



Date: 13 June 2019
Ask For: Emily Kennedy
Direct Dial: (01843) 577046
Email: emily.kennedy@thanet.gov.uk

CONSTITUTIONAL REVIEW WORKING PARTY

21 JUNE 2019

A meeting of the Constitutional Review Working Party will be held at **2.00 pm on Friday, 21 June 2019** in the Council Chamber, Cecil Street, Margate, Kent.

Membership:

Independent Members: Dr Jonathan Sexton (Chairman);

Councillors: Dennis, Hopkinson, Stevens and Tomlinson

SUPPLEMENTARY AGENDA

Item
No

Subject

4. **STANDING ORDERS IN RELATION TO STAFF** (Pages 3 - 28)

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STANDING ORDERS IN RELATION TO STAFF

Constitutional Review Working Party **21 June 2019**

Report Author **Director of Corporate Governance and Monitoring Officer**

Status **Recommendation**

Classification: **Unrestricted**

Executive Summary:

This report sets out the required arrangements for dealing with disciplinary action against the Council’s Statutory Officers (Head of Paid Service, Chief Finance Officer and Monitoring Officer) in order to comply with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

Recommendation(s):

The CRWP is requested to recommend to Standards Committee:

- a) to extend the terms of reference of the General Purposes Committee, as set out in Annex 1;
- b) to appoint a Disciplinary Appeals Committee and agree its terms of reference, as set out in Annex 1, and agree the Committee should comprise three Members of the Council appointed on a politically proportionate basis;
- c) to appoint an Independent Persons Panel, agree its terms of reference, as set out in Annex 1, and agree that it should comprise three Independent Persons;
- d) to agree to pay a fee to Independent Persons appointed to the Independent Persons Panel equal to the agreed rate paid in respect of their role in advising Council on Councillor Conduct issues;
- e) to amend the Employment Rules, as set out in Annex 2;
- f) to delegate to the Committee Services Manager authority to invite and appoint members to serve on the Independent Persons Panel as set out in paragraph 5 of the report, and;
- g) to delegate to the Chief Executive the authority to suspend the S.151 Officer or the Monitoring Officer in cases of urgency, as set out in paragraph 9

CORPORATE IMPLICATIONS

Financial and Value for Money	The proposals will result in costs being incurred in relation to the appointment of an Independent Investigator and also if either the Disciplinary Appeals Committee or the Independent Persons Panel decides to commission external legal and professional advice. In addition, the Members of the Independent Persons Panel are entitled to receive a fee, which must not exceed the rate payable to that person in respect of their role in advising the Council on Councillor Conduct issues. Any costs will be met from within existing budgets.
Legal	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require local authorities to make or modify standing orders to include certain provisions relating to staff and other matters. The Council amended the Employment Rules in February 2016 to comply with the broad requirements of the Regulations but left the details to be resolved later due to uncertainty over the operation of the rules. The

	<p>proposals in this report are compliant with the 2015 Regulations.</p> <p>The Independent Persons Panel is an advisory committee of the Council appointed under S.102 (4) of the Local Government Act 1972.</p>								
Corporate	<p>The Council is vulnerable to claims if its processes do not fully comply with the legislation and its contractual obligations. The proposals have been agreed with Kent Monitoring Officers following advice from Counsel on key issues.</p>								
Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1" style="width: 100%;"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td>Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td style="text-align: center;">✓</td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td style="text-align: center;">✓</td> </tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td> <td style="text-align: center;">✓</td> </tr> </table> <p>There are no direct equalities implications.</p>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,	✓	Advance equality of opportunity between people who share a protected characteristic and people who do not share it	✓	Foster good relations between people who share a protected characteristic and people who do not share it.	✓
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Foster good relations between people who share a protected characteristic and people who do not share it.	✓								

CORPORATE PRIORITIES (tick those relevant)✓	
A clean and welcoming Environment	
Promoting inward investment and job creation	
Supporting neighbourhoods	

CORPORATE VALUES (tick those relevant)✓	
Delivering value for money	
Supporting the Workforce	✓
Promoting open communications	

1.0 Introduction and Background

1.1 The Council's Employment Rules and Prescribed Standing Orders must stipulate that the Council's Statutory Officers (i.e. The Head of Paid Service, Monitoring Officer and Chief Finance Officer) may not be dismissed by the Council unless in accordance with the requirements of the Local Authorities (Standing Orders) England (Amendment) Regulations 2015.

1.2 Decisions on the arrangements needed to comply with these Regulations are a matter for Council.

2.0 Background

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- 2.1 The Local Government Act 1972, the Local Government Finance Act 1988 and the Local Government and Housing Act 1989 require local authorities To designate officers as the “head of paid service”, the “monitoring officer” and the officer “responsible for the administration of the authority’s financial affairs” (called the “chief finance officer” or “section 151 officer”), each of whom has a personal statutory duty to report to Cabinet or Full Council in certain circumstances. Their duties are, in very broad terms, to prevent or highlight organisational, legal or financial problems. This Council has designated the Chief Executive, the Director of Corporate Governance and the Deputy Chief Executive to these respective roles.
- 2.2 As a result of the personal duties upon them, the post holders have a degree of statutory protection from dismissal or other disciplinary action. Before the 2015 Regulations referred to above, there was a requirement to appoint a Designated Independent Person (DIP) to undertake an investigation where disciplinary proceedings were contemplated against a Statutory Officer. The Council or a relevant Committee was obliged to consider that report before making a decision involving disciplinary sanction or dismissal of a Statutory Officer. Under the previous rules, only Full Council could dismiss the Head of Paid Service. The Monitoring Officer and Chief Finance Officer could be dismissed by a Committee. The DIP procedures dated back to 1993 but the concept of statutory protection is a much older one.
- 2.3 In March 2015, the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force. The Regulations changed the procedure which local authorities must follow before dismissing the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (the Statutory Officers). The Regulations required the Council to include in its Constitution, Standing Orders which deal with the appointment and dismissal of staff.
- 2.4 The Department for Communities and Local Government (DCLG) had cited issues of complexity and expense associated with the previous regime as the reasons for bringing forward this legislative change. The 2015 Regulations sought to introduce a new streamlined procedure while attempting to retain an independent check within the system by giving the ‘Independent Persons’ (IPs) appointed to support the Members’ conduct framework a role in the disciplinary and dismissal process for these three officers.
- 2.5 The Council’s Employment Rules were revised as part of the review of the Constitution, in 2016 but they are silent as to the specific procedures which the Council will adopt if disciplinary action is to be taken against one of the Statutory Officers. Nor does the Constitution currently contain the “machinery” required to operate the new procedures. This is because there has been uncertainty as to how the legislation ought to be applied in practice.
- 2.6 The 2015 Regulations, as drafted, raised some fundamental questions about their scope, an apparent conflict with the Localism Act 2011 (see paras 5.12-5.13 below) and how, if at all, an appeal against a decision to dismiss could be incorporated into the new arrangements. Additional uncertainty was caused by the fact that the previous DIP process was embedded within the terms and conditions for Chief Executives as set out in the JNC for Local Authority Chief Executives handbook. The latter has contractual effect where an authority has agreed to be bound by JNC terms and conditions. Until October 2016, when the JNC issued a new handbook, there was a scenario where the contractual obligations owed under JNC terms required different steps to be taken to those set out in the new Regulations. The procedures proposed in this paper are largely modelled on what is contained in the new JNC handbook.

2.7 To try and resolve these issues discussions have taken place with other Monitoring Officers through the Kent Secretaries Group who have sought clarification from the Government as well as instructing Counsel on several key issues. The Group has now reached a Kent wide view on the most appropriate way to implement the new arrangements.

3.0 The New Process for Dismissal

3.1 The 2015 Regulations replaced the previous Designated Independent Person (DIP) arrangements with a new system. There is now no requirement to appoint a DIP where disciplinary action against a Statutory Officer is being considered and instead full Council must approve the dismissal of any of the Statutory Officers (previously this had only applied to the Head of Paid Service).

3.2 The Regulations stipulate that the following procedure must be followed before a Statutory Officer can be dismissed: The Council must invite a number of independent persons ("IPs") to be appointed to a Panel. (These are the same independent persons who have been appointed to advise the Council on member conduct complaints under the Localism Act 2011.) The Council must appoint independent persons who have accepted such an invitation to a Panel at least 20 days before the Council takes a decision to approve the dismissal of a Statutory Officer. Full Council must then meet and, before a vote is taken on whether or not to approve the proposed dismissal, it must take into account any advice, views or recommendations of the Panel as well as the conclusions of any investigation and any representations made by the officer concerned.

3.3 The Ministry for Housing, Communities and Local Government was asked if the new arrangements were limited to dismissal on conduct grounds or whether they also applied in cases of dismissal due to ill health or redundancy etc. MHCLG have clarified that the procedures set out in paragraph 3.2 only apply to dismissal on disciplinary grounds. However, if one of the Statutory Officers was to request that these procedures be invoked where dismissal was proposed on grounds other than conduct then it is considered such a request should be agreed to.

3.4 The Local Authorities (Standing Orders) Regulations 1993 define disciplinary action as follows: *"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."*

4.0 The JNC for Local Authority Chief Executives Model Disciplinary Procedure

4.1 The JNC October 2016 handbook contains a model disciplinary procedure. Whilst this procedure only applies to Heads of Paid Service subject to JNC terms and conditions, it is recommended that these procedures should be followed (with some minor deviations) and also applied to the other Statutory Officers too (i.e. to the Monitoring Officer and the Section 151 officer).

4.2 The main features of the JNC model procedure are:

a) That there should be a standing Investigation and Disciplinary Committee which oversees any disciplinary process and determines the outcome. (In Thanet this role could be carried out by a sub-committee of 3 members of the General Purposes Committee)

- b) That any disciplinary investigation should be carried out by an Independent Investigator.
- c) That there should be a Disciplinary Appeals Committee to consider any appeal against a decision of the Investigation and Disciplinary Committee to take any disciplinary action short of dismissal.

- 4.3 The model procedure suggests that any decision to suspend the Head of Paid Service should be made by a Committee, but that the power to make such a decision in urgent circumstances should be delegated to the Chairman of the Committee. However, this cannot lawfully be delegated to a single Member and as such is not recommended in this paper.
- 4.4 At present the Chief Executive and Directors have the power to discipline, suspend and dismiss employees in accordance with the Council's disciplinary procedure and capability procedures. However, in keeping with the principle of a consistent application of the protections to all of the Statutory Officers, it is proposed that the General Purposes Committee be responsible for deciding whether or not to suspend a Statutory Officer.
- 4.5 The model procedure suggests that any suspension of the Head of Paid Service (and so, by extension, the Monitoring Officer and S151 officer) is reviewed after a period of two months by a Committee. In doing so it should consult with the Independent Investigator and consider any representations from the officer concerned.
- 4.6 The model procedure makes provision for the Investigation and Disciplinary Committee (formed from our General Purposes Committee) and the Disciplinary Appeals Committee to include a Cabinet Member.
- 4.7 Amendments will be made to the Employment Rules to reflect the model procedure. The proposed amended Rules are attached as Annex 2.

5.0 Proposals for Change

a) Disciplinary action

- 5.1 The words "disciplinary action" in relation to a member of staff of a local authority has a specific meaning under the 2001 Regulations (set out earlier). Therefore any allegations against an officer must be assessed against this definition before they can be dealt with under the new procedure. In respect of the Monitoring Officer and Chief Finance Officer, the Chief Executive will determine whether the allegations come within the statutory definition. In respect of the Head of Paid Service, the determination will be made by the Monitoring Officer.

b) General Purposes Committee

- 5.2 The terms of reference of the General Purposes Committee need to be extended to include the power to decide whether any of the Statutory Officers should be suspended and to also determine whether any allegation against any of the Statutory Officers warrants investigation. It is recommended that when the Committee is exercising this power that, for consistency, unless a Member is unavoidably indisposed or conflicted, the same Members shall comprise the Committee until the matter has been dealt with fully. It is recommended that the same approach be applied to the Disciplinary Appeals Committee.
- 5.3 The General Purposes Committee would appoint an Independent Investigator. The Committee will consider any report of the Independent Investigator and, if appropriate

conduct a hearing. The Committee may determine that no action should be taken, that some action short of dismissal should be taken, or propose that the officer should be dismissed.

- 5.4 If the action taken is short of dismissal the officer should have the right to appeal that decision.
- 5.5 If the General Purposes Committees recommends that the officer should be dismissed it will forward its proposal and the necessary information to the Independent Persons Panel. The Panel will consider the proposal and the necessary particulars and decide what advice, views or recommendations to make to full Council. Full Council will decide whether or not to dismiss the officer, having regard to any advice, views or recommendations of the Panel, the conclusions of any investigation, and any representations from the officer.

b) Disciplinary Appeals Committee

- 5.6 It is proposed to set up a new appeals committee comprising three Members to determine any appeals by one of the statutory officers against a decision by the General Purposes Committee to take disciplinary action short of dismissal.
- 5.7 The new committee clearly cannot comprise any members of the General Purposes Committee.

c) The Independent Persons Panel

- 5.8 It is recommended that a standing Independent Persons Panel should be established, comprising three Independent Persons (IPs) and a substitute IP, appointed in priority order in accordance with the Regulations. The Panel will be an advisory committee of the Council. The substitute would take the place of any IP who was unable to participate because he or she was not available at the time, or had a personal conflict of interest. The Council currently has two IPs. In line with the priority order set out in the 2015 Regulations the Council's two IPs would be invited to serve on the Panel first and then an invitation would be extended to an IP from another authority in Kent. It is recommended that the Committee Services Manager is authorised to make these invitations.
- 5.9 If a Council has fewer than two IPs, it must extend the invitation to one or more IPs from another authority. If more accept the invitation than are needed, then appointments must be made in the following priority order: An IP appointed by the Council who is on the electoral register in Thanet Any other IP appointed by the Council An IP who has been appointed by another authority
- 5.10 At least two of the IPs who have accepted the invitation must be appointed, but there is no upper limit. They can be paid an allowance or expenses, but no more than they would receive for their Localism Act work. The appointment must be made at least 20 days before Council takes a decision to approve the dismissal of a Statutory Officer. At the full Council meeting, the authority must take into account any advice, views or recommendations of the Panel as well as the conclusions of any investigation and any representations made by the officer concerned.
- 5.11 The JNC for Local Authority Chief Executives (the JNC) has sought clarification from DCLG on whether the Panel referred to above should be comprised solely of independent persons or whether it can, or should, also include elected members. DCLG has indicated that the intention is that this Panel should consist solely of IPs "so that independent scrutiny can be attained before a full council takes the final

decision on a dismissal motion". The proposal is therefore to follow that approach as this emphasises the independence of the Panel while still ensuring Member involvement at every other stage of the process.

- 5.12 One of the difficulties in implementing the 2015 Regulations has been its apparent incompatibility with the Localism Act in relation to the appointment of independent persons. S. 28(8) of the Localism Act provides that any independent person appointed to provide a view on councillor conduct issues is ineligible to be appointed to this position if they are a voting co-opted member of a committee of the council (and/or hold such a position at any time during the 5 years ending with the appointment). However, an independent person appointed to an Independent Persons Panel under the 2015 Regulations will become a voting co-opted member of a committee of the council. The Council could decide not to give them a vote but that is not recommended as it is difficult to see how the Panel can come to a view on a matter if Panel Members do not have voting rights.
- 5.13 Counsel's advice is that, ultimately, the two pieces of legislation are not in irreconcilable conflict "because appointment to an IP (i.e. the Independent Persons Panel) cannot itself be regarded as disqualifying an Independent Person (IP) from being such on the basis that the very appointment makes them a co-opted member". An IP appointed under the Localism Act is not excluded from continuing in this role by virtue of being appointed as a voting member of the Independent Persons Panel as on that logic they would be prevented from serving on the Panel as they would no longer be an independent person.
- 5.14 The Kent Secretaries Group have agreed in principle reciprocal arrangements whereby each Council is able to invite the IP of another council in Kent to serve on the Independent Persons Panel. This proposal is being explored with the Independent Persons and contact is being made with the Chair of their Forum to seek their agreement to this reciprocal arrangement. Therefore it would be possible for the Independent Persons Panel to comprise one or more IPs from other authorities.
- 5.15 The proposed revised Terms of Reference for the General Purposes Committee, and the terms of reference for the Independent Persons Panel and the Disciplinary Appeals Committee are attached at Annex 1.

6.0 Options

- 6.1 The Council could establish a new standing Committee to carry out the additional functions proposed for the General Purposes Committee.
- 6.2 The Council could include one or more elected members as part of the membership of the Independent Persons Panel, although this is not recommended (paragraph 5.11).

7.0 Advice and analysis

- 7.1 The model procedure adopts a balanced approach to the need to set up a new disciplinary process, which will ensure that the Council has a fair process which is unlikely to be susceptible to successful challenge. It has taken over a year for the JNC to reach agreement on this process. Any attempt to seek local agreement to a different process is likely to cause further delay and it may be difficult to reach agreement. Any alternative process would have to be fair and comply with employment law, so it would be unlikely to be radically different from the model procedure.

- 7.2 The protection rules which apply to the Statutory Officers are an important means of ensuring good governance and maintaining high standards of legal, ethical and financial conduct and probity. The proposals in this report have been formulated in such a way that implements the 2015 Regulations, maintains those protections and governance safeguards while also minimising the costs and risks to the Council.
- 7.3 A flowchart detailing the processes for dealing with allegations in relation to disciplinary matters relating to the Council's Statutory Officers is attached at Annex 3.

8.0 Independent Persons

- 8.1 The Independent Persons who will comprise the Independent Persons Panel are the same independent persons appointed by the Council to advise on councillor conduct matters.
- 8.2 A person may not be appointed as an Independent Person (i.e. to advise on councillor conduct issues) if that person:
- (a) is a member, co-opted member or officer of the Council or a parish/town council in Thanet, or
 - (b) is a relative, or close friend of such a person, or
 - (c) has been a member, co-opted member or officer of the Council or a parish/town council in Thanet in the previous 5 years.
- 8.3 The Council must advertise any vacancies for an Independent Person and applicants must submit an application form before they can be appointed. Only Full Council can make the appointment, which must be approved by a majority of Members of the Council.

9.0 Decision making in cases of a need to urgently suspend one of the statutory chief officers

- 9.1 Where there is a need to urgently suspend one of the Statutory Officers. The General Purposes Committee is given the power to suspend any of the Statutory Officers. Such a decision could not be lawfully delegated to the Chairman of the Committee or any other Member but there remains a gap where the seriousness of a situation meant there was an urgent need to suspend one of the officers and it was not feasible to wait until the statutory five days' notice of a public meeting had been given. This is particularly an issue in the case of the Head of Paid Service as it would be possible for them to be given the power to suspend the Monitoring Officer or the S.151 Officer in a situation of urgency.
- 9.2 It is therefore recommended that the Chief Executive be given the explicit authority, following consultation with the Chairman of the General Purposes Committee where practicable, to suspend the Monitoring Officer or the S.151 Officer in cases of urgency. If agreed the following additional amendment to the Employment Rules is suggested:

"In cases of urgency the Head of Paid Service may suspend the Chief Finance Officer or the Monitoring Officer, following consultation with the Chairman of the General Purposes Committee where practicable whilst an investigation take place into alleged misconduct. The Head of Paid Service shall, before deciding to suspend, invite the officer to make representations unless it is impractical to do so. The General

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Purposes Committee shall review the suspension as soon as is practicable and in any event no later than two months following the original decision to suspend”.

9.3 If there was an urgent need to suspend the Head of Paid Service, the Council could rely on an implicit power in the Local Government (Access to Information) Act 1985 to convene a meeting of a Committee by giving shorter notice than the prescribed 5 clear days. The Act does not specify in what circumstances this provision can be relied on and, as such, it is rarely invoked because of the risk of challenge. If this provision was to be used then the Council would need to be able to demonstrate that it had used this power reasonably and for good reasons. The view of the Monitoring Officer is that this is a power the Council could justify relying on in circumstances where there was an urgent need to suspend the Head of Paid Service. In any event, the proposed procedures require that any suspension must be reviewed every two months by the General Purposes Committee and, for those meetings, the usual period of notice (i.e. 5 clear days) would be given.

10.0 Options

10.1 To make recommendations to the Standards Committee.

10.2 Not to make recommendations to the Standards Committee.

11.0 Next Steps

11.1 Any recommendations from the Constitutional Review Working Party will be considered when the report is considered by the Standards Committee, who would then consider those recommendations and in turn make recommendations on to be considered and adopted by Full Council.

Contact Officer:	Tim Howes, Director of Corporate Governance and Monitoring Officer
Reporting to:	Madeline Homer, Chief Executive

Annex List

Annex 1	(a) General Purposes Committee Amended Terms of Reference (b) Disciplinary Appeals Committee Terms of Reference (c) Independent Persons Panel Terms of Reference
Annex 2	Amended Employment Rules
Annex 3	Disciplinary process Flow Chart

Background Papers

Title	Details of where to access copy
The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015	http://www.legislation.gov.uk/uksi/2015/881/contents/made

Corporate Consultation

Finance	Matthew Sanham
Legal	Sophie Nartey, Interim Head of Legal Services

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Annex 1 Amendments to COUNCIL FUNCTIONS CARRIED OUT BY COMMITTEES

Decision Making Body: General Purposes Committee

Functions:

To exercise any function of the Council, which by statute or regulation is a function not to be the responsibility of an authority's executive, and which is not delegated to another committee or reserved to the Council by statute, regulations or the Council's Constitution.

To consider allegations /issues regarding disciplinary matters relating to the Head of Paid Service, the S.151 Officer and the Monitoring Officer.

- (a) Members of the committee must have completed mandatory training in respect of the latter function.
- (b) For consistency, unless unavoidably indisposed or conflicted, once appointed, the same Members shall comprise the committee (and any adjournment of it) over the course of the full consideration of the matter (and any related matter) that it has been convened to consider, until such time as the matter is disposed of.

Advisory Body: Independent Persons Panel

Functions;

To advise the authority on matters relating to the dismissal of the officers designated as the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer.

- (a) The Panel will comprise of three Independent Persons (IPs) appointed under section 28(7) of the Localism Act 2011 plus one reserve.
- (b) To be appointed in the following priority order:
 - (i) An IP who has been appointed by the Council and who is on electoral roll in Thanet
 - (ii) Any other IP appointed by the Council
 - (iii) An IP who has been appointed by another authority
- (c) Panel members must have completed mandatory training in respect of this function

Decision Making Body: Disciplinary Appeals Committee

Functions:

To hear and determine appeals brought by the Head of Paid Service, the S.151 Officer and the Monitoring Officer against any decisions made by the General Purposes Committee to take disciplinary action short of dismissal

- (a) 3 Members of the Council.
- (b) No Member who was a member of the General Purposes Committee making the decision which is the subject of the appeal may serve as a member of the

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Disciplinary Appeals Committee.

(c) Members of the committee must have completed mandatory training.

(d) For consistency, unless unavoidably indisposed or conflicted, once appointed, the same Members shall comprise the committee (and any adjournment of it) over the course of the full consideration of the matter (and any related matter) that it has been convened to consider, until such time as the matter is disposed of.

Annex 2

Officer Employment Procedure Rules (see also Standing Orders relating to Staff)

1.0 Recruitment and Appointment

(a) Declarations

(i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.

(ii) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

(b) Seeking support for appointment.

(i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

(ii) No Councillor will seek support for any person for any appointment with the Council.

(iii) Paragraphs (i) and (ii) above preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

2.0 Recruitment of Head of Paid Service and Chief Officers

Where the Council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

(a) draw up a statement specifying:

(i) the duties of the officer concerned; and

(ii) any qualifications or qualities to be sought in the person to be appointed;

(b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

(c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.

3.0 Appointment of Head of Paid Service

(a) The full Council will appoint the Head of Paid Service.

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Annex 2

(b) The full Council may only make or approve the appointment of the Head of Paid Service where no well-founded objection has been made by any member of the Cabinet.

4.0 Appointment of Chief Officers and Deputy Chief Officers

(a) A Committee or Sub-Committee of the Council will appoint chief officers and deputy chief officers. That Committee or Sub-Committee must include at least one member of the Cabinet.

(b) An offer of employment as a chief officer or deputy chief officer shall only be made where no well-founded objection from any member of the Cabinet has been received. A list of Chief Officers and Deputy Chief Officers is appended.

5.0 Other Appointments

(a) **Officers below deputy chief officer.** Appointment of officers below deputy chief officer (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.

(b) **Assistants to political groups.** Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

6.0 Disciplinary Action

(a) **Suspension.** The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended by the General Purposes Committee whilst an investigation takes place into alleged misconduct. Before deciding whether to suspend the Committee shall invite the officer to make representations unless it is impracticable to do so. That suspension will be on full pay and last no longer than two months. The Committee shall review any continuing suspension every two months. In carrying out such review the Committee shall consider any representations made by the officer.

~~(b) **Independent person.** No other disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by a designated independent person.~~

~~(b) The Head of Paid Service, Monitoring officer and Chief Finance Officer have a right of appeal to the Disciplinary Appeal Committee against any decisions made by the General Purposes Committee to take disciplinary action short of dismissal~~

(c) Councillors will not be involved in the disciplinary action (as defined by the Local Authorities (Standing Orders) (England) Regulations 2001) against any officer below deputy chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of disciplinary action.

7.0 Dismissal

- 7.1 Councillors will not be involved in the dismissal of any officer below deputy chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissals.
- 7.2 All Chief Officers and Deputy Chief Officers (with the exception of the Head of Paid Service, Monitoring Officer and Chief Finance Officer) have a right of appeal to the General Purposes Committee against dismissal.
- 7.3 The Head of Paid Service, Monitoring Officer and Chief Finance Officer have a right of appeal to the Disciplinary Appeals Committee against any decisions of the General Purposes Committee to take disciplinary action short of dismissal.
- 7.4 Where a committee, sub committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the Head of Paid Service, as the authority's Chief Finance Officer, or as the authority's Monitoring Officer, the Full Council must approve that dismissal before notice is given to that person.

List of chief officers and deputy chief officers for the purposes of Officer Employment Procedure Rule 4

Chief Executive

Deputy Chief Executive and Section 151 Officer

Director of Commercial and Operational Services

Director of Corporate Governance and Monitoring Officer

Deputy Chief Officers

Prescribed and Other Standing Orders

Part I – Prescribed Standing Orders

Introduction, Application and Interpretation

1. The following Standing Orders shall be known as 'Prescribed Standing Orders', and shall form part of the Council's Standing Orders. The Council's Standing Orders other than Prescribed Standing Orders shall be known as 'Ordinary Standing Orders'.
2. In the event of any conflict or inconsistency between Ordinary Standing Orders and Prescribed Standing Orders the latter shall prevail.
3. Any word or phrase contained within Prescribed Standing Orders shall, if such word or phrase is given a meaning by The Local Authorities (Standing Orders) Regulations 1993, have that same meaning for the purposes of Prescribed Standing Orders.

Appointment of Chief Officers

4. Where the authority propose to appoint a Chief Officer, and it is not proposed that the appointment be made exclusively from among their existing Officers, they shall:-
 - (a) draw up a statement specifying:-
 - (i) the duties of the Officer concerned, and
 - (ii) any qualifications or qualities to be sought in the person to be appointed;
 - (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it: and
 - (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.
5. (1) Where a post has been advertised as provided in standing order 4 (b) the authority shall:-
 - (a) interview all qualified applicants for the post, or
 - (b) select a short list of such qualified applicants and interview those included on the short list.

(2) Where no qualified person has applied, the authority shall make further arrangements for advertisement in accordance with standing order 4 (b).
6. Every appointment of a Chief Officer shall be made by the authority unless made by any duly authorised Committee, Action/Sub-Committee, or a relevant Joint Committee.
7. The steps under Prescribed Standing Orders 4 and 5 above may be taken by any

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Committee, Action/Sub-Committee or Chief Officer of the authority if duly authorised in that behalf.

8. Where the duties of a Chief Officer include the discharge of functions of two or more local authorities in pursuance of Section 101 (5) of the Local Government Act 1972:-
 - (a) the steps under prescribed standing orders 4 and 5 above may be taken by any duly authorised joint committee of those authorities, sub committee of such a committee or a chief officer of any of the authorities concerned, and
 - (b) any chief officer may be appointed by such a duly authorised joint committee, sub committee of such a committee or a committee or sub committee of any of those authorities.
9. Excluded from the application of prescribed standing orders 4 to 6 shall be any appointment in pursuance of Section 9 (assistants for political groups) of the Act.

Disciplinary Action Against Head of Paid Service and Others

- 10.1 ~~The Head of Paid Service, Monitoring officer and Chief Finance Officer may not be dismissed by the Council unless in accordance with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.~~

~~A relevant officer may not be dismissed by the Council unless the procedure set out in Schedule 3 to the Local Authorities (Standing Orders) (England) Regulations 2001 is complied with.~~

~~(Note: In this standing order 'relevant officer' means head of the authority's paid service, monitoring officer or the chief finance officer, as the case may be.)~~

- 10.2 ~~The Head of Paid Service, Monitoring officer and Chief Finance Officer have a right of appeal to the Disciplinary Appeal Committee against any decisions made by the General Purposes Committee to take disciplinary action short of dismissal~~

Recording of Votes at Meetings

11. (1) Where immediately after a vote is taken at a meeting of a relevant body any member of that body so requires, there shall be recorded in the minutes of the proceedings of that meeting whether that person cast his/her vote for the question or against the question or whether he/she abstained from voting.
- (2) In this paragraph 'relevant body' means the authority, a committee or sub committee of the authority or a relevant joint committee or sub committee of such a committee.

Signing Minutes - Extraordinary Meetings

12. Where in relation to any meeting of the authority the next such meeting is a meeting

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called under paragraph 3 (extraordinary meetings) of Schedule 12 to the Local Government Act 1972, the next following meeting of the authority (being a meeting called otherwise than under that paragraph) shall be treated as a suitable meeting for the purposes of paragraph 41 (1) and (2) (signing of minutes) of that Schedule.

Variation and Revocation

13. Otherwise than to incorporate options allowed by the Regulations these prescribed standing orders shall not be revoked or amended.

Part II – Standing Orders relating to Staff

1. In this Part:

“the 1989 Act” means the Local Government and Housing Act 1989;

“the 2000 Act” means the Local Government Act 2000;

“disciplinary action” has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;

“executive” and “executive leader” have the same meaning as in Part II of the 2000 Act;

“member of staff” means a person appointed to or holding a paid office or employment under the authority; and

“proper officer” means the Human Resources Manager or his or her nominee.

2. Subject to paragraphs 3 and 7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority’s paid service or by an officer nominated by him/her.

3. Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against:

- (a) the officer designated as the head of the authority’s paid service;
- (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act;
- (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989

Act;

- (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or
- (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

4. (1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority’s paid service, the authority must approve that appointment before an offer of appointment is made to that person.

(2) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority’s paid service, as the authority’s chief finance officer, or as the authority’s monitoring officer, the authority must approve that dismissal before notice is given to that person.

(3) **The Head of Paid Service, Monitoring officer and Chief Finance Officer may**

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not be dismissed by the Council unless in accordance with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015:

- (a) At least 20 days before the relevant Council meeting a Panel has been established for the purposes of advising on matters relating to the dismissal and independent persons appointed under section 27 of the Localism Act 2011 have been invited to be appointed to the Panel and
 - (b) Any advice, views or recommendations of the Panel, the conclusions of any investigation into the proposed dismissal and any representations from the relevant officer have been taken into account before the taking of the vote on whether or not to approve such a dismissal
 - (3) Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph ~~(a)~~, ~~(b)~~, ~~(c)~~ or (d) of paragraph 3, at least one member of the executive must be a member of that committee or subcommittee.
- 5. (1) In this paragraph, “appointor” means, in relation to the appointment of a person as an officer of the authority, the authority or, where a committee, subcommittee or officer is discharging the function of appointment on behalf of the authority, that committee, sub-committee or officer, as the case may be.
- (2) An offer of an appointment as an officer referred to in sub-paragraph (a), (b) (c) or (d) of paragraph 3 must not be made by the appointor until:
 - (a) the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
 - (b) the proper officer has notified every member of the executive of the authority of:
 - (i) the name of the person to whom the appointor wishes to make the offer;
 - (ii) any other particulars relevant to the appointment which the appointor has notified to the proper officer; and
 - (iii) the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the executive to the proper officer; and
 - (c) either:

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(i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointee that neither he/she nor any other member of the executive has any objection to the making of the offer;

(ii) the proper officer has notified the appointor that no objection was received by him/her within that period from the executive leader; or

(iii) the appointor is satisfied that any objection received from the executive leader within that period is not material or is not wellfounded.

6. (1) In this paragraph, “dismissor” means, in relation to the dismissal of an officer of the authority, the authority or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the authority, that committee, sub-committee or other officer, as the case may be.
- (2) Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be given by the dismissor until:
- (a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
 - (b) the proper officer has notified every member of the executive of the authority of –
 - (i) the name of the person who the dismissor wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and
 - (iii) the period within which any objection to the dismissal is to be made by the executive leader on behalf of the executive to the proper officer; and
 - (c) either:
 - (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he/she nor any other member of the executive has any objection to the dismissal;
 - (ii) the proper officer has notified the dismissor that no objection was received by him/her within that period from the executive leader; or
 - (iii) the dismissor is satisfied that any objection received from the

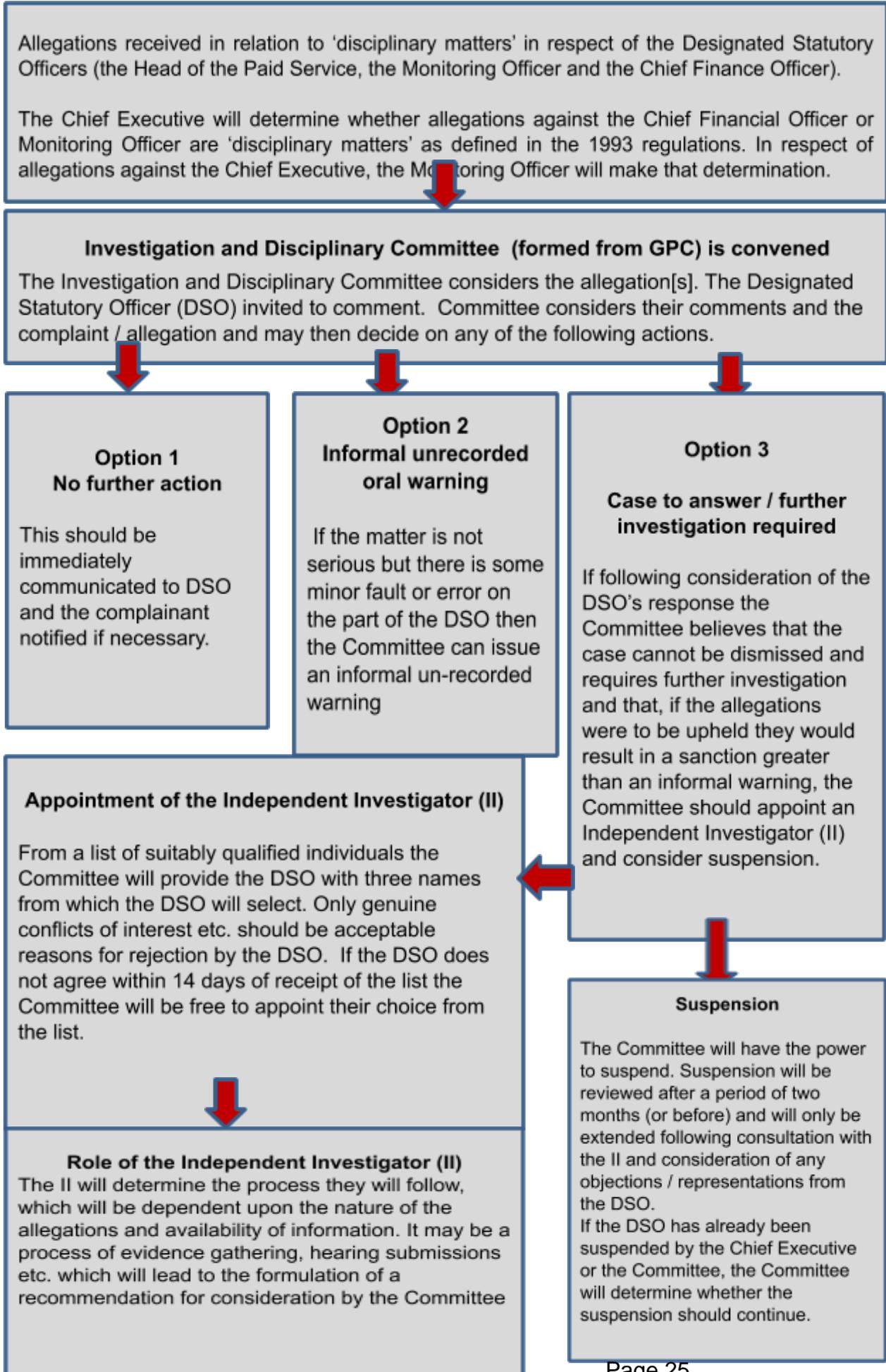
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executive leader within that period is not material or is not well founded.

7. Nothing in paragraph 2 shall prevent a person from serving as a member of any committee or sub-committee established by the authority to consider an appeal by:
 - (a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or
 - (b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

Procedure for Local Authority Designated Statutory Officers



Report by Independent Investigator and consideration and decision by the GPC

On completion of the investigation the Independent Investigator will prepare a report with recommendations and rationale for submission to the Committee.

The Committee will afford the DSO the opportunity for a hearing to allow the post holder to challenge the recommendations of the Independent Investigator, call witnesses etc.

The Committee may decide to call witnesses for clarification. The DSO and Independent Investigator should attend this meeting and both parties afforded the opportunity to summarise their case and will have the usual opportunities to present evidence and cross examine witnesses etc. Both parties will have the right to be represented at the hearing. The hearing should be conducted in accordance with the ACAS code of practice.



Recommendation of the GPC

Following either consideration of the report of the II or a full hearing of the case the GPC will essentially have the following options:

- No case to answer
- Recommend informal resolution or other appropriate procedures
- Refer back to the II for further investigation
- Disciplinary action short of dismissal
- Propose dismissal



No case to answer

Appropriate communication should be prepared in agreement with the DSO to ensure that as far as possible there is no damage to the post holder's reputation.

Action short of dismissal

A decision to take action short of dismissal should be communicated in writing to the DSO with rationale for the decision. The DSO has the right to appeal to the Disciplinary Appeals Committee against this decision.

Recommendation to dismiss

If there is a recommendation to dismiss, the reports of the GPC and the II should then be sent to Independent Panel (IP) for its consideration. The DSO may make written representation to the IP.

Composition, role and process of the Independent Panel (IP)

The IP will be a committee of the Council, appointed under section 102(4) of the Local Government Act 1972, and will comprise only independent persons (at least two) appointed under S28 (7) of the Localism Act 2011. Appropriate training should be provided to these independent members. Both parties should be present or represented* at the meeting. The IP should receive any oral representations from the DSO in which case it should invite any response of behalf of the GPC to the points made, and may ask questions of either party. The IP should review the decision and prepare a report for Council. This report should contain clear rationale if they disagree with the recommendation to dismiss.

*The GPC should nominate a person to attend on its behalf. This will usually be the Chairman of the GPC.



Report to Full Council

Following consideration by the IP a report will be presented to Council. This report should comprise the recommendation of the GPC, the IP's report and any comments on the recommendations for dismissal from the IP. In the light of this information, Council should consider the recommendation to dismiss. The DSO should be allowed to attend this meeting and address the Council. The IP may also be invited to attend to provide clarification if required. Following this consideration Council should either confirm or reject the recommendation to dismiss. It may at this stage impose a lesser sanction (in which case there would be no right of appeal)



Notice of dismissal and Executive Notification Procedure

The DSO will not be issued with the notice of the dismissal until:

the Council has notified the proper officer of the name of the person who the Council wishes to dismiss and any other particulars which the Council considers are relevant to the dismissal

the proper officer has notified every member of the executive of this information together with the period within which any objection to the dismissal is to be made by the Leader of the Council on behalf of the executive to the proper officer; and

either—

(i) the Leader has, within the period specified, notified the Council that neither he nor any other member of the executive has any objection to the dismissal;

(ii) the proper officer has notified the Council that no objection was received by him within that period from the Leader; or

(iii) the Council is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

