

DISCIPLINARY PROCEDURE AND GUIDANCE FOR RELEVANT OFFICERS*

*(Based on model procedure for England issued by Joint Negotiating Committee for
Local Authority Chief Executives)*



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1. Introduction

Guidance issued by the Joint Negotiating Committee (“JNC”) for Local Authority Chief Executives recommends that their model procedures should be followed except in so far as the parties locally agree to vary them. Whilst the Council therefore has some discretion in how far to follow the agreed guidance this procedure follows the model with minor amendments to make it relevant to the Council’s existing bodies/processes. The Local Government Association (LGA) and the Association of Local Authority Chief Executives and Senior Managers (ALACE) through the JNC for Chief Executives recommend the model procedure because:

- The procedure and guidance have been drawn up considering the experience of the Joint Secretaries in their involvement with individual cases.
- Its variants apply to constitutions with Council Leader/Cabinet executives, mayor/cabinet executives and councils and other authorities operating a committee system.

Local Authority Chief Executive, Monitoring Officer, and Chief Finance Officer (Relevant Officers*) are protected under specific regulations that make distinct provisions, compared to other employees. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment)

Regulations 2015) (“the 2015 Regulations”) The aim is to protect the Relevant Officers from unwarranted political interference in their roles in the Council

In accordance with Part 3.6.3 of the Council’s Constitution the Chief Executive Officer, the Section 151 Officer and the Monitoring Officer are directly appointed by the Council. This procedure will be used to undertake any Disciplinary action relating to these post holders. To reflect this, they and the Chief Executive are referred to as “Relevant Officer(s)” throughout the following procedure and supporting guidance.

This procedure and guidance have been prepared so that Council Members can satisfy themselves that they:

- Understand the procedure to be used.
- Seek appropriate advice at every stage.
- Do not compromise the outcome of any proceedings.
- Allow every opportunity for fair procedures to operate.

This guidance outlines the key elements of procedures for disciplining a Relevant Officer. This guidance is arranged to present each element of the model procedure, immediately followed by the relevant part of the guidance, for ease of reference.

The Director of People & Policy with support from Democratic Services is responsible for the management of these procedures.

2. Issues requiring investigation

Procedure

Where an allegation is made relating to the conduct or capability of a Relevant Officer or there is some other substantial issue that requires investigation, the matter will be considered by the Restructuring Implementation Committee (“RIC”).

Other structures necessary to manage the process are in place, including an Independent Person Panel should there be a proposal for the dismissal of a Relevant Officer. This is comprised of the Council’s Independent Persons, appointed in accordance with section 28(7) Localism Act 2011 and Part 2.21 of the Council’s Constitution.

2.1 Guidance

2.1.1 The Local Authorities (Standing Orders) (England) Regulations 2001 (the Regulations) (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) provide that the dismissal of a Statutory Officer in cases of disciplinary action (as defined in the Regulations) may only take place if the proposal to dismiss is approved by way of a vote at a meeting of the Council, after they have considered:

- any advice, views, or recommendations of a panel (the Independent Person Panel)
- the conclusions of any investigation into the proposed dismissal and
- any representations from the Relevant Officer concerned

2.1.2 Disciplinary action in relation to a Relevant Officer is defined in the Regulations as “any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Council, be recorded on the member of staff’s personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract”.

2.1.3 The definition of disciplinary action would therefore include other reasons for dismissal such as capability or some other substantial reason including a breakdown in trust and confidence between the Relevant Officer and the Council.

2.1.4 The attached Appendix A (potential reasons for termination table) sets out those circumstances that could potentially result in dismissal and whether they are covered by this procedure.

2.2 Structures to manage the procedure

- 2.2.1 A key feature of the model procedure is the specific roles envisaged by the RIC, the Employment Committee, the Independent Person Panel, and the Council. The Council has agreed several important issues around the composition of committees and the delegation of appropriate powers.
- 2.2.2 The Committee that performs the Investigating and Disciplinary function will be known as the Restructuring Implementation Committee (RIC). The Council has established the RIC; a committee made up of one member from each political group. This Committee can take decisions and appropriate actions as a matter of urgency and is able to meet at very short notice to consider allegations and decide whether there is a case to answer and to consider whether suspension of the Relevant Officer might be appropriate. As it is possible that in some circumstances members of the committee may find themselves in a position where they have a conflict of interest the quorum is set at three members. The Council does not appoint substitutes. The Committee has an important role in considering the report of an Independent Investigator. The role of the Committee is explained further at appropriate stages in the guidance.
- 2.2.3 The Employment Committee must be a balanced committee having regard to the rules on political proportionality of three Members who are not Members of the RIC. The Employment Committee has a limited role and will only hear appeals against action taken short of dismissal and then decide either to confirm the action or to impose no sanction or a lesser sanction.
- 2.2.4 The Independent Panel comprises of Independent Persons (at least two in number) who have been appointed by the Council, or by another, neighboring, Council, for the purposes of the Members' conduct regime under section 28(7) of the Localism Act 2011. The Council will issue invitations for membership of the Panel of two in accordance with the following priority order:
- an Independent Person who has been appointed by the Council and who is a local government elector in the Council's area
 - any other independent person who has been appointed by the Council and
 - an Independent Person who has been appointed by a neighboring Council.
- 2.2.5 Appropriate training will be provided for Independent Panel members.
- 2.2.6 It should be noted that any remuneration paid to members of an Independent Panel may not exceed that payable in respect of their role under the Localism Act.
- 2.2.7 A requirement for any disciplinary process is to carry out an investigation of the allegations to establish the facts of the case and to collate evidence for use in the disciplinary hearing. In the case of a Relevant Officer, it will normally be necessary to engage an independent person for this purpose, and this person is referred to here as the Independent Investigator. Arrangements have been

agreed to enable the speedy appointment of a competent and experienced person to perform this role, with the assistance of the Joint Secretaries.

2.3 Managing access to the procedure (See also Paragraph 5 of this guidance) – considering the allegations or other issues under investigation

- 2.3.1 The procedure itself does not require that every single issue which implies some fault or potential error on the part of the Relevant Officer be investigated using this process. It is for the Council to decide the issues that will engage the formal process.
- 2.3.2 The Council corporately will consider what constitutes an ‘allegation’ made relating to the conduct or capability of a Relevant Officer and what it considers are other substantial issues requiring investigation. Procedures for complaints against the Council and a Relevant Officer and for issues that might be substantial and require some form of investigation, and possibly formal resolution, are varied. Procedures are in place which can filter out and deal with ‘allegations’ against a Relevant Officer which are unfounded or trivial or can best be dealt with under some other procedure.
- 2.3.3 For example, allegations and complaints that are directed at a Relevant Officer, but are complaints about a particular service, should be dealt with through the Council’s general complaints procedure. If the matter is a grievance from a member of staff directed against a Relevant Officer, it may be appropriate to first deal with it through the Council’s grievance procedure. Of course, if the matter were a serious complaint against a Relevant Officer’s personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under this disciplinary procedure.
- 2.3.4 The Council has put in place arrangements that can manage the process so that records are kept of allegations and investigations and that there is a clear route into the disciplinary procedure. In the case of allegations against a Relevant Officer the Director of People & Policy and the Chair of the Council would oversee referrals to the RIC.
- 2.3.5 Where the issue to be investigated is related to the sickness absence or capability of a Relevant Officer in terms of performance, there is likely to be a link with the Council’s Absence Management procedure or appraisal/managing performance procedure.
- 2.3.6 Where management action is required in respect of the normal sickness of a Relevant Officer, the Council needs to be clear about who takes appropriate actions. Initially the Director of People & Policy will follow the Council’s normal absence management procedures. The Director of People & Policy will report to the Chair of the Council on the matter being investigated. Where procedures have been followed to the point where dismissal appears to be a possibility, likely at the point where a final warning has been given.

2.3.7 In accordance with the JNC agreement, an objective performance appraisal system is in place where any shortcomings in a Relevant Officer's performance should be identified, and therefore remedied, at an early stage.

3. Timescales

Procedure

It is in the interests of all parties that proceedings be conducted expeditiously.

It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.

3.1 Guidance

An important principle when taking disciplinary action is that the process should be conducted expeditiously but fairly. There is, therefore, a need to conduct investigations with appropriate thoroughness, to arrange hearings and allow for representation. It is not in the interests of the Council, or a Relevant Officer, that proceedings are allowed to drag on without making progress towards a conclusion.

3.2 Statutory and indicative timescales

The procedure does not set out explicit timescales except the specific requirement in the Local Authority (Standing Orders) (England) Regulations 2001 for the appointment of the Independent Panel at least 20 working days before the meeting of the Council at which consideration as to whether to approve a proposal to dismiss is to be given. This guidance refers to other statutory timescales and restrictions which are applicable to disciplinary procedures more generally, such as those contained in the Employment Relations Act 1999 (in connection with the right to be accompanied).

3.3 Avoiding delays in the procedure

One cause of delay in the procedure is the availability of the key people necessary to manage and control the process.

3.3.1 Availability of Independent Investigator

An Independent Investigator should only be formally appointed once the RIC has determined that there is a case that requires further investigation. However, to minimise delays in any potential investigation, steps will be taken to identify a shortlist of three potential Independent Investigators from the list held by the JNC Joint Secretaries (see paras 6.3 and 6.4) concurrently with arrangements for the initial meeting of the Committee. This is not pre-judging whether an Independent Investigator will be needed, but a practical step to assist in minimising any delays.

3.3.2 Availability of the Relevant Officer in case of sickness

- (a) It is possible that the sickness of the Relevant Officer could impact on the ability to follow the disciplinary procedure. This may be because:
- the issue under investigation is the Relevant Officer's sickness (i.e., a capability – ill health issue); or alternatively,
 - while during an investigation, relating to a Relevant Officer's conduct, the Relevant Officer commences sickness absence during the disciplinary process.
- (b) In principle, the sickness of a Relevant Officer will invoke the Council's normal absence management procedures. The nature of the investigation and facts surrounding the sickness will dictate the appropriate way of dealing with the issue. It is worth noting (see paragraph 10.) that a proposed dismissal on the grounds of permanent ill-health, does not require the involvement of an Independent Investigator or Independent Person Panel.
- (c) If the investigation is about the long-term sickness or frequent ill-health problems experienced by a Relevant Officer, the Council should obtain appropriate medical information and advice by following the Absence Management Policy. However, the Committee or Independent Investigator may feel there is a need for further or more up-to-date advice and again they should use the Council's normal processes and procedures to obtain this. If the Relevant Officer's absence or problems at work are because of a disability which places him/her at a substantial disadvantage compared to others without the disability, then the Council must consider and undertake reasonable adjustments to remove the disadvantage. The RIC must satisfy itself that this has been fully considered and that no further reasonable adjustments could be made which would remedy the situation.
- (d) Where the issue under investigation is not health-related and is, for example, the conduct of a Relevant Officer and they then commence sickness absence then the approach will depend on the type and length of the illness and exactly when it occurs during the process.
- (e) A short period of illness should not normally create a major problem although the timing of the illness can create difficulties if it coincides with scheduled meetings for investigating or hearing aspects of the case. If this occurs, then reasonable efforts should be made to rearrange the meeting. However, if the sickness becomes more persistent or is likely to become longer term then the Council will take steps to identify whether the Relevant Officer, although possibly not fit to perform the full range of duties, is fit enough to take part in the investigation or disciplinary hearing.
- (f) If it appears that there will be a long period of ill health which will prevent the Relevant Officer taking part in the process, the Council and possibly the Independent Investigator will have to make a judgement as to how long to wait before proceeding. In some cases, it may be appropriate to wait a little longer

where a prognosis indicates a likely return within a reasonable timescale.

- (g) However, where this is not the case, the Council will in most cases need to press ahead given the importance of resolving issues which can have a significant impact on both parties due to the nature and high profile of the role of a Relevant Officer. If this is the case the Council will make sure that the Relevant Officer is given the opportunity to attend any meetings or hearings. However, the Relevant Officer should be informed that if they cannot attend the meetings or hearings then they would proceed without them. If this is the case the Relevant Officer may make written submissions to be considered and may also send their representative to speak on their behalf before a decision is taken.

3.3.3 Availability of representative

The availability of a Relevant Officer's representative can also be a possible cause of delay. Reasonable account should be taken of the availability of all relevant parties when setting dates and times of meetings. Where it is simply not possible to agree dates to suit everybody the Council should be aware of the statutory right to be accompanied at disciplinary hearings and to take this into account when setting dates (see Paragraph 4).

3.3.4 Availability of witnesses

If the Independent Investigator or the RIC allows either party to call witnesses and the witnesses are unable to attend, their evidence should not be discounted and should still be considered. Alternatives may include written statements or minutes/records where individuals have been interviewed as part of the investigation. However, such evidence may not carry the same weight as evidence that can be subjected to cross-examination.

3.3.5 Availability of Committee Members

- (a) In establishing the RIC and setting up an Employment Committee, the Council must take availability issues into account and have an operational quorum in place as set out in Part 2 of the Constitution.
- (b) In establishing the RIC, the Council has recognised that the committee may need to be able to meet at short notice to consider serious allegations against a Relevant Officer.

3.3.6 Availability of Independent Panel members

The Independent Person Panel must be appointed at least 20 days before the Council meeting at which consideration whether to approve a proposal to dismiss is to be given. The appointment of Independent Person Panel members will, therefore, consider their availability to undertake their role within that timescale.

4 Suspension

Procedure

Suspension will not always be appropriate as there may be alternative ways of managing the investigation.

However, the RIC needs to consider whether it is appropriate to suspend a Relevant Officer. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of a Relevant Officer might compromise the investigation or impair the efficient exercise of the Council's functions.

In any case, the Relevant Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.

The Council's Director of People and Policy, in consultation with Chair of the Council, has the delegated authority to suspend a Relevant Officer immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by the Relevant Officer are such that their remaining presence at work poses a serious risk to the health and safety of others or the resources, information, or reputation of the Council. The power should only be used in exceptional circumstances in most cases a meeting of the RIC should make the decision to suspend. Any decision to suspend under this delegation should be reviewed by the RIC on the earliest date on which a quorate meeting of the RIC can be convened.

The continuance of a suspension should be reviewed after it has been in place for two months.

4.1 Guidance

Although suspension, to investigate an allegation, or a serious issue is a neutral act, it is a serious step in the process that should be managed well. Unlike with most other posts, the suspension of a Relevant Officer may come immediately to the attention of the local and perhaps national media with potentially damaging consequences for the reputation of the Relevant Officer and the Council.

Where a Relevant Officer is suspended and facing allegations this is potentially stressful for the individual and disruptive to the Council. It is therefore in the interests of all parties that such cases are dealt with as expeditiously as possible.

4.2 Alternatives to suspension

Suspension will not be appropriate in every case, as this will depend on the nature of the allegation or seriousness of the issue. Before suspending a Relevant Officer, careful consideration should be given to whether it is necessary and whether there are

any other suitable alternative ways of managing arrangements such as working from home for a period or for example by agreeing working in another way that protects the Relevant Officer and Council from further allegations of a similar nature.

4.3 Power to suspend

The Chief Executive is the Head of Paid Service and normally bears the delegated responsibility for implementing Council policy on staffing matters. However, when it is the Chief Executive who is the subject of an allegation or investigation, the Council needs to be clear about who has the power to suspend the Chief Executive and in what circumstances. This has been captured in the delegation to the RIC and the Officer Delegation scheme both set out in the Council's Constitution.

The point at which it may become clear that suspension is an appropriate action is likely to be at the stage where the RIC has conducted its initial assessment. The Council has therefore given the Committee the power to suspend a Relevant Officer.

4.4 Short notice suspension

The procedure also recognises that in exceptional circumstances it may be necessary to suspend at very short notice and before the Committee can meet, e.g., because the remaining presence of the Relevant Officer could be a serious danger to the health and safety of others, or a serious risk to the resources, information, or reputation of the Council. The Director of People and Policy, in consultation with the Chair of the Council has the delegated power to suspend a Relevant Officer immediately.

4.5 Suspension conditions

If suspension were deemed appropriate, the RIC (or in exceptional circumstances, The Director of People & Policy, in consultation with and the Chair of the Council) would agree conditions which are necessary to manage the suspension and the investigation. For example, a Relevant Officer might request access to workplace materials and even witnesses. Arrangements should be made to manage such requests and facilitate appropriate access. Another general principle would be that whilst suspended, the Relevant Officer would remain available to participate in the investigation and to attend any necessary meetings. Other important issues would include communication channels for day-to-day communication and any stipulations for reporting any scheduled or unscheduled absence from the area, e.g., pre-arranged holiday.

4.6 Review of suspension

Where a Relevant Officer is suspended, the suspension should be reviewed after two months, and only continued following consultation with the Independent Investigator and after considering of any representations made by the Relevant Officer.

If it becomes clear during the suspension that the allegation is not as serious as first thought, the RIC should review the suspension on the earliest date on which a quorate meeting of the RIC can be convened, with a view to the Relevant Officer being returned to their normal duties.

5 Right to be accompanied

Procedure

Other than in circumstances where there is an urgent requirement to suspend a Relevant Officer, they will be entitled to be accompanied at all stages.

5.1 Guidance

Although the statutory right to be accompanied applies only at a disciplinary hearing, the JNC procedure provides the opportunity for a Relevant Officer to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost ("the Relevant Officer's Representative").

The procedure recognises that there may be, in exceptional circumstances, a need to suspend the Relevant Officer at short notice, when it is not possible to arrange for the Relevant Officer's Representative to be present. These circumstances might include for example where there is a serious risk to the health and safety of others or serious risk to the resources, information, or reputation of the Council.

Although it would be beneficial to agree dates for the necessary meetings, the procedure cannot be allowed to be delayed owing to the unavailability of a Relevant Officer's Representative. The statutory right to be accompanied in a disciplinary hearing contained in s.10 of the Employment Relations Act 1999 applies only to hearings where disciplinary action might be taken or be confirmed when a decision may be taken on the sanction, or a decision may be confirmed during an appeal. In this procedure the statutory entitlement to be accompanied would arise:

- where the RIC considers the report of the Independent Investigator and provides the Relevant Officer with the opportunity to state their case before making its decision.
- during any appeal against the decision taken by the RIC
- at a Council meeting considering a proposal for dismissal and fulfilling the requirement relating to a right of appeal.

At these important stages, if the Relevant Officer's Representative is unavailable for the date set then the Relevant Officer will have the right under the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week.

If the Relevant Officer's Representative is unable to attend within that period the Council will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

6 Considering the allegations or other issues under investigation

Procedure

The RIC will, as soon as is practicable, inform the Relevant Officer in writing of the allegations or other issues under investigation and provide them with any evidence that the Committee is to consider, and of their right to present oral evidence.

The Relevant Officer will be invited to put forward written representations and any evidence including written evidence from witnesses they wish the RIC to consider. The RIC will also provide the opportunity for the Relevant Officer to make oral representations. At this initial consideration of the need to investigate further, it is not anticipated that witnesses will be called. The discretion to call witnesses lies solely with the RIC.

The RIC will give careful consideration to the allegations, or other issues, supporting evidence and the case put forward by the Relevant Officer before taking further action.

The RIC, with advice from the Director of People and Policy, shall decide whether:

- the issue requires no further formal action under this procedure, or***
- the issue should be referred to an independent investigator.***

The RIC shall inform the Relevant Officer of its decision without delay.

6.1 Guidance

The range of issues and to some extent the seriousness of the issues, which come before the RIC, will depend on the filter that the Council adopts. Issues such as those relating to sickness absence and performance are likely to arise at the RIC having followed the Council's absence management or managing performance / appraisal procedures (see Paragraph 2.4).

It is possible in some cases that with some minimal investigation the RIC can dismiss the allegation without even the need to meet with the Relevant Officer. However, this procedure is aimed at dealing with situations where the matter is not so easily disposed of. It therefore provides a process whereby the Relevant Officer is made aware of the allegations and provided with the opportunity to challenge the allegations or to make their response.

When an issue comes before the RIC it, with advice from the Director of People & Policy, needs to make a judgement (see paragraph 6.2.1) as to whether the allegation can be dismissed or whether it requires more detailed investigation, in which case this will be undertaken by an Independent Investigator. If the RIC is of the opinion that the allegations do not warrant an investigation, this should be immediately notified to the Relevant Officer without delay, and, if necessary, the complainant informed accordingly. If the RIC is of the opinion that the matter is not serious but there is some

minor fault or error, then it can issue a verbal warning in accordance with its standard procedures.

The appointment of an Independent Investigator is a serious step but does not mean that the Relevant Officer is guilty of some misdemeanour. In some cases, the eventual result of the investigation will be to absolve the Relevant Officer of any fault or wrongdoing. The appointment of an Independent Investigator operates so that both the Council and the Relevant Officer can see that matters are dealt with fairly and openly. However, the matter still needs to be handled carefully in public relations terms due to the potential damage to the reputation of the Relevant Officer or the Council.

6.1.1. Threshold test for the appointment of an Independent Investigator

Cases will vary in complexity but the threshold test for the RIC 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 Relevant Officer's personal file and
- there is evidence in support of the allegation sufficient to require further investigation

6.2.2 Conducting the initial Committee investigation

It is intended that this stage is conducted as expeditiously as possible with due regard to the facts of the case. At this stage it is not necessarily a fully detailed investigation of every aspect of the case as that will be the responsibility of the Independent Investigator (if appointed). To avoid delay the RIC will want to explore the availability of potential Independent Investigators on the list maintained by the JNC Joint Secretaries at an early stage (see Paragraphs 6.3 and 6.4). However, it is important that before any decision is taken to formally appoint an Independent Investigator, the Relevant Officer is aware of the allegations that have been made against him / her (or the issue to be addressed) and given the opportunity to respond.

This will be achieved by:

- a) The Chair of the RIC writing to the Relevant Officer on behalf of the RIC setting out the allegations / issues and providing any evidence to be considered
- b) Providing the opportunity for the Relevant Officer to respond to the allegations in writing and to provide personal evidence or witness statements. The calling of witnesses at this stage is at the discretion of the RIC.
- c) Providing the opportunity for the Relevant Officer to respond to the allegations and appear before the RIC
- d) Fair notice should be given to enable the Relevant Officer adequate time to prepare a response to the allegations or issues under investigation. During the initial hearing by the RIC, the Relevant Officer is entitled to attend and can be accompanied by a Relevant Officer's Representative (subject to section

6.2.3 Treatment of witness evidence

In general, if the Council has witness evidence relating to an allegation this should be presented in written form to the Relevant Officer, although in exceptional cases it might be appropriate to anonymise the evidence to protect the identity of a witness. However, it remains important that the detail of the allegation is put to the Relevant Officer in order that they understand the case against them.

6.2.4 Conflicts of interest

As envisaged in the model procedure the Council has established a standing RIC. Paragraph 2.3 indicates the basic rules concerning its membership. However, because the Committee will comprise named Members, there may be occasions when this presents problems of conflict of interest, for example where a Member of the Committee is a witness to an alleged event or is the person who makes the original complaint or allegation. Members in this position should take no part in the role of the Committee, although they will of course be able to give evidence, if required. The Council has established a quorum in the Constitution that will minimise the likelihood of an individual conflict of interest delaying the procedure. Where several Members find themselves in a conflict situation, there may be no alternative but for the Council to establish a new Committee to perform the function of the RIC.

Declarations of interest are matters for individual Members who are required to follow the Council's Members' Code of Conduct and can seek advice from the Monitoring Officer or their Deputy. Problems could follow for the speed at which the case is conducted if a Relevant Officer considers there are valid grounds for making a formal complaint to the Council about the involvement of a Member in a case.

6.2.5 Maintaining the fairness and integrity of the procedure

Where there is a matter that requires investigation, it is important that a fair and correct procedure is followed. Allegations against a Relevant Officer or serious issues that require resolution should follow this procedure. It is important that Members do not undermine the fairness of the procedure by, for example, putting motions to a meeting of the Council about the case as there is a serious risk that it could prejudice the disciplinary procedure. Additionally, such actions will not only create adverse publicity for the Council and the Relevant Officer but may create conflicts of interest and could limit the role that those Members can then take as the case progresses.

6.2.6 Other appropriate actions

It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of a Relevant Officer, or some other substantial issue, the RIC might be able to consider alternatives to immediately moving to the appointment of an Independent Investigator or alternatively to dismiss the allegation or issue.

Clearly this will depend on the facts of the matters being investigated. It could be that

the Council has another more appropriate policy or procedure to follow. Alternatively, it could be that the issue is one which might benefit from some mediation or attempts to resolve the issue in dispute prior to moving formally to appointing an Independent Investigator.

It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships have broken down but there is no evidence of misconduct attached to the Relevant Officer. The Joint Secretaries could be available to assist.

If any financial settlements are considered, it is important that such an arrangement:

- 6.2.6.1 Falls within the Council's discretions under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 ("the 2006 Regulations"), or
- 6.2.6.2 Is a payment in consideration of an agreement that compromises a genuine legal claim that a Relevant Officer might have at a Court or Employment Tribunal

In both cases the settlement must also comply with any other restrictions on exit payments.

The 2006 Regulations are designed to enable the Council to compensate employees whose employment terminates on grounds of redundancy or in the interests of the efficient exercise of the Council's functions. It is therefore possible that a payment will be legitimate in certain circumstances. However, where there is an obvious case requiring disciplinary action and the allegation is such that dismissal is a likely outcome, it is not likely that an external auditor will sanction a deal under the current regulations.

The Council must take appropriate legal advice when attempting to reach a financial settlement to ensure that any payment is justified and lawful in line with the guidance on [special severance payments](#). Relevant considerations will include the likelihood of the claim succeeding and the amount of compensation that could be awarded by a Court or an Employment Tribunal.

6.2.7 Power to agree financial settlements

When considering its delegation of power, the Council must include consideration of which Committee or Office holder has the authority to negotiate a settlement and a process by which any settlement would be sanctioned including liaison with the external auditor. Under these circumstances it is expected that the RIC would authorise the Director of People & Policy to negotiate a settlement in consultation with the RIC but the final decision would be made by the RIC.

6.2.8 Access to appropriate professional / independent advice

Investigating allegations or serious issues involving a Relevant Officer can be demanding on the individuals involved. The RIC (and the Employment Committee for any appeal and the Council) will have access to the Council's Officers but given the

closeness of relationships between the Relevant Officer and other Senior Officers this can be a difficult time for those required to advise the RIC, to conduct investigations internally, or to source advice from outside the Council.

The Council has given the RIC the power to appoint external advisers as appropriate. Useful sources of general advice on the operation of the procedure and assistance with conducting investigations include the Local Government Association by contacting the Employers' Secretary or from ALACE. In addition to this general advice and assistance, given the potential complexity of the issue, the Council may choose to obtain external legal advice in consultation with the Head of Legal his/her deputy.

6.2.9 Ill-health - medical advice

In cases of capability related to sickness or where during any other investigation, the ill-health of a Relevant Officer, results in their unavailability it will be important that the RIC has access to appropriate medical advice from the Council's Occupational Health advisor.

6.2.10 Performance

Where the issue is one of capability in terms of performance or competence, other than ill-health, the Council will need to be able to establish or demonstrate the nature of the concerns. Evidence will be necessary to justify a further investigation.

Evidence might come from a variety of sources, e.g., inspection reports, etc. As the Council follows an established appraisal / managing performance process, this can also provide an appropriate route to establishing issues suitable for referral to the RIC.

Where the issue is breakdown of trust and confidence, the Council will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with a Relevant Officer.

7 Appointment of an Independent Investigator

Procedure

The RIC will be responsible for appointing an Independent Investigator, providing the necessary facilities, funding the remuneration and providing all available information about the allegations.

The Independent Investigator should be selected from the list maintained by the National Joint Secretaries.

7.1 Guidance

When the RIC has decided to appoint an Independent Investigator, it is important that

the Council moves quickly to take this forward. This is particularly important if the Relevant Officer has been suspended. This can be assisted if the availability of potential Independent Investigators is explored at an early stage.

In accordance with the model procedure the RIC will be responsible for the appointment of the Independent Investigator, agree the terms of remuneration and working methods but for expediency the RIC may choose to delegate these decisions to an Officer subject to consultation with the Chair of the Committee.

It is in the interests of the Council and the Relevant Officer that both sides have confidence in the independence and relevant competence of the Independent Investigator, not least to avoid, or at least minimise, argument later in the process about the quality or credibility of the investigation. To this end, it has been agreed that the National Joint Secretaries will maintain a list of potential Independent Investigators, who have been selected for their suitability and experience for this work. Independent Investigators on that list will be offered on a 'taxi-rank' basis subject to their availability within the desired timescales, and no material connections with the Council or the Relevant Officer nor any connection to the allegations.

The Council will approach the National Joint Secretaries and will be supplied with the top three names from the list (if in exceptional circumstances three names are not available, both local parties will agree to choose from a shorter list). If these are acceptable to the Council, the Relevant Officer will be invited to select one of the names. The only acceptable reason for not selecting from the names supplied being conflict of interest. If an appointment is not agreed by the Relevant Officer within 14 days of the date of the names being supplied, the Council will be at liberty to select an Investigator from the names supplied.

7.2 Terms of reference – allegations or issues to be investigated

When appointing an Independent Investigator, they will be provided with terms of reference. The Investigator will need to be:

- aware of the precise allegation(s) or issue(s) to be investigated
- provided with access to sources of information and people identified as relevant to the case
- aware of expectations regarding timescales and any known factors which could hinder their investigation, e.g., the availability of key people.

The Committee will be responsible for agreeing this information. It will also be able to discuss timescales for the investigation.

7.3 Remuneration

Remuneration for the Independent Investigator will be set at the Local Government Association's normal consultancy rate for external consultancy work.

8 The Independent investigation

Procedure

The ACAS Code of Practice on Discipline and Grievance requires there to be an investigation to establish the facts of the case before proceeding to the disciplinary hearing. The JNC believes that, for Relevant Officers, this should be carried out by an Independent Investigator. In practice it is for the Independent Investigator to determine the process they will follow. However, the JNC's preferred process is 'Evidence Collection and Investigation'. Alternatively, the Independent Investigator may hear the case including evidence provided by witnesses. Irrespective of the way the Independent Investigator investigates the case on completion of their investigation, the Independent Investigator must prepare a report with recommendations and rationale for submission to the RIC. Once appointed it will be the responsibility of the Independent Investigator to investigate the issue/allegation and to prepare a report stating in their opinion whether (and, if so, the extent to which) the evidence they have obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and recommending any disciplinary action (if any is appropriate) or range of actions which appear to him/her to be appropriate for the Council to take against the Relevant Officer.

8.1 Guidance

8.1.1. Resources

The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, the Independent Investigator could decide to delegate some of the investigation work to an assistant. This should be agreed with the RIC and the Relevant Officer should be informed. If the work is delegated to someone else outside of the Council, this might also require further discussion on any difference in the terms of remuneration for the assistant to the Independent Investigator.

8.1.2 Working arrangements

Once appointed it will be the responsibility of the Independent Investigator to investigate the issue/allegation and to prepare a report:

- stating in his/her opinion whether (and, if so, the extent to which) the evidence they have obtained supports any allegation of misconduct or other issue under investigation; and
- to recommend any disciplinary action (if any is appropriate) or range of actions which appear to them to be appropriate for the Council to take against the Relevant Officer.

The methodology adopted by the Independent Investigator should be confirmed with the parties. However, the JNC believes that the Independent Investigator should operate on the basis either of a process of evidence gathering, hearing submissions

etc., or a formal hearing, at which both parties will have the usual opportunities to present evidence, cross-examine witnesses etc. Both parties can be represented by an individual of their choice (the Relevant Officer's representation should be obtained at his/her own expense). While the recommended procedure allows for either option, on balance the JNC's preference is for the 'evidence collection and investigation' model, but the decision on this remains with the Independent Investigator.

8.1.3 Confidential contact at the Council

Although the Independent Investigator has a degree of independence, it is advisable to agree some conditions for their investigation in order that disruption to the Council's work is kept to a minimum at what can be a difficult time. The Independent Investigator will also require agreed contact and reporting arrangements with the parties. The RIC will therefore designate an Officer to administer the arrangements.

During the investigation the Independent Investigator will as a matter of principle, make every attempt to ensure the appropriate confidentiality of any information obtained and discussed.

9 Receipt and consideration of the Independent Investigator's report by the RIC

Procedure

The RIC will consider the report of the Independent Investigator and give the Relevant Officer the opportunity to state his/her case and, to question witnesses, where relevant, before deciding.

Having considered any other associated factors, the RIC may:

- ***Take no further action***
- ***Recommend informal resolution or other appropriate procedures***
- ***Refer to the Independent Investigator for further investigation and report***
- ***Recommend informal resolution or other appropriate procedures***
- ***Take disciplinary action against the Relevant Officer short of dismissal***
- ***Propose dismissal of the Relevant Officer to a meeting of the Council.***

9.2 Guidance

9.2.2 Report of the Independent Investigator

The report of the Independent Investigator is made to the RIC which has delegated powers from the Council to receive the report and take a decision on the outcome. Unless the Relevant Officer is exonerated by the report then at this stage the Relevant Officer should be given the opportunity to state their case before the RIC makes its decision.

This may be done in one of two ways, according to the process followed by the Independent Investigator:

- If the Independent Investigator has proceeded by way of an evidence- gathering process, the RIC should hold a hearing, giving both the Independent Investigator and the Relevant Officer the right to call and question each other's witnesses.
- If the Independent Investigator has held a full hearing, the RIC may choose to limit their meeting to a consideration of the Independent Investigator's report. However, the RIC will need to consider whether to call witnesses for clarification, bearing in mind the ACAS Code of Practice requirement that the employee should be given a reasonable opportunity to call relevant witnesses. The Independent Investigator and the Relevant Officer should both attend the meeting and be given an opportunity to summarise their case.

Under both options the Committee hearing should be conducted in accordance with the ACAS Code of Practice.

9.2.3 New material evidence

Where there is, at this stage, new evidence produced which is material to the allegation/issue and may alter the outcome, the RIC may:

- take this into account in making their decision or
- request that the Independent Investigator undertake some further investigation and incorporate the impact of the new evidence into an amended report.

9.2.4 Recommendations by the Independent Investigator – outcomes or options

The Independent Investigator is expected to recommend any disciplinary action that appears to be appropriate. At this stage clarity is required and a clear reasoned recommendation should be given. However, it could be that there is not one obvious action, and it may be that the Independent Investigator recommends a range of alternative actions.

Whilst the Independent Investigator's role is to make recommendations on disciplinary action, they may wish to comment on potential options for the way forward following the investigation process.

9.3 Decision by the Committee

The RIC should take its decision based on the Independent Investigator's report, and its own findings. It is open to the RIC to impose a lesser or greater sanction than that recommended, and it is obviously important for later stages of the procedure that the reasons for doing so are recorded.

10 Action short of dismissal

Procedure

The RIC may agree to impose no sanction, or to act short of dismissal, in which case the RIC will impose an appropriate penalty / take other appropriate action.

10.1 Guidance

Where a Relevant Officer is found to have no case to answer, appropriate communication should be prepared with the Relevant Officer to ensure as far as possible that there is no damage to their reputation.

Where the decision taken by the RIC is action short of dismissal, the action will be taken by the RIC itself. There is no requirement to seek confirmation by a meeting of the Council. The Constitution of the Committee includes the delegated power to take disciplinary action in these circumstances.

The Relevant Officer has a right of appeal against the decision (see Paragraph 12).

11 Where dismissal is proposed

Procedure

Proposal to dismiss on the grounds of misconduct and for other reasons such as capability or some other substantial reason

The RIC will inform the Relevant Officer of the decision and put that proposal to the Independent Person Panel along with the Independent Investigator's report and any other necessary material. This is not a full re-hearing and will not involve the calling of witnesses

The role of the Independent Person Panel

Where the Committee is proposing dismissal, this proposal needs to be considered by a meeting of the Independent Person Panel.

Both parties should be present or represented (the RIC might be represented by its Chair or other nominated person at the meeting). The Panel should receive any oral representations from the Relevant Officer, in which case it should invite any response on behalf of the RIC to the points made and may ask questions of either party. The Independent Person Panel should review the decision and prepare a report for a meeting of the Council. This report should contain a clear rationale if the Panel disagrees with the recommendation to dismiss.

The role of the Council

A meeting of the Council will consider the proposal that the Relevant Officer should be

dismissed, and must consider:

- *Any advice, views, or recommendations of the Independent Person Panel*
- *The conclusions of the investigations into the proposed dismissal*
- *Any representations from the Relevant Officer*
- *The Relevant Officer will have the opportunity to appear before the Council and put his or her case to the Council before a decision is taken.*

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, do not require the involvement of an Independent Investigator or Independent Person Panel.

However, the Council will follow appropriate and fair procedures in these cases and has mechanisms in place, including appropriate delegated authorities, to manage such eventualities.

11.1 Guidance

Where the RIC proposes dismissal, the 2015 Regulations require that the Council must approve the dismissal before notice of dismissal is issued.

11.2 The role of the Independent Person Panel

The Independent Panel must be appointed at least 20 days before the meeting of the Council at which the recommendation for dismissal is to be considered.

It is likely that Independent Person Panel members will be unfamiliar with their role under the 2015 Regulations and with matters relating to the working environment of the Relevant Officer. Accordingly, it is important for Independent Person Panel members to be offered appropriate training for the role the Panel is to fulfil.

The role of the Independent Person Panel is to offer any advice, views, or recommendations it may have to the Council on the proposal for dismissal. The Panel will receive the RIC proposal and the reasons in support of the proposal, the report of the Independent Investigator and any oral and/or written representations from the Relevant Officer. The Independent Investigator may be invited to attend to provide clarification, if required. The Panel will be at liberty to ask questions of either party.

The Panel should then formulate any advice, views, or recommendations it wishes to present to the Council. If the Panel 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.

11.3 The role of the Council

The 2015 Regulations require that, where there is a proposal to dismiss a Relevant Officer, the Council must approve the dismissal before notice of dismissal is issued. The Council must therefore consider the proposal and reach a decision before the Relevant Officer can be dismissed.

Given the thoroughness and independence of the previous stages the investigation of the Independent Investigator (where applicable), it will not be appropriate to undertake a full re-hearing of the case. Instead, consideration by the Council will take the form of a review of the case and the proposal to dismiss, and any advice, views, or recommendations of the Independent Person Panel.

The Relevant Officer will have the opportunity to attend and be accompanied by the Relevant Officer's Representative and to put forward their case before a decision is reached.

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, in a case of misconduct or other reasons such as capability or some other substantial reason, referring it back to the RIC to determine that sanction.

12 Appeals

Procedure

Appeals against dismissal

Where the RIC has made a proposal to dismiss; the hearing by the Council will also fulfil the appeal function.

Appeals against action short of dismissal

If the RIC decides on action short of dismissal, the Relevant Officer may appeal to the Employment Committee. The Employment Committee will consider the report of the Independent Investigator and any other relevant information considered by the RIC, e.g., new information, outcome of any further investigation, etc. The Relevant Officer will have the opportunity to appear at the meeting and state his/her case.

The Employment Committee will consider these matters and conduct any further investigation it considers necessary to reach a decision.

The decision of the Employment Committee will be final.

12.2 Guidance

12.2.1 Appeals against dismissal

Discipline and Grievance – ACAS Code of Practice requires that an employee who has been dismissed is provided the opportunity to appeal against the decision.

As the Constitution requires that the Council approves the dismissal before notice of dismissal is issued, there may be some concerns about the ability to offer a fair appeal if the whole Council was already familiar with the issues and had already taken the decision to dismiss. The model procedure therefore envisages that the Council meeting fulfils the requirement for an appeal. Before the Council takes a decision on the recommendation to dismiss a Relevant Officer it will take representations from a Relevant Officer. Those representations will constitute the appeals process.

12.2.2 Appeals against action short of dismissal

Appeals against actions short of dismissal will be heard by the Employment Committee. The appeal hearing will take the form of a review of the case and the decision that was taken by the RIC.

This process will follow the procedure that the Council applies generally to its other employees.

Annex A - Potential Reasons for Termination of a Relevant Officer

ACTION	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
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
Appropriate Procedure to follow	JNC (This policy)	JNC (This policy)	JNC (This policy)	JNC (This policy)	Local (with full Authority approval)	Local (with full Authority approval)	Local (with full Authority approval)