

PROCEDURE FOR DEALING WITH COMPLAINTS OF MISCONDUCT BY STATUTORY OFFICERS OF THE DEVON & SOMERSET FIRE & RESCUE AUTHORITY

1 INTRODUCTION

- 1.1. The procedure as outlined in this document for dealing with complaints of misconduct by the Authority's Statutory Officers is based on the Model Disciplinary Procedure and Guidance produced by the Joint Negotiating Council (JNC) for Chief Executives of Local Authorities. While this Model Procedure and Guidance and the Regulations¹ on which it is based are not directly applicable to combined fire and rescue authorities, the Devon & Somerset Fire & Rescue Authority has nonetheless resolved to adopt² procedures consistent with these.

2 STANDING ORDERS

- 2.1. The Authority's Standing Orders provide as follows:

DISCIPLINARY ACTION – HEAD OF PAID SERVICE (CHIEF FIRE OFFICER), MONITORING OFFICER AND CHIEF FINANCE OFFICER (TREASURER)

- (1). No disciplinary action in respect of the head of the Authority's paid service (the Chief Fire Officer), its monitoring officer or its chief finance officer (the Treasurer), except action described in (2) below, may be taken by the Authority, or by a committee, a sub-committee, a joint committee on which the Authority is represented or any other person acting on behalf of the Authority, other than in accordance with a recommendation in a report made by a designated independent person under the Authority's approved procedure for investigating allegations of misconduct by these officers.
- (2). The action mentioned in paragraph (1) is suspension of the officer concerned for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.

¹ The Local Authorities (Standing Orders) (England) Regulations 2001, as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

² Minute DSFRA/18, Authority Meeting 28 June 2019

3 THE “STATUTORY OFFICERS”

- 3.1. The three “Statutory Officers” for the Devon & Somerset Fire & Rescue Authority to which the procedure set out in this document applies are:
- a. The Chief Fire Officer (as required by virtue of the Devon & Somerset Fire & Rescue Authority [Combination Scheme] Order 2006). The Chief Fire Officer, amongst other things, discharges the role of Head of the Authority’s Paid Service and in this capacity is responsible for the manner in which the functions of the Authority are discharged, the number and grades of staff required to discharge those functions, the organisation of the staff and the appointment and proper management of the staff;
 - b. The Monitoring Officer (required by Section 5 of the Local Government and Housing Act 1989). The role of the Monitoring Officer is to ensure that the Authority operates in a lawful manner; and
 - c. The Chief Finance Officer responsible for the proper administration of the Authority’s financial affairs (required by Section 112 of the Local Government Finance Act 1988). This officer is commonly referred to as the Authority’s Treasurer.

4 SUBMISSION OF COMPLAINTS

- 4.1. Complaints about misconduct by a Statutory Officer must be submitted in writing (including e-mail) as follows:
- a. a complaint about misconduct by either the Chief Fire Officer or the Treasurer should be submitted to the Monitoring Officer; or
 - b. a complaint about misconduct by the Monitoring Officer should be submitted to the Chief Fire Officer; or
 - c. a complaint about misconduct by all of the officers listed above should be submitted to the Deputy Monitoring Officer who will then discuss it with the Chair of the Authority.
- 4.2. The complaint must set out clearly what the misconduct is that is being complained about. The complaint should set out all relevant information (e.g. incidents, dates, times etc.). Any supporting evidence should also be submitted with the complaint.
- 4.3. The correspondence address for any complaints of misconduct by a Statutory Officer is:
- Either* The Monitoring Officer; *or* the Chief Fire Officer; *or* the Deputy Monitoring Officer (see paragraph 3.1 [a] to [c] above)
c/o Devon & Somerset Fire & Rescue Service Headquarters
The Knowle
Clyst St. George
EXETER EX3 0NW

4.4. For submissions by e-mail, the following addresses should be used:

Monitoring Officer: mpearson@dsfire.gov.uk

Chief Fire Officer: lhowell@dsfire.gov.uk

Deputy Monitoring Officer: DemocraticServices@dsfire.gov.uk

5 INITIAL PROCESSING OF COMPLAINT

5.1. On receipt of a written complaint, it will be acknowledged in writing to the complainant. Arrangements may then be made for an Executive Board Member with no prior involvement in the issue complained of to produce a report setting out purely any factual information to assist in determining whether or not it appears that the complaint should be submitted for independent investigation.

5.2. A meeting of the Appointments & Disciplinary Committee (“the Committee”) will then be called. The purpose of this meeting will be, in light of the complaint and any accompanying report that may have been produced by an Executive Board Member, to determine:

a. whether the complaint:

(i) requires no further action to be taken; or

(ii) is sufficient to warrant an informal, un-recorded warning to the Statutory Officer concerned (“the Subject Officer”); or

(iii) should be submitted for independent investigation;

b. subject to (a)(iii) above, whether the Subject Officer should be suspended while the investigation is conducted; and

c. subject to (a)(iii) above, the appointment of the Independent Investigator for the complaint.

5.3. The Committee should only refer a matter for independent investigation if it is satisfied that, on the basis of the evidence before it, the subsequent independent investigation could result in a sanction that would be recorded on the Subject Officer’s personnel file (i.e. a formal sanction).

5.4. Any suspension of the Subject Officer should not exceed a period of two months from the date of suspension. After the two month period, any proposed continuation should be subject to consultation by the Chair of the Committee with the Independent Investigator. The Chair of the Committee should confirm the outcome of the review in writing to the Subject Officer without delay and having taken into account any representations that may have been made by Subject Officer.

6 APPOINTMENTS & DISCIPLINARY COMMITTEE - INITIAL ASSESSMENT CRITERIA

6.1. In determining the issue, the Committee will consider, in light of all the evidence before it:

- a. whether sufficient information has been provided on which to base a decision on issuing an informal, unrecorded warning or to refer the matter for independent investigation;
 - b. whether the misconduct complaint appears to be simply malicious or “tit-for-tat”;
 - c. whether the complaint is about something that happened six months or more ago and it would be unfair, unreasonable or otherwise not in the public interest to pursue the matter **unless** it is felt that there are exceptional reasons to pursue it;
 - d. it would otherwise be inappropriate to expend the Authority’s resources on determining the misconduct complaint, having regard to the circumstances, any previous related complaints and the public interest.
- 6.2. If, in light of the evidence before it and the above assessment criteria, the Committee concludes that an informal, unrecorded warning should be issued, then the Subject Officer has a right of appeal against this to the Appeals Committee (see Section 9 below).
- 6.3. If, in light of the evidence before it, the Committee concludes that no prima facie case for referral to independent investigation has been established (i.e. there appear to be no or insufficient grounds for this), then the matter is concluded. The complainant will be notified in writing of this and that there is no right of appeal against such a decision.

7 APPOINTMENT AND ROLE OF THE INDEPENDENT INVESTIGATOR

- 7.1. In the event that the Committee determines that a prima facie case has been established to refer a misconduct complaint for independent investigation, then a Designated Independent Person to undertake the investigation must be appointed.
- 7.2. The Committee will obtain a list of suitably qualified individuals from the Joint Secretaries of the National Joint Council for Local Government Services and may prepare from this a short-list for the proposed appointment. The Subject Officer may choose the Independent Investigator from the short-list. If the Subject Officer raises genuine conflicts of interests in relation to those on the short-list, these should be considered by the Committee. If, though, the Subject Officer does not agree, within 14 days, to an appointment the Committee may appoint its choice from the list.
- 7.3. The Independent Investigator:
- a. **may** advise that
 - i. the Authority terminate any suspension of the Subject Officer;
 - ii. any suspension should continue after the expiry of the period referred to in the Authority’s Standing Order (a maximum of two months from the start of the suspension);
 - iii. the terms on which the suspension has taken place should be varied as may be specified;

- b. has authority to inspect any and all documents relating to the conduct of the Subject Officer which are in the possession of the Authority, or which the Authority has power to authorise inspection of;
- c. has authority to require any member of staff of the Authority to answer questions concerning the conduct of the Subject Officer; and
- d. **must**:
 - i. produce a report stating their opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct by the Subject Officer; and
 - ii. subject to (i) above, recommend any disciplinary action which it appears would be appropriate to take against the Subject Officer; and
 - iii. provide the Subject Officer with a copy of the report at the same time as it is provided to the Authority.

8 THE INDEPENDENT INVESTIGATOR'S REPORT

- 8.1. Once produced, the Independent Investigator's report will be considered at a further meeting of the Committee alongside any representations made by the Subject Officer. The Committee may then either:
 - a. determine that the allegations are not upheld; or
 - b. determine a sanction short of dismissal – **see also Section 9 below**, or
 - c. recommend dismissal to the full Authority – **see also Section 1 below**.
- 8.2. In the event of a recommendation for dismissal, then the advice, views and recommendations of one of the Authority's Independent Persons (as defined in Section 28(7) of the Localism Act) **must** be sought prior to consideration of the recommendation by the full Authority.

9 THE APPEALS COMMITTEE

- 9.1. In the event of the Appointments & Disciplinary Committee imposing either an informal, unrecorded sanction or, following consideration of the Independent Investigator's report), a sanction short of dismissal, then the Subject Officer may appeal to the Appeals Committee.
- 9.2. The Appeals Committee (which has a different membership to that of the Appointments & Disciplinary Committee) may either:
 - a. confirm any sanction imposed;
 - b. determine that a lesser sanction should be imposed; or
 - c. determine that no sanction at all should be imposed.
- 8.1. The decision of the Appeals Committee is final.

10 DISMISSAL OF A STATUTORY OFFICER

- 10.1. A decision to dismiss a Statutory Officer can only be taken by the full Authority.
- 10.2. When deciding any recommendation for dismissal, the Authority **must** consider:
 - a. the advice, views and recommendations provided by one of the Authority's Independent Persons on the recommendation; and
 - b. any representations from the Subject Officer.

11 EMERGENCY POWER TO SUSPEND THE CHIEF FIRE OFFICER

- 11.1. In the event of an allegation of misconduct by the Chief Fire Officer and where the allegation is such that the continued presence at work by the Chief Fire Officer would pose a serious risk either to the health and safety of others or the resources, information or reputation of the Authority, then the Monitoring Officer (following consultation with the Authority Chair) has delegated authority to suspend the Chief Fire Officer pending investigation by an Independent Investigator of the alleged misconduct.