



## HR Procedures

Disciplinary and Dismissal Procedures for the roles of the Chief Executive, Monitoring Officer and Section 151/~~Chief Finance~~ Officer



Human Resources

# Disciplinary and Dismissal Procedures for the roles of the Chief Executive, Monitoring Officer and Section 151/~~Chief Finance~~ Officer

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Annex 1 (Flowchart)

## 1. Summary and purpose of the procedures

- 1.1 These procedures apply to any disciplinary action to be taken against the Council's Chief Executive (acting as head of the Council's paid service), Monitoring Officer and ~~Chief Finance Officer~~ (Section 151 Officer) only (referred to collectively as the officers or individually as the officer as appropriate). These are all statutory officer roles and because of their statutory responsibilities and duties, the officers are afforded statutory protection over and above the rights that other members of staff are entitled to.
- 1.2 'Disciplinary action' for the purposes of these procedures means any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Council, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract.
- 1.3 These procedures put into practice the statutory rules set out in the Local Authorities (Standing Orders) (England) Regulations 2001 (the 2001 Regulations) and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the 2015 Regulations). The 2015 Regulations, which came into force on 11 May 2015, amend the 2001 by removing the requirement for the Council to appoint a 'designated independent person' before taking disciplinary action against the officers.
- 1.4 Instead, the decision to dismiss the officers has to be taken by the full council but not before full council has considered, amongst other things, any advice, views or recommendations from a 'panel' (comprising of 'independent persons' appointed in accordance with certain statutory rules). On 22 June 2015, the full council established the Dismissal Advisory Panel (DAP) and approved changes to standing orders to meet the requirements of the 2015 Regulations.
- 1.5 Subject to compliance with the statutory rules, these procedures should be read in conjunction with the Joint Negotiating Committee (JNC) Conditions of Service Handbook for Chief Executives and the JNC Conditions of Service Handbook for Chief Officers as well as other standards, rules, codes and policies of the Council relating to the performance, conduct and behaviour of the officers.
- 1.6 In outline, these procedures confirm that allegations or complaints likely to result in disciplinary action will be reported to the Council's General Purposes Committee (GPC). The GPC will act as the Council's investigation and disciplinary committee and will consider whether there is a case to answer, whether an investigation is necessary, whether to suspend the officer and whether to dismiss the allegation or take action short of dismissal or recommend dismissal. If dismissal is recommended all members of the Cabinet will be consulted. If there is no objection to the GPC's recommendation or, notwithstanding an objection the recommendation is reaffirmed, the advice, views and recommendations of the DAP will be sought. Thereafter, the full council will consider whether to approve a recommendation to dismiss the officer. The process is illustrated using a flowchart at Annex 1.
- 1.7 These procedures replace existing rules and reflect the law and the practice of the Council as at December 2015 and may be amended if the law or good practice changes or in the exercise of the Council's discretion.

## 2. Initial consideration of allegations or complaints of misconduct

2.1 These procedures apply to any disciplinary action to be taken against the officers. This includes allegations or complaints relating to conduct, capability or some other substantial issue. Allegations will initially be considered by the ~~Director-Head~~ of HR. In respect of the Chief Executive, the ~~Director-Head~~ of HR will consult the Monitoring Officer and the Chair of the GPC. In respect of the Monitoring Officer or the Chief Finance Officer, the ~~Director-Head~~ of HR will consult the relevant line manager and the Chief Executive.

2.2 It may be necessary to suspend the officer if an allegation is such that if proven it would amount to gross misconduct and may also be necessary in other cases if the continuing presence at work of the officer might compromise the investigation or impair the efficient exercise of the Council's functions. The Head of HR, in consultation as set out in 2.1, will have delegated authority to suspend the officer. Suspensions should be reviewed after a period of two months as recommended by the JNC Handbook.

## 3. The role of the GPC

3.1 If the ~~Director-Head~~ of HR considers that there may be a case to answer, he/she will report the allegation to the GPC. The GPC will consider whether there is a case to answer; whether an investigation is necessary and whether to suspend the officer. The GPC will be advised by the ~~Director-Head~~ of HR and, in respect of the Monitoring Officer or ~~Chief Finance Officer~~ S151 Officer, may also consult the relevant line manager or the Chief Executive. This will be a paper based consideration and not a hearing. The GPC will provide written reasons for its decision.

3.2 If the GPC decides there is a case to answer and decides to suspend the officer, it will be on full pay and if the suspension lasts longer than two months from the date it took effect, it will be reviewed by the GPC.

3.3 If the GPC decides there is a case to answer, the presumption will be that an investigation is necessary.

3.4 The GPC will either itself appoint a person to investigate the allegation or authorise the ~~Director-Head~~ of HR to do so. If an officer of the Council is appointed, he/she must be at least as senior as the officer being investigated. Alternatively, an external person may be appointed to investigate. In the case of the Chief Executive, an external person will always be required as no other employee is sufficiently senior.

3.5 Having regard to the nature of the role of the officer, the subject matter of the allegations, the need to ensure that the person appointed has the requisite expertise and the interests of fairness, careful consideration must be given to appointing the right person to investigate.

3.6 The terms and scope of the investigation will be set having regard to the principles of fairness, reasonableness and proportionality.

3.7 The investigation process will involve putting the particulars of the allegations to the officer and giving him/her the opportunity to respond. Other than in exceptional circumstances, the officer will be invited to attend an investigation

meeting at which the officer may be accompanied by a trade union representative or a colleague.

- 3.8 As soon as practicable after the investigation has been concluded and the investigation report has been finalised, the DirectorHead of HR will report the outcome to the GPC. At this stage of the process, the GPC's consideration of the allegations will take the form of a hearing. The officer will have the opportunity to make written representations in advance of the hearing and to make oral representations at the hearing. The officer may be accompanied by a trade union representative or a colleague.
- 3.9 The GPC will decide whether to dismiss the allegation or take action short of dismissal or recommend dismissal. The GPC will provide written reasons for its decision.
- 3.10 If the GPC recommends dismissal, the GPC will consider whether to suspend the officer at this stage or, if appropriate, whether any period of suspension should be extended.

#### **4. Notification to Cabinet**

- 4.1 If the GPC recommends dismissal, the DirectorHead of HR will notify every member of the Cabinet the name of officer whom it is intended to dismiss; any other particulars relevant to the dismissal and the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the DirectorHead of HR. If the Cabinet does not object to the proposed dismissal, the proposal will be reported to the DAP (see section 5 below).
- 4.2 If the Cabinet, or any member of the Cabinet does object, the Leader must, within the period specified in the notice, notify the DirectorHead of HR of any objection.
- 4.3 Any objection will be reported to the GPC who will reconsider its decision in the light of the objection. If the GPC is satisfied that the objection is material or is well founded, the GPC will decide whether to dismiss the allegation, take action short of dismissal or take such other action as it thinks is necessary to address the objection.
- 4.4 If the GPC is satisfied that the objection is not material or is not well founded or that the objection has been addressed, the GPC may reaffirm its decision to recommend dismissal. The GPC will provide written reasons for its decision. This will be a paper based consideration and not a hearing.

#### **5. The role of the DAP**

- 5.1 If the GPC's decision to recommend dismissal is reaffirmed, or in the event that there are no objections, the proposal will be considered by the DAP.
- 5.2 The DAP is a committee of the Council appointed under s102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of the officers. The DAP is therefore an advisory and not a decision making body. It will consist of 3 independent persons appointed to the DAP at least 20 working days before a meeting of full council at which a recommendation to dismiss an officer is going to be considered.

- 5.3 The DAP's consideration of the dismissal proposal will usually be based on the information considered by the GPC and will not be a hearing. The officer or his/her representative will, however, have the opportunity to make written representations in advance of the DAP's meeting and/or to make oral representations at the meeting at which the officer may be accompanied by a trade union representative or a colleague.
- 5.4 The DAP may also request advice from relevant specialists to inform its consideration of the dismissal proposal.
- 5.5 The DAP will set out its advice, views and recommendations to the full council in writing.

## **6. The meeting of full council**

- 6.1 The next and final stage of the dismissal procedure is for members to vote at a meeting of the full council whether or not to approve the dismissal.
- 6.2 Before taking a vote, according to the 2015 Regulations, the full council must take into account, in particular:
  - 6.2.1 any advice, views or recommendations of the Panel;
  - 6.2.2 the conclusions of any investigation into the proposed dismissal; and
  - 6.2.3 any representations from the officer.
- 6.3 The officer will have the right to make written representations in advance of the meeting of full council and to attend the meeting, accompanied by a trade union representative or a colleague, to make oral representations.

## **7. Appeal**

- 7.1 If the full council votes to approve the dismissal, there is no further internal right of appeal as the decision of full council constitutes a review of the GPC's decision and is final.

## **8. General information**

- 8.1 Nothing in these procedures shall prevent the Council from dealing with minor allegations or complaints informally if it is appropriate to do so in all the circumstances of the case. Similarly, if there are substantial mitigating circumstances justifying it, the Council may also deal with allegations or complaints informally.
- 8.2 Further or alternatively, and without prejudice to the legal rights and obligations of the parties, the officer and the Council may agree that conciliation or some other form of dispute resolution procedure should be pursued instead of these procedures.
- 8.3 Any informal resolution of an allegation or complaint should, if appropriate, make clear what specific changes in behaviour and/or performance are expected and within what timescales.

8.4 Unless, exceptionally, it would be in the public interest to do otherwise, confidentiality will be maintained throughout the process.