



Date: 13 November 2019  
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## CONSTITUTIONAL REVIEW WORKING PARTY

21 NOVEMBER 2019

A meeting of the Constitutional Review Working Party will be held at **3.00 pm on Thursday, 21 November 2019** in the Council Chamber, Cecil Street, Margate, Kent.

### Membership:

Independent Members: Dr Jonathan Sexton (Chairman);

Councillors: Hopkinson, S Piper, Stevens and Tomlinson

## A G E N D A

- | <u>Item No</u> | <u>Subject</u>   |
|----------------|--|
| 1.             | <b><u>APOLOGIES FOR ABSENCE</u></b>  |
| 2.             | <b><u>DECLARATIONS OF INTEREST</u></b> (Pages 3 - 4)<br>To receive any declarations of interest. Members are advised to consider the advice contained within the Declaration of Interest advice attached to this Agenda. If a Member declares an interest, they should complete the <a href="#">Declaration of Interest Form</a> |
| 3.             | <b><u>MINUTES OF PREVIOUS MEETING</u></b> (Pages 5 - 8)<br>To approve the Minutes of the Constitutional Review Working Party meeting held on 24 September 2019, copy attached.   |
| 4.             | <b><u>STANDING ORDERS IN RELATION TO STAFF</u></b> (Pages 9 - 36)  |

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### **Do I have a Disclosable Pecuniary Interest and if so what action should I take?**

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

### **Do I have a significant interest and if so what action should I take?**

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or  
Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
  - exercises functions of a public nature; or
  - is directed to charitable purposes; or
  - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992



If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

### **Gifts, Benefits and Hospitality**

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £25 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

### **What if I am unsure?**

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Committee Services Manager well in advance of the meeting.

If you need to declare an interest then please complete the declaration of [interest form](#).

# Public Document Pack Agenda Item 3

## CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 24 September 2019 at 3.00 pm in Council Chamber, Cecil Street, Margate, Kent.

**Present:** Dr Jonathan Sexton (Chairman); Councillors Ashbee, Hopkinson, S Piper and Stevens

**In Attendance:** Councillor Bailey

### 114. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Tomlinson, substituted by Councillor Ashbee.

### 115. DECLARATIONS OF INTEREST

Mr Tim Howes, Director of Corporate Governance and Monitoring Officer declared an interest as the subject under discussion in agenda item 3 as the item was about employment conditions for council employees.

### 116. MINUTES OF PREVIOUS MEETING

Councillor Stevens proposed, Councillor Hopkinson seconded and Members agreed the minutes as a correct record of the Constitutional Review Working Party meeting that was held on 21 June 2019.

### 117. STANDING ORDERS RELATING TO STAFF

Dr Sexton, Chairman of the working party gave a brief background to the subject for discussion and said that the issue had been considered by the Constitutional Review Working Party who made recommendations to the Standards Committee, who in turn recommended the proposed standing orders relating to staff to Council for decision.

Mr Tim Howes explained to Members that the item had been referred back to the Constitutional Review Working Party because of some concerns about some aspects of the proposed standing orders. The major concerns were with regards to the filter mechanism to reviewing cases.

The officer advice was that the filter should be managed by the CEx in cases involving the Monitoring Officer and the Monitoring Officer in cases involving the CEx. Mr Howes advised that using the General Purposes Committee to manage the filter mechanism would be an approach outside the JNC practice guidance.

If the working party were to adopt the approach where the GPC were to manage the filter mechanism, there would be operational challenges of how such a protocol could be fairly managed. The Committee would find the following operational issues a challenge to manage:

- Right of reply;
- Providing evidence;
- Right of appeal;
- Predetermination.

Mr Howes indicated that the middle of the ground approach could be that the CEx and Monitoring Officer could manage the filter process in consultation with GPC Chairman.

The JNC model protects staff from political accusations. The practice guidance encourages informal resolutions first before engaging the formal process.

Contributing to discussion, Members raised the following points:

- A committee of elected Members should look at staff issues brought before the committee to determine whether the issues were a valid grievance, disciplinary issue or frivolous;
- It would be helpful if the following wording in the model was removed from the process, “The Chief Executive will determine whether the allegations against the Chief Financial Officer or Monitoring Officer are ‘disciplinary matters’ as defined in the 1993 regulation. In respect of allegations against the Chief Executive, the Monitoring Officer will make that determination.”
- Screening should not be done by statutory officers;
- It was unlikely that three or four political group representatives on the committee could use political motivation to push through a frivolous issue;
- The solution for filtering out impropriety through involvement of statutory officers would be to involve the three political party group leaders;
- Political bias should not come into this process because committee members have been trained and understand the role of this committee;
- There is a need to ensure that there was complete robustness and faith in the process being proposed, so that issues were not illegitimately filtered out;
- There was a perception problem of involving statutory officers in the filtering process;
- Political bias can be filtered out through the involvement of the independent investigator;
- There will be instances where some cases were dealt with by council departments and other occasions where some matters would be referred to the General Purposes Committee;
- In the main councillors through the committee should filter cases and not statutory officers;
- Could the GPC be split into two so they consider cases at different stages of the process;
- There could be an argument that Statutory Officers might be motivated by their own positions when considering cases;
- Council should not adopt a policy for rare occurrences. Instead the policy should be designed to cater for the routine occurrences;
- The overwhelming view was that there were now over 18 members who have been trained. The GPC membership could be increased to 15 members. This would enable the committee to split into 5 member panel roles that would determine validity of cases (filtering role), Investigations role and appeals role;
- Council should have put in place a legally compliant process a year ago;
- Can a standards committee meeting be arranged before 10 October to consider any recommendations from the working party?
- Paragraph 5.1 in the original report that went to the 11 July 2019 Council should be deleted in the updated report for the October council meeting. If the issue regarding that section of the report was not resolved the new policy proposals might not move forward;
- There was also a need to seek guidance that was specific to the CEx on what the measures for filtering complaints against the CEx were. Examples of good practice could also be sought from other local councils. The working party would then meet again to consider the advice;
- Could officers confirm that the draft process in the council report was the default position?

Members agreed the following:

1. That the wording at the start of the proposed flow chart of the model in Annex 4, page 35 of the agenda that reads, "The Chief Executive will determine whether the allegations against the Chief Financial Officer or Monitoring Officer are 'disciplinary matters' as defined in the 1993 regulation. In respect of allegations against the Chief Executive, the Monitoring Officer will make that determination" be deleted;
2. That the wording in paragraph 2.4, on page 9 of the agenda that reads, "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," be deleted.

Responding to Member comments and questions, Mr Howes made the following points:

- Officers would have no objections to the removal of the provision in the model that reads: "The Chief Executive will determine whether the allegations against the Chief Financial Officer or Monitoring Officer are 'disciplinary matters' as defined in the 1993 regulation. In respect of allegations against the Chief Executive, the Monitoring Officer will make that determination."
- Officers would not agree to an approach where the three political group leaders were involved in the filtering of cases;
- Political bias is acknowledged in the legislation. That is why the JNC model was designed to filter out such biases;
- The officer role in filtering is only to ascertain if the cases required further action or not. This meant determining whether there was a case to answer or not;
- At some stage in the process, officers would be required to produce a report to explain the course of action taken and the reasons for making that decision;
- The General Purposes Committee cannot be involved in filtering cases as they would no longer be able to get involved in subsequent stages that include investigation, as they may be viewed as having pre-determined the case;
- The involvement of councillors at the early stages would be open to legal challenge;
- It was advisable to start this process with the informal stage, where officers would consult the Chairman of the GPC;
- Before the working party took a firm position on the recommendations to make Council, it was advisable to approach the JNC for guidance and research on arrangements adopted by other local councils;
- The recommendations from the working party would be forwarded to Standards Committee and then Council;
- The process did appear long because the Council had to get it right;
- Whilst the proposals were going through the decision making process, the Council would continue to use the JNC model as it was a lawful process.

Summarising discussion the Chairman acknowledged that the process of coming up with appropriate standing orders appeared to be a frustrating long drawn out process. However it was important and necessary to get it right. Dr Sexton summed up the way forward that Members had agreed on as follows:

1. The proposal was that the filtering of complaints be made by a panel of elected Members subject to advice from the JNC;
2. The Monitoring Officer would seek guidance from the JNC;
3. Another meeting of the Constitutional Review Working Party would be convened to consider the advice from the JNC and agree recommendations to forward to Standards Committee and Council.

Meeting concluded: 4.45 pm

**STANDING ORDERS IN RELATION TO STAFF**

Constitutional Review Working Party                      **21 November 2019**

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

Status    **Recommendation**

Classification:    **Unrestricted**

**Executive Summary:**

This report sets out the revision to the constitution which are required for setting out the 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 The Local Authorities (Standing Orders) (England) Regulations 2001 (the 2001 Regulations) as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the 2015 Regulations).

**Recommendation(s):**

The Constitutional Review Working Party 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 five 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 (in consultation with the Chairman of the General Purposes Committee) the authority to suspend the S.151 Officer or the Monitoring Officer in cases of urgency, as set out in paragraph 9

**CORPORATE IMPLICATIONS**

<b>Financial and Value for Money</b>	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
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# Agenda Item 4

	<p>their role in advising the Council on Councillor Conduct issues. Any costs will be met from within existing budgets.</p>								
<b>Legal</b>	<p>The The Local Authorities (Standing Orders) (England) Regulations 2001 as amended by 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.</p> <p>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 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>								
<b>Corporate</b>	<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>								
<b>Equality Act 2010 &amp; Public Sector Equality Duty</b>	<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 &amp; maternity. Only aim (i) of the Duty applies to Marriage &amp; civil partnership.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <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.	✓								

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

<b>CORPORATE VALUES (tick those relevant) ✓</b>	
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 2001 Regulations as amended by the 2015 Regulations.
- 1.2 Decisions on the arrangements needed to comply with these Regulations are a matter for Council.

## **2.0 Background**

- 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 2001 Regulations as amended by 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 2001 Regulations 2001 were amended by the 2015 Regulations. The amendments 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 2001 Regulations required the Council to include in its Constitution, Standing Orders which deal with the appointment and dismissal of staff with particular provisions relating to the statutory officers.
- 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 2001 Regulations as amended by 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.

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- 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 Joint Negotiating Committee (JNC) for Local Authority Chief Executives handbook. The latter only 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 2001 Regulations as amended by 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 IPs 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 (MHCLG) 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 The Local Authorities (Standing Orders) (England) Regulations 2001 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 for Disciplinary Action.**
- 4.1 The JNC October 2016 handbook contains a model disciplinary procedure. Whilst this procedure only applies to those Heads of Paid Service who are subject to JNC terms and conditions, it is recommended that these procedures (in relation to disciplinary action) 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. (It is recommended that this role is carried out by our 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. (It is recommended that this is a Council Committee of 5 members).
- 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).

### **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.

### **c) Disciplinary Appeals Committee**

5.6 It is proposed to set up a new appeals committee comprising five 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.

### **d) 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 the 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 MHCLG on whether the Panel referred to above should be comprised solely of independent persons or whether it can, or should, also include elected members. MHCLG 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 amendments from 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.

## **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 2001 Regulations as amended by 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 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 (in this case the General Purposes 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 Views of the Constitutional Review Working Party**

10.1 This report was reviewed by the Constitutional Review Working Party on 21 June. The changes suggested by the Constitutional Review Working Party have been included in this report.

10.2 The main changes were:

- a. Increasing the membership of the Disciplinary Appeals Committee from three to five members
- b. Making clear that the Disciplinary Appeals Committee and General Purposes Committee should contain a Cabinet Member
- c. Clarity on the role of the Independent Investigator
- d. That the Chief Executive should consult with the Chair of the General Purposes Committee before suspending the Chief Finance Officer or Monitoring Officer.

## **11.0 Views of the Standards Committee**

11.1 This report was reviewed by the Standards Committee on 27 June 2019. There were a number of typographical and other minor changes to clarify meaning, which have been incorporated into this report.

11.3 One particular point was raised under paragraph 3.3 above. This was whether the Council could invoke this process in respect of ill-health dismissal or redundancy? The MHCLG have already advised that it should only be used by the Council for dismissal on disciplinary grounds (whilst an officer could request it on other grounds for dismissal). This is because the Regulations are there as a 'shield' to protect the officer from arbitrary use of other powers to dismiss them, they are not there as a 'sword' for the council to use at will in cases other than disciplinary dismissals. Therefore, the Council should only invoke this procedure for dismissal on disciplinary grounds.

## **12.0 Withdrawal of the matter from Council on the 11 July 2019**

12.1 Following the withdrawal of this report from Council on the 11 July 2019, the report was referred back to the Constitutional Review Working Party for greater clarity on the 'filter process' for referring allegations of alleged misconduct against the Chief Executive to the GPC.

12.2 Advice was sought from the Joint Secretaries of the JNC for Chief Executives on this point. Their advice was that the filter process should not involve substantive member involvement beyond the Chair of the IDC, as demonstrated in the JNC Handbook for Chief Executives. The handbook sets out a procedure where, in the case of the Chief Executive, the Monitoring Officer and the Chair of the IDC would oversee referrals to that committee.

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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	<a href="http://www.legislation.gov.uk/ukxi/2015/881/contents/made">http://www.legislation.gov.uk/ukxi/2015/881/contents/made</a>
The Local Authorities (Standing Orders) (England) Regulations 2001	

## Corporate Consultation

<b>Finance</b>	Chris Blundell, Head of Financial Services
<b>Legal</b>	Estelle Culligan, Head of Legal and Democratic 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.

The Committee must include at least one Cabinet Member

**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

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- (a) 5 Members of the Council one of whom must be a Member of the Cabinet
- (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 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.

**Appendix 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.
- (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

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## Annex 2

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.

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7. The steps under Prescribed Standing Orders 4 and 5 above may be taken by any 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 The Local Authorities (Standing Orders) (England) Regulations 2001 as amended by 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

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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 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

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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 not be dismissed by the Council unless in accordance with the requirements of the The Local Authorities (Standing Orders) (England) Regulations 2001 as amended by 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

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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 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.

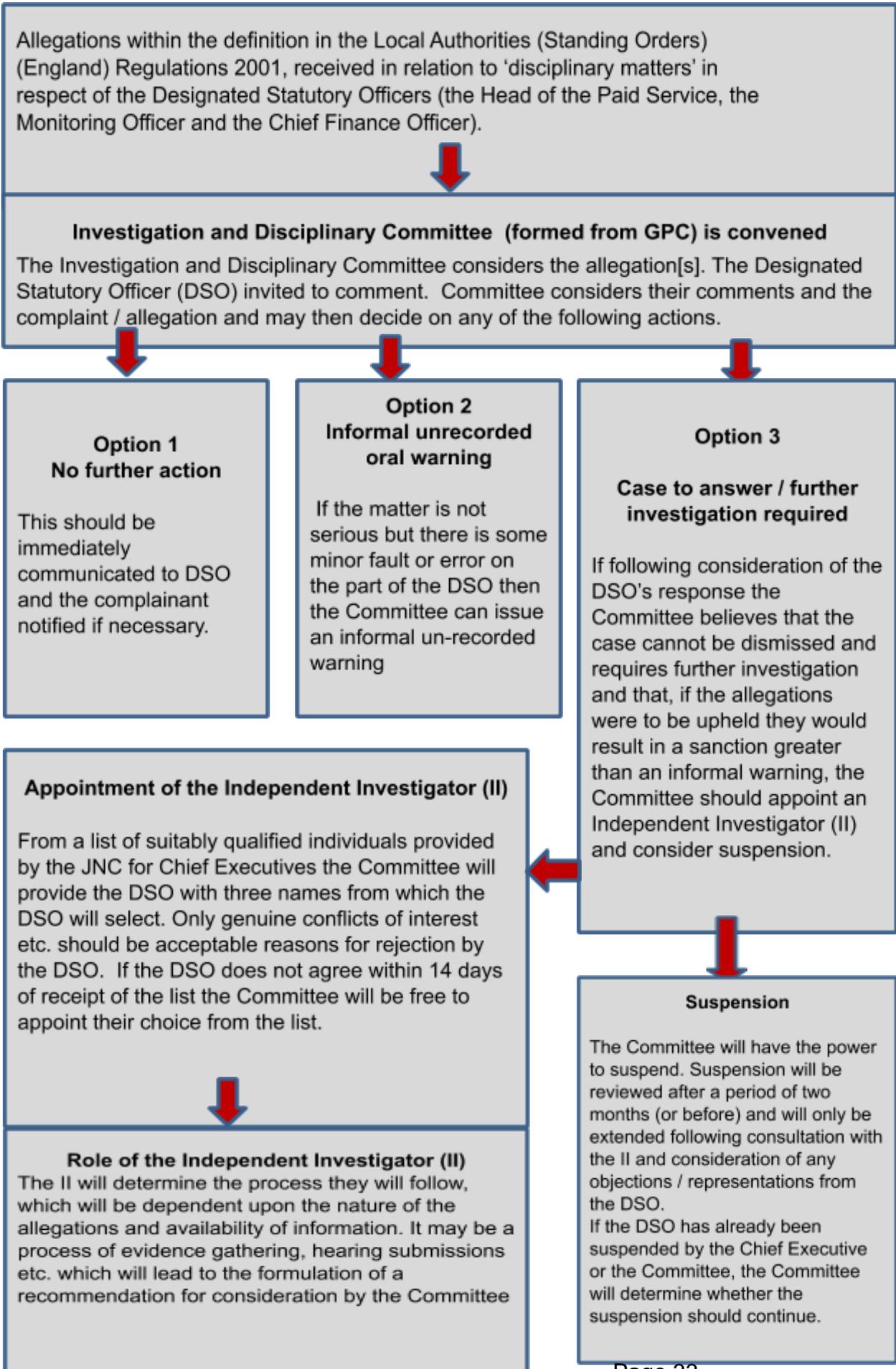
6. (1) In this paragraph, “dismissor” means, in relation to the dismissal of an officer of the authority, the authority or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the authority, that committee, sub-committee or other officer, as the case 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 dismiss that neither he/she nor any other member of the executive has any objection to the dismissal;

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- (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 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.

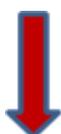
The Committee may decide to call witnesses for clarification. The DSO and Independent Investigator should attend this meeting and both parties afforded the opportunity to summarise their case and will have the usual opportunities to present evidence and cross examine witnesses etc. Both parties will 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**

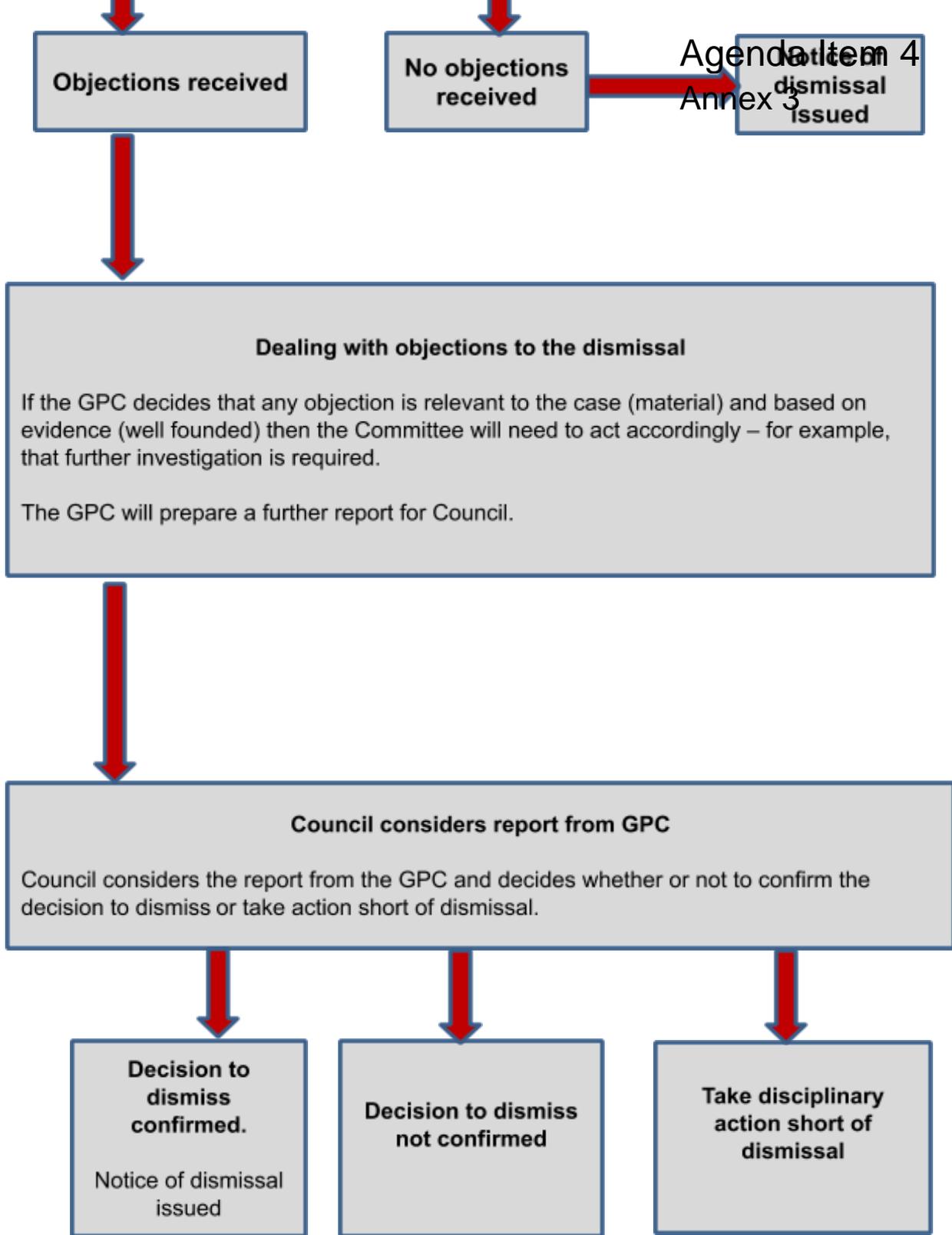
Following consideration by the IP a report will be presented to Council. This report should comprise the recommendation of the GPC, the IP's report and any comments on the recommendations for dismissal from the IP. In the light of this information, Council should consider the recommendation to dismiss. 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 cabinet 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 cabinet to the proper officer; and either—
  - (i) the Leader has, within the period specified, notified the Council that neither they nor any other member of the cabinet has any objection to the dismissal;
  - (ii) the proper officer has notified the Council that no objection was received by the proper officer 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.



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Annex 3