

APPENDIX 2 (A)

REVIEW OF CONSTITUTION – ARRANGEMENTS FOR THE DISMISSAL OF THE HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCE OFFICER

1. Supporting Information - background

- 1.1 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”)
- 1.2 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.
- 1.3 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
- 1.4 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.

- 1.5 In the absence of any guidance from the Joint Negotiating Committee on Local Authority Chief Executives (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.

2. New model procedure from the JNC

- 2.1 The JNC is the negotiating body for ALACE (the Association of Local Authority Chief Executives 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 Chief Executives' Handbook. Whilst the Handbook may be incorporated in the Chief Executive's contract of employment, the model procedure, if it is to be applied has to be both adapted and adopted by full Council.
- 2.2 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.
- 2.3 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.

3. Proposed changes to existing procedures

- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 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 Chief Executive, 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.

- 3.5 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 Chief Executive following consultation with the Leader. Again the model provides for this decision to be reviewed every two months.
- 3.6 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 Chief Executive, 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 Chief Executive following consultation with the Leader.
- 3.7 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 chief executive being accompanied by a person of their choice at their own cost.
- 3.8 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.
- 3.9 A copy of the present and amended Employment Procedure Rules are attached for information.

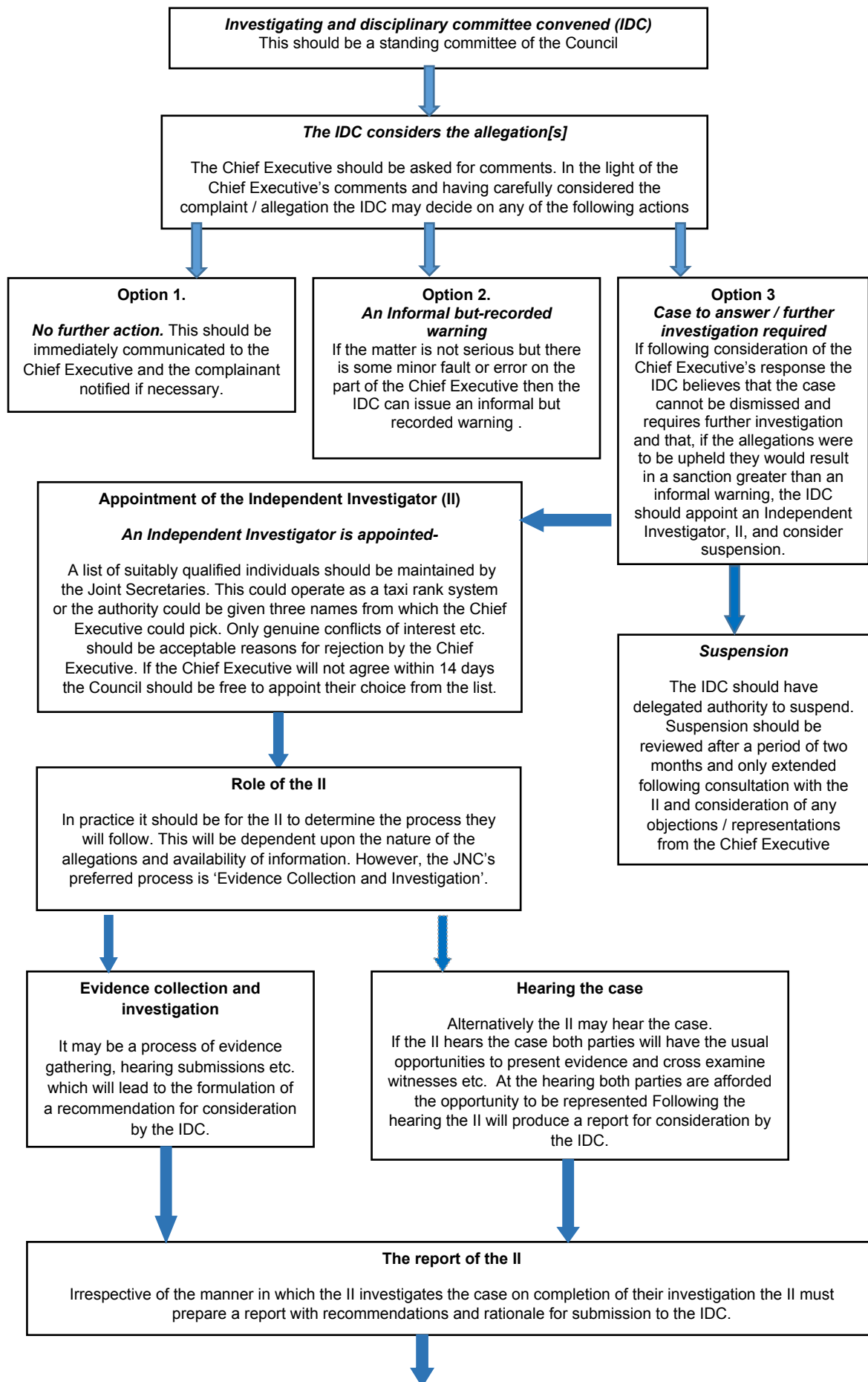
4. Contractual Issues

- 4.1 The relevant officers have been consulted about the changes in procedure outlined in the report.

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Disciplinary Procedure for Local Authority Chief Executives

Appendix 2A



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

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 postholder'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.