



Grievance Policy and Procedure for Statutory Chief Officers

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Background

Local authority Chief Executives, S151 Officers and Monitoring Officers are protected under specific regulations that make distinctive provisions, compared to other employees. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) and the Local Authorities (Standing Orders) (Wales) Regulations 2006 aim to protect these roles from unwarranted political interference in their roles.

Thanet District Council has adopted, as far as is practicable, the model procedures laid down in the JNC Chief Executive Handbook and has extended these provisions to include all Statutory Chief Officers.

Scope

Subject to the following officers' terms and conditions of employment incorporating the JNC terms and conditions, this policy applies to:

The Chief Executive (Head of Paid Service),
Section 151 Officer,
Monitoring Officer

And hereon will refer to all 3 roles collectively as 'Statutory Officer'.

The Council reserves the right to implement the procedure at any stage as set out below, taking into account the severity of the allegations against a Statutory Officer.

Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently unless:

- Bias is alleged in the conduct of the disciplinary meeting
- There is possible discrimination.

If this occurs then the disciplinary process may be temporarily suspended in order to deal with the grievance.

Statutory Officers may not raise a grievance against a sanction that has been given as they have the right to appeal the decision under the disciplinary procedure.

The Grievance Procedure

These procedures cover the following circumstances:

- Where an employee raises a grievance against a Statutory Officer
- Where a Statutory Officer raises a grievance

Procedure for dealing with a grievance raised by an employee against a Statutory Officer

An employee raising a grievance against a Statutory Officer should do so using the normal Thanet District Council Grievance policy and procedure.

However, while operating within the context of the employee's grievance procedure after the initial filtering and any attempt at informal resolution, if the matter remains unresolved, then a panel of elected members (the Grievance Committee) will hear the grievance on behalf of the employer (Formal Stage 1). It is here that the power exists to resolve a grievance against a Statutory Officer. The Grievance Committee can either uphold or dismiss the grievance. If the outcome of the Stage 1 investigation is that the grievance is not upheld, then the complainant has the right to appeal (Formal Stage 2) to a panel of elected members (the Grievance Appeal Committee).

The Grievance Committee can either uphold or dismiss the grievance.

Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.

There is a statutory right for the aggrieved employee to be accompanied by a fellow worker or a trade union representative, at any meeting that deals with the grievance .

Initial filtering of grievances

Where an employee raises a grievance against a Statutory Officer, The Monitoring Officer will act as 'Receiving Officer' and will undertake an initial filtering to ensure that 'allegations' against the Statutory Officer which are clearly unfounded or trivial are not taken any further, or can best be dealt with under some other procedure.

If the matter is a serious complaint against the Statutory Officer's personal behaviour such as sexual or racial harassment, the matter would potentially be one that would be appropriate for an investigation under the disciplinary procedure.

If the Monitoring Officer is the person bringing the grievance, is the subject of the Grievance or is otherwise involved or has a conflict of interest in the grievance, then either the Chief Executive, or another appropriate officer as detailed below and/or a Monitoring Officer from a neighbouring authority will be commissioned to act as the Receiving Officer.

In circumstances where the Monitoring Officer and the Chief Executive are subjects of the Grievance or are otherwise both involved, the claimant should submit their grievance to either the Deputy Monitoring Officer and/or the HR Manager (or equivalent), who will be the appropriate officer. If the case is straightforward and can be easily resolved, these individuals may act in the role of Receiving Officer as detailed throughout this procedure.

However, in most cases, it is likely that they will be responsible for commissioning a Monitoring Officer from a neighbouring authority to act as Receiving Officer.

It may be appropriate for the Receiving Officer, whoever that is, to take advice from an external legal adviser.

A meeting will be held between the Receiving Officer and the complainant without unreasonable delay after a grievance is received. The employee should be allowed to explain the grievance and how it could be resolved. Consideration will be given to adjourning the meeting for any investigation that may be necessary.

The Receiving Officer will make one of the following decisions:

- The grievance is actually about a council service, rather than a complaint against the officer personally. In this case the Receiving Officer would refer the matter back to the aggrieved employee, or their line manager, and indicate that the matter is one that they could raise under the appropriate complaints process for the council.
- That there are other formal procedures that apply rather than the grievance procedure.
- That the grievance should not be directed at the Statutory Officer as it does not relate to a specific action of the Statutory Officer or a specific omission of the Statutory Officer and so should be directed to an intermediate manager.
- That the grievance is either frivolous or clearly unfounded. Individual grievances can be deeply held and serious consideration should be given to the merits of each individual case. A decision to classify a grievance as frivolous or unfounded will result in it not being taken any further so should not be taken lightly. A grievance could be considered to be frivolous if it appears to have been raised in bad faith because it has no reasonable prospect of success and/or it is not an issue that is reasonable to complain about. To some extent this judgement may be informed by whether the individual employee has a history of submitting frivolous or unfounded grievances. This would probably require the Receiving Officer to check whether other procedures were more apt, but that does not necessarily compromise the Receiving Officer from dealing with the case as suggested below.
- That an attempt should be made to resolve the grievance informally.
- That the matter requires further investigation.

Resolving grievances informally

Where the Receiving Officer is satisfied that the grievance is neither procedurally flawed nor frivolous or clearly unfounded then there may be some value in an attempt being made to

resolve the matter informally. This might be through internally-facilitated informal joint discussions or informal joint discussions facilitated by an external mediator.

Resolving grievances formally

Formal Stage 1 - the grievance investigation and hearing

The Grievance Investigation

Where informal attempts at resolution are considered inappropriate or have been tried and failed, then the Receiving Officer should manage the Formal Stage 1 investigation. In most cases it will be appropriate for an independent investigator to be commissioned to carry out the investigation.

If the outcome of the investigation is in favour of the complainant, a solution should be proposed, taking into account the remedy requested by the complainant and the Receiving Officer's assessment of what would be appropriate in all the circumstances.

If the Statutory Officer is unwilling to accept these proposals, the matter will be referred to the Grievance Committee for it to resolve.

If the complainant does not accept the outcome then the grievance is referred to the Grievance Committee for it to resolve.

The Grievance Committee hearing

The Grievance Committee will hear the case and reach its conclusion which will be one of 3:

- 1) Upholds the grievance and this may include a decision or recommendation on how the issue can best be resolved to the satisfaction of the aggrieved employee.
- 2) Upholds the grievance and also decides that it is a matter of a serious nature then it may decide to refer the matter to the Investigation and Disciplinary Committee. That Committee would then have to consider whether there was a case to answer, and, if so, would commission an independent investigation under the disciplinary procedure and the matter would proceed as laid down in the Disciplinary Procedure.
- 3) The Committee dismisses the grievance

Formal Stage 2 - the appeal hearing

If the Grievance Committee finds against the complainant then that person has a right of appeal to the Grievance Appeal Committee, and the Statutory Officer should be immediately informed that this has happened.

The Grievance Appeal Committee will then be responsible for considering the appeal with appropriate technical and procedural advice from the Receiving Officer.

Where the Grievance Appeal Committee upholds the appeal, this may include a decision or recommendation on how the issue can best be resolved to the satisfaction of the aggrieved employee.

Where the Grievance Appeal Committee upholds the appeal and also decides that it is a matter of a serious nature, then it may decide to refer the matter to the Investigation and Disciplinary Committee. That Committee should consider commissioning an independent investigation to determine whether there was a case to answer, and if so what sanction was appropriate.

Where the Grievance Appeal Committee dismisses the appeal, then the matter would be regarded as having been concluded.

Procedure for dealing with grievances raised by a Statutory Officer

Where a Statutory Officer raises a grievance, then similar principles need to apply, namely:

Informal attempts at resolution should be regarded as preferable to immediate recourse to formal procedures.

There should be two stages available to the aggrieved employee, in this case the statutory officer.

Should the Section 151 Officer or Monitoring Officer take a grievance out against the Chief Executive, or each other, then the process described in "Procedure for dealing with a grievance raised by an employee against a Statutory Officer" should be followed.

Procedure for dealing with grievances raised by the Chief Executive (Head of Paid Service)

As Head of Paid Service, the Chief Executive cannot take out a grievance against another member of staff, as any cause for such concern would constitute grounds for disciplinary action and as head of the paid service the Chief Executive could initiate such action against any other employee.

A Chief Executive (Head of Paid Service) can only raise a grievance against one or more Member(s) and the Council's Monitoring Officer should act as Receiving Officer.

Where the Chief Executive raises a grievance against one or more Member(s), then this should be referred to the Receiving Officer in the first instance who should establish, through discussions with the appropriate parties, whether there is any prospect of resolving the

matter informally. This might be through internally-facilitated informal joint discussions or informal joint discussions facilitated externally by an external mediator.

In the event that informal resolution is neither appropriate nor successful, the Receiving Officer should refer the matter to the Council's Grievance Committee. If the Grievance Committee considers it appropriate, having come to its conclusions, it might refer a matter about the conduct or behaviour of an elected member to the council's Standards Committee or other appropriate arrangements.

An appeal by the Chief Executive against the outcome of the Grievance Committee's deliberations should be to the full Council.

Grievances raised by a Statutory Officer during disciplinary proceedings

Where a Statutory Officer is the subject of a disciplinary / capability investigation and raises a grievance relating to the case, the Panel who decided to initiate the disciplinary proceedings will decide how to deal with the grievance.

This will depend on the facts of the case, the stage of the disciplinary procedure reached and the nature of the grievance raised. In some cases it may be appropriate to hear the grievance before continuing with the disciplinary / capability investigation. In other cases it will be appropriate to deal with the issues raised in the grievance as part of the wider disciplinary / capability investigation.

Adopted by General Purposes Committee

25 August 2021