

Disciplinary Procedure for Statutory Officers

This document outlines the disciplinary procedure that will apply to the following roles, referred to in this document as statutory officer:

- Chief Executive
- Section 151 officer
- Monitoring Officer

This procedure is based on the model procedure provided by The JNC (Joint Negotiating Committee) and complies with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

The procedure will apply where an allegation of misconduct or gross misconduct relating to a statutory officer – as defined by the Code of Conduct and Disciplinary Procedure found in the Joint Negotiating Committee (JNC) for Chief Executives of Local Authorities National salary framework & conditions of service handbook [Link](#) and our Code of Conduct.

1. Who Receives the Complaint?

Complaint relates to:	Who is the receiving officer
Chief Executive	Monitoring Officer
Section 151 Officer	Chief Executive
Monitoring Officer	Chief Executive

In all of the above cases, the receiving officer will notify the HR Director of a complaint prior to instigating this procedure. Advice from the Council's approved employment law advisers may be taken. The HR Director will act as the default receiving officer should all statutory officers be conflicted. The Receiving officer and the HR Director will decide whether the allegations are clearly unfounded, trivial or can best be dealt with under some other procedure.

2. Shared Roles

Where a statutory officer is shared between two organisations, e.g. the Council's shared Chief Executive with Peterborough City Council the appropriate dismissal procedure that applies in the employing Council will be followed. The non-employing organisation will provide input into this procedure as appropriate. Where a decision is taken by the employing organisation is to dismiss a statutory officer the non-employing organisation will consider the implications for the sharing arrangement in place. Advice from the Council's approved employment law advisers should be taken in this situation.

3. Roles In This Procedure

This procedure refers to the following roles:

Investigating and Disciplinary Committee (IDC)

The role of the IDC is to:

- Consider an allegation
- Consider whether disciplinary action is appropriate
- Take a decision on whether to suspend
- Decide if an investigation is required and appoint an Independent Investigator.

Following the investigation the IDC will:

- Consider the findings of the independent investigation and representations from the statutory officer
- Decide if action short of dismissal is appropriate or
- Propose dismissal of the statutory officer to Council, outlining their reasons for this in a report to Council.

The IDC is made up as follows:

- At least 5 members
- Politically balanced
- Has authority to suspend if appropriate
- Chair has delegated authority to suspend in exceptional circumstances
- The receiving officer will convene panels with the support of Democratic Services

It is anticipated that the Staffing and Appeals Committee will act as the IDC. However there is flexibility as to who makes up the IDC to prevent any potential conflicts of interest.

Independent investigator

The independent investigator will investigate the issue/allegation and prepare a report for the IDC to consider. A list of suitably qualified individuals should be held by the National Joint Secretaries of the JNC.

Independent Panel

The independent panel is required where the IDC is proposing dismissal of the statutory officer. They will consider the Independent Investigator's report alongside representations from the IDC and the statutory officer. The Independent Panel will prepare a report to Council outlining whether they support the IDC's proposal to dismiss.

The Independent Panel is made up as follows:

- Comprise of a min of 2 independent persons appointed in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- Appointed by the Council
- Set up 20 days prior to the Full Council meeting
- IDC should nominate a person to attend on its behalf (the chair or other nominated person)
- Prepares report to the Full Council following meeting
- A list of suitably qualified individuals will be held by Democratic Services
- Appropriate training should be provided
- The receiving officer will convene panels with the support of Democratic Services.

It is anticipated that the Independent Panel is made up of the two Independent Persons appointed by council under the Localism Act 2011 to work alongside the Monitoring Officer and Constitution and Ethics Committee on councillor code of conduct complaints. However there is flexibility as to who makes up the Independent Panel to prevent any potential conflicts of interest.

Appeals Committee

The appeals committee is required where the statutory officer is appealing action short of dismissal.

It is made up as follows:

- At least 5 members
- Not members of the IDC

- Politically balanced
- The receiving officer will convene panels with the support of Democratic Services.

Council

The Council will make a decision whether to dismiss the statutory officer following consideration of the IDCs proposal to dismiss, the input of the independent panel and the representations of the statutory officer. References to the Council in this document refer to Full Council.

4. Issues Requiring Investigation

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 IDC.

5. Timescales

It is in the interests of all parties that proceedings are conducted as expeditiously as is possible.

6. Suspension

Suspension will not always be appropriate as there may be alternative ways of managing the investigation.

The IDC 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.

In any case the statutory officer shall be informed of the reason for the proposed suspension and have the right to be present information before such a decision is taken.

The chair of the IDC, should hold the delegated power to suspend the statutory officer immediately in an emergency if an exceptional situation arises where by allegations of misconduct by the statutory officer are such that his/her remaining presence at work pose a serious risk to the health and safety of others or the resources, information or reputation of the authority.

The continuance of a suspension should be reviewed regularly.

7. Right to be Accompanied

Other than in circumstances where there is an urgent requirement to suspend a statutory officer, he/she will be entitled to be accompanied at all stages of this procedure by a trade union representative or a work colleague. If the statutory officer requests to be accompanied by another party this must be agreed by the employer in advance of any meetings. The statutory officer is responsible for any associated costs.

8. Considering the Allegations

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

The statutory 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 statutory officer with the opportunity 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.

The IDC will give careful consideration to the allegations and other issues, supporting evidence and the case put forward by the statutory officer before taking further action.

The IDC will decide whether:

- The issue requires no further formal action under this procedures or
- The issue should be referred to an Independent Investigator

The IDC shall inform the statutory officer of its decision without delay.

9. Appointment of an Independent Investigator

Where a decision is taken to refer an issue for investigation the IDC will be responsible for appointing an Independent Investigator, providing the necessary facilities, paying the remuneration and providing all available information about the allegations.

The Independent investigator should be selected from the list maintained by the National Joint Secretaries of the JNC.

10. The Independent Investigation

The ACAS Code of Practice on Discipline and Grievance requires there to be an investigation to establish the facts of the case before proceeding to the disciplinary hearing. The JNC recommends that this should be carried out by an Independent Investigator.

The Independent Investigator should determine the procedure for the investigation.

It will be the responsibility of the Independent Investigator to investigate the issue/allegation and to then prepare a report stating:

- in his/her opinion whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason
- recommend any disciplinary action (if any is appropriate) or range of actions which appear to be appropriate for the authority to take against the statutory officer.

11. Receipt and Consideration of the Independent Investigator's Report by the IDC

The IDC will meet to consider the report of the Independent Investigator. This meeting will follow the format of a disciplinary hearing. The statutory officer will be present and have the opportunity to state his/her case and to question witnesses, where relevant, before making a decision.

Having considered any other associated factors the IDC will decide to:

- Take no further action;
- Recommend informal resolution or other appropriate procedures;
- Refer back to the Independent Investigator for further investigation and report;
- Take disciplinary action against the statutory officer short of dismissal;
- or
- Propose dismissal of the statutory officer to the Council.

12. Action Short of Dismissal

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. The IDC will inform the statutory officer of the decision. Action short of dismissal will not be referred to the Independent Panel or Council.

13. Proposal to Dismiss

The role of the Independent Panel

Where the IDC is proposing dismissal, this proposal needs to go before the Independent Panel. The Independent Panel will consider the Independent Investigator's report and any other necessary material. This is not a full re-hearing and will not involve the calling of witnesses.

There is a specific requirement in the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015 for the appointment of the Independent Panel at least 20 working days before the meeting of the Council at which the consideration of whether to approve a proposal to dismiss is to be given.

The IDC and the statutory officer should be present or represented - the IDC may be represented by its Chair or other nominated person. The Independent Panel should receive any oral representations from the statutory officer, in which case it should invite any responses on behalf of the IDC to the points made, and may ask questions of either party.

The Independent Panel should review the IDC's proposal to dismiss and prepare a report for Council. This report should contain clear rationale if the Independent Panel disagrees with the IDC's recommendation to dismiss.

14. Consideration by the Council

The role of the Council

The Council will consider, in confidential session, the IDC's proposal that the statutory officer should be dismissed, and take into account:

- Any advice, view or recommendations of the Independent Panel
- The conclusions of the investigation into the proposed dismissal
- Any representations from the statutory officer

The statutory officer will have the opportunity to appear before the Council and put his/her case to the Council before a decision is taken. The dismissal is not effective until approved by Council.

15. Appeals against dismissal

The statutory officer will be informed of the recommendation to dismiss prior to the Council meeting and will be provided with the rationale for this decision. At this point the case has gone through the following stages:

- A preliminary investigation
- An independent investigation
- A hearing by the IDC
- The recommendation to dismiss has been considered by the independent panel whose comments will be considered by Council prior to them confirming their decision.

If the statutory officer considers that they have grounds for appeal against the recommendation to Council to dismiss they must prepare the information that they will present prior to the Council meeting and present this to Council. Consideration of the statutory officer's representation at the Council meeting will fulfil the appeal function.

The decision of the Council will be final.

16. Appeals against action short of dismissal

If the IDC takes action short of dismissal, the statutory officer may appeal to the Appeals Committee.

The Appeals Committee will consider the report of the Independent Investigator and any other relevant information considered by the IDC, e.g. new information, executive objections (if relevant), outcome of any further investigation, etc. The statutory officer will have the opportunity to appear at the meeting and state his/her case.

The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.

The decision of the Appeals Committee will be final.

17. Redundancy, Permanent Ill-Health and the Expiry of Fixed Term Contracts

Proposed dismissals on the grounds of redundancy, permanent ill-health and expiry of fixed term contract where there has been no commitment to renew it, do not require the involvement of an Independent Investigator or Independent Panel.

However the authority should follow appropriate and fair procedures in these cases and have mechanisms in place, including appropriate delegated authorities, to manage such eventualities. In addition, dismissals, for all reasons set out in this paragraph must be approved by the Council itself.