



CHIEF OFFICERS' DISCIPLINARY POLICY AND PROCEDURE

This policy applies to Chief Officers (as defined by legislation) of the County Council.

Separate arrangements in place regarding the statutory roles of Chief Executive (Head of Paid Service), Monitoring Officer and Section 151 Finance Officer

Except where dismissal arises:

- through capability and/or ill health
- from organisational and efficiency requirements
- in relation to probationary procedures

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POLICY STATEMENT

The Council seeks to ensure that lawful, fair and effective arrangements exist for dealing with Chief Officer conduct and disciplinary issues. This procedure, set out at Appendix 1, provides a framework for making those officers aware of unacceptable conduct and for dealing with any such issues.

The Council will have full regard to relevant statutes including its Constitution and have based the procedure on the model set out in the JNC Conditions of Service for Chief Officers (November 2008 version).

The procedure applies to all Chief Officers as defined in Article 9 of the Council's constitution. A separate policy applies to those designated as "Statutory Officers" namely the Head of Paid Service, Monitoring Officer and Section 151 Finance Officer.

OBJECTIVES

The objectives of this policy are to ensure that:

- The Council meets all relevant legal requirements regarding any disciplinary decisions it takes in relation to its Chief Officers.
- Chief Officers are treated in a fair and consistent manner in relation to conduct and disciplinary issues.
- The Chief Executive and other relevant managers are supported in carrying out their responsibilities for the maintenance of high standards of conduct of Chief Officers.
- The Council, its employees, clients, the public and recipients of Council services are protected from the consequences of misconduct.

PRINCIPLES

At all stages in this procedure, an individual subject to it will be:

- informed of the nature of the issue(s) of concern or case against them
- given a chance to offer an explanation before any decision is taken
- given the right to be represented by a Council work colleague or a recognised trade union representative or official, at any formal meeting or hearing
- given reasonable notice of any formal meeting or hearing as outlined below
- notified of the outcome of any formal meeting or hearing in writing
- given a right to appeal against formal disciplinary action
- able to be confident the Council will comply with its obligations to disabled employees under the Equality Act in terms of reasonable adjustments
- treated with dignity and respect at all times
- recognised to be in a situation of potential stress/anxiety and be treated accordingly
- able to be confident they will not be judged "guilty" in advance of the conclusion of the process
- able to be confident of confidentiality of communication; with access to such, by others, limited
- able to be confident the process will be carried out speedily and without undue delay.

STANDARDS OF CONDUCT

Chief Officers have a contractual responsibility to be aware of and conform to the Council's values, rules, policies and procedures and to co-operate with any investigations, to attend any meetings, interviews and hearings convened in accordance with this policy. They are expected to maintain standards of conduct both at work and outside of work.

The following examples of misconduct are intended to help individuals understand the standards required by the Council. The Council's Officer [Code of Conduct](#) (and relevant professional Codes of Conduct) expands further on some of these standards. This list of examples is illustrative and not exhaustive:

- Deliberate provision of false or misleading information, e.g. on application forms.
- Breaches of the Council's Information Governance Policy.
- Failure to wear or use appropriate equipment/attire made available or necessary for the job (including safety equipment unless exempted on the grounds of religion or belief following a risk assessment).
- Unauthorised absence, poor timekeeping.
- Failure to comply with sickness absence procedures and Absence Management Policy.
- Falsification of official accounts or documents e.g. travel sheets, expense claims.
- Incapacity at work, due to the effects of alcohol or non-prescribed drugs.
- Physical violence, indecent behaviour, action or language that is likely to cause offence, including racial, religious or sexual abuse.
- Harassment, bullying or victimisation of others, including racial, religious or sexual intimidation or prejudice of other employees or members of the public.
- Disruption of others by unruly or disorderly behaviour.
- Discourteous or improper treatment of others, e.g. the public, colleagues, Members, service users, partner organisations.
- Acceptance of bribes or involvement in similar corrupt practice.
- Lack of integrity that may damage public confidence in the Council.
- Unauthorised employment, e.g. engaging in unauthorised employment during hours when contracted to work for the Council, or engaging during off-duty hours in employment considered detrimental to the interests of the Council.
- Political activity whilst occupying a "Specified" politically restricted post in accordance with the Local Democracy, Economic Development and Constitution Act 2009.
- Engaging in activities or conduct that may adversely affect recovery from illness.
- Conviction of a criminal offence inconsistent with the position the employee holds.
- Use of Council time/property/equipment for personal reasons without permission.
- Theft of, misuse of, damage to or neglect of property or equipment.
- Failure to report actual or suspected abuse of any service user by another employee or any other person.
- Disregard for the health and safety of others, including reckless driving or operation of vehicles, plant or equipment, and smoking in prohibited areas.

Note:

Dependent upon the circumstances and seriousness of a particular case the above examples of misconduct may be regarded as gross misconduct. Except in the most exceptional circumstances, gross misconduct will result in summary dismissal, without notice.

ALLEGED CRIMINAL ACTIVITY

An employment investigation may run in parallel to a police, audit and/or child protection or adult abuse investigation, as may be necessary and should not be held up by any such investigations unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

An individual who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover ups will have the right not to be dismissed or victimised for speaking out on such malpractice. For further information see the Council's Confidential Reporting Code.

INVOKING THE DISCIPLINARY PROCEDURE

Where an allegation is made regarding the conduct of a Chief Officer, the Chief Executive together with the Monitoring Officer and Service Manager - People Management will decide whether the issue falls within the definition of staff discipline.

Records will be kept by the Monitoring Officer of any allegations against the Chief Officer concerned and any decision reached. The records will reflect whether or not the decision was to invoke the Disciplinary Procedure and if not, whether any other action was recommended. The records will also detail the advice given by the Monitoring Officer and Service Manager - People Management where appropriate.

In those instances where the procedure has not been invoked but other action is recommended the matter shall be referred to the Service Manager - People Management to ensure that the appropriate alternative action is taken for example, allegations and complaints that are directed at the Chief Officer concerned but are actually complaints about a particular service, will be dealt with through the Council's corporate complaints procedure.

If the matter is a grievance from a member of staff directed against a Chief Officer, it will be appropriate to first deal with it through the Council's grievance procedure.

SUSPENSION

It may be considered appropriate to suspend the officer from work or have them temporarily redeployed to work elsewhere, e.g. in cases where the allegations are serious or to facilitate an investigation. Such actions do not constitute disciplinary action or imply guilt on the part of the employee. The suspended employee will be given support and issued with appropriate guidance. The suspension (or temporary redeployment) will be kept under regular review. For further information see the Council's [Management Guidance on Suspension from Work](#).

However, the Chief Executive with advice from the Service Manager - People Management and the Monitoring Officer will need to consider whether it is appropriate to suspend the Chief Officer. This may be appropriate where the allegation is serious and there is evidence to suggest that misconduct may have occurred or where the officer's continuing presence at work compromises the investigation or impairs the efficient exercise of the Council's functions.

Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract and to make any further working relationship and trust impossible.

INVESTIGATION

Where an allegation is made relating to the conduct of a Chief Officer or there is some other substantial issue that requires investigation that matter will be dealt with initially by the Chief Executive or appropriate nominee. The Chief Executive shall be supported throughout the process by the Service Manager - People Management. The Chief Executive will inform the Chief Officer in writing of the allegations or other issues under investigation.

It is possible in some cases that with some minimal investigation the Chief Executive can dismiss the allegation without the need of a formal investigation. However, this procedure is aimed at dealing with situations where the matter is not so easily dismissed.

The Chief Executive will be advised by the Monitoring Officer and the Service Manager - People Management as necessary.

If the Chief Executive decides that the matter should be referred for formal investigation the Chief Executive shall appoint an investigator to carry out any further investigation required into the allegations or other issues as soon as practicable.

If appropriate the investigator will be appointed from outside of the Council.

The Chief Executive shall determine the terms of appointment of the investigator, agree any remuneration (if appropriate), and provide facilities and all available information regarding allegations or other issues under investigation as are necessary to enable the Investigator to fulfil their role.

The Chief Officer will be informed that an investigator has been appointed.

The investigator will be entitled to interview witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's e-mail, internet and other IT systems, including the accounts of the Chief Officer concerned. The Chief Officer shall fully cooperate with the investigator and make themselves available for such interviews and meetings and provide any relevant documentation or information as the investigator deems necessary.

The Chief Officer shall be given reasonable facilities and access to the Council's premises and systems as well as personal files/diary etc. to allow them to prepare their responses on such terms as may be agreed by the investigator.

The amount of time required to be spent on the investigation will depend on the case. Due to demands on their time the investigator may decide to delegate some of the investigation work to an assistant. This however should be agreed with the Chief Executive and the Chief Officer concerned should be informed.

The investigator will prepare a report ("Investigation Report") stating in their opinion whether (and if so, the extent to which) the evidence they have obtained supports any allegation of misconduct or supports a need for action under this procedure for some other substantial reason.

Within seven working days of receipt of the final report of the investigator, the Chief Executive shall send a copy to the Chief Officer. It shall be accompanied by a written

indication if any further action is to be taken and if so confirmation of the specific allegations to be considered by the Appointments Disciplinary Sub-Committee at a disciplinary hearing and any supporting documentation.

Where action short of dismissal is recommended the matter will be referred back to the Chief Executive who will consider this option and take the appropriate action. This may; however be a decision to proceed with a disciplinary hearing.

The Chief Officer concerned will be given the opportunity to state his/her case before the Disciplinary Sub-Committee and this will be provided by means of a disciplinary hearing.

The Chief Officer will be given not less than ten working days written notice of the date of the hearing. The notice shall include:

- i the time and place of the hearing;
- ii who will be in attendance at the hearing including the members of the Disciplinary Sub-Committee;
- iii confirmation that the Chief Officer may be accompanied by a Council work colleague, recognised trade union officer or recognised trade union representative;
- iv a copy of this procedure.

Within two working days of receipt of notice of the disciplinary hearing, the Chief Officer shall agree the date for the Hearing or propose a postponement for the date of the hearing for a period not exceeding ten working days setting out the reasons for the request.

Arrangements will be made for the Disciplinary Sub-Committee to be advised at the hearing by an Independent Adviser. This may be the Service Manager -People Management or a representative from Legal Services as appropriate.

THE DISCIPLINARY SUB-COMMITTEE HEARING

The Monitoring Officer shall arrange for a record to be taken of the hearing. This may be an audio recording that will then be translated into a paper record.

The procedure for the Disciplinary Sub-Committee will be as follows:

- i the Chair of the Disciplinary Sub-Committee Committee will explain the purpose of the Hearing and procedure to be followed;
- ii the Chief Executive and Investigator will present the report to the Committee including the proposal to dismiss the Chief Officer concerned;
- iii the Chief Officer and the Disciplinary Sub-Committee and Independent Adviser will have the opportunity to ask questions of the Chief Executive and Investigator;
- iv the Chief Officer has the opportunity to state his/her case;

- v the Disciplinary Sub-Committee and Independent Adviser will have the opportunity to ask questions of the Chief Officer;
- vi both sides will sum-up their presentations, commencing with the Chief Executive.

When the Disciplinary Sub-Committee has heard all of the evidence submitted they will adjourn to consider what, if any further action should be taken.

The policy allows for the following hearing outcomes;

No Further Action

Where it is considered there is no case to answer.

First Written Warning

- Where the Chief Officer's employee's conduct has fallen below acceptable standards or,
- Where the offence is sufficiently serious to justify an immediate formal sanction.

Note: The warning will be regarded as live for disciplinary purposes for between 6 to 12 months, as determined at the Disciplinary Hearing.

Final Written Warning

- Where the Chief Officer's conduct continues to be significantly below acceptable standards and previous written warning(s) have not resulted in sufficient improvement, or
- Where the offence is so serious that a final warning is appropriate as a first formal warning, or
- Where dismissal would normally be appropriate but significant mitigation is accepted.

Note: The warning will be regarded as live for disciplinary purposes for between 12 to 24 months, as determined at the Disciplinary Hearing.

All warnings will be confirmed in writing and will include:

- A clear statement of the unsatisfactory conduct or behaviour.
- The level of the warning.
- The length of time it will remain live for disciplinary purposes.
- The required level of improvement (in measurable terms).
- The consequences of no improvement in conduct or behaviour
- The right to appeal.

Dismissal

Dismissal will occur where there has been gross misconduct or where the Chief Officer has a final written warning and further misconduct or unsatisfactory conduct has taken place.

- **Dismissal with contractual notice** - Unless the Chief Officer is dismissed for gross misconduct, he/she will receive the appropriate period of notice.
- **Summary dismissal** - Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

All others present at the Hearing will withdraw while the Disciplinary Sub-Committee consider their decision advised by the Independent Adviser and Monitoring Officer.

A letter will outline the decision and the action to be taken. Where the Disciplinary Sub-Committee proposes dismissal it will inform the Monitoring Officer that it is proposing to the Executive that the Chief Officer concerned be dismissed and that the executive objections procedure should commence.

The Monitoring Officer will notify every member of the Executive of:

- the fact that the Disciplinary Sub-Committee is proposing to the Executive that it dismisses the Chief Officer concerned;
- any other particulars relevant to the dismissal;
- the period by which any objection to the dismissal proposal should be submitted (within 5 working days).

At the end of this period the Monitoring Officer will either:

- inform the Disciplinary Sub-Committee that no objections have been received by members of the Executive or;
- inform the Disciplinary Sub-Committee that an objection or objections have been received and provide details of the objections.

The Disciplinary Sub-Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well grounded. If they are then the Disciplinary Sub-Committee will act accordingly i.e. it will consider the impact of the Executive objections on the report carried out on behalf of the Chief Executive and relevance to the sanction, may commission further investigation by the Chief Executive and report if required etc.

Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the Disciplinary Sub-Committee will inform the Chief Officer concerned of that decision.

In the case of the executive Director Public Health, under the provisions of the Health and Social Care Act 2012, the Secretary of State for Health must be consulted in advance about any proposals to dismiss this officer. While the Secretary of State does not have power of veto of such proposal, any reasonable representations from him/her must be properly taken into consideration before a decision to dismiss is made.

APPEAL PROCESS

Where the decision has been confirmed by the Chair of the Disciplinary Sub-Committee, the Chief Officer has the right to appeal against that decision. This must be done in writing (including by E- mail) within 10 working days of receipt of written confirmation of the decision. Any appeal should be made to the Head of People Management and will be heard by the Disciplinary Appeals Sub-Committee.

Receipt of a letter will be deemed to have taken place two days after posting if sent by first class post.

The Chief Officer must outline one or more of the following reasons upon which they seek to appeal and provide the rationale/evidence in respect of this. The reasons for appeal may be:

- There was a defect in the procedure.
- Not all evidence was considered.
- The sanction was too severe.
- New evidence has come to light since the last hearing.

New evidence may be considered in the Appeal Hearing subject to the requirement that any evidence to be presented is included in the documents submitted before the hearing. Any late new evidence will only be admitted with the agreement of the Disciplinary Appeals Sub-Committee.

Where new evidence is to be submitted the employee should state clearly what the evidence is and why it is believed that it would alter the original decision and why it was not included at the previous hearing.

If the grounds of the appeal relate to a defect in the original hearing process or procedure, the Service Manager - People Management may advise that a rehearing is held in place of the Appeal Hearing. If this is the case the meeting will follow the original hearing procedure and all parties and witnesses will be invited. The panel and possible outcomes will be consistent with the Appeal Hearing procedure.

Arrangements will be made for the Disciplinary Appeals Sub-Committee to be advised at the hearing by an **Independent Adviser**. This may be the Service Manager - People Management or a representative from Legal Services as appropriate.

The Monitoring Officer shall arrange for a written record to be taken of the hearing.

The procedure for the Disciplinary Appeals Sub-Committee will be as follows:

- i the Chair of the Disciplinary Appeals Sub-Committee will explain the purpose of the Hearing and procedure to be followed;
- ii the Chief Officer presents his/her case based on the grounds specified when submitting the appeal;
- iii the Chief Executive will have the opportunity to ask questions of the Chief Officer;
- iv the Disciplinary Appeals Sub-Committee will have the opportunity to ask questions of the Chief Officer;
- v the Chief Executive present the management position in response to the Chief Officer grounds of appeal;
- vi both sides will sum-up their presentations, commencing with the Chief Officer.

When the Disciplinary Appeals Sub-Committee has heard all of the evidence submitted they will adjourn to consider whether to uphold or dismiss the appeal

All others present at the hearing will withdraw while the Disciplinary Appeals Sub-Committee consider their decision advised by the Independent Adviser and Monitoring Officer.

A letter will outline the decision and the action to be taken.

REFERRALS TO DBS AND OTHER ORGANISATIONS

The Council has a legal duty to refer information to the Disclosure and Barring Service (DBS) where it has removed an individual from working or volunteering or has concerns in respect of an individual's contact with children or vulnerable adults. For further information see the Council's [Policy on the Referral to the DBS](#).

There may also be a need to refer the circumstances of a particular case to other professional bodies, e.g. The Teaching Agency or Health Professions Council.