

Council Report

Ward(s) affected: All

Report of Director of Resources

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## **Disciplinary Procedures for Head of Paid Service/ Monitoring Officer/Chief Finance Officer/Directors**

### **Executive Summary**

The Council will be aware that, following Sue Sturgeon's retirement on 31 May 2017, James Whiteman has been appointed to succeed her as the Council's Managing Director and Head of Paid Service on 1 June 2017.

As part of the process of finalising Mr Whiteman's employment contract in respect of his appointment, it became apparent that our procedures for dealing with disciplinary action, including dismissal, against the Council's three statutory officers<sup>1</sup>, required further clarification to bring them into line with accepted best practice in local government.

In 2015, and in response to requirements of Government Regulations<sup>2</sup>, the Council approved new arrangements for dealing with disciplinary action against a "relevant officer" (see footnote <sup>1</sup> below), and these were incorporated into Officer Employment Procedure Rules in Part 4 of the Constitution.

In essence, these arrangements provide that the power to approve the dismissal of a relevant officer may only be exercised by full Council and only after taking into account:

- (a) any advice, views or recommendations of a Panel, comprising of at least two Independent Persons appointed under section 28(7) of the Localism Act 2011,
- (b) the conclusions of any investigation into the proposed dismissal, and
- (c) any representations from the relevant officer

Whilst the Regulations dealt with the statutory process leading up to the decision by full Council to approve a dismissal, there is no adopted procedure for dealing with the earlier stages of the process, including:

- (i) the appointment of an independent investigator to look into allegations of misconduct,
- (ii) the submission of the independent investigator's report, including their findings and

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<sup>1</sup> or "Relevant Officers" as they are referred to in Regulations, namely Head of Paid Service, Monitoring Officer, and Chief Finance Officer

<sup>2</sup> The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the 2015 Regulations")

- recommendations, to a committee of councillors for the purpose of holding a hearing into the allegations, and
- (iii) actions that may be taken by the committee, including action short of dismissal and a process for dealing with appeals against such action

We are therefore proposing to incorporate into Officer Employment Procedure Rules more detailed procedures for dealing with allegations of misconduct by the relevant officers and directors, and to amend the terms of reference of the Employment Committee to clarify its role in the process.

We are also proposing to clarify the constitution of the Independent Panel and existing officer delegations in respect of disciplinary action (including dismissal) of officers below Director level.

**Recommendation:**

- (1) That, subject to formal consultation with the Relevant Officers and Directors and to the receipt of no well-founded objections,
- (a) the amendments to Officer Employment Procedure Rules, as set out in Annex 1 to this report, be adopted; and
- (b) the terms of reference of the Employment Committee be amended as shown in Annex 2 to this report.
- (2) That, in accordance with Section 102(4) of the Local Government Act 1972, the Council appoints an Independent Panel comprising at least two relevant independent persons only, for the purposes of advising the Council on matters relating to the dismissal of Relevant Officers of the Council.
- (3) That the Council authorises the Managing Director or the Monitoring Officer, as appropriate, to invite relevant independent persons to be considered for appointment to the Panel and to appoint to the Independent Panel such independent persons who have accepted an invitation.
- (4) That the Powers Reserved to Directors in the scheme of delegation to officers in Part 3 of the Constitution, be amended, so that it reads:
- ~~“Within approved budgets and in consultation with the relevant head of service, if where appropriate and Director of Resources~~
- .....
- (b) to establish or re-organise the staffing structure within their area of responsibility; ~~and~~ to appoint, suspend, discipline and dismiss staff within their area, *and to authorise officers reporting directly to them to appoint, discipline and dismiss staff* in accordance with the Council’s policies.”

**Reason for Recommendation:**

To put in place agreed disciplinary procedures for dealing with allegations of misconduct against the relevant officers.

**1. Purpose of Report**

- 1.1 This report asks the Council to approve the detailed procedures for dealing with disciplinary action (including dismissal) against the Head of the Paid Service, Monitoring Officer, Chief Finance Officer, and any Director. These procedures will be incorporated into Officer Employment Procedure Rules.

## 2. Strategic Priorities

- 2.1 High ethical standards are critical to maintaining public confidence in local government. Holders of public office are accountable for their decisions and actions to the public. It is important to have a mechanism in place to deal effectively and fairly with any allegations of misconduct by the Council's most senior officers.

## 3. Background

- 3.1 The Council's approach to disciplinary action and dismissal of the Head of Paid Service, the Monitoring Officer, the Chief Finance (Section 151) Officer and Directors is currently set out in the Officer Employment Procedure Rules, in Part 4 of the Council's Constitution.

- 3.2 In essence, these arrangements provide that the power to approve the dismissal of a Relevant Officer may only be exercised by full Council and only after taking into account:

- (a) any advice, views or recommendations of a Panel, comprising of at least two Independent Persons appointed under section 28(7) of the Localism Act 2011,
- (b) the conclusions of any investigation into the proposed dismissal, and
- (c) any representations from the relevant officer

- 3.3 Whilst the procedure rules set out the statutory requirements for dealing with the proposed dismissal of the Relevant Officers, they only document what are, in effect, the latter stages of the overall disciplinary procedures. There is no adopted procedure for dealing with the earlier stages of the process, including:

- (i) the appointment of an independent investigator to look into allegations of misconduct,
- (ii) the submission of the independent investigator's report, including their findings and recommendations, to a committee of councillors for the purpose of holding a hearing into the allegations, and
- (iii) actions that may be taken by the committee, including action short of dismissal and a process for dealing with appeals against such action

- 3.4 The Council will be aware that, following Sue Sturgeon's retirement on 31 May 2017, James Whiteman has been appointed to succeed her as the Council's Managing Director and Head of Paid Service on 1 June 2017. As part of the process of finalising Mr Whiteman's employment contract in respect of his appointment, it became apparent that our procedures for dealing with disciplinary action, including dismissal, against the Relevant Officers and Directors, required further clarification to bring them into line with accepted best practice in local government.

## 4. Proposals

- 4.1 We are therefore proposing to incorporate into Officer Employment Procedure Rules more detailed procedures for dealing with allegations of misconduct by the Relevant Officers (and Directors). These procedures are set out in full in **Annex 1**.

- 4.2 This report also proposes amendments to the terms of reference of the Employment Committee to clarify its role in the process, including the establishment of an Appeals Panel comprising three members or substitute members of the Employment Committee who were not involved in the original disciplinary hearing. The proposed amendments to the terms of reference are set out in **Annex 2**.

- 4.3 Since the introduction of the 2015 Regulations, there has been a lack of clarity as to whether elected members could be included in the Independent Panel, alongside the Independent Persons. On this issue, the Government's intention was that the Panel advising the Council on these matters should only comprise Independent Persons, although the Regulations do not state this explicitly. The rationale behind a Panel comprising only Independent Persons is sound given that its purpose is to provide an independent view of the disciplinary proceedings for the full Council to take into account when it makes a decision on whether to dismiss a Relevant Officer.
- 4.4 As it will be necessary for the Council to invite relevant independent persons to be considered for appointment to the Independent Panel and to appoint to the Panel such independent persons who have accepted an invitation, it is suggested that the Council authorises the Managing Director or the Monitoring Officer, as appropriate, to undertake this duty.
- 4.5 We are also proposing to clarify the existing officer delegations in respect of disciplinary action (including dismissal) of officers below Director level. Officer Employment Procedure Rule 6.1 (d) currently authorises the Managing Director, officers to whom she delegates and officers with the appropriate delegated authority to take disciplinary action against or dismiss officers below the level of Director. However, in the scheme of delegation to officers in Part 3 of the Constitution, the power to dismiss such staff is reserved only to Directors. It is proposed that this delegation be amended to enable Directors to authorise officers reporting directly to them to appoint, discipline and dismiss staff.

## **5. Equalities and Diversity Implications**

- 5.1 Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- (i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
  - (ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
    - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
    - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  - (iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

5.2 No equality impact assessment has been undertaken because these changes are required by the law and contract of employment.

## **6. Financial Implications**

6.1 There are no significant financial implications for the Council arising from the Constitutional changes proposed in this report.

## **7. Legal Implications**

7.1 This report sets out the Constitutional changes the Council is required to make in order to comply with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and the key elements of best practice in respect of the conduct of disciplinary proceedings recommended by the JNC for Local Authority Chief Executives.

## **8. Human Resource Implications**

8.1 There are set out in the report.

## **9. Background Papers**

None

## **10. Appendices**

Annex 1: Revised Officer Employment Procedure Rules

Annex 2: Revised Terms of Reference of the Employment Committee

## GUILDFORD BOROUGH COUNCIL

### OFFICER EMPLOYMENT PROCEDURE RULES

(NB. Procedure Rules 1 to 5 inclusive are unchanged)

#### 6. Dismissal and Disciplinary Action – General

##### 6.1 Head of the Authority's Paid Service, Monitoring Officer, and Chief Finance Officer ("Relevant Officers" as defined in procedure rule 7 below)

- (a) ~~The dismissal of the Head of the Authority's Paid Service and disciplinary action short of dismissal shall be conducted in accordance with the procedures set out in Appendix 1 to these procedure rules. In accordance with procedure rule 7 below, the full Council will approve the dismissal of, or disciplinary action (as referred to in procedure rule 7.1 (b) (ii) below) against a Relevant Officer (before notice is given to that person in the case of dismissal) following a recommendation by the Panel (as referred to in procedure rule 7.8 below). That Panel must include at least one member of the Executive. Notice of dismissal of a Relevant Officer shall only be given where no well founded objection from the Leader on behalf of the Executive has been received following giving of notice of the proposal to all members of the Executive in accordance with the provisions of Part II of Schedule 1 of the 2001 Regulations.~~
- (b) ~~The dismissal of the Monitoring Officer, and Chief Finance Officer and disciplinary action short of dismissal shall be conducted in accordance with the procedures set out in Appendix 2 to these procedure rules .~~

##### Directors

- (c) ~~The dismissal of directors, who are not Relevant Officers, and disciplinary action short of dismissal shall be conducted in accordance with the procedures set out in Appendix 3 to these procedure rules. undertaken by the Employment Committee or a sub-committee thereof. The Employment Committee or sub-committee must include at least one member of the Executive. Notice of dismissal of a Director shall only be given where no well founded objection from the Leader on behalf of the Executive has been received following giving of notice of the proposal to all members of the Executive in accordance with the provisions of Part II of Schedule 1 of the 2001 Regulations.~~

##### Officers below Director

- (d) The Managing Director, officers to whom he or she delegates and officers with the appropriate delegated authority may take disciplinary action against or dismiss officers below the level of Director (except the Monitoring Officer or S151/Chief Finance Officer in the event that those posts are not held by directors). Councillors will not be involved in the dismissal of any officer below directors (unless they are the Monitoring Officer or S151/Chief Finance Officer).

~~7. Disciplinary Action – Head of the Authority’s Paid Service, Monitoring Officer and Chief Finance Officer~~

~~6.2~~ In the following paragraphs and in Appendices 1, 2 and 3 to these Procedure Rules:-

- (a) “the 2011 Act” means the Localism Act 2011;
- (b) (i) “chief finance officer”, “disciplinary action”, “head of the authority's paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;  
  
(ii) (Unless the context otherwise requires) for the purposes of this Constitution, disciplinary action shall include dismissal ~~and capability~~ proceedings
- (c) “Independent Person” means a person appointed under section 28(7) of the 2011 Act;
- (d) “local government elector” means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts;
- (e) “the Independent Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the ~~disciplinary action and/or~~ dismissal of relevant officers of the authority;
- (f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss disciplinary action against a Relevant Officer; and
- (g) “Relevant Officer” means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.
- (h) “The Authority” means Guildford Borough Council

~~7.2 (a) A Relevant Officer may not be subject to disciplinary action by the Authority unless the procedure set out in the following paragraphs of this procedure rule has been complied with.~~

~~(b) The Relevant Officer may be suspended whilst an investigation takes place into the alleged misconduct. Any such suspension must be on full pay and terminate no later than two months from the day on which the suspension takes effect.~~

~~(c) In relation to any suspension pursuant to paragraph (b) above, the Panel may direct:-~~

~~(i) that the Authority terminates the suspension of the Relevant Officer;~~

~~(ii) that any such suspension must continue after the expiry of the said~~

~~two month period; and  
(iii) that the terms on which any such suspension has taken place must be varied in accordance with its direction~~

~~7.3 The Authority must invite Relevant Independent Persons to be considered for appointment to the Panel with a view to appointing at least two such persons to the Panel.~~

~~7.4 In paragraph 7.3 above, "Relevant Independent Person" means any Independent Person who has been appointed by the Authority or, where there are fewer than two such persons, such Independent Persons as have been appointed by another authority or authorities as the Authority considers appropriate.~~

~~7.5 Subject to paragraph 7.6 below, the Authority must appoint to the Panel such Relevant Independent Persons who have accepted an invitation issued in accordance with paragraph 7.3 above in accordance with the following priority order:-~~

~~(a) a Relevant Independent Person who has been appointed by the Authority and who is a local government elector;~~

~~(b) any other Relevant Independent Person who has been appointed by the Authority; and~~

~~(c) a Relevant Independent Person who has been appointed by another authority or authorities.~~

~~7.6 The Authority is not required to appoint more than two Relevant Independent Persons but may do so.~~

~~7.7 The Authority must appoint any Panel at least 20 working days before the relevant meeting.~~

~~7.8 Before the taking of a vote at the relevant meeting on whether or not to approve disciplinary action, the Authority must take into account, in particular:-~~

~~(a) any advice, views or recommendations of the Panel and especially the Independent Persons thereon (and should they consider it necessary, the Independent Persons may give their advice, views and recommendations separately);~~

~~(b) the conclusions of any investigation into the proposed dismissal; and~~

~~(c) any representations from the relevant officer.~~

6.3 Any remuneration, allowances or fees paid by the Authority to an Independent Person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that Independent Person in respect of that Person's role as an independent person under the 2011 Act.

~~The appointments of Independent Persons referred to above may be carried out by the Monitoring Officer (unless the above procedures are being carried out in respect of the Monitoring Officer, in which case the appointments may be carried out by the Deputy Monitoring Officer or by one of the other Relevant Officers).~~



## Disciplinary Procedure for Managing Director/Head of Paid Service

### 1. Introduction

- 1.1 The disciplinary procedure set out below is for use in cases relating to the Managing Director/Head of Paid Service.
- 1.2 Informal conciliation is preferred to formal procedures if it can bring about a mutually agreed solution to the problems that have arisen. Such solutions should make it clear what specific changes in behaviour and/or performance are expected, and the agreed timescales.

### 2. General

- 2.1 The principles of natural justice and good management must govern the conduct of any proceedings against the Managing Director/Head of Paid Service on the grounds of alleged misconduct.
- 2.2 Any decisions in such matters must be in accordance with the law, in particular the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001, as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (“the Regulations”). The Regulations state that the Head of Paid Service may not be dismissed by an authority unless the procedure set out in the following paragraphs have been complied with.
- 2.3 Disciplinary procedures should be handled as quickly as possible, subject to the need to investigate the case thoroughly and to give the Managing Director/Head of Paid Service a reasonable opportunity to reply fully to the allegations.
- 2.4 The Managing Director/Head of Paid Service has the right to be represented at all stages throughout the Disciplinary Procedures by a union representative or some other person of their choice at their own cost.

### 3. Disciplinary Procedure

- 3.1 Where a question of discipline is raised in connection with the Managing Director/Head of Paid Service, the Monitoring Officer will refer the matter to the Employment Committee (“the Committee”). The Committee will consider the allegations and will meet with the Managing Director/Head of Paid Service to discuss them.
- 3.2 The Committee will then decide to either:
- appoint an Independent Investigator (“the Independent Investigator”) to investigate the allegations and report to the Committee with their findings and recommendations. The Committee will also consider whether suspension is necessary for a maximum period of two months (see paragraph 4 below) or
  - issue an informal unrecorded oral warning or
  - take no further action.
- 3.3 If the Committee decides to appoint an Independent Investigator a list of suitably qualified individuals is provided by the JNC Joint Secretaries and the Officer may

choose from three names provided. If genuine conflicts of interest are raised, these will be considered by the Committee but if the Managing Director/Head of Paid Service does not agree within 14 days the Council should be free to appoint their choice from the list.

3.4 The Managing Director/Head of Paid Service will be given full details of the allegations against them prior to the appointment of the Independent Investigator and shall be informed of their appointment as soon as is reasonably practicable thereafter.

3.5 The Independent Investigator will conduct a thorough review of the allegations and the evidence and shall normally provide a report within 20 working days of the commencement of the investigation stating his/her opinion as to whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegations of misconduct on the part of the Managing Director/Head of Paid Service.

#### **4. Suspension**

4.1 Suspension may be appropriate where the Managing Director/Head of Paid Service's continued presence at work might compromise the investigation or impair the efficient exercise of the Council's functions. The Chairman of the Committee may suspend the Managing Director/Head of Paid Service on full pay pending further investigation when allegations of misconduct are raised.

4.2 Written notice stating the reasons for any such suspension shall be given. The suspension may be for a maximum period of two months only from the date the suspension takes effect. The Chairman of the Committee may direct that the suspension is terminated or extended beyond the two-month period.

4.3 The Managing Director/Head of Paid Service shall be informed of the reason for suspension, or continued suspension and shall have the right to present information before such a decision is taken.

#### **5. The Hearing**

5.1 The Committee will hold a Hearing. The Committee must include at least one member of the Executive. The Managing Director/Head of Paid Service shall be given at least five clear working days' notice of the Hearing at which s/he will be entitled to be present and represented. S/he may make written submissions to the Hearing and may call witnesses.

5.2 Once the Independent Investigator has presented their findings, the Managing Director/Head of Paid Service may ask questions of the Independent Investigator and any witnesses called by him/her. The Managing Director/Head of Paid Service will then present his or her case and call any witnesses. The Committee may ask questions throughout the process.

5.3 The Committee will then consider whether the allegations are substantiated and, if so, whether any one of the following outcomes is appropriate:

(a) dismissal; or

(b) disciplinary action short of dismissal, such action may include:

- Written warning – including requirements on how to improve performance

- Final written warning – including requirements on how to improve performance
- Relegation (i.e. a reduction in salary) either indefinitely or for a specified period; or

(c) any other reasonable sanction deemed appropriate by the Committee; or

(d) to take no further action.

If the Committee determines that the outcome referred to in (a) above is appropriate, the procedures referred to in paragraphs 5.4, 5.5 and 6 below must be followed. The Committee may determine the outcomes referred to in (b), (c) and (d) above.

5.4 The Monitoring Officer, acting in the capacity of “proper officer” under the Regulations, will notify every member of the Executive of:

(i) the name of the person who the Committee wishes to dismiss;

(ii) any other particulars relevant to the dismissal which has been notified to the proper officer; and

(iii) the period within which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Executive to the proper officer;

5.5 Notice of the dismissal of the Managing Director/Head of Paid Service must not be given by the Council until either -

(i) the Leader of the Council has, within the period specified in the notice under sub-paragraph (iii) of paragraph 5.4, notified the proper officer that neither he nor any other member of the executive has any objection to the dismissal;

(ii) the proper officer has notified the Council that no objection was received by him within that period from the Leader; or

(iii) the Council is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

## 6. The Independent Panel

6.1 Where the Hearing recommends dismissal, an independent advisory panel (“the Independent Panel”) shall be convened by the Monitoring Officer no later than 15 working days after the Hearing to review the case and make recommendations to full Council.

6.2 The Monitoring Officer must invite Relevant Independent Persons to be considered for appointment to the Independent Panel with a view to appointing at least two such persons to the Panel.

6.3 In paragraph 6.2 above, “Relevant Independent Person” means any Independent Person who has been appointed by the Authority or, where there are fewer than two such persons, such Independent Persons as have been appointed by another authority or authorities as the Authority considers appropriate.

6.4 Subject to paragraph 6.5 below, the Monitoring Officer must appoint to the Independent Panel such Relevant Independent Persons who have accepted an invitation issued in accordance with paragraph 6.2 above in accordance with the following priority order:-

- (a) a Relevant Independent Person who has been appointed by the Authority and who is a local government elector;
- (b) any other Relevant Independent Person who has been appointed by the Authority; and
- (c) a Relevant Independent Person who has been appointed by another authority or authorities.

6.5 The Authority is not required to appoint more than two Relevant Independent Persons but may do so.

6.6 The Authority must appoint any Independent Panel at least 20 working days before the relevant meeting at which the full Council will consider whether or not to approve any recommendation for the dismissal of the Managing Director/Head of Paid Service.

6.7 The Monitoring Officer shall give at least five clear working days' notice of the Independent Panel meeting to the Managing Director/Head of Paid Service, who shall be entitled to attend and make representations. The Independent Investigator shall also attend the meeting but the Independent Panel will not conduct a rehearing of the evidence.

6.8 The Monitoring Officer will report the advice, views and recommendations of the Independent Panel to all councillors and the Managing Director/Head of Paid Service at least five clear working days before the date of the relevant meeting of the full Council that will consider whether or not to approve the dismissal of the Managing Director/Head of Paid Service.

## **7 Appeals**

### Appeal against dismissal

7.1 Where a recommendation to dismiss the Managing Director/Head of Paid Service has been made as referred to in paragraph 5.3 (a) above, the consideration of that recommendation by full Council will fulfil the appeal function. The appeal hearing by the full Council at the relevant meeting will take the form of a review of the case. The Managing Director/Head of Paid Service will have the opportunity to make further representations to the full Council at the relevant meeting. The Council, before the taking of a vote on whether or not to approve dismissal, must take into account, in particular:

- (a) Any advice, views or recommendations of the Independent Panel (and should they consider it necessary, the relevant Independent Persons may give their advice, views and recommendations separately);
- (b) The conclusions of any investigation into the proposed dismissal;
- (c) The conclusions and recommendations of the Committee following the Hearing; and

(d) Any representations from the Managing Director/Head of Paid Service.

After taking into account the above matters at the relevant meeting, the Council may take any one of the following actions:

- (i) to approve the recommendation for dismissal or
- (ii) to reject the recommendation for dismissal but impose sanctions described in paragraph 5.3 (b) or (c) above, or
- (iii) to reject the recommendation for dismissal and take no further action

Appeal against action short of dismissal

7.2 Where the Committee has taken action short of dismissal as referred to in paragraph 5.3 (b) or (c) above, the Managing Director/Head of Paid Service will have a right of appeal to the Appeals Panel. The Appeals Panel shall be politically balanced and comprise three councillors appointed by the Monitoring Officer who are members or substitute members of the Committee who were not involved in the Hearing. The Managing Director/Head of Paid Service will have the opportunity to make further representations to the Appeals Panel at its meeting.

After considering all relevant matters relating to the appeal, the Appeals Panel may take any one of the following actions:

- (i) to reject the appeal and confirm the Committee's decision, or
- (ii) to allow the appeal, in part, and impose an alternative sanction short of dismissal, or
- (iii) to allow the appeal and take no further action against the Managing Director/Head of Paid Service

## Disciplinary Procedure for Monitoring Officer and Chief Finance Officer

### 1. Introduction

- 1.1 The disciplinary procedure set out below is for use in cases relating to the Monitoring Officer or the Chief Finance Officer ("the Officer" or "the Officers" as appropriate).
- 1.2 Informal conciliation is preferred to formal procedures if it can bring about a mutually agreed solution to the problems that have arisen. Such solutions should make it clear what specific changes in behaviour and/or performance are expected, and the agreed timescales.

### 2. General

- 2.1 The principles of natural justice and good management must govern the conduct of any proceedings against the Officers on the grounds of alleged misconduct.
- 2.2 Any decisions in such matters must be in accordance with the law, in particular the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001, as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations"). The Regulations state that the Officers may not be dismissed by the Council unless the procedure set out in the following paragraphs have been complied with.
- 2.3 Disciplinary procedures should be handled as quickly as possible, subject to the need to investigate the case thoroughly and to give the Officer a reasonable opportunity to reply fully to the allegations.
- 2.4 The Officer has the right to be represented at all stages throughout the Disciplinary Procedures by a union representative or some other person of their choice at their own cost.

### 3. Disciplinary Procedure

- 3.1 Where a question of discipline is raised in connection with the Officer, the Managing Director will consider the allegations and meet with the Officer to discuss them.
- 3.2 The Managing Director will then decide to either:
- appoint an Independent Investigator ("the Independent Investigator") to investigate the allegations and report to the Employment Committee ("the Committee") with their findings and recommendations. The Managing Director will also consider whether suspension is necessary for a maximum period of two months (see paragraph 4 below), or
  - issue an informal unrecorded oral warning or
  - take no further action.
- 3.3 If the Managing Director decides to appoint an Independent Investigator, a list of suitably qualified individuals is provided by the JNC Joint Secretaries and the Officer

may choose from three names provided. If genuine conflicts of interest are raised, these will be considered by the Managing Director but if the Officer does not agree within 14 days the Council should be free to appoint their choice from the list.

3.4 The Officer will be given full details of the allegations against them prior to the appointment of the Independent Investigator and shall be informed of their appointment as soon as is reasonably practicable thereafter.

3.5 The Independent Investigator will conduct a thorough review of the allegations and the evidence and shall normally provide a report within 20 working days of the commencement of the investigation stating his/her opinion as to whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegations of misconduct on the part of the Officer.

#### **4. Suspension**

4.1 Suspension may be appropriate where the Officer's continued presence at work might compromise the investigation or impair the efficient exercise of the Council's functions. The Managing Director may suspend the Officer on full pay pending further investigation when allegations of misconduct are raised.

4.2 Written notice stating the reasons for any such suspension shall be given. The suspension may be for a maximum period of two months only from the date the suspension takes effect. The Managing Director may direct that the suspension is terminated or extended beyond the two-month period.

4.3 The Managing Director shall inform the Officer of the reason for suspension, or continued suspension and the Officer shall have the right to present information before such a decision is taken.

#### **5. The Hearing**

5.1 The Committee will hold a Hearing. The Committee must include at least one member of the Executive. The Officer shall be given at least five clear working days' notice of the Hearing at which s/he will be entitled to be present and represented. S/he may make written submissions to the Hearing and may call witnesses.

5.2 Once the Independent Investigator has presented their findings, the Officer may ask questions of the Independent Investigator and any witnesses called by him/her. The Officer will then present his or her case and call any witnesses. The Committee may ask questions throughout the process.

5.3 The Committee will then consider whether the allegations are substantiated and, if so, whether any one of the following outcomes is appropriate:

(a) dismissal; or

(b) disciplinary action short of dismissal, such action may include:

- Written warning – including requirements on how to improve performance
- Final written warning – including requirements on how to improve performance
- Relegation (i.e. a reduction in salary) either indefinitely or for a specified period; or

(c) any other reasonable sanction deemed appropriate by the Committee; or

(d) to take no further action.

If the Committee determines that the outcome referred to in (a) above is appropriate, the procedures referred to in paragraphs 5.4, 5.5 and 6 below must be followed. The Committee may determine the outcomes referred to in (b), (c) and (d) above.

5.4 The Managing Director, acting in the capacity of “proper officer” under the Regulations, will notify every member of the Executive of:

(i) the name of the person who the Committee wishes to dismiss;

(ii) any other particulars relevant to the dismissal which has been notified to the proper officer; and

(iii) the period within which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Executive to the proper officer;

5.5 Notice of the dismissal of the Officer must not be given by the Council until either -

(i) the Leader of the Council has, within the period specified in the notice under sub-paragraph (iii) of paragraph 5.4, notified the proper officer that neither he nor any other member of the executive has any objection to the dismissal;

(ii) the proper officer has notified the Council that no objection was received by him within that period from the Leader; or

(iii) the Council is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

## **6. The Independent Panel**

6.1 Where the Hearing recommends dismissal, an independent advisory panel (“the Independent Panel”) shall be convened by the Managing Director no later than 15 working days after the Hearing to review the case and make recommendations to full Council. The Independent Panel shall comprise of at least two relevant independent persons who have been appointed either by the Council, or by another council(s), under the provisions of Section 28(7) of the Localism Act 2011.

6.2 At least 20 working days before the relevant meeting at which the full Council will consider whether or not to approve any recommendation for the dismissal of the Officer, the Managing Director will appoint relevant independent persons who have accepted an invitation to sit on the Independent Panel in accordance with the following priority order:

(1) a relevant independent person who has been appointed by the Council, and who is a local government elector;

(2) any other relevant independent person who has been appointed by the Council;



(3) a relevant independent person who has been appointed by another council or councils.

6.3 The Managing Director shall give at least five clear working days' notice of the Independent Panel meeting to the Officer, who shall be entitled to attend and make representations. The Independent Investigator shall also attend the meeting but the Independent Panel will not conduct a rehearing of the evidence.

6.4 The Managing Director will report the advice, views and recommendations of the Independent Panel to all councillors and the Officer at least five clear working days before the date of the relevant meeting of the full Council that will consider whether or not to approve the dismissal of the Officer.

## **7. Appeals**

### Appeal against dismissal

7.1 Where a recommendation to dismiss the Officer has been made as referred to in paragraph 5.3 (a) above, the consideration of that recommendation by full Council will fulfil the appeal function. The appeal hearing by the full Council at the relevant meeting will take the form of a review of the case. The Officer will have the opportunity to make further representations to the full Council at the relevant meeting. The Council, before the taking of a vote on whether or not to approve the dismissal, must take into account, in particular:

(i) Any advice, views or recommendations of the Independent Panel (and should they consider it necessary, the relevant Independent Persons may give their advice, views and recommendations separately);

(ii) The conclusions of any investigation into the proposed dismissal;

(i) The conclusions and recommendations of the Committee following the Hearing; and

(ii) Any representations from the Officer

After taking into account the above matters at the relevant meeting, the Council may take any one of the following actions:

(i) to approve the recommendation for dismissal, or

(ii) to reject the recommendation for dismissal but impose sanctions described in paragraph 5.3 (b) or (c) above, or

(iii) to reject the recommendation for dismissal and take no further action

### Appeal against action short of dismissal

7.2 Where the Committee has taken action short of dismissal as referred to in paragraph 5.3 (b) or (c) above, the Officer will have a right of appeal to the Appeals Panel. The Appeals Panel shall be politically balanced and comprise three councillors appointed by the Managing Director who are substitute members of the Employment Committee who were not involved in the Hearing. The Officer will have the opportunity to make further representations to the Appeals Panel at its meeting.

After considering all relevant matters relating to the appeal, the Appeals Panel may take any one of the following actions:

- (i) to reject the appeal and confirm the Committee's decision, or
- (ii) to allow the appeal, in part, and impose an alternative sanction short of dismissal, or
- (iii) to allow the appeal and take no further action against the Officer.

## Disciplinary Procedure for Directors (who are not Relevant Officers)

### 1. Introduction

- 1.1 The disciplinary procedure set out below is for use in cases relating to Directors, who are not Relevant Officers as defined in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 1.2 Informal conciliation is preferred to formal procedures if it can bring about a mutually agreed solution to the problems that have arisen. Such solutions should make it clear what specific changes in behaviour and/or performance are expected, and the agreed timescales.

### 2. General

- 2.1 The principles of natural justice and good management must govern the conduct of any proceedings against a Director on the grounds of alleged misconduct.
- 2.2 Any decisions in such matters must be in accordance with the law, in particular the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001, as amended ("the Regulations").
- 2.3 Disciplinary procedures should be handled as quickly as possible, subject to the need to investigate the case thoroughly and to give the Director a reasonable opportunity to reply fully to the allegations.
- 2.4 The Director has the right to be represented at all stages throughout the Disciplinary Procedures by a union representative or some other person of their choice at their own cost.

### 3. Disciplinary Procedure

- 3.1 Where a question of discipline is raised in connection with a Director, the Managing Director will consider the allegations and meet with the Director to discuss them.
- 3.2 The Managing Director will then decide to either:
- appoint an Independent Investigator ("the Independent Investigator") to investigate the allegations and report to the Employment Committee ("the Committee") with their findings and recommendations. The Managing Director will also consider whether suspension is necessary for a maximum period of two months (see paragraph 4 below), or
  - issue an informal unrecorded oral warning or
  - take no further action.
- 3.3 If the Managing Director decides to appoint an Independent Investigator, a list of suitably qualified individuals is provided by the JNC Joint Secretaries and the Director may choose from three names provided. If genuine conflicts of interest are raised, these will be considered by the Managing Director but if the Director does not agree within 14 days the Council should be free to appoint their choice from the list.

3.4 The Director will be given full details of the allegations against him/her prior to the appointment of the Independent Investigator and shall be informed of their appointment as soon as is reasonably practicable thereafter.

3.5 The Independent Investigator will conduct a thorough review of the allegations and the evidence and shall normally provide a report within 20 working days of the commencement of the investigation stating his/her opinion as to whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegations of misconduct on the part of the Director.

#### 4. Suspension

4.1 Suspension may be appropriate where the Director's continued presence at work might compromise the investigation or impair the efficient exercise of the Council's functions. The Managing Director may suspend the Director on full pay pending further investigation when allegations of misconduct are raised.

4.2 Written notice stating the reasons for any such suspension shall be given. The Managing Director may direct that the suspension is terminated or extended beyond the period of initial suspension.

4.3 The Managing Director shall inform the Director of the reason for suspension, or continued suspension, and the Director shall have the right to present information before such a decision is taken.

#### 5. The Hearing

5.1 The Committee will hold a Hearing. The Committee must include at least one member of the Executive. The Director shall be given at least five clear working days' notice of the Hearing at which s/he will be entitled to be present and represented. S/he may make written submissions to the Hearing and may call witnesses.

5.2 Once the Independent Investigator has presented their findings, the Director may ask questions of the Independent Investigator and any witnesses called by him/her. The Director will then present his or her case and call any witnesses. The Committee may ask questions throughout the process.

5.3 The Committee will then consider whether the allegations are substantiated and, if so, whether any one of the following outcomes is appropriate:

(a) dismissal; or

(b) disciplinary action short of dismissal, such action may include:

- Written warning – including requirements on how to improve performance
- Final written warning – including requirements on how to improve performance
- Relegation (i.e. a reduction in salary) either indefinitely or for a specified period; or

(c) any other reasonable sanction deemed appropriate by the Committee; or

(d) to take no further action.

If the Committee determines that the outcome referred to in (a) above is appropriate, the procedures referred to in paragraphs 5.4, 5.5 and 6 below must be followed. The Committee may determine the outcomes referred to in (b), (c) and (d) above.

5.4 The Managing Director, acting in the capacity of “proper officer” under the Regulations, will notify every member of the Executive of:

- (i) the name of the person who the Committee wishes to dismiss;
- (ii) any other particulars relevant to the dismissal which has been notified to the proper officer; and
- (iii) the period within which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Executive to the proper officer;

5.5 Notice of the dismissal of the Director must not be given by the Committee until either -

- (i) the Leader of the Council has, within the period specified in the notice under sub-paragraph (iii) of paragraph 5.4, notified the proper officer that neither he nor any other member of the Executive has any objection to the dismissal;
- (ii) the proper officer has notified the Committee that no objection was received by him within that period from the Leader; or
- (iii) the Committee is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

## **6. The Independent Panel**

6.1 Where the finding at the Hearing is to dismiss the Director, an independent advisory panel (“the Independent Panel”) shall be convened by the Managing Director no later than 15 working days after the Hearing. The Independent Panel shall comprise of at least two relevant independent persons who have been appointed either by the Council, or by another council(s), under the provisions of Section 28(7) of the Localism Act 2011.

6.2 The Independent Panel will review the case and confirm one of the following courses of action:

- (i) to confirm that the decision to dismiss the Director is appropriate taking into account all the relevant matters, in which case the dismissal will be implemented, or
- (ii) to confirm that the decision to dismiss the Director is not appropriate taking into account all the relevant matters, in which case the matter will be referred back to the Committee for further consideration of the advice, views, and recommendations of the Independent Panel.

6.3 The Managing Director shall give at least five clear working days’ notice of the reference back to the Committee to the Director, who shall be entitled to attend and make representations.

6.4 In the event of a reference back, the Committee, after taking into account the advice, views and recommendations of the Independent Panel and any further submissions from the Director, may take any one of the following actions:

- (i) to confirm their decision to dismiss the Director
- (ii) to determine action short of dismissal as described in paragraph 5.3 (b) or (c) above
- (iii) to take no further action

## 7. Appeals

7.1 Where the Committee has determined either:

- (i) that the Director shall be dismissed, as referred to in paragraph 5.3 (a) above, or
- (ii) that the Director shall be disciplined by way of action short of dismissal, as referred to in paragraph 5.3 (b) or (c) above

the Director may submit an appeal against that decision to the Appeals Panel.

7.2 The Appeals Panel shall be politically balanced and comprise three councillors appointed by the Managing Director who are members or substitute members of the Committee who were not involved in the Hearing.

7.3 The appeal hearing by the Appeals Panel will take the form of a review of the case. The Director will have the opportunity to make further representations to the Appeals Panel. The Appeals Panel, before the taking of a vote on the outcome of the appeal, must take into account, in particular:

- (a) Any advice, views or recommendations of the Independent Panel (and should they consider it necessary, the relevant Independent Persons may give their advice, views and recommendations separately);
- (b) The conclusions of any investigation into the proposed dismissal;
- (c) The conclusions and recommendations of the Committee following the Hearing; and
- (d) Any representations from the Director

7.4 After taking into account the above matters, the Appeals Panel may take any one of the following actions:

- (i) to reject the appeal and confirm the Committee's decision, or
- (ii) to allow the appeal, in part, and impose an alternative sanction short of dismissal, or
- (iii) to allow the appeal and take no further action against the Director.

**TERMS OF REFERENCE OF THE EMPLOYMENT COMMITTEE**

1. To approve the Council's human resources policies.
- ~~2. To determine appointments (but only to make recommendations to Full Council in the case of the Relevant Officers as referred to in Officer Employment Procedure Rule 7 in Part Four of this Constitution), remuneration, pension discretions, employment, dismissal and disciplinary action relating to the Managing Director and to Directors (but as regards disciplinary action not including Relevant Officers as referred to in Officer Employment Procedure Rule 7)~~
2. *Following the relevant procedures set out in Officer Employment Procedure Rule 6 in Part Four of this Constitution:*
  - (a) *To make recommendations to full Council in respect of the appointment or dismissal of Relevant Officers*
  - (b) *To determine disciplinary action short of dismissal of Relevant Officers*
  - (c) *To determine the appointment, dismissal or disciplinary action short of dismissal of Directors who are not Relevant Officers*
  - (d) *To constitute the Appeals Panel provided that such Panel shall comprise only those members or substitute members of the Employment Committee who were not involved in the original Hearing.*
3. *To determine remuneration and pension discretions relating to the Managing Director and Directors in accordance with the Council's approved human resources policies and Pay Policy Statement.*
4. To approve or make a recommendation to Council for any financial settlement with any Director in connection with the termination of his or her employment, subject to the requirements of the Pay Policy Statement.
- ~~5. To constitute (either as a whole or as a sub-committee; together with at least two Independent Persons as referred to in Officer Employment Procedure Rule 7) the Panel (as so referred to) to make recommendations and give its advice and views to Council in relation to dismissal, and disciplinary action relating to the said Relevant Officers.~~
5. To make recommendations to Council in relation to any financial settlement with the Managing Director in connection with the termination of his or her employment.
6. To conduct a hearing into any unresolved grievance brought by the Managing Director.