

To: Members of the Special Sub-Group

Councillors Hayfield, Humphreys, Jenns, Singh, M Stanley and Sweet

For the information of the other Members of the Council

SPECIAL SUB-GROUP

16 SEPTEMBER 2015

The Special Sub-Group will meet in the Committee Room, The Council House, South Street, Atherstone on Wednesday 16 September 2015 at 6.30pm.

AGENDA

PART I - PUBLIC BUSINESS

- 1 Evacuation Procedure.**
- 2 Apologies for Absence / Members away on official Council business.**
- 3 Disclosable Pecuniary and Non-Pecuniary Interests**
- 4 Public Participation**

Up to twenty minutes will be set aside for members of the public to ask questions or to put their views to elected Members. Participants are restricted to five minutes each. If you wish to speak at the meeting please contact David Harris on 01827 719222 or email democraticservices@northwarks.gov.uk.

**PART A – ITEMS FOR DISCUSSION AND DECISION
(WHITE PAPERS)**

5 Devolution/ Combined Authorities – Report of the Chief Executive

Summary

To receive a verbal update on the progress of the proposals for devolution/combined authorities.

The Contact Officer for this report is Jerry Hutchinson (719200).

6 Statutory Officer Disciplinary and Dismissal Procedure – Report of the Assistant Director (Finance and Human Resources)

Summary

This report advises members of the changes to the Statutory Dismissal Procedure to be followed for dismissing a statutory officer of the Council.

The Contact Officer for this report is Sue Garner (719374).

JERRY HUTCHINSON
Chief Executive

For general enquiries please contact David Harris, Democratic Services Manager, on 01827 719222 or via e-mail – davidharris@northwarks.gov.uk.

For enquiries about specific reports please contact the officer named in the report.

Agenda Item No 6

Special Sub-Group

16 September 2015

**Report of the Assistant Director
(Finance and Human Resources)**

**Statutory Officer Disciplinary
and Dismissal Procedure**

1 Summary

- 1.1 This report advises members of the changes to the Statutory Dismissal Procedure to be followed for dismissing a statutory officer of the Council.

Recommendation to the Executive Board

- a To adopt the Statutory Officer Disciplinary and Dismissal Procedure;**
- b To amend the Constitution of the Council to include the revised arrangements; and**
- c To authorise consultation with the Statutory Officers to amend their contracts of employment in line with Statutory Officer Disciplinary and Dismissal Procedure.**

2 Introduction

- 2.1 Special arrangements for disciplinary action, including dismissal, for the Council's statutory officers have been in place for some years in local government in recognition of the sensitivity of their roles in a political environment. If statutory duties are not exercised properly due to risk of detriment, the interests of the Council and the public are not served. The limited statutory protection is designed to be in everyone's interests, and relevant officers can still be legitimately held to account where it is appropriate in the public interest.
- 2.2 The current requirement, set out in the 2001 Regulations, is for the Council to appoint a 'designated independent person' before it can dismiss or discipline its Head of Paid Service, Chief Financial Officer or Monitoring Officer. Disciplinary action of any kind would need to be in accordance with a recommendation made by the Designated Independent Person.
- 2.3 Disciplinary action in this context has a wide definition of "any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff for any

reason other than redundancy, permanent ill-health or infirmity of mind or body”.

- 2.4 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force on 11 May 2015 and bring in new mandatory requirements which amend the procedure to be followed for the discipline or dismissal of a statutory officer.

3 The New Process

- 3.1 The new process is set out in the schedule to the 2015 Regulations. As well as removing the statutory requirement for a Designated Independent Person in order to take any kind of disciplinary action, the regulations introduce new rules in respect of dismissal.
- 3.2 The Council must appoint a Panel (meeting as and when required) being a committee appointed by the Council under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of statutory officers of the Council. It will be subject to all the legal requirements of a committee including the proportionality rules.
- 3.3 The role of this Panel – The Investigation and Disciplinary Panel – will be:
- To screen potential disciplinary/dismissal issues to consider whether they require investigation and whether the relevant Statutory Officer should be suspended;
 - Organise the investigation including appointing an investigator;
 - Hold a post investigation meeting to review the investigator’s report, hear the Statutory Officer’s views and consider what disciplinary action, if any, is appropriate;
 - Where the Panel decides that action up to/short of dismissal or no disciplinary action is appropriate, the Panel puts this in place without the need for any further referral.
- 3.4 The post investigation meeting held by the Investigation and Disciplinary Panel is stage one of the disciplinary process for actions up to/short of dismissal. If the statutory officer wishes to appeal any decision taken at this stage, an Appeal Panel will be convened to hear the appeal.
- 3.5 Where dismissal is the recommendation, the Investigation and Disciplinary Panel must refer the matter to an Independent Panel for its views. The Independent Panel must include at least two independent persons and at least five additional local authority elected members. The Independent Persons must have been appointed for the purposes of the ethical standards regime under section 28(7) of the Localism Act 2011.
- 3.6 At the outset of many disciplinary issues it is apparent that dismissal will be a potential sanction, meaning the authority must be prepared at the start of any disciplinary process for it to apply at a later stage. The Independent Panel must be in place at least 20 working days before the meeting at which the Council decides whether or not to approve a proposal to dismiss, so that it

has time to consider the investigation report and recommendations of the Investigation and Disciplinary Panel.

3.7 The Investigation and Disciplinary Panel must then refer its own report and that of the Independent Panel to the Full Council for its decision on whether to approve the proposal to dismiss. In taking any decision on dismissal, the Council must take into consideration:

- the conclusions of any investigation into the proposed dismissal;
- any advice, views or recommendations of the Independent Panel; and
- any representations from the statutory officer concerned.

3.8 The Regulations provide little detail of how the new process will operate in practice. The HR Manager has used the guidance provided by the Local Government Association which advises on how to meet the regulations and comply with employment law to produce a procedure for North Warwickshire Borough Council that fits with the governance arrangements that are already in place. A copy of the Statutory Officer Disciplinary and Dismissal Procedure can be found at Appendix A.

...

4 Governance

4.1 As with all staffing issues, this is the responsibility of the Special Sub Group of the Council. The Special Sub Group will establish both the Investigation and Disciplinary Panel and an Appeal Panel and appoint substitutes where required, in accordance with political balance.

4.2 Where dismissal is proposed and the authority approves it, there is no one in the authority who has the power to overturn the dismissal decision. The Council meeting will then in effect become the appeal stage.

4.3 Strictly speaking this is not in line with standard employment law practices, but bearing in mind the Regulations' requirements, tribunals may find that such an approach is fair given that the Statutory Officer will have had the opportunity to state their case before any proposal to dismiss is made and then to address the Council before any decision to approve the dismissal is made.

5 Contractual Issues

5.1 The Chief Executive (Head of Paid Service) has in his contract of employment "The appointment is subject to the Conditions of Service of the Joint Negotiating Committee (JNC) for Chief Executives of Local Authorities". The Local Government Association are seeking to amend the JNC model procedures through collective agreement, thereby potentially removing any need to agree amendments at a local level. However if the JNC model is not amended, then the most sensible approach is to amend the contract of employment through consultation with the Chief Executive.

5.2 Both the Monitoring Officer and the Chief Financial Officer have in their contracts of employment "The appointment is subject to the Conditions of Service of the National Joint Council for Chief Officers of Local Authorities".

All other Chief Officers are subject to these conditions, so it cannot be amended nationally as the Regulations only affect these Statutory Officers. Again the most sensible approach is to amend employment contracts through consultation with the Monitoring Officer and the Chief Financial Officer.

6 Report Implications

6.1 Finance and Value for Money Implications

6.1.1 Under the 2015 Regulations, any remuneration allowances or fees paid by the council to an Independent Person appointed to the Panel must not exceed the level of remuneration, allowance or fees payable to that Independent Person in respect of that person's role as Independent Person under the localism Act 2011.

6.1.2 Travel expenses of Independent Persons are reimbursed at the same rate as set out in the Members' allowance scheme. These new duties can be included in these arrangements.

6.2 Human Resources Implications

6.2.1 As detailed in the report

6.3 Risk Management Implications

6.3.1 The Council must follow the statutory process and exercise its powers reasonably and for a proper purpose. If the council does not implement these revised regulations, it will be in breach of the requirements set out in the Regulations.

6.4 Equalities Implications

... 6.4.1 Attached as Appendix B.

The Contact Officer for this report is Janis McCulloch (719236)

APPENDIX A

Statutory Officer Disciplinary and Dismissal Procedure

September 2015



**North Warwickshire
Borough Council**

1 Purpose and Scope

- 1.1 The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary in respect of the Head of Paid Service, Monitoring Officer or the Chief Finance Officer (thereafter referred to as the “Statutory Officer”).
- 1.2 Dismissal will not usually be considered for a first breach of discipline except in the case of gross misconduct, when the penalty could be dismissal without notice or payment in lieu of notice.
- 1.3 This document should be read alongside the report to Executive Board on 21 September 2015 and the decision of the Full Council at its meeting on 30 September 2015.

2 Principles

- 2.1 No disciplinary action will be taken until the case has been fully investigated.
- 2.2 For formal actions the Statutory Officer concerned will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- 2.3 At all stages of the procedure the Statutory Officer will have the right to be accompanied by a trade union representative or a work colleague.
- 2.4 There will be a right to appeal against any disciplinary action.
- 2.5 Where time limits are referred to in the course of the procedure they may be varied by agreement between the Statutory Officer and the Council.

3 Governance

- 3.1 Disciplinary and dismissal matters for the Statutory Officers of the Council are the overall responsibility of the Special Sub Group. When a formal complaint is received a meeting of the Special Sub Group will be convened with the purpose of establishing two panels; the Investigation and Disciplinary Panel, and the Appeals panel.
- 3.2 Each panel will comprise of three members of Special Sub Group, with individual members only able to sit on one of the panels. The allocation to the panels, and the appointment of substitutes where required, should be in accordance with political balance.

4 Investigation Process

- 4.1 Where a question of discipline is raised in connection with a Statutory Officer, the Investigation and Disciplinary Panel (IDP) will consider those allegations.
- 4.2 Depending upon the nature of the allegations the IDP may decide to undertake a preliminary investigation to determine whether there are grounds to the allegation before advising the Statutory Officer of the allegations
- 4.3 The Chair of the IDP will advise the Statutory Officer in writing of the allegations as soon as is reasonably practicable.
- 4.4 The Statutory Officer will be given the opportunity to make representations on them and to comment on any evidence before the IDP decides whether any or all of the allegations are to be investigated fully.

5 Suspension

- 5.1 The IDP has the right to authorise suspension of the Statutory Officer with pay.
- 5.2 This will be necessary where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurized before the disciplinary hearing, or there is a potential risk to the business or other employees or third parties in allowing the Statutory Officer to remain at work.

6 Independent Investigation

- 6.1 If having considered the allegations and any representations made by the Statutory Officer, the IDP decides that there may be a case to answer in respect of misconduct, or in respect of capability that could result in dismissal, then it will be responsible for appointing an Independent Investigating Officer. The IDP will also agree the identity of the Investigating Officer with the Statutory Officer concerned.
- 6.2 The IDP may seek other professional advice and assistance on any matters during the course of the investigation or when considering the Investigation Officer's report, as it considers necessary.
- 6.3 There is no right for employees to be accompanied at a formal investigatory interview, but the Council will allow a trade union representative or colleague if requested.

7 Investigation and Disciplinary Panel– Post Investigation Meeting

- 7.1 Once the investigation is complete, the IDP will convene to consider the resulting report and what, if any disciplinary action is appropriate. The Statutory

Officer will be provided with a copy of the report prior to the meeting. The procedure for the meeting is set out in the Appendix to this document.

- 7.2 The Statutory Officer is entitled to attend this meeting to make their own representations and also to be accompanied by a trade union representative or a colleague. After the hearing the IDP will produce a written report, including its recommendations relating to disciplinary action as may be appropriate.
- 7.3 If the IDP concludes that there is a question of substance as to the Statutory Officer's capability, it should advise the Statutory Officer of the issues and the manner in which performance should improve and set a period of time after which the performance level will be reviewed. The period of time should be sufficient to allow the Statutory Officer a reasonable opportunity to show improved performance.
- 7.4 The exception to this would be where a previous warning had been issued, or where there is a serious incapability which is not likely to be remedied within a reasonable timeframe. In the event that dismissal is required, the dismissal process in this policy needs to be followed.
- 7.5 Where the IDP decides that a sanction up to and including action short of dismissal is the most appropriate sanction, or that no disciplinary action at all is appropriate, it is authorised to implement this decision. In this situation please refer to section 8 of this procedure.
- 7.6 Where the IDP recommends dismissal it must refer the matter to an Independent Panel and Full Council. In this situation please refer to section 9 of this procedure.

8 Action Short of Dismissal or No Disciplinary Action

- 8.1 Where the IDP decides that there is no case to answer and therefore no disciplinary action will be taken, it is authorised to make this decision, which must be communicated in writing to the Statutory Officer.
- 8.2 Where the IDP decides that a disciplinary sanction other than dismissal is appropriate then it is authorised to make this decision. The decision must be communicated in writing to the Statutory Officer.

9 Recommendation to Dismiss

- 9.1 Where the IDP makes a recommendation to dismiss, this will be considered in the first instance by an Independent Panel. The Independent Panel will be made up of at least two Independent Persons appointed under the provisions of section 28 of the Localism Act 2011 and at least five additional local authority elected members.

- 9.2 If an insufficient number of North Warwickshire Borough Council Independent Persons accept the invitation to join an Independent Panel, an Independent Person appointed by another authority can sit on the Independent Panel. The Panel must be appointed at least 20 working days prior to the meeting of the Full Council which will consider the recommendation of the IDP, and will provide independent advice to the Full Council on the dismissal proposal.
- 9.3 The Independent Panel will consider the report of the Investigating Officer. It will also consider the recommendations from the IDP and any submissions made by the Statutory Officer.
- 9.4 The Independent Panel will provide their written comments on the IDP recommendations and this will go forward to Full Council for a final decision. The Statutory officer will be supplied with a copy of the written comments produced by the Independent Panel.

10 Final Dismissal Decision

- 10.1 In the event that the IDP recommendation is to dismiss the Statutory Officer, the matter must go forward to Full Council, who will vote on whether to approve the proposal to dismiss. This decision must take account of the advice of the Independent Panel, the report of the Investigating Officer and any representations from the Statutory Officer.
- 10.2 Due to the importance of the meeting, the Statutory Officer must be provided with the appropriate paperwork in advance of the meeting. Any further representations which the Statutory Officer wishes to be considered must be submitted in writing to the Democratic Services Manager at least 7 clear days prior to the Council meeting.
- 10.3 The Statutory Officer is entitled to attend the meeting of the Full Council to make oral representations in person and also to be accompanied by a trade union representative or a work colleague.
- 10.4 If Full Council approves the proposal to dismiss, then the Chairman of the IDP will issue the dismissal notice in accordance with the Full Council's instructions, and with the assistance of the HR Manager and/or HR Officer.

11 Appeals

- 11.1 The IDP hearing is considered to be stage 1 of the Disciplinary Process. The Statutory Officer has the right to make representations to the IDP, and will have the statutory right to representation in the form of a trade union representative or a work colleague.

- 11.2 Where the IDP decides to apply a disciplinary sanction other than dismissal, as stated in paragraphs section 8, an appeal against a disciplinary sanction other than dismissal will be heard by the Appeal Panel.
- 11.3 If the IDP decides to recommend dismissal, consideration of the proposal by Full Council is considered to be the 'appeal', in that it is the second opportunity for the Statutory Officer to state their case and make representations.
- 11.4 There is no further opportunity to appeal against the decision of the Full Council.

12 Appeal Process

(For disciplinary sanctions other than dismissal)

- 12.1 The Statutory Officer must provide written notice of the appeal within 7 days of being informed in writing of the disciplinary sanction being applied against them.
- 12.2 When lodging an appeal, the Statutory Officer should state:
- The grounds of appeal; and
 - Whether they are appealing against the finding that they have committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed or both.
- 12.3 Appeal hearings will normally take place within 14 days of receipt of the Statutory Officer's written notice of appeal.
- 12.4 The Appeal Panel must decide on the basis of all sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the disciplinary sanction.
- 12.5 In the event that the Appeal Panel finds for the Statutory Officer, they must allow the appeal and shall either remove all records of the disciplinary sanction from the Statutory Officer's record or apply an alternative lesser sanction. In the event that they do not accept the representations made by or on behalf of the Statutory Officer they must uphold the disciplinary sanction.
- 12.6 Upon completion of the appeal, the Appeal Panel will convey their decision to the Statutory Officer. The decision will be confirmed in writing within one week. There is no further right of appeal against the Appeal Panel's decision.

13 Role of the Companion

- 13.1 The Statutory Officer has a right to be accompanied at various stages of the procedure by a trade union representative or a work colleague.

13.2 The Statutory Officer's chosen companion has the right to address the hearing and to put forward the case, sum up the case and respond on the Statutory Officer's behalf to any view expressed at the hearing. The companion may also confer with the Statutory Officer during the hearing. However, there is no requirement for the Council to permit the companion to answer questions directly addressed to the Statutory Officer, or to address the hearing where the Statutory Officer indicates that they do not wish this.

14 Grievance

14.1 The effect of any grievance raised by a Statutory Officer subject to this procedure, and during the course of its application, must be considered. Depending upon the circumstances it may be appropriate to suspend the disciplinary procedure for a short period or to hear the two concurrently. In every case HR advice should be sought.

15 Disciplinary Action

15.1 Where it has been established that the Statutory Officer has committed a disciplinary offence, the following disciplinary action may be taken, subject to following the procedure detailed in this document:-

a) Stage 1 – First written warning

A first warning for misconduct will be issued if conduct does not meet acceptable standards and will remain for 12 months. The warning will be in writing and set out the nature of the misconduct, the change in behavior required and any timescales. The Statutory Officer will also be informed that a final warning may be considered if there is no sustained satisfactory improvement or change.

b) Stage 2 – Final written warning

If the offence is sufficiently serious, if there is further misconduct or a failure to improve performance during the period of the prior warning, a final warning may be given to the Statutory Officer and will remain live for 18 months. The warning will give details of the complaint, the improvement required and any timescales.

c) Stage 3 – Dismissal or other sanction

If there is still further misconduct the final step in the procedure may be dismissal or some other action short of dismissal such as demotion. Where it is established that the Statutory Officer has committed an act of gross misconduct, they may be summarily dismissed by Full Council

Disciplinary Hearing - Order of Proceedings

1. Opening

The Chairperson should begin by explaining how the hearing will be conducted.

2. Complaint

At the hearing the Chairperson will explain the allegations against the Statutory Officer. The investigator will present their report and the chairperson will go through the evidence that has been gathered.

3. Statutory Officer right to reply

The Statutory Officer will be allowed to set out their case and answer any allegations that have been made. The Statutory Officer should also be given a reasonable opportunity to ask questions and present evidence.

4. Witnesses

The Statutory Officer is allowed to bring witnesses or witness statements. They will be allowed to question witnesses brought by the Council unless it is decided that this is unreasonable.

5. At any point, the Panel may ask questions of either party for clarification.

6. Summing up

After questioning is completed, the Chairperson will summarise the main points of the discussion and will ask the Statutory Officer if they have anything further to say.

7. Adjournment

The Chairperson will then adjourn the hearing before a decision is taken about whether a disciplinary penalty is appropriate. This allows time for reflection and proper consideration.

8. More matters come to light

If new matters come to light in the course of the hearing, not being matters which could have been previously raised the Statutory Officer, the hearing shall be adjourned to investigate the new facts and the hearing will be reconvened when this has been done.

Equality Impact Assessment Summary Sheet

Please complete the following table summarised from the equality impact assessment form. This should be completed and attached to relevant Board reports.

Name of Policy Procedure/Service	Statutory Officer Disciplinary and Dismissal Procedure
Officer Responsible for assessment	Janis McCulloch

Does this policy /procedure /service have any differential impact on the following equality groups /people

- (a) Is there a positive impact on any of the equality target groups or contribute to promoting equal opportunities and improve relations or:
- (b) could there be a negative impact on any of the equality target groups i.e. disadvantage them in any way

Equality Group	Positive impact	Negative impact	Reasons/Comments
Racial			There is neither a positive nor a negative impact as the procedure will be applied to all 'Protected Officers'
Gender			
Disabled people			
Gay, Lesbian and Bisexual people			
Older/Younger people			
Religion and Beliefs			
People having dependents caring responsibilities			
People having an offending past			
Transgender people			

If you have answered **No** to any of the above please give your reasons below

Please indicate if you believe that this document

Should proceed to further Impact assessment **No**

Needs no further action **No**