

## **Disciplinary Procedure for Head of Paid Service, Section 151 Officer and Monitoring Officer**

### **Background**

The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) provide a degree of protection for chief executives and certain statutory chief officers (section 151 and monitoring officers) against unwarranted political interference in their roles as Head of Paid Service, Section 151 Officer and Monitoring Officer.

These changes have been incorporated into the Council Constitution and new procedures are required to be formalised.

### **Scope**

This procedure sits alongside the Model Disciplinary Procedure and Guidance as outlined in the Joint Negotiating Committee for Local Chief Executives National Salary Framework and Conditions of Service Handbook (updated 13<sup>th</sup> October 2016) and will be used to manage the disciplinary process for the Head of Paid Service, Section 151 Officer and Monitoring Officer.

Should any cases involving allegations against any of these three officers also implicate other officers and there is one investigation, this higher level procedure will be used for all officers under investigation.

Where the procedure refers to a Hearing, the process will follow the Council's Hearing Procedure.

Democratic Services, in conjunction with HR, will be responsible for arranging all meetings/Hearings.

### **Right to be accompanied**

The JNC procedure provides that at all stages, officers have the right to be accompanied by a trade union representative or some other person of their choice at their own cost. The only exception being, if an emergency suspension needs to take place where there is a serious risk identified.

The disciplinary procedure cannot be delayed, however, due to the unavailability of representative although every effort will be made to arrange dates that are mutually convenient.

The statutory right to be accompanied applies in disciplinary hearings where decisions around disciplinary action, a disciplinary sanction or an appeal are taken. In these cases should the officer's representative be unavailable to attend we will postpone the Hearing for up to a week when the Hearing will go ahead regardless of the representative's availability.

## **Informal Resolution**

If possible, an informal resolution should be sought and the Council will pay full regard to the principles within the ACAS handbook. The advice of the Joint Secretaries may also be sought. Formal action should be a last resort.

## **Formal Procedure**

### **Suspension**

The decision to suspend the chief executive, S151 officer or monitoring officer must be considered carefully taking into account the nature of the allegations, the effect on the officer and potential reputational damage to the Council. The Assistant Director HR/OD has delegated authority to suspend in relevant circumstances in conjunction with the Leader of the Council and relevant Cabinet Member. Suspension should be reviewed by the IDC after 2 months.

### **Investigating and Disciplinary Committee – initial meeting**

As part of the procedure, an Investigating and Disciplinary Committee (IDC) is required to be set up. This committee will be politically balanced and will consist of a panel of five members, including at least one cabinet member. Members appointed to the panel should have no prior knowledge or conflicts of interest in the case/officer involved.

Prior to the initial meeting, the Council should shortlist three people (or less if three are not available) from a list of independent investigators held by the Joint Secretaries to conduct an investigation should the IDC decide that this is the appropriate way forward.

The IDC's initial role will be to inform the officer of the allegations in writing, providing any evidence that might require investigation. The officer will be invited to put forward any written representations and evidence to the meeting (this includes any written evidence from witnesses they wish to be considered at this stage). The officer will also be invited to attend the meeting to make oral representations. If they do not attend their written representations will be taken into account.

At the meeting, the IDC will consider any evidence presented by the officer, either in writing or in person, and determine if it is appropriate to call the witnesses at this stage before any decision is taken. The IDC may decide:

- no further formal action is taken, or
- there is a case to answer and an investigation is required, or
- to consider other actions (for example mediation, use of a different procedure, mutual termination etc)

If the IDC decides that there is a case to answer they will appoint an independent investigator.

They will also consider if it is appropriate to suspend the officer. If the officer has already been suspended under emergency powers, the IDC will review the

decision to determine whether or not the suspension stands. Suspension will be further reviewed by the IDC after 2 months.

The officer will be informed of the decision in writing.

## **Investigation**

The Joint Secretaries hold a list of independent investigators. Once the options of independent investigators from the list are determined suitable by the Council, the officer will be invited to select an investigator from the list (if no selection is made within 14 days of the names being supplied the Council should select an investigator from the list).

The role of the investigator will be to establish the facts and collate evidence. The investigation should remain confidential, impartial, and should be speedy and thorough.

The investigator will prepare a report to the IDC outlining:

- the facts of the case
- findings and evidence
- their opinion as to whether or not they believe that the evidence gathered supports the allegation and the need for disciplinary action to be taken
- their recommendations as to what disciplinary action they believe to be appropriate

## **IDC – Hearing**

On receipt of the investigation report, the IDC will conduct a Hearing which will:

- consider the findings, report and recommendations of the independent investigator including any new material evidence material to the allegations
- give the officer the opportunity to state their case
- question any witnesses where relevant

The IDC may decide on the following outcomes:

1. No further action should be taken – the officer should be informed and appropriate communication prepared to ensure no damage to the officer's reputation
2. The issue should be resolved informally or through another procedure
3. The case should be referred back to the investigator for further investigation – this should be only when it is absolutely necessary in order to made a decision (for example to investigate any new evidence)
4. To take action short of dismissal (ie to issue a disciplinary sanction) – the officer should be notified of this and given the right of appeal
5. To recommend to Council to dismiss the officer

Where the IDC proposes to recommend to dismiss the officer, the Leader and all members of the Cabinet should be informed and given the opportunity to object. This part of the process should be carried by the Assistant Director HROD in

conjunction with Democratic Services and any objections from the Cabinet should be made through the Leader.

The IDC will then reconvene to consider any objections and reaffirm their proposed recommendations to dismiss.

The IDC's proposed recommendations to dismiss should then be put to an Independent Panel.

The IDC will reconvene once the report from the independent panel is received to consider the recommendation to dismiss. If the recommendations to dismiss do not change, the officer will be informed of the decision at this point and given the right to appeal. This will be to full Council.

Should the IDC decide not to dismiss, other options should be considered (see above IDC outcomes).

### **Independent Panel**

If a recommendation to dismiss is made by the IDC an Independent Panel (IP) will be established comprising of three independent panel members (or at least 2) who are:

- an independent person appointed by the Council who is a local government elector in this borough
- an independent person appointed by the Council for the purpose of the Council members conduct regime under the Localism Act 2011
- an independent person appointed by another Council for the purpose of the Council members conduct regime under the Localism Act 2011

The IP will be held in accordance with the Council's Hearing Procedure and will take place at least 20 working days before the meeting of the Council. The IP will offer advice, views or recommendations to the Council at which the recommendation for dismissal will be considered. It will:

- receive the IDC recommendations and reasons – presented by the Chair of the IDC
- receive the report from the independent investigator, who will be invited to the IP to provide clarification if required
- receive oral/written representations from the officer, who will be invited to attend
- hear evidence from any witnesses
- ask questions of either party

The IP will consider all of the evidence and formulate any advice, views or recommendations it wishes to make to Council on the proposal to dismiss the officer. A report will be prepared for the IDC/Council. If they disagree with the IDC's proposals to dismiss, the report should include a clear rationale of the reasons why.

## **Council**

Where there is a proposal to dismiss the Head of Paid Service, S151 Officer or Monitoring Officer, Council must approve the dismissal before notice of dismissal is issued.

A special meeting of Council will be set up by Democratic Services and will take place at least 20 working days after the meeting of the Independent Panel. Given the thoroughness and independence of the previous stages it will not be appropriate for Council to undertake a full re-hearing of the case and the meeting will review the case, the proposal to dismiss and any other evidence/representations. This stage will also act as the officer's appeal against the proposal to dismiss. In addition:

- the officer will attend and make representation first as this will effectively be their opportunity to appeal
- the Chair of the IDC will attend and present the proposal to dismiss/reasons
- the advice, views and recommendations of the Independent Panel will be taken into consideration
- the conclusions from the investigation will be considered

Council will have three options:

- to confirm the dismissal of the officer – this should be communicated to the officer as soon as possible
- to reject the proposal to dismiss the officer, ie no sanction – this should be communicated to the officer and communications prepared to ensure as far as possible there is no damage to their reputation
- Impose a lesser sanction or refer back to the IDC to determine the lesser sanction

## **Appeals Committee**

Appeal Hearings against disciplinary action (action short of dismissal) will be heard by an Appeals Committee which will be politically balanced, include at least one cabinet member and will comprise of five three elected members who were not members of the IDC.

Its purpose is to hear the officer's representation and review the case/decision taken by the IDC, IP and consider the investigation report along with any other evidence relating to the case. They will also conduct any further investigations necessary to enable them to reach a decision.

The Panel may decide:

- to confirm the sanction given
- no sanction should be given – communications should be agreed with the officer to ensure as far as possible no damage to their reputation)
- a lesser sanction should be given

The decision of the Appeals Committee is final.