
Head of Paid Service and Chief Officers Disciplinary Procedures

Report by the Head of Democratic and Central Services

1. INTRODUCTION

- 1.1 Arising from the adoption by the Employment Panel of a redundancy scheme and voluntary release scheme on 27th September 2010, a number of decisions were taken by the Panel and by the Council on 3rd November 2010 to amend existing procedures to deal with the implications for heads of service and above. This included revisions to the Officer Employment Procedure Rules in the Council's constitution and the broadening of the remit of the Appointments Panel and its reconstitution as the Employee Selection Panel to make provision for the dismissal of officers at these grades under the redundancy scheme.
- 1.2 The Employment Panel also made provision for an extension of the Council's grievance procedure to include the head of paid service and chief officers but no change was made in terms of disciplinary arrangements.
- 1.3 The Employment Panel approved a revised disciplinary policy and procedure at its meeting held on 25th May 2010 but this specifically excludes chief officers. As a result of the foregoing, it is apparent that further changes to the Council's rules and procedures are advisable to ensure that the appropriate procedures are in place for those officers and the head of paid service.

2. DISCIPLINARY POLICY AND PROCEDURE

- 2.1 The Council's revised policy and procedure applies to all employees at head of service level and below. Chief officers employed under the Joint Negotiating Committee for Chief Officers of Local Authorities Conditions of Service have a separate procedure and are specifically excluded from the Council's policy. Similarly the Head of Paid Service is employed under separate arrangements, in this case the Joint Negotiating Committee Conditions of Service for Local Authority Chief Executives.
- 2.2 Turning first to chief officers, their JNC conditions of service contain provisions relating to discipline, capability and redundancy. In terms of discipline, the conditions of service refer to a procedure that should be tailored to the needs of each local authority and contain a model procedure for use by individual authorities. The conditions of service and model procedure are extremely broad and do not contain the depth of detail required to deal with any incidents that may arise. Nor

does it match the provisions of the Officer Employment Procedure Rules in the constitution. The Council's own disciplinary policy and procedure is based upon the ACAS guide for discipline and grievances at work and apply the principles contained in the JNC conditions of service with a few exceptions where the latter contain special provisions for chief officers.

- 2.3 With regard to the head of paid service, the JNC conditions of service for chief executives are very detailed and specify the actions to be taken in virtually all circumstances that may arise. There is therefore no need to introduce further change. However the conditions of service do refer to the need for various delegations etc. to be in place in the event that they are needed.
- 2.4 A further anomaly has arisen in that the disciplinary policy and procedure adopted by the Employment Panel for all employees does not make provision for the protection afforded in law to certain statutory posts if these are occupied by heads of service, i.e. the chief finance officer and monitoring officer. One of those is currently filled by a head of service.
- 2.5 In the absence of a specific disciplinary policy for chief officers other than the model contained in the JNC conditions of service, it is recommended that the Council's own policy and procedure be extended to apply to chief officers, subject to the amendments contained in Appendix A attached. At the same time, an opportunity should be taken to amend the policy and procedure to incorporate the special provisions that apply to statutory post holders (with the exception of the head of paid service) which again are specified in Appendix A.
- 2.6 To ensure that the necessary processes are in place to deal with the application of the disciplinary arrangements for the head of paid service, various delegations are required and these are explained in Appendix B.

3. OFFICER EMPLOYMENT PROCEDURE RULES

- 3.1 Closer examination of the disciplinary arrangements for chief officers and heads of service has demonstrated that there are anomalies between those policies and procedures and the provisions of the Officer Employment Procedure Rules. The latter, for example, state that disciplinary action in respect of chief officers and heads of service may be taken by the Employment Panel whereas the disciplinary policy and procedure specify other arrangements. In order to ensure consistency, it is proposed that the Officer Employment Procedure Rules be amended in accordance with the proposals contained in Appendix C attached.
- 3.2 The changes proposed will necessitate a further extension of the role of the Employee Selection Panel and its re-designation with the suggested name of Senior Officers Panel. Similar changes will be required to the role of the Appeals Sub Group. These are explained in Appendix C.

4. CONCLUSION

- 4.1 It has become apparent that a number of decisions of a procedural nature need to be taken by the Council to ensure that the appropriate disciplinary arrangements are in place for the senior management of the Council. These are itemised in the attached appendices.

5. RECOMMENDATION

- 5.1 It is therefore

RECOMMENDED

that the recommendations contained in Appendices A to C attached to this report be approved.

BACKGROUND PAPERS

The Council's disciplinary policy and procedure

The model disciplinary procedure and guidance to the procedure contained in the Joint Negotiating Committee terms and conditions of service for Chief Executives

The Joint Negotiation Committee for Chief Officers constitution, conditions of service and salaries.

The Council's constitution.

The Local Authorities (Standing Orders) (England) Regulations 2001.

Contact Officer: Roy Reeves, Head of Democratic and Central Services
☎ 01480 388003

This page is intentionally left blank

APPENDIX A

CHIEF OFFICERS AND HEADS OF SERVICE IN STATUTORY POSTS DISCIPLINARY POLICY AND PROCEDURE

1. GENERAL

- 1.1 Paragraph 3.4 of the Council's disciplinary policy and procedure currently states that 'Chief officers employed under the terms of the JNC for Chief Officers or other local authorities' national agreements have separate procedures, and are excluded from this policy'.
- 1.2 **It is recommended that this paragraph be substituted by the statement 'Chief Officers are employed under the terms of the JNC for Chief Officers conditions of service which contain provisions relating to discipline, capability and redundancy. This policy replaces the model procedure for disciplinary arrangements contained in the JNC terms and conditions, subject to the provisions contained in Appendix 7 of this policy.'**
- 1.3 Paragraph 9.3 of the Council's disciplinary policy and procedure lists the appendices attached to the disciplinary policy. **It is recommended that 'Appendix 7 - Special provisions for chief officers' be added to the list.**

2. APPENDIX 2

- 2.1 Section 5 of Appendix 2 of the disciplinary policy deals with the suspension of an employee but omits any definition as to who has the authority to do so. **It is recommended that the following paragraph be added to that section –**

'5.3. The suspension of an employee may be undertaken as follows –

| Employee Group | Responsibility for Suspension |
|------------------------------------|---|
| Up to and including Grade 7 | Activity Manager or designated officer |
| Activity Manager | Head of service or designated officer |
| Head of service | Director or designated officer |
| Chief officer | Senior Officer Panel.' |

- 2.2 Paragraph 6.3 of Appendix 2 of the policy specifies the arrangements for disciplinary hearings by line managers and Members. **Another row is recommended as an addition to the table to deal with the situation for chief officers –**

| Employee Group | Investigatory Meetings(s) | Disciplinary Hearing | Appeal | Final Appeal |
|----------------|---------------------------|-------------------------|-------------------|-------------------|
| Chief Officers | Head of Paid Service | Senior Officers Panel†† | Appeals Sub Group | No further appeal |

2.3 A footnote will need to be added to the table as follows –

‘†† The Senior Officers Panel shall comprise 4 Members of the Council and the relevant executive councillor in relation to the post.’

2.4 Special arrangements apply to the posts of head of paid service, chief finance officer and monitoring officer under the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001. One of those positions is currently undertaken by a head of service. **It is therefore recommended that the reference to heads of service in the table in paragraph 6.3 be accompanied by the symbol † and the following footnote added below the table –**

‘† Special provisions apply in the case of a head of service who has been appointed as the Council’s chief finance officer or monitoring officer which are contained in Appendix 7.’

2.5 Paragraph 7.6.4 of Appendix 2 deals with the sanction levels as a result of disciplinary hearings. **A further line in the table is recommended to deal with chief officers as follows –**

| Employee Group | Verbal & Written Warning | Final Warning | Dismissal |
|-----------------|--------------------------|-----------------------|-----------------------|
| Chief officers† | Senior Officers Panel | Senior Officers Panel | Senior Officers Panel |

2.6 It is also recommended that the head of service group in that table should have the symbol † attached and a footnote added below the table as follows –

‘† Officers filling the positions of chief finance officer or monitoring officer are subject to the special provisions contained in Appendix 7.’

3. APPENDIX 7

3.1 It is recommended that a new Appendix 7 be added to the policy as follows –

‘Appendix 7

1.0 Application

1.1 This disciplinary policy and procedure applies to chief officers, subject to the provisions of this appendix. This

appendix also applies to heads of service who have been appointed as chief finance officer or monitoring officer.

1.2 In the case of chief officers, this policy replaces the model disciplinary procedure contained in the JNC for Chief Officers for Local Authorities terms and conditions. All other aspects of part 4 of those terms and conditions relating to discipline, capability and redundancy remain unaltered.

2.0 Chief Finance Officer and Monitoring Officer

2.1 No disciplinary action in respect of the chief finance officer or monitoring officer, except suspension, may be taken by the Council or a panel of the Council other than in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001 (investigation of alleged misconduct).

2.2 The designated independent person must be such person as may be agreed between the Council and the chief finance officer or monitoring officer ("the relevant officer"), or in the default of such agreement, nominated by the Secretary of State. The designated independent person –

(i) may direct –

- (a) that the Council terminates any suspension of the relevant officer;
- (b) that any such suspension must continue after the expiry of the period of two months;
- (c) that the terms on which any such suspension has taken place must be varied in accordance with the direction; or
- (d) that no steps (whether by the Council or a panel of the Council) towards disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence or with the agreement of the designated independent person, are to be taken before a report is made by the designated independent person;

(ii) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Council, or which the Council has power to authorise him to inspect;

(iii) may require any member of staff of the Council to answer questions concerning the conduct of the relevant officer;

(iv) must make a report to the Council –

- (a) stating his opinion as to whether (and, if so, the extent to which) the evidence he has obtained supports any allegation of misconduct against the relevant officer; and
 - (b) recommending any disciplinary action which appears to him to be appropriate for the Council to take against the relevant officer; and
- (v) must, no later than the time at which he makes his report, send a copy to the relevant officer.

3.0 Suspension

3.1 A chief officer or a head of service appointed as chief finance officer or monitoring officer may be suspended for the purpose of investigating the alleged misconduct occasioning the action. Any such suspension must be on full pay and terminate no later than 2 months later than the day on which the suspension takes effect.

4.0 Chief Officers

4.1 A chief officer will receive not less than 10 working days written notice of the meeting of the Senior Officers Panel. Before the meeting the chief officer has the right, if so requested, within a reasonable time (i) to receive further details of the complaint made and/or (ii) to a postponement of the meeting for a jointly agreed period not exceeding 14 days. The chief officer may circulate a written statement to the Senior Officers Panel before the meeting.

4.2 As a result of a hearing, the Senior Officers Panel can –

- (i) exonerate the chief officer;
- (ii) state its opinion as to whether (and if so the extent to which) the evidence it has obtained supports any allegation of misconduct against the chief officer;
- (iii) determine the disciplinary action (if any) or range of actions which appear appropriate to take against the chief officer. The appropriate course of action will be drawn from the following list:-
 - (a) recorded verbal warning;
 - (b) written warning;
 - (c) final written warning;
 - (d) suspension on half pay or no pay for a specified period;
 - (e) relegation (i.e. a reduction in salary) for a specified period;
 - (f) an invitation to resign or accept retirement;
 - (g) dismissal with notice.

- 4.3 The final decision will be given to the chief officer in writing at the earliest opportunity.**
- 4.4 In the event of a decision to dismiss a chief officer, such action will be subject to the provisions of Part II of Schedule I of the Local Authorities (Standing Orders) (England) Regulations 2001.**
- 4.5 If a warning is given, it should tell the chief officer –**
- (i) the level of improvement required;**
 - (ii) the date by which it is to be achieved;**
 - (iii) what will happen if it is not;**
 - (iv) how to appeal.**
- 4.6 Alternatively, the Panel may explore other alternatives, e.g.**
- (i) early retirement;**
 - (ii) secondment;**
 - (iii) redeployment to a more junior post where there are issues relating to capability.**
- 4.7 In the case of a chief officer submitting an appeal against a decision of the Senior Officers Panel, the appeal will be dealt with by the Appeals Sub Group in accordance with the terms of reference of that Sub-Group set out in Appendix 6 of the disciplinary policy and procedure.**
- 4.8 The decision of the Appeals Sub Group shall be final.’**

This page is intentionally left blank

**HEAD OF PAID SERVICE
DISCIPLINARY POLICY AND PROCEDURE**

1. GENERAL

- 1.1 A model disciplinary procedure and guidance to the procedure forms part of the conditions of service of the Council's head of paid service, a post currently filled by the Chief Executive. It contains the principal elements of the Council's own disciplinary policy and procedure but deals with the particular circumstances of the post of head of paid service and the unique relationship that this places the post holder in with the authority.
- 1.2 Because of the extent of detail contained in the model procedure, there is no need for further change to enable it to be implemented should the occasion arise. However the model procedure itself should be adopted by the Council for the purpose of disciplinary matters in relation to the head of paid service and appropriate delegations should be in place to authorise various actions to be taken by the Council.

2. MODEL PROCEDURE

- 2.1 **It is recommended therefore that the model procedure contained in the JNC terms and conditions of service for Chief Executives be adopted for the officer filling the post of head of paid service and the following sentence added as paragraph 3.5 of the Council's own disciplinary policy and procedure – 'The head of paid service (Chief Executive) is employed under the terms of the Joint Negotiating Committee for Chief Executives conditions of service which contain a model procedure that has been adopted by the Council and the holder of that post is therefore excluded from this policy.**

3. ROLE OF THE SENIOR OFFICERS PANEL

- 3.1 The model procedure recommends that a standing committee be in place, referred to in the document as the Investigating and Disciplinary Committee, with specific terms of reference to undertake the actions provided for in the procedure.
- 3.2 **It is recommended that this role be filled by the Senior Officers Panel and that all references in the procedure to the Investigatory and Disciplinary Committee denote that panel.** In accordance with the provisions of the model procedure, **it is recommended that the terms of reference of the Senior Officers Panel be extended to include the following –**
- **To undertake the role of the Investigatory and Disciplinary Committee as set out in the JNC terms and conditions of employment for the head of paid service;**

- To appoint the Designated Independent Person to undertake an investigation and to determine the terms, remuneration and working methods for the person appointed;
- To suspend the head of paid service for a period not exceeding two months;
- To negotiate and agree a financial settlement with the head of paid service in the event of the mutual termination of the contract of employment;
- To appoint any such external advisers as may be necessary to provide professional and independent advice in the event of an investigation involving the head of paid service;
- To undertake any disciplinary action involving the head of paid service, including consideration of the report by the Designated Independent Person.

4. APPEAL PROCESS

- 4.1 Where disciplinary action is taken by the Senior Officers Panel, an appeal process must be established. In the event of disciplinary action being taken other than dismissal, the model procedure makes provision for an appeal to an Appeals Committee. **It is therefore recommended that this role be filled by the Council's existing Appeals Sub Group as set out in Appendix 6 of the Council's disciplinary policy and procedure and that all references in the model procedure to the Appeals Committee denote that Sub Group, with the decision of the Sub Group being final.**
- 4.2 If dismissal is proposed by the Senior Officers Panel, this decision can only be taken by the full Council in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001. The JNC terms and conditions state that the consideration by the Council should constitute the appeal process for the head of paid service. This course of action is already provided for in the Officer Employment Procedure Rules contained in the constitution.

5. FURTHER DELEGATION

- 5.1 The model procedure for the head of paid service also proposes that, in the event of immediate suspension being considered desirable prior to it being possible to convene a meeting of the Investigatory and Disciplinary Committee, an elected Member such as the committee chairman be authorised to take action. The model procedure itself acknowledges that disciplinary action is a council and not an executive function. As such, delegation is not permissible to an individual councillor. It would place an officer of the Council in a very invidious position if he were to be authorised to suspend the head of paid service, even if this were to be undertaken after consultation with the

chairman of the Senior Officers Panel. **It is recommended therefore that suspension remains the role of the Senior Officers Panel.**

- 5.2 Finally, the model procedure indicates that there should be a clear route into the disciplinary procedure in the case of allegations against the head of paid service. As proposed in the procedure, **it is recommended that the monitoring officer, after consultation with the Chairman of the Senior Officers Panel, be authorised to oversee referrals to the Panel in such circumstances.**

This page is intentionally left blank

APPENDIX C

OFFICER EMPLOYMENT PROCEDURE RULES AND RESPONSIBILITY FOR COUNCIL FUNCTIONS

1. GENERAL

- 1.1 Changes will be required to the constitution both in terms of the Officer Employment Procedure Rules and the terms of reference of the Employee Selection Panel set out in Table 2 of Part 3 which deals with the responsibility for Council functions.

2. OFFICER EMPLOYMENT PROCEDURE RULES

- 2.1 The Rules were amended by Council as recently as the meeting of 3rd November 2010 to extend the remit of the former Appointments Panel to provide for the dismissal of employees at head of service level and above as a result of the introduction of the redundancy and voluntary release schemes. The Panel was re-named as the Employee Selection Panel.
- 2.2 Closer examination has indicated that further minor changes are required to make provision for disciplinary action for heads of service and above.
- 2.3 The first sentence of paragraph B.1 of the Rules states that 'Disciplinary action in respect of the head of paid service, monitoring officer and chief finance officer may be taken only by the full Council or a panel of the Council appointed for that purpose. **It is recommended that the following words be added to the sentence – 'in accordance with the Council's disciplinary policy and procedure and their terms and conditions of employment'**.
- 2.4 The paragraph goes on to state that no disciplinary action, other than suspension, may be taken other than 'in accordance with' a recommendation in a report by a designated independent person. The Local Authorities (Standing Orders) (England) Regulations 2001 require the Council to appoint an independent person to investigate alleged misconduct in the case of the head of paid service, chief finance officer and monitoring officer and for that person to report to the Council recommending any disciplinary action which appears to him to be appropriate against the relevant officer. This implies that the Council has discretion as to the appropriate course of action it may take, as opposed to the way in which the current paragraph in the Officer Employment Procedure Rules is worded which states that the disciplinary action should be 'in accordance with' the recommendation. **It is recommended therefore that the second sentence of paragraph B.1 be amended so that it states 'No disciplinary action, other than suspension, may be taken except after consideration of a recommendation in a report made by a designated independent person under Regulation 7 of the Local**

Authorities (Standing Orders) (England) Regulations 2001 (investigation of alleged misconduct).'

- 2.5 Paragraph B.1 also states that the head of paid service, chief finance officer and the monitoring officer may be suspended by the Council or a panel for the purpose of investigating alleged misconduct. For clarity, **it is recommended that the appropriate panel is the Senior Officers Panel and its terms of reference broadened accordingly.**
- 2.6 Paragraph B.2 of the Rules refers to disciplinary action against other chief officers and heads of service. It simply states 'Disciplinary action in respect of other chief officers and heads of service may be taken by the Employment Panel.' As the full range of sanctions in the case of disciplinary action is not available to that panel, **it is recommended that the sentence be replaced by the following – 'Disciplinary action against other chief officers and heads of service (with the exception of those to which paragraph B.1 applies) shall be dealt with under the Council's disciplinary policy and procedures and their terms and conditions of service. In the case of suspension, such action may be taken by the Senior Officers Panel.'**
- 2.7 The Council's disciplinary policy and procedure (as amended by this report) makes provision for the dismissal of chief officers and heads of service following a hearing by the Senior Officers Panel. Part C of the Rules deals with the dismissal of senior officers and makes provision for Cabinet notification in the case of the head of paid service, chief officers and heads of service (paragraph C.4). The requirement for Cabinet notification will also apply in the case of disciplinary action.

3. PART 3, TABLE 2 – RESPONSIBILITY FOR COUNCIL FUNCTIONS

- 3.1 The terms of reference of the Employee Selection Panel are listed in Table 2 of Part 3 of the Council's constitution. Arising from the clarification in terms of suspension of heads of service and above, **it is recommended that the Employee Selection Panel be re-named as the Senior Officers Panel and its terms of reference, as listed in Table 2, extended to include the following –**

'To suspend chief officers and heads of service in accordance with the Officer Employment Procedure Rules and the Council's disciplinary policy and procedure'; and

'To undertake hearings and take any disciplinary action in the case of chief officers and heads of service as provided by the Council's disciplinary policy and procedure'.

- 3.2 The determination of an appeal against a decision made by or on behalf of the authority is a local choice function in accordance with regulations made under the Local Government Act 2000. Table 1 of Part 3 of the constitution provides for this to be a Council as opposed to an executive function and for this to be dealt with by a politically balanced Appeals Sub Group comprising 5 Members. Its terms of reference in the context of disciplinary matters are explained in Appendix 6 of the Council's disciplinary policy and procedure.

- 3.3 For the avoidance of doubt, it would be preferable if the Appeals Sub Group were to be added to the list of committees/panels etc. in Table 2 of Part 3 which explains how the Council has delegated its functions and responsibilities. **It is therefore recommended that the following be added to Table 2 –**

| COMMITTEE/PANEL | MEMBERSHIP | FUNCTIONS |
|--------------------------|---|---|
| Appeals Sub Group | 5 Members appointed by the Chief Executive from a Panel appointed by the Council (subject to no members appointed to the sub group hearing an appeal who has been involved in the decision against which the appeal has been submitted | <p>To determine appeals by employees under the Council's disciplinary policy and procedure</p> <p>To fill the role as the appeal process for chief officers under the model disciplinary procedure contained in the JNC for Chief Officers of Local Authorities Conditions of Service</p> <p>To act as the appeal committee (in the case of disciplinary action other than dismissal) provided for in the model disciplinary procedure and guidance contained in the JNC terms and conditions for Local Authority Chief Executives</p> |