

**Shropshire Fire and Rescue Authority**

**Disciplinary Procedure 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 Shropshire Fire & Rescue Authority.

1.1.2 Shropshire Fire & Rescue Authority has extended the original provisions so that it includes the following (all "Relevant Officers" in this document):-

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

1.1.3 The Joint Negotiating Committee has issued a revised edition of the 'National Salary Framework & Conditions of Service Handbook' for Local Authority Chief Executives which includes Model Disciplinary Procedures (England & Wales) – these procedures also apply to S151 and Monitoring Officers. These conditions of service form 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 Personnel Panel 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 Personnel Panel 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 If the Relevant Officer's representative is unavailable at any of these stages, 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 Officer's representative is unable to attend within that period the Authority or Personnel Panel (as appropriate) has the right to proceed 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 the allegation and consider whether or not there is sufficient information to immediately refer it to the Personnel Panel or whether there is a need to establish more information before doing so. Once the Monitoring Officer is of the view that sufficient information is available, they will refer the allegation/issue to the Personnel Panel of the Authority.

2.1.3 The Monitoring Officer (or their Deputy) will act as Clerk to the Personnel Panel providing necessary procedural and administrative support including noting the meetings accordingly. The Personnel Panel 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, another appropriate officer as determined by the Personnel Panel or an externally appointed person (appointed by the Monitoring Officer on behalf of the Personnel Panel).

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 Personnel Panel. In such instances the Deputy / Acting Monitoring Officer, or an external person appointed by the Chief Fire Officer (or someone acting on their behalf) will provide procedural and administrative support to the Personnel Panel as necessary. The Personnel Panel 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 Deputy / Acting Monitoring Officer, another appropriate officer as determined by the Personnel Panel or an externally appointed person (appointed by the Chief Fire Officer on behalf of the Personnel Panel).

2.1.4 The Personnel Panel 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 Personnel Panel 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 Personnel Panel to consider. The Personnel Panel will also provide the opportunity for the Relevant Officer to make representations to it – this can be oral or written representations.

2.1.6 The Personnel Panel, having given careful consideration to the allegation or other issues, supporting evidence, written and / or oral representations of the Relevant Officer will decide whether the allegation / issues considered:

- Requires no further action;
- Can be resolved via issue of an unrecorded oral warning; or
- Should be referred to an Independent Investigator.

2.1.7 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"; or
- the allegation is deemed vexatious.

2.1.8 Where an informal / unrecorded oral warning is to be issued, the Monitoring Officer (or Deputy) (or relevant person appointed in cases involving allegations against the Monitoring Officer) will make necessary arrangements for the Relevant Officer to attend a planned meeting of the Personnel Panel.

2.1.9 The threshold test for the appointment of an Independent Investigator is where the Personnel Panel 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 Officer's file.

2.1.10 The Personnel Panel will aim to advise the Relevant Officer in writing of its decision within a maximum period of 2 months following initial submission of the allegation / complaint to the Personnel Panel. In exceptional cases where the Personnel Panel anticipates further time is necessary beyond 2 months the Relevant Officer will be notified of this.

2.1.11 The Personnel Panel 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, Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer Corporate Services and/or relevant deputies as appropriate to ensure the procedure can progress in timely manner.

## **2.2 Suspension**

2.2.1 The Personnel Panel 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 serious misconduct which has the potential to harm the public or political reputation of the Service / Authority or the presence of a Relevant Officer might compromise the investigation or impair the efficient exercise of the Authority's functions then suspension may be necessary.

2.2.2 Where a suspension is being considered, the Personnel Panel will inform the Relevant Officer that it is considering suspension and confirm that suspension is not disciplinary action. The Relevant Officer will have the opportunity to present information to the Personnel Panel (in writing) 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 Personnel Panel. The Personnel Panel 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 most cases, the Personnel Panel will receive information from an initial fact-finding exercise (where one has been necessary) before reaching a decision on suspension. In exceptional circumstances, it may be necessary to suspend at very short notice before the Personnel Panel 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 of, or information within, the

Service / Authority or a serious risk to the 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 Personnel Panel. Where the Chief Fire Officer 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 Personnel Panel in circumstances where it is necessary to suspend at short notice before the Personnel Panel can meet.

### **3.0 FORMAL STAGE**

#### **3.1 Independent Investigator**

3.1.1 The Personnel Panel is responsible for the appointment of an Independent Investigator from a nationally maintained list. The Personnel Panel 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. The Personnel Panel reserves the right to proceed with instructions if it considers that any objection from the Relevant Officer is malicious, vexatious, designed to delay the process or otherwise unfounded.

3.1.2 The Personnel Panel will be responsible for ensuring the Independent Investigator 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 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 Officer is to be interviewed by the Independent Investigator as part of any 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 Independent Investigator. 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 Independent Investigator will refer the completed investigation report and evidence gathered including any recommendations with rationale as to the way forward to the Personnel Panel via either the Monitoring Officer, Deputy / Acting Monitoring Officer or other appropriate officer as pre-determined by the Panel.

### **3.2 Consideration & Decision of the Personnel Panel**

3.2.1 The Personnel Panel will consider the report of the Independent Investigator and their recommendations 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 (either in person or in writing) or provide mitigating circumstances at the hearing and may be accompanied. The Relevant Officer will have the opportunity to challenge the recommendations of the Independent Investigator and question any witnesses.

### **3.3 Recommendation of the Personnel Panel**

3.3.1 Following the Formal Hearing the Personnel Panel 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 Personnel Panel will advise the Relevant Officer in writing of their decision and, where necessary, confirm that any period of suspension has been brought to an end.

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 Personnel Panel, 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 Personnel Panel are as follows:

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

3.4.2 The Personnel Panel 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 an Appeals Panel drawn from members of the Authority where those members have not been part of the Personnel Panel. Section 4 of this document outlines the appeal process.

### **3.5 Recommendation for Dismissal**

3.5.1 Where the Personnel panel decision is to recommend dismissal, the Relevant Officer 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 Investigator's 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 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 Independent Panel will be responsible for considering any recommendation from the Personnel Panel to dismiss a Relevant Officer and will consider both the Personnel Panel decision along with the report from the Independent Investigator. The Independent Panel meeting is not a re-hearing and witnesses will not be called. The Relevant Officer however should be offered the opportunity to be present at the meeting of the Independent Panel and the Personnel Panel should be represented by a nominated person.

3.6.3 The Relevant Officer will be entitled to submit written representations for consideration by the Independent Panel as well as being afforded the opportunity to make oral representations at the meeting of the Independent Panel. The nominated representative of the Personnel Panel 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 Independent Panel.

3.6.4 The Independent Panel will review the Personnel Panel's decision and prepare a report for Full Authority. The report of the Independent Panel will outline a clear rationale if they disagree with the recommendation of the Personnel Panel 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 Personnel Panel;
- The Independent Investigators Report; and
- 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 Independent Investigator may also be invited to attend to provide clarification if required.

3.7.3 Following full consideration of the matter, 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 to dismiss is confirmed the Relevant Officer will be notified in writing.

3.7.6 For the avoidance of doubt, the involvement of any Member on any of the Panels referred to within this document will not preclude their involvement in the Full Authority meeting to consider the same matters, in accordance with the Localism Act 2011 (s.25).

## **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 Independent Investigator's report being inaccurate or incomplete;
- The issue is not proven on the balance of probabilities;
- The disciplinary sanction was too severe; or
- New evidence has come to light since the hearing which will have an impact on the decision.

4.1.2 The Appeals Panel will consider the report of the Independent Investigator and any other relevant information considered by the Personnel Panel. The Relevant Officer will have the opportunity to appear at the meeting of the Appeals Panel and present their case.

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

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

4.1.4 The decision of the Appeals Panel 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 set out by the NJC 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 to attend the meeting to make oral representations before the decision is taken on the recommendation to dismiss. Those representations constitute the Relevant Officer's final right of appeal.