

HIGH PEAK BOROUGH COUNCIL

Report to Council

15th October 2019

TITLE:	Disciplinary Procedure for Local Authority Chief Executives and Statutory Officers
EXECUTIVE COUNCILLOR:	Cllr Alan Barrow – Executive Councillor for Corporate Services & Finance
CONTACT OFFICERS:	Tanya Cooper – Head of OD & Transformation
WARDS INVOLVED:	Non-Specific

Appendices Attached:

Appendix A – Summary of the Disciplinary Procedure for Chief Executives and Statutory Officers

1. Reason for the Report

- 1.1 The purpose of this report is to adopt the model Disciplinary Procedure and Guidance in accordance with the Joint Negotiating Committee (JNC) Conditions of Service Handbook for Chief Executives

2. Recommendations

- 2.1 It is recommended that the Council:
- Adopts the model Disciplinary Procedure and Guidance for the Chief Executive in accordance with the JNC Conditions of Service Handbook for Chief Executives
 - Adopts the same Disciplinary Procedure and Guidance for other officers who hold a statutory role (Section 151 Officer and Monitoring Officer) as recommended by the JNC for Chief Executives
 - Establishes an Investigating and Disciplinary Committee (IDC) in accordance with the JNC for Chief Executives Conditions of Service Handbook. The IDC should consist of an equal number of members from both High Peak Borough Council (HPBC) and Staffordshire Moorland District Council (SMDC), as a result of the Chief Executive and other statutory officers being jointly employed by the two councils.

- Appoints an elected member (the Chair of the IDC) with the designated power to suspend the Chief Executive and other statutory officers in an emergency
- Updates the Council's constitution to comply with the JNC Conditions of Service Handbook for Chief Executives

3. Executive Summary

- 3.1 The Local Government Association (LGA) has provided notification of a change to the National Conditions of Service for Chief Executives. The JNC Conditions of Service Handbook for Chief Executives recommends the adoption of a model Disciplinary Procedure and Guidance for the Chief Executive in order to deal with allegations of conduct or capability in the absence of a locally agreed procedure.
- 3.2 It is also recommended this procedure and guidance should be adopted in respect of other officers who hold a statutory role. This would be applicable to the Section 151 Officer (Executive Director - Transformation) and the Monitoring Officer (Executive Director - People). It should also be noted that the Chief Executive and the Executives Directors are jointly employed by High Peak Borough Council (HPBC) and Staffordshire Moorlands District Council (SMDC).
- 3.3 Local authority statutory officers are protected under specific regulations that make distinctive provision, compared to other employees. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) aim to protect the statutory officers from unwarranted political interference in their roles.
- 3.4 The Disciplinary Procedure and Guidance also recommends the establishment of various standing committees in order that potential disciplinary issues can be dealt with quickly. It is recommended the following are established:
- An Investigating and Disciplinary Committee (IDC);
 - An Appeals Committee;
 - An Independent Panel;
 - Appointment of an elected member with designated power suspend the Chief Executive / statutory officers immediately in an emergency.
- 3.5 The disciplinary procedure is summarised at Appendix A.

4. How this Report Links to Corporate Priorities

- 4.1 It is important to note that it is a requirement of the JNC for Chief Executives Conditions of Service Handbook to set out a disciplinary procedure and guidance in accordance with these national conditions of service.

5. Options and Analysis

5.1 As detailed in the report.

6. Implications

6.1 Community Safety - (Crime and Disorder Act 1998)

None

6.2 Workforce

The adoption of the disciplinary procedure and guidance affects three staff: Chief Executive, Executive Director (Transformation) and Chief Finance Officer and Executive Director (People) and Monitoring Officer.

6.3 Equality and Diversity/Equality Impact Assessment

This report has been compiled in accordance with the Councils' equality and diversity policies.

6.4 Financial Considerations

None.

6.5 Legal

The adoption of the Disciplinary Policy and Procedure is compliant with the JNC for Chief Executives Conditions of Service Handbook and in accordance with the ACAS code of practice on Disciplinary and Grievance.

6.6 Sustainability

None.

6.7 Internal and External Consultation

The proposed arrangements have been consulted at national level.

The Chief Executive, Executive Director (Transformation) and Chief Finance Officer and Executive Director (People) and Monitoring Officer will be notified of this National Condition of Service following approval of the Disciplinary Procedure.

6.8 Risk Assessment

Not applicable

ANDREW P STOKES
Executive Director (Transformation) and Chief Finance Officer

Background Papers

JNC Conditions of Service
Handbook for Chief Executives

Location

Moorlands House

Contact Details

Andrew Stokes
Executive Director
Transformation

7 Background

- 7.1 The Local Government Association (LGA) has recently provided notification of a change to National Conditions of Service for Chief Executives. The JNC Conditions of Service Handbook for Chief Executives recommends the adoption of a model Disciplinary Procedure and Guidance for the Chief Executive in order to deal with allegations of conduct or capability in the absence of a locally agreed procedure.
- 7.2 It is also recommended this procedure and guidance should be adopted to other officers who hold a statutory role. This would be applicable to the Section 151 Officer (Executive Director - Transformation) and the Monitoring Officer (Executive Director - People). It should also be noted that the Chief Executive and the Executives Directors are jointly employed by High Peak Borough Council (HPBC) and Staffordshire Moorlands District Council (SMDC).
- 7.3 The LGA and the Association of Local Authority Chief Executives and Senior Managers (ALACE) through the JNC for Chief Executives commend this disciplinary procedure and guidance because:
- The procedure has been drawn up in light of experiences of the Joint Secretaries and their involvement in individual cases;
 - The variants of the procedure apply to constitutions with council leaders/cabinet executives, mayor/cabinet executive and those councils operating a committee system.
- 7.4 Local Authority Chief Executives are protected under specific regulations that make distinctive provision, compared to other employees. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) aim to protect the Chief Executive from unwarranted political interference in their role as Head of Paid Service of the Authority. High levels of accountability work most effectively within clear criteria for responsibilities. Even with the distinctive role of Head of Paid Service, disciplinary action will need to be based on clear evidence and elected members will want to ensure:
- They understand the procedure to be used;
 - Seek appropriate advice at every stage;
 - Do not compromise the outcome of any proceedings;
 - Allow every opportunity for fair procedure to operate.
- 7.5 The disciplinary procedure outlines guidance on the key elements of the procedure at each stage for disciplining Chief Executives.
- 7.6 The disciplinary procedure and guidance also recommends the establishment of various standing committees in order that potential disciplinary issues can be dealt with quickly. It is recommended the following are established:
- An Investigating and Disciplinary Committee (IDC);

- An Appeals Committee (AC);
- An Independent Panel (IP);
- Appointment of an elected member with designated power to suspend the Chief Executive / statutory officer immediately in an emergency.

8 Investigating and Disciplinary Committee (IDC)

- 8.1 This committee will consist of an equal number of elected members from HPBC and SMDC. This is due to the Chief Executive and the officers with statutory roles being contractually employed by both councils. The IDC must be politically balanced reflecting the respective political representation and shall consist of not more than five members from each council. As the authorities operate a leader/cabinet structure there must be at least one member from each authority's executive.
- 8.2 The purpose of the IDC is to consider allegations of conduct or capability and to consider if suspension is appropriate in cases of alleged gross misconduct. The IDC may also be required to meet at short notice to consider allegations. It is also suggested that the chair of this committee has the delegated power to suspend the Chief Executive/Statutory Officers in an emergency. The IDC also has an important role to consider the report of an independent investigator.
- 8.3 It will be the IDC's responsibility to hear disciplinary cases.

9 Appeals Committee (AC)

- 9.1 This committee will also consist of an equal number of elected members from HPBC and SMDC. The AC must be politically balanced reflecting the respective political representation and shall consist of not more than five members from each council.
- 9.2 The purpose of the AC is to hear appeals against action taken short of dismissal and to take a decision either to confirm the action taken, or to impose no sanction or a lesser sanction.
- 9.3 It should be noted that both Councils' currently have separately established Appeal Panels in place in accordance with both constitutions to consider appeals.

10 Independent Panel (IP)

- 10.1 It should be noted the IP is only required if there is a proposal to dismiss the Chief Executive or statutory officers which would require decision by full Council. The IP will be made up of two independent persons (appointed by the Council for the purpose of the council members' conduct regime under Section 28 (7) of the Localism Act 2011) from each Council.

10.2 Appointments to the panel are required to be in accordance with the following priority order:

- 1) An independent person who has been appointed by the council and who is a local government elector in the authority area;
- 2) Any other independent person who has been appointed by the Council and;
- 3) An independent person who has been appointed by another council or councils.

10.3 The purpose of the IP is to consider any oral representation of the Chief Executive and invite the IDC to respond of the points made by the Chief Executive. The IP may ask questions of both the IDC and the Chief Executive. The (IP) is required to review the decision of the IDC and prepare a report to Council containing clear rationale if the IP disagrees with the recommendation to Council to dismiss.

11 Independent Investigator

11.1 Should there be a requirement for any disciplinary process to carry out an investigation of allegations in order to establish the face of the case and to collate evidence for the use in a disciplinary hearing and it will be normally be necessary to engage an independent investigator to carry out the investigation. In order to ensure this part of the process is carried out quickly the joint secretaries at the LGA have appointed competent and experienced independent investigators to perform this role. A list of these is held with the LGA.

11.2 The role of the independent investigator will be to determine the process they will follow. This will depend on the nature of the allegation and availability of information. However, the JNC preferred process is based on evidence collection and investigation (i.e. evidence gathering and hearing submissions) which will lead to the formation of a report for consideration by the IDC at the disciplinary hearing.

12 Disciplinary Procedure and Guidance

12.1 The disciplinary procedure is summarised at Appendix A.