

Section 8 - Officer Employment Procedure Rules

(Standing Orders relating to Staff)

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.

When appointing Chief Officers and Deputy Chief Officers on an interim basis, the recruitment process will be undertaken in conjunction with the appropriate Cabinet Portfolio holder or their appointed deputy and in consultation with the Cabinet Portfolio holder for Human Resources,

For interim Statutory Chief Officers (The Head of Paid Service, Section 151 Officer or Monitoring Officer) a full Appointment Panel will meet to agree the appointment, which must be ratified by full Council.

Any extensions to interim arrangements should be agreed with the appropriate Cabinet Member.

Any proposal to move from a temporary to a permanent appointment would be subject to assessment via a sub-group of the Employment Panel (as per normal permanent recruitment).

(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) Where the matter cannot be resolved informally, an initial filtering will take place to determine if the issue requires investigating.
- (2) In some circumstances, the Council may consider that in order to clarify whether there is any substance to the allegation or complaint, preliminary initial inquiries should be undertaken before the Model Procedure is invoked. This would be particularly appropriate where the matter has been raised under another procedure such as a grievance and is not itself a disciplinary complaint. To enable this process to happen the Council should nominate an officer who would most appropriately be the Council's Monitoring Officer.
- (3) Once it is determined that an investigation is required, the Head of Paid Service, Monitoring Officer and S151-Chief Finance Officer may be suspended whilst the investigation takes place into alleged misconduct. That suspension will be on full pay and will be reviewed after two months and periodically thereafter as appropriate. Pay will not be reduced during the period of suspension, for example if the period of suspension coincides with one of sickness absence, and their entitlement to full pay under the sickness scheme reduces or expires the officer(s) will continue to receive full pay.
- (4) 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.

- The IDC will have delegated powers to exercise the functions of the IDC as set out in the model procedure. They have an important role in deciding whether any allegations against the officer meet a 'threshold test' (see procedure in Appendix A) which justifies further investigation, and then considering the report of an independent investigator.
- 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.
- Following receipt of the investigation report the IDC will conduct a Hearing to consider the findings/ recommendations of the independent investigator, hear the officer's case and question any witnesses.
- If a disciplinary sanction/dismissal is recommended 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 recommended to be dismissed and relevant details of the sanction or dismissal.

The IDC's recommendation will then be put to an Independent Panel.

- (5) 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 the response/recommendations from the IDC
- ask questions of all parties

The Panel will consider all of the evidence and review the recommendations 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 recommendations 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 recommendations the officer should be informed of this in writing and given the right of appeal.

- (6) 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 convened 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)

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).

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.

4.8.9 Special Severance Payments

- (1) Any Special Severance Payments (SSPs) made in excess of £100k require approval by full Council.
- (2) Any and all payments of £20k and over in value upto £100k require approval from the Monitoring Officer, Section 151 Officer and Chief Executive and Leader, in consultation with the Chair of Overview and Scrutiny. Any payments under £20k can be approved by the Monitoring Officer.
- (3) Where the proposed payment is to the Head of Paid Service, to avoid a conflict of interest, the Employment Panel will oversee this and will appoint an independent panel to approve the payment to the Chief Executive:
 - This panel must comprise of 3 independent persons (or at least 2).
 - The Independent Panel will make recommendations to the Employment Panel and the decision will, ultimately be approved by Council

Accountability:	Approvals:
Under £20,000 <i>Scheme of Delegation</i>	Monitoring Officer
£20,000 - £99,999	Chief Executive Leader of the Council S151 officer Monitoring officer

	(in consultation with the Chair of Overview and Scrutiny)
£100,000+	<p>Chief Executive</p> <p>Leader of the Council</p> <p>S151 officer</p> <p>Monitoring officer</p> <p>Full Council</p>
Any Payment to the Chief Executive	<p>A panel of at least 2 independent people.</p> <p>Employment Panel</p> <p>Full Council</p>

Appendix A

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.

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 7 September 2022) 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.

The Council's usual declaration of interest arrangements apply throughout this process and officers/members involved in the process should not engage with other staff/the public in discussions of the case. Such actions will not only create adverse publicity for the council and the officers but may create conflicts of interest and could limit the role that those officers/councillors can then take as the case progresses.

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. Officers may also be accompanied in IDC meetings.

Given the statutory requirement for an Independent Panel to meet to consider a recommendation for dismissal, it would also be appropriate, where the officer is attending that meeting, for them to be accompanied.

In these cases we will attempt to arrange dates suitable for all parties however, 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.

Fair notice will be given as far as possible to enable the officer adequate time to prepare an initial response to the allegations or issues under investigation

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. Alternative resolution methods, for example mediation, should be considered. Formal action should be a last resort and only take place where the matter cannot be resolved informally.

An initial filtering will take place to determine if the issue requires investigating. In some circumstances, the Council may consider that in order to clarify whether there is any substance to the allegation or complaint, preliminary initial inquiries should be undertaken before the Model Procedure is invoked. This would be particularly appropriate where the matter has been raised under another procedure such as a grievance and is not itself a disciplinary complaint. To enable this process to happen the Council should nominate an officer who would most appropriately be the Council's Monitoring Officer.

Formal Procedure

Suspension

The decision to suspend the Chief Executive, S151 Officer or Monitoring Officer must be considered carefully by the IDC taking into account the nature of the allegations, the effect on the officer and potential reputational damage to the Council.

On rare occasions circumstances could arise which require an immediate suspension before the IDC has a reasonable opportunity to meet, for example if the allegations of misconduct are such that officer's remaining presence at work poses a serious danger to the health and safety of others or a serious risk to the resources, confidential information or reputation of the authority. It may also be necessary if the continuing presence at work of the officer might compromise the investigation or impair the efficient exercise of the council's functions.

In these cases emergency suspension may be considered, subject to the suspension being reviewed by the IDC at the earliest opportunity.

Ordinarily, the council's Chief Executive/Monitoring Officer will make the decision for an emergency suspension to take place after consultation with the Chair of the IDC.

However, should the Chief Executive and/or Monitoring Officer be implicated in disciplinary investigations at the same time, the Executive Director (Strategy & Transformation) in consultation with the Director of People & Inclusion 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 and periodically thereafter as appropriate.

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, who will have delegated powers to exercise the functions of the IDC as laid down in the model procedure, has an important role in deciding whether any allegations against the officer meet a 'threshold test' which justifies further investigation, and then considering the report of an independent investigator.

Cases will vary in complexity but the threshold test for the IDC in deciding whether to appoint an Independent Investigator is to consider the allegation or matter and assess whether:

- if it were to be proved **through an independent investigation**, it would be such as to lead to dismissal or other action which would be recorded on the chief executive's personal file and
- there is evidence in support of the allegation sufficient to require further investigation

It is intended that this initial assessment as to whether the 'threshold test' has been met is conducted as expeditiously as possible. Should the test be met the IDC will arrange for the appointment of an Independent Investigator.

The panel will be politically balanced and will consist of a panel of at most 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. The Council's usual arrangements for declarations of interest will apply throughout the process.

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 (within the realms of other relevant procedures) 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 at the earliest opportunity. Suspension will be further reviewed by the IDC after 2 months and periodically thereafter as appropriate. Pay will not be reduced during the period of suspension, for example if the period of suspension coincides with one of sickness absence, and their entitlement to full pay under the sickness scheme reduces or expires the officer(s) will continue to receive full pay.

The officer will be informed of the decision in writing.

Investigation

The Joint Secretaries hold a list of independent investigators who have been selected for their suitability and experience for this work and who have received training. 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 or there is more than one officer under investigation and agreement cannot be reached, the Council will select an investigator from the list).

The IDC will be responsible for deciding the terms of reference for the investigation and for providing this and other information to the Independent Investigator. It will also be in a position to discuss timescales for the investigation.

The Independent Investigator may approach the IDC at any point to seek further guidance or clarification on issues which emerge during the investigation. 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.

They should operate on the basis of an independent investigation using his / her powers

to access information and interview witnesses.

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

Before finalising the report, the Independent Investigator should consider whether they should check the factual content of the report with the officers and other witnesses as appropriate.

The Council will designate an officer to administer the arrangements. The administering officer will ensure that the officer receives the Independent Investigator's report simultaneously with the IDC.

IDC – Hearing

On receipt of the investigation report, the IDC will conduct a Hearing at which the Independent Investigator will present his / her report and both the Council and the officer will have the right to question them and to call and question each other's witnesses. The IDC hearing should be conducted in accordance with the Council's Hearing Procedure.

The Independent Investigator must recommend any disciplinary action that appears to be appropriate. At this stage clarity is important and a clear reasoned recommendation should be given. The IDC 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 recommends to dismiss the officer, the Leader and all members of the Cabinet should be informed. This part of the process should be carried out by the

Executive Director (Strategy & Transformation) in consultation with the Director of People & Inclusion and in conjunction with Democratic Services.

The IDC will inform the officer of the decision and put that recommendation to the Independent Panel along with the Independent Investigator's report and any other necessary material.

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

Appropriate training devised by the JNC is available for panel members if required.

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 and the timings of the meetings should be set far enough apart so as to ensure that the Panel can perform its role thoroughly, including to produce a report which can be circulated to council members five working days before the Council meeting.

The Panel is **not** a full re-hearing of the case and will not involve the calling of witnesses.

The Panel will be supported by officers who have not attended meetings of the IDC and the agenda/papers agreed by both the Council and the officer.

Both parties should be present or represented (the IDC might be represented by its Chair or other nominated person) at the Panel meeting.

The Panel should review the IDC's recommendation for dismissal and prepare a report for Council. 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 and invite any response on behalf of the IDC to the points made
- 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 concerning the dismissal of the officer. A report will be prepared for the IDC / Council. If the Panel disagree with the IDC's recommendations to dismiss, the report should include a clear rationale of the reasons why and the Chair of the Independent Panel should be invited to attend the meeting of the IDC to present the report and answer questions.

Council

As the Standing Orders Regulations require that the council approves the recommendation for dismissal before notice of dismissal is issued, there might be concern about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss.

The Model Procedure upon which this procedure is based envisages that the principal decision to recommend dismissal is taken by the IDC and the council meeting fulfils the necessary requirement for an additional level of decision making necessary to demonstrate an effective appeal.

Where there is a recommendation 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.

The Council meeting serves two purposes:

- To consider whether to approve the IDC recommendation to dismiss
- To act as the appeal mechanism against a dismissal decision

In view of the need for the council to ensure a fair decision-making process, it will need to consider whether members already involved in these, or other, ways should take part in the council meeting having regard to whether their participation in the meeting would give rise to unlawful decision-making or maladministration, due to predetermination or bias. Therefore Members with previous involvement should not take part in the Council deliberations.

This involvement might be as:

- Complainant
- Member of the IDC
- Witness in the investigation and / or hearing
- Member offering public comments on the ongoing disciplinary process

Disciplinary proceedings are usually conducted in meetings from which the public have

been excluded, and this practice is commended for council meetings considering the exercise of the function to dismiss the Head of Paid Service, Monitoring Officer or S151 Officer.

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. Instead, consideration by the council will take the form of a review of the case and the recommendation to dismiss, and any advice, views or recommendations of the Independent Panel and the meeting will review the case, the recommendations to dismiss and any other evidence/representations. This stage will also act as the officer's appeal against the recommendation 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 recommendation 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 recommendation 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 sanctions short of dismissal imposed by the IDC will be heard by an Appeals Committee which will be politically balanced, include at least one cabinet member and will comprise of at most five elected members who were not members of the IDC.

Its purpose is to hear the officer's representation and review the case (the case and disciplinary sanctions applied by the IDC, the IP findings and the investigation report along with any other evidence relating to the case for example new information, executive objections (if relevant), outcome of any further investigation, etc.

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.