council.

- e) In the event that the I&DC propose/recommends dismissal of any of the Statutory Chief Officers, there is a requirement to follow an Executive Objections procedure.

The Executive Objections Procedure in the JNC Handbook states that The I&DC will inform the Proper Officer that it is proposing/recommending to the Council that a Statutory Chief Officer should be dismissed and that the Executive Objections procedure should commence.

The I&DC will consider any objections received from the Executive Objections Procedure and satisfy itself as to whether any of the objections are both material and well founded.

If they are, the I&DC will consider the objections in accordance with the JNC Handbook, for example, consider the impact of the Executive Objections on the report of the Designated Independent Person and relevance to the sanction, commission further investigation by the Designated Independent Person and report if required etc.

If, having satisfied itself that there are no material and well-founded objections to the proposal/recommendation to dismiss, the Statutory Chief Officer will be notified of the decision and the proposal/recommendation referred to Council along with any necessary material (e.g. the Designated Independent Person's Report).

- f) Where the I&DC proposes/recommends dismissal, the Regulations require the Council to approve the dismissal before any notice of dismissal is issued. The Council must therefore consider the proposal/recommendation from the I&DC and reach a recommendation before a Statutory Chief Officer can be

dismissed. The Statutory Chief Officer has the opportunity to put forward their case to Council before a decision is reached by Council.

The hearing of the matter by the Council will also fulfil the statutory appeal function.

- g) With regards to appeals against dismissal, the Council's Employment and Appointments Committee will consider any such appeal.

4.0 STATUTORY AND INDICATIVE TIMESCALES

4.1 An important principle when potentially taking disciplinary action is that the process should be conducted expeditiously and fairly. There is, therefore, a need to conduct investigations with appropriate thoroughness, to arrange hearings in a timely manner and allow for appropriate and necessary representation. It is not in the interests of the Council or the Statutory Chief Officers if proceedings are allowed to progress without a sense of urgency and importance.

4.2 The JNC Handbook does not set out explicit timescales except those relating to the specific reference in the Local Authority (Standing Orders) (England) Regulations 2001 for the suspension of Statutory Officers (which must last no longer than 2 months unless directed by the Designated Independent Person (DIP)).

5.0 CURRENT POSITION

5.1 The Independent Investigator, Mr Penn has begun the preliminary investigation. An essential part of that investigation is an interview with the officers concerned. Due to the need to provide information, the availability of representatives and the investigator, it will not be possible to conclude the preliminary investigation within the two month period, as referred to in paragraph 4.2., in effect 28 August 2012.

5.2 An extension of the suspension period can only be directed by the DIP, therefore the Council needs to consider its position. The conclusion of the preliminary report is expected early September 2012.

5.3 Suspension was implemented at this early stage because of concerns that the continuing presence of the Statutory Officers might compromise the investigation or impair the efficient exercise of the Council's functions.

5.4 The Council would, therefore, be reluctant for the Statutory Officers to return to work on 27 August 2012 before the preliminary investigation has been completed.

5.5 Options

The available options are summarised as follows:

Option 1 – Reach an agreement

To reach an agreement with the Statutory officers that they continue to remain at home pending completion of the preliminary investigation. This option seeks to lessen the risk of challenge.

Option 2 – Instruction to stay at home

If the Statutory Officers refuse to stay at home then the alternative is to instruct the officers concerned to stay at home.

- 5.6 It is therefore recommended that the I&DC authorises the Head of HR and OD to seek the voluntary agreement of the three Statutory Officers to stay at home until the I&DC have received the preliminary investigation and concluded the next steps. In the event that the voluntary agreement is not reached the I&DC is asked to authorise the Head of HR and OD to issue a management instruction that the Statutory Officers concerned do not attend work. As with suspension, either scenario would represent a neutral act. The Statutory Officers would still be required to not make contact with work colleagues and to be available for the investigation.

A draft copy of the proposed letter to the Statutory Officers is attached at Appendix Three.

6.0 RELEVANT RISKS

- 6.1 The Council is required to follow the Statutory process and meet all legal and contractual obligations. The options seek to reduce the risk of challenge to the process.

7.0 OTHER OPTIONS CONSIDERED

- 7.1 Options are outlined at paragraph 5.5.

8.0 CONSULTATION

- 8.1 Not applicable.

9.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 9.1 Not applicable.

10.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 10.1 Resources implications set out in report.

11.0 LEGAL IMPLICATIONS

- 11.1 Legal implications set out in report.

12.0 EQUALITIES IMPLICATIONS

- 12.1 All relevant equality implications shall be complied with. EIA is not required.

13.0 CARBON REDUCTION IMPLICATIONS

- 13.1 Not applicable.

14.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

14.1 Not applicable.

15.0 RECOMMENDATION/S

15.1 The I&DC note progress of the preliminary investigation; and

15.2 The I&DC agree the way forward in relation to the three Statutory Officers as outlined in paragraph 5.3.

REPORT AUTHOR: CHRIS HYAMS

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Development
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APPENDICES

- Appendix One Terms of Reference for Investigating and Disciplinary Committee
- Appendix Two Terms of Reference for Preliminary Investigation
- Appendix Three Draft letter to the Statutory Officers.

REFERENCE MATERIAL

(Include background information referred to or relied upon when drafting this report, together with details of where the information can be found. There is no need to refer to publicly available material: e.g. Acts of Parliament or Government guidance.)

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Statutory Investigation Process	16 July 2012

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Wirral Metropolitan Borough Council

Terms of Reference for Investigation and Disciplinary Committee (I&DC)

1.0 Scope

1.1 To investigate or take forward investigations into concerns about conduct and/or capability of Statutory Chief Officers.

1.2 To consider allegations/issues regarding disciplinary matters relating to the designated statutory officers of the Council (the Head of Paid Service, the Monitoring Officer or Chief Finance Officer) and to authorise initial investigation.

1.3 To commission and receive reports from a Designated Independent Person investigating allegations of misconduct against the designated statutory officers of the Council.

1.4 To determine appropriate action upon receipt of preliminary investigation and/or Designated Independent Person's report in accordance with regulations and JNC Terms and Conditions Handbook for Chief Executives.

1.5 To make recommendations to Council as to action taken in relation to Statutory Chief Officers as appropriate.

1.6 To enable the Council to comply with the provisions of The Local Authorities (Standing Orders) Regulations 2001.

2.0 Membership of I&DC

2.1 The Committee shall be politically balanced, shall consist of 7 Members of the Council, one of whom shall be a Member of the Executive.

2.2 Membership of the Committee shall be drawn from the nominated members of the Employment Appeals Sub-Committee.

3.0 Procedure for Investigation and Disciplinary Committee

3.1 The Local Authorities (Standing Orders) Regulations 2001 require that no disciplinary action may be taken against the designated statutory officers other than in accordance with a report made by a Designated Independent Person.

3.2 Disciplinary action is defined to mean any action occasioned by alleged "misconduct" or "gross misconduct" which, if proved, would according to the Council's usual practice, be recorded on the officer's staff personnel file.

Essentially, this covers all reasons for dismissal or other disciplinary action other than redundancy, ill health or infirmity of mind or body or the renewal of a fixed term contract.

- 3.3 It is in the interests of all parties that the proceedings be conducted expeditiously and fairly.
- 3.4 In the exercise of its function, the Committee is to receive and consider the allegations/issues and, having heard representations from the officer/his adviser and, having sought any necessary clarification from him or others, decide whether the issues require no further formal action, or whether the issues should be referred to a DIP.
- 3.5 In considering the matter, the Committee will consider whether the allegations/issues can be dismissed or whether to appoint a DIP. The threshold in deciding to appoint a DIP when considering the allegations/issues is whether:
 - 3.5.1 if proved it would be such as to lead to the dismissal or other action which would be recorded on the officer's BD's personal file; and
 - 3.5.2 there is evidence in support of the allegation/issue sufficient to require further investigation.
- 3.6 The officer has the right to be accompanied at the Committee Meeting.
- 3.7 The Council's Access to Information Procedure Rules shall apply.
- 3.8 The provisions of the Members' Code of Conduct will apply to confidential material provided to members.

Terms of Reference for Preliminary Investigation

Approved by Council on 16 July 2012

1. Roles

Wirral Council, as the employer and acting through the Investigating and Disciplinary Committee, authorises the preliminary investigation into the roles of:

Ian Coleman	Acting Chief Executive (and Head of Paid Service, and Substantive S.151 Officer)
Bill Norman	Director of Law, HR and Asset Management (and Monitoring Officer)
David Taylor-Smith	Acting Director of Finance (and S.151 Officer, and substantive Deputy Director of Finance)

Chris Hyams, Head of Human Resources and Organisational Development will fulfil the role the Council's 'Proper Officer' in ensuring the Council meets its statutory obligations in relation to the investigation process.

Contact details: chrishyams@wirral.gov.uk
Tel: 0151 691 8590

Administrative Support will be provided by Tony Williams, Acting Employee Relations Manager on behalf of Head of Human Resources and Organisation Development

Contact details: tonywilliams@wirral.gov.uk
Tel: 0151 691 8678

2. Purpose

The purpose of this investigation is to investigate the concerns raised in the Audit Commission's Public Interest Report into the Council's Highways and Engineering Services Contract award and management, dated 8 June 2012. The concerns relate to the adequacy of the Council's corporate governance arrangements and whether:

The Acting Chief Executive and Head of Paid Service (and substantive S.151 officer) and the Director of Law, HR and Asset Management and Monitoring Officer fulfilled their statutory obligations and:

The Acting Director of Finance and S151 Officer, in his substantive role as Deputy Director of Finance, fulfilled his responsibilities and in particular his responsibility for the Council's Internal Audit and procurement functions.

3. Methodology

- (a) Undertake relevant background reading, to include:
- All relevant reports and correspondence from District Auditor in relation to Audit Commission's Public Interest Report into the Council Highways and Engineering Services Contract award and management, dated 8 June 2012
 - Review previous reports and correspondence from Audit Commission in relation to the adequacy of the Council's governance arrangements, the Council's response and actions taken in relation to those reports
 - Review the role of the Council's Corporate Governance group in ensuring the adequacy of the Council's governance arrangements
- (b) Interview (separately) Mr Norman, Mr Coleman and Mr Taylor-Smith, each of whom may be represented and prepare an interview note (to be agreed by each Officer)
- (c) In the light of (a) and (b) above, determine which other people are considered appropriate to be interviewed and ask the Council to arrange those interviews. Prepare interview notes (to be agreed with all interviewees).
- (d) The preliminary investigation process to comply fully with the Model Disciplinary Procedure and Guidance set out in JNC for Local Authority Chief Executives National Salary Framework and Conditions of Service Handbook September 2009
- (e) Confidentiality. To observe (and to require all interviewees and those present to observe) absolute confidentiality.

4. Outputs

A preliminary report relating to each officer should be produced for the Council's Investigating and Disciplinary Committee.

The report should include the investigation methodology; the evidence gathered; an analysis and findings in order to assist the Investigating and Disciplinary Committee in deciding whether;

- There are any matters that require further formal action under the Procedure; and

- There are any matters that should be referred to a Designated Independent Person (DIP) for formal investigation

5. Timescale

The issues raised are very serious and the surrounding circumstances are complex. It is not possible to set a definitive timescale for this preliminary work and the Council will be guided by the investigator in relation to this matter.

However, the most important consideration is that the investigation is thorough, fair and robust and conducted in a timely manner, in accordance with all legal requirements and appropriate guidance and good practice.

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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