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difference

**Disciplinary Policy and
Procedure
“Protected Officers”**

(Chief Executive, Chief Finance Officer
and Monitoring Officer)

REVIEWED JULY 2022

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1. INTRODUCTION

- 1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 introduced specific regulations that make distinctive provisions for certain protections to be in place in the event of disciplinary action being considered against a Local Authority Chief Executive, Chief Finance Officer or Monitoring Officer. These officers will be referred to as the 'Protected Officers'.
- 1.2 This formal procedure reflects the requirements of these Regulations and the model procedures within the JNC handbooks for Chief Executives (updated October 2016).
- 1.3 Where an allegation is made relating to the conduct or capability of a protected officer or there is some other substantial issue that requires investigation and where this may potentially lead to dismissal, the matter will be considered as set out below by the Senior Officer's Disciplinary Committee (the Committee). If a recommendation to dismiss has been made it will also be considered by the Independent Panel, comprising of at least two Independent Persons (see 5.3), prior to a final decision by Full Council. This includes situations of significant sickness absence where the next stage may be termination of employment (other than formal ill health retirements).

2. GENERAL GUIDELINES AND PRINCIPLES

- 2.1 The definition of disciplinary action as set out in the Local Authorities (Standing Orders) (England) Regulations 2001 as amended includes other reasons for dismissal such as capability or some other substantial reason including a breakdown in trust and confidence between the chief executive and the authority or situations of significant sickness absence (other than formal ill health retirements).
- 2.2 In general, informal conciliation is to be preferred if it can bring about a mutually agreed solution to the problems that have arisen. Where potential disciplinary problems (either conduct or performance) are identified then either of the parties may wish to approach the appropriate JNC Side Secretary. The Joint Secretaries are available at any stage in the proceedings to facilitate discussions between the parties and act as impartial conciliators.
- 2.3 Any officer within the scope of this policy has the right to be accompanied by a trade union representative or work colleague at any formal stage of the procedure. They and/or their representative have the right to put their side of the case and to call witnesses.

- 2.4 The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) provide that the dismissal of a chief executive or protected officer in cases of disciplinary action (as defined by the regulations) may only take place if the proposal to dismiss is approved by way of a vote at a meeting of the authority, after they have taken into account:
- any advice, views or recommendations of a panel (the Independent Panel)
 - the conclusions of any investigation into the proposed dismissal and
 - any representations from the protected officer concerned
- 2.5 The procedure:
- specifies who has the authority to take disciplinary actions
 - ensures that action is not taken without careful investigation
 - gives clear details of time scales and any deadlines associated with the various stages of the procedure.
- 2.6 The HR Manager should be informed of all disciplinary concerns raised in respect of the Protected Officers. North West Employer Organisations will be the Council's main point of contact for advice and guidance on the employment and legal implications of dealing with the complaint. They will also attend and be involved in any part of the process as appropriate.
- 2.7 If the officer concerned is a trade union steward or representative, the Council will inform the regional office of the trade union concerned prior to commencement under this procedure.
- 2.8 At all stages in the procedure confidentiality must be respected by all the parties involved.
- 2.9 No officer will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.
- 2.10 The application of this policy and procedure will be non-discriminatory irrespective of an employee's age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender or sexual orientation.

3. FORMAL PROCEDURE

3.1 Preliminary Investigation

- 3.1.1 The Committee will, as soon as is practicable inform the protected 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 his/her right to present oral evidence.

3.1.2 The protected officer will be invited to put forward written representations and any evidence including any written evidence from witnesses. The Committee will also provide the opportunity for the protected officer to make oral representations. At this initial point in the procedure, it is not anticipated that witnesses will be called; the discretion to do so lies solely with the Committee.

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

3.1.4 The Committee will decide whether

- the issue requires no further formal action under this procedure or
- the issue should be referred to an Independent Investigator.

3.1.5 The Committee will inform the protected officer of its decision without delay.

3.2 **Suspension**

3.2.1 Where there is enough evidence to suggest that the protected officer may be guilty of gross misconduct or where the officer's continuing presence at work compromises the investigation or impairs the efficient exercise of the Council's functions, the officer will be suspended from duty.

3.2.2 The decision to suspend will be made by the Committee having taken into consideration appropriate employment/HR advice. This will normally be carried out in person with the protected officer either by the full Committee or individually by the Committee Chair who ultimately has the delegated power to suspend. In certain circumstances however it may be that the protected officer is informed in writing of the decision to suspend.

3.2.3 The protected officer will receive confirmation of the suspension in writing at the earliest opportunity stating the reasons for the suspension, who they may contact within the Council while they are suspended and that suspension will be on full pay and should last no longer than 2 months (unless there are exceptional circumstances).

3.2.4 It will be made clear to the officer that suspension is not a disciplinary penalty and that it will not prejudice any future disciplinary hearing.

3.2.5 During the course of the investigation, the Independent Investigating Officer may need to review the suspension and recommend:

- that the Council terminates any suspension of the officer;
- that any such suspension must continue after the expiry of 2 months.

3.3 **Appointment of an Independent Investigator**

3.3.1 Cases will vary in complexity but the threshold test for the Committee in deciding whether to appoint an Independent Investigator is to consider the allegation or matter and assess whether:

- if it were to be proved, it would be such as to lead to the dismissal or other action which would be recorded on the protected officer's personal file and
- there is evidence in support of the allegation sufficient to require further investigation.

3.3.2 The Committee select the Independent Investigator from a list maintained by the National Joint Secretaries.

3.4 **The Independent Investigation**

3.4.1 Once appointed it will be the responsibility of the Independent Investigator to:

- investigate the issue/allegation
- prepare a report stating in his/her opinion whether 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
- recommend any disciplinary action (if appropriate) or range of actions which appear to him/her to be appropriate for the authority to take against the protected officer.

3.4.2 Where disciplinary action is recommended the HR Manager will arrange a hearing with the Committee.

3.5 **Cases Involving Child Protection, Vulnerable Adults or Financial Irregularities, or Wider Issues for the Council**

3.5.1 Any complaint involving allegations relating to child protection issues or vulnerable adults must be discussed with the Local Authority Designated Officer for children's social care and adult's social care, as appropriate at Lancashire County Council.

3.5.2 In accordance with the Financial Regulations and Financial Procedure Rules the Chief Internal Auditor must be notified of any suspected fraud, theft, irregularity, improper use or misappropriation of the authority's property or resources.

4. DISCIPLINARY HEARING

4.1 If the Committee accepts a recommendation to proceed to a full disciplinary hearing this will be convened in accordance with the arrangements described below.

4.2 The officer must receive formal notice of a disciplinary hearing. The letter must give at least 5 working days' notice of the hearing and will include:

- confirmation that the Committee will act as the Hearing Panel;
- the date, time and location of the hearing;
- the investigation report, which will include details of the allegations;
- any other supporting evidence and any witnesses that will be called;
- the fact that the officer will have the opportunity to state their case and call and/or question any witnesses;
- the protected officer's right of representation by a trade union representative or work colleague;
- any previous warnings that could be taken into account when deciding the level of any disciplinary action;
- the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
- the right to submit a written statement to the Hearing Panel.
- a request that any documents which the officer wishes to be considered and details of any witnesses s/he intends to call are provided to the HR Manager at least 3 working days before the hearing for distribution to the panel.

4.3 An appropriate independent employment specialist will attend with the Hearing Panel.

4.4 A model order of conduct for the disciplinary hearing is shown in section 8.

4.5 The Committee, having considered all associated factors may:

- 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 protected officer short of dismissal
- Propose dismissal of the protected officer to the Council.

4.6 If, following an investigation and disciplinary hearing, disciplinary action is required, the following options are available:

- Written Warning
- Final Written Warning
- Dismissal, and dismissal with offer of re-engagement

5. WHERE DISMISSAL IS PROPOSED

- 5.1 Where the Committee proposes dismissal, the Regulations require that before notice of dismissal is issued:
- an opportunity has to be given to the executive (Cabinet) to object, and
 - the council must approve the dismissal.
- 5.2 **Executive Objections Procedure**
- 5.2.1 The Monitoring Officer will appoint a 'Proper Officer' to liaise with the Cabinet. If the Monitoring Officer is the one subject to disciplinary proceedings a Proper Officer will be appointed by the Corporate Management Team in liaison with Human Resources.
- 5.2.2 The Committee will inform the Proper Officer that it is proposing to the council that the protected officer be dismissed and that the executive objections procedure should commence.
- 5.2.3 The Proper Officer will notify all members of the executive of:
- The fact that the Committee is proposing to the council that it dismisses the protected officer
 - Any other particulars relevant to the dismissal
 - The period by 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
- 5.2.4 At the end of this period the Proper Officer will inform the Committee either:
- That the Leader has notified him/her that no members of the Executive have any objection to the dismissal
 - That an objection or objections have been received and provide details.
- 5.2.5 The Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, then the Committee will act accordingly and may commission further investigation by the Independent Investigator and report if required.
- 5.2.6 Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the Committee will inform the protected officer of the decision and put that proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material.
- 5.3 **The role of the Independent Panel**
- 5.3.1 Where the Committee is proposing dismissal, this proposal needs to go before the Independent Panel which must be appointed at least 20 days before the meeting of Full Council at which the recommendation for dismissal is to be considered.

- 5.3.2 The Independent Panel should comprise of at least two independent persons appointed by the Council in accordance with Regulations made under Section 28(7) of the Localism Act 2011.
- 5.4 **The role of Full Council**
- 5.4.1 The Council will consider the proposal that the protected officer should be dismissed and must take into account:
- Any advice, views or recommendations of the Independent Panel
 - The conclusions of the investigations into the proposed dismissal
 - Any representations from the protected officer
- 5.4.2 The protected officer will have the opportunity to appear before Full Council and put his or her case forward before a decision is taken. They will have the right of representation at this meeting.
- 5.4.3 The Council is at liberty to reject the proposal to dismiss. It can then decide on the appropriate course of action which could include substituting a lesser sanction or referring back to the Committee to determine that sanction.
- 5.4.4 It should be noted that the Council's decision is the final stage in the process and in effect constitutes the appeal stage as well.

6. APPEALS

- 6.1 **Appeals against dismissal**
- Where the Committee has made a proposal to dismiss; the hearing by Full Council will also fulfil the appeal function.
- 6.2 **Appeals against action short of dismissal**
- If the Committee takes action short of dismissal, the protected officer may appeal to the Council's Employment and Appeals Committee. They will consider the report of the Independent Investigator and any other relevant information. The protected officer will have the opportunity to appear at the meeting and state his/her case.
- 6.3 The decision of the Appeals Committee will be final.

7. EXAMPLES OF GROSS MISCONDUCT

7.1 Some of the offences which may be regarded as gross misconduct are (this list is not exhaustive):

- theft, unauthorised use or removal of the council's, a service user's, a client's or a fellow employee's property;
- falsification of time-sheets, expenses claims or other records;
- fighting or physical assault;
- sexual or racial harassment;
- harassment or discrimination on the grounds of race, gender, sexuality, disability, age or religious belief;
- deliberate damage to council or a fellow employee's property;
- accepting gifts or bribes for personal gain;
- inability to carry out normal work through being under the influence of alcohol or other drugs (medically prescribed drugs may be an exception);
- negligent or wilful failure to comply with legal requirements and council policies and procedures;
- deliberate disregard for safety rules;
- serious negligence causing unacceptable loss, damage or injury;
- a serious breach of the Code of Conduct;
- misuse of an employee's official position for personal gain, or for the inappropriate benefit of a friend, colleague or member of the employee's family;
- serious neglect of duty and responsibility associated with the post;
- failure to comply with a reasonable management instruction, despite being warned of the consequences;
- abuse of a service user;
- Non-disclosure of criminal convictions, cautions, and bans e.g. from driving that have occurred during the employees employment with the council;
- bringing the council into serious disrepute;
- criminal offences, which relate to, or affect the employee's ability to fulfil the terms of their contract, or have the potential to damage the reputation of the council.

8. ORDER OF CONDUCT OF DISCIPLINARY HEARING

- 8.1 The Hearing Panel Chairman will begin the formal hearing by
- introducing the people present
 - explaining the purpose of the meeting
 - checking any arrangements for representation
 - outlining the format to be followed
- 8.2 The Independent Investigating Officer presents the case from their investigation, referring to any documents and witnesses.
- If they call a witness -
- they will question the witness
 - the employee or their representative may question the witness
 - the Hearing Panel and their advisor may ask questions of the witness
- 8.3 The Officer or their representative can then question the Independent Investigating Officer.
- 8.4 The Hearing Panel and their advisor may question the Independent Investigating Officer.
- 8.5 The Officer or their representative presents the officer's response - which will include any mitigation, referring to documents and witnesses where appropriate.
- 8.6 If the officer or their representative calls a witness -
- They will question the witness
 - The Independent Investigating Officer may question the witness
 - The Hearing Panel and their advisor may ask questions of the witness
- 8.7 The Independent Investigating Officer questions the officer or their representative on their response to case.
- 8.8 The Hearing Panel and their advisor may question the officer or their representative.
- 8.9 Summing up by each side. The Independent Investigating Officer sums up the case first. The Officer/representative sums up last. New evidence should not be introduced during summing up. However, the Hearing Panel reserves the right to seek further information where it appears that there may be new evidence that could affect the outcome of that decision.
- 8.10 The Hearing Panel and their advisor adjourn to consider and decide on whether the allegations are substantiated and (taking into account any current warning) on any consequent action.
- 8.11 All parties are recalled and informed of the decision, the rationale for making that decision and that written confirmation will follow.

- 8.12 Where the decision is to issue a sanction short of dismissal, the officer will also be informed of their right of appeal.
- 8.13 Where the decision is to recommend dismissal or dismissal with an offer of re-engagement the matter will be referred to Full Council and action will continue as 5.4 above.

9. EQUALITY IMPACT ASSESSMENT AND MONITORING

- 9.1 The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

10. DATA PROTECTION

- 10.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.