

By: Peter Sass – Head of Democratic Services
Gary Cooke – Cabinet Member for Corporate and Democratic Services

To: County Council

Date: 11 December 2015

Subject: **Establishment of the Statutory Officer Independent Panel**

Classification: Unrestricted

Past Pathway: Personnel Committee – 30 April 2015

SUMMARY: This report invites the County Council to establish the Statutory Officer Independent Panel; approve its Terms of Reference; and agree the necessary amendments to the Constitution outlined in sections 5 and 6 of the report.

Background:

1. The enactment of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (“the Regulations”) requires that a decision to dismiss one of the County Council’s statutory officers must be taken by the full Council, with regard being given to a report on the dismissal from a panel comprising at least two independent persons. These persons to be drawn from those people appointed under Section 28(7) of the Localism Act 2011 (the Independent Persons appointed in relation to the investigation of ethical standards complaints about elected and co-opted Members).
2. At its meeting on 30 April 2015, the Personnel Committee considered a report of the Corporate Director Engagement, Organisational Design and Development in relation to Statutory Officer Disciplinary Procedures (attached at **Appendix 1**) and made the following decision:

“Resolved: that, subject to the Members of this Committee being satisfied that the Independent Persons are suitable for this role, the County Council be recommended to approve for inclusion in the Personnel Management Rules provision for the proposed procedures for the Head of Paid Service, Monitoring Officer and Chief Finance Officer, as outlined in the report, with provision for the panel to appoint their own advisors for non-Personnel matters, and that this process be extended to include all statutory roles, including the Director of Children’s Services, Director of Adult Social Services and the Director of Public Health.”

The Statutory Officer Independent Panel:

3. The role of the Statutory Officer Independent Panel will be to make a recommendation to the Personnel Committee who will consider this alongside any advice, the conclusions of any investigations into the

proposed dismissal and the representations of the officer concerned. The Personnel Committee agreed that there would be an explicit assumption that the Council would abide by the recommendations of the Statutory Officer Independent Panel unless there were exceptional reasons to justify departing from them. The Personnel Committee will then make a recommendation to the County Council if a dismissal is required so that it can make a formal decision as required by the Regulations. Specifically, paragraph 8 of the Regulations requires the Council to take into account:

- a. Any advice, views or recommendations of the Panel;
 - b. Any conclusions of any investigation into the proposed dismissal; and
 - c. Any representations from the relevant officer.
4. The Regulations also state that at least two independent persons should constitute the Statutory Officer Independent Panel to consider any proposed dismissal of a statutory officer. Currently, KCC has one Independent Person appointed under Section 28(7). However, there is a reciprocal arrangement in place with the Kent and Medway Fire and Rescue Authority to use their Independent Person in situations where the Council's Independent Person may not be available or is conflicted, so there is scope to appoint a panel of two Independent Persons under the Regulations. If one or both of the people identified above cannot be appointed to the Statutory Officer Independent Panel, there is also scope to use the Kent Secretaries' Network with other authorities in Kent in order to ensure an appropriately constituted panel.

Proposed Changes to the Constitution:

5. The County Council is asked to formally appoint the Statutory Officer Independent Panel and agree its Terms of Reference for inclusion in Appendix 2 Part 2 of the Constitution as follows:

Powers:

- a. The Statutory Officer Independent Panel is established under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 to act in an advisory capacity where the Personnel Committee is considering the dismissal of a statutory officer.
- b. For these purposes, a statutory officer means either the Head of Paid Service, the Monitoring Officer, the Chief Finance Officer, the Director of Children's Services, the Director of Adult Social Services or the Director of Public Health.

Membership:

The panel is an advisory committee established under Section 102(4) of the Local Government Act 1972 comprising solely of non-elected Members. The panel will comprise of two persons falling within the definition of Independent Persons for the purposes of Section 28(7) of the Localism Act 2011; being those appointed by Kent County Council and the Kent and Medway Fire and Rescue

Authority or, in their absence, from those appointed by other Kent local authorities.

Meetings:

- a. The panel will meet when the Personnel Committee is considering the dismissal of a statutory officer.
- b. The panel will consider the matter and may make its views, advice or recommendations to the Personnel Committee and to the County Council.
- c. The panel must be established no less than 20 working days before its report is submitted to the County Council.
- d. The standing chairman of the panel will be the person appointed by the County Council as its Independent Person under Section 28(7) of the Localism Act 2011. In his/her absence, a Chairman will be elected as the first item of business when the panel meets.

Quorum:

- e. There is no quorum; therefore a meeting of the panel can only proceed with two independent persons present.
6. The County Council is also recommended to make the following consequential amendments to Appendix 2 Part 1 of the Constitution:

2. Appointments

- (i) In paragraph 2(d), remove the words “or dismissal”.
- (ii) Insert a new 2(e):

“To consider and determine a recommendation of the Personnel Committee and the report of the Statutory Officer Independent Panel in relation to the proposed dismissal of a statutory officer”

- (iii) Re-number 2(e) to 2(g) as 2(f) to 2(h).

Recommendations:

7. The County Council is invited to approve the establishment of and Terms of Reference for the Statutory Officer Independent Panel, together with the necessary amendments to the Constitution as set out in Sections 5 and 6 above.

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Background Papers: Report to the Personnel Committee on Statutory Officer Disciplinary Procedures on 30 April 2015.