

Human Resources Committee Agenda



Date: Monday, 6 March 2017

Time: 10.00 am

Venue: City Hall, College Green, Bristol, BS1 5TR

Distribution:

Councillors: Helen Godwin (Chair), Paula O'Rourke (Vice-Chair), Lesley Alexander, Kye Dudd, Richard Eddy, Gary Hopkins, Mike Langley and Jo Sergeant

Copies to: Nicki Beardmore, Sandra Farquharson (Interim Service Director Human Resources), Mark Williams, James Brereton, Louise deCordova (Democratic Services Officer) and Shahzia Daya (Service Director - Legal and Democratic Services)

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Date: Friday, 24 February 2017



Agenda

1. Welcome, Introductions and Safety Information **10.00 am**

2. Apologies for Absence

3. Declarations of Interest

4. Chair's Business

To receive any announcements from the Chair.

5. Public Forum

NB. up to 30 minutes is allowed for this item

Petitions, questions and statements will be accepted only if they relate to the business for which the extraordinary meeting has been arranged.

6. Pay Policy Statement

Committee to consider the amendments to the Pay Policy statement for recommendation to Full Council.

(Pages 3 - 16)

7. Performance Management Panel

Committee to consider the report for recommendation to Full Council.

(Pages 17 - 26)

8. Protected Officers Disciplinary & Dismissal Procedure

Committee to consider the report for recommendation to Full Council.

(Pages 27 - 65)



HR Committee

6th March 2017



Report of: Interim Service Director Human Resources, Change and Communications

Title: The Council's Pay Policy Statement for the period 1st March 2017 to 31st March 2018

Ward: N/A

Officer Presenting Report: Sandra Farquharson (Interim Head of HR)

Contact Telephone Number: (0117) 35 21359

Recommendation

That the Committee recommends the Pay Policy Statement for the period 1st March 2017 to 31st March 2018 be approved by the Full Council.

Summary

The purpose of this report is to re-consider the Pay Policy Statement (PPS) for 2017/18. The Localism Act 2011 requires local authorities to agree and publish a PPS annually before the start of the financial year to which the statement relates.

The significant issues in the report are:

- The Committee is asked to recommend to the Full Council that the PPS be back-dated to 1st March 2017, so it will cover the 13 months from that date until 31st March 2018.
- The Committee is asked to note that the bonus for the Chief Executive included in the draft PPS considered at its meeting on 2nd February is more accurately described as performance-related pay (PRP), and that this is reflected in the updated draft PPS attached to this report.
- The Committee is asked to re-consider the bonus element of the Chief Executive's terms and conditions of employment in accordance with the advertised Chief Executive role and agree that the PRP advertised for the role may be awarded annually.
- The Committee is also asked if it would be content to increase the PRP percentage figure to 15% in line with the Council's current PPS (for 2016/17), which permits the award of a non-consolidated and non-pensionable "Uplift Band" of up to 15% for recruitment and retention reasons to Service Directors.

Policy

1. The Localism Act 2011 requires local authorities to agree and publish a pay policy statement annually before the start of the financial year to which the statement relates.
2. The Council's Constitution states that the HR Committee determines the pay and grading and other terms and conditions of 1st and 2nd tier posts and postholders. Determining the terms and conditions on which all other staff hold office is delegated to the Head of Paid Service who may arrange for the discharge of these functions through Strategic Directors. All officers exercising HR functions must do so in accordance with the Council's HR policies and any advice provided by the Service Director HR.

Consultation

3. Internal

The Senior Leadership Team was consulted on the proposal to freeze the pay of Strategic Directors and Service Directors in December 2016.

The trade unions have been informed of the proposals.

The HR Committee considered the draft Pay Policy Statement for 2017/18 at its meeting on 2nd February 2017. The relevant extract of the draft minutes of the Committee's meeting is as follows:

"The Committee received a report of the Interim Service Director Human Resources, Change and Communications and considered the public forum statement submitted by Unite in conjunction with this item. The Committee was asked to recommend the Pay Policy Statement 2017/18 be approved by the Full Council.

The HR Business Partner summarised the significant issues in the report. In response to members questions the following points were raised:

- a. It was noted that the proposal not to progress the pay of Service Directors could affect the Council's ability to recruit and retain skilled managers, and should be recognised as a risk.*
- b. It was noted that the current pay proposals were in line with current market rates and aligned with provisions explicit in the Corporate Strategy considered by Cabinet. It was noted that in circumstances where the need to recruit specialist skills required enhanced payments, any proposals for a Market Pay Supplement would be brought to the Committee for approval.*
- c. Officers were in discussions with the trade unions to understand the full cost implications of developing a new pay structure. An April 2018 implementation was proposed.*
- d. It was noted that restrictions on exit payments had not yet been enacted by the Government. Once in force, any severance proposal which exceeded the cap would need a waiver approved by the Full Council.*

- e. *It was noted that a change in the law which comes into force from 6th April 2017 would require payments to contractors to be subject to PAYE rules. This was a significant change which was likely to have a big impact on the market and could reduce the costs of employing specialist interim managers on short term contracts.*
- f. *It was noted that any proposed bonus [performance-related pay] paid to the Chief Executive would be calculable on annual basis based on performance, but would not be payable until the end of the contract.*
- g. *The pay policy should note i) the Council's commitment to the Living Wage Foundation; ii) the proposal to progress the pay structure for April 2018; iii) identification of the risk associated with the pay freeze for Chief Officers. **Action: James Brereton***

The Committee RESOLVED:

To recommend the Pay Policy Statement 2017/18 be approved by the Full Council as outlined in the report, subject to the comments and actions arising."

- 4. External**
None required.

Context

- 5. The Pay Policy Statement explains the Council pay policies for its highest and lowest-paid employees. It is written and published in line with the Localism Act 2011 (the Act) and guidance issued by the Secretary of State (the Guidance). The draft Pay Policy Statement forms Appendix A to this report.
- 6. Freezing the pay of Strategic Directors and Service Directors at 2016/17 levels will affect three Strategic Directors and 20 Service Directors. The bar on pay progression will affect 18 Service Directors (there is one spot rate of pay for Strategic Directors and two Service Directors are already on the Competence Rate).
- 7. The Council continues to work with the trade unions in developing a new pay structure. Implementation was planned for 1st April 2017, but this has been put back to 1st April 2018. There will be additional costs involved in introducing a new pay spine, which will need to be considered and evaluated. The design principles for the new pay structure are provided at Appendix B for information.
- 8. The Council has paid its own employees no less than the Real Living Wage (as set by the Living Wage Foundation) since October 2014. The Council aspires to become a Living Wage Employer, which requires the Council to do all it can in law to ensure that those who deliver services on the Council's behalf (eg, contractors) pay their own staff no less than the Real Living Wage. This is subject to affordability considerations, and discussions with the Living Wage Foundation on potential timescales.
- 9. The Government intends to introduce restrictions on exit payments, but these have yet to be enacted. The Government is also changing the law to further curtail "off-payroll" working in the public sector with effect from 6th April 2017.

Proposal

10. The Committee is asked to recommend to the Full Council that the PPS be back-dated to 1st March 2017, so it will cover the 13 months from that date until 31st March 2018.
11. The Committee is asked to note that the bonus for the Chief Executive included in the draft PPS considered at its meeting on 2nd February is more accurately described as performance-related pay (PRP), and that this is reflected in the updated draft PPS attached to this report.
12. The Committee is asked to re-consider the PRP element of the Chief Executive's terms and conditions of employment in accordance with the advertised Chief Executive role and agree that the PRP advertised for the role may be awarded annually.
13. The Committee is also asked if it would be content to increase the PRP percentage figure to 15% in line with the Council's current PPS (for 2016/17), which permits the award of a non-consolidated and non-pensionable "Uplift Band" of up to 15% for recruitment and retention reasons to Service Directors.

Other Options Considered

14. To not freeze pay at 2016/17 levels for Strategic Directors and Service Directors and to not prevent pay progression for Service Directors. It is estimated that this would add around £70k to the Council's pay-bill.

Risk Assessment

15. Failure to produce a compliant pay policy statement by the required deadline would place the Council in derogation of law.
16. Failure to keep track with market pay rates for chief officers is likely to lead to recruitment and retention difficulties.

Public Sector Equality Duties

- 17a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
 - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
- tackle prejudice; and
 - promote understanding.

17b) An Equality Impact Relevance Check is attached at Appendix C.

Legal and Resource Implications

Legal

"This report fulfils the legal requirement placed on the Council by s.38 (1) of the Localism Act 2011 to produce an annual pay policy statement."

Advice provided by Husinara Jones (Senior Solicitor), 24th January 2017.

Financial

(a) Revenue

"As indicated in the report, the financial implications of the revised/proposed new pay structure are not yet known as this is currently being developed. It is, however, essential that the financial implications of the proposed new pay structure are fully costed, over the period of the Medium Term Financial Plan (MTFP), to review its affordability in the context of the Council's overall budget constraints. Given the planned introduction of 1st April 2018, it is essential that this is considered as soon as possible to ensure that it can be considered in the context of the Council's MTFP."

(b) Capital

"The pay structure for the Council relates to all staff, including those employed to deliver capital projects. Therefore, any changes to the current pay structure may have a financial implication on the cost of capital schemes, where the cost of employed staff is recharged to those capital schemes."

Advice provided by Kevin Lock (Finance Business Partner), 24th January 2017.

Land

Not applicable.

Personnel

"The new pay rates for Strategic Directors and Service Directors implemented on 1st June 2016 were inclusive of the 1% pay award agreed by the Joint Negotiating Committee for Chief Officers of Local Authorities for the years 2016/17 and 2017/18. There is no contractual right for Service Directors to progress from the Appointment Rate to the Competence Rate."

Advice provided by Mark Williams (HR Business Partner), 24th January 2017.

Appendices:

A – Draft Pay Policy Statement

B – Design Principles

C – Equality Impact Relevance Check

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None.

Bristol City Council

Pay Policy Statement for the period 1st March 2017 to 31st March 2018

1. Introduction

- a. It is essential that the Council attracts and keeps people with the right talents and commitment to lead and deliver great services to Bristol's citizens. At the same time the Council has to get the best value for the taxpayer.
- b. This Statement explains the Council pay policies for its highest and lowest-paid employees. It is written and published in line with the Localism Act 2011 (the Act) and guidance issued by the Secretary of State (the Guidance). It was approved by the Full Council on X.
- c. The Guidance is clear that decisions on pay policies should be made by councillors. The Council is committed to making sure that all councillors have a say on how pay decisions are made, especially about its highest-paid employees. To achieve this, the Statement is reviewed every year. The Mayor is consulted, and any proposals made are taken into account. The draft statement is considered by the Human Resources Committee and finally by the Full Council. Both meetings are open to the public.
- d. In line with the law (the Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002), the pay of the Mayor's Assistant is set as the Mayor thinks fit, within the financial resources available to the Council.
- e. As recommended by the Guidance, this Statement sets out clearly and separately its policies on each of the requirements listed in the relevant sections of the Act. The Guidance says that this is to help enable taxpayers to decide whether they are getting value for money in the way that public money is spent on local authority pay and reward.
- f. The Council is committed to equal pay for all its employees and to removing any bias in its pay systems related to age, disability, gender, race, religion or belief or on the grounds of being bisexual, gay, lesbian or transgender. Equal pay applies to all contractual terms and conditions as well as pay.
- g. The Council aspires to be a Living Wage Employer, as accredited by the Living Wage Foundation. The Council has paid its own employees no less than the Real Living Wage since 1st October 2014. In relation to asking other employers that deliver services on the Council's behalf to pay their staff no less than the Real Living Wage, the Council has submitted a draft plan to the Living Wage Foundation and is awaiting feedback.

2. Development priority for 2017/18

- a. The Council will work to reform its pay structure with the intention of implementing changes from 1st April 2018. The new pay structure will take the Real Living Wage (as set by the Living Wage Foundation) as its starting point and will change or replace Bristol Grades 1 to 15. Proposals will be subject to equality impact assessment and will be negotiated with the trade unions. Any proposals will be subject to approval of the Human Resources Committee.

3. Pay of the Council's highest-paid employees

- a. The Council's highest-paid employees are called "Chief Officers" and are made up of the Chief Executive, Strategic Directors and Service Directors.
- b. The Council's policy is that the Chief Executive's salary should be no more than 10 times the salary of the lowest-paid employee. For the period covered by this Pay Policy Statement the Chief Executive's salary will be £160,000.
- c. The Council's policy is that the salary of Strategic Directors will be 85% of the Chief Executive's salary. Therefore, for the period covered by this Pay Policy Statement the salary of Strategic Directors will be £136,000.
- d. The Council's policy is that the salaries of Service Directors are set in line with the market rate. In view of the Council's financial position for the period covered by this Pay Policy Statement the Appointment and Competence Rates will be frozen at their 2016/17 levels of £94,601 and £98,213 respectively and there will be no progression from the Appointment Rate to the Competence Rate for Service Directors.

4. Pay of the Council's lowest-paid employees

- a. The Council's lowest-paid employees are those who are paid the Real Living Wage, which is set by the Living Wage Foundation. The Council has adopted this definition because it has decided that none of its employees should be paid less than the Real Living Wage. From 1st April 2017, the Real Living Wage is £8.45 per hour, which equates to a minimum salary of £16,303 (based on a full-time week of 37 hours).
- b. Apprentices in their first year are paid £5 per hour. Apprentices in their second year are paid £5 per hour until they are 18 years old and then at the National Minimum Wage for their age. Apprentices in their third year are paid the Real Living Wage (as set by the Living Wage Foundation). An additional allowance of £25 per week is paid to apprentices who have left local authority care, and this is paid throughout their apprenticeship for as long as they live in independent accommodation.
- c. Interns, student placements and trainees are normally paid the Real Living Wage.

5. Relationship between the pay of the Council's highest and lowest-paid employees

- a. Will Hutton's 2011 Review of Fair in the Public Sector recommended that all public service organisations publish their top to median pay ratio to allow the public to hold them to account. The Government's terms of reference for the Hutton review suggested that no public sector manager should earn more than 20 times the lowest paid person in the organisation.
- b. The change in these ratios at the Council over recent years is shown in the following table:

| Date | Top to median pay ratio | Top to lowest salary ratio |
|--------------------------------|-------------------------|----------------------------|
| 31 st March 2012 | - | 15.6:1 |
| 31 st March 2013 | - | 12.35:1 |
| 31 st March 2014 | 6.68:1 | 12.87:1 |
| 31 st March 2015 | 6.29:1 | 11.85:1 |
| 31 st December 2015 | 6.75:1 | 11.33:1 |
| 31 st December 2016 | 6.23:1 | 10.05:1 |

- c. For the period covered by this Pay Policy Statement the Council's top earner (the Chief Executive) will be on a salary of £160,000 and from 1st April 2017 the lowest-paid person will be on a salary of £16,303. This means that on 1st April 2017 the Council's top to lowest salary ratio will be 9.81:1.

6. Pay of Chief Officers when they start

- a. Chief Officers will be paid the rate for the job.
- b. An Uplift Band may be payable to Service Directors to ensure that the pay of a job is sufficiently competitive to attract a field of suitable candidates. The maximum Uplift Band is 15% of the Competence Rate for Service Directors. Any Uplift Band will be non-contractual and non-pensionable. The Selection Committee decides if an Uplift Band should apply on appointment. In reaching its decision the Committee will look closely at the business case, including external benchmark data.
- c. The Guidance says that the Full Council should have the opportunity to vote before salary packages totalling £100,000 or more are offered for new appointments. Through its Constitution the Full Council delegates this to the Selection Committee.

7. Increases and additions to pay for Chief Officers

- a. The pay of Chief Officers will be reviewed each year through this Pay Policy Statement. The Council will be mindful of pay awards agreed by the Joint Negotiating Committee for Chief Executives of Local Authorities and the Joint Negotiating Committee for Chief Officers of Local Authorities. The 1% pay awards agreed by these bodies for 2017/18 are deemed to have been included in the rates implemented in 2016/17 so there will be no change to the rates of pay shown in paragraph 3 above before 1st April 2018.

- b. An Uplift Band may be payable to Service Directors for retention reasons. The maximum Uplift Band is 15% of the Competence Rate for Service Directors. Any Uplift Band will be non-contractual and non-pensionable. The Human Resources Committee decides if an Uplift Band should apply. In reaching its decision the Committee will look closely at the business case, including external benchmark data.

8. Performance-related pay for Chief Officers

- a. The Chief Executive may be awarded performance-related pay of up to a maximum of 15% of basic salary per year payable annually. This is intended to be discretionary, non-contractual and non-pensionable. Any performance-related pay awarded may not be payable if the employee is leaving for any reason other than the normal expiry of the contract and will be forfeited in the event of a gross misconduct dismissal.

9. Bonuses for Chief Officers

- a. There are no bonuses for Chief Officers.

10. Pay of Chief Officers when they leave

- a. When a chief officer leaves they will be paid in line with what they are entitled to under their contract of employment (their notice period is three months) and the Council's policies as they apply to all employees of the Council (there are no policies just for Chief Officers).
- b. The Guidance says that the Full Council should have the opportunity to vote before severance packages costing £100,000 or more are paid to employees leaving the Council. The Government intends to go further than this and cap the cost of an employee leaving a job in the public sector at £95,000. The Council is advised that this is likely to be implemented at some point in 2017. Councils may be given the authority to approve severance packages that cost more than £95,000 by a vote of the Full Council, but guidance on this has not yet been published. Until this change happens, the Council's current policy will continue, which is that the severance packages of Chief Officers are approved by the Human Resources Committee.
- c. The Government also intends to change the law so that someone who takes a severance package in the public sector can only work in the public sector again in the following 12 months if they pay back part of their severance payment. The Council is advised that this is also likely to be implemented at some point in early 2017. Until this change happens the Council's current policy will continue, which was negotiated with the trade unions and approved by the Human Resources Committee. The Council's current policy is that employees who leave due to voluntary severance will not be re-employed by the Council in a paid job or engaged directly or through a company on an "off-payroll" basis for 12 months after they leave. (Off-payroll means a person who is paid via a company rather than through the payroll as an employee). Employees who leave due to compulsory redundancy are free to apply for re-employment with the Council at any point after they've left.

11. Paying Chief Officers “off-payroll”

- a. The Government is changing the law so that public sector organisations (including the Council) are obliged to deduct and pay income tax and National Insurance contributions to HMRC in respect of payments made on or after 6th April 2017 to people engaged through personal service companies. Until this change happens the Council’s current policy will continue, which is that Chief Officers must always be paid through the payroll unless there are exceptional, temporary reasons that justify engaging them on an “off-payroll” basis. Where an off-payroll arrangement is used the Council will always ask the contractor to confirm that they are complying with the law on tax and National Insurance. The Council will consider ending contracts where that confirmation is not received.

12. Returning Officer fees

- a. The Council’s Returning Officer for elections and referenda is appointed by the Full Council and may or may not be a chief officer. Fees are paid for these duties. They vary depending on the type of poll and are published prior to each election. Fees for most polls (including national elections and referenda) are set and paid by the Government (rather than the Council).

13. More information about the pay of Chief Officers

- a. The Council is committed to being open about its policies on pay. Approved pay policy statements are published on the Council’s website at www.bristol.gov.uk/council-spending-performance/senior-officers-pay. Other information that the Council has to publish under the Local Government Transparency Code 2015 is available via that webpage.

Replacing BG1-15 – design principles

- 1. Grades:**
 - a. Will cover from the UK Living Wage (Living Wage Foundation) to TP1.
 - b. Will be fewer than 15 in number.
 - c. Will not overlap.
 - d. Will not have large pay gaps between them.
- 2. Points-to-pay:**
 - a. Will be more even than at present – ie, each grade will cover roughly the same number of job evaluation points.
- 3. Pay points:**
 - a. Will explore the use of an appointment rate / competence rate model.
 - b. Will continue to use specific NJC Spinal Column Points.
 - c. Will not include an Uplift Band equivalent (market pay supplements may continue to be used where necessary).
- 4. Pay progression:**
 - a. Will normally take place within 12 months of an employee's start date in the job, unless there is clear evidence that would not justify it.
- 5. Pay awards:**
 - a. Living Wage Foundation and NJC pay awards will continue to be honoured.
- 6. Job evaluation:**
 - a. Will continue to use the Greater London Provincial Council (GLPC) job evaluation scheme.
 - b. Will not require a complete re-evaluation of all jobs, though many JEQs will need to be updated and evaluated.
 - c. Will need a consistent approach to career grades.
- 7. Aspiration:**
 - a. For the new system to be implemented for centrally-employed staff from 1st April 2018.
 - b. For more staff to be paid at or above the median pay for Bristol than are paid below it (ie, £23,812 per year pro rata as at April 2016 (Office for National Statistics Annual Survey of Hours and Earnings)).
- 8. Cost (including any transitional arrangements):**
 - a. Will be affordable overall within the Medium Term Financial Strategy.
- 9. Implementation:**
 - a. Will include transitional arrangements as appropriate.
 - b. May be later for non-teaching staff at schools where the Council is the employer in law.
 - c. All employees will be issued with new contractual documentation.
- 10. Agreement:**
 - a. Will be subject to equalities impact assessment, legal advice on all sides and trade union ballots.
 - b. Will be enshrined in a local collective agreement.

Bristol City Council Equality Impact Relevance Check



This tool will identify the equalities relevance of a proposal, and establish whether a full Equality Impact Assessment will be required. Please read the guidance prior to completing this relevance check.

| What is the proposal? | |
|--|--|
| Name of proposal | BE6 – workforce policy and conditions review |
| Please outline the proposal. | It is proposed to freeze pay rates for Strategic Directors, Service Directors and senior managers. It is also proposed to double from 10 to 20 the maximum number of days of additional leave that staff can apply to buy. |
| What savings will this proposal achieve? | 2017/18: £260k 2018/18: £1.463m |
| Name of Lead Officer | Mark Williams |

| Could your proposal impact citizens with protected characteristics? (This includes service users and the wider community) |
|--|
| Please outline where there may be significant opportunities or positive impacts, and for whom. |
| None. |
| Please outline where there may be significant negative impacts, and for whom. |
| None. |

| Could your proposal impact staff with protected characteristics? (i.e. reduction in posts, changes to working hours or locations, changes in pay) | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--------------------------|-----------------------|-----------------------|-----------|----------|-------|-------|------|-----------------------|-------|--------|-------|-----------------------|-------|-------|-------|-------|--------|--------|--------|-----------|--------|--------|--------|
| Please outline where there may be significant opportunities or positive impacts, and for whom. | | | | | | | | | | | | | | | | | | | | | | | | |
| In relation to the pay freeze, none. In relation to the Annual Leave Top-Up Scheme, all employees will be eligible to apply and managers will be encouraged to accept applications. | | | | | | | | | | | | | | | | | | | | | | | | |
| Please outline where there may be negative impacts, and for whom. | | | | | | | | | | | | | | | | | | | | | | | | |
| In relation to the pay freeze, this will be applied to all Chief Officers and senior managers. For information the representation of affected staff is as follows: | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="1"> <thead> <tr> <th>Protected characteristic</th> <th>Affected staff</th> <th>Bristol City Council*</th> <th>Bristol**</th> </tr> </thead> <tbody> <tr> <td>Disabled</td> <td>9.00%</td> <td>6.67%</td> <td>7.4%</td> </tr> <tr> <td>Black Minority Ethnic</td> <td>5.83%</td> <td>11.71%</td> <td>12.8%</td> </tr> <tr> <td>White Minority Ethnic</td> <td>7.77%</td> <td>4.90%</td> <td>7.65%</td> </tr> <tr> <td>Women</td> <td>49.11%</td> <td>60.21%</td> <td>46.77%</td> </tr> <tr> <td>Christian</td> <td>42.24%</td> <td>43.17%</td> <td>48.21%</td> </tr> </tbody> </table> | Protected characteristic | Affected staff | Bristol City Council* | Bristol** | Disabled | 9.00% | 6.67% | 7.4% | Black Minority Ethnic | 5.83% | 11.71% | 12.8% | White Minority Ethnic | 7.77% | 4.90% | 7.65% | Women | 49.11% | 60.21% | 46.77% | Christian | 42.24% | 43.17% | 48.21% |
| Protected characteristic | Affected staff | Bristol City Council* | Bristol** | | | | | | | | | | | | | | | | | | | | | |
| Disabled | 9.00% | 6.67% | 7.4% | | | | | | | | | | | | | | | | | | | | | |
| Black Minority Ethnic | 5.83% | 11.71% | 12.8% | | | | | | | | | | | | | | | | | | | | | |
| White Minority Ethnic | 7.77% | 4.90% | 7.65% | | | | | | | | | | | | | | | | | | | | | |
| Women | 49.11% | 60.21% | 46.77% | | | | | | | | | | | | | | | | | | | | | |
| Christian | 42.24% | 43.17% | 48.21% | | | | | | | | | | | | | | | | | | | | | |

| | | | |
|--|--------|--------|----------|
| Other religion | 8.45% | 8.68% | 6.64% |
| No religion | 49.30% | 48.15% | 45.15% |
| Lesbian/gay/bisexual | 5.19% | 4.36% | 1.94%*** |
| * Excludes staff in schools | | | |
| ** Economically-active population, Office for National Statistics 2011 | | | |
| *** South-West, Office for National Statistics 2015 | | | |
| In relation to the Annual Leave Top-Up Scheme, none. | | | |

| Is a full Equality Impact Assessment required? | |
|--|---|
| Does the proposal have the potential to impact on people with protected characteristics in the following ways: | |
| <ul style="list-style-type: none"> • access to or participation in a service, • levels of representation in our workforce, or • reducing quality of life (i.e. health, education, standard of living) ? | |
| Please indicate yes or no. If the answer is yes then a full impact assessment must be carried out. If the answer is no, please provide a justification. | No because neither proposal has the potential to impact on levels of representation in the workforce. |
| Service Director sign-off and date: | Equalities Officer sign-off and date: |



HR Committee

6th March 2017

Report of: Interim Service Director Human Resources, Change and Communications

Title: Performance Management Panel

Ward: N/A

Officer Presenting Report: Sandra Farquharson (Interim Head of HR)

Contact Telephone Number: (0117) 35 21359

Recommendation

That the Committee recommends to the Full Council that the Council's Constitution be amended to provide for a Performance Management Panel as set out in this report.

Summary

The purpose of this report is to re-affirm the Committee's intentions regarding the performance management of the Chief Executive, and to provide further details on the process.

The significant issues in the report are:

- The proposed terms of reference for the Performance Management Panel (PMP) are attached at Appendix A.
- The Committee is asked to note the guidance (attached at Appendix B) that is provided by the Joint Negotiating Committee for Local Authority Chief Executives (JNC), and which has been used to shape the proposals.
- The membership of the PMP, which will meet at least annually, is proposed to be:
 - The Elected Mayor and the Party Group Leaders (who will be the voting members)
 - The Chief Executive and their trade union or professional association representative
 - Two representatives of the Local Government Association (LGA) and the Service Director HR (or nominee).
- In advance of the Panel meeting, the Chief Executive will provide the LGA representatives with evidence of how they have met the agreed targets. The LGA representatives will make an assessment of the information supplied and will propose for the Panel's consideration what if any level of performance-related pay should be awarded.

Policy

1. The Council's Constitution currently makes no provision for the performance management of the Chief Executive, and none took place under the previous administration.
2. Under the JNC it is a contractual obligation on the part of both the Chief Executive and the Council to engage in a regular process of appraisal.

Consultation

3. Internal

The HR Committee considered the performance management of the Chief Executive at its meeting on 24th November 2016. The relevant extract of the minutes of the Committee's meeting is as follows:

"The Committee received a report from the Service Director, Human Resources and Workplace, and considered the public forum statement submitted by Paul Wheeler, Bristol Equality in conjunction with this item. The report seeks the Committee's approval for proposals relating to the terms and conditions and performance management of the job of Chief Executive.

a. Officers read the legal advice which had been provided in relation to the report as follows:

'The pay of the Chief Executive is set out in the Council's Pay Policy Statement, and any amendments to the Statement require the approval of the Full Council.

Other than in relation pay and to dismissal for poor performance and misconduct, the terms and conditions of employment for the Chief Executive are set by the Human Resources Committee.

The Council's Constitution currently does not provide for the performance management of the Chief Executive and any amendments to the Constitution require the approval of the Full Council.

Legal and HR advice should be sought when drafting the terms of the fixed term contract for the new Chief Executive.'

Advice given by: Shahzia Daya, Service Director, Legal and Democratic Services

Date: 15 November 2016

- b. The facility to award performance related pay to the Chief Executive is part of the annual Pay Policy Statement, which must be approved by the Full Council. The level of that payment (if any) would be decided by the Performance Management Panel, and not Full Council.*
- c. The Chief Executive's performance objectives will be set and monitored by the Performance Management Panel. In discussion at HR Committee, it was agreed that Full Council or the Executive Function serving the Mayor and wider council should take on this role and the recommendation is to set up a performance panel for that purpose. It was confirmed that the performance management panel could consist of the Mayor and Party Group Leaders and advisors.*

The Committee RESOLVED:

(i) To recommend to the Full Council that a Performance Management Panel be constituted to agree objectives with the Chief Executive, assess the jobholder's performance and decide what level (if any) of performance related pay should be awarded. The Panel to be composed of the Mayor and Party Group Leaders, supported by advisers with appropriate expertise. (ii) To approve the proposed terms and conditions of employment as outlined in this report."

- 4. External**
None required.

Context

- 5.** It is for the Council to decide whether the appraisal should be carried out by a small committee representing all political groups or by a senior representative or representatives of the controlling group. Whichever approach is adopted, those conducting the appraisal need to bear in mind at all times that the Chief Executive is employed by the Council as a whole, not by the Mayor or controlling group, and is therefore required to service all of the Council.
- 6.** Appraisal should take place at least annually, supplemented by regular monitoring meetings, and should be set in the context of the Council's objectives, priorities and targets as expressed in the Corporate Strategy.
- 7.** The focus of the process should be on clarifying what the Chief Executive is expected to achieve and on identifying any development needs which, if met, would maintain a high level of performance. The process of setting objectives should be by agreement and the result should be to identify objectives that are relevant and challenging, but achievable. Wherever possible standards of performance should be expressed in ways that can be monitored objectively.
- 8.** As with every individual, the Chief Executive will have strengths and weaknesses, and the parties should identify the professional development necessary to equip the postholder with the skills needed to meet the Council's objectives. Occasionally, changes may be needed to the working relationship between the Mayor and/or councillors and the Chief Executive, and it should be accepted that this may apply on all sides.
- 9.** The detailed content of appraisal interviews should normally be treated as confidential to the participants, unless both parties agree that it would be helpful for the targets agreed to be shared more widely.
- 10.** A formal process of appraisal does not prevent the review of progress and performance or the application of capability/conduct procedures as necessary.

Proposal

- 11.** The proposed terms of reference for the Performance Management Panel (PMP) are attached at Appendix A.
- 12.** The Committee is asked to note the guidance (attached at Appendix B) that is provided by the Joint Negotiating Committee for Local Authority Chief Executives (JNC), and which has been used to shape the proposal.

- 13.** The membership of the PMP, which will meet at least annually, is proposed to be:
- The Elected Mayor and the Party Group Leaders (who will be the voting members)
 - The Chief Executive and their trade union or professional association representative
 - Two representatives of the Local Government Association (LGA) and the Service Director HR (or nominee).
- 14.** In advance of the Panel meeting, the Chief Executive will provide the LGA representatives with evidence of how they have met the agreed targets. The LGA representatives will make an assessment of the information supplied and will provide an agreed recommendation for the Panel's consideration of what if any level of performance-related pay should be awarded.
- 15.** One of the LGA representatives will be invited to sit as an independent member of the Panel and must approve the final decision reached by the Panel.

Other Options Considered

- 16.** None.

Risk Assessment

- 17.** The risks of not putting in place a structured performance management process for the Chief Executive are:
- Vesting the performance management of the Chief Executive in the controlling group only.
 - The parties may be in breach of employment contract
 - Achievement of the Council's key priorities may be monitored less frequently under informal arrangements
 - The absence of a comparative framework for judgements on the performance
 - Openness and transparency may be eroded

Public Sector Equality Duties

- 18a)** Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic

that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

18b) Not applicable because this report concerns an individual post.

Legal and Resource Implications

Legal

'''

Advice provided by x (y), z.

Financial

(a) Revenue

'''

(b) Capital

'''

Advice provided by x (y), z.

Land

Not applicable.

Personnel

Within an appropriate framework, performance related pay provides a direct incentive to achieve well defined objectives. The performance culture of the council can be further developed with its introduction at the level of Chief Executive. Management derive assistance and direction from a corporate framework of the objectives set. The monitoring of objectives and the assessment of achievements that includes an independent review, prior to award, provides appropriate rigour and reassurance to the council.

Advice provided by Sandra Farquharson,
Interim Head of Human Resources
04/03/17

Appendices:

- A – Performance Management Panel terms of reference
- B – Joint Guidance on Appraisal of the Chief Executive

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None.

Performance Management Panel

Membership

- The Mayor and the Party Group Leaders (who are the voting members)
- The Chief Executive and their trade union or professional association representative
- Two representatives of the Local Government Association and the Service Director HR (or nominee)

Terms of Reference

Overview

At least annually to appraise the performance of the Chief Executive and to determine what if any level of performance-related pay should be awarded to the postholder. Bearing in mind that the Chief Executive is required to serve the whole Council (ie, the Elected Mayor and all councillors), to clarify what the Chief Executive is expected to achieve and to identify any continuing professional development needs which, if met, would maintain a high level of performance. This process does not prevent the review of progress and performance or the application of capability/conduct procedures as necessary.

Functions

The Full Council has delegated the following functions to the Panel:

- (a) To agree what the Chief Executive should personally achieve and identify required standards of performance in order to deliver the Council's key objectives, priorities and targets, and appropriate timescales for their achievement. Objectives should be agreed with the Chief Executive and should be relevant, challenging and achievable.
- (b) To identify positive achievements over the previous period.
- (c) To identify and where possible resolve factors preventing the achievement of agreed goals.
- (d) To identify the professional development necessary to equip the Chief Executive with the requisite skills to meet the Council's objectives and changing priorities.
- (e) Having considered the available evidence and the views of the Local Government Association representative and other parties, to determine what if any level of performance-related pay should be awarded to the Chief Executive.
- (f) To hold regular monitoring meetings at which targets can be reviewed as necessary.

JOINT GUIDANCE ON APPRAISAL OF THE CHIEF EXECUTIVE

1. INTRODUCTION

- 1.1 This guidance is intended for use by senior elected members and the chief executive when agreeing a process for appraising the performance of the chief executive. The focus of this process should be on clarifying what the chief executive is expected to achieve and on identifying any continuing developmental needs which, if met, would maintain a high level of performance. The process of setting objectives should be by agreement and the result should be to identify objectives which are relevant and challenging but achievable.
- 1.2 The process should not become complex. At all times it needs to focus clearly on a few basic issues: what the chief executive's job is; what has been done well; what could have been done better; the major issues over the next year; and what developmental needs the process clearly identifies.

2. RESPONSIBILITY FOR APPRAISAL

- 2.1 The responsibility for appraising the chief executive lies with senior elected members. It is a contractual obligation on the part of both the chief executive and the employing council to engage in a regular process of appraisal.
- 2.2 It will be for local decision in the light of local circumstances whether the appraisal should be carried out by a small committee representing all political groups or by a senior representative or representatives of the controlling group. Whichever approach is adopted, those conducting the appraisal need to bear in mind at all times that the chief executive is employed by the council as a whole, not by the controlling group, and is therefore required to serve all of the council.

3. AIMS OF APPRAISAL

- To identify and clarify the key objectives, priorities and targets of the council and appropriate timescales for their achievement over the next (e.g. twelve) months
- Agree what the chief executive should personally achieve over the next (e.g. twelve) months and identify required standards of performance, in order to deliver the council's key objectives, priorities and targets. Wherever possible standards of performance should be expressed in ways which can be monitored objectively
- Discuss positive achievements over the past (e.g. twelve) months and identify reasons for good performance

- Discuss instances over the past (e.g. twelve) months where targets have not been met, identifying the factors preventing the achievements of agreed goals
 - Discuss developmental requirements. The chief executive will have strengths and weaknesses and the parties should identify the professional development necessary to equip the chief executive with the requisite skills to meet the council's objectives. The parties should be proactive and anticipate future developmental needs in the context of the council's changing priorities. This discussion could lead to the design of a formal programme of continuous professional development (CPD). Equally this discussion may lead to agreement on changes to the working relationship between leading members and the chief executive. It should not be assumed that it is only the chief executive who may need to adjust his / her approach to the working relationship
- 3.1 Appraisal should be set in the context of the council's objectives, priorities and targets, generally expressed in corporate plans. Appraisal targets when taken as a whole should be related to agreed targets for the council as a whole.

4. THE APPRAISAL CYCLE

- 4.1 Appraisal should take place on a predetermined date, **at least annually**, backed up by regular monitoring meetings at which targets can be reviewed for continuing relevance. A formal system of appraisal should not prevent the continuous review of progress and performance.

5. KEY ELEMENTS OF THE APPRAISAL PROCESS

- Continuous two-way monitoring of performance against objectives
- Preparation for an appraisal interview
- An appraisal interview where recent and current performance, future objectives and development needs are discussed
- Agreement on action required from either party to ensure required performance is achievable
- A continuing process of informal discussion regarding performance

6. The appraisal interview and afterwards

- Both parties should be well informed and prepared for the interview
- The process should be two-way
- The interview should be free from interruptions, and notes should be taken when necessary

- The parties should concentrate as far as possible on established facts rather than unsubstantiated opinions
- Targets which are realistic and capable of being monitored should be agreed
- Any agreed personal development plans should be implemented within the agreed timescale
- The chief executive should be given a reasonable opportunity to correct any shortfalls in performance
- A date for the next review should be agreed

7. EXTERNAL ASSISTANCE

- 7.1 External assistance in facilitating the appraisal process can be helpful in providing an independent perspective.
- 7.2 Within the local government 'family', it may be sought from the Local Government Association or by contacting the [Employers' Secretary](#) or from the appropriate Regional Employers' Organisation or [ALACE](#) or [SOLACE](#). Alternatively such assistance may be available from commercial sources, such as consultancy firms.
- 7.3 Such assistance from the aforementioned organisations may take the form of them either directly participating in the process for which a fee may be requested to cover staff time or the recommendation of, for example, a suitably experienced recently retired senior officer or other independent individual.

Note: If external assistance is sought, it must have the agreement of both sides.

8. OTHER MATTERS

- 8.1 The detailed content of appraisal interviews should normally be treated as confidential to the participants, unless both parties agree that it would be helpful for the targets agreed for the ensuing period to be shared more widely. However, it may be useful to report to an appropriate committee meeting that an appraisal interview has taken place.
- 8.2 This may be useful in acting as a reminder that the chief executive and members need to ensure that chief officers are in their turn appraised.
- 8.3 It should, however, not be assumed that the process for appraising the chief executive should be followed in precise detail for other staff. There is a fundamental difference between elected members appraising the chief executive and managers appraising subordinates. The principles, nevertheless, are the same.



HR Committee

6th March 2017

Report of: Interim Service Director Human Resources, Change and Communications

Title: Disciplinary Procedures for the Chief Executive and Chief Officers

Ward: N/A

Officer Presenting Report: Sandra Farquharson (Interim Head of HR)

Contact Telephone Number: (0117) 35 21359

Recommendation

That the Committee recommends to the Full Council:

1. That the Council's Constitution (Part 3, Section 1, Paragraph (j)) be amended to read: *"Confirming the appointment of the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer, and confirming the dismissal of the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer"*.
2. That the Terms of Reference of the Human Resources Committee be amended to replace the final two sentences of "Overview" with *"In accordance with the Officer Employment Procedure Rules to act as the Investigating and Disciplinary Committee in relation to the Chief Executive and Chief Officers"*, and the following to be added to "Functions": *"To hear and determine matters of discipline in relation to the Chief Executive and Chief Officers, including taking action up to and including dismissal. Where dismissal is the outcome in relation to the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer the Committee will recommend this to the Full Council for a final decision"*.
3. That the membership of the Human Resources Committee be amended to include at least one member of the executive, which is required when it is acting as the Investigating and Disciplinary Committee in relation to the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer.
4. That an Independent Panel be established as a committee of the Council appointed under section 102(4) of the Local Government Act 1972 comprising only independent persons (at least two) appointed under Section 28(7) of the Localism Act 2011 for the following purpose: *"To review the decision of the Investigating and Disciplinary Committee to dismiss the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer, and to provide comments on this recommendation to the Full Council for a final decision"*.

That the Committee adopts:

- The Model Disciplinary Procedure of the Joint Negotiating Committee for Local Authority Chief Executives (as detailed in the sections headed “procedure” in Appendix A to this report) in relation to matters of discipline of the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer, noting that throughout the appendices A, Ai, Aii and Aiii “chief executive” should be construed to include not only the Head of Paid Service but also the Monitoring Officer and the Chief Financial (Section 151) Officer.
- The Model Procedure of the Joint Negotiating Committee for Chief Officers of Local Authorities in relation to matters of discipline of all other Chief Officers (as detailed in Appendix B to this report).

That the Committee repeals the Council’s Disciplinary Policy for 1st and 2nd Tier Officers.

That the Committee notes:

- That the sections headed “guidance” in Appendix A to this report are not part of the procedure but may be taken into account.
- That a separate report on the procedure to be followed in relation to grievances raised against or by the Chief Executive will be brought to the Committee’s next meeting.
- That the Officer Employment Procedure Rules (in the Council’s Constitution) will be updated as necessary in order to reflect the agreed position.

Summary

The purpose of this report is to amend the Council’s Constitution and procedures in line with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and in light of recommendations from the Joint Negotiating Committee of Local Authority Chief Executives.

The significant issues in the report are:

- Are detailed under “Recommendations” above.

Policy

1. The Council’s approach to disciplinary action and dismissal of the Head of Paid Service, the Monitoring Officer, the Chief Financial (Section 151) Officer and other Chief Officers is set out in the Officer Employment Procedure Rules, which form Part 4(F) of the Council’s Constitution.
2. The contract of employment of the Chief Executive explicitly incorporates the terms and conditions of the Joint Negotiating Committee on Local Authority Chief Executives (JNC).

Consultation

3. Internal

This matter has been considered by the HR Committee on three previous occasions. This present report reflects the model procedure and associated guidance issued by the JNC in October 2016, which was subsequent to the Committee’s consideration of this matter at its meeting on 22nd September 2016. The relevant minute is as follows:

“The Committee received a report from the Service Director, Human Resources and Workplace. The report proposed how the Council should implement the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. The Committee is asked to recommend the proposed amendments of the Council’s Constitution to Full Council.

The Committee RESOLVED:

(i) To approve the recommendations to Full Council as set out in the report.

4. External

None.

Context

5. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the Regulations) came into force in May 2015 and brought in a new disciplinary/dismissal procedure for local authorities’ heads of paid service, monitoring officers and chief financial (Section 151) officers (protected officers). The Regulations removed the statutory requirement for the appointment of a Designated Independent Person (DIP), and introduced new rules that require any decision to dismiss a protected officer to be taken by the Full Council by way of a vote after consideration of any advice, views or recommendations from a Panel containing at least two independent members appointed under the Localism Act 2011, the conclusions of any investigation into the proposed dismissal and any representations from the officer concerned.
6. The new process applies to dismissals for any reason “other than redundancy, permanent ill-health or infirmity of mind or body, but not because of the failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract”. However, unlike the DIP process, it does not apply to disciplinary action short of dismissal.
7. Initial changes to the Officer Employment Procedure Rules were made at the Full Council’s Annual Meeting in May 2015 in order to meet tight timescales imposed by the legislation, but further refinement is necessary in light of the publication by the JNC of the model procedure and associated guidance.

Proposal

8. As identified under “Recommendations” above.

Other Options Considered

9. To recommend the Council’s own procedure based on earlier advice from the Local Government Association as considered by the HR Committee at its meeting on 22nd September 2016, but the JNC Model Procedure has in effect superseded this.

Risk Assessment

10. The risk of not approving the Recommendations is that there will be no compliant process in place to deal with matters of discipline in relation to the Chief Executive and Chief Officers.

Public Sector Equality Duties

- 11a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.
- 11b) No equality impact assessment has been undertaken because these changes are required by the law and contract of employment.

Legal and Resource Implications

Legal

""

Advice provided by x (y), z.

Financial

(a) Revenue

""

(b) Capital

""

Advice provided by x (y), z.

Land

Not applicable.

Personnel

High ethical standards are critical to maintaining public confidence in local government. Holders of public office are accountable for their decisions and actions to the public. It is important to have a mechanism in place to prevent misconduct and to deal with it effectively. These Disciplinary Procedures are as set out in the JNC Model Procedure and associated guidance.

Sandra Farquharson
Interim Head of Human Resources
04/03/2017

Appendices:

- A – Model Disciplinary Procedure for the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer
- Ai – Model Disciplinary Procedure flowchart
- Aii – Model Disciplinary Procedure (relationship with sickness procedure) flowchart
- Aiii – Model Disciplinary Procedure (relation with capability/performance management) flowchart
- Aiv – Proper procedure ready reckoner for the Head of Paid Service, the Monitoring Officer and the Chief Financial (Section 151) Officer
- B – Model Disciplinary Procedure for all other Chief Officers

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None.

THE MODEL DISCIPLINARY PROCEDURES & GUIDANCE TO THE PROCEDURES (A. ENGLAND and B. WALES)

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Introduction

The model procedures should be followed except in so far as the parties locally agree to vary them. The council has discretion in how far to follow the agreed guidance. The Local Government Association (LGA) and the Association of Local Authority Chief Executives and Senior Managers (ALACE) through the JNC for Chief Executives commend this model procedure because:

- The procedure and guidance have been drawn-up in light of the experience of the Joint Secretaries in their involvement with individual cases;
- Its variants apply to constitutions with council leader / cabinet executives, mayor/cabinet executives and those councils operating a committee system;

Local authority chief executives 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 the chief executive from unwarranted political interference in their role as head of paid service of the authority. High levels of accountability work most effectively within clear criteria for responsibilities. Even with the distinctive role of Head of Paid Service, disciplinary action will need to be based on clear evidence.

Local authority elected members will want to ensure that they:

- Understand the procedure to be used;
- Seek appropriate advice at every stage;
- Do not compromise the outcome of any proceedings;
- Allow every opportunity for fair procedures to operate.

This guidance outlines the key elements of procedures for disciplining chief executives.

The elements of what is procedure and what is guidance to the procedure is arranged in such a way as to present each element of the model procedure – immediately followed by the relevant part of the guidance for ease of reference.

As there are significant differences between the English and Welsh regulations, for ease of understanding there are two separate sections:

A. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE – ENGLAND
(from **page 29**)

B. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE – WALES (from **page 54**)

Further guidance on process applying to both procedures is expressed in flow diagram format which is provided as **Appendices 5a, W5a, 5b and 5c**.

A. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE – ENGLAND

1. *Issues requiring investigation – (procedure)*

Where an allegation is made relating to the conduct or capability of the chief executive or there is some other substantial issue that requires investigation, the matter will be considered by the Investigating & Disciplinary Committee (IDC).

This Committee will be a standing committee appointed by the council. Arrangements for flexibility are recommended in the event that a member of the standing committee has a conflict of interest.

Other structures are necessary to manage the whole process, including an Independent Panel should there be a proposal for the dismissal of the chief executive. This will be comprised of independent persons, appointed in accordance with ***The Local Authorities (Standing Orders) (England) Regulations 2001*** as amended.

1. *Issues requiring investigation – (guidance)*

1.1 *The Local Authorities (Standing Orders) (England) Regulations 2001 as amended*

1.1.1. The Local Authorities (Standing Orders) (England) Regulations 2001 (the Regulations) (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) provide that the dismissal of a chief executive in cases of disciplinary action (as defined in the Regulations) may only take place if the proposal to dismiss is approved by way of a vote at a meeting of the authority, after they have taken into account:

- any advice, views or recommendations of a panel (the Independent Panel)
- the conclusions of any investigation into the proposed dismissal and
- any representations from the protected officer concerned

1.1.2 **Disciplinary action:** in relation to a member of staff of a local authority is defined in the Regulations as “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 definition of disciplinary action would therefore include other reasons for dismissal such as capability or some other substantial reason including a

breakdown in trust and confidence between the chief executive and the authority.

- 1.1.4 The attached **Appendix 5d** (potential reasons for termination table) sets out those circumstances that could potentially result in dismissal and whether or not they are covered by this procedure.

1.2 Structures to manage the procedure

- 1.2.1 A key feature of the model procedure is the specific roles envisaged by the Investigating and Disciplinary Committee (IDC), the Appeals Committee, the Independent Panel and the council. Authorities will need to consider a number of important issues around the composition of committees and the delegation of appropriate powers. In particular, it must be borne in mind that staffing issues are a non-executive function and so these bodies have to be put in place by the council not the Leader / Mayor or executive.
- 1.2.2 The IDC must be a politically balanced committee comprising, it is suggested, five members. Where authorities operate a leader / cabinet or mayor / cabinet executive structure, this must include at least one member of the executive. This Committee may need to be in a position to take decisions and appropriate actions as a matter of urgency. It may need to meet at very short notice to consider allegations and decide whether there is a case to answer and to consider whether suspension of the chief executive might be appropriate. It is also possible that in some circumstances members of the IDC may find themselves in a position where they have a conflict of interest. It is therefore recommended that authorities take this into account when constructing the committee and its powers, including the quorum and substitutes. The IDC also has an important role in considering the report of an Independent Investigator. The role of the IDC is explained further at appropriate stages in the guidance. (The Committee that performs this function may locally be known by a different name although its role and responsibilities will be that outlined throughout this document and referred to herein as the IDC. This Committee may also fulfil other functions).
- 1.2.3 The Appeals Committee must be a politically balanced committee of, it is suggested, five members who are not members of the IDC. Where authorities operate an executive structure this must include at least one member of the executive. The Appeals Committee will have a more limited role. Its purpose will be to hear appeals against action taken short of dismissal and to take a decision either to confirm the action or to impose no sanction or a lesser sanction.
- 1.2.4 The JNC has agreed that the Independent Panel should comprise of independent persons (at least two in number) who have been appointed by the council, or by another council, for the purposes of the council members' conduct regime under section 28(7) of the Localism Act 2011. Councils are required to issue invitations for membership of the Panel in accordance with the following priority order:

- (a) an independent person who has been appointed by the council and who is a local government elector in the authority's area
- (b) any other independent person who has been appointed by the council and
- (c) an independent person who has been appointed by another council or councils

- 1.2.5 Appropriate training should be provided for Independent Panel members.
- 1.2.6 It should be noted that any remuneration paid to members of an Independent Panel may not exceed that payable in respect of their role under the Localism Act.
- 1.2.7 A requirement for any disciplinary process is to carry out an investigation of the allegations to establish the facts of the case and to collate evidence for use in the disciplinary hearing. In the case of a chief executive, it will normally be necessary to engage an independent person for this purpose, and this person is referred to here as the Independent Investigator. Arrangements have been agreed to enable the speedy appointment of a competent and experienced person to perform this role, with the assistance of the Joint Secretaries.

1.3 Managing access to the procedure (See also Para 5 of this guidance) – considering the allegations or other issues under investigation

- 1.3.1 The procedure itself does not require that every single issue which implies some fault or potential error on the part of the chief executive be investigated using this process. It is for the authority to decide the issues that will engage the formal process.
- 1.3.2 Authorities will therefore need to consider what constitutes an 'allegation' made relating to the conduct or capability of the chief executive and what it considers are other substantial issues requiring investigation. Clearly the route for complaints against the council and the chief executive and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied. Ideally, procedures need to be in place which can filter out and deal with 'allegations' against the chief executive which are clearly unfounded, or trivial or can best be dealt with under some other procedure.
- 1.3.3 For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the council's general complaints procedure. If the matter is a grievance from a member of staff directed against the chief executive, it may be appropriate to first deal with it through the council's grievance procedure. Of course if the matter were a serious complaint against the chief executive'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.

- 1.3.4 An authority will need to put into place arrangements that can manage the process. In particular - that records are kept of allegations and investigations and that there is a clear route into the disciplinary procedure. It could be, for example, that in the case of allegations against the chief executive, the monitoring officer and the Chair of the IDC would oversee referrals to that Committee.
- 1.3.5 Where the issue to be investigated is related to the sickness absence or capability of the chief executive in terms of performance, there is likely to be a link with the authority's sickness procedure or appraisal / performance management procedure.
- 1.3.6 Where management action is required in respect of the normal sickness of the chief executive, the authority needs to be clear about who takes appropriate actions. Initially, it could be the Director of HR (according to local procedures) who will follow the authority's normal sickness absence procedures. Whoever is responsible will report to the IDC as appropriate to the matter being investigated – in particular where procedures have been followed to the point where dismissal appears to be a possibility (see flow diagrams **Appendices 5a, 5b & 5c** for reference).
- 1.3.6 Any shortcomings in a chief executive's performance can be better identified, and therefore remedied, at an early stage if there is an objective performance appraisal system in place as required by the JNC agreement (see **Appendix 2**).
- 1.3.7 For a chief executive the system is likely to be linked to objectives in the authority's community plan and the performance objectives should be specific, measurable, achievable, realistic and time-related. It may, but will not necessarily, be the system against which pay progression is measured (see flow diagram **Appendix 5c**).

2. Timescales – (procedure)

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

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

2. Timescales – (guidance)

- 2.1 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 chief executive, that proceedings are allowed to drag on without making progress towards a conclusion.

2.2 Statutory and indicative timescales

2.2.1 The procedure does not set out explicit timescales except the specific requirement in the Local Authority (Standing Orders) (England) Regulations 2001 for the appointment of the Independent Panel at least 20 working days before the meeting of the council at which consideration as to whether to approve a proposal to dismiss is to be given. In this guidance we make reference to other statutory timescales and restrictions which are applicable to disciplinary procedures more generally, such as those contained in the Employment Relations Act 1999 (in connection with the right to be accompanied).

2.3 Avoiding delays in the procedure

One cause of delay in the procedure is the availability of the key people necessary to manage and control the process.

2.3.1 Availability of Independent Investigator

An Independent Investigator should only be formally appointed once the IDC has determined that there is a case that requires further investigation. However to minimise delays in any potential investigation, steps should be taken to identify a shortlist of three potential Independent Investigators from the list held by the JNC Joint Secretaries (see paras 6.3 and 6.4) concurrently with arrangements for the initial meeting of the IDC. This is not pre-judging whether an investigator will be needed, but a practical step to assist in minimising any delays.

2.3.2 Availability of the chief executive in case of sickness

- (a) It is possible that the sickness of the chief executive could impact on the ability to follow the disciplinary procedure. This may be because:
- the issue under investigation is the chief executive's sickness in itself (ie. a capability issue); or alternatively,
 - while during an investigation for another reason such as allegations about the chief executive's conduct, the chief executive commences sickness absence during the disciplinary process.
- (b) In principle, the sickness of the chief executive will invoke the local authority's normal sickness procedures. The nature of the investigation and facts surrounding the sickness will dictate the appropriate way of dealing with the issue.
- (c) If the investigation is about the long-term sickness or frequent ill-health problems experienced by the chief executive the authority should have already obtained appropriate medical information and advice by following its local processes. This would normally include referral to the authority's occupational health adviser who would examine the chief executive and / or seek further medical information from the chief executive's GP or any specialist dealing

with the case. However, the IDC or Independent Investigator may feel the need for further or more up-to-date advice and again they should use the authority's normal processes and procedures to obtain this. If the chief executive's absence or problems at work are as a result of a disability which places him / her at a substantial disadvantage compared to others without the disability, then the authority must consider and undertake reasonable adjustments in order to remove the disadvantage. The IDC must satisfy itself that this has been fully considered and that no further reasonable adjustments could be made which would remedy the situation.

- (d) Where the issue under investigation is not health-related and is, for example, the conduct of the chief executive and he / she then commences sickness absence then the approach will depend on the type and length of the illness and exactly when it occurs during the process.
- (e) A short period of illness should not normally create a major problem although the timing of the illness can create difficulties if it coincides with scheduled meetings for investigating or hearing aspects of the case. If this occurs then reasonable efforts should be made to rearrange the meeting. However, if the sickness becomes more persistent or is likely to become longer term then the authority will take steps to identify whether the chief executive, although possibly not fit to perform the full range of duties, is fit enough to take part in the investigation or disciplinary hearing.
- (f) If it appears that there will be a long period of ill health which will prevent the chief executive taking part in the process, the authority and possibly the Independent Investigator will have to make a judgement as to how long to wait before proceeding. In some cases it may be appropriate to wait a little longer where a prognosis indicates a likely return within a reasonable timescale.
- (g) However, where this is not the case, the authority will in most cases need to press ahead given the importance of resolving issues which can have a significant impact on both parties due to the nature and high profile of the role of chief executive. If this is the case the authority should ensure that the chief executive is given the opportunity to attend any meetings or hearings. However, the chief executive should be informed that if they cannot attend the meetings or hearings then they would proceed without them. If this is the case the chief executive may make written submissions to be considered and may also send their representative to speak on their behalf before a decision is taken.

2.3.3 Availability of representative

The availability of the chief executive's representative can also be a possible cause of delay. Reasonable account should be taken of the availability of all relevant parties when setting dates and times of meetings. Where it is simply not possible to agree dates to suit everybody the authority needs to be aware of the statutory right to be accompanied at disciplinary hearings and to take this into account when setting dates (see **Paragraph 4**).

2.3.4 Availability of witnesses

If the Independent Investigator or the IDC allows either party to call witnesses and the witnesses are unable to attend, their evidence should not be discounted and should still be considered. Alternatives may include written statements or minutes / records where individuals have been interviewed as part of the investigation. However, such evidence may not carry the same weight as evidence that can be subjected to cross-examination.

2.3.5 Availability of committee members

- (a) It is recommended that, in establishing the IDC and the Appeals Committee, authorities take availability issues into account and any operational quorum when considering the numbers of members to serve on these committees.
- (b) It should be particularly borne in mind that the IDC might need to be able to meet at short notice to consider serious allegations against the chief executive.

2.3.6 Availability of Independent Panel members

The Independent Panel must be appointed at least 20 days before the council meeting at which consideration whether or not to approve a proposal to dismiss is to be given. The appointment of Independent Panel members should, therefore, take into account their availability to undertake their role within that timescale.

3. Suspension – (procedure)

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

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

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

An elected member should hold the delegated power to suspend the chief executive immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by the chief executive 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. It is suggested that this power might be held by the Chair of the IDC or the Chair of the Urgency Committee.

The continuance of a suspension should be reviewed after it has been in place for two months.

3. Suspension – (guidance)

3.1 Although suspension in order to investigate an allegation or a serious issue is not disciplinary action in itself, it is a serious step in the process that should be managed well. Unlike with most other posts, the suspension of the chief executive may come immediately to the attention of the local and perhaps national media with potentially damaging consequences for the reputation of the chief executive and the authority.

3.2 Where a chief executive is suspended and facing allegations this is potentially stressful for the individual and disruptive to the council. It is therefore in the interests of all parties that such cases are dealt with as expeditiously as possible.

3.3 Alternatives to suspension

Suspension will not be appropriate in every case, as this will depend on the nature of the allegation or seriousness of the issue. Before suspending the chief executive, careful consideration should be given to whether it is necessary and whether there are any other suitable alternative ways of managing the situation, for example by agreeing particular working arrangements such as working from home for a period or working in some

other way that protects the chief executive and authority from further allegations of a similar nature.

3.4 Power to suspend

- (a) The chief executive is the head of paid service and normally bears the delegated responsibility for implementing council policy on staffing matters. However, when it is the chief executive who is the subject of an allegation or investigation, the authority will need to be clear about who has the power to suspend the chief executive and in what circumstances.
- (b) The point at which it may become clear that suspension is an appropriate action is likely to be at the stage where the IDC has conducted its initial assessment. The model procedure therefore envisages that the IDC should have the power to suspend the chief executive.

3.5 Short notice suspension

- (a) The procedure also recognises that in exceptional circumstances it may be necessary to suspend at very short notice and before the IDC can meet, e.g. because the remaining presence of the chief executive could be a serious danger to the health and safety of others, or a serious risk to the resources, information or reputation of the authority. An elected member should hold the delegated power to suspend in an emergency. It is suggested that this power might be held by the Chair of the IDC or the Chair of the Urgency Committee.

3.6 Suspension protocols

If suspension were deemed appropriate, the IDC (or in exceptional circumstances, the chair) would also be the appropriate body to agree or authorise any protocols which are necessary to manage the suspension and the investigation. For example, the chief executive might request access to workplace materials and even witnesses. Arrangements should be made to manage such requests and facilitate appropriate access. Another general principle would be that whilst suspended, the chief executive would remain available to participate in the investigation and to attend any necessary meetings. Therefore other important issues would include communication channels for day-to-day communication and any stipulations for reporting any scheduled or unscheduled absence from the area, e.g. pre-arranged holiday.

3.7 Review of suspension

Where the chief executive is suspended, the suspension should be reviewed after two months, and only continued following consultation with the Independent Investigator and after taking into account any representations made by the chief executive.

4. *Right to be accompanied – (procedure)*

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

4. *Right to be accompanied – (guidance)*

- 4.1 Although the statutory right to be accompanied applies only at a disciplinary hearing, the JNC procedure provides the opportunity for the chief executive to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost.
- 4.2 The procedure recognises that there may be, in exceptional circumstances, a need to suspend the chief executive at short notice, when it is not possible to arrange for their trade union representative to be present. These circumstances might include for example where there is a serious risk to the health and safety of others or serious risk to the resources, information, or reputation of the authority.
- 4.3 Although it would be beneficial to agree dates for the necessary meetings required, the procedure cannot be allowed to be delayed owing to the unavailability of a representative. The statutory right to be accompanied in a disciplinary hearing contained in [s.10 of the Employment Relations Act 1999](#) applies only to hearings where disciplinary action might be taken or be confirmed, that is to say when a decision may be taken on the sanction, or a decision may be confirmed during an appeal. In this model procedure the statutory entitlement to be accompanied would arise:
 - where the IDC considers the report of the Independent Investigator and provides the chief executive with the opportunity to state their case before making its decision.
 - during any appeal against the decision taken by the IDC.
 - at a council meeting considering a proposal for dismissal and also fulfilling the requirement relating to a right of appeal
- 4.4 At these important stages (IDC receiving the report of the Independent Investigator and any appeal against the decision taken by the IDC), if the chief executive's trade union representative is unavailable for the date set then the chief executive 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.
- 4.5 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.

5. *Considering the allegations or other issues under investigation – (procedure)*

The IDC will, as soon as is practicable inform the chief executive in writing of the allegations or other issues under investigation and provide him / her with any evidence that the Committee is to consider, and of his / her right to present oral evidence.

The chief executive will be invited to put forward written representations and any evidence including written evidence from witnesses he / she wishes the Committee to consider. The Committee will also provide the opportunity for the chief executive to make oral representations. At this initial consideration of the need to investigate further, it is not anticipated that witnesses will be called. The discretion to call witnesses lies solely with the IDC.

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

The IDC shall decide whether:

- the issue requires no further formal action under this procedure or
- the issue should be referred to an Independent Investigator

The IDC shall inform the chief executive of its decision without delay.

5. *Considering the allegations or other issues under investigation – (guidance)*

- 5.1 The range of issues and to some extent the seriousness of the issues, which come before the IDC, will depend on the filter that the council adopts. Issues such as those relating to sickness absence and performance are likely to arise at the IDC having followed the authority's sickness absence or performance management / appraisal procedures (see **Paragraph 1.3**).
- 5.2 It is possible in some cases that with some minimal investigation the IDC can dismiss the allegation without even the need to meet with the chief executive. However, this procedure is aimed at dealing with situations where the matter is not so easily disposed of. It therefore provides a process whereby the chief executive is made aware of the allegations and provided with the opportunity to challenge the allegations or to make their response.
- 5.3 When an issue comes before the IDC it needs to make a judgement (see **paragraph 5.4.1**) as to whether the allegation can be dismissed or whether it requires more detailed investigation, in which case this will be undertaken by an Independent Investigator. If the IDC is of the opinion that the allegations do not warrant an investigation, this should be immediately notified to the chief executive without delay, and, if necessary, the complainant informed accordingly. If the IDC is of the opinion that the matter is not serious but there

is some minor fault or error, then it can issue an unrecorded oral warning in accordance with its standard procedures.

- 5.4 The appointment of an Independent Investigator is a serious step but does not mean that the chief executive is guilty of some misdemeanour. In some cases the eventual result of the investigation will be to absolve the chief executive of any fault or wrongdoing. The appointment of an Independent Investigator operates so that both the authority and the chief executive 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 chief executive or the local authority.

5.4.1 Threshold test for the appointment of an Independent Investigator

Cases will vary in complexity but the threshold test for the IDC in deciding whether to appoint an Independent Investigator 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 chief executive's personal file and
- there is evidence in support of the allegation sufficient to require further investigation

5.4.2 Conducting the initial IDC 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 Independent Investigator (if appointed). In order to avoid delay the IDC will want to explore the availability of potential Independent Investigators on the list maintained by the JNC Joint Secretaries at an early stage (see paras 6.3 and 6.4). However, it is important that before any decision is taken to formally appoint an Independent Investigator, the chief executive 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 IDC writing to the chief executive setting out the allegations / issues and providing any evidence to be considered
 - Providing the opportunity for the chief executive to respond to the allegations in writing and to provide personal evidence or witness statements. The calling of witnesses at this stage is at the discretion of the IDC
 - Providing the opportunity for the chief executive to appear before the IDC
- (c) Fair notice should be given to enable the chief executive adequate time to prepare a response to the allegations or issues under investigation. During the initial hearing by the Committee, the chief executive is entitled to attend and

can be accompanied by a representative (subject to **paragraph 2.3.3** and **paragraph 4**).

5.4.3 Treatment of witness evidence

In general, if the authority has witness evidence relating to an allegation this should be presented in written form to the chief executive, although 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 chief executive in order that he / she understands the case against him / her.

5.4.4 Conflicts of interest

- (a) The model procedure envisages, and it is strongly recommended that the authority take steps to establish, a standing IDC. **Paragraph 1.2** indicates the basic rules concerning its membership. However, because a standing committee will comprise named councillors, 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. The authority should attempt to construct its Committees, and establish quorums and substitution rules in order to minimise the likelihood of an individual conflict of interest delaying the procedure. 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 IDC.
- (b) Declarations of interest are matters for individual councillors who are required to follow their authority's code of conduct for elected members and can seek advice from their Monitoring Officer. Problems could follow for the speed at which the case is conducted if the chief executive considers there are valid grounds for making a formal complaint to the council about the involvement of a councillor in a case.

5.4.5 Maintaining the fairness and integrity of the procedure

Where there is a matter that requires investigation it is important that a fair and correct procedure is followed. Allegations against the chief executive 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 chief executive but may create conflicts of interest and could limit the role that those councillors can then take as the case progresses.

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 chief executive, or some other substantial issue, the IDC might be in a position to consider alternatives to immediately moving to the appointment of an Independent Investigator 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 formally to appointing an Independent Investigator.
- (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 chief executive. The Joint Secretaries could be available to assist (see **Appendix 4**).
- (d) 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 chief executive might have at a Court or Employment Tribunal

In both cases the settlement must also comply with any other restrictions on exit payments, such as the £95,000 cap on such payments, including the circumstances in which the council may exercise powers to waive the cap.

- (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 an external 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 and lawful. 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

When considering its delegation of power the authority must include consideration of which Committee or Officeholder has the authority to negotiate a settlement and also a process by which any settlement would be sanctioned including liaison with the external auditor.

5.4.8 Access to appropriate professional / independent advice

- (a) Conducting an investigation into allegations or serious issues involving the chief executive can be demanding on the individuals involved. The IDC (and the Appeal Committee and council) will have access to the local authority's officers, but given the closeness of relationships between the chief executive 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 authority should provide that the IDC has powers to appoint external advisers as appropriate. Useful sources of general advice on the operation of the procedure and assistance with conducting investigations include the Local Government Association by contacting the [Employers' Secretary](#) or from the appropriate Regional Employers' Organisation or [ALACE](#).

In addition to this general advice and assistance, given the potential complexity of the issue, authorities might also require access to their own legal advice.

5.4.9 Ill-health - medical advice

In cases of capability related to sickness or where during the course of any other investigation, the ill-health of the chief executive results in their unavailability it will be important that the IDC has access to appropriate medical advice from the council's Occupational Health provider (see **paragraph 2.3.2**).

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, inspection 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 IDC (see **Appendix 2**).
- (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 chief executive.

6. *Appointment of an Independent Investigator - (procedure)*

The IDC will be responsible for appointing an Independent Investigator, providing the necessary facilities, paying the remuneration and providing all available information about the allegations.

The Independent Investigator should be selected from the list maintained by the National Joint Secretaries.

6. *Appointment of an Independent Investigator - (guidance)*

6.1 Where a decision has been taken to appoint an Independent Investigator, it is important that the council moves quickly to take this forward. This is particularly important if the chief executive has been suspended. This can be assisted if the availability of potential Independent Investigators is explored at an early stage.

6.2 This will require that the council is clear as to who has the power to appoint the Independent Investigator and to agree the terms of remuneration and working methods. The model procedure envisages that this will be the responsibility of the IDC.

6.3 It is in the interests of the council and the chief executive that both sides should have confidence in the independence and relevant competence of the Independent Investigator, not least to avoid, or at least minimise, argument later in the process about the quality or credibility of the investigation. To this end, it has been agreed that the Joint Secretaries will maintain a list of potential Independent Investigators, who have been selected for their suitability and experience for this work. Independent Investigators on that list will be offered on a 'taxi-rank' basis subject to their availability within the desired timescales, and no material connections with the council or the chief executive nor any connection to the allegations.

6.4 The Council will approach the National Joint Secretaries and will be supplied with the top three names from the list (if in exceptional circumstances three names are not available, both local parties will agree to choose from a shorter list). If these are acceptable to the council, the chief executive will be invited to select one of the names. The only acceptable reason for not selecting from the names supplied being conflict of interest. If an appointment is not agreed by the chief executive within 14 days of the date of the names being supplied, the council will be at liberty to select an Investigator from the names supplied.

6.5 *Terms of reference – allegations or issues to be investigated*

(a) When appointing an Independent Investigator it is important that they are provided with terms of reference. The Investigator 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 IDC will be responsible for providing this information. It will also be in a position to discuss timescales for the investigation.

6.6 Remuneration

Remuneration for the Independent Investigator will be set at the Local Government Association's normal consultancy rate for external consultancy work.

7. *The Independent investigation – (procedure)*

The **ACAS Code of Practice on Discipline and Grievance** requires there to be an investigation to establish the facts of the case before proceeding to the disciplinary hearing. The JNC believes that, for chief executives, this should be carried out by an Independent Investigator. He / she should determine the procedure for the investigation, either operating on the basis of an independent investigation using his / her powers to access information, or a formal hearing, at which the allegations and supporting evidence including evidence provided by witnesses are presented by the authority's representative and the chief executive or his / her representative is able to present his / her case. While the recommended procedure allows for either option, on balance the JNC's preference is for the 'investigation' model, but the decision on this remains with the Independent Investigator.

Once appointed it will be the responsibility of the Independent Investigator 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 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 him / her to be appropriate for the authority to take against the chief executive.

7. *The Independent investigation – (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 Independent Investigator could decide to delegate some of the investigation work to an assistant. This should be agreed with the IDC and the chief executive 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 Independent Investigator

7.2 Working arrangements

7.2.1 Once appointed it will be the responsibility of the Independent Investigator 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 (if any is appropriate) or range of actions which appear to him / her to be appropriate for the authority to take against the chief executive.

7.2.2 The methodology adopted by the Investigator should be confirmed with the parties. However, the JNC believes that the Independent Investigator should operate on the basis either of a process of evidence gathering, hearing submissions etc or a formal hearing, at which both parties will have the usual opportunities to present evidence, cross-examine witnesses etc. Both parties can be represented by an individual of their choice (the chief executive's representation should be obtained at his / her own expense). While the recommended procedure allows for either option, on balance the JNC's preference is for the 'investigation' model, but the decision on this remains with the Independent Investigator.

7.3 Suspension

7.3.1 The Independent Investigator does not have the power to suspend the chief executive, but if the chief executive has been suspended for two months, the IDC is required to review the suspension (see **paragraph 3.2.5**).

7.4 Confidential contact at authority

7.4.1 Although the Independent Investigator 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 Independent Investigator will also require agreed contact and reporting arrangements with the parties. It is recommended therefore that the council designates an officer to administer the arrangements.

7.4.2 During the investigation the Independent Investigator 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 Independent Investigator's report by the IDC – (procedure)

The IDC will consider the report of the Independent Investigator, and also give the chief executive the opportunity to state his / her case and, to question witnesses, where relevant, before making a decision.

Having considered any other associated factors the IDC may:

- Take no further action
- Recommend informal resolution or other appropriate procedures
- Refer back to the Independent Investigator for further investigation and report
- Take disciplinary action against the chief executive short of dismissal
- Propose dismissal of the chief executive to the Council

8. Receipt and consideration of Independent Investigator's report by the IDC - (guidance)

8.1 Report of the Independent Investigator

8.1.1 The report of the Independent Investigator is made to the IDC which will have delegated powers from the authority to receive the report and take a decision on the outcome. Unless the chief executive is exonerated by the report then at this stage the chief executive should be given the opportunity to state his/her case before the committee makes its decision.

8.1.2 This may be done in one of two ways, according to the process followed by the Independent Investigator:

- If the Independent Investigator has proceeded by way of an evidence-gathering process, the Committee should hold a hearing, giving both the Independent Investigator and the chief executive the right to call and question each other's witnesses
- If the Independent Investigator has held a full hearing, the Committee may choose to limit their meeting to a consideration of the Independent Investigator's report. However, the Committee will need to consider whether to call witnesses for clarification, bearing in mind the ACAS Code of Practice requirement that the employee should be given a reasonable opportunity to call relevant witnesses. The Independent Investigator and the chief executive should both attend the meeting and be given an opportunity to summarise their case.

Under both options the IDC hearing should be conducted in accordance with the ACAS Code of Practice.

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 IDC may:

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

8.3 Recommendations by the Independent Investigator – outcomes or options

8.3.1 The Independent Investigator is expected to recommend any disciplinary action that appears to be appropriate. At this stage clarity is to be welcomed and a clear reasoned recommendation should be given. However, it could be that there is not one obvious action and it may be that the Independent Investigator recommends a range of alternative actions.

8.3.2 Whilst the Independent Investigator's role is to make recommendations on disciplinary action, he / she may wish to comment on potential options for the way forward following the investigation process.

8.4 Decision by the IDC

8.4.1 The IDC should take its decision on the basis of the Independent Investigator's report, and its own findings. It is open to the Committee to impose a lesser or greater sanction than that recommended and it is obviously important for later stages of the procedure that the reasons for doing so are recorded.

9. *Action short of dismissal – (procedure)*

The IDC may agree to impose no sanction, or to take action short of dismissal, in which case the Committee will impose an appropriate penalty / take other appropriate action.

9. *Action short of dismissal – (guidance)*

9.1 Where the chief executive is found to have no case to answer, appropriate communication should be prepared with the chief executive to ensure as far as possible that there is no damage to the chief executive's reputation.

9.2 Where the decision taken by the IDC is action short of dismissal, the action will be taken by the Committee itself. 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 IDC will need to include the delegated power to take disciplinary action in these circumstances.

- 9.3 The chief executive has a right of appeal against the decision (see **paragraph 11**).

10. Where dismissal is proposed – (procedure)

Proposal to dismiss on the grounds of misconduct and for other reasons such as capability or some other substantial reason

Executive constitutions only

In Mayor / cabinet and leader / cabinet **executive constitutions only**. The IDC will inform the Proper Officer that it is proposing to the council that the chief executive be dismissed and that the executive objections procedure should commence.

Executive objections procedure

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

- The fact that the IDC is proposing to the council that it dismisses the chief executive
- Any other particulars relevant to the dismissal
- The period by which any objection to the dismissal is to be made by the leader / elected mayor on behalf of the executive, to the Proper Officer

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

- that the leader / elected mayor has notified him / her that neither he / she nor any member of the executive has any objection to the dismissal
- that no objections have been received from the leader / elected mayor in the period or
- that an objection or objections have been received and provide details of the objections

The IDC 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 Committee will act accordingly, i.e. it will consider the impact of the executive objections on its proposal for dismissal, commission further investigation by the Independent Investigator and report if required, etc.

Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the IDC will inform the chief executive of the decision and put that proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material.

Non-executive administration

In local authorities with no executive and therefore operating a committee system, the IDC will inform the chief executive of the decision and put that

proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material. This is not a full re-hearing and will not involve the calling of witnesses

The role of the Independent Panel

Where the IDC is proposing dismissal, this proposal needs to go before the Independent Panel.

Both parties should be present or represented (the IDC might be represented by its Chair or other nominated person at the meeting). The Panel should receive any oral representations from the Chief Executive, in which case it should invite any response on behalf of the IDC to the points made, and may ask questions of either party. The Independent Panel should review the decision and prepare a report for Council. This report should contain a clear rationale if the Panel disagrees with the recommendation to dismiss.

The role of the Council

The council will consider the proposal that the chief executive should be dismissed, and must take into account:

- Any advice, views or recommendations of the Independent Panel
- The conclusions of the investigations into the proposed dismissal
- Any representations from the chief executive

The chief executive will have the opportunity to appear before the council and put his or her case to the council before a decision is taken.

Redundancy, Permanent Ill-Health and the expiry of Fixed Term Contracts

Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract where there has been no commitment to renew it, do not require the involvement of an Independent Investigator or Independent Panel.

However, the authority should follow appropriate and fair procedures in these cases and have mechanisms in place, including appropriate delegated authorities, to manage such eventualities. In addition, dismissals for all reasons including those set out in this paragraph must be approved by the Council itself.

10. Where the IDC proposes dismissal – (guidance)

- 10.1 Where the Committee 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 set out in the model procedure reflects the requirements of the [Standing Orders Regulations](#) (see Schedule 1, Part 1 (Mayor and cabinet executive), Paragraph 6 and Part 2 (leader and cabinet executive), Paragraph 6).

10.2.2 It is important that the authority identify The ‘Proper 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 IDC 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 Independent Panel

10.3.1 The Independent Panel must be appointed at least 20 days before the meeting of the council at which the recommendation for dismissal is to be considered.

10.3.2 It is likely that Independent Panel members will be unfamiliar with their role under the Regulations and with matters relating to the working environment of chief executives. Accordingly, it is important for Panel members to be offered appropriate training for the role the Panel is to fulfil.

10.3.3 The role of the Panel is to offer any advice, views or recommendations it may have to the council on the proposal for dismissal. The Panel will receive the IDC proposal and the reasons in support of the proposal, the report of the Independent Investigator and any oral and / or written representations from the chief executive. The Independent Investigator may be invited to attend to provide clarification if required. The Panel will be at liberty to ask questions of either party.

10.3.4 The Panel should then formulate any advice, views or recommendations it wishes to present to the council. If the Panel is recommending any course of

action other than that the council should approve the dismissal, then it should give clear reasons for its point of view.

10.4 The role of the Council

10.4.1 The Regulations require that in all constitutions, where there is a proposal to dismiss the chief executive, the council must approve the dismissal before notice of dismissal is issued. The council must therefore consider the proposal and reach a decision before the chief executive can be dismissed.

10.4.2 Given the thoroughness and independence of the previous stages, in particular, the investigation of the Independent Investigator (where applicable), it will not be appropriate to undertake a full re-hearing of the case. Instead, consideration by the council will take the form of a review of the case and the proposal to dismiss, and any advice, views or recommendations of the Independent Panel.

10.4.3 The chief executive will have the opportunity to attend and be accompanied by their representative and to put forward his / her case before a decision is reached.

10.4.4 The Council is at liberty to reject the proposal to dismiss. It can then decide on the appropriate course of action which could include substituting a lesser sanction or, in a case of misconduct or other reasons such as capability or some other substantial reason, referring it back to the IDC to determine that sanction.

11. Appeals – (procedure)

Appeals against dismissal

Where the IDC has made a proposal to dismiss; the hearing by the council will also fulfil the appeal function.

Appeals against action short of dismissal

If the IDC takes action short of dismissal, the chief executive may appeal to the Appeals Committee. The Appeals Committee will consider the report of the Independent Investigator and any other relevant information considered by the IDC, e.g. new information, executive objections (if relevant), outcome of any further investigation, etc. The chief executive will have the opportunity to appear at the meeting and state his / her case.

The 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 Appeals Committee will be final.

11. Appeals – (guidance)

11.1 Appeals against dismissal

11.1.1 [Discipline and Grievance – ACAS Code of Practice](#) requires that an employee who has been dismissed is provided the opportunity to appeal against the decision.

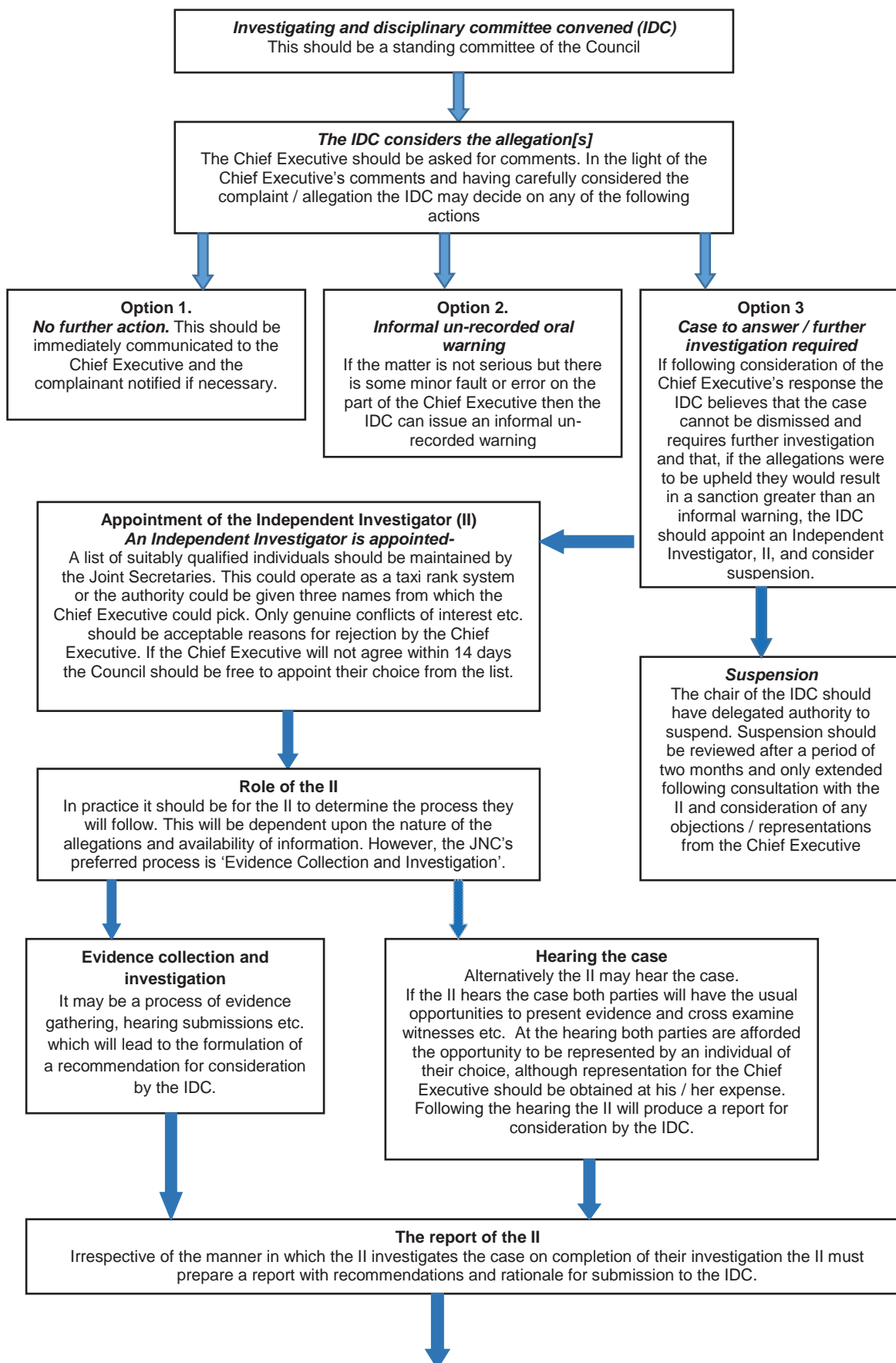
11.1.2 As the Standing Orders Regulations require that the council approves the dismissal before notice of dismissal is issued, there might be some concerns about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss. 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 chief executive it will take representations from the chief executive. Those representations will constitute the appeals process.

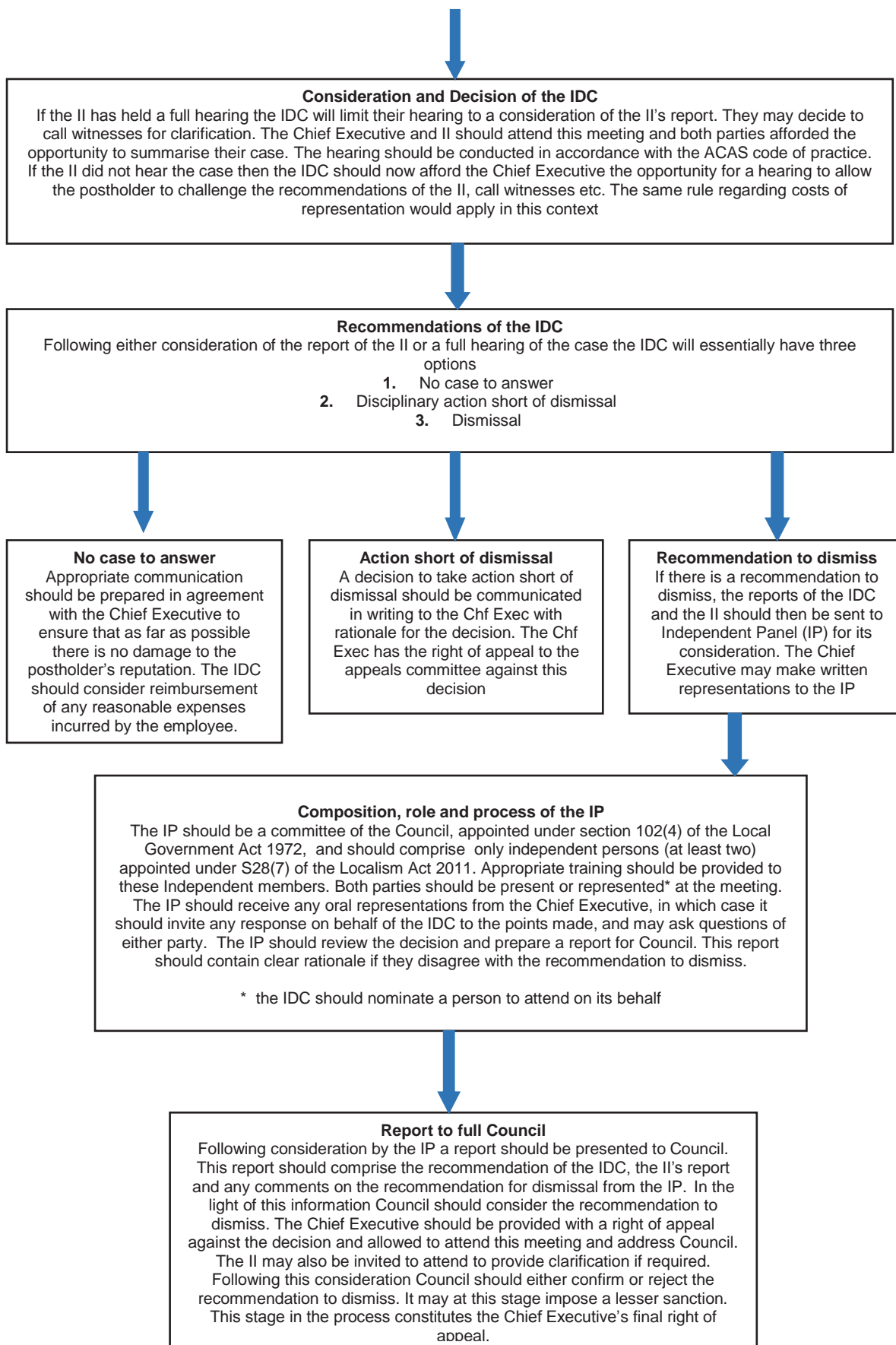
11.2 Appeals against action short of dismissal

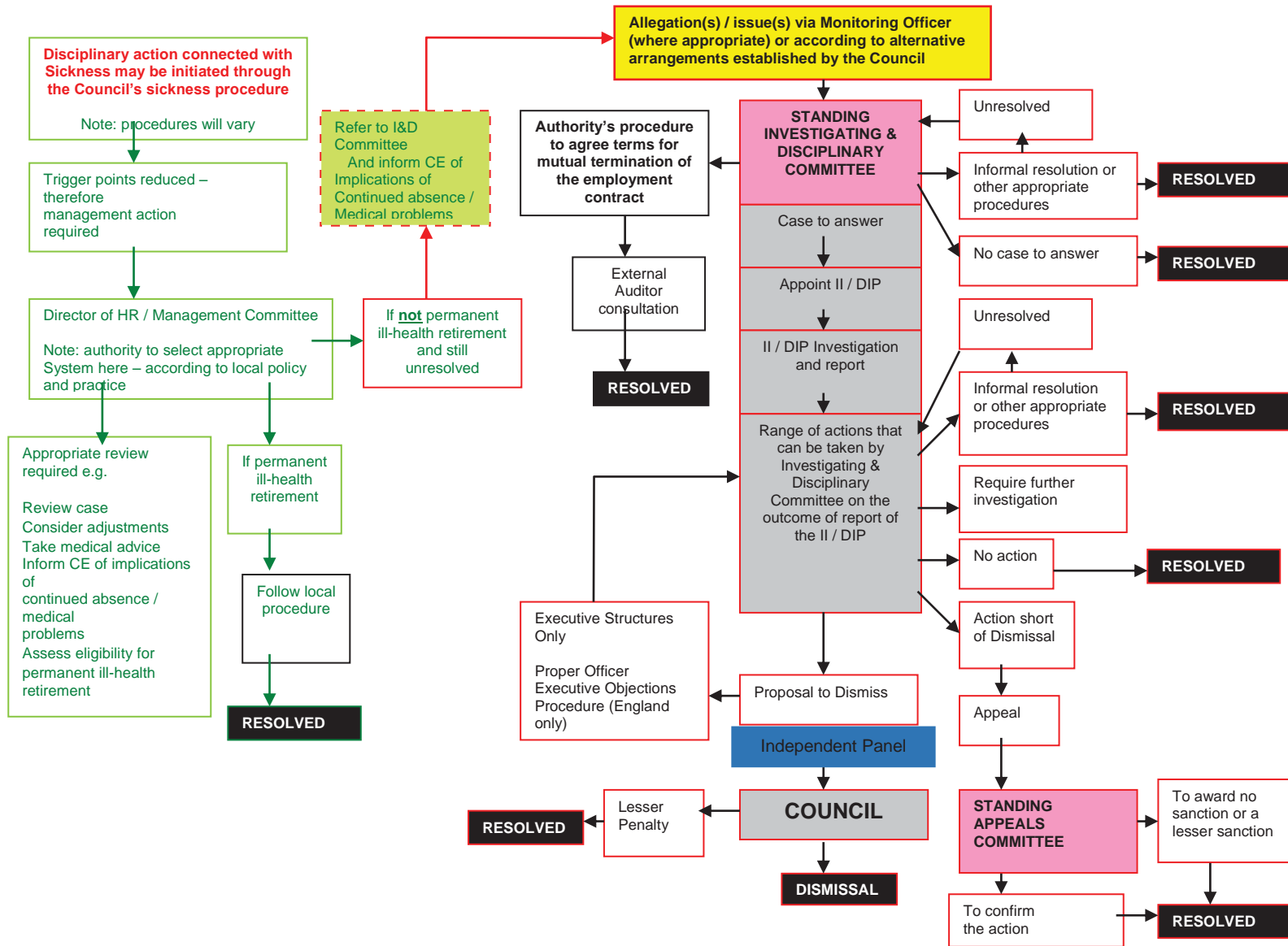
11.2.1 Appeals against actions short of dismissal will be heard by the Appeals Committee. The appeal hearing will take the form of a review of the case and the decision that was taken by the IDC.

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

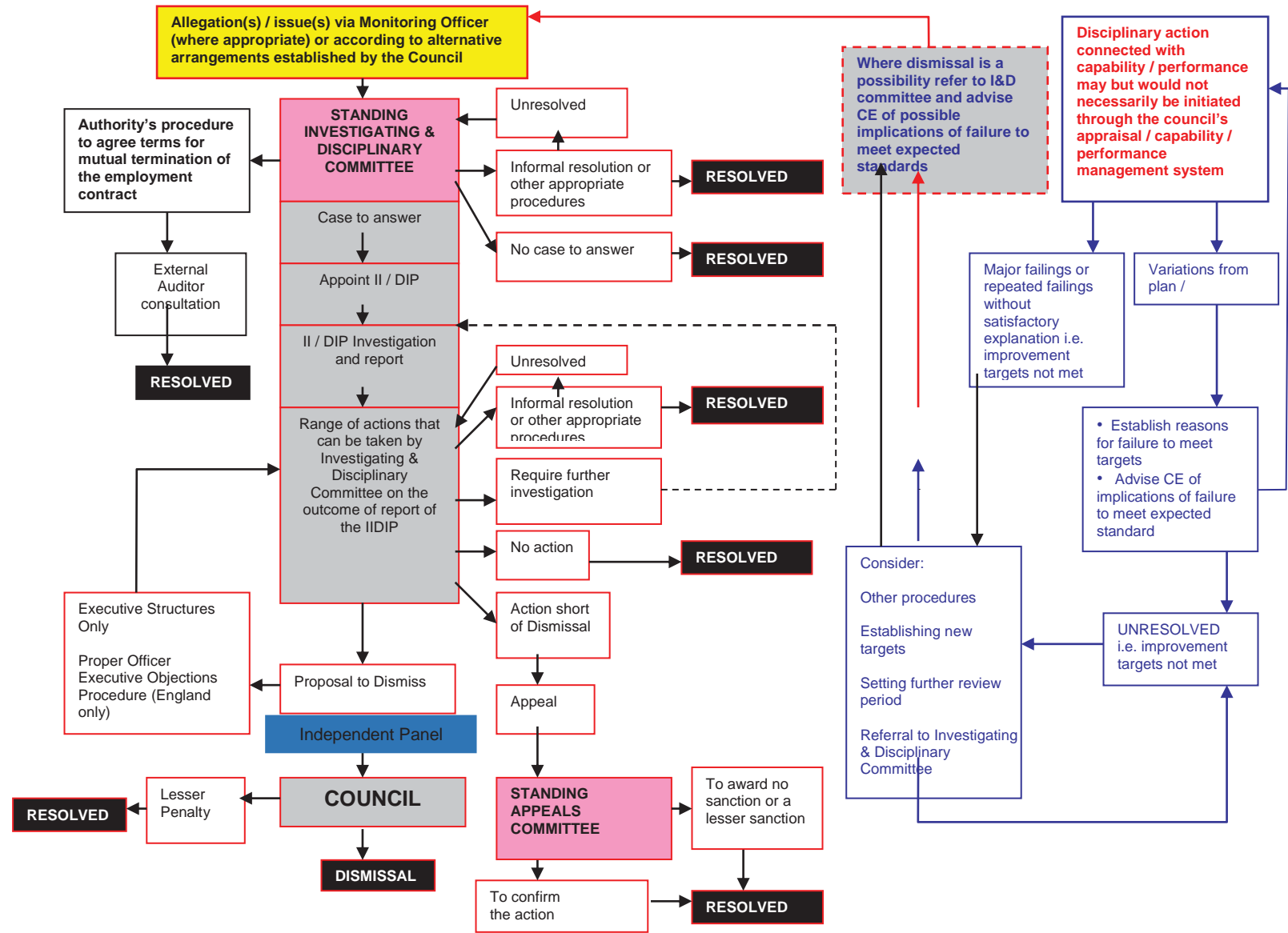
ENGLAND ONLY: Disciplinary Procedure for Local Authority Chief Executives







Revised Model Disciplinary Procedure for Local Authority Chief Executives: Example of Relationship with the Council's Capability / Performance Management Processes



Appendix 5d

| ACTION | REASON FOR TERMINATION | | | | | | | |
|---|------------------------|--------------------------|---|-------------------------------|--|-------------------------------------|-------------------------------|---|
| | Misconduct | Capability - Performance | Capability – Ill health (Long term or, frequent intermittent absence) | Some other Substantial Reason | | Capability- Permanent Ill Health | Redundancy | Expiry of Fixed Term Contract |
| Dismissal | Yes | Yes | Yes | Yes | | Maybe – could be mutual termination | Yes | Yes |
| England only: Independent Panel Required Wales only: Designated Independent Person | Yes | Yes | Yes | Yes | | No | No | Yes- If authority has given commitment to renew |
| Required to follow ACAS Code of Practice | Yes | Yes | Yes | Yes | | Maybe – if dismissal | No | No |
| Appropriate Procedure to follow | JNC | JNC | JNC | JNC | | Local (with Council approval) | Local (with Council approval) | Local (with Council approval) |