

LIVERPOOL CITY REGION COMBINED AUTHORITY

To: The Chair and Members of the Liverpool City Region Audit and Governance Committee

Meeting: 19 January 2022

Authority/Authorities Affected: All

EXEMPT/CONFIDENTIAL ITEM: No

Key Decision: No

REPORT OF THE CHIEF LEGAL OFFICER AND MONITORING OFFICER

CHIEF OFFICERS DISCIPLINARY PROCEDURE

1. PURPOSE OF REPORT

1.1 The purpose of this report is to ask Members to:

- Consider amending the Liverpool City Region Combined Authority Constitution;
- Include a designated section, outlining the processes and procedures for dealing with Chief Officers for disciplinary matters and if approved;
- Recommend this amendment to the next Combined Authority meeting.

2. RECOMMENDATIONS

2.1 It is recommended that the Liverpool City Region Audit and Governance Committee:

- a) Consider and approve the Joint Negotiation Committee (JNC) Model Disciplinary Procedure and Guidance for Local Authority Chief Executives, which includes the processes and procedures for dealing with both the appointment and discipline of Chief Officers (Appendices 1 and 2);
- b) Notes the Guidance for Local Authority Chief Executives, in accordance with the Joint Negotiating Committee October 2016 National Salary Framework & Conditions of Service Handbook;
- c) Recommends to the Combined Authority the inclusion of the JNC Model Disciplinary Procedure into the Constitution; and
- d) If Members are minded, to recommend approval to the Combined Authority of the JNC Model Disciplinary Procedure, to also consider and recommend to the Combined Authority, amendments to the Constitution as set out in Appendix 4 of this report.

3. BACKGROUND

3.1 Members will be aware that in the last twelve months activity to recruit a new Chief Executive and two Executive Directors has been undertaken successfully with 3 appointments being made.

3.2 Subsequently, a review of the current arrangements has been conducted and concluded that improved clarity of those arrangements and transparency could be secured through:

- Consideration of, and;
- Potential inclusion in the Combined Authority Constitution of the JNC Model Disciplinary Procedure and Guidance for Local Authority Chief Executives.

Constitution Amendments

3.3 A tracked changes version of the Constitution is available at Appendix 4 of this report, which reflects the below changes cited.

3.4 The following changes to the Constitution are proposed to be amended as follows:-

<u>Section Number</u>	<u>Proposed Amendment</u>
Addition to Part 3, Section D – Audit and Governance Committee Terms of Reference – 8. Functions – Standards - new paragraph to read as follows:	(h) to form an Investigating and Disciplinary Committee for the purposes of the Disciplinary Procedure in relation to the Combined Authority’s Chief Officers, as per Part 6, Section F of the Constitution.
Part 3, Section E – Appointments and Disciplinary Committee Terms of Reference – 8. Functions Paragraph 5.1(e) to read as follows:	(e) In addition to the above, the Appointments and Disciplinary Committee may deal with the discipline and dismissal of Chief Officers. The Chief Officers Disciplinary Procedure and Guidance can be found in Part 6, Section F of the Constitution. The Committee will form as the Appeals Committee for the purposes of the Disciplinary Procedure.
Addition to Part 6 – Codes and Protocols Section F. Chief Officers Disciplinary Procedure and Guidance:	PART 6 – SECTION F CHIEF OFFICERS DISCIPLINARY PROCEDURE AND GUIDANCE CONTENTS No. Section 1. Introduction 2. Definitions 3. Dismissals and Disciplinary

Action

1. Introduction

1.1 The below will outline how the Chief Officers are dismissed and the taking of disciplinary action.

2. Definitions

2.1 For the purpose of the below procedure and guidance, the definition of "Chief Officer" means those who are in Executive or Statutory Officer positions. These posts can be found in the Senior Leadership Staffing Structure Chart contained in Part 3, Annex C of the Constitution.

3. Dismissals and Disciplinary Action

3.1 A Chief Officer may not be dismissed by the Combined Authority unless the relevant procedures set out below have been complied with.

3.2 A Chief Officer may be suspended whilst an investigation takes place into the alleged misconduct. Such suspension will be on full pay and last no longer than two months.

3.3 The meaning of disciplinary action in this context is as defined under the Local Authorities (Standing Orders) Regulations 1993.

3.4 Disciplinary action will be dealt with in accordance with

best practice, which is the JNC Model Disciplinary Procedure and Guidance and as such the following will be complied with:

- (a) The Audit and Governance Committee will form as the Investigating and Disciplinary Committee and will have the authority to oversee the disciplinary process.
- (b) The Appointments and Disciplinary Committee will form as the Appeals Committee and will have the authority to consider appeals against action taken short of dismissal.
- (c) Two independent persons will be called upon from our Constituent Councils and will comprise of the Independent Panel and will have the authority to consider any proposal to dismiss.

3.5 Before a Chief Officer can be dismissed, any disciplinary action will be conducted in accordance with the statutory disciplinary and dismissal procedure contained in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. This includes the following:

- (a) The final decision to dismiss a Chief Officer will be by resolution of the full Combined Authority.

	<p>(b) The Independent Panel will be appointed at least 20 days before the Authority meeting, at which consideration as to whether to approve a proposal to dismiss is to be given or not.</p> <p>(c) Before taking a vote on whether to approve such a dismissal, the Combined Authority will take into account any advice, views or recommendations of the Independent Panel; the conclusions of any investigation into the proposed dismissal; and, any representations from the Chief Officer who is the subject of the proposed dismissal.</p> <p>3.6 Members will not be involved in the dismissal or the disciplinary action of any Officer below Deputy Chief Officer level, except where such involvement is necessary for any investigation or inquiry into alleged misconduct.</p>
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Chief Officers

- 3.5** Reference to Chief Officers means those who are in Executive or Statutory Officer positions. These posts can be found in the newly approved Senior Leadership Staffing Structure Chart, which has been published as part of the Combined Authority Constitution in Part 3, Annex C and is included as Appendix 3 to this report.
- 3.6** Currently, there is no public, detailed procedure in place for the Combined Authority which sets out the processes to deal with Chief Officers for either appointment or disciplinary matters.
- 3.7** Both the Combined Authority Constitution and Disciplinary Policy mention the procedure briefly, respectively in Part 3 – Section E ‘Appointments and Disciplinary

Committee' of the Constitution and Section 10 of Disciplinary Policy. At page 76, Section 5.1(e) of the Constitution of LCRCA and at page 9 of the Disciplinary Policy, it states the following:

'The LCRCA's Appointments and Disciplinary Panel may deal with the discipline and dismissal of Chief Officers and Deputy Chief Officers. Dismissal of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer must be approved by the Combined Authority and such dismissal proceedings shall comply with Schedule 3 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 including the requirement to appoint two independent persons to the Panel.'

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

- 3.8** The statutory disciplinary and dismissal procedure found in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ('the Regulations'), must be followed before a Chief Officer can be dismissed.
- 3.9** The changes under these amended Regulations required the Combined Authority to establish a process, to reflect the new procedures and make clear who would be responsible at any stage of the process if required. The Regulations also required for this to be reflected in the Constitution. By inclusion of the above statement the letter of the law was complied with. If members agree to the recommendations contained in this report, it will afford greater transparency to members, officers and the public as to what would be involved in appointment and disciplinary proceedings of a Chief Officer.
- 3.10** The Regulations have been designed to protect Chief Officers from unwarranted political interference in their roles. Inevitably because of the sensitivity that any disciplinary proceedings would bring, this is the focus of this report and the procedures themselves.
- 3.11** The Local Authorities (Standing Orders) Regulations 1993 define disciplinary action as follows:
- '...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.'*
- 3.12** In summary, the Regulations outline the disciplinary procedure as follows:
- (a) The final decision to dismiss any of the Chief Officers must be by resolution of the full authority;
 - (b) There is a requirement for the authority to appoint an Independent Panel ('IP') which includes at least 2 'Independent Persons';
 - (c) Before taking a vote on whether to approve such a dismissal, the authority must take into account the following:

- (i) Any advice, views or recommendations of the IP;
- (ii) The conclusions of any investigation into the proposed dismissal, and;
- (iii) Any representations from the Chief Officer who is the subject of the proposed dismissal.

3.13 The more detailed framework that is put in place which covers the Combined Authority procedure for dealing with Chief Officers for disciplinary matters, will need to reference the Regulations to show compliance.

JNC for Local Authority Chief Executives – Model Disciplinary Procedure – The Guidance

3.14 The JNC October 2016 National Salary Framework & Conditions of Service Handbook for Local Authority Chief Executives ('the Guidance'), provides direction on the disciplinary procedure for Chief Officers and suggests that the model procedure in Appendix 2 contained in the guidance should be followed.

3.15 A full copy of the Guidance has been attached for Members consideration for adopting and approving the framework as best practice (Appendix 1).

3.16 A flow diagram relating to the model disciplinary procedure from the Guidance has also been attached, which provides a useful breakdown of the processes and procedures involved in the Guidance (Appendix 2).

3.17 There is discretion as to the extent the Combined Authority follows the guidance. However, the model procedure has been considered as establishing best practice. Many public authorities have incorporated the Guidance into existing disciplinary procedures/frameworks for Chief Officers.

3.18 The Guidance recommends the establishment of several bodies, to ensure disciplinary action can be dealt with quickly. It is recommended that the Combined Authority should establish these bodies and outline that they have been set up in the Constitution.

3.19 The guidance recommends the following committees should be established:

- There should be an Investigating and Disciplinary Committee ('IDC') which oversees the disciplinary process and ultimately determines the outcome:
 - The IDC must be a politically balanced committee and the guidance suggests a composition of five members.
 - The recommendation is for the Audit and Governance Committee to form the IDC should one be needed.
- There should be an Appeals Committee ('AC') which considers appeals against action taken short of dismissal:
 - The AC must be a politically balanced committee and the guidance suggests a composition of five members who are not members of the IDC.
 - The recommendation is that this would be the remaining members of the Appointments and Disciplinary Committee. However, it should be noted, that this may not offer a politically balanced structure.

- There should be in place an IP, who will consider any proposal to dismiss as constituted in accordance with the 2015 Regulations:
 - The IP should comprise of at least two independent persons.
 - The IP must be appointed at least 20 days before the Authority meeting at which consideration as to whether to approve a proposal to dismiss is to be given or not.
 - There is a correspondence in place currently with each of the Constituent Authorities that confirms that persons comprising the IP will be called upon from the Constituent Councils.

3.20 A summary of the JNC model disciplinary procedure is as follows:

- 1) If it was decided the allegation(s) against a Chief Officer needs investigation, the IDC will consider the issues;
- 2) The IDC must appoint an Independent Investigator ('II');
- 3) The II will investigate and report back to the IDC;
- 4) The IDC will then agree its recommendation to the public authority;
- 5) If the recommendation is for dismissal, it must be considered by the IP;
- 6) The IP will review the recommendation and assemble a report of its own, and;
- 7) Both reports/recommendations from the IDC and IP go before the Combined Authority, to review and determine the employment position for the Chief Officer in question.

3.21 The guidance makes clear that a requirement for any disciplinary process is to ensure that an investigation of the allegations, in order to set out the facts of the case and to collect evidence for use in the disciplinary hearing is included.

3.22 There are no specific timescales apart from the appointment of the IP to adhere to. However, the guidance reinforces that it is in the interest of all parties that proceedings are conducted expeditiously but fairly.

4. RESOURCE IMPLICATIONS

4.1 Financial

There are no financial costs directly in relation to the recommendations of this report, however, it should be noted that should there need to be an investigation there will be costs in association with the disciplinary procedure in relation to Chief Officers, such as the remuneration of the II and the IP.

4.2 Human Resources

The Chief Officers will have contracts of employment which refer to the JNC terms and conditions of service. Therefore, should an amendment to LCRCA Constitution and the adoption of the JNC Model Disciplinary Procedure and Guidance be

approved, the amendment to the Constitution must align with what is contained in the Chief Officers contracts of employment.

4.3 Physical Assets

There are no identifiable physical assets implications in relation to the contents of this report.

4.4 Information Technology

There are no identifiable information technology implications in relation to the contents of this report.

5. LEGAL IMPLICATIONS

5.1 The recommendations in this report are in accordance with the legal requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

5.2 Adoption of best practice as recommended by the JNC in their Model Disciplinary Procedure and Guidance has also been recommended.

6. RISKS AND MITIGATION

6.1 By not approving the recommendations within this report, there is a risk that the Combined Authority will not have the proper processes and procedures in place to deal with disciplinary matters in relation to Chief Officers, in the event where they will need to be implemented.

6.2 Adopting and approving best practice in accordance with the JNC Model Disciplinary Procedure and Guidance, will ensure there is a robust and compliant process in place to deal with disciplinary matters in relation to Chief Officers and mitigates risks against the Combined Authority as to how the disciplinary matters have been dealt with.

7. EQUALITY AND DIVERSITY IMPLICATIONS

7.1 The JNC Model Disciplinary Procedure and Guidance has been created on the foundation that all Chief Officers are treated fairly and equally. Adoption of this best practice will ensure the Combined Authority is adhering to their equality and diversity responsibilities.

8. PRIVACY IMPLICATIONS

8.1 There are no identifiable privacy implications in relation to the contents of this report.

9. COMMUNICATION ISSUES

- 9.1** If an amendment to Constitution to include a section designated to 'Chief Officers Disciplinary Procedure and Guidance' is approved, the amended Constitution will need to be made available for the public domain on the website.

10. CONCLUSION

- 10.1** This report puts forward a recommendation to amend the Constitution, in order to ensure the Combined Authority is protecting its Chief Officers by including a more detailed disciplinary procedure.
- 10.2** The proposed amendment to the Constitution also ensures the Combined Authority is being transparent in its approach and complying with what is best practice, should the disciplinary processes and procedures in relation to Chief Officers need to be implemented.

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Appendices:

Appendix 1 – Joint Negotiating Committee October 2016 National Salary Framework & Conditions of Service Handbook - Model Disciplinary Procedure and Guidance

Appendix 2 – JNC Model Disciplinary Procedure Flowchart

Appendix 3 – Senior Leadership Staffing Structure

Appendix 4 – Suggested amendments to the Constitution - as track changes

Background Documents:

LCRCA Constitution