



## **Disciplinary Procedure and Guidance for the Chief Executive, Statutory Officers, and Non-Statutory Chief Officers.**

(Based on model procedure for England issued by Joint Negotiating Committee for Local Authority Chief Executives)

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### **Introduction**

Guidance issued by the Joint Negotiating Committee (“JNC”) for Local Authority Chief Executives suggest that their model procedures should be followed except in so far as the parties locally agree to vary them. Whilst the Authority therefore has some discretion in how far to follow the agreed guidance this procedure follows the model with minor amendments to make it relevant to a National Park Authority. The Local Government Association (LGA) and the Association of Local Authority Chief Executives and Senior Managers (ALACE) through the JNC for Chief Executives commend the model procedure because:

- The procedure and guidance have been drawn up in light of the experience of the Joint Secretaries in their involvement with individual cases;
- Its variants apply to constitutions with council leader/Cabinet executives, mayor/cabinet executives and councils and other authorities operating a committee system;

Local authority chief executives are protected under specific regulations that make distinctive provisions, compared to other employees. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment)

Regulations 2015) (“the 2015”) and the Local Authorities (Standing Orders) (Wales) Regulations 2006 aim to protect the chief executive from unwarranted political interference in their role as head of paid service of the Authority. High levels of accountability work most effectively within clear criteria for responsibilities. Even with the distinctive role of Head of Paid Service, disciplinary action will need to be based on clear evidence.

In accordance with Part 5 of the Authority’s Standing Orders the three Directors, the Section 151 Officer and the Monitoring Officer are directly appointed by the Authority; therefore this procedure and guidance should also be used for any Disciplinary relating to these post holders. To reflect this, they and the Chief Executive are referred to as “Relevant Officers” throughout the following procedure and supporting guidance.

The Discipline Policy applies to all employees covered by the National Agreement on Pay and Conditions of Service for Local Government Services and should be used for any disciplinary action relating to the role and responsibilities of the Head of Law and the Head of Finance.

This procedure and guidance has been prepared so that Authority Members can make sure that they:

- Understand the procedure to be used;
- Seek appropriate advice at every stage;
- Do not compromise the outcome of any proceedings;
- Allow every opportunity for fair procedures to operate.

This guidance outlines the key elements of procedures for disciplining a Relevant Officer.

The elements of what is procedure and what is guidance to the procedure is arranged in such a way as to present each element of the model procedure immediately followed by the relevant part of the guidance for ease of reference.

The Head of Human Resources with support from Democratic Services is responsible for the management of these procedures.

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## **1. Issues requiring investigation**

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### **Procedure**

Where an allegation is made relating to the conduct or capability of a Relevant Officer or there is some other substantial issue that requires investigation, the matter will be considered by the Investigating & Disciplinary Committee (“Committee”).

Other structures necessary to manage the whole process are in place, including an Independent Panel should there be a proposal for the dismissal of a Relevant Officer. This is comprised of the Authority’s Independent Persons, appointed in accordance with The Local Authorities (Standing Orders) (England) Regulations 2001 as amended.

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### **Guidance**

#### **1.1 *The Local Authorities (Standing Orders) (England) Regulations 2001 as amended***

- 1.1.1. The Local Authorities (Standing Orders) (England) Regulations 2001 (the Regulations) (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) provide that the dismissal of a chief executive in cases of disciplinary action (as defined in the Regulations) may only take place if the proposal to dismiss is approved by way of a vote at a meeting of the Authority, after they have taken into account:
- any advice, views or recommendations of a panel (the Independent Panel)
  - the conclusions of any investigation into the proposed dismissal and
  - any representations from the Relevant Officer concerned
- 1.1.2 Disciplinary action: in relation to a member of staff of the National Park Authority is defined in the Regulations as “any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Authority, be recorded on the member of staff’s personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Authority has undertaken to renew such a contract”.
- 1.1.3 The definition of disciplinary action would therefore include other reasons for dismissal such as capability or some other substantial reason including a breakdown in trust and confidence between the Relevant Officer and the Authority.
- 1.1.4 The attached Appendix A (potential reasons for termination table) sets out those circumstances that could potentially result in dismissal and whether or not they are covered by this procedure.

## **1.2 Structures to manage the procedure**

- 1.2.1 A key feature of the model procedure is the specific roles envisaged by the Committee, the Appeals Committee, the Independent Panel and the Authority. The Authority has agreed a number of important issues around the composition of committees and the delegation of appropriate powers.
- 1.2.2 The Committee that performs the Investigating and Disciplinary function will be known as the Investigating and Disciplinary Committee (IDC). The Authority has agreed to establish a Committee made up of 6 Members and balanced in accordance with the provisions in the Environment Act 1995. This Committee is in a position to take decisions and appropriate actions as a matter of urgency, and is able to meet at very short notice to consider allegations and decide whether there is a case to answer and to consider whether suspension of the Relevant Officer might be appropriate. As it is possible that in some circumstances Members of the Committee may find themselves in a position where they have a conflict of interest the quorum is set at three Members with at least one Secretary of State and one Local Authority Member present. The Authority does not appoint substitutes. The Committee has an important role in considering the report of an Independent Investigator. The role of the Committee is explained further at appropriate stages in the guidance.
- 1.2.3 The Appeals Committee must be a balanced committee of five Members who are not Members of the Committee. The Authority has agreed that, if an Appeals Committee is required, five Members will be appointed from the Authority’s existing Appeals Panel with at

least one Secretary of State and one Local Authority Member present. In this context the Appeals Committee has a limited role and will only hear appeals against action taken short of dismissal and then make a decision either to confirm the action or to impose no sanction or a lesser sanction.

1.2.4 The JNC has agreed that the Independent Panel should comprise of Independent Persons (at least two in number) who have been appointed by the Authority, or by another Local Authority or National Park Authority, for the purposes of the Members' conduct regime under section 28(7) of the Localism Act 2011. The Authority will issue invitations for membership of the Panel of two in accordance with the following priority order:

- (a) an Independent Person who has been appointed by the Authority and who is a local government elector in the Authority's area
- (b) any other independent person who has been appointed by the Authority-and
- (c) an Independent Person who has been appointed by another Local Authority or National Park Authority.

1.2.5 Appropriate training will be provided for Independent Panel members by Human Resources and Democratic Services.

1.2.6 It should be noted that any remuneration paid to members of an Independent Panel may not exceed that payable in respect of their role under the Localism Act.

1.2.7 A requirement for any disciplinary process is to carry out an investigation of the allegations to establish the facts of the case and to collate evidence for use in the disciplinary hearing. In the case of a Relevant Officer, it will normally be necessary to engage an independent person for this purpose, and this person is referred to here as the Independent Investigator. Arrangements have been agreed to enable the speedy appointment of a competent and experienced person to perform this role, with the assistance of the Joint Secretaries.

### **1.3 *Managing access to the procedure (See also Paragraph 5 of this guidance) – considering the allegations or other issues under investigation***

1.3.1 The procedure itself does not require that every single issue which implies some fault or potential error on the part of the Relevant Officer be investigated using this process. It is for the Authority to decide the issues that will engage the formal process.

1.3.2 The Authority will therefore need to consider what constitutes an 'allegation' made relating to the conduct or capability of a Relevant Officer and what it considers are other substantial issues requiring investigation. Clearly the route for complaints against the Authority and a Relevant Officer and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied. Procedures are in place which can filter out and deal with 'allegations' against a Relevant Officer which are clearly unfounded or trivial or can best be dealt with under some other procedure.

1.3.3 For example, allegations and complaints that are directed at a Relevant Officer, but are actually complaints about a particular service, should be dealt with through the Authority's general complaints procedure. If the matter is a grievance from a member of staff directed against a Relevant Officer, it may be appropriate to first deal with it through the Authority's grievance procedure. Of course if the matter were a serious complaint against a Relevant

Officer's personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the disciplinary procedure.

- 1.3.4 The Authority has put into place arrangements that can manage the process so that records are kept of allegations and investigations and that there is a clear route into the disciplinary procedure. In the case of allegations against a Relevant Officer, the Monitoring Officer or the Chief Executive (as appropriate), the Head of Human Resources and the Chair of the Authority would oversee referrals to the Committee.
- 1.3.5 Where the issue to be investigated is related to the sickness absence or capability of a Relevant Officer in terms of performance, there is likely to be a link with the Authority's Absence Management procedure or appraisal/managing performance procedure.
- 1.3.6 Where management action is required in respect of the normal sickness of a Relevant Officer, the Authority needs to be clear about who takes appropriate actions. Initially the Head of Human Resources will follow the Authority's normal absence management procedures. The Head of Human Resources will report to the Monitoring Officer or the Chief Executive (as appropriate), and the Chair of the Authority as appropriate to the matter being investigated – in particular where procedures have been followed to the point where dismissal appears to be a possibility likely at the point where a final warning has been given.
- 1.3.6 As, in accordance with the JNC agreement, an objective performance appraisal system is in place where any shortcomings in a Relevant Officer's performance should be identified, and therefore remedied, at an early stage.

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## **2. Timescales**

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### **Procedure**

It is in the interests of all parties that proceedings be conducted expeditiously.

It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.

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### **Guidance**

- 2.1 An important principle when taking disciplinary action is that the process should be conducted expeditiously but fairly. There is, therefore, a need to conduct investigations with appropriate thoroughness, to arrange hearings and allow for representation. It is not in the interests of the Authority, or a Relevant Officer, that proceedings are allowed to drag on without making progress towards a conclusion.

#### **2.2 *Statutory and indicative timescales***

- 2.2.1 The procedure does not set out explicit timescales except the specific requirement in the Local Authority (Standing Orders) (England) Regulations 2001 for the appointment of the Independent Panel at least 20 working days before the meeting of the Authority at which

consideration as to whether to approve a proposal to dismiss is to be given. This guidance refers to other statutory timescales and restrictions which are applicable to disciplinary procedures more generally, such as those contained in the Employment Relations Act 1999 (in connection with the right to be accompanied).

## **2.3 *Avoiding delays in the procedure***

One cause of delay in the procedure is the availability of the key people necessary to manage and control the process.

### **2.3.1 *Availability of Independent Investigator***

An Independent Investigator should only be formally appointed once the Committee has determined that there is a case that requires further investigation. However to minimise delays in any potential investigation, steps will be taken to identify a shortlist of three potential Independent Investigators from the list held by the JNC Joint Secretaries (see paras 6.3 and 6.4) concurrently with arrangements for the initial meeting of the Committee. This is not pre-judging whether an Independent Investigator will be needed, but a practical step to assist in minimising any delays.

### **2.3.2 *Availability of the Relevant Officer in case of sickness***

- (a) It is possible that the sickness of the Relevant Officer could impact on the ability to follow the disciplinary procedure. This may be because:
- the issue under investigation is the Relevant Officer's sickness in itself (ie a capability – ill health issue); or alternatively,
  - while during an investigation relating to a Relevant Officer's conduct, the Relevant Officer commences sickness absence during the disciplinary process.
- (b) In principle, the sickness of a Relevant Officer will invoke the Authority's normal absence management procedures. The nature of the investigation and facts surrounding the sickness will dictate the appropriate way of dealing with the issue. It is worth noting (see paragraph 10.) that a proposed dismissal on the grounds of permanent ill-health, does not require the involvement of an Independent Investigator or Independent Panel.
- (c) If the investigation is about the long-term sickness or frequent ill-health problems experienced by a Relevant Officer the Authority should obtain appropriate medical information and advice by following the Absence Management Policy. However, the Committee or Independent Investigator may feel there is a need for further or more up-to-date advice and again they should use the Authority's normal processes and procedures to obtain this. If the Relevant Officer's absence or problems at work are as a result of a disability which places him/her at a substantial disadvantage compared to others without the disability, then the Authority must consider and undertake reasonable adjustments in order to remove the disadvantage. The Committee must satisfy itself that this has been fully considered and that no further reasonable adjustments could be made which would remedy the situation.
- (d) Where the issue under investigation is not health-related and is, for example, the conduct of a Relevant Officer and he/she then commences sickness absence then

the approach will depend on the type and length of the illness and exactly when it occurs during the process.

- (e) A short period of illness should not normally create a major problem although the timing of the illness can create difficulties if it coincides with scheduled meetings for investigating or hearing aspects of the case. If this occurs then reasonable efforts should be made to rearrange the meeting. However, if the sickness becomes more persistent or is likely to become longer term then the Authority will take steps to identify whether the Relevant Officer, although possibly not fit to perform the full range of duties, is fit enough to take part in the investigation or disciplinary hearing.
- (f) If it appears that there will be a long period of ill health which will prevent the Relevant Officer taking part in the process, the Authority and possibly the Independent Investigator will have to make a judgement as to how long to wait before proceeding. In some cases it may be appropriate to wait a little longer where a prognosis indicates a likely return within a reasonable timescale.
- (g) However, where this is not the case, the Authority will in most cases need to press ahead given the importance of resolving issues which can have a significant impact on both parties due to the nature and high profile of the role of a Relevant Officer. If this is the case the Authority will make sure that the Relevant Officer is given the opportunity to attend any meetings or hearings. However, the Relevant Officer should be informed that if they cannot attend the meetings or hearings then they would proceed without them. If this is the case the Relevant Officer may make written submissions to be considered and may also send their representative to speak on their behalf before a decision is taken.

### **2.3.3 Availability of representative**

The availability of a Relevant Officer's representative can also be a possible cause of delay. Reasonable account should be taken of the availability of all relevant parties when setting dates and times of meetings. Where it is simply not possible to agree dates to suit everybody the Authority should be aware of the statutory right to be accompanied at disciplinary hearings and to take this into account when setting dates (see Paragraph 4).

### **2.3.4 Availability of witnesses**

If the Independent Investigator or the Committee allows either party to call witnesses and the witnesses are unable to attend, their evidence should not be discounted and should still be considered. Alternatives may include written statements or minutes/records where individuals have been interviewed as part of the investigation. However, such evidence may not carry the same weight as evidence that can be subjected to cross-examination.

### **2.3.5 Availability of Committee Members**

- (a) In establishing the Committee and setting up an Appeals Panel Committee, the Authority has taken availability issues into account and has an operational quorum in place as set out in Part 1 of Standing Orders.

- (b) In establishing the IDC the Authority has recognised that the Committee may need to be able to meet at short notice to consider serious allegations against a Relevant Officer.

### **2.3.6 Availability of Independent Panel members**

The Independent Panel must be appointed at least 20 days before the Authority meeting at which consideration whether or not to approve a proposal to dismiss is to be given. The appointment of Independent Panel members will, therefore, take into account their availability to undertake their role within that timescale.

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## **3. Suspension**

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### **Procedure**

Suspension will not always be appropriate as there may be alternative ways of managing the investigation.

However, the Committee needs to consider whether it is appropriate to suspend a Relevant 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 a Relevant Officer might compromise the investigation or impair the efficient exercise of the Authority's functions.

In any case, the Relevant Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.

The Authority's Head of Human Resources, in consultation with Chair of the Authority and the Chief Executive or the Monitoring Officer (as appropriate), has the delegated authority to suspend a Relevant Officer immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by the Relevant Officer are such that his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Authority. This power should only be used in exceptional circumstances in most cases a meeting of the Committee should make the decision to suspend. Any decision to suspend under this delegation should be reviewed by the Committee on the earliest date on which a quorate meeting of the Committee can be convened.

The continuance of a suspension should be reviewed after it has been in place for two months.

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### **Guidance**

- 3.1 Although suspension in order to investigate an allegation or a serious issue is not disciplinary action in itself, it is a serious step in the process that should be managed well. Unlike with most other posts, the suspension of a Relevant Officer may come immediately to the attention of the local and perhaps national media with potentially damaging consequences for the reputation of the Relevant Officer and the Authority.



3.2 Where a Relevant Officer is suspended and facing allegations this is potentially stressful for the individual and disruptive to the Authority. It is therefore in the interests of all parties that such cases are dealt with as expeditiously as possible.

### **3.3 Alternatives to suspension**

(a) Suspension will not be appropriate in every case, as this will depend on the nature of the allegation or seriousness of the issue. Before suspending a Relevant Officer, careful consideration should be given to whether it is necessary and whether there are any other suitable alternative ways of managing arrangements such as working from home for a period or for example by agreeing particular working in another way that protects the Relevant Officer and Authority from further allegations of a similar nature.

### **3.4 Power to suspend**

(a) The Chief Executive is the Head of Paid Service and normally bears the delegated responsibility for implementing Authority policy on staffing matters. However, when it is the Chief Executive who is the subject of an allegation or investigation, the Authority needs to be clear about who has the power to suspend the Chief Executive and in what circumstances. This has been captured in the delegation to the Committee and the Officer Delegation scheme both set out in the Authority's Standing Orders.

(b) The point at which it may become clear that suspension is an appropriate action is likely to be at the stage where the Committee has conducted its initial assessment. The Authority has therefore given the Committee the power to suspend a Relevant Officer.

### **3.5 Short notice suspension**

(a) The procedure also recognises that in exceptional circumstances it may be necessary to suspend at very short notice and before the Committee can meet, e.g. because the remaining presence of the Relevant Officer could be a serious danger to the health and safety of others, or a serious risk to the resources, information or reputation of the Authority. The Head of Human Resources, in consultation with the Authority's Monitoring Officer or the Chief Executive (as appropriate), and the Chair of the Authority, has the delegated power to suspend a Relevant Officer immediately.

### **3.6 Suspension conditions**

(a) If suspension were deemed appropriate, the Committee (or in exceptional circumstances, the Head of Human Resources, in consultation with the Authority's Monitoring Officer or the Chief Executive (as appropriate), or their Deputy, and the Chair of the Authority) would agree conditions which are necessary to manage the suspension and the investigation. For example, a Relevant Officer might request access to workplace materials and even witnesses. Arrangements should be made to manage such requests and facilitate appropriate access. Another general principle would be that whilst suspended, the Relevant Officer would remain available to participate in the investigation and to attend any necessary meetings. Therefore other important issues would include communication channels for day-to-day

communication and any stipulations for reporting any scheduled or unscheduled absence from the area, e.g. pre-arranged holiday.

### **3.7 Review of suspension**

- (a) Where a Relevant Officer is suspended, the suspension should be reviewed after two months, and only continued following consultation with the Independent Investigator and after taking into account any representations made by the Relevant Officer.
- (b) If it becomes clear during the suspension that the allegation is not as serious as first thought, the IDC should review the suspension on the earliest date on which a quorate meeting of the IDC can be convened, with a view to the Relevant Officer be returned to their normal duties.

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## **4. Right to be accompanied**

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### **Procedure**

Other than in circumstances where there is an urgent requirement to suspend a Relevant Officer, he or she will be entitled to be accompanied at all stages.

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### **Guidance**

- 4.1 Although the statutory right to be accompanied applies only at a disciplinary hearing, the JNC procedure provides the opportunity for a Relevant Officer to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost “the Relevant Officer’s Representative”).
- 4.2 The procedure recognises that there may be, in exceptional circumstances, a need to suspend the Relevant Officer at short notice, when it is not possible to arrange for the Relevant Officer’s Representative to be present. These circumstances might include for example where there is a serious risk to the health and safety of others or serious risk to the resources, information, or reputation of the Authority.
- 4.3 Although it would be beneficial to agree dates for the necessary meetings required, the procedure cannot be allowed to be delayed owing to the unavailability of a Relevant Officer’s Representative. The statutory right to be accompanied in a disciplinary hearing contained in s.10 of the Employment Relations Act 1999 applies only to hearings where disciplinary action might be taken or be confirmed, that is to say when a decision may be taken on the sanction, or a decision may be confirmed during an appeal. In this procedure the statutory entitlement to be accompanied would arise:
  - where the Committee considers the report of the Independent Investigator and provides the Relevant Officer with the opportunity to state their case before making its decision.

- during any appeal against the decision taken by the Committee
- at an Authority meeting considering a proposal for dismissal and also fulfilling the requirement relating to a right of appeal.

4.4 At these important stages, if the Relevant Officer's Representative is unavailable for the date set then the Relevant Officer will have the right under the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week.

4.5 If the Relevant Officer's Representative is unable to attend within that period the Authority will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

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## **5. Considering the allegations or other issues under investigation**

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### **Procedure**

The Committee will, as soon as is practicable inform the Relevant Officer in writing of the allegations or other issues under investigation and provide him / her with any evidence that the Committee is to consider, and of his / her right to present oral evidence.

The Relevant Officer will be invited to put forward written representations and any evidence including written evidence from witnesses he / she wishes the Committee to consider. The Committee will also provide the opportunity for the Relevant Officer to make oral representations. At this initial consideration of the need to investigate further, it is not anticipated that witnesses will be called. The discretion to call witnesses lies solely with the Committee.

The Committee will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the Relevant Officer before taking further action.

The Committee, with advice from the Head of Human Resources, shall decide whether:

- the issue requires no further formal action under this procedure or
- the issue should be referred to an Independent Investigator

The Committee shall inform the Relevant Officer of its decision without delay.

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### **Guidance**

5.1 The range of issues and to some extent the seriousness of the issues, which come before the Committee, will depend on the filter that the Authority adopts. Issues such as those relating to sickness absence and performance are likely to arise at the Committee having followed the Authority's absence management or managing performance / appraisal procedures (see Paragraph 1.3).

5.2 It is possible in some cases that with some minimal investigation the Committee can dismiss the allegation without even the need to meet with the Relevant Officer. However, this procedure is aimed at dealing with situations where the matter is not so easily disposed of. It

therefore provides a process whereby the Relevant Officer is made aware of the allegations and provided with the opportunity to challenge the allegations or to make their response.

5.3 When an issue comes before the Committee it, with advice from the Head of Human Resources, needs to make a judgement (see paragraph 5.4.1) as to whether the allegation can be dismissed or whether it requires more detailed investigation, in which case this will be undertaken by an Independent Investigator. If the Committee is of the opinion that the allegations do not warrant an investigation, this should be immediately notified to the Relevant Officer without delay, and, if necessary, the complainant informed accordingly. If the Committee is of the opinion that the matter is not serious but there is some minor fault or error, then it can issue an unrecorded oral warning in accordance with its standard procedures.

5.4 The appointment of an Independent Investigator is a serious step but does not mean that the Relevant Officer is guilty of some misdemeanour. In some cases the eventual result of the investigation will be to absolve the Relevant Officer of any fault or wrongdoing. The appointment of an Independent Investigator operates so that both the Authority and the Relevant Officer can see that matters are dealt with fairly and openly. However, the matter still needs to be handled carefully in public relations terms due to the potential damage to the reputation of the Relevant Officer or the Authority.

#### **5.4.1 Threshold test for the appointment of an Independent Investigator**

- (a) Cases will vary in complexity but the threshold test for the Committee in deciding whether to appoint an Independent Investigator is to consider the allegation or matter and assess whether:
- 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 Relevant Officer's personal file and
  - there is evidence in support of the allegation sufficient to require further investigation

#### **5.4.2 Conducting the initial Committee investigation**

- (a) It is intended that this stage is conducted as expeditiously as possible with due regard to the facts of the case. At this stage it is not necessarily a fully detailed investigation of every aspect of the case as that will be the responsibility of the Independent Investigator (if appointed). In order to avoid delay the Committee will want to explore the availability of potential Independent Investigators on the list maintained by the JNC Joint Secretaries at an early stage (see Paragraphs 6.3 and 6.4). However, it is important that before any decision is taken to formally appoint an Independent Investigator, the Relevant Officer is aware of the allegations that have been made against him / her (or the issue to be addressed) and given the opportunity to respond.
- (b) This will be achieved by:
- The Committee Chair writing to the Relevant Officer on behalf of the Committee setting out the allegations / issues and providing any evidence to be considered

- Providing the opportunity for the Relevant Officer to respond to the allegations in writing and to provide personal evidence or witness statements. The calling of witnesses at this stage is at the discretion of the Committee
  - Providing the opportunity for the Relevant Officer to respond to the allegations and appear before the Committee
- (c) Fair notice should be given to enable the Relevant Officer adequate time to prepare a response to the allegations or issues under investigation. During the initial hearing by the Committee, the Relevant Officer is entitled to attend and can be accompanied by a Relevant Officer's Representative (subject to Paragraphs 2.3.3 and 4).

#### **5.4.3 Treatment of witness evidence**

In general, if the Authority has witness evidence relating to an allegation this should be presented in written form to the Relevant Officer, although in exceptional cases it might be appropriate to anonymise the evidence in order to protect the identity of a witness. However, it remains important that the detail of the allegation is put to the Relevant Officer in order that he/she understands the case against him/her.

#### **5.4.4 Conflicts of interest**

- (a) As envisaged in the model procedure the Authority has established a standing Investigating and Disciplinary Committee. Paragraph 1.2 indicates the basic rules concerning its membership. However, because the Committee will comprise named Members, there may be occasions when this presents problems of conflict of interest, for example where a Member of the Committee is a witness to an alleged event, or is the person who makes the original complaint or allegation. Members in this position should take no part in the role of the Committee, although they will of course be able to give evidence, if required. The Authority has established a quorum in Standing Orders that will minimise the likelihood of an individual conflict of interest delaying the procedure. Where a number of Members find themselves in a prejudiced position, there may be no alternative but for the Authority to establish a new Committee to perform the function of the IDC.
- (b) Declarations of interest are matters for individual Members who are required to follow the Authority's Members' Code of Conduct and can seek advice from the Monitoring Officer or their Deputy. Problems could follow for the speed at which the case is conducted if a Relevant Officer considers there are valid grounds for making a formal complaint to the Authority about the involvement of a Member in a case.

#### **5.4.5 Maintaining the fairness and integrity of the procedure**

- (a) Where there is a matter that requires investigation it is important that a fair and correct procedure is followed. Allegations against a Relevant Officer or serious issues that require resolution should follow this procedure. It is important that Members do not undermine the fairness of the procedure by for example putting motions to a meeting of the Authority about the case as there is a serious risk that it could prejudice the disciplinary procedure. Additionally, such actions will not only create adverse publicity for the Authority and the Relevant Officer but may create conflicts

of interest and could limit the role that those Members can then take as the case progresses.

#### **5.4.6 Other appropriate actions**

- (a) It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of a Relevant Officer, or some other substantial issue, the Committee might be in a position to consider alternatives to immediately moving to the appointment of an Independent Investigator or alternatively to dismiss the allegation or issue.
- (b) Clearly this will depend on the facts of the matters being investigated. It could be that the Authority has another more appropriate policy or procedure to follow. Alternatively, it could be that the issue is one which might benefit from some mediation or attempts to resolve the particular issue in dispute prior to moving formally to appointing an Independent Investigator.
- (c) It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships are breaking down but there is no evidence of misconduct attached to the Relevant Officer. The Joint Secretaries could be available to assist.
- (d) If any financial settlements are considered, it is important that such an arrangement:
  - Falls within the Authority's discretions under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 ("the 2006 Regulations"), or
  - Is a payment in consideration of an agreement that compromises a genuine legal claim that a Relevant Officer might have at a Court or Employment Tribunal

In both cases the settlement must also comply with any other restrictions on exit payments, such as the £95,000 cap on such payments, including the circumstances in which the Authority may exercise powers to waive the cap.
- (e) The 2006 Regulations are designed to enable the Authority to compensate employees whose employment terminates on grounds of redundancy or in the interests of the efficient exercise of the Authority's functions. It is therefore possible that a payment will be legitimate in certain circumstances. However, where there is an obvious case requiring disciplinary action and the allegation is such that dismissal is a likely outcome, it is not likely that an external auditor will sanction a deal under the current regulations.
- (f) The Authority must take appropriate legal advice when attempting to reach a financial settlement to ensure that any payment is justified and lawful. Relevant considerations will include the likelihood of the claim succeeding and the amount of compensation that could be awarded by a Court or an Employment Tribunal.

#### **5.4.7 Power to agree financial settlements**

When considering its delegation of power the Authority must include consideration of which Committee or Office holder has the authority to negotiate a settlement and also a process by which any settlement would be sanctioned including liaison with the external auditor. It is anticipated that under these circumstances the Committee would authorise the Head of Human Resources to negotiate a settlement in consultation with the Committee and the Head of Finance or their deputy but the final decision would be made by a full meeting of the Authority.

#### **5.4.8 Access to appropriate professional / independent advice**

- (a) Conducting an investigation into allegations or serious issues involving a Relevant Officer can be demanding on the individuals involved. The Committee (and the Appeals Panel and the Authority) will have access to the Authority's Officers, but given the closeness of relationships between the Relevant Officer and other Senior Officers this can be a difficult time for those required to advise the Committee, to conduct investigations internally, or to source advice from outside the Authority.
- (b) The Authority has given the Committee the power to appoint external advisers as appropriate. Useful sources of general advice on the operation of the procedure and assistance with conducting investigations include the Local Government Association by contacting the Employers' Secretary or from the East Midlands Council or ALACE. In addition to this general advice and assistance, given the potential complexity of the issue, the Authority may choose to obtain external legal advice in consultation with the Head of Law or his/her deputy.

#### **5.4.9 Ill-health - medical advice**

In cases of capability related to sickness or where during the course of any other investigation, the ill-health of a Relevant Officer, results in their unavailability it will be important that the Committee has access to appropriate medical advice from the Authority's Occupational Health advisor (see Paragraph 2.3.2)

#### **5.4.10 Performance**

- (a) Where the issue is one of capability in terms of performance or competence, other than ill-health, the Authority will need to be in a position to establish or demonstrate the nature of the concerns. Evidence will be necessary in order to justify a further investigation.
- (b) This might come from a variety of sources, e.g. Joint Performance and Achievement Review, inspection reports, etc. As the Authority follows an established appraisal / managing performance process, this can also provide an appropriate route to establishing issues suitable for referral to the Committee.
- (c) Where the issue is breakdown of trust and confidence, the Authority will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with a Relevant Officer.

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## **6. Appointment of an Independent Investigator**

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## Procedure

The Committee will be responsible for appointing an Independent Investigator, providing the necessary facilities, paying the remuneration and providing all available information about the allegations.

The Independent Investigator should be selected from the list maintained by the National Joint Secretaries.

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## Guidance

6.1 When the Committee has made a decision to appoint an Independent Investigator, it is important that the Authority moves quickly to take this forward. This is particularly important if the Relevant Officer has been suspended. This can be assisted if the availability of potential Independent Investigators is explored at an early stage.

6.2 In accordance with the model procedure the Committee will be responsible for the appointment of the Independent Investigator, agree the terms of remuneration and working methods but for expediency the Committee may choose to delegate these decisions to an Officer subject to consultation with the Chair of the Committee.

6.3 It is in the interests of the Authority and the Relevant Officer that both sides have confidence in the independence and relevant competence of the Independent Investigator, not least to avoid, or at least minimise, argument later in the process about the quality or credibility of the investigation. To this end, it has been agreed that the National Joint Secretaries will maintain a list of potential Independent Investigators, who have been selected for their suitability and experience for this work. Independent Investigators on that list will be offered on a 'taxi-rank' basis subject to their availability within the desired timescales, and no material connections with the Authority or the Relevant Officer nor any connection to the allegations.

6.4 The Authority will approach the National Joint Secretaries and will be supplied with the top three names from the list (if in exceptional circumstances three names are not available, both local parties will agree to choose from a shorter list). If these are acceptable to the Authority, the Relevant Officer will be invited to select one of the names. The only acceptable reason for not selecting from the names supplied being conflict of interest. If an appointment is not agreed by the Relevant Officer within 14 days of the date of the names being supplied, the Authority will be at liberty to select an Investigator from the names supplied.

### 6.5 Terms of reference – allegations or issues to be investigated

- (a) When appointing an Independent Investigator they will be provided with terms of reference. The Investigator will need to be:
- aware of the precise allegation(s) or issue(s) to be investigated
  - provided with access to sources of information and people identified as relevant to the case



- aware of expectations regarding timescales and any known factors which could hinder their investigation, e.g. the availability of key people
- (b) The Committee will be responsible for agreeing this information. It will also be in a position to discuss timescales for the investigation.

## **6.6 Remuneration**

Remuneration for the Independent Investigator will be set at the Local Government Association's normal consultancy rate for external consultancy work.

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## **7. The Independent investigation**

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### **Procedure**

The ACAS Code of Practice on Discipline and Grievance requires there to be an investigation to establish the facts of the case before proceeding to the disciplinary hearing. The JNC believes that, for Relevant Officers, this should be carried out by an Independent Investigator. In practice it is for the Independent Investigator to determine the process they will follow. However, the JNC's preferred process is 'Evidence Collection and Investigation'. Alternatively the Independent Investigator may hear the case including evidence provided by witnesses. Irrespective of the manner in which the Independent Investigator investigates the case on completion of their investigation, the Independent Investigator must prepare a report with recommendations and rationale for submission to the IDC. Once appointed it will be the responsibility of the Independent Investigator to investigate the issue/allegation and to prepare a report stating in his/her opinion whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and recommending any disciplinary action (if any is appropriate) or range of actions which appear to him/her to be appropriate for the Authority to take against the Relevant Officer.

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### **Guidance**

#### **7.1 Resources**

7.1.1 The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, the Independent Investigator could decide to delegate some of the investigation work to an assistant. This should be agreed with the Committee and the Relevant Officer should be informed. If the work is delegated to someone else outside of the Authority this might also require further discussion on any difference in the terms of remuneration for the assistant to the Independent Investigator.

#### **7.2 Working arrangements**

7.2.1 Once appointed it will be the responsibility of the Independent Investigator to investigate the issue/allegation and to prepare a report:

- stating in his/her opinion whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or other issue under investigation; and
- to recommend any disciplinary action (if any is appropriate) or range of actions which appear to him/her to be appropriate for the Authority to take against the Relevant Officer.

7.2.2 The methodology adopted by the Independent Investigator should be confirmed with the parties. However, the JNC believes that the Independent Investigator should operate on the basis either of a process of evidence gathering, hearing submissions etc or a formal hearing, at which both parties will have the usual opportunities to present evidence, cross-examine witnesses etc. Both parties can be represented by an individual of their choice (the Relevant Officer's representation should be obtained at his/her own expense). While the recommended procedure allows for either option, on balance the JNC's preference is for the 'evidence collection and investigation' model, but the decision on this remains with the Independent Investigator.

### **7.3 Suspension .**

7.3.1 The Independent Investigator does not have the power to suspend a Relevant Officer, but if the Relevant Officer has been suspended for two months, the Committee is required to review the suspension (see Paragraph 3.7).

### **7.4 Confidential contact at the Authority**

7.4.1 Although the Independent Investigator has a degree of independence, it is advisable to agree some conditions for his/her investigation in order that disruption to the Authority's work is kept to a minimum at what can be a difficult time. The Independent Investigator will also require agreed contact and reporting arrangements with the parties. The Committee will therefore designate an Officer to administer the arrangements.

7.4.2 During the investigation the Independent Investigator will as a matter of principle, make every attempt to ensure the appropriate confidentiality of any information obtained and discussed.

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## **8. Receipt and consideration of the Independent Investigator's report by the Committee**

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### **Procedure**

The Committee will consider the report of the Independent Investigator, and also give the Relevant Officer the opportunity to state his/her case and, to question witnesses, where relevant, before making a decision.

Having considered any other associated factors the Committee may:

- Take no further action
- Recommend informal resolution or other appropriate procedures
- Refer back to the Independent Investigator for further investigation and report
- Take disciplinary action against the Relevant Officer short of dismissal

- Propose dismissal of the Relevant Officer to a meeting of the Authority.
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## **Guidance**

### **8.1 Report of the Independent Investigator**

8.1.1 The report of the Independent Investigator is made to the Committee which has delegated powers from the Authority to receive the report and take a decision on the outcome. Unless the Relevant Officer is exonerated by the report then at this stage the Relevant Officer should be given the opportunity to state his/her case before the Committee makes its decision.

8.1.2 This may be done in one of two ways, according to the process followed by the Independent Investigator: Report of the Independent Investigator.

- If the Independent Investigator has proceeded by way of an evidence- gathering process, the Committee should hold a hearing, giving both the Independent Investigator and the Relevant Officer the right to call and question each other's witnesses
- If the Independent Investigator has held a full hearing, the Committee may choose to limit their meeting to a consideration of the Independent Investigator's report. However, the Committee will need to consider whether to call witnesses for clarification, bearing in mind the ACAS Code of Practice requirement that the employee should be given a reasonable opportunity to call relevant witnesses. The Independent Investigator and the Relevant Officer should both attend the meeting and be given an opportunity to summarise their case.

Under both options the Committee hearing should be conducted in accordance with the ACAS Code of Practice.

### **8.2 New material evidence**

8.2.1 Where there is, at this stage, new evidence produced which is material to the allegation/issue and may alter the outcome, the Committee may:

- take this into account in making their decision or
- request that the Independent Investigator undertake some further investigation and incorporate the impact of the new evidence into an amended report

### **8.3 Recommendations by the Independent Investigator – outcomes or options**

8.3.1 The Independent Investigator is expected to recommend any disciplinary action that appears to be appropriate. At this stage clarity is to be welcomed and a clear reasoned recommendation should be given. However, it could be that there is not one obvious action and it may be that the Independent Investigator recommends a range of alternative actions.

8.3.2 Whilst the Independent Investigator's role is to make recommendations on disciplinary action, he/she may wish to comment on potential options for the way forward following the investigation process.

## **8.4 Decision by the Committee**

- 8.4.1 The Committee should take its decision on the basis of the Independent Investigator's report, and its own findings. It is open to the Committee to impose a lesser or greater sanction than that recommended and it is obviously important for later stages of the procedure that the reasons for doing so are recorded.

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## **9. Action short of dismissal**

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### **Procedure**

The Committee may agree to impose no sanction, or to take action short of dismissal, in which case the Committee will impose an appropriate penalty / take other appropriate action.

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### **Guidance**

- 9.1 Where a Relevant Officer is found to have no case to answer, appropriate communication should be prepared with the Relevant Officer to ensure as far as possible that there is no damage to their reputation.
- 9.2 Where the decision taken by the Committee is action short of dismissal, the action will be taken by the Committee itself. There is no requirement to seek confirmation by a meeting of the Authority. The constitution of the Committee includes the delegated power to take disciplinary action in these circumstances.
- 9.3 The Relevant Officer has a right of appeal against the decision (see Paragraph 11).
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## **10. Where dismissal is proposed**

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### **Procedure**

#### **Proposal to dismiss on the grounds of misconduct and for other reasons such as capability or some other substantial reason**

The National Park Authority operates a committee system, and therefore the Committee will inform the Relevant Officer of the decision and put that proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material. This is not a full re-hearing and will not involve the calling of witnesses

#### **The role of the Independent Panel**

Where the Committee is proposing dismissal, this proposal needs to go before a meeting of the Independent Panel.

Both parties should be present or represented (the Committee might be represented by its Chair or other nominated person at the meeting). The Panel should receive any oral representations from the Relevant Officer, in which case it should invite any response on behalf of the Committee to the points made, and may ask questions of either party. The Independent Panel should review the decision and prepare a report for a meeting of the Authority. This report should contain a clear rationale if the Panel disagrees with the recommendation to dismiss.

### **The role of the Authority**

A meeting of the Authority will consider the proposal that the Relevant Officer should be dismissed, and must take into account:

- Any advice, views or recommendations of the Independent Panel
- The conclusions of the investigations into the proposed dismissal
- Any representations from the Relevant Officer
- The Relevant Officer will have the opportunity to appear before the Authority and put his or her case to the Authority before a decision is taken.

### **Redundancy, Permanent Ill-Health and the expiry of Fixed Term Contracts**

Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract where there has been no commitment to renew it, do not require the involvement of an Independent Investigator or Independent Panel.

However, the Authority will follow appropriate and fair procedures in these cases and has mechanisms in place, including appropriate delegated authorities, to manage such eventualities. In addition, dismissals for all reasons including those set out in this paragraph must be approved by the Authority itself.

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## **Guidance**

10.1 Where the Committee proposes dismissal, the 2005 Regulations require that the Authority must approve the dismissal before notice of dismissal is issued.

### **10.2 The role of the Independent Panel**

10.2.1 The Independent Panel must be appointed at least 20 days before the meeting of the Authority at which the recommendation for dismissal is to be considered.

10.2.2 It is likely that Independent Panel members will be unfamiliar with their role under the 2005 Regulations and with matters relating to the working environment of the Relevant Officer. Accordingly, it is important for Independent Panel members to be offered appropriate training for the role the Panel is to fulfil.

10.2.3 The role of the Independent Panel is to offer any advice, views or recommendations it may have to the Authority on the proposal for dismissal. The Panel will receive the Committee proposal and the reasons in support of the proposal, the report of the Independent Investigator and any oral and/or written representations from the Relevant Officer. The Independent Investigator may be invited to attend to provide clarification if required. The Panel will be at liberty to ask questions of either party.

10.2.4 The Panel should then formulate any advice, views or recommendations it wishes to present to the Authority. If the Panel is recommending any course of action other than that the Authority should approve the dismissal, then it should give clear reasons for its point of view.

### **10.3 The role of the Authority**

10.3.1 The 2005 Regulations require that, where there is a proposal to dismiss a Relevant Officer, the Authority must approve the dismissal before notice of dismissal is issued. The Authority must therefore consider the proposal and reach a decision before the Relevant Officer can be dismissed.

10.3.2 Given the thoroughness and independence of the previous stages, in particular, the investigation of the Independent Investigator (where applicable), it will not be appropriate to undertake a full re-hearing of the case. Instead, consideration by the Authority will take the form of a review of the case and the proposal to dismiss, and any advice, views or recommendations of the Independent Panel.

10.3.3 The Relevant Officer will have the opportunity to attend and be accompanied by the Relevant Officer's Representative and to put forward his/her case before a decision is reached.

10.3.4 The Authority is at liberty to reject the proposal to dismiss. It can then decide on the appropriate course of action which could include substituting a lesser sanction or, in a case of misconduct or other reasons such as capability or some other substantial reason, referring it back to the Committee to determine that sanction.

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## **11. Appeals**

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### **Procedure**

#### **Appeals against dismissal**

Where the Committee has made a proposal to dismiss; the hearing by the Authority will also fulfil the appeal function.

#### **Appeals against action short of dismissal**

If the Committee takes action short of dismissal, the Relevant Officer may appeal to the Appeals Panel. The Appeals Panel will consider the report of the Independent Investigator and any other relevant information considered by the Committee, e.g. new information, outcome of any further

investigation, etc. The Relevant Officer will have the opportunity to appear at the meeting and state his/her case.

The Appeals Panel will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.

The decision of the Appeals Panel will be final.

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## **Guidance**

### **11.1 Appeals against dismissal**

11.1.1 Discipline and Grievance – ACAS Code of Practice requires that an employee who has been dismissed is provided the opportunity to appeal against the decision.

11.1.2 As the Standing Orders Regulations require that the Authority approves the dismissal before notice of dismissal is issued, there may be some concerns about the ability to offer a fair appeal if the whole Authority was already familiar with the issues and had already taken the decision to dismiss. The model procedure therefore envisages that the Authority meeting fulfils the requirement for an appeal. Before the Authority takes a decision on the recommendation to dismiss a Relevant Officer it will take representations from a Relevant Officer. Those representations will constitute the appeals process.

### **11.2 Appeals against action short of dismissal**

11.2.1 Appeals against actions short of dismissal will be heard by the Appeals Panel. The appeal hearing will take the form of a review of the case and the decision that was taken by the Committee.

11.2.2 This process will follow the procedure that the Authority applies generally to its other employees.