



**To: All Members of the Urgency Committee
(and any other Members who may wish to attend)**



**J. Henshaw
LLB (Hons)
Clerk to the Authority**

Tel: 0151 296 4000
Extn: 4113 Kelly Kellaway

Your ref:

Our ref HP/DM

Date: 3rd February 2020

Dear Sir/Madam,

You are invited to attend a meeting of the **URGENCY COMMITTEE** to be held at **10.30 am** on **TUESDAY, 4TH FEBRUARY, 2020** in the Members Room - Fire Service Headquarters.

Yours faithfully,

Clerk to the Authority

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MERSEYSIDE FIRE AND RESCUE AUTHORITY

URGENCY COMMITTEE

4 FEBRUARY 2020

AGENDA

Members

Cllr Del Arnall
Cllr Les Byrom (Chair)
Cllr Brian Kenny
Cllr Lisa Preston
Cllr James Roberts

1. Preliminary Matters

Members are requested to consider the identification of:

- a) declarations of interest by individual Members in relation to any item of business on the Agenda
- b) any additional items of business which the Chair has determined should be considered as matters of urgency; and
- c) items of business which may require the exclusion of the press and public during consideration thereof because of the possibility of the disclosure of exempt information.

2. Authority Statutory/ Relevant Officers Disciplinary Procedure (Pages 5 - 28)

To consider Report CFO/009/20 of the Chief Fire Officer, concerning revisions to the Authority's Statutory Officers Disciplinary Procedure in order to reflect The Local Authority (Standing Order) (England) (Amendment) Regulations 2015 Considerations; and associated changes to the Constitution in order to establish the required procedural governance. The report and amended procedure will also address any outstanding actions from report CFO/042/15 (Appendix A).

If any Members have queries, comments or require additional information relating to any item on the agenda please contact Committee Services and we will endeavour to provide the information you require for the meeting. Of course this does not affect the right of any Member to raise questions in the meeting itself but it may assist Members in their consideration of an item if additional information is available.

Refreshments

Any Members attending on Authority business straight from work or for long periods of time, and require a sandwich, please contact Democratic Services, prior to your arrival, for arrangements to be made.

MERSEYSIDE FIRE & RESCUE AUTHORITY			
MEETING OF THE:	URGENCY COMMITTEE		
DATE:	4 TH FEBRUARY 2020	REPORT NO:	CFO/009/20
PRESENTING OFFICER	RIA GROVES		
RESPONSIBLE OFFICER:	RIA GROVES	REPORT AUTHOR:	RIA GROVES
OFFICERS CONSULTED:	MIKE PILKINGTON		
TITLE OF REPORT:	AUTHORITY'S STATUTORY/RELEVANT OFFICERS DISCIPLINARY PROCEDURE		

APPENDICES:	APPENDIX A:	CFO/042/15
	APPENDIX B:	TERMS OF REFERENCE <i>(A FULL COPY OF THE CONSTITUTION WILL BE AVAILABLE FOR MEMEBERS TO REVIEW AT THE MEETING)</i>
	APPENDIX C:	STATUTORY OFFICERS DISCIPLINARY PROCEDURE

Purpose of Report

1. To request that Members, approve revisions to the Authority's Statutory Officers Disciplinary Procedure in order to reflect The Local Authority (Standing Order) (England) (Amendment) Regulations 2015 Considerations; and associated changes to the Constitution in order to establish the required procedural governance. The report and amended procedure will also address any outstanding actions from report CFO/042/15 (Appendix A).

Recommendation

2. That Members:
 - (a) Approve revisions to the Authority's Constitution in order to extend the terms of reference of the Audit Committee to include its role as Investigation and Discipline Committee (IDC) (Appendix B).
 - (b) Approve the revised Statutory Officers Disciplinary Procedure (Appendix C)
 - (c) Request that the Monitoring Officer/Acting Monitoring Officer writes to the Independent Member to invite them to become part of the Independent Panel and if accepted note that this would result in them being omitted from the IDC.
 - (d) Approve the establishment and make up of an Independent Panel as detailed in the report.

- (e) Request that the Monitoring Officer/Acting Monitoring Officer writes to Local Authority colleagues in order to establish a pool of Independent Persons who could be utilised to make up the Independent Panel if required.

Introduction and Background

3. On the 26th May 2015 the Authority approved the incorporation of The Local Authorities (Standing Orders) Regulations (England) (Amendment) Regulations 2015 ('2015 Regulations') as far as possible as a matter of good practice as a result of paper CFO/042/15. (Appendix A)
4. Since the implementation of the new 2015 Regulations further guidance has been issued in the form of a Model Disciplinary Procedure which address the requirements of the 2015 Regulations. The Model Disciplinary Procedure, while similar to the 2015 Regulations are not directly applicable to fire and rescue authorities however it was considered appropriate that the Authority's disciplinary procedure be comparable to those across the sector for Statutory Officers as the Model Procedure for Chief Executives has been adopted across England.
5. Subsequently the processes for this Authority have been reviewed and this paper now proposes revisions to enable procedures comparable to those across England in adherence with the 2015 Regulations to be adopted.
6. This report and the revised procedure (Appendix C) provides procedural clarity should a formal complaint be made against one of the Authority's Statutory Officers.

Proposed Changes - AUDIT COMMITTEE

7. It is recommended that the Audit Committee acts as the IDC and the Terms of Reference for the Committee are amended to include the following additional terms:

15.3 Discipline Procedures for Statutory & Relevant Officers

- (a) To act as Investigating and Disciplinary Committee where an allegation is made against the Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer, Monitoring Officer or Treasurer in line with the Authority's policy for Discipline Procedures for Statutory Officers.
- (b) To determine whether any allegation of misconduct by a statutory / relevant officer should be investigated by an independent investigator;
- (c) To determine whether the statutory / relevant officer subject to the allegation should be suspended while the investigation is conducted;
- (d) To appoint the independent investigator subject to the involvement of the statutory / relevant officer;

- (e) Appoint Independent Members to the Independent Panel.
 - (f) To consider the outcome of any resultant investigation and representations from the statutory / relevant Officer and either:
 - (i) determine there is no case to answer;
 - (ii) determine a sanction short of dismissal; or
 - (iii) recommend dismissal to the full Authority
8. For ease of reference a full amended Terms of Reference are set in Appendix B to this report.

INDEPENDENT PANEL

- 9. Members will recall that (Appendix A) further to the adoption of the 2015 Regulations by the Authority the dismissal of Statutory Officers must now be taken by the full Authority. Prior to making any such decision the Authority must invite at least two Independent Persons to be members of an Independent Panel for the purposes of dealing with disciplinary action against any of the Statutory Officers and to take into consideration any recommendation of the Panel.
- 10. The appointment of the Independent Persons must be made at least 20 working days before the meeting of the Authority is convened to consider whether or not to approve a proposal to dismiss any of the Statutory Officers.
- 11. It is recommended that the Independent Panel should be established comprising of 3 Independent Persons. Further clarification on the guidance was provided in respect of the Independent Panel and as such the Independent Panel comprising solely of independent persons was recommended so that independent scrutiny can be attained before the relevant authority takes the final decision on a proposal to dismiss. The proposal is therefore to follow that approach as this emphasises the independence of the Independent Panel while still ensuring Member involvement at every other stage of the process.
- 12. If the establishment of the Independent Panel is approved to ensure legal and procedural efficacy, authority is sought from Members for the Monitoring Officer or their equivalent authorised deputy to invite the current Independent Persons to serve on the Independent Panel. The Authority currently have one Independent Person.
- 13. If established the Authority will be required to co-opt 2 further Independent Persons to the Independent Panel.
- 14. To ensure there is no undue delay in appointments, procedure and practice in dealing with disciplinary matters, the 2015 Regulations do permit the use, in priority order, of other Independent Persons. The order is as follows:

- (1) An Independent Person who has been appointed by the Authority and who is a local government elector;
 - (2) Any other Independent Person who has been appointed by the Authority, and
 - (3). Any Independent Person who has been appointed by another Authority or Authorities
15. In accordance with the 2015 Regulations invitations can be extended to other Independent Persons of other local authorities across Merseyside as an approach to pool Independent Persons as and when required. It is recommended that the Monitoring Officer or their equivalent authorised deputy be authorised to make these invitations to ensure there are no undue delays in any disciplinary matters in the event the Authority does not have the required 2 Independent Persons appointed at any given time.
16. In this event it is proposed that the Audit Committee, acting as the IDC be authorised to formally appoint such Independent Person(s) to the Independent Panel, as required.
17. Any remuneration, allowances or fees paid by the Authority to an Independent Person appointed and co-opted to the Independent Panel pursuant to the Regulations would be in accordance with the Members Scheme of Allowances.
18. It is proposed that the same remuneration, allowances or fees are paid to an Independent Person who has been appointed by another Authority who is invited to the Independent Panel when convened as necessary as those appointed directly by the Authority.
19. At the Authority meeting, the Members must take into account any advice, views or recommendations of the Independent Panel as well as the conclusions of any investigation and any representations made by the relevant officer concerned.
20. A new draft procedure has been created by the People and Organisational Development department for the Statutory Officers Disciplinary Procedure taking into account the new proposed process contained in Appendix C.
21. It is recommended that this revised procedure is adopted by the Authority.
22. Standing Order 36 of the Constitution (Disciplinary Action) applies the disciplinary procedures to the Authority's three statutory posts (Chief Fire Officer, Monitoring Officer and the Treasurer) as well as the Deputy Chief Fire Officer defined as "the Relevant Officer". It is also proposed to amend Standing Order 36 to extend the definition of "Relevant Officer" to include the Assistant Chief Fire Officer (role re-introduced in 2019) to be consistent with the agreed Principal Officer posts and management structure identified within Article 3 of the Constitution in addition to the necessary draft amendments to reflect the proposed change in the disciplinary procedure contained in Appendix B.

Equality and Diversity Implications

23. Any investigation would take place with Equality and Diversity in full consideration.

Staff Implications

24. If the recommendations are approved the new procedure would apply to all Principle and Statutory Officers.

Legal Implications

25. The recommendations address the implementation of the 2015 Regulations and nationally approved guidance as detailed within the report.
26. The proposed procedure has been nationally agreed and endorsed to mitigate the risk to the Authority within an employment tribunal however this does not remove the risk altogether with a hearing of the full Authority to determine whether to dismiss a Relevant Officer is also in effect a right of appeal. This is on the basis that the relevant officer has previously had the opportunity to put their case to the Investigating and Disciplinary Committee and the Independent Panel.
27. Standing Order 36 would require amendment as proposed in Appendix B if the recommendations are approved.

Financial Implications & Value for Money

28. If the recommendations are approved and in the event an independent investigator was appointed the costs associated would be at the approved NJC consultancy hourly rate.
29. There will be minimal costs associated with the appointment of further independent persons which would follow current allowances of £50 per meeting attended and travel expenses.
30. These costs can be contained within the Democratic Services budget

Risk Management, Health & Safety, and Environmental Implications

31. The process outlined in this report and recommended for adoption are compliant with the 2015 Regulations and nationally agreed Joint Negotiating Committee for Local Authority Chief Executives and is being applied to the two other relevant statutory officers protected by the 2015 Regulations as well as all Principal Officers. This mitigates the risk to the Authority from a procedural perspective in terms of dealing with disciplinary issues involving statutory officers.

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32. Compliance with the 2015 Regulations and subsequent guidance will give confidence to the communities of Merseyside that the full Authority is involved in any disciplinary issue regarding statutory officers

BACKGROUND PAPERS

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

The Joint Negotiating Committee for Chief Executives of Local Authorities Model Disciplinary Procedures and Guidance

GLOSSARY OF TERMS

MERSEYSIDE FIRE AND RESCUE AUTHORITY			
MEETING OF THE:	AUTHORITY		
DATE:	26 MAY 2015	REPORT NO:	CFO/042/15
PRESENTING OFFICER	MONITORING OFFICER		
RESPONSIBLE OFFICER:	JANET HENSHAW	REPORT AUTHOR:	JANET HENSHAW
OFFICERS CONSULTED:	CHIEF FIRE OFFICER		
TITLE OF REPORT:	THE LOCAL AUTHORITIES (STANDING ORDERS) REGULATIONS (ENGLAND) (AMENDMENT) REGULATION 2015: STATUTORY OFFICER DISCIPLINARY PROCEDURES		

APPENDICES:	APPENDIX A: LETTER TO CHIEF EXECUTIVES FROM DCLG DATED 25TH MARCH 2015 APPENDIX B: THE LOCAL AUTHORITIES (STANDING ORDERS) REGULATIONS (ENGLAND) (AMENDMENT) REGULATIONS 2015
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Purpose of Report

1. To inform Members about new Regulations in force relating to disciplinary procedures for statutory officers.

Recommendation

2. That Members;
 - a. Approve compliance with the Local Authorities (Standing Orders) Regulations (England) (Amendment) Regulations 2015 as far as possible as a matter of good practice
 - b. Approve the establishment of an Independent Panel with the appointment of a further Independent Person as described in paragraphs 8 and 14 below
 - c. Request the Director of People and Organisational Development to draft a new Procedure for Disciplinary Processes for Statutory Officers.
 - d. Request that the Monitoring Officer present a further report later in the year should any revisions be necessary in light of emerging good practice

Introduction and Background

3. In February 2013 and March 2014 proposals were put forward by the Department for Communities and Local Government (DCLG) to remove the requirements for a designated independent person (DIP) to be appointed to investigate allegations of misconduct for the Head of Paid Service (HoPS), Finance Officer (FO, often referred to as Section 151 officer) and Monitoring Officer (MO).
4. DCLG believes that through the earlier consultation processes there was consistent support for the removal of the DIP procedure as this was seen as bureaucratic and costly. New Regulations have been published which remove the requirement for certain Authorities to have such a process in place.
5. DCLG has laid Regulations in parliament, which provide for the new arrangements for taking disciplinary action against the specified statutory officers to be given effect by Authorities modifying their standing orders no later than at the first ordinary council meeting held after 7th May 2015 elections. To achieve this, the Regulations came into force on 11th May 2015.
6. Any decision to dismiss one of the above officers must now be taken by the full Authority, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.
7. Authorities are now required to invite independent persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to form an independent panel. An independent panel will be formed if two or more independent persons accept the invitations, and Authorities should appoint 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,
 - b any other independent person who has been appointed by the Authority, and
 - c an independent person who has been appointed by another Authority or Authorities.
8. The DIP process is referred to in the national terms and conditions of chief executives (usually the HoPS) and the FO and MO contracts usually cross refer to this aspect of the chief executive terms and conditions. Due to this, in many cases the DIP process is often incorporated into personal contracts and will need to be amended accordingly.
9. These Regulations do not specifically apply to Fire and Rescue Authorities however there are elements of confusion aligned to this in that the letter from DCLG (attached as Appendix A to this report) refers to the application of the Regulations to "Principal Councils" whilst the Regulations themselves (at Appendix B) apply to "Local Authorities" and "Relevant Authorities" and there are different definitions for each – none of which, in these Regulations, includes Fire and Rescue Authorities.

10. However, the Local Government and Housing Act 1989, which provides for the mandatory creation of three statutory officer posts, does apply to Fire and Rescue Authorities.
11. There are other elements of inconsistency or lack of clarity in the Regulations and the accompanying guidance in that;
 - a The Regulations refer to cases of dismissal only, whereas the guidance refers to disciplinary action. The DIP process incorporated any disciplinary action that was likely to be greater than an informal warning. It is thought that the intention of the Regulations is for an independent panel to be required only in the cases of potential dismissal
 - b There is no requirement for the independent panel to make a recommendation of sanction(s) to the Authority and so varying practice may arise,
 - c There is no restriction on the option for council to apply a more severe sanction than may be recommended by an independent panel (currently it cannot exceed the DIP recommendation).
 - d Panel members are appointed for the purposes of the member code of conduct under section 28 of the Localism Act, so they may well not have the relevant expertise to carry out an investigation and report. The Regulations are silent on who carries out an investigation or how it is commissioned and so these are issues that Authorities will have to determine. As the investigation is a key part of a disciplinary process, a proper and thorough investigation will still be required.
12. Despite these inconsistencies and confusion about the application of the Regulations, it is proposed that Merseyside Fire and Rescue Authority accepts the Regulations as far as possible as good practice. The only other option would be to retain the current procedures (involving a DIP) which would mean that the Authority would have inconsistent practices.
13. It is further proposed that an Independent Panel be formed to be convened as and when required and other Local Authorities in Merseyside contacted regarding other independent persons who could possibly be approached under the Regulations as described in Paragraph 8c above. The latter may prove difficult as attempts to “share” such independent persons for the purposes of the Member Code of Conduct were unsuccessful. In this case the Authority would have to advertise as it currently has only one Independent person.
14. It is proposed that the People and Organisational Development Department (POD) is requested to draft a revised procedure which will retain the Monitoring Officer as an Investigator for these purposes. Should the investigation conclude that dismissal is a potential outcome then this will be referred to an Independent Panel who will have the responsibility for recommending an appropriate sanction.

15. Should the investigation conclude that action short of dismissal is a potential outcome then this will be referred to the Chief Fire Officer for a decision. Should the matter relate to the Chief Fire Officer then this too would be referred to the Panel in these circumstances.
16. Should Members approve the Recommendations of this report, the Constitution would need to be amended to reflect these arrangements.
17. All authorities are responding to this legislation very urgently and it is likely that sector best practice will emerge across the next few months. It is therefore recommended that this approach is reviewed closely and subsequent revisions brought back to the Authority later this year if required

Equality and Diversity Implications

18. Any investigation would take place with Equality and Diversity in full consideration.

Staff Implications

19. These Regulations affect only statutory officers and all are aware of the previous Regulations in respect of specific disciplinary action which is contained within their contract of employment.

Legal Implications

20. The Authority Constitution would require amendment in respect of Standing Order 36 and the Terms of Reference for the Audit sub Committee.

Financial Implications & Value for Money

21. Any costs associated with the appointment of a DIP would be avoided should Members accept the Recommendations of this report. There will be small costs associated with the appointment of another independent person which would follow current payments agreements of £50 per meeting attended and travel expenses.

Risk Management, Health & Safety, and Environmental Implications

22. There are no direct implications for risk management or health and safety contained within this report.

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23. Compliance with these Regulations will give confidence to the communities of Merseyside that the full Authority is involved in any disciplinary issue regarding statutory officers.

BACKGROUND PAPERS

GLOSSARY OF TERMS

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APPENDIX B

Article 15 – Audit Committee

15.1 Terms of Reference

Audit Activity

- (a) To consider the internal auditor's annual report and opinion, and a summary of internal audit activity (actual and proposed) and the level of assurance it can give over the Authority's corporate governance arrangements.
- (b) To consider and approve summaries of specific internal audit reports as requested.
- (c) To consider reports dealing with the management and performance of the providers of internal audit Services.
- (d) To consider a report from internal audit on agreed recommendations not implemented within a reasonable timescale.
- (e) To consider the external auditor's annual letter, relevant reports, and the report to those charged with governance.
- (f) To consider specific reports as agreed with the external auditor.
- (g) To comment on the scope and depth of external audit work and to ensure it gives value for money.
- (h) To ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies and that the value of the audit process is actively promoted.
- (i) To commission work from internal and external audit.
- (j) To approve the Treasury Management (Year End) Report.

Regulatory Framework

- (a) To maintain an overview of the Authority's constitution in respect of contract procedure rules, financial regulations and codes of employee conduct and behaviour.
- (b) To review any issue referred to the sub Committee by the Chief Fire Officer, Deputy Chief Fire Officer or Treasurer or member of Authority's Strategic Leadership Team.

- (c) To monitor the effective development and operation of risk management and corporate governance in the Authority.
- (d) To monitor Authority policies on Whistleblowing and the anti-fraud and anti-corruption strategy and the Authority's complaints process.
- (e) To consider the Authority's arrangements for corporate governance agreeing necessary actions to ensure compliance with best practice.
- (f) To approve the Authority's Annual Governance Statement.
- (g) To consider the Authority's compliance with its own and other published standards and controls.

Accounts

- (a) To review the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the council.
- (b) To consider the external auditor's report to those charged with governance on issues arising from the audit of accounts.
- (c) Approve the audited Statement of Accounts and approve publication of the same (NB this can also be approved by the Policy and Resources Committee if necessary).

15.2 Members' Code of Conduct

To determine allegations made under the Member Code of Conduct Procedure and refer sanctions proposed and any complaint allegation requiring further investigation to the Authority's Appeals Committee.

15.3 Discipline Procedures for Statutory & Relevant Officers

- (a) To act as Investigating and Disciplinary Committee where an allegation is made against the Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer, Monitoring Officer or Treasurer in line with the Authority's policy for Discipline Procedures for Statutory Officers.
- (b) To determine whether any allegation of misconduct by a statutory/relevant officer should be investigated by an independent investigator;
- (c) To determine whether the statutory/relevant officer subject to the allegation should be suspended while the investigation is conducted;

(d) To appoint the independent investigator subject to the involvement of the statutory/relevant officer

(e) Appoint Independent Members to the Independent Panel.

(f) To consider the outcome of any resultant investigation and representations from the statutory/relevant Officer and either:

- (i) determine there is no case to answer
- (ii) determine a sanction short of dismissal; or
- (iii) recommend dismissal to the full Authority

15.4 Membership

5 voting members.

15.5 Quorum

Three voting members

Standing Order 36: Disciplinary Action

36.1 No disciplinary action concerning the dismissal of the Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer, Monitoring Officer or the Treasurer ("the Relevant Officer") may be taken by the Authority, or by a committee a subcommittee, a joint committee on which the Authority is represented or any other person acting on behalf of the Authority, other than in accordance with a decision by the full Authority.

36.2 Disciplinary action short of dismissal in respect of the Relevant Officer may be taken by the Audit Committee in its capacity as the IDC.

36.3 Any suspension of the officer in respect of Standing Order 36 for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect unless agreed otherwise by the Audit Committee.

36.4 Any allegation of misconduct and any proposed disciplinary action must comply with the Statutory Officers' Disciplinary Procedure as currently in force

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Merseyside Fire and Rescue Authority
Disciplinary Procedures for Relevant Officers
The Local Authorities (Standing Orders) (England) (Amendment) Regulations
2015

Disciplinary Procedure - Service Instruction

1.0 INTRODUCTION

1.1 Disciplinary Procedure for Statutory Positions

1.1.1 The Local Authorities (Standing Orders) (England) Regulations 2015 amended The Local Authorities (Standing Orders) (England) Regulations 2001 regarding the disciplinary procedure for statutory positions within Authorities. This procedure outlines the process to be followed when dealing with disciplinary matters for Statutory Officers in Merseyside Fire & Rescue Authority.

1.1.2 Merseyside Fire & Rescue Authority has extended the original provisions to include ("the Relevant Officers") therefore as per the Constitution this procedure applies to the following officers:

- Chief Fire Officer
- Monitoring Officer
- Section 151 Officer
- Deputy Chief Fire Officer
- Assistant Chief Fire Officer

1.1.3 The Joint Negotiating Council has issued a revised edition of the 'National Salary Framework & Conditions of Service Handbook' for Local Authority Chief Executives. The included Model Disciplinary Procedures (England & Wales) [NB: also applies to S151 and Monitoring Officers] forms the basis of this procedure.

1.2 Disciplinary Action

1.2.1 The definition of disciplinary action in relation to this process includes any action occasioned by alleged misconduct or poor performance which if proven would be recorded on the Relevant Officer's personal file. This includes any proposal for dismissals of the Relevant Officer for any reason other than redundancy, permanent ill health or infirmity of mind or body where another more appropriate procedure may be invoked.

1.2.2. Where an allegation is made in respect of a Relevant Officer which could constitute either misconduct or gross misconduct, then the Authority shall initiate this disciplinary procedure.

1.3 Right to be accompanied

- 1.3.1 The Relevant Officer will have the opportunity to be accompanied at all stages by their trade union representative or some other person of their choice (at their own cost), excluding in exceptional circumstances where there is a need to suspend the Relevant Officer at short notice.
- 1.3.2 The statutory right to be accompanied applies only to hearings where disciplinary action may be taken or confirmed. Whilst every effort will be made to agree suitable dates the unavailability of a representative cannot unduly delay the procedure. In this procedure the statutory right to be accompanied would arise as follows:
- Where the Investigation and Disciplinary Committee (IDC) considers the report of the Independent Investigator (II) 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 IDC for action short of dismissal
 - At an Authority Meeting considering a recommendation for Dismissal which also fulfils the requirement relating to a right of appeal.
- 1.3.3 At any of these detailed stages Relevant Officer representative is unavailable then the Relevant Officer will have the right to postpone the meeting for a period of up to 7 calendar days.
- 1.3.4 If the Relevant Officers representative is unable to attend within that period the Authority has the right to proceed with the hearing without further delay, although reasonable consideration should be given to arranging an alternate date.

1.4 Timescales

- 1.4.1 The intention is that all proceedings necessary under this procedure are conducted expeditiously in the best interests of all parties.
- 1.4.2 Timescales applied at the various stages will be cognisant of ensuring all aspects of the procedure can be achieved practically without imposing unrealistic deadlines.

2.0 INFORMAL STAGE

2.1 Allegations against Relevant Officers

- 2.1.1 If an allegation / other issue is raised against a Relevant Officer the following process will apply.
- 2.1.2 The Monitoring Officer will receive and refer the allegation/issue to the Audit Committee of the Authority which will act as the Investigating and Disciplinary Committee (IDC). The Monitoring Officer will act as Clerk to the IDC providing necessary procedural and administrative support including noting the meetings accordingly. The IDC will decide when receiving the initial

allegation, the appropriate person to assist them with information gathering that may be required at this initial stage. This may be the Monitoring Officer or another appropriate officer as determined by the IDC.

- 2.1.3 Where the allegation/issue relates to the Monitoring Officer then the Chief Fire Officer will nominate an appropriate person to be responsible for receiving and referring the allegation/issue to the IDC. In such instances the Deputy / Acting Monitoring officer will provide procedural and administrative support to the IDC as necessary. The IDC will decide when receiving the initial allegation, the appropriate person to assist them with information gathering at this stage. This may be the Deputy / Acting Monitoring Officer or another appropriate officer as determined by the IDC.
- 2.1.4 The IDC will, as soon as is practicable, inform the Relevant Officer in writing of the allegation or other issues under investigation and will also provide, as soon as is practicable, him/her with any evidence the IDC is to consider. This includes the right to hear any oral evidence that may be presented.
- 2.1.5 The Relevant Officer will be invited to put forward written representations and provide any evidence, including evidence from any witnesses he / she wishes the IDC to consider. The IDC will also provide the opportunity for the Relevant Officer to make oral representations direct to the IDC.
- 2.1.5 The IDC having given careful consideration to the allegation or other issues, supporting evidence, written and / or oral representations of the Relevant Person will decide whether the allegation/issues considered:
- Requires no further action
 - Can be resolved via issue of an unrecorded oral warning
 - Should be referred to an Independent Investigator.
- 2.1.6 In determining whether an allegation of misconduct by a Relevant Officer should be investigated in accordance with the Authority's approved procedures, it may be decided to take no action if one or more of the following applies:
- insufficient information has been provided on which to base a decision on whether the allegation should be investigated;
 - the allegation appears to be simply malicious or "tit-for-tat"
 - the allegation is deemed vexatious.
- 2.1.7 Where an informal/unrecorded oral warning is to be issued the Monitoring Officer (Deputy / Acting Monitoring Officer for issues involving the Monitoring Officer) will make necessary arrangements for the Relevant Person to attend a planned meeting of the IDC.
- 2.1.8 The threshold test for the appointment of an Independent Investigator is where the IDC considers:
- there is sufficient evidence in support of the allegation to require further investigation,
 - and should the allegations be upheld it would lead to either dismissal or another formal sanction that would be recorded on the Relevant Officers file.

- 2.1.9 The IDC will aim to advise the Relevant Person in writing of its decision within a maximum period of 2 months following initial submission of the allegation/complaint to the IDC. In exceptional cases where the IDC anticipates further time is necessary beyond 2 months the Relevant Officer will be notified of this.
- 2.1.10 The IDC will request officer support as necessary to ensure the Formal Stages can progress procedurally as necessary. This may involve the Monitoring Officer, Deputy / Acting Monitoring Officer, Director of People & Organisational Development and/or relevant deputies as appropriate to ensure the procedure can progress in timely manner.

2.2 Suspension

- 2.2.1 The IDC will be responsible for any decision to suspend a Relevant Officer within this process. Suspension will not always be necessary or appropriate where alternate means of managing the investigations are available. Where an allegation, if proven, would amount to gross misconduct, or the presence of a Relevant Officer might comprise the investigation, or impair the efficient exercise of the Authority's functions then suspension may be necessary.
- 2.2.2 Where a suspension is proposed the IDC will inform the Relevant officer of the reasons for the suspension and confirming that suspension is not disciplinary action. The Relevant Officer will have the opportunity to present information before the final decision is taken. Relevant Officers will continue to receive their normal remuneration during a period of suspension.
- 2.2.3 It is also appropriate at this stage to confirm any conditions which will apply during the period of suspension, for example, communication channels, availability to attend meetings, access to premises and ICT, along with the status of planned annual leave etc.
- 2.2.4 Suspension will usually last for a maximum period of two months unless reviewed by the IDC. The IDC may extend suspension beyond two months in consultation with the Independent Investigator where necessary to enable the investigation to continue unimpeded.
- 2.2.5 In exception circumstances it may be necessary to suspend at very short notice before the IDC can meet, for example where the Relevant officer could be a serious risk to the Health & Safety of others, or a serious risk to the resources, information of reputation of the Authority. In such instances delegated authority to suspend a Relevant Officer at short notice resides with the Monitoring Officer/Chief Fire Officer who will consult with the Chair of the IDC. Where the Chief Fire Officers is the subject of this procedure the Monitoring Officer will have delegated authority to suspend the Chief Fire Officer following consultation with the Chair of the IDC.

3.0 FORMAL STAGE

3.1 Independent Investigator

- 3.1.1 The IDC are responsible for the appointment of an Independent Investigator (II) from a nationally maintained list. The IDC will be provided with three names which will then be provided to the Relevant Officer who is subject to the complaint. The Relevant Officer will be invited to select one of the names and may only discount names where a genuine conflict of interest exists. If the Relevant Officer has not agreed a name within 14 days, the IDC will select the Investigator from the names provided.
- 3.1.2 The IDC will be responsible for ensuring the Independent Investigator (II) is provided with terms of reference for their role and has sufficient facilities, support, access to information and officers, and is appropriately remunerated for this role.
- 3.1.3 Once appointed, the Independent Investigator (II) should carry out a thorough investigation in line with the ACAS Code of Practice on Discipline and Grievances to gather evidence and establish the facts promptly, ensuring a written record is made at all stages for later reference.
- 3.1.4 Where the Relevant Officers is to be interviewed by the II as part of an Investigation they will be advised of the purpose of the meeting in advance and that they may be accompanied. When making these arrangements this should not frustrate or delay the investigation.
- 3.1.5 The Relevant Officer and/or his Representative will be given the opportunity to present their case and any relevant evidence to the II. Any technical expertise or witnesses relevant to the case will also be made available where necessary.
- 3.1.6 Notes of any interviews taken as part of the investigation process should be treated as confidential and treated with discretion. However, those taking part in the process should be advised that any records, notes and statements or interviews taken as part of the process may be shared as appropriate if assessed as relevant information to be considered within the context of this policy and procedure.
- 3.1.7 Having investigated and established the facts, the II will refer the completed investigation report and evidence gathered including any recommendations with rationale as to the way forward to the IDC via either the Monitoring Officer; Deputy / Acting Monitoring Officer; or other appropriate officer as pre-determined by the IDC.

3.2 Consideration & Decision of the IDC

- 3.2.1 The IDC will consider the report of the II and the recommendations made during a Formal Hearing conducted in accordance with the ACAS code of practice before deciding on the course of action to take.
- 3.2.2 During the Hearing the Relevant Officer will be provided with the opportunity to make representations or provide mitigating circumstances at the hearing

and may be accompanied. The Relevant Officer will have the opportunity to challenge the recommendations of the II and question any witnesses.

3.3 Recommendation of the IDC

3.3.1 Following the Formal Hearing the IDC will make a recommendation as follows:

- No case to answer
- Disciplinary action short of dismissal
- Dismissal

3.3.2 Where the recommendation is no case to answer the IDC will advise the Relevant Officer in writing of their decision, confirming the ending of any suspension, if required.

3.3.3 In such instances appropriate communication can be prepared in consultation with the Relevant Officer to ensure as far as possible that there is no damage to their reputation.

3.4 Disciplinary Action Short of Dismissal

3.4.1 The IDC, when recommending disciplinary action short of dismissal, will be responsible for taking the action and imposing any appropriate penalty. There is no requirement for full Authority to approve action short of dismissal. The actions short of dismissal available to the IDC are as follows:

- Issue of a written warning;
 - Either a first written warning valid for 6 months from the date of issue
 - Or a final written warning valid for 18 months from the date of issue

3.4.2 The IDC will communicate its decision to the Relevant Officer in writing outlining the rationale for the decision. The Relevant Officer will have the right to appeal disciplinary action short of dismissal to the Appeals Committee of the Authority. Section 4 outlines the appeal process.

3.5 Recommendation for Dismissal

3.5.1 Where the IDC decision is to recommend dismissal, the Relevant Officers must be notified in writing of the recommendation and advised that this recommendation will be sent to the Independent Panel, along with copies of the Independent Investigators report. The Relevant Officer must be advised of the option to submit written representation to the Independent Panel.

3.6 The Independent Panel

3.6.1 The Independent Panel (IP) is a committee of the Authority that consists of at least two independent persons appointed under S28 (7) of the Localism Act 2011.

- 3.6.2 The IP will be responsible for considering any recommendation from the IDC to dismiss a Relevant Officer and will consider both the IDC decision report along with the report from the Independent Investigator. The IP meeting is not a re-hearing and witness will not be called. The Relevant person however should be present at the meeting of the IP, and the IDC should be represented by a nominated person.
- 3.6.3 The Relevant Officer will be entitled to submit written representations for consideration by the IP as well as being afforded the opportunity to make oral representations at the meeting of the IP. The nominated representative of the IDC will be invited to respond to any of the points made by the Relevant Officer during the meeting. Both parties may be questioned as necessary by the IP.
- 3.6.4 The Independent Panel will review the IDC decision and prepare a report for Full Authority. The report of the IP will outline a clear rationale if they disagree with the recommendation of the IDC to dismiss.

3.7 Full Authority

- 3.7.1 A report will be submitted to Authority by the Monitoring Officer or Deputy / Acting Monitoring Officer / or other appropriate officer as necessary which includes:
- The Recommendation of the IDC
 - The Independent Investigators Report
 - The comments made on the recommendation for dismissal from the Independent Panel.
- 3.7.2 The Full Authority will consider the recommendation to dismiss the Relevant Officer. The meeting will not be a re-hearing and witnesses will not be called however the Relevant Officer will be invited to attend this meeting and given the opportunity to address the Authority. The IP may also be invited to attend to provide clarification if required.
- 3.7.3 Following full consideration the Authority should either confirm or reject the recommendation to dismiss.
- 3.7.4 If rejecting the recommendation, the Authority may elect to impose a lesser disciplinary sanction as outlined in section 3.4, or take no further action.
- 3.7.5 If the recommendation is confirmed the Relevant Person will be notified in writing.

4.0 APPEALS

4.1 Appeals against disciplinary action short of dismissal

- 4.1.1 The Relevant Officer has the right to appeal against action short of dismissal to the Appeals Committee. The Relevant Officer must appeal within 7 calendar days of receiving the notice of the sanction and the outcome of the

Hearing. The notice of any appeal must be in writing and should clearly specify one or more of the grounds of appeal such as:

- There was a defect in the procedure
- The II report being inaccurate or incomplete.
- The issue is not proven on the balance of probabilities
- The disciplinary sanction was too severe
- New evidence has come to light since the hearing which will have an impact on the decision.

4.1.2 The Appeals committee will consider the report of the II and any other relevant information considered by the IDC. The Relevant Officer will have the opportunity to appear at the meeting of the Appeals Committee and present their case.

4.1.3 The Appeals committee will consider all matters before making a decision as to whether to:

- Reject the appeal and confirm the IDC's decision
- To allow the appeal in part and impose alternative action short of dismissal
- To allow the appeal and take no further action against the relevant Officer

4.1.4 The decision of the Appeals Committee is final.

4.2 Appeals Against Dismissal

4.2.1 The ACAS Code of Practice requires that an employee who is dismissed is provided with the opportunity to appeal against the decision.

4.2.2 As Standing Orders Regulations require that the whole Authority approves a dismissal before notice of dismissal is issued, there may be some concerns about the ability to offer a fair appeal if the whole of the Authority is familiar with the issues and already taken the provisional decision to dismiss.

4.3.3 The model procedure envisages that the meeting of the Full Authority therefore provides the Relevant Officers right of appeal. All information will be provided to all Authority members in line with statutory requirements providing an opportunity for members to raise objections. The Relevant Officer will have the option to make written representations in advance to the Authority, and attend the meeting to make oral representations before the decision is taken on the recommendation to dismiss. Those representations constitute the Relevant Officers final right of appeal.