

# DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

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## CAERPHILLY COUNTY BOROUGH COUNCIL

### DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

#### 1. Scope of Procedure

- 1.1 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 (together “Statutory Officers”); they also apply to an officer who was a Statutory Officer at the time the alleged misconduct (or the reason for the proposed action occurred) even if at the time of the proposed disciplinary action they are no longer a Statutory Officer.
- 1.2 The Council has resolved that this Procedure will apply to all Statutory Officers of the Council for the purpose of dealing with disciplinary, capability and other similar issues where disciplinary action could be taken or where there are circumstances which may result in a proposal for dismissal other than:-
  - (i) redundancy;
  - (ii) expiry of a fixed term contract;
  - (iii) retirement or termination on the grounds of ill-health.
- 1.3 For the avoidance of doubt, this Procedure also applies to a breakdown of trust and confidence between the Statutory Officer and the Council.
- 1.4 Minor conduct issues can often be resolved informally and this is the Council’s preferred approach wherever possible. Formal steps will be taken under this Procedure if the matter cannot be resolved informally, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 1.5 The objective of this Procedure is to:
  - (i) encourage Statutory Officers to achieve and maintain acceptable standards of behaviour;
  - (ii) provide a fair and consistent method of dealing with alleged failure to maintain acceptable standards of behaviour;
  - (iii) minimise disagreements about disciplinary matters.
- 1.6 No disciplinary action (other than action relating to suspension to which paragraph 5 applies) in respect of the Statutory Officers to which this

Procedure applies may be taken by the Council, or by a committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a Designated Independent Person under regulation 9 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended.

- 1.7 Save where alternative arrangements have been agreed in advance between the Council and the Statutory Officer, the steps set out in this Procedure should be followed. The parties recognise that it may be necessary to depart from the Procedure, from time to time, according to the particular circumstances of a case. In such circumstances, both parties agree to give fair consideration to reasonable proposals to modify the Procedure accordingly with reference to the Joint Negotiating Committee's conditions of Service Handbook - Model Disciplinary Procedure and Guidance.
- 1.8 This Procedure does not form part of the Statutory Officer's contract of employment and it may be amended at any time, subject to overall compliance with the Local Authorities (Standing Orders) (Wales) Regulations 2006.
- 1.9 Any disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All individuals must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter under this Procedure.

## **2. Investigating and Disciplinary Committee ("IDC")**

- 2.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Statutory Officer, the matter will be referred to an IDC for consideration.
- 2.2 The IDC should be a standing committee appointed by the Council. The constitution of the IDC should include the delegated power to take disciplinary action short of dismissal against Statutory Officers if recommended by a Designated Independent Person (DIP).
- 2.3 The IDC should:
  - (i) include no fewer than three elected members;
  - (ii) be politically balanced;
  - (iii) not include any member with a direct personal involvement in the complaint; and
  - (iv) include a member of the Executive (with Executive members should not making up more than half of the IDC membership).

- 2.4 The IDC shall appoint a chair person to oversee the function of the Committee (“Chair”).
- 2.5 The IDC must, within 1 month of the referral of alleged misconduct to it, meet to consider the allegation of misconduct and decide whether it should be further investigated (see section 7 below).
- 2.6 The IDC shall be responsible for conducting the preliminary investigation into the allegations of conduct or capability, or other issues under investigation in order to determine whether a case to answer appears to exist which requires further consideration by a Designated Independent Person (see section 7 below).

### **3. Timescales**

- 3.1 The Procedure does not generally incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the circumstances of a particular case. Where time limits do apply, they are included within the relevant section of this Policy. However, it is implicit that all stages of the Procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

### **4. Access to Professional / Independent Advice**

- 4.1 The IDC will have access to the Council's officers to provide professional advice as appropriate.
- 4.2 The IDC also has powers to appoint external advisers as appropriate including independent external legal advice.

### **5. Suspension**

- 5.1 Suspension will not always be appropriate as there may be alternative ways of managing the investigation.
- 5.2 Suspension does not amount to disciplinary action under this Procedure but is instead a neutral act. Consideration will however need to be given to whether or not it is appropriate to suspend the Statutory Officer. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the Statutory Officer might compromise the investigation or impair the efficient exercise of the Council's functions.
- 5.3 In any case, the Statutory Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.

- 5.4 In ordinary cases, the power to suspend a Statutory Officer will rest with the IDC. However, if an exceptional situation arises whereby allegations of misconduct by the Statutory Officer are such that their remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Council, the Chair of the IDC (or in their absence the Chair of the Urgency Committee) will have power to suspend a Statutory Officer.
- 5.5 Absence from duty during any period of suspension shall be on full pay.
- 5.6 Any suspension must not last longer than 2 months from the day on which it takes effect unless a Designated Independent Person (DIP) has used their power to direct a continuation of the suspension after the expiry of that period. In the event a DIP is not appointed within this timescale then consideration will be given to alternatives to suspension in light of the reasons for suspension.
- 5.7 The necessity for the Statutory Officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided. Further specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Statutory Officer's suspension.

## **6. Right to be Accompanied**

- 6.1 Statutory Officers may be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost.
- 6.2 This Procedure recognises that there may be, in exceptional circumstances, a need to suspend the Statutory Officer at short notice, when it is not possible to arrange for their trade union representative to be present. These circumstances might include the circumstances outlined in paragraph 5.4 above.
- 6.3 Within this Procedure, the statutory entitlement to be accompanied arises in the following situations:
- (i) where the IDC considers the report of the DIP and provides the Statutory Officer with the opportunity to state their case before making its decision;
  - (ii) during any appeal against the decision taken by the IDC;
  - (iii) at a Council meeting considering a proposal for dismissal and also fulfilling the requirement relating to a right of appeal.

6.4 At these important stages (6.3.1-6.3.3 above), if the Statutory Officer's representative is unavailable for the date set then the Statutory Officer will have the right in accordance with the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week. If the representative is unable to attend within that period the Council will have the right to go ahead with the hearing without further delay, although reasonable consideration will be given to arranging an alternative date when all parties can attend.

## **7. Preliminary Investigation / Considering the Issues**

7.1 The IDC will, as soon as is practicable inform the Statutory Officer in writing of the allegations or other issues under investigation and provide them with any evidence that the IDC is to consider.

7.2 The IDC shall be responsible for determining the arrangements for conducting a preliminary investigation. This preliminary stage should not be a fully detailed investigation of every aspect of the case as that will be the responsibility of the DIP (if appointed). However, the IDC may make such enquiries of the Statutory Officer or any other person as it considers appropriate.

7.3 Before any decision is taken to formally appoint a DIP, the Statutory Officer should be made aware of the allegations that have been made against them (or the issue to be addressed) and given the opportunity to respond. This will include the IDC:

- (i) writing to the Statutory Officer setting out the allegations / issues and providing any evidence to be considered;
- (ii) inviting the Statutory Officer to a meeting of the IDC to put forward oral and written representations;

7.4 It is not anticipated that witnesses will be called during this preliminary investigation. The discretion to call witnesses lies solely with the IDC on a case by case basis.

7.5 Cases will vary in complexity but the threshold test for the IDC to consider in deciding whether to appoint a DIP is to consider the allegation or matter and to assess whether:

- (i) if it were to be proved, it would be such as to lead to the dismissal or other action which would be recorded on the Statutory Officer's personal file; and
- (ii) there is evidence in support of the allegation sufficient to require further investigation.

7.6 The IDC will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the Statutory

Officer before taking further action in accordance with the threshold test. The IDC shall decide whether:

- (i) the issue requires no further formal action under this Procedure (in which case they will consider what other steps, if any, should be taken, for example a requirement for training). In such cases the IDC would ordinarily lift any suspension immediately; or
- (ii) the issue should be referred to a DIP for an independent investigation.

7.7 The IDC shall inform the Statutory Officer of its decision without delay.

## **8. The Role of the DIP**

8.1 Once a decision is taken to appoint a DIP this should be done quickly. The DIP should be agreed between the IDC and the Statutory Officer within 1 month of the decision to appoint a DIP. If there is a failure to agree on a suitable DIP, the Council will write to the Welsh Ministers requesting the nomination of a DIP. The IDC must appoint the person nominated by Welsh Ministers.

8.2 Once a DIP has been appointed, the IDC will be responsible for making the appointment, providing the DIP with necessary facilities, agreeing remuneration and providing all available information about the allegations.

8.3 The IDC must provide the DIP with terms of reference. The DIP will also need to be:

- (i) aware of the precise allegation(s) or issue(s) to be investigated;
- (ii) provided with access to sources of information and people identified as relevant to the case; and
- (iii) aware of expectations regarding timescales and any known factors which could hinder their investigation, e.g. the availability of key people.

8.4 The IDC must, after consulting the DIP, attempt to agree a timetable within which the DIP is to undertake the investigation. Where there is no agreement, the DIP must set a timetable which they consider appropriate.

8.5 Once appointed, the DIP will consider whether it is appropriate to terminate or continue any suspension arrangements within 2 months of the commencement of any suspension. The DIP does not have the power to suspend the Statutory Officer and neither is their permission required in order to suspend the Statutory Officer. However, in



circumstances where the IDC has suspended the Statutory Officer, the DIP has the power to direct that:

- (i) the suspension be terminated;
- (ii) the suspension continue beyond the two month limit; and
- (iii) the terms on which the suspension has taken place should be varied.

## **9. DIP Investigation**

9.1 It is the responsibility of the DIP to investigate the issue / allegation and to prepare a report:

- (i) stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and
- (ii) recommending any disciplinary action (if any is appropriate) or range of actions which appear to them to be appropriate for the Council to take against the Statutory Officer.

9.2 The DIP will, as a matter of principle, make every attempt to ensure the appropriate confidentiality of any information obtained and discussed.

## **10. Receipt and Consideration of the DIP's Report**

10.1 The DIP's report (including any witness statements where relevant) should be delivered to the IDC and Statutory Officer simultaneously for consideration as soon as it is finalised.

10.2 If the report recommends disciplinary action is taken against the Statutory Officer, the Statutory Officer must be given an opportunity to state their case. The Chair of the IDC should summon a meeting of the IDC as a Disciplinary Hearing ("Disciplinary Hearing").

10.3 The Chair of the IDC shall write to the Statutory Officer as soon as possible giving adequate notice of the date of the Disciplinary Hearing having regard to the issues in the case and the volume of associated documentation. The notice shall include:

- (i) the allegations to be considered at the Disciplinary Hearing;
- (ii) the time and place of the Disciplinary Hearing;
- (iii) who will be in attendance (the DIP, the IDC and any legal advisor to the IDC, the Statutory Officer and their representative);

- (iv) confirmation that the Disciplinary Hearing is convened under this Procedure and could result in disciplinary action including dismissal;
  - (v) confirmation that the Statutory Officer may be accompanied at the Disciplinary Hearing by their trade union representative or some other person of their choice, at their own cost;
  - (vi) confirmation that the Statutory Officer may ask any person to be present as a witness or adduce any documents or written statements in support of their response, provided full details of such witnesses.
- 10.4 Within 7 working days, the Statutory Officer shall either agree the date for the Hearing or propose a postponement for the date of the Hearing for a period not exceeding 7 working days setting out the reasons for the request. For the avoidance of doubt, the postponement includes any postponement due to the availability of the Statutory Officer's Companion. If the Statutory Officer requests a postponement, the Chair of the IDC or their nominee and the Statutory Officer (or his representative) shall agree the date for the Hearing. If they cannot agree the date within one working day, the Chair of the IDC, having taken appropriate advice, shall determine the date of the Disciplinary Hearing.
- 10.5 The Statutory Officer and their Companion must make every effort to attend the Disciplinary Hearing (whether reconvened or otherwise). Failure to attend without good reason may be treated as misconduct in itself. If the Statutory Officer fails to attend without good reason, or persistently fails to do so, the Disciplinary Hearing may proceed in their absence and a decision may be made based on the available evidence.
- 10.6 At least 7 working days before the date of the Disciplinary Hearing the Statutory Officer shall give to the Chair of the IDC:
- (i) Full details of any witnesses they wish to call;
  - (ii) Copies of any documents which they wish to refer to in support of their response;
  - (iii) Any written statements or submissions which they wish to submit; and
  - (iv) Details of the Companion they wish to bring to the Disciplinary Hearing.

## **11. The Disciplinary Hearing**

11.1 The procedure for the Disciplinary Hearing will be as follows:

- (i) the Chair of the IDC will explain the purpose of the Hearing and the procedure to be followed;
- (ii) the DIP will present the evidence contained within their report and provide a brief summary of their approach and conclusions. The DIP may as part of this presentation reference documents and witness evidence in person or in writing to the IDC;
- (iii) the IDC will have the opportunity to ask questions of the DIP, including direct questions to any witnesses. In most cases it is envisaged that witness evidence at the Disciplinary Hearing will not be required as the investigation by the DIP will have already have included interviews with witnesses in person. Therefore, only in exceptional cases will witness evidence be heard at the Disciplinary Hearing, at the IDC's discretion. The Statutory Officer or their representative will also have an opportunity to ask the DIP questions by way of clarification of any findings made;
- (iv) the Statutory Officer or their representative will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
- (v) the DIP and the IDC will then have the opportunity to ask questions of the Statutory Officer including direct questions to any witnesses. The Statutory Officer's representative does not have the right to answer questions on their behalf;
- (vi) both sides will sum-up their presentations, commencing with the DIP.

11.2 At this stage, if there is new evidence produced which is material to the allegation / issue and may alter the outcome, the IDC may:

- (i) take this into account in making their decision; or
- (ii) request that the DIP undertake some further investigation and incorporate the impact of the new evidence into an amended report. If this is a possibility, the DIP should review their decision taking into account any new evidence. The Disciplinary Hearing may be adjourned pending receipt of the amended report. The Statutory Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.

## **12. Decision by the IDC**

- 12.1 The IDC is required to take a decision on the basis of the DIP's report. It is always open to the IDC to impose a lesser sanction than that recommended but it cannot impose a greater sanction.
- 12.2 When the IDC has heard all of the evidence submitted it will adjourn to consider what, if any, further action should be taken. All others present at the Disciplinary Hearing (other than any external or legal advisor to the IDC) will withdraw while the IDC consider their decision. The range of options available will include:
- (i) taking no further action;
  - (ii) recommending informal resolution or other appropriate procedures be followed (such as but not limited to early retirement, secondment, or redeployment to a more junior post where there are issues relating to capability or loss of trust and confidence);
  - (iii) taking action short of dismissal (no limited to a recorded or oral warning, a written warning, a final written warning); or
  - (iv) dismissal.

## **13. Action Short of Dismissal**

- 13.1 Where the decision is to take action short of dismissal the IDC will impose the necessary penalty / action, up to the maximum recommended by the DIP. There is no requirement in such circumstances to seek confirmation by the Council.
- 13.2 Where practicable, the decision of the IDC will be delivered orally after an adjournment. However, in order to ensure that the IDC shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Statutory Officer as soon after the Disciplinary Hearing as is reasonably practicable.
- 13.3 A letter will be sent out to the Statutory Officer which outlines the decision and the action, if any, to be taken. The letter will also set out the right of appeal ("Decision Letter").

## **14. Dismissal**

- 14.1 When the IDC proposes dismissal, then the Council must approve the dismissal before notice of dismissal is issued.
- 14.2 The IDC will inform the Statutory Officer of its decision and confirm that the proposal for dismissal will be put to the council alongside all relevant material (including the report of the DIP) for consideration.
- 14.3 The Council will consider the IDC's proposal that the Statutory Officer should be dismissed. The Statutory Officer, accompanied by their representative will have the opportunity to put their case to the Council before a decision is taken.
- 14.4 Given the thoroughness and independence of the previous stages, in particular, the investigation of the DIP, it will not be appropriate to undergo a full re-hearing of the case. Instead, consideration by the Council will take the form of a review of the case and the recommendation to dismiss.
- 14.5 If required, the Council shall be advised by an independent legal adviser who shall not usually be the same adviser who advised the IDC.
- 14.6 The Council will aim to provide its decision orally to the Statutory Officer at the Council meeting. However, should this not be possible, the decision will be notified to the Statutory Officer, in writing, as soon as reasonably practicable thereafter.

## **15. Appeal Process**

- 15.1 This procedure provides for different arrangements for appeals against dismissal and appeals against action short of dismissal.
- 15.2 **Appeals against dismissal:**
- 15.2.1 Where the IDC has made a proposal to dismiss; the hearing by the Council will fulfil the statutory appeal function.
- 15.3 **Appeals against action short of dismissal:**
- 15.3.1 Where the IDC takes action short of dismissal, the Statutory Officer may appeal to the Appeals Committee. The appeal hearing will take the form of a review of the decision taken by the IDC.
- 15.3.2 The Appeal Committee should:
- (i) include no fewer than three elected members;
  - (ii) be politically balanced;

- (iii) not include any member with a direct personal involvement in the complaint;
  - (iv) include a member of the Executive; and
  - (v) not include any member of the IDC.
- 15.4 Any appeal must be made in writing to the name set out in the Decision Letter within 7 working days of the date of the Decision Letter including the grounds of appeal (“Notice of Appeal”).
- 15.5 Within 5 working days thereafter the Statutory Officer must inform the Chair of the Appeals Committee of the following details in relation to the Notice of Appeal and provide the following information:
- (i) whether the Statutory Officer is to be accompanied at the appeal hearing and if so by whom;
  - (i) whether they wish to call witnesses and if so, their names and the nature of the evidence they will provide; and
  - (ii) copies of any additional documents or information relevant to the appeal that was not provided at the Disciplinary Hearing.
- 15.6 The Appeals Committee will consider the appeal as soon as reasonably practicable after the Notice of Appeal has been received. It will invite the following persons to be present at an appeal hearing:
- (i) the Statutory Officer, who may be accompanied; and
  - (ii) the Chair of the IDC or another member of the IDC if so nominated by the Chair, to explain their reasons for their decision and to answer any questions.
- 15.7 The Procedure for convening the Appeal Hearing will follow that set out above in relation to the Disciplinary Hearing. The Statutory Officer will have the opportunity to state their case.
- 15.8 If required, the Appeals Committee shall be advised by an independent legal adviser who shall not usually be the same adviser who advised the IDC.
- 15.9 The Appeals Committee may decide to uphold or dismiss the original decision of the IDC or impose a different sanction, as long as it is no higher than originally recommended by the DIP.
- 15.10 The decision reached will be final and there is no further right of appeal.

15.11 If it is not practicable for the Appeals Committee to provide its decision orally at the conclusion of the appeal hearing, it will be notified to the Statutory Officer, in writing, as soon as reasonably practicable.

**16. Review of the Procedure**

16.1 A review of this procedure will take place in 2 years or earlier if appropriate. Any amendments will be consulted with all the relevant parties, save for in the case of changes necessitated by changes to legislation.