

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

PROCEDURES FOR DISMISSAL DISCIPLINE AND GRIEVANCE MATTERS FOR THE CHIEF EXECUTIVE AND STATUTORY OFFICERS

The Head of Personnel is authorised to develop this procedure from time to time, based on the Model Procedure, but adapted to reflect the specific details outlined above as agreed by Full Council.

1 Background

In these Procedures, “**Statutory Officers**” means the Council’s Chief Executive, Monitoring Officer and s.151 Officer.

In principle it is for each employer to determine its procedures and practical arrangements for the handling of grievances, disciplinary action and the termination of employment contracts, taking into account of relevant considerations in general employment law. However, further legal requirements need to be taken into consideration in the case of Local Authority Statutory Officers.

The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended, the “**Standing Orders Regulations**”) set out the statutory processes for dismissal and disciplinary action against a Statutory Officer. A set of best-practice model procedures and guidance, reflecting the Standing Orders Regulations, have been devised by the Joint Negotiating Committee for Local Authority Chief Executives.¹ These are set out in a Conditions of Service Handbook, most recently updated on 7 September 2022 (the **Model Procedure**, together with accompanying guidance the **Model Code**). Although the Model Code was devised to apply only to Chief Executives, the Council has determined to apply the disciplinary and dismissal provisions to matters involving the other two Statutory Officer roles as well: this is consistent with best practice across other local authorities.

The procedures in the JNC Model Code were integrated into the Council’s Constitution following decisions in April 2020, and have been incorporated into the contracts of employment of the Council’s Statutory Officers.

At the same time, it is important to note that the Model Code (as with any Guidance document) is not a binding document, and its provisions are not mandatory. The Model Code also expressly provides for authorities to make local arrangements for various parts of the wider procedure, and to agree amendments in specific cases where this is in the interests of both parties. Accordingly it is open to the Council to depart from the Model Code where this is appropriate in the circumstances.

The Council will therefore follow the JNC Model Code as appropriate when handling dismissal, disciplinary or grievance matters against any of its Statutory Officers.

¹ The JNC is the negotiating body bringing together the LGA (representing employer local authorities) and the Association of Local Authority Chief Executives (ALACE) representing officers.

Key aspects of the Council's local arrangements are explained in section 3 of this document.

All other terms and conditions of employment for the Statutory Officers are as per the Council's employment terms and conditions, as set out in the contracts of employment for the individuals concerned and the Council's Employee Handbook.

2 Dismissal Procedures

2.1 Redundancy, Permanent Ill-Health and the expiry of Fixed Term Contracts

Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract, where there has been no commitment to renew it, shall be managed in accordance with the Council's normal procedures. It should be noted that dismissals for all reasons including those set out in this paragraph must be approved by Full Council.

2.2 Disciplinary action resulting in proposals to dismiss on the grounds of misconduct, and proposals to dismiss for other reasons such as capability and some other substantial reason

In situations where there is the potential to dismiss on the grounds of misconduct, capability or some other substantial reason the Council will first consider informal resolution (see section 3 below).

If this is not successful, then these situations will require the involvement of the Council's Investigating and Disciplinary Committee (**IDC**). The IDC will follow the steps outlined in the JNC's Model Procedure including, where appropriate, the appointment of an Independent Investigator.

2.3 Performance and sickness absence matters

Issues relating to sickness absence management and employee performance management will be dealt with in accordance with the Council's procedures for these matters, to the point where dismissal appears to be a possibility. At this point, reference will be made to the Model Code.

The summary table in Appendix 1 indicates the appropriate procedures to follow for the different types of situations, i.e. whether the issue should follow a local procedure or whether it should follow the Model Code.

3 Disciplinary Procedures

3.1 Considerations prior to contemplating disciplinary action

"Disciplinary Action" is defined within the Standing Orders Regulations, and includes reasons for dismissal such as capability or some other substantial reason including a breakdown in trust and confidence between the Chief Executive and the Council.

The Model Code recognises that taking formal disciplinary action against a Statutory Officer can be complex, time-consuming, and potentially very expensive. Accordingly, a key issue is whether formal disciplinary action is necessary at all or whether informal resolution to a problem could provide a better solution in the circumstances. Assistance with informal resolution can be requested from the Joint Secretaries of the JNC.

The Council will consider the relevant guidance on early informal resolution and joint secretarial conciliation, as outlined in Appendix 4 of the Model Code.

In addition, when a complaint or allegation is received against a Statutory Officer the appropriate procedure to follow should be considered, as set out in section 3.5 of this procedure.

3.2 The formal JNC procedure and associated guidance

Where informal resolution is not possible and it is deemed that the disciplinary procedure is the appropriate process to follow, then subject to the paragraphs below, the Model Procedure shall apply (see flowchart at **Appendix 2**).

The Statutory Officer's line manager shall have responsibility for the Council's position in the informal resolution.

The Model Procedure can be modified by mutual agreement to suit the particular circumstances of the case, but not so as to contradict the requirements of the Standing Orders Regulations. There is an obligation on each party to give fair consideration to reasonable proposals from the other party to modify the Model Procedure.

The principles of natural justice and good management practice must govern the conduct of any proceedings against all officers. The Council will also have full regard to the principles and standards set out in *Discipline and Grievance - ACAS Code of Practice*.

The procedure should be handled as quickly as is consistent with the need to investigate the case and to give the relevant officer a fair opportunity to reply fully to complaints. The supporting guidance for the Model Procedure should be referred to for advice in relation to timescales for the process.

3.3 Receipt of the complaint/allegation

Complaints/allegations against the Chief Executive should be made to the Leader of the Council or the Monitoring Officer. Complaints/allegations against the Monitoring Officer or Section 151 Officer should be made to the Chief Executive.

The Head of Personnel will provide support for the process and should be made aware of any complaints/allegations as soon as possible so that advice regarding the required process can be provided.

The Joint Secretaries of the JNC should be notified as soon as it is proposed to use the Model Procedure and it is recommended that both parties contact the appropriate side

secretary as soon as possible to ascertain whether more detailed assistance might be desirable. The Head of Personnel will co-ordinate this contact on behalf of the Council.

3.4 Key features of the model disciplinary procedure

3.4.1 The Model Procedure is outlined in full in Appendix 2.

Specific roles within the Model Procedure are allocated to:

- The Monitoring Officer
- The Investigating and Disciplinary Committee;
- The Appeals Panel;
- The Independent Panel;
- The Grievance Panel; and
- Full Council

The composition of these committees/panels and the delegation of powers to them are a non-executive function and so must be agreed by Full Council.

3.4.2 Initial Filtering of Complaints

Not all complaints about a Statutory Officer should lead to a referral to an IDC. The Model Code recommends that local authorities establish procedures to filter out and deal with allegations which are clearly unfounded, trivial or can best be dealt with under some other procedure, for example:

- complaints about a particular service should be dealt with through the Council's general complaints procedure;
- complaints raised by a member of staff directed at the Chief Executive should be dealt with through the grievance procedure.

The **Monitoring Officer** (or another appropriate officer in the event of their inability/unsuitability to act) shall be responsible for the filtering of allegations in accordance with paragraph 1.3.3a of the Model Guidance. The Monitoring Officer shall be responsible for carrying out any preliminary inquiries that are needed at the filtering stage to clarify whether there is any substance to the allegation or complaint. Those inquiries should be conducted consistent with the LGA Guidance for Member Conduct Complaints from time to time, and may include requests for clarification from the complainant.

3.4.3 The **Investigating and Disciplinary Committee (IDC)** is a politically balanced committee comprising of nine members, at least one of whom will be a member of Cabinet. The IDC may delegate administrative matters, such as dealing with the Joint Secretaries, to an appropriate senior officer (likely to be the Monitoring Officer or an appropriate Executive Director or Head of Personnel).

If the IDC decides that allegations require further investigation it has delegated responsibility to appoint an Independent Investigator; the investigator should be identified from the list provided by the National Joint Secretaries.

The IDC will have delegated responsibility, where appropriate, for the suspension of the relevant officer. In the event of the need for urgency, this function will be delegated to the Chief Executive, should there be a need to suspend the Monitoring Officer or Section 151 Officer, or the Monitoring Officer should there be a need to suspend the Chief Executive. In all cases, the decision to be made in consultation with the Chair of the IDC and the Head of Personnel.

- 3.4.4 The **Appeals Committee** must be a politically balanced committee comprising of five members at least one of whom will be a member of Cabinet. Members of the Appeals Committee cannot be members of the IDC. The Appeals Committee's purpose is to hear appeals against action taken short of dismissal and decides to either confirm the action or to impose no sanction or a lesser sanction. The Council's Licensing and Appeals Panel deals with appeals against disciplinary sanctions short of dismissal relating to the relevant officers. The Appeals Committee may delegate administrative matters, such as dealing with the Joint Secretaries, to an appropriate senior officer (normally the Monitoring Officer or an appropriate Executive Director).
- 3.4.5 The **Independent Panel** should comprise of at least two independent persons appointed by the Council or another Council, under section 28 of the Localism Act 2011. Where for any reason one of these Independent Persons is unable or unwilling to act, the Council shall appoint as a replacement an independent person properly appointed by another Council.

The Independent Panel shall only be used if the IDC, having received the report of the Independent Investigator and having held a hearing, is minded to recommend dismissal to Full Council. The Independent Panel must hear the

- 3.4.6 Where the IDC recommends dismissal, then the Standing Orders Regulations require that the matter must go to **Full Council** for decision. Full Council will receive a report from the Independent Panel comprising the IDC's recommendations, the Independent Investigator's report and the Independent Panel's comments on the recommendations.

The Standing Orders Regulations provide that the dismissal of a Statutory Officer in cases of disciplinary action (as defined in those Regulations) may only take place if the proposal to dismiss is approved by way of a vote at a meeting of Full Council, after they have taken into account:

- any views or recommendations of the IDC and the Independent Panel;
- the conclusions of any investigation into the proposed dismissal and
- any representations from the Statutory Officer concerned.

3.5 Financial Settlement

Notwithstanding the provisions of paragraph 5.4.7 of the Model Code, the negotiation of financial settlements should be carried out by officers. The approval of any financial settlement shall be done in accordance with statutory guidance.

3.6 Support for Disciplinary Process

Support for the IDC process will be undertaken by the Head of Personnel (or nominated representative). The Head of Personnel will ensure that records are kept of allegations and investigations and that there is a clear route into the disciplinary procedure. Appropriate records will be kept on the personnel file of the relevant Statutory Officer.

The Head of Personnel (or nominated representative) will be responsible for arranging appropriate mandatory training for members serving on the IDC, Appeals Committee, Grievance Committee and the Independent Persons serving on the Independent Panel.

3.7 Support for Statutory Officers

Although the statutory right to be accompanied applies only at a disciplinary hearing the JNC procedure provides the opportunity for a Statutory Officer to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost. Further advice on the right to be accompanied as it applies to the Model Procedure can be found in section 4 of the JNC guidance.

3.8 Suspension

Suspension will not always be appropriate but may be a consideration depending on the nature of the allegations or seriousness of the issue. Before suspending a Statutory Officer, careful consideration should be given as to whether this is necessary. If suspension is being considered, section 3 of the JNC's guidance should be followed.

3.9 Timescales

The guidance encourages proceedings to be conducted expeditiously in the interests of all parties. It also refers to other statutory timescales and restrictions which are applicable to disciplinary procedures more generally, such as those contained within the Employment Rights Act 1999 (in connection with the right to be accompanied). These timescales/restrictions should be adhered to.

Otherwise (except in one instance)² the Model Procedure does not set out explicit timescales.

It is recognised that the availability of key people necessary to the process could cause delay and section 2.3 of the guidance in the Model Code should be referred to.

3.10 Additional Guidance

The Council will have regard to the JNC Model Code at all times. The Guidance within the Model Code covers in particular:

- considering other allegations/ issues under investigation
- conducting the initial IDC investigation
- setting terms of reference etc. relating to the Independent Investigators
- treatment of witness evidence
- conflicts of interest
- maintaining fairness and integrity during the procedure
- breakdown of trust and confidence
- access to appropriate professional/independent advice
- action that the IDC can take

The Head of Personnel will ensure that the IDC is provided with the relevant and up-to-date JNC guidance throughout the process.

Where additional guidance is required at any stage of the process, this will be sought via the Local Government Association. This may include the provision of specialist independent advice to the IDC if required.

4. Grievance Procedures relating to the Chief Executive

In the case of a grievance brought against, or by a chief executive, the Council shall apply the procedures and guidance set out in Appendix 7 of the Model Code, including the guidance on informal resolution.

The **Grievance Committee** should be a politically balanced committee of up to 5 members who are not members of either the IDC or the Appeals Committee. The Committee shall be convened from members of the Standards Committee subject to these conditions. The role of the Grievance Committee is to fulfil the requirements of the Grievance Procedure in the Model Code from time to time.

For the purposes of Appendix 7 of the Model Code, the Council nominates the Monitoring Officer as “Receiving Officer”.

² the specific requirement in the Standing Orders Regulations for the appointment of the Independent Panel at least 20 working days before the meeting of the council at which consideration is to be given as to whether to approve a recommendation to dismiss.

Appendix 1

		Reason for Termination						
		Misconduct	Capability Performance	Capability – Ill Health (Long term or frequent intermittent absence)	Some other substantial reason	Capability – Permanent Ill Health	Redundancy	Expiry of Fixed Term Contract
Action	Dismissal	Yes	Yes	Yes	Yes	Maybe – could be mutual termination	Yes	Yes
	Independent Panel Required?	Yes	Yes	Yes	Yes	No	No	Yes if authority has given commitment to renew
	Required to follow ACAS Code of Practice	Yes	Yes	Yes	Yes	Maybe – if dismissal	No	No
	Procedure to Follow	JNC	JNC	JNC	JNC	Local (with Council approval)	Local (with Council approval)	Local (with Council approval)

Appendix 2

Model Disciplinary Procedure for Local Authority Statutory Officers

ENGLAND ONLY: Disciplinary Procedure for Local Authority Chief Executives



