JOINT NEGOTIATING COMMITTEE

for

LOCAL AUTHORITY CHIEF EXECUTIVES

NATIONAL SALARY FRAMEWORK

&

CONDITIONS OF SERVICE

HANDBOOK

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Employers' Secretary:	**Officers' Side Secretary:**
NAOMI COOKE Local Government Association 18 Smith Square London SW1P 3HZ Tel: 020 7664 3000 email: info@local.gov.uk	IAN MILLER Hon Secretary ALACE www.alace.org.uk Tel: 07515 190917 email: alacehonsec@yahoo.co.uk

PREAMBLE

The Joint Negotiating Committee (JNC) for Chief Executives of Local Authorities is the national negotiating body for the pay and conditions of service of chief executives in England and Wales.

The Authorities' Side consists of elected members nominated by the Local Government Association and the Welsh Local Government Association. The Staff Side consists of chief executives nominated by the Association of Local Authority Chief Executives and Senior Managers (ALACE). ALACE is registered as an independent trade union.

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NB:
All hyperlinks and email addresses contained in this Agreement are correct at the time of publication. Please notify the Joint Secretaries of any discrepancies by emailing them at the addresses shown on the cover page.

THE CHIEF EXECUTIVE

1. DEFINITION

The term “chief executive” means the officer who is the head of the council’s paid service. The duties and responsibilities of the post shall be determined by the individual employing authority. They shall include the statutory responsibilities of the head of the paid service, and such other duties as determined by the authority, which should include the following:

(i) Responsibility for:

(a) leading the management team or equivalent, in particular in securing a corporate approach
(b) securing the provision of advice on the forward planning of objectives and services
(c) ensuring the efficient and effective implementation of the council’s programmes and policies across all services and the effective deployment of the authority’s resources to those ends.

For these purposes the chief executive has authority over all other employees of the council.

(ii) Advising the council, its executive and its committees on all matters of general policy and all other matters upon which his or her advice is necessary, with the right of attendance at all committees of the council and all subcommittees and working parties.

(iii) Advising the leader or elected mayor of the council, or where appropriate the party group leaders, on any matter relevant to the council’s functions.

(iv) Representing and negotiating on behalf of the council on external bodies and networks.

(v) Advising or making suitable arrangements for advising the Lord Mayor, Mayor or Chair of the council on all matters within the duties of that office.

Chief Executives in Wales have specific statutory duties including reviewing and, when necessary, reporting on how the council is exercising its functions, and its functions relating to financial planning, asset management, risk management; and workforce.[1]

2. ADVICE TO POLITICAL GROUPS

The chief executive shall not be required to advise any political group of the council, either as to the work of the group or as to the work of the council, neither shall he or she be required to attend any meetings of any political

[1] S54 of the Local Government and Elections (Wales) Act 2021

group. This shall be without prejudice to any arrangements to the contrary which may be made in agreement with the chief executive and which includes adequate safeguards to preserve the political neutrality of the chief executive in relation to the affairs of the council.

3. WHOLE-TIME SERVICE

The chief executive shall devote his or her whole-time service to the work of the council and shall not engage in any other business or take up any other additional appointment without the express consent of the council. He or she shall not subordinate his or her duty as chief executive to his or her private interests or put himself or herself in a position where his or her duty and private interests conflict.

4. PERFORMANCE APPRAISAL

This guidance is intended for use by senior elected members and the chief executive when agreeing a process for appraising the performance of the chief executive. The focus of this process should be on clarifying what the chief executive is expected to achieve and on identifying any continuing development needs which, if met, would maintain a high level of performance. The process of setting objectives should be by agreement and the result should be to identify objectives which are relevant and challenging but achievable. The LGA, Regional Employers' Organisations, ALACE and SOLACE are potential sources of advice and assistance. Guidance is attached at **Appendix 2.**

5. FIXED TERM CONTRACTS

Fixed term contracts can raise issues of considerable legal complexity. It is important for both sides to understand the implications of the contract before completing it. The joint secretaries are available to act in an impartial role in that process if requested by either side. **Paragraph 13.4** contains further information regarding procedures for the ending of a fixed-term contract.

SALARIES

6. SALARY FRAMEWORK

The salary paid to a chief executive will be that determined by the employing local authority. Salaries shall be deemed to be inclusive, and all other fees and emoluments, unless they are covered by **Paragraph 7** or the authority expressly agrees that they shall be retained by the officer, shall be paid by the officer into the council's accounts.

7. RETURNING OFFICER FEES

The chief executive shall be entitled to receive and retain the personal fees arising from such of the duties of returning officer, acting returning officer, deputy returning officer or deputy acting returning officer and similar positions as he or she performs subject to the payment of pension contributions

thereon, where appropriate, unless a specific term has been included in the chief executive's contract referring to alternative arrangements.

8. SETTING REMUNERATION LEVELS

The Localism Act 2011 requires councils to produce and publish a pay policy statement. According to the Act and statutory guidance published in 2012 and 2013, the statement should include the local authority's policy on specific aspects of chief officers' remuneration: remuneration on recruitment, increases and additions to remuneration, use of performance-related pay and bonuses, termination payments, and transparency arrangements. It should also set out the approach to be adopted towards pay dispersion, (i.e. differentials). In addition, the Local Government Transparency Code 2015 requires councils to publish the differential between the taxable benefits of senior managers and the median taxable earnings figure for the council's whole workforce, and details of senior employee salaries (above £50,000), names (with the option for individuals to refuse to consent for their name to be published), job descriptions, responsibilities, budgets and numbers of staff in England. Separate guidance applies to councils in Wales.

In this context it is essential for good governance that local authorities can demonstrate that decisions on pay and reward packages for chief executives have been made in an open and accountable way.

One option is for a council to establish a remuneration committee. The issues that local authorities will need to consider if they set up such a committee are set out at **Appendix 3**.

The establishment of a remuneration committee is of course optional and different models may well suit individual authorities. What is clear though is that more than lip service must be paid to the notion of providing a verifiable and accountable process for recommending the remuneration level of the most highly paid official.

In Wales, the Independent Remuneration Panel for Wales must be consulted on any proposed changes to a chief executive's salary, unless the change is in keeping with changes applied to other officers of that authority (whether the change is an increase or decrease). The authority must have regard to the recommendation(s) of the Panel when reaching its decision.

OTHER CONDITIONS OF SERVICE

9. APPLICATION OF TERMS AND CONDITIONS GENERALLY

A chief executive shall enjoy terms and conditions in other respects not less favourable than those accorded to other officers employed by the council. Such terms and conditions may include:

Adoption Scheme
Car Allowances
Continuous Service

~~Grievance~~ (see Appendix 7 *'Model Grievance Procedure'*)
Health, Safety & Welfare
Maternity / Paternity Scheme
Official Conduct
Reimbursement of Expenditure
Sickness Scheme
Training & Development

10. REMOVAL EXPENSES: NEW APPOINTMENTS

In the case of officers taking up new appointments, authorities may (in the interests of local government and to facilitate the moving of officers) reimburse fully or contribute towards the costs reasonably incurred in removal and in setting up a new home, and other costs reasonably incurred in taking up a new appointment.

11. ANNUAL LEAVE

The chief executive shall be entitled to a minimum of 30 days' annual leave (in addition to statutory and other public holidays but inclusive of any long service leave, extra statutory and local holidays). In exceptional circumstances and by mutual agreement annual leave may be carried forward to the next leave year.

12. RESTRICTIONS ON RE-EMPLOYMENT

After termination of the chief executive's employment, he / she:

(i) will not divulge any information to any third party which is confidential to the authority

(ii) will not, without the consent of the authority, within a period of 12 months take up employment with or provide services for reward to any body:

  (a) if during the chief executive's last two years of employment the authority has been involved in transactions with that body for which the offer of employment or provision of services could reasonably be regarded as a reward

  (b) which is likely to benefit from commercially sensitive information which is known to the chief executive by virtue of his / her past employment by the authority

13. PROCEDURES FOR, DISCIPLINE, CAPABILITY, REDUNDANCY AND OTHER DISMISSALS

13.1 In principle it is for each local authority to determine its procedures and practical arrangements for the handling of disciplinary action and termination of the employment contract, taking into account the relevant considerations in general employment law. However, in the case of a chief executive (head of paid service) there are further legal requirements for certain types of disciplinary action and dismissal.

13.2 In England, the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) and in Wales, the Local Authorities Standing Orders (Wales) Regulations 2006 provide a degree of protection for chief executives against unwarranted political interference in their role as heads of paid service of local authorities. In England, the Regulations require that the council takes into account any advice, views or recommendations of an independent panel before a chief executive can be dismissed, for any reason other than redundancy, permanent ill-health or the expiry of a fixed term contract unless the authority has undertaken to renew that fixed term contract. In Wales, the regulations require that a Designated Independent Person is required to investigate and make a recommendation in the event of disciplinary action being taken against the chief executive on the grounds of misconduct or if there is any other proposal to dismiss the chief executive for any reason other than redundancy, permanent ill-health or the expiry of a fixed term contract unless the authority has undertaken to renew that fixed term contract. The considerations and the management of these different types of disciplinary action and potential dismissal therefore will vary.

13.3 There are, therefore, differences between the English and Welsh regulations and accordingly there are two separate procedures (one for local authorities in England and one for local authorities in Wales). The model procedures with guidance on their application and operation in both countries are introduced below **A England** and **B Wales**, and contained at **Appendix 5a (England)** and **Appendix W5a (Wales)**.

A ENGLAND

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

13.4 Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract where there has been no commitment to renew it, do not require the involvement of an Independent Investigator or Independent Panel (**England Page 50**).

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

Disciplinary action on grounds of conduct, proposals to dismiss on the grounds of misconduct and proposals to dismiss for other reasons such as capability and some other substantial reason

13.5 Disciplinary action or situations in which there is the potential to dismiss on the grounds of misconduct and potential to dismiss for other reasons such as capability and some other substantial reason will require the involvement of an Independent Investigator. Where it results in a recommendation for dismissal, it will require the involvement of an Independent Panel before the Council considers the recommendation.

13.6 The JNC has developed a Model Disciplinary Procedure to use in these cases where the matter cannot be resolved informally and an Independent Investigator and Independent Panel may be required.

13.7 A summary table at **Appendix 5d** indicates the appropriate procedures to follow for the different types of situations, i.e. whether the issue should follow a local procedure or whether it should follow the JNC model procedure.

Considerations prior to contemplating disciplinary action

13.8 Taking disciplinary action against a chief executive can be a difficult, time-consuming and potentially very expensive process made more complex because it happens so rarely that many elected members and senior staff will be unfamiliar with the relevant legal and employment contract provisions.

13.9 A key issue is whether formal disciplinary action is necessary at all or whether informal resolution to a problem could provide a better solution in the circumstances. This will sometimes be the case and the Joint Secretaries are available to assist. (**See paragraphs 13.11 – 13.14**).

13.10 Where formal procedures are to be engaged, the JNC urges elected members and those who advise them to ensure that they understand the procedure, seek appropriate advice at every stage and do not compromise the outcome of any proceedings. (**See paragraphs 13.15 – 13.20**).

Early informal resolution and joint secretarial conciliation

13.11 Authorities should have regard to the ACAS advisory handbook *Discipline and Grievance at Work*. A key message in this guidance is that prevention is better than cure: "The use of formal disciplinary procedures should be considered a 'last resort' rather than the first option. Many problems can be sorted out through informal dialogue".

13.12 The JNC encourages authorities to adopt this informal approach. Experience shows that once formal disciplinary procedures have been instituted against a chief executive the inevitable high profile of the case can make it more difficult for normal working relationships to be resumed. There might also be an effect on staff morale and it is possible for there to be negative publicity in the local and sometimes national media.

13.13 A guiding principle of the early informal approach is therefore to obtain improvement and remedy problems. Where potential disciplinary problems (either conduct or performance) are identified then either of the parties may wish to approach the appropriate JNC Side Secretary. The Joint Secretaries are available at any stage in the proceedings to facilitate discussions between the parties and act as impartial conciliators. **Appendix 4** sets out the JNC's protocol for Joint Secretarial conciliation. Joint Secretarial assistance can also be requested during the formal stages of the procedure although the scope for resolution may be reduced by then as the parties are more likely to have adopted adversarial positions.

13.14 Conciliation is preferable to the use of formal procedures if it can bring about a mutually agreed solution to any problems. While the conciliation process itself is informal any resolution should make it clear what specific changes in behaviour and / or performance are expected and within what timescales. Depending on the nature of the case, a mutually agreed resolution could include, for example:

- For minor performance and conduct issues it may make sense for there to be an off-the-record agreement that an informal warning will be issued. If the chief executive is prepared to accept such a warning in the appropriate spirit then it may not be in either party's interest for the formal procedures to be initiated.

- Where there are performance shortcomings with a relatively inexperienced chief executive then one solution could be for a more experienced, possibly retired, chief executive to act as a mentor.

The formal JNC procedure and associated guidance

13.15 The model procedures have been agreed by the JNC in the light of the experience of the Joint Secretaries in their involvement in individual cases. The procedure includes appropriate variations for application in councils with leader / cabinet executives, mayor / cabinet executives and those operating a committee system.

13.16 Where informal resolution is not possible the Model Procedure should apply unless alternative arrangements have been agreed by both parties locally. The Model Procedure can also be modified by mutual agreement to suit the particular circumstances of the case, but not so as to contradict the requirements of the Standing Orders Regulations. There is an obligation on both the authority and its chief executive to give fair consideration to reasonable proposals from the other party to modify the model procedure to suit local circumstances.

13.17 The principles of natural justice and good management practice must govern the conduct of any proceedings against the chief executive. Authorities should also have full regard to the principles and standards set out in *Discipline and Grievance - ACAS Code of Practice*.

13.18 The Model Procedure should be carried out as quickly as is consistent with the need to investigate the case and to give the chief executive a fair opportunity to reply fully to complaints. In order to use the model procedure, authorities will need to do some preparatory work by considering appropriate committees and delegated powers before incidents which might engage the procedure arise.

13.19 The Joint Secretaries of the JNC should be notified as soon as it is proposed to use the procedure and it is recommended that both parties contact the appropriate side secretary as soon as possible to ascertain whether more detailed assistance might be desirable

13.20 The range of possibilities is difficult to cover completely within the content of this handbook. However, the Handbook sets out the Model Procedure in detail in **Appendix 5**, together with guidance on the operation of the procedure and associated issues. There are also flow diagrams to assist in making the process as clear as possible. Further advice and guidance can be sought from the Joint Secretaries.

B WALES

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

W13.4 Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract where there has been no commitment to renew it, do not require the involvement of a Designated Independent Person. However, the authority should follow appropriate and fair procedures in these cases and have mechanisms in place, including appropriate delegated authorities, to manage such eventualities.

Disciplinary action on grounds of conduct, proposals to dismiss on the grounds of misconduct and proposals to dismiss for other reasons such as capability and some other substantial reason

W13.5 Disciplinary action or situations in which there is the potential to dismiss on the grounds of misconduct and potential to dismiss for other reasons such as capability and some other substantial reason will require the involvement of a Designated Independent Person. There are also additional considerations as to the impact of the Standing Orders Regulations such as limits on suspension of the chief executive and the powers and method of appointment of the Designated Independent Person, which authorities and chief executives need to be aware of.

W13.6 The JNC has developed a Model Procedure to use in these cases where a Designated Independent Person may be required and the matter cannot be resolved informally. The Model Procedure with guidance on its application and operation are contained at **Pages 55-78**.

W13.7 A summary table at **Appendix 5d** indicates the appropriate procedures to follow for the different types of situations, i.e. whether the issue should follow a local procedure or whether it should follow the JNC Model Procedure.

Considerations prior to contemplating disciplinary action

W13.8 Taking disciplinary action against a chief executive can be a difficult, time-consuming and potentially very expensive process made more complex because it happens so rarely that many elected members and senior staff will be unfamiliar with the relevant legal and employment contract provisions.

W13.9 A key issue is whether formal disciplinary action is necessary at all or whether informal resolution to a problem could provide a better solution in the circumstances. This will sometimes be the case and the Joint Secretaries are available to assist. (**See paragraphs W13.11 – W13.14**).

W13.10 Where formal procedures are to be engaged the JNC urges elected members to ensure that they understand the Model Disciplinary Procedure, seek appropriate advice at every stage and do not compromise the outcome of any proceedings. (**See paragraphs W13.15 – W13.21**).

Early informal resolution and joint secretarial conciliation

W13.11 Authorities should have regard to *Discipline and Grievances at Work: The ACAS Guide*. A key message in this guidance is that prevention is better than cure:
"The use of formal disciplinary procedures should be considered a 'last resort' rather than the first option. Many problems can be sorted out through informal dialogue".

W13.12 The JNC encourages authorities to adopt this informal approach. Experience shows that once formal disciplinary procedures have been instituted against a chief executive the inevitable high profile of the case can make it more difficult for normal working relationships to be resumed. There might also be an effect on staff morale and it is possible for there to be negative publicity in the local and sometimes national media.

W13.13 A guiding principle of the early informal approach is therefore to obtain improvement and remedy problems. Where potential disciplinary problems (either conduct or performance) are identified then either of the parties may approach the appropriate JNC Side Secretary. The Joint Secretaries are available at any stage in the proceedings to facilitate discussions between the parties and act as impartial conciliators. **Appendix 4** sets out the JNC's protocol for Joint Secretarial conciliation. Joint Secretarial assistance can also be requested during the formal stages of the procedure although the scope for resolution may be reduced by then as the parties are more likely to have adopted adversarial positions.

W13.14 Conciliation is preferable to the use of formal procedures if it can bring about a mutually agreed solution to any problems. While the conciliation process itself is informal any resolution should make it clear what specific changes in behaviour and / or performance are expected and within what timescales. Depending on the nature of the case, a mutually agreed resolution could include, for example:

- For minor performance and conduct issues it may make sense for there to be an off-the-record agreement that an informal warning will be issued. While the law is clear that to take any sort of

disciplinary action the Designated Independent Person process has to be used, it may be sufficient for elected members to express their concerns informally and let the matter rest there. If the chief executive is prepared to accept such a warning in the appropriate spirit then it may not be in neither party's interest for the formal procedures to be initiated.

- Where there are performance shortcomings with a relatively inexperienced chief executive then one solution could be for a more experienced, possibly retired, chief executive to act as a mentor.

The formal JNC procedure and associated guidance

W13.15 The Model Procedure has been agreed by the JNC in the light of leading counsel's opinion and the experience of the Joint Secretaries in their involvement in individual cases. The procedure is suitable for application in councils with leader/cabinet executives and mayor / cabinet executives.

W13.16 Where informal resolution is not possible the Model Procedure should apply unless alternative arrangements have been agreed locally. The Model Procedure can also be modified by mutual agreement to suit the particular circumstances of the case, but not so as to contradict the requirements of the Standing Orders Regulations. There is an obligation on both the authority and their chief executive to give fair consideration to reasonable proposals from the other party to modify the model procedure to suit local circumstances.

W13.17 The principles of natural justice and good management practice must govern the conduct of any proceedings against the chief executive. Authorities should also have full regard to the principles and standards set out in *Discipline and Grievance - ACAS Code of Practice*

W13.18 The Model Procedure should be carried out as quickly as is consistent with the need to investigate the case and to give the chief executive a fair opportunity to reply fully to complaints. In order to use the Model Procedure, authorities will need to do some preparatory work by considering appropriate committees and delegated powers before incidents which might engage the Model Procedure arise.

W13.19 The Joint Secretaries of the JNC should be notified as soon as it is proposed to use the Model Procedure and it is recommended that both parties contact the appropriate Side Secretary as soon as possible to ascertain whether more detailed assistance might be desirable.

W13.20 The range of possibilities is difficult to cover completely within the content of this handbook. However, the Handbook sets out in detail in Appendix 5 the Model Procedure together with guidance on the operation of the procedure and associated issues. There are also flow

diagrams to assist in making the process as clear as possible. Further advice and guidance can be sought from the Joint Secretaries.

W13.21 In the event that as a result of following the Model Procedure the decision is taken to appoint a DIP, the JNC has produced a brief Guidance Note (**Appendix 6**) to assist members, Chief Executives and the DIP to understand the role.

14. Grievance Procedures

In principle it is for each local authority to determine its procedures and practical arrangements for the handling of grievances, taking into account the relevant considerations in general employment law. However, in the case of a chief executive, there are particular factors which may need to be borne in mind in the case of a grievance against a chief executive or a grievance brought by a chief executive, and the JNC has therefore adopted a Model Procedure for use in such circumstances. This is set out in **Appendix 7.**

APPENDIX 1

C O N S T I T U T I O N

1. TITLE

The Committee shall be known as the Joint Negotiating Committee for Chief Executives of Local Authorities (hereinafter referred to as "the Committee").

2. SCOPE

The Committee shall have within their scope all chief executives of all principal local authorities in England and Wales as defined in paragraph 1 of the national conditions of service.

3. MEMBERSHIP

The Committee shall consist of not more than 11 members on each side. The current membership is appointed as follows:

***Representing local authorities*:**

Local Government Association	9
Welsh Local Government Association	1

Representing chief executives:

Association of Local Authority Chief Executives and Senior Managers	11

4. If any of the organisations named in paragraph 3 hereof fail to appoint the number of representatives provided for by the constitution, such failure to appoint shall not vitiate the decisions of the Committee always providing the quorum referred to in paragraph 13 is met. In the event of any member of the Committee or any sub-committee thereof being unable to attend any meeting of the Committee or of the sub-committee, as the case may be, the organisation represented by such member shall be entitled to appoint another representative to attend and vote in his / her place.

5. A member of the Committee shall automatically retire on ceasing to be a member of the organisation which he / she represents.

6. On the occurrence of a casual vacancy, a new member shall be appointed by the organisation in whose representation the vacancy occurs and shall sit until the end of the period for which his / her predecessor was appointed.

FUNCTIONS

7. The functions of the Committee shall be to consider from time to time the salary framework and general conditions of service of the officers named in

paragraph 2 hereof and to make recommendations in regard to such scales and conditions to the local authorities by which such officers are employed.

Provided that, in considering general conditions of service, the Committee shall have regard to the general conditions of service now or hereafter recommended by the National Joint Council for Local Government Services or to any agreed alternative local conditions.

All recommendations made by the Committee to local authorities shall be sent simultaneously to the bodies named in paragraph 3 hereof.

PROCEDURE

8. ***Sub-Committees*** The Committee may appoint from their own members such sub-committees as they may consider necessary and with such authorities as they may from time to time determine. The reports of all sub-committees shall be submitted to the full Committee.

9. ***Chair and Vice-Chair*** The Committee shall appoint annually a Chair and Vice-Chair. The Chair, or in his / her absence the Vice-Chair, shall preside at all meetings of the Committee. In the absence of both the Chair and the Vice-Chair at any meeting, a Chair shall be elected to preside. In no case shall a Chair have a second or casting vote.

10. ***Officers*** Each side shall appoint a joint secretary.

11. ***Meetings*** Meetings of the Committee shall be held as often as may be necessary, and the Chair shall call a special meeting if so requested by one-third of either side of the Committee. The notice summoning any special meeting shall state the nature of the business proposed to be transacted thereat, and no other matters shall be discussed. A special meeting shall take place within fourteen days after the request has been received.

12. ***Voting*** The voting in the Committee and in sub-committees shall be by show of hands or otherwise as the Committee or sub-committee, as the case may be, shall determine. No resolution shall be regarded as carried unless it has been approved by a majority of the members entitled to vote present on each side of the Committee or sub-committee, as the case may be.

13. ***Quorum*** The quorum of the Committee shall be 8, consisting of 4 representatives from each side. In the absence of a quorum the Chair shall vacate the chair, and the business then under consideration shall be the first business to be discussed either at the next ordinary meeting or at a further special meeting to be held within fourteen days after the date fixed for the first special meeting, as the case may be. The quorum of a sub-committee shall, subject to any directions given by the Committee, be determined by the sub-committee.

14. ***Notices of meetings*** All notices of meetings of the Committee and of any sub-committee thereof shall be sent to the respective members at least seven clear days before the date of the meeting.

FINANCE

15. Each side shall meet its own expenses.

APPLICATION

16. In the event of any question arising as to the interpretation of recommendations issued by the Committee and their application to a particular chief executive or of any other question arising relating to salaries which cannot be settled by the employing authority and the officer concerned, the Committee shall at the request of either party consider the matter and endeavour to assist them in securing a settlement.

ARBITRATION

17. In the event of a dispute over terms and conditions of employment arising between the two sides of the Committee on any matter, the dispute shall, at the request of either side, be reported to the Advisory, Conciliation and Arbitration Service (ACAS) by the Joint Secretaries with a request that the matter be referred for settlement by arbitration. The arbitration award shall be accepted by the two sides and shall be treated as though it were an agreement between the two sides.

AMENDMENTS TO CONSTITUTION

18. Alterations in the constitution of the Committee shall be made as follows:

(a) in paragraph 3 of this constitution any change to the organisations represented on each Side, shall be a matter for each Side to determine

(b) all other clauses can only be changed with the assent of both bodies named in paragraph 3

APPENDIX 2

JOINT GUIDANCE ON APPRAISAL OF THE CHIEF EXECUTIVE

1. INTRODUCTION

1.1 This guidance is intended for use by senior elected members and the chief executive when agreeing a process for appraising the performance of the chief executive. The focus of this process should be on clarifying what the chief executive is expected to achieve and on identifying any continuing developmental needs which, if met, would maintain a high level of performance. The process of setting objectives should be by agreement and the result should be to identify objectives which are relevant and challenging but achievable.

1.2 The process should not become complex. At all times it needs to focus clearly on a few basic issues: what the chief executive's job is; what has been done well; what could have been done better; the major issues over the next year; and what developmental needs the process clearly identifies.

2. RESPONSIBILITY FOR APPRAISAL

2.1 The responsibility for appraising the chief executive lies with senior elected members. It is a contractual obligation on the part of both the chief executive and the employing council to engage in a regular process of appraisal.

2.2 It will be for local decision in the light of local circumstances whether the appraisal should be carried out by a small committee representing all political groups or by a senior representative or representatives of the controlling group. Whichever approach is adopted, those conducting the appraisal need to bear in mind at all times that the chief executive is employed by the council as a whole, not by the controlling group, and is therefore required to serve all of the council.

3. AIMS OF APPRAISAL

- To identify and clarify the key objectives, priorities and targets of the council and appropriate timescales for their achievement over the next (e.g. twelve) months

- Agree what the chief executive should personally achieve over the next (e.g. twelve) months and identify required standards of performance, in order to deliver the council's key objectives, priorities and targets. Wherever possible standards of performance should be expressed in ways which can be monitored objectively

- Discuss positive achievements over the past (e.g. twelve) months and identify reasons for good performance

- Discuss instances over the past (e.g. twelve) months where targets have not been met, identifying the factors preventing the achievements of agreed goals

- Discuss developmental requirements. The chief executive will have strengths and weaknesses and the parties should identify the professional development necessary to equip the chief executive with the requisite skills to meet the council's objectives. The parties should be proactive and anticipate future developmental needs in the context of the council's changing priorities. This discussion could lead to the design of a formal programme of continuous professional development (CPD). Equally this discussion may lead to agreement on changes to the working relationship between leading members and the chief executive. It should not be assumed that it is only the chief executive who may need to adjust his / her approach to the working relationship

3.1 Appraisal should be set in the context of the council's objectives, priorities and targets, generally expressed in corporate plans. Appraisal targets when taken as a whole should be related to agreed targets for the council as a whole.

4. THE APPRAISAL CYCLE

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

5. KEY ELEMENTS OF THE APPRAISAL PROCESS

- Continuous two-way monitoring of performance against objectives

- Preparation for an appraisal interview

- An appraisal interview where recent and current performance, future objectives and development needs are discussed

- Agreement on action required from either party to ensure required performance is achievable

- A continuing process of informal discussion regarding performance

6. The appraisal interview and afterwards

- Both parties should be well informed and prepared for the interview

- The process should be two-way

- The interview should be free from interruptions, and notes should be taken when necessary

- The parties should concentrate as far as possible on established facts rather than unsubstantiated opinions

- Targets which are realistic and capable of being monitored should be agreed

- Any agreed personal development plans should be implemented within the agreed timescale

- The chief executive should be given a reasonable opportunity to correct any shortfalls in performance

- A date for the next review should be agreed

7. EXTERNAL ASSISTANCE

7.1 External assistance in facilitating the appraisal process can be helpful in providing an independent perspective.

7.2 Within the local government 'family', it may be sought from the Local Government Association or by contacting the Employers' Secretary or from the appropriate Regional Employers' Organisation or ALACE or SOLACE. Alternatively, such assistance may be available from commercial sources, such as consultancy firms.

7.3 Such assistance from the aforementioned organisations may take the form of them either directly participating in the process for which a fee may be requested to cover staff time or the recommendation of, for example, a suitably experienced recently retired senior officer or other independent individual.

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

8. OTHER MATTERS

8.1 The detailed content of appraisal interviews should normally be treated as confidential to the participants, unless both parties agree that it would be helpful for the targets agreed for the ensuing period to be shared more widely. However, it may be useful to report to an appropriate committee meeting that an appraisal interview has taken place.

8.2 This may be useful in acting as a reminder that the chief executive and members need to ensure that chief officers are in their turn appraised.

8.3 It should, however, not be assumed that the process for appraising the chief executive should be followed in precise detail for other staff. There is a fundamental difference between elected members appraising the chief executive and managers appraising subordinates. The principles, nevertheless, are the same.

APPENDIX 3

CONSIDERATIONS IN DEVELOPING REMUNERATION COMMITTEES – JOINT GUIDANCE

1. Composition

1.1 In order to be representative but viable, the Committee needs to be small but it can be useful to have an odd number of members to ensure that clear decisions can be taken. Working by consensus is also a viable option. It is suggested that the Committee should have no more than 5 members.

1.2 The Committee can be composed entirely of elected members if this is the most workable solution in an authority but consideration may be given to having some external representation. Any external members should of course have no conflicts of interest and should be experienced in managing large organisations.

2. Remit

2.1 The Committee will be responsible for providing advice and will have delegated authority for making decisions or recommendations to the full council (or another committee) on pay and remuneration issues within its agreed remit in relation to the chief executive.

2.2 To make properly informed decisions on pay policy the Committee will need to ensure that it has comprehensive, relevant and reliable advice and market data provided by the online pay benchmarking system epaycheck (incl hyperlink). Further advice is also available from the Local Government Association or by contacting the Employers' Secretary or from the appropriate Regional Employers' Organisation or ALACE or SOLACE. Alternatively, such assistance may be available from commercial sources, such as consultancy firms.

2.3 The remit of the Committee would include all those elements of the remuneration package which are not set nationally (e.g. pensions) or by overall council policy, including:

- Fixed point salary
- Variable pay elements
- Some additional benefits within the context of overall pay.

2.4 It would also be responsible for oversight of any performance / contribution-related pay scheme for the chief executive (targets to be set and reviewed elsewhere as part of the chief executive's appraisal process).

2.5 The Committee would not be responsible for the actual operation of any appraisal processes, which should be kept separate.

3. Process

3.1 The Committee should meet at least annually to:

- Determine any requirement for a formal review of the relevant pay market
- (Where determined necessary) commission relevant research and analysis and make recommendations thereon
- Review any remuneration issues arising from established performance / contribution-related pay assessment

4. Recommendations

4.1 The Committee's recommendations should be based on data / advice / evidence / views collected from a number of possible sources, including (but not limited to):

- The council's own personnel / HR function, possibly in the form of a report on current issues
- National and / or Regional Employers' Organisations
- Independent external pay data / advice / facilitation from:
    - External consultancy organisations with relevant experience in pay market analysis
    - Pay benchmark information (from local employers / other similar local authorities)
- Performance data drawn from council-wide performance management indicators
- Submissions made by the Association of Local Authority Chief Executives and Senior Managers on behalf of their members

4.2 The Committee would then make reasoned recommendations to the relevant Committee of the council or would be in a position to act with delegated authority, as defined within the constitution.

4.3 In addition, in the first year of operation, the Committee would need to meet initially to agree the pay data to be collected and to agree its expectations of the process. The Committee would also need to determine what it would recommend as an overall executive pay policy, having regard to the general pay and employment strategy of the council.

4.4 The Committee may also need to hold additional meetings at the request of the council, when advice is required for example on changes to existing systems or if a new appointment is to be made.

5. Confidentiality and Protocols

5.1 Confidentiality should always be maintained whilst discussions are taking place and until decisions are published. It may well be advisable to agree other protocols for the operation of the Committee, to which members would be expected to adhere.

APPENDIX 4

JNC AGREED PROTOCOLS FOR JOINT SECRETARIAL CONCILIATION

1. General principles

1.1 Conciliation is an informal process designed to assist the parties in exploring the ground for possible agreement between them.

1.2 If conciliation is to work the participants must therefore have the confidence to float suggestions without compromising their respective positions. It is therefore essential that, if ultimately no agreement is possible, any avenues explored informally should not then be used in any subsequent discussions, unless agreed by both parties.

1.3 To achieve this objective the conciliation needs to be underpinned by the following principles:

- **Informality**
  The conciliation process is informal, which means that the proceedings should be off the record and non-legalistic

- **No pre-conditions**
  Neither side should seek to impose any pre-conditions on the process, unless by joint agreement

- **Without prejudice**
  This is probably the most important principle. Neither party will have the confidence to float suggestions for resolution if they are likely to prejudice their position later on. The parties must therefore mutually respect this principle and guarantee that they will not use anything discussed in conciliation at a later stage or publicise it

- **No publicity**
  These principles could be undermined if either of the parties used the media to publicise its case. Accordingly, there should not be any publicity unless the parties agree to the contrary

2. Process for the conciliation meeting

2.1 As conciliation is an informal process there is no need for case statements. However, the Joint Secretaries need to familiarise themselves with the case beforehand so the respective parties are asked to provide a briefing note for this purpose which indicates what they are seeking to achieve.

2.2 It is for the individual parties to decide who will represent them at the conciliation meeting. For the council the Joint Secretaries believe that there should be a minimum of a politician with sufficient authority to make decisions and / or provide policy direction (this would probably need to be the leader of the council) together with a technical adviser (who may be an officer of the council or other appropriate person). For ALACE it would normally be the chief

executive and ALACE adviser. This is not intended to constrain the number of people participating in the process but, if the number of representatives from either side is large, it would be helpful to restrict the number during any face-to-face discussions (see below).

2.3 The Joint Secretaries will conduct the conciliation meeting along the “shuttle-diplomacy” lines used by ACAS. This means that any of the following is possible as a formulation for discussions:

- The Employers’ Secretary (or their representative) will probably start with a briefing from council representatives while the Staff Side Secretary (or their representative) will probably start with a briefing from their member
- The Joint Secretaries are likely to have their own private discussions at various points during the proceedings
- The Joint Secretaries together may ask to have discussions with either or both of the respective parties
- The Joint Secretaries may judge that it would be helpful for them to have discussions with the two parties together. In this event, if either party has brought a large team, it would be helpful if only a few representatives were present during such joint discussions

2.4 The council is asked to provide at least three suitable rooms. The nature of conciliation means that discussions may be long and there may be periods when one or both of the parties is waiting for other discussions to take place.

2.5 Where the matter is resolved the parties will have to agree how it is to be processed and any joint communications. If no resolution is possible then it is important that the principles outlined above in **paragraph 1.3** are observed.

APPENDIX 5

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

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Introduction

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

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

Local authority chief executives are protected under specific regulations that make distinctive provisions compared to other employees. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) and the Local Authorities (Standing Orders) (Wales) Regulations 2006 aim to protect the chief executive from unwarranted political interference in their role as head of paid service of the authority. High levels of accountability work most effectively within clear criteria for responsibilities. Even with the distinctive role of Head of Paid Service, disciplinary action will need to be based on clear evidence.

Local authority elected members will want to ensure that they:

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

This Appendix outlines the key elements of the Model Procedure for disciplining chief executives.

The elements of what is Procedure and what is Guidance to the Procedure are arranged for ease of reference to present each element of the Model Procedure, immediately followed by the relevant part of the Guidance.

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

A. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE – ENGLAND (from page 28)

B. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE – WALES (from page 55)

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

A. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE – ENGLAND

1. Issues requiring investigation – (procedure)

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

This Committee will be a standing committee appointed by the council, with delegated powers to exercise the functions of the IDC as set out in this Model Procedure. Arrangements for flexibility are recommended in the event that a member of the standing committee has a conflict of interest.

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

1. Issues requiring investigation – (guidance)

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

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

- any advice, views or recommendations of the Independent Panel
- the conclusions of any investigation into the proposed dismissal and
- any representations from the chief executive.

1.1.2 **Disciplinary action:** in relation to a member of staff of a local authority, is defined in the Regulations as:

"any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract".

The definition of disciplinary action would therefore include other reasons for dismissal such as capability or some other substantial reason including a

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

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

1.2 Structures to manage the Model Procedure

1.2.1 A key feature of the Model Procedure is the specific roles envisaged for the Investigating and Disciplinary Committee (IDC), the Appeals Committee, the Independent Panel and the council. Authorities will need to consider a number of important issues around the composition of committees and the delegation of appropriate powers. In particular, it must be borne in mind that staffing issues are a non-executive function and so these bodies have to be put in place by the council not the Leader / Mayor or executive.

1.2.2 The IDC must be a politically balanced committee comprising, it is suggested, at most five members. Where authorities operate a leader / cabinet or mayor / cabinet executive structure, this must include at least one member of the executive. The IDC may need to be in a position to take decisions and appropriate actions as a matter of urgency. It may need to meet at very short notice to consider allegations and decide whether there is a case to answer and to consider whether suspension of the chief executive might be appropriate. It is also possible that in some circumstances members of the IDC may find themselves in a position where they have a conflict of interest (see also **paragraph 5.4.4**). It is therefore recommended that authorities take this into account when constructing the committee and its powers, including the quorum and substitutes. The IDC has an important role in deciding whether any allegations against the chief executive meet a 'threshold test' which justifies further investigation, and then considering the report of an Independent Investigator. The role of the IDC is explained further at appropriate stages in the Model Procedure. (The Committee that performs this function may locally be known by a different name although its role and responsibilities will be those outlined throughout this document and referred to herein as the IDC. This Committee may also fulfil other functions).

1.2.3 The Appeals Committee must be a politically balanced committee of, it is suggested, at most five members who are not members of the IDC. Where authorities operate an executive structure, this must include at least one member of the executive. The Appeals Committee will have a more limited role. Its purpose will be to hear appeals against disciplinary sanctions short of dismissal imposed by the IDC and to take a decision either to confirm the action or to impose no sanction or a lesser sanction.

1.2.4 The JNC has agreed that the Independent Panel should comprise of independent persons (at least two in number) who have been appointed by the council, or by another council, for the purposes of the council members' conduct regime under section 28(7) of the Localism Act 2011. Councils are required to issue invitations for membership of the Panel in accordance with the following priority order:

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

1.2.5 Appropriate training should be provided for Independent Panel members.

1.2.6 It should be noted that any remuneration paid to members of an Independent Panel may not exceed that payable in respect of their role under the Localism Act.

1.2.7 A requirement for any disciplinary process is to carry out an investigation of the allegations to establish the facts of the case and to collate evidence for use in the disciplinary hearing. In the case of a chief executive, it will normally be necessary to engage an independent person for this purpose, and this person is referred to here as the Independent Investigator. Arrangements have been agreed to enable the speedy appointment of a competent and experienced person to perform this role, with the assistance of the Joint Secretaries.

1.2.8 Other relevant preparatory arrangements are referred to elsewhere in this Appendix, including:

- initial enquiries into the allegations or complaints and access to the Model Procedure (**paragraphs 1.3.3a and 1.3.4**)
- power to suspend with immediate effect (**paragraph 3.5**)
- ensuring there is absolute clarity about who has authority to negotiate and / or agree a settlement (**paragraph 5.4.7**).

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

1.3.1 The Model Procedure itself does not require that every single issue which implies some fault or potential error on the part of the chief executive be investigated using this process. It is for the authority to decide the issues that will engage the Model Procedure.

1.3.2 Authorities will therefore need to consider what constitutes an 'allegation' made relating to the conduct or capability of the chief executive and what it considers are other substantial issues requiring investigation. Clearly the route for complaints against the council and the chief executive and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied. Ideally, procedures need to be in place which can filter out and deal with 'allegations' against the chief executive which are clearly unfounded, or trivial, or can best be dealt with under some other procedure.

1.3.3 For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the council's general complaints procedure. If the matter is a grievance from a member of staff directed against the chief executive, it may be appropriate to first deal with it through the Grievance Procedure. Of course, if the matter were a serious complaint against the chief executive's personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the Model Disciplinary Procedure.

1.3.3a In some circumstances, the Council may consider that in order to clarify whether there is any substance to the allegation or complaint, preliminary initial inquiries should be undertaken before the Model Procedure is invoked. This would be particularly appropriate where the matter has been raised under another procedure such as a grievance and is not itself a disciplinary complaint. To enable this process to happen the Council should nominate an officer who would most appropriately be the Council's Monitoring Officer.

1.3.4 An authority will need to put into place arrangements that can manage the process. In particular, records should be kept of allegations and investigations and there should be a clear route into the Model Procedure. It could be, for example, that in the case of allegations against the chief executive, the monitoring officer and the Chair of the IDC would oversee referrals to that Committee.

1.3.5 Where the issue to be investigated is related to the sickness absence or capability of the chief executive in terms of performance, there is likely to be a link with the authority's sickness procedure or appraisal / performance management procedure.

1.3.6 Where management action is required in respect of the normal sickness of the chief executive, the authority needs to be clear about who takes appropriate actions. Initially, it could be the Director of HR (according to local procedures) who will follow the authority's normal sickness absence procedures. Whoever is responsible will report to the IDC as appropriate to the matter being investigated – in particular where procedures have been followed to the point where dismissal appears to be a possibility (see flow diagrams **Appendices 5a, 5b & 5c** for reference).

1.3.7 Any shortcomings in a chief executive's performance can be better identified, and therefore remedied, at an early stage if there is an objective performance appraisal system in place as required by the JNC agreement (see **Appendix 2**).

1.3.8 For a chief executive, the system is likely to be linked to objectives in the authority's Corporate Plan, or equivalent, and the performance objectives should be specific, measurable, achievable, realistic and time-related. It may, but will not necessarily, be the system against which pay progression is measured (see flow diagram **Appendix 5c**).

2. Timescales – (procedure)

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

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

2. Timescales – (guidance)

An important principle when taking disciplinary action is that the process should be conducted expeditiously but fairly. There is, therefore, a need to conduct investigations with appropriate thoroughness, to arrange hearings and allow for representation. It is not in the interests of the council, or the chief executive, that proceedings are allowed to drag on without making progress towards a conclusion.

2.1 Statutory and indicative timescales

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

2.2 Avoiding delays in the procedure

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

2.3 Availability of Independent Investigator

An Independent Investigator should only be formally appointed once the IDC has determined that the 'threshold test' (see para 5.4.1) has been met and that there is a case that requires further investigation. However, to minimise delays in any potential investigation, steps should be taken to identify a shortlist of three potential Independent Investigators from the list held by the JNC Joint Secretaries (see paras 6.3 and 6.4) concurrently with arrangements for the initial meeting of the IDC. This is not pre-judging whether an investigator will be needed, but a practical step to assist in minimising any delays.

2.4 Availability of the chief executive in case of sickness

(a) It is possible that the sickness of the chief executive could impact on the ability to continue the disciplinary procedure. This may be because:

- the issue under investigation is the chief executive's sickness in itself (ie. a capability issue); or alternatively,

- while during an investigation for another reason such as allegations about the chief executive's conduct, the chief executive commences sickness absence during the disciplinary process.

(b) In principle, the sickness of the chief executive will invoke the local authority's normal sickness procedures. The nature of the investigation and facts surrounding the sickness will dictate the appropriate way of dealing with the issue.

(c) If the investigation is about the long-term sickness or frequent ill-health problems experienced by the chief executive, the authority should have already obtained appropriate medical information and advice by following its local processes. This would normally include referral to the authority's occupational health adviser who would examine the chief executive and / or seek further medical information from the chief executive's GP or any specialist dealing with the case. However, the IDC or Independent Investigator may feel the need for further or more up-to-date advice and again they should use the authority's normal processes and procedures to obtain this. If the chief executive's absence or problems at work are as a result of a disability which places him / her at a substantial disadvantage compared to others without the disability, then the authority must consider and undertake reasonable adjustments in order to remove the disadvantage. The IDC must satisfy itself that this has been fully considered and that no further reasonable adjustments could be made which would remedy the situation.

(d) Where the issue under investigation is not health-related and is, for example, about the conduct of the chief executive and he / she then commences sickness absence then the approach will depend on the type and length of the illness and exactly when it occurs during the process.

(e) A short period of illness should not normally create a major problem although the timing of the illness can create difficulties if it coincides with scheduled meetings for investigating or hearing aspects of the case. If this occurs then reasonable efforts should be made to rearrange the meeting. However, if the sickness becomes more persistent or is likely to become longer term then the authority will take steps to identify whether the chief executive, although possibly not fit to perform the full range of duties, is fit enough to take part in the investigation or disciplinary hearing.

(f) If it appears that there will be a long period of ill health which will prevent the chief executive taking part in the process, the authority and possibly the Independent Investigator will have to make a judgement as to how long to wait

before proceeding. In some cases, it may be appropriate to wait a little longer where a prognosis indicates a likely return within a reasonable timescale.

(g) However, where this is not the case, the authority will in most cases need to press ahead given the importance of resolving issues which can have a significant impact on both parties due to the nature and high profile of the role of chief executive. If this is the case the authority should ensure that the chief executive is given the opportunity to attend any meetings or hearings. However, the chief executive should be informed that if they cannot attend the meetings or hearings then they would proceed without them. If this is the case the chief executive may make written submissions to be considered and may also send their representative to speak on their behalf before a decision is taken.

2.5 Availability of representative

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

2.6 Availability of witnesses

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

2.7 Availability of committee members

(a) It is recommended that, in establishing the IDC and the Appeals Committee, authorities take availability issues into account and any operational quorum when considering the numbers of members to serve on these committees.

(b) It should be particularly borne in mind that the IDC might need to be able to meet at short notice to consider serious allegations against the chief executive.

2.8 Availability of Independent Panel members

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

3. Suspension – (procedure)

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

However, the IDC will need to consider whether it is appropriate to suspend the chief executive. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the chief executive might compromise the investigation or impair the efficient exercise of the council's functions.

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

The JNC recognises that on rare occasions circumstances could arise which require an immediate suspension before the IDC has a reasonable opportunity to meet, for example if the allegations of misconduct are such that the chief executive's remaining presence at work poses a serious risk to the health and safety of others or the resources, confidential information or reputation of the authority. To account for this, the authority should consider and put in place the necessary protocols to facilitate an emergency suspension, subject to the suspension being reviewed by the IDC at the earliest opportunity.

The continuance of any suspension should be reviewed after it has been in place for two months and periodically thereafter as appropriate.

3. Suspension – (guidance)

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

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

3.3 Alternatives to suspension

Suspension will not be appropriate in every case, as this will depend on the nature of the allegation or seriousness of the issue. Before suspending the chief executive, careful consideration should be given to whether it is necessary and whether there are any other suitable alternative ways of

managing the situation, for example by agreeing particular working arrangements such as working from home for a period or working in some other way that protects the chief executive and authority from further allegations of a similar nature.

3.4 Power to suspend

(a) The chief executive is the head of paid service and normally bears the delegated responsibility for implementing council policy on staffing matters. However, when it is the chief executive who is the subject of an allegation or investigation, the authority will need to be clear about who has the power to suspend the chief executive and in what circumstances.

(b) The point at which it may become clear that suspension is an appropriate action is likely to be at the stage where the IDC has conducted its initial assessment. The Model Procedure therefore provides for the IDC to have the power to suspend the chief executive.

3.5 Short notice suspension

3.5.1 It remains preferable that the decision to suspend is taken by the IDC after consideration of the allegation. However, the Model Procedure also recognises that in exceptional circumstances it may be necessary to suspend at very short notice and before the IDC can meet, e.g. because the remaining presence of the chief executive could be a serious danger to the health and safety of others, or a serious risk to the resources, confidential information or reputation of the authority. It may also be necessary if the continuing presence at work of the chief executive might compromise the investigation or impair the efficient exercise of the council's functions.

3.5.2 The Council should have in place a formal arrangement setting out which individual or individuals would hold the authority to suspend in such exceptional circumstances and to establish any associated protocols. It might be possible for a smaller sub-committee to meet more quickly but alternatively this task may fall to an officer. Ordinarily, given their role in relation to propriety and lawful actions of the authority, the JNC would expect the council's Monitoring Officer to be a suitable person to make such a decision after consultation with, for example, the Chair of the IDC.

3.5.3 However, there may be rare cases in which both the Chief Executive and Monitoring Officer (and sometimes other senior managers) have been implicated in disciplinary investigations at the same time, so, for purely pragmatic reasons, the Council should consider whether its arrangements also include other suitable individuals.

3.5.4 Any decision to suspend at short notice should be confirmed by the IDC (or other appropriate Committee) at the earliest possible opportunity.

3.6 Suspension protocols

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

3.7 Review of suspension

Where the chief executive is suspended, the suspension should be reviewed after two months and periodically thereafter as appropriate, and only continued after taking into account any representations made by the chief executive.

4. Right to be accompanied – (procedure)

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

4. Right to be accompanied – (guidance)

4.1 Although the statutory right to be accompanied applies only at a disciplinary hearing, the Model Procedure provides for the chief executive to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost.

4.2 The Model Procedure recognises that there may be, in exceptional circumstances, a need to suspend the chief executive at short notice, when it is not possible to arrange for their trade union representative to be present. These circumstances might include for example where there is a serious risk to the health and safety of others or serious risk to the resources, information, or reputation of the authority.

4.3 Although it would be beneficial to agree dates for the necessary meetings required the procedure cannot be delayed owing to the unavailability of a representative. The statutory right to be accompanied in a disciplinary hearing contained in s.10 of the Employment Relations Act 1999 applies only to hearings where disciplinary action might be taken or be confirmed, that is to say when a decision may be taken on the sanction, or a decision may be confirmed during an appeal. In this model procedure the statutory entitlement to be accompanied would arise:

- where the IDC considers the report of the Independent Investigator and provides the chief executive with the opportunity to state their case before making its decision.
- during any appeal against the decision taken by the IDC.
- at a council meeting considering a proposal for dismissal and also fulfilling the requirement relating to a right of appeal

4.3a Given the statutory requirement for an Independent Panel to meet to consider a recommendation for dismissal, it would also be appropriate, where the chief executive is attending that meeting, for them to be accompanied.

4.4 At these important stages (IDC receiving the report of the Independent Investigator and any appeal against the decision taken by the IDC), if the chief executive's trade union representative is unavailable for the date set then the chief executive will have the right under the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week.

4.5 If the representative is unable to attend within that period the authority will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date suitable to all parties.

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

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

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

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

The IDC shall decide whether:

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

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

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

5.1 The range of issues and to some extent the seriousness of the issues, which come before the IDC, will depend on the result of the filter that the council adopts. Issues such as those relating to sickness absence and performance are likely to arise at the IDC having followed the authority's sickness absence or performance management / appraisal procedures (see **Paragraph 1.3**).

5.2 It is possible in some cases that with some minimal investigation the IDC can dismiss the allegation without even the need to meet with the chief executive. However, the Model Procedure deals with situations where the matter is not so easily disposed of. It therefore provides a process whereby the chief executive is made aware of the allegations and provided with the opportunity to challenge the allegations or to make a response.

5.3 When an issue comes before the IDC it needs to make a judgement (see **paragraph 5.4.1**) as to whether the allegation can be dismissed or whether it requires more detailed investigation, in which case this will be undertaken by an Independent Investigator. If the IDC is of the opinion that the allegations do not warrant an investigation, this should be immediately notified to the chief executive without delay, and, if necessary, the complainant informed accordingly. If the IDC is of the opinion that the matter is not serious but there

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

5.4 The appointment of an Independent Investigator is a serious step but does not mean that the chief executive is guilty of any misdemeanour. In some cases, the outcome of the investigation will be to absolve the chief executive of any fault or wrongdoing. The appointment of an Independent Investigator operates so that both the authority and the chief executive can see that matters are dealt with fairly and openly. However, the matter still needs to be handled carefully in public relations terms due to the potential damage to the reputation of the chief executive or the local authority.

5.4.1 Threshold test for the appointment of an Independent Investigator

Cases will vary in complexity but the threshold test for the IDC in deciding whether to appoint an Independent Investigator is to consider the allegation or matter and assess whether:

if it were to be proved through an independent investigation, it would be such as to lead to dismissal or other action which would be recorded on the chief executive's personal file and

there is evidence in support of the allegation sufficient to require further investigation

5.4.2 Conducting the initial IDC investigation

(a) It is intended that this initial assessment as to whether the 'threshold test' has been met is conducted as expeditiously as possible with due regard to the facts of the case. At this stage it is not a fully detailed investigation of every aspect of the case as that will be the responsibility of the Independent Investigator (if appointed). In order to avoid delay the IDC will want to explore the availability of potential Independent Investigators on the list maintained by the JNC Joint Secretaries at an early stage (see paras 6.3 and 6.4). However, it is important that before any decision is taken to formally appoint an Independent Investigator, the chief executive is aware of the allegations that have been made against him / her (or the issue to be addressed) and given the opportunity to respond.

(b) This will be achieved by:

- The IDC writing to the chief executive setting out the allegations / issues and providing any evidence to be considered
- Providing the opportunity for the chief executive to respond to the allegations in writing and to provide personal evidence or witness statements. The calling of witnesses at this stage is at the discretion of the IDC
- Providing the opportunity for the chief executive to appear before the IDC

(c) Fair notice should be given to enable the chief executive adequate time to prepare an initial response to the allegations or issues under investigation. During the initial hearing by the IDC, the chief executive is entitled to attend and can be accompanied by a representative (subject to **paragraph 4** above, and **paragraph (Wales) 2.3.3**).

(d) Having assessed the available evidence and in the light of the chief executive's initial response to the matter, the IDC must then decide whether the 'threshold test' (paragraph 5.4.1) has been met. If that is the decision, the IDC must then arrange for the appointment of an Independent Investigator.

5.4.3 Treatment of witness evidence

In general, if the authority has witness evidence relating to an allegation this should be presented in written form to the chief executive, although in exceptional cases it might be appropriate to anonymise the evidence in order to protect the identity of a witness. However, it remains important that the detail of the allegation is put to the chief executive in order that he / she understands the case against him / her.

5.4.4 Conflicts of interest

(a) The Model Procedure envisages, and it is strongly recommended that the authority take steps to establish, a standing IDC. **Paragraph 1.2** indicates the basic rules concerning its membership. However, because a standing committee will comprise named councillors, there may be occasions when this presents problems of conflict of interest, for example where a member of the committee is a witness to an alleged event or is the person who makes the original complaint or allegation. Councillors in this position should take no part in the role of the Committee, although they will of course be able to give evidence, if required. The authority should construct its Committees and establish quorums and substitution rules in order to minimise the likelihood of an individual conflict of interest delaying the procedure. Where a number of members find themselves in a prejudiced position, there may be no alternative but for the council to establish a new Committee to perform the function of the IDC.

(b) Declarations of interest are matters for individual councillors who are required to follow their authority's code of conduct for elected members and can seek advice from their Monitoring Officer. The efficient management of the process could be compromised if the chief executive considers there are valid grounds for making a formal complaint to the council about the involvement of a councillor in a case.

5.4.5 Maintaining the fairness and integrity of the procedure

Where there is a matter that requires investigation, it is important that a fair and correct procedure is followed. Allegations against the chief executive or serious issues that require resolution should follow this Model Procedure. It is important that councillors do not undermine the fairness of the procedure by for example putting motions to full council about the case as there is a serious

risk that it could prejudice the disciplinary procedure. Similarly, it is important that councillors do not engage in public discussion of the disciplinary action while the investigation and other elements of the process are under way. Additionally, such actions will not only create adverse publicity for the authority and the chief executive but may create conflicts of interest and could limit the role that those councillors can then take as the case progresses.

5.4.6 Other appropriate actions

(a) It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of the chief executive, or some other substantial issue, the IDC might be in a position to consider alternatives to immediately moving to the appointment of an Independent Investigator or alternatively to dismiss the allegation or issue.

(b) Clearly this will depend on the facts of the matters being investigated. It could be that the authority has another more appropriate policy or procedure to follow. Alternatively, it could be that the issue is one which might benefit from some mediation or attempts to resolve the particular issue in dispute (including the imposition of a sanction short of dismissal, such as a formal warning, which is accepted by the chief executive) prior to moving formally to appointing an Independent Investigator.

(c) It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships are breaking down but there is no evidence of misconduct on the part of the chief executive. The Joint Secretaries are available to assist (see **Appendix 4**)**.**

(d) If a financial settlement is considered, it is important that such an arrangement falls within current regulations and guidance governing such matters.

(e) The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 are designed to enable a local authority to compensate employees whose employment terminates on grounds of redundancy or in the interests of the efficient exercise of the authority's functions. It is therefore possible that a payment will be legitimate in certain circumstances. However, where there is an obvious case requiring disciplinary action and the allegation is such that dismissal is a likely outcome, it is not likely that an external auditor will sanction a deal under the current regulations.

(f) The authority must take appropriate legal advice when attempting to reach a financial settlement to ensure that any payment is justified and lawful. Relevant considerations will include the likelihood of the claim succeeding and the amount of compensation that could be awarded by a Court or an Employment Tribunal.

5.4.7 Power to agree financial settlements

There needs to be clarity about who has authority to negotiate and / or agree a settlement. Generally, unless the authority wishes all decisions to be taken by full council, it is important that the authority should have or put in place a delegation to a committee or officer to negotiate and agree any financial settlement.

In authorities operating the executive and leader model, non-executive functions cannot be delegated to an individual member or to the executive. Authorities also need to ensure that they comply with relevant legislation and statutory guidance (such as, at the time of issue of this handbook, *"Openness and accountability in local pay: Guidance under section 40 of the Localism Act 2011"* (February 2013)) and with any relevant provision in the authority's pay policy statement under section 38 of the 2011 Act.

5.4.8 Access to appropriate professional / independent advice

(a) Conducting an investigation into allegations or serious issues involving the chief executive can be demanding on the individuals involved. The IDC (and the Appeal Committee and council) will have access to the local authority's officers but given the closeness of relationships between the chief executive and the other senior officers this can be a difficult time for those required to advise the Committee, to conduct investigations internally, or to source advice from outside the authority.

(b) The authority should ensure that the IDC has powers to appoint external advisers as appropriate. Useful sources of general advice on the operation of the procedure and assistance with conducting investigations include the Local Government Association by contacting the Employers' Secretary or from the appropriate Regional Employers' Organisation or ALACE.

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

5.4.9 Ill-health - medical advice

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

5.4.10 Performance

(a) Where the issue is one of capability in terms of performance or competence, other than ill-health, the council will need to be in a position to establish or demonstrate the nature of the concerns. Evidence will be necessary in order to justify a further investigation.

(b) This might come from a variety of sources, e.g. performance appraisal records, inspection reports, etc. Where the council follows an established appraisal / performance management process, this can also provide an appropriate route to establishing issues suitable for referral to the IDC (see **Appendix 2**).

5.4.11 Breakdown of trust and confidence

Where the issue is breakdown of trust and confidence, the council will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with the chief executive.

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

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

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

6. Appointment of an Independent Investigator - (guidance)

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

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

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

6.4 The Council will approach the National Joint Secretaries and will be supplied with the top three names from the list (if in exceptional circumstances three names are not available, both local parties will agree to choose from a shorter

list). If these are acceptable to the council, the chief executive will be invited to select one of the names. The only acceptable reason for not selecting from the names supplied being conflict of interest. If an appointment is not agreed by the chief executive within 14 days of the date of the names being supplied, the council will be at liberty to select an Investigator from the names supplied.

6.4.1 Where an officer in addition to the chief executive is to be subject to the same investigation, efforts should be made to secure the agreement of all of the officers on the appointment but, in the absence of agreement, the Council may select the Investigator from the names supplied.

6.5 Terms of reference – allegations or issues to be investigated

(a) When appointing an Independent Investigator, it is important that they are provided with terms of reference. The Investigator will need to be:

- aware of the precise allegation(s) or issue(s) to be investigated
- provided with access to sources of information and people identified as relevant to the case
- aware of expectations regarding timescales and any known factors which could hinder their investigation, e.g. the availability of key people

(b) The IDC will be responsible for deciding the terms of reference for the investigation and for providing this and other information to the Independent Investigator. It will also be in a position to discuss timescales for the investigation.

(c) The Independent Investigator may approach the IDC at any point to seek further guidance or clarification on issues which emerge during the investigation.

6.6 Remuneration

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

7. The Independent investigation – (procedure)

The ACAS Code of Practice on Discipline and Grievance requires there to be an investigation to establish the facts of the case before proceeding to the disciplinary hearing. The JNC believes that, for chief executives, this should be carried out by an Independent Investigator. He / she should operate on the basis of an independent investigation using his / her powers to access information and interview witnesses.

Once appointed it will be the responsibility of the Independent Investigator to investigate the issue / allegation and to prepare a report stating in his/her opinion whether (and, if so, the extent to which) the evidence he / she has obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and recommending any disciplinary action (if any is appropriate) or range of actions which appear to him / her to be appropriate for the authority to take against the chief executive.

7. The Independent investigation – (guidance)

7.1 Resources

7.1.1 The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, the Independent Investigator could decide to delegate some of the investigation work to an assistant. This should be agreed with the IDC and the chief executive should be informed. If the work is delegated to someone else outside of the authority this might also require further discussion on any difference in the terms of remuneration for the assistant to the Independent Investigator

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7.2 Function of Independent Investigator

7.2.1 Once appointed it will be the responsibility of the Independent Investigator to investigate the issue / allegation and to prepare a report:

- stating in his / her opinion whether (and, if so, the extent to which) the evidence he / she has obtained supports any allegation of misconduct or other issue under investigation; and
- to recommend any disciplinary action (if any is appropriate) or range of actions which appear to him / her to be appropriate for the authority to take against the chief executive.

7.2.2 Before finalising the report, the Independent Investigator should consider whether they should check the factual content of the report with the Chief Executive and other witnesses as appropriate.

7.3 Confidential contact at authority

7.3.1 Although the Independent Investigator has a degree of independence, it is advisable to agree some protocols for his / her investigation in order that disruption to the council's work is kept to a minimum at what can be a difficult time. The Independent Investigator will also require agreed contact and reporting arrangements with the parties. It is recommended therefore that the council designates an officer ('the Administering Officer') to administer the arrangements.

7.3.2 During the investigation the Independent Investigator will as a matter of principle make every attempt to ensure the appropriate confidentiality of any information obtained and discussed.

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

The Administering Officer should ensure that the Chief Executive receives the Independent Investigator's report simultaneously with the IDC.

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

Having considered any other associated factors, the IDC may:

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

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

8.1 Report of the Independent Investigator

8.1.1 The report of the Independent Investigator is made to the IDC which will have delegated powers from the authority to receive the report and recommend dismissal to the council or decide on any appropriate lesser disciplinary sanction. Unless the chief executive is exonerated by the report then at this stage the chief executive should be given the opportunity to state his/her case before the committee makes its decision.

8.1.2 The IDC should hold a hearing, at which the Independent Investigator will present his / her report and both the Council and the Chief Executive will have the right to question the Independent Investigator and to call and question

each other's witnesses. The IDC hearing should be conducted in accordance with the ACAS Code of Practice.

8.2 New material evidence

Where there is, at this stage, new evidence produced which is material to the allegation / issue and may alter the outcome, the IDC may:

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

8.3 Recommendations by the Independent Investigator – outcomes or options

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

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

8.4 Decision by the IDC

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

9. Action short of dismissal – (procedure)

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

9. Action short of dismissal – (guidance)

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

9.2 Where the decision taken by the IDC is action short of dismissal, the action will be taken by the Committee itself. There is no requirement to seek confirmation by the council (or in authorities operating Mayor and cabinet or leader and cabinet executives, checking to see whether there are any objections raised by

members of the executive). The constitution of the IDC will need to include the delegated power to take disciplinary action in these circumstances.

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

10. Where dismissal is proposed – (procedure)

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

Executive constitutions only

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

Executive objections procedure

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

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

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

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

The IDC will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, then the IDC will consider the impact of the executive objections on its recommendation for dismissal, commission further investigation by the Independent Investigator and report if required, etc.

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

Non-executive administration

In local authorities with no executive and therefore operating a committee system, the IDC will inform the chief executive of the decision and put that proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material.

The role of the Independent Panel

Where the IDC is recommending dismissal, this recommendation needs to go before the Independent Panel. This is not a full re-hearing of the case and will not involve the calling of witnesses.

Appropriate training has been devised by the JNC, and should be offered to members of the Panel. If practicable, the Independent Panel should be serviced and supported by officers who have not attended meetings of the IDC.

Both parties should be present or represented (the IDC might be represented by its Chair or other nominated person) at the Panel meeting.

The Panel should hear the reasons for the IDC's recommendation and also receive any oral representations from the Chief Executive, in which case it should invite any response on behalf of the IDC to the points made, and may ask questions of either party. The Independent Panel should review the IDC's recommendation for dismissal and prepare a report for Council. This report should contain a clear rationale if the Panel disagrees with the recommendation to dismiss.

The role of the Council

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

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

Where the Independent Panel does not endorse the recommendation of the IDC, the Chair of the Independent Panel should be invited to attend and present the report of the Panel and to answer questions,

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

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

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

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

10. Where the IDC recommends dismissal – *(guidance)*

10.1 Where the Committee recommends dismissal, the Regulations require that the council must approve the dismissal before notice of dismissal is issued. Additionally, in councils that operate with either a Mayor and cabinet executive or a leader and cabinet executive, notice of dismissal must not be issued until an opportunity has been given to members of the executive to object to the dismissal.

10.2 Executive objections procedure

10.2.1 The executive objections procedure set out in the Model Procedure reflects the requirements of the Standing Orders Regulations (see Schedule 1, Part 1 (Mayor and cabinet executive), Paragraph 6 and Part 2 (leader and cabinet executive), Paragraph 6).

10.2.2 The Proper Officer, as required under the Regulations, should notify members of the executive of the proposal to dismiss, providing relevant information and the timescale during which any material and well-founded objections should be made.

10.2.3 It will also be appropriate for the Proper Officer to explain that in order for an objection to be considered material and well-founded, the objection would need to be not only based on evidence (well-founded) but must also be relevant to the case (material).

10.2.4 Given that the Model Procedure has been followed it would be unusual for a member of the executive to be in a position to raise an objection that would be sufficient to change the outcome significantly. However, this may be the case.

10.2.5 It is for the IDC to decide whether any objections put forward by members of the executive are material and well-founded. If they are, then the Committee will need to consider the effect of the objection and act accordingly. For example, this may require further investigation.

10.3 The role of the Independent Panel

10.3.1 The Regulations require that the Independent Panel must be appointed at least 20 working days before the meeting of the council at which the recommendation for dismissal is to be considered. The JNC recommends that timings of the meetings of the Independent Panel and of the Council should be set far enough apart so as to ensure that the Panel can perform its role

thoroughly, including to produce a report which can be circulated to council members five working days before the Council meeting.

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

10.3.2a To facilitate the independence of the Panel, its meeting(s), if practicable, should be serviced and attended by officers who have not been involved in the meetings of the IDC (if necessary, being drawn from another authority). Also, the agenda for the Panel meeting, and any papers other than those referred to in paragraph 10.3.3, should if possible be agreed between the council and the chief executive.

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

10.3.4 The Panel should then formulate any advice, views or recommendations it wishes to present to the council. If the Panel is recommending any course of action other than that the council should approve the recommendation for dismissal, then it should give clear reasons for its point of view.

10.4 The role of the Council

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

10.4.1a The Council meeting serves two purposes:

- To consider whether to approve the IDC recommendation to dismiss
- To act as the appeal mechanism against a dismissal decision (see Section 11)

10.4.1b There may be a question whether members with previous involvement should take part in the Council deliberations. This involvement might be as:

- Complainant
- Member of the IDC
- Witness in the investigation and / or hearing
- Member offering public comments on the ongoing disciplinary process

In view of the need for the council to ensure a fair decision-making process, it will need to consider whether members already involved in these, or other, ways should take part in the council meeting having regard to whether their participation in the meeting would give rise to unlawful decision-making or maladministration, due to predetermination or bias. Whether that is the case will depend on the circumstances of each case. However, where a member has been involved as a material witness or in the formulation or bringing of charges, it is more likely that there will be circumstances of predetermination or bias. Conversely, if a member's role in an investigation, or other preliminary stage is more limited and indicates their mind is not closed on the issue then it is less likely that such circumstances will exist. It is also recognised that in broader council governance terms, a council's standing orders or other constitutional documents may contain provisions relevant to this issue.

10.4.1c It is common for disciplinary proceedings to be conducted in meetings from which the public have been excluded, and this practice is commended for council meetings considering the exercise of the function to dismiss the chief executive under the Regulations.

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

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

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

11. Appeals – (procedure)

Appeals against dismissal

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

Appeals against action short of dismissal

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

The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.

The decision of the Appeals Committee will be final.

11. Appeals – (guidance)

11.1 Appeals against dismissal

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

11.1.2 As the Standing Orders Regulations require that the council approves the recommendation for dismissal before notice of dismissal is issued, there might be concern about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss. The Model Procedure therefore envisages that the principal decision to propose dismissal is taken by the IDC and the council meeting fulfils the necessary requirement for an additional level of decision making necessary to demonstrate an effective appeal. Before the council takes a decision on the recommendation to dismiss the chief executive it will hear representations from the chief executive. Those representations will constitute the appeals process.

11.2 Appeals against action short of dismissal

11.2.1 Appeals against disciplinary sanctions imposed by the IDC short of dismissal will be heard by the Appeals Committee. The appeal hearing will take the form of a review of the case and the disciplinary sanctions applied by the IDC.

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

B. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE - WALES

1. Issues requiring investigation – (procedure)

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

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

1. Issues requiring investigation – (guidance)

1.1 The Local Authorities (Standing Orders) (Wales) Regulations 2006

1.1.1 The Local Authorities (Standing Orders) (Wales) Regulations 2006 (Regulation 8, and Schedule 4) require that no disciplinary action be taken against the chief executive other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). The definition of disciplinary action (Interpretation, Regulation 2) is wide.

1.1.2 Disciplinary action: in relation to a member of staff of a relevant authority (county council or county borough council) means 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.

This definition would therefore include other reasons for dismissal such as capability or some other substantial reason including a breakdown in trust & confidence between the chief executive and the authority.

1.1.3 Therefore, although the definition refers to disciplinary action, it clearly requires that any action that could lead to a warning for misconduct or where there are circumstances which may result in a proposal for dismissal for any reason other than the following be covered by the process:

- Redundancy;
- Expiry of a fixed term contract;
- Retirement or termination on permanent ill-health grounds.

1.1.4 The attached **Appendix 5d** sets out those circumstances that could potentially result in dismissal and whether or not they are covered by this procedure.

1.2 Structures to manage the procedure

1.2.1 A key feature of the Model Procedure is the specific roles envisaged by the IDC, the Appeals Committee and the council. Authorities will need to consider a number of important issues around the composition of committees and the delegation of appropriate powers. In particular, it must be borne in mind that the appointment and dismissal of staff are non-executive functions. Therefore, these bodies have to be put in place by the council not the leader / Mayor or executive.

1.2.2 The Welsh regulations require (Regulation 9 (1)) that when it appears that an allegation of misconduct which may lead to disciplinary action has been made against the head of paid service (chief executive) the authority must appoint a committee ("an investigation committee") to consider the alleged misconduct. In this model the JNC envisages that for practical reasons, not explicitly set out in the regulations, this committee will have a wider function than performing only the initial investigation. For example, it will also receive the report of the Designated Independent Person, may make recommendations to full council, may take disciplinary action itself in some circumstances (in accordance with the regulations) and have a number of other functions such as powers to suspend the chief executive and appoint a Designated Independent Person, etc. It is therefore referred to throughout as the Investigating and Disciplinary Committee (IDC) (It does not matter what the committee is called locally, and it could for example perform other local functions. The important feature is that it has appropriate powers and resources to perform its role and responsibilities). It is also envisaged and strongly advised that authorities should have a standing committee rather than attempt to set one up only when an allegation arises. The IDC must be a politically balanced committee comprising a minimum of three members (Regulation 9 (2)) although an authority might wish to have a larger committee, particularly if this is necessary to achieve political balance. Where authorities operate a leader / cabinet or mayor / cabinet executive structure, this must include one member of the executive but not more than half of the members of the committee are to be members of the executive. This Committee may need to be in a position to take decisions and appropriate actions as a matter of urgency. It may need to meet at very short notice to consider allegations and decide whether there is a case to answer and to consider whether suspension of the chief executive might be appropriate. It is also possible that in some circumstances members of the committee may find themselves in a position where they have a conflict of interest. It is therefore recommended that authorities take this into account when constructing the committee and its powers, including the quorum and substitutes. The role of the IDC is explained further at appropriate stages in the guidance.

1.2.3 The Appeals Committee is not stipulated in the Standing Orders Regulations but again has a practical purpose in relation to the procedure. Again it must be a politically balanced committee and it is strongly recommended that it be a standing committee. The number of members is not specified but it is

suggested, as with the IDC that there is a minimum of three members but that an authority might wish to have a larger committee. The members of the Appeals Committee should not be members of the IDC. Where authorities operate an executive structure, this must include one member of the executive but not more than half of the members of the committee are to be members of the executive. The Appeals Committee will have a more limited role. Its purpose will be to hear appeals against disciplinary sanctions short of dismissal and to take a decision either to confirm the action or to award no sanction or a lesser sanction.

1.3 Managing access to the Model Procedure (see also paragraph 5.1)

1.3.1 The Model Procedure itself does not require that every single issue which implies some fault or potential error on the part of the Chief executive be investigated using this process. It is for the authority to decide the issues that will engage the Model Procedure.

1.3.2 Authorities will therefore need to consider what constitutes an 'allegation' made relating to the conduct or capability of the Chief executive and what it considers are other substantial issues requiring investigation. Clearly the route for complaints against the council and the chief executive and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied. Ideally, procedures need to be in place which can filter out and deal with 'allegations' against the chief executive which are clearly unfounded, or trivial or can best be dealt with under some other procedure.

1.3.3 For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the council's general complaints procedure. If the matter is a grievance from a member of staff directed against the chief executive, it may be appropriate to first deal with it through the Grievance Procedure. Of course, if the matter were a serious complaint against the chief executive's personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the Model Disciplinary Procedure.

1.3.3a In some circumstances, the Council may consider that in order to clarify whether there is any substance to the allegation or complaint, preliminary initial inquiries should be undertaken before the Model Procedure is invoked. This would be particularly appropriate where the matter has been raised under another procedure such as a grievance and is not itself a disciplinary complaint. To enable this process to happen, the Council should nominate an officer, who would most appropriately be the Council's Monitoring Officer, to manage this filtering process.

1.3.4 An authority will need to put into place arrangements that can manage the process. In particular, records should be kept of allegations and investigations and there should be a clear route into the Model Disciplinary Procedure. It could be, for example, that in the case of allegations against the chief executive, the monitoring officer, and the Chair of the IDC would oversee

referrals to that Committee. Alternatively, some authorities might prefer that the role were performed by the HR Director.

1.3.5 Where the issue to be investigated is related to the sickness absence or capability of the chief executive in terms of performance, there is likely to be a link with the authority's sickness procedure and appraisal / performance management procedure.

1.3.6 Where management action is required in respect of the normal sickness of the chief executive, the authority needs to be clear about who takes appropriate actions. Initially, it could be the normal management team of elected members or Director of HR (according to local procedures) who will follow the authority's normal sickness absence procedures. Whoever is responsible will report to the IDC as appropriate to the matter being investigated – in particular where procedures have been followed to the point where dismissal appears to be a possibility (see flow diagrams **Appendices W5a, 5b and 5c**).

1.3.7 Any shortcomings in a chief executive's performance can be better identified, and therefore remedied, at an early stage if there is an objective performance appraisal system in place as required by the JNC agreement (see **Appendix 2**). For a chief executive the system is likely to be linked to objectives in the authority's Corporate Plan, or equivalent, and the performance objectives should be specific, measurable, achievable, realistic, and time-related. It may, but will not necessarily, be the system against which pay progression is measured (see **Appendix 5c**).

2. Timescales – (procedure)

It is in the interests of all parties that proceedings be conducted expeditiously. It is recognised that it would be inappropriate to impose timescales that in practical terms could be difficult to achieve.

2. Timescales – (guidance)

2.1 An important principle when taking disciplinary action is that the process should be conducted expeditiously but fairly. There is, therefore, a need to conduct investigations with appropriate thoroughness, to arrange hearings and allow for representation. It is not in the interests of the council, or the chief executive, that proceedings are allowed to drag on without making progress towards a conclusion.

2.2 Statutory and indicative timescales

The procedure does not set out explicit timescales except those specifically referred to in the Local Authorities (Standing Orders) (Wales) Regulations 2006 (as amended). In this guidance we also make reference to other statutory timescales and restrictions which are applicable to disciplinary procedures more generally, such as those contained in the Employment Relations Act 1999 (in connection with the right to be accompanied).

2.3 Avoiding delays in the procedure

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

2.3.1 Availability of the Designated Independent Person (DIP) (see paragraph 6)

(a) The Local Authority (Standing Orders) (Wales) Regulations 2006 require that the Designated Independent Person must be agreed between the council and the chief executive within 1 month of the date on which the requirement to appoint the Designated Independent Person arose otherwise a Designated Independent Person will be nominated by Welsh Ministers for formal appointment by the council. The practicalities of discussing and agreeing on the DIP is a matter which could be delegated to an appropriate officer, eg, Monitoring Officer of HR Director.

(b) There is no provision in the Regulations on the amount of the fee to be paid to the DIP for their work. However, the Regulations do provide that the authority must pay reasonable remuneration to the DIP, including any reasonable costs.

(c) Where a decision has been taken to appoint a DIP it is important that the authority move quickly to achieve this to adhere to the timescale set out in the regulations in (a) above but also due to the two-month time limit on suspension, this is also particularly important where the chief executive has been suspended.

(d) The regulations provide that it is the committee's responsibility to appoint the Designated Independent Person. This would include agreeing the terms of remuneration and working methods for the Designated Independent Person.

(e) The JNC Joint Secretaries maintain a list of individuals who have the necessary knowledge and experience of local government issues to act at this level and in this capacity. The list is intended to provide a resource to local authorities. It also provides a way to help avoid unnecessary delays.

2.3.2 Availability of the chief executive in case of sickness

(a) It is possible that the sickness of the chief executive could impact on the ability to continue the disciplinary procedure. This may be because:

- the issue under investigation is the chief executive's sickness in itself (i.e. a capability issue); or alternatively
- while during an investigation for another reason such as allegations about the chief executive's conduct, the chief executive commences sickness absence during the disciplinary process

(b) In principle, the sickness of the chief executive will invoke the local authority's normal sickness procedures. The nature of the investigation and facts surrounding the sickness will dictate the appropriate way of dealing with the issue.

(c) If the investigation is about the long-term sickness or frequent ill-health problems experienced by the chief executive the authority should have already obtained appropriate medical information and advice by following its local processes which would normally include referral to the authority's occupational health adviser who would examine the chief executive and / or seek further medical information from the chief executive's GP or any specialist dealing with the case. However, the IDC or Designated Independent Person may feel the need for further or more up-to-date advice and again they should use the authority's normal processes and procedures to obtain this. If the chief executive's absence or problems at work are as a result of a disability which places him / her at a substantial disadvantage compared to others without the disability, then the authority must consider and undertake reasonable adjustments in order to remove the disadvantage. The IDC must satisfy itself that this has been fully considered and that no further reasonable adjustments could be made which would remedy the situation.

(d) Where the issue under investigation is not health-related and is e.g. about the conduct of the chief executive and the chief executive then commences sickness absence then the approach will depend on the type and length of the illness and exactly when it occurs during the process.

(e) A short period of illness should not normally create a major problem although the timing of the illness can create difficulties if it coincides with scheduled meetings for investigating or hearing aspects of the case. If this occurs then reasonable efforts should be made to rearrange the meeting. However, if the sickness becomes more persistent or is likely to become longer term then the authority will take steps to identify whether the chief executive, although possibly not fit to perform the full range of duties, is fit enough to take part in the investigation or disciplinary hearing.

(f) If it appears that there will be a long period of ill health which will prevent the chief executive taking part in the process, the authority and possibly the DIP will have to make a judgement as to how long to wait before proceeding. In some cases, it may be appropriate to wait a little longer where a prognosis indicates a likely return within a reasonable timescale.

(g) However, where this is not the case, the authority will in most cases need to press ahead given the importance of resolving issues which can have a significant impact on both parties due to the nature and high profile of the role of chief executive. If this is the case the authority should ensure that the chief executive is given the opportunity to attend any meetings or hearings. However, the chief executive should be informed that if they cannot attend the meetings or hearings then they would proceed without them. If this is the case the chief executive may make written submissions to be considered and may also send their representative to speak on their behalf before a decision is taken.

2.3.3 Availability of representative

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

2.3.4 Availability of witnesses

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

2.3.5 Availability of committee members

(a) It is recommended that, in addition to the requirements set out in **paragraphs 1.22 and 1.23** in establishing the IDC and the Appeals Committee, authorities take availability issues into account and any operational quorum when considering the numbers of members to serve on these committees.

(b) It should be particularly borne in mind that the IDC might need to meet at short notice to consider serious allegations against the chief executive.

3. Suspension – (procedure)

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

However, the IDC will need to consider whether it is appropriate to suspend the chief executive. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the chief executive might compromise the investigation or impair the efficient exercise of the council's functions.

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

The JNC recognises that on rare occasions circumstances could arise which require an immediate suspension before the IDC has a reasonable opportunity to meet, for example if the allegations of misconduct are such that the chief executive's remaining presence at work poses a serious risk to the health and safety of others or the resources, confidential information or reputation of the authority. To account for this, the authority should consider and put in place the necessary protocols to facilitate an emergency suspension, subject to the suspension being reviewed by the IDC at the earliest opportunity.

The continuance of any suspension should be reviewed after it has been in place for two months and periodically thereafter as appropriate.

3. Suspension – (guidance)

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

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

3.3 Alternatives to suspension

Suspension will not be appropriate in every case, as this will depend on the nature of the allegation or seriousness of the issue. Before suspending the chief executive, careful consideration should be given to whether it is necessary and whether there are any other suitable alternative ways of

managing the situation, for example by agreeing particular working arrangements such as working from home for a period or working in some other way that protects the chief executive and authority from further allegations of a similar nature.

3.4 Power to suspend

(a) The chief executive is the head of paid service and normally bears the delegated responsibility for implementing council policy on staffing matters. However, when it is the chief executive who is the subject of an allegation or investigation, the authority will need to be clear about who has the power to suspend the chief executive and in what circumstances.

(b) The point at which it may become clear that suspension is an appropriate action is likely to be at the stage where the IDC has conducted its initial assessment. The Model Procedure therefore provides for that Committee to have the power to suspend the chief executive.

3.5 Short notice suspension

It remains preferable that the decision to suspend is taken by the IDC after consideration of the allegation. However, the Model Procedure also recognises that in exceptional circumstances it may be necessary to suspend at very short notice and before the IDC can meet, e.g. because the remaining presence of the chief executive could be a serious danger to the health and safety of others, or a serious risk to the resources, confidential information or reputation of the authority. It may also be necessary if the continuing presence at work of the chief executive might compromise the investigation or impair the efficient exercise of the council's functions.

The Council should have in place a formal arrangement setting out which individual or individuals would hold the authority to suspend in such exceptional circumstances and to establish any associated protocols. It might be possible for a smaller sub-committee to meet more quickly but alternatively this task may fall to an officer. Ordinarily, given their role in relation to propriety and lawful actions of the authority, the JNC would expect the council's Monitoring Officer to be a suitable person to make such a decision after consultation with, for example, the Chair of the IDC.

However, there may be rare cases in which both the Chief Executive and Monitoring Officer (and sometimes other senior managers) have been implicated in disciplinary investigations at the same time, so, for purely pragmatic reasons, the Council should consider whether its arrangements also include other suitable individuals.

Any decision to suspend at short notice should be confirmed by the IDC (or other appropriate Committee) at the earliest possible opportunity.

3.6 Suspension protocols

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

3.7 Time limits on suspension

(a) Where the chief executive is suspended The Local Authorities (Standing Orders) (Wales) Regulations 2006 (Regulation 8, Schedule 4) specify that any suspension for the purposes of investigating the allegation must be on full pay and terminate no later than 2 months from the day the suspension takes effect. This period can be extended by the Designated Independent Person who also has the power to vary the terms on which any suspension has taken place.

(b) Where a chief executive is suspended and it is decided that a Designated Independent Person shall be appointed, the authority must look to a speedy appointment. It is not always easy to identify and agree terms with a Designated Independent Person and any delay in commencing the process could create the danger that the 2-month period may expire before a DIP is in place. The regulations indicate that the chief executive would then be entitled to return to work. If such a situation arises it would be preferable to try to reach an agreement with the chief executive on an alternative to them returning to the office until the Designated Independent Person has been appointed.

4. Right to be accompanied – (procedure)

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

4. Right to be accompanied – (guidance)

4.1 Although the statutory right to be accompanied applies only at a disciplinary hearing, the JNC Model Procedure provides for the chief executive to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost.

4.2 The Model Procedure recognises that there may be, in exceptional circumstances, a need to suspend the chief executive at short notice, when it is not possible to arrange for their trade union representative to be present. These circumstances might include for example where there is a serious risk to the health and safety of others or serious risk to the resources, information, or reputation of the authority.

4.3 Although it would be beneficial to agree dates for the necessary meetings required, the Procedure cannot drag on owing to the unavailability of a representative. The statutory right to be accompanied in a disciplinary hearing contained in s.10 of the Employment Relations Act 1999 applies only to hearings where disciplinary action might be taken or be confirmed. That is to say when a decision may be taken on the sanction or a decision may be confirmed during an appeal. In this model procedure the statutory entitlement to be accompanied would arise:

- where the IDC considers the report of the Designated Independent Person and provides the chief executive with the opportunity to state their case before making its decision
- during any appeal against a decision made by the IDC
- At a council meeting considering a proposal for dismissal and also fulfilling the requirement relating to a right of appeal

4.4 At these important stages (IDC receiving the report of the DIP and any appeal against the decision taken by that Committee), if the chief executive's trade union representative is unavailable for the date set then the chief executive will have the right under the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week.

4.5 If the representative is unable to attend within that period the authority will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

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

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

The chief executive will be invited to put forward written representations and any evidence including evidence from witnesses he / she wishes the IDC to consider.

The IDC will also provide the opportunity for the chief executive to make oral representations.

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

The IDC shall decide whether:

- the issue requires no further formal action under this procedure; or
- the issue should be referred to a Designated Independent Person.

The IDC shall inform the chief executive of its decision.

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

5.1 The range of issues and to some extent the seriousness of the issues, which come before the IDC, will depend on the result of the initial filter that the council adopts. Issues such as those relating to sickness absence and performance are likely to arise at the IDC having followed the authority's sickness absence or performance management / appraisal procedures (see **paragraph 1.3**).

5.2 It is possible in some cases that with some minimal investigation the IDC can dismiss the allegation without even the need to meet with the chief executive. However, the Model Procedure deals with situations where the matter is not so easily dismissed. It therefore provides a process whereby the chief executive is made aware of the allegations and provided with the opportunity to challenge the allegations or to make their response. The IDC has a number of specific powers. It:

(a) may make such enquiries of the chief executive or any other person it considers appropriate

(b) may request the chief executive or any other person it considers appropriate to provide it with such information, explanation or documents as it considers necessary within a specified time limit, and

(c) may receive written or oral representations from the chief executive or any other person it considers appropriate

5.3 When an issue comes before the IDC it needs to make a judgement as to whether the allegation can be dismissed or whether it requires more detailed investigation by a Designated Independent Person (DIP). The regulations (Reg 9 (2)) require that the Committee must make its decision within 1 month of its appointment to consider the allegation. As the procedure envisages a standing committee in place to consider allegations we believe that the 1 month period would begin to run from the date that the 'allegation' was put to the Committee for consideration.

5.4 The appointment of a Designated Independent Person is a serious step but does not mean that the chief executive is guilty of any misdemeanour. In some cases, the outcome of the investigation will be to absolve the chief executive of any fault or wrongdoing. The appointment of a Designated Independent Person operates independently so that both the authority and the chief executive can see that matters are dealt with fairly and openly. However, the matter still needs to be handled carefully in public relations terms due to the potential damage to the reputation of the chief executive or the local authority.

5.4.1 Threshold test for the appointment of a DIP

Cases will vary in complexity but the threshold test for the IDC in deciding whether to appoint a Designated Independent Person is to consider the allegation or matter and assess whether:

- if it were to be proved through an independent investigation, it would be such as to lead to the dismissal or other action which would be recorded on the chief executive's personal file; and
- there is evidence in support of the allegation sufficient to require further investigation.

5.4.2 Conducting the initial IDC Investigation

(a) It is intended that the initial assessment as to whether the 'threshold test' has been met is conducted by the IDC as expeditiously as possible with due regard to the facts of the case. At this stage it is not a fully detailed investigation of every aspect of the case as that will be the responsibility of the Designated Independent Person (if appointed). However, it is important that before any decision is taken to appoint a Designated Independent Person the chief executive is aware of the allegations that have been made against him / her (or the issue to be addressed) and given the opportunity to respond.

(b) This will be achieved by:

- The IDC writing to the chief executive setting out the allegations / issues and providing any evidence to be considered.
- Providing the opportunity for the chief executive to respond to the allegations in writing and to provide personal evidence or witness evidence.

- Providing the opportunity for the chief executive to appear before the IDC and to call witnesses.

(c) Fair notice should be given to enable the chief executive adequate time to prepare an initial response to the allegations or issues under investigation. During the initial assessment by the IDC, the chief executive is entitled to attend and can be accompanied by a representative (subject to **paragraph 2.3.3** and **paragraph 4**).

(d) Having assessed the available evidence and in the light of the chief executive's initial response to the matter the IDC must then decide whether the 'threshold test' has been met. If that is the outcome the IDC must then arrange for the appointment of a Designated Independent Person.

5.4.3 Treatment of witness evidence

In general, if the authority has witness evidence relating to an allegation this should be presented to the chief executive, although in exceptional cases it might be appropriate to anonymise the evidence in order to protect the identity of a witness. However, it remains important that the detail of the allegation is put to the chief executive in order that he / she understands the case against him / her.

5.4.4 Conflicts of interest

(a) The model procedure envisages, and it is strongly recommended that the authority take steps to establish, a standing IDC. **Paragraph 1.2.2** indicates the basic rules concerning its membership. However, because a standing committee will comprise named councillors, there may be occasions when this presents problems of conflict of interest, for example where a member of the committee is a witness to an alleged event or is the person who makes the original complaint or allegation. Councillors in this position should take no part in the role of the Committee, although they will of course be able to give evidence, if required. The authority should attempt to construct its Committees, established quorums, and substitution rules in order to minimise the likelihood of an individual conflict of interest delaying the procedure. Where a number of members find themselves in a prejudiced position, there may be no alternative but for the council to establish a new Committee to perform the function of the IDC.

(b) Declarations of interest are matters for individual councillors who are required to follow the authority's Code of Conduct for Members and can seek advice from their Monitoring Officer or Standards Committee. The efficient management of the process could be compromised if the chief executive considers there are valid grounds for making a formal complaint to the Public Services Ombudsman for Wales about the involvement of a councillor in a case.

5.4.5 Maintaining the fairness and integrity of the procedure

Where there is a matter that requires investigation, it is important that a fair and correct procedure is followed. Allegations against the chief executive or serious issues that require resolution should follow the Model Procedure. It is important that councillors do not undermine the fairness of the procedure by for example putting motions to full council about the case as there is a serious risk that it could prejudice the disciplinary procedure. Similarly, it is important that councillors do not engage in public discussion of the disciplinary action while the investigation and other elements of the process are under way. Additionally, such actions will not only create adverse publicity for the authority and the chief executive but may create conflicts of interest and could limit the role that those councillors can then take as the case progresses.

5.4.6 Other appropriate actions

(a) It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of the chief executive, or some other substantial issue, the IDC might be in a position to consider alternatives to immediately moving to the appointment of a Designated Independent Person or alternatively to dismiss the allegation or issue.

(b) Clearly this will depend on the facts of the matters being investigated. It could be that the authority has another more appropriate policy or procedure to follow. Alternatively, it could be that the issue is one which might benefit from some mediation or attempts to resolve the particular issue in dispute prior to moving to appointing a Designated Independent Person.

(c) It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships are breaking down but there is no evidence of misconduct on the part of the chief executive. The Joint Secretaries could be available to assist (see **Appendix 4**).

(d) If any financial settlements are considered, it is important that such an arrangement: falls within current regulations governing such matters.

(e) The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 are designed to enable a local authority to compensate employees whose employment terminates on grounds of redundancy or in the interests of the efficient exercise of the authority's functions. It is therefore possible that a payment will be legitimate in certain circumstances. However, where there is an obvious case requiring disciplinary action and the allegation is such that dismissal is a likely outcome, it is not likely that a District Auditor will sanction a deal under the current regulations.

(f) The authority must take appropriate legal advice when attempting to reach a financial settlement to ensure that any payment is justified. Relevant considerations will include the likelihood of the claim succeeding and the

amount of compensation that could be awarded by a Court or an Employment Tribunal.

5.4.7 Power to agree financial settlements

There needs to be clarity about who has authority to negotiate and/or agree a settlement. Generally, unless the authority wishes all decisions to be taken by full council, it is important that the authority should have or put in place a delegation to a committee or officer to negotiate and agree any financial settlement. In authorities operating the executive and leader model, non-executive functions cannot be delegated to an individual member or to the executive. Authorities also need to ensure that they comply with relevant legislation and statutory guidance (Pay Accountability within local government) and with any relevant provision in the authority's pay policy statement under section 38 of the 2011 Act.

5.4.8 Access to appropriate professional / independent advice

(a) Conducting an investigation into allegations or serious issues involving the chief executive can be demanding on the individuals involved. The IDC (and the Appeal Committee and council) will have access to the local authority's officers but given the closeness of relationships between the chief executive and the other senior officers this can be a difficult time for those required to advise the Committee, to conduct investigations internally, or to source advice from outside the authority.

(b) The authority should ensure that the IDC has powers to appoint external advisers as appropriate. Useful sources of general advice on the operation of the procedure and assistance with conducting investigations include the Local Government Association by contacting the Employers' Secretary or from the Welsh Local Government Association or ALACE or SOLACE.

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

5.4.9 Ill-health - medical advice

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

5.4.10 Performance

(a) Where the issue is one of capability in terms of performance or competence, other than ill-health, the council will need to be in a position to establish or demonstrate the nature of the concerns. Evidence will be necessary in order to justify a further investigation.

(b) This might come from a variety of sources, e.g. performance appraisal records, inspection reports, etc. Where the council follows an established appraisal / performance management process, this can also provide an appropriate route to establishing issues suitable for referral to the Investigating & Disciplinary Committee (see **Appendix 2**).

5.4.11 Breakdown of trust and confidence

Where the issue is breakdown of trust and confidence, the council will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with the chief executive.

6. Appointment of a Designated Independent Person – (procedure)

The Designated Independent Person must be agreed between the IDC and the chief executive within 1 month of the decision to appoint a DIP. If there is a failure to agree on a suitable Designated Independent Person the council will appoint the person nominated by Welsh Ministers.

Once a Designated Independent Person has been agreed, the IDC will be responsible for making the appointment, providing the necessary facilities, agreeing remuneration and providing all available information about the allegations.

6. Appointment of a Designated Independent Person - (guidance)

6.1 Where a decision has been taken to appoint a Designated Independent Person it is important that the council moves quickly to achieve this. The Regulations provide that the authority and the chief executive must agree on a DIP within 1 month of the decision to appoint one. This may also be particularly important if the chief executive has been suspended because of the two-month time limit on suspension (see **paragraph 2.3.1**).

6.2 The IDC is responsible for appointing the Designated Independent Person. This will include issues such as the terms of remuneration and working methods.

6.2.1 Terms of reference – allegations or issues to be investigated

(a) When appointing the Designated Independent Person it is important that they are provided with terms of reference. The DIP will need to be:

- aware of the precise allegation(s) or issue(s) to be investigated
- provided with access to sources of information and people identified as relevant to the case
- aware of expectations regarding timescales and any known factors which could hinder their investigation, e.g. the availability of key people

(b) The IDC will be responsible for providing this information. It will also be in a position to discuss timescales for the Designated Independent Person's investigation. The Committee must, after consulting the Designated Independent Person, attempt to agree a timetable within which the DIP is to undertake the investigation. Where there is no agreement the DIP must set a timetable which he / she considers appropriate.

6.2.2 Remuneration

(a) There is no provision in the Regulations that stipulates the rate of remuneration to be paid to the Designated Independent Person for their work. However, the Regulations do provide (Regulation 9 (10)) that:

> *'A relevant authority must pay reasonable remuneration to a designated independent person appointed by the investigation committee and any costs incurred by, or in connection with, the discharge of functions under this regulation.'*

(b) This is a fairly broad obligation on local authorities. One issue that has caused delay and failure to appoint in some cases is the issue of providing the Designated Independent Person with an indemnity. Some DIPs may decline to accept the role unless the authority indemnifies them against any future legal costs arising from the role performed. There has been a difference of opinion as to whether the DIP should have insurance in their own right to cover such an eventuality, or whether the council should provide this or indeed whether it has the power to do so. In the opinion of the CLG, at the time of implementation, this issue is to all intents and purposes resolved by the wording of Regulation 9(10), i.e. that the Regulations require the council to bear all of the costs of the DIP incurred by him / her in, or in connection with, the discharge of his / her functions under this Regulation.

7. The Independent Person investigation – (procedure)

The Local Authorities (Standing Orders) (Wales) Regulations 2006 require the Designated Independent Person to investigate and make a report to the council. In this model procedure this would be the IDC. The JNC believes that the Designated Independent Person should operate on the basis of a combination of independent investigation using his / her powers to access information, and a formal hearing, at which the allegations and supporting evidence including evidence provided by witnesses are stated by the authority's representative and the chief executive or his / her representative is able to present his / her case.

Once appointed it will be the responsibility of the Designated Independent Person to investigate the issue / allegation and to prepare a report:

stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and recommending any disciplinary action (if any is appropriate) or range of actions which appear to him / her to be appropriate for the authority to take against the chief executive.

Note: wording above not all in regulations but necessary to deal with other situations resulting in proposals to dismiss

7. The Independent Person investigation – (guidance)

7.1 Resources

The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, the DIP could decide to delegate some of the investigation work to an assistant. This should be agreed with the IDC and the chief executive should be informed. If the work is delegated to someone else outside of the authority this might also require further discussion on any difference in the terms of remuneration for the assistant to the Designated Independent Person.

7.2 Working arrangements

7.2.1 Once appointed it will be the responsibility of the Designated Independent Person to investigate the issue / allegation and to prepare a report:

- stating in his / her opinion whether (and, if so, the extent to which) the evidence he / she has obtained supports any allegation of misconduct or other issue under investigation and
- to recommend any disciplinary action which appears to him / her to be appropriate for the council to take against the head of paid service / chief executive

7.2.2 The IDC must, after consulting the Designated Independent Person, attempt to agree a timetable within which the DIP is to undertake the investigation. Where there is no agreement the DIP must set a timetable which he / she considers appropriate.

7.2.3 The Regulations only require the Designated Independent Person to investigate and report to the council. The methodology should be confirmed with the parties. However, the JNC believes that the Designated Independent Person should operate on the basis of a combination of independent investigation using his / her powers to access information, and a formal hearing, at which details of the allegations and supporting evidence are stated by the authority's representative and where the chief executive is given the opportunity to respond.

7.3 Power to extend suspension

7.3.1 The Regulations provide that suspension of the chief executive for the purposes of investigating the issue should last for no longer than two months.

7.3.2 The DIP does not have the power to suspend the chief executive and neither is his / her permission required in order to suspend the chief executive. However, the Regulations provide that where the authority has suspended the chief executive, the Designated Independent Person has the power to direct:

- that the authority terminates the suspension
- that the suspension should continue beyond the two-month limit
- that the terms on which the suspension has taken place must be varied

7.4 Confidential contact at authority

7.4.1 Although the Designated Independent Person has a degree of independence, it is advisable to agree some protocols for his / her investigation in order that disruption to the council's work is kept to a minimum at what can be a difficult time. The Designated Independent Person will also require agreed contact and reporting arrangements with the parties. It is recommended therefore that the council designates an officer to administer the arrangements.

7.4.2 During the investigation the Designated Independent Person will as a matter of principle, make every attempt to ensure the appropriate confidentiality of any information obtained and discussed.

8. Receipt and consideration of the Designated Independent Person's report by the IDC– (procedure)

The IDC will consider the report of the Designated Independent Person and also give the chief executive the opportunity to state his / her case before making a decision. Having considered any other associated factors, the Committee may:

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

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

8.1 Report of the Designated Independent Person

The requirement is that the Designated Independent Person makes a report to the council and sends a copy to the chief executive simultaneously. In the JNC procedure it is envisaged that the report be made to the IDC which will have delegated powers from the authority to receive the report and take a decision on the outcome. Unless the chief executive is exonerated by the report then at this stage the chief executive should be given the opportunity to state his / her case before the committee makes its decision.

8.2 New material evidence

Where there is, at this stage, new evidence produced which is material to the allegation / issue and may alter the outcome, the IDC may:

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

The way the evidence is taken into account will depend on its nature. The introduction of new evidence in itself cannot be used to justify a more serious sanction than recommended by the Designated Independent Person. If this is a possibility, the Designated Independent Person should review his / her decision taking into account the new evidence.

8.3 Recommendations by the DIP - outcomes or options

8.3.1 The Regulations require the Designated Independent Person to recommend any disciplinary action that appears to be appropriate. At this stage clarity is to be welcomed and a clear reasoned decision is preferable. However, it could

be that there is not one obvious action and it may be that the Designated Independent Person recommends a range of alternative actions. In this case the IDC would need to select the action to be taken.

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

8.4 Decision by the IDC

The Committee is required to take a decision on the basis of the Designated Independent Person's report. It is always open to the Committee to impose a lesser sanction than that recommended but it cannot impose a greater sanction.

9. Action short of dismissal – (procedure)

Where the decision is to take action short of dismissal the IDC will impose the necessary penalty / action, up to the maximum recommended by the Designated Independent Person.

9. Action short of dismissal – (guidance)

Where the decision taken by the Committee is action short of dismissal the action will be taken by the Committee itself. There is no requirement to seek confirmation by the council. The constitution of the IDC will need to include the delegated power to take disciplinary action in these circumstances.

10. Where the IDC proposes dismissal – (procedure)

Where the Committee proposes dismissal, the Regulations require that the council must approve the dismissal before notice of dismissal is issued. The Committee will inform the chief executive of the decision and put that proposal to the council along with any necessary material e.g., the report of the Designated Independent Person.

The role of The Council

The council will consider the proposal from the IDC that the chief executive should be dismissed. The chief executive will have the opportunity to put his or her case to the council before a decision is taken.

10. Where the IDC proposes dismissal – *(guidance)*

Where the Committee proposes dismissal, the Regulations require that the council must approve the dismissal before notice of dismissal is issued.

10.2 Executive objections procedure

10.2.1 Although previous statutory guidance referred to conducting an executive objections procedure in authorities operating leader / cabinet and mayor / cabinet constitutions this is not required.

10.3 The role of The Council

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

10.3.2 Given the thoroughness and independence of the previous stages, in particular, the investigation of the Designated Independent Person it will not be appropriate to undergo a full re-hearing of the case. Instead, consideration by the council will take the form of a review of the case and the recommendation to dismiss.

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

11. Appeals – (procedure)

Appeals against dismissal

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

Appeals against action short of dismissal

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

The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.

The decision of the Appeals Committee will be final.

11. Appeals – *(guidance)*

11.1 Appeals against dismissal

11.1.1 *Discipline and Grievance at Work – The ACAS Guide* requires that an employee who has been dismissed is provided the opportunity to appeal against the decision.

11.1.2 As the Standing Orders Regulations require that the council approves the dismissal before notice of dismissal is issued, there might be some concerns about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss. The model procedure therefore envisages that the council meeting fulfils the requirement for an appeal. Before the council takes a decision on the recommendation to dismiss the chief executive it will take representation from the chief executive. Those representations will constitute the appeals process.

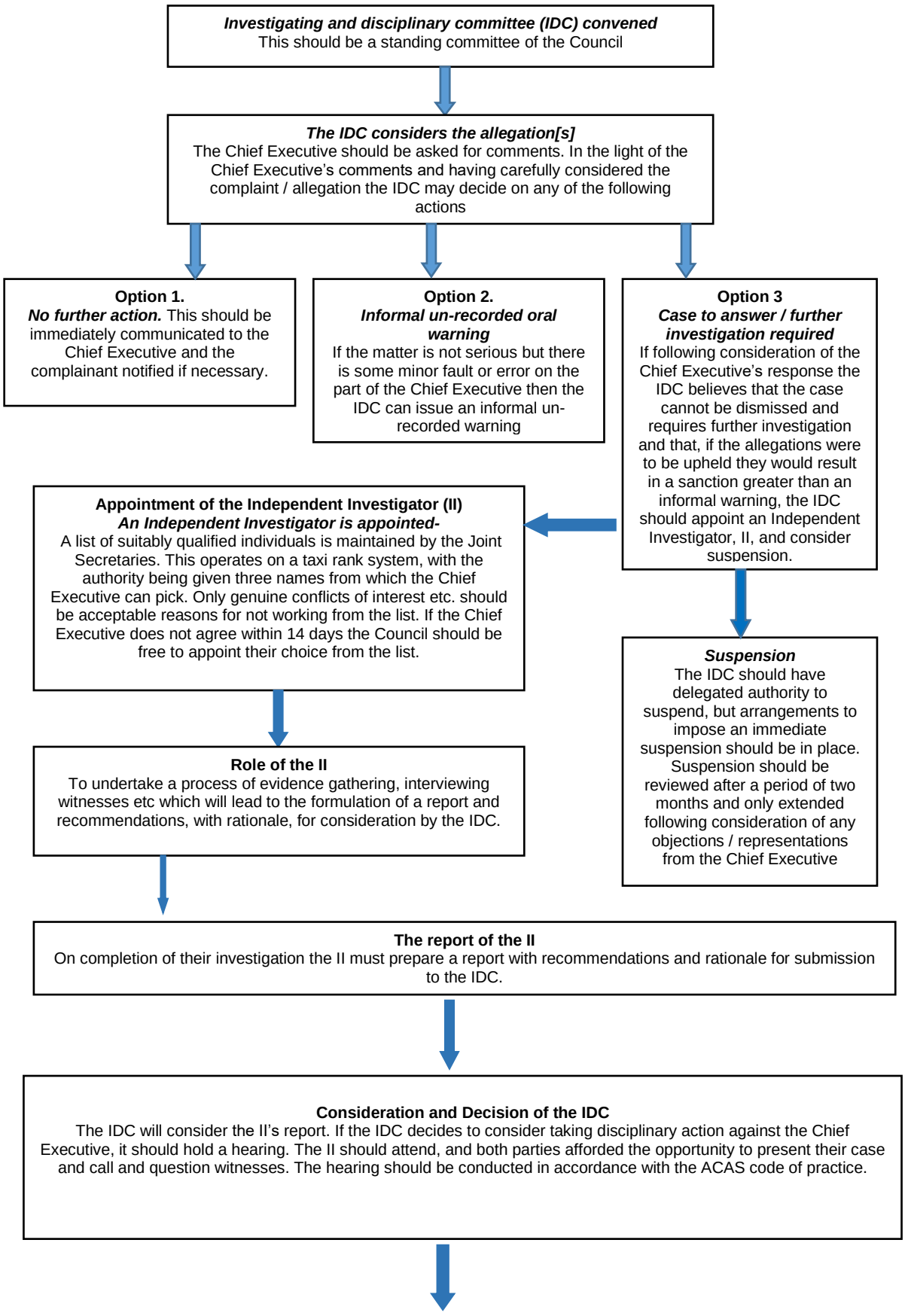
11.2 Appeals against action short of dismissal

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

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

Appendix 5a

ENGLAND ONLY: Disciplinary Procedure for Local Authority Chief Executives



Recommendations of the IDC

Following the hearing of the case the IDC will essentially have three options

1. No case to answer

2. Disciplinary action short of dismissal

3. Dismissal

No case to answer

Appropriate communication should be prepared in agreement with the Chief Executive to ensure that as far as possible there is no damage to the postholder's reputation. The IDC should consider reimbursement of any reasonable expenses incurred by the employee.

Action short of dismissal

A decision to take action short of dismissal should be communicated in writing to the Chf Exec with rationale for the decision. The Chf Exec has the right of appeal to the appeals committee against this decision

Recommendation to dismiss

If there is a recommendation to dismiss, the reports of the IDC and the II should then be sent to Independent Panel (IP) for its consideration. The Chief Executive may make representations to the IP

Composition, role and process of the IP

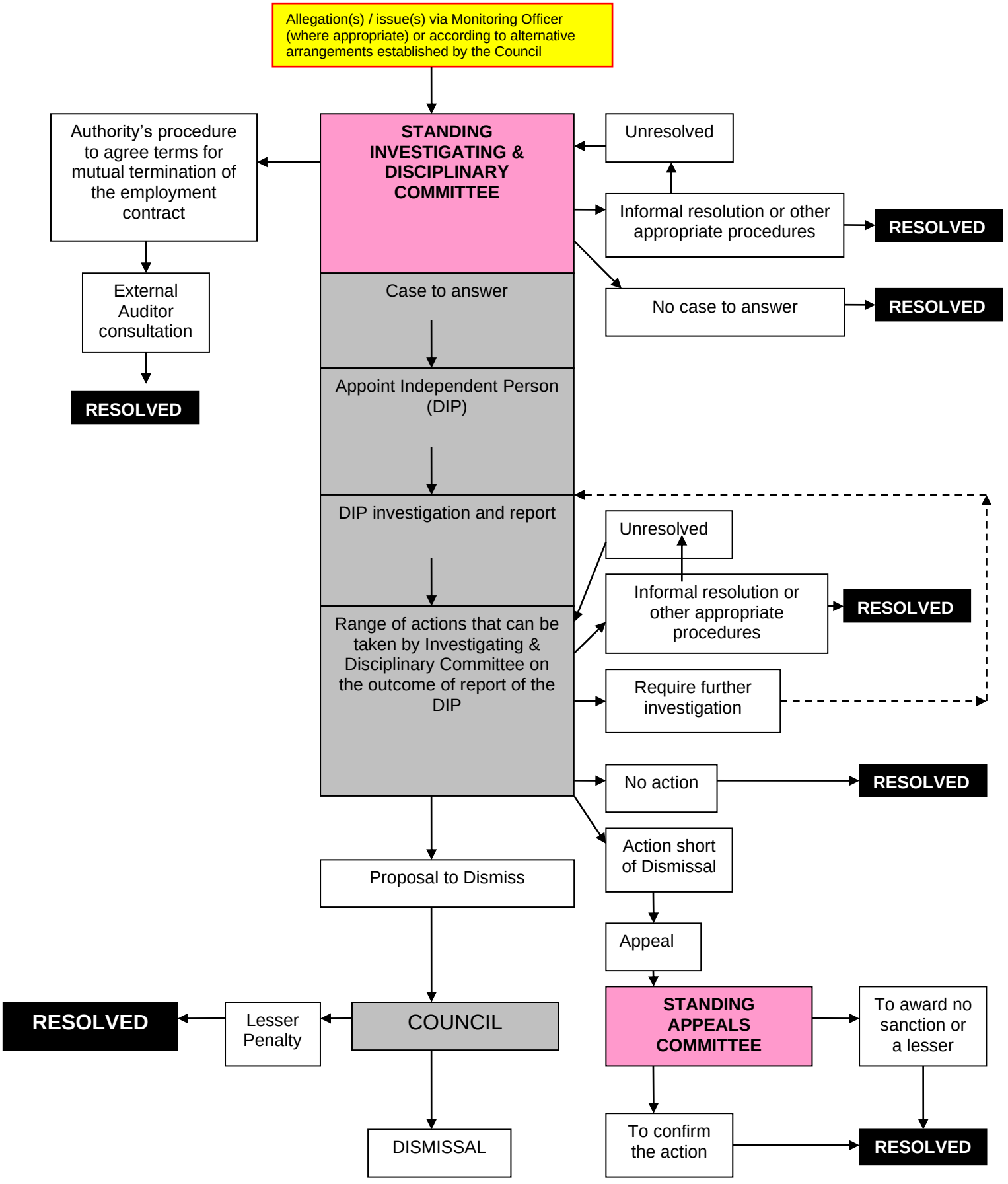
The IP should be a committee of the Council, appointed under section 102(4) of the Local Government Act 1972, and should comprise only independent persons (at least two) appointed under S28(7) of the Localism Act 2011. Appropriate training prepared by the JNC should be provided to these Independent members. The meeting should be serviced by officers who have not previously been involved with the IDC. Both parties should be present or represented* at the meeting. The representative of the IDC should present the reasons for the recommendation to dismiss. The IP should receive any representations from the Chief Executive. Either side (and the IP) may ask questions of either party and of the II. The IP should review the decision and prepare a report for Council. This report should contain clear rationale if the IP disagrees with the recommendation to dismiss.

Report to full Council

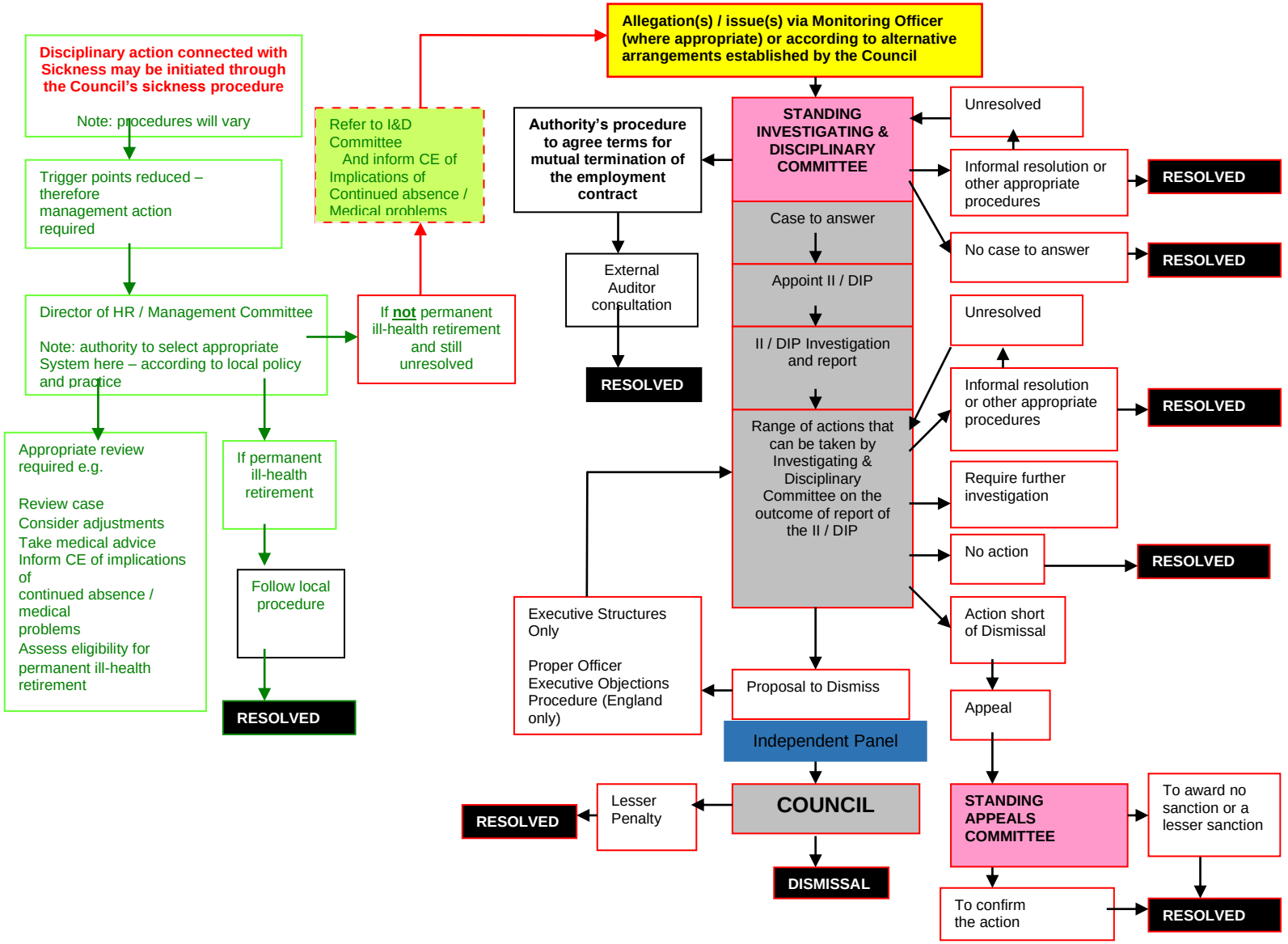
Following consideration by the IP a report should be presented to Council. This report should comprise the recommendation of the IDC, the II's report and any comments on the recommendation for dismissal from the IP. In the light of this information Council should consider the recommendation to dismiss. The Chief Executive should be provided with a right of appeal against the decision and allowed to attend this meeting and address Council. The II may also be invited to attend to provide clarification if required. A representative of the IP should be invited to attend if the IP does not support the recommendation for dismissal. Following this consideration Council should either confirm or reject the recommendation to dismiss. It may at this stage impose a lesser sanction. This stage in the process constitutes the Chief Executive's final right of appeal.

Appendix W5a

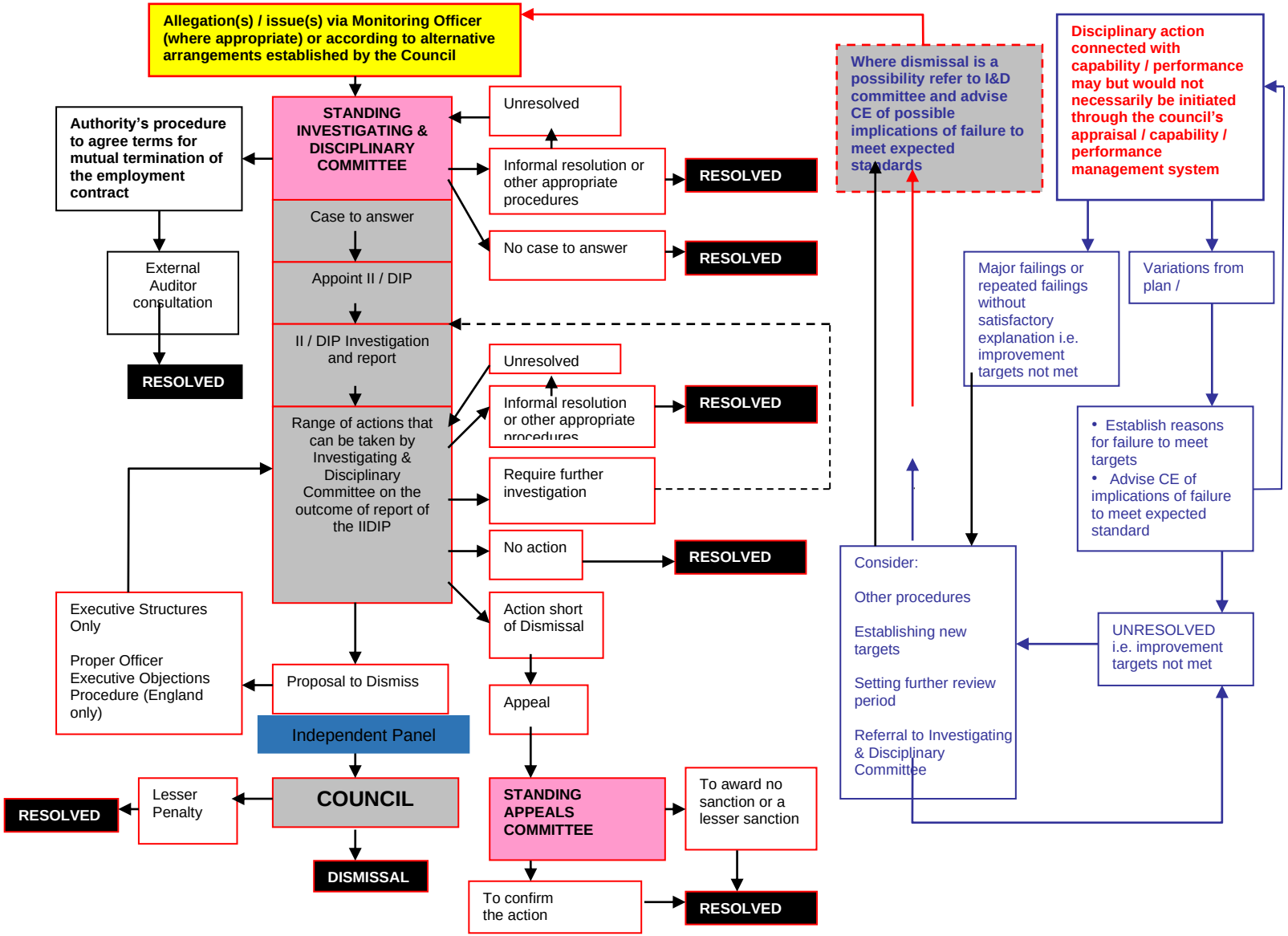
WALES ONLY: Disciplinary Procedure for Local Authority Chief Executives



Outline revised Model Disciplinary Procedure for Local Authority Chief Executives **Appendix 5b**
Example of Relationship with the Council's Sickness Procedure



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



Appendix 5d

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

APPENDIX 6
(Wales only)

1. DESIGNATED INDEPENDENT PERSONS

1.1 This joint guidance provides a commentary on the role of Designated Independent Persons (DIPs). While it is contained in the Handbook it is not intended that it be incorporated into the conditions of service of Chief Executives, but rather that it be regarded as a stand-alone document to assist DIPs.

2. THE ROLE

2.1 A designated independent person ("DIP") is someone external to and Independent of an employing authority, who is individually appointed when that authority makes allegations of a disciplinary or capability nature against either the head of paid service, the monitoring officer or the section 151 chief financial officer.

2.2 The DIP concept has its origins in the June 1986 Widdicombe report *The Conduct of Local Authority Business* (HMSO Cmnd 9797), and the succeeding Local Government and Housing Act 1989. Section 20 of that Act made it a duty (for the first time in local government law) for local authorities to adopt certain procedural standing orders. Though the Act itself did not refer to DIPs, sufficiently wide powers were given to the Secretary of State for such a requirement to be incorporated into the Local Authorities (Standing Orders) Regulations 1993, SI No 202. The disciplinary provisions of those Regulations, which applied only to heads of paid service, remain partly in force (in respect of National Parks Authorities in both England and Wales), for local authorities in Wales the similarly titled SI 2006 No 1275 (W.121).

2.3 The role of a DIP, set out in regulation 9(6) in Wales, is to report to the authority concerned as to whether (and if so, the extent to which) the evidence obtained supports any allegation of misconduct against the officer concerned, and to recommend any disciplinary action which the DIP thinks it would be appropriate for the authority accordingly to take.

2.4 Disciplinary action is defined by regulation 2 to include any proposal for dismissal for any reason other than redundancy, permanent ill-health and (unless its renewal has been promised) failure to renew a fixed term contract. On the issue of allegations of breakdown in trust and confidence, see **paragraph 5.4.10 (c)**.

2.5 Each DIP appointment should be agreed between the authority and the officer concerned, but in default of agreement the appropriate Welsh Minister will nominate a DIP for the authority to appoint. The authority must pay the DIP reasonable remuneration and all the associated costs that the DIP incurs (but are under no obligation to afford or pay for any legal or other representation to the employee whose conduct is being investigated).

2.6 DIPs are given a number of powers to facilitate their role, including directions about continuing any suspension, inspection of relevant documents, and requiring any employee (in Wales this also includes any councillor) to answer questions about the conduct of the person being investigated. Regulation 9(7) of the 2006 Regulations in Wales require that the DIP is brought into an attempt mutually to agree a timetable for the hearing, and given default powers accordingly in regulation 9(8). As to how they actually carry out the task of obtaining evidence about the relevant conduct DIPs are not given any procedural duties or directions by the Regulations: the process is at their general discretion, and they have no powers to award costs, direct that settlements be reached, or conduct conciliation or mediation roles.

2.7 For those whose employment, however, is governed by the Conditions of Service agreed by the JNC for Chief Executives, the statutory basis is augmented by their contractual terms. Those JNC Conditions of Service contain a general commentary in **paragraph 13 on page 7** on procedures for discipline, capability, redundancy and other dismissals, accompanied by a model procedure at **Appendix 5B (Wales)**. DIPs are expected to operate in conformity with the principles that the JNC Conditions of Service set out. Accordingly, the Joint Secretaries have in addition drafted and published this further commentary on DIPs, and the guidance at **paragraph 3**, in the light both of experience of how these Regulations have worked previously and how the JNC now envisages their future working.

2.8 **Paragraph 8.3.2**, while explicitly acknowledging the DIP's formal role only to make recommendations about any possible disciplinary action, adds that a DIP "may wish to comment on potential options for the way forward for the DIP process." This is intended to be used where a DIP considers that, notwithstanding that either no or only limited disciplinary action would be appropriate, the realities of the situation and the interests of those concerned (including the public interest) require a different kind of outcome to be achieved.

2.9 A DIP is not a judge, nor a substitute for an Employment Tribunal. While a statutory appointment in one sense, a DIP is given none of the personal immunities or powers of enforcement that they have. The role is best understood as an independent element of what remains essentially an internal and confidential process of the authority. While the Council cannot exceed the degree of severity of any disciplinary action recommended by the DIP, it is the view of the JNC that there is no obligation either to comply with any recommendation, e.g. the authority having considered the evidence and submissions of the chief executive might decide that the recommendation of the DIP is too severe in all the circumstances of the case. The decision reached remains that of the authority, who must maintain contractual appeal rights and will in principle be answerable to an Employment Tribunal in just the same way as with any other employee.

3. GUIDANCE

3.1 DIPs are given wide discretion as to the procedure they adopt, although the 2006 Regulations in Wales contain timetabling provisions. Accordingly, while there are no formal powers for DIPs to be given directions by anyone, this guidance has been drafted to assist DIPs in addressing issues and making the decisions likely to be required. It can do no more than inform those matters, but it is based on the experience of other DIP hearings that have been held.

3.2 **Paragraph 7** advises on practical matters including the resources, the working arrangements, the power to extend suspension beyond two months, and the need for confidential but co-ordinated contact with the authority.

The Degree of Formality

3.3 As stated above, a DIP is neither a judge nor a substitute for an Employment Tribunal. While a statutory appointment, a DIP is given none of the personal immunities or powers of enforcement that they have. The role is best understood as an independent element of what remains essentially an internal and confidential process of the authority. Nevertheless, an investigation by a DIP is a statutory process, and that requires structure and a mode of conduct appropriate to the seriousness of the matter for the parties involved. Some useful principles can be taken from the practice and procedure applied at Employment Tribunal Hearings.

3.4 Rule 2 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 SI No. 1237 (as amended) – schedule 1 comprises the Employment Tribunal Rules of Procedure – sets out the overriding objective to deal with cases fairly and justly including avoiding delays and dealing with cases in ways which are proportionate to the complexity and importance of the issues. Further, Rule 41 states that "The tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit evidence. The tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts." Rule 43 states inter alia that "The tribunal may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as they give evidence if it considers it in the interests of justice to do so." The Joint Secretaries consider that a similar approach by the DIP will usually be appropriate, meeting the over-riding objective "to deal with cases justly"

3.5 **Paragraph 7.2.3** expresses the view that the JNC believes that the DIP "should operate on the basis of a combination of independent investigation using his / her powers to access information, and a formal hearing, at which details of the allegations and supporting evidence are stated by the authority's representative and where the chief executive is given the opportunity to respond." This may well depend on the nature of the case given the wide scope of the Standing Orders

Regulations to apply to different circumstances of potential discipline or dismissal. It may be, for example, that in some cases a more inquisitorial investigation may be appropriate rather than an adversarial challenge of allegations, eg, considering the evidence for and implications of long-term ill health.

The Degree of Confidentiality

3.6 With very limited exceptions, rule 5 of schedule 2 to the 2013 Regulations (as amended) provides for Employment Tribunal hearings to be public (although preliminary hearings must generally be held in private under rule 56. Here there is a distinct difference for the DIP process. Though there is no explicit bar to this in the Standing Orders Regulations, local authority hearings into disciplinary and capability matters are customarily held in private, and anyone the subject of a DIP hearing is likely to expect the same. The Joint Secretaries expect confidentiality also to be observed in these hearings.

3.7 If either side wishes to call two or more witnesses, the DIP will need to consider carefully whether they should be allowed to hear each other's evidence (as is usually the case in a criminal trial), or whether each witness should be heard separately with no-one else present not required or mutually agreed. The latter is the usual practice in local authority disciplinary hearings, and the Joint Secretaries assume that this will also be the norm in DIP hearings.

3.8 Whether to allow the press and media or others to be present is a separate matter from the joint presence of witnesses. No case is known to the Joint Secretaries where this has been agreed, and so they expect DIPs to refuse any such request if unacceptable to either side. A refusal is not considered to infringe human rights law provisions about open hearings, because as stated above a DIP hearing is an independent element of what remains essentially an internal and confidential process of the authority.

3.9 This latter point is emphasised by **paragraph 7.4.2** that during the investigation the DIP "will as a matter of principle, make every attempt to ensure the appropriate confidentiality of any information obtained and discussed."

Access to the DIP's Report

3.10 The DIP's functions end with the submission of the report to the appointing authority. A copy must be sent to the person investigated (regulation 9(6)(e) of SI 2006 No. 1275 in Wales), but there is no further obligation on anyone's part to supply or publish it. No one other than the authority has the legal right to do so. The Joint Secretaries consider DIP reports to be exempt from freedom of information disclosure by virtue of section 40 of the Freedom of information Act 2000, ie. because of the potential to breach the data protection principles set out in schedule 1 to the Data Protection Act 1998.

3.11 The Joint Secretaries also consider that the DIP should seek clarity before submission of the report about access to or publication of all or any of it. The report could be drafted to include a short statement of the outcome intended for publication even where the rest of the report itself is to be kept confidential. DIPs should bear in mind that where material is published without approval, it may be unjust for there to be no lawful way for a response to be made or, in a case of selective publication, for the balance of the report to be restored.

3.12 The law of defamation must also be considered in relation to the publication of any DIP report. The Joint Secretaries consider that qualified privilege will attach to publication to the Council itself but may well not cover wider publication or distribution.

Costs

3.13 DIPs have no power to award costs. Section 13A of the Employment Tribunals Act 1996 gave power for rules to be made for the award of costs in such Tribunals, but DIPs have no equivalent power. They will no doubt bear in mind the impact that any imbalance in the representational resources available to the person being investigated and to the employing authority may have on the conduct and outcome of any investigation.

Indemnity

3.14 A DIP is not an employee of the appointing local authority, so cannot be legally protected as such. While in addition to reasonable remuneration a local authority must pay "any costs incurred by him in, or in connection with, the discharge of his functions," it is not unequivocally established that this requirement covers any costs arising out of any claim for damages made as a consequence of the investigation or anything contained in the report (particularly if the claim were made by the appointing authority). DIPs will no doubt want to be satisfied on appointment that they have either an adequate indemnity from the authority or appropriate insurance cover. **Paragraph 6.2.2(b)**, referring to the indemnity issue, concluded by noting the CLG opinion that regulation 9(10) of the 2006 Regulations is wide enough to both allow and require the employing authority to meet the DIP's costs in this respect.

APPENDIX 7

Model Grievance Procedures

1. Introduction

1.1 These procedures covers the following circumstances:

- where an employee raises a grievance against the chief executive
- where a chief executive raises a grievance – by definition this will be against an individual elected member(s) or the employing council generally.

1.2 Section 1.3 of the guidance to the model disciplinary procedure covers some of this ground and references to this section are made below where appropriate.

1.3 The procedure in **paragraph 2** below is set out in as a flow chart.

2. Procedure for dealing with a grievance raised by an employee against the chief executive

2.1 An employee raising a grievance against the chief executive should do so using the grievance procedure provided for in his or her contract of employment. However, while operating within the context of the employee's grievance procedure, it is only the mandatory stages of a grievance procedure (i.e. the formal stages, as referred to in **paragraph 2.2**) that can resolve the grievance when the person complained of is the chief executive. With this in mind, the JNC has agreed the following advice.

2.2 Under the ACAS code the internal procedure to be followed by an aggrieved employee should comprise at least two formal stages. After the initial filtering and any attempt at informal resolution, if the matter remains unresolved, then a panel of elected members (the Grievance Committee) will hear the grievance on behalf of the employer (Formal Stage 1). It is here that the power exists to resolve a grievance against the chief executive. The panel can either **uphold** or **dismiss** the grievance. If the outcome of the Stage 1 investigation is that the grievance is not upheld, then the complainant has the right to appeal (Formal Stage 2) to a panel of elected members (the Appeal Panel).

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

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

Initial filtering of grievances

2.5 Where an employee raises a grievance against the chief executive it would be appropriate for an initial filtering to take place, as procedures need to be in place which can filter out and deal with 'allegations' against the chief executive which are clearly unfounded or trivial or can best be dealt with under some other procedure. For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the Council's general complaints procedure. If the matter is a serious complaint against the chief executive's personal behaviour such as sexual or racial harassment, the matter would potentially be one that would be appropriate for an investigation under the disciplinary procedure.

2.6 To enable this process to happen the Council should nominate an officer who would be the recipient of any grievance raised against the chief executive (referred to below as the Receiving Officer). This would most appropriately be the Council's Monitoring Officer. If the Monitoring Officer is the person bringing the grievance against the chief executive or is otherwise involved in the grievance, then another appropriate chief officer and / or a Monitoring Officer from a neighbouring authority should be commissioned to act as the Receiving Officer.

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

2.8 The principle of an initial filtering is already acknowledged in relation to disciplinary procedures. The Receiving Officer is responsible for the filtering process, the outcome of which could include the following:

i. the Receiving Officer decides that the grievance is actually about a council service, rather than a complaint against the chief executive personally. In this case the Receiving Officer would refer the matter back to the aggrieved employee, or their line manager, and indicate that the matter is one that they could raise under the appropriate complaints process for the council.

ii. the Receiving Officer decides that there are other formal appeal procedures that apply rather than the grievance procedure eg, in cases of redundancy.

iii. the Receiving Officer decides that the grievance should not be directed at the chief executive as it does not relate to a specific action of the chief executive or a specific omission of the chief executive and so should be directed to an intermediate manager.

iv. the Receiving Officer decides that the grievance is either patently frivolous or clearly unfounded. Individual grievances can be deeply held so a decision that it is frivolous or unfounded and will not be taken any further should not be taken lightly. To some extent this judgement may be informed by whether the individual employee has a history of submitting frivolous or unfounded grievances. Where that is not the case then the Receiving Officer may want to err on the side of caution, particularly if the substance of the grievance is something that could be pursued to an Employment Tribunal. This would probably require the Receiving Officer to check whether other procedures were more apt, but that does not necessarily compromise the Receiving Officer from dealing with the case as suggested below.

Resolving grievances informally

2.9 Where the Receiving Officer is satisfied that the grievance is neither procedurally flawed nor patently frivolous or clearly unfounded (such as a complaint about the organisation, process, provision of facilities, inadequate IT equipment, failure of consultation between departments etc) then if appropriate an attempt should be made to resolve the matter informally. This might be through internally facilitated informal joint discussions or informal joint discussions facilitated externally by an external mediator.

3. Resolving grievances formally

Formal Stage 1

The Grievance Investigation

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

3.2 If the outcome of the investigation is in favour of the complainant, a solution should be proposed, taking into account the remedy requested by the complainant and the Receiving Officer's assessment of what would be appropriate in all the circumstances. If the chief executive is unwilling to accept these proposals, the matter will be referred to the Grievance Committee for it to resolve.

3.3 Just as the model disciplinary procedure recommends that Councils annually establish an Investigation and Disciplinary Committee and an Appeal Committee so that they are available if needed, so it is necessary for Councils annually to establish a Grievance Committee of 3 to 5 members with political proportionality, who are not members of the Investigation and Disciplinary Committee or the Appeal Committee.

The Grievance Committee hearing

3.4 The Grievance Committee will hear the case and reach its conclusion.

The Committee upholds the grievance

3.5 Where the Committee **upholds** the grievance this may include a decision or recommendation on how the issue can best be resolved to the satisfaction of the aggrieved employee.

3.6 Where the Committee **upholds** the grievance and also decides that it is a matter of a serious nature then it may decide to refer the matter to the Investigation and Disciplinary Committee. That Committee would then have to consider under section 5 of **Appendix 5** whether there was a case to answer, and, if so, would commission an independent investigation under the disciplinary procedure and the matter would proceed as laid down in **Appendix 5**.

3.7 The Committee dismisses the grievance – the right to appeal

Formal Stage 2

3.8 If the Committee finds against the complainant then that person has a right of appeal to a member Appeal Committee (or other such body established by the Council for this purpose), and the chief executive should be immediately informed that this has happened. The Appeal Committee will then be responsible for considering the appeal with appropriate technical and procedural advice from the Receiving Officer.

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

3.10 Where the Appeal Committee upholds the appeal and also decides that it is a matter of a serious nature, then it may decide to refer the matter to the Investigation and Disciplinary Committee. That Committee would then have to consider whether there was a case to answer, and, if so, would commission an independent investigation under the disciplinary procedure in England or Wales, as appropriate.

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

4 Procedure for dealing with grievances raised by the chief executive

4.1 Where the chief executive raises a grievance, then similar principles need to apply, namely:

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

- There should be two stages available to the aggrieved employee, in this case the chief executive.

4.2 A chief executive cannot take out a grievance against another member of staff, as any cause for such concern would constitute grounds for disciplinary action and as head of the paid service the chief executive could initiate such action against any other employee. A chief executive grievance has to be against one or more member(s) and the Council's Monitoring Officer should act as Receiving Officer.

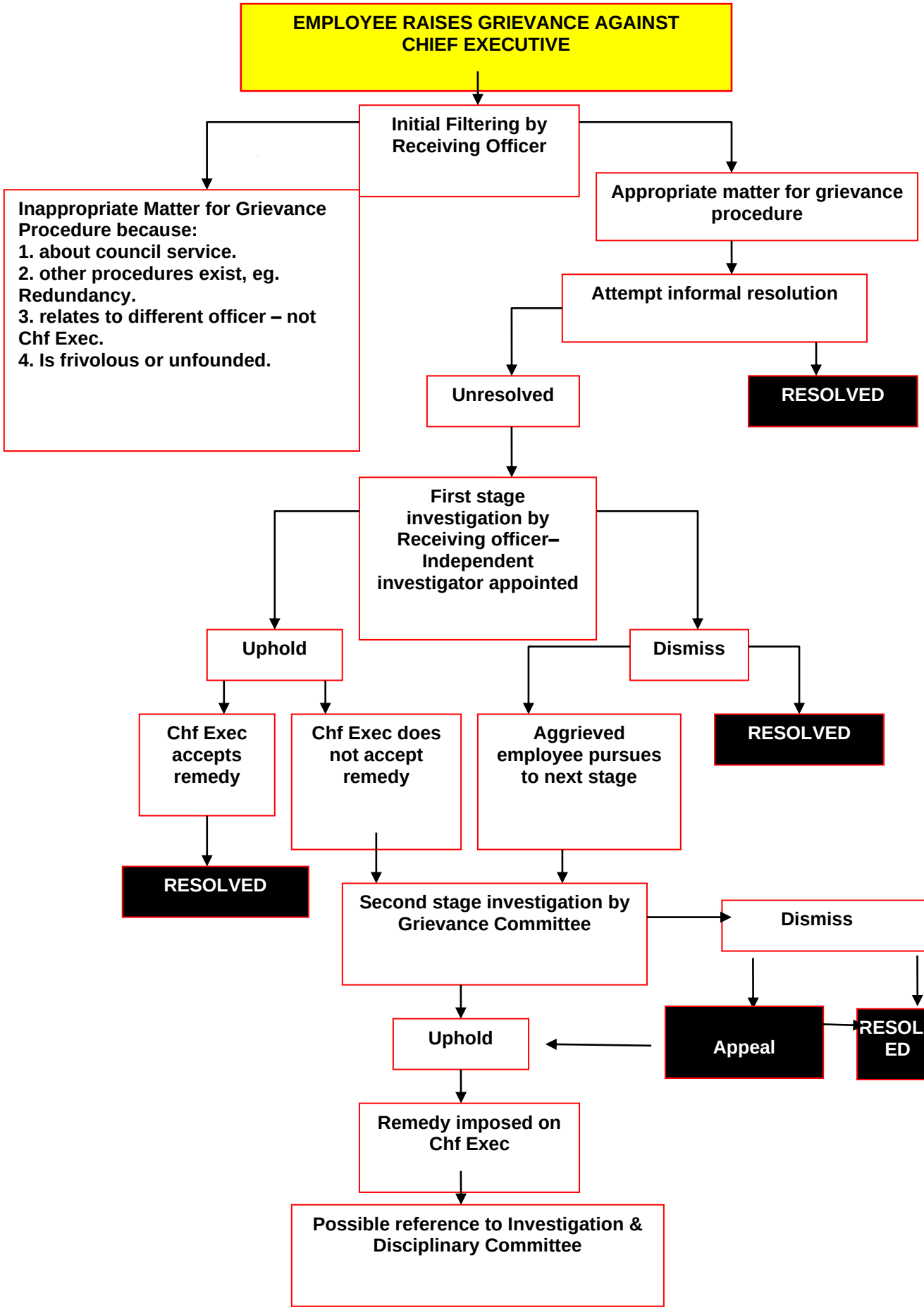
4.3 Where the chief executive raises a grievance, then this should be referred to the Receiving Officer in the first instance who should establish, through discussions with the appropriate parties, whether there is any prospect of resolving the matter informally. This might be through internally facilitated informal joint discussions or informal joint discussions facilitated externally by an external mediator.

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

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

5 Grievances raised by the chief executive during disciplinary proceedings

5.1 Where a chief executive is the subject of a disciplinary / capability investigation and raises a grievance relating to the case, the Investigating and Disciplinary Committee will decide how to deal with the grievance. This will depend on the facts of the case, the stage of the disciplinary procedure reached and the nature of the grievance raised. In some cases, it may be appropriate to hear the grievance before continuing with the disciplinary / capability investigation. In other cases, it will be appropriate to deal with the issues raised in the grievance as part of the wider disciplinary / capability investigation.


EMPLOYEE RAISES GRIEVANCE AGAINST CHIEF EXECUTIVE
Initial Filtering by Receiving Officer
Inappropriate Matter for Grievance Procedure because:
1. about council service.
2. other procedures exist, eg. Redundancy.
3. relates to different officer – not Chf Exec.
4. Is frivolous or unfounded.
Appropriate matter for grievance procedure
Attempt informal resolution
Unresolved
RESOLVED
First stage investigation by Receiving officer– Independent investigator appointed
Uphold
Dismiss
Chf Exec accepts remedy
Chf Exec does not accept remedy
Aggrieved employee pursues to next stage
RESOLVED
RESOLVED
Second stage investigation by Grievance Committee
Dismiss
Uphold
Appeal
RESOLVED
Remedy imposed on Chf Exec
Possible reference to Investigation & Disciplinary Committee