



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.