



Title:	Constitution of the Council (Part 4G: Disciplinary Procedures for Statutory Officers)
Owner:	Linda McDonald
Date of version:	12th December 2022
Review due:	Annually as required
Approved by Head of Service:	Andy O'Brien

Adopted by Full Council on 12th December 2022

DISCIPLINARY PROCEDURES FOR STATUTORY OFFICERS

1 SCOPE & OBJECTIVES

- 1.1 These procedures have been adopted by the Council to deal with any disciplinary &/or capability or similar matters arising in relation to the Statutory Officers (the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer) of the Council.
- 1.2 These procedures are consistent with the provisions mandated by Schedule 3 the Local Authorities (Standing Orders) England Regulations 2001 as amended by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 (Schedule 3 Provisions) . They are based on the Model Procedure set out in the JNC Conditions of Service for Chief Executives (September 2022 edition) (Model Procedure) which is consistent with the Schedule 3 Provisions. The Model Procedure must be used in the case of Chief Executives and the JNC Conditions of Service for Chief Officers states that they can be used in the case of all statutory officers to ensure the process complies with the Schedule 3 Provisions.
- 1.3 These procedures must be read in conjunction with the guidance notes at Appendix 5 to the JNC Conditions of Service for Chief Executives (September 2022 edition).
- 1.4 The objectives of these procedures are to:
 - 1.4.1 encourage employees to achieve and maintain appropriate standards of behaviour;
 - 1.4.2 provide a fair and consistent method of dealing with alleged failure;
 - 1.4.3 remind managers and supervisors how disciplinary matters should be handled;
 - 1.4.4 minimise disagreements about disciplinary matters;
 - 1.4.5 reduce the need for dismissals.

- 1.5 Except where alternative arrangements have been agreed in advance between the Council and the Statutory Officer, the following procedure should apply in cases of alleged misconduct or incapability or similar matters.
- 1.6 The procedure can be modified by mutual agreement to suit the particular circumstances of the case, but not so as to contradict the Schedule 3 Provisions. There is an obligation on both the authority and the Statutory 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 Statutory Officer or there is some other substantial issue that requires investigation, the matter will be considered by the Chief Officer Standards Committee (“the Committee”). The Committee performs the role of the Investigation and Disciplinary Committee defined in the Model Procedure and 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.
- 2.2 The powers and responsibilities of the Chairman of the Committee set out in these procedures may be exercised by the Vice-Chairman of the Committee in the absence of the Chairman.

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 Committee will need to consider whether it is appropriate to suspend the Statutory 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 Statutory Officer might compromise the investigation or impair the efficient exercise of the Council's functions.
- 4.3 In any case, the Statutory 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 Statutory Officer to remain suspended shall be reviewed at regular intervals .
- 4.5 This power may be exercised by:
- 4.5.1 the Committee in respect of any Statutory Officer;
 - 4.5.2 the Chair of that Committee (in consultation with the Monitoring Officer) in respect of the Chief Executive;
 - 4.5.3 the Chair of that Committee (in consultation with the Chief Executive) in respect of the Chief Finance Officer or the Monitoring Officer.

5 RIGHT TO BE ACCOMPANIED

- 5.1 Other than in circumstances where there is an urgent requirement to suspend the Statutory Officer, he or she will be entitled to be accompanied (by a Trade Union representative, work colleague, legal advisor or friend) 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 FILTER STAGE

- 6.1 Not all complaints against a Statutory Officer should be dealt with under the formal process and Local Authorities are expected to have in place a mechanism to filter out allegations against a Statutory Officer which are:
- 6.1.1 Clearly unfounded;
 - 6.1.2 Trivial; or
 - 6.1.3 Can be dealt with under a separate procedure
- 6.2 The filter stage will be conducted by the Monitoring Officer in the case of complaints against the Head of Paid Service or the s151 Officer and by the Head of Paid Service in the case of complaints against the Monitoring Officer.
- 6.3 The subject of the complaint will be provided with full details of the complaint before being interviewed by the officer undertaking the filter process; who will then prepare a report stating whether the complaint should be filtered out for any of the reasons at 6.1.1, 6.1.2 or 6.1.3; or whether it should be referred to the Committee for consideration in the manner set out at section 7 below. A copy of the report will be shared with the Chairman of the Committee.
- 6.4 In the event that the complaint is referred to the Committee for consideration, the Statutory Officer will be invited to make written submissions in response to the complaint.

7 CONSIDERATION BY COMMITTEE

- 7.1 A meeting of the Committee will be convened for the purpose of considering the complaint and the Statutory Officer's response and the Committee may decide on any of the following three options.
- 7.2 **Option 1: No further action.** This should be immediately communicated to the Statutory Officer and the complainant notified if necessary.
- 7.3 **Option 2: Informal un-recorded warning.** If the matter is not serious but there is some minor fault or error on the part of the Statutory Officer then the Committee can issue an informal un-recorded warning.

- 7.4 **Option 3: Case to answer/further investigation required.** If following consideration of the Statutory Officer’s response the Committee believes that the case cannot be dismissed; and that if the allegations were to be upheld they would result in a sanction greater than an informal warning, the Committee should appoint an Independent Investigator (II) and consider suspension as outlined in section 4 above.

8 APPOINTMENT OF THE INDEPENDENT INVESTIGATOR

- 8.1 A list of suitably qualified and trained individuals is held by the Joint Secretaries of the JNC. This operates as a “taxi rank” system and the Council will be given the next three names on the list which, if acceptable to the Council, will be given to the Statutory Officer, who will select one of the three.
- 8.2 The Statutory Officer will be entitled to reject any of those listed in case of a genuine conflict of interest.
- 8.3 If the Statutory Officer does not select one of those three within 14 days then the Council is free to appoint the person of its choice from among the three on the list.
- 8.4 It is for the II to determine which of two processes they will follow – either “Evidence Collection and Investigation” or “Hearing the Case” as set out at 8.5 and 8.6 below. This will be dependant upon the nature of the allegation and the availability of evidence but the Council notes the JNC’s preferred process is “Evidence Collection and Investigation”.
- 8.5 **Evidence Collection and Investigation.** This may be a process of gathering documentary evidence and interviewing parties and witnesses which will lead to the formulation of a recommendation for consideration by the Committee.
- 8.6 **Hearing the Case.** Alternatively the II may hear the case. If so, both parties will have the opportunity to be represented by an individual of their choice. Following the hearing the II will produce a report for consideration by the Committee.
- 8.7 Irrespective of the manner in which the II investigates the case, on completion of their investigation the II must prepare a report with recommendations and rationale, for submission to the Committee.

9 CONSIDERATION AND DECISION OF THE COMMITTEE

- 9.1 If the II has held a full hearing the Committee will limit their hearing to a consideration of the II's report. They may decide to call witnesses for clarification. The Statutory Officer and the II should attend this meeting and both parties will be afforded the opportunity to summarise their case. The hearing should be conducted in accordance with the ACAS code of practice.
- 9.2 If the II did not hear the case then the Committee should now afford the Statutory Officer the opportunity for a hearing to allow the post holder to challenge the recommendations of the II, call witnesses and present evidence.
- 9.3 Following either consideration of the II's report or a full hearing of the case the Committee has three decision options: (1) no case to answer; (2) disciplinary action short of dismissal; or (3) dismissal
- 9.4 **No case to answer.** Appropriate communication should be prepared in consultation with the Statutory Officer to ensure that as far as possible there is no damage to the post holder's reputation. The Committee should consider reimbursement of any reasonable expenses incurred by the Statutory Officer.
- 9.5 **Action short of dismissal.** A decision to take action short of dismissal should be communicated in writing to the Statutory Officer with full reasons for the decision. The Statutory Officer has the right of appeal to the Appeals Committee against this decision.
- 9.6 **Recommendation to dismiss.** If there is a recommendation to dismiss, the reports of the Committee and the II should then be sent to the Independent Panel (IP) for its consideration. The Statutory Officer may make written representations to the IP.

10 COMPOSITION, ROLE AND PROCESS OF THE INDEPENDENT PANEL

- 10.1 The IP is a committee of the Council, appointed under section 102 (4) of the Local Government Act 1972, and comprises only independent persons (at least two)

appointed under s28 (7) of the Localism Act 2011. Appropriate training should be provided to these independent persons.

- 10.2 The Statutory Officer and the Chairman, (or the Vice-Chairman in the absence of the Chairman) on behalf of the Committee, should be present and/or represented at the meeting.
- 10.3 The IP will invite any oral representations from the Statutory Officer, in which case it should invite any response on behalf of the Committee.
- 10.4 The IP may ask questions of either party.
- 10.5 The IP will review the decision of the Committee and prepare a report for Council. The report should contain clear rationale if the IP disagree with the Recommendation to dismiss.

11 WHERE THE COMMITTEE PROPOSE DISMISSAL

- 11.1 Where the Committee propose the dismissal of the Statutory Officer, the Committee will inform the Proper Officer that it is proposing to the Full Council that the Statutory Officer be dismissed and that the executive objections procedure should commence.

12 EXECUTIVE OBJECTIONS PROCEDURE

- 12.1 The Proper Officer will notify all members of the Cabinet of:
 - 12.1.1 the fact that the Committee is proposing to the Full Council that it dismisses the Statutory Officer;
 - 12.1.2 any other particulars relevant to the dismissal;
 - 12.1.3 the period (not being less than 5 working days) by which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Cabinet, to the Proper Officer.
- 12.2 The Proper Officer for this purpose shall be the Monitoring Officer (in the case of the proposed dismissal of the Chief Executive) or the Chief Executive (in the case of the proposed dismissal of the Chief Finance Officer or the Monitoring Officer).

- 12.3 At the end of the period set out in accordance with paragraph 12.1.3, the Proper Officer will inform the Committee and the Statutory Officer that either:
- 12.3.1 the Leader has notified them that neither they nor any member of the Cabinet has any objection to the dismissal;
 - 12.3.2 no objections have been received from the Leader during the period; or
 - 12.3.3 an objection or objections have been received and provide details of the objections.
- 12.4 If no objections have been notified, an extraordinary meeting of the Full Council shall be convened to consider solely this matter. The Full Council shall be presented with a suitable report from the Chairman of the Committee along with any necessary material.
- 12.5 If any objections have been notified:
- 12.5.1 The Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, then the Committee will act accordingly i.e. it will consider the impact of the executive objections and relevance to the sanction; and may commission further investigation if that is deemed necessary.
 - 12.5.2 If it satisfies itself that, notwithstanding the objections, it is appropriate to dismiss, the Committee will inform the Statutory Officer of the decision. An extraordinary meeting of the Full Council shall be convened to consider solely this matter. The Full Council shall be presented with a suitable report from the Chairman of the Committee along with any necessary material.

13 REPORT TO FULL COUNCIL

- 13.1 Following consideration by the IP a report must be presented to Council. This report should comprise the recommendation of the Committee, the IP's report, and any comments on the recommendation for dismissal from the IP. In light of this information Council should consider the recommendation to dismiss.

- 13.2 The Statutory Officer should be provided with a right of appeal against the decision and invited to attend this meeting and address Council. The II may also be invited to attend to provide any clarification required.
- 13.3 Council should either confirm or reject the recommendation to dismiss and it may decide to impose a lesser sanction.
- 13.4 This stage in the process constitutes the Statutory Officer's final right of appeal.