



## **Employment Policy Statement**

**Policy Title:**           **Disciplinary Procedure for the Chief Executive, Chief Finance Officer and Monitoring Officer**

**Date:**                   **January 2016**

**Approved:**

### **Policy Statement**

Local authority Chief Executives and some statutory officers are protected under specific regulations that make distinctive provisions for certain protections to be in place in the event of needing to hold a disciplinary hearing for these officers. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 aim to protect the Chief Executive and the two principal statutory officers from unwarranted political inference. This policy sets the procedure to be used for disciplining such officers.

### **Scope**

This policy applies to:

- The Chief Executive
- Chief Finance Officer (Section 151 Officer)
- Monitoring Officer

The term protected officer is used throughout this policy to refer to the above three officers.

### **Legislation**

Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

Localism Act 2011

Local Authorities (Standing Orders) (England) Regulations 2001.

Local Government and Housing Act 1989.

## **Content**

1. Issues requiring investigations
2. Structures to manage the procedures
3. Suspension
4. Right to be accompanied
5. Considering the allegations or issues under investigations
  - 5.1 Conducting the Investigating & Disciplinary Committee (IDC) investigation
  - 5.2 Treatment of witness evidence
  - 5.3 Conflicts of interest
  - 5.4 Maintaining the fairness and integrity of the procedure
  - 5.5 Ill-health - medical advice
  - 5.6 Performance
6. The Independent Panel investigation
7. Report(s) to Full Council
8. Full Council decision on dismissal
9. Appeal against dismissal

### Appendices;

1. Examples of misconduct
2. Mutual termination of the contract
3. Policy Flowchart

## **Procedure**

### **1. Issues requiring investigations**

- 1.1 Where an allegation is made relating to the conduct or capability of a protected officer or there is some other substantial issue that requires investigation and where this may potentially lead to dismissal, the matter will be considered as set out below by the Investigation & Disciplinary Committee (IDC) and an Independent Panel prior to final decision by Full Council if a recommendation to dismiss has been made. This includes situations of significant sickness absence where the next stage may be termination of employment (other than formal ill health retirements).

- 1.2 All other conduct, capability, sickness absence or other substantial issues that may require investigation, but where the outcome is potentially a Warning or Caution, would be considered under the relevant procedure for wider staff (i.e. the Disciplinary & Contract Termination Procedure, Capability Procedure or Absence Management Policy).
- 1.3 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require that no disciplinary action that could potentially lead to dismissal can be taken against a protected officer other than in accordance with these regulations.
- 1.4 The above excludes redundancies, efficiency of the service terminations, ill health retirements or the expiry of a fixed term contracts.
- 1.5 Allegations and complaints that are directed at the Chief Executive, but are actually complaints about a particular service should be dealt with via the Council's Complaints Procedure. If the matter is a grievance from a member of staff directed at a protected officer this should be dealt with via the Grievance Procedure.
- 1.6 Issues around a protected officer's performance should be initially identified via the appraisal system and only if performance continues to be poor should disciplinary action be considered. Appendix 1 contains examples of actions which might be construed as misconduct and which might attract a warning, disciplinary sanctions or dismissal.

## **2. Structures to manage the procedures**

- 2.1 The Council will set up an IDC to investigate matters that may potentially lead to the dismissal of a protected officer as described in section 1 above. The IDC must be politically balanced comprising of five members, at least one member must be a member of the Cabinet, and two substitute members.
- 2.2 The IDC will appoint an investigating officer to investigate the matters concerned. For either of the statutory officers this may be the Chief Executive. For the Chief Executive this would be a suitable external person.
- 2.3 In addition to the IDC the Council will set up an Independent Panel. This must consist of at least two Independent Persons who accept an invitation from the authority to be on the Independent Panel. An Independent Person is someone who has been appointed as an Independent Person (under section 28[7] of the Localism Act 2011). The authority must ensure the Independent Panel is in place at least 20 working days before the Full Council meeting at which the decision to dismiss could be taken. When appointing Independent Persons it must do so in the following order for those that accept the invitation:
  - an Independent Person appointed by the authority and who is an elector in the authority's area
  - any other Independent Person who has been appointed by the authority

- an Independent Person who has been appointed by another authority or authorities
- 2.4 The Independent Persons will attend and participate in the meetings of the IDC but cannot vote. If they do not support the appointment of the chosen investigating officer they should make a statement confirming this to Full Council.

### **3. Suspension**

- 3.1 Suspension to investigate an allegation or a serious issue is not a disciplinary action in itself. The suspension of the Chief Executive in particular could however receive immediate media attention with potentially damaging consequences for the Council and the Chief Executive.
- 3.2 The IDC is responsible for suspending a protected officer and it will need to consider whether this is appropriate. It may be necessary to suspend if the continuing presence of the protected officer might compromise the investigation or impair the efficient exercise of the Council's functions.
- 3.3 The Chairman of the Council or in his absence, the Vice Chairman, has the power to suspend the Chief Executive in an emergency whereby his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Council. The Chief Executive can suspend other protected officers in similar circumstances. All other suspensions should be dealt with by the IDC.
- 3.4 In any case, the protected officer shall be informed of the reasons for the suspension. The reasons for his or her suspension should be put in writing within 5 working days of the decision being made.
- 3.5 Suspension will be on normal full pay except where the protected officer is receiving less than full pay (or no pay) under his or her contract of employment in which case this would apply.

### **4. Right to be accompanied**

- 4.1 Other than in circumstances where there is an urgent requirement to suspend the protected officer he/she will be entitled to be accompanied at all formal stages of this procedure by a trade union representative or workplace colleague. The right to be accompanied must be confirmed in writing to the protected officer.
- 4.2 In line with the provisions of the Employment Relations Act 2004 the representative may address hearings in order to put the protected officer's case; sum up their case; respond on their behalf to any view expressed and confer with him/her during the hearing. The representative does not have the right to answer questions on the protected officer's behalf.
- 4.3 Where the representative is unavailable for a formal hearing on the date given the protected officer will be entitled to request its postponement by up to one week.
- 4.4 If the representative is unable to attend after a new date has been offered the

Council will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

- 4.5 Although the statutory right to be accompanied applies only at a disciplinary hearing, the Joint Negotiating Committee (JNC) for Chief Executives procedure provides the opportunity for the Chief Executive to be accompanied at all stages by their trade union or some other person of their choice, at their own cost.

## **5. Considering the allegations or other issues under investigation**

### **Conducting the Investigating & Disciplinary Committee investigation**

- 5.1 The IDC will, as soon as is practicable, inform the protected officer in writing of the allegations or other issues under investigation and provide him/her with any evidence that the Committee is to consider.
- 5.2 This stage should be conducted as expeditiously as possible with due regard to the facts of the case. It is important that the protected officer is aware of the allegations that have been made against him/her (or the issue to be addressed) and given the opportunity to respond. This will be achieved by:
- The IDC writing to the protected officer setting out the allegations/issues and providing any evidence to be considered.
  - Providing the opportunity for the protected officer to respond to the allegations in writing and to provide personal evidence or witness evidence.
  - Providing the opportunity for the protected officer to appear before the IDC and to call witnesses.
- 5.3 Reasonable notice should be given to enable the protected officer adequate time to prepare a response to the allegations or issues under investigation. During the hearing by the IDC the protected officer is entitled to attend and can be accompanied by a representative.
- 5.4 The protected officer will be invited to put forward written representations and any evidence, including evidence from witnesses he/she wishes the IDC to consider. The IDC will also provide the opportunity for the protected officer to make oral representations about the allegations.
- 5.5 The IDC will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the protected officer before reaching a decision.
- 5.6 The IDC shall decide whether:
- the issue requires no further formal action under this procedure

- the issue justifies a Written Warning or Final Written Warning or equivalent to be issued in which case this will be done.
- the issue warrants dismissal and therefore should be referred to the Independent Panel.

The IDC shall inform the protected officer of its decision and follow this up in writing within 5 working days.

- 5.7 All matters need to be handled carefully in public relations terms due to the potential damage to the reputation of the Chief Executive / protected officer or the Council.

#### **Treatment of witness evidence**

- 5.8 In general, if the Council has witness evidence relating to an allegation this should be presented to the protected officer, although in exceptional cases it might be appropriate to anonymise the evidence in order to protect the identity of a witness. However, it remains important that the detail of the allegation is put to the protected officer in order that he/she understands the case against him/her.

#### **Conflicts of interest**

- 5.9 There may be occasions when a member of the IDC has a conflict of interest, for example where they have been a witness to an alleged event or are the person who made the original complaint. They should take no part in the Committee, although they will be able to give evidence, if required. Where this is the case one of the substitute members should replace them.
- 5.10 Declarations of interest are matters for individual councillors who are required to follow the Council's Code of Conduct and can seek advice from the Council's Monitoring Officer or deputy if there is a potential conflict.

#### **Maintaining the fairness and integrity of the procedure**

- 5.11 It is important that councillors do not undermine the fairness of the procedure by, for example, putting motions to Council about the case as there is a serious risk that it could prejudice the procedure. Additionally, such actions could create adverse publicity for the Council and the Chief Executive / protected officer, create conflicts of interest and could limit the role that those councillors can then take in the process.

#### **Ill-health - medical advice**

- 5.12 In respect of capability related to sickness or where during the course of any other investigation, the ill-health of the protected officer results in his/her unavailability the IDC will have access to appropriate medical advice from the Council's Occupational Health provider.

#### **Performance**

- 5.13 Where the issue is one of capability in terms of performance or competence, other than ill-health, the IDC will need to be in a position to establish or demonstrate the nature of the concerns. Evidence will be necessary in order to justify a further investigation e.g. from performance appraisal records.
- 5.14 Where the issue is breakdown of trust and confidence, the IDC will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with the protected officer.

## **6. The Independent Panel investigation**

- 6.1 If in the view of the IDC the issue justifies dismissal then the matter must be referred to the Independent Panel. The Independent Panel may support the IDC's decision or may choose to investigate the matter further prior to reaching a conclusion.

## **7. Report(s) to Full Council**

- 7.1 The IDC and the Independent Panel may together or separately make recommendations, in the form of written report(s) to Full Council, about whether or not the protected officer should be dismissed.
- 7.2 The IDC and the Independent Panel will as a matter of principle make every attempt to ensure the appropriate confidentiality of any information obtained and discussed.

## **8. Full Council decision on dismissal**

- 8.1 The final decision on dismissal will be taken by a meeting of full Council, who must consider but does not have to follow the decision recommendations, if any, made by the IDC and Independent Panel.
- 8.2 Council will invite the protected officer to submit any written representations at least 5 working days before the date of the meeting.
- 8.3 The chairman of the IDC should present the case for dismissal. The Independent Panel should present a contrary case if that applies.
- 8.4 Council will consider the report(s) from the IDC and the Independent Panel and also give the protected officer the opportunity to state his/her case before making a decision. Council may decide to:
- Take no further action.
  - Recommend informal resolution or other appropriate procedures.
  - Refer back to the IDC for further investigation and report.
  - Take disciplinary action against the protected officer short of dismissal.
  - To dismiss the protected officer.

8.5 Where there is, at this stage, further evidence produced which is material to the outcome, Council may:

- Take this into account.
- Request the IDC undertake some further investigations and incorporate the impact of the new evidence into an amended report.

8.6 The Council's decision will be implemented by the IDC.

## **9. Appeal against dismissal**

9.1 Where the IDC has made a proposal to dismiss, the hearing by the Council will also fulfil the statutory appeal function.



## Appendix 1: Examples of misconduct

Examples of actions which might be construed as misconduct and which might attract a warning, disciplinary sanctions or dismissal are:

- Unauthorised and intentional disclosure of confidential information;
- Failure to make a relevant declaration under the Employees Code of Conduct;
- Providing false (or withholding) information for the purposes of obtaining employment with the Council;
- Harassment or unlawful and intentional discrimination on the grounds of sex, race, disability and other areas covered by the Council's Equalities Policy;
- Abusive, threatening or aggressive behaviour;
- Being under the influence of alcohol or drugs at work or on Council premises;
- Physical assault;
- Failure to account properly for cash or other financial transactions;
- Fraud including submission of false claims for overtime, expenses etc;
- Driving a Council vehicle (or a private vehicle on official duties) whilst disqualified, without a licence, medically unfit, under the influence of drink or drugs or without insurance cover for business use of a private vehicle;
- Theft
- Corruption, acceptance of prohibited hospitality or partial treatment of a contractor, job candidate etc as identified by the Code of Conduct;
- Working for another employer in Council time or use of Council time, plant or equipment for personal gain;
- Omission or commission of an act likely to endanger others or to expose the Council to prosecution, civil proceedings or significant financial loss;
- Actions outside work that may bring the Council into disrepute
- Abuse of sickness schemes;
- Unacceptable conduct;
- Unauthorised use of the internet facility or accessing illegal or unacceptable material (e.g. pornography or material detailing an illegal activity)

The above list is not exhaustive.

## Appendix 2: Mutual termination of the contract

- 1 It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships have broken down, but there is no evidence of misconduct attached to the protected officer.
- 2 If any financial settlements are to be considered it is important that such an arrangement:
  - Falls within the Council's approved Discretions Policy under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, or
  - Is a payment that settles, by way of a settlement agreement, a genuine legal claim that the protected officer might have at a Court or Employment Tribunal.
- 3 The Local Government (Early Termination of Employment) Discretionary Compensation) (England and Wales) Regulations 2006 are designed to enable a local authority to compensate employees whose employment terminates on grounds of redundancy or in the interests of the efficient exercise of the authority's functions. It is therefore possible that a payment will be legitimate in certain circumstances. However, where there is an obvious case requiring disciplinary action and the allegation is such that dismissal is a likely outcome, it is not likely that a District Auditor will sanction a deal under the current Regulation.
- 4 The Council must take appropriate legal advice when attempting to reach a financial settlement to ensure that any payment is justified. Relevant considerations will include the likelihood of the claim succeeding and the amount of compensation that could be awarded by a Court or an Employment Tribunal.
- 5 Power to agree financial settlements: the IDC has delegated powers to negotiate a settlement agreement within the limits set out in 2 above. The IDC must liaise with the District Auditor before any settlement is finalised.

January 2016