

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter:	Statutory Dismissal Procedures for Heads of Paid Service, Monitoring Officers and the Responsible Financial Officer
Meeting/Date:	Employment Panel: 17th June 2015 Corporate Governance Panel: 15th July 2015 Council: 29th July 2015
Executive Portfolio:	Councillor J D Ablewhite
Report by:	Lynsey Fulcher LGSS HR Business Partner

EXECUTIVE SUMMARY

1. INTRODUCTION

- 1.1 This report sets out the changes to the statutory disciplinary and dismissal procedures applying to English local authorities' Heads of Paid Service, Monitoring Officers and Chief Financial Officers, under which a new process will replace the current statutory Designated Independent Person (DIP) process, outlined in the current Local Authorities (Standing Orders) (England) regulations 2001.
- 1.2 The new regulations require authorities to put in place the necessary standing orders in respect of the new process "no later than the first ordinary meeting of the authority falling after 11th May 2015". This report will therefore be presented to the Huntingdonshire District Council Employment Panel in June, followed by the Corporate Governance Panel on 15th July and finally Council on the 29th July 2015.

2. BACKGROUND

- 2.1 The key feature of the new process is that the requirement for a Designated Independent Person is removed, and instead protected officers will not, in most cases, be able to be dismissed unless the dismissal has been approved by full Council by way of a vote. The previous rules are revoked entirely. The new rules do the following:
 - ❖ They remove the role of the Designated Independent Person.
 - ❖ They apply only to the dismissal of the Head of Paid Service, responsible Financial Officer and Monitoring Officer and not to disciplinary action short of dismissal.
 - ❖ They remove the restriction on suspension of these officers during investigation of misconduct.
 - ❖ They extend the provision that only full Council can dismiss the Head of Paid Service to include the dismissal of the Head of Paid Service and Monitoring Officer.
 - ❖ They state that, before Council considers whether to dismiss these officers, it must convene a panel made up of councillors and at least two "independent persons". These are the same independent persons

appointed under the Localism Act to advise on standards issues. If the Council cannot recruit two independent persons to the panel it has appointed, it may invite independent persons appointed by another council.

- ❖ The Council can appoint more than two independent persons to a panel and there are no rules on the number of councillors on the panel.

2.2 In accordance with the new regulations, and to incorporate the requirements of the new Local Authorities (Standing Orders) (England) (Amendment) regulations 2015, changes to the relevant section of the Constitution have been amended and shown in Appendix 1.

2.3 The Disciplinary Procedures have also been amended and these are attached at Appendix 2.

3. OPTIONS CONSIDERED/IMPLICATIONS

3.1 The changes to the Council's Employment Procedure Rules are mandatory. The Council has a power to require attendance by more than two "independent persons" at meetings.

3.2 The rules still provide greater protection for the three "statutory officers" than for other employees. The justification for this (as set out in the Explanatory Memorandum) is that these officers have statutory duties that they must discharge personally but within a political environment. The intention is to ensure that these officers can discharge their duties without any fear of being influenced by elected members and being dismissed without good reason.

4. RECOMMENDATION

4.1 It is **RECOMMENDED**

that the Council adopt the revised Disciplinary Procedures and the necessary amendments to the Council's Employment Procedure Rules, as set out in Appendix 1 and 2 to the report.

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Appendix 1 – Changes to the Constitution.
Changes highlighted in *bold italics*

PART FOUR – RULES OF PROCEDURE
OFFICER EMPLOYMENT PROCEDURE RULES

A. RECRUITMENT AND APPOINTMENT – no changes proposed.

B. DISCIPLINARY ACTION

1. Head of Paid Service, Monitoring Officer and Chief Finance Officer

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 in accordance with the Council's disciplinary policy and procedure and their terms and conditions of employment. No disciplinary action, other than suspension, may be taken except after consideration of a recommendation in a report made by a designated independent ~~panel person~~ under Regulation 7 of the Local Authorities (Standing Orders) (England) (***Amendment***) Regulations ***2015*** (investigation of alleged misconduct).

An officer may be suspended by the Council or panel for the purpose of investigating alleged misconduct but the suspension must be on full pay and of no more than two months duration.

2. Other Chief Officers and Heads of Service

Disciplinary action against other Chief Officers and Heads of Service (with the exception of those to which paragraph B1 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.

3. Other Employees

Disciplinary action in respect of other employees may be taken in accordance with the Council's disciplinary procedure and rules adopted by the Employment Panel but such action may not involve councillors, other than as a member of an Appeals Sub-Group as provided for in the disciplinary procedure rules.

C. DISMISSAL

1. Head of Paid Service *Monitoring Officer and Chief Finance Officer*

The full Council must approve the dismissal of the Head of Paid Service, ***Monitoring Officer and Chief Finance Officer*** following the recommendation of such a dismissal by ***the independent panel*** of the Council appointed for that purpose. That panel must include at least one member of the Cabinet.

2. Other Chief Officers and Heads of Service

A panel of the Council appointed for that purpose may approve the dismissal of a Chief Officer or Head of Service (***not included in section C1 above***) or their equivalent. That panel must include at least one member of the Cabinet.

3. Other Employees

The dismissal of other employees below heads of service level is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.

4. Cabinet Notification

A notice of the dismissal of a Chief Officer, *Monitoring Officer, Chief Finance Officer* or head of service shall not be made by the Council or panel (as appropriate) until –

- (i) the Council or panel has supplied the Head of Paid Service with details of the proposed dismissal;
- (ii) the Head of Paid Service has supplied members of the Cabinet with details of the proposed dismissal and allowed a period for objection to the dismissal by the Executive Leader on behalf of the Cabinet; and
- (iii) the Executive Leader has informed the Head of Paid Service that there is no objection to the dismissal, such objection has not been received within the requisite period or the Council or panel (as appropriate) is satisfied that any objection is not material or well-founded.

D. APPEALS

An appeal by any employee against any disciplinary action or dismissal by the Council, a panel or the Head of Paid Service or his/her nominee may be heard by an Appeals Panel comprising the Managing Director, the Corporate Director or Head of Service excluding the Corporate Director or Head of Service in whose Service the employee was employed at the time of his/her dismissal and a representative of the Staff Council but not from the Division from which the employee is employed convened by the Elections and Democratic Services Manager under the Council's disciplinary procedure rules.

E. SUPPLEMENTARY

In the event of the above Rules applying to a case involving an appointment or dismissal in relation to the Head of Paid Service, the references relating to the action to be taken in these Rules by the Head of Paid Service shall be undertaken by the Corporate Director (Services) & Monitoring Officer, *paying regard to the recommendations made by the independent panel.*

F. THE INDEPENDENT PANEL

The panel as described in the above Rules should be comprised of at least two independent persons and must include at least one member of the Cabinet. The panel membership must be agreed 20 working days prior to a meeting and will be arranged by the Corporate Director (Services) or in the case of any action against that officer, by the Deputy Monitoring Officer.

Terms of reference for the Panel

- i) To investigate proposed disciplinary action against a Chief Officer, Monitoring Officer or Chief Finance Officer.*
- ii) To offer advice, views or recommendations to Council on the proposed course of action, including any proposal for dismissal.*

Disciplinary Policy and Procedure

1.0 Introduction

- 1.1 The Council strives to create and maintain a working environment which is conducive to the achievement of organisational, team and individual objectives and which promotes effective and harmonious working conditions. Huntingdonshire District Council (HDC) believes that all employees should be treated equitably and with respect.
- 1.2 The aim of this policy is to provide a solution for those occasions when standards of conduct or performance are unacceptable and to encourage an improvement in behaviour and prevent future shortcomings in conduct or performance.

2.0 References

Please read this Disciplinary Policy in conjunction with the following:

- ⇒ Attendance Policy.
- ⇒ Capability Policy.
- ⇒ Dignity at Work Policy.
- ⇒ Drugs & Alcohol Policy
- ⇒ Equality of Opportunity Policy.
- ⇒ Grievance Policy and Procedure.
- ⇒ HDC's Key Values and Behaviours
- ⇒ Whistleblowing Policy and Procedure.

- ⇒ Employment Act 2002.
- ⇒ Employment Relations Act 1999.
- ⇒ Data Protection Act 1998.

3.0 Definition

- 3.1 In accordance with the ACAS Code of Practice on disciplinary procedures the Council defines disciplinary as "a situation which may include misconduct and / or poor performance".
- 3.2 This policy does not apply in the following situations:
- ⇒ termination of a fixed term contract of employment, where the term of that contract expires without being renewed,
 - ⇒ termination of a fixed term contract where the reason for termination is that the need for the employee's service has or is about to expire,
 - ⇒ where dismissal arises through organisational and efficiency requirements e.g. redundancy,
 - ⇒ where an employee has resigned from their position, or other termination by mutual agreement.
- 3.3 Where an employee is deemed incompetent, incapable or their performance at work is considered no longer effective or efficient due to a lack of skill or aptitude, or due to health or any other physical or mental quality, these issues should be dealt with under the Capability Policy.

~~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.~~

3.4 ***The Officer Employment Procedure Rules within the Huntingdonshire District Council Constitution outlines the disciplinary procedure applicable to the Head of Paid Service, Monitoring Officer and Chief Finance Officer the holders of these posts are therefore excluded from this policy. Appendix 7 outlines the procedure to be followed for this group of employees.***

~~3.5 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.~~

4.0 Special Cases

4.1 If an employee raises a grievance during the disciplinary process, the disciplinary procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

4.2 Where disciplinary action is being taken against a Trade Union representative the normal disciplinary procedure will apply. However, depending on the circumstances it is advisable to discuss the matter with an official employed by the union, after obtaining the employee's agreement.

4.3 The Council requires the highest standards of integrity from its employees at all times, and for this reason, it will regard any criminal offence committed by an employee whilst at work or otherwise, as an extremely serious matter. If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration will be given to what effect the charge or conviction may have on an employee's suitability to do their job and their relationship with the Council, work colleagues and customers.

5.0 Aims

5.1 This policy aims to:

- ⇒ promote orderly employment relations as well as equity in the treatment of employees,
- ⇒ ensure fairness and consistency in dealing with disciplinary matters,
- ⇒ ensure disciplinary matters are dealt with promptly,
- ⇒ ensure employees are aware of the standards of conduct at work expected of them,
- ⇒ ensure that the necessary investigation is carried out to establish the factual information,
- ⇒ help and encourage employees to improve, dealing with any apparent shortcomings in conduct or performance,

- ⇒ ensure standards are adhered to whilst providing equitable methods in dealing with alleged failures.

6.0 Guiding Principles

- 6.1 This policy is designed to enable facts to be established quickly and ensure consistency in dealing with disciplinary matters.
- 6.2 No disciplinary action will be taken until the matter has been investigated.
- 6.3 At each stage of the procedure an employee will be advised of the nature of the disciplinary and be given the opportunity to state their case.
- 6.4 Disciplinary matters will be heard in a calm and objective manner with the outcome being both fair and equitable.
- 6.5 An employee will not ordinarily be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will normally be dismissal without notice and without pay in lieu of notice.
- 6.6 Throughout a disciplinary matter everyone will be treated equitably, with dignity and respect regardless of their gender, race, religion or beliefs, sexuality, age or disability.

7.0 Advice and Support

- 7.1 Advice, support and guidance from Human Resources is always available at all stages of the procedure (informal and formal).
- 7.2 To help ensure the procedure is applied equitably, a representative of Human Resources will be present at all formal disciplinary hearings.
- 7.3 The Council employs a confidential First Contact Listening service, a small team of employee volunteers who have received training in basic listening skills. Whilst they are not trained counsellors, they are able to listen to employees who may feel they need to talk through either a work related or personal problem.
- 7.4 The Council provides counselling and support as appropriate for individual employee's needs to ensure the welfare and performance of an employee is dealt with in a supportive and positive manner.
- 7.5 It may be appropriate for the matter to be dealt with by way of mediation, depending of the nature of the disciplinary. This involves the appointment of a third-party mediator arranged by Human Resources, who will discuss the disciplinary matter with all those involved and seek to facilitate an outcome. Mediation will only be used if all parties involved in the disciplinary agree.
- 7.6 Should any aspect of the disciplinary process cause difficulty because of a disability, language barriers or other difficulties, the Council has trade union representatives, Staff Council representatives, work colleagues and Human Resources who are available to provide necessary help or assistance.

8.0 Disciplinary Rules for all employees

8.1 Rules are set out in Appendix 1 which apply to all employees in terms of standards of conduct and performance expected of them during employment. Any breaches of these rules will render an employee liable to disciplinary action.

9.0 Disciplinary Procedure

9.1 The Council has a two phase disciplinary procedure, comprising of both informal and formal processes.
In the cases of minor misconduct or unsatisfactory performance the aim will be to find a solution using the first phase of the procedure – the informal process (See Appendix 2, section 2.0).

9.2 On occasions where disciplinary matters cannot be resolved informally or where matters are of a more serious nature therefore require moving directly to formal action, the disciplinary matter will be dealt with at the second phase (formal) of the disciplinary procedure (See Appendix 2, section 3.0).

The formal disciplinary phase comprises of three stages and includes a provision for individuals to appeal if they are not content with the outcome of the formal disciplinary hearing.

9.3 Please see attached Appendices for further guidance:

- Appendix 1 - Disciplinary Rules
- Appendix 2 - Disciplinary Procedure
- Appendix 3 - Employee Guidelines and Flowchart
- Appendix 4 - Manager Guidelines and Flowchart
- Appendix 5 - Appeals Panel – Terms of Reference
- Appendix 6 - Appeals Sub Group – Terms of Reference
- Appendix 7 - Special provisions for Chief Officers

10.0 The right to be accompanied at Disciplinary investigations and hearing

10.1 The Employment Relations Act 1999 gives a statutory right to be accompanied by a companion at a disciplinary hearing (See Appendix 2, section 11.0).

10.2 HDC allows an employee being investigated and any witnesses that are interviewed, where a statement is required to be signed, the right to have a representative present at the meeting. The chosen companion may be a Staff Council, Union representative or work colleague.

11.0 Keeping written records

11.1 Human Resources keeps a written record of all disciplinary cases dealt with.

These records include:

1. the nature of the disciplinary;
2. all findings made from investigatory meetings;
3. all interviews and documentation in relation to the disciplinary;
4. what was decided and the action taken;
5. the reason for the actions;

6. whether an appeal was lodged;
7. the outcome of the appeal; and
8. any subsequent developments.

It is a Managers responsibility to complete a file note for disciplinary matters dealt with at the informal stage, this is to include the first five points above and be forwarded to Human Resources for the employee's personal file.

- 11.2 All records are treated as confidential and kept in accordance with the Data Protection Act 1998 on an employee's personal file held by Human Resources.
- 11.3 Copies of meeting records will be supplied on request from the employee including copies of any formal minutes that have been taken. In certain circumstances (for example to protect a witness) the Council may withhold some information.
- 11.4 The Council monitors disciplinary statistics for reporting purposes on gender, race, age and disability. All reporting is anonymous.

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~~ **except after consideration of a recommendation in a report made by a designated independent panel under Regulation 7 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (investigation of alleged misconduct)**, ~~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 panel as described in the above Rules should be comprised of at least two or three independent persons and must include at least one member of the Cabinet. The panel membership must be agreed 20 working days prior to ~~and a~~ meeting and will be arranged by the Corporate Director (Services) or in the case of any action against that officer, by the Deputy Monitoring Officer.**

The designated independent **panel** –

- (i) may ~~direct~~ **recommend**–
- (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 **panel**, 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 **them** 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 *their* 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 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.