

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

13 FEBRUARY 2012

1. PRINCIPAL OFFICERS' STAFFING COMMITTEE – TERMS OF REFERENCE

Report of the Clerk and Monitoring Officer and the Chief Fire Officer.

RECOMMENDED

- 1.1 THAT appeals against dismissal and disciplinary action in respect of the Deputy Chief Fire Officer, an Assistant Chief Fire Officer, Director of Corporate Services, Director of Human Resources and Director of Finance and Procurement be determined in future by the Principal Officers' Staffing Committee;
- 1.2 THAT consequential amendments be made to the following constitutional documents as indicated in the Appendix to this report:
 - Terms of reference of the Principal Officers' Staffing Committee
 - Paragraph 3.3 of the schedule of matters reserved to the Authority
 - Paragraph 2.6 and 3.7 of the scheme of delegations to officers
 - Paragraph 27 of the procedural Standing Orders of the Authority.

2. PURPOSE OF REPORT

- 2.1 To make provision for the Principal Officers' Staffing Committee to hear appeals against dismissal or other disciplinary action in respect of principal officers other than the Chief Fire Officer, and to make consequential amendments to relevant constitutional documents.

3. BACKGROUND

- 3.1 In November 2004 the Authority approved revised disciplinary and grievance procedures effective from 1 January 2005. Under the new process appeals against dismissal or disciplinary action are

heard by managers. The exceptions to this are dealing with disciplinary proceedings in respect of the Chief Fire Officer and hearing an appeal in a disciplinary matter by the Deputy Chief Fire Officer, both of which are delegated to the Principal Officers' Staffing Committee. The scheme of delegations and schedule of matters reserved to the Authority approved by the Authority in November 2010 were drawn up on this basis.

- 3.2 This process has been reviewed in the light of the continuing vacancy for Deputy Chief Fire Officer and it is suggested that, for the time being, appeals against dismissal and disciplinary action in respect of the Deputy Chief Fire Officer, an Assistant Chief Fire Officer, Director of Corporate Services, Director of Human Resources, Director of Finance and Procurement to be determined by the Principal Officers' Staffing Committee. The first stage of the disciplinary process would continue to be dealt with by the Chief Fire Officer.
- 3.2 Any change to the process will require amendment of various constitutional documents as indicated in the Appendix to the report.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment [EIA] has been carried out and has indicated that a full EIA is not required.

5. **LEGAL IMPLICATIONS**

- 5.1 An appropriate appeals process is required to be established as part of any disciplinary process in order to comply with the ACAS Code of Practice on Disciplinary and Grievance.

6. **FINANCIAL IMPLICATIONS**

- 6.1 There are no direct financial implications arising from this report. The disciplinary and appeal process will be subject to scrutiny in the event of any referral to an Employment Tribunal. Costs against the Authority could be incurred if the process is not fit for purpose.

BACKGROUND PAPERS

Terms of reference of the Principal Officers' Staffing Committee approved by the Authority on 27 June 2011.

Schedule of matters reserved to the Authority and scheme of delegation to officers approved by the Authority on 28 November 2011.

Procedural Standing Orders approved by the Authority on 22 June 2009.

Minutes of the Authority dated 22 November 2004.

NEERAJ SHARMA
CLERK AND
MONITORING OFFICER

VIJ RANDENIYA
CHIEF FIRE OFFICER

Proposed amendments to constitutional documents [shown shaded]

Principal Officers' Staffing Committee – terms of reference

To make the appointments of the Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officers and non-uniformed Directors.

To consider and make a recommendation to the Authority on the dismissal or other disciplinary action in respect of the Chief Fire Officer.

To hear and decide upon appeals by the Deputy Chief Fire Officer, an Assistant Chief Fire Officer, Director of Corporate Services, Director of Human Resources or Director of Finance and Procurement against dismissal or other disciplinary action.

To shortlist and interview candidates for appointment as independent Members of the Standards Committee, and to make a recommendation to the Authority as to the person/s to be appointed.

To submit its minutes to the Authority.

West Midlands Fire and Rescue Authority - Matters reserved to the Authority [extract]

3. Human Resources

- 3.1 Approval of any significant changes in staffing models and organisational structures, pay and conditions of service; approval of the staffing structure and pay and conditions of service for principal and statutory officers.
- 3.2 Appointment of Chief Fire Officer, Deputy and Assistant Chief Fire Officers and Directors [P]; appointment of the Clerk, Monitoring Officer and Treasurer.
- 3.3 Discipline and dismissal of the Chief Fire Officer, Clerk, Monitoring Officer and Treasurer; to hear and decide upon appeals by the Deputy Chief Fire Officer, an Assistant Chief Fire Officer, Director of Corporate Services, Director of Human Resources or Director of Finance and Procurement against dismissal or other disciplinary action [P].

- 3.4 Deciding appeals under the firefighter pension schemes and the local government superannuation regulations [A].
- 3.5 Deciding on trade disputes under the national conditions of service for uniformed and non-uniformed personnel [A].

Key

[A] Appeals Committee

[APM] Audit and Performance Management Committee

[E] Executive Committee

[P] Principal Officers' Staffing Committee

West Midlands Fire and Rescue Authority - Scheme of Delegation to Officers [extract]

2. Powers not to be delegated

2.1 This Scheme does not delegate:-

- (a) Any matter reserved to the Authority.
- (b) Any matter that must not by law be delegated to an Officer.

Powers should not be delegated:

- 2.6** In respect of action constituting the appointment or dismissal of the Chief Fire Officer, the Clerk, Monitoring Officer or the Treasurer; appointment of the Deputy Chief Fire Officer, an Assistant Chief Fire Officer, Director of Corporate Services, Director of Human Resources or Director of Finance and Procurement; or the determination of appeals against dismissal or other disciplinary action in respect of the Deputy Chief Fire Officer, an Assistant Chief Fire Officer, Director of Corporate Services, Director of Human Resources, Director of Finance and Procurement.

3. Delegations to the Chief Fire Officer

- 3.7** To make and terminate appointments, including voluntary and compulsory redundancy, of uniformed and non uniformed staff up to (but not including) those appointments to be made/terminated by the Principal Officers' Staffing Committee, save for any matters reserved for decision by the Authority which shall include the determination of appeals against dismissal or other disciplinary

action in respect of the Deputy Chief Fire Officer, an Assistant Chief Fire Officer, Director of Corporate Services, Director of Human Resources, Director of Finance and Procurement which is delegated to the Principal Officers' Staffing Committee.

Procedural Standing Orders of the Authority [extract]

PART 6 – APPOINTMENT AND DISCIPLINE OF STAFF

27. Appointment, Dismissal and Disciplinary Action

- (1) The appointment of the Chief Fire Officer, the Deputy Chief Fire Officer and all Directors shall be made by the **Appointments Principal Officers' Staffing** Committee of the Authority. These posts shall be subject to the National Joint Council's scheme of conditions of service for Brigade Managers of Local Authorities Fire and Rescue Services as amended from time to time and be subject to the relevant disciplinary regulations which apply to the employee(s) concerned.
- (2) Where the Authority proposes to appoint an officer, as described in (1) above, the Authority:-
 - (a) will draw up a statement specifying:
 - (i) the duties of the officer concerned; and
 - (ii) any qualifications or qualities to be sought in the person to be appointed;
 - (b) will make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
 - (c) will make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to all applicants for any particular post and to any other person on request.

The Authority will either interview all qualified applicants for the post or select a short list of qualified applicants and interview those on the short list. If no qualified person applies, the Authority shall make arrangements for further advertisement in accordance with (b) above.

- (3) Subject to paragraphs (7), (8) and (9) below, the appointment, dismissal and taking disciplinary action against any other employee must be carried out by the Chief Fire Officer or by an officer who can lawfully be nominated by him/her. Any such action shall be taken in accordance with any legislative requirements, the Authority's policies and procedures and be subject to any specific rules or regulations which apply to the conditions of service of the employee(s) concerned.

Councillors will not be involved in disciplinary action against any officer below director level.

Appeals by the Deputy Chief Fire Officer, an Assistant Chief Fire Officer, Director of Corporate Services, Director of Human Resources or Director of Finance and Procurement against dismissal or other disciplinary action will be determined by the Principal Officers' Staffing Committee of the Authority.

- (4) The Authority will require any candidate for appointment to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Authority, or the partner of such persons.
- (5) No candidate related to a councillor or officer as described above will be appointed without the agreement of the Chief Fire Officer or an officer nominated by him/her.
- (6) The Authority will disqualify any applicant who directly or indirectly seeks the support of any Member of the Authority for any appointment. No Member of the Authority will seek support for any person for any appointment with the Authority.
- (7) The Authority shall make the arrangements for the appointment of:-
- (a) the Clerk under the provisions of the Local Government Act 1985;
 - (b) the Monitoring Officer under the provisions of the Local Government and Housing Act 1989;
 - (c) an officer to be responsible for the proper administration of the authority's financial affairs under the provisions of the Local Government Act 1985 (the Treasurer).

- (8) No disciplinary action in respect of the Chief Fire Officer, Clerk/Monitoring Officer or the Treasurer, except action described in paragraph (9), may be taken by the Authority, or by a committee, a joint committee on which the Authority is represented or any other person acting on behalf of the Authority, other than in accordance with a recommendation in a report made by a designated independent person as set out under this Standing Order.
- (9) The action mentioned in paragraph (8) is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect. The decision to suspend shall be made by the Authority.
- (10) If it appears to the Authority that an allegation of misconduct by the Chief Fire Officer, Clerk/Monitoring Officer or the Treasurer as the case may be ('The Relevant Officer') requires to be investigated, the Authority must appoint a person ('the Designated Independent Person').
- (11) The Designated Independent Person must be such person as may be agreed between the Authority and the Relevant Officer or, in default of agreement, nominated by the Secretary of State.
- (12) The Designated Person:
 - (a) may direct:-
 - (i) that the Authority terminate any suspension of the Relevant Officer;
 - (ii) that any such suspension must continue after the expiry of the period referred to in paragraph (9);
 - (iii) that the terms on which the suspension has taken place must be varied in accordance with that direction; or
 - (iv) that no steps (whether by the Authority or any committee or officer acting on behalf of the Authority) towards disciplinary action or further disciplinary action against the Relevant Officer, other than steps taken in the presence, or with the agreement, of the Designated Independent Person, are to be taken before a report is made under sub-paragraph (d).

- (b) may inspect any documents relating to the conduct of the Relevant Officer which are in the possession of the Authority, or which the Authority has the power to authorise him or her to inspect;
 - (c) may require any Member of staff of the Authority to answer questions concerning the conduct of the Relevant Officer;
 - (d) must make a report to the Appointments Principal Officers' Staffing Committee:-
 - (i) stating his or her opinion as to whether (and if so to what extent) the evidence that he or she has obtained supports any allegation of misconduct against the Relevant Officer; and
 - (ii) recommending any disciplinary action which appears to him or her to be appropriate for the Authority to take against the Relevant Officer; and
 - (e) must no later than the time at which he or she makes their report under sub paragraph (d) send a copy of the report to the Relevant Officer.
- (13) The Appointments Principal Officers' Staffing Committee will, after considering the report of the Designated Person, make a recommendation to the Authority with regard to dismissal or any disciplinary action in respect of the Chief Fire Officer, Clerk/Monitoring Officer or the Treasurer.
- (14) In paragraph (12) 'disciplinary action' and 'designated independent person' have the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001.