



<b>Title:</b>	<b>Constitution of the Council (Part 4F: Disciplinary Procedures for Chief Officers)</b>
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**Adopted by Full Council on 12<sup>th</sup> December 2022**



# DISCIPLINARY PROCEDURES FOR CHIEF OFFICERS

## 1 SCOPE & OBJECTIVES

- 1.1 These procedures have been adopted by the Council to deal with any disciplinary and/or capability or similar matters arising in relation to the Chief Officers of the Council who are not “Statutory Officers” (i.e. they apply to all of the Heads of Service other than the Chief Finance Officer and the Monitoring Officer).
- 1.2 These procedures are based on the model procedure set out in the JNC Conditions of Service for Chief Officers (September 2022 edition). Those Conditions also contain guidance which may be useful in operating these procedures.
- 1.3 The objectives of these procedures are to:
  - 1.3.1 encourage employees to achieve and maintain appropriate standards of behaviour;
  - 1.3.2 provide a fair and consistent method of dealing with alleged failure;
  - 1.3.3 remind managers and supervisors how disciplinary matters should be handled;
  - 1.3.4 minimise disagreements about disciplinary matters;
  - 1.3.5 reduce the need for dismissals.
- 1.4 Except where alternative arrangements have been agreed in advance between the Council and the Chief Officer, the following procedure should apply in cases of alleged misconduct or incapability or similar matters.
- 1.5 The procedure can be modified by mutual agreement to suit the particular circumstances of the case. There is an obligation on both the Council and the Chief Officer to give fair consideration to reasonable proposals from the other party to modify the procedure to suit local circumstances.

## 2 ISSUES REQUIRING INVESTIGATION

- 2.1 Where an allegation is made relating to the conduct or capability of a Chief Officer or there is some other substantial issue that requires investigation, the matter will initially be dealt with by the Chief Executive or a Head of Service (“the Manager”). The Manager shall be supported throughout by a member of the Council’s HR team. Thereafter it may be referred to the Chief Officer Standards Committee (“the Committee”). The Committee is a standing committee appointed by the Council. The Committee shall be advised throughout by a suitable independent advisor who shall be supported by a member of the Council’s HR team.

## 3 TIMESCALES

- 3.1 It is in the interests of all parties that proceedings be conducted expeditiously.
- 3.2 It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.

## 4 SUSPENSION

- 4.1 Suspension will not always be appropriate as there may be alternative ways of managing the investigation. Suspension is a neutral act.
- 4.2 However, the Manager will need to consider whether it is appropriate to suspend the Chief Officer. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the Chief Officer might compromise the investigation or impair the efficient exercise of the Council’s functions.
- 4.3 In any case, the Chief Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.
- 4.4 The necessity for the Chief Officer to remain suspended shall be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided.

## 5 RIGHT TO BE ACCOMPANIED

- 5.1 Other than in circumstances where there is an urgent requirement to suspend the Chief Officer, he or she will be entitled to be accompanied at all stages provided that the process is not substantially delayed by this, subject always to the requirements of fairness having regard to all the circumstances.

## 6 PRELIMINARY INVESTIGATION

- 6.1 The Manager will, as soon as practicable, inform the Chief Officer in writing of the allegations or other issues under investigation. The date of this notification shall be the "Start Date" for the purpose of these procedures.
- 6.2 The Manager shall appoint an officer of the Council or an independent person to carry out a short preliminary investigation of the allegations or other issues under investigation as soon as possible to help him determine whether or not to investigate them formally. It is expected that this investigation should take no more than 1 week to complete and should not prejudice any later formal investigation of the allegations.
- 6.3 The Manager shall determine the terms of appointment of the preliminary investigator, agree the investigator's remuneration (if appropriate), procure the necessary facilities and provide all available information about the allegations or other issues under investigation as shall be necessary to enable them to fulfil their role. The preliminary investigator shall be entitled to interview such witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's email, internet and other IT systems (including the accounts of the Chief Officer). The Chief Officer shall fully co-operate with the preliminary investigator and shall make themselves available for such interviews and meetings as the preliminary investigator reasonably deems necessary.
- 6.4 The Chief Officer shall be given reasonable facilities and access to the Council's premises and systems as well as their personal files/diary etc. to allow them to prepare their response on such reasonable terms as may be agreed by the Manager.
- 6.5 The preliminary investigator shall prepare a report following their investigation and submit this to the Manager. It is expected that this will ordinarily be within 7 working days of the Start Date. The Manager shall send a copy of the preliminary investigator's

report and any other evidence which they are to consider to the Chief Officer or their representative within one working day of it being received.

- 6.6 The Chief Officer shall, if they so wish, request further information and documents from the Council relating to the complaint within 5 working days of receipt by the Chief Officer of the preliminary investigator's report.
- 6.7 Once the period for requesting further information has elapsed and the Council have dealt with any request for information and documents made under paragraph 6.6, the Manager shall arrange to meet with the Chief Officer &/or their representative. It is expected that they will ordinarily meet within 15 working days of the Start Date. The Chief Officer shall be advised in writing that they may, but are not required to:
- 6.7.1 put forward written representations &/or evidence including written evidence from witnesses which they wish the Manager to consider at this stage (in which case this shall be submitted at least 3 working days before the meeting);
  - 6.7.2 attend the meeting with the Manager;
  - 6.7.3 make oral representations to the Manager.
- 6.8 The Manager will give careful consideration to the allegations or other issues, the preliminary investigator's report, supporting evidence and any representations put forward by the Chief Officer before taking further action. The Manager will not hear any oral evidence at this meeting (other than oral representations) unless they determine otherwise.
- 6.9 The Manager shall decide whether:
- 6.9.1 the issue requires no further formal action under this procedure (in which case they will consider what other steps, if any, should be taken and also lift any suspension); or
  - 6.9.2 the issue should be referred to the Committee, in which case the following paragraphs of this procedure shall apply.
- 6.10 The Manager shall inform the Chief Officer of their decision in writing as soon as practicable.

## 7 APPOINTMENT OF INVESTIGATOR

- 7.1 If the Manager decides that the matter should be referred to the Committee, they shall appoint an officer of the Council or an independent person to carry out a full investigation of the allegations or other issues under investigation as soon as possible to help the Committee decide what action (if any) to take. This investigator may be, but need not be, the same person as carried out the preliminary investigation.
- 7.2 The Manager shall determine the terms of appointment of the investigator, agree the investigator's remuneration (if appropriate), procure the necessary facilities and provide all available information about the allegations or other issues under investigation as shall be necessary to enable them to fulfil their role.

## 8 THE FULL INVESTIGATION

- 8.1 It will be the responsibility of the investigator to investigate the allegations or other issues under investigation and to prepare a report:
- 8.1.1 stating in their opinion whether (and, if so, the extent to which) the evidence they have obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and
  - 8.1.2 recommending any disciplinary action (if any is appropriate) or range of actions which appear to them to be appropriate for the Council to take against the Chief Officer.

## 9 PRE-HEARING PROCEDURES

- 9.1 The Manager shall send a copy of the Investigator's report to the Chief Officer or their representative within two working day of it being received and shall confirm the allegations to be considered by the Committee.
- 9.2 The Chief Officer shall, if he so wishes, request further information and documents from the Council relating to the complaint within 5 working days of receipt by him of the Investigator's report.

- 9.3 Once the period for requesting further information has elapsed and the Manager has dealt with any request for information and documents made under paragraph 9.2, the SSC Manager (HR, OD & Payments) shall give not less than ten working days written notice of the date of the Committee's disciplinary hearing. The notice shall include:
- 9.3.1 the time and place of the hearing;
  - 9.3.2 confirmation that the hearing is convened under this disciplinary procedure and could result in disciplinary action;
  - 9.3.3 the names of any witnesses to be called and a copy of any documents to be used in support of the complaint (other than the investigator's report which has been provided under paragraph 9.1 above);
  - 9.3.4 advice that the Chief Officer may be accompanied at the hearing by a trade union or other representative;
  - 9.3.5 advice that the Chief Officer may ask any other person to be present as a witness or adduce any documents or written statement in support of his response so long as full details of such witnesses and copies of any such documents or statement are given to the SSC Manager (HR, OD & Payments) at least five working days before the date for the disciplinary hearing for distribution to all parties;
  - 9.3.6 a copy of this procedure.
- 9.4 Within two working days the Chief Officer shall either agree the date for the hearing or propose to the SSC Manager (HR, OD & Payments) a postponement of the date for the hearing for a period not exceeding ten working days. If the Chief Officer requests a postponement, the SSC Manager (HR, OD & Payments) and the Chief Officer (or his representative) shall seek to agree the date for the hearing. If they cannot agree the date within one working day, the Chair of the Committee shall determine the date for the hearing.
- 9.5 The Chief Executive shall then formally give notice to the Committee (and the Chief Officer if the hearing has been postponed) of the date for the disciplinary hearing and shall submit a report to the Committee including the investigator's report.
- 9.6 At least five working days before the date for the disciplinary hearing the Chief Officer shall give to the SSC Manager (HR, OD & Payments):

- 9.6.1 full details of any witnesses that they wish to call;
  - 9.6.2 copies of any documents which they wish to use in support of their response;
  - 9.6.3 any written statement of their response which they wish to submit.
- 9.7 The SSC Manager (HR, OD & Payments) shall provide a copy of such documents and information to the Manager and the Investigating Committee as soon as reasonably possible after receipt.

## 10 HEARING BY INVESTIGATING COMMITTEE

- 10.1 The SSC Manager (HR, OD & Payments) shall arrange for a written record to be taken of the hearing.
- 10.2 The procedure for the hearing will be to consider the allegations previously notified. If fresh allegations emerge during the hearing these must be subject to a separate hearing.
- 10.2.1 The Chairman of the Committee will explain the purpose of the hearing and the procedure to be followed;
  - 10.2.2 The Manager or their representative will present the complaint and will introduce evidence in support of the complaint, including the investigator's report and documents and witnesses as previously notified;
  - 10.2.3 The Chief Officer or his representative and then the Committee and the independent advisor will have the opportunity to ask questions of the Manager and/or his representative, including direct questions to the witnesses;
  - 10.2.4 The Chief Officer or their representative will introduce evidence in support of their position, including documents and witnesses as previously notified;
  - 10.2.5 The Manager or their representative and then the Committee and the independent advisor will have the opportunity to ask questions of the Chief Officer and/or his representative, including direct questions to the witnesses;
  - 10.2.6 Both sides will sum up their presentations; beginning with the Manager or their representative.

- 10.3 When the Committee have heard all of the evidence submitted they will decide whether to:
- 10.3.1 take no further action;
  - 10.3.2 recommend informal resolution or other appropriate procedures;
  - 10.3.3 refer back to the Investigator for further investigation and report;
  - 10.3.4 take disciplinary action against the Chief Officer.
- 10.4 In the case of disciplinary action this shall be either:
- 10.4.1 A recorded oral warning;
  - 10.4.2 A written warning;
  - 10.4.3 A final written warning;
  - 10.4.4 Suspension on half pay or no pay for a specified period;
  - 10.4.5 Relegation (i.e. a reduction in salary) for a specified period;
  - 10.4.6 Dismissal with or without notice.
- 10.5 All others present (other than the independent advisor) will withdraw whilst the Committee consider their decision.
- 10.6 After due consideration the Chairman of the Committee will convey the decision to the Manager and the Chief Officer. Normally the decision will be given orally as soon as it has been taken and the final decision will be confirmed in writing at the earliest opportunity following the hearing. Exceptionally the decision may be deferred and given in writing later (but within five days of the hearing) together with any formal disciplinary warning. The letter confirming, or taking, formal action will set out the rights of appeal. If a warning is given, this should tell the Chief Officer:
- 10.6.1 The level of improvement required;
  - 10.6.2 The date by which it is to be achieved;
  - 10.6.3 What will happen if not.

## 11 APPEALS

- 11.1 If the Committee takes action against the Chief Officer, the Chief Officer shall have the right to appeal the Committee's decision to the Council's Appeals Panel. Any appeal must be made in writing to the SSC Manager (HR, OD & Payments) within 10 working days of the decision being communicated to the Chief Officer and must include:
- 11.1.1 The general grounds of appeal;
  - 11.1.2 Whether they are to be represented/accompanied and, if so, by whom;
  - 11.1.3 Whether they wish to call witnesses and, if so, their names;
  - 11.1.4 Copies of any additional documents not used at the original hearing.
- 11.2 The Appeals Panel will consider the appeal as soon as reasonably possible after the appeal has been notified and will invite the following to be present:
- 11.2.1 The Chief Officer, who may be accompanied by a trade union or other representative;
  - 11.2.2 The Manager or their representative;
  - 11.2.3 The Chairman of the Senior Officer Employment Committee to explain their reasons for their decision and answer questions on this.
- 11.3 The Appeals Panel shall be advised by an independent advisor (who will usually not be the same advisor who advised the Senior Officer Employment Committee).
- 11.4 The procedure shall be the same as the procedure set out in paragraphs 9 and 10 above save that the Chairman of the Senior Officer Employment Committee shall also explain their reasons for their decision and answer questions on this.
- 11.5 The Appeals Panel may also take into account any additional information which has become available on the particular allegations and may invite any other person to be present to assist in resolving any question or fact which is in dispute. Such a person will only be present whilst giving information and being questioned on it.
- 11.6 The Appeals Panel may decide to uphold/dismiss the original penalty or impose a different penalty. The decision reached will be final. This will normally be given when the decision is reached but will in any event be confirmed in writing within five days of the appeal.