

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Employment & Appeals Committee  
**DATE:** 12 April 2017  
**CONTACT OFFICER:** Linda Walker, Interim Monitoring Officer  
(01753 875 017)  
**WARD(S):** All

### **PART I**

#### **FOR DECISION**

#### **ARRANGEMENTS FOR THE DISMISSAL OF THE HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCE OFFICER**

##### **1. Purpose of Report**

To advise Members of the Model Disciplinary Procedure and Guidance agreed by the Joint Negotiating Committee for Local Authority Head of Paid Services issued in October 2016 and to compare this with the arrangements currently in force in Slough. To make recommendations regarding the future disciplinary procedures for the Head of Paid Service (Head of Paid Service), Monitoring Officer and Chief Finance Officer (s151 Officer) (“the relevant Officers”)

##### **2. Recommendations/Proposed Actions**

The Employment and Appeals Committee is requested to recommend to Council the following new committees and delegations:

- a) The abolition of the existing Statutory Officers’ Disciplinary Panel.
- b) The creation of an Investigating and Disciplinary Committee to deal with disciplinary matters relating to the relevant officers. This committee to be a politically balanced committee of five Members one of whom is to be a member of the Executive.
- c) The creation of an Appeals Committee to deal with disciplinary matters short of dismissal relating to the relevant officers. This committee is to be a politically balanced committee of five Members one of whom is to be a member of the Executive.
- d) The creation of an Independent Panel comprising three people appointed under section 28 Localism Act 2011 to advise Council in the event of a recommendation from the Independent Disciplinary Committee to dismiss a relevant Officer.

- e) The Investigating and Disciplinary Committee to have delegated responsibility for the suspension of “the relevant officers.” In the event of the need for urgency, this function to be delegated to the Monitoring Officer following consultation with the Leader in the case of the suspension of the Head of Paid Service and delegated to the Head of Paid Service following consultation with the Leader in the case of the suspension of the Monitoring Officer or the Chief Finance Officer.
- f) In the case of a complaint against a relevant officer, the decision whether to refer the matter to the Investigating and Disciplinary Committee will be delegated to the Monitoring Officer following consultation with the Leader in the case of a complaint against the Head of Paid Service and delegated to the Head of Paid Service following consultation with the Leader in the case of a complaint against the Monitoring Officer or the Chief Finance Officer.
- g) The relevant officers will be given the same right to be accompanied at any disciplinary hearing as all Slough employees. This does not automatically include the right to be accompanied by a legal representative.
- h) The Monitoring Officer should be tasked with producing a revised disciplinary procedure for the relevant officers based on the model procedure produced by the Joint Negotiating Committee for Local Authority Head of Paid Services for approval by the Employment and Appeals Committee.
- i) Thereafter the Employment and Appeals Committee will not have responsibility for the discipline of the relevant officers.

### 3. **Other Implications**

#### (a) Financial

There are no significant financial implications.

#### (b) Risk Management

The process is compliant with the 2015 Regulations and the recommendations of the Joint Negotiating Committee for Local Authority Head of Paid Services and is being applied to the two other relevant officers protected by the 2015 Regulations. This mitigates any risk.

#### (c) Human Rights and other Legal Implications

The recommendations take into account The Human Rights Act and existing law on the right to be accompanied at a disciplinary hearing. The model procedure provides that the hearing at full Council to determine

whether to dismiss a relevant officer is in effect a right of appeal. This is on the basis that the relevant officer has previously had the opportunity to put their case to the Investigating and Disciplinary Committee and the Independent Panel. This procedure however has not been tested in the courts. The fact that the process has been agreed nationally by the trade unions and the employers mitigates the risk but it does not remove it altogether.

The standard contract of employment for the relevant officers refers to the JNC agreed conditions. 'A failure to implement a disciplinary procedure based on the model could be a breach of contract.

(d) Equalities and Impact Assessment

No impact assessment has been carried out, but all relevant officers will be treated in accordance with equalities principles.

(e) Workforce

The relevant officers in post have been consulted on the proposed new structure.

#### 4. **Supporting Information - background**

4.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amended the Local Authorities (Standing Orders) (England) Regulations 2001 by changing the statutory process for dismissing the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer ("the relevant officers")

4.2 Previously no disciplinary action could be taken against a relevant officer other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). The 2015 Regulations abolished the role of the DIP and outlined a new process to be followed and to be incorporated into Council constitutions at the first Council meeting following the 2015 annual Council meeting.

4.3 The new process contains the following features:

(a) Only full Council may approve the dismissal of a relevant officer;

(b) A panel must be set up under the provisions of s102(4) Local Government Act 1972 at least 20 working days before the meeting of full Council with the function of advising the authority on matters relating to the dismissal of a relevant officer;

(c) The “independent persons” appointed for the purposes connected with standards complaints against Members must be invited to be on the Panel with a view to appointing at least two such persons;

(d) Before voting on dismissal, full Council must take into account:

- i Any advice, views or recommendations of the Panel;
- ii The conclusion of any investigation into the proposed dismissal; and
- iii Any representations from the relevant officer

4.4 The new process only relates to disciplinary action leading to dismissal. It does not apply to dismissal by reason of redundancy, expiry of a fixed term contract and permanent ill health. It also does not apply to action short of dismissal.

4.5 In the absence of any guidance from the Joint Negotiating Committee on Local Authority Head of Paid Services (JNC), Council agreed in November 2015 that any disciplinary action against the relevant officer would be dealt with by a panel of three independent persons who would arrange for an investigation into the matter; consider the investigation report and representations from the relevant officer; and make recommendations to full Council.

## **5. New model procedure from the JNC**

5.1 The JNC is the negotiating body for ALACE (the Association of Local Authority Head of Paid Services and Senior Managers) on the union side and the Local Government Association representing employer local authorities. The JNC has recently agreed a model procedure to reflect the changed Regulations and this has now been written into the Head of Paid Services’ Handbook. Whilst the Handbook may be incorporated in the Head of Paid Service’s contract of employment, the model procedure, if it is to be applied has to be both adapted and adopted by full Council.

5.2 Unlike the Council’s existing procedure, the JNC model spells out in detail the process to be followed and the structure to support the process.

5.3 The key features of the model procedure are set out in the diagram at appendix 1 and are as follows:

(a) The procedure involves four bodies: an Investigating and Disciplinary Committee (IDC), an Appeals Committee, the Independent Panel and the Council.

- (b) The IDC is a politically balanced committee comprising five members one of whom will be a member of the Executive. It will appoint an independent investigator from a list held by the JNC.
- (c) The Appeals Committee is a politically balanced committee comprising five members one of whom will be a member of the Executive. It hears appeal against action short of dismissal and decides either to confirm the action, impose no sanction or a lesser sanction.
- (d) The Independent Panel comprises at least two independent persons appointed by Slough or another council for the purposes of hearing complaints under the Members' standards regime.
- (e) The Independent Panel is only used if the IDC having received the report of the independent investigator and held a hearing is minded to recommend dismissal to full Council. If the recommendation is for a lesser sanction such as a written warning, the IDC has the power to impose this without referring to either the Independent Panel or full Council. The relevant officer can then appeal the sanction to the Appeals Committee.
- (f) If the IDC recommendation is dismissal, the Executive will be given the opportunity to make any objections that are both material and well founded. Following this, the Independent Panel will hold a hearing where it will listen to both the chair of the IDC and the relevant officer and will then give their advice/views/recommendations to Council.
- (g) The matter then goes to full Council for a decision. This is in effect an appeal hearing for the relevant officer who is allowed to put his or her case to council before a decision is taken.

## **6. Proposed changes to existing procedures**

- 6.1 Given that the relevant officers will have JNC terms and conditions referred to in their contracts of employment which could potentially lead to a breach of contract argument if Council did not follow the JNC model, it is recommended that Slough adopts the structures of the model procedures and applies it to all three relevant officers. It marries together the requirements for an independent view with the practical experience of Members familiar with the services, workings and duties of the Council.
- 6.2 The Employment and Appeals Committee (EAC) does not sit easily within the model structure. A subcommittee of the EAC would report to the EAC and not directly to Council as envisaged in the model. The EAC itself is too large to act effectively as the IDC and there would still be the need for a separate group of Members to make up an Appeals Committee.

- 6.3 It is proposed that the model structure is followed and that a stand alone IDC is set up that reports directly to Council and a separate stand alone Appeals Committee is set up. Each committee would comprise five Members; be politically balanced; and would include a member of the Executive. It is further proposed that the existing statutory officers' disciplinary panel becomes the Independent Panel.
- 6.4 The model procedure envisages the IDC deciding on whether to suspend a relevant officer. It also recommends that due to the need for speed and the difficulties in calling together a committee at short notice, there needs to be an arrangement in place to deal with suspensions that are urgent. It is recommended that in the case of the Head of Paid Service, this decision should be delegated to the Monitoring Officer following consultation with the Leader. Any suspension then has to be reviewed every two months by the independent investigator.
- 6.5 In the case of an urgent suspension of the Monitoring Officer or the Chief Finance Officer it is recommended that the task is delegated to the Head of Paid Service following consultation with the Leader. Again the model provides for this decision to be reviewed every two months.
- 6.6 Similarly not all complaints about a relevant officer should lead to a referral to an IDC. Some may be more appropriately dealt with under for example, a service's complaints procedure. There needs to be a process to redirect complaints to the appropriate quarter or to weed out those that have no merit. It is proposed that the same delegations apply as to urgent suspensions. Namely that in the case of a complaint against the Head of Paid Service, the Monitoring Officer following consultation with the Leader will decide whether a complaint should go to the IDC, through a different process or be dismissed. In the case of complaints against the Monitoring Officer and the Chief Finance Officer, the delegation should be to the Head of Paid Service following consultation with the Leader.
- 6.7 The model procedure allows the relevant officer to be accompanied at any disciplinary meetings. However the model is wider than the statutory right given to all employees to be accompanied by a trade union official or work colleague. The model talks about the Head of Paid Service being accompanied by a person of their choice at their own cost.
- 6.8 This implies that the relevant officer could be represented by a lawyer. Internal disciplinary proceedings are not legal proceedings. By allowing one side to be legally represented it would inevitably lead to all parties being legally represented thereby both adding to the cost and length of the process. There is no statutory requirement to allow lawyers to attend and the relevant

officer always has the right to go to law at the end of the process. It is recommended that this proposal is not implemented and that the relevant officers are afforded their statutory rights and nothing more. If there are extenuating circumstances and a case can be made out for a relevant officer being legally represented, then this can be considered on a case by case basis.

## **7. Contractual Issues**

7.1 The relevant officers have been consulted about the changes in procedure outlined in this report. The current Chief Finance Officer's contract of employment refers to the JNC conditions including the JNC disciplinary procedure. Failure to adopt a procedure based on the JNC model could be a breach of contract.

## **8. Appendices Attached**

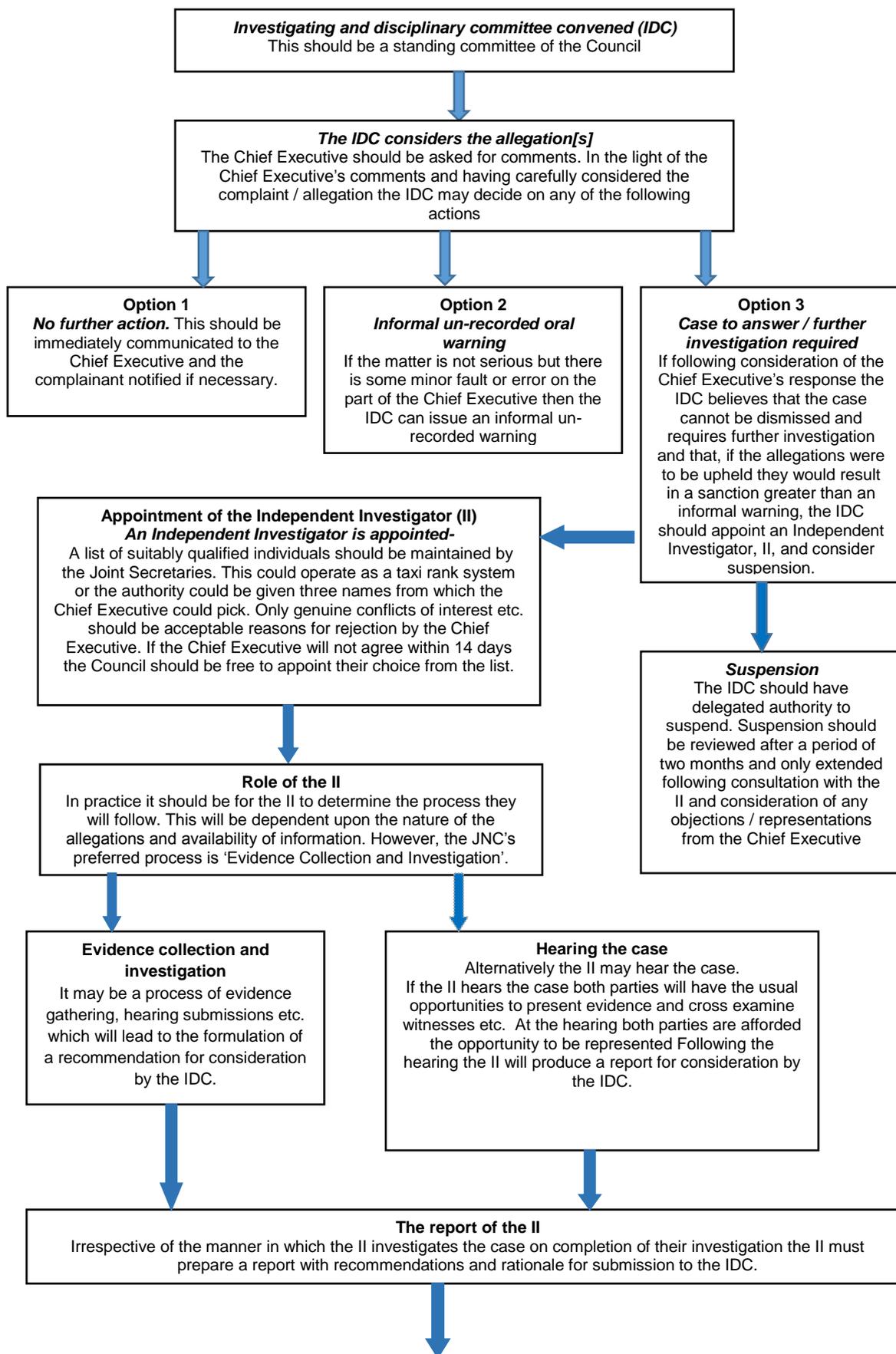
8.1 Appendix 1 – Procedure flowchart

## **9. Background Papers**

9.1 JNC Model Disciplinary Procedure and Guidance

## Appendix 1

### Disciplinary Procedure for Local Authority Chief Executives



**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 post holder to challenge the recommendations of the II, call witnesses etc. The same rule regarding costs of representation would apply in this context.

**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

**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 post holder's reputation.

**Action short of dismissal**

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

**Recommendation to dismiss**

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

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

The IP should be a committee of the Council, appointed under section 102(4) of the Local Government Act 1972, and should comprise only independent persons (at least two) appointed under S28 (7) of the Localism Act 2011. Appropriate training 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.

**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.