

APPENDIX A

DISCIPLINARY POLICY AND PROCEDURE FOR THE HEAD OF PAID SERVICE, THE SECTION 151 OFFICER AND THE MONITORING OFFICER

Introduction

1. A separate procedure is required for the Head of Paid Service, the Section 151 Officer and the Monitoring Officer in order to comply with The Local Authorities (Standing Orders)(England) Regulations 2001 as amended. References to 'officers' in this procedure is to these officers.
2. This procedure is based on the model procedure issued by the JNC for Chief Executives of Local Authorities and has been approved by the Employment and Appeals Committee. Further guidance is available in the NJC handbook on the use of the model procedure which may be referred to as far as is relevant bearing in mind any differences in the model procedure and this procedure.
3. The procedure is not contractual and may be amended from time to time.
4. The procedure will be applied fairly and consistently by the Council regardless of sex, race, creed, ethnic origin, age, marital status, disability and sexual orientation.
5. Individuals with disabilities will be given the opportunity, time and support to request and receive appropriate facilities required for them to participate in the procedure.
6. All involved in this procedure are reminded of the importance of confidentiality and must ensure that all information, whether verbal or written, is kept strictly confidential and not passed on to persons who are not involved in the procedure. Disciplinary action may result from breaches of confidentiality.
7. The principles of natural justice and good management practice will govern the conduct of any proceedings against the officer.
8. In general, informal conciliation is to be preferred to formal procedures if this can bring about a mutually agreed solution to the problems. Such solutions should make it clear what specific changes in behaviour and/or performance are expected and within what timescales.

Scope of procedure

9. The procedure covers:
 - a. disciplinary action and situations where there is the potential to dismiss for misconduct and
 - b. potential dismissals for capability – performance or sickness absence other than permanent ill-health
 - c. potential dismissals for some other substantial reason including a breakdown in trust between the officer and the authority.
10. The procedure does not cover dismissals in respect of redundancy, permanent ill-health and the expiry of fixed-term contracts where there has been no commitment to

renew it. However, approval of the dismissal of these officers will still need to be obtained by full Council.

11. The Council's sickness absence or capability policy and procedure should be followed in appropriate cases in the first instance. Where it becomes apparent that dismissal is a possibility this procedure should be commenced. In the case of ill health this is likely to be at the stage where a Strategic Director Review would be carried out. In the case of capability, this is likely to be where normally the issue would progress to Stage Three.

Timescales

12. The Council recognises that it is in the interests of all parties that proceedings be conducted expeditiously. However, it is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.

Issues requiring investigation

13. Where an allegation is made relating to the conduct or capability of the head of paid service, the section 151 officer or monitoring officer or there is some other substantial issue that requires investigation, the matter will be considered by the Investigating & Disciplinary Committee (IDC).
14. The decision as to whether to refer a complaint against an officer to the IDC will be made as follows:
 - a. In the case of the Head of Paid Service, by the Monitoring Officer following consultation with the Leader; and
 - b. In the case of the Monitoring Officer or the s.151 Officer, by the Head of Paid Service following consultation with the Leader.

Suspension

15. The IDC will consider whether it is appropriate to suspend the 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 officer might compromise the investigation or impair the efficient exercise of the council's functions.
16. The officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.
17. In the event of urgency, suspension may be carried out by:
 - a. In the case of the Head of Paid Service, the Monitoring Officer following consultation with the Leader; and
 - b. In the case of the Monitoring Officer or the section 151 officer, the Head of Paid Service following consultation with the Leader.

18. The continuance of a suspension should be reviewed by the IDC following consultation with the Independent Investigator after it has been in place for two months.

Right to be accompanied

19. The officer has the right to be accompanied at any formal hearing under this procedure by a trade union representative or work colleague.

Considering the allegations or other issues under investigation

20. The IDC will, as soon as is practicable inform the officer in writing of the allegations or other issues under investigation and provide him / her with any evidence that the Committee is to consider, and of his / her right to present oral evidence.

21. The officer will be invited to put forward written representations and any evidence including written evidence from witnesses he / she wishes the Committee to consider. The Committee will also provide the opportunity for the officer to make oral representations. At this initial consideration of the need to investigate further, it is not anticipated that witnesses will be called. The discretion to call witnesses lies solely with the IDC.

22. The IDC will decide whether:

- a. the issue requires no further formal action under this procedure;
- b. to issue an informal but recorded warning; or
- c. the issue should be referred to an Independent Investigator.

Appointment of Independent Investigator

23. Where the IDC decides that the issue should be referred to an Independent Investigator it will appoint an investigator from the list supplied by the National Joint Secretaries.

24. The IDC shall ensure that arrangements are made to provide the necessary facilities, pay remuneration and to provide all necessary information to the Independent Investigator.

The Independent Investigation

25. The Independent Investigator shall investigate the issue and prepare a report stating in his/her opinion whether (and, if so, the extent to which) the evidence he / she has obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and recommending any disciplinary action (if any is appropriate) or range of actions which appear to him / her to be appropriate for the authority to take against the officer.

Receipt and consideration of the Independent Investigator's report by the IDC

26. The IDC will consider the report of the Independent Investigator, and also give the officer the opportunity to state his / her case and, to question witnesses, where relevant, before making a decision.
27. Having considered any other associated factors the IDC may:
 - a. Take no further action
 - b. Recommend informal resolution or other appropriate procedures
 - c. Refer back to the Independent Investigator for further investigation and report
 - d. Take disciplinary action against the officer short of dismissal
 - e. Propose dismissal of the officer to the Council

Action short of dismissal

28. The IDC may agree to impose no sanction, or to take action short of dismissal, in which case the Committee will impose an appropriate penalty / take other appropriate action.
29. The penalties available to the IDC in relation to misconduct or capability are to impose a first or final written warning.
30. Any other action must be consistent with the officer's contract of employment.

Procedure where dismissal is proposed

31. The IDC will inform the Proper Officer that it is proposing to the council that the officer be dismissed and that the executive objections procedure should commence.
32. The Proper Officer will notify all members of the executive of:
 - a. The fact that the IDC is proposing to the council that it dismisses the officer
 - b. Any other particulars relevant to the dismissal
 - c. The period by which any objection to the dismissal is to be made by the leader on behalf of the executive, to the Proper Officer
33. At the end of this period the Proper Officer will inform the IDC either:
 - a. That the leader has notified him / her that neither he / she nor any member of the executive has any objection to the dismissal
 - b. that no objections have been received from the leader in the period or
 - c. that an objection or objections have been received and provide details of the objections
34. The IDC 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 on its proposal for dismissal and commission further investigation and report by the Independent Investigator if required.
35. Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the IDC will inform the officer of the decision and put that

proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material.

The Independent Panel

36. Where the IDC is proposing dismissal, this proposal needs to go before the Independent Panel.
37. The Independent Panel must be appointed at least 20 days before the meeting of the Council at which the recommendation for dismissal is to be considered.
38. Both parties should be present or represented. The IDC should normally be represented by the Chair but may be represented by another member of the Committee if the Chair is unavailable.
39. The Panel should receive any oral representations from the officer, in which case it should invite any response on behalf of the IDC to the points made, and may ask questions of either party. The Independent Panel should review the decision and prepare a report for Council. This report should contain a clear rationale if the Panel disagrees with the recommendation to dismiss.

The Role of the Council

40. The Council will consider the proposal that the officer should be dismissed, and must take into account:
 - a. Any advice, views or recommendations of the Independent Panel;
 - b. The conclusions of the investigations into the proposed dismissal; and
 - c. Any representations from the officer
41. The officer will have the opportunity to appear before the council and put his or her case to the council before a decision is taken.
42. The Council will not undertake a full re-hearing of the case but will review the proposal to dismiss.
43. If the Council rejects the proposal to dismiss it can decide on a lesser sanction or refer back to the IDC to determine the sanction. Any such sanction must be consistent with the contract of employment.

Appeals against dismissal

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

Appeals against action short of dismissal

45. If the IDC takes action short of dismissal, the officer may appeal to the Appeals Committee.
46. The appeal hearing will take the form of a review of the case.

47. The Appeals Committee will consider the report of the Independent Investigator and any other relevant information considered by the IDC, for example, new information, executive objections (if relevant), outcome of any further investigation. The officer will have the opportunity to appear at the meeting and state his / her case.
48. The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.
49. The decision of the Appeals Committee will be final.