

**Committee:** Council

**Date:**

**Title:** Senior Officer Employment Disciplinary Procedures

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## Summary

1. By virtue of The Local Authorities (Standing Orders) (England) Regulations 2001 the statutory officers of the council the Head of Paid Service (Chief Executive), the Chief Finance Officer (Director of Finance and Corporate Services) and the Monitoring Officer (Assistant Director Governance and Legal and Monitoring Officer), have duties to advise and protect the Council as a corporate body. In carrying out their duties at times they may be required to provide advice to members that is not welcome or popular, or to take such action in connection with that advice in order to fulfil their statutory responsibilities. Accordingly, these three statutory posts are protected by law under specific regulations from unwarranted political interference in carrying out their proper duties.

2. The Local Authority (Standing Orders) (England)(Amendment) Regulations amended the previous legislation to change the statutory process for dismissing the Head of Paid Service, Monitoring Officer and Chief Finance Officer (“the relevant officers”). Previously no disciplinary action could be taken against a relevant officer other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). The 2015 Regulations abolished the role of the DIP and outlined a new process to be followed and to be incorporated into Council Constitutions.

3. In addition to the statutory requirements, a new process for managing disciplinary and dismissal matters in relation to relevant officers was agreed by the Joint Negotiating Committee (JNC) for Local Authority Chief Executives in October 2016 and incorporated into the contractual terms and conditions of employment for Local Authority Chief Executives. In August 2017, the JNC recommended that a modified procedure for the Chief Finance Officer and Monitoring Officer should also be adopted. The JNC recommended that the relevant provisions of the Chief Executives’ Handbook should be used as a reference guide in such circumstances. On May 7<sup>th</sup>, 2019, and again on April 15<sup>th</sup>, 2021, a letter to all Local Authority Chief Executives was sent out reminding authorities to address these changes.

4. The Council’s Officer Employment Procedure Rules, contained within Councils Constitution at part 4, are not drafted to reflect the legislation or the new model procedure. At Part 4 paragraph 8.2 the Constitution states “A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with”. Those paragraphs following in the Constitution do not comply with the legislation or the JNC recommendations. The Council does not have in place the structures, or the standing committees required to operate these procedures. These structures must be established so that the procedure required by the Regulations and the model policy can be managed.

5. Implementation of the Regulations and the new model procedure will require the Council to agree new disciplinary procedures for relevant officers and establish a standing Investigating and Disciplinary Committee (IDC), an Appeal Committee (AC), together with an Independent Panel (IP). Officers will also require authorisation to amend the Constitution to give effect to these changes, to effect changes to the employment contracts of relevant officers, to formulate new disciplinary procedure arrangements for the same and to organise appropriate mandatory training for members of the new committees and the persons that will comprise the Independent Panel.

6. This report provides procedural clarity in the processes to be followed in the event that a formal written complaint is to be made against one of the council's relevant officers. As in any employment situation mediation and Alternative Dispute Resolution should always be considered prior to the commencement of formal action, however it is important that members have clarity in relation to the matters covered in this report so that the Council complies with the relevant Regulations and terms and conditions of employment.

7. A basic flow chart of the JNC procedure can be found at appendix 1.

### **Recommendations**

On the 30<sup>th</sup> June 2021 GAP members agreed to recommend the following to Full Council and Council is therefore requested to approve the following recommendations:

8. That the JNC model procedure be adopted for all three relevant statutory officers and that the Council's disciplinary procedures and the Constitution be amended to reflect this.

9. The establishment of the following standalone Committees to manage the procedure:

**An Investigating and Disciplinary Committee (IDC)** to deal with disciplinary matters relating to the relevant officers. This committee is to be a politically balanced committee of at least five members, at least one of whom is to be a member of the Cabinet. There should be two reserve members in case of any conflict of interest.

**An Appeals Committee (AC)** to deal with disciplinary matters short of dismissal relating to the relevant officers. This committee is to be a politically balanced committee of at least five members, at least one of whom is to be a member of the Cabinet. There should be two reserve members in case of any conflict of interest.

**An Independent Panel (IP)** comprising of three people appointed under section 28 Localism Act 2011 to advise Council in the event of a recommendation from the IDC to dismiss a relevant officer.

10. The delegation of power to an elected Member most usually the Chair of the IDC to suspend a relevant officer immediately in an emergency.

11. That in the case of a complaint against a relevant officer, the decision whether to refer the matter to the IDC will be delegated to the Monitoring Officer or Chief Finance Officer in conjunction with the HR Manager in the case of a complaint against the Head of Paid Service and delegated to the Head of Paid Service in conjunction with the HR Manager in the case of a complaint against the Monitoring Officer or the Chief Finance Officer. In all cases the JNC will be consulted prior to referral and independent legal advice will be taken as appropriate.

12. That the relevant officers will be given the same right to be accompanied at any disciplinary hearing as all Uttlesford District Council employees. Additionally, this will include the right to be accompanied by a legal representative at their own cost.

13. That the Assistant Director Governance and Legal and Monitoring Officer be authorised to make all necessary and consequential amendments to the constitution to give effect to these recommendations.

14. That the HR Manager in conjunction with the Assistant Director Governance and Legal and Monitoring Officer be authorised to appoint three new persons to comprise the IP.

15. That the HR Manager be authorised to arrange appropriate mandatory training for members serving on the IDC and AC and the Independent Persons serving on the IP.

16. That the HR Manager be authorised to amend the Councils disciplinary procedures and contracts of employment for relevant officers accordingly.

17. That the IDC and AC be appointed, and seats thereon allocated to political groups in accordance with the rules of proportionality and that appointments be made to Committees in accordance with the nominations received from political groups.

### **Financial Implications**

18. There are financial implications associated with this report. Members appointed to the IDC, AC and IP will all need to be trained prior to the convening of these Committees and three new IP's will need to be engaged to comprise the IP.

### **Background Papers**

19. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

- Council Constitution
- Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015
- National Salary Framework and Conditions of Service Handbook updated 13 October 2016.
- Joint Negotiating Committee (JNC) for Local Authority Chief Officers National Salary Framework and Conditions of Service Handbook updated 8 August 2017.
- Letters to Local Authority CEO dated 7.5.2019 and 15.4.2021.

### **Impact**

20.

Communication/Consultation	None
Community Safety	None

Equalities	No impact assessment has been carried out, but all relevant officers will be treated in accordance with equalities principles.
Health and Safety	None
Human Rights/Legal Implications	This report includes legal and human rights implications. The processes outlined in this report and recommended for adoption are compliant with the 2015 Regulations and nationally agreed Joint Negotiating Committee for Local Authority Chief Executives and other relevant statutory officers. The recommendations take into account the Human Rights Act and existing law on the right to be accompanied at a disciplinary hearing. The standard contract of employment for the relevant officers refers to the JNC agreed conditions of service handbook for local authority Chief Executives. The employment contracts of all three relevant officers need to be amended accordingly. A failure to implement a disciplinary procedure based on the model could be a breach of contract. A member who has made a complaint would not be able to serve on the IDC or Appeals Committee considering that complaint due to the common law rules of bias.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	This report recommends structures that should be put in place in order to address any disciplinary matters relating to specific posts

## **Situation**

21. The Regulations provide that the dismissal of a relevant officer in cases of disciplinary action may only take place if the proposal to dismiss is approved by way of a vote at a meeting of the authority, after they have considered:

- Any advice, views, or recommendations of a panel (IP)

- The conclusions of any investigation into the proposed dismissal and
- Any representations from the protected officer concerned.

22. Disciplinary action is defined as “any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority, 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 authority has undertaken to renew such a contract”.

23. The view of the JNC is that this definition includes 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 authority.

24. The procedure involves a referral system and the operation of: An **Investigating and Disciplinary Committee (IDC)**, an **Appeals Committee (AC)**, the **Independent Panel (IP)**, the **Cabinet** and the **Council**.

### **Referral to the Investigating and Disciplinary Committee IDC.**

25. The initial decision to refer a matter to the IDC is delegated to the Monitoring Officer or Chief Finance Officer in conjunction with the HR Manager in the case of a complaint against the Head of Paid Service and delegated to the Head of Paid Service in conjunction with the HR Manager in the case of a complaint against the Monitoring Officer or the Chief Finance Officer. There is no member or IP involvement in this stage of the process as the referring officers whilst they work together closely and have to do so are all Independent Senior Officers and are bound by Statutory Duty, Officers Code of Conduct and their own Professional Codes of Conduct. They have to at all times act in the Organisations best interests. If they did not, they could be subject to action themselves. Following concerns raised in GAP regarding the difficulties that could be caused by requiring senior officers to refer each other and that the fact that in accordance with employment law and good practice, Mediation and Alternative Dispute Resolution should always be considered prior to starting any disciplinary action. It is recommended that the referring officer will take the advice of the HR Manager and JNC who provide an advisory and conciliation service. Independent legal advice can also be taken as appropriate

### **Investigating and Disciplinary Committee IDC.**

26. The purpose of the IDC is to investigate allegations against a relevant officer relating to (i) conduct; (ii) capability; or (iii) some other substantial issue that requires investigation. It must also determine whether an investigation is needed.

If the IDC determines that an investigation is needed it will also need to appoint an Independent Investigator (II) and consider any report of that II. Any II will be appointed from a list held by the JNC.

The IDC after considering an II Report then must decide whether to:

- impose no sanction.
- impose a sanction short of dismissal.
- or recommend dismissal to the IP and commence a dismissal process.

28. The Committee must be a standing Committee appointed by the Council and can undertake other functions as well. GAP considered whether they wished to

recommend that the IDC should be set up as a separate Committee or whether it should be incorporated into the Councils recently set up Appointments Committee. Gap's decision was that the new structures should stand alone and new Committees. The Committees must be politically balanced, should be made up of at least five members and include at least one member of the Cabinet.

29. Arrangements for flexibility will be required, including the use of reserve members or substitutes, in the event that a member of the IDC has a conflict of interest in the matter to be considered.

### **An Independent Panel IP.**

30. The purpose of the IP is to review a recommendation of the IDC proposing dismissal of the relevant officer and any representations made by the relevant officer.

31. Its role is also to provide advice, views, or recommendations via a report to Council before a relevant officer can be dismissed, for any reason other than redundancy, permanent ill health, or the expiry of a fixed term contract, unless the authority has undertaken to renew that fixed term contract.

32. The IP is only used if the IDC, having received the report of the IP and held a hearing, is minded to recommend dismissal to full Council. If the recommendation is for a lesser sanction such as a written warning, the IDC has the power to impose this without referring to either the IP or full Council. The relevant officer can then appeal the sanction to the AC.

33. If the IDC recommendation is dismissal, the Cabinet will be given the opportunity to make any objections that are both material and well founded. Following this, the IP will hold a hearing where it will listen to both the chair of the IDC and the relevant officer and will then give their advice/views/recommendations to Council.

34. The matter then goes to full Council for a decision. This is in effect an appeal hearing for the relevant officer who is allowed to put his or her case to Council before a decision is taken.

35. The IP should be comprised of at least two independent persons who have been appointed by the Council, for the purposes of the Council Members' conduct regime under *section 28(7) of the Localism Act 2011*.

36. Uttlesford currently have three existing long standing Independent Persons appointed by the Council under section 28(7) Localism Act 2011 to support the Standards Committee. Good practice guidance recommends that the terms of office of Independent Persons are reviewed two yearly and these are due for review. In order not to disrupt the current continuity of appointment and the need to put these new procedures in place with some degree of urgency it was proposed and agreed by GAP that the appointment of three new further Independent Persons to supplement those already in position be recommended to Council.

### **Appeals Committee AC.**

37. The purpose of the AC is to hear appeals against action taken by the IDC on Sanctions (except for dismissal) and then decide whether to confirm the sanction; impose no sanction; or impose a lesser sanction.

38. The AC has a fairly limited role, but its decision is final.

39. The AC must be politically balanced, made up of five members and include at least one member of the Cabinet. The Members of the AC cannot be members of the IDC.

40. Arrangements for flexibility will be required, including the use of reserve members or substitutes, in the event that a member of the IDC has a conflict of interest in the matter to be considered.

**Elected member with the designated power to suspend the Chief Executive.**

41. An elected Member with the delegated power to suspend a relevant officer immediately in an emergency or if an exceptional situation arises whereby allegations of misconduct by the relevant officer are such that their continued presence at work poses a serious risk to the health and safety of others or the resources, information, or reputation of the authority.

42. It is recommended by the JNC that this appointment should be given to the same member that is appointed as the Chair of the IDC.

**Risk Analysis**

43.

Risk	Likelihood	Impact	Mitigating actions
The council does not adopt the recommended structures and is therefore unable to meet the requirements of the Regulations	1 – it is a recommended model that is proposed	3 – it is important that any disciplinary matters relating to these statutory posts are dealt with appropriately	Adoption of recommended structures and policy

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

