

# Pay Policy Statement

Including LGPS Employer's Discretionary  
Compensation Policy

2021 – 2022

March 2021

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## 1. Leader's Introduction

1.1. Carmarthenshire Council recognises the public interest in public sector pay and is committed to being open, transparent and accountable and, as Leader, I want to ensure that our Council Taxpayers have access to information about how we pay people.

1.2. The Council is committed to taking an open and transparent approach to pay, which will enable the local taxpayer to readily access our pay policy statement and understand and take an informed view of whether local decisions on all aspects of remuneration are fair and make best use of public funds.

1.3. To assist with this, Carmarthenshire County Council has a cross party politically balanced Members' Pay Advisory Group that advises the Council on the content of its Pay Policy Statement.

1.4. As one of the major employers in Carmarthenshire, and the 4th largest local authority in Wales, the County Council's ambition is to contribute to building a more prosperous local community by modelling good employment practice, including ensuring fairness in the way that it pays and rewards its existing and future employees.

1.5. The Council also wishes to be an attractive source of potential employment to job seekers across its community and is committed to using its resources to create meaningful and fairly remunerated employment opportunities for local people.

1.6. In addition to our existing provisions, we are intending to work with the local Credit Union to introduce a direct from pay savings facility to make it easier for our employees to save regularly and with minimum fuss.

1.7. This year's statement once again demonstrates how we are continuing to ensure that our employees can expect a reasonable wage. I am pleased to confirm that in the absence of a national pay agreement which has yet to be concluded, the Pay Policy Advisory Panel has endorsed the recommendation to continue to pay a Real Living Wage supplement to ensure that our lowest paid receive the equivalent of £9.50 per hour (including fixed allowances). This will be paid from 1<sup>st</sup> April.

1.8. We are committed to providing quality services which offer value for money in a way that balances concern for our lower paid employees with job security and



affordability. We continue to strive to deliver high-quality essential services to Carmarthenshire's citizens in an increasingly challenging financial climate.

- 1.9. Under the direction of our Chief Executive, Wendy Walters, work continues to be under way to identify further ways to reduce costs whilst keeping citizens at the heart of everything we do.
- 1.10. In light of the budget challenges facing the Council, a number of initiatives have been successful, such as the Council's TIC (Transform, Innovate & Change) team that applies the principles of lean systems thinking and process re-engineering, and has added value by helping the Council deliver over £19m of savings. There is still much to do, and whilst engaging with staff, Councillors and the public, we will now focus on delivering savings from analysing Routine Spend, maximise Income Generation potential, and continue to reduce waste, duplication and bureaucracy over the next couple of years, so that we can protect our frontline services.
- 1.11. The following information outlines the Council's operating basis and general position in respect of employment, pay and conditions of service and is pertinent to the current statutory requirements of the Localism Act and the Transparency Code.

Councillor Emlyn Dole



Leader Carmarthenshire County Council

## 2. Chief Executive's Introduction

- 2.1. Welcome to Carmarthenshire County Council's tenth annual Pay Policy Statement. The statement sets out the Council's approach to setting pay and conditions for Chief Officers and those for the workforce. This year's statement once again demonstrates how we are continuing to ensure that our employees can expect a reasonable wage, therefore I am pleased to confirm that, with the endorsement of the Authority's Pay Policy Advisory Panel, the Living Wage supplement will continue to form part of all our lowest paid employees' salaries, and that the Council has increased the hourly rate to £9.50 from 1 April 2021.
- 2.2. I also welcome the fact that the Living Wage has seen the multiple between the annual salary of our lowest paid Council employee and the Chief Executive as a ratio, yet again drop within the last 12 months, from 1:8.52 to 1:8.47. The Council is committed to fair pay, and it is welcomed that our pay ratio is significantly below the 9-12:1 ratios found elsewhere.
- 2.3. This pay policy outlines the basis on which Carmarthenshire County Council can compete in labour markets at all levels and for all roles, enabling the Council to attract, retain, and fairly reward people with the knowledge, experience, skills and attributes that are essential to the effective delivery of services to residents, businesses, and other stakeholders in Carmarthenshire.
- 2.4. We are mindful of our obligations as an equal opportunities employer and want to ensure that people are treated fairly and with respect in all its activities and processes. The Council aims to be an organisation that recruits and retains a diverse and skilful workforce from the local community and beyond, and its approach to the pay and conditions of its workforce is intended to support this objective.
- 2.5. Over the last 10 years, the Council has bridged a £120m budget shortfall and the reductions in funding have been exacerbated by the requirement to fund pressures in a number of service areas including statutory social care (both for adults and children), the delivery of Waste Services, and our Education service provision. The amount therefore available for all other services has consequently fallen in real terms over the same period. Even looking forward to the 2021/22 proposed budget allocation by Welsh Government, the Council



is likely to receive a real term decrease in budget allocation due to significant pressures in the areas of Pay & Pension.

- 2.6. Furthermore, we continue to provide the opportunity for our workforce to take advantage of a number of benefits such as the purchasing of additional annual leave and agile working which provide much needed flexibility for employees as well as assisting us to manage the continued financial burdens that we face in balancing our budget and thereby enabling us to protect jobs and essential services, which is one of my key priorities.
- 2.7. Finally, the last 12 months have been particularly difficult for all of us as a result of the challenges we all faced during the Covid19 Pandemic. However, from an employment perspective we have been able to put in place policies that have allowed the authority to maximise the flexibility of deploying our staff where there was greatest need, so that the most vulnerable in our communities were supported and protected. I am incredibly proud and grateful to those staff who went that extra mile to respond to those challenges. This flexibility and commitment reinforces the powerful effect that a 'One-Team' approach can create.

Wendy Walters

A handwritten signature in black ink, appearing to read 'Wendy Walters', with a horizontal line extending to the right.

Chief Executive - Carmarthenshire County Council

### **3. Purpose**

3.1. The purpose of the statement is to provide transparency regarding the Council's approach to setting the pay of its employees (excluding Teachers) by identifying the methods by which salaries of all employees are determined. This requires English and Welsh Local Authorities to produce and publish a Pay Policy Statement for each financial year detailing:

- The Council's policies for all aspects and elements of the remuneration of its Officers and Chief Officers, which are included within Appendices A to M of this Pay Policy Statement.
- The approach to the publication of, and access to, information relating to all aspects of the remuneration of Chief Officers.
- The Council's policy on the remuneration of its lowest paid employees.
- The relationship between the remuneration of its Chief Officers and other employees.

3.2. This is Carmarthenshire County Council's tenth annual Pay Policy Statement and covers the period 1st April 2021 to 31st March 2022.

3.3. Once approved by the full Council, this policy statement will supersede the 2020/2021 Pay Policy Statement and will be subject to review in accordance with the relevant legislation prevailing at that time.

### **4. Legislative Framework**

4.1. Under Section 112 of the Local Government Act 1972, the Council has the "power to appoint officers on such reasonable terms and conditions as the Authority thinks fit". This Pay Policy Statement (the 'statement') sets out the Council's approach to pay in accordance with the requirements of Section 38 of the Localism Act 2011. It takes account of the "Pay Accountability in Local Government in Wales" Statutory Guidance issued by the Welsh Government in May 2017 and updated in December 2020 which has regard to the Public Services Staff Commission Guidance published in December 2016.

4.2. Under Section 39 of the Localism Act, the Pay Policy Statement must be approved by a resolution of the Authority before it comes into force and be



approved before 31<sup>st</sup> March immediately preceding the financial year to which it applies.

- 4.3. In determining the pay and remuneration of all its employees, the Council will comply with all relevant employment legislation. This includes the Equality Act 2010, Part Time Employment (Prevention of Less Favourable Treatment) Regulations 2000, The Agency Workers Regulations 2010 and, where relevant, the Transfer of Undertakings (Protection of Earnings) Regulations. With regard to the Equal Pay requirements contained within the Equality Act, the Council aims to ensure there is no pay discrimination within its pay structures and that pay differentials can be objectively justified through the use of equality proofed job evaluation mechanisms which directly relate salaries to the requirements, demands and responsibilities of the role.
- 4.4. In accordance with the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, the Authority also undertakes an equal pay audit and the report is published on our website:

<https://www.carmarthenshire.gov.wales/home/council-democracy/equality-diversity/>

## **5. Scope of the Pay Policy**

- 5.1. The Localism Act 2011 requires local authorities to develop and make public their Pay Policy on all aspects of Chief Officer remuneration (including on ceasing to hold office), and also in relation to the "lowest paid" in the Council, explaining their Policy on the relationship between remuneration for Chief Officers and other groups.
- 5.2. The provisions in the Localism Act 2011 which relate to Pay Policy statements only apply to employees directly appointed and managed by the Council. Employees who are appointed and managed by school Head Teachers/Governing Bodies are, therefore, not required to be included within the scope of Pay Policy statements. This reflects the unique employment legislation position whereby school employees are employed by the local authority but decisions about the appointment and management of such employees are mostly discharged by Head Teachers/Governing Bodies, as appropriate. However, all Governing Bodies within Carmarthenshire (including Voluntary Aided Schools) have formally agreed to adopt the pay structure and associated terms and conditions of employment for all locally employed 'green

book' staff. Teachers are employed under nationally agreed Teachers Pay and Conditions.

5.3. In the interests of consistency, the pay-related data which is set out in this Pay Policy statement does not include data for employees who are appointed and managed by Head Teachers/Governing Bodies.

5.4. This document also includes the Council's Local Government Pension Scheme Employers' Compensation Discretions Policy (Appendix G) which the Council is required to produce. This will be kept under review pending any revised exit pay cap regulations which are re-introduced during the life of this Policy.

## **6. Terms and Conditions of Employment**

6.1. The Council's workforce numbers are approximately 8,549 people, 626 of whom work for us on a casual basis with 7,923 people employed on a permanent, temporary or fixed-term basis. . Their employment is covered by a range of terms and conditions drawn from either:

- National Joint Council for Local Government Services (Green Book)
- Joint National Council for Chief Executives
- Joint National Council for Chief Officers
- Soulbury Committee
- School Teachers Pay and Conditions

To operate flexibly, the Council's workforce operates with a mix of contract types. Contracts are kept under review particularly in relation to the use of casual workers who provide valued flexibility and cover for services. These arrangements are kept under review to ensure that where casual working arrangements become more regular, the service is asked to consider using different types of contracts subject to that being acceptable to the worker. A proportion of casual workers value the flexibility and lack of obligation and often do not want to move to temporary or permanent contracts.

6.2. The following are provided as Appendices to this policy:

- Carmarthenshire County Council's Pay Grades - Local Government Services Employees (Appendix A)

- Carmarthenshire County Council's JNC Chief Executive and Chief Officer Pay Grades (Appendix B)
- Officer Employment Procedure Rules (Appendix C)
- National Pay Grades - Soulbury (Appendix D)
- Local Government Services Employees - Acting Up and Honoraria Schemes (Appendix E)
- Market Supplement Scheme (Appendix F)
- LGPS Employer Discretions Compensation Policy (Appendix G)
- Severance Scheme (Appendix H)
- Flexible Retirement Policy (Appendix I)
- JNC Local Authority Chief Executives Conditions of Service (Appendix J)
- JNC Local Authority Chief Officers Conditions of Service (Appendix K)
- Sample Written Statement of Particulars (Appendix L)
- Pay rates for Modern Apprentices and other Trainee positions (Appendix M)

6.3. A breakdown of staff numbers by pay band and gender is included in the Equal Pay Audit and Equalities Report which are published separately.

#### 6.4. National Pay Awards

6.4.1. For all employee groups, any nationally agreed pay awards, negotiated by the local government employers in conjunction with the recognised trade unions will be applied, including to Chief Officers and the Chief Executive. The Council will pay these nationally agreed pay awards as and when determined unless full Council decides otherwise.

6.4.2. In advance of the National Pay negotiations, the Council will ensure that it's lowest paid continue to receive the equivalent of the Real Living Wage which is currently £9.50 per hour via the payment of a supplement with effect from 1<sup>st</sup> April 2021. This will be adjusted when the outcome of the pay negotiations is confirmed.

6.4.3. The calculation of the Real Living Wage takes account of all pay including allowances such as the Council's weekend working supplement and term time allowance so many of our lower paid employees are in receipt of total pay higher than the Real Living Wage. Modern Apprentices and other Trainee positions fall outside of our NJC Terms and Conditions and are not

covered by Living Wage arrangements. See Appendix M for details of their pay rates.

## 6.5. Job Evaluation

6.5.1. Job evaluation is a systematic way of determining the value of a job in relation to other jobs within an organisation. It aims to make a systematic comparison between jobs to assess their relative value for the purpose of establishing a rational pay structure and pay equity between jobs. The Council completed a job evaluation exercise in 2010/2011 in relation to posts governed by NJC employee conditions of service. The grading structure, which was consulted upon with the recognised trade unions and based on the outcome of the job evaluation exercise, has been in place since 2011/12 and modified only to add Grade O in 2016/17.

6.5.2. The Council uses the Greater London Provincial Council (GLPC) Scheme for evaluating all NJC jobs. This is a recognized scheme within local government and was developed in conjunction with trade unions.

6.5.3. All NJC jobs are allocated a grade which maps across to the Council's pay structure which is based upon the nationally negotiated pay spine. This determines the salaries of the large majority of the Council's non-teaching workforce.

6.5.4. The pay and grading structure is based on the NJC for Local Government Services (LGS) nationally agreed pay spine as revised during 2019.

6.5.5. All other pay-related terms and conditions are the subject of national and/or locally negotiated arrangements and referred to the Executive Board and/or Full Council as appropriate.

6.5.6. The senior manager grade (O) was introduced during 2016/17 to address the differential between the top of this locally agreed grading structure and the bottom of the JNC Chief Officer pay scales. This is to provide the Authority with greater flexibility in the reallocation of responsibilities following the reduction in the number of Head of Service posts. It is intended that a small number of posts will fall into this grade. Any proposal

to apply Grade O to any post must be agreed and authorised by the Chief Executive via the Assistant Chief Executive.

## 6.6. Starting Salaries

6.6.1. The Council's practice is that all appointments to jobs with the Council are made at the minimum of the relevant pay grade, although this can be varied where justified.

6.6.2. The Appointments Panel 'A' (for Corporate Directors) will determine the starting salary of Directors and Panel 'B' (for Heads of Service) will determine the starting salary of Heads of Service within agreed pay scales.

## 6.7. Other Pay-Related Terms and Conditions

6.7.1. All other pay-related allowances are the subject of national and/or locally negotiated agreements.

6.7.2. The terms and conditions of employment relating to annual leave, hours of work, overtime payments, weekend working arrangements and sick pay for all employee groups (with the exception of teaching staff) are set out in our relevant People Management policies.

6.7.3. During 2020/2021 a number of temporary policies were introduced to support employees and to ensure continuity of services during the COVID-19 pandemic. These included:

- additional hourly payments to care workers when working over 20 hours per week – introduced to ensure staffing levels were maintained.
- standby payments to care workers to maintain staffing levels across the public and independent care sector during emergency staffing crises
- Continuity payments to casual workers who worked regularly during the 12 weeks prior to March 2020 "lockdown"
- Flexibility around carry over of annual leave where employees have been unable to take time off due to service demands
- Suspension of fit note requirements for up to 10 days COVID-19 self isolation
- Suspension of sickness absence triggers for first 12 weeks of COVID-19 absence
- Paid time off for staff unable to attend work (and who cannot work at home) due to emergency childcare issues

- Service recovery checklists and risk assessments to ensure safe working arrangements are in place for all employees who cannot work from home
- COVID-19 Vaccination Policy

#### 6.8. Acting Up and Honoraria Payments

- 6.8.1. There may be occasions when an employee is asked to carry out duties which are of a higher responsibility to those of their substantive post for a period of time, or to 'act up' into a more senior job within the Council, covering the full range of duties of the higher job. In such circumstances an additional payment may be made in line with the Council's policy on payment of acting up or honoraria. The scheme can be found at Appendix F.
- 6.8.2. The Chief Executive must approve any acting up or honoraria payments proposed for Chief Officers. Where the acting up or honoraria payments would result in the total pay package exceeding £100,000, then approval must be sought from full Council in consultation with the Independent Remuneration Panel.
- 6.8.3. Payment of honoraria will only apply to situations of more than four weeks duration and will normally be for the maximum period of up to 12 months, and subject to three monthly interval review unless otherwise agreed.

#### 6.9. Market Supplement Scheme

- 6.9.1. The use of job evaluation enables the Council to set appropriate remuneration levels based on internal job size relativities within the Council. However, in exceptional circumstances it may be necessary to take account of the external pay market in order to attract and retain employees with a competitive salary where the experience, skills and capacity are in short supply.
- 6.9.2. The Council has a Market Supplement Scheme to ensure that the requirement for any market pay supplements is objectively justified by

reference to clear and transparent evidence of relevant market comparators, using appropriate data sources. It is the Council's policy that any such additional payments are kept to a minimum and reviewed on a regular basis so that they can be withdrawn where no longer considered necessary for recruitment and retention. The principles underpinning this Market Supplement Scheme are equally applicable to all other employee groups within the Council and may be implemented accordingly.

6.9.3. Currently the Council pays the following market supplements in recognition of the significant recruitment and retention difficulties the service faces:

- Approved Mental Health Practitioners – £1000 allowance p.a. for 33 sessions on day rota and £1500 p.a. allowance for 24 sessions on out of hours rota.

#### 6.10. Local Government Pension Scheme (LGPS)

6.10.1. Subject to qualifying conditions, employees have a right to join the Local Government Pension Scheme (or the Teachers' Pension Scheme, where applicable) and are contractually enrolled into the LGPS. The Authority operates within the auto-enrolment framework set out within the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

6.10.2. The employee contribution rates, which are defined by statute, currently range between 5.5% and 12.5% of actual pensionable pay depending on the full-time equivalent salary levels. The employer contribution rate is set by actuaries who advise the Dyfed LGPS Fund and is reviewed on a triennial basis in order to ensure that it is appropriately funded. The next triennial review will be undertaken in March 2022. The employer's contribution rate effective is 18%.

6.10.3. Employees who are active members of the LGPS have the opportunity to join the salary sacrifice shared cost Additional Voluntary Contributions (AVC) Scheme, which assists employees who wish to increase pension benefits at retirement by paying into the LGPS AVC Scheme.

## 6.11. Other Employee Benefits

6.11.1. The Council is responsible for supporting the health, safety, wellbeing, and welfare of its employees in order to ensure that they can perform at their best. As part of this approach and in common with other large employers the Council provides a number of other benefits such as eye test reimbursement for users of display screen equipment at work, health care benefits, discounts with local businesses, financial advice and participation in the Cycle to Work and Car salary sacrifice schemes.

6.11.2. The Council was awarded the Platinum Corporate Health Standard in February 2020 because of the work it does to support the health and wellbeing of our staff. We were the first Council in Wales to hold this award and have done so continuously since 2009.

6.11.3. We support Health & Wellbeing initiatives and have invested in Health and Wellbeing Coordinators who work across the Authority to promote healthy lifestyle choices, such as encouraging activity, improving diet, giving advice, motivation, and health education for all staff.

6.11.4. We have recruited a team of volunteer departmental Health and Wellbeing Champions who work with colleagues to raise awareness of key health topics, support health initiatives and events.

6.11.5. An in-house team of medical experts within our Occupational Health Centre, give advice in support of positive mental and physical health, and as an authority we have signed the 'Time to Change' pledge to assist with improving public attitudes and behaviour towards people with mental health problems and reduce the stigma that people with mental health problems report in their personal relationships, social lives and at work.

6.11.6. Additionally, we deliver bespoke Managing Mental Health training to our managers and general awareness raising sessions for all staff.

6.11.7. During 2020/21 we encouraged our workforce to have flu vaccinations the cost of which was reimbursed.



6.11.8. The authority encourages all its staff to have COVID-19 vaccinations and the majority of frontline social services staff in designated priority groups have received the vaccine.

6.11.9. An extensive package of wellbeing support and online resources have been made available to employees to support them during the COVID-19 pandemic.

## **7. Decision Making Including Consideration of Value for Money**

7.1. As in previous years, a politically balanced Pay Policy Advisory Panel has been established to consider the Council's Pay Policy prior to its submission to County Council for approval.

7.2. The Local Government and Housing Act 1989 provides that:

(1) It shall be the duty of every relevant authority—

(a) to designate one of their officers as the head of their paid service; and

(b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow his duties under this section to be performed.

(2) It shall be the duty of the head of a relevant authority's paid service, where he<sup>1</sup> considers it appropriate to do so in respect of any proposals of his with respect to any of the matters specified in subsection (3) below, to prepare a report to the authority setting out proposals.

(3) Those matters are—

(a) the manner in which the discharge by the authority of their different functions is co-ordinated.

(b) the number and grades of staff required by the authority for the discharge of their functions.

(c) the organisation of the authority's staff; and

(d) the appointment and proper management of the authority's staff.

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<sup>1</sup> Reference to he/him is directly quoted from legislation and not intended to be exclusive

(4) It shall be the duty of the head of a relevant authority's paid service, as soon as practicable after he has prepared a report under this section, to arrange for a copy of it to be sent to each member of the authority.

(5) It shall be the duty of a relevant authority to consider any report under this section by the head of their paid service at a meeting held not more than three months after copies of the report are first sent to members of the authority; and nothing in section 101 of the M1 Local Government Act 1972 or in section 56 of [F1, or Schedule 10 or 20 to,] the M2 Local Government (Scotland) Act 1973 (delegation) shall apply to the duty imposed by virtue of this subsection.

(6) Under the Local Authorities (Standing Order) (Wales) (Amendment) Regulations 2014 any decision to determine or vary the remuneration of those to be appointed as Chief Officers, where salaries are £100,000 or more, must be referred to the IRPW and ratified by full Council.

7.3. Since 2002, the Council has reduced the number of senior posts - see paragraph 8.2. These reductions have been made possible by reviewing and amalgamating roles and responsibilities to deliver value for money.

7.4. This principle is applied to all posts which become vacant or via restructuring if appropriate, to ensure that the service can be provided as effectively and cost efficiently as possible.

## **8. Collective Bargaining Arrangements with Trade Unions**

8.1. The following trade unions are part of the national machinery for pay bargaining and terms and conditions:

### NJC for Local Government Services

UNISON

GMB

UNITE

### JNC for Chief Officers

UNISON

GMB

Soulbury Committee

Association of Educational Psychologists (AEP)

PROSPECT

NEU

Teachers

NAHT

NASUWT

NEU

UCAC

ASCL

- 8.2. Trade union recognition is for the purposes of consultation and negotiation on a collective basis in relation to relevant matters, which are not determined by national negotiating bodies, which both parties agree are both appropriate and beneficial to be determined by agreement. Negotiations are conducted with the aim of reaching agreement and avoiding disputes. Recognition also relates to representation on individual trade union member basis.

## **9. Senior Pay Remuneration**

### **9.1. The Chief Executive**

9.1.1. Wendy Walters was appointed Chief Executive of Carmarthenshire County Council in June 2019 after 16 years of service with the Authority. Mrs Walters has previously served the Council as Director of Regeneration and Policy, Assistant Chief Executive and Head of Economic Development, as well as in other senior management positions. Prior to joining the Council, she has worked in the private and voluntary sectors.

9.1.2. Mrs Walters was born, raised, and has spent much of her life living in Carmarthenshire, and is a proud fluent Welsh speaker.

- 9.1.3. As Chief Executive, Mrs Walters has overall responsibility to deliver the Council's key corporate and partnership priorities as set out in the Corporate Strategy (2018 – 2023), working with Elected Members and providing strategic leadership, advice and direction to the Council in delivering its vision.
- 9.1.4. Mrs Walters leads the Corporate Management Team and delivers the Authority's statutory obligations as the Head of Paid Service, as well as being the Council's principal policy advisor.
- 9.1.5. She plays a key role in several regional collaborations, delivering residual EU funding and securing and delivering external funding programmes and multi-million pound regeneration developments for Carmarthenshire. Her role also includes being Clerk to the Lieutenancy, the Proper Officer for the Coroner Service, and Returning Officer for Parliamentary, National Assembly, County Council and other elections.
- 9.1.6. As Chief Executive, Mrs Walters works within the national conditions of service covered by the JNC for Chief Executives. The four Corporate Director posts are covered by the JNC for Chief Officers. Together with Head of Administration and Law (Monitoring Officer) and the Assistant Chief Executive (People Management) these posts constitute the Council's Corporate Management Team (CMT).
- 9.1.7. The Chief Executive has overall corporate management and operational responsibility for all staff and ensures the provision of professional and impartial advice in the decision-making process to the Executive Board, Scrutiny committees, the Full Council and other committees. The Chief Executive is also required to represent the Authority on partnership and external bodies (as required by statute or the council) and provides these services, on a politically neutral basis. The Chief Executive is the senior officer who leads and takes responsibility for the Council.
- 9.1.8. The Council is a large organisation with an annual revenue budgeted spend in excess of £500m, and a 5 year capital investment programme of over £250m, delivering a wide and diverse range of services which the citizens of the County depend upon. Responding to the ongoing reductions in public service spending requires authorities to significantly

change the way that they manage their services. The Council also spends over £60m a year operating and improving its housing stock.

9.1.9. The role of the Chief Executive is a full-time and permanent position, and the post holder is selected on merit, against objective criteria, following public advert. The Chief Executive is appointed by full Council.

9.1.10. The salary of the current Chief Executive as Head of Paid Service with effect from the 1st April 2020 is £151,967.

9.1.11. The Council has a statutory duty to appoint a Returning Officer for specified Elections and Referenda. The Chief Executive undertakes this role. The Returning Officer is personally responsible for a wide range of functions in relation to the conduct of Elections and Referenda and is paid for discharging these functions in accordance with prescribed fees.

9.1.12. Fees for local elections were agreed by the Policy and Review Committee in April 1999. Fees for non-local elections are set and reimbursed by the Cabinet Office or Welsh Government over which the Council has no jurisdiction.

9.1.13. Expenses in relation to car mileage, public transport, overnight accommodation and parking etc. are claimed back in accordance with the Council's Travel and Subsistence Policy.

9.1.14. The Chief Executive is an active member of the Local Government Pension Scheme as detailed in the Authority's published Statement of Accounts. There have been no increases or enhancements to the pension outside of standard arrangements.

Details of the Chief Executive's pay, including any additional payments are published in the Statement of Accounts.

## 9.2. Chief Officers – Senior Staff

9.2.1. Employees defined by the Localism Act as Chief Officers, including Service Directors, work within the national conditions of service covered by the JNC for Chief Officers.

9.2.2. All other employees, other than a small number covered by national terms and conditions for Soulbury staff (whose pay is also determined through national bargaining), work within the national conditions of service covered by the NJC for Local Government Employees.

9.2.3. The Council has 22 Chief Officer posts within the substantive structure at Carmarthenshire County Council which fall within the statutory definition of Section 43. As at 31<sup>st</sup> March 2021 these are:

- Chief Executive (1 post)
- Corporate Directors (4 posts)
- Assistant Chief Executive (1 post)
- Heads of Service (16 posts)

9.2.4. In addition to the substantive structure the following posts are shared regionally with our partners:

- Head of Regional Collaboration (funded by CCC & 5 Regional Partners)
- Head of Integrated Services (funded by CCC/Health)
- Head of Strategic Joint Commissioning (funded CCC/Pembs)
- Programme Director, Swansea Bay City Deal (funded by Regional Partners)

9.2.5. The Council does not permit an employee occupying any post on the Council's agreed establishment to be paid other than via the Council's payroll, except in the cases of jointly funded / shared posts when they may be on the payroll of another local authority or the Health Board.

### 9.3. Pay

9.3.1. The Pay Advisory Group recommends that Senior Officer Remuneration be subject to the relevant National Pay Awards only.

9.3.2. For the purposes of this statement, senior management means 'Chief Officers' as defined within S43 of the Localism Act. The posts falling within the statutory definition are set out below, with details of their basic salary

as at 1<sup>st</sup> April 2020 <sup>2</sup> (not including 2021/22 national negotiations). These details are available on the Council's website.

- Chief Executive as the head of paid service - fixed salary point of £151,967 (includes national pay award).
- Corporate Directors as statutory and non-statutory chief officers - the salary of the posts fall within a range of four incremental points between £122,426 rising to a maximum of £131,721 per annum.
- Assistant Chief Executive as direct report to the Head of Paid Service - the salary of the posts fall within a range of four incremental points between £103,824 rising to a maximum of £110,020 per annum.
- Heads of Service (including the Monitoring Officer) as direct reports to statutory and non-statutory chief officers - the salary of the posts fall within a range of four incremental points between £90,911 rising to a maximum of £96,968 per annum.

9.3.3. Following appointment and on completion of a satisfactory probationary period, progression through the incremental scale of the relevant grade is subject to satisfactory performance assessed on an annual basis. The Council does not pay bonus or performance related pay to any of its staff.

9.3.4. Details of Chief Officers' pay are published in the Statement of Accounts.

#### 9.4. Additions to Salary of Chief Officers

9.4.1. Chief Officers are remunerated in accordance with their contracts of employment, which provide for a four-point incremental salary scale and pension contributions. However, the salary for the Chief Executive is a fixed-point salary.

9.4.2. Where Chief Officers (and all other employees) use their private vehicles on Council business, the Council pays the standard HMRC mileage rate of 45 pence per mile. The Council also reimburses any other reasonable expenses, incurred by the Chief Officer whilst on Council business, on production of receipts and in accordance with JNC conditions and other local conditions.

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<sup>2</sup> At the time of publication pay negotiations had not been concluded so 2020/2021 salaries are quoted.

9.4.3. In addition to the above, the Chief Officers who undertake the following roles receive an additional allowance of 10% of basic salary:

- Deputy Chief Executive
- JNC Heads of Service fulfilling a statutory role

#### 9.5. Changes to Chief Officer Remuneration

9.5.1. Any determination of the level, or changes to the level, of remuneration to be paid to a Chief Officer at appointment, where the salary is £100,000 and over will be determined by Full Council in line with the requirements of the Local Authorities' (Standing Orders) (Wales) Regulations (Amendment) Regulations 2014.

9.5.2. The Council employs Chief Officers under JNC terms and conditions which are incorporated into individual contracts of employment. The JNC for Chief Officers negotiates on national (UK) annual cost of living pay increases for this group, and any award of the same is determined on this basis. Chief Officers employed under JNC terms and conditions are contractually entitled to any national JNC determined pay rises and this Council will therefore pay these as and when determined in accordance with current contractual requirements.

#### 9.6. Recruitment and Appointment of Chief Officers

9.6.1. The Council's Policy and Procedure relating to the recruitment of Chief Officers is contained within the Officer Employment Procedure Rules as set out in the Council's Constitution. (Appendix C).

9.6.2. The determination of the remuneration to be offered to any newly appointed Chief Officer will be in accordance with the approved pay structure and relevant Council policies in place at the time of recruitment.

9.6.3. Any salary that exceeds the threshold of £100,000 must be approved beforehand by Full Council.

9.6.4. Where the Council remains unable to recruit Chief Officers under a contract of employment or there is a need for interim support to provide



cover for a vacant substantive Chief Officer post, the Council will, where necessary, consider temporary internal acting up arrangements in line with the Council's Payment of Acting Up and Honoraria Policy or external interim appointments. Internal acting up arrangements can be appointed up to a maximum of 12 months in line with the Standing Order Regulations.

- 9.6.5. Any appointments or severance payments above £95k and any amendments to this Pay Policy will require the approval of Full Council. This will be kept under review pending the re-introduction of any exit pay cap regulations during the life of this Pay Policy.

## 9.7. Joint Appointments

- 9.7.1. The Welsh Government has introduced a Local Government and Elections (Wales) Bill which includes a greater general power of competence, a power for local authorities to make an application to merge voluntarily, and powers to facilitate regional working through corporate joint committees.

- 9.7.2. The Bill will see local authorities able to request the creation of a corporate joint committee for any service they wish. Welsh ministers, however, will only be able to create a corporate joint committee in a limited number of functional areas that are set out in the Bill. These are: improving education, strategic planning for the development and use of land and the function or preparing a strategic development plan, transport, and economic development.

- 9.7.3. The aim is to reduce complexity for councils using different kinds of regional working arrangements, and to ensure that the decisions are made as close to the local people as is possible for effective and efficient democracy. The Bill meanwhile requires a principal council to appoint a Chief Executive and make provisions about their role. This will replace the term 'head of paid service' and updates the role to reflect modern management practices.

## 9.8. Independent Remuneration Panel

- 9.8.1. Section 143A of the Local Government (Wales) Measure 2011 refers to the Independent Remuneration Panel in Wales ("the IRP") and sets out their

functions in relation to salaries of heads of paid service. The IRP may make recommendations about any policy in this Pay Policy Statement which relates to the salary of the Council's head of paid service and any proposed change to the salary of the Council's Head of Paid Service. The Council, will, as required, consult the IRP in relation to any change to the salary of the head of paid service which is not commensurate with a change of the salaries of the Council's other staff, and will have regard to any recommendation received from the IRP when deciding whether or not to proceed with making the change.

9.8.2. The Council is required to identify in this pay policy statement whether any such referral has been made to the IRP, and if so, the nature of the referral, the IRP's decision and the Council's response. No referral has been made to the IRP during 2020/2021.

9.8.3. An authority which chooses not to follow the advice of the Panel may become subject to a Ministerial direction to reconsider their position. The Act also provides that authorities will be able to reduce (but not increase) the salary payable to their head of paid service in advance of a recommendation from the IRP, so long as the contract under which the salary is payable does not prevent the authority from changing the salary after receiving a recommendation.

9.8.4. The Local Government (Wales) Act 2015 extends the power of the IRP, under section 143A of the Local Government (Wales) Measure 2011 to cover salaries payable to chief officers (using the Localism Act definition) as well as the head of paid service.

## 10. Talent Management

10.1. Our strategic approach to supporting talent management across the Council is underpinned by our People Strategy and the standards which we aim to achieve as an Investors in People employer.

10.2. We aim to support a workforce that is innovative, skilled, motivated, well informed, high performing, proud to work for Carmarthenshire County Council and committed to delivering high quality services to the public.

10.3. Key to delivering this is our ability to successfully recruit, retain and develop our employees to realise their full potential. The following provides an overview of our strategic approach to talent management:

10.3.1. Supporting a Learning Culture

10.3.2. In modernising our approach to learning all our employees will have the opportunity for more effective learning experiences, allowing them to access knowledge-based resources in a more agile way, whilst maximising digital tools and skills for improved personal, team and organisational performance.

- i. Performance Management - Our 'Helping People Perform' (Appraisal) process which, as well as placing an emphasis on performance, seeks to put in place personal development plans, developing the skills necessary not only for current roles, but with a future focus to support career development and succession planning. We have a supportive framework for Mentoring and Coaching at all levels and collaborate with key partners in providing this support.
- ii. Career Development – In addition to operating internal and external secondment opportunities, we encourage effective Career Development Conversations – providing potential future leaders and managers with the means to identify effective learning opportunities e.g. shadowing /attachments to projects that support organisational improvement such as our Transform, Innovate and Change programme, Internal Reviewers for Investors in People as well as those that offer both experiential and qualification opportunities e.g. Future Leaders Programme, Academi Wales Summer School.
- iii. Succession Planning – Our Work Ready Programme has successfully supported Apprentices and Graduates to gain permanent employment in key service areas. Some of our most critical and effective areas for succession planning include occupations within social care. Our Workforce Development programme equips newly qualified Social Workers with the advanced knowledge, skills and qualifications they need as they progress to experienced practitioners

and, in some cases to more senior practice roles. Our Language Skills Strategy not only supports statutory requirements for Welsh Language but ensures that we are planning for future skills development to sustain excellent service provision. During 2020/2021, the Council employed 13 Graduate Trainees who will hopefully go on to play key roles within the Council or in its community in the future.

## **11. Performance Related Pay**

- 11.1. The Council does not apply any bonuses or performance related pay to its staff.

## **12. Support for Lower Paid Staff**

- 12.1. All employees, regardless of whether they are over the statutory age of 25, are paid at a minimum of the voluntary Real Living wage rate, and this on-going principle was a recommendation of the cross-party Pay Policy Advisory Panel that met on 19<sup>th</sup> February 2021.
- 12.2. This Authority pays supplements for weekend working (8%) and term time only working (4%) which increase the pay of mainly lower paid employees.
- 12.3. With the above-mentioned supplements, many of our lower graded posts now attract a total remuneration higher than the Real Living Wage.

## **13. Off Payroll Arrangements**

- 13.1. Where the Council is unable to recruit to a job under a contract of employment or where there is a need for specialist support for a specific project, the Council will, where necessary, consider engaging individuals under a contract for services. These will be sourced through the relevant procurement process contained within the Council's Contract Procedure Rules, ensuring the Council is able to demonstrate value for money from competition in securing the relevant service.

13.2. Where the contract for service is to provide cover for a vacant post, in addition to ensuring adherence to Contract Procedure Rules, decision making in relation to the appointment will be in line with the Council's rules in relation to appointments i.e. Council will determine appointments at Chief Executive Level, Appointments Committee A will determine appointments at Director level, Appointments Committee B will determine appointments at Heads of Service.

13.3. With effect from April 2017, the UK Government introduced "Intermediaries Legislation" known as IR35 that reformed tax rules of off payroll working in the public sector. The Council is compliant with this revised legislation.

## **14.Exit Policy**

### **14.1. Early Retirement, Voluntary Redundancy and Compulsory Redundancy**

14.1.1. The Council's approach to statutory and discretionary payments on termination of employment of employees, prior to reaching normal retirement age, is set out within its Employers Discretionary Compensation Policy (Local Government Pension Scheme) statement. This discretionary policy is included as Appendix G. This will be kept under review pending any re-introduction of exit pay cap regulations during the life of this Pay Policy.

14.1.2. Any other payments falling outside the provisions, or the relevant periods of contractual notice shall be subject to a formal decision made in accordance with the Scheme of Delegation as contained within the Council's Constitution.

14.1.3. The Council operates a Severance Scheme for all its employees, payments under which are authorized in accordance with the above discretionary policy. Our current Severance Scheme is attached at Appendix H.

14.1.4. The Authority will comply with the Welsh Government's guidance that full Council should be given the opportunity to vote before large severance packages beyond a particular threshold are approved for Chief Officers

leaving the organisation. The guidance states that “as with salaries on appointment, the Welsh Ministers consider £95,000 is the right level for that threshold to be set. Members must be made aware of any statutory or contractual entitlements due to the employee and the consequences of a non-approval by Council, in which failure to fulfil the statutory or contractual obligations may enable the employee to claim damages for breach of contract”. When calculating the value of a severance package, the following payments will be included:

- a. Salary paid in lieu of notice
- b. Lump sum redundancy/severance payment
- c. Cost to the Council of the strain on the pension fund arising from early access to an unreduced pension.

#### 14.2. Flexible Retirement

14.2.1. Chief Officers and all other eligible Council employees are permitted to take flexible retirement in accordance with the provisions of the Local Government Pension Scheme and the Council’s Flexible Retirement Scheme.

#### 14.3. Re-employment

14.3.1. Employees who voluntarily leave the Council’s employment under the Council’s Severance Scheme cannot usually be re-employed in any capacity including on a casual basis, until at least 1 year has elapsed. Under no circumstances should an employee be re-appointed into the same or similar job to the one in which s/he was employed at the time of leaving. All such appointments should be made via the usual Authority’s recruitment procedures.

14.3.2. However, in exceptional circumstances only, employees may be re-employed by the Council prior to 1 year, subject to the agreement of the Chief Executive and Leader of the Council. In approving a re-employment, the Authority will need to be satisfied that:

- The employee is not being re-employed in a role or capacity, which is broadly similar to the role which they left voluntarily
- The rate of pay applied to the work undertaken by the re-engaged employee should be that appropriate to the work to be done and not the grading which applied to the employee prior to the end of their current contract
- The employment should be for a fixed term, not exceeding one year, unless there are exceptional circumstances; and
- the arrangement must provide financial / operational advantage to the Council.

14.3.3. This will be operated entirely at the Council's discretion and the decision in respect of each application will be final.

14.3.4. Other restrictions on re-employment may apply and reference will be made to the appropriate Conditions of Service when any re-employment is being considered.

#### 14.4. 14.4 £95k Exit Payment Cap

14.4.1. On Friday 12 February 2021, HM Treasury announced that the Restriction of Public Sector Exit Payments Legislation has been revoked with immediate effect, due to 'unforeseen consequences' of the legislation. On 25 February 2021, The Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 were made and laid before parliament and will come into force on 19th March 2021. These regulations confirm the effect of the disapplication Directions made on the 12th February 2021 but are not retrospective. As a consequence of the Treasury announcement the following applies to the Fund and employers:

14.4.1.1. For exits from 12 February 2021, LGPS administering authorities must continue to pay qualifying scheme members an unreduced pension under regulation 30(7) of the LGPS 2013 regulations. Scheme employers will be required to pay full strain costs in relation to those unreduced benefits.

## **15. Pay Relativities within the Council**

### **15.1. Lowest Paid Employees**

The Council's definition of lowest paid persons for the purposes of this statement is:

- Those employed under a contract of employment with the Council who are employed on full time 37 hours per week equivalent salaries; and
- Employees whose remuneration is equivalent to Spinal Column Point (SCP) 1 of the nationally negotiated pay spine, plus any pay supplement bringing the salary up to the level of the Real Living Wage, used within the Council's local grading structure.

15.2. This definition is adopted to correlate with the National Joint Council (NJC) for Local Government Services recognition of lower paid employees within the national pay spine.

15.3. The relationship between the rate of pay for the "lowest paid" employees and the Council's Chief Officers is regulated by the processes used for determining pay and grading structures as set out in this Pay Policy Statement.

15.4. The statutory guidance under the Localism Act recommends the use of pay multiples as a means of measuring the relationship between pay rates across the workforce and that of senior managers, as included within the Hutton "Review of Fair Pay in the Public Sector" (2010).

15.5. Will Hutton was asked by the UK Government to explore the case for a fixed limit on dispersion of pay through a requirement that no public sector manager can earn more than 20 times the lowest paid person in the organization.

15.6. Hutton concluded that the relationship to median earnings was a more relevant measure and the Government's Code of Recommended Practice on



Data Transparency recommends the publication of the ratio between the highest rate of pay and the median average pay of the whole of the Council's workforce (but excluding teachers and other employees appointed and managed by schools, in the case of local authorities).

15.7. As part of its commitment to pay transparency and following the recommendations of the Hutton "Review of Fair Pay in the Public Sector" (2011), the Council publishes the following information on an annual basis. The information for this Pay Policy is as follows (please note these ratios may change following the introduction of National Pay Awards which are yet to be agreed):

15.7.1. Multiple of Salary Ratio

- The multiple between the annual salary of the lowest paid Council employee and the Chief Executive (full-time equivalent basis) as a ratio 1:8.47
- The multiple between the annual salary of the lowest paid Council employee and the average Chief Officer (full-time equivalent basis) as a ratio 1:5.72
- The multiple between median earning of Council employees and the Chief Executive (full-time equivalent basis) as a ratio 1:7.00
- The multiple between median earning of Council employees and the average Chief Officer (full-time equivalent basis) as a ratio 1:4.73

15.7.2. The median salary in the Council is £20,903 (all staff managed by schools have been excluded from the calculation).

15.7.3. All other pay related allowances are subject to either nationally or locally negotiated rates, that are determined in accordance with collective bargaining machinery and/or Council Policy. In determining its grading structure and setting remuneration levels for all posts, the Council takes account of the need to ensure value for money against the ability to recruit and retain appropriately skilled and experienced employees that can deliver high quality services to the public.

15.7.4. New appointments will normally be made at the minimum of the relevant grade, although this can be varied where necessary subject to the qualifying

criteria within the Council's Recruitment Salaries Guidance and/or Market Supplement Scheme.

## **16.Publication**

16.1. Upon approval by the full Council, this Pay Policy statement will be published on the Council's website.

16.2. In addition, for posts where pay is at least £60,000 per annum, as required under the Accounts and Audit (Wales) (Amendment) Regulations 2014, the Council's Annual Statement of Accounts will include a note setting out the total amount of:

- a) Salary, fees or allowances paid to or receivable by the person in the current and previous year
- b) any bonuses so paid or receivable by the person in the current and previous year
- c) any sums payable by way of expenses allowance that are chargeable to UK income tax
- d) any compensation for loss of employment and any other payments connected with termination
- e) any benefits received that do not fall within the above
- f) The Authority will present this statement to Full Council before it is formally adopted and before the end of each financial year, i.e., 31 March.

(If you require this information in an alternative format (for example large print), please contact People Management on:

[CEDutyHR@carmarthenshire.gov.uk](mailto:CEDutyHR@carmarthenshire.gov.uk)



## Appendix A – Pay Scales

Grade Structure		Spinal Point	BASIC ONLY Apr-20 Salary (£'s)	Apr-20 Hrly Rate	BASIC + 8% Apr-20 Salary (£'s)	Apr-20 Hrly Rate	BASIC + 4% Apr-20 Salary (£'s)	Apr-20 Hrly Rate
Grade A		1	17,942	9.2998	19,269	9.9876	18,556	9.6181
	Grade B	2	18,198	9.4325	19,654	10.1872	18,926	9.8098
Grade C		3	18,562	9.6212	20,047	10.3909	19,304	10.0058
		4	18,933	9.8135	20,448	10.5987	19,690	10.2058
	Grade D	5	19,312	10.0099	20,857	10.8107	20,084	10.4101
		6	19,698	10.2100	21,274	11.0269	20,486	10.6184
		7	20,092	10.4142	21,669	11.2472	20,896	10.8310
Grade E		8	20,493	10.6221	22,132	11.4716	21,313	11.0471
		9	20,903	10.8346	22,575	11.7012	21,739	11.2679
		11	21,748	11.2726	23,488	12.1745	22,618	11.7235
		12	21,183	11.4980	23,958	12.4181	23,070	11.9578
		14	23,080	11.9630	24,926	12.9198	24,003	12.4414
	Grade F	15	23,541	12.2019	25,424	13.1779	24,483	12.6902
		17	24,491	12.6943	26,450	13.7097	25,471	13.2023
		19	25,481	13.2075	27,519	14.2638	26,500	13.7357
Grade G		20	25,991	13.4718	28,070	14.5494	27,031	14.0109
		22	27,041	14.0161	29,204	15.1372	28,123	14.5769
		23	27,741	14.3789	29,960	15.5291	28,851	14.9542
		24	28,672	14.8615	30,966	16.0505	29,819	15.4560
		25	29,577	15.3305	31,943	16.5569	30,760	15.9437
	Grade H	26	30,451	15.7836	32,887	17.0462	31,669	16.4149
		27	31,346	16.2475	33,854	17.5474	32,600	16.8974
		28	32,234	16.7077	34,813	18.0445	33,523	17.3759
Grade I		29	32,910	17.0581	35,543	18.4229	34,226	17.7402
		30	33,782	17.5101	36,485	18.9111	35,133	18.2104
		31	34,728	18.0004	37,506	19.4404	36,117	18.7204
		32	35,745	18.5276	38,605	20.0100	37,175	19.2688
		33	36,922	19.1377	39,876	20.6688	38,399	19.9032
	Grade J	34	37,890	19.6394	40,921	21.2104	39,406	20.4252
		35	38,890	20.1577	42,001	21.7702	40,446	20.9642
		36	39,880	20.6709	43,070	22.3243	41,475	21.4976
Grade K		37	40,876	21.1871	44,146	22.8820	42,511	22.0346
		38	41,881	21.7080	45,231	23.4444	43,556	22.5762
		39	42,821	22.1953	46,247	23.9710	44,534	23.0832
		40	43,857	22.7322	47,366	24.5511	45,611	23.6414
		41	44,863	23.2537	48,452	25.1140	46,658	24.1841
	Grade L	42	45,859	23.7699	49,528	25.6717	47,693	24.7205
		43	46,845	24.2810	50,593	26.2237	48,719	25.2524
		44	47,793	24.7724	51,616	26.7539	49,705	25.7634
Grade M		45	48,782	25.2850	52,685	27.3080	50,733	26.2963
		46	49,743	25.7831	53,722	27.8455	51,733	26.8146

		<b>47</b>	50,710	26.2843	54,767	28.3872	52,738	27.3355
		<b>48</b>	52,616	27.2723	56,825	29.4539	54,721	28.3633
	Grade N	<b>49</b>	55,321	28.6743	59,747	30.9685	57,534	29.8214
		<b>50</b>	58,012	30.0692	62,653	32.4747	60,332	31.2717
		<b>51</b>	60,710	31.4676	65,567	33.9851	63,138	32.7261
		<b>52</b>	65,244	33.8177	70,464	36.5234	67,854	35.1705
Grade O		<b>53</b>	68,591	35.5525	74,078	38.3966	71,335	36.9748
		<b>54</b>	72,111	37.3770	77,880	40.3673	74,995	38.8719
		<b>55</b>	75,810	39.2943	81,875	42.4380	78,842	40.8659

## Appendix B – Salaries for Chief Executive and Chief Officers

<b>Chief Executive</b>	
£151,967	Fixed Point

<b>Directors</b>	Incremental Point
£131,721	4
£129,398	3
£127,076	2
£122,426	1

<b>Assistant Chief Executive</b>	Incremental Point
£110,020	4
£109,296	3
£107,473	2
£103,824	1

<b>Heads of Service</b>	Incremental Point
£96,968	4
£95,452	3
£93,939	2
£90,911	1

## **Appendix C – Employment Procedure Rules (Constitution)**

[Office Employment Procedure Rules](#)

## Appendix D – Soulbury Pay Scales

### **SOULBURY PAY AGREEMENT: 2020**

#### **Education Improvement Professionals**

<b>SCP</b>	<b>1.9.20</b>
1	36419
2	37723
3	38955
4	40203
5	41443
6	42684
7	43988
8	45243*
9	46705
10	48009
11	49295
12	50541
13	51951**
14	53209
15	54598
16	55854
17	57114
18	58350
19	59625
20	60283***
21	61549
22	62653
23	63867
24	64956
25	66121
26	67257
27	68419
28	69597
29	70777
30	71956
31	73124
32	74311
33	75498
34	76714
35	77927
36	79174
37	80402
38	81642



39	82866
40	84089
41	85318
42	86546
43	87773
44	89006
	90236
46	91468
47	92705
48	93930***
	*
49	95160***
	*
50	96392***
	*

### **Notes to Educational Improvement Professionals above:**

Salary scales to consist of not more than four consecutive points based on the duties and responsibilities attaching to posts and the need to recruit and motivate staff.

\*normal minimum point for EIP undertaking the full range of duties at this level.

\*\*normal minimum point for senior EIP undertaking the full range of duties at this level.

\*\*\*normal minimum point for leading EIP undertaking the full range of duties at this level.

\*\*\*\*extension to range to accommodate structured professional assessments.

### **Young People's / Community Services Manager**

#### **SCP**

	<b>01.09.2</b>
	<b>0</b>
1	37772
2	39008
3	40243
4	41505*
5	42786
6	44036
7	45314**
8	46767
9	47568
10	48806
11	50036
12	51269
13	52493
14	53729
15	54966

16	56207
17	57455
18	58695
19	59927
20	61186***
21	62469***
22	63782***
23	65120***
24	66486***

### **Notes to Young People's / Community Service Manager above:**

The minimum Youth and Community Service Officers' scale is 4 points.

Other salary scales to consist of not more than four consecutive points based on duties and responsibilities attaching to posts and the need to recruit retain and motivate staff.

\*normal minimum point for senior youth and community service officers undertaking the full range of duties at this level (see paragraph 5.6 of the Soulbury Report).

\*\*normal minimum point for principal youth and community service officer undertaking the full range of duties at this level (see paragraph 5.8 of the Soulbury Report).

\*\*\*extension to range to accommodate discretionary scale points and structured professional assessments.

### **Trainee Educational Psychologists**

#### **SCP**

	<b>1-9-20</b>
1	24541
2	26337
3	28131
4	29929
5	31724
6	33520

### **Assistant Educational Psychologists**

<b>SCP</b>	<b>1.9.20</b>
1	30166
2	31399
3	32630
4	33856

### **Educational Psychologists – Scale A**

<b>SCP</b>	<b>1.9.20</b>
1	38197
2	40136
3	42075
4	44012
5	45951
6	47889
7	49714
8	51538
9	53247*
10	54959*
11	56554*

### **Notes to Educational Psychologists – Scale A above**

Salary scales to consist of six consecutive points based on the duties and responsibilities attaching to posts and the need to recruit retain and motivate staff. *\*Extension to scale to accommodate structured professional assessment points.*

### **Senior and Principal Educational Psychologists**

<b>SCP</b>	<b>1.9.20</b>
1	47889
2	49714
3	51538*
4	53247
5	54959
6	56554
7	57209
8	58433
9	59646
10	60880
11	62090
12	63323
13	64577
14	65790**
15	67061**
16	68318**
17	69585**
18	70850**

### **Notes to Senior and Principal Educational Psychologists above**

Salary scales to consist of not more than four consecutive points based on the duties and responsibilities attaching to posts and the need to recruit retain and motivate staff.

\*Normal minimum point for the principal educational psychologist undertaking the full range of duties at this level.

\*\*Extension to range to accommodate discretionary scale points and structured professional assessments.

## **Appendix E – Acting Up and Honoraria Policy**

### **1. Policy Statement**

- 1.1 The Council recognises that it may be necessary from time to time to apply an additional payment when an employee is requested to 'act up' into a higher graded post or temporarily undertake additional duties.
- 1.2 Where changes to the job are likely to be permanent, a revised job profile should be submitted to the Pay and Reward team and the post should be re-evaluated under the Council's Job Evaluation scheme.
- 1.3 Where changes are of a temporary nature and will be in place for 12 months or less, an honorarium, or acting up payment, may apply.
- 1.4 The purpose of this Policy is to ensure that the additional payments are properly evaluated and applied on a consistent basis.
- 1.5 This procedure covers all employees including centrally employed school staff except centrally employed teachers and staff on the complement of locally managed schools.

### **2. Honorarium**

- 2.1 Where there is the need for an employee to either act up into a higher graded post or take on some additional duties on a temporary basis, if there is more than one suitable employee with the appropriate skills and experience to undertake the additional duties and/or responsibilities, then a selection process will need to be followed to determine the best person to undertake those duties and/or responsibilities. Please contact your HR Advisor regarding the appropriate process to follow.
- 2.2 Honorarium payments will only apply once the acting up / additional duties have been undertaken for a period of 28 days. Payment will be backdated to day one.
- 2.3 Any honorarium payment will be for a maximum of 12 months and will be reviewed and authorised on a three-monthly basis. If the acting up / additional duties are going to continue longer than 12 months then the manager should seek advice from their HR Advisor.

### **3. Exceptions – emergency acting up**

- 3.1 There will be occasions where an employee is required to act up as emergency cover, e.g. to cover sickness absence. This will usually apply to frontline services where the service will be unable to run without someone covering the post, for

example a Refuse / Recycling Loader acting up into the role of an absent Refuse / Recycling Driver.

- 3.2 An exception to the 28 day rule will be made in these instances as the acting up is likely to be for a short period and on an ad hoc basis. If you are unsure whether emergency acting up is applicable, please consult with your HR Advisor.
- 3.3 Care should still be taken to ensure fair application of the acting up opportunity where there is more than one employee with the appropriate skills to undertake the role.
- 3.4 Emergency acting up will only apply when an employee is covering the full role of the higher graded post. The full amount of the difference between the existing salary and the minimum salary of the higher grade should be paid. If the minimum salary of the acting up grade is lower, or the same as, the employee's current salary, they should be paid the honorarium at the next SCP above their current salary.
- 3.5 In cases of emergency cover, payment will be made from day 1 of the acting up. Details of the acting up should be submitted to payroll by the manager.

#### **4. Procedure**

- 4.1 A business case must be made by the relevant manager to support the application for an honorarium payment using the "Request for an Honorarium Payment" form (Appendix 1) and submitted to the departmental Director for approval.

Types of evidence include:

- The reason for the payment, e.g. to cover for long term absence, or to undertake a specific piece of work.
  - Details of the post affected and the grades of the substantive and higher graded post.
  - Whether the extent of the duties are full or partial – if partial, the duties must have been evaluated by the Pay and Reward team before submitting the business case.
  - Cost – calculation of the amount per month the employee would be entitled to receive.
- 4.2 The full amount of the difference between the existing salary and the minimum salary of the higher grade should be paid. If the minimum salary of the acting up grade is lower, or the same as, the employee's current salary, they should be paid the honorarium at the next SCP above their current salary.

4.3 Where longer term situations may apply, e.g. maternity cover, the Authority's Recruitment and Selection policy should be followed.

4.4 Where the additional duties are evaluated as being the same grade as the employee's substantive post, no payment will be made. It is for the manager to ensure that the additional workload is manageable within the employee's standard working hours, or, with the appropriate approval, authorise overtime where necessary.

## **5 Method of payment**

5.1 Honorarium payments will be made on a monthly or four-weekly basis in line with the employee's normal pay periods and will be shown as a separate, identifiable payment on the payslip.

## **6 Authorisation**

6.1 Once the business case has been agreed by the Director it should be forwarded to the Senior HR Adviser for their consideration. Where the payment request is in relation to additional duties, and the role is covered by the Job Evaluation scheme, the Pay and Reward team will also need to authorise to confirm that the grade being applied is correct.

6.2 The business case will then be passed to Payroll for the payment to be set up.

## **7.0 Monitoring**

7.1 Honorarium and acting up payments will be regularly monitored by the People Management division.

## **8.0 Employees on protected salaries**

Employees who are on protected salaries and who undertake duties of a higher grade than their substantive grade, but not higher than their protected salary, are not entitled to receive any additional remuneration. They should still be encouraged to undertake the opportunity of acting up as part of their development to assist them in improving their promotion prospects.

## **9.0 Ending the acting up / temporary additional responsibilities**

The employee should be fully supported, and their performance regularly reviewed, whilst undertaking additional duties. Additional training and support may be required during the acting up period. If concerns regarding performance do arise then these should be discussed before the decision is taken to end the acting up / temporary additional responsibilities arrangement.

If a post that has been covered by acting up arrangements is advertised and the employee who has been covering the role is the successful applicant, the period of acting up will be taken into account when agreeing the spinal column point they will be paid on.

When the arrangement is ended, at least one week's notice should be given and a further change of circumstance form must be completed by the manager to ensure that payment for acting up/additional duties is ended. Settling back into their original role can be difficult for an employee and managers need to be sensitive to potential concerns in this respect. Employees who have acted up into a role have no automatic right to it on a more permanent basis.

However, employees who have acted up/taken on additional responsibilities who are not subsequently appointed to a higher graded post following competitive interviews must receive constructive feedback as to why they were not successful.

This is with the exception of acting up arrangements due to health & safety and/or minimum staffing requirements which can be reviewed on a daily basis by the operating manager.

## **10.0 CONCERNS BY EMPLOYEES**

The fair application of the above policy is designed to avoid concerns raised by employees in respect of acting up/ temporary additional responsibility arrangements. However, where an employee has a concern they should first seek to resolve the matter informally by discussing it with their line manager, in keeping with the Council's Grievance Procedure. The advice of the HR Advisor should be sought at an early stage in these circumstances in order to avoid any ongoing concerns.

### **ENSURING EQUALITY OF OPPORTUNITY**

All employees are required to adopt a positive, open and fair approach and ensure the Authority's Equality and Diversity Policy is adhered to and applied consistently to all irrespective of race, colour, nationality, ethnic or national origins, disability, religion and belief or non-belief, age, sex, gender reassignment, gender identity and gender expression, sexual orientation, pregnancy or maternity, marital or civil partnership status.

In addition, the Welsh Language Standards ask us to 'ensure that the Welsh language is treated no less favorably than the English language' and this principle should be adopted in the application of this policy.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly



If you require this publication in an alternative format,  
please contact [CEDutyHR@carmarthenshire.gov.uk](mailto:CEDutyHR@carmarthenshire.gov.uk)

## Appendix F – Market Supplement Scheme Policy

### Purpose of scheme

The use of a Job Evaluation scheme allows for the creation of a fair and equitable pay structure which ensures rates of pay are based on robust criteria across the organisation. However, the resulting rates of pay may not necessarily reflect the value of jobs in the wider external market place.

This market supplement scheme has been developed to recognise that there may be times when specific skills and experiences are in short supply. Use of market supplement payments is one way of ensuring we secure sufficient employees with the required skills to safeguard the provision of these services.

A key purpose of the scheme is to ensure that any market supplements are paid fairly and consistently to avoid the risk of non-compliance with equal pay legislation. There would need to be clear evidence that the basic rate of pay being paid by Carmarthenshire County Council for a specific job is significantly lower than the market rate for a relevant and equivalent post in a similar market and that any recruitment or retention problems are due to rates of pay.

However, the introduction of market supplements must be properly controlled in order to avoid the creation of potentially unlawful pay disparities and Equal Pay Act risks. There are, therefore, very specific rules to the application of market supplements to ensure that they can be objectively justified.

Market Supplements must be:

I. restricted to a limited number of jobs where there is clear evidence that the Council's own pay is significantly lower and / or demonstrably competitive to the market rate for specific jobs **and** there are enduring recruitment or retention problems.

II. applied only where there are recruitment or retention problems in relation to a very specific role (a generic application to, for example, all social workers, could not be justified if the problems related to childcare social workers alone).

III. designated as temporary and subject to regular review and monitoring as to outcomes.

IV. applied to existing as well as newly recruited post-holders in the relevant job.

V. clearly identified as separate from basic pay (so that their basis is understood by the employee and they can be justified if an equal pay issue arises).

VI. ideally paid separately from basic pay, either monthly, quarterly, half yearly or as an annual payment (whichever best serves as a recruitment and/or retention measure).

VII. capable of being withdrawn. The contractual terms and a process for withdrawal should be clear and established.

VIII. phased out or withdrawn if a review shows they are not consistent with the above criteria.

IX. payments will not normally be made to employees still in their probation period or during any other initial training period. This will be agreed with the department when payment of a market supplement is being considered.

## **2. Scope of the scheme**

This procedure covers all employees including centrally employed school staff except centrally employed teachers and staff on the complement of locally managed schools.

## **3. Use of scheme**

This scheme replaces any earlier scheme operated by Carmarthenshire County Council and will be operated alongside the Carmarthenshire County Council pay and grading structure.

The scheme will be applied to specific posts on a temporary basis where a suitable business case is developed and approved. The scheme is not designed to reflect an individual's performance.

The scheme will be subject to periodic review to ensure it remains relevant.

## **4. Preparation of a market supplement business case**

Before a business case is put forward for a market supplement, the Head of Service must satisfy him/herself that all non-pay related measures to successfully recruit and / or retain a staff member have been reasonably explored, including a review of the skills, qualifications and experiences required for the post.

If a market supplement is still considered appropriate, the Head of Service should develop a business case which should be submitted to the Assistant Chief Executive (People Management), or nominated representative, with evidence of failure to recruit

and / or retain staff as well as evidence of pay rates for the role in other relevant organisations.

The Assistant Chief Executive (People Management) or their nominated representative, in conjunction with the Organisational Support team, will respond to the Head of Service to either recommend the market supplement be paid or to refuse the request.

The following information will be taken into account when making the decision whether it is appropriate to pay a market supplement.

- Evidence demonstrating the nature and extent of the recruitment / retention difficulties
- The extent of the potential impact on services if the recruitment / retention difficulties are not resolved
- The likely duration of the problem
- Evidence of pay data from the relevant comparator organisations. This may be based on local, regional or national data depending on what is relevant for the post. Ideally this data should include the whole package not just basic pay so total packages can be compared.

There are a number of indicators that may suggest that there is a severe recruitment and / or retention problem within a particular service. It is important to note that these are merely indicators; they do not mean that a post will attract a market supplement.

The indicators are as follows:-

- The post has been advertised externally on three occasions and those three attempts have resulted in failure to appoint an individual to the post.
- Information concerning turnover within a post or a group of posts within the Council.
- Information concerning the external labour market, e.g. awareness of the failure of universities to recruit students to particular courses.
- Information gained through the medium of exit questionnaires or Interviews.

Any other significant retention issues.

**Managers should explore alternative recruitment solutions when a post is advertised for the second and third time; managers must not advertise the post three times without reviewing the documentation and methods used. At the same**

**time, a manager does not have to advertise a post on three separate occasions if there is substantial evidence from other sources of information that there may be a case for paying a market supplement.**

## **5. Funding**

The payment of market supplements will be funded by the division in which the post lies. If the post is cross-divisional then the cost will be shared by those divisions concerned.

## **6. Payment of market supplements**

Payment will be calculated by the Assistant Chief Executive (People Management) or nominated representative in conjunction with the Pay and Reward Team. The payment will be based on the median salary for the equivalent roles, taken from an independent external salary survey.

## **7. Calculation of a market supplement**

All supplements will be calculated as additional increments based on the evidence supplied and will be the nearest increment below the comparator salary. The payment should be set at a level that is considered will alleviate the recruitment and retention / operational difficulties but which is not excessive and can be justified in terms of salary paid to the comparator jobs in the market.

The purpose, justification and extent of any market supplement must be transparent and records maintained to demonstrate this so that the Council can respond effectively to any challenge regarding the rationale for such a payment.

Market supplements will be identified as a separate item on payslips and do not form part of the basic pay for the post. They will be subject to tax, NI and pension contributions in the normal way.

Market supplements will be taken into account for overtime calculations and any other enhancements / allowances.

## **8. Duration and Review of payments**

The duration of the payment will be determined at the outset based upon how long the recruitment difficulties are likely to continue and will be confirmed in writing to the employee. The initial supplement payment period will be for a maximum of 12 months.

The market supplement will be reviewed at least every 12 months or earlier if necessary. If the departmental manager believes the market supplement needs to continue they will need to provide a new business case, containing up to date information, at each review. This business case will be considered by the Assistant Chief Executive (People Management) or nominated representative along with any other relevant information.

Where the business case to support the continued payment is no longer relevant and sustainable the supplement shall be withdrawn and contractual notice given to the post holder(s) in writing.

Where the decision to withdraw a market supplement is made, this will apply to all posts within the same job group (e.g. all Social Workers within Children's Services) and their post holders simultaneously.

There are a number of situations which may trigger a withdrawal of market supplement payment and these include:-

- Job group no longer has any vacancies
- Posts can be filled after first advertisement
- Turnover has reduced to an acceptable level
- Market research shows there is no longer any justification for the payment

This list is not exclusive.

## **9. Management of the scheme**

The scheme and all payments made under it will be monitored and reviewed annually and the outcome reported to the Assistant Chief Executive (People Management) or their nominated representative and the department.

Vacancies should be advertised in the usual way, denoting the grade and salary for the post. The market supplement should be quoted as a separate figure, as follows:-

***Salary £XX,XXX to £XX,XXX (plus additional market supplement up to a maximum of £xxx where appropriate).***

## **10. Interpretation**

Any matters of interpretation arising from the scheme are to be determined by the Assistant Chief Executive (People Management).

## **11. Ensuring equality of treatment**

### **ENSURING EQUALITY OF OPPORTUNITY**

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In addition, the Welsh Language Standards ask us to 'ensure that the Welsh language is treated no less favorably than the English language' and this principle should be adopted in the application of this policy.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly

If you require this publication in an alternative format please contact **People Management** on [CEDutyHR@carmarthenshire.gov.uk](mailto:CEDutyHR@carmarthenshire.gov.uk)



### Discretionary Compensation Regulations

#### Discretions introduced on 9th August 2014

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The Authority is required to publish its policy in respect of the Discretionary Compensatory Regulations under the Local Government Pension Scheme (LGPS). These discretions are subject to change, either in line with any change in regulations or by due consideration by the Authority. These provisions do not confer any contractual rights.

#### LGPS Regulations 2013

- The Authority has used its discretion not to contribute to a shared cost APC scheme (**Regulation 16 (2)(e) and 16 (4)(d)**).
- The Authority will consider whether all or some benefits can be paid if an employee reduces his/her hours or grade (flexible retirement). Each application will be considered on its own merits following full consideration of all financial and service delivery implications. The Authority may waive the resulting actuarial reduction on benefits paid on flexible retirement, in whole or in part, providing that appropriate supporting evidence is presented (**Regulation 30 – 6 -8**).
- The Authority may waive, in whole or in part, the actuarial reduction on benefits which a member draws before normal pension age (early retirement), providing appropriate supporting evidence is presented and full consideration of all financial and service delivery implications (**Regulation 30 – 8**).
- The Authority has used its discretion not to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (**Regulation 31**).

#### LGPS (Transitional Provisions, Savings and Amendment) Regulation 2014

- The Authority will consider all requests to “switch on” the 85 year rule for a member drawing benefits on or after age 55 and before age 60, providing that appropriate supporting evidence



is presented and full consideration of all financial and service delivery implications **(Schedule 2, para. 1(2) and 2(2))**

- The Authority may waive, on compassionate grounds, the resulting actuarial reduction applied to benefits from pre 1 April 2014 membership, providing that appropriate supporting evidence is presented and full consideration of all financial and service delivery implications **(Schedule 2, para. 2(3))**

#### **LGPS (Early Termination of Employment) (Discretionary Compensation) Regulations 2006**

- The Authority will base the redundancy pay at actual weeks pay where this exceeds the statutory weeks pay limit (Regulation 5).
- The calculation for redundancy pay will be based on the statutory redundancy weeks pay x 1.5. e.g. under the statutory redundancy table the maximum redundancy weeks calculation is 30 weeks, the Authority will pay up to a maximum of 45 weeks. Where an individual has reached aged 55 they will also receive release of unreduced pension benefits built up to the date of termination (Regulation 6).
- For efficiency of service retirements where an individual has reached aged 55 they will receive release of unreduced pension benefits built up to the date of termination (Regulation 6).
- Where there is a mutual agreement for the release of an individual under the Authority's Severance Scheme the Authority will use its discretion to give compensation payments based on actual salary. The discretionary payments will be based on age and service, with a multiplier to be applied of 1.5, and limited to a maximum of 45 weeks. Where an individual has reached aged 55 they will also receive release of unreduced pension benefits built up to the date of termination.
- 2 years continuous qualifying service is required to access these Compensation Arrangements.

#### **LGPS (Benefits, Membership and Contributions) Regulations 2007**

- Each request for early payment of deferred benefits on or after age 55 and before age 60 will be considered on its own merits following full consideration of all financial and service delivery issues. The Authority may waive the resulting actuarial reduction on compassionate grounds applied to deferred benefits paid early, providing that appropriate supporting evidence is presented. **(Regulation 30 - 2 and 5).**
- The Authority has used its discretion not to augment membership for a member leaving on the grounds of redundancy or business efficiency on or before 31st March 2014 **(Regulation 12).**

- The Authority will consider all requests to grant an application for early payment or suspended tier 3 ill health pension on or after age 55 and before age 60, providing that appropriate supporting evidence is presented and full consideration of all financial and service delivery implications. The Authority may waive, on compassionate grounds, the actuarial reduction applied to benefits paid early, providing that appropriate supporting evidence is presented. **(Regulation 30A -3 and 5)**

#### **LGPS Regulations 1997 (as amended)**

- The Authority may grant application, from a post 31.3.98 / pre 1.4.08 leaver or from a councillor, for early payment of benefits on or after age 55 and before age 60, as appropriate and in light of the circumstances relating to each case. The Authority may waive, on compassionate grounds, the actuarial reductions applied to benefits paid early for a post 31.3.98 / pre 1.4.08 leaver or a councillor leaver, as appropriate and in light of the circumstances relating to each case **(Regulation 31 – 2 and 5)**
- The Authority may grant to councillor optants out and pre 1.04.08 employee optants who continue in service, to receive a pension and lump sum from their NRD without reduction, after taking into account the circumstances relating to each case **(Regulation 31 – 7A)**

Dyfed Pension Fund Administering Authority discretions are available on [www.dyfedpensionfund.org.uk](http://www.dyfedpensionfund.org.uk). The full list of discretionary policies for Carmarthenshire County Council can also be found on this site.



## Appendix H – Severance Scheme

### **General Principles**

Carmarthenshire County Council (CCC) is committed to working with employees and trade unions to minimise the impact of budget reductions on its services and workforce. However, Local Government continues to face a difficult economic future which could result in significant budget reduction. This will inevitably affect the way we provide services and the employees who provide those services. The Severance Scheme provides financial support to employees who leave their employment early due to efficiency.

### **Scope**

This scheme applies to employees of Carmarthenshire County Council who have a minimum of two years qualifying service, excluding staff employed by locally managed schools where the governing body will determine the policy.

In line with the business case approval process, any employee subject to disciplinary or capability (health or performance) triggers or procedures will be precluded from the Severance Scheme, until it can be demonstrated that due process has been followed. Managers should speak to their HR Advisor prior to agreeing any provisional support for an application for release under the Severance Scheme.

### **The Scheme**

The scheme follows the principles of the Discretionary Compensatory Regulations. The Council's Policy in respect of the Discretionary Policy Regulations are subject to change, either in line with any change in regulations or by due consideration by the Authority. These provisions do not confer any contractual rights.

The scheme is also governed by The Restriction of Public Sector Exit Payments Regulations 2020 which are effective from 4<sup>th</sup> November 2020 and restrict exit payments to a total of £95K.

Payment will be made in accordance with the table of severance payments and, from 4<sup>th</sup> November 2020, in conjunction with The Restriction of Public Sector Exit Payment Regulations 2020. Details of these Regulations may be found here:

<https://www.legislation.gov.uk/uksi/2020/1122/contents/made>

Payment will be made through the first available payroll after the termination date. Release of pension benefits will be considered for those LGPS members aged 55 or over.

Voluntary severance ends the employment contract through mutual consent on an agreed date.

### **Process**

The department will review the expression of interest to determine whether the request can be supported and whether a business case can be made to release you.

There is no right to severance. The decision made by the Authority will be final therefore there is no appeals process within this scheme.

If you are interested in exploring the possibility of voluntary severance, please complete the enclosed expression of interest form and discuss your request with your line manager.

Please do not contact the Pensions Section to request an estimate of your benefits. This will only be provided if the expression of interest form is completed and returned. However, some useful guidance and information can be found on the Dyfed Pension Scheme Website including an online calculator: <https://mypensiononline.dyfedpensionfund.org.uk>

Following receipt of your expressions of interest your Head of Service will review your request. You will then be contacted to explore your request in more detail and to discuss the implications.

You will not be committed to any expressions of interest until you sign an acceptance form and Settlement Agreement, as appropriate, which confirms termination of employment on a mutually agreeable date. Once signed, the Authority is not obliged to accept any subsequent request you may make to withdraw from the agreement.

Employees leaving the Council's employment on the grounds of Voluntary Severance will do so on the basis of a **mutually agreed termination date, with no notice period being applicable on either side** and with **no payment in lieu** for any outstanding holidays, time off in lieu or flexi leave.

Employees who voluntarily leave the Council's employment under this Scheme cannot work for Carmarthenshire County Council again in any capacity, including on a casual basis, until at least one year has elapsed. No employee should be re-appointed into the same or similar job to the one in which s/he was employed at the time of leaving. All such appointments should be made via the usual Authority's recruitment procedures.

In very exceptional circumstances an employee may be re-employed by the Council prior to one year, subject to the joint agreement of the Chief Executive and Leader of the Council. In approving a re-employment the Authority will need to be satisfied that:

- the employee is not being re-employed in a role or capacity, which is broadly similar to the role they left voluntarily;
- the rate of pay applied to the work undertaken by the re-engaged employee should be that appropriate to the work to be done and not the grading which applied to the employee prior to the end of their current contract;
- the employment should be for a fixed term, not exceeding one year, unless there are exceptional circumstances; and
- the arrangement must provide financial / operational advantage to the Council.

This will be operated entirely at the Council's discretion and the decision in respect of each application is final.

Further information can also be found via the HR pages on the intranet. If you are unable to access these pages, please contact your line manager.

Please contact your departmental HR Advisor should you require any further clarification in respect of the Scheme.

## **ENSURING EQUALITY OF OPPORTUNITY**

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expression, sexual orientation, pregnancy or maternity, marital or civil partnership status.

In addition, the Welsh Language Standards ask us to 'ensure that the Welsh language is treated no less favorably than the English language' and this principle should be adopted in the application of this principle.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly

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## Appendix I – Flexible / Phased Retirement Policy

We (Carmarthenshire County Council) are committed to providing more choice and flexibility to you (our employees) if you wish to make a gradual adjustment from work into retirement or stay in work beyond Normal Pension Age (NPA), making your transition from working life to retirement an enjoyable one.

We recognise that attracting and retaining a well-trained, well-motivated, flexible and mixed age workforce, with a wide range of skills and experience, is essential to the provision of quality services.

This policy sets out how you can work with your manager to achieve flexibility for as you approach retirement.

In keeping with legislation, we have not operated a compulsory retirement age for our employees since 1 October 2011.

### Scope

This policy applies to all employees who are active members of the Local Government Pension Scheme (LGPS) but excluding support staff and teachers employed by locally managed schools where the governing body will determine the policy and unattached teachers who are not active members of the Teachers' Pension Scheme (TPS).

Unattached teachers who are active members of the TPS should refer to the section of the policy which applies to them.

This policy should also be read in conjunction with our [Employer Discretionary Policy](#).

It should also be read in conjunction with our [Redeployment Policy](#) which offers support to employees who are 'at risk' of losing their employment.

If you are not a member of the LGPS or TPS and wish to make a request for reduced working hours please refer to our [Flexible Working Policy](#).

### Key Points

- Flexible/phased retirement is a planned approach to retirement that involves a voluntary reduction in hours and/or move to a lower graded post and at the same time allowing access to accrued pension benefits.
- There is no automatic right for you to work on reduced hours or grade, whilst drawing pension benefits. However, all such requests will be considered in a reasonable manner.

- It is necessary to obtain the relevant approval in line with our [Retirement Business Case procedure](#).
- If you have been an active member of the LGPS/TPS for at least **2 years** or have transferred previous pension rights into the scheme, you can consider the possibility of Flexible/Phased Retirement.
- You may voluntarily draw your LGPS/TPS pension benefits without a reduction on attaining Normal Pension Age (NPA).
- You must seek our agreement to draw your pension benefits at the earliest from the age of 55 whilst continuing to work on reduced hours or in a job on a lower salary.
- Pension benefits must be drawn, at the latest one day before reaching the age of 75.
- Guidance for LGPS members on the 85-year rule is provided at **Appendix 1**
- Guidance for TPS members on phased retirement is provided at **Appendix 2**

### **What is Normal Pension (NPA) Age?**

The NPA for the purposes of the LGPS is the same as the State Pension Age (SPA), although there are other options to retire earlier or to continue working, within the LGPS regulations. You can check your state pension age by visiting the government website at: [www.gov.uk/calculate-state-pension](http://www.gov.uk/calculate-state-pension)

NPA for the purposes of TPS is explained in **Appendix 2** due to changes to the scheme that will come into effect on 1<sup>st</sup> April 2015.

### **What is flexible/phased retirement?**

Flexible/phased retirement enables you to access your LGPS/TPS pension (actuarial reductions may apply) and phase into retirement by:

- reducing your working hours; and/or
- moving to a job on a lower salary

Alternatively, you can request to continue to work on reduced hours or grade and decide not to access any pension benefits until NPA, when there would be no actuarial reductions.



## **What are the benefits of having a flexible/phased retirement policy?**

This is a change from retiring at a specified age to a much more flexible approach so that you can plan, financially and socially, and make a gradual adjustment from work into retirement.

It also benefits us as we are able to retain experienced staff with valuable skills and enabling better succession planning.

## **Eligibility for flexible/phased retirement**

If you are a member of the LGPS/TPS<sup>3</sup> you may, from the age of 55, approach your line manager regarding an application for flexible/phased retirement. It will be important for you to consider your proposed working pattern, how the change will impact on you financially, including your pension benefits and the impact your request may have on the service. It will help your manager if you include in your application your solution to any potential negative impact on service delivery as a result of accommodating a reduction in working hours/grade.

It is also your line manager's responsibility to carefully consider an application for flexible/phased retirement and examine how the flexible/phased retirement application and desired working pattern can be accommodated within a service area or function. Where the request cannot be supported your line manager should explore alternative options with you which may be mutually agreeable.

Where the application can be supported your line manager must present a retirement business case which must be approved in relation to both:

- reduction in hours and/or grade; and
- early payment of the pension benefits.

The business case should include details of the impact on service delivery and the benefit to your Department as well as to yourself and any associated costs. The following criteria must be satisfied:

- You must be employed by us on a permanent contract of employment; and
- For LGPS members it is recommended that there should be a reduction in hours of at least 20% or a reduction in grade. We will consider all applications taking into account all financial and service delivery issues on a case by case basis.
- For TPS members please refer to **Appendix 2**.

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<sup>3</sup> Non LGPS/TPS Members should refer to the Flexible Working Policy

In all cases, including where you request a gradual reduction in hours over a period of time, the business case should detail the proposed reductions in hours, the dates of the reduction and the proposed final retirement date at the outset. This is to ensure succession planning.

Where a flexible/phased retirement application and the subsequent business case demonstrate a cost to us, the business case must clearly set out the cost and service benefits of agreeing the application. It is your manager's responsibility to ensure that the business case provides all the information required.

There is no trial period for flexible retirement under the LGPS and, once it has been agreed, the decision cannot be reversed, because of the direct impact upon the pension benefits. There can be no reversal of the decision to reduce the number of hours whilst still in the same post.

For phased retirement under TPS the reduction must be for a minimum period of 12 months.

### **Conditions of Service**

If you reduce your hours in the same job, all the conditions of your contract of employment will be retained, pro rata part time, including recognition of continuous service for purposes of annual leave and sick pay, and for employment rights such as redundancy payments.

If you start a new job, you will receive a new contract of employment and, provided local government service is continuous without a break, this will be recognised for purposes of annual leave and sick pay, and for employment rights, such as redundancy payments.

### **Financial implications of flexible/phased retirement**

The annual pension and lump sum retirement grant (if applicable) are paid with effect from the date of flexible/phased retirement and Additional Voluntary Contributions (AVC's) may be accessed if you choose too.

After taking flexible retirement you may contribute to the LGPS in the new or part time job and start an additional pension that will be accessed when they finally retire. It is important to note that the new local government pension record is a separate pension accrual. This means that the previous service (relating to the pension put into payment as a result of flexible retirement) will not count as accrued service in respect of the later benefits.

If you are taking phased retirement under TPS please refer to **Appendix 2**.

You are responsible for obtaining your own independent financial and pension advice as the Council is not able to provide this but the following information might be helpful:

- Flexible/phased retirement will have the effect of reducing salary and partially replacing this with pension benefits. Depending on the level of salary reduction and the amount of accrued pension benefits, the overall level of income received during the period of flexible/phased retirement, or at the eventual date of retirement from the Council, might be less than that received by continuing to work in the original contract until the LGPS/TPS normal pension age or beyond;
- the pension is treated as taxable income and will, therefore, be subject to income tax deductions, in the same way as your salary;
- on reaching state pension age, you might become entitled to state pension benefits over and above your LGPS/TPS pension benefits. You are advised to seek advice from the relevant government department.

### **Pension reduction & implications**

The amount of pension benefits awarded under flexible/phased retirement is calculated in the same way as for voluntary early retirement (LGPS) or actuarially adjusted benefits (TPS). Pension benefits will be subject to a reduction if they are drawn before the LGPS/TPS deemed NPA.

You may remain in the pension scheme and accrue a second pension (LGPS) or continue to accrue additional pensionable service (TPS) based on your reduced hours/grade. These benefits will become payable without actuarial reduction at NPA, or anytime thereafter should you choose to remain working beyond NPA but must be accessed at least 1 day before your 75<sup>th</sup> birthday. You will be covered for all pension benefits such as ill health retirement and death in service. You can also purchase Additional Pension Contributions or pay Additional Voluntary Contributions.

### **Waiving the pension reduction**

The LGPS regulations allows us as your employer the discretion to waive the pension reduction. This will only be possible in **exceptional circumstances** in accordance with our Employer Discretionary Policy. Your manager must seek advice from the HR team before proceeding with any flexible retirement application where it is proposed that we will bear the cost of the pension reduction and the reasons for doing so must be set out clearly within the Business Case.

In the event that we agree to waive the pension reduction and the flexible retirement application is approved, should you subsequently submit your resignation; voluntarily increase your hours of work or apply for another job within the Authority prior to the agreed retirement date, we reserve the right to recover from you the full cost of the actuarial strain incurred.

### **Flexible Retirement Applications Procedure**

Applications will be processed as follows:

- you can review your current pension information via Pension Online via [www.dyfedpensionfund.org.uk](http://www.dyfedpensionfund.org.uk) or [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk);
- you make a formal request in writing to your line manager outlining the reduction in hours or grade requested and proposed dates;
- your line manager will arrange a mutually convenient time to discuss the application with you;
- your line manager will confirm if the application can be supported subject to the approval of the Flexible Retirement Business Case;
- your line manager will contact the HR Team to obtain actuarial strain pension figures for the business case and to provide actual pension figures for you;
- you will confirm with your line manager if you wish to proceed with your application on receipt;
- your line manager completes the Flexible Retirement Business Case and submits for approval to your Head of Service or Director in accordance with the Retirement Business Case Guidelines.

Once approved

- for reduced working hours: your line manager must confirm the variation in working hours and commencement date to the HR Employee Services Team;
- for a reduction in grade: you should apply for suitable vacancies in accordance with our Recruitment and Selection policy or if eligible, the Redeployment Policy where you are deemed 'at risk'. Once successful in being offered/redeployed in an alternative post, you should seek confirmation of the pension benefits payable. If you wish to proceed with the application, final approval must be sought from the existing Head of Service who will be required to finalise the Flexible Retirement Business Case for approval in accordance with agreed procedures.

Flexible/Phased Retirement is discretionary on our part and therefore there is no right of appeal where an application is not approved.

However, where an application cannot be supported by your line manager they should seek advice from the HR Team in advance of confirmation to you to ensure that the case has been reasonably considered and to explore any potential alternative solutions.

### **Ensuring Equality of Treatment**

This policy must be applied consistently to all employees irrespective of race, colour, nationality (including citizenship), ethnic or national origins, language, disability, religion, belief or non-belief, age [subject to statutory regulations], sex, gender identity and expression, sexual orientation, parental, marital or civil partnership status, pregnancy or maternity.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team

If you require this information in an alternative format (for example large print), please contact People Management on [CEDutyHR@carmarthenshire.gov.uk](mailto:CEDutyHR@carmarthenshire.gov.uk)

## Appendix 1

### LGPS 2014 ALL Wales Pension Fund Factsheet

#### 85-year Rule

##### When can I retire?

The Normal Pension Age (NPA) under the Local Government Pension Scheme (LGPS) 2014 is linked to your State Pension Age (SPA)<sup>1</sup>, with a minimum age of 65. However, you may voluntarily retire from age 55, but your benefits may be actuarially reduced to take account of early payment before your NPA.

##### What is the 85 Year Rule?

The 85-year rule is a test to assess whether a member's benefits would be reduced, if they retire before their NPA. If a member's age plus their Scheme membership (both measured in whole years), added up to 85 or more, their benefits were **NOT** reduced. If the rule was NOT satisfied, a full reduction was applied to a member's benefits.

##### When was the 85 Year Rule removed?

On 1 October 2006, the 85-year rule was removed from the Regulations. If you were an active member as at 30 September 2006, some or all of your membership will still be protected by the 85 Year Rule. If you were covered by the 85 Year Rule, it will continue to apply from 1 April 2014. However, if you joined the LGPS on or after 1 October 2006, the 85 Year Rule will NOT apply to your circumstances.

##### Am I protected under the 85 Year Rule?

If you were an active member as at 30 September 2006 and choose to retire before your NPA, having met the 85 Year Rule, you will have some form of protection.

If you were **born on or before 31 March 1956**, all benefits built up to 31 March 2016 will be protected in full. Benefits from 1 April 2016 will be reduced for the period from your date of leaving to your SPA.

If you were **born on or between 1 April 1956 and 31 March 1960**, all benefits built up to 31 March 2008 will be protected in full, **BUT** benefits built up between 1 April 2008 and 31 March 2020 will be reduced on a 'tapered' basis for the period from your date of leaving to age 65 (the normal retirement age under the 2008 Scheme). Any benefits built up after 1 April 2020 will be reduced in **FULL** for the period from your date of leaving to your SPA.

If you were **born on or after 1 April 1960**, all benefits built up to 31 March 2008 will be protected in full, **BUT** benefits built up from 1 April 2008 until your date of leaving will be reduced in **FULL**. For membership from 1 April 2008 to 31 March 2014, the

reduction will be for the period from your date of leaving to your 65th birthday. Your membership from 1 April 2014 will be reduced for the period from your date of leaving to your SPA.

### **How much of a 'reduction' will apply?**

Your benefits will be reduced in accordance with guidance issued by the Government Actuary's Department (GAD). The period from your date of leaving to the appropriate retirement age will be measured in years and days, therefore the percentage reduction will be amended for part years. (Factors as at 08/01/2019).

<b>Years Early</b>	<b>Annual Pension  Reduction</b>	<b>Automatic Lump  Sum Reduction</b>
0	0%	0%
1	5.1%	2.3%
2	9.9%	4.6%
3	14.3%	6.9%
4	18.4%	9.1%
5	22.2%	11.2%
6	25.7%	13.3%
7	29.0%	15.3%
8	32.1%	17.3%
9	35.0%	19.2%
10	37.7%	21.1%
11	41.6%	21.1%
12	44.0%	21.1%
13	46.3%	21.1%

### **Will the 85 Year Rule apply if I retire from age 55?**

With the introduction of the LGPS 2014 from 1 April 2014, you are able to voluntarily retire from age 55 (without your Employer's consent). If you do choose to voluntarily retire between age 55 and 60, any 85 Year Rule protections will **NOT** automatically apply and your benefits will therefore be reduced in **FULL**. However, if you choose to

retire on or after age 60, any 85 Year Rule protections **WILL** apply. The ability to apply the 85 Year Rule to voluntary retirement between age 55 and 60 is at the discretion of your Employer. Your Employer will have a policy on this matter.

**What if I am made redundant or have to retire on the grounds of efficiency?**

If you are made redundant by your Employer or if you have to retire on the grounds of efficiency and you are aged 55 or over, your benefits will come into payment immediately **WITHOUT** reduction.

**Further Information**

This factsheet gives general guidance only. For further information, please contact:

Tel: **01267 224 043** Email: **pensions@carmarthenshire.gov.uk**



## **Appendix 2**

### **Phased Retirement for members of the Teachers' Pensions Scheme**

If you are an unattached-teacher you may want to continue working while drawing some of your accrued pension benefits.

Phased retirement under the TPS allows you to decide how much of your accrued pension benefits to take, up to a maximum of 75% of total benefits. Please note that this is not the same as 75% of the available benefits at each phased retirement event. If you take 75% of your benefits at your first phased retirement, then a subsequent phased retirement will look at the new benefits, ie. those already accrued at the point of the first retirement and the new accrual during the phased retirement and take 75% of those benefits minus the 75% already taken to calculate the 'Additional Pension' to be paid under the second phase of the retirement award. If members have accrued final salary and career average benefits, they don't have to access both sets of benefits when they take phased retirement, i.e. they could choose to only take up pension from their final salary pension or vice versa. They can, of course, choose to take benefits from both, subject to the maximum 75%.

Phased retirement is a practical option, if some simple guidelines are followed.

#### **If an unattached teacher requests phased retirement**

1. Your Pensionable Salary must reduce by at least 20%, compared to their previous six months earnings, for a minimum of 1 year following the date of phased retirement, e.g. this could be because your hours have reduced, or you have taken up a post of lesser responsibility (and hence lesser salary).
2. You may take phased retirement and following a break in service start a new appointment in a support role in an educational establishment, such as a classroom assistant. The new appointment can be with the same or a different employer but must be within six months of the previous job ceasing.
3. You may take phased retirement if you have a break in employment provided it is not more than six months of the previous job ceasing.
4. The application form for phased retirement must be signed by the employer responsible for the new working arrangement and must be made within three months of you taking up employment.
5. Protected members can take a maximum of two phased retirements before finally retiring. Career average members can take up to three phased retirements before finally retiring, but only two before age 60.

However, from April 2015 changes to the Teachers' Pension Scheme will affect some teachers interested in taking phased retirement. It is strongly advised to consult the Teachers' Pensions website for up to date information prior to making a request.

You can obtain an application form from the secure member area, '[My Pension Online \(MPO\)](#)'. As you are required to complete a number of questions and options you must take care in checking that you have correctly completed all the relevant sections. You can assess your options, with respect to converting pension to a lump sum, e.g. using the modellers available on 'My Pension Online'.

You'll be required to confirm:

- your proposed phased retirement date;
- the start date and the new salary that will be paid; and
- details of service and salary since your last service update or from a date requested by Teachers' Pensions.

If there is any delay in providing the information you may not receive your benefits at your retirement / payable date. Applications should be submitted at least three months before the proposed retirement date, but any application received more than six months from the retirement will be rejected. This is because service and salary details can change in the intervening period.

### **Normal Pension Age (NPA) for TPS?**

The NPA for the purposes of the TPS depends when you joined the scheme. If you've only been a member of the TPS Scheme since 1 January 2007 you will have a Normal Pension Age (NPA) of 65.

However, if you were a member of the Teachers' Pension Scheme before 1 January 2007 then your normal pension age will be 60 – provided you haven't had a break in service of more than five years.

If you had a break of more than five years, your NPA remains at 60 for service up to the end of the break in service, but it will be 65 for any future service. In pension terms you'll be classed as a 'member with mixed service'.

Please note changes to NPA effective from 1<sup>st</sup> April 2015: There is no change to members' final salary normal pension age from 1 April 2015. With effect from 1 April 2015 members' career average normal pension age will be equal the state pension age (SPA) or 65 where that is higher. Employees can check their state pension age by visiting the government website at: [www.gov.uk/calculate-state-pension](http://www.gov.uk/calculate-state-pension)

For the latest information please visit [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk)



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

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

**HANDBOOK**

UPDATED 13 OCTOBER 2016

## **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.**

### **Employers' Secretary:**

SARAH MESSENGER  
LGA, Local Government House  
Smith Square  
London SW1P 3HZ

### **Officers' Side Secretary:**

IAN MILLER Hon Secretary ALACE  
[www.alace.org.uk](http://www.alace.org.uk)

Tel: 07515 190917

Email: [alacehonsec@yahoo.co.uk](mailto:alacehonsec@yahoo.co.uk)

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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**.

## **APPENDIX 1**

### **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

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

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

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

## **FUNCTIONS**

7. The functions of the Committee shall be to consider from time to time the salary framework and general conditions of service of the officers named in paragraph 2 hereof and to make recommendations in regard to such scales and conditions to the local authorities by which such officers are employed.

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

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

## **PROCEDURE**

**8. Sub-Committees** The Committee may appoint from their own members such sub-committees as they may consider necessary and with such authorities as they may from

time to time determine. The reports of all sub-committees shall be submitted to the full Committee.

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

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

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

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

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

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

## **FINANCE**

**15.** Each side shall meet its own expenses.

## **APPLICATION**

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

## **ARBITRATION**

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

## **AMENDMENTS TO CONSTITUTION**

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

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

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

## **APPENDIX 2**

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

#### **1. INTRODUCTION**

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

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

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

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

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

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



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

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

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

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

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

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

## 4. THE APPRAISAL CYCLE

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

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

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

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

- Both parties should be well informed and prepared for the interview
- The process should be two-way
- The interview should be free from interruptions, and notes should be taken when necessary
- The parties should concentrate as far as possible on established facts rather than unsubstantiated opinions
- Targets which are realistic and capable of being monitored should be agreed

- Any agreed personal development plans should be implemented within the agreed timescale
- The chief executive should be given a reasonable opportunity to correct any shortfalls in performance
- A date for the next review should be agreed

## **7. EXTERNAL ASSISTANCE**

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

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

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

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

## **8. OTHER MATTERS**

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

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

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

## **APPENDIX 3**

### **CONSIDERATIONS IN DEVELOPING REMUNERATION COMMITTEES – JOINT GUIDANCE**

#### **1. Composition**

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

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

#### **2. Remit**

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

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

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

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

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

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

### **3. Process**

3.1 The Committee should meet at least annually to:

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

### **4. Recommendations**

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

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

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

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

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

## **5. Confidentiality and Protocols**

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

## **APPENDIX 4**

### **JNC AGREED PROTOCOLS FOR JOINT SECRETARIAL CONCILIATION**

#### **1. General principles**

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

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

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

- **Informality**

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

- **No pre-conditions**

Neither side should seek to impose any pre-conditions on the process, unless by joint agreement

- **Without prejudice**

This is probably the most important principle. Neither party will have the confidence to float suggestions for resolution if they are likely to prejudice their position later on. The parties must therefore mutually respect this principle and guarantee that they will not use anything discussed in conciliation at a later stage or publicise it

- **No publicity**

These principles could be undermined if either of the parties used the media to publicise its case. Accordingly there should not be any publicity unless the parties agree to the contrary

## **2. Process for the conciliation meeting**

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

2.2 It is for the individual parties to decide who will represent them at the conciliation meeting. For the council the Joint Secretaries believe that there should be a minimum of a politician with sufficient authority to make decisions and / or provide policy direction (this would probably need to be the leader of the council) together with a technical adviser (who may be an officer of the council or other appropriate person). For ALACE it would normally be the chief executive and ALACE adviser. This is not intended to constrain the number of people participating in the process but, if the number of representatives from either side is large, it would be helpful to restrict the number during any face-to-face discussions (see below).

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

- The Employers’ Secretary (or their representative) will probably start with a briefing from council representatives while the Staff Side Secretary (or their representative) will probably start with a briefing from their member
- The Joint Secretaries are likely to have their own private discussions at various points during the proceedings



- The Joint Secretaries together may ask to have discussions with either or both of the respective parties
- The Joint Secretaries may judge that it would be helpful for them to have discussions with the two parties together. In this event, if either party has brought a large team, it would be helpful if only a few representatives were present during such joint discussions

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

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

## **APPENDIX 5**

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

#### **CONTENTS OF MODEL PROCEDURES & GUIDANCE**

**England      Wales**

Independent Person (Wales).

Conducting the initial investigation, treatment of witness evidence, conflicts of interest, maintaining the fairness of the procedure, other possible actions, power to agree financial settlements, access to appropriate professional, independent or medical advice, evidence of performance issues.

- |    |  |    |    |
|----|--|----|----|
| 6. | <b>Appointment of an Independent Investigator (England) or Designated Independent Person (Wales)</b> | 44 | 69 |
|----|--|----|----|

Power to appoint the Designated Independent Person, agreeing terms of reference and remuneration.

- |    |   |    |    |
|----|---|----|----|
| 7. | <b>The Independent (Person) investigation</b> | 45 | 70 |
|----|---|----|----|

Resources, working arrangements, powers to extend or end suspensions, confidential contact at authority.

- |    |   |    |    |
|----|---|----|----|
| 8. | <b>Receipt and consideration of the Independent Investigator / Designated Independent Person's Report by the Investigating and Disciplinary Committee</b> | 47 | 72 |
|----|---|----|----|

The report of the Independent Investigator / Designated Independent Person, consideration of new material evidence, recommendations by the Independent Investigator / Designated Independent Person, decision by the Investigating and Disciplinary Committee.

- |    |                                  |    |    |
|----|----------------------------------|----|----|
| 9. | <b>Action short of dismissal</b> | 48 | 73 |
|----|----------------------------------|----|----|

Action short of dismissal to be taken by the Investigating and Disciplinary Committee.

- |     |   |    |    |
|-----|---|----|----|
| 10. | <b>Where the Investigating and Disciplinary Committee propose dismissal</b> | 49 | 73 |
|-----|---|----|----|

- |     |                |    |    |
|-----|----------------|----|----|
| 11. | <b>Appeals</b> | 52 | 74 |
|-----|----------------|----|----|

Appeals against proposals to dismiss to the council, appeals against action short of dismissal to Appeals Committee.



## 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. 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.

### ***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 – (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. 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.

## **2.2 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 – (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. *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.

### **3.3 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.



#### ***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.

### **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 – (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

## **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



## **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 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 - (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 – (guidance)***

### **7.1 Resources**

7.1.1 The amount of time required to be spent on the investigation will depend on the case.

## ***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.

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

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

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## **7.2 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**).

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## **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

## **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

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 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 – (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. 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.

9.2 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.

## **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 of the chief executive and the proper officer will report to the council if required, etc.



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 – (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. 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.

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.

### ***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.

## **B. THE MODEL DISCIPLINARY PROCEDURE AND GUIDANCE - WALES**

### ***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 – (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

### ***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.

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 or 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 – (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. 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.

3.2 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

## **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.

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 – (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.

## **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.

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 – (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**

## **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.

(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 - (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 – (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

## **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

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:

#### ***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
- 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 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 – (guidance)**

### **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.

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 – (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 – (guidance)**

### **11.1 Appeals against dismissal**

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

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

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

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

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

## Appendix 5a

### ENGLAND ONLY: Disciplinary Procedure for Local Authority Chief Executives

#### ***Investigating and disciplinary committee convened (IDC)***

This should be a standing committee of the Council

#### **Option 1.**

**No further action.** This should be immediately communicated to the Chief Executive and the complainant notified if necessary.

#### ***The IDC considers the allegation[s]***

The Chief Executive should be asked for comments. In the light of the Chief Executive's comments and having carefully considered the complaint / allegation the IDC may decide on any of the following actions

#### **Option 3**

##### ***Case to answer / further investigation required***

If following consideration of the Chief Executive's response the IDC believes that the case cannot be dismissed and requires further investigation and that, if the allegations were to be upheld they would result in a sanction greater than an informal warning, the IDC should appoint an Independent Investigator, II, and consider suspension.

#### **Option 2.**

##### ***Informal un-recorded oral warning***

If the matter is not serious but there is some minor fault or error on the part of the Chief Executive then the IDC can issue an informal un-recorded warning

oral warning.

#### **The report of the II**

Irrespective of the manner in which the II investigates the case on completion of their investigation the II must prepare a report with recommendations and rationale for submission to the IDC.

#### ***Suspension***



The chair of the IDC should have delegated authority to suspend. Suspension should be reviewed after a period of two months and only extended following consultation with the II and consideration of any objections / representations from the Chief Executive

### **Hearing the case**

Alternatively the II may hear the case.

If the II hears the case both parties will have the usual opportunities to present evidence and cross examine witnesses etc. At the hearing both parties are afforded the opportunity to be represented by an individual of their choice, although representation for the Chief Executive should be obtained at his / her expense. Following the hearing the II will produce a report for consideration by the IDC.

### **Evidence collection and investigation**

It may be a process of evidence gathering, hearing submissions etc. which will lead to the formulation of a recommendation for consideration by the IDC.

### **Role of the II**

In practice it should be for the II to determine the process they will follow. This will be dependent upon the nature of the allegations and availability of information. However, the JNC's preferred process is 'Evidence Collection and Investigation'.

### **Appointment of the Independent Investigator (II)**

#### ***An Independent Investigator is appointed-***

A list of suitably qualified individuals should be maintained by the Joint Secretaries. This could operate as a taxi rank system or the authority could be given three names from which the Chief Executive could pick. Only genuine conflicts of interest etc. should be acceptable reasons for rejection by the Chief Executive. If the Chief Executive will not agree within 14 days the Council should be free to appoint their choice from the list.

### **Consideration and Decision of the IDC**

If the II has held a full hearing the IDC will limit their hearing to a consideration of the II's report. They may decide to call witnesses for clarification. The Chief Executive and II should attend this meeting and both parties afforded the opportunity to summarise their case. The hearing should be conducted in accordance with the ACAS code of practice.

If the II did not hear the case then the IDC should now afford the Chief Executive the opportunity for a hearing to allow the postholder to challenge the recommendations of the II, call witnesses etc. The same rule regarding costs of representation would apply in this context

### **Report to full Council**

Following consideration by the IP a report should be presented to Council. This report should comprise the recommendation of the IDC, the II's report and any comments on the recommendation for dismissal from the IP. In the light of this information Council should consider the recommendation to dismiss. The Chief Executive should be provided with a right of appeal against the decision and allowed to attend this meeting and address Council. The II may also be invited to attend to provide clarification if required. Following this consideration Council should either confirm or reject the recommendation to dismiss. It may at this stage impose a lesser sanction. This stage in the process constitutes the Chief Executive's final right of appeal.

### **Composition, role and process of the IP**

The IP should be a committee of the Council, appointed under section 102(4) of the Local Government Act 1972, and should comprise only independent persons (at least two) appointed under S28(7) of the Localism Act 2011. Appropriate training should be provided to these Independent members. Both parties should be present or represented\* at the meeting. The IP should receive any oral representations from the 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 IP should review the decision and prepare a report for Council. This report should contain clear rationale if they disagree with the recommendation to dismiss.

\* the IDC should nominate a person to attend on its behalf

### **Recommendation to dismiss**

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

### **Action short of dismissal**

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

### **No case to answer**

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

### **Recommendations of the IDC**

Following either consideration of the report of the II or a full hearing of the case the IDC will essentially have three options

- 1. No case to answer**
- 2. Disciplinary action short of dismissal**
- 3. Dismissal**

## WALES ONLY: Disciplinary Procedure for Local Authority Chief Executives



DISMISSAL

COUNCIL

Proposal to Dismiss

Range of actions that can be taken by Investigating & Disciplinary Committee on the outcome of report of the DIP

DIP investigation and report

Appoint Independent Person (DIP)

Case to answer

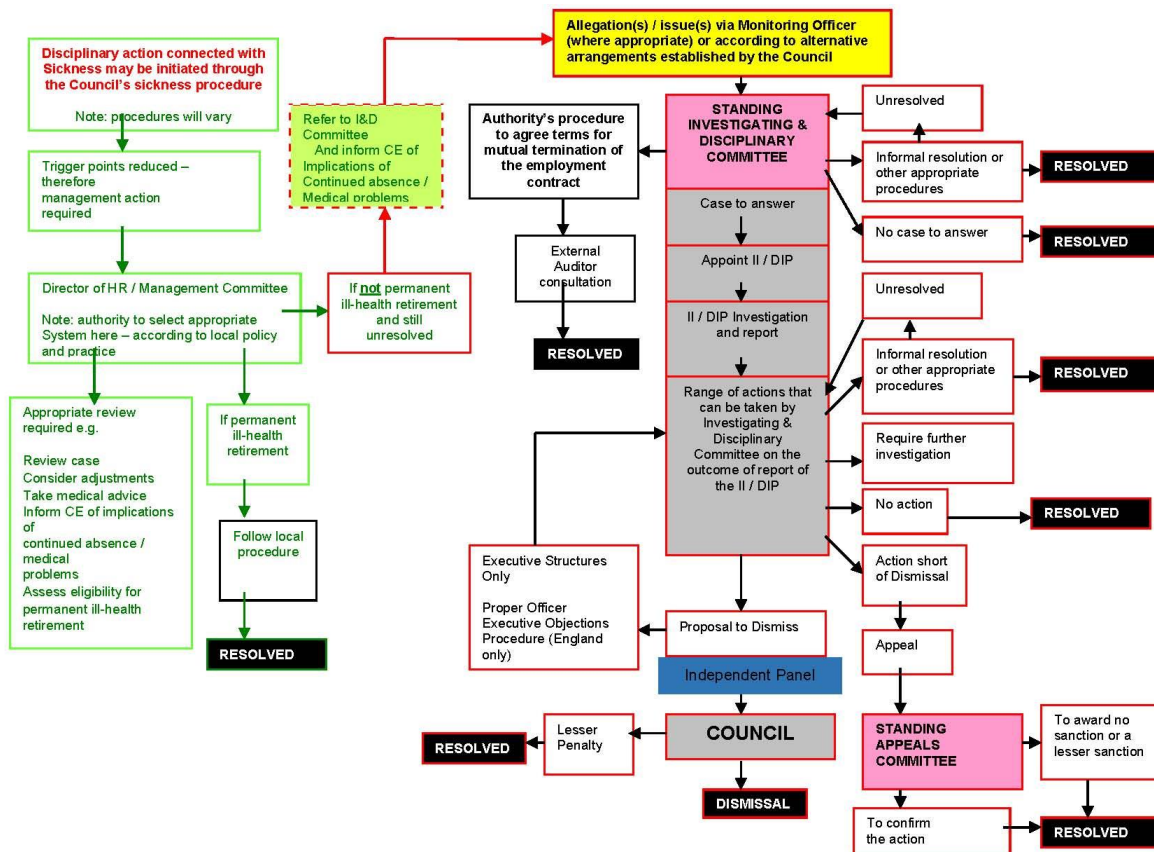
### **STANDING INVESTIGATING & DISCIPLINARY COMMITTEE**

Allegation(s) / issue(s) via Monitoring Officer (where appropriate) or according to alternative arrangements established by the Council



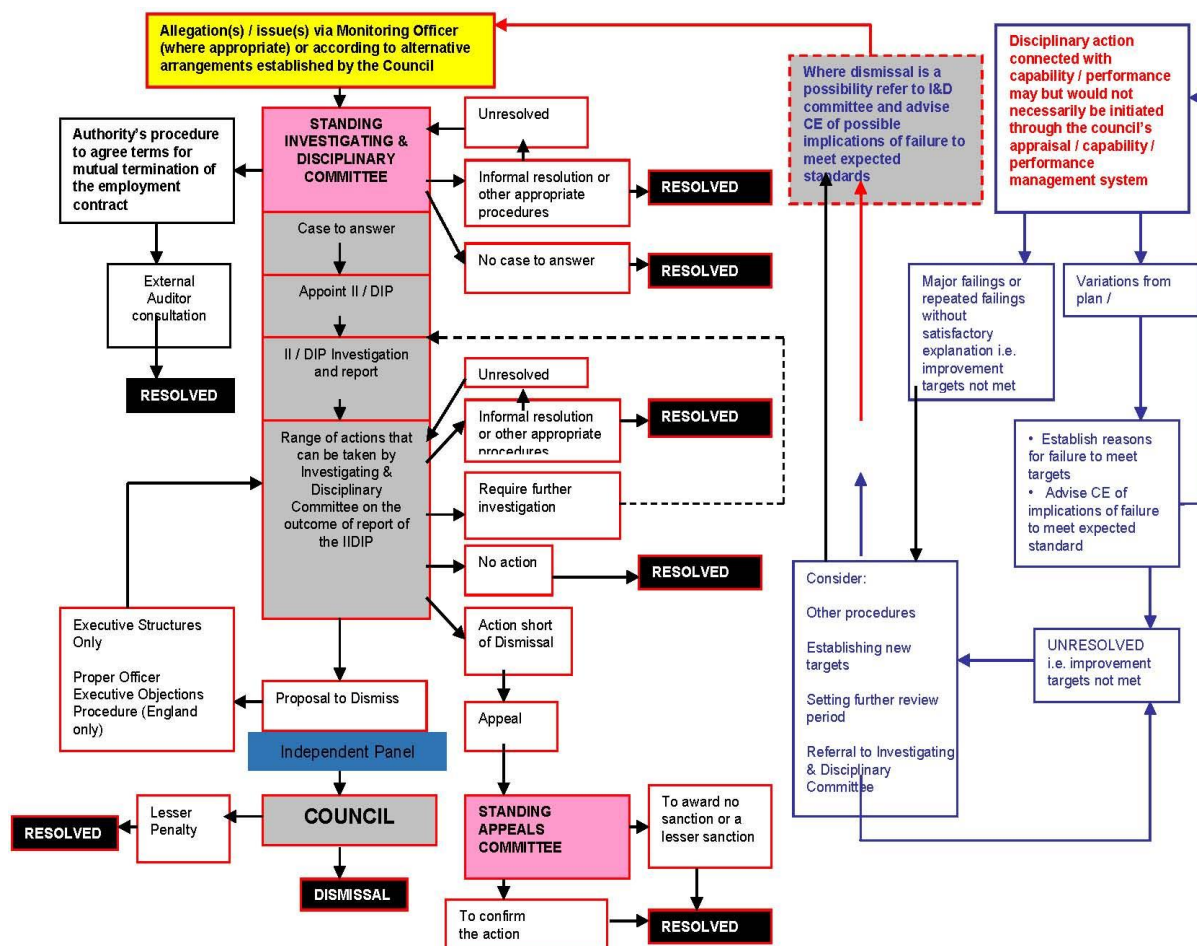
## Outline revised Model Disciplinary Procedure for Local Authority Chief Executives Appendix 5b

### Example of Relationship with the Council's Sickness Procedure



## Appendix 5c

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



## Appendix 5d

### APPENDIX 5dAppendix

#### ACTION

#### REASON FOR TERMINATION

	Misconduct	Capability - Performance	Capability – Ill health  (Long term or, frequent intermittent absence)	Some other Substantial Reason	Capability – Permanent Health
Dismissal	Yes	Yes	Yes	Yes	Maybe –  could be termina
England only: Independent Panel Required	Yes	Yes	Yes	Yes	No
Wales only: Designated Independent Person					

## **APPENDIX 6**

### **(Wales only)**

#### **1. DESIGNATED INDEPENDENT PERSONS**

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

#### **2. THE ROLE**

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

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

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

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

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

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

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

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

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

### **3. GUIDANCE**

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

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

#### **The Degree of Formality**

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

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

3.5 **Paragraph 7.2.3** expresses the view that the JNC believes that the DIP “should operate on the basis of a combination of independent investigation using his / her powers to access information, and a formal hearing, at which details of the allegations and supporting evidence are stated by the authority’s representative and where the chief executive is given the opportunity to respond.” This may well depend on the nature of the case given the wide scope of the Standing Orders Regulations to apply to different circumstances of potential discipline or dismissal. It may be, for example, that in some cases a more inquisitorial investigation may be appropriate rather than an adversarial challenge of allegations, eg, considering the evidence for and implications of long-term ill health.

### **The Degree of Confidentiality**

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

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



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

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

### **Access to the DIP’s Report**

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

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

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

### **Costs**

3.13 DIPs have no power to award costs. Section 13A of the Employment Tribunals Act 1996 gave power for rules to be made for the award of costs in such Tribunals, but DIPs



have no equivalent power. They will no doubt bear in mind the impact that any imbalance in the representational resources available to the person being investigated and to the employing authority may have on the conduct and outcome of any investigation.

## **Indemnity**

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

## APPENDIX 7

### Model Grievance Procedures

#### 1. Introduction

1.1 These procedures covers the following circumstances:

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

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

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

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

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

2.2 Under the ACAS code the internal procedure to be followed by an aggrieved employee should comprise at least two formal stages. After the initial filtering and any attempt at informal resolution, if the matter remains unresolved, then a panel of elected members

(the Grievance Committee) will hear the grievance on behalf of the employer (Formal Stage 1). It is here that the power exists to resolve a grievance against the chief executive. The panel can either **uphold** or **dismiss** the grievance. If the outcome of the Stage 1 investigation is that the grievance is not upheld, then the complainant has the right to appeal (Formal Stage 2) to a panel of elected members (the Appeal Panel).

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

- 1.4 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

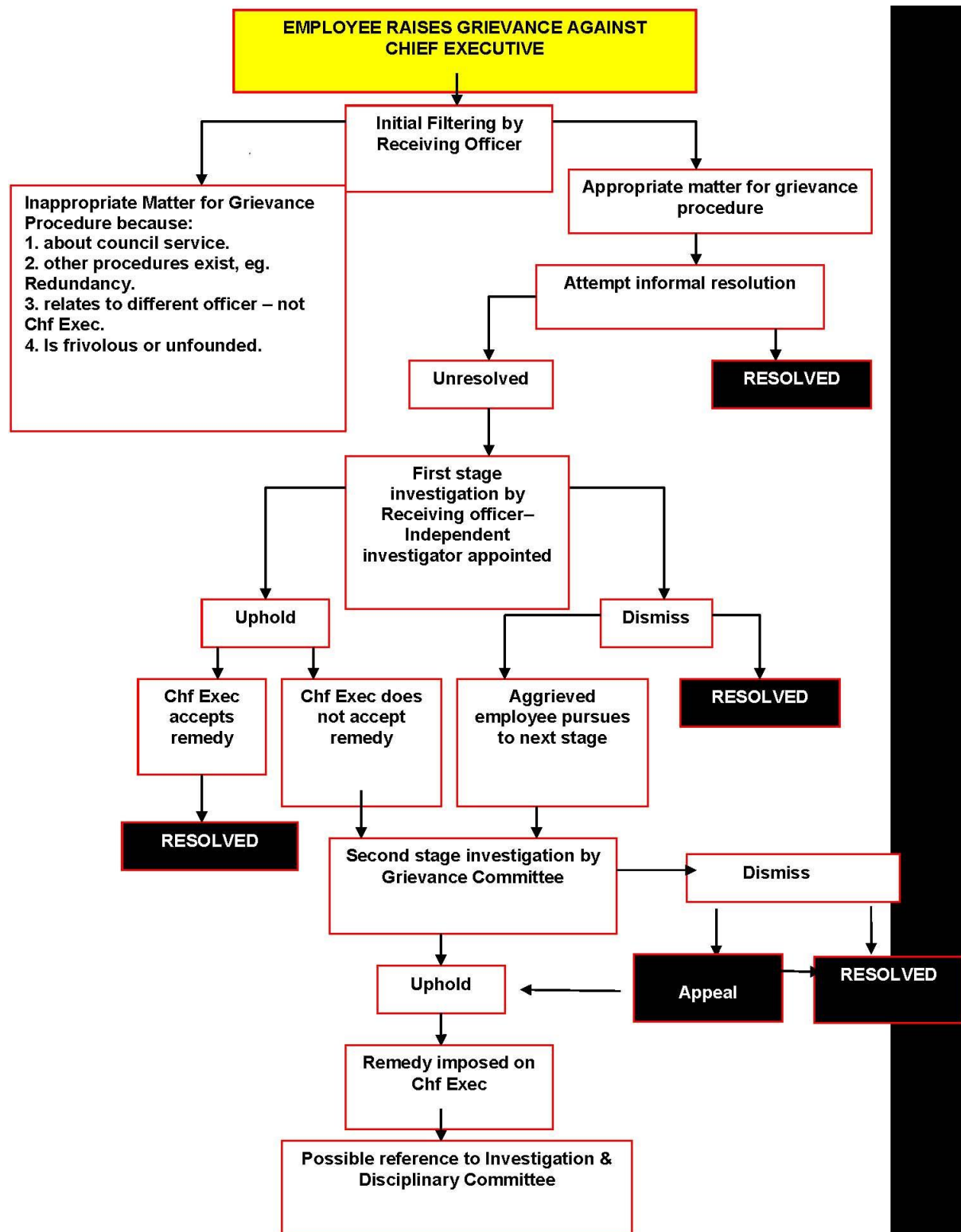
refer a matter about the conduct or behaviour of an elected member to the council's Standards Committee or other appropriate arrangements.

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.





# **JOINT NEGOTIATING COMMITTEE *for* LOCAL AUTHORITY CHIEF OFFICERS**

## **CONDITIONS OF SERVICE HANDBOOK**

**UPDATED 8 August 2017**

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**The Joint Negotiating Committee (JNC) for Chief Officers of Local Authorities is the national negotiating body for the pay and conditions of service of chief officers 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 representatives of GMB and UNISON.**

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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.

## **PART 1 - CONSTITUTION**

### **TITLE**

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

### **SCOPE**

2 The Committee shall have within their scope any officer of a local authority in England and Wales who

a is a chief officer designated by the employing authority as the administrative and executive head

*either i of a separate department*

*or ii of a particular function or service*

which in either case is regarded by the authority as important in relation to the total activities of the authority; or

b is designated by the authority as a recognised deputy to any chief officer covered by (a) above including an officer of deputy status but whose post may carry a different title.

### **MEMBERSHIP**

3 The Committee shall consist of 36 members, appointed as follows:-

Representing local authorities:

Local Government Association 9

Welsh Local Government Association 1

Representing officers:

GMB	23
Unison	3

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 secure the largest possible measure of joint action in respect of the salaries and service conditions of officers within the scope of the Committee; and to seek to resolve any differences between a local authority and its officers which may be referred to the Committee, in accordance with procedures to be determined by the committee from time to time.

## **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. When the Chair is a member of the Authorities' Side, the Vice-Chair shall be appointed from the Officers' Side and vice versa. The Chair shall be held in alternate years by a member of the Authorities' Side and a member of the Officers' Side. 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 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** The Committee shall appoint joint secretaries and a treasurer.

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** 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 10, consisting of 4 representatives of local authorities and 6 of the officers. 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** The expenses of the Committee, excluding any necessary travelling or subsistence expenses incurred by the members, shall be shared equally by the two sides.

## **ARBITRATION**

**16** In the event of a dispute over terms and conditions of employment arising between the two sides of the Committee on any matter of general application to staff or of application to particular classes of staff, the dispute shall, at the request of either side, be reported to the Advisory, Conciliation and Arbitration Service 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**

**17** 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 Sides.



## **PART 2 – CONDITIONS OF SERVICE**

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

A chief officer shall enjoy terms and conditions in other respects not less favourable than those accorded to other employees of the local authority. Where terms and conditions are not specified locally, 'Green Book' provisions shall apply. Such terms and conditions may include:

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

### **2. QUESTIONS OF INTERPRETATION**

Any questions concerning the interpretation of the paragraphs of this booklet shall be referred to the Joint Secretaries who if necessary, may agree to refer it to the Joint Negotiating Committee for determination.

### **3. PERIODS OF NOTICE TO TERMINATE EMPLOYMENT**

The period of notice on either side will normally be three months, but this can be changed by mutual agreement.

### **4. ANNUAL LEAVE**

The chief officer 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.

### **5. HONORARIUM PAYMENTS**

A local authority may consider granting an honorarium (of an amount dependent upon the circumstances of each case) to an officer within purview of this Committee who performs duties outside the scope of his/her post over an extended period.

### **6. RELOCATION EXPENSES**

In the case of officers being relocated it is the practice of some authorities to contribute towards the approved costs of removal

expenses and of other incidental expenses reasonably attributable to the removal; it would be in the best interests of local government and facilitate movement of officers if this practice were more widely followed.

## **7. SETTING REMUNERATION LEVELS**

7.1 The Localism Act 2011 requires local authorities 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 local authorities to publish the differential between the taxable benefits of senior managers and the median taxable earnings figure for the local authority'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.

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

7.3 One option is for a local authority to establish a remuneration committee. 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 officials.

7.4 The issues that local authorities will need to consider if they set up such a committee are set out at **Appendix 3** of the JNC Conditions of Service Handbook for local authority Chief Executives.

## **8. PERFORMANCE APPRAISAL**

8.1 Chief officers' responsibilities and accountabilities should be set out in writing at the appointment stage. Where this has not been done at the appointment stage it should be agreed with the individual officer concerned prior to the implementation of the performance appraisal scheme. Subsequently, there should be an annual process of performance appraisal linked to those responsibilities and accountabilities.

8.2 The performance appraisal process is separate from any scheme relating to either pay or performance related pay.

8.3 The performance appraisal process should involve the setting of both general and specific objectives for the year ahead and the review of performance in achieving previously set objectives. The focus of the process should be on clarifying what the chief officer will be expected to achieve and on identifying any continuing personal development needs to maintain a high level of performance.

8.4 The authority will provide training for all parties involved in the process, including elected members if involved.

8.5 The setting of objectives should be by consensus between the chief officer and his/her line manager, and/or the chief executive, and if desired an appropriate elected member. The result of the performance appraisal process will be to identify agreed objectives that are relevant and challenging but achievable and realistic in the light of available resources and time. (Joint Secretaries guidance on appraisal of chief officers is set out in full at **Annex 1**)

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

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

a will not divulge any information to any third party which is confidential to the authority.

b will not, without the consent of the authority, which will not unreasonably be withheld, within a period of 12 months take up employment with or provide services for reward to any body:

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

ii which is likely to benefit from commercially sensitive information which is known to the chief officer by virtue of his/her past employment by the authority.

9.2 These provisions would not apply if the termination of employment with the local authority arose as the result of redundancy or the externalisation of work and consequent transfer to a new employer.

## **10. SALARY**

The salary paid to a chief officer 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 11** or the authority expressly agrees that they shall be

retained by the officer, shall be paid by the officer into the local authority's accounts.

## **11. RETURNING OFFICER FEES**

The chief officer 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 officer's contract referring to alternative arrangements.

## **12. OFFICIAL CONDUCT**

12.1 The public is entitled to demand of a local government officer conduct of the highest standard.

12.2 An officer's off-duty hours are his/her personal concern but he/she should not subordinate his/her duty to his/her private interests nor put himself/herself in a position where his/her duty and his/her private interests conflict, or where public confidence in the conduct of the authority's business would be weakened.

12.3 Officers within purview of this Committee shall devote their whole-time service to the work of the local authority and shall not engage in any other business or take up any other additional appointment without the express consent of the local authority.

12.4 An officer shall not be required to advise any political group of the local authority, either as to the work of the group or as to the work of the local authority, neither shall he/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 any officer and which includes adequate safeguards to preserve the political neutrality of the officer in relation to the affairs of the local authority.

12.5 No officer shall communicate to the public the proceedings of any committee meeting nor the contents of any document relating to the authority which in either case is regarded by the authority as confidential unless required by law or expressly authorised to do so.

12.6 If it comes to the knowledge of an officer that a contract in which he/she has any pecuniary interest, whether direct or indirect (not being a contract to which he/she is himself/herself a party), has been or is proposed to be, entered into by the authority, he/she shall, as soon as practicable, given notice in writing to the chief executive of the authority of the fact that he/she is interested therein. (Attention is

drawn to the provisions of the Local Government Act 1972 Section 117).

12.7 Information concerning an officer's private affairs shall not be supplied to any person unless the consent of such officer is first obtained.

## **PART 3 - DISCIPLINE, CAPABILITY AND REDUNDANCY**

### **1. SPECIFIC STATUTORY OFFICERS**

1.1 Where disciplinary action against the Monitoring Officer or s151 Officer or, in Wales, the Head of Democratic Services is contemplated, the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) in England, and the Local Authorities Standing Orders (Wales) Regulations 2006 in Wales, provide a degree of protection for these officers against unwarranted political interference in their statutory role within local authorities.

1.2 (**England**) Paragraph 13 and 13A and Appendix 5A of the Conditions of Service Handbook of the Joint Negotiating Committee for Local Authority Chief Executives, which give effect to these statutory requirements, can be used as a reference guide in circumstances where disciplinary action against the Monitoring Officer or s151 Officer is contemplated.

1.3 (**Wales**) Paragraph 13 and 13B and Appendix 5B of the Conditions of Service Handbook of the Joint Negotiating Committee for Local Authority Chief Executives, which give effect to these statutory requirements, can be used as a reference guide in circumstances where disciplinary action against the Head of Democratic Services is contemplated.

### **2. CHIEF OFFICERS OTHER THAN SPECIFIC STATUTORY OFFICERS**

2.1 The size and structure of local authorities varies greatly and it is therefore difficult to set out single disciplinary and capability procedures which would fit all authorities. However, authorities will have local procedures to deal with such issues.

2.2 In general, informal conciliation is to be preferred to formal disciplinary and capability procedures if it can bring about a mutually agreed solution to the problems that have arisen. Such solutions should make it clear what specific changes in behaviour and/or performance are expected and within what timescales. However, provision is required to undertake more formal action where necessary.

2.3 The principles of natural justice and good management practice must govern the conduct of any proceedings against a chief officer on the grounds of either alleged misconduct (i.e. 'discipline') or an alleged inability to carry out their role (i.e. 'capability'). Authorities should have full regard to the principles and standards set out in the ACAS Code of Practice on Disciplinary Procedures.



2.4 A particular consideration for Chief Officers is that the procedures must take account of an officer's position in the hierarchy when determining who conducts investigations, undertakes disciplinary/capability hearings taking any appropriate action and who hears appeals. Depending on the structure of the authority and the circumstances of the case these functions should normally be undertaken by officers as appropriate but in some cases may require a committee of members to be involved in hearings or appeals.

2.5 Where the chief officer's continuing presence at work compromises an investigation or impairs the efficient exercise of the local authority's functions, the chief officer may (subject to whatever consultation or approval may be required under the authority's standing orders) be suspended from duty. The Council, or appropriate committee or senior officer, acting under delegated powers, may carry out such suspension on full pay. Written notice stating the reasons for any such suspension shall be given at the earliest opportunity possible.

2.6 Suspension protocols regarding communication and matters such as annual leave and sickness should be agreed. The necessity for the chief officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided.

2.7 In England, where an authority operates a mayor or leader cabinet executive system and as a result of disciplinary proceedings there is a recommendation to dismiss, they should check whether the executive objections procedure set out in schedule 1, part I, paragraph 6 and part II, paragraph 6 of the Local Authorities (Standing Orders) (England) Regulations 2001 applies, and if so ensure it is followed before the chief officer is dismissed.

2.8 Where the chief officer in question is a Director of Public Health in England then the authority should ensure that it complies with section 73A of the National Health Act 2006, which provides that before terminating the appointment of its Director of Public Health, a local authority must consult the Secretary of State for Health. Further information on this is available in the Department of Health's guidance, Directors of Public Health in Local Government: Roles, responsibilities and context.

2.9 The Joint Secretaries (or their representatives) are available to act in an impartial conciliation role, whether formal or informal if required to do so by the local parties.

### **3. REDUNDANCY**

3.1 Employing authorities should consult with any chief officer affected at the earliest possible stage when there is a suggestion that the chief officer's post might be abolished or proposed for abolition.



3.2 If after such consultation a proposal is formulated to abolish the chief officer's post, and that is part of a proposal to dismiss 20 or more employees from one establishment within 90 days the procedure of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, requiring consultation with trade unions, should be followed, the required statutory information being sent to the chief officer and to each independent trade union recognised by the employers for collective bargaining purposes for the chief officer. Where the provisions of the Act do not apply in any event a period of not less than twenty-eight days should be allowed for the individual consultation process. The chief officer and a trade union representative should also be afforded an opportunity of making oral representations to the Committee or Council meeting concerned before a final decision is made.

3.3 If following such consultations the authority decide that the post must nevertheless be abolished, the officer should be offered any suitable alternative employment that may be available or which may become available in consequence of the re-organisation giving rise to the abolition of the chief officer's post.

3.4 The authority should also bear in mind the possible application of discretionary powers of premature retirement, and permissible enhancement of benefits or redundancy payments, and the possibilities of providing an alternative post or of extending the period of notice to assist the chief officer in finding other employment.

3.5 Where the chief officer in question is a Director of Public Health in England then the authority should ensure that it complies with section 73A of the National Health Act 2006, which provides that before terminating the appointment of its Director of Public Health, a local authority must consult the Secretary of State for Health. Further information on this is available in the Department of Health's guidance, Directors of Public Health in Local Government: Roles, responsibilities and context.

## **ANNEX 1**

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

#### **1. INTRODUCTION**

1.1 This guidance is intended for use by senior officers, elected members and the chief executive when agreeing a process for appraising the performance of the chief officer. The focus of this process should be on clarifying what the chief officer 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 officer'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 a chief officer lies primarily with their line manager and/or chief executive. It is a contractual obligation on the part of both the chief officer and the employing local authority 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 include any input from elected members 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 officer is employed by the local authority as a whole, not by the controlling group, and is therefore required to serve all of the local authority.

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

- To identify and clarify the key objectives, priorities and targets of the local authority and appropriate timescales for their achievement over the next (e.g. twelve) months
- Agree what the chief officer should personally achieve over the next (e.g. twelve) months and identify required standards of performance, in order to help deliver the local authority'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 officer will have strengths and weaknesses and the parties should identify the professional development necessary to equip the chief officer with the requisite skills to meet the local authority's objectives. The parties should be proactive and anticipate future developmental needs in the context of the local authority'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 the chief officer and the chief executive. It should not be assumed that it is only the chief officer who may need to adjust his / her approach to the working relationship

3.1 Appraisal should be set in the context of the local authority'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 local authority as a whole.

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

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 officer should be given a reasonable opportunity to correct any shortfalls in performance
- A date for the next review should be agreed

## **7. OTHER MATTERS**

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.



## **Appendix L – Written Statement of Particulars**

Dear Colleague

Employees who come within the responsibility of a school governing body are referred to in this document as "school employees". This term does not include catering and cleaning staff working in schools who are directly employed by the Council.

### **PLACE OF WORK**

Your designated workplace for this post is confirmed in form ToE1.

The Authority reserves the right to change your place of work anywhere within the Council's area in accordance with the needs of the service without any additional paid travelling time on giving appropriate prior notice of such requirement.

If you are employed as a peripatetic worker you have no fixed place of work. The Council's address is County Hall, Carmarthen SA31 1JP.

Carmarthenshire County Council's Domiciliary Care Service is a countywide service and you are employed to work with all our people covering all areas of the county as required.

### **School employees**

The Governors reserve the right to require you to work on any part of the current or future school site, including additional school sites under Collaboration or Federation arrangements in accordance with the needs of the service. This will be without any additional paid travelling time on giving appropriate prior notice of such requirement.

### **EMPLOYMENT STATUS**

Your employment status is confirmed in form ToE1.

If you are employed on a temporary or fixed term basis this will be confirmed in form ToE1. The appointment will terminate on the date specified in form ToE1 for the reason specified in form ToE1 or when the post holder returns to duty, whichever occurs first.

The appointment may, however, be terminated by either side sooner provided appropriate notice is given.

### **Job Share**

The Authority agrees to employ you in a job-share capacity (provided it is able to recruit a job-share partner for your role should a vacancy arise).

Should the Authority not be able to recruit a suitably qualified person to fill the part vacant job share post and if you are unwilling or unable to work full-time, the Authority reserves the right to terminate your employment under the Scheme by the giving of the appropriate period of notice, as specified in the Employment Rights Act 1996. Such action would only be taken after consultation with you and your Trade Union Representative, if you so wished, regarding the various options available at that time.

You have a right of appeal against the termination of a temporary or fixed term contract. The appeal should be made in writing where possible, stating your grounds of appeal and to be received at least 7 days before the date of termination. The appeal should be addressed to the Assistant Chief Executive (People Management), Building 4 St David's Park, Job's Well Road, Carmarthen SA31 3HB.

Appeals for school employees should be addressed to the Chair of the governing body.

## **CONTINUOUS EMPLOYMENT**

Your continuous Local Government service start date for the purpose of certain statutory employment rights (i.e. sickness allowances, annual leave entitlement) is as specified in form ToE1

This will include any previous continuous service with any organisation covered by the Redundancy Payments (Continuity of Employment in Local Government etc.) (Modification) Order 1999, or any subsequent amending legislation, which covers local authorities and related bodies.

## **PROBATION PERIOD** (Excludes school employees)

If you are joining the Council's service, the appointment is subject to a probationary period of a minimum of 6 months. For newly qualified Social Workers and some childcare workers this will be a minimum of 12 months. During this probationary period your performance will be carefully monitored and your suitability for the post assessed. Your continued employment will be subject to satisfactory reports. If at any time during the probationary period adverse reports are received the Council may terminate your contract by giving the period of notice to which you are entitled. Please refer to the Management of Probationary Employees Policy, (available on request) for further information.



## **TERMS AND CONDITIONS OF EMPLOYMENT**

Your terms and conditions of employment will be in accordance with collective agreements negotiated and amended from time to time by the negotiating/governing body as specified in form ToE1 and should be read in conjunction with the appropriate paragraph below.

### **National Joint Council for Local Government Services (NJCCCC)**

Your terms and conditions of employment will be in accordance with collective agreements negotiated and amended from time to time by the National Joint Council for Local Government Services set out in the National Agreement on Pay and Conditions of Service, the negotiating machinery of Joint Council for Wales and the Council's Standing Orders, rules, decisions and local collective agreements reached with trade unions recognised by the Council. Copies of these documents are available for inspection from your Chief Officer or the Chief Executive's People Management Division, Building. 4, St David's Park, Job's Well Road, Carmarthen, SA31 3HB or on the Council's intranet site.

### **Soulbury Committee (SOULB-SC)**

Your terms and conditions of employment will be in accordance with collective agreements negotiated and amended from time to time by the Soulbury Committee set out in the report of the Soulbury Committee on the Salary Scales and Service Conditions of Educational Improvement Professionals, Educational Psychologists and Young People's/Community Service Managers.

Additional terms and conditions of employment will be in accordance with collective agreements negotiated and amended from time to time by the National Joint Council for Local Government Services set out in the National Agreement on Pay and Conditions of Service, the negotiating machinery of Joint Council for Wales and the Council's Standing Orders, rules, decisions and local collective agreements reached with trade unions recognised by the Council. Copies of these documents are available for inspection from your Chief Officer or the Chief Executive's People Management Division, Building 4, St David's Park, Job's Well Road, Carmarthen SA31 3HB or on the Council's Intranet site.

### **J.N.C. for Chief Officers of Local Authorities (CO-SC)**

Your conditions of service will be in accordance with the J.N.C. for Chief Officers of Local Authorities, as supplemented by local decisions.

## **IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006**

Your employment is subject to the restrictions placed on your time to remain in the UK and the statutory requirements to comply with the Immigration, Asylum and Nationality Act 2006 and the UK Borders Agency Codes of Practice. Your continued employment will therefore be reviewed and dependant on you obtaining future and valid permissions to remain in the UK and to undertake the type of work currently offered.

### **PAY**

Your pay frequency and pay group are specified in form ToE1 and should be read in conjunction with the appropriate paragraphs below.

#### **Four weekly paid employees (Pay Groups 9, 16)**

Your pay will be paid four-weekly in arrears by bank credit to a bank account of your choice.

#### **Monthly paid employees (Pay Group 11)**

Your salary will be paid in arrears on the 27<sup>th</sup> of each month for January to November inclusive (or the nearest working day if 27<sup>th</sup> falls on a weekend or bank holiday) for the month of December the pay date is the 24<sup>th</sup> or the last banking day prior to 25<sup>th</sup> December. Payment is by bank credit to a bank account of your choice.

#### **Monthly paid employees (Pay Group 15)**

Your salary will be paid in arrears on the last working day of each month. However, if the last working day falls on a Monday or Tuesday, you will be paid on the previous Friday. Payment is by bank credit to a bank account of your choice.

Your starting salary per annum and salary scale/grade is as specified within form ToE1. Where appropriate your salary will rise within the grade by annual increments up to the maximum point of the grade. Increments will be paid on 1<sup>st</sup> April every year unless you commenced duties between 2<sup>nd</sup> October and 31<sup>st</sup> March in any year, in which you will receive your first salary increment 6 months from the date on which you commenced duties.

#### **Tutors**

Your rate of pay per hour for courses is as specified in form ToE1.

#### **Chief Officers**

Progression through the incremental scale of the relevant grade is subject to satisfactory performance assessed on an annual basis. The Council does not pay bonus or performance related pay.

### **Overpayments**

Should you be overpaid, as a result of a mistake in fact, the full amount will be deducted from subsequent salary payment(s) or any other payment due to you from the Council. The Employee Services Section is authorised to deduct 10% of your gross monthly salary to recover the overpayment and will continue until the full amount has been retrieved. Should you wish to make repayments in larger denominations please contact the Employee Services Section

In the event an overpayment has not been fully recovered before the time of your final salary payment the Employee Services Section is authorised to recover the full amount. If for any reason, the overpayment has not been recovered in full, the matter will be referred to the Authority's Debtors' Section in order that you be invoiced for the payment that remains outstanding.

### **UNAUTHORISED ABSENCE**

The Authority reserves the right to withhold payment or deduct from salary a day's pay for each day of unauthorised absence. Any decision concerning this matter will be made by the Head of Service/Governing Body or his/her nominated representative. Unauthorised absence may result in disciplinary action being taken.

### **HOURS OF WORK**

Normal office hours are Monday to Thursday 8.45 to 17.00 and Friday 8.45 to 16.30. Your work pattern and normal working hours per week exclusive of meal breaks will be provided to you by your line manager/Head Teacher. The Authority operates a range of different shift patterns which are developed and from time to time amended to meet the needs of the service.

Your hours of duty are to be worked in accordance with the needs of the service and at the direction of the Head Teacher/Director of the Department or his/her nominated representative.

### **Chief Officers**

It should be noted that the salary range takes account of the fact that the duties of this post cannot be satisfactorily undertaken within a fixed working week and that some elements of unsocial hours will be required for the proper performance of duties.

### **Drivers**

Drivers must take unpaid breaks in accordance with EU & AETR rules on drivers' hours.

### **Term Time Employees**

If the nature of your role requires you to be employed on term time only working, you will be required to work term time weeks including INSET days. The number of weeks and term time hours you are contracted to work per week exclusive of meal breaks are as specified in form ToE1.

Please note - if you work term time weeks only, the contracted hours shown on your ToE1 will be your actual weekly working hours (inclusive of paid holidays), averaged over the year, to enable you to receive equal salary payments throughout the year. A 4% allowance on basic pay will be paid to recognise the term time nature of the work. This allowance is only payable to staff where the nature of the work is restricted to term time only. The 4% will be included in pay calculations for the purposes of sickness and annual leave.

### **Tutors**

The contracted hours of work are variable. The setting of hours each academic term or year reflects varying factors, local circumstances, student enrolment, courses offered and budgetary considerations. A normal working week will be based on the needs of each course and may fluctuate depending on the needs of the course and the time of year.

Should student attendance fall below an acceptable level resulting in the cancellation of the class then you will not be paid beyond the date of the last class presented. The provision of courses and any changes will be at the discretion of the Authority.

### **Domiciliary Services**

The contract hours of work (exclusive of meal breaks) as specified in form ToE1 are allocated on a rota in accordance with the needs of the service. You are obliged to accept hours of work offered on your rota'd working days, to meet your contractual obligation.

### **Catering staff**

In order to accommodate the fluctuation in number of meals provided/income generated, the contracted hours may be varied. Reductions or increases in hours will

be notified by the Catering Manager with one week's notice and implemented accordingly.

### **Passenger Assistant staff**

In order to accommodate the fluctuation in the number of children being transported, the contracted hours may be varied. Reductions or increases in hours will be notified by the Network Manager with one week's notice and implemented accordingly.

If you leave your job part way through the year, a calculation will be undertaken to ensure that you have not been under or overpaid. Any adjustment necessary will be made in your last salary.

**Annualised Hours Contract** (only applicable to employees working to agreed peak business working pattern).

Your average contracted hours worked per week exclusive of meal breaks are as specified in form ToE1. The working hours confirmed by the Departmental agreed working arrangements will be designed to accommodate the needs of the business during summer and winter periods. You will be required to work increased hours during the summer period and decreased hours during the winter period. The implementation of flexible working hours is at the discretion of your Chief Officer. Overtime will be paid in accordance with NJC conditions for all hours worked over the agreed set maximum in the Summer Period and the agreed set maximum hours in the Winter Period.

If you leave your job part way through the year, a calculation will be undertaken to ensure that you have not been under or overpaid. Any adjustment necessary will be made in your last salary.

### **Sleeping In**

Employees required to 'sleep in' on the premises are entitled to the allowance as set out in the National Joint Council Circular on Allowances. Sleeping in allowance covers the requirement to sleep in and up to 30 minutes call out per night. If an individual is required to work in excess of 30 minutes they will be paid at their normal rate of pay (overtime if applicable) including any night time enhancement (if applicable – see below).

### **Night Work**

Staff who work a minimum of 3 hours waking nights between the hours of 11pm and 6am as part of the normal working week are entitled to an enhanced payment of time and a third on their basic hourly rate. The three hours do not have to be consecutive.

### **Weekend Working**

In recognition of weekend working, an 8% enhancement on basic pay for all hours worked will be paid to post holders who are required to work a minimum of two weekend days/shifts in every four weeks as part of their normal working pattern (on a regular basis/rota). The 8% will be included in pay calculations for the purposes of sickness and annual leave.

### **Standby and Call Out**

Where the nature of the work requires additional duties to be carried out outside of normal working hours a standby rota may be operated by the Line Manager as and when required by the service. An employee on standby must be contactable at all times during the stated period of standby and must be prepared and able to return to work if the situation warrants it. Any changes to contractual standby will be notified within one month of the change. Employees required to work standby duties will be paid the Authority's agreed standby rate for the session. If called out, normal hourly rates for the hours worked will apply plus overtime/enhanced rates if appropriate.

### **Highways Winter Maintenance Standby**

You will be expected to travel to various sites or depots in Carmarthenshire when required to meet operational needs and standby arrangements. There will be a requirement on a periodic and ad-hoc basis to work overtime and undertake standby duty to deal with highway emergency and winter gritting duties outside normal working hours. Standby arrangements may apply during the week and at weekends to ensure the authority meets its statutory obligations in ensuring the highway is maintained in a safe condition for all users.

### **Overtime/Work Outside of normal hours (excluding Chief Officers)**

The full-time standard working hours are 37 per week. You will not be expected to work overtime on a regular basis. However, if you are required and authorised to work in excess of the standard working hours per week and any such work falls outside the flexible working hours you may, if authorised, be paid at the appropriate overtime rate.

If you are contracted to work on annualised hours or on a rolling rota, overtime rates are only payable for hours worked over the average of 37 hours in the contracted period.

Please note that the Authority/Governing Body will implement the Working Time Regulations in allocating additional hours and all staff are required to inform their Line Manager/Head Teacher of additional work undertaken including other posts that they may have in other sections of the Authority or work commitments undertaken for other organisations.

Please see Code of Conduct in relation to notifying the Authority of other employment (excludes school staff).

For all hours worked beyond 37 hours per week in a particular post which have previously been approved by your Line Manager / Head Teacher will be paid at the basic hourly rate plus 50%.

## **PENSION**

In accordance with the Local Government Pension Scheme Regulations all new employees will automatically become a member of the Local Government Pension Scheme (LGPS). Should you wish to opt out of LGPS membership an Opt Out Form is available from Dyfed Pension Fund website: [www.dyfedpensionfund.org.uk](http://www.dyfedpensionfund.org.uk). Alternatively contact Dyfed Pension Fund, County Hall, Carmarthen SA31 1JP.

You should have received an employee guide on the LGPS summarising the benefits of the pension scheme. Further details are available on the Dyfed Pension fund website – [www.dyfedpensionfund.org.uk](http://www.dyfedpensionfund.org.uk).

Your contribution rate will be assessed in accordance with your actual pensionable pay, as specified in form ToE1.

The pension banding tables are reviewed periodically and as a result there may be an automatic increase or decrease in your pension banding. Your pension banding may also increase as a result of a pay increase including any incremental pay rises. Pension contributions will be payable on all of your taxable pay.

## **TIME OFF**

If you are planning on taking time off work but are unsure of the type of time off that you may be entitled to, you may benefit from taking a look at the [Time Off policy](#) in the first instance. This will signpost you to the types of time off that are available and whether they are paid or unpaid.

## **Holidays**

### **School employees**

The leave year will be operative from 1 April to 31 March. Those employees commencing or terminating employment during the year are entitled to leave proportional to the number of completed months' service during that year. Please note for school-based establishments no leave is to be taken during term time

### **Community Learning Tutors**

The leave year will be operative from 1 September to 31 August. Those employees commencing or terminating employment during the year are entitled to leave proportional to the number of completed months' service during that year.

### **Catering and Cleaning staff**

The leave year will be operative from 1 January to 31 December. Those employees commencing or terminating employment during the year are entitled to leave proportional to the number of completed months' service during that year. Please note for school-based establishments no leave is to be taken during term time.

### **For all other employees**

The leave year will be operative from your birthday. Those employees commencing or terminating employment during the year are entitled to leave proportional to your service during that year.

Please see your line manager/Head Teacher to confirm your entitlement. You may be required to take your annual leave entitlement when your establishment/workplace is closed for specific holiday periods or for any other reason as advised by your line manager.

Leave entitlement is calculated on the basis of length of continuous service as indicated below:

0 - 5	completed years' service	26 days
Over 5 - 10	completed years' service	31 days
10 Plus	completed years' service	34 days

No payment in lieu of accrued contractual holiday will be made to the employee (and where appropriate a deduction will be made from salary) in the event of his/her termination for gross misconduct or in the event of the employee giving inadequate notice of termination or leaving before the contractual notice period has expired. Contractual holiday for these purposes means all and any leave entitlement provided for in the employee's contract that is over and above the minimum statutory leave period provided for in the Working Time Regulations 1998 (i.e. 5.6 weeks or a maximum of 28 days) unless your Service Director/Head Teacher believes there are exceptional circumstances which have prevented leave from being taken.



Employees leaving local government service having taken leave beyond their entitlement at that point, will have the corresponding number of days pay deducted from their final salary payment or any other payment due from the Authority.

Annual leave should be requested from your line manager/Head Teacher and is subject to the agreement of the Department/Head Teacher.

**For employees in establishments with fixed holiday periods.**

You will be required to take all of your annual leave entitlement when your establishment/workplace is closed for specific holiday periods or for any other reason as advised by your Line Manager/Head Teacher.

**Bank/Public Holidays**

There are 8 days designated as public bank holidays by the Authority. This is calculated on a pro rata hourly basis during the year for part time employees. If you are scheduled or required to work a bank holiday, you will be paid at double time (i.e. time plus time) for all hours physically worked, in complete recompense for all hours worked.

**Job Share**

Entitlement to take paid holiday on bank or public holidays will be shared proportionately between job-sharers. Alternatively, and with the permission of your manager, you can choose to adjust your working pattern to ensure a fair distribution of bank and public holidays. Your entitlement to take paid holiday on public or bank holidays will be the pro rata equivalent of the entitlement of full-time employees.

**Sickness Absence**

Your entitlements during any absence due to sickness or injury are as indicated in the National Joint Council conditions Part 2 Section 10.

During 1<sup>st</sup> year of service 1 month's full pay (and after completing 4 months' service)  
2 months half pay  
During 2<sup>nd</sup> year of service 2 months' full pay and 2 months' half pay  
During 3<sup>rd</sup> year of service 4 months' full pay and 4 months' half pay  
During 4<sup>th</sup> and 5<sup>th</sup> years of service 5 months' full pay and 5 months' half pay  
After 5 years' service 6 months' full pay and 6 months' half pay

If you are unable to attend work as a result of illness or injury you must notify your line manager/Head Teacher as soon as practicable on the first day of absence of the reason for, and likely duration of, the absence.

You are required to complete a self-certification form via [Resourcelink/My View](#) for the first 7 days of the period you were due to work (including Saturday and Sunday). Catering and cleaning employees should complete a paper form SA128 (Self Certification Statement of Absence). This should be done immediately upon your return to work or as soon as possible if the absence is long term.

If your sickness absence is longer than 7 days you must submit to your line manager a General Practitioner's Fitness for Work Certificate by the 8<sup>th</sup> day of absence.

For further details please see Sickness Absence Employee Information and Sickness Absence Management Procedure (available on the Intranet).

### **School employees**

School employees should refer to the schools' Sickness Absence Management Policy and Procedure which is available in the school office along with any school reporting arrangements.

## **NOTICE**

- (i) The Authority will give you one week's notice to terminate the contract of employment during your probationary period. Following the probationary period, the minimum period of notice to which you will be entitled from the Council is 1 week or as shown below, whichever is the longer:-

### **Period of Continuous Service**

1 month or more but less than 2 years  
2 years or more but less than 12 years  
12 years or more

### **Minimum Notice**

1 week  
1 week for each year of continuous service  
12 weeks

You are required to give one week's notice to terminate the contract of employment during your probationary period. Following the probationary period, the minimum period of notice you are required to give to terminate your employment will be;

Grade A – K – 1 month

Grade L – O – 3 months

Chief Officers - 3 months

Soulbury - salary equal or exceeding NJC spinal point 40 – 3 months

Your employment may be terminated by the employer without notice or payment in lieu of notice in the event of serious misconduct.

## **MATERNITY**

For Information on the Authority's Maternity Policy, please click [here](#).

## **PATERNITY**

For information on the Authority's Paternity Policy, please click [here](#).

## **PAY IN LIEU OF NOTICE**

The Authority may make a payment in lieu of notice for all or any part of your notice period on termination of your employment (rather than you working out your notice period). This provision, which is at the Authority's discretion, applies whether notice to terminate the contract is given by you or by the Authority.

## **BENEFITS**

For details of your eligibility to benefits that may be available to you as a worker/employee of the Authority, please see our [benefits page](#).

## **CARS/TRAVEL**

Please note if you are authorised to use your car for work purposes you should ensure that you are able to drive and that you are covered by the appropriate business insurance. The Authority also reserves the right to ensure at any time that you are covered by the appropriate documents (MOT, car insurance and the appropriate driving licence.)

Authorised work related car journeys are reimbursed at the Authority's car user allowance rate.

### **For Peripatetic workers only**

If you are employed as a peripatetic worker with no fixed place of work you will be reimbursed authorised business mileage incurred in excess of 10 miles from home to the first job location and from the last job location to home **(20 miles per day)**. If however, you are working a split shift, any additional mileage will be paid in full.

## **CONFIDENTIALITY**

You may not, during or after the termination of your employment with the Council, disclose to anyone other than in the proper course of your employment, any information of a confidential nature relating to the School, the Council or its business. This confidentiality of information applies during working and non-working hours. Breach of this clause may lead to your summary dismissal.

As an employee of the Council you are responsible for complying with Data Protection legislation when processing personal data as part of your duties. You are also responsible for adhering to relevant Council policies when handling personal data.

## **RESTRICTIONS ON OTHER EMPLOYMENT**

Prior to agreeing to undertake other work (paid or unpaid) outside of the Council, permission must be sought from the appropriate Head of Service/ Line Manager as per the Code of Conduct – Employees (available on request). (Please note – this is not applicable to school staff within the responsibility of the governing body.)

### **Chief Officers**

You must devote your whole-time service to the work of the Council except where otherwise authorised. You must uphold the principles of the Employees Code of Conduct and ensure that you declare any personal interests in accordance with the Council's policies.

### **Your attention is drawn to the following extract from the JNC Chief Officers Conditions of Service Handbook:**

After termination of a chief officer's employment you:

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

These provisions would not apply if the termination of employment with the local authority arose as the result of redundancy or the externalisation of work and consequent transfer to a new employer.

## GENERAL REQUIREMENTS OF THE POST HOLDER

You will be held responsible for ensuring that the accountabilities of your post (job profile available on request) are fulfilled and your performance in doing so may be assessed from time to time. You will carry out such work and duties as are usual or necessary in connection with your appointment or such work as may reasonably be required. You are required to invoke the Council's/School's established processes and procedures to challenge and report dangerous, abusive, discriminatory or exploitive behaviour and practice. You will be responsible for your own actions, behaviour and any subsequent consequences. All employees are expected to recognise the limits of their competence and be responsible for limiting their actions to those which they feel competent to undertake. You will have due regard for economy and use of resources whilst maintaining standards at all times.

You are expected to uphold at all times the core values of the Council/School and ensure that your behaviour does not deliberately bring the Council/School into disrepute.

The Council reserves the right to seek a Disclosure and Barring Service check for all employees in posts that have safeguarding responsibilities.

Employees in posts requiring them to register with Social Care Wales or in Registered Services under Care Inspectorate Wales, will be required to register with the DBS Update Service (for which there is an annual subscription fee) and it is your responsibility to ensure that subscription is maintained annually to uphold professional registration.

You are required to inform your Manager/Head Teacher/Director and/or your Human Resources section at the earliest opportunity if you are under investigation for a criminal offence or are convicted of a criminal offence (including cautions and bind over orders). Please note that all declarations will be treated in strictest confidence and will not necessarily affect your ability to carry out your post. Failure to report such matters may result in disciplinary proceedings.

Where required you will maintain membership of appropriate professional bodies.

### **For employees within Social Care**

If you are employed within the Social Care Sector, you are also required to abide by the principles of the Code of Professional Practice as per the document published by Social Care Wales. You can download a copy at [www.socialcare.wales](http://www.socialcare.wales)

You will also be obliged to register and maintain registration with the Care Council for Wales when it is required.

## DISCIPLINARY POLICY AND PROCEDURE

The Authority's Disciplinary Policy and Procedure is available [here](#). If you are dissatisfied with any disciplinary decision you have the right of appeal. The appeal should be addressed to the Assistant Chief Executive (People Management), Building 4 St David's Park, Job's Well Road, Carmarthen SA31 3HB.

### School staff

The disciplinary rules applicable to you are set out in the School's Disciplinary Policy and Procedure (the school's policy is available from the school office). If you are dissatisfied with any disciplinary decision you have the right to appeal in accordance with the appropriate provision of the policy. Full details are available from your head teacher or Clerk to the Governing Body of the school.

### Chief Officers

The disciplinary procedures applicable to you are set out in the J.N.C. for Chief Officers of Local Authorities Conditions of Service.

## GRIEVANCE PROCEDURE

If you have a grievance relating to your employment you should discuss the matter in the first instance with your immediate supervisor in accordance with the [Grievance Policy and Procedure](#). This explains the stages of the procedure available to you should you be dissatisfied with the outcome. Please note that there is a separate policy dealing with grievances of bullying and harassment - [Behavioural Standards](#).

### School staff

The school's disciplinary, grievance, and Dignity and Respect policies/guidance are available from the school office.

## DISMISSAL

If you are dismissed from the employment of the Authority, you will be advised of the reason and offered a right of appeal in accordance with the terms of the appropriate policy (except during your probationary period when the Managing Probationary Employees Policy applies to staff except those employed by schools), as follows:

Health	Sickness Absence Management Policy
Redundancy	Redundancy Policy
Performance	Capability Policy
Conduct	Disciplinary Policy

## **POLITICAL RESTRICTION**

If you have been advised in form ToE1 that your post is a 'politically restricted post' please refer to the terms outlined in the political restriction document (available on request).

## **LEARNING AND DEVELOPMENT**

It is a condition of your employment that you undertake all appropriate learning and development. This will include any development identified to build your skills in order to enable you to perform your duties fully (including additional duties you may be reasonably required to perform). Such development may be specified within a Learning Agreement on your commencement. This agreement will include any specified timeframe.

## **HEALTH AND SAFETY**

You are required to abide by the appropriate Health and Safety Rules of the Authority. If you occupy a post that is subject to health surveillance you are expected to attend for medical examination as and when required.

This Written Statement of Particulars supersedes any previous Written Statement of.

Please signify your acceptance of the appointment on the above terms and conditions by signing both copies of the Terms of Employment (Form ToE1) and returning one copy to me.

Yours sincerely



**Mr Paul Thomas**

### ***Assistant Chief Executive (People Management)***

Mae croeso i chi gysylltu gyda'r Cyngor trwy gyfrwng y Gymraeg neu'r Saesneg.

You are welcome to contact the Council through the medium of Welsh or English.

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DOCUMENTS & POLICIES – are available on the Authority's intranet site -

<http://intranet/our-people/hr/>

Or for school staff – All policies are available from the school office.



## Appendix M – Trainee and Modern Apprentice Pay Rates

CCC Pay Grades - Training Contracts [Including Apprentices]									
Table 1	Year 1 - Grade Structure [MODAPP] - 2020-21								
Level	Spinal Point	Salary [£]			Hrly Rate [£]				
1	1001	8,778			4.5500				
2 and 3	1005	12,827			6.6489				
4	1003	15,820			8.2000				
5	1006	17,842			9.2480				
-	1002	12,443			6.4500				
-	1004	16,823			8.7200				
Table 2	Year 2+ - Age Dependent - 2020-21								
Level		16-17		18-20		21-24		25+	
		Salary [£]	Hrly Rate [£]	Salary [£]	Hrly Rate [£]	Salary [£]	Hrly Rate [£]	Salary [£]	Hrly Rate [£]
1		8,778	4.5500	12,443	6.4500	15,820	8.2000	16,823	8.7200
2 and 3		12,827	6.6489	12,827	6.6489	15,820	8.2000	16,823	8.7200
4		15,820	8.2000	15,820	8.2000	15,820	8.2000	16,823	8.7200
5		17,842	9.2480	17,842	9.2480	17,842	9.2480	17,842	9.2480

- Year 1 – The Council's rate of pay will be dependent on Apprentice entry level [table 1].
- Year 2+ - The Council's rate of pay will be dependent on Apprentice age [table 2] or level [table 1], whichever is the higher. The rate of pay should not reduce for Apprentices entering Year 2+.
- Spinal Points – With the exception of 1005 and 1006, all spinal points will increase in line with the National Minimum / Living Wage set by Government and not dependent on the NJC National Pay Award.
- The application of a pay supplement for weekend working [8%] and term time working [4%] will not operate for training contracts and government funded job placement schemes.