



Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

Statutory Officer Disciplinary and Dismissal Policy and Procedure

DOCUMENT CONTROL

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DOCUMENT APPROVALS

This document requires the following committee approvals:

Committee	Date of meeting pending
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DOCUMENT DISTRIBUTION

This document will be distributed to all employees of Cherwell District

DATE FOR REVIEW

No later than 1st November 2025 but sooner if impacted by legislative changes.

REVISION HISTORY

Version	Revision date	Summary of revision

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1 Purpose and scope

- 1.1 These procedures have been developed taking into account the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the “Regulations”) to provide a fair and consistent process specifically for dealing with disciplinary action, the use of suspension, carrying out investigations, dismissals and appeals for the post-holders who hold the office of Head of Paid Service, Monitoring Officer and Section 151 Chief Finance Officer, referred to in this document as Statutory Officers.
- 1.2 For the avoidance of doubt these procedures will be used for any circumstance in which the use of suspension, disciplinary action, carrying out investigations, dismissals and appeals of these post-holders regardless of whether the issue in question relates to their substantive post or Statutory Officer role.
- 1.3 The policy shall also apply to any Deputy Statutory Officers where it is proposed to take disciplinary action (as defined by this policy) in relation to an issue or issues relating to their Statutory Officer role only. Therefore, in these procedures where reference is made to Statutory Officers, this also includes the Councils’ Deputy Statutory Officers when they are acting in this capacity.
- 1.4 Where the Head of Paid Service is the subject of the relevant action, any reference in these procedures to action to be taken by the Head of Paid Service on behalf of the Council shall be deemed to refer to the Deputy Head of Paid Service. Where the Monitoring Officer is the subject of the relevant action any reference in these procedures to action to be taken by the Monitoring Officer on behalf of the Council shall be deemed to refer to the Deputy Monitoring Officer.
- 1.5 In the event that an issue, deficiency or question arises which is not provided for in these procedures, they should be read in conjunction with the Joint Negotiating Committee (JNC) for Chief Executives Handbook (for Head of Paid Service) and Joint Negotiating Committee (JNC) for Chief Officers Handbook for other officers covered by this policy.
- 1.6 This policy does not form part of the contracts of employment of the Statutory Officers

2 Key Principles - Procedures for Discipline, Redundancy and Other Dismissals

- 2.1 Where a matter cannot be resolved informally, the Personnel Committee (PC) is required to investigate and make a determination in the event of disciplinary action being taken against a Statutory Officer on the grounds of misconduct.
- 2.2 If there is any proposal by the PC to dismiss a Statutory Officer for any reason relating to misconduct, performance (capability) or a breakdown in mutual trust and confidence this must be the subject of a recommendation

to the Full Council of the employing authority as set out below, where appropriate having taken into account any advice, views or recommendations of a panel of independent persons appointed in accordance with the Regulations.

- 2.3 For the purposes of this policy and any relevant agreements entered into for the purposes of Section 113 of Local Government Act 1972, a decision to dismiss a Statutory Officer made by the Full Council of the employing authority shall also be deemed to be a decision by the non-employing authority where the officer also holds a Statutory Officer appointment which, by virtue of section 113 of the Local Government Act 1972, places him/her at the disposal of the non-employing authority.

3 Contemplating Disciplinary Action & Other Forms of Resolution

- 3.1 Consideration should be given to whether formal disciplinary action is necessary or whether an informal or other form of resolution would be a better option. Subject to the initial filtering, this is decided by the PC based on the advice given by the Head of Paid Service, the Monitoring Officer and the Assistant Director of HR as appropriate.

4 Personnel Committee Responsibilities

- 4.1 The role and responsibilities of the PC in this context are to:
- 4.1.1 Where appropriate, deal with minor instances of unsatisfactory conduct at an early stage.
 - 4.1.2 Ensure that the Statutory Officer clearly understands the standards of conduct expected of him/her.
 - 4.1.3 Carry out, or make arrangements for, an investigation when any breach of discipline is alleged.
 - 4.1.4 Ensure that the Statutory Officer subject to investigation is kept up-to-date with progress.
 - 4.1.5 Decide, in the most serious cases whether or not to suspend the Statutory Officer. Sections 8 and 9 provide more information on suspension.
 - 4.1.6 Report to Full Council in respect of a recommendation to dismiss, having convened a Panel involving Independent Persons.
- 4.2 The Head of Paid Service or Deputy Head of Paid Service as appropriate shall inform the Statutory Officer of any decision in relation to any action to be taken or not if that is the case.

5 Statutory Officer's Entitlements

- 5.1 The Statutory Officer is entitled to the following:

- 5.1.1 To be accompanied at all stages by a trade union or other representative at their own cost. However, there may be circumstances where a trade union or other representative may not be available. In these situations, where suspension is under consideration, suspension will not be unduly delayed; see section 10.1.
- 5.1.2 To appeal against the disciplinary sanction/recommendation of a disciplinary hearing as made by the PC, where the decision of the PC is not to recommend dismissal to Full Council.
- 5.2 It is important to note that appeals *cannot* be made against decisions to dismiss made by Full Council.

6 Issues Requiring Investigation

- 6.1 Where an allegation is made relating to the conduct or capability of a Statutory Officer or there is some other substantial issue and following an initial filtering it is concluded that this requires investigation, the matter will be considered by the PC.
- 6.2 The PC, with the advice of the Head of Paid Service and Monitoring Officer (and where appropriate the Assistant Director of HR) will decide if any allegation made against a Statutory Officer can be dismissed or whether it requires more detailed investigation.
- 6.3 In those instances where the procedure has not been invoked but other action is taken/agreed the matter will be dealt with using other appropriate policies and procedures.
- 6.4 Allegations and complaints that are directed at a Statutory Officer, but are actually complaints about a particular service, will be dealt with through the Council's general complaints procedure. If the matter is a grievance from a member of staff directed against a Statutory Officer, usually, it will in the first instance be dealt with through the Council's grievance procedure.

7 Timescales

- 7.1 It is recognised that it is inappropriate to impose timescales that could in practical terms be difficult to achieve due to the combination of the requirements to follow both employment law, local government law and the principles of fairness but that the process should be conducted expeditiously but fairly.
- 7.2 The first meeting of the PC will be to consider whether there is, on the face of it, a case to be investigated. The balance of probabilities is the correct standard of proof.
- 7.3 If the decision is that there is a case to answer the Statutory Officer will then be invited to a subsequent meeting to provide an initial response to the allegations, and the PC will determine if a full investigation is required.

- 7.4 The PC will, if required, then arrange to carry out a full investigation. If as a consequence of that investigation a further meeting of the PC is held and it considers that a hearing should take place that could determine to recommend dismissal of the Statutory Officer, the hearing will be called.
- 7.5 Any recommendation to dismiss will be presented to the Full Council of the employing authority for consideration. In such circumstances the Monitoring Officer will invite and appoint Independent Persons to a Panel as required by the Officer Employment Procedure Rules (as set out in the Constitution). The panel must be appointed at least 20 working days before the Full Council meeting.
- 7.6 The Statutory Officer will be given at least 5 working days' notice at each stage of the process.

8 Suspension

- 8.1 Suspension will not always be appropriate or necessary as there may be alternative ways of managing the situation.
- 8.2 However, the PC will need to consider whether it is appropriate or necessary to suspend the Statutory Officer and to record the reason/s for the suspension. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the Statutory Officer might compromise or prejudice the investigation or witnesses, where it involves allegations of serious financial or other impropriety, impair the efficient exercise of the Council's functions or other appropriate reasons.
- 8.3 In any case, the Statutory Officer shall be informed of the reason for the proposed suspension both orally and in writing and have the right to present information before such a decision is taken.
- 8.4 If a decision is made to suspend the Statutory Officer, he/she will be advised orally and in writing.

9 Emergency Suspensions

- 9.1 The Head of Paid Service or Monitoring Officer, in consultation with the Chairman, or in his/her absence the Vice Chairman of the PC, holds the delegated power to suspend a Statutory Officer immediately in an emergency. The Chairman of the PC and both Leaders will be advised when a Statutory Officer has been suspended on emergency grounds. An emergency suspension shall be subject to review by the PC at the earliest opportunity.
- 9.2 Suspension is not a punitive measure and will therefore always be on full pay.

10 Right to be accompanied

- 10.1 Other than in circumstances where there is an urgent requirement to suspend a Statutory Officer, he or she will be entitled to be accompanied at all stages.
- 10.2 If the Statutory Officer's representative is unavailable for any meeting dates set then the Statutory Officer may postpone the meeting for a period of up to one working week.
- 10.3 If the representative is unable to attend within that period the PC and/or Full Council will have the right to proceed with the meeting/hearing without further delay, although reasonable consideration will be given to arranging an alternative date.

11 Considering the Allegations or Other Issues under Investigation

- 11.1 The Head of Paid Service or Deputy Head of Paid Service will, as soon as is practicable, inform the Statutory Officer in writing of the allegations or other issues under investigation and provide him/her with any evidence that the PC are to consider, including the right to hear oral evidence.
- 11.2 The Statutory Officer will be invited to put forward written representations and any evidence including evidence from witnesses he/she wishes the PC to consider. The PC will also provide the opportunity for the Statutory Officer to make oral representations.
- 11.3 The PC will give careful consideration to the allegations or other issues, supporting evidence, and the case put forward by the Statutory Officer before deciding what, if any, further action is to be taken.
- 11.4 The PC shall decide whether:
- The issue requires no further formal action under this procedure; or
 - The issue should be the subject of a full investigation.
- 11.5 The PC shall inform the Statutory Officer of its decision without delay.
- 11.6 In cases where an investigation is requested, as dismissal is one possible outcome, the Monitoring Officer shall be requested to appoint independent persons to attend the meeting of PC that receives the investigation report in an observer capacity and form the independent panel that is required to consider recommendations of dismissal and provide its views to Council, such panel to meet separately if necessary following the PC meeting and at least 20 working days prior to the full council meeting.

12 Conducting the Investigation

- 12.1 Before conducting the investigation it is important that the Statutory Officer is aware of the allegations that have been made against him/her (or the issue to be addressed) and given the opportunity to respond as set out in section 11 above.

12.2 Where the PC determines the issue should be the subject of a full investigation, the PC shall be responsible for appointing an investigator who in appropriate cases will be an independent investigator, selected from the list maintained by the National Joint Secretaries (also referred to in this procedure as the Investigating Officer). Once appointed it shall be the responsibility of the investigator to investigate the issue/allegation and to prepare a report stating in their opinion whether (and, if so, the extent to which) the evidence the investigator has obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and recommending any disciplinary action (if any is appropriate) or range of actions which appear to the investigator to be appropriate for the Council to take against the Statutory Officer.

12.3 In cases where, during the course of any investigation, the ill-health of a Statutory Officer results in their unavailability the PC may request appropriate medical advice from Occupational Health. The Statutory Officer may exercise their right not to cooperate with a referral to occupational health. In such circumstances the PC will make the best-informed decision they can, in the absence of such medical advice.

13 Treatment of Witness Evidence

13.1 Where there is witness evidence relating to an allegation, this should be provided to the Proper Officer with at least 5 working days' notice of the PC meeting, except where both the Statutory Officer and the PC waive this requirement. In exceptional cases it might be appropriate to anonymise the evidence in order to protect the identity of a witness. However, it remains important that the detail of the allegation is put to the Statutory Officer in order that he/she understands the case against him/her.

14 Conflicts of Interest

14.1 There may be occasions when being a witness presents problems of conflict of interest, for example where a member of the PC is a witness to an alleged event or is the person who makes the original complaint or allegation.

14.2 Councillors in this position should take no part in the role of the PC, although they will of course be able to give evidence, if required.

14.3 Declarations of interest are matters for individual councillors who are required to follow the Councillors Code of Conduct and can seek advice from the Monitoring Officer or Deputy Monitoring Officer or other officers, provided there is no conflict of interest.

15 Maintaining the Fairness and Integrity of the Procedure

15.1 Where there is a matter that requires investigation it is important that a fair and correct procedure is followed. Allegations against a Statutory Officer that require resolution should follow this procedure.

15.2 It is important that councillors do not undermine the fairness of the procedure by, for example, putting motions to either Full Council about the case as there is a serious risk that it could prejudice the disciplinary procedure.

15.3 Confidentiality throughout the process is essential to maintain fairness and integrity and therefore the PC should ensure that all documents, paperwork and other evidence are kept strictly confidential.

16 Other Appropriate Actions

16.1 It could be that when faced with an issue, whether it be an allegation of misconduct by the Statutory Officer, or some other substantial issue, the PC might be in a position to consider alternatives to a full investigation or alternatively to dismiss the allegation or issue.

16.2 Clearly this will depend on the facts of the matters being considered. It could be that the employing authority has another more appropriate policy or procedure to follow. Alternatively, it could be that the issue is one which might benefit from some mediation or attempts to resolve the particular issue in dispute (including the imposition of a sanction short of dismissal, such as a formal warning, which is accepted by the Statutory Officer) prior to conducting a full investigation.

17 Resources

17.1 The amount of time required to be spent on the investigation will depend on the case. The PC shall be provided with appropriate resources to appoint an investigating officer and independent advisors as they deem necessary. Due to the demands on their time, the investigating officer may need to be supported by an assistant. This should be agreed with the PC and the Statutory Officer should be informed.

18 Receipt and Consideration of the Investigating Officer's Report by the PC.

18.1 On completion of the investigation, the PC will be convened and members of the independent panel will also be requested to attend in order to receive the report of the Investigating Officer and any representations made. The PC will consider the report of the Investigating Officer which shall be provided to the Statutory Officer at the same time as it is provided to the PC. The PC shall give the Statutory Officer the opportunity to state his/her case and to question witnesses, where relevant before making a decision as follows:

- The management case will normally be presented by the person who undertook the investigation, calling witnesses as necessary.
- The Statutory Officer (and their representative, if present) will then have the opportunity to state their case, with the provision to call witnesses as necessary.

- Each side will have the opportunity to ask relevant questions of the other side, including their witnesses, and to sum up at the end of the hearing. The management representative will sum up first, followed by the Statutory Officer.
- If witnesses are called, they will attend the hearing solely to make their statement and to answer questions. They will then withdraw.
- If, during the hearing, substantial documentary evidence which has not previously been disclosed is produced by either side, the other party shall have the right to request an adjournment in order to allow sufficient time to examine the evidence. The Chair of the PC has the discretion to decide whether evidence can be submitted as time will have been previously been allowed for both parties to submit evidence, and therefore new evidence should be admitted in exceptional circumstances only.
- Other than when parties are summing up, the Committee can ask questions of either side.
- At the end of the hearing both sides will withdraw while the Committee and any advisers consider their decision.
- At the end of the decision making adjournment, the Statutory Officer (and their representative, if present) and the person presenting the management case will be re-called and given the decision, which will be confirmed in writing, normally within 5 working days.
- If the decision is to apply a disciplinary sanction other than dismissal, the Statutory Officer must also be informed of their right of appeal.
- However if the decision is to recommend the dismissal of the Statutory Officer to Full Council of the employing authority no right of appeal will apply but the procedure set out in sections 20 to 22 below shall be followed.
- In exceptional circumstances, where it is considered necessary to delay making a decision, the Statutory Officer will be informed of this decision, and advised when and how they will be notified of the decision in respect of the disciplinary hearing. This will be done as soon as possible and normally no later than 5 working days after the date of the hearing.

Having considered any other associated factors the PC may:

- Take no further action, cease suspension immediately and consider re-integration of the Statutory Officer back into the workplace.
- Recommend informal resolution or other appropriate procedures.
- Refer back to the investigating officer for further investigation and report.

- Determine a disciplinary sanction short of dismissal to be applied to the Statutory Officer.
- Determine to recommend dismissal of the Statutory Officer to the Full Council of the employing authority and consider the need to extend any period of suspension to facilitate that.

19 Action Short of Dismissal

- 19.1 Where the decision is to take action short of dismissal the PC will determine the necessary sanction.
- 19.2 There is no requirement to seek agreement of the Full Council of the employing authority for sanctions other than dismissal.

20 Recommendation of Dismissal – Independent Panel

- 20.1 Where the decision of the PC is to make a recommendation that the Statutory Officer be dismissed, the PC will inform the Head of Paid Service and Monitoring Officer that it is proposing to the Full Council of the employing authority that the Statutory Officer be dismissed and that the procedures required by rule 7 of the Officer Employment Procedure Rules (set out in the Council's Constitution) will commence.
- 20.2 A Panel with Independent Persons (see Appendix to the Officer Employment Procedure Rules in the Council's Constitution) who will have been present at the meeting of the PC will meet following the PC meeting to consider the recommendation of the PC to dismiss and to provide advice, views and recommendations to the Full Council of the employing authority.

21 Executive Objections Procedure

- 21.1 The Proper Officer will notify all members of the CDC Executive of:
- The fact that the PC is proposing a recommendation to the Full Council of the employing authority that it dismisses the Statutory Officer.
 - Any other particulars relevant to the proposed dismissal.
 - The period by which any objection to the recommendation to the Full Council is to be made to the Proper Officer.

At the end of this period the Proper Officer will either:

- Inform the Full Council that no objections to the proposed dismissal have been received from members of the Executive, or
 - Inform the Full Council that an objection or objections have been received from members of the Executive and provide details of the objections.
- 21.2 Full Council will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, the Full

Council will act accordingly i.e. it will consider the impact of the Executive objections on the recommendation of the PC and commission a further investigation and report by PC if necessary/appropriate.

21.3 If Full Council is satisfied that there are no material and well-founded objections to the proposal to dismiss, they will act accordingly and consider a proposal by the PC to dismiss the Statutory Officer.

21.4 Full Council must consider:

- (a) any advice, views or recommendations of the Independent Persons' Panel;
- (b) the conclusions of any investigation into the proposed dismissal; and
- (c) any representations from the relevant Statutory Officer.

22 The Role of the Employing Authority in a Recommendation to Dismiss a Statutory Officer

22.1 It is a legal requirement that, where there is a proposal to dismiss a Statutory Officer, Full Council of the employing authority must approve the dismissal before the dismissal is confirmed.

22.2 Given the thoroughness and independence of the previous stages, in particular, the investigation of the PC, it will not be appropriate to undergo a full re-hearing of the case. Instead, consideration by the Full Council will take the form of a review of the case and the recommendation to dismiss together with consideration of the advice, views and recommendations of the Independent Persons' Panel.

22.3 The Statutory Officer will have the opportunity to be accompanied by their representative and to put forward his/her representations to Full Council before a decision is reached.

23 Right of Appeal – Action short of Dismissal

23.1 The Statutory Officer may appeal to the Appeals Committee against the decision of the PC to issue a disciplinary sanction, short of dismissal, to him/her.

23.2 The Appeals Committee will consider the report of the Investigating Officer and any other relevant information considered by the PC i.e. new information outcome of any further investigations etc. The Statutory Officer will have the opportunity to state his/her case.

23.3 The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.

23.4 The appeal hearing will take the form of a review of the case and the decision/recommendation that was taken by the PC.

23.5 This process should follow the Appeals Committee Procedure rules as set out in the Constitution.

24 Recommendation to Dismiss – Statutory Officer Rights

24.1 Appeals

24.2 It is a statutory requirement that the Full Council of the employing authority must approve the proposed dismissal of a Statutory Officer before dismissal (with or without notice) is confirmed to him/her. Consequently it would not be possible to offer a fair appeal, by virtue of the requirement for Full Council to approve the PC's recommendation to dismiss, as every councillor would already be familiar with the issues, and had of necessity participated in the decision to dismiss.

24.3 Before the Full Council of the employing authority takes a decision on the PC's recommendation to dismiss a Statutory Officer it will take representations from the Statutory Officer on reasons why a dismissal should not be made.