

**6. Disciplinary action**

- (i) Disciplinary procedures should be handled as quickly as possible, subject to the need to investigate thoroughly. Informal conciliation is preferred to formal procedures if it can bring about a mutually agreed solution.
- (ii) Where an allegation is made against the Monitoring Officer or the Chief Finance Officer, the Head of Paid Service, or in the case of the Head of Paid Service, the Chair of the Governance Committee, will decide whether to:
  - a) take no action; or
  - b) agree an informal course of action; or
  - c) take formal action with the consent of the employee; or
  - d) refer the matter to the Investigating and Disciplinary Committee (IDC)

the Governance Committee will, as a term of reference of the Governance Committee, act as the IDC. The IDC must be politically balanced and must include at least one member of Cabinet.

If the statutory officer does not agree any proposed informal course of action and/or if it is decided to refer the matter to the IDC, the Head of Paid Service, or the Chair of the Governance Committee, as appropriate, will decide whether to suspend and will have authority to suspend if it is considered appropriate. This may be necessary, for example, if an allegation is such that if proven it would amount to gross misconduct or if the Statutory Officer's continuing presence at work might compromise the investigation or impair the efficient exercise of the Council's functions. If it is decided that the Statutory Officer should be suspended, the Statutory Officer will be informed in writing of this and of the reason for the suspension without delay and shall have the right to present information before such a decision is made.

- (iii) Where an allegation is made, the Head of Human Resources and Organisation Development will write to the Statutory Officer to invite the Statutory Officer to an IDC investigative meeting within 10 working days of the meeting. The invitation should set out the allegation(s)/issues, and provide any evidence to be considered. The invitation will also invite the Statutory Officer to submit a written response to the IDC not less than 5 working days before the meeting.
- (iv) Following the investigative meeting, the IDC will determine the course of action to be either:
  - a) no further action required; or
  - b) informal, un-recorded warning given; or
  - c) an Independent Investigator to be appointed to investigate the allegations and report to the IDC with their findings and recommendations.

- (v) The Chair of the IDC will confirm the outcome of the investigative meeting in writing to the Statutory Officer without delay.
- (vi) If the IDC decides to appoint an Independent Investigator, a list of suitably qualified individuals is provided by the JNC Joint Secretaries and the Statutory Officer may choose from the list provided. If genuine conflicts of interest are raised these will be considered by the IDC but if the Statutory Officer does not agree within 14 days, the IDC should be free to appoint their choice from the list.
- (vii) The Independent Investigator will conduct an investigation and produce a written report to the IDC:
  - a. Stating in his/her opinion whether (and if so, the extent to which) the evidence he/she has obtained supports the allegation of misconduct or other issue under investigation; and
  - b. Recommending any disciplinary action or range of actions (if any) which appear to him/her to be appropriate for the authority to take against the Statutory Officer.
- (viii) Where the Statutory Officer is suspended, the suspension should be reviewed by the Chair of the IDC after two months, and only continued following consultation with the Independent Investigator. The Chair of the IDC should confirm the outcome of the review in writing to the Statutory Officer without delay and after taking into account any representations made by the Statutory Officer.
- (ix) If the Independent Investigator considers that there is a case to answer, the Head of Human Resources and Organisation Development will arrange a hearing in accordance with the Code of Practice on Disciplinary and Grievance Procedures and invite the Statutory Officer to attend, giving at least 10 working days' notice including any associated paperwork from the Independent Investigator. The Statutory Officer has a right to be accompanied in the normal way. Any written response to the documents provided by the Independent Investigator should be received from the Statutory Officer at least 5 working days' in advance of the hearing.
- (x) At the hearing, the Independent Investigator should present their findings, including calling any witnesses they may wish to. After this presentation, the Statutory Officer may ask questions. The Statutory Officer will then have the opportunity to present their case and call any witnesses.
- (xi) The IDC will then consider which of the following outcomes is appropriate:
  - a) no further action; or
  - b) refer back to the Independent Investigator for further investigation and report; or
  - c) disciplinary action short of dismissal or other appropriate procedure; or

- d) recommend dismissal.

If the IDC decide on disciplinary action short of dismissal then the Statutory Officer will have the right of appeal. Appeals should be heard by an Appeals Committee, drawn from Full Council, and which will be a politically balanced committee of normally 5 members who were not part of the IDC. The appeal must be submitted in writing within 10 working days' of the hearing. Full details setting out the grounds of appeal must be provided.

- (xii) Where the IDC propose dismissal, the IDC will inform the Proper Officer that it is proposing to the Council that the Statutory Officer be dismissed. In the case of any proposal to dismiss the Head of Paid Service, the Proper Officer will be the Monitoring Officer and in all other cases, the Proper Officer will be the Head of Paid Service. The Proper Officer should then notify all members of the Council of:

- a. The fact that the IDC is proposing to the Council that it dismisses the Statutory Officer.
- b. Any other particulars relevant to the dismissal.
- c. The period by which any objection to the dismissal is to be made by the Leader to the Proper Officer.

- (xiii) At the end of this period, the Proper Officer will inform the IDC either:
- a. That the Leader has notified him/her that neither he/she nor any member of the Cabinet has any objection to the dismissal.
  - b. That no objections have been received from the Leader, or
  - c. That an objection or objections have been received and provide details of the objections.

- (xiv) The IDC will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If there are any material and/or well founded objections to the proposal to dismiss the IDC will consider the impact of any objections on the decision and commission further investigation by the Independent Investigator and report if required. If there is no material and/or well founded objections to the proposal to dismiss, the IDC will inform the Statutory Officer of this decision. Thereafter, the IDC will put the proposal to recommend dismissal to an Independent Panel (IP) that should be convened, giving at least 5 working days' notice to all concerned. The IP members must be appointed to the IP at least 20 working days before the Full Council meeting at which it considers whether to approve a proposal to dismiss.

- (xv) The IP should comprise two or more relevant Independent Persons who accept the invitation in the following priority order:
- a) an Independent Person who has been appointed by the council and who is a local government elector in the authorities area;

- b) any other Independent Person who has been appointed by the council; and
- c) an Independent Person who has been appointed by another council or councils.

The IP members will be appropriately supported on matters of process and compliance with employment law..

- (xvi) The role of the IP is to offer any advice, views or recommendations it may have to the Council on the proposal for dismissal. The IP will receive the IDC proposal and reasons in support of the proposal, the report of the Independent Investigator and representations (oral and/or written) from the Statutory Officer and their representative. Any written response to the proposal to dismiss, including the Independent Investigator's report should be received by the IP from the Statutory Officer at least 5 working days' before the IP meeting. The IDC should be represented by its Chair or other nominated person at the IP meeting. The Independent Investigator may also be invited to attend the IP meeting to provide clarification if required. Members of the IP may ask questions of either party who have been given reasonable opportunity to be present or represented. While representations may be made, the IP will not conduct a rehearing of the evidence.
- (xvii) The IP should then formulate any advice, views or recommendations it wishes to present to the Council. If the IP is recommending any course of action other than that the Council should approve the dismissal, then it should give clear reasons for its point of view.
- (xviii) Where dismissal is recommended, Full Council must consider the proposal and reach a decision before notice of dismissal is issued. The Statutory Officer will be provided with all relevant papers or documents in advance of the meeting and will be allowed to attend (and be accompanied by their representative) and put forward his/her case before a decision is reached. Written representations may also be given by the Statutory Officer in advance of the meeting. The Independent Investigator may also be invited to attend.
- (xix) Full Council will consider which of the following outcomes is appropriate:
  - a) Approve dismissal; or
  - b) Reject the proposal to dismiss; or
  - c) Substitute a lesser sanction; or
  - d) Refer the matter back to the IDC to determine such appropriate lesser sanction
- (xx) No notice of dismissal shall be given until the decision has been approved by Full Council.
- (xxi) Where the IDC has made a proposal to dismiss, the hearing by Full Council will also fulfil the appeal function.

- (xxii) Any discussion at the Full Council or the Governance Committee under these rules regarding an individual officer would be conducted under the exempt part of the meeting.