

1 The Local Authorities (Standing Orders)

The Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended by the Local Authorities (Standing Orders)(Wales) (Amendment) Regulations 2014 (“the Regulations”) set out mandatory requirements in respect of disciplinary proceedings relating to the Chief Executive, the Monitoring Officer, the Section 151 Officer and the Head of Democratic Services; they also apply to an officer who was, but at the time of the proposed disciplinary action no longer is such an officer, and where the alleged misconduct, or, as the case may be, the reason for the proposal for dismissal, occurred during the period when the officer was such an officer.

The Council has also resolved that this procedure will apply to all officers employed on JNC terms and conditions.

2 Intention

This standing order is intended to give effect to the Regulations, but also sets out a prescriptive disciplinary procedure, which incorporates the JNC for Chief Executives for Local Authorities model procedure, with modifications, and which are to be applied in the event of an allegation against the officer/s. It will consist of initial guidance and then a procedure to be followed in all cases.

3 Interpretations

The interpretations below are those that are set out in the 2006 Regulations as amended and the relevant parts are replicated below. (Regulation 2):

- a) "The 1989 Act" ("Deddf 1989") means the Local Government and Housing Act 1989;
- b) "The 2000 Act" ("Deddf 2000") means the Local Government Act 2000;
- c) "chief officer" ("prif swyddog) means:
 - i) The Chief Executive;
 - ii) Its monitoring officer;
 - iii) A statutory chief officer mentioned in paragraph (a), (c) or (d) of section 2(6) of the 1989 Act, or
 - iv) A non-statutory chief officer (within the meaning of section 2(7) of the 1989 Act);

and any reference to an appointment or purported appointment of a chief officer includes reference to the engagement or purported engagement of such an officer under a contract of employment;

- d) "chief finance officer" ("prif swyddog cyllid") means the officer having responsibility, for the purposes of section 151 of the Local Government Act 1972

(financial administration) for the administration of the local authority's financial affairs;

- e) "disciplinary action" ("camau disgyblu") in relation to a member of staff of the authority means 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;
- f) "head of democratic services" ("pennaeth gwasanaethau democrataidd") means the officer designated under section 8 of the Local Government (Wales) Measure 2011;
- g) "head of the authority's paid service" ("pennaeth gwasanaeth taledig yr awdurdod") means the officer designated under section 4(1) of the 1989 Act (designation and reports of Chief Executive);
- h) "monitoring officer" ("swyddog monitro") means the officer designated under section 5(1) of the 1989 Act (designation and reports of monitoring officer);
- i) "working day" ("diwrnod gwaith") means any day which is not a Saturday, a Sunday, Christmas Eve, Christmas Day, Maundy Thursday, Good Friday, a bank holiday in Wales or a day appointed for public thanksgiving or mourning (and "bank holiday" means a day to be observed as such under section 1 of and Schedule 1 to the Banking and Financial Dealings Act 1971).

4 The power to confirm

The power to confirm the dismissal of the head of the authority's paid service must be exercised by Council itself (Regulation 7). In respect of the Monitoring Officer, the Chief Financial Officer, the Head of Democratic Services and all other officers on JNC conditions, any disciplinary action may be taken by the Chief Officers Disciplinary Committee and the Chief Officers Appeals Committee (Part 2, Paragraph 4 (1) of Schedule 3).

5 Executive membership requirement

At least one member of the Executive must be a member of the Chief Officers Disciplinary Committee and the Chief Officers Appeals Committee (Part 2, Paragraph 4 (2) (a) of Schedule 3) There is no such requirement in relation to the Investigation Committee, but this does not preclude a member of the executive from so sitting on that Committee.

6 Executive member restriction

Not more than half of the members of the Chief Officers Disciplinary Committee and the Chief Officers Appeals Committee are to be members of the executive of the authority (Part 2, paragraph 4 (2) (b) of Schedule 3).

7 Disciplinary action

No disciplinary action (other than action to which paragraph 18.5 applies) in respect of the officers to which this procedure applies may be taken by the relevant authority, or by a committee, a sub-committee, a joint committee on which the relevant authority is represented or any other person acting on behalf of the relevant authority, other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP) under regulation 9 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended. (investigation of alleged misconduct). (Regulation 8 and Schedule 4 paragraph 2 – verbatim).

8 Suspension due to alleged misconduct

The action to which this paragraph applies is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; provided such suspension is on full pay and terminates no later than the expiry of two months beginning on the day on which the suspension takes effect." (Schedule 4 Paragraph 3).

9 The Appeal & Awards

The Appeal & Awards Committee is delegated the authority to suspend the relevant officer.

10 Investigating Committee

The Appeal & Awards Committee will be the relevant Investigating Committee (the "IC") and will perform the function of carrying out an initial investigation to consider the alleged misconduct.

11 Membership of the IC

For these purposes the IC must:

- a) Consist of a minimum of 3 members of the authority; (Regulation 9 (2) (a) & (b) – the committee will already have been set up at the first regular Council);
- b) Be politically balanced in accordance with section 15 of the 1989 Act; and
- c) Must, within 1 month of the referral of alleged misconduct to it, consider the allegation of misconduct and decide whether it should be further investigated. (Regulation 9 (2) (a) (b) & (c) – the committee will already have been set up at the first regular Council).

12 Process of the IC

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13 Designated independent person

Where it appears to the IC that an allegation of misconduct by the relevant officer should be further investigated, it must appoint a person ("the designated independent person" - the DIP) for the purposes of the standing order which incorporates the provisions in Schedule 4 (or provisions to the like effect). Regulation 9 paragraphs (3) & (4).

14 Appointing a DIP

In deciding whether to appoint a DIP, the IC shall, in considering whether there is an allegation of misconduct against a relevant officer that requires further investigation, take into account the following factors:

- a) Is the allegation such that if it were proved it would lead to dismissal or other action which would be recorded on the officers personal file; and
- b) There is evidence in support of the allegation sufficient to require further investigation.

15 Appointment of DIP

In the event that this test is satisfied, the IC will proceed to appoint a DIP.

16 The DIP who is appointed

The DIP who is appointed – (Regulation 9 paragraphs (5) to (11):

- a) Must be such person as may be agreed between the authority and the relevant officer within 1 month of the date on which the requirement to appoint the designated independent person arose; or
- b) Where there is no such agreement, must be such person as is nominated for the purpose by the Welsh Ministers.

17 What the DIP may do

The DIP –

- 1 May direct:
 - a) That the authority terminate any suspension of the relevant officer;
 - b) That any such suspension is to continue after the expiry of the two month period referred to in 6;
 - c) That the terms on which any such suspension has taken place are to be varied in accordance with the direction; or
 - d) That no steps (whether by the relevant authority or any committee, sub-committee or officer acting on behalf of the relevant authority) by way of 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 under sub-paragraph 4.
- 2 May inspect any documents relating to the conduct of the relevant officer which are in the possession of the relevant authority, or which the relevant authority has power to authorise the designated independent person to inspect;
- 3 May require any member or member of staff of the relevant authority to answer questions concerning the conduct of the relevant officer;
- 4 Must make a report to the authority–
 - a) Stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct against the relevant officer; and
 - b) Recommending any disciplinary action which appears appropriate for the relevant authority to take against the relevant officer, and
 - c) Must no later than the time at which the report is made under sub-paragraph 4; send a copy of the report to the relevant officer.
- 5 The relevant officer and the authority must, after consulting the designated independent person, attempt to agree a timetable within which the designated independent person is to undertake the investigation.
- 6 Where there is no agreement under paragraph 5, the DIP must set a timetable as that person considers appropriate within which the investigation is to be undertaken.
- 7 The authority must consider the report prepared by the DIP within one month of receipt of that report by the authority.
- 8 The authority will pay reasonable remuneration to a designated independent person appointed by the IC and any costs incurred by, or in connection with, the discharge of functions under this regulation.

- 9 The procedure for receiving allegations of misconduct or capability or a breakdown in trust and confidence is set out below.

18 Procedure for Discipline in respect of JNC Officers

1 Introduction

- a) This procedure is based upon the model disciplinary procedure contained in the Joint Negotiating Committee for Chief Executives of Local Authorities National Salary Structure and Conditions of Service Handbook.
- b) If a matter is prescribed in the Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended which is not referred to in this procedure or where there is a conflict, the Regulations take precedence.

2 General

- a) Procedures are set out below for use in cases relating to discipline, and any proposal to dismiss on the basis of a breakdown in trust and confidence. The Joint Secretaries of the JNC should be notified as soon as it is proposed to use this procedure and the relevant officer and the authority will attempt to contact the appropriate side secretary as soon as possible to ascertain whether more detailed assistance may be desirable. A precedent for this purpose is set out in Schedule Two below.
- b) In general, informal conciliation is to be preferred to invoking this formal procedure if it can bring about a mutually agreed solution to the problems that have arisen. Such solutions should make it clear what specific changes in behaviour and/or performance are expected and within what timescales. In the event that informal conciliation is not possible or practicable, the formal process will apply.
- c) Any decisions in these matters must be in accordance with the requirements of the law in respect of the rules of natural justice and the relevant Standing Order Regulations in force at the time.
- d) Any disciplinary procedures should be handled as quickly as possible but this must be measured against the need to investigate the case fully and to give the relevant officer an opportunity to reply fully to the complaints.

3 Procedure

- a) Any allegations of misconduct should be notified to the Strategic Human Resources and Organisational Development Manager who will be the responsible officer for this purpose. For the avoidance of doubt, the one month timescale referred to in paragraph 16(a) of the Standing Order above, begins to run from the day the allegation is received by the responsible officer.
- b) The responsible officer will then prepare a report and forward it to both the Appeal & Awards Committee and the relevant officer or his or her

representative. A date will be set for the Committee to meet as soon as the allegation is received.

- c) In cases of urgency or where there is a serious allegation, the Committee may meet on short notice to consider the question of suspension only and the relevant officer will be given reasonable notice of the meeting.

4 **The Investigation Meeting**

- a) The relevant officer will be permitted to respond both in writing and orally at the Investigation Committee Meeting save that the remit of the Committee is inquisitorial in nature and no cross examination will be permitted at the Meeting.
- b) The relevant officer will be entitled to be represented by his or her trade union representative or some other person of his or her choice but this shall not be at the authority's cost.
- c) The Committee will meet to consider the allegation in order to determine whether there is an allegation of misconduct by the relevant officer which requires further investigation by a Designated Independent Person (DIP).
- d) The Committee will be advised by a legal officer at all times.
- e) The procedure for the Committee Meeting will be as follows:-
 - i) The Strategic Human Resources and Organisational Development Manager or their nominated deputy will outline the allegation and introduce any evidence that the Authority wishes to rely on in support;
 - ii) Any witnesses for the authority will give their evidence and questions will be permitted;
 - iii) the relevant officer or his representative will present their defence;
 - iv) Any witnesses for the relevant officer will give their evidence and questions will be permitted;
 - v) The Committee will then adjourn to deliberate and decide whether there is a case that merits further investigation;
 - vi) The Committee will re-convene to deliver their decision to the relevant officer.
- f) The Committee will assess any evidence provided in support of the allegations and anything said in defence. The Committee will then decide whether it is in a position to dismiss the allegation. If it cannot, and further investigation is needed, the Committee must refer the matter to the DIP.
- g) If the Committee decides that the matter is dismissed, then that will be an end to the allegation and no record will be made on the relevant officers' personal file.
- h) If the matter is to be referred to a DIP, the Committee will draw up the charges that will form the basis of the remit of the DIP and these will be communicated to both the DIP and the relevant officer in writing.

- i) A liaison officer will be appointed within the authority to assist the DIP with logistical arrangements and to keep the responsible officer informed of progress.

5 Suspension

- a) When carrying out its deliberations, the Committee will also consider whether suspension is appropriate. In disciplinary cases, suspension may be appropriate where the relevant officers continuing presence at work might compromise the investigation or impair the efficient exercise of the authority's functions or where a repeat of the alleged offence could have serious consequences for the Authority.
- b) In these circumstances, the suspension must be for a maximum period of two months from the date of the initial suspension and the officer will continue to receive full pay for all of the period of suspension.
- c) For calculation purposes, the suspension period will be deemed to commence on the date which is the day before the Committee decides to suspend and then count forward two calendar months from this date.
- d) If the Committee decides that suspension is appropriate, the reasons for the decision to suspend and the terms of any suspension will be communicated in writing to the relevant officer. In accordance with Regulation 9 of the Regulations, any suspension is subject to any direction of the DIP.
- e) The authority is able to request that the DIP consider as to whether to authorise that the suspension may continue over the maximum two month period, but no continuation of the suspension is permissible unless expressly authorised by the DIP.
- f) The necessity for suspension should be reviewed by the Strategic Human Resources and Organisational Development Manager at regular intervals and where possible lengthy periods of suspension are to be avoided. Consideration may also be given to home working as an alternative to suspension, but this is dependent on the allegation and the feasibility of such an arrangement.
- g) Whilst suspension is a neutral act and is in no way an indication of guilt or pre-determination, in cases of potential gross misconduct the relevant officer should normally be suspended pending the investigation by the DIP.

19 Appointment of the Designated Independent Person

- 1 The DIP will be appointed by the Committee or a person nominated by to do so. It will be preferable for both parties to agree a DIP the Committee and the LGA or the joint secretaries of the JNC will be able to provide the names of suitable candidates for appointment. A draft letter of engagement is included at Schedule One of this procedure.

- 2 The parties must agree a DIP within a period of one month from the date of the Committee determination. In the event of a failure to agree the DIP must be such person who is nominated for the purpose by the Welsh Ministers.

20 Investigation by the DIP

- 1 It is the duty of the DIP to prepare a report. The report will state an opinion as to whether the evidence obtained supports any allegation of misconduct against the officer.
- 2 In order to prepare the report the DIP will carry out a comprehensive investigation into any allegations. The relevant officer, the authority and the DIP must attempt to agree a timescale for the investigation. In the event that no agreement can be reached, the DIP will set a timescale as he or she considers appropriate.
- 3 The relevant officer will be given not less than ten (10) working days notice of the commencement of the investigation and should at the same time be provided with full details of the allegations being investigated.
- 4 The relevant officer has the right to request:-
 - a) Further details of the allegations made, and
 - b) A postponement of the investigation for a period to be agreed between the parties, or in default of agreement for a period not exceeding fourteen (14) days.
- 5 It will be for the DIP to decide on the format of the investigation in consultation with the parties. The DIP may hear evidence from one party in the absence of the other if he/ she consider it expedient.
- 6 The authority will make available all facilities that it is required to do by virtue of Regulation 9 of the Standing Orders (Wales) Regulations as amended (reproduced in full above).
- 7 If the DIP decides to conduct the investigation by means of a hearing, then the relevant officer will be entitled to attend and be represented on the same basis as referred to in paragraph 18.4 above. It shall be for the authority to submit evidence of the allegations against the relevant officer by means of witnesses and the submission of relevant documents.
- 8 The authority will engage the services of an independent lawyer to present the case on its behalf.
- 9 Any witnesses tendered by either party will be open to cross examination by or on behalf of the relevant officer or the authority.

21 The Report of the DIP

- 1 At the conclusion of the investigation, the DIP will present a report to the Chief Officer Disciplinary Committee ("CODC") which will meet as soon as is

practicable, but in any event, no later than one month after receipt of the report. A copy of the report will be sent to the relevant officer as soon as it is submitted to the CODC.

- 2 This report will state an opinion as to whether the allegation of misconduct is made out and recommend any disciplinary action which appears appropriate for the authority to take against the relevant officer.
- 3 Possible recommended sanctions are set out below, but this is not an exhaustive list:
 - a) Recorded oral warning;
 - b) Written warning;
 - c) Suspension on no pay or half pay;
 - d) Dismissal with or without notice.

22 The Meeting of the Chief Officer Disciplinary Committee

- 1 The Chief Officer Disciplinary Committee ("CODC") will meet to consider the report and shall accept the recommendations of the DIP. If the DIP recommends no disciplinary action, the Committee is bound by that recommendation. If however the DIP recommends dismissal or some other disciplinary sanction, the decision as to whether to impose a lesser sanction than dismissal remains that of the Chief Officer Disciplinary Committee.
- 2 The relevant officer or his or her representative will be permitted to address the CODC prior to it carrying out its deliberations. However under normal circumstances, no evidence will be permitted to be called.
- 3 There may however be circumstances where new evidence has emerged since the investigation which should be admitted in the interests of fairness. It is anticipated that such circumstances should be rare and the CODC will give full consideration to any representations that new evidence ought to be admitted.
- 4 The CODC will then deliberate and decide on what action to take, if any and this will then be communicated to the parties at the meeting if practicable, but in any event in writing setting out the reasons for the decision and informing the relevant officer of their right to appeal.

23 Right of Appeal

- 1 The relevant officer will have the right of appeal against the decision of the Chief Officers Disciplinary Committee. Such appeal will be in writing and will comprehensively set out the ground/s of appeal. This is to be delivered to the Strategic Human Resources and Organisational Development Manager within 5 working days of the date that the decision is communicated to him/her.
- 2 The appeal will take the form of a review of the previous decision and will be considered by the following bodies in accordance with the 2006 Regulations as amended:

- a) In respect of the Chief Executive the appeal will be to Council. In which event, any members who have had any previous involvement in the process either as witnesses or as members of the Chief Officer Disciplinary Committee will be required to refrain from attending;
- b) In respect of all other Officers, the appeal will be to the Chief Officer Appeals Committee;
- c) The relevant officer or his or her nominated representative will be permitted to address Council/the COAC, but will not be permitted to adduce new evidence other than in accordance with the considerations referred to in paragraph 22.3;
- d) The COAC/Council will then deliberate and decide on what action to take, if any, and this will then be communicated to the parties at the meeting if practicable, but in any event in writing setting out the reasons for the decision;
- e) The decision of the COAC/Council is final and there is no further right of appeal;
- f) No grievance will be entertained in relation to this procedure or any decisions take by the Committees.