

SCHEDULE TWO: PROPOSED AMENDMENTS

OFFICER EMPLOYMENT PROCEDURE RULES

6. Disciplinary action

(1) **Suspension of Head of Paid Service, Section 151 Chief Finance Officer and Monitoring Officer**

~~The Head of Paid Service, Monitoring Officer and Chief Finance Officer ("the relevant officer(s)") may be~~ suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. ~~The Appointment Committee and Appeals Panel will make any decision to suspend the relevant officer (s) and/or authorise any investigation in accordance with the appropriate JNC Conditions of Service Handbook.~~

Comment [ES1]: This changes the current procedure from a decision of the Leader to make it consistent with the requirements in the JNC Handbook and to avoid any suggestion of bias or lack of transparency.

(2) **Disciplinary action against the Head of Paid Service, Monitoring Officer and Section 151 Chief Finance Officer**

No other disciplinary action may be taken in respect of any of the officers described in (1) above except in accordance with a recommendation in a report made by a disciplinary panel under the Local Authorities (Standing Orders) (England) Regulations 2001 as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. The Disciplinary and Dismissal Procedure for Head of Paid Service, Monitoring Officer and Section 151 Chief Finance Officer is set out as an appendix to these Officer Employment Procedure Rules. The procedures in the relevant JNC Conditions of Service Handbook must also be followed to the extent practicable.

Formatted: Not Highlight

(3) **Disciplinary action against officers below deputy chief officer.**

Disciplinary action in respect of officers below the level of Deputy Chief Officer will be taken by the Chief Executive or their nominated senior officer. Councillors will not be involved in the disciplinary action against any officer below ~~Head of Service~~ Deputy Chief Officer level except where such involvement is necessary for any investigation or inquiry into alleged misconduct.

7. Dismissal

(1) **Head of Paid Service**

(a) Subject to 8(2) the full Council must approve the dismissal of the Head of Paid Service before notice of dismissal is given following the recommendation of dismissal by ~~a committee or sub-committee of the Council~~ the Appointment and Appeals Panel. ~~That committee or sub-committee must include at least one member of the Executive.~~ The requirements in the relevant JNC Conditions of Service Handbook, summarised in Appendix 1, must also be followed. In this Constitution, to the extent that there is any conflict or ambiguity between such Handbook and the other contents of this Appendix, the latter will prevail.

(b) Notice of the dismissal of the Head of Paid Service must not be given by or on behalf of the committee or sub-committee Appointment and Appeals Panel ("the Committee Panel") until -

- (i) the Committee Panel has notified the Proper Officer that they wish to dismiss the Head of Paid Service and of any particulars which the Committee Panel considers are relevant to the dismissal;
- (ii) the Proper Officer has notified every member of the Executive
 - a) that the Committee Panel wishes to dismiss the Head of Paid Service and of any other particulars relevant to the dismissal which the Committee Panel has notified to the Proper Officer; and
 - (b) of the period within which any objection to the dismissal is to be made, by the Executive Leader on behalf of the Executive to the Proper Officer; and
- (iii) either -
 - (a) the Executive Leader has, within the period specified in the notice under (1)(b)(ii) above, notified the Committee Panel that neither (s)he nor any other member of the Executive has any objection to the dismissal;
 - (b) the Proper Officer has notified the Committee Panel that no objection was received by him/her within that period from the Executive Leader; or
 - (c) the Committee Panel is satisfied that any objection from the Executive Leader within that period is not material or well founded.

(2) **Directors and Heads of Service**

- (a) A Committee, sub-committee or another officer may discharge the function of the dismissal of a director or head of service. If a committee or sub-committee is discharging the function that committee or sub-committee must include at least one member of the Executive.
- (b) Notice of the dismissal of a director or head of service must not be given by a committee, sub-committee or officer ("the Committee") until the procedure set out in 7(1)(b)(i), (ii) and (iii) above has been followed.

(3) **Officers below Head of Service**

Dismissal of officers below head of service (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and shall not be made by Councillors.

8. **Appeals**

- (1) Nothing set out above shall prevent a councillor from serving as a member of any committee or sub-committee established by the Council to consider an appeal by -
 - (a) another person against any decision relating to the appointment of that person as an officer of the Council; or

-
-
- (b) an officer of the Council other than the Head of Paid Service against any decision relating to the dismissal or, or, taking disciplinary action against, that officer.
- (2) Prior to a meeting of full Council to approve the dismissal of the Head of Paid Service a ~~committee-panel~~ to consider any appeal by the Head of Paid Service must be established. The Members appointed to that appeal ~~committee-panel~~ must not attend or participate in that part of the Council meeting which considers the dismissal of the Head of Paid Service.

Appendix to the Officer Employment Procedure Rules

Disciplinary and Dismissal Procedure for Head of Paid Service, Monitoring Officer and Section 151 Chief Finance Officer

Employment Committee on 10 August 2015 adopted the procedure, as provided for in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, as follows:

1. Where an allegation of potential misconduct is made against the Head of Paid Service, Monitoring Officer or Chief Finance Officer (the 'protected officers'), then the Head of Paid Service, Leader of the Council, in conjunction with the Corporate Director of HR People (and Monitoring Officer or Section 151 Chief Finance Officer where an allegation relates to the Head of Paid Service), where the allegation is not related to them will consider whether the issues require investigation and, where this is the case, determine the most appropriate person to conduct the investigatory process.
2. This will ordinarily be an external, independent investigator, with the relevant background, skill set and experience to conduct investigations of this nature. The independent investigator will, to the extent practicable, undertake their investigation in accordance with the ACAS Code of Practice.
3. The Leader of the Council, Head of Paid Service (or Monitoring Officer or Section 151 Chief Finance Officer where an allegation relates to the Head of Paid Service) (appropriate) and the Corporate Director of HR People, will consider whether suspension is appropriate or whether there are any other suitable alternative ways of managing the situation. Where suspension is deemed appropriate, the Corporate Director of HR Place will ensure that agreed-normal Council suspension protocols are followed.
4. The findings from the investigation will be presented to a Panel established in accordance with the relevant JNC Conditions of Service Handbook; this Panel must consist of a least 2 independent persons, who must be drawn from those appointed under section 28(7) of the Localism Act 2011. In addition, the Panel will comprise of Elected Members who will ordinarily be members of the Employment Committee and will be politically balanced in line with the rules of proportionality. The Panel will be advised by the Corporate Director of HR People (or their representative).
5. The 'protected officers' are entitled to be given an opportunity to make personal representations to the Panel and have the right to be accompanied by their Trade Union representative or a work colleague if they so wish.

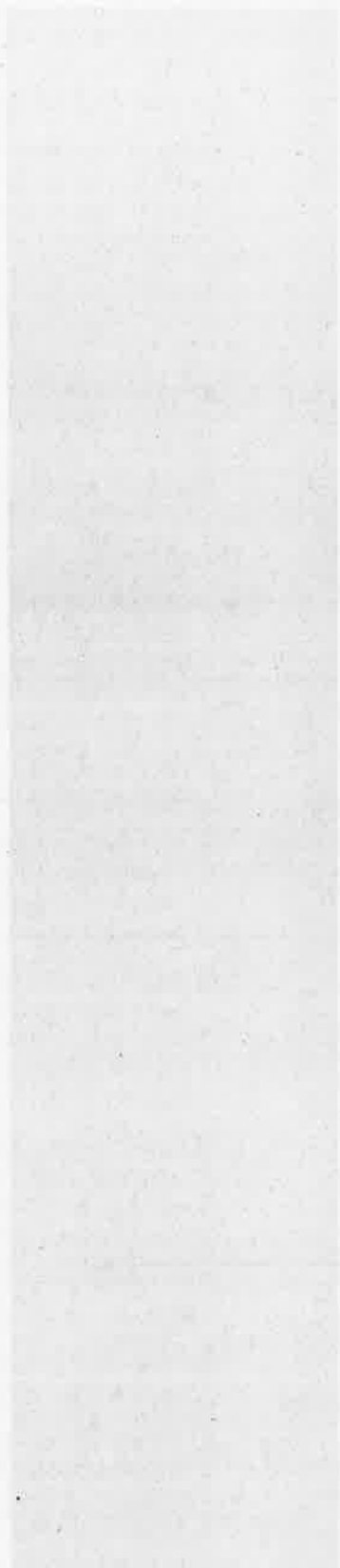
Comment (ES2): the Leader's role has been removed here on the basis that employment matters should not be an executive function and since the Leader or Deputy is likely to be involved in any decisions at a later stage.

6. The Panel will consider the conclusions of the investigation and any representations from the protected officer concerned.
7. Where it is considered by the Panel that no action or action short of dismissal should take place, then the Panel can progress in confirming the outcome of the Panel meeting and there is no requirement to put the matter forward for an authority vote.

Appendix to the Officer
Employment Procedure Rules

8. Where the Panel determines that action short of dismissal is the appropriate sanction, the protected officer has the right of appeal to a politically-balanced Appeals Committee ordinarily made up of members of the Employment Committee, who were not involved in the Panel meeting. The appeal hearing will take the form of a review of the case and the decision that was taken by the Panel. The protected officer will be invited to make their verbal/written representations to the Appeals Committee for consideration. Where the protected officer chooses to present verbally, representatives from the Panel will also be in attendance. The Appeals Committee will be advised by the Corporate Director of HR People (or their representative). All relevant parties will be provided with the relevant documentation in advance of the Appeals Committee.
9. Where the proposal is to dismiss, the Executive Objections Procedure will be followed prior to the matter going forward to full Council.
10. On receipt of any objections, it is for the Panel to decide whether they are material and well-founded. If they are, then the Panel will need to consider the effect of the objection and act accordingly. For example, this may require further investigation.
11. Where there are no objections or any objection is deemed as not material or well-founded, the matter will then be considered at full Council, who will vote at a meeting on whether to approve the proposal to dismiss. There must be an interlude of at least 20 working days between the full Council meeting and the date of the original Panel meeting.
12. At their meeting, full Council will consider the original investigation report and the recommendations of the Panel, along with any verbal/written representation from the protected officer. Where the protected officer chooses to present verbally, representatives from the Panel will also be in attendance. All relevant parties will be provided with the relevant documentation in advance of full Council.
13. The decision of Council will be by way of a majority vote and will be final.
14. Where a decision to dismiss is approved by Council, then the protected officer has no further right of appeal.
15. It is in the interests of all parties that the process should be conducted expeditiously, but fairly and that any delays in the procedure are avoided, wherever possible.

16. This process will also be adopted in cases where there are issues in relation to capability, which are not resolved through the provision of additional guidance, training, development and support.



'Protected Officers' Disciplinary and Dismissal Procedure Flowchart

The following flowchart provides a summary of the procedure:

Initial Action

The Leader of the Council, Head of Paid Service (or Monitoring Officer or Section 151 Chief Finance Officer where allegations relate to the Head of Paid Service appropriate) and the Corporate Director of HR People appoints an independent investigator

The independent investigator undertakes an investigation in line with ACAS Code of Practice and produces a report with detailed findings

Panel Hearing

A Panel, comprising of 2 independent persons, together with Elected Members who will ordinarily be members of the Employment Committee and the Corporate Director of PeopleHR (or their representative in an advisory capacity), hears the case, including representations from the protected officer

Any recommendation on no action or action short of dismissal can be confirmed by the Panel without any referral to full Council.

Appeals Committee

The protected officer has a right of appeal against a sanction of action short of dismissal to an Appeals Committee ordinarily made-up of Employment Committee members who were not involved in the Panel meeting. The

Trafford Council

Appeals Committee will review the case and the decision made, together with verbal/written representation from the protected officer and the Panel.



Appendix to the Officer
Employment Procedure Rules

Executive Objections Procedure

Where the proposal is to dismiss, the Executive Objections Procedure will be followed before the proposal being considered by Council

Under the Executive Objections Procedure, members of the Executive have a chance to object to the proposed dismissal. If there are no objections or it is deemed that any objection is not material or well-founded, then the proposal to dismiss can proceed.

It is for the Panel to decide whether any objections are material and well-founded. If they are, then the Panel will need to consider the effect of the objection and act accordingly. For example, this may require further investigation.

Full Council

Where the proposal is to dismiss, full Council considers all written documentation relating to the case for dismissal, including the advice, views and recommendation from the Panel, together with verbal/written representation from the protected officer and the Panel. An interlude is required of at least 20 working days between the original Panel meeting and the full Council meeting.

Council votes on whether or not to dismiss (majority vote) and their decision will be final.

