

# ITEM 5

## DISCIPLINARY PROCEDURE FOR CHIEF OFFICERS

### 1. Scope of Procedure

- 1.1 This Procedure applies to all Chief Officers (and Deputy Chief Officers) of the Council other than those designated as “**Statutory Officers**” namely the Head of Paid Service (hereafter referred to as the “**Chief Executive**”), the Monitoring Officer and Chief Finance Officer (Section 151 Officer).
- 1.2 This Procedure has been adopted by the Council for the purpose of dealing with disciplinary, capability and other substantial issues in relation to Chief Officers of the Council. For the avoidance of doubt, this Procedure also applies to a breakdown in trust and confidence between the Chief Officer and the Council.
- 1.3 Minor conduct issues can often be resolved informally. Formal steps will be taken under this Procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 1.4 The objective of this Procedure is to:-
  - (i) encourage employees to achieve and maintain acceptable standards of behaviour;
  - (ii) provide a fair and consistent method of dealing with alleged failure to maintain acceptable standards of behaviour;
  - (iii) minimise disagreements about disciplinary matters; and
  - (iv) reduce the need for disciplinary action and dismissals.
- 1.5 Save where alternative arrangements have been agreed in advance between the Council and the Chief Executive or the Chief Officer, the steps set out in this Procedure should be followed. The parties recognise that it may be necessary to depart from the Procedure, from time to time, according to the particular circumstances of a case. In such circumstances, both parties agree to give fair consideration to reasonable proposals to modify the Procedure accordingly.
- 1.6 This Procedure does not form part of a Chief Officer’s contract of employment and it may be amended at any time, subject to overall compliance with the Local Authorities (Standing Orders) (England) Regulations 2001.
- 1.7 Any disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All individuals involved must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

## **2. Roles and Responsibilities**

- 2.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Chief Officer, the Chief Executive will be responsible for conducting the preliminary investigation which is further referred to in paragraph 5 below.
- 2.2 The Chief Executive shall undertake a preliminary investigation into the allegations of conduct or capability, or other issues under investigation in order to determine whether a disciplinary case to answer appears to exist which requires further consideration by an Investigating and Disciplinary committee ("**Investigating and Disciplinary Committee**"). The Chief Executive may choose to appoint another Chief Officer of the Council or an independent person to carry out the preliminary investigation on its behalf and whoever undertakes that role shall be referred to as the "**Preliminary Independent Investigator**" in this Procedure.
- 2.3 Save where the Chief Executive is satisfied, following a preliminary investigation, that the issue requires no further action or can be resolved informally, the matter must be referred to the Investigating and Disciplinary Committee, which shall be responsible for determining the matter in accordance with paragraph 5 below.

## **3. Timescale**

- 3.1 The Procedure does not generally incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the circumstances of a particular case. Where time limits do apply, they are included within the relevant section of this Procedure. However, it is implicit that all stages of the Procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

## **4. Suspension**

- 4.1 Suspension is not regarded as disciplinary action under this Procedure but as a neutral act which may be implemented where, in the opinion of the Chief Executive, it is envisaged that the Chief Officer's continuing presence at work might compromise the investigation or otherwise impair the efficient exercise of the Council's functions.
- 4.2 Suspension may also be necessary if an allegation is such that, if proven, it would amount to gross misconduct.
- 4.3 Prior to imposing suspension in an ordinary case, the Chief Executive shall inform the Chief Officer, in writing, of the reason for the proposed suspension and the Chief Officer shall have the opportunity to make representations before a decision is taken. The Procedure recognises that in exceptional circumstances it may be necessary to suspend at very short notice, for example because the continuing presence of the Chief Officer could be a serious danger to the health and safety of others, or a serious risk to the resources, information or reputation of the Council.

4.4 The necessity for the Chief Officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided. Further specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Chief Officer's suspension, whilst avoiding any prejudice to the investigation or to the efficient exercise of the Council's functions.

4.5 Absence from duty during any period of suspension shall be on full pay.

## 5. Preliminary Investigation

5.1 The Chief Executive will be responsible for informing the Chief Officer, in writing, of the allegations or other issues under investigation.

5.2 The Chief Executive shall be responsible for determining the arrangements for conducting a preliminary investigation, as set out in paragraph 2.2 above.

5.3 The Chief Executive shall where a decision has been taken to appoint another to conduct the preliminary investigation on its behalf, determine the terms of appointment of the Preliminary Independent Investigator, agree any remuneration payable to the Preliminary Independent Investigator (if appropriate), and provide facilities and all available information regarding the allegations or other issues under investigation as are necessary to enable the Preliminary Independent Investigator to fulfil their role.

5.4 The Chief Executive or Preliminary Independent Investigator will be entitled to interview witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's email, internet, and other IT systems, including the accounts of the Chief Officer. The Chief Officer shall fully cooperate with the Chief Executive or Preliminary Independent Investigator and shall make themselves available for such interviews and meetings and provide any relevant documentation or information as the Chief Executive or Preliminary Independent Investigator deems necessary.

5.5 The Chief Officer shall be given reasonable facilities and access to the Council's premises and systems as well as personal files/diary, etc. to allow them to prepare their responses on such terms as may be agreed by the Chief Executive or Preliminary Independent Investigator.

5.6 The Chief Executive or the Preliminary Independent Investigator shall prepare a short report following their investigation which, where required, shall be submitted to the Chief Executive for their consideration ("**Preliminary Investigation Report**"). A copy of the Preliminary Investigation Report shall be provided to the Chief Officer.

5.7 Before determining whether the allegations or other issues under investigation warrant referral to the Investigation and Disciplinary Committee for further consideration, the Chief Executive shall advise the Chief Officer, in writing, that:-

- they are required to attend a meeting with the Chief Executive;

- they may make oral representations to the Chief Executive at that meeting; and
  - they may put forward written representations or evidence, including written witness evidence, which they wish the Chief Executive to consider at this stage. Any such written representations, witness statements or supporting evidence must be submitted to the Chief Executive at least three working days before the meeting.
6. The Chief Executive will give careful consideration to the allegations or other issues under investigation, the Preliminary Investigator's Report, supporting evidence and any representations put forward by the Chief Officer before taking further action.
- 6.1 The Chief Executive shall decide whether:-
- (i) The issue requires no further formal action under this Procedure (in which case they will consider what other steps, if any, should be taken) and would ordinarily lift any suspension immediately; or
  - (ii) The issue should be referred to the Investigating and Disciplinary Committee, in which case the following paragraphs shall apply.
- 6.2 The Chief Executive shall inform the Chief Officer of the decision, in writing, as soon as practicable.
- 7. The Role of the Investigating and Disciplinary Committee and appointing an Investigator**
- 7.1 If the Chief Executive decides that the matter should be referred to the Investigating and Disciplinary Committee, it shall be its responsibility to appoint a Chief Officer of the Council, or an independent person, to carry out any further investigation required into the allegations or other issues as soon as practicable. This Investigator can be the same person who carried out the preliminary investigation.
- 7.2 The Investigating and Disciplinary Committee should:-
- (a) no fewer than three elected members;
  - (b) should not include any member with a direct personal involvement in the complaint;
  - (c) should be politically balanced; and
  - (d) should include a member of the Executive.
- 7.3 The Investigating and Disciplinary Committee shall appoint a chair person to oversee the function of the Committee ("**Chair**").
- 7.4 The Investigating and Disciplinary Committee shall be advised throughout by a suitable adviser who may be employed by or independent of the Council, (the

**“Independent Adviser”**) who shall ordinarily be accompanied by a member of the Council’s HR Team, save in cases where a conflict of interest could arise, in which case the Investigating and Disciplinary Committee shall appoint a nominee.

7.5 The Chief Executive shall determine the terms of appointment of the Investigator, agree the Investigator’s remuneration (if appropriate), procure the necessary facilities and provide all available information about the allegations or other issues under investigation as shall be necessary to enable them to fulfil their role.

7.6 The Chief Officer will be informed that the matter has been referred to the Investigating and Disciplinary Committee, the members of the Investigating and Disciplinary Committee and that an Investigator has been appointed who, subject to availability, may be the same person who carried out the preliminary investigation.

## **8. Responsibilities of the Investigator**

8.1 It will be the responsibility of the Investigator to carry out a further investigation into the allegations or other issues under investigation and to prepare a report (**“Investigation Report”**):-

- (i) stating in their opinion whether (and if so, the extent to which) the evidence they have obtained supports any allegation of misconduct, or incapability or supports a need for action under this Procedure for some other substantial reason; and
- (ii) recommending what, if any, disciplinary action or range of actions appears to be appropriate for the Council, through its Investigating and Disciplinary Committee, to take against the Chief Officer having regard to all the circumstances of the case.

## **9. Pre-Disciplinary Hearing Procedure**

9.1 The Chief Executive, or their nominee, shall send a copy of the Investigation Report to the Chief Officer. If the Investigation Report identifies allegations of misconduct and a need for further action, the Chief Officer will be sent, in addition to the Investigation Report, written notice of the specific allegations to be considered by the Investigating and Disciplinary Committee at the Disciplinary Hearing and any supporting documentation.

9.2 The Chief Officer shall, if they so wish, request further information and documents relating to the allegations .

9.3 Any additional information and documentation requested will be provided by the Investigator, where relevant, within seven working days or such other time as appropriate in the circumstances.

9.4 Once a response has been provided by the Investigator further to paragraph 9.3 above (if requested), the Chief Officer shall be given not less than

tenworking days written notice of the date of the Disciplinary Hearing. The notice shall include:-

- (i) the time and place of the Disciplinary Hearing;
- (ii) who will be in attendance at the Disciplinary Hearing including the members of the Investigating and Disciplinary Committee;
- (iii) a copy of the Investigator's Report and any supporting documentation (including any witness statements where relevant) and the allegations to be considered at the Disciplinary Hearing;
- (iv) confirmation that the Disciplinary Hearing is convened under this Procedure and could result in disciplinary action;
- (v) confirmation that the Chief Officer may be accompanied at the Disciplinary Hearing by a trade union representative, an official employed by a trade union or a fellow work colleague ("**Companion**");
- (vi) confirmation that the Chief Officer may ask any person to be present as a witness or adduce any documents or written statements in support of his response, provided full details of such witnesses and copies of any such documents or statements are provided to the Chief Executive, or their nominee, at least five working days before the date of the Disciplinary Hearing, for distribution to all parties.

9.5 The Chief Officer shall either agree the date for the Hearing or propose to the Head of HR or their nominee, a postponement for the date of the Hearing for a period not exceeding fourteen days setting out the reasons for the request. For the avoidance of doubt, the postponement includes any postponement due to the availability of the Chief Officer's Companion. If the Chief Officer requests a postponement, the Head of HR or their nominee and the Chief Officer (or his representative) shall agree the date for the Hearing. If they cannot agree the date within one working day, the Chair of the Investigating and Disciplinary Committee, having taken appropriate advice, shall determine the date of the Disciplinary Hearing.

9.6 The Head of HR or their nominee shall then formally give notice to the Investigating and Disciplinary Committee (and the Chief Officer if the Hearing has been postponed) of the date for the Disciplinary Hearing and shall submit a report to the Investigating and Disciplinary Committee, including the Investigation Report, supporting evidence and any representations provided by the Chief Officer.

9.7 The Chief Officer and their Companion must make every effort to attend the Disciplinary Hearing (whether reconvened or otherwise). Failure to attend without good reason may be treated as misconduct in itself. If the Chief Officer fails to attend without good reason, or persistently fails to do so, the

Disciplinary Hearing may proceed in their absence and a decision may be made based on the available evidence.

9.8 At least five working days before the date of the Disciplinary Hearing the Chief Officer shall give to the Head of HR, or their nominee:-

- (i) Full details of any witnesses they wish to call;
- (ii) Copies of any documents which they wish to refer to in support of their response;
- (iii) Any written statements or submissions which they wish to submit; and
- (iv) Details of the Companion they wish to bring to the Disciplinary Hearing.

9.9 The Head of HR or their nominee shall provide a copy of such documents and information to the Chief Executive and the Investigating and Disciplinary Committee as soon as reasonably practicable thereafter.

## **10. The Disciplinary Hearing**

10.1 The procedure for the Disciplinary Hearing will be as follows:-

- (i) the Chair of the Investigating and Disciplinary Committee will explain the purpose of the Hearing and the procedure to be followed;
- (ii) the Chief Executive, or their nominee (who may include the Investigating Officer) will present the complaint and introduce evidence in support of the complaint, including the Investigation Report, documents and witness evidence either in person or in writing as previously notified;
- (iii) the Chief Officer or his Companion, and the Investigating and Disciplinary Committee and Independent Adviser, will have the opportunity to ask questions of the Chief Executive and/or their nominee, including direct questions to the witnesses;
- (iv) the Chief Officer or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
- (v) the Chief Executive, or their nominee, and the Investigating and Disciplinary Committee and the Independent Adviser will have the opportunity to ask questions of the Chief Officer and/or their Companion, including direct questions to the witnesses;
- (vi) both sides will sum-up their presentations, commencing with the Chief Executive or their nominee.

- 10.2 The Chief Officer's Companion can address the hearing, put and sum up the Chief Officer's case, make representations on behalf of the Chief Officer to any views expressed at the Disciplinary Hearing and confer with the Chief Officer during the Disciplinary Hearing. The Companion does not, however, have the right to answer questions on the Chief Officer's behalf.
- 10.3 The Disciplinary Hearing may be adjourned if the Investigating and Disciplinary Committee need to carry out any further investigations such as re-interviewing witnesses in the light of any new points which are raised at the Disciplinary Hearing. The Chief Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.
- 10.4 When the Investigating and Disciplinary Committee has heard all of the evidence submitted they will adjourn to consider what, if any, action should be taken. The range of options available to them include:-
- (i) taking no further action;
  - (ii) recommending informal resolution or other appropriate procedures be followed;
  - (iii) referring back to the Investigator for further investigation and a further report;
  - (iv) taking disciplinary action against the Chief Officer.
- 10.5 In the case of disciplinary action, this can include the following:-
- (i) a recorded or oral warning;
  - (ii) a written warning;
  - (iii) a final written warning;
  - (iv) a final written warning accompanied by:-
    - (A) suspension on half pay or no pay for a specified period; and/or
    - (B) relegation (i.e. reduction in salary) for a specified period and/or on specified terms; and/or
    - (C) demotion;
  - (v) dismissal (whether summary dismissal or on notice)(subject to completion of the notification procedure in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001); and
  - (vi) alternatively the Investigating and Disciplinary Committee may explore other alternatives such as but not limited to early



retirement, secondment, or redeployment to a more junior post where there are issues relating to capability or loss of trust and confidence in the Chief Officer in their current role.

- 10.6 For the avoidance of doubt, the actions set out in paragraph 10.5 (iv) above shall only be applied in circumstances where the Investigating and Disciplinary Committee has decided that appropriate disciplinary action would include dismissal but that action short of dismissal would be more appropriate due to mitigating or other circumstances.
- 10.7 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that period.
- 10.8 All others present at the Disciplinary Hearing (other than the Independent Adviser) will withdraw while the Investigating and Disciplinary Committee consider their decision.
- 10.9 Where practicable, the decision of the Investigating and Disciplinary Committee will be delivered orally after an adjournment. However, in order to ensure that the Investigating and Disciplinary Committee shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Chief Officer in writing as soon after the hearing as is reasonably practicable.
- 10.10 The letter will outline the decision and the action, if any, to be taken and will set out the right of appeal ("**Decision Letter**").

#### **Where the Investigating and Disciplinary Committee proposes dismissal**

- 10.11 Where the Investigating and Disciplinary Committee has determined that dismissal (whether summary or on notice) is the appropriate action in the circumstances, notice of dismissal must not be issued until an opportunity has been given to members of the executive to object to the dismissal.
- 10.12 The Investigating and Disciplinary Committee will notify the appropriate designated officer (the "**Proper Officer**") that it is proposing to the Council that the Chief Officer be dismissed and that the executive objections procedure should commence in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001.
- 10.13 The Proper Officer will notify all members of the executive of:
  - (a) the fact that the Investigating and Disciplinary Committee has determined that the Chief Officer be dismissed;
  - (b) any other particulars relevant to the dismissal;
  - (c) the period by which any objection to the dismissal is to be made by the Leader on behalf of the executive, to the Proper Officer.
- 10.14 At the end of the period of notification, the Proper Officer will either:

- (a) inform the Investigating and Disciplinary Committee that the Leader has notified that neither they nor any member of the executive has any objection to the dismissal;
- (b) inform the Investigating and Disciplinary Committee that no objections have been received from the Leader in the period; or
- (c) inform the Investigating and Disciplinary Committee that an objection or objections have been received and provide details of the objections.

10.15 The Investigating and Disciplinary Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are well founded, the Investigating and Disciplinary Committee will act accordingly which may include consideration of the impact of the executive objections on the Investigation Report and relevance to the sanction or the commissioning of further investigation by the Investigator.

10.16 Once the Investigating and Disciplinary Committee is satisfied that there are no material and well-founded objections to the proposal to dismiss, the Investigating and Disciplinary Committee will inform the Chief Officer of the decision to dismiss.

## **11. Appeal Process**

11.1 The Chief Officer shall have the right to appeal the Investigating and Disciplinary Committee's decision, to the Appeals Committee. Any appeal must be made in writing to the Chair of Appeals Committee or their nominee as set out in the Decision Letter and include the grounds of appeal ("**Notice of Appeal**").

11.2 The Appeals Committee should be made up of no fewer than three elected members and include at least one Cabinet Member.

11.3 Within five working days thereafter the Chief Officer must inform the Chair of the Appeals Committee of the following details in relation to the Notice of Appeal and provide the following information:

- (i) whether the Chief Officer is to be accompanied at the Appeal Hearing by a Companion and if so by whom;
- (ii) whether they wish to call witnesses and if so, their names and the nature of the evidence they will provide;
- (iii) copies of any additional documents or information relevant to the appeal that was not provided at the Disciplinary Hearing;

11.4 Having considered the Notice of Appeal, the Appeals Committee will determine whether the Appeal Hearing will take the form of a full re-hearing or a review of the decision taken by the Investigating and Disciplinary Committee.

- 11.5 The Appeals Committee will consider the appeal as soon as reasonably practicable after the Notice of Appeal has been received. It will invite the following persons to be present at an Appeal Hearing:
- (i) the Chief Officer, who may be accompanied by a Companion; and
  - (ii) the Chair of the Investigating and Disciplinary Committee or another members of the Committee if so nominated by the Chair, to explain the reasons for their decision and to answer any questions.
- 11.6 The procedure for convening the Appeal Hearing will follow that set out above in relation to the Disciplinary Hearing.
- 11.7 The Appeals Committee shall be advised by an independent adviser who shall not usually be the same Adviser who advised the Investigating and Disciplinary Committee.
- 11.8 The Appeals Committee may take into account any additional information which has become available in relation to the allegations or other issues under investigation following the Disciplinary Hearing.
- 11.9 The Appeals Committee may decide to uphold or dismiss the original decision of the Investigating and Disciplinary Committee or impose a different sanction within the range of penalties as set out in paragraphs 10.4 and 10.5.
- 11.10 The decision reached will be final and there is no further right of appeal.
- 11.11 If it is not practicable for the Appeals Committee to provide their decision orally, at the conclusion of the Appeal Hearing it will be notified to the Chief Officer, in writing, as soon as reasonably practicable following the Appeal Hearing.