

# GENERAL PURPOSES COMMITTEE

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Wednesday, 25 January 2017 at 7.00 p.m.

CR1, Mulberry Place, 5, Clove Crescent, London E14 2BG

This meeting is open to the public to attend.

**Members:**

Chair: Councillor Danny Hassell

Vice-Chair: Councillor Denise Jones

Councillor Khaled Uddin Ahmed, Councillor Craig Aston, Councillor David Edgar, Councillor Aminur Khan, Councillor Muhammad Ansar Mustaqim and Councillor Helal Uddin

**Deputies:**

Councillor Asma Begum, Councillor Andrew Cregan, Councillor Marc Francis, Councillor Peter Golds, Councillor Ayas Miah, Councillor Candida Ronald and Councillor Andrew Wood

[The quorum for this body is 3 Members]

**Contact for further enquiries:**

Joel West, Democratic Services

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Web: <http://www.towerhamlets.gov.uk/committee>

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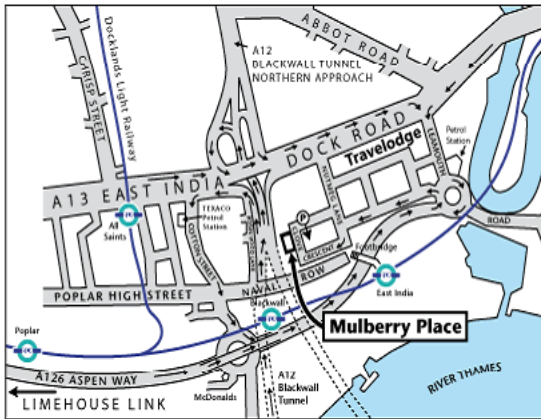
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## **APOLOGIES FOR ABSENCE**

### **1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTERESTS** **1 - 4**

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992.

See attached note from the Monitoring Officer.

### **2. MINUTES** **5 - 8**

To confirm as a correct record of the proceedings the unrestricted minutes of the meeting of the Committee held on 23 November 2016.

## **3. REPORTS FOR CONSIDERATION**

### **3.1 Local Authority Governor Applications** **9 - 14**

The report sets out for Members the details of applicants who have expressed an interest in being appointed to local authority school governor positions at Tower Hamlets schools. The Committee is asked to endorse or reject the nominations for appointments set out in the report.

### **3.2 Localism Act 2011 - Pay Policy Statement 2017/18** **15 - 78**

To recommend to Full Council a Pay Policy Statement for 2017/18.

### **3.3 Organisation Structure Implementation Update** **79 - 86**

This report updates Members on the implementation of the new organisational structure. The report provides a timetable for implementing the new structure including recruitment to vacant posts.

### **3.4 Designated Independent Person (DIP) update** **87 - 188**

To note progress developing a new process for the dismissal of statutory officers, following the implementation of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

### **3.5 Electoral Services Update**

To receive feedback on the annual canvass 2016 and the Whitechapel By-Election, 1 December 2016.

Report to follow.

**3.6 Review of Proportionality on the Appointment Sub-Committee** **189 - 194**

To review the allocation of seats on the Appointments Sub Committee following recent changes to the Council's political group composition.

**4. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT**

**5. EXCLUSION OF THE PRESS AND PUBLIC**

In view of the contents of the remaining items on the agenda the Committee is recommended to adopt the following motion:

“That, under the provisions of Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985, the press and public be excluded from the remainder of the meeting for the consideration of the Section Two business on the grounds that it contains information defined as Exempt in Part 1 of Schedule 12A to the Local Government Act, 1972.”

**EXEMPT SECTION (Pink Papers)**

The exempt committee papers in the agenda will contain information, which is commercially, legally or personally sensitive and should not be divulged to third parties. If you do not wish to retain these papers after the meeting, please hand them to the Committee Officer present.

**6. EXEMPT MINUTES** **195 - 198**

To confirm as a correct record of the proceedings the exempt minutes of the meeting of the Committee held on 23 November 2016.

**7. EXEMPT REPORTS FOR CONSIDERATION**

**7.1 Exempt Appendices for Local Authority Governor Applications** **199 - 216**

The report sets out for Members the details of applications of applicants who have expressed an interest in being appointed to local authority school governor positions at Tower Hamlets schools.

**Next Meeting of the Committee:**

Wednesday, 8 March 2017 at 7.00 p.m. in CR1, Mulberry Place, 5, Clove Crescent, London E14 2BG

# Agenda Item 1

## **DECLARATIONS OF INTERESTS - NOTE FROM THE MONITORING OFFICER**

This note is for guidance only. For further details please consult the Members' Code of Conduct at Part 5.1 of the Council's Constitution.

Please note that the question of whether a Member has an interest in any matter, and whether or not that interest is a Disclosable Pecuniary Interest, is for that Member to decide. Advice is available from officers as listed below but they cannot make the decision for the Member. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending a meeting.

### **Interests and Disclosable Pecuniary Interests (DPIs)**

You have an interest in any business of the authority where that business relates to or is likely to affect any of the persons, bodies or matters listed in section 4.1 (a) of the Code of Conduct; and might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or a person with whom you have a close association, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected.

You must notify the Monitoring Officer in writing of any such interest, for inclusion in the Register of Members' Interests which is available for public inspection and on the Council's Website.

Once you have recorded an interest in the Register, you are not then required to declare that interest at each meeting where the business is discussed, unless the interest is a Disclosable Pecuniary Interest (DPI).

A DPI is defined in Regulations as a pecuniary interest of any of the descriptions listed at **Appendix A** overleaf. Please note that a Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

### **Effect of a Disclosable Pecuniary Interest on participation at meetings**

Where you have a DPI in any business of the Council you must, unless you have obtained a dispensation from the authority's Monitoring Officer following consideration by the Dispensations Sub-Committee of the Standards Advisory Committee:-

- not seek to improperly influence a decision about that business; and
- not exercise executive functions in relation to that business.

If you are present at a meeting where that business is discussed, you must:-

- Disclose to the meeting the existence and nature of the interest at the start of the meeting or when the interest becomes apparent, if later; and
- Leave the room (including any public viewing area) for the duration of consideration and decision on the item and not seek to influence the debate or decision

When declaring a DPI, Members should specify the nature of the interest and the agenda item to which the interest relates. This procedure is designed to assist the public's understanding of the meeting and to enable a full record to be made in the minutes of the meeting.

Where you have a DPI in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, in addition to disclosing the interest to that meeting, you must also within 28 days notify the Monitoring Officer of the interest for inclusion in the Register.

**Further advice**

For further advice please contact:-

Graham White, Acting Corporate Director, Governance – 020 7364 4800.

## APPENDIX A: Definition of a Disclosable Pecuniary Interest

(Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Reg 2 and Schedule)

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to the Member's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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**LONDON BOROUGH OF TOWER HAMLETS**

**MINUTES OF THE GENERAL PURPOSES COMMITTEE**

**HELD AT 7.00 P.M. ON WEDNESDAY, 23 NOVEMBER 2016**

**C1, MULBERRY PLACE, 5, CLOVE CRESCENT, LONDON E14 2BG**

**Members Present:**

Councillor Danny Hassell (Chair)  
Councillor Denise Jones (Vice-Chair)  
Councillor Shah Alam  
Councillor David Edgar  
Councillor Aminur Khan  
Councillor Muhammad Ansar Mustaqim  
Councillor Helal Uddin  
Councillor Peter Golds (Substitute for Councillor Craig Aston)  
Councillor Ayas Miah (Substitute for Councillor Khaled Uddin Ahmed)

**Apologies:**

Councillor Khaled Uddin Ahmed  
Councillor Craig Aston

**Officers Present:**

Will Tuckley	(Chief Executive)
Runa Basit	(Head of School Governance & Information)
Mark Norman	(Legal Advisor & Deputy Monitoring Officer)
Stuart Young	(Interim Divisional Director, HR & Transformation)
Joel West	(Senior Democratic Services Officer)

**1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTERESTS**

There were no declarations of disclosable pecuniary interests.

**2. MINUTES**

The unrestricted minutes of the General Purposes Committee meeting held on 14 September 2016 were agreed and signed as a correct record, subject to the following amendments:

- Minute 3.1 – Elections Update – replacing ‘police officers understood’ with ‘police officers increasingly understood’ in the first sentence of the final paragraph.

- Minute 3.2 – Organisation Structure – to add that a discussion had taken place regarding the assimilation of current staff into the new structure.
- Minute 3.3 – Workforce Diversity – replacing ‘LGA’ with ‘GLA’.
- Minute 7 – Any Other Business’: Adding ‘Some’ to the beginning of the first sentence.

### **Matters arising**

Further to Minute 3.3 - Workforce Diversity – the Chair asked that the previously requested information on gender and ethnic-blind recruitment options and report on sickness management be brought to the next meeting of the Committee.

## **3. REPORTS FOR CONSIDERATION**

### **3.1 Local Authority Governor Applications**

Runa Basit, Head of School Governance & Information, introduced the report, which summarised applications from five persons who had applied to be nominated for appointment as a local authority governor at Tower Hamlets maintained schools.

Following consideration of the information supplied, including both unrestricted and restricted reports, the Committee agreed to nominate all five applicants to the school governor position each had applied for.

### **RESOLVED -**

1. That the applications for Local Authority Governors as detailed in the report be approved as follows:
  - a. That Tat-Seng Chiam be nominated for appointment as a governor at Harry Gosling Primary School under the 2012 School Governance (Constitution) Regulations.
  - b. That Daniel Murshad be nominated for appointment as a governor at Stepney Green School under the 2012 School Governance (Constitution) Regulations.
  - c. That Louis Coiffait be nominated for appointment as a governor at Olga Primary School under the 2012 School Governance (Constitution) Regulations.
  - d. That Jack Gillet be nominated for appointment as a governor at Lawdale Primary School under the 2012 School Governance (Constitution) Regulations.

- e. That Isobel Cattermole be nominated for appointment as a governor at Beatrice Tate Special School under the 2012 School Governance (Constitution) Regulations.

### **3.2 Council Restructure Update**

Will Tuckley, Chief Executive, introduced the report and explained the key changes to the organisational structure proposal that had been received at the previous meeting of the Committee.

In response to queries from some members of the Committee, Stuart Young, Interim HR, OD & Transformation Manager, explained that the requested delegated authority for posts technically meeting the definition of Deputy Chief Officer related to anomalies in the current structure, whereby junior staff report directly to Directors. He agreed to provide a list of all such posts to the Committee along with an updated Council structure chart that accounted for the changes proposed since the September 2016 Committee meeting.

Some members of the Committee indicated concern with the proposal from the report to appoint a recruitment agency to support appointments and external recruitment to any vacant posts that remain after the restructure. They felt such an approach contains a risk of the Council becoming dependent on such services and questioned whether this represented value for money. Will Tuckley, Chief Executive, explained that, as it is proposed to carry out a recruitment campaign for a number of posts, this will provide better value for money than if the services were used for a one-off appointment.

Mr Young also outlined engagement of trade unions since the previous meeting. Comments had been received from GMB, Unison and Unite. Mr Young had advised the Unite Branch Secretary that he could address this meeting of the Committee, but it appeared he had chosen not to attend.

**RESOLVED** that the Committee -

- a) Notes the responses to consultation as described at paragraph 3.4 of the report and subsequent changes to the structure at paragraph 3.5 of the report.
- b) Notes the arrangements put in place by the Chief Executive acting as Head of Paid service to implement the new management structure.
- c) Agrees to the proposal at paragraph 3.12 of the report that those posts technically meeting the definition of Deputy Chief Officer are delegated for appointment to the Head of Paid Service.

### **4. EXCLUSION OF THE PRESS AND PUBLIC**

**RESOLVED**

1. That in accordance with the provisions of Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985, the press and public be excluded

from the remainder of the meeting on the grounds that the remaining agenda item contained information defined as exempt or confidential in Part 1 of Schedule 12A to the Local Government Act 1972.

## **5. EXEMPT MINUTES**

The exempt minutes of the General Purposes Committee meeting held on 14 September 2016 were agreed and signed as a correct record.

### **Matters arising**

In response to questions from members of the Committee, Mr Tuckley advised:

- he hoped to be in a position shortly to provide an update on the resolutions of item 6.2 (Council Organisational Structure - Staffing Implications).
- he will investigate whether the Council's constitution, policies and guidance on Councillors' access to information is appropriate, including Councillors' access to restricted/exempt reports and documents.

## **6. EXEMPT REPORTS FOR CONSIDERATION**

### **6.1 Exempt Appendices for Local Authority Governor Applications**

The appendices for Local Authority Governor Applications were considered during item 3.1 on the unrestricted part of the agenda.

### **6.2 Council Restructure Staffing Implications**

The Committee considered a restricted report on staffing implications of the Organisation structure update report considered in the unrestricted part of the agenda.

Members discussed the report and agreed the recommendations as set out.

The meeting ended at 8.50 p.m.

Chair, Councillor Danny Hassell  
General Purposes Committee

Non-Executive Report of the: <b>General Purposes Committee</b> 25 January 2017	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Debbie Jones, Corporate Director (Children's Services)	<b>Classification:</b> [Unrestricted]
<b>Local Authority Governor Applications</b>	

<b>Originating Officer:</b>	Runa Basit, Head of Governor Services
<b>Wards affected:</b>	All

## 1. SUMMARY

This report sets out for Members details of applicants who have applied to be nominated as the local authority governor at Tower Hamlets maintained schools.

## 2. RECOMMENDATION

The General Purposes Committee is recommended to:

- 2.1 Consider the applications and agree to nominate the applicants to the positions that are available for local authority governors at maintained schools in Tower Hamlets.

### **3. REASONS FOR DECISION**

- 3.1 The School Governance (Constitution) (England) Regulations 2012 set out the process for the appointment of local authority governors to maintained schools. The Regulations allow for the local authority to nominate a person to fill the position of local authority governor. It is for the governing body to appoint that person if the governing body considers the person meets any eligibility criteria that it has set.
- 3.2 The governor nominations in this report are to fill the current LA governor vacancies.

### **4. ALTERNATIVE OPTIONS**

#### **Background - LA appointed governors**

- 4.1 To improve the efficiency for appointing local authority governors to school vacancies, the General Purposes Committee at a meeting held on Wednesday 15 February 2006 made the decision to delegate authority to the Corporate Director (Children, Schools & Families) to appoint and revoke the appointment of local authority governors, except where there was a dispute about an appointment or there was more than one applicant for a post in which case the Committee would decide the appointment.
- 4.2 At a meeting on 29 November 2011, the Council resolved to amend the constitution and the terms of reference of the General Purposes Committee were amended. The committee is now responsible for the appointment and revocation of local authority school governors.
- 4.3 As this is a function of the local authority there is no alternative option.

### **5. LOCAL AUTHORITY GOVERNOR NOMINATIONS AND APPOINTMENTS**

- 5.1 Applications to be nominated as the local authority governor to three schools are attached as Appendices to this report in the restricted area of the agenda.

### **6. APPLICATIONS**

#### **Re-Appointments**

- 6.1 The Headteacher and Chair provided the following comments in relation to the re-appointment of Dr Lowe as the LA governor at Chisenhale:  
Jenny Lowe has been a governor at Chisenhale for more than 10 years including serving as the Chair and committee chair. She is currently the nominated governor for safeguarding, a role she undertakes with great professionalism. Her commitment is evidenced by her excellent attendance record, her contribution to meetings and to policy review. She regularly attends governor conferences and training events and always feeds back her learning to other

governors. Jenny brings a wealth of knowledge and experience to the governing body and is very well respected by her fellow governors.

The Headteacher and Chair would like Dr Lowe to continue as the LA governor at Chisenhale. Dr Lowe's application is enclosed at **Appendix 1**.

6.2 The Headteacher and Chair provided the following comments in relation to the re-appointment of Ms Le-Tessier as the LA governor at Seven Mills:  
Geeta Le-Tessier has played a valuable role on the Seven Mills Governing Body during her term of office as an LA governor:

- She is Chair of the Premises Committee. Her professional experience (in public housing) gives her valuable insights into the school's management of its buildings/site, and into related Health and Safety issues. She takes part in the annual Governors' Health and Safety site audit.
- Her professional experience has been very useful to the school during the past four years.
- Geeta is a member of the school's Finance and Staffing Committee. Her professional experience of setting, managing and monitoring budgets for large housing projects is very valuable for the work of this committee.
- Geeta also acts as one of two link governors for SEN/Inclusion and Safeguarding. This involves meeting with the deputy head/inclusion co-ordinator (who is also the school's safeguarding lead) on a regular basis.
- Geeta's attendance record at meetings is very good, and she also makes additional visits to school (e.g. for special events) whenever she can.
- Most importantly, Geeta understands well the role of the governor as critical friend. She does not shy away from asking challenging questions, but she is always constructive in any criticism she makes and is realistic in her suggestions for ways forward. She is very supportive of the school's child- and community-centred ethos.

The Headteacher and Chair very much hope that Geeta will be able to continue in her role as the LA governor for a second term. Ms Le-Tessier's application is enclosed at **Appendix 2**.

### **New application**

6.3 The Headteacher fully supports Ms K Marriner's application and provided the following comments in relation to appointing Ms Marriner as the LA governor at the PRU Management Committee:

Kerri has previously been an Associate Governor and has supported various governor actions including:

- Staff appointments
- School policy development

More importantly Kerri has excellent knowledge of student behaviour and the support required to challenge and in improving the behaviour which leads to social exclusion. She also has very strong knowledge and understanding of Alternative Provision more generally, which will also support the school's ongoing development. Ms K Marriner's application is enclosed at **Appendix 3**.

## **7. COMMENTS OF THE CHIEF FINANCE OFFICER**

7.1 There are no financial implications arising from the recommendations in this report.

## **8. LEGAL COMMENTS**

8.1 Section 19 of the Education Act 2002 requires each maintained school to have a governing body, which is a body corporate constituted in accordance with the Regulations. Each maintained school is required to have an instrument of government, which specifies the membership of the governing body. Regulations require a governing body to include person appointed as a local authority governor and for a number of associated matters.

8.2 The 2012 Regulations detail the composition of the governing body and the appointment of governors, including local authority governors. The 2012 Regulations provide that there can be only one local authority nominated governor. A local authority governor is a person who is nominated by the local authority and is appointed by the governing body after being satisfied that the person meets any eligibility criteria set by the governing body. It is for the governing body to decide whether the Local Authority nominee has the skills to contribute to the effective governance and success of the school and meets any eligibility criteria they have set. If the governing body has set eligibility criteria, then these should be notified at the meeting, so the Committee can consider them before making a nomination.

8.3 Schedule 4 to the 2012 Regulations set out the circumstances in which a person is qualified or disqualified from holding or continuing in office as a governor, details of which are as follows –

- A person who is a registered pupil at a school is disqualified from holding office as a governor of the school.
- A person must be aged 18 or over at the date of appointment to be qualified to be a governor.
- A person cannot hold more than one governor post at the same school at the same time.
- A governor who fails to attend meetings for six months without the consent of the governing body becomes disqualified from continuing to hold office.
- A person is disqualified from holding or continuing in office if: (1) his or her estate is sequestered (under bankruptcy) or the person is subject to a bankruptcy restrictions order or an interim order; (2) he or she is, broadly speaking, disqualified from being a company director; (3) he or she has been removed from office as trustee of a charity; (4) he or she has a criminal conviction of a specified kind within a specified time period; (5) he or she is subject to a specified prohibition or restriction on employment, such as being barred from 'regulated activity' relating to children under the Safeguarding of Vulnerable Groups Act 2006; or



(6) he or she refuses to apply for a criminal records certificate when requested to do so by the clerk to the governing body.

- A person is disqualified from appointment as a local authority governor if he or she is eligible to be a staff governor.

8.4 Once appointed, a governor will hold office for a fixed period of four years from the date of appointment, except in a limited number of circumstances. This does not prevent a governor from being elected for a further term. A governor may resign, be removed or be disqualified from holding office in the circumstances specified in the relevant Regulations.

8.5 In determining whether to appoint an authority governor, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. The Committee will wish to be satisfied that the process of selection is fair, open and consistent with furtherance of these equality objectives.

8.6 The Council's Constitution gives the General Purposes Committee responsibility for appointment of local authority school governors.

## **9. ONE TOWER HAMLETS CONSIDERATIONS**

9.1 Local Authority Governors are drawn from all sectors of the community. There is a mechanism in place to ensure, as far as possible, that the composition of governing bodies reflects the makeup of the school and wider community.

## **10. BEST VALUE (BV) IMPLICATIONS**

10.1 There are no best value implications arising from the report.

## **11. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

11.1 There are no SAGE implications in the report.

## **12. RISK MANAGEMENT IMPLICATIONS**

12.1 Governors have a crucial strategic role in promoting school improvement and supporting Headteachers and staff in their work. Their statutory responsibilities and duties require a range of skills. There is a risk that the local authority will not be able to meet governing body requirements for particular skills. The LA engages in a number of activities to ensure a range of applications from the community and local business.

## **13. CRIME AND DISORDER REDUCTION IMPLICATIONS**

13.1 The proposals in the report do not have an impact in relation to the reduction of crime and disorder.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE.

### **Appendices**

- Appendices 1 – 3 [EXEMPT]. LA Governor Application Forms

### **Officer contact details for documents:**

- Runa Basit, Head of Governor Services, 020 7364 4302

Non-Executive Report of the:  <b>General Purposes Committee</b>  25 January 2017	
<b>Report of:</b> Zena Cooke, Corporate Director Resources	<b>Classification:</b> Unrestricted
<b>Localism Act 2011 – Pay Policy Statement 2017/18</b>	

<b>Originating Officer(s)</b>	Stuart Young, Interim Divisional Director HR and Transformation
<b>Wards affected</b>	All wards

## Summary

Under Section 38(1) of the Localism Act 2011, the council is required to adopt a pay policy statement for each financial year.

The council's first pay policy statement was adopted for 2012/13 and subsequent pay policy statements were agreed for 2013/14, 2014/15, 2015/16 and 2016/17 (Appendix 2). A statement for 2017/18 (draft attached as Appendix 1) should be approved and adopted by 31<sup>st</sup> March 2017 to enable it to be published as soon as is practical in the new financial year.

The Local Government Transparency Code 2015 (Appendix 3) includes further guidance regarding the calculation of the pay multiple, which forms part of the pay policy statement. No further supplementary guidance has been published in relation to the 2017/18 pay policy statement and a Local Government Transparency Code 2016 is also yet to be published.

Should guidance or a 2016 Code be published after the 2017/18 pay policy has been considered by the GP Committee and/or Full Council, which requires minor amendments to be made to the pay policy statement, it is proposed that the GP Committee delegate the authority to make such amendments to the Chief Executive after consultation with the Divisional Director (HR and Transformation), the Chair of the GP Committee and the Monitoring Officer. Should any fundamental changes be required, the pay policy statement will be sent back to the GP Committee for consideration.

The draft 2017/18 pay policy statement is included at Appendix 1 for consideration by the GP Committee. The proposed statement has to be approved and adopted by the end of March 2017. The meeting of Full Council, during which the statement will be considered for adoption, will be held on 22<sup>nd</sup> March 2017.

The pay policy statement sets out the council's current policies and practice in relation to pay for all parts of the workforce, with the exception of school based

employees. Any changes to the way in which staff are remunerated would need to be dealt with as outlined in section 8 – Legal comments. The model pay policy produced for schools could be reviewed for 2017/18 to include a commitment to pay London Living Wage.

### **Recommendations:**

The General Purposes Committee is recommended to:-

1. Consider the draft pay policy statement, proposing any changes to be made and, subject to such changes, recommend that Full Council agrees the draft statement.
2. Agree that if any minor changes to the 2017/18 pay policy statement are required as a result of future government guidance or a Local Government Transparency Code 2016, these amendments be delegated to the Chief Executive, after consultation with the Divisional Director (HR and Transformation), the Chair of the GP Committee and the Monitoring Officer. Should any fundamental changes be required, the pay policy statement will be sent back to the GP Committee for consideration.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The Localism Act 2011 received Royal Assent on 15 November 2011. In addition to the Act, the 'Code of Recommended Practice for Local Authorities on Data Transparency' was published in September 2011 under Section 2 of the Local Government, Planning and Land Act 1980. The Code sets out key principles for local authorities in creating greater transparency through the publication of data. Supplementary guidance, 'Openness and Accountability in Local Pay: Guidance under Section 40 of the Localism Act', was published on 20 February 2013.
- 1.2 The Act's intention is to bring together the strands of increasing accountability, transparency and fairness, with regards to pay.
- 1.3 The provisions of the legislation required Local Authorities to adopt and publish a pay policy statement for 2011/12 and for each subsequent financial year. Statements must be approved by Full Council and have regard to the guidance published by the Secretary of State. Authorities will be constrained by their policy statement when making determination on senior officer pay, although the statement may be amended at any time by further resolution of Full Council.

## **2. ALTERNATIVE OPTIONS**

- 2.1 As the publication of a pay policy statement and the nature of its content is a legislative requirement, there are no alternative options.

## **3. DETAILS OF REPORT**

- 3.1 The pay policy statement must set out the authority's policies for the financial year relating to the remuneration of its officers. This must include:
- A policy on the level and elements of remuneration for each chief officer
  - A policy on the remuneration of lowest paid employees (together with a definition of 'lowest paid employees' and reasons for adopting that definition)
  - A policy on the relationship between the remuneration of chief officers and the remainder of the workforce
  - A policy on other specific aspects of chief officers' remuneration (remuneration on recruitment, increases and additions to remuneration, use of PRP and bonuses, and the approach to termination payments).
- 3.2 Additionally, the council must have regard to other statutory guidance or recommendations e.g. relating to pay multiples, but it should be noted that the statutory guidance emphasises that each LA has the autonomy to take its own decisions on pay and pay policies.
- 3.3 The draft pay policy statement takes into account Local Government Association (LGA)/Association of Local Authority Chief Executives (ALACE) guidance issued to local authority Chief Executives 'Localism Act: Pay Policy Statement Guidance for Local Authority Chief Executives' and the statement details the council's current arrangements; using the definitions contained in the Act and associated guidance. The Act also requires the council to have regard to statutory guidance entitled 'Openness and accountability in local pay' under the Transparency Agenda. The original guidance was published in 2012, with updated guidance published in February 2013, which stated that the pay policy statement should set out the council's position in relation to appointments to posts with salary packages over £100,000 and redundancy packages over the same amount.
- 3.4 The Localism Act defines senior executives, and in this statement they are the Chief Executive, Directors, the Monitoring Officer and Assistant Directors.
- 3.5 The draft statement refers to information already published by the council in relation to senior salary data to meet with the requirements of the Government's transparency agenda. In addition, the Local Government Transparency Code 2015 also covers the way in which the pay multiple included in the pay policy should be calculated. The government have consulted on changes to the Code for 2016 but at the time of writing, the results have not been published. Should any minor changes to the 2017/18 pay policy statement be required as a result of the publication of a Local

Government Transparency Code 2016, these amendments could be made by the Chief Executive, after consultation with the Divisional Director (HR and Transformation), the Chair of the GP Committee and the Monitoring Officer. Should any fundamental changes be required, the pay policy statement will be sent back to the GP Committee for consideration.

### **Pay Multiple**

- 3.6 There is a requirement to publish a ratio, or pay multiple. There are a variety of ways to approach this, but the Hutton Review of Fair Pay in the Public Sector (2011) supported the publication of the ratio of the council's highest paid employee (the Chief Executive) to that of its median earner (i.e. the mid-point between the highest and lowest salaries). This multiple is quoted in the draft statement. The ratio last year was 1:6.7 and this year is 1:6.1.
- 3.7 For the 2014/15 pay policy statement, an additional ratio demonstrating the relationship between the council's highest paid employee (total salary package) and the lowest salary of the non-schools workforce was included. This ratio last year was 1:10.87 and this year is 1:10.90. This allows greater comparison with other boroughs that provide this ratio.
- 3.8 The Local Government Transparency Code 2015 states that the pay multiple is defined as the ratio between the highest paid taxable earnings for the given year (including base salary, variable pay, bonuses, allowances and the cash value of any benefits-in-kind) and the median earnings figure of the whole of the authority's workforce. If this definition is applied, the ratio is 1:6.1. This is the same as the figure already used. (Please note that this figure will be updated in March, when a full tax year can be taken into consideration, to ensure it is accurate and up to date).
- 3.9 When considering the 2015-16 pay policy in January 2015, HR Committee asked about schools and apprentices in relation to the pay multiples. For clarity, apprentices and schools' staff are not included in the pay multiple calculations. Apprentices are excluded due to the fact the multiples apply to employees only. Schools can adopt their own pay policy and therefore their staff would be covered by these. The Pay Policy is clear that the pay multiples only apply to the non-schools workforce. The model pay policy provided to schools could be revised for 2017/18 to include pay multiples.
- 3.10 Once other councils have published their pay policies, there will be a further report to GP Committee including benchmarking information as to how the council's pay multiples compare to those of other London boroughs.

### **London Living Wage**

- 3.11 The council is an accredited Living Wage Employer. This means that we adhere to the Living Wage Foundations accreditation statement, which states that "Employees based in London Boroughs (shall be paid) not less than the London Living Wage; and increase the amount which it pays to affected employees by the same amount as any increase to the London Living Wage,

within 6 months of the date on which any increase in the London Living Wage is officially announced.”

- 3.12 The London Living Wage (LLW) increases annually and the latest rise was announced on 31<sup>st</sup> October 2016. The LLW rate increased from £9.40 to £9.75 per hour.
- 3.13 The council has 6 months in which to apply the new LLW rates, i.e. by 30th April 2017. It is proposed the new rate is introduced from 1<sup>st</sup> April 2017. Whilst the council’s standard procurement documentation does not stipulate when contractors are required to apply the LLW, it is further proposed to align the increase for third party service providers with directly employed workers.
- 3.14 The lowest paid staff in the council are currently paid at the London Living Wage rate of £9.40 per hour. It is proposed that from 1<sup>st</sup> April 2017, the lowest paid staff are moved on to spinal column point (SCP) 6, which will equate to £9.99 per hour – an increase of 59p per hour or SCP 7, which will equate to £10.07 per hour, depending on their length of service.
- 3.15 SCPs 6 and 7 have not been used for a number of years due to past increases in the LLW, prior to the 2 year pay award being agreed, which meant the LLW rate surpassed the hourly rates for these points. Following the 2 year pay award agreed last year, SCPs 6 and 7 are both now back above the LLW rate and it is therefore proposed that they start to be used again.
- 3.16 Prior to the 2 year pay award agreed last year, the lowest paid staff had progressed to SCP 8, which at that time was the lowest point above the LLW rate. It was therefore agreed that last year, as the pay award was pending, staff who had been receiving SCP 8 (£9.35 per hour) would receive an increase to the actual LLW rate (£9.40 per hour).
- 3.17 The Trade Unions requested that SCPs 6 and 7 are not reintroduced as they are seeking to increase the pay of those paid at the lower end of the pay scales. However, as the 2016-18 pay award is weighted so that the biggest hourly increase is at the lower end of the pay spine, SCPs 6 and 7 are now above the LLW rate.
- 3.18 There are currently 561 staff who are receiving the LLW. This figure excludes staff who were on SCP 8 but their substantive post grade is Scale1A2, as they will remain on SCP 8, or progress to SCP 9 if they have the requisite service. The 561 staff have a substantive post grade of Scale1A1 and have only previously progressed to SCP 8 due to the LLW increases.
- 3.19 In relation to the 561 staff receiving the LLW, it is proposed that as SCPs 6 and 7 are now above the LLW, they be moved back on to SCP 6 or 7 as appropriate. Staff who have the service to have progressed to the top of Scale1A1 grade will be placed on SCP 7 and those who have not will be placed on SCP 6.

- 3.20 Although this approach means reducing the SCP that these staff were previously on, they will receive an actual pay increase of at least 59p per hour. This approach also means that staff are once again receiving pay in line with the evaluated grade for their post.
- 3.21 Many of the 561 employees work part time, meaning that there are 325 full-time equivalents. The maximum cost increase (based on the current rate of £9.40 per hour) of this approach, assuming all staff were to be paid on SCP 7 (which would apply to the overwhelming majority), would be £399,425 per annum.
- 3.22 Although the 2017-18 Pay Policy does not specifically say which SCP these staff should be placed on, it does say that “as the London Living Wage rises in future years, the council will continue to increase pay levels for the lowest paid staff to ensure that they are paid the nearest scale point above the London Living Wage.” This approach complies with that principle.
- 3.23 It is proposed that as well as moving staff currently paid on LLW whose substantive grade is Scale1A1 on to SCPs 6 and 7 as appropriate, that new starters in posts graded Scale1A1 are placed on a starting point of SCP 6, which is the lowest SCP in the grade.
- 3.24 The significant increase of the hourly rate at the lower end of the pay scale means that SCPs 6 and 7 can be reintroduced, relieving the concertina effect that was occurring in the lower grades.
- 3.25 If, however, staff were paid at the London Living Wage rate of £9.75 per hour instead of being placed on the appropriate SCP, the cost (based on the assumptions in 3.21 above) would be around £207,480.
- 3.26 It is likely that by 2018 the current pay spine will not be fit for purpose. Given this, a Task and Finish Group looking at a future pay spine for London, taking into account, amongst other things, the concertina effect that rises to the LLW is having on the bottom of the current pay spine, has been established and some initial work done. The council is represented on this group, which may be called on to do further work in 2017, depending on how national discussions about amendments to the pay spine progress.

## **Future Legislative Changes**

### **Change expected by end of 2016/early 2017 - Repayment of Public Sector Exit Payments**

- 3.26 The Small Business, Enterprise and Employment Act 2015 became law on 26<sup>th</sup> March 2015. The Act includes provision for secondary legislation in relation to the repayment of public sector exit payments. Draft Repayment of Public Sector Exit Payments Regulations 2015 have been created, which are due to come into force in late 2016/early 2017.



- 3.27 The Regulations will mean that individuals earning more than £80,000, who receive an exit payment and then take a new job anywhere in the public sector within a year, either on or off payroll, will have to repay, to the employer who made the payment, all or part of their exit payment.
- 3.28 In anticipation of the regulations, a separate paragraph was included in the Pay Policy for 2016-17, under section 12.5 – re-employment following redundancy/early retirement, to cover the requirement in the regulations as follows: -

*“Any employee or office holder who earns above the threshold set out in the Repayment of Public Sector Exit Payments Regulations 2016, will be required to repay in full or part (as set out in the Regulations), to the employer who made the payment, any exit payment they receive should they return to any part of the public sector (see the Regulations for a full list), either on or off payroll, within 12 months, once the Regulations are operable. This requirement can only be waived in exceptional circumstances and by a decision of Full Council.”*

### **Change expected in 2017 – Public Sector Exit Payment Cap**

- 3.29 At present there is no limit on public sector exit payments. The government announced on 23<sup>rd</sup> May 2015 that it intends to end six figure exit payments for public sector workers. The government therefore proposes to introduce a cap of £95k on the total value of exit payments.
- 3.30 This cap will include all forms of exit payment available to employees on leaving employment, for example cash lump sums, such as redundancy payments, the cost to the employer of funding early access to unreduced pensions (‘pension strain’), severance payments, ex gratia payments and other non-financial benefits, such as additional paid leave. The cap of £95k on the total value of the exit payment would apply whether these benefits are taken individually or in combination.
- 3.31 Where multiple payments are made, these will be aggregated to be measured against the £95k cap. At present, it is proposed that the following will not be in scope: -
- Compensation payments in respect of death or injury attributable to employment, serious ill health and ill health retirement and certain fitness related requirements
  - Payments made to conclude/settle litigation, including claims for unfair dismissal and/or breach of contract
- 3.32 It is proposed that waivers would be available in exceptional cases and will require the approval of Full Council. There will be a requirement for the council to maintain records and publish annual details of all exit payments made within the financial year

- 3.33 Draft Public Sector Exit Payment Regulations 2016 have been created by the Treasury, in exercise of the power conferred upon them by section 153A(1) of the Small Business, Enterprise and Employment Act 2015. However, these are still in draft form and an implementation date is yet to be set. The LGA has advised it is awaiting further legislative developments and guidance will be issued in due course.
- 3.34 At present, it is unclear how the proposals set out in the Regulations will override either the statutory or contractual rights of employees. It is likely that further legislation will be required to give effect to these proposals where they override contractual provisions. The proposals may also require legislative amendments to the Local Government Pension Scheme.
- 3.35 The proposed changes are aimed at senior managers within the public sector. However, there will be a greater impact on employees with longer service, even at middle income level, in relation to the cost of providing unreduced pension benefits.
- 3.36 It is not proposed to add anything to the pay policy at this stage with regard to these proposals. If changes are needed once the final regulations are implemented and their impact is clear, they will be made at that time.
- 3.37 A further report and guidance will be produced on these regulations and their impact once the final details are known.

### **Trade Union Consultation**

- 3.38 The draft pay policy and this report have been shared with Unison, GMB and Unite for their comments but none were received.

## **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 The MTFs includes a provision of £1.6m in 2017/18 to cover increases in employee costs as a result of pay inflation and changes in London Living Wage (LLW).
- 4.2 Aside from that, the other recommendations within the report are not expected to lead to any additional financial commitments for the council. However, there will be some additional administrative responsibilities arising from these changes which will need to be managed through existing resources.

## **5. LEGAL COMMENTS**

- 5.1 The legal considerations are set out in the body of the report and therefore there are no additional legal implications arising.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 An equality analysis will be carried out on the draft policy statement, but it should be noted that the statement describes existing policies and practice

rather than proposing new ones. Should there be amendments, further advice on the impact will be given.

## **7. BEST VALUE (BV) IMPLICATIONS**

7.1 This report sets out the council's pay policy for 2017/18, which is required by law. It ensures that employees receive an appropriate salary for the work they undertake and that the council's approach to pay is set out clearly.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

8.1 There are no implications.

## **9. RISK MANAGEMENT IMPLICATIONS**

9.1 The draft statement describes existing policies and practice. Any risks, e.g. from proposing changes in the future to pay and benefits, would be assessed at the time.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 There are no implications.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

Repayment of Public Sector Exit Payments

#### **Appendices**

Appendix 1 – Draft Pay Policy Statement 2017/18

Appendix 2 – Pay Policy Statement 2016/17

Appendix 3 – Local Government Transparency Code 2015

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#### **Local Government Act, 1972 Section 100D (As amended)**

#### **List of “Background Papers” used in the preparation of this report**

List any background documents not already in the public domain including officer contact information.

- Localism Act 2011
- LGA / ALACE - 'Localism Act: Pay Policy Statement Guidance for Local Authority Chief Executives'

- DCLG - Openness and Accountability in Local Pay: guidance under section 40 of the Localism Act
- DCLG - 'Openness and accountability in local pay: Guidance under section 40 of the Localism Act 2011' Supplementary Guidance
- Communities and Local Government - The Code of Recommended Practice for Local Authorities on Data Transparency

**Officer contact details for documents:**

- Stuart Young, Interim Divisional Director, HR and Transformation 020 7364 5918

**London Borough of Tower Hamlets  
Pay Policy statement 1 April 2017 – 31 March 2018**

**1 Introduction**

The Localism Act 2011 requires Local Authorities to produce a pay policy statement every financial year. This requirement is part of the Government's drive towards public sector transparency.

The Pay Policy Statement sets out the Council's current policies and practice in relation to pay for all parts of the workforce. The statement excludes school based employees. The Statement is made available on the Council's website, which also includes separately published salary information for senior managers as part of the Government's Transparency Code.

**2 Scope**

The policy addresses the requirements of the Localism Act and addresses key areas of pay and remuneration.

The Localism Act defines senior executives, and in this statement they are the Chief Executive/Head of Paid Service, Directors and the Monitoring Officer (who make up the Corporate Management Team) in addition to Directors and Divisional Directors.

**3 Pay and grading structure**

The majority of employees' pay and conditions of service are agreed nationally either via the National Joint Council (NJC) for Local Government Services, or the Joint National Council (JNC) for Chief Officers, with regional or local variations.

The Council also employs some staff on Soulbury conditions of service, some on conditions determined by the Joint National Council for Youth and Community Workers, some staff covered by the School Teachers Pay and Conditions Document and some staff on locally agreed terms and conditions for Lecturers and Tutors.

There are also a number of staff who have retained their existing terms and conditions following TUPE transfers into the organisation.

It is the practice of the Council to seek the views of local trade unions on pay related matters, recognising that elements are settled within a national framework.

The Council uses national pay scales up to grade LPO8, and determines the

appropriate grade for each job in accordance with the Greater London Provincial Council (GLPC) job evaluation scheme.

Above LPO8, local grades are in place for senior staff as follows:

- LP09 - evaluated under a local variation to the GLPC job evaluation Scheme
- Chief Officers, Deputy Chief Officers (Divisional Directors and senior executives) and Key Chief Officers - evaluated under the Joint Negotiating Committee for Chief Officers job evaluation scheme

The Council signed a Single Status agreement in April 2008 with trade unions.

This brought former manual grades into the GLPC job evaluation scheme, and replaced spot points with narrow grade bands. One of the key aims of the agreement was to eliminate potential pay inequality from previous pay structures and ensure that new pay structures are free from discrimination.

New and changed jobs are evaluated using the relevant job evaluation scheme, with the appropriate grade being determined using a range of factors.

The scale point on which an individual is appointed to the post is normally the lowest of the grade but will depend on skills and experience.

#### **4 How the Council's management team is structured**

The Council's Corporate Management Team is led by the Chief Executive/Head of Paid Service, supported by a number of Chief Officers reporting to the Chief Executive/Head of Paid Service. All statutory roles are at this level of the organisation, with the exception of the Director of Public Health.

Divisional Directors (Deputy Chief Officers) in each Directorate report to a member of the Corporate Management Team.

#### **5 Senior Executive remuneration**

Pay for senior executives who are members of the Corporate Management Team is made up of three elements:

- Basic pay (defined by a locally agreed grade)
- London weighting allowance
- Travel allowance payment

In addition, Returning Officer fees are payable to the Chief Executive in respect of elections or referenda where fees are not funded by the Council. This means that no fees will be paid for local elections or referenda which are

funded by the Council but, the Returning Officer will receive fees for all elections and referenda externally funded.

Divisional Directors (Deputy Chief Officers) receive basic pay (defined by a locally agreed grade).

Senior salary data is published on the Council's website as part of the Government's transparency agenda. For details, please see [\(Link\)](#)

## **6 Senior appointments**

All salary packages for posts at Chief Officer or Deputy Chief Officer level are in line with locally agreed pay scales.

## **7 Lowest paid employees**

The council's lowest paid London based employees are those who are paid on the lowest scale point above the level of London Living Wage.

The council's lowest paid non London based employees are those who are paid on the lowest scale point above the level of National Living Wage.

The council's Apprentices are paid at the London Living Wage rate.

The council will implement the increase to the London Living Wage on 1<sup>st</sup> April 2017 and as the London Living Wage rises in future years, the council will continue to increase pay levels for the lowest paid staff to ensure that they are paid the nearest scale point above the London Living Wage.

## **8 National pay bargaining**

Annual pay increases across the Council's grades are set through the process of national pay bargaining which the Council subscribes to.

The Council contributes to the negotiation process by providing an employer view through the annual Local Government Employers' regional pay briefings. The employers' side then negotiate with trade unions at a national level.

National pay rates are set using a number of factors, including:

- The sector's ability to pay
- Movement in market rates
- Inflation levels
- Other pay awards
- The Government's policy position regarding public sector pay

## **9 Incremental progression**

Incremental progression is on an annual basis for those staff who are not at the top of their grade. As per national conditions of service, progression is automatic for all staff (subject to general satisfactory performance) except Divisional Directors and Chief Officers who have to demonstrate satisfactory performance through a formal annual appraisal before being awarded incremental progression.

## **10 Additional payments and allowances**

A range of allowances and payments are paid as appropriate to the nature and requirement of specific posts, groups of posts and working patterns. These include car and travel allowances, overtime, standby, weekend and night work, shift and call-out payments.

Acting up and honoraria payments are made to individual staff as appropriate using clear criteria, and where a clear business need is identified.

The Council has a staff relocation package, available to new entrants to the Council's employment, but subject to tight eligibility criteria.

The Council also has the ability to pay market supplements for recruitment and retention purposes, where there is a strong business case and appropriate criteria are met.

The Council does not operate a performance related pay scheme or bonus scheme.

## **11 Pensions**

All employees (with the exceptions set out below) of the Council up to 75 years of age and who have a contract of more than 3 months' duration are entitled to join the Local Government Pension Scheme (LGPS). Decisions on delegated provisions are agreed by the Pensions Committee. The LGPS is a contributory scheme, whereby the employee contributes from their salary. The level of contribution is determined by whole time salary and contribution levels are set by Government who then advise the employer.

All employees of the Council from 18 to 75 years of age and who are employed on Teacher, Youth Work or Tutor/Lecturer terms and conditions are entitled to join the Teachers' Pension Scheme. The Teachers' Pension Scheme is a contributory scheme, whereby the employee contributes from their salary and contribution levels are set by Government.

## **12 Compensation for loss of office**

### *12.1 Financial terms for redundancy*

The Council has a policy linked to its policy for Handling Organisational Change which sets out the terms for redundancy and early termination of staff



(subject to qualifying criteria), which apply to Chief Officers and to all staff. In certain circumstances, individuals may also qualify for early release of their pension.

### *12.2 Redundancy packages*

When it is proposed to delete a post at Chief Officer, Key Chief Officer or Deputy Chief Officer level, a report is submitted to the Council's GP Committee for consideration. If the proposal will result in a postholder receiving a severance package, the costs of such a package are included in the report.

### *12.3 Ill health*

Where termination of employment arises from ill health, payments will be made in accordance with the contract of employment. In certain circumstances, individuals may also qualify for early release of their pension.

### *12.4 Negotiated exits – settlements*

If it is determined that a negotiated settlement is appropriate for a senior executive in circumstances which do not amount to a dismissal, the Service Head (Human Resources & Transformation) will deal with the detail, and the Council's Chief Executive/Head of Paid Service after consultation with the Monitoring Officer (or in circumstances where it is not appropriate for one or other to be involved, the Chief Financial Officer) will consider whether the terms of the offer constitute value for money and are appropriate, fair and reasonable in the circumstances, and the proposed settlement shall then be subject to the agreement of the General Purpose Committee.

### *12.5 Re-employment following redundancy/early retirement*

Any member of staff who has left the Council by reason of redundancy or early retirement and received a severance payment is required to have a gap before reemployment. The gap should be at least 1 year after the date of termination for staff who left due to compulsory redundancy or a gap of at least 2 years after the date of termination for staff who left due to voluntary redundancy before they can return, either as a directly employed member of staff, an agency worker or a consultant. This does not prevent them from working in Tower Hamlets Schools during this period.

To allow for exceptional circumstances, when it might be necessary to reemploy someone sooner than set out above, a Director, in conjunction with the Service Head HR and Transformation, and after consultation with the Chair of the General Purpose Committee, has authority to waive the 1 or 2 year requirement (as appropriate), provided there is justification.

Any employee or office holder who earns above the threshold set out in the Repayment of Public Sector Exit Payments Regulations 2016, will be required to repay in full or part (as set out in the Regulations), to the employer who made the payment, any exit payment they receive should they return to any part of the public sector (see the Regulations for a full list), either on or off payroll, within 12 months, once the Regulations are operable. This

requirement can only be waived in exceptional circumstances and by a decision of Full Council.

### **13 Pay multiples / comparisons**

The Council's pay and grading structures reflect a wide range of job requirements and levels of responsibility across the organisation, with pay and grading being determined by the Council's job evaluation schemes.

The pay ratio demonstrating the relationship between the Council's highest paid employee (total salary package) and the median (mid-point between the highest and lowest) salary position of the non-schools workforce is 1:6.1.

The pay ratio demonstrating the relationship between the Council's highest paid employee (total salary package) and the lowest salary of the non-schools workforce is 1:10.9.

The Council will have regard to its pay ratios and keep them under review, seeking to balance the following:

- Ensuring appropriate reward mechanisms which value knowledge, skills and experience at a senior level, and ensure that the Council can recruit and retain the best talent
- Addressing its commitment to matching the London Living Wage for our lowest paid staff, and encouraging the developmental progression for staff in the lowest graded roles.

### **14 Equality issues**

The policy elements described in this report derive from national terms and conditions and bargaining, or local discretion. The Council has a keen regard for equality issues and should any changes be made to the pay policy in the future, proposals would go through an Equality Analysis. One of the key aims of Single Status agreement was to eliminate potential pay inequality from previous pay structures and ensure that new pay structures are free from discrimination.

### **15 Review**

The Localism Act 2011 requires relevant authorities to prepare a Pay Policy Statement for each subsequent financial year. The Council's next Statement is scheduled to be for 2018/19 and will be submitted to Full Council for approval by 31 March 2018.

Should changes to pay policy be contemplated that would result in an amended statement being published in the year that it applies, these would be subject to a detailed consultation process before an appropriate recommendation was made to Full Council.

**London Borough of Tower Hamlets  
Pay Policy statement 1 April 2016 – 31 March 2017**

**1 Introduction**

The Localism Act 2011 requires Local Authorities to produce a pay policy statement every financial year. This requirement is part of the Government's drive towards public sector transparency.

The Pay Policy Statement sets out the Council's current policies and practice in relation to pay for all parts of the workforce. The statement excludes school based employees. The Statement is made available on the Council's website, which also includes separately published salary information for senior managers as part of the Government's Transparency Code.

**2 Scope**

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The Localism Act defines senior executives, and in this statement they are the Chief Executive/Head of Paid Service, Corporate Directors and the Monitoring Officer (who make up the Corporate Management Team) in addition to Directors and Service Heads.

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There are also a number of staff who have retained their existing terms and conditions following TUPE transfers into the organisation.

It is the practice of the Council to seek the views of local trade unions on pay related matters, recognising that elements are settled within a national framework.

The Council uses national pay scales up to grade LPO8, and determines the

appropriate grade for each job in accordance with the Greater London Provincial Council (GLPC) job evaluation scheme.

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The Council signed a Single Status agreement in April 2008 with trade unions.

This brought former manual grades into the GLPC job evaluation scheme, and replaced spot points with narrow grade bands. One of the key aims of the agreement was to eliminate potential pay inequality from previous pay structures and ensure that new pay structures are free from discrimination.

New and changed jobs are evaluated using the relevant job evaluation scheme, with the appropriate grade being determined using a range of factors.

The scale point on which an individual is appointed to the post is normally the lowest of the grade but will depend on skills and experience.

#### **4 How the Council's management team is structured**

The Council's Corporate Management Team is led by the Chief Executive/Head of Paid Service, supported by a number of Chief Officers reporting to the Chief Executive/Head of Paid Service. All statutory roles are at this level of the organisation, with the exception of the Director of Public Health.

Service Heads (Deputy Chief Officers) in each Directorate report to a member of the Corporate Management Team.

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In addition, Returning Officer fees are payable to the Chief Executive in respect of elections or referenda where fees are not funded by the Council. This means that no fees will be paid for local elections or referenda which are

funded by the Council but, the Returning Officer will receive fees for all elections and referenda externally funded.

Service Heads (Deputy Chief Officers) receive basic pay (defined by a locally agreed grade).

Senior salary data is published on the Council's website as part of the Government's transparency agenda. For details, please see [http://www.towerhamlets.gov.uk/ignl/council\\_and\\_democracy/Transparency/transparency.aspx](http://www.towerhamlets.gov.uk/ignl/council_and_democracy/Transparency/transparency.aspx)

## **6 Senior appointments**

All salary packages for posts at Chief Officer, Key Chief Officer or Deputy Chief Officer level are in line with locally agreed pay scales.

## **7 Lowest paid employees**

The council's lowest paid London based employees are those who are paid on the lowest scale point above the level of London Living Wage.

The council's lowest paid non London based employees are those who are paid on the lowest scale point above the level of National Living Wage.

The council's Apprentices are paid at the London Living Wage rate.

The council will implement the increase to the London Living Wage on 1<sup>st</sup> April 2016, by temporarily paying the London Living Wage to employees on Scale point 8, until a national pay agreement is implemented, at which point the increased salary will be backdated.

In the event that no pay award is agreed for 2016, those staff will be moved up to spinal column point 9.

As the London Living Wage rises in future years, the council will continue to increase pay levels for the lowest paid staff to ensure that they are paid the nearest scale point above the London Living Wage.

## **8 National pay bargaining**

Annual pay increases across the Council's grades are set through the process of national pay bargaining which the Council subscribes to.

The Council contributes to the negotiation process by providing an employer view through the annual Local Government Employers' regional pay briefings. The employers' side then negotiate with trade unions at a national level.

National pay rates are set using a number of factors, including:

- The sector's ability to pay
- Movement in market rates
- Inflation levels
- Other pay awards
- The Government's policy position regarding public sector pay

## **9 Incremental progression**

Incremental progression is on an annual basis for those staff who are not at the top of their grade. As per national conditions of service, progression is automatic for all staff (subject to general satisfactory performance) except Service Heads and Chief Officers who have to demonstrate satisfactory performance through a formal annual appraisal before being awarded incremental progression.

## **10 Additional payments and allowances**

A range of allowances and payments are paid as appropriate to the nature and requirement of specific posts, groups of posts and working patterns. These include car and travel allowances, overtime, standby, weekend and night work, shift and call-out payments.

Acting up and honoraria payments are made to individual staff as appropriate using clear criteria, and where a clear business need is identified.

The Council has a staff relocation package, available to new entrants to the Council's employment, but subject to tight eligibility criteria.

The Council also has the ability to pay market supplements for recruitment and retention purposes, where there is a strong business case and appropriate criteria are met.

The Council does not operate a performance related pay scheme or bonus scheme.

## **11 Pensions**

All employees (with the exceptions set out below) of the Council up to 75 years of age and who have a contract of more than 3 months' duration are entitled to join the Local Government Pension Scheme (LGPS). Decisions on delegated provisions are agreed by the Pensions Committee. The LGPS is a contributory scheme, whereby the employee contributes from their salary. The level of contribution is determined by whole time salary and contribution levels are set by Government who then advise the employer.

All employees of the Council from 18 to 75 years of age and who are employed on Teacher, Youth Work or Tutor/Lecturer terms and conditions are entitled to join the Teachers' Pension Scheme. The Teachers' Pension Scheme is a contributory scheme, whereby the employee contributes from their salary and contribution levels are set by Government.

## **12 Compensation for loss of office**

### *12.1 Financial terms for redundancy*

The Council has a policy linked to its policy for Handling Organisational Change which sets out the terms for redundancy and early termination of staff (subject to qualifying criteria), which apply to Chief Officers and to all staff. In certain circumstances, individuals may also qualify for early release of their pension.

### *12.2 Redundancy packages*

When it is proposed to delete a post at Chief Officer, Key Chief Officer or Deputy Chief Officer level, a report is submitted to the Council's HR Committee for consideration. If the proposal will result in a postholder receiving a severance package, the costs of such a package are included in the report.

### *12.3 Ill health*

Where termination of employment arises from ill health, payments will be made in accordance with the contract of employment. In certain circumstances, individuals may also qualify for early release of their pension.

### *12.4 Negotiated exits – settlements*

If it is determined that a negotiated settlement is appropriate for a senior executive in circumstances which do not amount to a dismissal, the Service Head (Human Resources & Workforce Development) will deal with the detail, and the Council's Chief Executive/Head of Paid Service after consultation with the Monitoring Officer (or in circumstances where it is not appropriate for one or other to be involved, the Chief Financial Officer) will consider whether the terms of the offer constitute value for money and are appropriate, fair and reasonable in the circumstances, and the proposed settlement shall then be subject to the agreement of the Human Resources Committee.

### *12.5 Re-employment following redundancy/early retirement*

Any member of staff who has left the Council by reason of redundancy or early retirement and received a severance payment is required to have a gap before reemployment. The gap should be at least 1 year after the date of termination for staff who left due to compulsory redundancy or a gap of at least 2 years after the date of termination for staff who left due to voluntary redundancy before they can return, either as a directly employed member of staff, an agency worker or a consultant. This does not prevent them from working in Tower Hamlets Schools during this period.

To allow for exceptional circumstances, when it might be necessary to reemploy someone sooner than set out above, a Corporate Director, in conjunction with the Service Head HR and WD, and after consultation with the

Chair of the Human Resources Committee, has authority to waive the 1 or 2 year requirement (as appropriate), provided there is justification.

Any employee or office holder who earns above the threshold set out in the Repayment of Public Sector Exit Payments Regulations 2016, will be required to repay in full or part (as set out in the Regulations), to the employer who made the payment, any exit payment they receive should they return to any part of the public sector (see the Regulations for a full list), either on or off payroll, within 12 months, once the Regulations are operable. This requirement can only be waived in exceptional circumstances and by a decision of Full Council.

### **13 Pay multiples / comparisons**

The Council's pay and grading structures reflect a wide range of job requirements and levels of responsibility across the organisation, with pay and grading being determined by the Council's job evaluation schemes.

The pay ratio demonstrating the relationship between the Council's highest paid employee (total salary package) and the median (mid-point between the highest and lowest) salary position of the non-schools workforce is 1:6.7.

The pay ratio demonstrating the relationship between the Council's highest paid employee (total salary package) and the lowest salary of the non-schools workforce is 1:10.87.

The Council will have regard to its pay ratios and keep them under review, seeking to balance the following:

- Ensuring appropriate reward mechanisms which value knowledge, skills and experience at a senior level, and ensure that the Council can recruit and retain the best talent
- Addressing its commitment to matching the London Living Wage for our lowest paid staff, and encouraging the developmental progression for staff in the lowest graded roles.

### **14 Equality issues**

The policy elements described in this report derive from national terms and conditions and bargaining, or local discretion. The Council has a keen regard for equality issues and should any changes be made to the pay policy in the future, proposals would go through an Equality Analysis. One of the key aims of Single Status agreement was to eliminate potential pay inequality from previous pay structures and ensure that new pay structures are free from discrimination.

### **15 Review**

The Localism Act 2011 requires relevant authorities to prepare a Pay Policy



Statement for each subsequent financial year. The Council's next Statement is scheduled to be for 2017/18 and will be submitted to Full Council for approval by 31 March 2017.

Should changes to pay policy be contemplated that would result in an amended statement being published in the year that it applies, these would be subject to a detailed consultation process before an appropriate recommendation was made to Full Council.

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Department for  
Communities and  
Local Government

# Local Government Transparency Code 2015



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February 2015

ISBN: 978-1-4098-4484-6

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# Part 1: Introduction

## Policy context

1. This Code is issued to meet the Government's desire to place more power into citizens' hands to increase democratic accountability and make it easier for local people to contribute to the local decision making process and help shape public services. Transparency is the foundation of local accountability and the key that gives people the tools and information they need to enable them to play a bigger role in society. The availability of data can also open new markets for local business, the voluntary and community sectors and social enterprises to run services or manage public assets.
2. 'Data' means the objective, factual data, on which policy decisions are based and on which public services are assessed, or which is collected or generated in the course of public service delivery. This should be the basis for publication of information on the discharge of local authority functions.
3. Analysis by Deloitte<sup>1</sup> for the Shakespeare Review of Public Sector Information estimates the economic benefits of public sector information in the United Kingdom as £1.8 billion, with social benefits amounting to £5 billion. The study highlights the significant potential benefits from the publication of public data. And, local authorities and local people want to see published open data:
  - 80 per cent of those responding to a transparency survey<sup>2</sup> by the Local Government Association in September 2012 cited external accountability as a benefit, with 56 per cent citing better local decision making and democracy as a benefit
  - a survey of 800 members of Bedford's Citizens Panel<sup>3</sup> showed that 64 per cent of respondents thought it was very important that the council makes data available to the public and the public were most interested in seeing data made available about council spending and budgets (66 per cent)
  - research by Ipsos MORI<sup>4</sup> found that the more citizens feel informed, the more they tend to be satisfied with public services and their local authorities.

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<sup>1</sup> "Market Assessment of Public Sector Information", Deloitte, May 2013, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/198905/bis-13-743-market-assessment-of-public-sector-information.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198905/bis-13-743-market-assessment-of-public-sector-information.pdf)

<sup>2</sup> "Local Government Transparency Survey 2012", LGA, December 2012, [http://www.local.gov.uk/documents/10180/11541/Local\\_Government\\_Transparency\\_Survey\\_2012.pdf/dd4c24ed-20ba-4feb-b6eb-fea21e4af049](http://www.local.gov.uk/documents/10180/11541/Local_Government_Transparency_Survey_2012.pdf/dd4c24ed-20ba-4feb-b6eb-fea21e4af049)

<sup>3</sup> "Citizens Panel Summer 2011 Survey Results Data Transparency" Bedford Borough Council, August 2011 (unpublished)

<sup>4</sup> "What do people want, need and expect from public services?", Ipsos MORI, 2010, [http://www.ipsos-mori.com/DownloadPublication/1345\\_sri\\_what\\_do\\_people\\_want\\_need\\_and\\_expect\\_from\\_public\\_services\\_110310.pdf](http://www.ipsos-mori.com/DownloadPublication/1345_sri_what_do_people_want_need_and_expect_from_public_services_110310.pdf)

4. Therefore, the Government believes that in principle all data held and managed by local authorities should be made available to local people unless there are specific sensitivities (eg. protecting vulnerable people or commercial and operational considerations) to doing so. It encourages local authorities to see data as a valuable resource not only to themselves, but also their partners and local people.
5. Three principles have guided the development of this Code:
- **demand led** – there are growing expectations that new technologies and publication of data should support transparency and accountability. It is vital that public bodies recognise the value to the public of the data they hold, understand what they hold, what their communities want and then release it in a way that allows the public, developers and the media to use it
  - **open** – provision of public data should become integral to local authority engagement with local people so that it drives accountability to them. Its availability should be promoted and publicised so that residents know how to access it and how it can be used. Presentation should be helpful and accessible to local people and other interested persons, and
  - **timely** – the timeliness of making public data available is often of vital importance. It should be made public as soon as possible following production even if it is not accompanied with detailed analysis.
6. This Code ensures local people can now see and access data covering (annex A summarises the publication requirements specified in this Code):
- **how money is spent** – for example, all spending transactions over £500, all Government Procurement Card spending and contracts valued over £5,000
  - **use of assets** – ensuring that local people are able to scrutinise how well their local authority manages its assets<sup>5</sup>. For example, self-financing for council housing – introduced in April 2012 – gave each local authority a level of debt it could support based on the valuation of its housing stock. This Code gives local people the information they need to ask questions about how their authority is managing its housing stock to ensure it is put to best use, including considering whether higher value, vacant properties could be used to fund the building of new affordable homes and so reduce waiting lists. The requirement in paragraphs 38 to 41 builds on existing Housing Revenue Account practices<sup>6</sup>
  - **decision making** – how decisions are taken and who is taking them, including how much senior staff are paid, and
  - **issues important to local people** – for example, parking and the amount spent by an authority subsidising trade union activity.

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<sup>5</sup> Nationally, local authorities' estate (all forms of land and buildings) is estimated to be worth about £220 billion.

<sup>6</sup> The Housing Revenue Account (Accounting Practices) Directions 2011 require that local authorities' annual statement of accounts include disclosure of the total balance sheet value of the land, houses and other property and the vacant possession value of dwellings within the authority's Housing Revenue Account, <https://www.gov.uk/government/publications/the-housing-revenue-account-directions-2011>.

7. Local authorities are encouraged to consider the responses the Government received<sup>7</sup> to its consultation and look to go further than this Code by publishing some of the data proposed by respondents, in line with the principle that all data held and managed by local authorities should be made open and available to local people unless there are specific sensitivities to doing so.
8. Fraud can thrive where decisions are not open to scrutiny and details of spending, contracts and service provision are hidden from view. Greater transparency, and the provisions in this Code, can help combat fraud. Local authorities should also use a risk management approach with strong internal control arrangements to reduce the risk of any payment fraud as a result of publishing public data. Local authorities should refer to the Chartered Institute of Public Finance and Accountancy Code of Practice on Managing the Risk of Fraud and Corruption<sup>8</sup>. Annex B provides further information on combating fraud.

## Application

9. This Code is issued by the Secretary of State for Communities and Local Government in exercise of his powers under section 2 of the Local Government, Planning and Land Act 1980 (“the Act”) to issue a Code of Recommended Practice (the Code) as to the publication of information by local authorities about the discharge of their functions and other matters which he considers to be related. It is issued following consultation in accordance with section 3(11) of the Act.
10. The Code does not replace or supersede the existing legal framework for access to and re-use of public sector information provided by the:
  - Freedom of Information Act 2000 (as amended by the Protection of Freedoms Act 2012)
  - Environmental Information Regulations 2004
  - Re-use of Public Sector Information Regulations 2005
  - Infrastructure for Spatial Information in the European Community (INSPIRE) Regulations 2009, and
  - sections 25 and 26 of the Local Audit and Accountability Act 2014<sup>9</sup> which provide rights for persons to inspect a local authority’s accounting records and supporting documentation, and to make copies of them.
11. This Code does not apply to Police and Crime Commissioners, for whom a separate transparency framework applies.

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<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/266815/Transparency\\_Code\\_Government\\_Response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266815/Transparency_Code_Government_Response.pdf) (see paragraph 37)

<sup>8</sup> <http://www.cipfa.org/services/counter-fraud-centre/code-of-practice>

<sup>9</sup> See the Accounts and Audit Regulations 2015 (S.I. 2014/234) for details of when and how those rights may be exercised.



12. This Code only applies to local authorities in relation to descriptions of information or data where that type of local authority undertakes the particular function to which the information or data relates.

13. The Code applies in England only.

## Definitions

14. In this Code:

“local authority” means:

- a county council in England
- a district council
- a parish council which has gross annual income or expenditure (whichever is the higher) exceeding £200,000
- a London borough council
- the Common Council of the City of London in its capacity as a local authority
- the Council of the Isles of Scilly
- a National Park authority for a National Park in England
- the Broads Authority
- the Greater London Authority so far as it exercises its functions through the Mayor
- the London Fire and Emergency Planning Authority
- Transport for London
- a fire and rescue authority (constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies, and a metropolitan county fire and rescue authority)
- a joint authority established by Part IV of the Local Government Act 1985 (fire and rescue services and transport)
- a joint waste authority, i.e. an authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007
- an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009
- a combined authority established under section 103 of that Act
- a waste disposal authority, i.e. an authority established under section 10 of the Local Government Act 1985, and
- an integrated transport authority for an integrated transport area in England.

“a social enterprise”<sup>10</sup> means a business that trades for a social and/or environmental purpose and is a business which:

- aims to generate its income by selling goods and services, rather than through grants and donations
- is set up to specifically make a difference, and
- reinvests the profits it makes for the purpose of its social mission.

“a small or medium sized enterprise” means an undertaking which has fewer than 250 employees.

“voluntary and community sector organisations” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

## Data protection

15. The Government believes that local transparency can be implemented in a way that complies with the Data Protection Act 1998. Where local authorities are disclosing information which potentially engages the Data Protection Act 1998, they must ensure that the publication of that information is compliant with the provisions of that Act. The Data Protection Act 1998 does not restrict or inhibit information being published about councillors or senior local authority officers because of the legitimate public interest in the scrutiny of such senior individuals and decision makers. The Data Protection Act 1998 also does not automatically prohibit information being published naming the suppliers with whom the authority has contracts, including sole traders, because of the public interest in accountability and transparency in the spending of public money.
16. For other situations where information held by local authorities contains public data which cannot be disclosed in a Data Protection Act compliant manner, the Information Commissioner’s Office has published guidance on anonymisation of datasets, enabling publication of data which can yield insights to support public service improvement, whilst safeguarding individuals’ privacy<sup>11</sup>.
17. To ensure that published valuation information for social housing assets (see paragraphs 38 to 41) is not disclosive of individual properties, authorities are required to publish their valuation data at postal sector level, i.e. full ‘outbound’ code (first part of the postcode) and first digit of the ‘inbound’ code (second part of the postcode). This provides an average cell size of 2,500 households, which should be large enough to prevent identification of individual dwellings. However, in particular areas where the postcode sector gives a number of households below 2,500 the postcode level should be set higher, that is at postcode district level (e.g. PO1 \*\*\*).

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<sup>10</sup> <https://www.gov.uk/set-up-a-social-enterprise>

<sup>11</sup> [http://ico.org.uk/for\\_organisations/data\\_protection/topic\\_guides/anonymisation](http://ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation)

18. Local authorities should also make the following adjustment prior to publishing social housing valuation data in order to mitigate the possibility of identifying individual properties:

- Step 1 – for any given postcode sector where the number of occupied social housing properties in any valuation bands is less than a threshold of '10', authorities should merge that particular cell with the next lowest valuation band, and so on until the resultant merged cells contain at least '10' occupied social housing properties. However, if continued repetition of step 1 leads to the number of valuation bands applied to that postcode sector falling below the proposed minimum threshold of valuation bands as set out in paragraph 17, authorities should then apply step 2.
- Step 2 – authorities should merge the original (non-merged) valuation data for the relevant postcode sector with the valuation data with any adjoining postcode sectors which show the lowest number of socially rented properties. Then apply Step 1.

## Licences

19. When using postcode data (for example, in connection with paragraphs 35 to 41), local authorities will need to assess their current licence arrangement with the Royal Mail with regards to the terms of use of the Postcode Address File (PAF).

## Commercial confidentiality

20. The Government has not seen any evidence that publishing details about contracts entered into by local authorities would prejudice procurement exercises or the interests of commercial organisations, or breach commercial confidentiality unless specific confidentiality clauses are included in contracts. Local authorities should expect to publish details of contracts newly entered into – commercial confidentiality should not, in itself, be a reason for local authorities to not follow the provisions of this Code. Therefore, local authorities should consider inserting clauses in new contracts allowing for the disclosure of data in compliance with this Code.

## Exclusions and exemptions

21. Authorities should ensure that they do not contravene the provisions of sections 100A, 100B or 100F of the Local Government Act 1972.
22. Where information would otherwise fall within one of the exemptions from disclosure, for instance, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Infrastructure for Spatial Information in the European Community (INSPIRE) Regulations 2009 or fall within Schedule 12A to the Local Government Act 1972 then it is at the discretion of the local authority whether or not to rely on that exemption or publish the data. Local authorities should start from the presumption of openness and disclosure of information, and not rely on exemptions to withhold information unless absolutely necessary.

## Timeliness and errors

23. Data should be as accurate as possible at first publication. While errors may occur, the publication of information should not be unduly delayed to rectify mistakes. This concerns errors in data accuracy. The best way to achieve this is by having robust information management processes in place.
24. Where errors in data are discovered, or files are changed for other reasons (such as omissions), local authorities should publish revised information making it clear where and how there has been an amendment. Metadata on data.gov.uk should be amended accordingly.

## Further guidance and support

25. The Local Government Association has published guidance<sup>12</sup> on transparency (eg. technical guidance notes, best practice examples and case studies) to help local authorities comply with this Code.

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<sup>12</sup> <http://www.local.gov.uk/practitioners-guides-to-publishing-data>

# Part 2: Information which must be published

## Part 2.1: Information to be published quarterly

26. Data covered by this section includes:

- expenditure exceeding £500 (see paragraphs 28 and 29)
- Government Procurement Card transactions (paragraph 30), and
- procurement information (see paragraphs 31 and 32).

27. The data and information referred to in this Part (2.1) must be:

- first published within a period of three months from the date on which the local authority last published that data under the Local Government Transparency Code 2014<sup>13</sup> and not later than one month after the quarter to which the data and information is applicable
- published quarterly thereafter and on each occasion not later than one month after the quarter to which the data and information is applicable.

### **Expenditure exceeding £500**

28. Local authorities must publish details of each individual item of expenditure that exceeds £500<sup>14</sup>. This includes items of expenditure<sup>15</sup>, consistent with Local Government Association guidance<sup>16</sup>, such as:

- individual invoices
- grant payments
- expense payments
- payments for goods and services
- grants
- grant in aid
- rent
- credit notes over £500, and
- transactions with other public bodies.

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<sup>13</sup> Under the Local Government Transparency Code 2014, local authorities were required to publish this data on the first occasion, not later than 31 December 2014 and quarterly thereafter.

<sup>14</sup> The threshold should be, where possible, the net amount excluding recoverable Value Added Tax.

<sup>15</sup> Salary payments to staff normally employed by the local authority should not be included. However, local authorities should publish details of payments to individual contractors (e.g. individuals from consultancy firms, employment agencies, direct personal contracts, personal service companies etc) either here or under contract information.

<sup>16</sup> <http://www.local.gov.uk/practitioners-guides-to-publishing-data>

29. For each individual item of expenditure the following information must be published:

- date the expenditure was incurred
- local authority department which incurred the expenditure
- beneficiary
- summary of the purpose of the expenditure<sup>17</sup>
- amount<sup>18</sup>
- Value Added Tax that cannot be recovered, and
- merchant category (eg. computers, software etc).

### **Government Procurement Card transactions**

30. Local authorities must publish details of every transaction on a Government Procurement Card. For each transaction, the following details must be published:

- date of the transaction
- local authority department which incurred the expenditure
- beneficiary
- amount<sup>19</sup>
- Value Added Tax that cannot be recovered
- summary of the purpose of the expenditure, and
- merchant category (eg. computers, software etc).

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<sup>17</sup> This could be the descriptor that local authorities use in their accounting system providing it gives a clear sense of why the expenditure was incurred or what it purchased or secured for the local authority.

<sup>18</sup> Where possible, this should be the net amount excluding recoverable Value Added Tax. Where Value Added Tax cannot be recovered – or the source of the data being used cannot separate out recoverable Value Added Tax – then the gross amount should be used instead with a note stating that the gross amount has been used.

<sup>19</sup> Where possible, this should be the net amount excluding recoverable Value Added Tax. Where Value Added Tax cannot be recovered – or the source of the data being used cannot separate out recoverable Value Added Tax – then the gross amount should be used instead with a note stating that the gross amount has been used.

## Procurement information

31. Local authorities must publish details of every invitation to tender for contracts to provide goods and/or services<sup>20</sup> with a value that exceeds £5,000<sup>21, 22</sup>. For each invitation, the following details must be published:

- reference number
- title
- description of the goods and/or services sought
- start, end and review dates, and
- local authority department responsible.

32. Local authorities must also publish details of any contract<sup>23</sup>, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000<sup>24</sup>. For each contract, the following details must be published:

- reference number
- title of agreement
- local authority department responsible
- description of the goods and/or services being provided
- supplier name and details
- sum to be paid over the length of the contract or the estimated annual spending or budget for the contract<sup>25</sup>
- Value Added Tax that cannot be recovered
- start, end and review dates
- whether or not the contract was the result of an invitation to quote or a published invitation to tender, and
- whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number<sup>26</sup>.

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<sup>20</sup> This includes contracts for staff who are employed via consultancy firms or similar agencies.

<sup>21</sup> The threshold should be, where possible, the net amount excluding recoverable Value Added Tax.

<sup>22</sup> Tenders for framework agreements should be included, even though there may be no initial value.

<sup>23</sup> This includes contracts for staff who are employed via consultancy firms or similar agencies.

<sup>24</sup> The threshold should be, where possible, the net amount excluding recoverable Value Added Tax.

<sup>25</sup> Where possible, this should be the net amount excluding recoverable Value Added Tax. Where Value Added Tax cannot be recovered – or the source of the data being used cannot separate out recoverable Value Added Tax – then the gross amount should be used instead with a note stating that the gross amount has been used.

<sup>26</sup> For example, this might be the company or charity registration number.

## Part 2.2: Information to be published annually

33. Data covered by this section includes:

- local authority land (see paragraphs 35 to 37)
- social housing assets (see paragraphs 38 to 41)
- grants to voluntary, community and social enterprise organisations (see paragraphs 42 and 43)
- organisation chart (see paragraph 44)
- trade union facility time (see paragraph 45)
- parking account (see paragraph 46)
- parking spaces (see paragraph 47)
- senior salaries (see paragraphs 48 and 49)
- constitution (see paragraph 50)
- pay multiple (see paragraphs 51 and 52), and
- fraud (see paragraph 53).

34. With the exception of data relating to social housing assets (paragraphs 38 to 41), the data and information in this Part (2.2) must be:

- first published within a period of one year from the date on which the local authority last published that data under the Local Government Transparency Code 2014<sup>27</sup> and not later than one month after the year to which the data and information is applicable
- published annually thereafter and on each occasion not later than one month<sup>28</sup> after the year to which the data and information is applicable.

The data on social housing assets (see paragraphs 38 to 41) must be published:

- on the first occasion, not later than 1 September 2015 (based on the most up to date valuation data available at the time of publishing the information), then
- in April 2016, and
- every April thereafter.

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<sup>27</sup> Under the Local Government Transparency Code 2014, local authorities were required to publish this data on the first occasion, not later than 2 February 2015 and annual thereafter.

<sup>28</sup> In relation to parking account data, where the local authority's annual accounts have not been finalised, the authority should publish estimates within one month after the year to which the data is applicable and subsequently publish final figures as soon as the authority's accounts are finalised.



## Local authority land

35. Local authorities must publish details of all land and building assets including:

- all service and office properties occupied or controlled by user bodies, both freehold and leasehold
- any properties occupied or run under Private Finance Initiative contracts
- all other properties they own or use, for example, hostels, laboratories, investment properties and depots
- garages unless rented as part of a housing tenancy agreement
- surplus, sublet or vacant properties
- undeveloped land
- serviced or temporary offices where contractual or actual occupation exceeds three months, and
- all future commitments, for example under an agreement for lease, from when the contractual commitment is made.

Information about the following land and building assets are to be excluded from publication:

- rent free properties provided by traders (such as information booths in public places or ports)
- operational railways and canals
- operational public highways (but any adjoining land not subject to public rights should be included)
- assets of national security, and
- information deemed inappropriate for public access as a result of data protection and/or disclosure controls (eg. such as refuge houses).

36. For the purposes of this dataset about local authority land (paragraphs 35 to 37), details about social housing should not be published. However, information about the value of social housing stock contained in a local authority's Housing Revenue Account does need to be published for the social housing asset value dataset (paragraphs 38 to 41).

37. For each land or building asset, the following information must be published together in one place:

- Unique Property Reference Number<sup>29</sup>
- Unique asset identity - the local reference identifier used by the local body, sometimes known as local name or building block. There should be one entry per asset or user/owner (eg. on one site there could be several buildings or in one building there could be several users floors/rooms etc – where this is the case, each of these will have a separate asset identity). This must include the original reference number from the data source plus authority code
- name of the building/land or both
- street number or numbers - any sets of 2 or more numbers should be separated with the ‘-’ symbol (eg. 10-15 London Road)
- street name – this is the postal road address<sup>30</sup>
- post town
- United Kingdom postcode
- map reference – local authorities may use either Ordnance Survey or ISO 6709 systems to identify the location of an asset, but must make clear which is being used. Where an Ordnance Survey mapping system is used (the grid system) then assets will be identified using Eastings before Northings. Where geocoding in accordance with ISO 6709 is being used to identify the centre point of the asset location then that reference must indicate its ISO coordinates
- whether the local authority owns the freehold or a lease for the asset and for whichever category applies, the local authority must list all the characteristics that apply from the options given below:

*for freehold assets:*

- occupied by the local authority
- ground leasehold
- leasehold
- licence
- vacant (for vacant properties, local authorities should not publish the map reference or full address details, they should only publish the first part of the postcode<sup>31</sup>).

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<sup>29</sup> The Unique Property Reference Number (UPRN) is a unique twelve digit number assigned to every unit of land and property recorded by local government, this is a statutory obligation. The UPRN uniquely and definitively identifies every addressable location in the country. The numbers originate from Geo-Place (an OS and LGA joint venture).

<sup>30</sup> Local authorities should use the official postal address. Exceptionally, where this is not available, local authorities should use the address they hold for the asset.

<sup>31</sup> The first part of the postcode, or Outward Code, refers to the area and the district only, [http://www.postcodeaddressfile.co.uk/products/postcodes/postcodes\\_explained.htm](http://www.postcodeaddressfile.co.uk/products/postcodes/postcodes_explained.htm)

*for leasehold assets:*

- occupied by the local authority
- ground leasehold
- sub leasehold
- licence.

*for other assets:*

- free text description eg. rights of way, access etc<sup>32</sup>.
- whether or not the asset is land only (i.e. without permanent buildings) or it is land with a permanent building.

## **Social housing asset value**

38. Local authorities must publish details of the value of social housing stock that is held in their Housing Revenue Account<sup>33</sup>.

39. The following social housing stock data must be published:

- valuation data to be listed at postal sector level<sup>34</sup> (e.g. PO1 1\*\*), without indicating individual dwelling values, and ensuring that data is not capable of being made disclosive of individual properties, in line with disclosure protocols set out in paragraphs 15 to 18
- valuation data for the dwellings using both Existing Use Value for Social Housing and market value (valued in accordance with guidance<sup>35</sup>) as at 1 April. This should be based on the authority's most up to date valuation data at the time of the publication of the information
- an explanation of the difference between the tenanted sale value of dwellings within the Housing Revenue Account and their market sale value, and assurance that the publication of this information is not intended to suggest that tenancies should end to realise the market value of properties.

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<sup>32</sup> Where a local authority feels unable to verify rights of way information, for example, it should add a short narrative explaining why it is unable to identify and verify the information.

<sup>33</sup> All local housing authorities who hold housing stock are required to account for all income and expenditure in relation to that stock in a separate account which is called the Housing Revenue Account.

<sup>34</sup> The first part of the postcode, or Outward Code (which refers only to the area and the district only), and first digit of the second part of the postcode, or Inward Code (the number identifies the sector in the postal district). [http://www.postcodeaddressfile.co.uk/products/postcodes/postcodes\\_explained.htm](http://www.postcodeaddressfile.co.uk/products/postcodes/postcodes_explained.htm)

<sup>35</sup> *Guidance for Valuers on Stock Valuation for Resource Accounting 2010* published by the Secretary of State for Communities and Local Government in January 2011, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5939/1825886.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5939/1825886.pdf)

40. The valuation data and information referred to in paragraph 39 must be published in the following format:

- for each postal sector level, the valuation data should be classified within set bands of value. Authorities must set their valuation bands within the general parameters set out in the table below, in light of the local characteristics of the housing market in their area, in order to ensure that valuation data published by all authorities is consistent and clear to understand:

<b>Valuation Band Range</b>	<b>Intervening bands value</b>
< £50,000 -£99,999	6 Bands of £10,000
£100,000 - £299,999	10 Bands of £20,000
£300,000 - £499,999	4 Bands of £50,000
£500,000 - £999,999	5 Bands of £100,000
£1,000,000 – £2,999,999>	5 Bands of £500,000

- authorities should ensure that any band should only include values that fall within the band parameters (i.e. not give a top value band). If that is the case, the lowest and highest band should be further disaggregated
- authorities should bear in mind that it is likely that the numbers of properties in the lowest and highest bands will be low, leading to potential disclosure problems. The protocol to address this issue is set out in paragraphs 15 to 18
- for each postal sector level, within the set band of value, the data should indicate:
  - the total number of dwellings
  - the aggregate value of the dwellings and their mean value, using both Existing Use Value for Social Housing and market value, and
  - the percentage of the dwellings that are occupied and the percentage that are vacant
- authorities must publish the valuation data for both tenanted and vacant dwellings.

41. An example of how the data specified in paragraphs 39 and 40 could be presented is included at annex C.

### **Grants to voluntary, community and social enterprise organisations**

42. Local authorities must publish details of all grants to voluntary, community and social enterprise organisations. This can be achieved by either:

- tagging and hence specifically identifying transactions which relate to voluntary, community and social enterprise organisations within published data on expenditure over £500 or published procurement information, or
- by publishing a separate list or register.

43. For each identified grant, the following information must be published as a minimum:

- date the grant was awarded
- time period for which the grant has been given
- local authority department which awarded the grant
- beneficiary
- beneficiary's registration number<sup>36</sup>
- summary of the purpose of the grant, and
- amount.

### **Organisation chart**

44. Local authorities must publish an organisation chart covering staff in the top three levels of the organisation<sup>37</sup>. The following information must be included for each member of staff included in the chart:

- grade
- job title
- local authority department and team
- whether permanent or temporary staff
- contact details
- salary in £5,000 brackets, consistent with the details published under paragraph 48, and
- salary ceiling (the maximum salary for the grade).

### **Trade union facility time**

45. Local authorities must publish the following information on trade union facility time:

- total number (absolute number and full time equivalent) of staff who are union representatives (e.g. general, learning and health and safety representatives)
- total number (absolute number and full time equivalent) of union representatives who devote at least 50 per cent of their time to union duties
- names of all trade unions represented in the local authority
- a basic estimate of spending on unions (calculated as the number of full time equivalent days spent on union duties by authority staff that spent the majority of their time on union duties multiplied by the average salary), and
- a basic estimate of spending on unions as a percentage of the total pay bill (calculated as the number of full time equivalent days spent on union duties by authority staff that spent the majority of their time on union duties multiplied by the average salary divided by the total pay bill).

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<sup>36</sup> For example, this might be the company or charity registration number.

<sup>37</sup> This should exclude staff whose salary does not exceed £50,000.

## Parking account

46. Local authorities must publish on their website, or place a link on their website to this data if published elsewhere:

- a breakdown of income and expenditure on the authority's parking account<sup>38, 39</sup>. The breakdown of income must include details of revenue collected from on-street parking, off-street parking and Penalty Charge Notices, and
- a breakdown of how the authority has spent a surplus on its parking account<sup>38,40</sup>.

## Parking spaces

47. Local authorities must publish the number of marked out controlled on and off-street parking spaces within their area, or an estimate of the number of spaces where controlled parking space is not marked out in individual parking bays or spaces.

## Senior salaries

48. Local authorities are already required to publish, under the Accounts and Audit Regulations 2015 (Statutory Instrument 2015/234)<sup>41</sup>:

- the number of employees whose remuneration in that year was at least £50,000 in brackets of £5,000
- details of remuneration and job title of certain senior employees whose salary is at least £50,000, and
- employees whose salaries are £150,000 or more must also be identified by name.

49. In addition to this requirement, local authorities must place a link on their website to these published data or place the data itself on their website, together with a list of responsibilities (for example, the services and functions they are responsible for, budget held and number of staff) and details of bonuses and 'benefits-in-kind', for all employees whose salary exceeds £50,000. The key differences between the requirements under this Code and the Regulations referred to above is the addition of a list of responsibilities, the inclusion of bonus details for all senior employees whose salary exceeds £50,000 and publication of the data on the authority's website.

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<sup>38</sup> A parking account kept under section 55 of the Road Traffic Regulation Act 1984 as modified by Regulation 25 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.

<sup>39</sup> Local authorities should also have regard to both statutory guidance, *The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions*, <http://assets.dft.gov.uk/publications/tma-part-6-cpe-statutory-guidance/betterprkstatutoryguid.pdf>, and non-statutory operational guidance, *Operational Guidance to Local Authorities: Parking Policy and Enforcement*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212559/parkinginforcepolicy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212559/parkinginforcepolicy.pdf)

<sup>40</sup> Section 55 (as amended) of the Road Traffic Regulation Act 1984 sets out how local authorities should use a surplus on their parking account. Local authorities should breakdown how they have spent a surplus on their parking account within the categories set out in section 55.

<sup>41</sup> For the accounting year 2014-15, the Accounts and Audit (England) Regulations 2011 (Statutory Instrument 2011/817) remain applicable.

## Constitution

50. Local authorities are already required to make their Constitution available for inspection at their offices under section 9P of the Local Government Act 2000. Local authorities must also, under this Code, publish their Constitution on their website.

## Pay multiple

51. Section 38 of the Localism Act 2011 requires local authorities to produce Pay Policy Statements, which should include the authority's policy on pay dispersion – the relationship between remuneration of chief officers and the remuneration of other staff. Guidance produced under section 40 of that Act<sup>42</sup>, recommends that the pay multiple is included in these statements as a way of illustrating the authority's approach to pay dispersion.

52. Local authorities must, under this Code, publish the pay multiple on their website, defined as the ratio between the highest paid taxable earnings for the given year (including base salary, variable pay, bonuses, allowances and the cash value of any benefits-in-kind) and the median earnings figure of the whole of the authority's workforce. The measure must:

- cover all elements of remuneration that can be valued (eg. all taxable earnings for the given year, including base salary, variable pay, bonuses, allowances and the cash value of any benefits-in-kind)
- use the median earnings figure as the denominator, which should be that of all employees of the local authority on a fixed date each year, coinciding with reporting at the end of the financial year, and
- exclude changes in pension benefits, which due to their variety and complexity cannot be accurately included in a pay multiple disclosure.

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<sup>42</sup> Openness and accountability in local pay: Guidance under Section 40 of the Localism Act (February 2012), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5956/2091042.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5956/2091042.pdf)

## Fraud

53. Local authorities must publish the following information about their counter fraud work<sup>43</sup>:

- number of occasions they use powers under the Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014<sup>44</sup>, or similar powers<sup>45</sup>
- total number (absolute and full time equivalent) of employees undertaking investigations and prosecutions of fraud
- total number (absolute and full time equivalent) of professionally accredited counter fraud specialists
- total amount spent by the authority on the investigation and prosecution of fraud, and
- total number of fraud cases investigated.

## Part 2.3: Information to be published once only

### Waste contracts

54. Local authorities must publish details of their existing waste collection contracts, in line with the details contained in paragraph 32. Local authorities must publish this information at the same time as they first publish quarterly procurement information under paragraphs 27, 31 and 32 of this Code.

## Part 2.4: Method of publication

55. Public data should be published in a format and under a licence that allows open re-use, including for commercial and research activities, in order to maximise value to the public. The most recent Open Government Licence published by the National Archives should be used as the recommended standard. Where any copyright or data ownership concerns exist with public data these should be made clear. Data covered by Part 2 of this Code must be published in open and machine-readable formats (further information about machine-readable formats can be found in Part 3.2).

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<sup>43</sup> The definition of fraud is as set out by the Audit Commission in *Protecting the Public Purse*.

<sup>44</sup> S.I. 2014/899.

<sup>45</sup> For example, the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 gives local authorities the power to require information from listed bodies, during the investigation of fraud connected with an application for or award of a reduction under a council tax reduction scheme: <http://www.legislation.gov.uk/ukSI/2013/501/contents/made>



## Part 3: Information recommended for publication

56. Part 2 of this Code set out details of the minimum data that local authorities must publish. The Government believes that in principle all data held and managed by local authorities should be made available to local people unless there are specific sensitivities to doing so. Therefore, it encourages local authorities to go much further in publishing the data they hold, recognising the benefits of sharing that data for local people, more effective service delivery and better policy making. Part 3 of this Code sets out details of data that the Government recommends local authorities publish.

### Part 3.1: Information recommended for publication

57. Data covered by this section includes:

- expenditure data (see paragraph 58)
- procurement information (see paragraphs 59 and 60)
- local authority land (see paragraph 61 and 62)
- parking spaces (see paragraphs 63 and 64)
- organisation chart (see paragraph 65)
- grants to voluntary, community and social enterprise organisations (see paragraphs 66 and 67), and
- fraud (see paragraph 68).

#### **Expenditure data**

58. It is recommended that local authorities go further than the minimum publication requirements set out in Part 2 and:

- publish information on a monthly instead of quarterly basis, or ideally, as soon as it becomes available and therefore known to the authority (commonly known as 'real-time' publication)
- publish details of all transactions that exceed £250 instead of £500. For each transaction the details that should be published remain as in paragraph 29
- publish all transactions on all corporate credit cards, charge cards and procurements, including those that are not a Government Procurement Card. For each transaction the details that should be published remain as set out in paragraph 30
- publish the total amount spent on remuneration over the period being reported on, and
- classify expenditure using the Chartered Institute of Public Finance and Accountancy Service Reporting Code of Practice to enable comparability between local authorities.

## Procurement information

59. It is recommended that local authorities place on Contracts Finder<sup>46</sup>, as well as any other local portal, every invitation to tender or invitation to quote for contracts to provide goods and/or services with a value that exceeds £10,000. For each invitation, the details that should be published are the same as those set out in paragraph 31.

60. It is recommended that local authorities should go further than the minimum publication requirements set out in Part 2 and publish:

- information on a monthly instead of quarterly basis, or ideally, as soon as it is generated and therefore becomes available (commonly known as 'real-time' publication)
- every invitation to tender for contracts to provide goods and/or services with a value that exceeds £500 instead of £5,000. The details that should be published are the same as those set out in paragraph 31
- details of invitations to quote where there has not been a formal invitation to tender. The details that should be published are the same as those set out in paragraph 31
- all contracts in their entirety where the value of the contract exceeds £5,000<sup>47</sup>
- company registration number at Companies House
- details of invitations to tender or invitations to quote that are likely to be issued in the next twelve months. The details that should be published are the same as those set out in paragraph 31
- details of the geographical (eg. by ward) coverage of contracts entered into by the local authority
- details of performance against contractual key performance indicators, and
- information disaggregated by voluntary and community sector category (eg. whether it is registered with Companies House, Charity or Charitable Incorporated Organisation, Community Interest Company, Industrial and Provident Society, Housing Association, etc).

## Local authority land

61. It is recommended that local authorities should go further than the minimum publication requirements set out in Part 2 and publish information on a monthly instead of annual basis, or ideally, as soon as it becomes available and therefore known to the authority (commonly known as 'real-time' publication). It is also recommended that local authorities should publish all the information possible on Electronic Property Information Mapping Service.

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<sup>46</sup> Documentation for all procurements valued at over £10,000 is stored on Contracts Finder for public viewing as part of government's transparency commitment. <https://online.contractsfinder.businesslink.gov.uk/>

<sup>47</sup> Where a contract runs into several hundreds of pages or more, a local authority should publish a summary of the contract or sections of the contract, if this would be more helpful to local people and businesses.

62. It is further recommended that local authorities also go further than the minimum publication requirements set out in paragraph 37 by publishing, alongside them in one place, the following information:

- size of the asset measured in Gross Internal Area (m<sup>2</sup>) for buildings or hectares for land, in accordance with the Royal Institute of Chartered Surveyors Code of Measuring Practice. The Gross Internal Area is the area of a building measured to the internal face of the perimeter walls at each floor level. Local authorities using Net Internal Area (m<sup>2</sup>) should convert measurements to Gross Internal Area using appropriate conversion factors<sup>48</sup> and state the conversion factor used
- services offered from the asset using the services listed in the Effective Services Delivery government service function list <http://doc.esd.org.uk/FunctionList/1.00.html> (listing up to five main services)
- reason for holding asset such as, it is occupied by the local authority or it is providing a service on the authority's behalf, it is an investment property, it supports economic development (eg. provision of small businesses or incubator space), it is surplus to the authority's requirements, it is awaiting development, it is under construction, it provides infrastructure or it is a community asset
- whether or not the asset is either one which is an asset in the authority's ownership that is listed under Part 5 Chapter 3 of the Localism Act 2011 (assets of community value) and/or an asset which the authority is actively seeking to transfer to the community
- total building operation (revenue) costs as defined in the corporate value for money indicators for public services<sup>49</sup>
- required maintenance - the cost to bring the property from its present state up to the state reasonably required by the authority to deliver the service and/or to meet statutory or contract obligations and maintain it at that standard. This should exclude improvement projects but include works necessary to comply with new legislation (eg. asbestos and legionella)
- functional suitability rating using the scale:
  - good – performing well and operating efficiently (supports the needs of staff and the delivery of services)
  - satisfactory – performing well but with minor problems (generally supports the needs of staff and the delivery of services)
  - poor – showing major problems and/or not operating optimally (impedes the performance of staff and/or the delivery of services)
  - unsuitable – does not support or actually impedes the delivery of services
- energy performance rating as stated on the Display Energy Certificate under the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended).

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<sup>48</sup> Local authorities are not expected to re-measure buildings. Research undertaken for the Scottish Government offers one method of converting Net Internal Area to Gross Internal Area and can be found at: <http://www.scotland.gov.uk/Resource/Doc/217736/0121532.pdf>

<sup>49</sup> <http://www.nao.org.uk/wp-content/uploads/2013/02/2010-11-Estates-Management.pdf> (See page 17).

## **Parking spaces**

63. It is recommended that local authorities should publish the number of:

- free parking spaces available in the local authority's area and which are provided directly by the local authority, and
- parking spaces where charges apply that are available in the local authority's area and which are provided directly by the local authority.

64. Where parking space is not marked out in individual parking bays or spaces, local authorities should estimate the number of spaces available for the two categories in paragraph 63.

## **Organisation chart**

65. It is recommended that local authorities should go further than the minimum publication requirements set out in Part 2 and publish:

- charts including all employees of the local authority whose salary exceeds £50,000
- the salary band for each employee included in the chart(s), and
- information about current vacant posts, or signpost vacancies that are going to be advertised in the future.

## **Grants to voluntary, community and social enterprise organisations**

66. It is recommended that local authorities should go further than the minimum publication requirements set out in Part 2 and publish information on a monthly instead of annual basis where payments are made more frequently than a single annual payment, or ideally, as soon as the data becomes available and therefore known to the authority (commonly known as 'real-time' publication).

67. It is further recommended that local authorities publish information disaggregated by voluntary and community sector category (eg. whether it is registered with Companies House, charity or charitable incorporated organisation, community interest company, industrial and provident society, housing association, etc).

## **Fraud**

68. It is recommended that local authorities should go further than the minimum publication requirements set out in Part 2 and publish:

- total number of cases of irregularity investigated
- total number of occasions on which a) fraud and b) irregularity was identified
- total monetary value of a) the fraud and b) the irregularity that was detected, and
- total monetary value of a) the fraud and b) the irregularity that was recovered.

## Part 3.2: Method of publication

69. The Government endorses the five step journey to a fully open format:

- One star Available on the web (whatever format) but with an open license
- Two star As for one star plus available as machine-readable structured data (eg. Excel instead of an image scan of a table)
- Three star As for two star plus use a non-proprietary format (eg. CSV and XML)
- Four star All of the above plus use open standards from the World Wide Web Consortium (such as RDF and SPARQL<sup>21</sup>)
- Five star All the above plus links an organisation's data to others' data to provide context

70. The Government recommends that local authorities publish data in three star formats where this is suitable and appropriate<sup>50</sup>, alongside open and machine-readable format, within six months of this Code being issued.

**Shehla Husain**  
**A Senior Civil Servant in the Department for Communities and Local Government**

**Department for Communities and Local Government**  
**27 February 2015**

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<sup>50</sup> Statistical data, lists etc should be capable of being published in this format but others (eg. organisation charts) may be more difficult.

# Annex A: Table summarising all information to be published

Information title	Information which must be published	Information recommended for publication
<p><b>Expenditure exceeding £500</b></p>	<p>Quarterly publication Publish details of each individual item of expenditure that exceeds £500, including items of expenditure, consistent with Local Government Association guidance, such as:</p> <ul style="list-style-type: none"> <li>• individual invoices</li> <li>• grant payments</li> <li>• expense payments</li> <li>• payments for goods and services</li> <li>• grants</li> <li>• grant in aid</li> <li>• rent</li> <li>• credit notes over £500</li> <li>• transactions with other public bodies.</li> </ul> <p>For each individual item of expenditure the following information must be published:</p> <ul style="list-style-type: none"> <li>• date the expenditure was incurred</li> <li>• local authority department which incurred the expenditure</li> <li>• beneficiary</li> <li>• summary of the purpose of the expenditure</li> <li>• amount</li> <li>• Value Added Tax that cannot be recovered</li> <li>• merchant category (eg. computers, software etc).</li> </ul>	<ul style="list-style-type: none"> <li>• Publish information on a monthly instead of quarterly basis, or ideally, as soon as it becomes available and therefore known to the authority (commonly known as ‘real-time’ publication).</li> <li>• Publish details of all transactions that exceed £250 instead of £500. For each transaction the details that should be published remain as set out in paragraph 29.</li> <li>• publish the total amount spent on remuneration over the period being reported on.</li> <li>• classify purpose of expenditure using the Chartered Institute of Public Finance and Accountancy Service Reporting Code of Practice to enable comparability between local authorities.</li> </ul>

Information title	Information which must be published	Information recommended for publication
<b>Government Procurement Card transactions</b>	<p>Quarterly publication Publish details of every transaction on a Government Procurement Card. For each transaction, the following details must be published:</p> <ul style="list-style-type: none"> <li>• date of the transaction</li> <li>• local authority department which incurred the expenditure</li> <li>• beneficiary</li> <li>• amount</li> <li>• Value Added Tax that cannot be recovered</li> <li>• summary of the purpose of the expenditure</li> <li>• merchant category (eg. computers, software etc).</li> </ul>	<ul style="list-style-type: none"> <li>• Publish all transactions on all corporate credit cards, charge cards and procurements, including those that are not a Government Procurement Card. For each transaction the details that should be published remain as set out in paragraph 30.</li> </ul>
<b>Procurement information</b>	<p>Quarterly publication Publish details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £5,000. For each invitation, the following details must be published:</p> <ul style="list-style-type: none"> <li>• reference number</li> <li>• title</li> <li>• description of the goods and/or services sought</li> <li>• start, end and review dates</li> <li>• local authority department responsible.</li> </ul> <p>Quarterly publication Publish details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000. For each contract, the following details must be published:</p> <ul style="list-style-type: none"> <li>• reference number</li> <li>• title of agreement</li> <li>• local authority department responsible</li> </ul>	<p>Place on Contracts Finder, as well as any other local portal, every invitation to tender or invitation to quote for contracts to provide goods and/or services with a value that exceeds £10,000.</p> <p>Publish:</p> <ul style="list-style-type: none"> <li>• information on a monthly instead of quarterly basis, or ideally, as soon as it is generated and therefore becomes available (commonly known as ‘real-time’ publication)</li> <li>• every invitation to tender for contracts to provide goods and/or services with a value that exceeds £500 instead of £5,000</li> <li>• details of invitations to quote where there has not been a formal invitation to tender</li> <li>• all contracts in their entirety where the value of the contract exceeds £5,000</li> </ul>

Information title	Information which must be published	Information recommended for publication
	<ul style="list-style-type: none"> <li>• description of the goods and/or services being provided</li> <li>• supplier name and details</li> <li>• sum to be paid over the length of the contract or the estimated annual spending or budget for the contract</li> <li>• Value Added Tax that cannot be recovered</li> <li>• start, end and review dates</li> <li>• whether or not the contract was the result of an invitation to quote or a published invitation to tender</li> <li>• whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number.</li> </ul>	<ul style="list-style-type: none"> <li>• company registration number at Companies House</li> <li>• details of invitations to tender or invitations to quote that are likely to be issued in the next twelve months</li> <li>• details of the geographical (eg. by ward) coverage of contracts entered into by the local authority</li> <li>• details of performance against contractual key performance indicators</li> <li>• information disaggregated by voluntary and community sector category (eg. whether it is registered with Companies House, charity or charitable incorporated organisation, community interest company, industrial and provident society, housing association, etc).</li> </ul>
<b>Local authority land</b>	<p>Annual publication</p> <p>Publish details of all land and building assets including:</p> <ul style="list-style-type: none"> <li>• all service and office properties occupied or controlled by user bodies, both freehold and leasehold</li> <li>• any properties occupied or run under Private Finance Initiative contracts</li> <li>• all other properties they own or use, for example, hostels, laboratories, investment properties and depots</li> <li>• garages unless rented as part of a housing tenancy agreement</li> <li>• surplus, sublet or vacant properties</li> <li>• undeveloped land</li> <li>• serviced or temporary offices where contractual or actual occupation exceeds three months</li> <li>• all future commitments, for example under an agreement for lease, from when the contractual commitment is made.</li> </ul>	<p>Publish information on a monthly instead of annual basis, or ideally, as soon as it becomes available and therefore known to the authority (commonly known as 'real-time' publication). It is also recommended that local authorities should publish all the information possible on Electronic Property Information Mapping Service.</p> <p>Publish the following additional information:</p> <ul style="list-style-type: none"> <li>• the size of the asset measured in Gross Internal Area (m<sup>2</sup>) for buildings or hectares for land, in accordance with the Royal Institute of Chartered Surveyors Code of Measuring Practice. The Gross Internal Area is the area of a building measured to the internal face of the perimeter walls at</li> </ul>



Information title	Information which must be published	Information recommended for publication
	<p>However, information about the following land and building assets are to be excluded from publication:</p> <ul style="list-style-type: none"> <li>• rent free properties provided by traders (such as information booths in public places or ports)</li> <li>• operational railways and canals</li> <li>• operational public highways (but any adjoining land not subject to public rights should be included)</li> <li>• assets of national security</li> <li>• information deemed inappropriate for public access as a result of data protection and/or disclosure controls (eg. such as refuge houses).</li> </ul> <p>Information on social housing is also excluded from this specific dataset.</p> <p>For each land or building asset, the following information must be published together in one place:</p> <ul style="list-style-type: none"> <li>• Unique Property Reference Number</li> <li>• Unique asset identity - the local reference identifier used by the local body, sometimes known as local name or building block. There should be one entry per asset or user/owner (eg. on one site there could be several buildings or in one building there could be several users, floors/rooms etc – where this is the case, each of these will have a separate asset identity). This must include the original reference number from the data source plus authority code</li> <li>• name of the building/land or both</li> <li>• street number or numbers - any sets of 2 or more numbers should be separated with the '-' symbol (eg. 10-15 London Road)</li> <li>• street name – this is the postal road address</li> <li>• post town</li> </ul>	<p>each floor level. Local authorities using Net Internal Area (m<sup>2</sup>) should convert measurements to Gross Internal Area using appropriate conversion factors and state the conversion factor used</p> <ul style="list-style-type: none"> <li>• the services offered from the asset, using the services listed in the Effective Services Delivery government service function list <a href="http://doc.esd.org.uk/FunctionList/1.00.html">http://doc.esd.org.uk/FunctionList/1.00.html</a> (listing up to five main services)</li> <li>• the reason for holding asset such as, it is occupied by the local authority or it is providing a service in its behalf, it is an investment property, it supports economic development (eg. provision of small businesses or incubator space), it is surplus to the authority's requirements, it is awaiting development, it is under construction, it provides infrastructure or it is a community asset</li> <li>• whether or not the asset is either one which is an asset in the authority's ownership that is listed under Part 5 Chapter 3 of the Localism Act 2011 (assets of community value) and/or an asset where the authority is actively seeking transfer to the community</li> <li>• total building operation (revenue) costs as defined in the corporate value for money indicators for public services</li> </ul>

Information title	Information which must be published	Information recommended for publication
	<ul style="list-style-type: none"> <li>• United Kingdom postcode</li> <li>• map reference – local authorities may use either Ordnance Survey or ISO6709 systems to identify the location of an asset, but must make clear which is being used. Where an Ordnance Survey mapping system is used (the grid system) then assets will be identified using Eastings before Northings. Where geocoding in accordance with ISO 6709 is being used to identify the centre point of the asset location then that reference must indicate its ISO coordinates</li> <li>• whether the local authority owns the freehold or a lease for the asset and for whichever category applies, the local authority must list all the characteristics that apply from the options given below: <ul style="list-style-type: none"> <li><i>for freehold assets:</i> <ul style="list-style-type: none"> <li>○ occupied by the local authority</li> <li>○ ground leasehold</li> <li>○ leasehold</li> <li>○ licence</li> <li>○ vacant (for vacant properties, local authorities should not publish the full address details and should only publish the first part of the postcode)</li> </ul> </li> <li><i>for leasehold assets:</i> <ul style="list-style-type: none"> <li>○ occupied by the local authority</li> <li>○ ground leasehold</li> <li>○ sub leasehold</li> <li>○ licence</li> </ul> </li> <li><i>for other assets:</i> <ul style="list-style-type: none"> <li>○ free text description eg. rights of way, access etc.</li> </ul> </li> </ul> </li> <li>• whether or not the asset is land only (without permanent buildings) or it is land with a permanent building.</li> </ul>	<ul style="list-style-type: none"> <li>• required maintenance - the cost to bring the property from its present state up to the state reasonably required by the authority to deliver the service and/or to meet statutory or contract obligations and maintain it at that standard. This should exclude improvement projects but include works necessary to comply with new legislation (eg. asbestos and legionella)</li> <li>• functional suitability rating using the scale: <ul style="list-style-type: none"> <li>○ good – performing well and operating efficiently (supports the needs of staff and the delivery of services)</li> <li>○ satisfactory – performing well but with minor problems (generally supports the needs of staff and the delivery of services)</li> <li>○ poor – showing major problems and/or not operating optimally (impedes the performance off staff and/or the delivery of services)</li> <li>○ unsuitable – does not support or actually impedes the delivery of services</li> </ul> </li> <li>• energy performance rating as stated on the Display Energy Certificate under the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended).</li> </ul>

Information title	Information which must be published	Information recommended for publication
<b>Social housing asset value</b>	<p>Annual publication</p> <p>Publish details on the value of social housing assets within local authorities' Housing Revenue Account.</p> <p>Information to be published using the specified value bands and postal sector:</p> <ul style="list-style-type: none"> <li>• total number of homes</li> <li>• the aggregate value and mean value of the dwellings for both existing use value (social housing) and market value, and</li> <li>• percentage of homes that are vacant and that are tenanted.</li> </ul> <p>Information to be published at a general level:</p> <ul style="list-style-type: none"> <li>• an explanation of the difference between the tenanted sale value of homes within the Housing Revenue Account and their market sale value, and</li> <li>• an assurance that the publication of this information is not intended to suggest that tenancies should end to realise the market value of properties.</li> </ul> <p>Other residential tenanted properties that the authority may hold within their General Fund are excluded from this specific dataset, as is information on other building assets or land that local authorities hold within their Housing Revenue Account.</p>	
<b>Grants to voluntary, community and social enterprise organisations</b>	<p>Annual publication</p> <p>Publish details of all grants to voluntary, community and social enterprise organisations. This can be achieved by either:</p> <ul style="list-style-type: none"> <li>• tagging and hence specifically identifying transactions which relate to voluntary, community and social enterprise organisations within published data on expenditure over £500 or published procurement information, or</li> <li>• by publishing a separate list or register.</li> </ul>	<ul style="list-style-type: none"> <li>• Publish information on a monthly instead of annual basis where payments are made more frequently than a single annual payment, or ideally, as soon as the data becomes available and therefore known to the authority (commonly known as 'real-time' publication).</li> </ul>

Information title	Information which must be published	Information recommended for publication
	<p>For each identified grant, the following information must be published as a minimum:</p> <ul style="list-style-type: none"> <li>• date the grant was awarded</li> <li>• time period for which the grant has been given</li> <li>• local authority department which awarded the grant</li> <li>• beneficiary</li> <li>• beneficiary's registration number</li> <li>• summary of the purpose of the grant</li> <li>• amount</li> </ul>	<ul style="list-style-type: none"> <li>• information disaggregated by voluntary and community sector category (eg. whether it is registered with Companies House, charity or charitable incorporated organisation, community interest company, industrial and provident society, housing association etc).</li> </ul>
<b>Organisation chart</b>	<p>Annual publication</p> <p>Publish an organisation chart covering staff in the top three levels of the organisation. The following information must be included for each member of staff included in the chart:</p> <ul style="list-style-type: none"> <li>• grade</li> <li>• job title</li> <li>• local authority department and team</li> <li>• whether permanent or temporary staff</li> <li>• contact details</li> <li>• salary in £5,000 brackets, consistent with the details published for Senior Salaries</li> <li>• salary ceiling (the maximum salary for the grade).</li> </ul>	<p>Local authorities should publish:</p> <ul style="list-style-type: none"> <li>• charts including all employees in the local authority whose salary exceeds £50,000</li> <li>• the salary band for each employee included in the chart(s)</li> <li>• information about current vacant posts, or signpost vacancies that are going to be advertised in the future.</li> </ul>
<b>Trade union facility time</b>	<p>Annual publication</p> <p>Publish the following information:</p> <ul style="list-style-type: none"> <li>• total number (absolute number and full time equivalent) of staff who are union representatives (including general, learning and health and safety representatives)</li> <li>• total number (absolute number and full time equivalent) of union representatives who devote at least 50 per cent of their time to union duties</li> <li>• names of all trade unions represented in the local authority</li> </ul>	

Information title	Information which must be published	Information recommended for publication
	<ul style="list-style-type: none"> <li>• a basic estimate of spending on unions (calculated as the number of full time equivalent days spent on union duties multiplied by the average salary), and</li> <li>• a basic estimate of spending on unions as a percentage of the total pay bill (calculated as the number of full time equivalent days spent on union duties multiplied by the average salary divided by the total pay bill).</li> </ul>	
<b>Parking account</b>	<p>Annual publication Publish on their website, or place a link on their website to this data published elsewhere:</p> <ul style="list-style-type: none"> <li>• a breakdown of income and expenditure on the authority's parking account. The breakdown of income must include details of revenue collected from on-street parking, off-street parking and Penalty Charge Notices</li> <li>• a breakdown of how the authority has spent a surplus on its parking account.</li> </ul>	
<b>Parking spaces</b>	<p>Annual publication Publish the number of marked out controlled on and off-street parking spaces within their area, or an estimate of the number of spaces where controlled parking space is not marked out in individual parking bays or spaces.</p>	<p>Local authorities should publish the number of:</p> <ul style="list-style-type: none"> <li>• free parking spaces available in the local authority's area and which are provided directly by the local authority, and</li> <li>• parking spaces where charges apply that are available in the local authority's area and which are provided directly by the local authority.</li> </ul> <p>Where parking space is not marked out in individual parking bays or spaces, local authorities should estimate the number of spaces available for the two categories.</p>

Information title	Information which must be published	Information recommended for publication
<b>Senior salaries</b>	<p>Annual publication</p> <p>Local authorities must place a link on their website to the following data or must place the data itself on their website:</p> <ul style="list-style-type: none"> <li>• the number of employees whose remuneration in that year was at least £50,000 in brackets of £5,000</li> <li>• details of remuneration and job title of certain senior employees whose salary is at least £50,000</li> <li>• employees whose salaries are £150,000 or more must also be identified by name.</li> <li>• a list of responsibilities (for example, the services and functions they are responsible for, budget held and number of staff) and details of bonuses and 'benefits in kind', for all employees whose salary exceeds £50,000.</li> </ul>	
<b>Constitution</b>	<p>Annual publication</p> <p>Local authorities must publish their Constitution on their website.</p>	
<b>Pay multiple</b>	<p>Annual publication</p> <p>Publish the pay multiple on their website defined as the ratio between the highest taxable earnings for the given year (including base salary, variable pay, bonuses, allowances and the cash value of any benefits-in-kind) and the median earnings figure of the whole of the authority's workforce. The measure must:</p> <ul style="list-style-type: none"> <li>• cover all elements of remuneration that can be valued (eg. all taxable earnings for the given year, including base salary, variable pay, bonuses, allowances and the cash value of any benefits-in-kind)</li> <li>• use the median earnings figure as the denominator, which should be that of all employees of the local authority on a fixed date each year, coinciding with reporting at the end of the financial year</li> <li>• exclude changes in pension benefits, which due to their variety and complexity cannot be accurately included in a pay multiple disclosure.</li> </ul>	

Information title	Information which must be published	Information recommended for publication
<b>Fraud</b>	<p>Annual publication</p> <p>Publish the following information:</p> <ul style="list-style-type: none"> <li>• number of occasions they use powers under the Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014, or similar powers</li> <li>• total number (absolute and full time equivalent) of employees undertaking investigations and prosecutions of fraud</li> <li>• total number (absolute and full time equivalent) of professionally accredited counter fraud specialists</li> <li>• total amount spent by the authority on the investigation and prosecution of fraud</li> <li>• total number of fraud cases investigated.</li> </ul>	<p>Local authorities should publish:</p> <ul style="list-style-type: none"> <li>• total number of cases of irregularity investigated</li> <li>• total number of occasions on which a) fraud and b) irregularity was identified</li> <li>• total monetary value of a) the fraud and b) the irregularity that was detected, and</li> <li>• total monetary value of a) the fraud and b) the irregularity that was recovered.</li> </ul>
<b>Waste contracts</b>	<p>One-off publication</p> <p>Local authorities must publish details of their existing waste collection contracts, in line with the details contained in paragraphs 32 of the Code, at the point they first publish quarterly contract information under Part 2 of this Code.</p>	

## Annex B: Detecting and preventing fraud

Tackling fraud is an integral part of ensuring that tax-payers money is used to protect resources for frontline services. The cost of fraud to local government is estimated at £2.1 billion a year. This is money that can be better used to support the delivery of front line services and make savings for local tax payers.

A culture of transparency should strengthen counter-fraud controls. The Code makes it clear that fraud can thrive where decisions are not open to scrutiny and details of spending, contracts and service provision are hidden from view. Greater transparency, and the provisions in this Code, can help combat fraud.

Sources of support to tackle fraud include:

*Fighting Fraud Locally, The Local Government Fraud Strategy*

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118508/strategy-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118508/strategy-document.pdf)), was drafted by the National Fraud Authority and CIPFA (the Chartered Institute of Public Finance and Accountancy). The document calls for the adoption of a tougher approach to tackle fraud against local authorities. The strategy is part of a wider collaboration on counter fraud and is the local authority contribution to the national fraud strategy – *Fighting Fraud Together* (<https://www.gov.uk/government/publications/nfa-fighting-fraud-together>) which encompasses both the public and private sectors response to fraud in the UK.

Local authorities should use a risk management approach with strong internal control arrangements to reduce the risk of any payment fraud as a result of publishing public data. Local authorities should refer to the *Chartered Institute of Public Finance and Accountancy Code of Practice on Managing the Risk of Fraud and Corruption* (<http://www.cipfa.org/services/counter-fraud-centre/code-of-practice>). The document sets out a step by step toolkit to tackling fraud: identifying and understanding your fraud risks and potential exposure to fraud loss; assessing current resilience to fraud; evaluating the organisation's ability to respond to potential or identified fraud; and developing a strategy. Developing an anti-fraud culture is an important part of improving resilience; the benefits of improving resilience to fraud include reduced exposure to fraud and an organisation that is better able to identify attempted frauds or vulnerabilities.

The National Fraud Authority have produced a guide on procurement fraud, *Procurement Fraud in the Public Sector*, ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118460/procurement-fraud-public-sector.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118460/procurement-fraud-public-sector.pdf)) which deals with the whole process, from bidding during the pre-contract award phase through to false invoicing in the post-contract award phase.

There are some specific steps local authorities can take to prevent procurement fraud. These might include:


- only accepting requests for changes to supplier standing data in writing



- seeking confirmation from the supplier that the requested changes are genuine, using contact details held on the vendor data file or from previous and legitimate correspondence; and not contacting the supplier via contact details provided on the letter requesting the changes
- ensuring that there is segregation of duties between those who authorise changes and those who make them
- only authorising changes when all appropriate checks have been carried out with legitimate suppliers and only making the changes when the proper authorisations to do so have been given
- maintaining a suitable audit trail to ensure that a history of all transactions and changes is kept
- producing reports of all changes made to supplier standing data and checking that the changes were valid and properly authorised before any payments are made
- carrying out standard checks on invoices before making any payments, and
- regularly verifying the correctness of standing data with suppliers.

# Annex C: Social housing asset data to be published

Postal Sector	Valuation Band Range	Intervening bands	Dwellings value				Tenure status		
			Total number social housing dwellings	EUV-SH Values		Market Values		% occupied dwellings	% vacant dwellings
				Total	Average	Total	Average		
PO1 1**	<£50,000 - £99,999	<£50,000							
		£50,000 - £59,999							
		£60,000 - £69,999							
		£70,000 - £79,999							
		£80,000 - £89,999							
		£90,000 - £99,999							
	£100,000 - £299,999	£100,000 - £119,999							
		£120,000 - £139,999							
		£140,000 - £159,999							
		£160,000 - £179,999							
		£180,000 - £199,999							
		£200,000 - £219,999							
		£220,000 - £239,999							
		£240,000 - £259,999							
		£260,000 - £279,999							
		£280,000 - £299,999							
	£300,000 - £499,999	£300,000 - £349,999							
		£350,000 - £399,999							
		£400,000 - £449,999							
		£450,000 - £499,999							
	£500,000 - £999,999	£500,000 - £599,999							
		£600,000 - £699,999							
		£700,000 - £799,999							
		£800,000 - £899,999							
		£900,000 - £999,999							
	£1m - £2,999,999>	£1,000,000 - £1,499,999							
		£1,500,000 - £1,999,999							
		£2,000,000 - £2,499,999							
		£2,500,000 - £2,999,999							
		£3,000,000>							

<p>Non-Executive Report of the:</p> <p><b>General Purposes Committee</b></p> <p>25 January 2017</p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Will Tuckley, Chief Executive</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Organisation Structure Implementation</b></p>	

<b>Originating Officer(s)</b>	Stuart Young – Interim Divisional Director HR & Transformation
<b>Wards affected</b>	All wards

## Summary

This report updates Members on the implementation of the new organisational structure. The report provides a timetable for implementing the new structure including recruitment to vacant posts.

## Recommendations

The General Purposes Committee is recommended to:

- a) Establish Appointment Sub-Committees as detailed at paragraph 3.5;
- b) Note the change in management reporting for the Communications and Policy, Strategy & Equalities functions as detailed at paragraph 3.6; and
- c) Note the progress in implementing the Council structure.

## **1. REASONS FOR THE DECISIONS**

- 1.1 General Purposes Committee has responsibility for the appointment to Chief/Deputy Chief Officer posts. It is usual practice for the Committee to establish Appointment Sub-Committees to fulfil the recruitment process and to receive a report back.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The organisational structure could be left unchanged but this would not deliver the necessary benefits to deliver the Council's strategic priorities.

## **3. DETAILS OF REPORT**

- 3.1 General Purposes Committee on 14<sup>th</sup> September 2016 agreed that the new organisation structure should be implemented. Members asked that the CE conduct the process for assimilation and noted that Members would determine appointments for chief officer and deputy chief officer vacant posts.
- 3.2 The CE held assimilation interviews on 16<sup>th</sup> December 2016. Shazia Hussain was successful in her application as Divisional Director Customer Access. The remaining posts were not appointed to. The other potential candidate was Sean Green who has accepted alternative employment as the Head of IT at the Corporation of London. The CE with Members and a Commissioner also interviewed for the vacant Monitoring Officer duties. Graham White was appointed to cover the role until the permanent job is recruited to.
- 3.3 The remaining vacant posts now require recruitment. A recruitment company has been appointed to co-ordinate advertising, search and testing activities. HR will manage logistics and administration to control costs. 9 posts will be advertised as follow:
- Corporate Director of Place
  - Corporate Director of Governance
  - Divisional Director Community Safety, DAAT & ASB
  - Divisional Director Sports, Leisure, Culture & Youth
  - Divisional Director Growth & Economic Development
  - Divisional Director IT
  - Divisional Director HR & Transformation
  - Divisional Director Legal
  - Divisional Director Housing & Regeneration
- 3.4 It is intended that the Divisional Director for Integrated Health will be a joint appointment with Health colleagues. In order to align a recruitment process it is proposed to delay appointment for a period of 6 months. Management arrangements are in place to cover the duties of this role pending the outcome of discussion with Health.

- 3.5 An indicative timetable for recruiting to these posts is attached at Appendix A. The Committee will consider proportionality for Appointment Sub-Committees elsewhere on the agenda. It is proposed to establish an Appointment Sub-Committee for each recruitment. HR and Democratic Services will liaise with Groups to identify Sub-Committees. Members are asked to note the timetable and the need to adhere to the dates it provides.
- 3.6 The organisation chart is attached at Appendix B. Members are asked to note the reporting line for the Communications; and Strategy, Policy, Equalities & Partnerships teams are amended to the Chief Executive.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 The Chief Finance Officer has been consulted in the preparation of this report. The additional recruitment costs arising from the proposals in this report will be met from the Council's Transformation Reserve.

#### **5. LEGAL COMMENTS**

- 5.1 This report asks that the Committee approves the recruitment to the remaining vacant posts in the new corporate management structure.
- 5.2 The Officer Employment Procedure Rules (OEPR) in Part 4.9 of the Constitution specify the Council's rules and procedures applying to both the appointment and dismissal of Chief Officers. The current rules and procedures for appointing to Chief and Deputy Chief Officer posts are set out in sections 5 and 6 of the OEPR
- 5.3 Any person being considered for a new Chief or Deputy Chief Officer role will be subject to an interview process to determine their suitability for the role as required by the appointment process in the OEPR. Further, the recruitment process will support both the Council's obligation to appoint on merit in section 7 of the Local Government and Housing Act 1989 and the Council's obligations under the Equality Act 2010 not to discriminate and to promote equality of opportunity.
- 5.4 When carrying out the reorganisation, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). It must take care not to discriminate or otherwise act unlawfully within the meaning of the Equality Act. A proportionate level of equality analysis is required in order to discharge the Council's duties.

#### **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 The organisational design principles set out in this report will support the One Tower Hamlets objectives.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 The proposals will add value to the efficiency and effectiveness of the Council. The future staffing organisation will contribute to each of the Best Value Action Plan areas.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 There are no direct SAGE implications arising from this report.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 The proposals to be brought forward on staffing will provide a secure foundation for the delivery of the Council's main plans and strategies therefore reducing risk of not realising our planned resident outcomes.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 There are no direct Crime and Disorder implications arising from this report.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- None

#### **Appendices**

- Appendix A - Recruitment timetable
- Appendix B - Organisation chart

#### **Officer contact details for documents:**

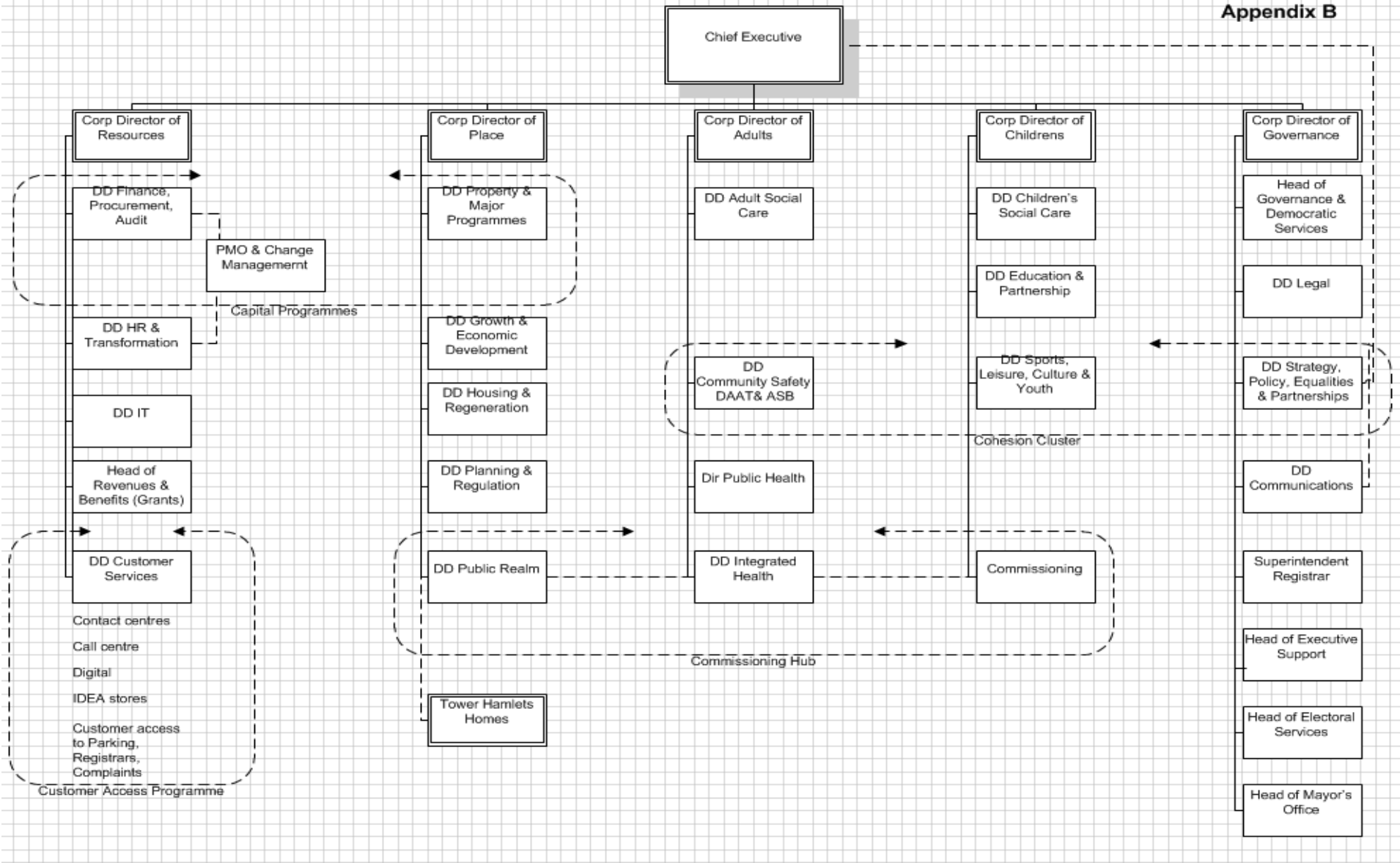
- N/A

**Appendix A**


	Indicative Date (tbc)	Lead
<b>SENIOR RECRUITMENT TIMETABLE FOR VACANT POSITIONS</b>		
Open Evening for potential candidates for all posts	<b>Early Feb</b>	Mayor, Members, CMT
<b>Corporate Director Place</b>		Will Tuckley - Lead Chief Officer, Stuart Young- HR, Penna
Advert	Mon 16/01/17	
Closing date	Mon 20/02/17	
Preliminary interviews – Penna and technical assessor	Fri 10/03/17	
Shortlist meeting Appointment Sub ctte	Wed 22/03/17	
Final Sub-Committee interviews and stakeholder panels	Wed 29/3/17	
<b>Corporate Director Governance</b>		Will Tuckley - Lead Chief Officer, Commissioners, Stuart Young- HR, Penna
Advert	Mon 16/01/17	
Closing date	Mon 13/02/17	
Preliminary interviews – Penna and technical assessor	Mon 27/02/17	
Shortlist meeting Appointment Sub ctte	Wed 15/03/17	
Final Sub-Committee interviews and stakeholder panels	Mon 20/3/17	
<b>DD Community Safety, DAAT &amp; ASB</b>		Denise Radley - Lead CO, Jacinta Gasson Mulcahy- HR, Penna
Advert	Mon 23/01/17	
Closing date	Mon 27/02/17	
Preliminary interviews – Penna and technical assessor	Fri 17/03/17	
Shortlist meeting Appointment Sub ctte	Tues 28/03/17	
Final Sub-Committee interviews and stakeholder panels	Thu 13/04/17	
<b>DD Sports, Leisure, Culture &amp; Youth</b>		Debbie Jones - Lead CO, Jacinta Gasson Mulcahy- HR, Penna
Advert	Mon 23/01/17	
Closing date	Mon 27/02/17	
Preliminary interviews – Penna and technical assessor	Fri 17/03/17	
Shortlist meeting Appointment Sub ctte	Tues 28/03/17	
Final Sub-Committee interviews and stakeholder panels	Thu 13/04/17	
<b>DD IT</b>		Zena Cooke- Lead CO, Mark Keeble- HR, Penna
Advert	Mon 23/01/17	

Closing date	Mon 27/02/17	
Preliminary interviews – Penna and technical assessor	Fri 17/03/17	
Shortlist meeting Appointment Sub ctte	Tues 28/03/17	
Final Sub-Committee interviews and stakeholder panels	Thu 13/04/17	
<b>DD Growth &amp; Economic Development</b>		Will Tuckley/Aman Dalvi- Lead CO, Catriona Hunt- HR, Penna
Advert	Mon 30/01/17	
Closing date	Mon 06/03/17	
Preliminary interviews – Penna and technical assessor	Fri 31/03/17	
Shortlist meeting Appointment Sub ctte	Mon 10/04/17	
Final Sub-Committee interviews and stakeholder panels	Fri 28/4/17	
<b>DD HR &amp; Transformation</b>		Zena Cooke- Lead CO, Jacinta Gasson- Mulcahy- HR, Penna
Advert	Mon 30/01/17	
Closing date	Mon 06/03/17	
Preliminary interviews – Penna and technical assessor	Fri 31/03/17	
Shortlist meeting Appointment Sub ctte	Mon 10/04/17	
Final Sub-Committee interviews and stakeholder panels	Fri 28/4/17	
<b>DD Legal</b>		Will Tuckley/Graham White- Lead CO, Catriona Hunt- HR, Penna
Advert	Mon 30/01/17	
Closing date	Mon 06/03/17	
Preliminary interviews – Penna and technical assessor	Fri 31/03/17	
Shortlist meeting Appointment Sub Ctte	Mon 10/04/17	
Final Sub-Committee interviews and stakeholder panels	Fri 28/4/17	
<b>DD Housing &amp; Regeneration</b>		Will Tuckley/Aman Dalvi- Lead CO, Catriona Hunt- HR, Penna
Advert	Mon 30/01/17	
Closing date	Mon 06/03/17	
Preliminary interviews – Penna and technical assessor	Fri 31/03/17	
Shortlist meeting Appointment Sub ctte	Mon 10/04/17	
Final Sub-Committee interviews and stakeholder panels	Fri 28/4/17	





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Non-Executive Report of the:  <b>General Purposes Committee</b>  25 <sup>th</sup> January 2017	
<b>Report of:</b> Zena Cooke, Corporate Director Resources	<b>Classification:</b> Unrestricted
<b>Designated Independent Person (DIP) Update</b>	

<b>Originating Officer(s)</b>	Stuart Young, Interim Divisional Director, HR and Transformation
<b>Wards affected</b>	All wards

### Summary

A report was presented to Full Council in July 2015 to amend the constitution following the implementation of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, which came into effect on 11<sup>th</sup> May 2015. The Regulations required local authorities to amend their rules with regards to the dismissal of statutory officers.

The Regulations changed the existing statutory procedure in respect of the dismissal of a Head of Paid Service, Monitoring Officer and Chief Financial Officer. They removed from the disciplinary process the previous requirement for a Designated Independent Person but introduced a new requirement to include Independent Persons (currently appointed as part of the Standards regime in a Panel).

There were still outstanding issues as to how the new process would work and it was agreed a further report would be brought to GP Committee once work had been done nationally to update the Chief Executive and Chief Officer handbooks and model disciplinary processes. This report gives an update on that process.

### Recommendations:

The GP Committee is recommended to:

1. Note the contents of the report and agree to adopt the model disciplinary procedure and flow diagram, and the grievance procedure as set out in the Chief Executive Handbook.
2. Agree that a further report be considered by GP Committee upon the national changes being made to the Chief Officers Handbook

## **1. REASONS FOR THE DECISIONS**

- 1.1 The decision is needed as further guidance has now been received in the form of an updated Chief Executive Handbook with an updated model disciplinary procedure.

## **2. ALTERNATIVE OPTIONS**

- 2.1 An alternative option would be to wait until the Chief Officers Handbook (with its own model disciplinary procedure) has also been updated before a model procedure is agreed. It is not known when this will be agreed but it is being worked on at present.
- 2.2 A further option would be to not adopt either model procedure and produce our own disciplinary procedure for statutory officers that takes into account the legislative changes, though the model procedures will be best practice and will answer some of the outstanding queries about how the process would best work.

## **3. DETAILS OF REPORT**

- 3.1 Further to an update in a JNC circular dated 5<sup>th</sup> May 2016 (reported to the GP Committee as part of a Senior Management Update / Recruitment to Vacancies report in June 2016) a further circular was issued on 13<sup>th</sup> October 2016 (Appendix 1).
- 3.2 The circular stated that an updated edition of the Chief Executives Handbook (Appendix 2), in which the Model Procedure (Appendix 5 of the Handbook) and Flow Diagram (Appendix 5a-c of the Handbook), for dealing with matters of discipline incorporates the new statutory process is now in place with effect from 13<sup>th</sup> October 2016.
- 3.3 The Model Grievance Procedure (Appendix 7 of the Handbook) has also been revised in order to make it more consistent with practice in authorities. The handbook has also been updated throughout to ensure that all references to external organisations, hyperlinks and emails etc. are correct.
- 3.4 Whilst the new disciplinary procedure applies specifically to Chief Executives, it could also be used as a framework for statutory chief officers, though the Chief Officers National Secretaries will be updating the separate chief officers' handbook in due course.
- 3.5 The JNC has raised with the Department for Communities and Local Government (CLG) an apparent conflict between the Local Authorities (Standing Orders) (England) Regulations 2001 (as now amended by the 2015 Regulations) with the fundamental requirements of the Localism Act 2011. The apparent conflict arises in relation to the Panel that is now required under the Standing Orders Regulations 2001.

- 3.6 That Panel is a committee of the authority under section 102(4) of the Local Government Act 1972, and must contain at least two relevant independent persons, an independent person being a person appointed under section 28(7) of the Localism Act 2011, i.e. an independent person appointed to advise the authority on elected member conduct issues. The JNC's concern is that their appointment to a Panel may debar them from being an independent person, under section 28(7).
- 3.7 The example given in the circular takes the case where a council constitutes a Panel using, say, two independent persons which it has appointed itself under section 28(7) of the Localism Act, as the Panel is a committee of the council, it is their understanding that the independent persons' status is that of co-opted members of that committee, and so of the authority. It is that co-opted status that potentially then debars them from being reappointed an independent person under section 28(7) for that council.
- 3.8 Although the Standing Order Regulations 2001 allow the appointment of relevant independent persons who have been appointed by another council, which would not therefore raise the issue identified above, it is clear that under the Regulations the priority is to be given to independent persons appointed by the same council as is considering the conduct of its designated officer.
- 3.9 In response to the JNC raising this issue, the CLG informed them that it does not give legal advice and does not give an opinion on legislation as that is a matter for the courts. However, its informal view was that once a person is appointed as an independent person in accordance with the provisions of the 2011 Act, they may act on the Panel without ceasing to be an independent person. This is because at the time of their appointment as an independent person, they would not have been a member of a committee, including a Panel, and so not have had co-opted status in the past five years.
- 3.10 If though, a former independent person who had also been a member of a Panel sought re-appointment as an independent person under the provisions of the Localism Act 2011, then they would be prevented from being re-appointed until five years after the end of their tenure on the Panel since this is considered to be a committee of the local authority.
- 3.11 Whilst the Joint Secretaries are not entirely convinced by all the points made by the CLG, they do not think there is any value in pursuing it further. They believe that independent persons being invited to be a member of a Panel for the council, of which they would thereby become subject to this possible future disqualification, should be made aware of that possibility at the time the invitation is made.
- 3.12 The handbook now refers to a list of Independent Investigators to be maintained by the National Secretaries: the process for selecting and training these people has started and further advice will be issued in due course.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 There are no direct financial implications arising from the recommendations within this report.

#### **5. LEGAL COMMENTS**

- 5.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (“the Regulations”) amend the Local Authorities (Standing Order) England Regulations 2001 and require local authorities to amend their standing orders to incorporate new arrangements for dismissal of the Head of Paid Service, the Monitoring Officer and the section 151 Chief Finance Officer.
- 5.2 The independent Panel which is required to be established under the new process is to be an advisory committee appointed by the Council under section 102(4) of the Local Government Act 1972.
- 5.3 The report accurately summarises the effect of the Regulations and the potential difficulties relating to the appointment of an Independent Person to an Independent Panel constituted as an advisory committee of the authority under section 102(4) of the Local Government Act 1972.
- 5.4 To comply with general employment law principles an essential part of a fair dismissal is that a fair and objective investigation is carried out. In addition the Regulations specify that the authority must take into account the conclusions of ‘any investigation’ before approving a proposal to dismiss. In order to be a fair procedure, any dismissal process should also provide opportunities for the officer to make representations about the disciplinary allegations and to be accompanied to a meeting at which their dismissal is being considered.
- 5.5 The proposed model disciplinary procedure complies with the Regulations, general employment law requirements and will require further amendments to the Council’s Constitution if adopted.
- 5.6 Members should also note that Direction 4 issued on 17 December 2014 by the Secretary of State for Communities and Local Government (under section 15 of the Local Government Act 1999) remains in force and requires the prior written agreement of the Commissioners before any dismissal or suspension of a person who has been designated as a statutory officer.

#### **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 A nationally agreed disciplinary procedure will have been developed with equality and diversity issues in mind.

**7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 Adopting a nationally agreed model disciplinary procedure that reflects best practice helps provide best value for the council in terms of dealing with any future disciplinary matters.

**8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 There are no implications.

**9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 Adopting a model disciplinary procedure agreed nationally reduces any likely risk to the council.

**10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 There are no implications.

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**Linked Reports, Appendices and Background Documents**

**Linked Report**

- None

**Appendices**

- Appendix 1 – JNC for Chief Executives Circular 13<sup>th</sup> October 2016
- Appendix 2 – JNC for Chief Executives Handbook – Updated 13<sup>th</sup> October 2016

**Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report**

- None

**Officer contact details for documents:**

- Stuart Young, Interim Divisional Director, HR and Transformation– 0207 364 5918

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## Joint Negotiating Committee for Chief Executives of Local Authorities

**To: Chief Executives in England (copies for the Finance Director and HR Director) (Wales and N Ireland for information only)  
Regional Directors  
Members of the Joint Negotiating Committee**

13 October 2016

Dear Chief Executive,

### CHIEF EXECUTIVES' HANDBOOK: UPDATED EDITION

As advised previously in JNC Circular dated 5 May 2016, the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 replaced the statutory Designated Independent Person (DIP) provisions with an Independent Panel process.

The JNC is now pleased to publish an updated edition of the Chief Executives' Handbook in which the Model Procedure for dealing with matters of discipline incorporates the new statutory process. The revised Model Procedure (for England only; the 2015 regulations do not apply in Wales) is set out at Appendix 5.

The *Model Grievance Procedure* at Appendix 7 has also been revised in order to make it more consistent with practice in authorities. The handbook has also been updated throughout to ensure that all references to external organisations, hyperlinks and emails etc are correct.

This handbook sets out what now become the conditions of service of employees engaged on terms as laid down by the Joint Negotiating Committee for Chief Executives of Local Authorities with effect from today.

With this in mind, chief executives are requested to ensure that this circular and the new handbook are drawn to the attention of the Council's Monitoring Officer and HR Director.

The Joint Secretaries of the JNC should be notified as soon as it is proposed to use the disciplinary 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.

Whilst this new procedure applies specifically to chief executives, we are aware that it could also be used as a framework for statutory chief officers.

<p>Employers' Secretary: Sarah Messenger Local Government Association Local Government House Smith Square London SW1P 3HZ <a href="mailto:info@local.gov.uk">info@local.gov.uk</a></p>	<p>Officers' Secretary: Ian Miller Hon Secretary ALACE  <a href="mailto:alacehonsec@yahoo.co.uk">alacehonsec@yahoo.co.uk</a></p>
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The Chief Officer National Secretaries will be updating the separate chief officers' handbook in due course. In the meantime the Chief Officer National Secretaries ([info@local.gov.uk](mailto:info@local.gov.uk) and [rehana.azam@gmb.org.uk](mailto:rehana.azam@gmb.org.uk)) should be notified if disciplinary action against statutory officers is being considered.

The JNC has raised with the Department for Communities & Local Government (CLG) an apparent conflict between the Local Authorities (Standing Orders) (England) Regulations 2001 (as now amended by the 2015 Regulations) with the fundamental requirements of the Localism Act 2011. That apparent conflict arises in relation to the Panel that is now required under the Standing Orders Regulations 2001.

That Panel is a committee of the authority under section 102(4) of the Local Government Act 1972, and must contain at least two relevant independent persons, an independent person being a person appointed under section 28(7) of the Localism Act 2011, ie. an independent person appointed to advise the authority on elected member conduct issues. The JNC's concern is that their appointment to a Panel may debar them from being an independent person, under section 28(7).

Taking a case where a council constitutes a Panel using, say, two independent persons which it has appointed itself under section 28(7) of the Localism Act, as the Panel is a committee of the council it is our understanding that the independent persons' status is that of co-opted members of that committee, and so of the authority. It is that co-opted status that potentially then debars them from being reappointed an independent person under section 28(7) for that council.

Although the Standing Orders Regulations 2001 allow the appointment of relevant independent persons who have been appointed by another council, which would not therefore raise the issue identified above, it is clear that under the Regulations the priority is to be given to independent persons appointed by the same council as is considering the conduct of its designated officer.

In response to our raising this issue CLG informed us that it does not give legal advice, nor does it give an opinion on legislation as that is a matter for the courts. However, its informal view is that once a person is appointed as an independent person in accordance with the provisions of the 2011 Act, they may act on the Panel without ceasing to be an independent person. This is because at the time of their appointment as an independent person, they would not have been a member of a committee, including a Panel, and so not have had co-opted status in the past five years.

If though, a former independent person who had also been a member of a Panel sought re-appointment as an independent person under the provisions of the Localism Act 2011, then they would be prevented from being re-appointed until five years after the end of their tenure on the Panel since this is considered to be a committee of the local authority. While the Joint Secretaries are not entirely convinced by all the points made by CLG, we do not think that there is any value in pursuing it further. We believe that independent persons being invited to be a member of a Panel for the council of which they would thereby become subject to this possible future disqualification, should be made aware of that possibility at the time the invitation is made.

We would be interested to hear from you if this issue arises in any future application of the new procedure.

Finally, the handbook refers to a list of Independent Investigators to be maintained by the National Secretaries: the process for selecting and training these people has started and further advice will be issued in due course.

Yours faithfully,

**Sarah Messenger**  
**Ian Miller**

**Joint Secretaries**

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

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

UPDATED 13 OCTOBER 2016

<b>Employers' Secretary:</b>	<b>Officers' Side Secretary:</b>
<p>SARAH MESSENGER LGA, Local Government House Smith Square London SW1P 3HZ</p> <p>Tel: 020 7187 7373 Email: <a href="mailto:info@local.gov.uk">info@local.gov.uk</a></p>	<p>IAN MILLER Hon Secretary ALACE <a href="http://www.alace.org.uk">www.alace.org.uk</a></p> <p>Tel: 07515 190917 Email: <a href="mailto:alacehonsec@yahoo.co.uk">alacehonsec@yahoo.co.uk</a></p>

## PREAMBLE

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

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

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### **NB:**

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

## **THE CHIEF EXECUTIVE**

### **1. DEFINITION**

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

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

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

- (ii) Advising the council, its executive and its committees on all matters of general policy and all other matters upon which his or her advice is necessary, with the right of attendance at all committees of the council and all subcommittees and working parties.
- (iii) Advising the leader or elected mayor of the council, or where appropriate the party group leaders, on any matter relevant to the council’s functions.
- (iv) Representing and negotiating on behalf of the council on external bodies and networks.
- (v) Advising or making suitable arrangements for advising the Lord Mayor, Mayor or Chair of the council on all matters within the duties of that office.

### **2. ADVICE TO POLITICAL GROUPS**

The chief executive shall not be required to advise any political group of the council, either as to the work of the group or as to the work of the council, neither shall he or she be required to attend any meetings of any political group. This shall be without prejudice to any arrangements to the contrary which may be made in agreement with the chief executive and which includes adequate safeguards to preserve the political neutrality of the chief executive in relation to the affairs of the council.



### **3. WHOLE-TIME SERVICE**

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

### **4. PERFORMANCE APPRAISAL**

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

### **5. FIXED TERM CONTRACTS**

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

## **SALARIES**

### **6. SALARY FRAMEWORK**

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

### **7. RETURNING OFFICER FEES**

The chief executive shall be entitled to receive and retain the personal fees arising from such of the duties of returning officer, acting returning officer, deputy returning officer or deputy acting returning officer and similar positions as he or she performs subject to the payment of pension contributions thereon, where appropriate, Unless a specific term has been included in the chief executive's contract referring to alternative arrangements.

## **8. SETTING REMUNERATION LEVELS**

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

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

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

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

## **OTHER CONDITIONS OF SERVICE**

### **9. APPLICATION OF TERMS AND CONDITIONS GENERALLY**

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

- Adoption Scheme
- Car Allowances
- Continuous Service
- Grievance
- Health, Safety & Welfare
- Maternity / Paternity Scheme
- Official Conduct
- Reimbursement of Expenditure
- Sickness Scheme
- Training & Development

## **10. REMOVAL EXPENSES: NEW APPOINTMENTS**

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

## **11. ANNUAL LEAVE**

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

## **12. RESTRICTIONS ON RE-EMPLOYMENT**

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

- (i) will not divulge any information to any third party which is confidential to the authority
- (ii) will not, without the consent of the authority, within a period of 12 months take up employment with or provide services for reward to any body:
  - (a) if during the chief executive's last two years of employment the authority has been involved in transactions with that body for which the offer of employment or provision of services could reasonably be regarded as a reward
  - (b) which is likely to benefit from commercially sensitive information which is known to the chief executive by virtue of his / her past employment by the authority

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

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

13.2 In England, the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) and in Wales, the Local Authorities Standing Orders (Wales) Regulations 2006 provide a degree of protection for chief executives against unwarranted political interference in their role as heads of paid service of local authorities. In England, the Regulations require that the council takes into account any advice, views or recommendations of an independent panel before a chief executive can be dismissed, for any reason

other than redundancy, permanent ill-health or the expiry of a fixed term contract unless the authority has undertaken to renew that fixed term contract. In Wales, the regulations require that a Designated Independent Person is required to investigate and make a recommendation in the event of disciplinary action being taken against the chief executive on the grounds of misconduct or if there is any other proposal to dismiss the chief executive for any reason other than redundancy, permanent ill-health or the expiry of a fixed term contract unless the authority has undertaken to renew that fixed term contract. The considerations and the management of these different types of disciplinary action and potential dismissal therefore will vary.

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

## **A ENGLAND**

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

- 13.4 Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract where there has been no commitment to renew it, do not require the involvement of an Independent Investigator or Independent Panel (**England Page 49**).

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

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

- 13.5 Disciplinary action or situations in which there is the potential to dismiss on the grounds of misconduct and potential to dismiss for other reasons such as capability and some other substantial reason will require the involvement of an Independent Investigator. Where it results in a proposal to dismiss, it will require the involvement of an Independent Panel before the Council considers the proposal.
- 13.6 The JNC has developed model procedures to use in these cases where an Independent Investigator and Independent Panel may be required and the matter cannot be resolved informally.
- 13.7 A summary table at **Appendix 5d** indicates the appropriate procedures to follow for the different types of situations, i.e. whether the issue should follow a local procedure or whether it should follow the JNC model procedure.

## Considerations prior to contemplating disciplinary action

- 13.8 Taking disciplinary action against a chief executive can be a difficult, time-consuming and potentially very expensive process made more complex because it happens so rarely that many elected members and senior staff will be unfamiliar with the relevant legal and employment contract provisions.
- 13.9 A key issue is whether formal disciplinary action is necessary at all or whether informal resolution to a problem could provide a better solution in the circumstances. This will sometimes be the case and the Joint Secretaries may be able to assist. (**See paragraphs 13.11 – 13.14**).
- 13.10 Where formal procedures are to be engaged, the JNC urges elected members and those who advise them to ensure that they understand the procedure, seek appropriate advice at every stage and do not compromise the outcome of any proceedings. (**See paragraphs 13.15 – 13.20**).

## Early informal resolution and joint secretarial conciliation

- 13.11 Authorities should have regard to the ACAS advisory handbook [Discipline and Grievance at Work](#). A key message in this guidance is that prevention is better than cure: “The use of formal disciplinary procedures should be considered a ‘last resort’ rather than the first option. Many problems can be sorted out through informal dialogue”.
- 13.12 The JNC encourages authorities to adopt this informal approach. Experience shows that once formal disciplinary procedures have been instituted against a chief executive the inevitable high profile of the case can make it more difficult for normal working relationships to be resumed. There might also be an effect on staff morale and it is possible for there to be negative publicity in the local and sometimes national media.
- 13.13 A guiding principle of the early informal approach is therefore to obtain improvement and remedy problems. Where potential disciplinary problems (either conduct or performance) are identified then either of the parties may wish to approach the appropriate JNC Side Secretary. The Joint Secretaries are available at any stage in the proceedings to facilitate discussions between the parties and act as impartial conciliators. **Appendix 4** sets out the JNC’s protocol for Joint secretarial conciliation. Joint secretarial assistance can also be requested during the formal stages of the procedure although the scope for resolution may be reduced by then as the parties are more likely to have adopted adversarial positions.
- 13.14 Conciliation is preferable to the use of formal procedures if it can bring about a mutually agreed solution to any problems. While the process itself is informal any resolution should make it clear what specific changes in behaviour and / or performance are expected and within what timescales. Depending on the nature of the case, a mutually agreed resolution could include, for example:
- For minor performance and conduct issues it may make sense for there to be an off-the-record agreement that an informal warning will be issued. If

the chief executive is prepared to accept such a warning in the appropriate spirit then it may not be in either party's interest for the formal procedures to be initiated.

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

### **The formal JNC procedure and associated guidance**

- 13.15 The model procedures have been agreed by the JNC in the light of the experience of the Joint Secretaries in their involvement in individual cases. The procedure includes appropriate variations for application in councils with leader / cabinet executives, mayor / cabinet executives and those operating a committee system.
- 13.16 Where informal resolution is not possible the model procedure should apply unless alternative arrangements have been agreed by both parties locally. The model procedure can also be modified by mutual agreement to suit the particular circumstances of the case, but not so as to contradict the requirements of the Standing Orders Regulations. There is an obligation on both the authority and its chief executive to give fair consideration to reasonable proposals from the other party to modify the model procedure to suit local circumstances.
- 13.17 The principles of natural justice and good management practice must govern the conduct of any proceedings against the chief executive. Authorities should also have full regard to the principles and standards set out in [Discipline and Grievance - ACAS Code of Practice](#).
- 13.18 The 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.
- 13.19 The Joint Secretaries of the JNC should be notified as soon as it is proposed to use the procedure and it is recommended that both parties contact the appropriate side secretary as soon as possible to ascertain whether more detailed assistance might be desirable
- 13.20 The range of possibilities is difficult to cover completely within the content of this handbook. However, the handbook 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.

## B WALES

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

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

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

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

W13.6 The JNC has developed model procedures to use in these cases where a Designated Independent Person may be required and the matter cannot be resolved informally. The model procedures with guidance on their application and operation are contained at **Pages 54-75**.

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

### Considerations prior to contemplating disciplinary action

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

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

W13.10 Where formal procedures are to be engaged the JNC urges elected members to ensure that they understand the procedure, seek

appropriate advice at every stage and do not compromise the outcome of any proceedings. (See paragraphs W13.15 – W13.21).

### Early informal resolution and joint secretarial conciliation

- W13.11 Authorities should have regard to [Discipline and Grievances at Work: The ACAS Guide](#). A key message in this guidance is that prevention is better than cure: “The use of formal disciplinary procedures should be considered a ‘last resort’ rather than the first option. Many problems can be sorted out through informal dialogue”.
- W13.12 The JNC encourages authorities to adopt this informal approach. Experience shows that once formal disciplinary procedures have been instituted against a chief executive the inevitable high profile of the case can make it more difficult for normal working relationships to be resumed. There might also be an effect on staff morale and it is possible for there to be negative publicity in the local and sometimes national media.
- W13.13 A guiding principle of the early informal approach is therefore to obtain improvement and remedy problems. Where potential disciplinary problems (either conduct or performance) are identified then either of the parties may wish to approach the appropriate JNC Side Secretary. The Joint Secretaries are available at any stage in the proceedings to facilitate discussions between the parties and act as impartial conciliators. **Appendix 4** sets out the JNC’s protocol for Joint Secretarial conciliation. Joint Secretarial assistance can also be requested during the formal stages of the procedure although the scope for resolution may be reduced by then as the parties are more likely to have adopted adversarial positions.
- W13.14 Conciliation is preferable to the use of formal procedures if it can bring about a mutually agreed solution to any problems. While the process itself is informal any resolution should make it clear what specific changes in behaviour and / or performance are expected and within what timescales. Depending on the nature of the case, a mutually agreed resolution could include, for example:
- For minor performance and conduct issues it may make sense for there to be an off-the-record agreement that an informal warning will be issued. While the law is clear that to take any sort of disciplinary action the Designated Independent Person process has to be used, it may be sufficient for elected members to express their concerns informally and let the matter rest there. If the chief executive is prepared to accept such a warning in the appropriate spirit then it may not be in neither party’s interest for the formal procedures to be initiated.
  - Where there are performance shortcomings with a relatively inexperienced chief executive then one solution could be for a



more experienced, possibly retired, chief executive to act as a mentor.

### **The formal JNC procedure and associated guidance**

- W13.15 The model 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 is suitable for application in councils with leader/cabinet executives and mayor / cabinet executives.
- W13.16 Where informal resolution is not possible the model procedure should apply unless alternative arrangements have been agreed locally. The model can also be modified by mutual agreement to suit the particular circumstances of the case, but not so as to contradict the requirements of the Standing Orders Regulations. There is an obligation on both the authority and their chief executive to give fair consideration to reasonable proposals from the other party to modify the model procedure to suit local circumstances.
- W13.17 The principles of natural justice and good management practice must govern the conduct of any proceedings against the chief executive. Authorities should also have full regard to the principles and standards set out in [Discipline and Grievance - ACAS Code of Practice](#)
- W13.18 The 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.
- W13.19 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.
- W13.20 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.
- W13.21 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 6**) to assist members, Chief Executives and the DIP to understand the role.

## 14. Grievance Procedures

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

## 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	9
Welsh Local Government Association	1

***Representing chief executives:***

Association of Local Authority Chief Executives and Senior Managers	11
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4. If any of the organisations named in paragraph 3 hereof fail to appoint the number of representatives provided for by the constitution, such failure to appoint shall not vitiate the decisions of the Committee always providing the quorum referred to in paragraph 13 is met. In the event of any member of the Committee or any sub-committee thereof being unable to attend any meeting of the Committee or of the sub-committee, as the case may be, the organisation represented by such member shall be entitled to appoint another representative to attend and vote in his / her place.
5. A member of the Committee shall automatically retire on ceasing to be a member of the organisation which he / she represents.
6. On the occurrence of a casual vacancy, a new member shall be appointed by the organisation in whose representation the vacancy occurs and shall sit until the end of the period for which his / her predecessor was appointed.

### FUNCTIONS

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

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

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

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

## PROCEDURE

8. **Sub-Committees** The Committee may appoint from their own members such sub-committees as they may consider necessary and with such authorities as they may from time to time determine. The reports of all sub-committees shall be submitted to the full Committee.
9. **Chair and Vice-Chair** The Committee shall appoint annually a Chair and Vice-Chair. The Chair, or in his / her absence the Vice-Chair, shall preside at all meetings of the Committee. In the absence of both the Chair and the Vice-Chair at any meeting, a Chair shall be elected to preside. In no case shall a Chair have a second or casting vote.
10. **Officers** Each side shall appoint a joint secretary.
11. **Meetings** Meetings of the Committee shall be held as often as may be necessary, and the Chair shall call a special meeting if so requested by one-third of either side of the Committee. The notice summoning any special meeting shall state the nature of the business proposed to be transacted thereat, and no other matters shall be discussed. A special meeting shall take place within fourteen days after the request has been received.
12. **Voting** The voting in the Committee and in sub-committees shall be by show of hands or otherwise as the Committee or sub-committee, as the case may be, shall determine. No resolution shall be regarded as carried unless it has been approved by a majority of the members entitled to vote present on each side of the Committee or sub-committee, as the case may be.
13. **Quorum** The quorum of the Committee shall be 8, consisting of 4 representatives from each side. In the absence of a quorum the Chair shall vacate the chair, and the business then under consideration shall be the first business to be discussed either at the next ordinary meeting or at a further special meeting to be held within fourteen days after the date fixed for the first special meeting, as the case may be. The quorum of a sub-committee shall, subject to any directions given by the Committee, be determined by the sub-committee.
14. **Notices of meetings** All notices of meetings of the Committee and of any sub-committee thereof shall be sent to the respective members at least seven clear days before the date of the meeting.

## **FINANCE**

15. Each side shall meet its own expenses.

## **APPLICATION**

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

## **ARBITRATION**

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

## **AMENDMENTS TO CONSTITUTION**

18. Alterations in the constitution of the Committee shall be made as follows:
  - (a) in paragraph 3 of this constitution any change to the organisations represented on each Side, shall be a matter for each Side to determine
  - (b) all other clauses can only be changed with the assent of both bodies named in paragraph 3

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

### **1. INTRODUCTION**

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

### **2. RESPONSIBILITY FOR APPRAISAL**

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

### **3. AIMS OF APPRAISAL**

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

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

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

#### **4. THE APPRAISAL CYCLE**

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

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

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

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

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

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

## **7. EXTERNAL ASSISTANCE**

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

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

## **8. OTHER MATTERS**

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



**CONSIDERATIONS IN DEVELOPING REMUNERATION COMMITTEES – JOINT GUIDANCE****1. Composition**

- 1.1 In order to be representative but viable, the Committee needs to be small but it can be useful to have an odd number of members to ensure that clear decisions can be taken. Working by consensus is also a viable option. It is suggested that the Committee should have no more than 5 members.
- 1.2 The Committee can be composed entirely of elected members if this is the most workable solution in an authority but consideration may be given to having some external representation. Any external members should of course have no conflicts of interest and should be experienced in managing large organisations.

**2. Remit**

- 2.1 The Committee will be responsible for providing advice and will have delegated authority for making decisions or recommendations to the full council (or another committee) on pay and remuneration issues within its agreed remit in relation to the chief executive.
- 2.2 To make properly informed decisions on pay policy the Committee will need to ensure that it has comprehensive, relevant and reliable advice and market data provided by the online pay benchmarking system epaycheck (incl hyperlink). Further advice is also available from the Local Government Association or by contacting the Employers' Secretary or from the appropriate Regional Employers' Organisation or ALACE or SOLACE. Alternatively such assistance may be available from commercial sources, such as consultancy firms.
- 2.3 The remit of the Committee would include all those elements of the remuneration package which are not set nationally (e.g. pensions) or by overall council policy, including:
- Fixed point salary
  - Variable pay elements
  - Some additional benefits within the context of overall pay.
- 2.4 It would also be responsible for oversight of any performance / contribution-related pay scheme for the chief executive (targets to be set and reviewed elsewhere as part of the chief executive's appraisal process).
- 2.5 The Committee would not be responsible for the actual operation of any appraisal processes, which should be kept separate.

### **3. Process**

3.1 The Committee should meet at least annually to:

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

### **4. Recommendations**

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

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

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

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

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

### **5. Confidentiality and Protocols**

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

## 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)

CONTENTS OF MODEL PROCEDURES & GUIDANCE

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## Introduction

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

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

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

Local authority elected members will want to ensure that they:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **1.2 Structures to manage the procedure**

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

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

1.2.5 Appropriate training should be provided for Independent Panel members.

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

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

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

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

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

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

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

## **2. Timescales – (procedure)**

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

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

## **2. Timescales – (guidance)**

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

## **2.2 Statutory and indicative timescales**

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

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

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

### **2.3.1 Availability of Independent Investigator**

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

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

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

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

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

### **2.3.3 Availability of representative**

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

#### **2.3.4 Availability of witnesses**

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

#### **2.3.5 Availability of committee members**

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

#### **2.3.6 Availability of Independent Panel members**

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

### **3. Suspension – (procedure)**

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

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

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

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

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

### **3. Suspension – (guidance)**

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

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

#### **3.3 Alternatives to suspension**

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



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

### **3.4 Power to suspend**

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

### **3.5 Short notice suspension**

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

### **3.6 Suspension protocols**

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

### **3.7 Review of suspension**

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

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

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

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

- 4.1 Although the statutory right to be accompanied applies only at a disciplinary hearing, the JNC procedure provides the opportunity for the chief executive to be accompanied at all stages by their trade union representative or some other person of their choice, at their own cost.
- 4.2 The procedure recognises that there may be, in exceptional circumstances, a need to suspend the chief executive at short notice, when it is not possible to arrange for their trade union representative to be present. These circumstances might include for example where there is a serious risk to the health and safety of others or serious risk to the resources, information, or reputation of the authority.
- 4.3 Although it would be beneficial to agree dates for the necessary meetings required, the procedure cannot be allowed to be delayed owing to the unavailability of a representative. The statutory right to be accompanied in a disciplinary hearing contained in [s.10 of the Employment Relations Act 1999](#) applies only to hearings where disciplinary action might be taken or be confirmed, that is to say when a decision may be taken on the sanction, or a decision may be confirmed during an appeal. In this model procedure the statutory entitlement to be accompanied would arise:
  - where the IDC considers the report of the Independent Investigator and provides the chief executive with the opportunity to state their case before making its decision.
  - during any appeal against the decision taken by the IDC.
  - at a council meeting considering a proposal for dismissal and also fulfilling the requirement relating to a right of appeal
- 4.4 At these important stages (IDC receiving the report of the Independent Investigator and any appeal against the decision taken by the IDC), if the chief executive's trade union representative is unavailable for the date set then the chief executive will have the right under the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week.
- 4.5 If the representative is unable to attend within that period the authority will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

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

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

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

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

The IDC shall decide whether:

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

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

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

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

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

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

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

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

#### **5.4.1 Threshold test for the appointment of an Independent Investigator**

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

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

#### **5.4.2 Conducting the initial IDC investigation**

- (a) It is intended that this stage is conducted as expeditiously as possible with due regard to the facts of the case. At this stage it is not necessarily a fully detailed investigation of every aspect of the case as that will be the responsibility of the Independent Investigator (if appointed). In order to avoid delay the IDC will want to explore the availability of potential Independent Investigators on the list maintained by the JNC Joint Secretaries at an early stage (see paras 6.3 and 6.4). However, it is important that before any decision is taken to formally appoint an Independent Investigator, the chief executive is aware of the allegations that have been made against him / her (or the issue to be addressed) and given the opportunity to respond.
- (b) This will be achieved by:
- The IDC writing to the chief executive setting out the allegations / issues and providing any evidence to be considered
  - Providing the opportunity for the chief executive to respond to the allegations in writing and to provide personal evidence or witness statements. The calling of witnesses at this stage is at the discretion of the IDC
  - Providing the opportunity for the chief executive to appear before the IDC
- (c) Fair notice should be given to enable the chief executive adequate time to prepare a response to the allegations or issues under investigation. During the initial hearing by the Committee, the chief executive is entitled to attend and

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

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

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

#### **5.4.4 Conflicts of interest**

- (a) The model procedure envisages, and it is strongly recommended that the authority take steps to establish, a standing IDC. **Paragraph 1.2** indicates the basic rules concerning its membership. However, because a standing committee will comprise named councillors, there may be occasions when this presents problems of conflict of interest, for example where a member of the committee is a witness to an alleged event, or is the person who makes the original complaint or allegation. Councillors in this position should take no part in the role of the Committee, although they will of course be able to give evidence, if required. The authority should attempt to construct its Committees, and establish quorums and substitution rules in order to minimise the likelihood of an individual conflict of interest delaying the procedure. Where a number of members find themselves in a prejudiced position, there may be no alternative but for the council to establish a new Committee to perform the function of the IDC.
- (b) Declarations of interest are matters for individual councillors who are required to follow their authority's code of conduct for elected members and can seek advice from their Monitoring Officer. Problems could follow for the speed at which the case is conducted if the chief executive considers there are valid grounds for making a formal complaint to the council about the involvement of a councillor in a case.

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

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

#### 5.4.6 Other appropriate actions

- (a) It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of the chief executive, or some other substantial issue, the IDC might be in a position to consider alternatives to immediately moving to the appointment of an Independent Investigator or alternatively to dismiss the allegation or issue.
- (b) Clearly this will depend on the facts of the matters being investigated. It could be that the authority has another more appropriate policy or procedure to follow. Alternatively, it could be that the issue is one which might benefit from some mediation or attempts to resolve the particular issue in dispute prior to moving formally to appointing an Independent Investigator.
- (c) It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships are breaking down but there is no evidence of misconduct attached to the chief executive. The Joint Secretaries could be available to assist (see **Appendix 4**).
- (d) If any financial settlements are considered, it is important that such an arrangement:
  - Falls within the authority's discretions under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, or
  - Is a payment in consideration of an agreement that compromises a genuine legal claim that the chief executive might have at a Court or Employment Tribunal

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

- (e) The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 are designed to enable a local authority to compensate employees whose employment terminates on grounds of redundancy or in the interests of the efficient exercise of the authority's functions. It is therefore possible that a payment will be legitimate in certain circumstances. However, where there is an obvious case requiring disciplinary action and the allegation is such that dismissal is a likely outcome, it is not likely that an external auditor will sanction a deal under the current regulations.
- (f) The authority must take appropriate legal advice when attempting to reach a financial settlement to ensure that any payment is justified and lawful. Relevant considerations will include the likelihood of the claim succeeding and the amount of compensation that could be awarded by a Court or an Employment Tribunal.

#### **5.4.7 Power to agree financial settlements**

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

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

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

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

#### **5.4.9 Ill-health - medical advice**

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

#### **5.4.10 Performance**

- (a) Where the issue is one of capability in terms of performance or competence, other than ill-health, the council will need to be in a position to establish or demonstrate the nature of the concerns. Evidence will be necessary in order to justify a further investigation.
- (b) This might come from a variety of sources, e.g. performance appraisal records, inspection reports, etc. Where the council follows an established appraisal / performance management process, this can also provide an appropriate route to establishing issues suitable for referral to the IDC (see **Appendix 2**).
- (c) Where the issue is breakdown of trust and confidence, the council will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with the chief executive.

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

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

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

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

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

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

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

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

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

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

- aware of the precise allegation(s) or issue(s) to be investigated



- provided with access to sources of information and people identified as relevant to the case
  - aware of expectations regarding timescales and any known factors which could hinder their investigation, e.g. the availability of key people
- (b) The IDC will be responsible for providing this information. It will also be in a position to discuss timescales for the investigation.

## 6.6 Remuneration

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

## 7. *The Independent investigation – (procedure)*

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

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

## 7. *The Independent investigation – (guidance)*

### 7.1 Resources

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

require further discussion on any difference in the terms of remuneration for the assistant to the Independent Investigator

## **7.2 Working arrangements**

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

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

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

## **7.3 Suspension**

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

## **7.4 Confidential contact at authority**

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

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

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

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

Having considered any other associated factors the IDC may:

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

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

**8.1 Report of the Independent Investigator**

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

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

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

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

## **8.2 New material evidence**

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

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

## **8.3 Recommendations by the Independent Investigator – outcomes or options**

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

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

## **8.4 Decision by the IDC**

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

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

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

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

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

9.2 Where the decision taken by the IDC is action short of dismissal, the action will be taken by the Committee itself. There is no requirement to seek confirmation by the council (or in authorities operating Mayor and cabinet or leader and cabinet executives, checking to see whether there are any objections raised by members of the executive). The constitution of the IDC will need to include the delegated power to take disciplinary action in these circumstances.

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

**10. Where dismissal is proposed – (procedure)**  
**Proposal to dismiss on the grounds of misconduct and for other reasons such as capability or some other substantial reason**

**Executive constitutions only**

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

**Executive objections procedure**

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

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

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

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

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

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

**Non-executive administration**

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

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

### **The role of the Independent Panel**

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

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

### **The role of the Council**

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

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

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

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

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

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

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

- 10.1 Where the Committee proposes dismissal, the Regulations require that the council must approve the dismissal before notice of dismissal is issued. Additionally, in councils that operate with either a Mayor and cabinet executive or a leader and cabinet executive, notice of dismissal must not be issued until

an opportunity has been given to members of the executive to object to the dismissal.

## **10.2 Executive objections procedure**

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

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

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

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

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

## **10.3 The role of the Independent Panel**

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

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

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

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

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

#### **10.4 The role of the Council**

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

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

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

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

#### **11. Appeals – (procedure)**

##### ***Appeals against dismissal***

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

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

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

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

**The decision of the Appeals Committee will be final.**



## **11. Appeals – (guidance)**

### **11.1 Appeals against dismissal**

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

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

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

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

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

## 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 (IDC).

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

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

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

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

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

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

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

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

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

## **1.2 Structures to manage the procedure**

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

operate an executive structure this must include one member of the executive but not more than half of the members of the committee are to be members of the executive. The Appeals Committee will have a more limited role. Its purpose will be to hear appeals against 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 paragraph 5.1)**

- 1.3.1 The procedure itself does not require that every single issue which implies some fault or potential error on the part of the Chief executive be investigated using this process. It is for the authority to decide the issues that will engage the formal process.
- 1.3.2 Authorities will therefore need to consider what constitutes an 'allegation' made relating to the conduct or capability of the Chief executive and what it considers are other substantial issues requiring investigation. Clearly the route for complaints against the council and the chief executive and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied. Ideally, procedures need to be in place which can filter out and deal with 'allegations' against the chief executive which are clearly unfounded, or trivial or can best be dealt with under some other procedure.
- 1.3.3 For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the council's general complaints procedure. If the matter is a grievance from a member of staff directed against the chief executive, it may be appropriate to first deal with it through the council's grievance procedure. Of course if the matter were a serious complaint against the chief executive's personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the disciplinary procedure.
- 1.3.4 An authority will need to put into place arrangements that can manage the process. In particular - that records are kept of allegations and investigations and that there is a clear route into the disciplinary procedure. It could be, for example, that in the case of allegations against the chief executive, the monitoring officer, and the Chair of the IDC would oversee referrals to that Committee. Alternatively, some authorities might prefer that the role were performed by the HR Director.
- 1.3.5 Where the issue to be investigated is related to the sickness absence or capability of the chief executive in terms of performance, there is likely to be a link with the authority's sickness procedure and appraisal / performance management procedure.
- 1.3.6 Where management action is required in respect of the normal sickness of the chief executive, the authority needs to be clear about who takes appropriate actions. Initially, it could be the normal management team of elected members or Director of HR (according to local procedures) who will follow the authority's

normal sickness absence procedures. Whoever is responsible will report to the IDC as appropriate to the matter being investigated – in particular where procedures have been followed to the point where dismissal appears to be a possibility (see flow diagrams **Appendices W5a, 5b and 5c**).

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

## **2. Timescales – (procedure)**

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

## **2. Timescales – (guidance)**

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

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

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

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

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

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

- (a) The Local Authority (Standing Orders) (Wales) Regulations 2006 require that the Designated Independent Person must be agreed between the council and the chief executive within 1 month of the date

on which the requirement to appoint the Designated Independent Person arose otherwise a Designated Independent Person will be nominated by Welsh Ministers for formal appointment by the council. The practicalities of discussing and agreeing on the DIP is a matter which could be delegated to an appropriate officer, eg, Monitoring Officer of HR Director.

- (b) There is no provision in the Regulations on the amount of the fee to be paid to the DIP for their work. However, the Regulations do provide that the authority must pay reasonable remuneration to the DIP, including any reasonable costs.
- (c) Where a decision has been taken to appoint a DIP it is important that the authority move quickly to achieve this to adhere to the timescale set out in the regulations in (a) above but also due to the two-month time limit on suspension, this is also particularly important where the chief executive has been suspended.
- (d) The regulations provide that it is the committee's responsibility to appoint the Designated Independent Person. This would include agreeing the terms of remuneration and working methods for the Designated Independent Person.
- (e) The JNC Joint Secretaries maintain a list of individuals who have the necessary knowledge and experience of local government issues to act at this level and in this capacity. The list is intended to provide a resource to local authorities. It also provides a way to help avoid unnecessary delays.

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

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

- (d) Where the issue under investigation is not health-related and is e.g. 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 **Paragraph 4**).

### 2.3.4 Availability of witnesses

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

### 2.3.5 Availability of committee members

- (a) It is recommended that, in addition to the requirements set out in **paragraphs 1.22 and 1.23** in establishing the IDC and the Appeals Committee, authorities take availability issues into account and any operational quorum when considering the numbers of members to serve on these committees.
- (b) It should be particularly borne in mind that the IDC might need to 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 IDC will need to consider whether it is appropriate to suspend the chief executive. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the chief executive might compromise the investigation or impair the efficient exercise of the council's functions.

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

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

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

### **3.3 Alternatives to suspension**

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

### **3.4 Power to suspend**

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

### **3.5 Short notice suspension**

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

### **3.6 Suspension protocols**

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

### **3.7 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 IDC considers the report of the Designated Independent Person and provides the chief executive with the opportunity to state their case before making its decision
  - during any appeal against the decision taken by the IDC
  - At a council meeting considering a proposal for dismissal and also fulfilling the requirement relating to a right of appeal
- 4.4 At these important stages (IDC receiving the report of the DIP and any appeal against the decision taken by that Committee), if the chief executive's trade union representative is unavailable for the date set then the chief executive will have the right under the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week.
- 4.5 If the representative is unable to attend within that period the authority will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

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

The IDC will, as soon as is practicable inform the chief executive in writing of the allegations or other issues under investigation and provide him / her with any evidence that the 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 IDC will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the chief executive before taking further action.

The IDC shall decide whether:

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

The IDC shall inform the chief executive of its decision.

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

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

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

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

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

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

5.4 The appointment of a Designated Independent Person is a serious step but does not mean that the chief executive is guilty of 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 IDC in deciding whether to appoint a Designated Independent Person is to consider the allegation or matter and assess whether:

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

#### **5.4.2 Conducting the initial IDC Investigation**

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

(b) This will be achieved by:

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

- Providing the opportunity for the chief executive to appear before the IDC and to call witnesses.
- (c) Fair notice should be given to enable the chief executive adequate time to prepare a response to the allegations or issues under investigation. During the initial hearing by the IDC, the chief executive is entitled to attend and can be accompanied by a representative (subject to **paragraph 2.3.3** and **paragraph 4**).

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

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

#### **5.4.4 Conflicts of interest**

- (a) The model procedure envisages, and it is strongly recommended that the authority take steps to establish, a standing IDC. **Paragraph 1.2.2** indicates the basic rules concerning its membership. However, because a standing committee will comprise named councillors, there may be occasions when this presents problems of conflict of interest, for example where a member of the committee is a witness to an alleged event, or is the person who makes the original complaint or allegation. Councillors in this position should take no part in the role of the Committee, although they will of course be able to give evidence, if required. The authority should attempt to construct its Committees, established quorums, and substitution rules in order to minimise the likelihood of an individual conflict of interest delaying the procedure. Where a number of members find themselves in a prejudiced position, there may be no alternative but for the council to establish a new Committee to perform the function of the IDC.
- (b) Declarations of interest are matters for individual councillors who are required to follow the authority's Code of Conduct for Members and can seek advice from their Monitoring Officer or Standards Committee. 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 IDC might be in a position to consider alternatives to immediately moving to the appointment of a Designated Independent Person or alternatively to dismiss the allegation or issue.
- (b) Clearly this will depend on the facts of the matters being investigated. It could be that the authority has another more appropriate policy or procedure to follow. Alternatively, it could be that the issue is one which might benefit from some mediation or attempts to resolve the particular issue in dispute prior to moving to appointing a Designated Independent Person.
- (c) It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships are breaking down but there is no evidence of misconduct attached to the chief executive. The Joint Secretaries could be available to assist (see **Appendix 4**).
- (d) If any financial settlements are considered, it is important that such an arrangement:
  - Falls within the authority's discretions under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 or
  - Is a payment in consideration of an agreement that compromises a genuine legal claim that the chief executive might have at a Court or Employment Tribunal
- (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 IDC (and the Appeal Committee and council) will have access to the local authority's officers, but given the closeness of relationships between the chief executive and the other senior officers this can be a difficult time for those required to advise the Committee, to conduct investigations internally, or to source advice from outside the authority.
- (b) The authority should provide that the IDC has powers to appoint external advisers as appropriate. Useful sources of general advice on the operation of the procedure and assistance with conducting investigations include the Local Government Association by contacting the [Employers' Secretary](#) or from the [Welsh Local Government Association](#) or [ALACE](#) or [SOLACE](#).

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

#### **5.4.9 Ill-health - medical advice**

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

#### **5.4.10 Performance**

- (a) Where the issue is one of capability in terms of performance or competence, other than ill-health, the council will need to be in a position to establish or demonstrate the nature of the concerns. Evidence will be necessary in order to justify a further investigation.
- (b) This might come from a variety of sources, e.g. performance appraisal records, inspection reports, etc. Where the council follows an established appraisal / performance management process, this can also provide an appropriate route to establishing issues suitable for referral to the Investigating & Disciplinary Committee (see **Appendix 2**).
- (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 IDC and the chief executive within 1 month of the decision to appoint a DIP. If there is a failure to agree on a suitable Designated Independent Person the council will appoint the person nominated by Welsh Ministers.

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

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

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

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

### **6.2.1 Terms of reference – allegations or issues to be investigated**

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

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

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

### **6.2.2 Remuneration**

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

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

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

## **7. The Independent Person investigation – (procedure)**

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

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

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

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

## **7. The Independent Person investigation – (guidance)**

### **7.1 Resources**

The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, the DIP could decide to delegate

some of the investigation work to an assistant. This should be agreed with the IDC and the chief executive should be informed. If the work is delegated to someone else outside of the authority this might also require further discussion on any difference in the terms of remuneration for the assistant to the Designated Independent Person.

## **7.2 Working arrangements**

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

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

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

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

## **7.3 Power to extend suspension**

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

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

- that the authority 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 IDC– (procedure)***

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

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

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

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

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

### **8.2 New material evidence**

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

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

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

a possibility, the Designated Independent Person should review his / her decision taking into account the new evidence.

### **8.3 Recommendations by the DIP - outcomes or options**

8.3.1 The Regulations require the Designated Independent Person to recommend any disciplinary action that appears to be appropriate. At this stage clarity is to be welcomed and a clear reasoned decision is preferable. However, it could be that there is not one obvious action and it may be that the Designated Independent Person recommends a range of alternative actions. In this case the IDC would need to select the action to be taken.

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

### **8.4 Decision by the IDC**

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

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

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

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

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

## **10. Where the IDC proposes dismissal – (procedure)**

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

### ***The role of The Council***

The council will consider the proposal from the IDC that the chief executive should be dismissed. The chief executive will have the opportunity to put his

or her case to the council before a decision is taken.

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

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

### **10.2 Executive objections procedure**

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

### **10.3 The role of The Council**

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

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

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

## **11. Appeals – (procedure)**

### ***Appeals against dismissal***

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

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

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

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

**The decision of the Appeals Committee will be final.**

## **11. Appeals – (guidance)**

### **11.1 Appeals against dismissal**

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

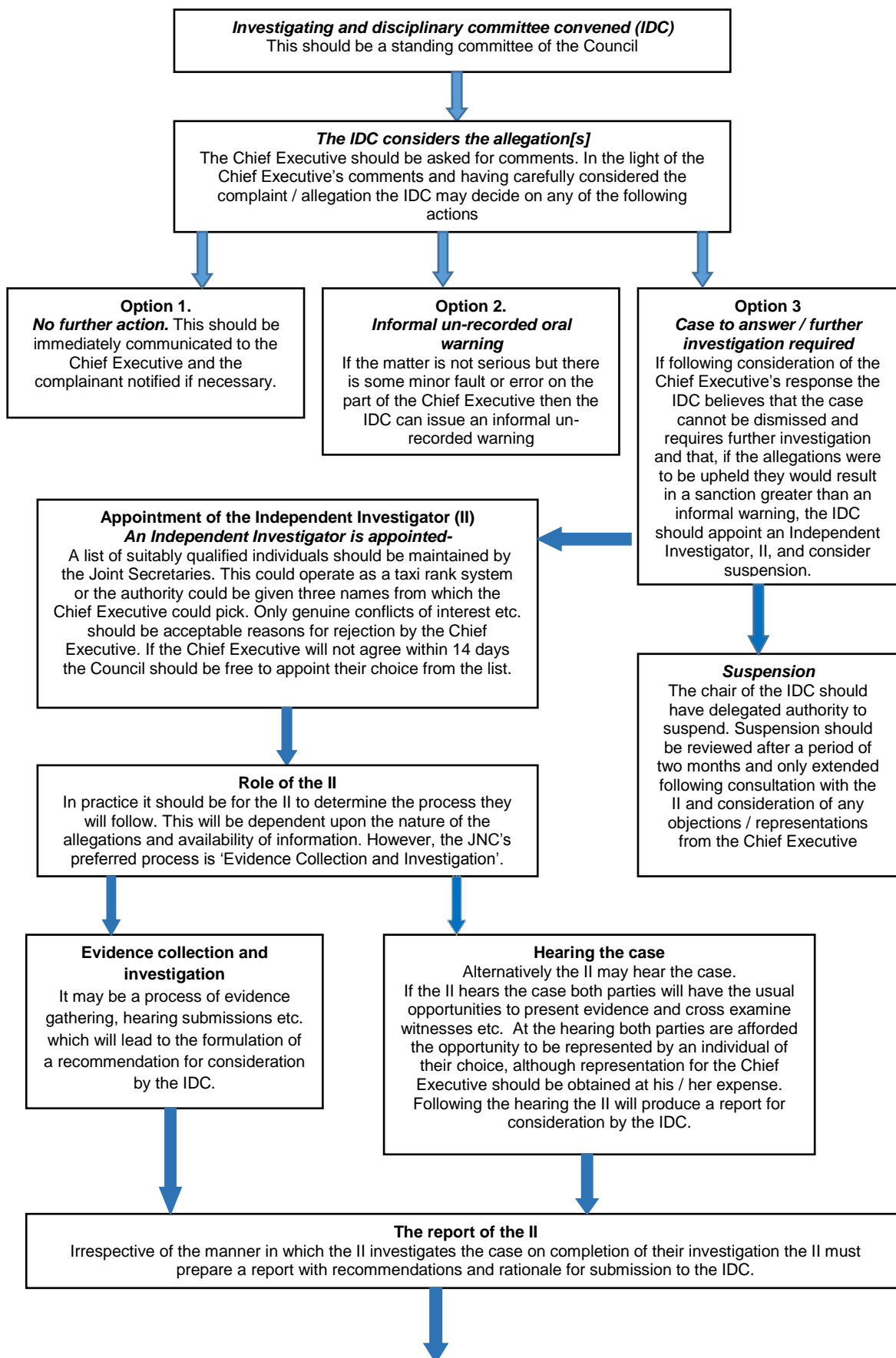
11.1.2 As the Standing Orders Regulations require that the council approves the dismissal before notice of dismissal is issued, there might be some concerns about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss.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

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

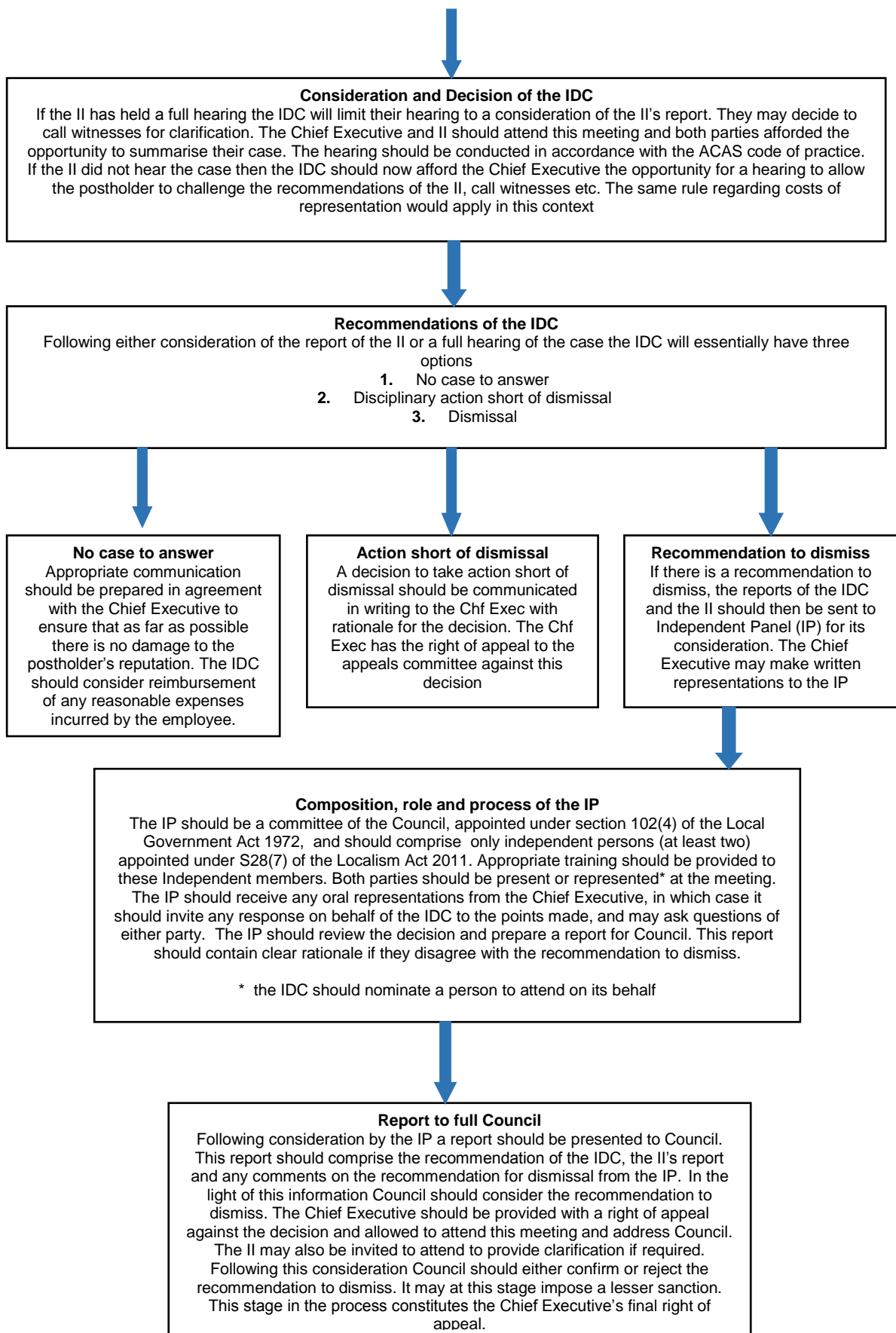
11.2.1 Appeals against actions short of dismissal will be heard by the Appeals Committee. The appeal hearing will take the form of a review of the case and the decision that was taken by the IDC.

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

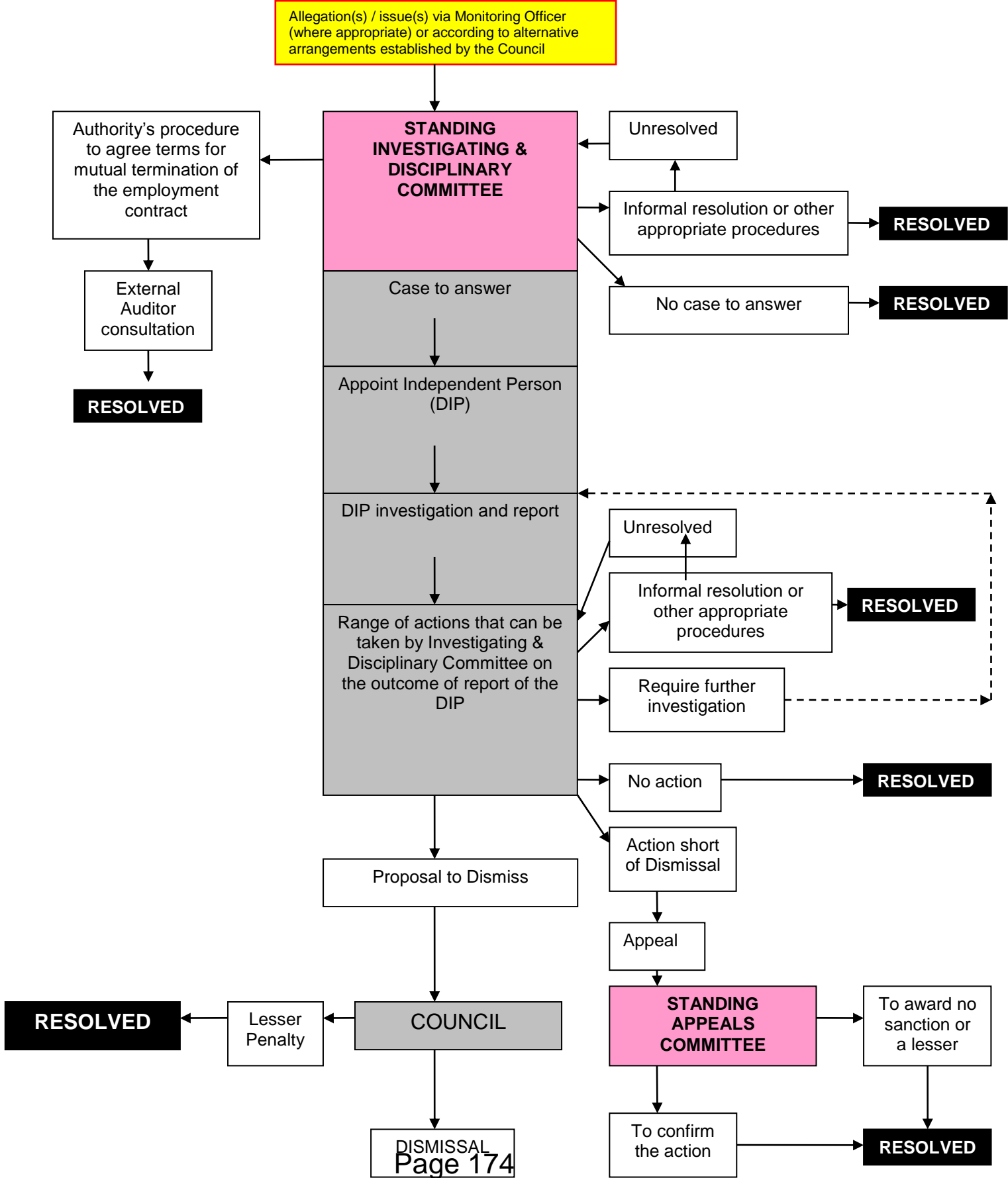
**ENGLAND ONLY: Disciplinary Procedure for Local Authority Chief Executives**

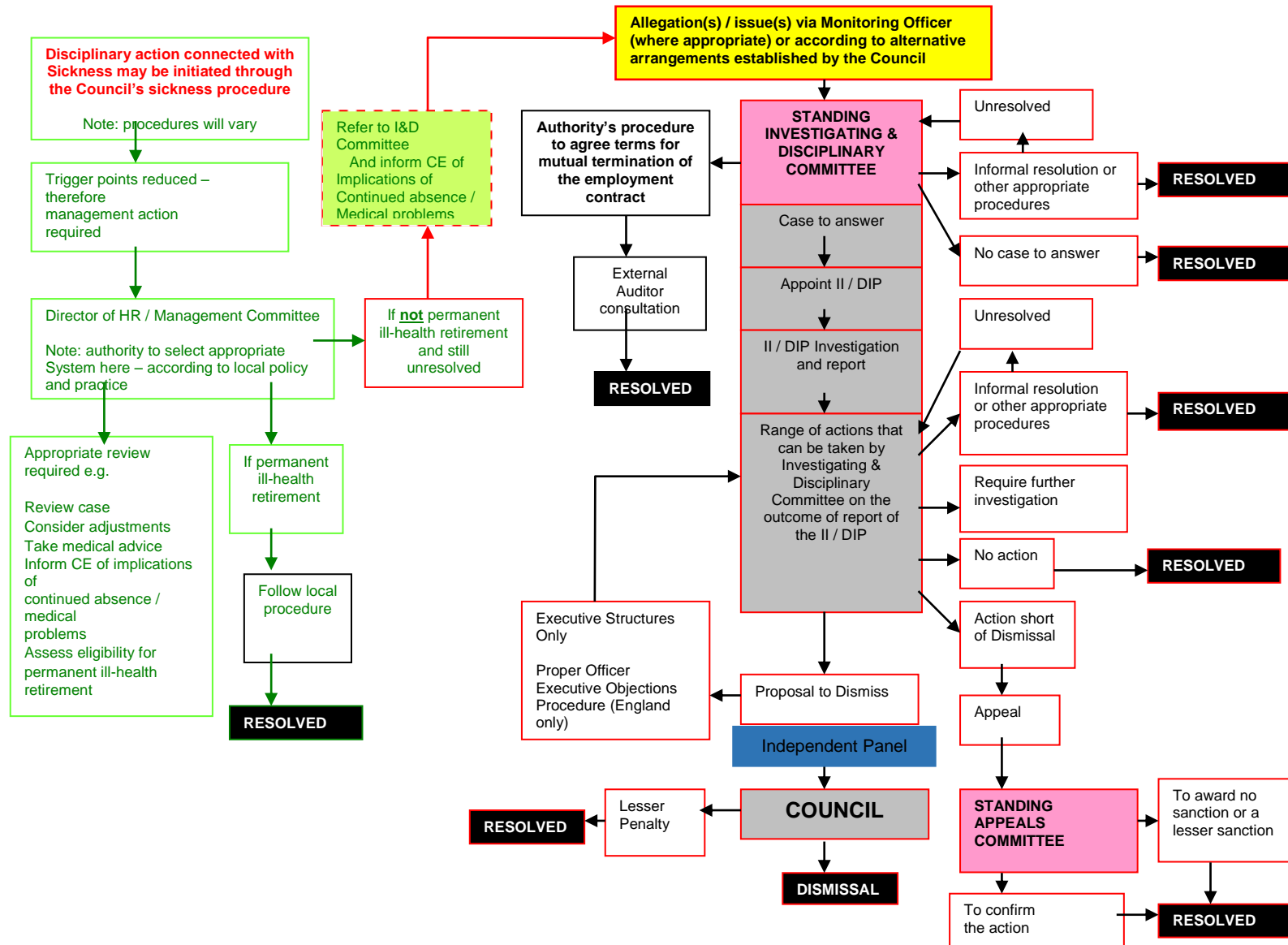




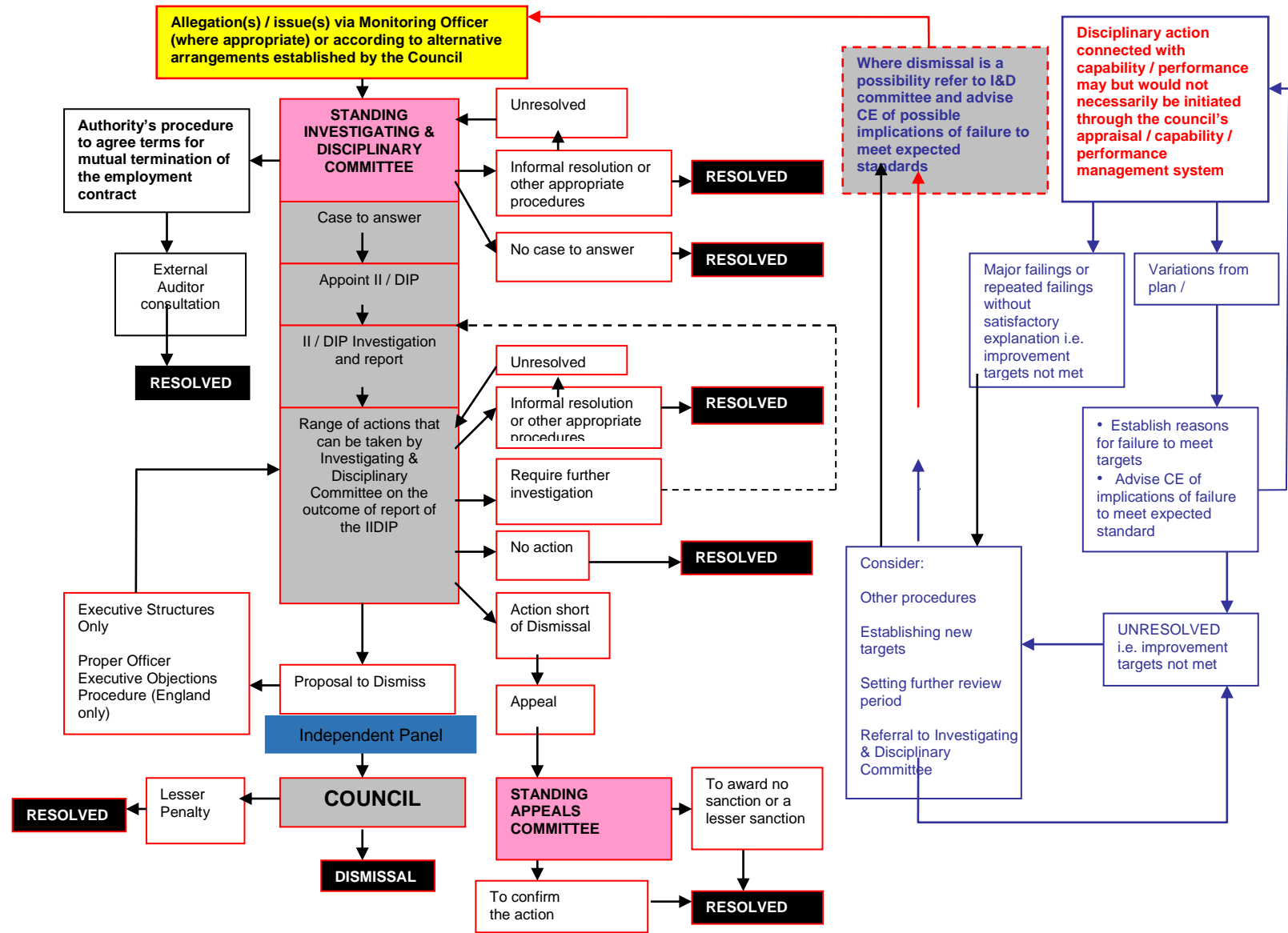


**WALES ONLY: Disciplinary Procedure for Local Authority Chief Executives**





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



Appendix 5d

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

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## **1. DESIGNATED INDEPENDENT PERSONS**

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

## **2. THE ROLE**

- 2.1 A designated independent person (“DIP”) is someone external to and Independent of an employing authority, who is individually appointed when that authority makes allegations of a disciplinary or capability nature against either the head of paid service, the monitoring officer or the section 151 chief financial officer.
- 2.2 The DIP concept has its origins in the June 1986 Widdicombe report *The Conduct of Local Authority Business* (HMSO Cmnd 9797), and the succeeding Local Government and Housing Act 1989. Section 20 of that Act made it a duty (for the first time in local government law) for local authorities to adopt certain procedural standing orders. Though the Act itself did not refer to DIPs, sufficiently wide powers were given to the Secretary of State for such a requirement to be incorporated into the Local Authorities (Standing Orders) Regulations 1993, SI No 202. The disciplinary provisions of those Regulations, which applied only to heads of paid service, remain partly in force (in respect of National Parks Authorities in both England and Wales), for local authorities in Wales the similarly titled SI 2006 No 1275 (W.121).
- 2.3 The role of a DIP, set out in regulation 9(6) in Wales, is to report to the authority concerned as to whether (and if so, the extent to which) the evidence obtained supports any allegation of misconduct against the officer concerned, and to recommend any disciplinary action which the DIP thinks it would be appropriate for the authority accordingly to take.
- 2.4 Disciplinary action is defined by regulation 2 to include any proposal for dismissal for any reason other than redundancy, permanent ill-health and (unless its renewal has been promised) failure to renew a fixed term contract. On the issue of allegations of breakdown in trust and confidence, see **paragraph 5.4.10 (c)**.
- 2.5 Each DIP appointment should be agreed between the authority and the officer concerned, but in default of agreement the appropriate Welsh Minister will nominate a DIP for the authority to appoint. The authority must pay the DIP reasonable remuneration and all the associated costs that the DIP incurs (but are under no obligation to afford or pay for any legal or other representation to the employee whose conduct is being investigated).

- 2.6 DIPs are given a number of powers to facilitate their role, including directions about continuing any suspension, inspection of relevant documents, and requiring any employee (in Wales this also includes any councillor) to answer questions about the conduct of the person being investigated. Regulation 9(7) of the 2006 Regulations in Wales require that the DIP is brought into an attempt mutually to agree a timetable for the hearing, and given default powers accordingly in regulation 9(8). As to how they actually carry out the task of obtaining evidence about the relevant conduct DIPs are not given any procedural duties or directions by the Regulations: the process is at their general discretion, and they have no powers to award costs, direct that settlements be reached, or conduct conciliation or mediation roles.
- 2.7 For those whose employment, however, is governed by the Conditions of Service agreed by the JNC for Chief Executives, the statutory basis is augmented by their contractual terms. Those JNC Conditions of Service contain a general commentary in **paragraph 13 on page 7** on procedures for discipline, capability, redundancy and other dismissals, accompanied by a model procedure at **Appendix 5B (Wales)**. DIPs are expected to operate in conformity with the principles that the JNC Conditions of Service set out. Accordingly the Joint Secretaries have in addition drafted and published this further commentary on DIPs, and the guidance at **paragraph 3**, in the light both of experience of how these Regulations have worked previously and how the JNC now envisages their future working.
- 2.8 **Paragraph 8.3.2**, while explicitly acknowledging the DIP's formal role only to make recommendations about any possible disciplinary action, adds that a DIP "may wish to comment on potential options for the way forward for the DIP process." This is intended to be used where a DIP considers that, notwithstanding that either no or only limited disciplinary action would be appropriate, the realities of the situation and the interests of those concerned (including the public interest) require a different kind of outcome to be achieved.
- 2.9 A DIP is not a judge, nor a substitute for an Employment Tribunal. While a statutory appointment in one sense, a DIP is given none of the personal immunities or powers of enforcement that they have. The role is best understood as an independent element of what remains essentially an internal and confidential process of the authority. While the Council cannot exceed the degree of severity of any disciplinary action recommended by the DIP, it is the view of the JNC that there is no obligation either to comply with any recommendation, e.g. the authority having considered the evidence and submissions of the chief executive might decide that the recommendation of the DIP is too severe in all the circumstances of the case. The decision reached remains that of the authority, who must maintain contractual appeal rights and will in principle be answerable to an Employment Tribunal in just the same way as with any other employee.

### 3. GUIDANCE

- 3.1 DIPs are given wide discretion as to the procedure they adopt, although the 2006 Regulations in Wales contain timetabling provisions. Accordingly, while there are no formal powers for DIPs to be given directions by anyone, this guidance has been drafted to assist DIPs in addressing issues and making the decisions likely to be required. It can do no more than inform those matters, but it is based on the experience of other DIP hearings that have been held.
- 3.2 **Paragraph 7** advises on practical matters including the resources, the working arrangements, the power to extend suspension beyond two months, and the need for confidential but co-ordinated contact with the authority.

#### **The Degree of Formality**

- 3.3 As stated above, a DIP is neither a judge nor a substitute for an Employment Tribunal. While a statutory appointment, a DIP is given none of the personal immunities or powers of enforcement that they have. The role is best understood as an independent element of what remains essentially an internal and confidential process of the authority. Nevertheless, an investigation by a DIP is a statutory process, and that requires structure and a mode of conduct appropriate to the seriousness of the matter for the parties involved. Some useful principles can be taken from the practice and procedure applied at Employment Tribunal Hearings.
- 3.4 Rule 2 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 SI No. 1237 (as amended) – schedule 1 comprises the Employment Tribunal Rules of Procedure – sets out the overriding objective to deal with cases fairly and justly including avoiding delays and dealing with cases in ways which are proportionate to the complexity and importance of the issues. Further, Rule 41 states that “ The tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit evidence. The tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.” Rule 43 states inter alia that “The tribunal may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as they give evidence if it considers it in the interests of justice to do so.” The Joint Secretaries consider that a similar approach by the DIP will usually be appropriate, meeting the over-riding objective “to deal with cases justly”
- 3.5 **Paragraph 7.2.3** expresses the view that the JNC believes that the DIP “should operate on the basis of a combination of independent investigation using his / her powers to access information, and a formal hearing, at which details of the allegations and supporting evidence are stated by the authority’s representative and where the chief executive is given the opportunity to respond.” This may well depend on the nature of the case given the wide scope of the Standing Orders



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

### **The Degree of Confidentiality**

- 3.6 With very limited exceptions, rule 5 of schedule 2 to the 2013 Regulations (as amended) provides for Employment Tribunal hearings to be public (although preliminary hearings must generally be held in private under rule 56. Here there is a distinct difference for the DIP process. Though there is no explicit bar to this in the Standing Orders Regulations, local authority hearings into disciplinary and capability matters are customarily held in private, and anyone the subject of a DIP hearing is likely to expect the same. The Joint Secretaries expect confidentiality also to be observed in these hearings.
- 3.7 If either side wishes to call two or more witnesses, the DIP will need to consider carefully whether they should be allowed to hear each other's evidence (as is usually the case in a criminal trial), or whether each witness should be heard separately with no-one else present not required or mutually agreed. The latter is the usual practice in local authority disciplinary hearings, and the Joint Secretaries assume that this will also be the norm in DIP hearings.
- 3.8 Whether to allow the press and media or others to be present is a separate matter from the joint presence of witnesses. No case is known to the Joint Secretaries where this has been agreed, and so they expect DIPs to refuse any such request if unacceptable to either side. A refusal is not considered to infringe human rights law provisions about open hearings, because as stated above a DIP hearing is an independent element of what remains essentially an internal and confidential process of the authority.
- 3.9 This latter point is emphasised by **paragraph 7.4.2** that during the investigation the DIP "will as a matter of principle, make every attempt to ensure the appropriate confidentiality of any information obtained and discussed."

### **Access to the DIP's Report**

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

- 3.11 The Joint Secretaries also consider that the DIP should seek clarity before submission of the report about access to or publication of all or any of it. The report could be drafted to include a short statement of the outcome intended for publication even where the rest of the report itself is to be kept confidential. DIPs should bear in mind that where material is published without approval, it may be unjust for there to be no lawful way for a response to be made or, in a case of selective publication, for the balance of the report to be restored.
- 3.12 The law of defamation must also be considered in relation to the publication of any DIP report. The Joint Secretaries consider that qualified privilege will attach to publication to the Council itself, but may well not cover wider publication or distribution.

### **Costs**

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

### **Indemnity**

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

## Model Grievance Procedures

### 1. Introduction

- 1.1 These procedures covers the following circumstances:
- where an employee raises a grievance against the chief executive
  - where a chief executive raises a grievance – by definition this will be against an individual elected member(s) or the employing council generally.
- 1.2 Section 1.3 of the guidance to the model disciplinary procedure covers some of this ground and references to this section are made below where appropriate.
- 1.3 The procedure in **paragraph 2** below is set out in as a flow chart.

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

- 2.1 An employee raising a grievance against the chief executive should do so using the grievance procedure provided for in his or her contract of employment. However, while operating within the context of the employee's grievance procedure, it is only the mandatory stages of a grievance procedure (i.e. the formal stages, as referred to in **paragraph 2.2**) that can resolve the grievance when the person complained of is the chief executive. With this in mind, the JNC has agreed the following advice.
- 2.2 Under the ACAS code the internal procedure to be followed by an aggrieved employee should comprise at least two formal stages. After the initial filtering and any attempt at informal resolution, if the matter remains unresolved, then a panel of elected members (the Grievance Committee) will hear the grievance on behalf of the employer (Formal Stage 1). It is here that the power exists to resolve a grievance against the chief executive. The panel can either **uphold** or **dismiss** the grievance. If the outcome of the Stage 1 investigation is that the grievance is not upheld, then the complainant has the right to appeal (Formal Stage 2) to a panel of elected members (the Appeal Panel).
- 2.3 Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- 2.4 There is a statutory right for the aggrieved employee to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union at any meeting that deals with the grievance.

## Initial filtering of grievances

- 2.5 Where an employee raises a grievance against the chief executive it would be appropriate for an initial filtering to take place, as procedures need to be in place which can filter out and deal with 'allegations' against the chief executive which are clearly unfounded or trivial or can best be dealt with under some other procedure. For example, allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the Council's general complaints procedure. If the matter is a serious complaint against the chief executive's personal behaviour such as sexual or racial harassment, the matter would potentially be one that would be appropriate for an investigation under the disciplinary procedure.
- 2.6 To enable this process to happen the Council should nominate an officer who would be the recipient of any grievance raised against the chief executive (referred to below as the Receiving Officer). This would most appropriately be the Council's Monitoring Officer. If the Monitoring Officer is the person bringing the grievance against the chief executive or is otherwise involved in the grievance, then another appropriate chief officer and / or a Monitoring Officer from a neighbouring authority should be commissioned to act as the Receiving Officer.
- 2.7 A meeting should be held between the Receiving Officer and the complainant without unreasonable delay after a grievance is received. The employee should be allowed to explain the grievance and how it could be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.
- 2.8 The principle of an initial filtering is already acknowledged in relation to disciplinary procedures. The Receiving Officer is responsible for the filtering process, the outcome of which could include the following:
- i. the Receiving Officer decides that the grievance is actually about a council service, rather than a complaint against the chief executive personally. In this case the Receiving Officer would refer the matter back to the aggrieved employee, or their line manager, and indicate that the matter is one that they could raise under the appropriate complaints process for the council.
  - ii. the Receiving Officer decides that there are other formal appeal procedures that apply rather than the grievance procedure eg, in cases of redundancy.
  - iii. the Receiving Officer decides that the grievance should not be directed at the chief executive as it does not relate to a specific action of the chief executive or a specific omission of the chief executive and so should be directed to an intermediate manager.

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

### **Resolving grievances informally**

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

### **3. Resolving grievances formally**

#### **Formal Stage 1**

#### **The Grievance Investigation**

- 3.1 Where informal attempts at resolution are considered inappropriate or have been tried and failed, then the Receiving Officer should manage the Stage 1 investigation. In most cases it will be appropriate for an independent investigator to be commissioned to carry out the investigation.
- 3.2 If the outcome of the investigation is in favour of the complainant, a solution should be proposed, taking into account the remedy requested by the complainant and the Receiving Officer's assessment of what would be appropriate in all the circumstances. If the chief executive is unwilling to accept these proposals, the matter will be referred to the Grievance Committee for it to resolve.
- 3.3 Just as the model disciplinary procedure recommends that Councils annually establish an Investigation and Disciplinary Committee and an Appeal Committee so that they are available if needed, so it is necessary for Councils annually to establish a Grievance Committee of 3 to 5 members with political proportionality, who are not members of the Investigation and Disciplinary Committee or the Appeal Committee.

## **The Grievance Committee hearing**

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

## **The Committee upholds the grievance**

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

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

## **3.7 The Committee dismisses the grievance – the right to appeal**

### **Formal Stage 2**

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

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

3.10 Where the Appeal Committee **upholds** the appeal and also decides that it is a matter of a serious nature, then it may decide to refer the matter to the Investigation and Disciplinary Committee. That Committee should consider commissioning an independent investigation to determine whether there was a case to answer, and if so what sanction was appropriate.

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

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

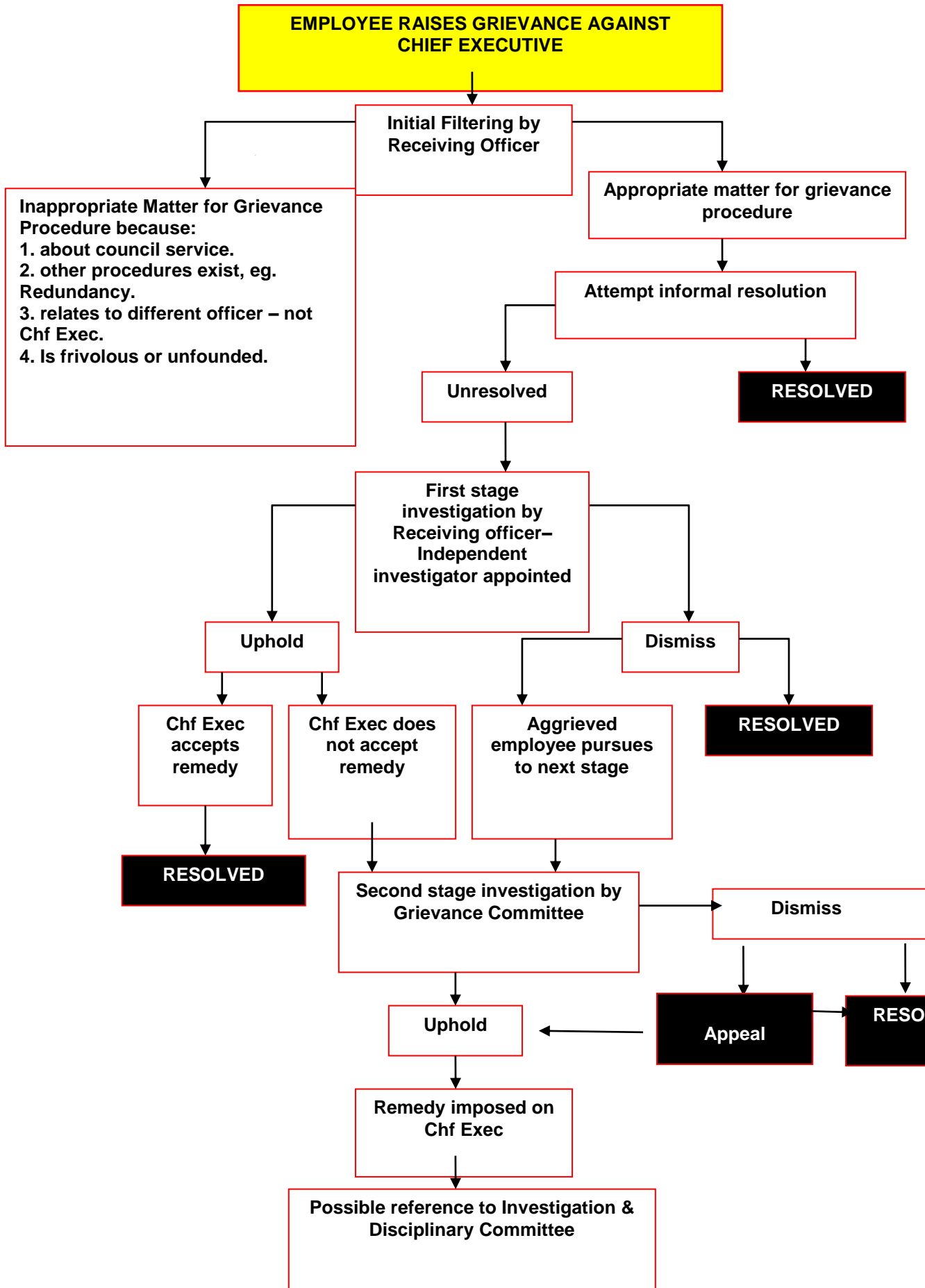
4.1 Where the chief executive raises a grievance, then similar principles need to apply, namely:

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

- There should be two stages available to the aggrieved employee, in this case the chief executive.
- 4.2 A chief executive cannot take out a grievance against another member of staff, as any cause for such concern would constitute grounds for disciplinary action and as head of the paid service the chief executive could initiate such action against any other employee. A chief executive grievance has to be against one or more member(s) and the Council's Monitoring Officer should act as Receiving Officer.
- 4.3 Where the chief executive raises a grievance, then this should be referred to the Receiving Officer in the first instance who should establish, through discussions with the appropriate parties, whether there is any prospect of resolving the matter informally. This might be through internally-facilitated informal joint discussions or informal joint discussions facilitated externally by an external mediator.
- 4.4 In the event that informal resolution is neither appropriate nor successful, the Receiving Officer should refer the matter to the Council's Grievance Committee. If the Grievance Committee considers it appropriate, having come to its conclusions, it might refer a matter about the conduct or behaviour of an elected member to the council's Standards Committee or other appropriate arrangements.
- 4.5 An appeal by the Chief Executive against the outcome of the Grievance Committee's deliberations should be to the full Council.

## **5 Grievances raised by the chief executive during disciplinary proceedings**

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





Non-Executive Report of the:  <b>General Purposes Committee</b>  25 January 2017	
<b>Report of:</b> Graham White, Acting Corporate Director, Governance	<b>Classification:</b> Unrestricted
<b>Review of Proportionality of the Appointment Sub-Committee</b>	

<b>Originating Officer(s)</b>	Matthew Mannion, Committee Service Manager
<b>Wards affected</b>	All wards

### Summary

The terms of reference of the General Purposes Committee include the determination of criteria for the Appointments Sub-Committees established from time to time to consider the appointment of statutory and non-statutory Chief Officers and Deputy Chief Officers.

On 15 June 2016, the Committee approved the terms of reference for Appointments Sub-Committees for the remainder of the municipal year 2016/17 and a process for arranging meetings of the Sub-Committee. This process included arrangements for allocation of Sub-Committee seats to the Council’s political groups. Following the December 2016 Whitechapel by-election and recent changes to the political composition of the Council, it is necessary for the Committee to amend these membership arrangements.

### Recommendations:

The General Purposes Committee is recommended to:

1. Amend the membership provisions of the Appointment Sub-Committee as detailed in paragraph 3.2 below.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The Constitution requires that the General Purposes Committee sets up Appointment Sub-Committees to determine senior officer appointments.
- 1.2 The political composition of the Council has changed since the arrangements for representation of the Council's political groups on the Appointment Sub Committee were approved. The arrangements should now be amended accordingly.

## **2. ALTERNATIVE OPTIONS**

- 2.1 If the membership arrangements are not amended, the membership of future Appointments Sub-Committee will not reflect the political composition of the Council

## **3. DETAILS OF REPORT**

- 3.1 The current membership arrangements for the Appointments Sub-Committee were approved by the General Purposes Committee in June 2016 and the allocations of Sub-Committee seats to political groups reflect the political composition of the Council at that time. They stated:
  - a) For a Chief Officer (Corporate Director level) appointment, the Appointments Sub-Committee shall comprise of seven Councillors as follows:-
    - Four Members nominated by the Leader of the Labour Group, at least one of whom must either be the Mayor or a member of the Executive;
    - Two Councillors nominated by the Leader of the Independent Group;
    - One Councillor nominated by the Leader of the Conservative Group.
  - b) For a Deputy Chief Officer (Divisional Director level) appointment, the Appointments Sub-Committee shall comprise of five Councillors as follows:-
    - Three Members nominated by the Leader of the Labour Group, one of whom must be either the Mayor or a member of the Executive;
    - One Councillors nominated by the Leader of the Independent Group;
    - One Councillor nominate by the Leader of the Conservative Group.
- 3.2 Following the December 2016 Whitechapel by-election and recent changes to several of the Council's political groups, the political composition of the Council has changed. Details of the new political composition were reported to Full Council on 5 December 2016, where the proportionality and allocation of places on committees and panels of the Council 2016/17 was formally amended. The changes included the creation of a new, fourth political group titled the People's Alliance of Tower Hamlets.
- 3.3 In accordance with the changes described above, it is necessary to consider the allocation of places for the Appointment Sub-Committees. For Chief Officers, amended allocations would be as follows:

- a) For a Chief Officer (Corporate Director level) appointment, the Appointments Sub-Committee shall comprise of 7 Councillors as follows:-
- 4 Members nominated by the Leader of the Labour Group, at least one of whom must either be the Mayor or a member of the Executive;
  - 1 Councillor nominated by the Leader of the Independent Group;
  - 1 Councillor nominated by the Leader of the Conservative Group.
  - 1 Councillor nominated by the Leader of the People's Alliance of Tower Hamlets Group.
- b) For a Deputy Chief Officer (Divisional Director level) appointments, the Sub-Committees have until now consisted of 5 Members. However, it is not possible to ensure that all political groups are properly represented on a five person Sub-Committee whilst maintaining a majority for the Majority Group as required. Whilst, it is not ideal to have a larger Sub-Committee for Deputy Chief Officer appointments, it is seen as the best solution available. It is therefore proposed to amend the proposed allocations to increase the size of the Sub-Committee to seven in line with Chief Officer Appointments:-
- 4 Members nominated by the Leader of the Labour Group, at least one of whom must either be the Mayor or a member of the Executive;
  - 1 Councillor nominated by the Leader of the Independent Group;
  - 1 Councillor nominated by the Leader of the Conservative Group.
  - 1 Councillor nominated by the Leader of the People's Alliance of Tower Hamlets Group.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 There are no financial implications directly arising from this report.

#### **5. LEGAL COMMENTS**

- 5.1 The Council must allocate seats on committees and other prescribed bodies so as to give effect to the political balance rules.
- 5.2 The rules for the allocation of seats are set out in sections 15 and 16 of the Local Government and Housing Act 1989 and the Local Government Committee and Political Group Regulations 1990.
- 5.3 Section 15(4) sets out four rules, and requires authorities to apply them in descending order of priority:
- Rule 1: Where some or all of the members of an authority have formed into two or more political groups, then no Committee may comprise just members from one political group.
  - Rule 2: Where a majority of members of Council are members of one political group, that political group must have a majority of the seats on each Committee.

- Rule 3: Without being inconsistent with the first two rules, the number of seats allocated to each political group on all the Committees taken together be as near as possible proportionate to their strength on Council.
  - Rule 4: So far as is consistent with Rules 1 to 3, each political party must be allocated that number of seats on each Committee taken individually as is proportionate to their strength on the Council. However, as set out above, this is subject to the need to give the majority a majority on each Committee.
- 5.4 Any seats left unallocated go by default to any members who are not members of any political group. A political group must comprise at least two members.
- 5.5 The political proportionality rules also apply to those outside bodies dealing with local government matters to which the council appoints three or more representatives.
- 5.6 The Council can only depart from these rules by passing a resolution with no member voting against the resolution.
- 5.7 In respect of the Appointment Sub-Committees to consider appointments to Divisional Director (Deputy Chief Officer) level posts, Membership of these have previously been set at five. However, following the recent changes, that does not allow representation from all political groups on the Council. This is considered important in ensuring that all groups have buy-in to successful candidates. It is therefore proposed that the number of Members on these Sub-Committees be increased to seven in line with the Sub-Committees that consider appointments to Chief Officer posts.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 The recruitment process will follow equalities best practice to ensure a diverse range of potential candidates. Members of the Appointments Sub-Committee will be trained on appointments and on equalities practices.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 Agreeing appropriate procedures for the appointment of senior officers is important in ensuring the Council recruits the best leadership team available to support the Best Value obligations.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 There are no direct implications on sustainable action for a greener environment.

## **9. RISK MANAGEMENT IMPLICATIONS**

9.1 There is a risk that the Council will not be successful in securing the best staff and its reputation will suffer if the recruitment and selection process for senior staff does not operate smoothly and effectively. The recommendation detailed above will ensure the Council complies with the statutory requirements for the appointment of Chief Officers and Deputy Chief Officers.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 There are no direct implications on crime and disorder reduction.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Reports**

- 'Establishment of Appointments Sub-Committee'. Item 4.2, [GP Committee, 16 June 2016](#)
- 'Review of proportionality and allocation of places on committees and panels of the Council 2016/17'. Item 11.4 [Council, 5 December 2016](#)

#### **Appendices**

- NONE.

#### **Local Government Act, 1972 Section 100D (As amended) list of "Background Papers" used in the preparation of this report**

- NONE.

#### **Officer contact details for documents:**

- Matthew Mannion, Committee Service Manager 020 7364 4651.

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# Agenda Item 6

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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of the Local Government Act 1972.

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By virtue of paragraph(s) 1, 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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