

ITEM 16 – Appendix 1

DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

1. Scope of Procedure

- 1.1 This Procedure applies to the officer designated as the Head of the council's Paid Service and Chief Executive, the Chief Finance Officer and the Monitoring Officer (hereafter referred to as the "**Statutory Officers**").
- 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 the Statutory Officers of the Council. For the avoidance of doubt, this Procedure also applies to a breakdown in trust and confidence between the Chief Executive and the Authority.
- 1.3 These procedures are consistent with Schedule 3 of the Local Authorities (Standing Orders) (England) Regulations 2001, as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (hereafter referred to as the "**Schedule 3 Provisions**"). The procedure is based on the Model Procedure set out in the Joint Negotiating Council (JNC) Conditions of Service Handbook for Chief Executives, which is consistent with the Schedule 3 provisions.
- 1.4 The Model procedure must be used in the case of Chief Executives and the JNC Conditions of Service for Chief Officers states that they can be used in the case of all statutory officers. This procedure must be read in conjunction with the guidance notes at Appendix 5 of the JNC Conditions of Service for Chief Executives Handbook.
- 1.5 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).
- 1.6 The objective of this Procedure is to:
 - (i) encourage Statutory Officers 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.
- 1.7 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, but not to the extent that they contradict the Schedule 3 provisions. In such circumstances, both parties agree to give fair consideration to reasonable proposals to modify the Procedure accordingly.

- 1.8 This Procedure does not form part of a Statutory 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 (as amended).
- 1.9 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. Issues Requiring Investigation

- 2.1 Where an allegation is made relating to the conduct and capability of the Statutory Officer or there is some other substantial issue that requires investigation, the matter will be referred to the Investigating and Disciplinary Committee ("**Investigating and Disciplinary Committee**") for consideration.
- 2.2 The Investigating and Disciplinary Committee should:
- (i) include no fewer than five elected members;
 - (ii) should not include any member with a direct personal involvement in the complaint, either as a complainant, witness or party to the allegations under consideration;
 - (iii) should be politically balanced.
 - (iv) Include at least one member of the Council Cabinet, with not more than half of the members of the Investigating and Disciplinary Committee being members of the executive.
- 2.3 The Investigating and Disciplinary Committee shall appoint a chair person to oversee the function of the Committee ("**Chair**"). In the absence of the Chair, the powers and responsibilities of the Chair detailed in these procedures may be exercised by a substitute appointed by the Committee ("**Vice-Chair**").
- 2.4 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 Chair shall appoint a nominee, who may be an external adviser.

3. Triggering the Procedure

- 3.1 Not all complaints against a Statutory Officer should be dealt with under the formal process. Prior to triggering the procedure, the relevant decision-maker will filter out allegations against a Statutory Officer which are:
- (a) Clearly unfounded (i.e. an allegation not supported by any substantiating evidence).

- (b) Trivial, vexatious or malicious
- (c) Can be dealt with under a separate procedure

- 3.2 Triggering the procedure will be determined by the Monitoring Officer in the case of complaints against the Chief Executive or Chief Finance Officer, and the Chief Executive in the case of complaints against the Monitoring Officer.
- 3.3 The subject of the complaint will be provided with full details of the complaint before being interviewed by the officer managing the procedure.
- 3.4 The officer managing the procedure will prepare a report stating whether the complaint should be rejected for any of the reasons detailed at paragraph 3.1; or, whether it should be referred to the Investigating and Disciplinary Committee for consideration in the manner set out at Section 7 of this procedure. A copy of the report will be shared with the Chair of the IDC.
- 3.5 In the event that the complaint is referred to the Investigating and Disciplinary Committee for consideration, the Statutory Officer will be invited to make written submissions in response to the complaint.

4. Timescale

- 4.1 It is in the interests of all parties that proceedings be conducted expeditiously.
- 4.2 It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.

5. Suspension

- 5.1 Suspension will not always be appropriate as there may be alternative ways of managing the investigation.
- 5.2 However, the Investigating and Disciplinary Committee will need to consider whether it is appropriate to suspend the Statutory Officer. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the Statutory Officer might compromise the investigation or impair the efficient exercise of the Council's functions.
- 5.3 In any case, the Statutory Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.
- 5.4 The continuance of a suspension should be kept under regular review. Any suspension is to be reviewed no later than two months after having been put in place.
- 5.5 The power to suspend may be exercised by the Committee in respect of any Statutory Officer.

- 5.6 In cases of urgency, whereby allegations of misconduct by the Statutory Officer are such that their remaining presence at work poses a serious risk to the health and safety of others or the resources, information, or reputation of the authority, the power to suspend may be exercised by:
- (a) The Chair of the Investigating and Disciplinary Committee (in consultation with the Monitoring Officer) in respect of the Chief Executive or Chief Finance Officer;
 - (b) The Chair of the Investigating and Disciplinary Committee (in consultation with the Chief Executive) in respect of the Monitoring Officer.
- 5.7 Save in urgent or exceptional cases, prior to imposing suspension in any case, the Investigating and Disciplinary Committee shall inform the Statutory Officer, in writing, of the reason for the proposed suspension and the Statutory Officer shall have the opportunity to make representations before a decision is taken.
- 5.8 In urgent or exceptional cases, the Statutory Officer shall be informed of such reasons in writing and may make representations to the Chair of the Investigating and Disciplinary Committee.
- 5.9 Specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Statutory Officer's suspension, whilst avoiding any prejudice to the investigation or to the efficient exercise of the Council's functions.
- 5.10 Absence from duty during any period of suspension shall be on full pay.

6. Right to be accompanied

- 6.1 Other than in circumstances where there is an urgent requirement to suspend the Statutory Officer, they will be entitled to be accompanied at all stages by their Trade Union representative or some other person of their choice, at their own cost.

7. Considering the allegations or other issues under investigation

- 7.1 The Chair of the Investigating and Disciplinary Committee will, as soon as is practicable, inform the Statutory Officer in writing of the allegations or other issues under investigation and provide them with any evidence that the Committee is to consider and of their right to present evidence.
- 7.2 The Statutory Officer will be invited to put forward written representations and any evidence, including any evidence from witnesses they wish the Committee to consider, within one month of being notified of the allegation by the Chair. The Committee will also provide the opportunity for the Statutory Officer to make oral representations. At this initial consideration of the need to investigate further, it is not anticipated that witnesses will be called. The discretion to call witnesses lies solely with the Investigating and Disciplinary Committee.

- 7.3 The Investigating and Disciplinary Committee will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the Statutory Officer before taking further action.
- 7.4 Having considered the guidance contained within Appendix 5 of the NJC Chief Executive's Handbook, the Investigating and Disciplinary Committee will decide whether:
- (a) The issue requires no further formal action under this procedure, or
 - (b) The issue should be referred to an Independent Investigator.
- 7.5 The Investigating and Disciplinary Committee will inform the Statutory Officer of its decision without delay.

8. Appointment of an Independent Investigator

- 8.1 The Investigating and Disciplinary Committee will be responsible for appointing an individual to investigate the complaint (the "**Independent Investigator**"), providing the necessary facilities, paying the remuneration and providing all available information about the allegations.
- 8.2 The Independent Investigator should be selected from the list of suitably qualified individuals maintained by the National Joint Secretaries. The NJC operates a 'taxi-rank' system whereby the Council will be given the next three names from the list which, if acceptable to the Council, will be given to the Statutory Officer, who will select one of the three.
- 8.3 The Statutory Officer will be entitled to reject any of those listed in the case of a conflict of interest. If an appointment is not agreed nor a notification of rejection on grounds of conflict of interest made by the Statutory Officer within 14 days of the date of the names being supplied, the Council will be at liberty to select an Investigator from the names provided.

9. The Independent Investigation

- 9.1 The Independent Investigator will undertake an investigation in accordance with the ACAS Code of Practice on Discipline and Grievance, to establish the facts of the case before proceeding to a disciplinary hearing.
- 9.2 Once appointed it will be the responsibility of the Independent Investigator to investigate the issue/allegation and to prepare a report stating in their opinion whether (and if so, the extent to which) the evidence they obtained supports any allegation of misconduct or incapability, or supports a need for action under this procedure for some other substantial reason.
- 9.3 The Independent Investigator will recommend any disciplinary action (if any is appropriate) or range of actions which appear to be appropriate for the authority to take against the Statutory Officer.

- 9.4 The 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 Statutory Officer. The Statutory Officer shall fully cooperate with the Independent Investigator and shall make themselves available for such interviews and meetings and provide any relevant documentation or information as the Independent Investigator deems necessary.
- 9.5 The Statutory 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 Independent Investigator.
- 10. Receipt and consideration of the Independent Investigator's report by the Investigating and Disciplinary Committee**
- 10.1 The officer managing the procedure should ensure that the Statutory Officer receives the Independent Investigator's report simultaneously with the Investigating and Disciplinary Committee.
- 10.2 The Investigating and Disciplinary Committee will consider the report of the Independent Investigator, and give the Statutory Officer the opportunity to state their case, and to question witnesses, where relevant, before making a decision.
- 10.3 A hearing will be conducted in accordance with the ACAS Code of Practice, Appendix 5 of the NJC Chief Executive's Handbook and the Hearings Procedure detailed at paragraphs 10.4 to 10.10.
- 10.4 The Chair of the Investigating and Disciplinary Committee or their nominee shall give the Statutory Officer written notice of the date of the Hearing. The notice shall include:
- (i) the time and place of the Hearing;
 - (ii) who will be in attendance at the Hearing including the members of the Investigating and Disciplinary Committee;
 - (iii) a copy of the Investigation Report and any supporting documentation (including any witness statements where relevant) and the allegations to be considered at the Hearing;
 - (iv) confirmation that the meeting is convened under this Procedure and could result in disciplinary action;
 - (v) confirmation that the Statutory Officer may be accompanied at the Hearing by a trade union representative, an official employed by a trade union or a fellow work colleague or some other person of their choice, at their own expense ("**Companion**");
 - (vi) Confirmation that the Statutory Officer may ask any person to be present as a witness or adduce any documents or written statements in support

of their response, provided full details of such witnesses and copies of any such documents or statements are provided to the Chair of the Investigating and Disciplinary Committee, or their nominee, at least five working days before the date of the Hearing, for distribution to all parties.

- 10.5 The Statutory Officer and their Companion must make every effort to attend the meeting. Failure to attend without good reason may be treated as misconduct in itself. If the Statutory Officer fails to attend without good reason, or persistently fails to do so, the meeting of the Investigating and Disciplinary Committee may proceed in their absence and a decision may be made based on the available evidence.
- 10.6 If the Investigating and Disciplinary Committee hear the case in full, at least five working days before the date of the Hearing the Statutory Officer shall give to the Chair of the Investigating and Disciplinary Committee, 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 rely upon; and
 - (iv) Details of the Companion they wish to bring to the Hearing.
- 10.7 The procedure for the Hearing will be as follows:
- (i) the Chair of the Investigating and Disciplinary Committee will set out the complaint, explain the purpose of the Hearing and the procedure to be followed;
 - (ii) the Independent Investigator will present the complaint and introduce evidence in support of the complaint, including their report, documents and witness evidence either in person or in writing as previously notified;
 - (iii) the Statutory Officer or their Companion, and the Investigating and Disciplinary Committee and Independent Adviser, will have the opportunity to ask questions of the Independent Investigator, including direct questions to the witnesses;
 - (iv) the Statutory Officer or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
 - (v) the Independent Investigator, or their nominee, and the Investigating and Disciplinary Committee and the Independent Adviser will have the opportunity to ask questions of the Statutory Officer and/or their Companion, including direct questions to the witnesses;

- (vi) both sides will sum-up their presentations, commencing with the Independent Investigator.

- 10.8 The Statutory Officer's Companion can address the hearing, put and sum up the Statutory Officer's case, make representations on behalf of the Statutory Officer to any views expressed at the Hearing and confer with the Statutory Officer during the Hearing. The Companion does not, however, have the right to answer questions on the Statutory Officer's behalf.
- 10.9 The 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 Hearing. The Statutory Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.
- 10.10 Upon conclusion of the hearing the Investigating and Disciplinary Committee may:
 - (a) Take no further action
 - (b) Recommend informal resolution
 - (c) Refer back to the Independent Investigator for further investigation and report
 - (d) Take disciplinary action against the Statutory Officer short of dismissal
 - (e) Propose dismissal of the Statutory Officer to the Council.

11. Action short of dismissal

- 11.1 The Investigating and Disciplinary Committee may agree to impose no sanction, or to take action short of dismissal, in which case the Committee may impose an appropriate penalty from amongst the options identified in paragraph 11.2.
- 11.2 In the case of disciplinary action short of dismissal, the Investigating and Disciplinary Committee may impose the necessary penalty up to the maximum recommended by the Independent Investigator and this can include the following:
 - (i) a written warning;
 - (ii) a final written warning;
 - (iii) In exceptional circumstances, where the misconduct warrants dismissal but there are mitigating circumstances, action short of dismissal may be considered as an alternative to dismissal. This may include transferring to alternative employment or reducing the seniority or level of responsibility. This may result in a reduction in pay and/or a change to terms and conditions. If the Statutory Officer does not agree to this, then they may be dismissed with notice or with payment in lieu of notice, with the agreement of the Council and in accordance with the remainder of this procedure;

- 11.3 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.
- 11.4 The hearing shall adjourn and all others present (other than the Independent Adviser) will withdraw while the Investigating and Disciplinary Committee consider their decision.
- 11.5 Where practicable, the decision of the Investigating and Disciplinary Committee will be delivered orally after an adjournment, together with the reasons for the decision. 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 Statutory Officer in writing as soon after the Hearing as is reasonably practicable and within no more than five working days, except with the agreement of all parties.
- 11.6 A letter will be sent to the Statutory Officer which outlines the decision, the reasons for the decision and the action, if any, to be taken and will set out the rights of appeal ("**Decision Letter**").

Where the Investigating and Disciplinary Committee propose dismissal

- 11.7 The Investigating and Disciplinary Committee will notify the appropriate designated officer or their nominated deputy (the "**Proper Officer**") that it is proposing to the Council that the Statutory Officer be dismissed and that the executive objections procedure should commence in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001, as amended.
- 11.8 The Proper Officer will notify all members of the executive of:
- (a) the fact that the Investigating and Disciplinary Committee is proposing to the Council that it dismisses the Statutory Officer;
 - (b) any other particulars relevant to the dismissal;
 - (c) the period (being no less than five working days) by which any objection to the dismissal is to be made by the Leader on behalf of the Executive, to the Proper Officer.
- 11.9 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.

11.10 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 Independent Investigator.

11.11 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 Statutory Officer of the decision and put that proposal to a panel of Independent Persons (the “**Independent Panel**”) along with any necessary material or documentation it considers appropriate.

12. The Independent Panel

12.1 Where the Investigating and Disciplinary Committee is proposing dismissal, the recommendation needs to go before the Independent Panel. This is not a full re-hearing of the case and will not involve the calling of witnesses

12.2 The Independent Panel is a committee of the Council, appointed under Section 102(4) of the Local Government Act 1972, and comprises only independent persons (at least two) appointed under Section 28(7) of the Localism Act 2011. Panel members are to be offered appropriate training to undertake their role.

12.3 Where practicable, the Independent Panel should be serviced and supported by officers who have not attended meetings of the Investigating and Disciplinary Committee.

12.4 Both parties should be present or represented (the Investigating and Disciplinary Committee may be represented by the Chair or other nominated person) at the Panel meeting.

12.5 The Panel should hear the reasons for the Investigating and Disciplinary Committee’s recommendation and receive any oral representations from the Statutory Officer, in which case it should invite any response on behalf of the Investigating and Disciplinary Committee to the points made, and may ask questions of either party.

12.6 The Panel will review the Investigating and Disciplinary Committee’s recommendation for dismissal and prepare a report for Council. The report should contain a clear rationale if the Panel disagrees with the recommendation to dismiss.

13. The role of the Council

13.1 The Council will consider the proposal that the Statutory Officer should be dismissed, and must take into account:

- (a) Any advice, views or recommendations of the Independent Panel
 - (b) The conclusions of the investigations into the proposed dismissal
 - (c) Any representations from the Statutory Officer
- 13.2 Where the Independent Panel does not endorse the recommendation of the Investigating and Disciplinary Committee, the Chair of the Independent Panel should be invited to attend and present the report of the Panel and to answer questions.
- 13.3 The Statutory Officer will have the opportunity to appear before the Council and put their case to the Council before a decision is taken.
- 14. Redundancy, Permanent Ill-Health and the expiry of Fixed Term Contracts**
- 14.1 Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract where there has been no commitment to renew it, do not require the involvement of the Investigating and Disciplinary Committee, Independent Investigator or Independent Panel. Dismissals of Statutory Officers for all reasons, including those set out in this paragraph, must be approved by the Council.
- 15. Appeal Process**
- 15.1 This procedure provides for different arrangements for appeals against dismissal and appeals against action short of dismissal.

Appeals against dismissal

- 15.2 Where the Investigating and Disciplinary Committee has made a proposal to dismiss, the hearing by the Council will also fulfil the appeal function. In these circumstances:
 - (a) Where an appeal is made, the appeal will be considered by full Council following the procedure set out at 15.5 to 15.15 below; and
 - (b) where no appeal is made, full Council will consider the recommendation to dismiss by the Investigating and Disciplinary Committee and either approve that decision or otherwise determine an alternative disciplinary penalty.

Appeals against action short of dismissal

- 15.3 If the Investigating and Disciplinary Committee imposes action short of dismissal, the Statutory Officer may appeal against any such sanction to the Appeals Committee. The Appeals Committee will consider the report of the Independent Investigator and any other relevant information considered by the Investigating and Disciplinary Committee.
- 15.4 The Appeals Committee will:
 - (a) Include no fewer than five elected members;

- (b) Not include any member with a direct personal involvement in the complaint, either as a complainant, witness or party to the allegations under consideration;
 - (c) Be politically balanced;
 - (d) Include at least one member of the Council Cabinet, with not more than half of the members of the Appeals Committee being members of the executive;
 - (e) Not include members of the Investigating and Disciplinary Committee who considered any aspect of the allegation that is the subject of the appeal.
- 15.5 Any appeal must be made in writing to the Chair of the Appeals Committee or their nominee as set out in the Decision Letter within ten working days of the date of the Decision Letter including the grounds of appeal ("**Notice of Appeal**").
- 15.6 The Chair of the Appeals Committee or their nominee shall inform the Statutory Officer of the date of the Appeal Hearing and will follow the same procedure detailed at paragraph 10.4 of this procedure.
- 15.7 No fewer than five working days prior to the Appeal Hearing, the Statutory 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 Statutory 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;
 - (iii) copies of any additional documents or information relevant to the appeal that was not provided at the initial Hearing;
- 15.8 The Appeal Hearing will normally take the form of a review of the decision taken by the Investigating and Disciplinary Committee.
- 15.9 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 Statutory Officer, who may be accompanied by a Companion; and
 - (ii) the Chair of the Investigating and Disciplinary Committee or another member of the Committee if so nominated by the Chair, to explain the reasons for their decision and to answer any questions.
- 15.10 The Procedure for conducting the Appeal Hearing will follow that set out in paragraph 10.7 of this procedure in relation to the initial Hearing.
- 15.11 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.

- 15.12 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 initial Hearing.
- 15.13 The Appeals Committee may decide to uphold or dismiss the original decision or recommendation of the Investigating and Disciplinary Committee, or impose a different sanction, as long as it is not more severe than originally recommended by the Independent Investigator and within the range of penalties as set out in paragraph 11.2.
- 15.14 The decision reached will be final and there is no further right of appeal.
- 15.15 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 Statutory Officer, in writing, as soon after the Appeal Hearing as is reasonably practicable, and within no more than five working days.