

# Disciplinary Policy For Dealing with an Allegation of Misconduct by a Senior Officer

## Details

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## Introduction

This procedure provides a fair and consistent process for dealing with disciplinary allegations against employees at a senior level. This procedure applies to the following roles:

- a. Chief Executive / Chief Fire Officer
- b. Director of Finance /Section 151 Officer
- c. Director
- d. Assistant Director
- e. Monitoring Officer

## Guidance

This runs in line with:

- a. The Local Authorities Standing Orders (England) Regulations 2001 and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015
- b. The National Salary Framework & Conditions of Service Handbook for Local Authority Chief Executives.

The disciplinary policy should be followed and referred to unless otherwise mentioned here.

### Informal stage

1. If an allegation of a disciplinary nature is raised against an employee referred to in section 1, then this policy will apply.
2. The direct line manager will initially fact find and identify whether an allegation requires further investigation. They will do this in conversation with the Assistant Director HR & Culture and the Chief Executive. If either of these two roles are the alleged or there are issues of objectivity another member of the team or an independent person of appropriate seniority will be involved. The line manager should decide whether the allegation:
  - a. Requires no further action.
  - b. Can be resolved via local informal action.
  - c. Should be referred to a formal investigation.

The Chair of the Authority will be informed of allegations made against any employee to whom this procedure applies.

3. The thresholds for referral to a formal investigation are:
  - a. There is sufficient evidence to support the allegation that requires further investigation.
  - b. Should the allegations be upheld, it would lead to either dismissal or a formal warning.

### Formal Stage

4. Ordinarily, the Chief Executive will be the Commissioning Officer for an investigation into any alleged misconduct which requires intervention at the formal stage under this policy. They will be supported (where appropriate) by the Assistant Director of HR & Culture or an externally appointed senior HR adviser in an advisory capacity. If there are grounds to believe that the Chief Executive had some involvement in the misconduct; or it would be inappropriate for the Chief Executive to be the Commissioning Officer, a Chief Executive of another fire and rescue authority will be appointed as Commissioning Officer.
5. The Commissioning Officer shall appoint an external investigator to investigate the matter unless the Commissioning Officer is satisfied that the matter can fairly investigated by an internal officer. The Commissioning Officer will provide the initial evidence to the investigator and agree the terms of reference with the investigator. The investigation will proceed in accordance with the disciplinary policy.
6. The investigator will report their findings to the Commissioning Officer in accordance with the disciplinary policy with a recommendation as to whether there is a case to answer or not.
7. During the disciplinary process the Commissioning Officer may recommend the suspension of the person under investigation under this procedure. An employee should only be suspended where suspension is considered to be necessary and follows the risk assessment process; suspension should be used for as little a time as possible and should be regularly reviewed. The suspension guidance in the disciplinary policy should be followed.
8. After the external investigation is concluded the investigating officer shall report back to the Commissioning Officer and shall produce an Investigation Report. If the Investigation Report concludes that there is a case to answer, the Commissioning Officer shall, as quickly as possible, arrange for a Hearing before a Hearing Panel.

9. The Hearing Panel shall consist of three people including the Chief Executive and two external independent people. Where there is no requirement to appoint "relevant independent persons" the designated independent person appointed to the Panel can be nominated in agreement with the Chair of the Authority. It would be appropriate for the designated independent person to be a Chief Executive or holder of an equivalent post from Kent Police, Kent County Council, another Fire & Rescue Service or NFCC.

There will also be an HR advisor and/or legal advisor from another organisation. For the purposes of this procedure a "relevant independent person" means a person whose identity falls within the meaning of section 28(7) of the Localism Act 2011.

#### *Chief Executive and Director of Finance and Customer Services Roles.*

The Hearing Panel shall consist of three Members of the Authority including the Vice-Chair of the Authority or other senior member (if appropriate). In cases involving disciplinary action against the Chief Executive or the Director of Finance and Customer Services where dismissal is a possible outcome, the Hearing Panel must also consist of at least two "relevant independent persons". Where dismissal is not a possible outcome the Hearing Panel must also consist of one "relevant independent person". In all cases the Hearing Panel should be supported by an external senior HR advisor/or legal advisor. (Appendix 10 – disciplinary hearing levels of authority). For the purposes of this procedure a "relevant independent person" means a person whose identity falls within the meaning of section 28(7) of the Localism Act 2011.

10. All parties present at the Hearing Panel may present, oral evidence, documentary evidence and witness evidence. The parties to the hearing may question each other or their witnesses. The Hearing Panel may ask questions of anyone present at any time. Parties are not entitled to legal representation save in exceptional circumstances which must be agreed by the Hearing Panel Chair in advance.
11. Following the hearing, the Hearing Panel must make findings as follows. In the case of a hearing relating to allegations against the Chief Executive or the Director of Finance and Customer Services if the Hearing Panel finds no misconduct or misconduct falling short of dismissal it must make a decision to that effect. If, however, the Hearing Panel takes the view that dismissal is the appropriate sanction they may only make a recommendation. In the case of a hearing relating to allegations against any other employee covered by this procedure the Hearing Panel must make a decision relating to the misconduct alleged. In all cases the decision/recommendation could be, but is not limited to:
  - a. Take no further action.
  - b. Recommend informal resolution or other appropriate action.
  - c. Refer for further investigation.
  - d. Disciplinary action short of dismissal (e.g., warning up to and including final written warning).
  - e. Dismissal.

The Hearing Panel must then produce a letter containing a summary of the hearing and the decision or recommendation arising from the hearing. This letter is referred to in the remainder of this procedure as the Notice of Sanction.

The Notice of Sanction must also clearly state to whom any appeal must be made, must contain a postal or e-mail address for that person and must confirm the time limit for lodging an appeal. The Notice of Sanction will be deemed to have been received by the employee the day after it is sent, if it is sent by e-mail to the employee's private e-mail address and will be deemed to have been received by the employee two clear days (excluding Saturdays, Sundays and Bank Holidays which will not be regarded as clear days) from the date of posting if sent by first class post or by recorded or special delivery.

#### **Appeals against Dismissal or other Disciplinary action short of Dismissal**

12. The ACAS Code of Practice recommends that an employee who is dismissed or is subject to disciplinary action short of dismissal is provided with the opportunity to appeal against the decision.
13. Appeals heard under this procedure are considered by the Senior Officers Appointments, Conditions and Conduct Committee (SOACC), with the support of an external HR and/or legal adviser not previously involved in the case.
14. In cases involving an appeal against the Chief Executive or the Director of Finance and Customer Services against a recommendation to dismiss the panel must also consist of at least two relevant independent persons (who should not be the same persons who were party of the decision to make the recommendation to dismiss). The Chair of the Authority will chair the Appeal meeting.
15. The employee's appeal to SOACC must be received by SOACC within 7 calendar days of the date upon which the employee is deemed to have received the Notice of Sanction. The employee's notice of an appeal must be in writing to the Chair of SOACC and should clearly specify one or more grounds of appeal such as:
  - a. There was a defect in the procedure.
  - b. The external investigators report being inaccurate or incomplete.
  - c. The issue is not proven on the balance of probabilities.
  - d. The disciplinary sanction was too severe.
  - e. New evidence has come to light since the hearing which will have an impact on the decision.
16. In addition to the employee's grounds of appeal SOACC will consider, the Notice of Sanction, the Investigation Report and any other relevant information considered by the Hearing Panel. The employee will have the opportunity to appear at the SOACC meeting and present their case. Witnesses will not normally be allowed at this stage but may be allowed at the discretion of SOACC. Parties are not entitled to legal representation save in exceptional circumstances which must be agreed by the Chair of SOACC in advance.
17. Following the appeal hearing SOACC will decide upon one of the following outcomes:
  - a. To reject the appeal and confirm the Hearing Panel's decision.
  - b. To allow the appeal in part and impose alternative sanction short of dismissal.
  - c. To allow the appeal and take no further action against the employee.
  - d. Where SOACC rejects the appeal of the Chief Executive or the Director of Finance and Customer Services, against a recommendation to dismiss, it must make a recommendation to dismiss to the Kent and Medway Fire and Rescue Authority.

The recommendation must contain:

- (a) any advice, views or recommendations of SOACC.
- (b) the conclusions of any investigation into the proposed dismissal; and
- (c) any representations from the employee.

Any recommendation to dismiss made under this paragraph must be sent to the Authority within 5 working days of the appeal hearing. A copy of the recommendation must be sent to the employee within the same timeframe.

The decision of SOACC is final (and with no further scope for appeal) for all disciplinary matters save for the dismissal of the Chief Executive or the Director of Finance and Customer Services. In all cases not relating to a recommendation to dismiss the Chief Executive or the Director of Finance and Customer Services SOACC should send a letter containing a summary of the hearing and its decision to the employee as soon as possible, but no later than 5 working days from the date of the conclusion of the appeal hearing.

#### **Full Authority**

18. Where a report is received by the Full Authority from SOACC recommending the dismissal of the Chief Executive or the Director of Finance and Customer Services containing the requirements listed in clause 209(d) above; the Full Authority must then consider the report, and vote upon whether to uphold the recommendation to dismiss. If the Authority decides that dismissal is not appropriate it may vote upon imposing a disciplinary sanction short of dismissal or may vote upon imposing no sanction

## ^ Relevant legislation and documentation

## ^ Linked policy (Tier 2)

[Disciplinary Policy](#)

## ^ Appendices

[Appendix 10. Disciplinary Hearing levels of Authority .docx](#)

## ^ Linked forms or templates (Tier 4)