

Part 3D - Officers' Employment Procedure Rules

These rules determine procedures to be followed in the recruitment of senior officers of the council and in any disciplinary action which may become necessary and the involvement of Members in such matters. Further details of the disciplinary process for senior officers are contained in relevant policies agreed by the Employment Committee.

1. Recruitment and appointment

(a) Declarations

- i) The council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are related to, or in a relationship with, any existing councillor or employee of the council, or of the partner of such persons.
- ii) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

(b) Seeking support for appointment.

- i) Subject to paragraph (iii), the council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the council. The content of this paragraph will be included in any recruitment information.
- ii) Subject to paragraph (iii), no councillor will seek support for any person for any appointment with the council.
- iii) Nothing in paragraphs (i) and (ii) above will preclude a councillor from giving a written reference for a candidate for submission with an application for appointment.

2. Recruitment of head of paid service and chief officers

Where the council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the council will:

- (a) draw up a statement specifying:
 - i) the duties of the officer concerned; and
 - ii) any qualifications or qualities to be sought in the person to be appointed,
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
- (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.

3. Where a post has been advertised as provided in paragraph 2(b), the council shall -

- (a) interview all qualified applicants for the post, or

- (b) select a short list of such qualified applicants and interview those included on the short list.
- 4. Where no qualified person has applied the council shall make further arrangements for advertisement in accordance with paragraph 2(b).
- 5. The council may authorise a chief officer to carry out any or all of the steps in paragraphs 2, 3 and 4 above and unless the council otherwise directs, the chief executive is authorised to carry out those steps in respect of any chief officer post.
- 6. **Appointment of head of paid service**
 - (a) The arrangements for the appointment of the Head of Paid Service (the Chief Executive) are reserved to the council¹.
 - (b) Where the Employment Committee or an appointments sub-committee is acting on behalf of the authority, the full council must approve the appointment before an offer of appointment is made.²
 - (c) The council may only make or approve the appointment of the Head of Paid Service where no well-founded objection has been made by any member of the **Cabinet**.
- 7. **Appointment of chief officers**
 - (a) The arrangements for and appointment of all chief officers and staff on the Joint National Council for Chief Officers conditions of service is delegated to the Employment Committee who are authorised to delegate any such process and appointment (including the terms of any contract for such appointment) to an Appointments Panel' being so far as practicable politically proportionate, which shall comprise such members as the Employment Committee thinks fit, but must include at least one member of the Cabinet.
 - (b) An offer of employment under (a) above must not be made by the Employment Committee or the Appointments Panel acting as a Sub- Committee of the Employment Committee until:
 - (i) the Chief Executive has been notified of the names of the shortlisted candidates together with any particulars considered relevant to the proposed appointment;

¹ The head of paid service (usually referred to as the Chief Executive) is a statutory appointment pursuant to section 4 of the Local Government and Housing Act 1989.

² Paragraph 4 of Part 2 of Schedule 1 of the Local Authorities (Standing Orders) (England) Regulations 2001(as amended).

- (ii) the chief executive has notified every member of the Cabinet of — the names of the shortlisted candidates;
 - any particulars relevant to the proposed appointment of any of the shortlisted candidates;
 - the period within which any objection to the making of any offer is to be made by the Leader of the Council on behalf of the Cabinet; and
- (iii) either —
 - The Leader has, within the period specified, notified the committee Chair that the Cabinet has no objection to the making of any offer;
 - the chief executive has notified the committee that no objection was received from the Leader within the period specified; or
 - the committee is satisfied that any objection received from the Leader of the Council within the period specified is not material or is not well founded.

8. **Other appointments**

- (a) Officers other than Head of Paid Service and Chief Officers

Appointment of officers on any other scheme of condition of service is the responsibility of the relevant chief officer or his/her nominee and may not be made by councillors.

9. **Disciplinary action of Relevant Officers**

- (a) **Suspension.** The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. It is recognised that suspension is a neutral act. The requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) and the Model Disciplinary Procedure A (England) of the Conditions of Service Handbook of the Joint Negotiating Committee for Local Authority Chief Executives (13th October 2016) and accompanying Guidance give effect to these provisions and will be used in circumstances where disciplinary action against the Head of Paid Service, Monitoring Officer or s151 Officer is contemplated
- (b) councillors will not be involved in disciplinary action against any officer other than those employed on the Joint National Council for Chief Officers conditions of service.

10. Dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer

(a) In this paragraph 10:

- "The 2011 Act" means the Localism Act 2011.
- "Independent person" means a person appointed under section 28(7) of the 2011 Act.
- "Local government elector" means a person registered as a local government elector in the council's area.
- "The Independent Panel" means a committee appointed by the council for the purposes of advising the council on matters relating to the dismissal of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer.
- "Relevant meeting" means a meeting of the full Council to consider whether or not to approve a proposal to dismiss the head of paid service, the Monitoring Officer or the Chief Finance Officer.
- "Relevant officer" means ~~the chief officers~~, Head of Paid Service, Chief Finance Officer or Monitoring Officer, as the case may be.
- 'Initial filtering' means the stage before formal disciplinary procedures may be initiated such initial filtering stage being reserved to the Monitoring Officer (or other designated proper officer).

(b) Where the Employment Committee or a committee acting on its behalf is discharging on behalf of the Full Council the function of dismissal of a relevant officer, the full Council must approve that dismissal before notice of dismissal is given to that person.

(c) Disciplinary action or situations in which there is the potential to dismiss or end the employment relationship with the Head of Paid Service, Monitoring Officer or Chief Finance Officer will require the involvement of an Independent Investigator. Where it results in a proposal to dismiss or end the employment relationship, it will require the involvement of an Independent Panel before the Council considers the proposal (in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015)).

(d) The Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (S.151 Officer) may not be dismissed by the Council unless this procedure is complied with.

(e) Initial Filtering

- i. Where a concern, allegation, or other issue arises relating to the conduct or capability of a relevant officer, the matter shall first be subject to an initial assessment undertaken by the Monitoring Officer (or other designated proper officer should the Monitoring Officer be the subject of the allegation).
- ii. The purpose of the initial assessment is to determine whether the issue is:

- (i) frivolous, vexatious or unrelated to the officer's professional duties;
 - (ii) a matter that can be appropriately addressed through management action, informal resolution, performance management, workplace mediation, or another procedure; or
 - (iii) a matter that potentially meets the JNC threshold for referral into the formal disciplinary process.
- iii. The formal disciplinary procedure shall only be engaged where the initial assessment identifies that the allegation, if substantiated, may constitute:
 - (a) misconduct or gross misconduct of sufficient seriousness to warrant consideration by the Investigating & Disciplinary Committee (I&DC); or
 - (b) another substantial issue falling within the JNC definitions that might reasonably require investigation by an Independent Investigator.
- iv. In applying the threshold test, the Monitoring Officer (or other designated proper officer should the Monitoring Officer be the subject of the allegation) must consider:
 - the nature, specificity, and evidence supporting the allegation;
 - whether the allegation is credible and within the officer's remit;
 - whether the matter requires immediate protective action.
- v. Outcome of initial assessment
 - (a) Where the threshold test is not met, the matter shall not proceed to the formal disciplinary process. Instead, the Monitoring Officer may give any direction to the consider an appropriate alternative route if required.
 - (b) Where the threshold test is met, the Monitoring Officer (or other designated proper officer should the Monitoring Officer be the subject of the allegation) shall refer the matter to the Investigating & Disciplinary Committee (I&DC).
- vi. Recording and Notification
 - (a) The Monitoring Officer shall keep a written record of the allegation(s), assessment steps, and outcome.
 - (b) The subject officer shall be informed in writing of the decision reached at the filtering stage, unless doing so would prejudice a parallel process.
- vii. Protection Against Misuse
 - (a) The Initial Assessment must ensure that the JNC disciplinary procedure is not invoked for issues that are minor, politically motivated, or unsupported by evidence.

(b) This filtering stage exists to ensure that the JNC process is engaged only where justified, consistent with national guidance and best practice.

(f) Process

Where the threshold is made out the relevant officer may not be dismissed unless the procedure set out in the following paragraphs (i) to (xi) is complied with.

(i) The Director of Corporate Services (or in the event that the factual circumstances suggest that a conflict of interests may arise in respect of that Director another Director) shall appoint:

- a. In consultation with the leaders of each political group, a committee of three members (the Investigation and Disciplinary Committee (I&DC)) shall be established, made up of constituted upon a politically proportionate basis each of whom shall not take or participate in any decisions of the Council relating to the same matter. The purpose of the I&DC is to review the allegations and determine to either take no action, issue an informal warning or request an investigation. The Chair of the I&DC may suspend the officer if an investigation takes place into alleged misconduct and or capability. That suspension will be on full pay and last no longer than two months;
- b. Should the I&DC conclude that an investigation be undertaken, the Director of Corporate Services (or if the factual circumstances suggest that a conflict of interests may arise in respect of that Director another Director) will appoint an Independent Investigator from the JNC approved list. Following an investigation, the I&DC will review the results of the investigation to consider what disciplinary action, if any, is appropriate after hearing the views of the relevant officer and then report its recommendations;
- c. In consultation with the leaders of each political group, a committee of three members (the I&DC Appeals Committee), not being members of the I&DC, shall be established made up of councillors in political proportionality to the number of seats each party has on the council and each of whom shall not take participate in any decisions of the council relating to the same matter;
- d. An Independent Panel of at least two independent persons appointed in accordance with the procedure set out below at (ii) to (v) for the purpose of providing advice, views, and recommendations.

(ii) The Independent Panel referred to at (i) (d) shall comprise "relevant independent persons" (meaning any independent person who has been appointed by the council), or where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the council considers appropriate.

- (iii) Subject to paragraph (iv), the council must appoint to the Independent Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph (iii) in accordance with the following priority order-
 - (1) a relevant independent person who has been appointed by the council and is a local government elector;
 - (2) any other relevant independent person who has been appointed by the council;
 - (3) a relevant independent person who has been appointed by another authority or authorities.
- (iv) No more than two relevant independent persons need be appointed, but the Council may appoint more if it so wishes.
- (v) The Independent Panel must be appointed at least 20 working days before the relevant meeting.
- (vi) A meeting of the Investigation and Disciplinary Committee (the I&DC) shall:
 - a. Screen potential disciplinary / dismissal issues to consider whether they require investigation and whether the relevant officer should be suspended;
 - b. Organise an investigation;
 - c. Review the results of the investigation to consider what disciplinary action, if any, is appropriate after hearing the views of the relevant officer and then report its recommendations;
 - d. If the recommendation is for a dismissal, refer the matter to the Independent Panel who shall review the decision and report of the I&DC, and provide their advice, views, and recommendations;
 - e. The I&DC shall, subject to (vii) below, provide the report of the Independent Panel alongside its own report to Council for a formal decision.
- (vii) In the event that the relevant officer elects to appeal the decision of the I&DC to recommend dismissal, the I&DC Appeals Committee shall convene to hear the appeal of the relevant officer, and shall review:
 - a. the decision and report of the I&DC any report of the Independent Panel on the matter
 - b. any representations made by the relevant officer,
 - c. any additional commentary provided by the Independent Panel (in relation to any new matters raised)

Following which, the I&DC Appeals Committee shall, where it resolves to recommend dismissal, submit its report together with any report of the Independent Panel to full Council for decision

- (viii) Before the taking of the vote at the relevant meeting on whether or not to approve such a dismissal, the full council must take into account, in particular-
- any advice, views or recommendations of the Independent Panel;
 - the conclusions of any investigation into the proposed dismissal; and
 - any representations of the officer whose dismissal is being considered at the meeting
- (ix) If the full Council approves the dismissal, the City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant officer), shall notify all members of the Cabinet of the name, and matters relevant to the dismissal.
- (x) Following receipt of the notification above, the Leader may within 7 days, give notice of objection to the dismissal, accompanied by reasons for the objection.
- (xi) The City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant officer) may request that the I&DC action the dismissal provided that:
- a. No objection is received from the Leader; or,
 - b. Upon receiving an objection, a meeting of the Council is convened, the objection considered, and the Council resolves that the objection is not material or is not well-founded.

Any remuneration, allowances or fees paid by the council to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.

11. Dismissal of other Senior Officers

- (a) Councillors will not be involved in the dismissal of any officer other than those who are employed on the Joint National Council for Chief Officers conditions of service.
- (b) Where the Employment Committee or a committee acting on its behalf is discharging the function of dismissal of an officer on the Joint National Council for Chief Officers Conditions of Service, at least one member of the Cabinet must be a member of that committee.
- (c) Notice of the dismissal of an officer on the Joint National Council for Chief Officers Conditions of Service must not be given by the council, the Employment Committee, a sub-committee or officer until —

- (i) the Chief Executive has been notified of the name of the person whom it is proposed to dismiss and any particulars which are considered relevant to the dismissal;
- (ii) the Chief Executive has notified every member of the Cabinet of —
 - the name of the person whom it is proposed to dismiss;
 - any particulars relevant to the proposed dismissal;
 - the period within which any objection to the proposed dismissal is to be made by the Leader of the Council on behalf of the Cabinet; and
- (iii) either —
 - The Leader has, within the period specified, notified the committee or officer taking the decision that the Cabinet has no objection to the dismissal;
 - the Chief Executive has notified the committee or officer taking the decision that no objection was received from the Leader within the period specified; or
 - the committee or officer is satisfied that any objection received from the Leader of the Council within the period specified is not material or is not well-founded.

(These Rules incorporate where required within paragraphs 6, 7, 8, 9, 10 and 11, the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001)(as amended).

NOTE:

The term 'Chief Officer' includes Directors.

Appendix 1

Executive Objection Procedure

If the Council approves the dismissal the City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant "protected" officer) shall notify all members of the Cabinet of the name, and matters relevant to the dismissal.

- (1) Following receipt of the notification above, the Leader may within 7 days, give notice of objection to the dismissal, accompanied by reasons for the objection.
- (2) The City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant "protected" officer) may request that the I&DC action the dismissal provided that:
 - No objection is received from the Leader; or,
 - Upon receiving an objection, a meeting of the Council is convened, the objection considered, and the Council resolves that the objection is not material or is not well-founded.