

To the Chair and Members of the CHIEF OFFICERS' APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE

Revised Discipline and Dismissal Procedures for the Managing Director

EXECUTIVE SUMMARY

1. The purpose of this report is to address the recommendations of the District Auditor contained in his report dated 28 May, 2008 referred to at paragraph 6 of this report in relation to the disciplinary and dismissal procedures for the Managing Director. In this regard the Committee is asked:
 - A) to approve the adoption of the Model Disciplinary Procedure & Guidance (2008) ("the Model Procedure") as established by the Joint Negotiating Committee as a revised documented process for dismissals, appeals and compromise agreements, guidance on the use of suspension and special leave and procedures for investigation for the Managing Director and;
 - B) to consider appropriate amendments to the Model Procedure as set out and/or recommended in this report to take account of the matters for local determination (as is set out in the Model Procedure Guidance) or to ensure compliance with the recommendations of the District Auditor.
2. A revised Joint Negotiating Committee (JNC) Handbook for Chief Executives ('The Handbook') came into force with effect from 1 April 2008. Within these revisions are significant changes as regards disciplinary procedures with the new Model Procedure contained in The Handbook. Although this procedure is recommended to authorities by the Joint Secretaries, it is not mandatory; however the relevant statutory regulations are clearly mandatory.
3. The Council approved the Managing Director's Action Plan in response to the District Auditor's Report. It is considered that the the adoption of the new Model Procedures incorporating the locally determined matters represents a significant step in the progress of the Improving Governance Project which is the mechanism for the delivery of the Managing Director's Action Plan in response to the District Auditor's Recommendations detailed in this report.

RECOMMENDATIONS

4. The Committee is asked to consider:-

- A) Adopting the Model Procedure as the basis of the revised documented process for dismissals, appeals and compromise agreements, guidance on the use of suspension and special leave and procedures for investigation for the Managing Director, and
- B) Agree a position in relation to those matters for local determination as set out in the Model Procedure detailed in this report at paragraph 12 to take account of the District Auditor's Recommendations, and
- C) Further to considering A and B to require the Director of People and Performance Improvement to submit a revised Local Discipline and Dismissal Procedure for the Managing Director to this Committee for adoption.

BACKGROUND

- 5. A Report in the Public Interest under Section 8 of the Audit Commission Act 1998 was prepared following a request by the then Interim Managing Director, to review the approach followed by the Council in investigating issues relating to the conduct and capability of the former Managing Director. The findings of this Report were reported to the Full Council on 28 May 2008 along with recommendations that could be considered to avoid similar situations arising in the future.
- 6. The prime purpose of the District Auditor's report was to help the Council learn lessons for the future and a number of recommendations were made to assist the process. The recommendations relating to this report which need to be considered by the Committee are:

R4: The Council should specify its future arrangements for handling any dismissals, appeals and approval of compromise agreements in relation to chief officers;

R6: The Council's disciplinary procedures should require that an officer should normally return to work unless the criteria for suspension or appropriate special leave are clearly met. (Formal recommendation under section 11 of the Audit Commission Act 1998);

R7: The Director of Legal Services should address the weaknesses in the investigation procedure;

- 7. In response to the District Auditor's recommendations as set out above in paragraph 6, the Managing Director made his recommendations to Full Council on 28 May 2008 for consideration as follows:

R4: The Director of People and Performance Improvement will bring a report on existing arrangements to agree and clarify roles and responsibilities for the future.

R6: This requires some detailed consultation by officers but in general terms is the existing position. Procedure and documents will be reviewed for clarity.

R7: These will be addressed and referred to in the report mentioned at R4 above.

8. A holistic approach has been taken to improve governance arrangements and a clear action plan drawn up which not only addresses the recommendations with the Public Interest Report but goes beyond this to aim for governance that fosters and creates an excellent environment to work within. The implementation of a procedure for dismissals, appeals and compromise agreements, guidance on the use of suspension and special leave and procedures for investigation for the Managing Director forms part of this holistic approach.
9. The Council's existing procedure for the discipline and dismissal of the Managing Director is attached at Appendix 1. This procedure is the nationally agreed process which has been in operation since 1988 with some minor revisions. In the light of difficulties experienced by a number of authorities over recent years the Joint Negotiating Committee for Chief Executives of Local Authorities has agreed a new model procedure and guidance which was issued on 4th April, 2008. This model procedure is attached at Appendix 2.
10. The Model Procedure is not only consistent with current legislation and has taken account of case law at the point of publication and provides an appropriate response to the Public Interest Report
11. The Model Procedure proposes that a Committee framework is in place which will not only prepare the infrastructure in terms of what resources will be required but will raise awareness to those who may become involved as to the role, responsibilities and actions expected of them as a result of being appointed e.g. to panels/committees together with any protocols that should be observed.
12. The Model Procedure sets out a number of matters for local determination which the Committee needs to consider and determine as follows:
 - A) The Guidance to the Model Procedure [paragraph 1.2 page 29] states that an Investigation Committee and an Appeal Committee for action short of dismissal are required. The Council has, as part of the Chief Officer's Appointment Committee (COAC) a sub committee (Chief Officer's Investigatory Sub Committee (COISC)). It is recommended that the Council utilises this sub committee to manage the investigatory process. It is recommended, that an Appeals Sub Committee is required and that this function should be carried out by the Council's JNC Chief Officer's Appeals Committee. This Committee can discharge the role being separate from the original investigation. Minor amendment to the Committees terms of reference would be required.
 - B) The Model Procedure [paragraph 1.3 page 29] states that it is for the Authority to decide the issues/allegations that will engage the formal investigatory process and suggests that for allegations against the Managing Director that the Monitoring Officer and the Chair of COISC would oversee referrals to the COISC. It is considered appropriate to follow the Model Procedure and to engage the Monitoring Officer and Chair of the COISC in this filtering process.

C) The Model Procedure [paragraph 3 page 35] sets out how suspensions should be dealt with in general but also suggests that in certain circumstances it may be necessary to suspend the Managing Director at very short notice. The Model Procedure states an elected member should make the decision to suspend in an emergency and suggests it could be the Chair of COISC. Examples of short notice suspensions are given in the Guidance to the Model Procedure as; the remaining presence of the Managing Director could be a serious danger to the health and safety of others, or a serious risk to the resources, information or reputation of the authority. Members might consider that the Chair of COISC is the appropriate person to make this decision. This can be achieved by using the Council's existing urgency provisions, [Council Procedure Rule 35].

D) The Model Procedure [paragraph 2, page 31 and paragraph 5 page 39] states that it is in the interests of all parties that proceedings be conducted expeditiously. It is recommended to achieve this that;

- I) the Procedure should require that the role of the Investigatory Committee will normally be discharged in a single meeting. Only in exceptional circumstances will a meeting be adjourned or a second meeting held. The issue to consider is whether there is a prima facie case to be investigated. The balance of probabilities is the correct standard of proof and the meeting should refer the matter to a Designated Independent Person ("DIP") unless it is satisfied that no case exists, and
- II) the Procedure should confirm that any subsequent issues that come to light during either a preliminary review or the DIP investigation must be referred to a preliminary review meeting to determine whether a new allegation should be considered by the DIP, and
- III) the Model Procedure states that 'fair' and 'reasonable' notice should be given. It is suggested that this is defined and fixed at a minimum of 5 working days for each stage of the process, unless this is expressly agreed otherwise by the Managing Director and considered, to be fair and reasonable by the Committee.

13. Recommendation R7 of the District Auditor's report requires the Director of Legal Services to address the weaknesses in the investigation procedure. The Auditor in his report identified that while conscious efforts were made to adhere to the Model Disciplinary Procedure, there were some weaknesses in applying the procedures which should be rectified for future investigations. These weaknesses were categorised as follows:-

- I. Sub-Committee Members needed to clearly understand their role and to act impartially. The Council needed to find a way of appropriately dealing with concerns regarding impartiality.

The Model Procedure sets out at paragraph 5.4.4 page 41, how issues relating to conflicts of interest should be best managed.

If adopted, the procedure should establish a framework of committees, quorum's and substitutes in order to minimise the likelihood of an individual conflict of interest delaying the procedure.

The procedure highlights that declarations of interest are matters for Councillors who are required to follow the National Code of Conduct and emphasises that any risk of complaint from a Managing Director for a breach of the Code of Conduct should be minimised.

The Council's Standards Committee have recommended to Full Council the adoption of a new procedure for the raising of concerns around impartiality of both Councillors and Officers to ensure as far as possibly these can be effectively dealt with and recorded if circumstances arose in the future.

- II. Evidence issued to a Sub-Committee should be explicit on individual allegations and key evidence. Short notice of issues should not be given and the Council should satisfy itself at all times that its own processes are fair and reasonable.

The Model Procedure if adopted sets out at paragraph 5.4.2 (a) and (b) that the Investigatory Committee need to write to the Managing Director setting out the allegations/issues and providing any evidence to be considered.

At (c) The Model Procedure provides that fair notice should be given to enable a Managing Director adequate time to prepare a response to allegations or issues under investigation.

At paragraph D (III) above, the Committee has also already considered that notice means a minimum of 5 working days unless otherwise expressly agreed by the Managing Director and considered fair and reasonable by the Committee.

- III. To take formal minutes summarising any oral report, where such reports form the source of evidence being used to reach a decision should be produced.

The Procedure, once drafted, should contain an express requirement that the proceedings of any Investigatory Sub-Committee meeting shall be formally and accurately record all submissions, representations and decisions made at each stage.

OPTIONS CONSIDERED

- 14. No other options were considered appropriate in this case as a review of the related procedures covered in this report was needed not only to resolve a number of recommendations made as part of the Managing Director's report but also in line with the JNC for Chief Executives changes effective from 1 April 2008

IMPACT ON THE COUNCIL'S KEY OBJECTIVES

15.

Doncaster Priorities	Implications of this initiative
Achieving Excellence	To support the Council in achieving excellence in direct service delivery and to fulfil its broader Borough-wide governance and leadership roles as part of the implementation of the LAA by developing our workforce and Members and creating appropriate roles and responsibilities that provide clear and effective leadership

RISKS & ASSUMPTIONS

16. The risk of not having appropriate procedures in place and undertaking a review of existing procedures may result in lessons not being learnt and the Council facing being in a similar position to when the Public Interest Report was requested. This could result in a poor reputation locally and nationally in relation to governance arrangements and the potential for poor ratings in inspection regimes.
17. In addition, if the Council's procedures are not fundamentally in line with those of the Joint Negotiating Committee for Chief Executives, then it could leave the council vulnerable to not adhering to its statutory obligations and potential employment tribunal cases being brought forward against the council.

LEGAL IMPLICATIONS

18. The Local Authorities (Standing Orders) (England) Regulations 2001 (Regulation 6, and Schedule3) require that no disciplinary action be taken against the Managing Director (unless they are also the council manager) other than in accordance with a recommendation in a report made by the DIP. The definition of disciplinary action is any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract.

The application of the new model procedures will ensure that processes are up-to-date, comply with relevant legislation and that best practice is being applied within the Council.

Adopting the Model Procedure together with the other initiatives detailed in this report will constitute part of a substantive and significant response to the Managing Director's action plan.

FINANCIAL IMPLICATIONS

19. There are no direct financial implications arising from the recommendations in this report.

Any costs associated with dismissals, appeals or compromise agreements will need to be met from existing budgets. A separate decision with appropriate financial implications will be made on each occasion.

CONSULTATION

20. Detailed consultation has taken place with relevant Statutory, Legal and Human Resources officers.
21. This report has significant implications in terms of the following:

<u>Procurement</u>		Crime & Disorder	
Human Resources	X	Human Rights & Equalities	
Buildings, Land and Occupiers		Environment & Sustainability	
ICT		Capital Programme	

BACKGROUND PAPERS

Audit Commission Public Interest Report – February 2008
Report of the Managing Director on the District Auditor's Public Interest Report – Full Council 28 May 2008
NJC for Chief Executives of Local Authorities Circular - 4 April 2008

APPENDIX 1

Council's Existing Procedures

From the Joint Negotiating Committee for Chief executives of Local Authorities National Salary Structure and conditions of Service Handbook Revised Edition 1998

APPENDIX 2

JNC Handbook- Model Procedure and Guidance

From the National Salary Framework and Conditions of Service for Local Authority Chief Executives Joint Negotiating Committee Handbook- April 2008

REPORT AUTHOR & CONTRIBUTORS

Jill Higgs, Head of Human Resources

Tel: 01302 737004 E-mail: jill.higgs@doncaster.gov.uk

Helen Wilson, Senior Legal Officer

Tel: 01302 734688 E-mail: helen.wilson@doncaster.gov.uk

Neil Pointon, Acting Director of Legal Services

Tel: 01302 734629 E-mail: neil.pointon@doncaster.gov.uk

RESPONSIBLE DIRECTORS

Kay Leigh

Director of People and Performance Improvement

Paul Evans

Acting Director of Resources and Monitoring Officer