

## **ANGUS COUNCIL CHIEF EXECUTIVE'S DISCIPLINARY PROCEDURE**

**This procedure forms part of Angus Council's Disciplinary Policy and Procedure.**

### **Stage 1**

**When faced with an allegation(s) of misconduct against the Chief Executive, Angus Council will give initial consideration to the allegation(s) or complaint to determine whether the matter should be formally investigated and whether suspension is appropriate.**

The allegation(s) will be provided to the Head of HR, IT & Organisational Development and the Head of Legal and Democratic Services and initially will be discussed with the Leader of the Council.

The Leader or Depute Leader where the Leader is the complainant will appoint an Assessment Group. This group will be made up of a cross party group of three elected members representing, as far as is practicable, the political balance of the Council. The Assessment Group will not participate in the subsequent stages of the procedure. Only councillors who have received recent and appropriate training should be members of the Assessment Group.

The HR Manager and Service Manager (Legal Services) will assist the Assessment Group.

The Head of HR, IT & OD will provide the Chief Executive with a copy of the allegation or complaint that has been made and advise that an Assessment Group has been called to meet to consider the matter within ten working days. The Chief Executive may wish to make initial observations to the Head of HR, IT & OD and the Head of Legal and Democratic Services. If agreed with the Chief Executive these observations will be shared with the Assessment Group. Where, depending on the circumstances, it is considered inappropriate to agree not to share these observations, i.e. where the allegations are serious enough to involve, for example, agencies such as the Police or are in breach of the Council's Employee Code of Conduct the Chief Executive will be advised of this.

The Assessment Group will be provided with a copy of the allegation(s) or complaint against the Chief Executive, and if previously agreed (or where considered necessary to do so) the initial observations from the Chief Executive. Based on the information available the group will decide whether a formal investigation is required. If the decision is taken to proceed to formal investigation the Assessment Group will also, depending on the nature of the allegation(s) or complaint, consider whether suspension, on full pay, is appropriate.

A note of the meeting and the decision making process will be taken. The decision of the Assessment Group will be communicated in writing to the Chief Executive and Leader of the Council within two working days.

If suspension from duties is deemed appropriate by the Assessment Group this will be recommended to the Leader who will carry out the suspension of the Chief Executive. This will be on full pay and will be confirmed in writing.

Where the Assessment Group decision is that no further action is necessary, no record of the allegation(s) or complaint will be entered on the Chief Executive's personal file.

## Stage 2

**Should the matter proceed to formal investigation, an Investigating Officer will be appointed to conduct a formal investigation into the allegation(s) or complaint.**

The Investigating Officer will be agreed between, and be independent of both, the Council and the Chief Executive. In the event of a failure to agree it will be for the Joint Secretaries to the SJNC to recommend an Investigating Officer.

The investigation should be conducted within a reasonable period. If the investigation is likely to extend beyond four weeks following appointment of the Investigating Officer, the Chief Executive will be kept informed of progress by the Head of HR, IT & OD on a weekly basis.

It is for the Investigating Officer to determine how best to investigate the allegation(s). However, the Investigating Officer will be expected to:

- Invite the Chief Executive to a formal meeting to discuss the allegations or complaint and prepare a signed statement. The Chief Executive will be given a minimum of five working days prior written notice of the investigatory meeting and the letter will advise of the right of representation at that meeting by a representative of an appropriate trade union or a work colleague.
- Meet with and interview any witnesses to or parties associated with the allegation(s) or complaint, a signed statement being prepared to record their evidence.
- Review the evidence available to ascertain whether it appears there is a case to be answered and recommend whether a disciplinary hearing should be convened. Present the management case should the matter proceed to a formal disciplinary hearing.
- The Chief Executive should be advised in writing by the Council Leader of the findings and recommendations of the Investigating Officer within 5 days of the completion of the investigation.

## Stage 3

**At the conclusion of the investigation, a Hearing Panel should if required be set up comprising of 3 councillors (cross party representing, as far as is practicable, the political balance of the Council). This panel must exclude members of the Assessment Group and any councillor who is party to any complaint giving rise to the investigation.**

The Investigating Officer will prepare a report for the Hearing Panel outlining the findings of the investigation. The report will include a recommendation as to whether the Investigating Officer considers there are sufficient grounds to the allegation(s) or complaint to warrant proceeding to a disciplinary hearing.

The Hearing Panel, following consideration of the report from the Investigating Officer, will decide if a disciplinary hearing should be convened.

The Chief Executive will be advised in writing of the decision of the Hearing Panel no later than five working days following the meeting of the panel. A copy of the report from the Investigating Officer will accompany that letter.

Where the Hearing Panel decides that no further action is necessary this decision will be recorded and notified to the Chief Executive within 3 working days of taking the decision. All references to the investigation must be removed from the Chief Executive's personal file and destroyed.

Where it is decided that a hearing should be held, the Chief Executive will be given a minimum of ten working days prior notice in writing of the hearing. The letter will provide full details of the allegation(s) or complaint, advise of any witnesses that may be called and include any associated statements. The letter will also advise the Chief Executive of their right to be represented at the hearing and ask the Chief Executive (or their representative) to provide in advance of the hearing any relevant papers that they may present as part of their case and the names of any witnesses they may wish to call.

The hearing will be held no later than four weeks from the date of the letter.

The Chief Executive may seek a postponement of the hearing to enable representation, such postponement should be for no more than ten working days.

The HR Manager and Service Manager (Legal Services) will advise the Hearing Panel.

**Conduct of the Hearing:** The role of the Hearing Panel is to conduct a fair hearing into the allegation(s) or complaint so that a reasonable decision can be made, based on the information presented. The conduct of the hearing will be as follows:

- The investigating officer will present the case.
- Members of the Hearing Panel and the Chief Executive (or their representative) will have the opportunity to question the investigating officer and any witnesses called.
- The Chief Executive (or their representative) will present their case.
- Members of the Hearing Panel and the investigating officer will have the opportunity to question the Chief Executive and any witnesses called by either party.
- The investigating officer will summarise their case, introducing no new evidence.
- The Chief Executive (or their representative) will summarise their case introducing no new evidence.
- Both parties will withdraw to enable the Hearing Panel to make a decision in private.
- Following the recess, the parties will reconvene and the Convenor of the Hearing Panel will advise the Chief Executive of the panel's decision. If the Hearing Panel is unable to provide a decision on the day of the hearing, they will reach a decision as soon as possible, but in any event the decision will be confirmed in writing to the Chief Executive within ten working days of the hearing. The letter will specify the reason for the disciplinary action, the level of discipline imposed, the right of appeal and that any such appeal is to be submitted in writing to the Head of Legal and Democratic Services.
- A record of the meeting and decision must be kept.

## Appeals

- There is a right of appeal against all forms of disciplinary action.
- If the Chief Executive wishes to exercise the right of appeal this should be done by writing to the Head of Legal and Democratic Services within 14 calendar days of receiving the letter confirming the disciplinary action, clearly outlining the grounds for the appeal.

**Sanctions:** If the allegation(s) or complaint against the Chief Executive is considered to have been substantiated, any disciplinary action taken should be reasonable in the circumstances taking into account the seriousness of the incident and any mitigation presented.

The Hearing Panel may impose any of the sanctions contained within Angus Council's Disciplinary Policy.

### Oral Warning

Where minor misconduct occurs which the Hearing Panel considers cannot be dealt with on an informal basis, an **ORAL WARNING** may be issued.

In such circumstances the Hearing Panel will make it clear that formal disciplinary action is being taken, will explain the reason for the warning, the nature of the improvement in conduct required and that further more serious disciplinary action is likely if there is a recurrence of misconduct. The warning and the circumstances surrounding it will be recorded, a copy given to the Chief Executive and a copy entered on their personal file.

### Written Warning

If the issue is sufficiently serious a **WRITTEN WARNING** will be issued. This will set out the reason for the warning and, where appropriate, the nature of the improvement in conduct required and will also state the likely consequences of any further misconduct.

### Final Written Warning

More serious misconduct or further misconduct after a warning has been given may warrant a **FINAL WRITTEN WARNING**. This will set out the reason for the warning and, where appropriate, the improvement in conduct required. It will also state that any further misconduct is likely to result in dismissal.

### Serious Action including Dismissal

The Chief Executive should normally be given a final written warning regarding their conduct before dismissal is contemplated. However, repeated misconduct is likely to result in **DISMISSAL**.

Certain offences will be regarded as **GROSS MISCONDUCT** warranting **SUMMARY DISMISSAL** i.e. dismissal without notice whether or not any previous warnings have been issued. The following list, which is not exhaustive, gives examples of offences which will normally be regarded as gross misconduct:

Theft; fraud; falsification of records including timesheets; fighting, deliberate damage to council property; physical assault; serious negligence; serious insubordination; serious breach of the confidentiality of council information, including the disclosure of confidential information to an unauthorised person or use of such information to gain personal advantage; failure to disclose a personal financial interest in a contract or proposed contract with the council, unauthorised acceptance of any fee or reward in connection with work.

Depending on the nature and seriousness of the offence, it is not necessary to progress from one level to the next. For example, it is possible for a final written warning to be issued without a written warning having previously been issued.

The Chief Executive cannot be dismissed for a first offence unless gross misconduct has been established. It is also possible to supplement the above warnings by applying other disciplinary sanctions including suspension without pay for up to 10 days.

### **Time Limits**

Warnings will be disregarded for disciplinary purposes after the following periods of satisfactory conduct:

Oral Warning .....	6 months
Written Warning .....	12 months
Final Written Warning .....	18 months

Should the allegation(s) or complaint be found to be not substantiated and no disciplinary action taken no record of the allegation(s) will be entered on the Chief Executive's personal file.

### **Stage 4**

**Where the Chief Executive appeals the decision of the Hearing Panel, a meeting of the Appeal Committee will be arranged to consider the appeal in the normal manner.**

The Appeal Committee will exclude members of the Hearing Panel and the Assessment Group, and as far as is practicable, be made up of a cross party group of three elected members representing the political balance of the council. Any councillor who has been party to the complaint giving rise to the process will not be a member of the Hearing Panel.

The Head of HR, IT & OD and the Head of Legal and Democratic Services will advise the Appeal Committee.

A record of the meeting and decision reached will be taken.

The Appeal Committee will ideally be held within 20 working days of receipt of the appeal.

The Chief Executive will be advised in writing a minimum of ten working days prior to the date of the Appeal Hearing and will be provided with a copy of any associated paperwork that will be presented on behalf of the Hearing Panel as part of their case. The letter will advise the Chief Executive of their right to be represented at the appeal, advise of any witnesses that may be called, and ask the Chief Executive (or their representative)

to provide in advance of the appeal any documentation that they intend to refer to and the names of any witnesses they may call.

The conduct of the Appeal Hearing will follow that of the Disciplinary Hearing, however it will be for the Chief Executive (or representative) as appellant to present their case first and be allowed to summarise their case last.

It is the responsibility of the Appeal Committee to determine whether the appeal from the Chief Executive should be upheld, upheld in part or dismissed. If upheld in part the Appeal Committee must also determine the impact of this decision on any sanction implemented by the Hearing Panel.

The convenor of the Appeal Committee will advise the Chief Executive of the decision of the Appeal Committee. If the committee is unable to reach a decision at the conclusion of the Hearing they will do so as soon as possible, but in any event the decision will be confirmed in writing to the Chief Executive within ten working days of the date of the appeal hearing.

At the conclusion of the Appeal Stage a report noting the outcome should be presented to Full Council for information only.