

Report sponsor: Chief Executive
Report authors: Head of Democracy, Head of Legal Services and Head of Human Resources and Organisational Development

Disciplinary Procedures for Statutory Officers

Purpose

- 1.1 This report seeks to align the Council's disciplinary procedure with the model Disciplinary Procedure and Guidance contained within the Joint Negotiating Committee (JNC) Conditions of Service Handbook for Chief Executives in relation to disciplinary procedures pertaining to the Council's statutory officers (Head of Paid Service, Chief Finance Officer, Monitoring Officer).
- 1.2 Local authority statutory officers are protected under specific regulations, owing to the profile and political exposure of their roles. The Local Authorities (Standing Orders) (England) Regulations 2001, as amended, afford specific protections, and require Councils to establish procedures for dealing with disciplinary, capability and other substantial issues in relation to Statutory Officers.
- 1.3 The Council resolved on 22 July 2015 that disciplinary procedures for the Statutory Officers be conducted in line with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. However, the accompanying procedure contained within Part 7 of the Council Constitution has not since been updated to reflect the requirements of the legislation. The Council has not had cause to use the procedure since the revised regulations were formally adopted.
- 1.4 The recommendations contained within the report seek approval for a revised procedure that reflects the model procedure and guidance issued by the JNC and re-establishment of the necessary constituted bodies for considering complaints against statutory officers, to allow any complaints that are received to be progressed expediently.

Recommendations

- 2.1 To adopt the draft Disciplinary Procedure attached at Appendix 1 for the Chief Executive, to be read in conjunction with the JNC Conditions of Service Handbook for Chief Executives.
- 2.2 To adopt the same Disciplinary Procedure and Guidance for other officers who hold a statutory role (Section 151 Officer and Monitoring Officer) as recommended by the JNC and in accordance with the Council resolution of 22 July 2015.

- 2.3 To re-establish the Investigating and Disciplinary Committee and the Disciplinary Appeals Committee as standing committees of the Council and to seek nominations from Group Leaders in accordance with the political proportionality calculations detailed at paragraph 4.9.
- 2.4 To establish the Independent Panel as a committee of the Council under Section 102(4) of the Local Government Act 1972 and in accordance with the requirements of paragraph 4.10.
- 2.5 Subject to the approval of recommendations 2.1 and 2.2, to delegate authority to the Investigating and Disciplinary Committee to suspend statutory officers under the agreed procedures and in cases of urgency to delegate the same authority to the Chair of the Investigating and Disciplinary Committee, in consultation with the relevant officers detailed in the procedure.
- 2.6 Subject to the approval of recommendations 2.1 and 2.2, to delegate authority for imposing action short of dismissal against statutory officers to the Investigating and Disciplinary Committee.
- 2.7 To approve the constitutional amendments to the Scheme of Delegations detailed at Appendix 2 and to delegate authority to the Head of Democracy to make any further consequential amendments required to give effect to recommendations 2.1 to 2.6.

Reasons

- 3.1 To ensure the Council's disciplinary procedures for statutory officers are in accordance with the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 as amended and recognised best practice published by the JNC.
- 3.2 To ensure complaints against statutory officers can be resolved fairly and efficiently.

Supporting information

- 4.1 The Council has previously adopted the amended regulations on 22 July 2015. The effect of the regulations was to simplify the process for dealing with matters relating to conduct, capability or dismissal of statutory senior council employees, with the previous procedure considered to be overly complex and expensive. However, as there has not been cause to use the procedure since the regulations were adopted, the local procedure contained in the Council Constitution has not since been updated.
- 4.2 The JNC have since published a model procedure and guidance based on the requirements of the regulations, for dealing with allegations of conduct or capability in relation to the Chief Executive. The JNC also recommend this procedure is used for the Chief Finance Officer and the Monitoring Officer, which is reflected in recommendation 2.2. The JNC Chief Executive's Handbook (September 2022 edition) is attached at Appendix 3 and the model procedure is summarised in the flow-chart provided at Appendix 4.

- 4.3 The report recommends the adoption of a local procedure attached at Appendix 1 that reflects the statutory requirements of the 2001 and 2015 regulations and the JNC Model Procedure. It is recommended that it is read in conjunction with the JNC guidance contained within the Chief Executive's handbook.
- 4.4 The Model Procedure provides some local discretion in several areas. For example, accessing the procedure and the protocol for the conduct of hearings. Where this is the case a procedure has been drafted that reflects the ACAS Code of Practice on Disciplinary and Grievance and principles of natural justice.
- 4.5 The Model Disciplinary Procedure and Guidance recommends the establishment of three standing committees to allow disciplinary issues to be dealt with quickly. These are: an Investigating and Disciplinary Committee (IDC); an Appeals Committee and an Independent Panel, comprising solely of Independent Members appointed under Section 28(7) of the Localism Act.
- 4.6 The Council has previously established the IDC and the Appeals Committee in its constitutional arrangements, but owing to the infrequency with which complaints against statutory officers arise, appointments have only been made when the committee has business to consider.
- 4.7 To bring the Council's procedure into line with the JNC Model Procedure and Guidance, it is recommended that members are appointed to the IDC and the Appeals Committee annually, irrespective of whether a complaint is under consideration. The composition of the committees are detailed in the draft procedure at Appendix 1 and the draft amendments to the Scheme of Delegations detailed at Appendix 2.
- 4.8 Recommendation 2.3 proposes that nominations are immediately sought to the IDC and Appeals committees. The committees should:
 - Have no fewer than five elected members
 - Be politically balanced
 - Include at least one member of the Council Cabinet, with not more than half of the membership to be members of the executive.
 - Not include any member with a direct personal involvement in the complaint.

Were a complaint to arise in which a sitting member of either the IDC or Appeals Committee held a conflict of interest, the standing delegation to the Monitoring Officer would be utilised to give effect to the wishes of Group Leaders and appoint an alternative member without further recourse to Full Council.

- 4.9 Based on the current political composition of the Council it is proposed that the committees are formed of six seats with places allocated as follows:

Group	Number of Councillors	Proportion of Committee	Proportion of Council (49)
Investigating and Disciplinary Committee			
Conservative	2	33%	34.7% (17)
Labour	2	33%	32.7% (16)
Other	2	33%	32.7% (16)
Disciplinary Appeals Committee			
Conservative	2	33%	34.7% (17)
Labour	2	33%	32.7% (16)
Other	2	33%	32.7% (16)

- 4.10 Appendix 2 also details the establishment of the Independent Panel. The 2015 Regulations require that the Panel is formed of Independent Members appointed under Section 28(7) of the Localism Act, with priority given to those Independent Members who are resident in the Council's area. At the time of writing, the Council has four individuals appointed under the Act, who sit as permanent members of the Council's Standards Committee.
- 4.11 The Model Disciplinary Procedure and Guidance also recommends that delegated authority is given to the Investigating and Disciplinary Committee to suspend statutory officers where necessary, and in exceptional circumstances delegate authority to the Chair of the IDC to agree suspensions in cases of genuine urgency.
- 4.12 It also recommended that the Council formally delegates authority to the IDC to take action short of dismissal. There is no statutory requirement to seek confirmation by the Council in these circumstances, as there would be in the event of a recommendation by the IDC to dismiss a statutory officer.

Public/stakeholder engagement

- 5.1 The draft procedure has been developed in accordance with the model procedure and guidance contained within Appendix 5 of the JNC Chief Executive's Handbook (September 2022 edition) and the ACAS code of practice on disciplinary and grievance.
- 5.2 The proposed arrangements have been consulted upon at national level by the Joint Negotiating Committee (JNC), the national negotiating body for the pay and conditions of service for local authority Chief Executives in England and Wales.

Other options

- 6.1 To not adopt the procedure attached at Appendix 1. Whilst the Council has adopted the 2015 regulations, the Council does not currently have a locally agreed procedure that reflects the statutory requirements. Therefore, any complaints received relating to statutory officers could not be resolved expediently.

Financial and value for money issues

- 7.1 The JNC model procedure is intended to provide a fair and efficient process for the investigation of conduct and capability issues relating to Statutory Officers. The procedure has been designed to minimise additional demand on public resources arising from any investigation.

Legal implications

- 8.1 The adoption of the draft procedure attached at Appendix 1 is compliant with the Local Authorities (Standing Orders) (England) Regulations 2001, as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

Climate implications

- 9.1 None directly arising.

Socio-Economic implications

- 10.1 None directly arising.

Other significant implications

- 11.2 The adoption of the procedure affects three employees of the Council who occupy the statutory roles of Head of Paid Service, Chief Finance Officer and Monitoring Officer – the Chief Executive, the Strategic Director of Corporate Resources and the Director of Legal, Procurement and Democratic Services.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu, Head of Legal Services	16 February 2023
Finance		
Service Director(s)		
Report sponsor	Paul Simpson, Chief Executive	16 February 2023
Other(s)	Liz Moore, Head of HR and Organisational Development	16 February 2023

Background papers:	None
List of appendices:	Appendix 1 – Draft Disciplinary Procedure Appendix 2 – Proposed amendments to the Scheme of Delegations Appendix 3 – JNC Chief Executive's Handbook (September 2022) Appendix 4 – JNC Model Disciplinary Procedure Flowchart