

**JOINT NEGOTIATING COMMITTEE**  
*for*  
**LOCAL AUTHORITY CHIEF EXECUTIVES**

**NATIONAL SALARY FRAMEWORK**  
**&**  
**CONDITIONS OF SERVICE**  
**HANDBOOK**

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## **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. The Staff Side consists of chief executives nominated by the Association of Local Authority Chief Executives (ALACE). ALACE is registered as an independent trade union.

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## **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.

### **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 nor she be required to attend any meetings of any political 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. LGE, Regional Employers' Organisations or ALACE or 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 15.4** contains further information regarding procedures for the ending of a fixed-term contract.

## **SALARIES**

### **6. SALARY FRAMEWORK**

- 6.1 The salary paid to a chief executive will be that determined by the employing local authority. The average and average maximum salaries shown at **Appendix 3** have been established by the JNC in a survey undertaken annually. They provide a national framework for guidance to authorities attempting to set or review the salary of their chief executive. They should be considered in the light of local circumstances, of each chief executive's remuneration package. The figures shown are intended to act as reference points which would be taken into account by local authorities in determining each chief executive's salary together with any other appropriate factors.

Local authorities should review the remuneration of their chief executive periodically in the light of the latest published figures. Factors to be taken into account include:

- (a) Relationship of current salary to appropriate illustrative comparative data;
- (b) Any special market considerations (which could be reflected through adjustments to salary);
- (c) Comparisons between authorities [information to be supplied by JNC];
- (d) Any substantial local factors not common to authorities of similar type and size;
- (e) Whether any adjustments are required to the package to reflect fixed term contract or performance considerations;
- (f) The possibility of consolidating into salary any currently separate payments such as local election fees.

The JNC will review implementation of the local review process. Both sides recognise that if local government is to attract and retain chief executives of a high calibre, adequate remuneration needs to be paid in the context of alternative public sector jobs. The employers will inform the leaders or elected mayors of all authorities of the rates of pay for chief executives established by the salary survey on an annual basis. Leaders of authorities paying above the upper quartile or below the lower quartile for that type of authority may be invited to comment.

The Joint Secretaries will develop an approach to advise and support authorities on pay, based upon joint secretarial advice, audit, Local Government Employers' (LGE) advice, Hay etc. This will be offered to authorities seeking support following the application of the handbook.

Either side may locally call upon the national Joint Secretaries' for advice on the conduct and implementation of a local review.

6.2 The framework for implementation at a local level is set out at **Appendix 3**.

## **7. ADVICE ON THE IMPLEMENTATION OF THE NATIONAL SALARY FRAMEWORK**

The Joint Secretaries are available to assist in cases of dispute.

The JNC has adopted a modified version of the HAY job evaluation scheme, which is available for those authorities who wish to use it to facilitate a review of their senior posts or to determine the appropriate salary levels to be applied to their chief executive, chief officers and deputies under the terms of the national agreement. Further details of the advice available on the Hay scheme can be obtained on request from the Employers' Secretary of the JNC.

## **8. INCLUSIVE SALARIES**

Salaries shall be deemed to be inclusive, and all other fees and emoluments, unless they are covered by **Paragraph 9** (returning officer, etc.) or the authority expressly agrees that they shall be retained by the officer, shall be paid by the officer into the council's accounts.

## **9. RETURNING OFFICER ETC**

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.

## **10. REMUNERATION COMMITTEES**

It is essential for good governance that Local Authorities can demonstrate that decisions on pay & reward packages for chief executives and chief officers have been made in an open and accountable way.

The Higgs Review on the role and effectiveness of non-executive directors (January 2003) highlighted the important role of the remuneration panel/committee in the private sector in setting remuneration levels for senior executives. Drawing on the findings of the Higgs review, options are presented for the composition, remit and processes that authorities might choose to follow if they decide to introduce a panel/committee approach to top pay review in a JNC context that includes a nationally established local framework.

The issues that local authorities will need to consider if they set up such committees have been incorporated at **Appendix 4**.

Adoption of a committee approach is of course optional to the authority 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 verified and accountable process for recommending the levels of top salaries.

## **OTHER CONDITIONS OF SERVICE**

### **11. 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
- Health, Safety & Welfare
- Maternity Scheme
- Official Conduct
- Reimbursement of Expenditure
- Sickness Scheme
- Training & Development

### **12. 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.

### **13. 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.

### **14. 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.

## **15. PROCEDURES FOR, DISCIPLINE, CAPABILITY, REDUNDANCY AND OTHER DISMISSALS**

- 15.1 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.
- 15.2 In England, The Local Authorities Standing Orders (England) Regulations 2001 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. They 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.
- 15.3 The considerations and the management of these different types of disciplinary action and potential dismissal therefore will vary.

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

- 15.4 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**

- 15.5 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.
- 15.6 The JNC has developed model procedures to use in these cases where a Designated Independent Person may be required and the matter cannot be resolved informally. There are some differences between the English and Welsh

regulations therefore for ease of understanding 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 are contained at **Appendix 6**.

- 15.7 A summary table at **Appendix 6d** indicates the appropriate procedures to follow for the different types of situations, ie. whether the issue should follow a local procedure or whether it should follow the JNC model procedure.

### **Considerations prior to contemplating disciplinary action**

- 15.8 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.
- 15.9 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 may be able to assist (**see paragraphs 15.11 – 15.14**).
- 15.10 Where formal procedures are to be engaged the JNC urges elected members to ensure that they understand the procedure, seek appropriate advice at every stage and do not compromise the outcome of any proceedings (**see paragraphs 15.15 – 15.21**).

### **Early informal resolution and joint secretarial conciliation**

- 15.11 Authorities should have regard to the ACAS advisory handbook *Discipline and Grievances 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”.
- 15.12 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.
- 15.13 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 5** sets out the JNC’s protocol for Joint Secretarial conciliation. Joint Secretarial assistance can also be requested during the formal stages of the procedure though the scope for resolution may be reduced by then as the parties are more likely to have adopted adversarial positions.

15.14 Conciliation is preferable to the use of formal procedures if it can bring about a mutually agreed solution to any problems. While the 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**

15.15 The model procedures have 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 includes appropriate variations for application in councils with leader/cabinet executives, mayor/cabinet executives and other alternative arrangements. The model procedures do not apply to council manager constitutions.

15.16 Where informal resolution is not possible the model procedure should apply unless alternative arrangements have been agreed locally. The model 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.

15.17 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 the ACAS Code of Practice 1 Disciplinary and Grievance Procedures:  
<http://www.acas.org.uk/index.aspx?articleid=2174>

15.18 The procedure should be handled 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.

15.19 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.

- 15.20 The range of possibilities is difficult to cover completely within the content of this handbook. However, the handbook contains the model procedure and 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.
- 15.21 in the event that as a result of following the formal procedure the decision is taken to appoint a DIP, the JNC has produced a brief Guidance Note (**Appendix 7**) to assist members, Chief Executives and the DIP to understand the role.

**CONSTITUTION**

**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 ... .. 11

***Representing chief executives:***

Association of Local Authority Chief Executives ... .. 11

**4.** If either 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.

**JOINT GUIDANCE ON APPRAISAL OF THE CHIEF EXECUTIVE****INTRODUCTION**

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.

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.

**RESPONSIBILITY FOR APPRAISAL**

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.

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.

**AIMS OF APPRAISAL**

1. 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.
2. 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.
3. Discuss positive achievements over the past (e.g. twelve) months and identify reasons for good performance.
4. Discuss instances over the past (e.g. twelve) months where targets have not been met, identifying the factors preventing the achievements of agreed goals.
5. 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.

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

## **THE APPRAISAL CYCLE**

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

## **KEY ELEMENTS OF THE APPRAISAL PROCESS**

1. Continuous two-way monitoring of performance against objectives.
2. Preparation for an appraisal interview.
3. An appraisal interview where recent and current performance, future objectives and development needs are discussed.
4. Agreement should be reached on action required from either party to ensure required performance is achievable.
5. The process of informal discussion regarding performance should continue.

## **The appraisal interview and afterwards...**

1. Both parties should be well informed and prepared for the interview.
2. The process should be two-way.
3. The interview should be free from interruptions and notes should be taken when necessary.
4. The parties should concentrate as far as possible on established facts rather than unsubstantiated opinions.
5. Targets which are realistic and capable of being monitored should be agreed.
6. Any agreed development plans should be implemented within the agreed timescale.
7. The chief executive should be given a reasonable opportunity to correct any shortfalls in performance.

8. A date for the next review should be agreed.

## **EXTERNAL ASSISTANCE**

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

Within the local government 'family', it may be sought from Local Government Employers (LGE) [jo.fowles@lge.gov.uk](mailto:jo.fowles@lge.gov.uk) or by contacting the Employers' Secretary [sarah.messenger@lge.gov.uk](mailto:sarah.messenger@lge.gov.uk) or from the appropriate Regional Employers' Organisation [www.lge.gov.uk/lge/core/page.do?pagelid=120016](http://www.lge.gov.uk/lge/core/page.do?pagelid=120016) or ALACE [www.alace.org.uk/](http://www.alace.org.uk/) or SOLACE [www.solace.org.uk](http://www.solace.org.uk)

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.

Alternatively such assistance may be available from commercial services, such as consultancy firms eg. SOLACE

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

## **OTHER MATTERS**

The content of appraisal interviews should be treated as confidential to the participants. However, it may be useful to report to an appropriate committee meeting that an appraisal interview has taken place.

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.

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.

**PAY IMPLEMENTATION AGREEMENT**

All chief executives received a 2.45% increase as a result of the national pay negotiations effective 1 April 2008.

**Note: No chief executive should receive a salary of less than £68,469 wef 1 April 2007. The minimum salary is increased annually by the same amount as the negotiated pay settlement.**

The pay framework is derived from an annual survey of the actual salary paid and maximum salary scale payable, by each local authority in England and Wales as at 1 April. The survey will be undertaken in April of each year and the results published no later than 30 September. The joint secretaries will keep the process of data collection under review in order that the results are made available at the earliest time possible.

The salary used will include any consolidated Returning Officer fees, and fees paid for additional approved employment and any cash alternatives paid, for instance, for car provision (please see also **paragraphs 6 - 9** of the agreement for further explanation)

The annual analysis will lead to publication in the pay and conditions handbook of the averaged actual and averaged maximum salaries for chief executives by District council, County council and Unitary / Metropolitan / London Borough council. In addition, information on a quartile basis and by region will be available on request.

<b>Chief Executives' Pay 2007</b>						
<b>Average Actual and Maximum Salaries (including additional payments ) Inclusive of the 2.475% negotiated settlement effective from 1 April 2007</b>						
	<b>Districts</b>		<b>Counties</b>		<b>Mets / UAs / LBs</b>	
<b>Population Band</b>	<b>Actual Salary</b>	<b>Maximum Salary</b>	<b>Actual Salary</b>	<b>Maximum Salary</b>	<b>Actual Salary</b>	<b>Maximum Salary</b>
<b>0 - 99,999</b>	97,818	99,417	-	-	120,176	122,297
<b>100,000 - 249,999</b>	105,942	107,712	-	-	148,124	150,841
<b>250,000 - 499,999</b>	-	-	161,062	163,505	163,495	166,244
<b>500,000 +</b>	-	-	175,904	178,962	171,238	171,238

The figures above are inclusive of certain elements of additional pay. Such additional payments could include, for example, regional allowance, PRP, fixed term contract, market supplement, long service supplement, local body payments, clerks' fees, evening meeting allowance, value of employers' contribution to lease car and essential user lump sum.

Exclusions (and therefore not shown in this table) may include honoraria, acting-up allowance, temporary payments for additional responsibilities, telephone allowance and expenses.

**Considerations in developing Remuneration Committees – Joint Guidance****1. Composition**

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.

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. It would be best if members involved in appraising the performance of officers whose remuneration is recommended by the Committee, were not themselves members of the Committee.

**2. Remit**

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 chief executives.

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 JNC annual salaries and numbers database in conjunction with consultancy advice.

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 Salary
- Variable pay elements
- Some additional benefits within the context of overall pay.

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 performance management process)

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

**3. Process**

The Committee should meet at least annually to;

- Determine any requirement for a formal review of the relevant pay market;
- (Where determined necessary) to commission relevant research and analysis and make recommendations thereon;

- Review any remuneration issues arising from established local appraisal / performance related pay

**4. *The Committee's recommendations would be based on data / advice / evidence / views collected from a number of possible sources, including (not exhaustively):***

- 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 (with local employers/other similar local authorities).

- Performance data drawn from both council-wide performance management indicators.
- Submissions made by the Association of Local Authority Chief Executives on behalf of their members.

The Committee would then make reasoned recommendations to the relevant Committee of the council or will have delegated authority, as defined within the constitution.

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 will 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.

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. *Protocols***

It may well be advisable to agree a set of protocols for the operation of the Committee, to which members would be expected to adhere. This may include, for example, maintaining confidentiality whilst discussions are taking place and until decisions are published.

**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.



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

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## ***Introduction***

The procedures are model procedures and therefore the council has discretion in how far to follow the guidance. Local Government Employers (LGE) and the Association of Local Authority Chief Executives (ALACE) through the JNC for Chief Executives commend this model procedure because:

- The procedure and guidance has been drawn-up in light of leading counsel's opinion and in 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 alternative arrangements councils;

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 and The Local Authorities (Standing Orders) (Wales) Regulations 2006 aim to protect the chief executive from unwarranted political interference in their role as head of paid service of the authority. High levels of accountability work most effectively within clear criteria for responsibilities. Even with the distinctive role of Head of Paid Service, disciplinary action will need to be based on clear evidence.

Local authority elected members will want to ensure that they:

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

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

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

As there are some 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 51)**

Further guidance on process applying to both procedures is expressed in flow diagram format which is provided as **Appendices 6a, 6b and 6c.**

## A. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE – **ENGLAND**

### **1. Issues requiring investigation – (procedure)**

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

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) (England) Regulations 2001**

1.1.1 The Local Authorities (Standing Orders) (England) Regulations 2001 (Regulation 6, and Schedule 3) require that no disciplinary action be taken against the chief executive (unless they are also the council manager) 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. Link to regulations. [www.opsi.gov.uk/SI/si2001/20013384.htm](http://www.opsi.gov.uk/SI/si2001/20013384.htm)

1.1.2 **Disciplinary action:** in relation to a member of staff of a local authority 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 6d** (potential reasons for termination table) sets out those circumstances that could potentially result in dismissal and whether or not they are covered by this procedure.

## **1.2 Structures to Manage the Procedure**

- 1.2.1 A key feature of the model procedure is the specific roles envisaged by the Investigating and Disciplinary Committee, 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 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 Investigating and Disciplinary Committee must be a politically balanced committee comprising, it is suggested, five members. Where authorities operate a leader/cabinet or mayor/cabinet executive structure, this must include one member of the executive. This Committee may need to be in a position to take decisions and appropriate actions as a matter of urgency. It may need to meet at very short notice to consider allegations and decide whether there is a case to answer and to consider whether suspension of the chief executive might be appropriate. It is also possible that in some circumstances members of the 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 Investigating and Disciplinary Committee also has an important role in considering the report of a Designated Independent Person. The role of the Investigating and Disciplinary Committee is explained further at appropriate stages in the guidance. (The Committee that performs this function may locally be known by a different name although its role and responsibilities will be that outlined throughout this document and referred to herewith as the Investigating and Disciplinary Committee. This Committee may also fulfil other functions).
- 1.2.3 The Appeals Committee must be a politically balanced committee of, it is suggested, five members who are not members of the Investigating and Disciplinary Committee. Where authorities operate an executive structure this must include one member of the executive. The Appeals Committee will have a more limited role. Its purpose will be to hear appeals against action taken short of dismissal and to take a decision either to confirm the action or to award no sanction or a lesser sanction.

## **1.3 Managing Access to the Procedure (see also Para 5.1 of this guidance) – considering the allegations or other issues under investigation**

- 1.3.1 The procedure itself does not require that every single issue which implies some fault or potential error on the part of the Chief executive be investigated using this process. It is for the authority to decide the issues that will engage the formal process.
- 1.3.2 Authorities will therefore need to consider what constitutes an ‘allegation’ made relating to the conduct or capability of the Chief executive and what it considers are other substantial issues requiring investigation. Clearly the route for complaints against the council and the chief executive and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied. Ideally, procedures need to be in place which can filter out

and deal with 'allegations' against the chief executive which are clearly unfounded, or trivial or can best be dealt with under some other procedure.

- 1.3.3 For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the council's general complaints procedure. If the matter is a grievance from a member of staff directed against the chief executive, it may be appropriate to first deal with it through the council's grievance procedure. Of course if the matter were a serious complaint against the chief executive's personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the disciplinary procedure.
- 1.3.4 An authority will need to put into place arrangements that can manage the process. In particular - that records are kept of allegations and investigations and that there is a clear route into the disciplinary procedure. It could be, for example, that in the case of allegations against the chief executive, the monitoring officer and the Chair of the Investigating and Disciplinary Committee would oversee referrals to the Investigating and Disciplinary 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 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 Investigating & Disciplinary Committee 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 6a, 6b & 6c 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 also Appendix 2 for Joint Secretaries guidance on the appraisal of the chief executive).** For a chief executive the system is likely to be linked to objectives in the authority's community plan and the performance objectives should be specific, measurable, achievable, realistic and time-related. It may, but will not necessarily, be the system against which pay progression is measured.  
**(refer to flow diagram Appendix 6c relationship to council's capability & performance procedure)**

## **2. Timescales – (procedure)**

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

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

## **2. Timescales – (guidance)**

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

### **2.2 Statutory and indicative timescales**

2.2.1 The procedure does not set out explicit timescales except those relating to the specific reference in the Local Authority (Standing Orders) (England) Regulations 2001 for the suspension of the Head of Paid Service (which must last no longer than 2 months unless directed by the Designated Independent Person). In this guidance we make reference to other statutory timescales and restrictions which are applicable to disciplinary procedures more generally, such as those contained in the Employment Relations Act 1999 (in connection with the right to be accompanied).

### **2.3 Avoiding delays in the procedure**

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

#### **2.3.1 Availability of the Designated Independent Person (DIP)**

(see also **para. 6.1** of this guidance – Appointment of a Designated Independent Person)

- (a) The Local Authority (Standing Orders) (England) Regulations 2001 require that the Designated Independent Person must be agreed between the council and the chief executive otherwise a Designated Independent Person will be nominated by the Secretary of State for formal appointment by the council.
- (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. Due to the two-month time limit

on suspension, this is particularly important where the chief executive has been suspended.

- (d) To avoid delays, this means that the authority should agree who has the power to appoint and to agree the terms of remuneration and working methods for the Designated Independent Person. In this model we envisage the Investigating and Disciplinary Committee doing this.
- (e) The JNC holds a list of individuals who could act as the DIP. These are people 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. However, an authority can identify a potential DIP from other sources, e.g. on recommendation of a regional employer, a QC, or a local or national figure of appropriate standing.

### **2.3.2 Availability of the chief executive in case of sickness**

- (a) It is possible that the sickness of the chief executive could impact on the ability to follow the disciplinary procedure. This may be because:
  - the issue under investigation is the chief executive's sickness in itself (ie. a capability issue); or alternatively,
  - while during an investigation for another reason such as allegations about the chief executive's conduct, the chief executive commences sickness absence during the disciplinary process.
- (b) In principle, the sickness of the chief executive will invoke the local authority's normal sickness procedures. The nature of the investigation and facts surrounding the sickness will dictate the appropriate way of dealing with the issue.
- (c) If the investigation is about the long-term sickness or frequent ill-health problems experienced by the chief executive the authority should have already obtained appropriate medical information and advice by following its local processes 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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee must satisfy themselves 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. 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 to be accompanied at disciplinary hearings and to take this into account when setting dates. **(see also Para 4 of the guidance - right to be accompanied)**

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

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

An elected member should hold the delegated power to suspend the chief executive immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by the chief executive are such that his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority. It is suggested that this power might be held by the Chair of the Investigating & Disciplinary Committee or the Chair of the Urgency Committee.

Any suspension must not last longer than 2 months unless the Independent Person has used his/her power to direct an extension to that period.

### **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 A chief executive who is suspended and facing allegations is potentially open to stress. It is therefore in the interests of the chief executive and the council that such cases are dealt with as expeditiously as possible.

#### **3.2.1 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.

### **3.2.2 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 Investigating and Disciplinary Committee has conducted its initial assessment. The model procedure therefore envisages that the Investigating and Disciplinary Committee should have the power to suspend the chief executive.

### **3.2.3 Short notice suspension**

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

### **3.2.4 Suspension protocols**

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

### **3.2.5 Time limits on suspension**

- (a) Where the chief executive is suspended The Local Authorities (Standing Orders) (England) Regulations 2001 (Regulation 6, Schedule 3) 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 procedure provides the opportunity for the chief executive to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost.
- 4.2 The procedure recognises that there may be, in exceptional circumstances, a need to suspend the chief executive at short notice, when it is not possible to arrange for their trade union representative to be present. These circumstances might include for example where there is a serious risk to the health and safety of others or serious risk to the resources, information, or reputation of the authority.
- 4.3 Although it would be beneficial to agree dates for the necessary meetings required, the procedure cannot be allowed to 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 Investigating and Disciplinary Committee 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 the decision taken by the Investigating and Disciplinary Committee.
- 4.4 At these important stages (Investigating and Disciplinary Committee receiving the report of the DIP and any appeal against the decision taken by the Investigating

and Disciplinary 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 Investigating & Disciplinary Committee 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 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 Committee to consider. The Committee will also provide the opportunity for the chief executive to make oral representations.

The Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee 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 Investigating and Disciplinary Committee, will depend on the filter that the council adopts. Issues such as those relating to sickness absence and performance are likely to arise at the Investigating & Disciplinary Committee having followed the authority's sickness absence or performance management/appraisal procedures.

**(see also Para 1.3 of the guidance to the procedure)**

- 5.2 It is possible in some cases that with some minimal investigation the Investigating and Disciplinary Committee can dismiss the allegation without even the need to meet with the chief executive. However, this procedure is aimed at dealing with situations where the matter is not so easily 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.

- 5.3 When an issue comes before the Investigating and Disciplinary Committee 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).
- 5.4 The appointment of a Designated Independent Person is a serious step but does not mean that the chief executive is guilty of some misdemeanour. In some cases the eventual result of the investigation will be to absolve the chief executive of any fault or wrongdoing. The appointment of 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 Investigating and Disciplinary Committee 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, 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 Investigating & Disciplinary Committee Investigation**

- (a) It is intended that this stage is conducted as expeditiously as possible with due regard to the facts of the case. At this stage it is not necessarily a fully detailed investigation of every aspect of the case as that will be the responsibility of the 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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee and to call witnesses.

- (c) Fair notice should be given to enable the chief executive adequate time to prepare a response to the allegations or issues under investigation. During the initial hearing by the Investigating and Disciplinary Committee, the chief executive is entitled to attend and can be accompanied by a representative. **(subject to para. 2.3.3 - availability of representative) and para. 4 of the guidance to the procedure - right to be accompanied)**

#### **5.4.3 Treatment of witness evidence**

- (a) 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 Investigating and Disciplinary Committee. **Paragraph 1.2.2 of the guidance – structures to manage the procedure)** 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 Investigating and Disciplinary Committee.
- (b) Declarations of interest are matters for individual councillors who are required to follow the National Code of Conduct and can seek advice from their Monitoring Officer or Standards Committee. Considerable problems could follow for the speed at which the case is conducted if the chief executive considers there are valid grounds for making a formal complaint to the Standards Board for England about the involvement of a councillor in a case.

#### **5.4.5 Maintaining the fairness and integrity of the Procedure**

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

#### 5.4.6 Other appropriate actions

- (a) It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of the chief executive, or some other substantial issue, the Investigating and Disciplinary Committee 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 attached to the chief executive. The Joint Secretaries could be available to assist –  
**(see Appendix 5 – JNC agreed protocols for conciliation)**
- (d) If any financial settlements are considered, it is important that such an arrangement:
- Falls within the authority's discretions under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, or
  - Is a payment in consideration of an agreement that compromises a genuine legal claim that the chief executive might have at a Court or Employment Tribunal.
- (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

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



#### 5.4.8 Access to appropriate professional/independent advice

- (a) Conducting an investigation into allegations or serious issues involving the chief executive can be demanding on the individuals involved. The Investigating and Disciplinary Committee (and the Appeal Committee and council) will have access to the local authority's officers, but given the closeness of relationships between the chief executive and the other senior officers this can be a difficult time for those required to advise the Committee, to conduct investigations internally, or to source advice from outside the authority.
- (b) The authority should provide that the Investigating and Disciplinary Committee 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 Employers [www.lge.gov.uk/lge/core/page.do?pagelid=119793](http://www.lge.gov.uk/lge/core/page.do?pagelid=119793) and the Regional Employers Organisations - [www.lge.gov.uk/lge/core/page.do?pagelid=120016](http://www.lge.gov.uk/lge/core/page.do?pagelid=120016)

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

- (a) 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 Para 2.3.2 of the guidance – availability of the chief executive in case of sickness**)

#### 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, CPA 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 - Joint Secretaries guidance on appraisal of the chief executive**)
- (c) Where the issue is breakdown of trust and confidence, the council will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with the chief executive.

## **6. Appointment of a Designated Independent Person - (procedure)**

The Designated Independent Person must be agreed between the Investigating & Disciplinary Committee and the chief executive. If there is a failure to agree on a suitable Designated Independent Person the council will ask the Secretary of State to nominate a Designated Independent Person.

Once a Designated Independent Person has been agreed, the Investigating & Disciplinary Committee 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. This is particularly important if the chief executive has been suspended because of the two-month time limit on suspension.

**(see also Para 2.3.1 of the guidance)**

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

### **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 Investigating and Disciplinary Committee will be responsible for providing this information. It will also be in a position to discuss timescales for the Designated Independent Person's investigation.

### **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 7 (4)) that:

*'A local authority must pay reasonable remuneration to a designated independent person appointed by the authority and any costs incurred by him in, or in connection with, the discharge of his 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 DCLG this issue is to all intents and purposes resolved by the wording of Regulation 7(4), 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) (England) Regulations 2001***

require the Designated Independent Person to investigate and make a report to the council. In this model procedure this would be the Investigating and Disciplinary Committee. 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 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 Person 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 DIP could decide to delegate some of the investigation work to an assistant. This should be agreed with the Investigating and Disciplinary Committee 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.

7.2.3 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. **(see para. 7 of the Procedure – the independent person investigation)**

## **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 terminate 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 Investigating & Disciplinary Committee – (procedure)**

The Investigating & Disciplinary Committee 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 Investigating & Disciplinary 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 Investigating & Disciplinary Committee - (guidance)**

### **8.1 Report of the Designated Independent Person**

8.1.1 The requirement is that the Designated Independent Person makes a report to the council and to the chief executive simultaneously. In the JNC procedure it is envisaged that the report be made to the Investigating and Disciplinary Committee 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**

8.2.1 Where there is, at this stage, new evidence produced which is material to the allegation/issue and may alter the outcome, the Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee would need to select the action to be taken.
- 8.3.2 Whilst the DIPs 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 Investigating and Disciplinary Committee**

- 8.4.1 The Investigating and Disciplinary 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 Investigating & Disciplinary Committee will impose the necessary penalty/action, up to the maximum recommended by the Designated Independent Person.

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

- 9.1 Where the decision taken by the Investigating and Disciplinary Committee is action short of dismissal the action will be taken by the Investigating and Disciplinary Committee. 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 Investigating and Disciplinary Committee will need to include the delegated power to take disciplinary action in these circumstances.

**10. Where the Investigating & Disciplinary Committee propose dismissal – (procedure)**

**Executive constitutions only**

In Mayor/cabinet and leader/cabinet **executive constitutions only**. The Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee 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 either:

- Inform the Investigating & Disciplinary Committee 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
- Inform the Investigating & Disciplinary Committee that no objections have been received from the leader/elected mayor in the period, or
- Inform the Investigating & Disciplinary Committee that an objection or objections have been received and provide details of the objections.

The Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee will act accordingly, i.e. it will consider the impact of the executive objections on the report of the Designated Independent Person and relevance to the sanction, commission further investigation by the Designated Independent Person and report if required, etc.

Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the Investigating & Disciplinary Committee will inform the chief executive of the decision and put that proposal to the council along with any necessary material, e.g. the Designated Independent Person's Report.

**Non-executive administration**

In local authorities with no executive (alternative arrangements) the Investigating and Disciplinary Committee will inform the chief executive of the

Cont...

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 Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee proposes dismissal – (guidance)**

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

### **10.2 Executive objections procedure**

10.2.1 The executive objections procedure set out in the model procedure reflects the requirements of the Standing Orders Regulations (see Schedule 1, Part 1 (Mayor and cabinet executive), Paragraph 6 and Part 2 (leader and cabinet executive), Paragraph 6). Link to Regulations: [www.opsi.gov.uk/SI/si2001/20013384.htm](http://www.opsi.gov.uk/SI/si2001/20013384.htm)

10.2.2 It is important that the authority identify The 'Proper Officer' to undertake the role specified in the Regulations, i.e. notifying members of the executive of the proposal to dismiss, providing relevant information and the timescale during which any material and well founded objections should be made.

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

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

10.2.5 It is for the Investigating and Disciplinary Committee 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 Council**

10.3.1 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 from the Investigating and Disciplinary Committee and reach a recommendation 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 Investigating & Disciplinary Committee has made a proposal to dismiss; the hearing by the council will also fulfil the appeal function.

### ***Appeals against action short of dismissal***

If the Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee, e.g. new information, executive objections (if relevant), 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 ACAS Code of Practice 1 - Disciplinary and Grievance Procedures 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 Investigating and Disciplinary Committee.

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 that requires investigation, the matter will be considered by the Investigating & Disciplinary Committee.

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 (unless they are also the council manager) 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. Link to regulations [www.opsi.gov.uk/legislation/wales/wsi2006/20061275e.htm](http://www.opsi.gov.uk/legislation/wales/wsi2006/20061275e.htm)

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 6d** (potential reasons for termination table) sets out those circumstances that could potentially result in dismissal and whether or not they are covered by this procedure.

## **1.2 Structures to Manage the Procedure**

- 1.2.1 A key feature of the model procedure is the specific roles envisaged by the Investigating and Disciplinary Committee, 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 (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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee. 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 action taken 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 Procedure (see also Para 5.1 of this guidance) – considering the allegations or other issues under investigation**

- 1.3.1 The procedure itself does not require that every single issue which implies some fault or potential error on the part of the Chief executive be investigated using this process. It is for the authority to decide the issues that will engage the formal process.
- 1.3.2 Authorities will therefore need to consider what constitutes an ‘allegation’ made relating to the conduct or capability of the Chief executive and what it considers are other substantial issues requiring investigation. Clearly the route for complaints against the council and the chief executive and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied. Ideally, procedures need to be in place which can filter out and deal with ‘allegations’ against the chief executive which are clearly unfounded, or trivial or can best be dealt with under some other procedure.
- 1.3.3 For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the council’s general complaints procedure. If the matter is a grievance from a member of staff directed against the chief executive, it may be appropriate to first deal with it through the council’s grievance procedure. Of course if the matter were a serious complaint against the chief executive’s personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the disciplinary procedure.
- 1.3.4 An authority will need to put into place arrangements that can manage the process. In particular - that records are kept of allegations and investigations and that there is a clear route into the disciplinary procedure. It could be, for example, that in the case of allegations against the chief executive, the monitoring officer, and the Chair of the Investigating and Disciplinary Committee would oversee referrals to the Investigating and Disciplinary Committee. Alternatively, some authorities might prefer that the role were performed by the HR Director.
- 1.3.6 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 Investigating & Disciplinary Committee 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 6a, 6b & 6c** 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 also **Appendix 2** for Joint Secretaries guidance on the appraisal of the chief executive). For a chief executive the system is likely to be linked to objectives in the authority's community plan and the performance objectives should be specific, measurable, achievable, realistic, and time-related. It may, but will not necessarily, be the system against which pay progression is measured (refer to flow diagram **Appendix 6c** relationship to council's capability & performance procedure)

## **2. Timescales – (procedure)**

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

## **2. Timescales – (guidance)**

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

### **2.2 Statutory and indicative timescales**

- 2.2.1 The procedure does not set out explicit timescales except those specifically referred to in the Local Authorities (Standing Orders) (Wales) Regulations 2006. 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 also para. 6.1 of this guidance – Appointment of a Designated Independent Person)**

- (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 the National Assembly for Wales 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 . 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 holds a list of individuals who could act as the DIP. These are people 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. However, an authority can identify a potential DIP from other sources, e.g. on recommendation of a regional employer, a QC, or a local or national figure of appropriate standing.

### **2.3.2 Availability of the chief executive in case of sickness**

- (a) It is possible that the sickness of the chief executive could impact on the ability to follow the disciplinary procedure. This may be because:
  - the issue under investigation is the chief executive's sickness in itself (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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee must satisfy themselves 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. 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 to be accompanied at disciplinary hearings and to take this into account when setting dates (see also **Para 4** of the guidance - right to be accompanied)



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

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

An elected member should hold the delegated power to suspend the chief executive immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by the chief executive are such that his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority. It is suggested that this power might be held by the Chair of the Investigating & Disciplinary Committee or the Chair of the Urgency Committee.

Any suspension must not last longer than 2 months unless the Independent Person has used his/her power to direct an extension to that period.

### **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 A chief executive who is suspended and facing allegations is potentially open to stress. It is therefore in the interests of the chief executive and the council that such cases are dealt with as expeditiously as possible.

#### **3.2.1 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.

#### **3.2.2 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 Investigating and Disciplinary Committee has conducted its initial assessment. The model procedure therefore envisages that the Investigating and Disciplinary Committee should have the power to suspend the chief executive.

#### **3.2.3 Short notice suspension**

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

#### **3.2.4 Suspension protocols**

- (a) If suspension were deemed appropriate, the Investigating and Disciplinary Committee (or in exceptional circumstances, the chair) would also be the

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

### **3.2.5 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 procedure provides the opportunity for the chief executive to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost.
- 4.2 The procedure recognises that there may be, in exceptional circumstances, a need to suspend the chief executive at short notice, when it is not possible to arrange for their trade union representative to be present. These circumstances might include for example where there is a serious risk to the health and safety of others or serious risk to the resources, information, or reputation of the authority.

- 4.3 Although it would be beneficial to agree dates for the necessary meetings required, the procedure cannot be allowed to 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 Investigating and Disciplinary Committee 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 the decision taken by the Investigating and Disciplinary Committee.
- 4.4 At these important stages (Investigating and Disciplinary Committee receiving the report of the DIP and any appeal against the decision taken by the Investigating and Disciplinary 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 Investigating & Disciplinary Committee 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 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 Committee to consider.

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

The Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee 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 Investigating and Disciplinary Committee, will depend on the filter that the council adopts. Issues such as those relating to sickness absence and performance are likely to arise at the Investigating & Disciplinary Committee having followed the authority's sickness absence or performance management/appraisal procedures **(see also Para 1.3 of the guidance to the procedure)**

5.2 It is possible in some cases that with some minimal investigation the Investigating and Disciplinary Committee can dismiss the allegation without even the need to meet with the chief executive. However, this procedure is aimed at dealing with situations where the matter is not so easily 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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee 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 some misdemeanour. In some cases the eventual result of the investigation will be to absolve the chief executive of any fault or wrongdoing. The appointment of 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 Investigating and Disciplinary Committee 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, 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 Investigating & Disciplinary Committee Investigation**

- (a) It is intended that this stage is conducted as expeditiously as possible with due regard to the facts of the case. At this stage it is not necessarily a fully detailed investigation of every aspect of the case as that will be the responsibility of the 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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee and to call witnesses.
- (c) Fair notice should be given to enable the chief executive adequate time to prepare a response to the allegations or issues under investigation. During the initial hearing by the Investigating and Disciplinary Committee, the chief executive is entitled to attend and can be accompanied by a representative. **(subject to para. 2.3.3 - availability of representative) and para. 4 of the guidance to the procedure - right to be accompanied)**

#### **5.4.3 Treatment of witness evidence**

- (a) 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 Investigating and Disciplinary Committee. **Paragraph 1.2.2 of the guidance – structures to manage the procedure)** 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 Investigating and Disciplinary Committee.
- (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. Considerable problems could follow for the speed at which the case is conducted if the chief executive considers there are valid grounds for making a formal complaint to the 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 this procedure. It is important that councillors do not undermine the fairness of the procedure by for example putting motions to full council about the case as there is a serious risk that it could prejudice the disciplinary procedure. Additionally, such actions will not only create adverse publicity for the authority and the chief executive but may create conflicts of interest and could limit the role that those councillors can then take as the case progresses.

#### 5.4.6 Other appropriate actions

- (a) It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of the chief executive, or some other substantial issue, the Investigating and Disciplinary Committee 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 attached to the chief executive. The Joint Secretaries could be available to assist –  
(see **appendix 5** – JNC agreed protocols for conciliation)
- (d) If any financial settlements are considered, it is important that such an arrangement:
  - Falls within the authority's discretions under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, or
  - Is a payment in consideration of an agreement that compromises a genuine legal claim that the chief executive might have at a Court or Employment Tribunal.
- (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**

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

#### **5.4.8 Access to appropriate professional/independent advice**

- (a) Conducting an investigation into allegations or serious issues involving the chief executive can be demanding on the individuals involved. The Investigating and Disciplinary Committee (and the Appeal Committee and council) will have access to the local authority's officers, but given the closeness of relationships between the chief executive and the other senior officers this can be a difficult time for those required to advise the Committee, to conduct investigations internally, or to source advice from outside the authority.
- (b) The authority should provide that the Investigating and Disciplinary Committee 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 Employers [www.lge.gov.uk/lge/core/page.do?pageld=119793](http://www.lge.gov.uk/lge/core/page.do?pageld=119793) and the Welsh Local Government Association [www.wlga.gov.uk](http://www.wlga.gov.uk)

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**

- (a) 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 Para 2.3.2 of the guidance – availability of the chief executive in case of sickness**)

#### **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, CPA 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 - Joint Secretaries guidance on appraisal of the chief executive)**

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

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

The Designated Independent Person must be agreed between the Investigating & Disciplinary Committee 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 the National Assembly for Wales.

Once a Designated Independent Person has been agreed, the Investigating & Disciplinary Committee 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 also Para 2.3.1 of the guidance)**
- 6.2 The Investigating and Disciplinary Committee are 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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary 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 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 Investigating and Disciplinary Committee. 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**

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 DIP could decide to delegate some of the investigation work to an assistant. This should be agreed with the Investigating and Disciplinary Committee 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 Investigating and Disciplinary 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.

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.  
**(see para. 7 of the Procedure – the independent person investigation)**

### **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 terminate 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 Investigating & Disciplinary Committee – (procedure)***

The Investigating & Disciplinary Committee 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 Investigating & Disciplinary 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 Investigating & Disciplinary Committee - (guidance)***

#### **8.1 Report of the Designated Independent Person**

- 8.1.1 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 Investigating and Disciplinary Committee 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**

- 8.2.1 Where there is, at this stage, new evidence produced which is material to the allegation/issue and may alter the outcome, the Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee 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 Investigating and Disciplinary Committee**

- 8.4.1 The Investigating and Disciplinary 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 Investigating & Disciplinary Committee will impose the necessary penalty/action, up to the maximum recommended by the Designated Independent Person.

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

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

**10. Where the Investigating & Disciplinary Committee propose dismissal – (procedure)**

The Investigating and Disciplinary 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 Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee proposes dismissal – (guidance)**

10.1 Where the Investigating and Disciplinary 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 Investigating and Disciplinary Committee and reach a recommendation 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 Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee 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 Investigating & Disciplinary Committee, 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 The ACAS Code of Practice 1 – Disciplinary and Grievance Procedures requires that an employee who has been dismissed is provided the opportunity to appeal against the decision.

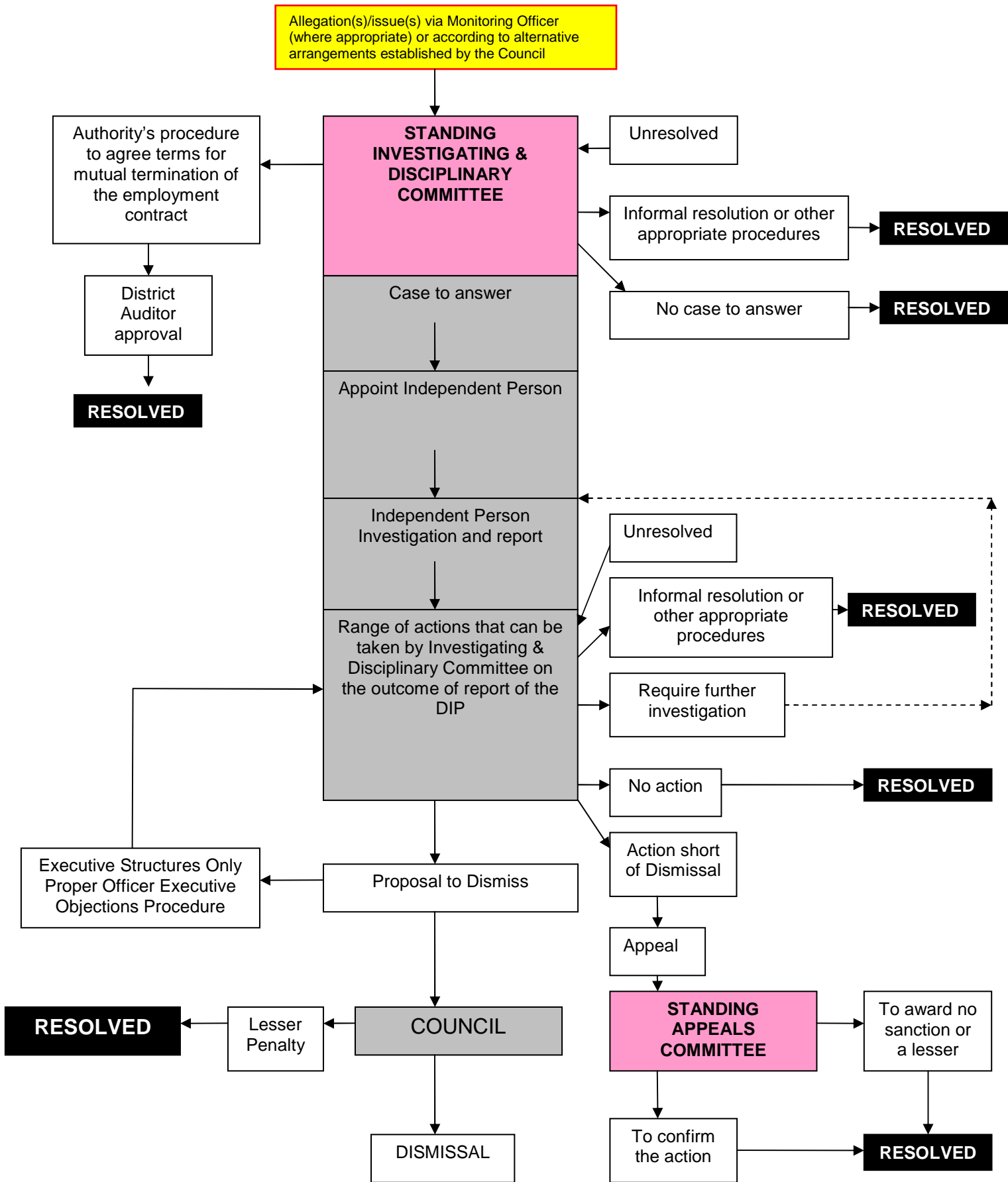
11.1.2 As the Standing Orders Regulations require that the council approves the dismissal before notice of dismissal is issued, there might be some concerns about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss. 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 Investigating and Disciplinary Committee.

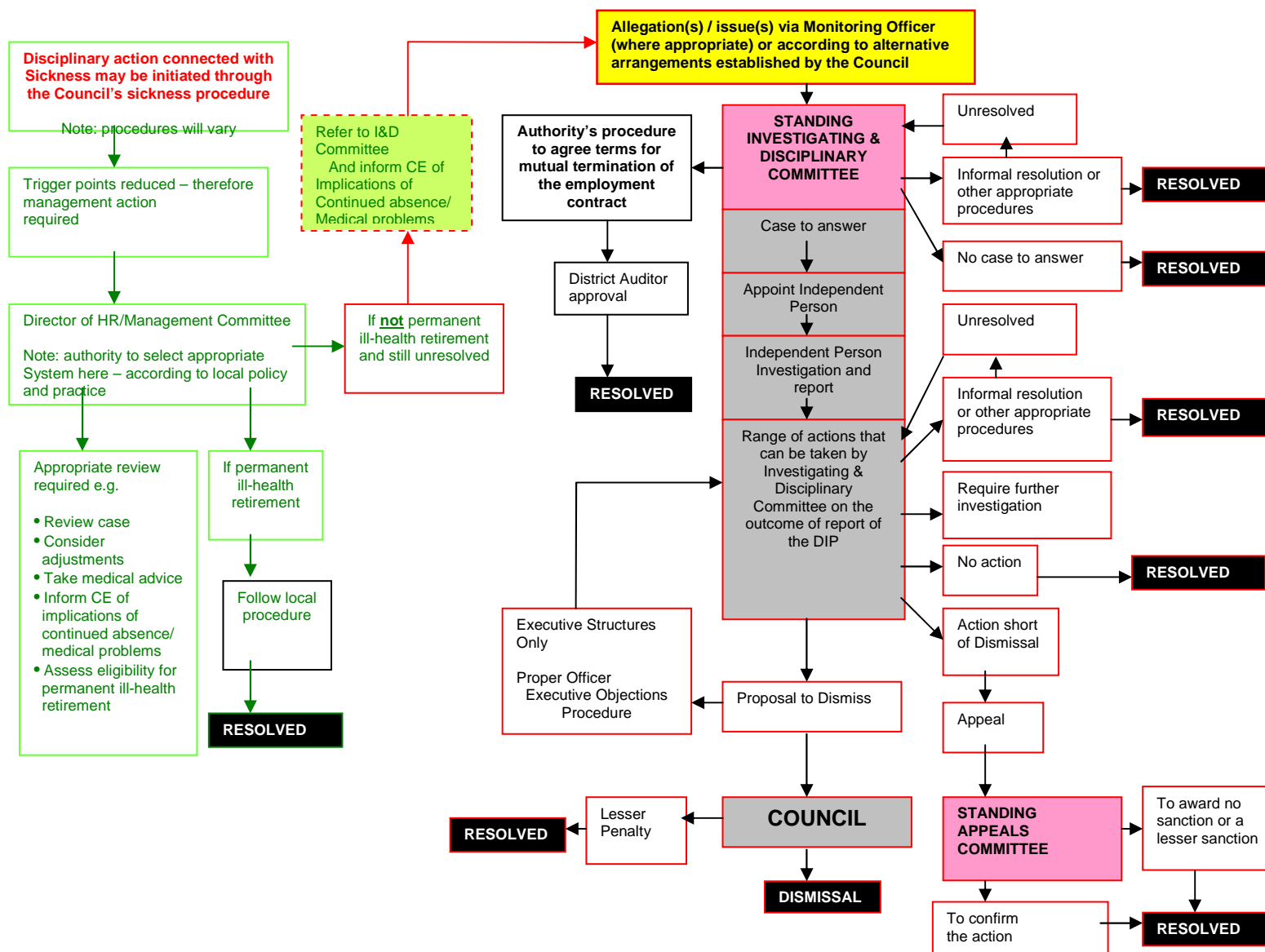
11.2.2 This process should follow the procedure that the local authority applies generally to its other employees.



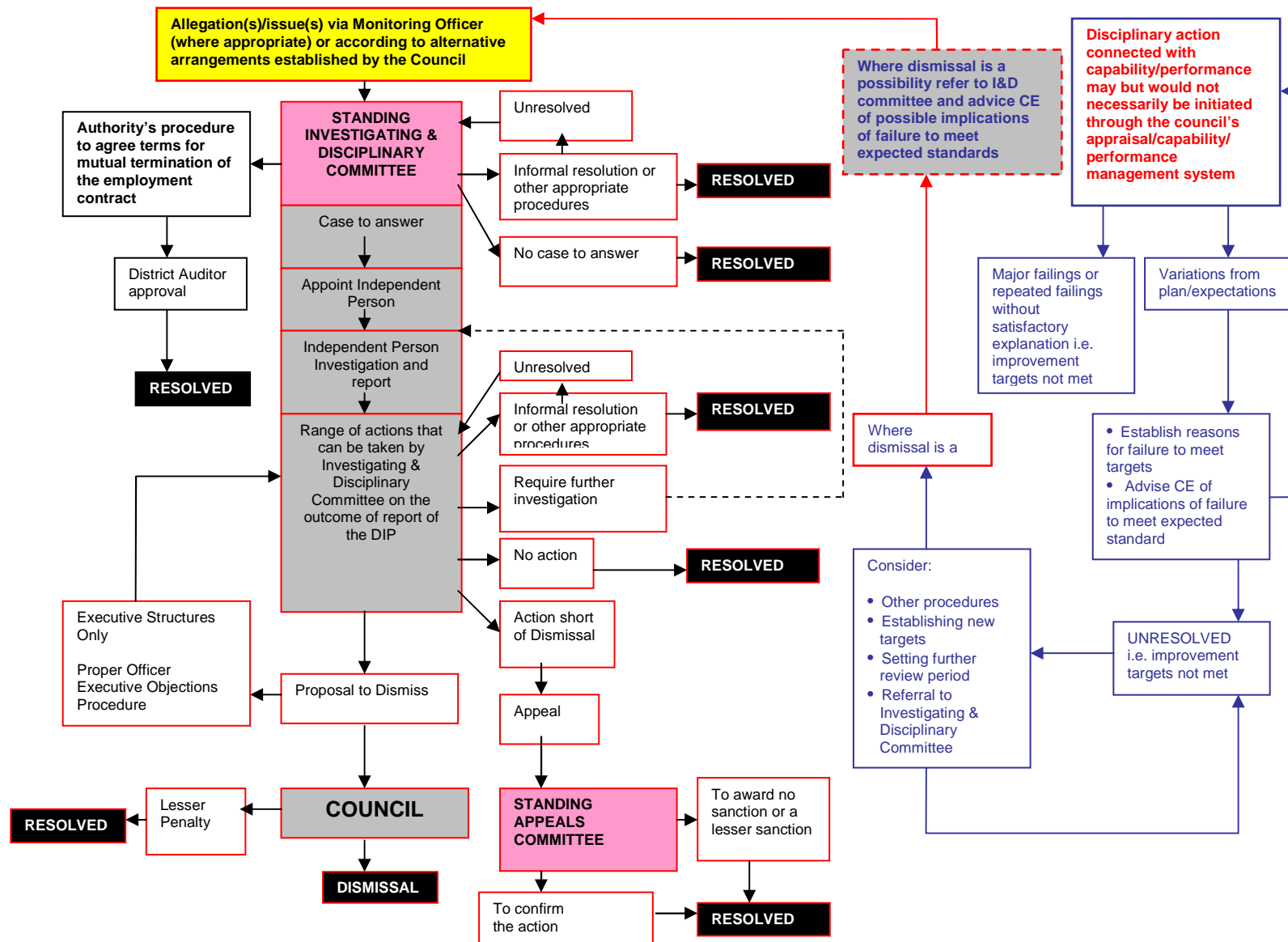


# Outline revised Model Disciplinary Procedure for Local Authority Chief Executives

## 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**



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
Designated Independent Person required	Yes	Yes	Yes	Yes		No	No	No - If authority has not given commitment to renew
Required to follow ACAS Code of Practice	Yes	Yes	Yes	Yes		Yes – if dismissal	No	No
Appropriate Procedure to follow	JNC	JNC	JNC	JNC		Local	Local	Local

### 1. DESIGNATED INDEPENDENT PERSONS

- 1.1 This joint guidance provides a commentary on the role of the 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), but the principal provisions relating to discipline and dismissal for local authorities in England are now the Local Authorities (Standing Orders) (England) Regulations 2001, SI No 3384, and for local authorities in Wales the similarly titled SI 2006 No 1275 (W.121). These two sets of Regulations are similar, but not identical. (In Wales the 2006 Regulations in particular contain important additional timetabling provisions.)
- 2.3 The role of a DIP, set out in regulation 7(3) in England and 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 in both England and Wales 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) of the 2008 edition of the Joint Negotiating Committee (“JNC”) Conditions for Chief Executives.)

- 2.5 Each DIP appointment should be agreed between the authority and the officer concerned, but in default of agreement the Secretary of State (or in Wales 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, however, DIPs in neither England nor Wales are 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 April 2008 edition of 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 section 15 on procedures for discipline, capability, redundancy and other dismissals, accompanied by a model procedure comprising Appendix 6. 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 has worked previously and how the JNC now envisages their future working.
- 2.8 Paragraph 8.3.2 of Appendix 6, 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 not paralleled in the 2001 Regulations applicable in England. 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 of Appendix 6 to the JNC Conditions of Service 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 14(2) of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI No. 1861 (as amended by SI 2008 N. 2683) – schedule 1 comprises the Employment Tribunal Rules of Procedure – states that “So far as it appears appropriate to do so, the Employment Judge or tribunal shall seek to avoid formality in his or its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts.” Rule 14(3) (as similarly amended) adds that “The Employment Judge or tribunal (as the case may be) shall make such enquiries of persons appearing before him or it and of witnesses as he or it considers appropriate and shall otherwise conduct the hearing in such manner as he or it considers most appropriate for the clarification of the issues and generally for the just handling of the proceedings.” Rule 27(2) (rule 27(1) having been deleted by SI 2008 No. 3240) continues that “Subject to rule 14(3), at the Hearing a party shall be entitled to give evidence, to call witnesses, to question witnesses and to address the tribunal.” Also rule 27(4) states 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” (regulation 3 of SI 2004 No. 1861, as substituted by SI 2004 No. 2351 and further amended by SI 2008 No. 2683).

- 3.5 Paragraph 7.2.3 of Appendix 6 to the JNC Conditions of Service 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 26 of schedule 1 to the 2004 Regulations (as amended by SI 2008 No. 3240) provides for Employment Tribunal hearings to be public (though case management discussions must be held in private under rule 17(1) as substituted by SI 2005 No. 1865 and further amended also by SI 2008 No. 3240). 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 others’ 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 of Appendix 6 to the JNC Conditions of Service 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 7(3)(e) of SI No. 2001 No. 3384 in England; 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, i.e. 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) of Appendix 6 to the JNC Conditions of Service, referring to the indemnity

issue, concluded by noting the CLG opinion that regulation 7(4) of the 2001 Regulations (the equivalent being regulation 9(10) of the 2006 Regulations in Wales) is wide enough to both allow and require the employing authority to meet the DIP's costs in this respect.

## Model Grievance Procedure

### 1 Introduction

1.1 Following the agreement on a revised model disciplinary procedure for local authority chief executives the JNC has now considered the question of grievances involving chief executives. This advice 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 elected member(s) or the employing council.

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 for para 2 is set out in **Annex 1** 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 their contract of employment.

2.2 Grievance procedures applying to employees below the level of chief executive are not a matter for the JNC for Local Authority Chief Executives. However, while operating within the context of that employee's grievance procedure, it is important so far as Chief Executives are concerned that certain principles are observed and it is with this in mind that the JNC has agreed the following advice.

#### ***Initial filtering of grievances***

2.3 Where an employee raises a grievance against the chief executive it would be appropriate for an initial filtering to take place before starting an investigation. This principle is already acknowledged at paragraph 1.3.2 of the model disciplinary procedure:

".... 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."

2.4 Paragraph 1.3.3 goes on to say:

"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 deal with it first through the council's grievance procedure. Of course if the matter were a serious complaint against the chief executive's personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the disciplinary procedure."

### ***Filtering process***

- 2.5 It is suggested that, where it is not the case already, councils should nominate an officer who would be the recipient of any grievance raised against the chief executive. This would most likely be the Head of Human Resources (referred to below as the receiving officer). The receiving officer would be responsible for the filtering process, the outcome of which could include the following:
  - 2.5.1 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.
  - 2.5.2 The receiving officer decides that there are other formal appeal procedures that apply rather than the grievance procedure eg in cases of redundancy.
  - 2.5.3 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.
  - 2.5.4 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 is particularly the case as the most usual situation is likely to be a grievance from a director rather than a junior member of staff. This would probably require the Head of HR to check with the Monitoring Officer whether other procedures were more apt, but that does not necessarily compromise the Monitoring Officer from dealing with the case as suggested below.

### ***Resolving grievances informally***

- 2.6 Where the receiving officer is satisfied that the grievance is neither procedurally flawed nor patently frivolous or clearly unfounded (maybe a complaint about organisation, process, provision of facilities,

inadequate IT equipment, failure of consultation between Departments etc) then there may be some value in seeking to agree with the parties that attempts 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 or the JNC Joint Secretaries.

### ***Resolving grievances formally***

- 2.7 Under the new ACAS code the internal procedure to be followed by an aggrieved employee should comprise at least two stages. The first stage of the grievance should be by reference to the Monitoring Officer or other appropriate director. If the matter remains unresolved then a panel of elected members (the Grievance Committee) will need to hear the grievance on behalf of the employer. Realistically it is only at this level that the power would exist to resolve a grievance against the chief executive. The panel can either **uphold** or **dismiss** the grievance.
- 2.8 Just as the model disciplinary procedures recommend that Councils annually establish an Investigation and Disciplinary Committee so it is available if needed, so it is good practice 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.

### ***Formal Stage 1 – Investigating Officer***

- 2.9 Where informal attempts at resolution are either considered inappropriate or have been tried and failed then the receiving officer should refer the grievance to the council's Monitoring Officer or, if compromised, to the Section 151 Officer or another director not involved, who will deal with the stage 1 investigation. Only in exceptional cases will someone independent be brought in to do the investigation. If this hearing finds against the complainant then that person has a right of appeal to a member Grievance Committee (or other such body established by the council for this purpose – see below), i.e. Stage 2, and the chief executive to be immediately informed that this has happened. The Grievance Committee will then be responsible for considering the grievance, with appropriate technical and procedural advice from the receiving officer.
- 2.10 If the investigating officer finds in favour of the complainant, he or she will propose a solution, taking into account the remedy requested by the complainant and his or her own 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 Panel for it to resolve.
- 2.11 Other allegations against the Chief Executive personally, whether or not the matters have been raised by the employee under the council's grievance procedure, should be referred by the receiving officer directly to the Investigation and Disciplinary Committee. The committee will

need to determine whether there is a case to answer under the chief executive's disciplinary procedure and also decide whether there are grounds to suspend the chief executive.

### ***Formal Stage 2 – Grievance Committee***

- 2.12 The Grievance Committee will hear the case and reach its conclusion

#### ***Committee upholds grievance***

- 2.13 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.

- 2.14 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 have to conduct an investigation to decide whether there was a case to answer and consequently for a Designated Independent Person to be appointed. The matter would then be dealt with under the terms of the statutory disciplinary regulations (for which the JNC has a model procedure).

#### ***Committee dismisses grievance***

- 2.15 Where the committee **dismisses** the grievance then the matter would be regarded as having been concluded because the reference to the committee will have been the second of the two stages recommended by the ACAS Code of Practice.

### **3 Procedure for dealing with grievances raised by the chief executive**

- 3.1 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.

- 3.2 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 so it makes more sense for the receiving officer to be the Monitoring Officer.

- 3.3 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 value in seeking to resolve the matter informally. This might be through internally-facilitated informal joint discussions or informal joint discussions facilitated externally by an external mediator or the JNC Joint Secretaries.

- 3.4 In the event that informal resolution is either inappropriate or unsuccessful 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.
- 3.5 An appeal should be to full council.

***Grievances raised by chief executive during disciplinary proceedings***

- 3.6 Where a chief executive is in the process 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 procedure reached and 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.

