

Appendix C

IDC Handbook and guidance notes

Procedure and guidance for Investigation and Disciplinary Committee

Scope:

1. This Handbook will apply to any potential disciplinary allegation (as defined in The Local Authorities (Standing Orders) (England) Regulations 2001 as amended) raised against any of the designated Statutory Officers of the Council (the Head of Paid Service, the Monitoring Officer and the Section 151 Officer) (the 'DSOs') in accordance with the Constitution. Any allegations relating to performance or capability against a DSO will be dealt with under a separate policy and procedure in the first instance but will be referred to the IDC if there is a potential for dismissal of the DSO. Any grievances raised against a DSO will also be investigated under the Council's grievance policy and procedure in the first instance.

Initial Filter Stage

2. If an allegation of potential misconduct against a DSO is made, the Monitoring Officer ("MO"), or an appointed Deputy Monitoring Officer ("DMO"), will conduct a filter process of the allegations.
3. The MO/DMO will determine whether the allegations should be filtered out of the IDC process on the basis that they are clearly unfounded, trivial or can best be dealt with under some other procedure.
4. The MO/DMO shall also consider whether early informal resolution of the issues with the DSO is appropriate, with the option of joint secretarial conciliation to avoid time-consuming and expensive formal IDC procedures.
5. If informal resolution is not appropriate, the MO/DMO will consider the evidence and (unless the matters are clearly unfounded or trivial) write to the DSO informing him or her of the allegations and asking for his or her representations. A meeting will normally be arranged by the MO/DMO with the DSO to discuss the allegations.
6. Having considered the DSO's views and evidence available, the MO/DMO will draft an initial filter report.
7. The draft filter report will be shared jointly with the Chair of the Staffing Committee and Leader, or Chair of the IDC if there is a standing committee.

8. The MO/DMO will finalise the filter report and will take into consideration the views of the Chair of the IDC and Chair of the Staffing Committee. The filter decision is, however, an officer decision for the MO/DMO to determine.
9. If the MO/DMO decides that the allegations should be filtered out of the IDC process, this shall be the end of the IDC procedure and the DSO will be sent a letter informing him or her of the decision as soon as possible.
10. If the MO/DMO decides that the allegations should be put to the Committee, the filter report and evidence considered should be sent to the DSO at least three weeks before the Committee hearing to allow the DSO time to consider the allegations and to put forward his or her submissions at least seven working days before the hearing.
11. If the allegations relate to potential gross misconduct, the MO/DMO should ask the IDC to consider suspension of the DSO (see further below).
12. The definitions of misconduct and gross misconduct for the purpose of the IDC process shall be the same as the definitions applied in the Council's disciplinary policy and procedure.
13. The IDC Co-Ordinator should notify the Joint Secretaries of the JNC when it is proposed to use the formal IDC procedure.

Matter proceeds to IDC process - Investigation Stage

14. It is in the interests of all parties that the proceedings be conducted expeditiously and fairly.
15. In the exercise of its function, the Committee is to receive and consider any allegations made. It may, in conjunction with its legal adviser and after consultation with its Committee members:
 - a. make such enquiries of the relevant officer or any other person as it considers appropriate
 - b. request additional information, explanations or documents from any person
 - c. invite or receive representations from any person
 - d. take such further steps as the Committee, in its reasonable opinion, decides is appropriate including suspension as further detailed below.
16. The Committee, in conjunction with its legal adviser and, having heard representations from the DSO or his or her adviser and the MO or where the MO cannot act the DMO, shall decide whether the issues:

- e. require no further formal action, or
- f. should be referred to an Independent Investigator ("II") to investigate the issue, or
- g. require such alternative action as the Committee, in its reasonable opinion and in consultation with the DSO's line manager, decides is appropriate, including referral to other appropriate procedures or reaching agreement with the DSO on an appropriate formal sanction without the need to appoint an II.

17. In considering whether the threshold in deciding to appoint an II has been met the Committee will assess whether:

- h. if the allegations are proved it would be such as to lead to the dismissal or other action which would be recorded on the DSO's personal file;
- i. there is evidence in support of the allegation/issue sufficient to require further investigation.

18. Before deciding to appoint an II or suspend a DSO the Committee shall invite the representations of the DSO. The DSO may prepare written submissions if he/she wishes which must be provided to the IDC Coordinator at least seven working days before the Committee Meeting. The DSO shall have the right to be accompanied at the Committee Meeting when called in to the meeting by a trade union representative or work colleague of their choice. The calling of witnesses at this stage is at the discretion of the Committee.

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

Suspension:

20. Suspension will not always be appropriate as there may be alternative ways of managing risks during the course of the investigation. However, the Committee will need to consider whether it is appropriate to suspend the DSO. This may be necessary if an allegation is such that the continuing presence at work of the DSO might compromise the investigation or impair the efficient exercise of the Council's functions.

- 21.** It may also be necessary if an exceptional situation arises for the Head of Paid Service in consultation with the Leader, or Deputy Leader in consultation with the Monitoring Officer (if the DSO is the Head of Paid Service), to carry out a temporary suspension of the DSO pending the IDC Committee hearing to consider the matter. In such circumstances, the temporary suspension decision will be reviewed by the Committee at the IDC meeting.
- 22.** The Committee should seek the views of the DSO's line manager in relation to any suspension review or decision, in conjunction with its legal adviser
- 23.** The DSO should also be informed of the proposed suspension and have the right to present information before such a decision is taken.
- 24.** The continuance of a suspension should be reviewed after it has been in place for two months. The Committee shall continue to review any continuing suspension at a frequency to be determined by the Committee, in conjunction with their legal adviser, taking into consideration the wellbeing of the DSO. For any suspension review the Head of HR will prepare a report for the Committee which should include a section of consultation with the DSO's line manager. In carrying out such review the Committee shall also consider any representations made by the DSO or his or her representative.
- 25.** The Committee shall re-consider whether suspension is appropriate if requested to do so by the Monitoring Officer or where the Monitoring Officer is unable to act the Deputy Monitoring Officer, or in circumstances where the Chair thinks it appropriate.
- 26.** The view of the Head of Paid Service (or if the DSO is the Head of Paid Service, the Leader), should be taken into consideration by the Committee when considering or re-considering any suspension decisions.
- 27.** Before suspending the DSO careful consideration should be given to whether it is necessary and whether there are any other suitable alternative ways of managing the situation, for example by agreeing particular working arrangements such as working from home or working in some other way that does not impact or interfere with the investigation and which protects the DSO and the Council from further allegations of a similar nature.
- 28.** If the DSO is suspended, a Single Point of Contact ("SPOC") and support officer (which can be the same person if agreed by the DSO) should be appointed for contacting the DSO.

Appointment of Independent Investigator

29. The IDC Coordinator will obtain three CVs from the JNC 'taxi rank' of investigators and appropriate references. If these are acceptable, the three CVs will be sent to the DSO to select one of the names.
30. The IDC Coordinator should consider the commissioning and procurement in line with the Council's procurement rules.
31. The only acceptable reason for the DSO not selecting from the names being supplied is a conflict of interest. If two of the names provided are conflicted, a new list of three CVs will be sent to the DSO. If only one of the names is conflicted, the DSO shall select one of the other two names provided. If an appointment is not agreed by the DSO within 14 calendar days of the names being supplied, the Committee Chair, in conjunction with its legal adviser and taking into consideration the views of the Head of Paid Service, will be at liberty to select an Investigator from the names supplied.
32. Terms of reference for the II are to be issued to the DSO for information only once agreed by the Committee in conjunction with its legal adviser. Terms of reference should make clear the precise allegations or issues to be investigated and provide access to sources of information and potential witnesses and set out expectations on timescales for completion of the report. It is anticipated that the report should be produced within 2-3 months' of sending the terms of reference to the II.
33. The II should share with the IDC Coordinator his/her proposed methodology for the investigation within 14 days of receiving the terms of reference. The II shall liaise with the IDC Coordinator in respect of any arrangements regarding the investigation.
34. Once completed, the II report should set out the Investigator's opinion whether (and if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or other issue under investigation 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 DSO.

Receiving the II's Report

35. The II should send a draft of his/her proposed report to the IDC Coordinator as soon as completed and within 12 weeks of the ToFR being agreed or within alternative agreed timescales. The Coordinator shall consult with the Head of

HR, proof read and make sure any and all statements are signed off together with any proposed suggestions/edits.

36. The Committee should receive the final report produced by an II in relation to a DSO within one month of the receipt of the report from the II by the IDC Coordinator. The report shall also be shared with the MO/DMO that filtered the matter.
- 53 The DSO shall be sent a copy of the report as soon as possible after it has been finalised and not less than four weeks before the intended meeting which considers the II's report. The DSO shall have the right to attend and be accompanied by their representative (trade union representative or work colleague of their choice) at the Committee Meeting which considers the II's report. The DSO shall submit any written representations or additional evidence he/she wishes the Committee to consider, to arrive with the Co-Ordinator at least 8 working days before the intended meeting so that a final bundle for the meeting may be prepared.
- 54 Any relevant witnesses should be issued with their statement, documents that will be referred to in their evidence and a copy of the agenda.
- 55 Democratic services to take responsibility for:
 - 55.1 Preparing paginated final bundle for the hearing to be indexed and copied to all parties five working days before the hearing
 - 55.2 Arranging hearing dates based on all parties' availability. (II; DSO; witnesses and members)
 - 55.3 Ensuring all packs are collected back in after the hearing and passed to the IDC Coordinator.

The Hearing

- 56 The Committee shall consider the II's report and shall invite representations from the DSO and/or his/her representative.
- 57 Having considered all the evidence and heard from the DSO and relevant witnesses the Committee may:
 - 57.1.1 Take no further action
 - 57.1.2 Recommend informal resolution or other appropriate procedures
 - 57.1.3 Refer back to the II for further investigation and report
 - 57.1.4 Impose disciplinary action against the DSO short of dismissal
 - 57.1.5 Propose dismissal of the DSO

- 58 In conducting any hearing the Committee shall have regard to the model disciplinary procedure in the JNC handbook for Chief Executives and the ACAS Code of Practice.

Decision

- 59 The Committee should make its decision on the basis of the II report and evidence heard at the hearing. It is open to the Committee to impose a lesser or greater sanction than that recommended by the II.
- 60 Where the DSO is found to have no case to answer, appropriate communication should be prepared by IDC Chair; legal adviser; Council communications, Head of Paid Service and the DSO to ensure as far as possible that there is no damage to the DSO's reputation.
- 61 Where the decision taken by the Committee is action short of dismissal, the action will be taken by the Committee itself, in conjunction with its legal adviser.
- 62 In the case of any disciplinary action other than dismissal the DSO may appeal to the Disciplinary Appeals Committee against the decision within 10 working days of the decision. The Disciplinary Appeals Committee will consider the report of the II and any other relevant information considered by the Committee. This process will follow the procedure for appeals under the Council's general disciplinary procedure. The DSO will be invited to an appeal hearing and the aim will be for it to take place no more than 30 working days following receipt of the DSO's appeal.
- 63 The DSO will have the opportunity to appear at the appeal meeting and state his/her case. The DSO will have the right to be accompanied to the meeting by a trade union representative or work colleague of their choice. The decision of the Appeals Committee will be final.
- 64 If the Committee decides that the DSO shall be dismissed the Committee shall inform the Head of HR that it is proposing to dismiss the DSO and that the executive objections procedure should commence. The Head of HR shall give all members of the Cabinet the opportunity to raise any objections prior to the decision, providing them with:
- a summary of the allegations;
 - a summary of the II's report and recommendations;
 - a summary of any representations from the DSO; and
 - the timescale during which any material and well-founded objections should be made.

In order for an objection to be considered material and well founded, the objection would need to be not only based on evidence (well-founded) but must also be relevant to the case (material). The Committee will consider at a reconvened committee meeting any objections and satisfy itself as to whether any of the objections are both material and well founded, in conjunction with its legal adviser. If they are then the Committee will consider the impact of the objections on its proposal for dismissal. Having satisfied itself that there are no material or well-founded objections to the proposal to dismiss, the Committee will inform the DSO of the decision and the proposal for dismissal will be put to the Independent Persons Panel for consideration along with the II report and any other necessary material.

- 65 The Committee Chair, the Committee's legal adviser and the DSO (or his or her representative) should be present at the meeting of the Independent Panel. The DSO will have the opportunity to make representations and the Committee Chair (or its representative) will have the chance to respond. The Independent Panel will review the decision and prepare a report for full Council. This report should contain a clear rationale if the Panel disagrees with the recommendation to dismiss. The Independent Panel must be appointed at least 20 days before the meeting of Full Council at which the recommendation for dismissal is to be considered. Appropriate training will be given.
- 66 A meeting of Full Council will consider under Part 2 of the meeting the proposal that a DSO should be dismissed and must take into account:
 - 66.1.1 Any advice, views or recommendations of the Independent Panel
 - 66.1.2 a summary of the allegations;
 - 66.1.3 a summary of the II's report and recommendations; and
 - 66.1.4 a summary of any representations of the DSO
- 67 The DSO will have the opportunity to appear before Full Council and put his/her case before a decision is taken. The DSO will have the right to be accompanied to this hearing by a trade union representative or work colleague of their choice.
- 68 Full Council must approve the dismissal before notice of dismissal is issued. Given the independent investigation that has already been carried out in respect of the allegations, it will not be appropriate for Full Council to undertake a full re-hearing of the case. Instead, consideration by the Council will take the form of consideration of a summary of the case and the proposal to dismiss and any advice, views or recommendations of the Independent Panel.

69 Full Council may reject the proposal to dismiss. If so, it must give reasons and the matter will then be referred back to the Committee to determine the sanction and the above procedures will be repeated again.

70 The hearing by Full Council will also fulfil the appeal function for the DSO's appeal against dismissal.

Power to agree financial settlements

71 It is possible at any stage to consider the mutual termination of the contract of employment of the DSO.

72 The Head of Paid Service (or Deputy if the DSO is the Head of Paid Service) shall have authority to agree a formal settlement agreement with the DSO subject to and in accordance with the terms of the Constitution. The Head of Paid Service (or Deputy) shall inform the Committee once a decision on any formal settlement has been reached.

Grievances raised by DSO during disciplinary proceedings

73 Where a DSO raises a grievance relating to his or her disciplinary case, the Committee will decide how to deal with the grievance. This will depend on the facts of the case, the stage of the IDC process reached and the nature of the grievance raised. In some cases it may be appropriate to hear the grievance before continuing with the IDC process. In other cases it will be appropriate to deal with the issues raised in the grievance as part of the IDC process itself.

Access to Information

74 The Council's Access to Information Procedure Rules shall apply to meetings of the Committee.

Access to Advice and Representation

75 For the avoidance of doubt, the Committee will commission and have access to external legal advice.

76 For the avoidance of doubt, if a DSO chooses to retain professional advice and/or representation at or in respect of any meeting of or hearing before the Committee, then the DSO in question shall be responsible for the cost of that advice or representation.