

# Section 8 - Officer Employment Procedure rules

(Standing Orders relating to Staff)

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## 4.8.1. Recruitment and Appointment

### (a) *Declarations*

(i) The Council will draw up a statement requiring any candidate for appointment as an Officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.

(ii) No candidate so related to a Councillor or an Officer will be appointed without the authority of the relevant Chief Officer or an Officer nominated by him/her.

### (b) *Seeking support for appointment*

(i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

(ii) No Councillor will seek support for any person for any appointment with the Council.

## 4.8.2. Recruitment of Head of Paid Service and Chief Officers

(i) Where the Council proposes to appoint a Chief Officer from amongst its existing officers the Executive Director of the department concerned should:

(a) Consult with the appropriate Cabinet Member(s) and prepare a report to the Employment Panel with the rationale, evidence around existing officers' suitability and why it is not considered necessary to advertise externally.

(b) If agreed, expressions of interest would be sought from relevant existing Officers outlining how the criteria for the role are met and a shortlist will be prepared.

(c) An appointment process will follow as outlined below.

(ii) If it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

(a) draw up a statement specifying:

(i) the duties of the officer concerned; and

(ii) any qualifications or qualities to be sought in the person to be appointed.

(b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

(c) make arrangements for a copy of the statement mentioned in paragraph (a)

above to be sent to any person on request.

(d) follow an appropriate recruitment process as outlined below.

#### **4.8.3. Appointment of Head of Paid Service**

(a) The full Council must confirm the appointment of the Head of Paid Service following the recommendation of such an appointment by a sub-group of the Employment Panel with the Leader of the Council as a full member of the Appointment Panel.

(b) An offer of an appointment as Head of Paid Service must not be made by the Council until:

(i) The Council has notified the Director of People and Inclusion of the name of the person to whom the Council wishes to make the offer and of any other particulars which the Council considers are relevant to the appointment;

(ii) The Director of People and Inclusion has notified (for information) every member of Cabinet of:

(a) the name of the person to whom the Council wishes to make the offer;

(b) any other particulars relevant to the appointment which the Council has notified to the Director of People and Inclusion;

(iii) and the Director of People and Inclusion seeks agreement on the appointment from a meeting of Full Council.

#### **4.8.4. Appointment of Chief Officers and Deputy Chief Officers**

(a) A sub-group of the Employment Panel of the Council will appoint Chief Officers and Deputy Chief Officers, with the relevant Member(s) of the Cabinet as full member(s) of the Appointment Panel for these purposes.

(b) The Chief Officer and Deputy Chief Officers posts subject to Rule 4 of the Officer Employment Rules are as defined in Section 2 of the Local Government and Housing Act 1989.

#### **4.8.5. Other Appointments**

##### *(a) Officers below Deputy Chief Officer*

The appointment of officers below Deputy Chief Officer (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.

##### *(b) Assistants to political groups*

The appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

#### **4.8.6. Disciplinary Action - Head of Paid Service, Monitoring Officer and Chief Finance Officer**

(To be considered in conjunction with the Disciplinary Procedure for Head of Paid Service, Section 151 Officer and Monitoring Officer - Appendix A)

(1) The Head of Paid Service, Monitoring Officer and S151-Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and will be reviewed after two months.

(2) The Council must approve the dismissal or other disciplinary action in relation to the Head of Paid Service, the Monitoring Officer or the S151-Chief Finance Officer following the recommendation of dismissal or disciplinary action by the Employment Panel (the Investigating and Disciplinary Committee - IDC) and an Independent Panel.

(3) The requirement to set up an Independent Panel is in accordance with the Local Authorities (Standing Orders) England Regulations 2015, the requirements of which are set out in Schedule 3 including who can sit on the Panel.

(d) The IDC will set up an initial meeting to inform the officer of the allegation, hear any representations and evidence from the officer and determine whether or not there is a case to answer. If it is determined that there is a case to answer an independent investigator will be appointed.

(e) Following receipt of the investigation report the IDC will conduct a Hearing to consider the findings/ recommendations, hear the officer's case and question any witnesses.

(f) If a disciplinary sanction/dismissal is proposed the Panel will notify the Director of People and Inclusion who will, through Democratic Services, notify every Member of the Cabinet of the name of the person and relevant details of the sanction or dismissal and give the opportunity for them to object/period of time to do this.

(g) Objections should be made through the Leader on behalf of the Cabinet to the Director of People and Inclusion; and either:-

(i) the Leader has, within the period specified in the notice under Rule 6(d)(ii)(c), notified the Panel that neither he/she nor any other Member of the Cabinet has any objection to the making of the offer;

(ii) the Director of People and Inclusion has notified the Panel that no objection was received within that period from the Leader; or

(iii) the Panel is satisfied that any objection received from the Leader/Cabinet within that period is not material or is not well founded.

(h) The IDC's proposed decision will then be put to an Independent Panel:

(4) The Independent Panel will be established comprising of two or more independent panel members:

- an independent person appointed by the Council who is a local government elector
- any other independent person appointed by the Council
- an independent person who has been appointed by another Council
- The Panel will:
  - hear the evidence of the investigator
  - hear oral representation from the officer
  - hear evidence from any witnesses
  - hear the response/proposals from the IDC

The Panel will consider all of the evidence and review the proposed decision from the IDC. A report will be prepared by the Independent Panel for Council with a clear recommendation as to whether or not they feel the officer should receive a disciplinary sanction or be dismissed. If they disagree with the IDC's proposals to issue a disciplinary sanction or dismiss, the report should include a clear rationale of the reasons why.

If the Panel are in agreement with the IDC's proposals the officer should be informed of this in writing and given the right of appeal.

(5) Under the 2015 regulations any decision to issue a disciplinary sanction or dismiss will be taken by full Council, who will take into account any advice, views or recommendations of the Independent Panel.

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.

At the meeting, which will also act as the officer's appeal if they have appealed, the case will be reviewed (a full re-hearing will not take place).

In addition:

- the officer will make representation first as this will effectively be their opportunity to appeal
- the advice, views and recommendations of the Independent Panel will be taken into consideration
- the conclusions from the investigation will be considered

Council may decide:

- to remove the disciplinary sanction or determine a lesser sanction
- to overturn the dismissal and award a lesser sanction (formal warning or action short of dismissal)
- to confirm the disciplinary sanction or dismissal of the officer

Decisions must be approved by way of a vote.

**4.8.7. Disciplinary Action - Chief Officers and Deputy Chief Officers (other than the Head of Paid Service, Monitoring Officer and Chief Finance Officer)**

(a) The Employment Panel shall approve the dismissal of or other disciplinary action in relation to Chief Officers and Deputy Chief Officers (other than the Head of Paid Service, Monitoring Officer or the Chief Finance Officer).

(b) Notice of the dismissal of the Chief Officer or Deputy Chief Officer (other than the Head of Paid Service, Monitoring Officer or the Chief Finance Officer) must not be given by the Director of People and Inclusion until:

(i) the Panel has notified the Director of People and Inclusion of the person who the Panel wishes to dismiss and other particulars which the Panel considers are relevant to the dismissal;

(ii) the Director of People and Inclusion has notified every Member of the Cabinet of;

(a) the name of the person who the Panel wishes to dismiss;

(b) any other particulars relevant to the dismissal which the Panel has notified to the Director of People and Inclusion; and

(iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the Director of People and Inclusion and; Either:

(i) the Leader has, within the period specified in the notice under Rule 7(b)(ii)(c), notified the Panel that neither he/she nor any other Member of the Cabinet has any objection to the dismissal;

(ii) the Director of People and Inclusion has notified the Panel that no objection was received by him within that period from the Leader; or

(iii) the Panel is satisfied that any objection received from the Leader/Cabinet within that period is not material or is not well founded.

**4.8.8. Disciplinary Action - Other Officers**

Other than hearing Appeals against dismissal, Councillors shall not be involved in the dismissal of or disciplinary action in relation to any Officer below Deputy Chief Officer except where such involvement is necessary for any investigation or enquiry into alleged misconduct and also through the Council's Disciplinary, Capability and Related Procedures as adopted from time to time, which may allow a right of appeal to Members in respect of such action.

## **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 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 Deputy Chief Executive 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 make 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 out by the Deputy Chief Executive 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.

least one cabinet member and will comprise of five 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.