

WIRRAL COUNCIL

COUNCIL MEETING

16 JULY 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 Council on the current position in relation to the suspension of the Council's three current 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) and set out the process that will be followed to enable the investigation of matters to proceed and be progressed.

2. CURRENT POSITION

2.1 On 13 March 2012, the Council received a draft report 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 .

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. Council will be requested to approve arrangements for the establishment of the I&DC at its meeting on 16 July 2012 (See Paragraph 5). All Statutory Chief Officers can make representations at that Committee 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 produces 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 requires 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 other than 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 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).

5.0 AMENDMENT TO COUNCIL'S CONSTITUTION

- 5.1 The JNC Handbook (Appendix 6, Para 1.2.2), requires that an I&DC is set up to deal with the investigation and, if applicable, disciplinary process.
- 5.2 Under Council's Constitution (Part 3, Schedule 2) The Employment Appeals Sub-Committee is the relevant committee for this purpose. The Committee has a membership of 1:1:1.
- 5.3 The JNC Handbook states that this must be a politically balanced committee compromising, it is suggested, of five members. This must also include one member of the Executive.
- 5.4 In order to ensure that this process is managed in line with the JNC Handbook (and guidance) it is proposed to amend the Council's Constitution to include specific provision for an Investigating and Disciplinary Committee. This will not replace the Employment Appeals Sub-Committee. It will supplement the existing arrangements to deal specifically with these matters.
- 5.5 It is proposed that the composition of the I&DC be seven members (which allows for a 4:2:1 political balance ratio). The membership will be from the same nominated members available for the Employment and Appointments Appeals Sub-Committee
- 5.6 A draft Terms of Reference for the Investigating and Disciplining Committee are attached at Appendix One.

6.0 APPOINTMENT OF AN INVESTIGATOR TO UNDERTAKE THE PRELIMINARY INVESTIGATION

- 6.1 As set out in Paragraph 3.2.1 the Council is required to commission a preliminary investigation to report into the concerns raised to The I&DC
- 6.2 It is proposed that Mr Richard Penn, a suitably qualified independent investigator, is appointed to undertake the preliminary investigation.
- 6.3 Mr Penn has 30 years experience in senior positions in local government, 19 years of which were as a Chief Executive (Knowsley MBC from 1980 to 1989 and Bradford City Council from 1989 to 1999).

- 6.4 Mr Penn was the Independent Adviser on Standards, then Commissioner for Standards, for the National Assembly for Wales from 2000 until 2010 and at the beginning of 2008 was appointed by the Minister for Local Government as the Chair of the Independent Remuneration Panel for Wales. He was also the Chair of the South Wales Probation Board from 2001 to 2007. In 2002, he completed a five-year term as a Commissioner with the Equal Opportunities Commission and from 2000 - 2003 was a Commissioner with the Legal Services Commission, chairing its Regional Committees for Wales and the South West Region.
- 6.5 Mr Penn also works as a public sector consultant (for the Audit Commission, SOLACE Enterprises, ALACE, the Local Government Employers and using his own company, Richard Penn Consulting Ltd) mainly with local authorities and other public bodies and has been widely used as an 'expert witness' at equal pay/equal value Tribunal Hearings involving local authorities and health organisations. He has undertaken a large number of high profile management investigations and has acted as a Designated Independent Person (DIP) for a number of local authority statutory officer disciplinary cases.
- 6.6 The Terms of Reference for the Preliminary Investigation is attached at Appendix Two, subject to the approval of Council on 16 July 2012.

7.0 APPOINTMENT OF EXTERNAL LEGAL ADVICE

- 7.1 As the investigation is focused on the Council's Statutory Chief Officers, the JNC Handbook (Appendix 6, Para 5.4.8) recognises that, given the closeness of relationships with officers, it can be difficult for those officers to advise the Investigating and Disciplinary (and Appeals) Committee, conduct investigations or source advice from outside of the Authority.
- 7.2 The JNC Handbook recommends that the Council should ensure that the I&DC has powers to appoint external advisers as appropriate.
- 7.3 It is proposed that Council agrees that Eversheds LLP should be appointed as the external legal advisors in relation to any investigatory and (if applicable) any disciplinary matters. This arrangement will be managed by the Acting Director of Law, HR and Asset Management, upon such terms as considered appropriate by relevant Council Officers.

8.0 RELEVANT RISKS

- 8.1 The Council is required to follow Statutory process and meet all legal and contractual obligations. Failure to do so will result in financial and reputational harm.

9.0 OTHER OPTIONS CONSIDERED

- 9.1 Not applicable.

10.0 CONSULTATION

10.1 Not applicable.

11.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

11.1 Not applicable.

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

12.1 Resources implications set out in report.

13.0 LEGAL IMPLICATIONS

13.1 Legal implications set out in report.

14.0 EQUALITIES IMPLICATIONS

14.1 All relevant equality implications shall be complied with.

15.0 CARBON REDUCTION IMPLICATIONS

15.1 Not applicable.

16.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

16.1 Not applicable.

17.0 RECOMMENDATION/S

That Council;

- 17.1 Notes the current position set out in the report in relation to three Statutory Chief Officers and the process that will be followed for the investigation;
- 17.2 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.
- 17.3 Formally commissions a preliminary investigation in accordance with the Terms of Reference set out in Appendix Two of this report.
- 17.4 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.
- 17.5 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

17.0 REASON/S FOR RECOMMENDATION/S

17.1 In order to fulfil the Council's statutory and contractual obligations.

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APPENDICES

Appendix One Terms of Reference for Investigating and Disciplinary
Committee

Appendix Two Terms of Reference for Preliminary Investigation

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