



Doncaster
Metropolitan Borough Council

Local Discipline and Dismissal Policy, Procedures and Guidance for Chief Executives/ Managing Directors

People & Performance Improvement

**DISCIPLINE AND DISMISSAL PROCEDURES FOR
CHIEF EXECUTIVES**

1. INTRODUCTION

- 1.1 These local procedures for Chief Executives should be read in conjunction with the Joint Negotiating Committee (JNC) for Chief Executives Handbook (Revised edition April 2008).
- 1.2 The Joint Negotiating Committee (JNC) for Chief Executives of Local Authorities is the national negotiating body for the pay and conditions of service of chief executives in England and Wales.
- 1.3 The Authorities' Side consists of elected members nominated by the Local Government Association. The Staff Side consists of chief executives nominated by the Association of Local Authority Chief Executives (ALACE). ALACE is registered as an independent trade union.
- 1.4 Where there is discretion to adopt locally agreed terms and conditions of service, these will be agreed by the Council's Chief Officers' Appointments and Conditions of Service Committee

2. POLICY ISSUES

2.1 Purpose

- 2.1.1 These procedures have been developed to provide a fair and consistent process for specifically dealing with dismissals, appeals, compromise agreements, and the use of suspension, special leave and carrying out investigations for Chief Executives. All other Terms and Conditions are those prescribed in the JNC Handbook for Chief Executives.

2.2 Scope

- 2.2.1 The procedure applies to the Managing Director and those employed on JNC Chief Executive and Chief Executive related terms and conditions of employment (additional separate national procedures exist in the respective JNC Conditions of Service Handbook).

The term "chief executive" or "managing director" means the officer who is the head of the Council's paid service.

- 2.2.2 It does not apply to all other employees including Chief Officers for which separate procedures exist and teachers employed by the Council in establishments or services with non-delegated powers ("unattached teachers") for which separate procedures exist.
- 2.2.3 It does not apply to any other teachers and employees in schools where the governing body has delegated powers for which separate procedures exist.

2.3 Key Principles

Procedures for, Discipline, Capability, Redundancy and Other Dismissals

2.3.1 In line with the Local Authorities Standing Orders (England) Regulations 2001, there is a requirement where the matter cannot be resolved informally, that a Designated Independent Person is required to investigate and make a recommendation in the event of disciplinary action being taken against the chief executive on the grounds of misconduct or if there is any other proposal to dismiss the chief executive for any reason such as capability and some other substantial reason including the breakdown in trust and confidence between the chief executive and the authority; other than redundancy, permanent ill-health or the expiry of a fixed term contract unless the authority has undertaken to renew that fixed term contract.

Early Informal Resolution and Joint Secretarial Conciliation

2.3.2 Where potential disciplinary problems (either conduct or performance) are identified then either of the parties may wish to approach the appropriate JNC Side Secretary. The Joint Secretaries are available at any stage in the proceedings to facilitate discussions between the parties and as impartial conciliators.

2.3.3 Conciliation is preferable to the use of formal procedures if it can bring about a mutually agreed solution to any problems. While the process itself is informal any resolution should make it clear what specific changes in behaviour and/or performance are expected and within what timescales.

Mayors' Responsibilities

2.3.4 Dealing with minor instances of unsatisfactory conduct at an early stage.

2.3.5 Ensuring that the chief executive clearly understands the standards of conduct expected of him/her.

2.3.6 Carrying out, or making arrangements for, an investigation when any breach of discipline is alleged. *(For further guidance refer to Fact Sheet on "Disciplinary Investigation Process")*

(It is advised to contact the Monitoring Officer and Director of People and Performance Improvement for guidance prior to any investigation being commenced)

2.3.7 Ensuring that the chief executive subject to investigation is kept up-to-date with progress.

2.3.8 Deciding, in the most serious cases (alleged gross misconduct), or where the chief executive's continued presence at work may hinder an investigation, or put people at risk, whether it may be necessary to suspend the chief executive.

Chief executives' Entitlements

- 2.3.9 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 a suspension will not be unduly delayed. (*Refer to Fact Sheets on "Suspension from Duty" and Representation"*)
- 2.3.10 To appeal against those outcomes of a disciplinary investigation (*Refer to Fact Sheet on "Appeals"*)
- 2.3.11 Where informal resolution is not possible the formal disciplinary procedure should apply.

THE DISCIPLINARY PROCEDURE

1. *Issues requiring investigation*

Procedure

Where an allegation is made relating to the conduct or capability of the Managing Director or there is some other substantial issue that requires investigation, the matter will be considered by the Authority's Chief Officer Investigatory Sub Committee (COISC)

This Committee is a standing committee appointed by the council.

Guidance

There are specific Regulations that confirm that no disciplinary action can be taken against the Managing Director other than in accordance with a recommendation in a report from a Designated Independent Person.

The definition of Disciplinary action is in relation to a member of staff of a local authority means 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, but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract.

The Chair and Vice Chair of COISC together with the Monitoring Officer and Director of People and Performance Improvement will decide if any allegation made against the Managing Director is within the above definition. Unless the matter were a serious complaint against the Managing Director's personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the disciplinary procedure.

Records will be kept by the Monitoring Officer of any allegations against the Managing Director and any decision reached. The records will reflect whether or not the decision was to invoke the Disciplinary Procedure and if not whether

any other action was recommended. The records will also detail the advice given by the Monitoring Officer.

In those instances where the procedure has not been invoked but other action is recommended the matter shall be referred to the Director of People and Performance Improvement such as sickness absence or performance issues.

For example, allegations and complaints that are directed at the Managing Director, 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 the Managing Director, it will be appropriate to first deal with it through the Council's grievance procedure.

2. Timescales

Procedure

It is in the interests of all parties that proceedings be conducted expeditiously.

Guidance

It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.

An important principle when taking disciplinary action is that the process should be conducted expeditiously but fairly. There is, therefore, a need to conduct investigations with appropriate thoroughness, to arrange hearings and allow for representation. It is not in the interests of the Council, or the Managing Director that proceedings are allowed to drag on without making progress towards a conclusion.

The role of COISC in investigating the allegation will normally be discharged in two meetings. Only in exceptional circumstances will a meeting be adjourned or a further meeting held. The first meeting of COISC 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. If the decision is that there is a case to answer the Managing Director will be invited to a second meeting of COISC to answer the allegations. At that second meeting the COISC should refer the matter to a Designated Independent Person ("DIP") unless it is satisfied that no case exists. Any subsequent issues that come to light at any stage of the process must be dealt with in the same way as any allegation.

The Managing Director will be given at least 5 working days notice at each stage of the process unless this is expressly agreed otherwise and is considered to be fair and reasonable.

3. Suspension

Procedure

Suspension will not always be appropriate as there may be alternative ways of managing the investigation.

However, the COISC will need to consider whether it is appropriate to suspend the Managing Director. 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 Managing Director might compromise the investigation or impair the efficient exercise of the council's functions.

In any case, the Managing Director shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.

The Chair and Vice Chair of COISC together with the Monitoring Officer and Director of People, Performance and Improvement hold the delegated power to suspend the Managing Director immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by the Managing Director are such that his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority.

Any suspension must not last longer than 2 months unless the Independent Person has used his/her power to direct an extension to that period.

Guidance

The Authority's policy on suspension should be followed. The Director of People and Performance Improvement should normally conduct the suspension.

4. *Right to be accompanied*

Procedure

Other than in circumstances where there is an urgent requirement to suspend the Managing Director, he or she will be entitled to be accompanied at all stages

Guidance

At important stages (such as attending COISC to answer the allegations, COISC receiving the report of the DIP and any appeal against the decision taken by the Committee), if the Managing Director's trade union representative is unavailable for the date set then the Managing Director will have the right under the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week.

If the representative is unable to attend within that period the authority will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

Details of the Authority's position on the right to be accompanied are set out in the "*Representation*" fact sheet.

5. *Considering the allegations or other issues under investigation*

Procedure

The COISC will, as soon as is practicable inform the Managing Director in writing of the allegations or other issues under Investigation and provide him/her with any evidence that the Committee is to consider including the right to hear oral evidence.

The Managing Director will be invited to put forward written representations and any evidence including evidence from witnesses he/she wishes the Committee to consider. The Committee will also provide the opportunity for the Managing Director to make oral representations.

The COISC will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the Managing Director before taking further action.

The COISC shall decide whether:

the issue requires no further formal action under this procedure; or

the issue should be referred to a Designated Independent Person.

The COISC shall inform the Managing Director of its decision.

Guidance

5.1 It is possible in some cases that with some minimal investigation the COISC can dismiss the allegation without even the need to meet with the Managing Director. However, this procedure is aimed at dealing with situations where the matter is not so easily dismissed. It therefore provides a process whereby the Managing Director is made aware of the allegations and provided with the opportunity to challenge the allegations or to make their response.

5.2 When an issue comes before the COISC it needs to make a judgement as to whether the allegation can be dismissed or whether it requires more detailed investigation by a Designated Independent Person (DIP).

5.3 The appointment of a Designated Independent Person is a serious step but does not mean that the Managing Director is guilty of some misdemeanour. In some cases the eventual result of the investigation will be to absolve the Managing Director of any fault or wrongdoing. The appointment of a Designated Independent Person operates independently so that both the authority and the Managing Director can see that matters are dealt with fairly and openly. However, the matter still needs to be handled carefully in public relations terms due to the potential damage to the reputation of the Managing Director or the local authority.

5.4.1 Threshold test for the appointment of a DIP

Cases will vary in complexity but the threshold test for the COISC in deciding whether to appoint a Designated Independent Person is to consider the allegation or matter and assess whether:

- . if it were to be proved, it would be such as to lead to the dismissal or other action which would be recorded on the Managing Director 's personal file; and
- there is evidence in support of the allegation sufficient to require further investigation.

5.4.2 Conducting the initial COISC Investigation

- (a) It is intended that this stage is conducted as expeditiously as possible with due regard to the facts of the case. At this stage it is not necessarily a fully detailed investigation of every aspect of the case as that will be the responsibility of the Designated Independent Person (if appointed). However, it is important that before any decision is taken to appoint a Designated Independent Person the Managing Director is aware of

the allegations that have been made against him/her (or the issue to be addressed) and given the opportunity to respond.

(b) This will be achieved by:

- The COISC writing to the Managing Director setting out the allegations/issues and providing any evidence to be considered.
- Providing the opportunity for the Managing Director to respond to the allegations in writing and to provide personal evidence or witness evidence.
- Providing the opportunity for the Managing Director to appear before the COISC and to call witnesses.

The role of COISC in investigating the allegation will normally be discharged in two meetings. Only in exceptional circumstances will a meeting be adjourned or a further meeting held. The first meeting of COISC 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. If the decision is that there is a case to answer the managing director will be invited to a second meeting of COISC to answer the allegations. At that second meeting the COISC should refer the matter to a designated independent person (“dip”) unless it is satisfied that no case exists. Any subsequent issues that come to light at any stage of the process must be dealt with in the same way as any allegation.

The managing director will be given at least 5 working days notice at each stage of the process unless this is expressly agreed otherwise and is considered to be fair and reasonable the Managing Director is entitled to attend and can be accompanied by a representative.

5.4.3 Treatment of witness evidence

- (a) In general, if the authority has witness evidence relating to an allegation this should be presented to the Managing Director with at least 5 working days notice. 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 Managing Director in order that he/she understands the case against him/her.

5.4.4 Conflicts of interest

- (a) There may be occasions when this presents problems of conflict of interest, for example where a member of the committee is a witness to an alleged event or is the person who makes the original complaint or allegation. Councillors in this position should take no part in the role of the Committee, although they will of course be able to give evidence, if required. Where a number of members find themselves in a prejudiced position, there may be no alternative but for the council to establish a new Committee to perform the function of the COISC.
- (b) Declarations of interest are matters for individual councillors who are required to follow the National Code of Conduct and can seek advice from their Monitoring Officer or Standards Committee. Considerable

problems could follow for the speed at which the case is conducted if the Managing Director considers there are valid grounds for making a formal complaint to the Standards Board for England about the involvement of a councillor in a case.

5.4.5 Maintaining the fairness and integrity of the Procedure

- (a) Where there is a matter that requires investigation it is important that a fair and correct procedure is followed. Allegations against the Managing Director or serious issues that require resolution should follow this procedure. It is important that councillors do not undermine the fairness of the procedure by for example putting motions to full council about the case as there is a serious risk that it could prejudice the disciplinary procedure. Additionally, such actions will not only create adverse publicity for the authority and the Managing Director but may create conflicts of interest and could limit the role that those councillors can then take as the case progresses.
- (b) Confidentiality throughout the process is essential to maintain fairness and integrity and therefore the COISC should ensure that all documents, paperwork and other evidence are kept strictly confidential.

5.4.6 Other appropriate actions

- (a) It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of the Managing Director, or some other substantial issue, the COISC might be in a position to consider alternatives to immediately moving to the appointment of a Designated Independent Person or alternatively to dismiss the allegation or issue.
- (b) Clearly this will depend on the facts of the matters being investigated. It could be that the 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 prior to moving to appointing a Designated Independent Person.
- (c) It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships are breaking down but there is no evidence of misconduct attached to the Managing Director. The Joint Secretaries could be available to assist following the nationally agreed protocol.
- (c) If any financial settlements are considered, it is important that such an arrangement:
 - Falls within the authority's discretions under The local Government (Early Termination of Employment) Discretionary Compensation)(England and Wales) Regulations 2006, or
 - Is a payment in consideration of an agreement that compromises a genuine legal claim that the Managing Director might have at a Court or Employment Tribunal.
- (e) The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 are designed to enable a local authority to compensate employees whose employment terminates on grounds of redundancy or in the interests of the efficient exercise of the authority's functions. It is therefore possible that a

payment will be legitimate in certain circumstances. However, where there is an obvious case requiring disciplinary action and the allegation is such that dismissal is a likely outcome, it is not likely that a District Auditor will sanction a deal under the current regulations.

- (f) The authority must take appropriate legal advice when attempting to reach a financial settlement to ensure that any payment is justified. Relevant considerations will include the likelihood of the claim succeeding and the amount of compensation that could be awarded by a Court or an Employment Tribunal.

5.4.7 Power to agree financial settlements

There has been no delegation giving a committee or a Statutory Officer to negotiate a settlement.

5.4.8 Access to appropriate professional/independent advice

- (a) Conducting an investigation into allegations or serious issues involving the Managing Director can be demanding on the individuals involved. The COISC (and the Appeal Committee and council) will have access to the local authority's officers, but given the closeness of relationships between the Managing Director and the other Senior officers this can be a difficult time for those required to advise the Committee, to conduct investigations internally, or to source advice from outside the authority.
- (b) The COISC has powers to appoint external advisers as appropriate.

5.4.9 Ill-health - medical advice

- (a) In cases of capability related to sickness or where during the course of any other investigation, the ill-health of the Managing Director results in their unavailability it will be important that the COISC has access to appropriate medical advice from the council's Health and Well Being provider.

5.4.10 Performance

- (a) Where the issue is one of capability in terms of performance or competence, other than ill-health, the council will need to be in a position to establish or demonstrate the nature of the concerns. Evidence will be necessary in order to justify a further investigation.
- (b) This might come from a variety of sources, e.g. performance appraisal records, CPA reports, etc. Where the council follows an established appraisal/performance management process, this can also provide an appropriate route to establishing issues suitable for referral to the Committee.
- (c) Where the issue is breakdown of trust and confidence, the council will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with the Managing Director

Procedure

The Designated Independent Person must be agreed between COISC and the Managing Director. If there is a failure to agree on a suitable Designated Independent person the council will ask the Secretary of State to nominate a Designated Independent Person.

Once a Designated Independent Person has been agreed, the COISC will be responsible for making the appointment, providing the necessary facilities, agreeing remuneration and providing all available information about the allegations. The COISC should consider delegating the appointment of the Designated Independent Person to the Monitoring Officer

Guidance

6.1 Where a decision has been taken to appoint a Designated Independent Person it is important that the council moves quickly to achieve this. This is particularly important if the Managing Director has been suspended because of the two-month time limit on suspension.

6.2. Terms of reference - allegations or issues to be investigated

(a) When appointing the Designated Independent Person it is important that they are provided with terms of reference. The DIP will need to be:

- aware of the precise allegation(s) or issue(s) to be investigated,
- provided with access to sources of information and people identified as relevant to the case,
- aware of expectations regarding timescales and any known factors which could hinder their investigation, e.g. the availability of key people.

(b) The COISC will be responsible for providing this information. It will also be in a position to discuss timescales for the Designated Independent Person's investigation.

6.2.2 Remuneration

(a) There is no provision in the Regulations that stipulates the rate of remuneration to be paid to the Designated Independent Person for their work. However, the Regulations do provide (Regulation 7 (4)) that: *'A local authority must pay reasonable remuneration to a designated independent person appointed by the authority and any costs incurred by him in, or in connection with, the discharge of his functions under this regulation.'*

(d) This is a fairly broad obligation on local authorities. One issue that has caused delay and failure to appoint in some cases is the issue of providing the Designated Independent Person with an indemnity. Some DIPs may decline to accept the role unless the authority indemnifies them against any future legal costs arising from the role performed. There has been a difference of opinion as to whether the DIP should have insurance in their own right to cover such an eventuality, or whether the council should provide this or indeed whether it has the power to do so. In the opinion of the DCLG this issue is to all intents and purposes resolved by the wording of Regulation 7(4), i.e. that the Regulations require the council to bear all of the costs of the DIP incurred by him/her in, or in connection with, the discharge of his/her functions under this Regulation.

7. Independent Person investigation

Procedure

The Local Authorities (Standing Orders) (England) Regulations 2001 require the Designated Independent Person to investigate and make a report to the Council (COISC). The Designated Independent Person should operate on the basis of a combination of independent investigation using his/her powers to access information, and a formal hearing, at which the allegations and supporting evidence including evidence provided by witnesses are stated by the authority's representative and the Managing Director or his/her representative is able to present his/her case.

Once appointed it will be the responsibility of the Designated Independent Person to investigate the issue/allegation and to prepare a report stating in his/her opinion whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or incapability or supports the need for action under this procedure for some other substantial reason; recommending any disciplinary action (if any is appropriate) or range of actions which appear to him/her to be appropriate for the authority to take against the Managing Director

Guidance

7.1 Resources

7.1.1 The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, the DIP could decide to delegate some of the investigation work to an assistant. This should be agreed with the COISC and the Managing Director should be informed. If the work is delegated to someone else outside of the authority this might also require further discussion on any difference in the terms of remuneration for the assistant to the Designated Independent Person.

7.2 Working arrangements

7.2.1 Once appointed it will be the responsibility of the Designated Independent Person to investigate the issue/allegation and to prepare a report:

- stating in his/her opinion whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or other issue under investigation; and
- to recommend any disciplinary action which appears to him/her to be appropriate for the council to take against the head of paid service/ Managing Director.

7.2.3 The Regulations only require the Designated Independent Person to investigate and report to the council. The methodology should be confirmed with the parties. However, the JNC believes that the Designated Independent Person should operate on the basis of a combination of independent investigation using his/her powers to access information, and a formal hearing, at which details of the allegations and supporting evidence are stated by the authority's representative and where the Managing Director is given the opportunity to respond.

7.3 Power to extend suspension

7.3.1 The Regulations provide that suspension of the Managing Director for the purposes of investigating the issue should last for no longer than two months.

7.3.2 The DIP does not have the power to suspend the Managing Director and neither is his/her permission required in order to suspend the Managing Director. However, the Regulations provide that where the authority has suspended the Managing Director, the Designated Independent Person has the power to direct:

- that the authority terminate the suspension;
- that the suspension should continue beyond the two month limit;
- that the terms on which the suspension has taken place must be varied.

7.4 Confidential contact at authority

7.4.1 Although the Designated Independent Person has a degree of independence, it is advisable to agree some protocols for his/her investigation in order that disruption to the council's work is kept to a minimum at what can be a difficult time. The Monitoring Officer shall be the agreed contact for the Designated Independent Person who will report arrangements with the parties.

7.4.2 During the investigation the Designated Independent Person will as a matter of principle, make every attempt to ensure the appropriate confidentiality of any information obtained and discussed.

8. *Receipt and consideration of the Designated Independent Person's Report by the COISC*

Procedure

The COISC will consider the report of the Designated Independent Person and also give the Managing Director the opportunity to state his/her case before making a decision. Having considered any other associated factors the COISC may:

Take no further action

Recommend informal resolution or other appropriate procedures

Refer back to the Designated Independent Person for further investigation and report

Take disciplinary action against the Managing Director short of dismissal

Recommend dismissal of the Managing Director to the Council

Guidance

8.1 Report of the Designated Independent Person

8.1.1 The requirement is that the Designated Independent Person makes a report to the council and to the Managing Director simultaneously. Unless the Managing Director is exonerated by the report then at this stage the Managing Director should be given the opportunity to state his/her case before the committee makes its decision.

8.2 New material evidence

8.2.1 Where there is, at this stage, new evidence produced which is material to the allegation/issue and may alter the outcome, the COISC may:

- take this into account in making their decision, or
- request that the Designated Independent Person undertake some further investigation and incorporate the impact of the new evidence into an amended report.

The way the evidence is taken into account will depend on its nature. The introduction of new evidence in itself cannot be used to justify a more serious sanction than recommended by the Designated Independent Person. If this is a possibility, the Designated Independent Person should review his/her decision taking into account the new evidence.

8.3 Recommendations by the DIP - Outcomes or Options

8.3.1 The Regulations require the Designated Independent Person to recommend any disciplinary action that appears to be appropriate. At this stage clarity is to be welcomed and a clear reasoned decision is preferable. However, it could be that there is not one obvious action and it may be that the Designated Independent Person recommends a range of alternative actions. In this case the COISC would need to select the action to be taken.

8.3.2 Whilst the DIPs role is to make recommendations on disciplinary action, he/she may wish to comment on potential options for the way forward following the DIP process.

8.4 Decision by the COISC

8.4.1 The COISC is required to take a decision on the basis of the Designated Independent Person's report. It is always open to the Committee to impose a lesser sanction than that recommended but it cannot impose a greater sanction.

9. *Action short of dismissal*

Procedure

Where the decision is to take action short of dismissal the Committee will impose the necessary penalty/action, up to the maximum recommended by the Designated Independent Person.

Guidance

9 1 Where the decision taken by the COISC is action short of dismissal the action will be taken by the COISC. There is no requirement to seek confirmation by the council (or in authorities operating Mayor and cabinet or leader and cabinet executives, checking to see whether there are any objections raised by members of the executive). The constitution of the COISC will need to include the delegated power to take disciplinary action in these circumstances.

10. Where the COISC proposals dismissal

Procedure

The COISC will inform the Monitoring Officer that it is proposing to the Council that the Managing Director be dismissed and that the executive objections procedure should commence.

Executive Objections Procedure

The Monitoring Officer will notify all members of the executive of:

The fact that the COISC is proposing to the Council that it dismisses the Managing Director.

Any other particulars relevant to the dismissal

The period by which any objection to the Council is to be made by the elected mayor on behalf of the executive to the Monitoring Officer

At the end of this Period the Monitoring Officer will either:

Inform the COISC that the elected mayor has notified him/her that neither he/she nor any member of the executive has any objection to the dismissal.

Inform the COISC that no objections have been received from the elected Mayor

Inform the COISC that an objection or objections have been received and provide details of the objections

The COISC will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are- then the COISC will act accordingly i.e. it will consider the impact of the executive objections on the report of the Designated Independent Person and relevance to the sanction, commission further investigation by the Designated Independent Person and report if required etc.

Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the COISC will inform the Managing Director of the decision and put that proposal to the council along with any necessary material e.g the Designated Independent Person's Report

The role of The Council

The council will consider the proposal from the COISC that the Managing Director should be dismissed. The Managing Director will have the opportunity to put his or her case to the council before a decision is taken.

Guidance

10.1 Where the COISC proposes dismissal the Regulations require that the council must approve the dismissal before notice of dismissal is issued. Additionally, in councils that operate with either a Mayor and cabinet executive or a leader and cabinet executive, notice of dismissal must not be issued until an opportunity has been given to members of the executive to object to the dismissal.

10.2 Executive objections procedure

10.2.1 The executive objections procedure reflects the requirements of the Standing Orders Regulations

10.2.2 It is important that the authority identify The Monitoring Officer to undertake the role specified in the Regulations, i.e. notifying members of the executive of the proposal to dismiss, providing relevant information and the timescale during which any material and well founded objections should be made.

10.2.3 It will also be appropriate to explain that in order for an objection to be considered material and well founded, the objection would need to be not only based on evidence (well-founded) but must also be relevant to the case (material).

10.2.4 Given the procedure followed it would be unusual for a member of the executive to be in a position to raise an objection that would be sufficient to change the outcome significantly. However, this may be the case.

10 2.5 It is for the COISC to decide whether any objections put forward by members of the executive are material and well founded. If they are, then the Committee will need to consider the effect of the objection and act accordingly. For example, this may require further investigation.

10.3 The role of The Council

10 3.1 The Regulations require that in all constitutions, where there is a proposal to dismiss the Managing Director, the council must approve the dismissal before notice of dismissal is issued. The council must therefore consider the proposal from the COISC and reach a recommendation before the Managing Director can be dismissed.

10 3.2 Given the thoroughness and independence of the previous stages, in particular, the investigation of the Designated Independent Person it will not be appropriate to undergo a full re-hearing of the case. Instead, consideration by the council will take the form of a review of the case and the recommendation to dismiss.

10 3.3 The Managing Director will have the opportunity to be accompanied by their representative and to put forward his/her case before a decision is reached.

11. Appeals

Procedure

Appeals against dismissal

Where the COISC has made a proposal to dismiss the hearing by the Council will also fulfil the statutory appeal function.

Appeals against action short of dismissal

If the COISC takes action short of dismissal the Managing Director may appeal to the JNC for Chief Officers Appeals Committee. The JNC for Chief Officers Appeals Committee will consider the report of the Designated Independent Person and any other relevant information considered by the COISC i.e new information, executive objections (if relevant), outcome of any further investigations etc. The Managing Director will have the opportunity to state his/her case.

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

The decision of the JNC for Chief Officers Appeals Committee will be final

Guidance

11.1.1 Statutory Disputes Resolution Procedures contained in The Employment Act 2002 and The Employment Act 2002 (Dispute Resolution) Regulations 2004 require that an employee who has been dismissed is provided the opportunity to appeal against the decision.

11.1.2 As the Standing Orders Regulations require that the council approves the dismissal before notice of dismissal is issued, there might be some concerns about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss. The model procedure therefore envisages that the council meeting fulfils the requirement for an appeal. Before the council takes a decision on the recommendation to dismiss the Managing Director it will take representation from the Managing Director. Those representations will constitute the appeals process.

11.2 Appeals against action short of dismissal

11.2 1 Appeals against actions short of dismissal will be heard by the JNC for Chief Officers Appeals Committee. The appeal hearing will take the form of a review of the case and the decision that was taken by the COISC.

11 2. 2 This process should follow the procedure that the local authority applies generally to its other employees