



**Merseyside Fire and Rescue Authority Constitution Disciplinary Procedures for  
Relevant Officers  
The Local Authorities (Standing Orders) England Regulations 2001**

**Statutory Officers Disciplinary Procedure Service Instruction**

**1.0 INTRODUCTION**

**1.1 Disciplinary Procedure for Statutory Positions**

1.1.1 Statutory posts within the Authority may only be appointed or terminated by the fire authority. In April 2010 Merseyside Fire and Rescue Authority has extended this provision to include (“the Relevant Officer”), namely the following Principal Officers:

- Chief Fire Officer
- Deputy Chief Fire Officer
- Monitoring Officer/ Clerk to the Authority
- Deputy Chief Executive

1.1.2 The JNC has issued a revised edition of the ‘National Salary Framework and Conditions of Service Handbook’ for Local Authority Chief Executives. The substantive additions to the handbook are new Model Disciplinary Procedures (England & Wales) [NB: also applies to S151 and Monitoring Officers]; new JNC Guidance for Designated Independent Persons (DIPs),

**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.

**2.0 PROCEDURE**

**2.1 Preliminary Investigation**

2.1.1 If an allegation is made against a Relevant Officer a preliminary investigation will be undertaken

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- 2.1.2 The Audit Sub Committee acting as the Investigating and Disciplinary Committee will appoint a Clerk to the Authority as the Investigatory Officer where the Clerk is not the Monitoring Officer and themselves subject to the allegation.
- 2.1.3 Notes should be taken throughout the process. Treated as confidential and will normally be provided by the Clerk to the Authority or Monitoring Officer unless he /she is the subject of the allegation. In this instance note taking at interviews may be undertaken by the Director of People and Organisational Development or a representative appointed by the Director of People and Organisational Development as appropriate.
- 2.1.4 Where the Clerk to the Authority may be implicated or associated with the allegation another appropriate substitute should be engaged as Investigatory Officer or acting as Clerk to the Authority by the Audit Sub Committee in consultation with the POD Director and implement the preliminary investigation process.
- 2.1.5 The Clerk to the Authority or Acting Clerk role is to initially assess if a potential question of discipline exists, and if it does, whether it could not be resolved informally (e.g. through an unrecorded informal warning) or referred to another body, for example a complaint directed at the CFO but about general service provision may be passed to Professional Standards) or whether it requires detailed investigation by an appointed Designated Independent Person (DIP)
- 2.1.6 The Relevant Officer will be informed of the allegation by the Clerk to the Authority (or Acting Clerk) and the possible potential implications of the investigation process.
- 2.1.7 The Relevant Officer will be given the opportunity to and encouraged to comply, and fully cooperate with the preliminary assessment. This may include attending investigatory interviews, making a statement and providing any relevant documentation or evidence for the purpose of the investigation process and to assist in a speedy resolution.
- 2.1.8 Where a preliminary investigation determines that there is a potential case to answer, a DIP will be appointed by Clerk to the Authority (or acting Clerk) in consultation with the Chair of the Sub Audit Committee to fully investigate the matter, to determine if there is a case to answer.

The threshold test for the Clerk to appoint a DIP is:

- a) If the allegation were to be proven it could lead to dismissal or other formal action which would be recorded on the Relevant Officer's file
- b) There is evidence in support of the allegation which may be sufficient to require further investigation

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2.1.9 The Clerk (or Acting Clerk) to the Authority will write to the Relevant Officer confirming to him/her that a DIP will be appointed and providing the Relevant Officer with the name of the DIP they propose to formally investigate the case. It is important that all the parties agree on a DIP before being appointed.

2.1.10 The Relevant Officer will have an opportunity (within seven calendar days) to raise any issues or concerns regarding the DIP's appointment with the Chairperson of the Audit Sub Committee regarding the proposal. If an agreement cannot be reached regarding the appointment of an appropriate DIP, further considerations and consultation will take place with the POD Director and an appointment made after taking into consideration the objections which have been raised. A list of previous DIP nominees who have exhibited the appropriate skills or who have previous experience in a similar role may be sought from the Authority however this list is neither exclusive or exhaustive

2.1.11 It is impossible to predict the full range of circumstances that could arise in disciplinary cases and in some cases it may be appropriate in exceptional circumstances to suspend the Relevant Officer from the workplace while an investigation or preparation for a disciplinary hearing takes place

### **3.0 FORMAL INVESTIGATION**

3.1 Once appointed, the DIP should carry out a thorough investigation to establish the facts promptly, ensuring a written record is made for later reference.

3.2 Where the employee is to be interviewed by the DIP as part of an Investigation they must be advised of the purpose of the meeting in advance and that they may be accompanied by a Trade Union Representative or a Merseyside Fire and Rescue work colleague. When making these arrangements this should not frustrate or delay the investigation.

3.3 Recorded Interviews and any notes 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 considered as relevant information to be considered within the context of this policy and procedure

3.4 As a general rule, the DIP shall:

- Notify the Relevant Officer in writing immediately of the formal investigation into the allegations, the nature and details of the case.
- Keep a record.
- Conduct an appropriate investigation;
- Ensure the investigation is completed in good time.

3.5 The Relevant Officer and/or his Representative will be given the opportunity to present their case and any relevant evidence to the DIP any Technical expertise or witnesses relevant to the case will also be made available where necessary.

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- 3.6. Having investigated and established the facts, the DIP will refer the completed investigation record and report including any recommendations as to the way forward to the Clerk to the Authority and the Audit Sub Committee
- 3.7 The most appropriate recommendations or actions in accordance with the procedure may include:
  - No case to answer;
  - Reference back to an informal stage;
  - Proceed with a Hearing.
  - Make Recommendations for any subsequent Sanctions once the case has been heard

### **4.0 SUSPENSION**

- 4.1 Suspension of a Relevant Officer can only be sanctioned by an authorised officer normally this is the Chair/Vice Chair of the Authority in consultation with the Clerk to the Authority and or the Designated Independent Person.
- 4.2 If a Relevant Officer is suspended they should be informed of the reasons for the suspension, and that suspension is not disciplinary action. They should be offered the opportunity to make statement and informed that they will be asked to return to work as soon as reasonably possible, for an investigative meeting and before any disciplinary hearing is considered or takes place.
- 4.3 It is also appropriate at this stage to discuss any conditions, which will apply during the period of suspension, for example, communication channels, availability to attend meetings, facilities to meet with their representative, etc.

### **5.0 HEARING and RECOMENDATIONS**

- 5.1 If after investigation the DIP considers that there is a case to answer, they can recommend a hearing takes place and make recommendations with regards to any action or any range of actions which are deemed to appear to be appropriate to take against the Relevant Officer once the case has been heard. Appropriate course(s) of disciplinary action may be drawn from the following list once the case has been heard by the appropriate committee:
  - written warning (which may be a first written warning valid for 12 months from the date of issue or a final written warning valid for 18 months from the date of issue)
  - demotion ( in rank and salary to a lesser role within the organisation)
  - dismissal with notice ( or pay in lieu of notice may be made at the Authority's discretion)
  - if the case is one of gross misconduct summary dismissal without notice or payments in lieu, without payment for accrued for annual leave in excess of statutory requirements.
- 5.2 The relevant Officer will be provided with the opportunity to make representations or provide mitigating circumstances at the hearing and be represented by a Trade Union Representative or a Mersey fire and Rescue colleague.

- 5.3 In the case of a DIPs recommendation to Dismiss - the Audit Sub Committee and the Clerk to the Authority will be informed by the DIP of the recommendation to dismiss via the DIPs report.

## **6.0 DISMISSAL**

- 6.1 In accordance with the Local Authorities' (Standing Orders) (England) Regulations 2001 Statutory Instrument No. 3384, the following arrangement shall apply.
- 6.2 The Chair of the Audit Sub Committee will initially arrange to inform the Relevant Officer of the DIPs recommendation to dismiss and their decision to put the proposal to dismiss to the Fire Authority along with any necessary material e.g., the report of the Designated Independent Person for their consideration.
- 6.3 The Chair of the Audit Sub Committee will make arrangements to inform the Chair of the Authority and Director of People and Organisational Development of the DIPs recommendation to dismiss and their intention to put the proposal to dismiss the relevant officer to the Fire Authority.
- 6.4 The Audit Sub Committee Chair will inform The Clerk of the Authority of the intension to dismiss the relevant officer. The Clerk of the Authority will make the necessary arrangements to advise the Authority Chair and to convene a Special meeting of the full Authority alternatively make the arrangements to include the proposal to dismiss in the agenda of any scheduled meeting of the full Authority within the given time frame and allowing for the DIP report and accompanying information to be provided to members in accordance with statutory requirements.
- 6.5 The Clerk of the Authority would make the necessary arrangements to contact and advise the Relevant Officer of the date of the meeting. The Clerk of the Authority would also request confirmation of the Relevant Officer attendance, advise the Relevant Officer of their right to be accompanied by a Trade Union representative or a Merseyside Fire and Rescue work colleague and request that any representations or provisions for any mitigating circumstances are provided at least 7 days before the meeting is convened so allowing sufficient time for the Authority members time to consider the information prior to the meeting in line with statutory requirements.
- 6.6 All the members of the Fire Authority will be given the opportunity to consider the relevant information and raise any objections via the Chair of the Authority to the proposal that the Relevant Officer should be dismissed prior to the meeting.
- 6.7 The Relevant Officer will be able to present and make representations during the meeting.

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- 6.8 No notice of dismissal in respect of the Relevant Officer shall be given until:
- (i) The Director of People and Organisational Development has been notified of the name of the person who is proposed to be dismissed and of any other particulars which are relevant to the proposed dismissal.
  - (ii) The Clerk of the Authority has made arrangements to notify every Member of the Authority of the proposed/intended dismissal and has provided to them all the relevant information contained in the DIP report.
  - (iii) A date has been agreed by which the Chair of the Authority may, on behalf of the Authority Members, object to the Audit Sub Committee; about the proposed dismissal.
  - (iv) A date is agreed to convene a meeting when the Relevant Officer will have the opportunity to be able to make representations or present their case, to the Authority as their appeal to the intended dismissal.
  - (v) The Chair of the Authority has, within the timescales agreed notified the Audit Sub Committee and the Director of People and Organisational Development that neither he nor any Member of the Authority has any objection to the dismissal being made or no objection has been received by the Director of People and Organisational Development within the objection period; or
  - (vi) The Audit Sub Committee is satisfied that any objection which has been raised and received by the Chair of the Authority or Director of People and Organisational Development within the objection period is not material or is not well founded.
  - (vii) The Relevant Officer has been provided with a reasonable opportunity to make representations or be able to present his or her case at the meeting in which allows the process a form of appeal to the Fire Authority before any decision to dismiss has been taken.

### **7.0 RIGHT OF APPEAL**

#### **7.1. Against – LESSER SANCTIONS**

7.1.1 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
- Either the investigatory report or the DIP 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.

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7.1.2 The appeal will be made to the Clerk to the Authority who will, in consultation with the Chair of the Authority arrange an appeal hearing with Members of the Appeal Committees should be convened in the case of an appeal against sanctions.

7.1.3 The Relevant Officer shall be given not less than 21 days notice of the appeal hearing.

7.1.4 The decision of the Appeal Committee will be final and there will be no further right of appeal.

### **7.2 Against – DISMISSAL**

7.2.1 ACAS code of practice 1 Disciplinary and Grievance Procedures requires that an employee who has been dismissed is provided with the right of appeal against the decision.

7.2.2 As Standing Orders Regulation 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.

7.2.3 The model procedure envisages that the appeals process has been met by the DIP report and relevant information being disclosed to all Fire Authority Members in line with statutory requirements providing an opportunity for members to raise objections and convening a meeting of the whole Authority.

7.2.4 Any additional information or any address to the Authority from the Relevant Officer would need to be provided to The Clerk of the Authority at least 7 days before the meeting.

7.2.5 The Relevant Officer will then be able to make any representations or presentations during the convened meeting on all the information which has been provided in advance by The Clerk of the Authority to the Authority Members