



<b>Title:</b>	<b>Constitution of the Council (Part 4G: Disciplinary Procedures for Statutory Officers)</b>
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**Adopted by Full Council on 19<sup>th</sup> May 2017**



# DISCIPLINARY PROCEDURES FOR STATUTORY OFFICERS

## 1 SCOPE & OBJECTIVES

- 1.1 These procedures have been adopted by the Council to deal with any disciplinary &/or capability or similar matters arising in relation to the Statutory Officers (the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer) of the Council.
- 1.2 These procedures are based on the model procedure set out in the JNC Conditions of Service for Chief Executives (April 2008 edition) and are consistent with the provisions mandated by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015. Those Conditions also contain guidance which may be useful in operating these procedures.
- 1.3 The objectives of these procedures are to:
  - 1.3.1 encourage employees to achieve and maintain appropriate standards of behaviour;
  - 1.3.2 provide a fair and consistent method of dealing with alleged failure;
  - 1.3.3 remind managers and supervisors how disciplinary matters should be handled;
  - 1.3.4 minimise disagreements about disciplinary matters;
  - 1.3.5 reduce the need for dismissals.
- 1.4 Except where alternative arrangements have been agreed in advance between the Council and the Statutory Officer, the following procedure should apply in cases of alleged misconduct or incapability or similar matters.
- 1.5 The procedure can be modified by mutual agreement to suit the particular circumstances of the case, but not so as to contradict the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 as amended from time to time. There is an obligation on both the authority and the Statutory Officer to give fair

consideration to reasonable proposals from the other party to modify the procedure to suit local circumstances.

## 2 ISSUES REQUIRING INVESTIGATION

- 2.1 Where an allegation is made relating to the conduct or capability of a Statutory Officer or there is some other substantial issue that requires investigation, the matter will be considered by the Senior Officer Employment Committee (“the Committee”). The Committee is a standing committee appointed by the Council. The Committee shall be advised throughout by a suitable independent advisor who shall be supported by a member of the Council’s HR team.
- 2.2 The powers and responsibilities of the Chairman of the Committee set out in these procedures may be exercised by the Vice-Chairman of the Committee in the absence of the Chairman.

## 3 TIMESCALES

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

## 4 SUSPENSION

- 4.1 Suspension will not always be appropriate as there may be alternative ways of managing the investigation. Suspension is a neutral act.
- 4.2 However, the 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.

- 4.3 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.
- 4.4 The necessity for the Statutory Officer to remain suspended shall be reviewed at regular intervals .
- 4.5 This power may be exercised by:
  - 4.5.1 the Committee in respect of any Statutory Officer;
  - 4.5.2 the Chair of that Committee (in consultation with the Monitoring Officer) in respect of the Chief Executive;
  - 4.5.3 the Chair of that Committee (in consultation with the Chief Executive) in respect of the Chief Finance Officer or the Monitoring Officer.

## 5 RIGHT TO BE ACCOMPANIED

- 5.1 Other than in circumstances where there is an urgent requirement to suspend the Statutory Officer, he or she will be entitled to be accompanied (by a Trade Union representative, work colleague, legal advisor or friend) at all stages provided that the process is not substantially delayed by this, subject always to the requirements of fairness having regard to all the circumstances.

## 6 PRELIMINARY INVESTIGATION

- 6.1 The Chairman of the Committee will, as soon as practicable, inform the Statutory Officer in writing of the allegations or other issues under investigation. The date of this notification shall be the “Start Date” for the purpose of these procedures.
- 6.2 The Chairman of the Committee shall appoint an officer of the Council or an independent person to carry out a short preliminary investigation of the allegations or other issues under investigation as soon as possible to help the Committee determine whether or not to investigate them formally. It is expected that this investigation should take no more than 1 week to complete and should not prejudice any later formal investigation of the allegations.
- 6.3 The Chairman of the Committee shall determine the terms of appointment of the preliminary 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. The preliminary investigator shall be entitled to interview such 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 co-operate with the preliminary investigator and shall make themselves available for such interviews and meetings as the preliminary investigator reasonably deems necessary.

- 6.4 The Statutory Officer shall be given reasonable facilities and access to the Council's premises and systems as well as their personal files/diary etc to allow them to prepare their response on such reasonable terms as may be agreed by the Chairman of the Committee.
- 6.5 The preliminary investigator shall prepare a report following their investigation and submit this to the chair of the Committee. It is expected that this will ordinarily be within 7 working days of the Start Date. The Chairman of the Committee shall send a copy of the preliminary investigator's report and any other evidence which the Committee is to consider to the Statutory Officer or their representative within one working day of it being received.
- 6.6 The Statutory Officer shall, if they so wish, request further information and documents from the Council relating to the complaint within five working days of receipt by the Statutory Officer of the preliminary investigator's report.
- 6.7 Once the period for requesting further information has elapsed and the Council have dealt with any request for information and documents made under paragraph 6.7, the Chairman of the Committee shall summon a meeting of the Committee. It is expected that they will ordinarily meet within 20 working days of the Start Date. The Statutory Officer shall be advised in writing that they may, but are not required to:
- 6.7.1 put forward written representations &/or evidence including written evidence from witnesses which they wish the Committee to consider at this stage (in which case this shall be submitted at least 3 working days before the meeting);
  - 6.7.2 attend the meeting of the Committee;
  - 6.7.3 make oral representations to the Committee.

- 6.7.4 Be represented/accompanied (see paragraph 5.1 above)
- 6.8 The Committee will give careful consideration to the allegations or other issues, the preliminary investigator's report, supporting evidence and any representations put forward by the Statutory Officer before taking further action. The Committee will not hear any oral evidence at this meeting (other than oral representations) unless they determine otherwise.
- 6.9 The Committee shall decide whether:
- 6.9.1 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 also lift any suspension); or
- 6.9.2 the issue should proceed for a full investigation to be carried out.
- 6.10 The Committee shall inform the Statutory Officer of their decision in writing as soon as practicable.

## 7 APPOINTMENT OF INVESTIGATOR

- 7.1 The Chairman of the Committee shall appoint an officer of the Council or an independent person to carry out a full investigation of the allegations or other issues under investigation as soon as possible to help the Committee decide what action (if any) to take. This investigator may be, but need not be, the same person as carried out the preliminary investigation.
- 7.2 The Chairman of the Committee 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.

## 8 THE FULL INVESTIGATION

- 8.1 It will be the responsibility of the investigator to investigate the allegations or other issues under investigation and to prepare a report:
- 8.1.1 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

- 8.1.2 recommending any disciplinary action (if any is appropriate) or range of actions which appear to them to be appropriate for the Council to take against the Statutory Officer.

## 9 PRE-HEARING PROCEDURES

- 9.1 The Chairman of the Committee shall send a copy of the investigator's report to the Statutory Officer or their representative within two working days of it being received and shall confirm the allegations to be considered by the Committee.
- 9.2 The Statutory Officer shall, if he/she so wishes, request further information and documents from the Council relating to the complaint within 5 working days of receipt by him of the Investigator's report.
- 9.3 Once the period for requesting further information has elapsed and the Chairman of the Committee has dealt with any request for information and documents made under paragraph 9.2, the SSC Manager (HR, OD & Payments) shall give not less than ten working days written notice of the date of the Committee's disciplinary hearing. If a potential outcome of the hearing may be a recommendation of dismissal, the relevant panel membership must be adhered to (as Senior Officer Employment Committee paragraphs 2.2 and 2.13). The notice shall include:
  - 9.3.1 the time and place of the hearing;
  - 9.3.2 confirmation that the hearing is convened under this disciplinary procedure and could result in disciplinary action;
  - 9.3.3 the names of any witnesses to be called and a copy of any documents to be used in support of the complaint (other than the investigator's report which has been provided under paragraph 9.1 above);
  - 9.3.4 advice that the Statutory Officer may be accompanied at the hearing by a trade union or other representative;
  - 9.3.5 advice that the Statutory Officer may ask any other person to be present as a witness or adduce any documents or written statement in support of his/her response



so long as full details of such witnesses and copies of any such documents or statement are given to the SSC Manager (HR, OD & Payments) at least five working days before the date for the disciplinary hearing for distribution to all parties;

9.3.6 a copy of this procedure.

- 9.4 Within two working days the Statutory Officer shall either agree the date for the hearing or propose to the SSC Manager (HR, OD & Payments) a postponement of the date for the hearing for a period not exceeding ten working days. If the Statutory Officer requests a postponement, the SSC Manager (HR, OD & Payments) and the Statutory Officer (or their representative) shall seek to agree the date for the hearing. If they cannot agree the date within one working day, the Chairman of the Committee shall determine the date for the hearing.
- 9.5 The Chairman of the Committee shall then formally give notice to the Committee (and the Statutory Officer if the hearing has been postponed) of the date for the disciplinary hearing and shall submit a report to the Committee including the investigator's report.
- 9.6 At least five working days before the date for the disciplinary hearing the Statutory Officer shall give to the SSC Manager (HR, OD & Payments):
- 9.6.1 full details of any witnesses that they wish to call;
  - 9.6.2 copies of any documents which they wish to use in support of their response;
  - 9.6.3 any written statement of their response which they wish to submit;
  - 9.6.4 Whether he/she is to be represented/accompanied, and if so, by whom.
- 9.7 The SSC Manager (HR, OD & Payments) shall provide a copy of such documents and information to the Committee as soon as reasonably possible after receipt.

## 10 HEARING BY INVESTIGATING COMMITTEE

- 10.1 The Committee will give careful consideration to the investigator's report and also give the Statutory Officer or their representative the opportunity to state the Statutory Officer's case before taking further action. In the event that the Statutory Officer does not attend the meeting and is not represented, the Committee may decide to deal with the matter in their absence or to adjourn the meeting to enable the Statutory

Officer to attend &/or be represented. The meeting will only be adjourned once, other than in exceptional circumstances.

- 10.2 The Chairman of the Committee shall arrange for a written record to be taken of the hearing.
- 10.3 The procedure for the hearing will be to consider the allegations previously notified. If fresh allegations emerge during the hearing these must be subject to a separate hearing.
  - 10.3.1 The Chairman of the Committee will explain the purpose of the hearing and the procedure to be followed;
  - 10.3.2 The investigating officer or their representative will present the complaint and will introduce evidence in support of the complaint, including the investigator's report and documents and witnesses as previously notified;
  - 10.3.3 The Statutory Officer or his/her representative and then the Committee and the independent advisor will have the opportunity to ask questions of the investigating officer or his/her representative, including direct questions to the witnesses;
  - 10.3.4 The Statutory Officer or their representative will introduce evidence in support of their position, including documents and witnesses as previously notified;
  - 10.3.5 The investigating officer or his/her representative and then the Committee and the independent advisor will have the opportunity to ask questions of the Statutory Officer and/or his representative, including direct questions to the witnesses;
  - 10.3.6 Both sides will sum up their presentations; beginning with the investigating officer or his/her representative.
- 10.4 All others present (other than the independent advisor) will withdraw whilst the Committee consider their decision.
- 10.5 Having have heard all of the evidence submitted and considered any other associated factors the Committee shall decide whether to:
  - 10.5.1 take no further action;
  - 10.5.2 recommend informal resolution or other appropriate procedures;
  - 10.5.3 refer back to the investigator for further investigation and report;

- 10.6 take disciplinary action against the Statutory Officer short of dismissal; In the case of disciplinary action this shall be either:
- 10.6.1 A recorded oral warning;
  - 10.6.2 A written warning;
  - 10.6.3 A final written warning;
  - 10.6.4 Take action short of dismissal
  - 10.6.5 or
  - 10.6.6 recommend dismissal of the Statutory Officer to the Full Council.
- 10.7 The Chairman of the Committee shall inform the Statutory Officer of their decision as soon as practicable. Normally the decision will be given orally as soon as it has been taken and the final decision will be confirmed in writing at the earliest opportunity following the hearing. Exceptionally the decision may be deferred and given in writing later (but within five days of the hearing) together with any formal disciplinary warning. The letter confirming, or taking, formal action will set out the rights of appeal. If a warning is given, this should tell the Statutory Officer:
- 10.7.1 The level of improvement required;
  - 10.7.2 The date by which it is to be achieved;
  - 10.7.3 What will happen if not achieved by the specified date.

## 11 ACTION SHORT OF DISMISSAL

- 11.1 Where the decision is to take action short of dismissal the Committee will impose the necessary penalty/action. Examples of action short of dismissal are:
- 11.1.1 Suspension on half pay or no pay for a specified period;
  - 11.1.2 Relegation (i.e. a reduction in salary) for a specified period;

## 12 WHERE THE COMMITTEE PROPOSE DISMISSAL

- 12.1 Where the Committee propose the dismissal of the Statutory Officer, the Committee will inform the Proper Officer that it is proposing to the Full Council that the Statutory Officer be dismissed and that the executive objections procedure should commence.

## 13 EXECUTIVE OBJECTIONS PROCEDURE

- 13.1 The Proper Officer will notify all members of the Cabinet of:
- 13.1.1 the fact that the Committee is proposing to the Full Council that it dismisses the Statutory Officer;
  - 13.1.2 any other particulars relevant to the dismissal;
  - 13.1.3 the period (not being less than 5 working days) by which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Cabinet, to the Proper Officer.
- 13.2 The Proper Officer for this purpose shall be the Monitoring Officer (in the case of the proposed dismissal of the Chief Executive) or the Chief Executive (in the case of the proposed dismissal of the Chief Finance Officer or the Monitoring Officer).
- 13.3 At the end of the period set out in accordance with paragraph 12.1.3, the Proper Officer will inform the Committee and the Statutory Officer that either:
- 13.3.1 the Leader has notified them that neither they nor any member of the Cabinet has any objection to the dismissal;
  - 13.3.2 no objections have been received from the Leader during the period; or
  - 13.3.3 an objection or objections have been received and provide details of the objections.
- 13.4 If no objections have been notified, an extraordinary meeting of the Full Council shall be convened to consider solely this matter. The Full Council shall be presented with a suitable report from the Chairman of the Committee along with any necessary material..
- 13.5 If any objections have been notified:

- 13.5.1 The Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, then the Committee will act accordingly i.e. it will consider the impact of the executive objections and relevance to the sanction; and may commission further investigation if that is deemed necessary.
- 13.5.2 If it satisfies itself that, notwithstanding the objections, it is appropriate to dismiss, the Committee will inform the Statutory Officer of the decision. An extraordinary meeting of the Full Council shall be convened to consider solely this matter. The Full Council shall be presented with a suitable report from the Chairman of the Committee along with any necessary material..

## 14 THE ROLE OF THE FULL COUNCIL

- 14.1 The Full Council will consider any proposal from the Committee that the Statutory Officer should be dismissed following completion of the Executive Objections Procedure. The Statutory Officer will have the opportunity to put their case before the Council before a decision is taken.

## 15 APPEALS

### APPEALS AGAINST DISMISSAL

- 15.1 Where the Committee has made a proposal to dismiss, the hearing by the Full Council will also fulfil the appeal function.

### APPEALS AGAINST ACTION SHORT OF DISMISSAL

- 15.2 If the Committee takes action short of dismissal, the Statutory Officer may appeal to the Appeals Committee. The Appeals Committee will consider the report of the investigating officer and any other relevant information considered by the Committee, e.g. new information, executive objections (if relevant), outcome of any further investigations, etc. The Statutory Officer will have the opportunity to state their case.

- 15.3 The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.
- 15.4 The decision of the Appeals Committee will be final.