

**Local Discipline and Dismissal Policy,
Procedures and Guidance for
Statutory Officers of
Chief Executive/ Monitoring Officer/
Section 151 Finance Officer**

January 2012

1. Introduction

- 1.1 These local procedures for Chief Executives should be read in conjunction with the Joint Negotiating Committee (JNC) for Chief Executives Handbook (Revised edition April 2008).
- 1.2 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.
- 1.3 The Authorities' Side consists of elected members nominated by the Local Government Association. The Staff Side consists of chief executives nominated by the Association of Local Authority Chief Executives (ALACE). ALACE is registered as an independent trade union.
- 1.4 These local procedures for Statutory Chief Officers, Monitoring Officer and Section 151 Finance Officer should be read in conjunction with the Joint Negotiating Committee (JNC) for Chief Officers Handbook.
- 1.5 Where there is discretion to adopt locally agreed terms and conditions of service, these will be agreed by the Joint Personnel Committee

2. Purpose and scope

- 2.1 These procedures have been developed to provide a fair and consistent process for specifically dealing with disciplinary action and dismissals, appeals, compromise agreements, and the use of suspension and carrying out investigations for Chief Executives (Head of Paid Service), Monitoring Officer and Section 151 Finance Officer. The policy shall also apply to Deputy Monitoring, Deputy Section 151 Officers and officers deputising for the Head of Paid Service when carrying out functions covered by these posts as opposed to their substantive posts.

3. Key Principles - Procedures for, Discipline, Capability, Redundancy and Other Dismissals

- 3.1 It is for each Council to determine its procedures and practical arrangements for the handling of disciplinary action and the termination of contracts for the Chief Executive, Monitoring Officer and Section 151 Officer. However the Local Authorities Standing Orders (England) Regulations 2001, state a requirement where the matter cannot be resolved informally, 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, Monitoring Officer or Section 151 Finance Officer on the grounds of misconduct or if there is any other proposal to dismiss the Chief Executive, Monitoring Officer or Section 151 Officer for any reason other than redundancy, permanent ill-health or the expiry of a fixed term contract.

4. Contemplating Disciplinary Action

- 4.1 Consideration should be given to whether formal disciplinary action is necessary or whether an informal resolution would be a better option. This should be decided by the Joint Personnel Committee based on the advice given by the Head of Transformation, and the Monitoring Officer (or Deputy Monitoring Officer).

- 4.2 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 as impartial conciliators.
- 4.3 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.

5. **Joint Personnel Committee Responsibilities**

- Dealing with minor instances of unsatisfactory conduct at an early stage.
- Ensuring that the Chief Executive, Monitoring Officer or Section 151 Officer, as applicable clearly understands the standards of conduct expected of him/her.
- Carrying out, or making arrangements for, an investigation when any breach of discipline is alleged.

(It is requested that the Monitoring Officer (or Deputy Monitoring Officer where the investigation is against the Monitoring Officer) and Head of Transformation are contacted for guidance prior to any investigation being commenced)

- Ensuring that the Chief Executive, Monitoring Officer or Section 151 Officer subject to investigation is kept up-to-date with progress.
- Deciding, in the most serious cases (alleged gross misconduct), or where the Chief Executive's, Monitoring Officer's or Section 151 Officer's continued presence at work may hinder an investigation, or put people at risk, whether it may be necessary to suspend the Chief Executive, Monitoring Officer or Section 151 Officer.
- The committee shall inform the Chief Executive, Monitoring Officer or Section 151 Officer of any decision in relation to any action to be taken or not if that is the case.

6. **Chief Executives', Monitoring Officers', Section 151 Finance Officers' Entitlements**

- To be accompanied at all stages by a trade union or other representative at their own cost. However, there may be circumstances where a trade union or other representative may not be available. In these situations a suspension will not be unduly delayed.
- To appeal against those outcomes of a disciplinary investigation.

Where informal resolution is not possible the formal disciplinary procedure should apply.

THE DISCIPLINARY PROCEDURE

7. Issues requiring investigation

- 7.1 Where an allegation is made relating to the conduct or capability of the Chief Executive, Monitoring Officer or Section 151 Finance Officer or there is some other substantial issue that requires investigation, the matter will be considered by the Joint Personnel Committee.
- 7.2 There are specific Regulations that confirm that no disciplinary action can be taken against the Chief Executive, Monitoring Officer or Section 151 Finance Officer other than in accordance with a recommendation in a report from a Designated Independent Person.
- 7.3 The Joint Personnel Committee with the advice of the Monitoring Officer (or Deputy Monitoring Officer where applicable) and Head of Transformation will decide if any allegation made against the Chief Executive, Monitoring Officer or Section 151 Finance Officer should be pursued as formal rather than informal action, and the matter would then be one that would be suitable for an investigation under the disciplinary procedure.
- 7.4 Records will be kept by the Monitoring Officer (or Deputy Monitoring Officer where applicable) of any allegations against the Chief Executive, Monitoring Officer or Section 151 Finance Officer and any decision reached. The records will reflect whether or not the decision was to invoke the Disciplinary Procedure and if not whether any other action was recommended. The records will also detail the advice given by the Monitoring Officer (or Deputy Monitoring Officer where applicable).
- 7.5 In those instances where the procedure has not been invoked but other action is recommended the matter shall be referred to the Head of Transformation such as for sickness absence or performance issues.
- 7.6 Allegations and complaints that are directed at the Chief Executive, Monitoring Officer or Section 151 Finance Officer, but are actually complaints about a particular service, will 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, Monitoring Officer or Section 151 Finance Officer, it will be appropriate to first deal with it through the Council's grievance procedure.

8. Timescales

- 8.1 It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.
- 8.2 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, Monitoring Officer or Section 151 Finance Officer that proceedings are allowed to drag on without making progress towards a conclusion.

8.3 The role of the Joint Personnel Committee in investigating the allegation will normally be discharged in two meetings. Only in exceptional circumstances will a meeting be adjourned or a further meeting held. The first meeting of the JPC will be to consider whether there is, on the face of it, a case to be investigated. The balance of probabilities is the correct standard of proof. If the decision is that there is a case to answer the Chief Executive, Monitoring Officer or Section 151 Finance Officer will be invited to a second meeting to answer the allegations. At that second meeting the JPC should refer the matter to a Designated Independent Person (“DIP”) unless it is satisfied that no case exists.

8.4 The Chief Executive, Monitoring Officer or Section 151 Finance Officer will be given at least 5 working days notice at each stage of the process.

9. Suspension

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

9.2 However, the Joint Personnel Committee will need to consider whether it is appropriate to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer. 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, Monitoring Officer or Section 151 Finance Officer might compromise the investigation or impair the efficient exercise of the council's functions.

9.3 In any case, the Chief Executive, Monitoring Officer or Section 151 Finance Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.

9.4 The Head of Paid Service or Monitoring Officer (or Deputy Monitoring Officer where applicable) in consultation with the Chairman or in their absence Vice Chairman of the Joint Personnel Committee and Head of Transformation who hold the delegated power to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by the Chief Executive, Monitoring Officer or Section 151 Finance Officer 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.

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

10. Power to extend suspension

10.1 The Regulations provide that suspension of the Chief Executive, Monitoring Officer or Section 151 Finance Officer for the purposes of investigating the issue should last for no longer than two months.

10.2 The DIP does not have the power to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer and neither is his/her permission required in order to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer. However, the Regulations provide that where the authority has suspended the Chief Executive, Monitoring Officer or

Section 151 Finance Officer, the Designated Independent Person has the power to direct:

- that the authority terminate the suspension;
- that the suspension should continue beyond the two month limit;
- that the terms on which the suspension has taken place must be varied.

11. Right to be accompanied

- 11.1 Other than in circumstances where there is an urgent requirement to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer, he or she will be entitled to be accompanied at all stages.
- 11.2 At important stages (such as attending the Joint Personnel Committee) to answer the allegations, or when the committee receives the report of the DIP and any appeal against the decision of the Committee), if the Chief Executive's, Monitoring Officer's or Section 151 Finance Officer's trade union representative is unavailable for the date set then the Chief Executive, Monitoring Officer or Section 151 Finance Officer 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.
- 11.3 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.

12 Considering the Allegations or Other Issues under Investigation

- 12.1 The Joint Personnel Committee will, as soon as is practicable inform the Chief Executive, Monitoring Officer or Section 151 Finance Officer 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.
- 12.2 The Chief Executive, Monitoring Officer or Section 151 Finance Officer 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, Monitoring Officer or Section 151 Finance Officer to make oral representations.
- 12.3 The Joint Personnel Committee will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the Chief Executive, Monitoring Officer or Section 151 Finance Officer before taking further action.
- 12.4 The Joint Personnel Committee shall decide whether the issue:
- requires no further formal action under this procedure; or
 - should be referred to a Designated Independent Person.
- 12.5 It is possible in some cases that with some minimal investigation the Joint Personnel Committee can dismiss the allegation without even the need to meet with the Chief Executive, Monitoring Officer or Section 151 Finance Officer. 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, Monitoring Officer or Section 151 Finance Officer is

made aware of the allegations and provided with the opportunity to challenge the allegations or to make their response.

- 12.6 When an issue comes before the Joint Personnel Committee it needs to make a judgement as to whether the allegation can be dismissed or whether it requires more detailed investigation by a Designated Independent Person (DIP).
- 12.7 The appointment of a Designated Independent Person is a serious step but does not mean that the Chief Executive, Monitoring Officer or Section 151 Finance Officer is guilty of some misdemeanour. In some cases the eventual result of the investigation will be to absolve the Chief Executive, Monitoring Officer or Section 151 Finance Officer of any fault or wrongdoing. The appointment of a Designated Independent Person operates independently so that both the authority and the Chief Executive, Monitoring Officer or Section 151 Finance Officer 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, Monitoring Officer or Section 151 Finance Officer or the local authority. Any subsequent issues that come to light at any stage of the process must be dealt with in the same way as any allegation.

13. Appointment of a Designated Independent Person (DIP)

- 13.1 Cases will vary in complexity but in deciding whether to appoint a Designated Independent Person the Joint Personnel Committee 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, Monitoring Officer's or Section 151 Finance Officer's personal file; and
 - there is evidence in support of the allegation sufficient to require further investigation.

14. Conducting the initial investigation

- 14.1 It is intended that this stage is conducted quickly 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, Monitoring Officer or Section 151 Finance Officer is aware of the allegations that have been made against him/her (or the issue to be addressed) and given the opportunity to respond.
- 14.2 This will be achieved by:
- The Head of Transformation writing to the Chief Executive, Monitoring Officer or Section 151 Finance Officer setting out the allegations/issues and providing any evidence to be considered.
 - Providing the opportunity for the Chief Executive, Monitoring Officer or Section 151 Finance Officer to respond to the allegations in writing and to provide personal evidence or witness evidence.

- Providing the opportunity for the Chief Executive, Monitoring Officer or Section 151 Finance Officer to appear before the Joint Personnel Committee and to call witnesses.
- 14.3 The Chief Executive, Monitoring Officer or Section 151 Finance Officer will be given at least 5 working days notice at each stage of the process and the Chief Executive, Monitoring Officer or Section 151 Finance Officer is entitled to attend with representation.
- 14.4 Conducting an investigation into allegations or serious issues involving the Chief Executive, Monitoring Officer or Section 151 Finance Officer can be demanding on the individuals involved. The Joint Personnel Committee will have access to the local authority's officers, but given the closeness of relationships between the Chief Executive, Monitoring Officer or Section 151 Finance Officer 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. The Joint Personnel Committee has powers to appoint external advisers as appropriate.
- 14.5 In cases of capability related to sickness or where during the course of any other investigation, the ill-health of the Chief Executive, Monitoring Officer or Section 151 Finance Officer results in their unavailability it will be important that the Joint Personnel Committee has access to appropriate medical advice from the council's Occupational Health Advisor.
- 14.6 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.
- 14.7 This might come from a variety of sources, e.g. performance appraisal records, *CPA* reports. 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 Committee.
- 14.7 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, Monitoring Officer or Section 151 Finance Officer.

15. Treatment of Witness Evidence

- 15.1 In general, if the authority has witness evidence relating to an allegation this should be presented to the Chief Executive, Monitoring Officer or Section 151 Finance Officer with at least 5 working days notice of any committee attendance. 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, Monitoring Officer or Section 151 Finance Officer in order that he/she understands the case against him/her.

16. Conflicts of Interest

- 16.1 There may be occasions when being a witness 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. 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 required.

- 16.2 Declarations of interest are matters for individual councillors who are required to follow the Councillor Code of Conduct and can seek advice from their Monitoring Officer (or Deputy Monitoring Officer where applicable). Considerable problems could follow for the speed at which the case is conducted if the Chief Executive, Monitoring Officer or Section 151 Finance Officer considers there are valid grounds for making a formal complaint about the involvement of a councillor in a case.

17. Maintaining the Fairness and Integrity of the Procedure

- 17.1 Where there is a matter that requires investigation it is important that a fair and correct procedure is followed. Allegations against the Chief Executive, Monitoring Officer or Section 151 Finance Officer 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, Monitoring Officer or Section 151 Finance Officer but may create conflicts of interest and could limit the role that those councillors can then take as the case progresses.
- 17.2 Confidentiality throughout the process is essential to maintain fairness and integrity and therefore the committee should ensure that all documents, paperwork and other evidence are kept strictly confidential.

18. Other Appropriate Actions

- 18.1 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, Monitoring Officer or Section 151 Finance Officer, or some other substantial issue, the committee might be in a position to consider alternatives to immediately moving to the appointment of a Designated Independent Person or alternatively to dismiss the allegation or issue.
- 18.2 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.
- 18.3 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, Monitoring Officer or Section 151 Finance Officer. The Joint Secretaries could be available to assist - following the nationally agreed protocol.
- 18.4 The Head of Transformation has delegated authority to agree to compromise agreements or other financial settlements in conjunction with the Chairman or Vice Chairman of the Joint Personnel Committee.

19. Appointment of Designated Independent Person

- 19.1 The Designated Independent Person must be agreed between the Joint Personnel Committee and the Chief Executive, Monitoring Officer or Section 151 Finance Officer. If there is a failure to agree on a suitable Designated Independent Person the council will ask the Secretary of State to nominate a Designated Independent Person.
- 19.2 Once a Designated Independent Person has been agreed, the Joint Personnel Committee will be responsible for making the appointment, providing the necessary facilities, agreeing remuneration and providing all available information about the allegations. The Joint Personnel Committee should consider delegating the appointment of the Designated Independent Person to the Monitoring Officer (or Deputy Monitoring Officer where applicable).
- 19.3 Where a decision has been taken to appoint a Designated Independent Person it is important that the council moves quickly to achieve this. This is particularly important if the Chief Executive, Monitoring Officer or Section 151 Finance Officer has been suspended because of the two-month time limit on suspension.

20. Terms of Reference

- 20.1 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.
- 20.2 The Joint Personnel Committee will be responsible for providing this information. It will also be in a position to discuss timescales for the Designated Independent Person's investigation.
- 20.3 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 Monitoring Officer (or Deputy Monitoring Officer where applicable) shall be the agreed contact for the Designated Independent Person who will report arrangements with the parties.
- 20.4 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.

21. Remuneration

- 21.1 There is no provision in the Regulations that stipulates the rate of remuneration to be paid to the Designated Independent Person for their work. However, the Regulations do provide (Regulation 7 (4)) that: *'A local authority must pay reasonable remuneration to a designated independent person appointed by the authority and any costs incurred by him in, or in connection with, the discharge of his functions under this regulation.'*

22. Indemnity

- 22.1 One issue that has caused delay and failure to appoint in some cases is the issue of providing the Designated Independent Person with an indemnity. Some DIPs may decline to accept the role unless the authority indemnifies them against any future legal costs arising from the role performed. There has been a difference of opinion as to whether the DIP should have insurance in their own right to cover such an eventuality, or whether the council should provide this or indeed whether it has the power to do so. In the opinion of the DCLG this issue is to all intents and purposes resolved by the wording of Regulation 7(4), i.e. that the Regulations require the council to bear all of the costs of the DIP incurred by him/her in, or in connection with, the discharge of his/her functions under this Regulation.

23. Designated Independent Person Investigation

- 23.1 The Local Authorities (Standing Orders) (England) Regulations 2001 require the Designated Independent Person to investigate and make a report to the Council (the Joint Personnel Committee). 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, Monitoring Officer or Section 151 Finance Officer or his/her representative is able to present his/her case.

- 23.2 Once appointed it will be the responsibility of the Designated Independent Person to investigate the issue/allegation and to prepare a report stating in his/her opinion whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or incapability or supports the need for action under this procedure for some other substantial reason; 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, Monitoring Officer or Section 151 Finance Officer.

24. Resources

- 24.1 The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, the DIP could decide to delegate some of the investigation work to an assistant. This should be agreed with the Joint Personnel Committee and the Chief Executive, Monitoring Officer or Section 151 Finance Officer 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.

25. Working Arrangements

- 25.1 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, Monitoring Officer or Section 151 Finance Officer.

25.2 The Regulations only require the Designated Independent Person to investigate and report to the council. The methodology to be used should be confirmed with the Joint Personnel Committee. 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, Monitoring Officer or Section 151 Finance Officer is given the opportunity to respond.

26. Receipt and Consideration of the Designated Independent Person's Report by the Joint Personnel Committee.

26.1 The Joint Personnel Committee will consider the report of the Designated Independent Person and also give the Chief Executive, Monitoring Officer or Section 151 Finance Officer the opportunity to state his/her case before making a decision. Having considered any other associated factors the Joint Personnel 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, Monitoring Officer or Section 151 Finance Officer short of dismissal
- Recommend dismissal of the Chief Executive, Monitoring Officer or Section 151 Finance Officer to the Council

27. Report of the Designated Independent Person

27.1 The requirement is that the Designated Independent Person makes a report to the council and to the Chief Executive, Monitoring Officer or Section 151 Finance Officer simultaneously. Unless the Chief Executive, Monitoring Officer or Section 151 Finance Officer is exonerated by the report then at this stage the Chief Executive, Monitoring Officer or Section 151 Finance Officer should be given the opportunity to state his/her case before the committee makes its decision.

28. New material evidence

28.1 Where there is, at this stage, new evidence produced which is material to the allegation/issue and may alter the outcome, the Joint Personnel Committee may:

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

28.2 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.

29. Recommendations by the DIP - Outcomes or Options

- 29.1 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 Joint Personnel Committee would need to select the action to be taken.
- 29.2 Whilst the DIPs role is to make recommendations on disciplinary action, he/she may wish to comment on potential options for the way forward.

30. Decision by the Joint Personnel Committee

- 30.1 The Joint Personnel 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.

31. Action Short of Dismissal

- 31.1 Where the decision is to take action short of dismissal the Committee will impose the necessary penalty/action, up to the maximum recommended by the Designated Independent Person.
- 31.2 There is no requirement to seek confirmation by the council. The constitution of the Joint Personnel Committee will need to include the delegated power to take disciplinary action in these circumstances.

32. Dismissal

- 32.1 The Joint Personnel Committee will inform the Monitoring Officer (or Deputy Monitoring Officer where applicable) that it is proposing to the Council that the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer be dismissed and that the Cabinet/Executive objections procedure should commence.

33. Executive Objections Procedure

- 33.1 The Monitoring Officer (or Deputy Monitoring Officer where applicable) will notify all members of the executive of:
- The fact that the Joint Personnel Committee is proposing to the Council that it dismisses the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer.
 - Any other particulars relevant to the dismissal
 - The period by which any objection to the Council is to be made to the Monitoring Officer (or Deputy Monitoring Officer where applicable)

At the end of this period the Monitoring Officer (or Deputy Monitoring Officer where applicable) will either:

- Inform the Joint Personnel Committee that no objections to the dismissal have been received from members of the Cabinet and Executive.

- Inform the Joint Personnel Committee that an objection or objections have been received and provide details of the objections
- 33.2 The Joint Personnel Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are then the Joint Personnel Committee will act accordingly i.e. it will consider the impact of the Cabinet and Executive objections on the report of the Designated Independent Person and relevance to the sanction, commission further investigation by the Designated Independent Person and report if required etc.
- 33.3 Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the Joint Personnel Committee will inform the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer of the decision and put that proposal to the council along with any necessary material e.g the Designated Independent Person's Report.

34. The Role of The Council

- 34.1 The Regulations require that in all constitutions, where there is a proposal to dismiss the Chief Executive, Monitoring Officer or Section 151 Finance Officer, the council must approve the dismissal before notice of dismissal is issued.
- 34.2 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.
- 34.3 The Head of Paid Service, Monitoring Officer or Section 151 Finance Officer will have the opportunity to be accompanied by their representative and to put forward his/her case before a decision is reached.
- 34.4 Where the Joint Personnel Committee has made a proposal to dismiss the hearing by the Council will also fulfil the statutory appeal function.

35. Appeals Against Action Short of Dismissal

- 35.1 If the Joint Personnel Committee takes action short of dismissal the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer may appeal to the Appeals Committee. The Joint Appeals Committee will consider the report of the Designated Independent Person and any other relevant information considered by the Joint Personnel Committee i.e new information, Cabinet and Executive objections (if relevant), outcome of any further investigations etc. The Head of Paid Service, Monitoring Officer or Section 151 Finance Officer will have the opportunity to state his/her case.
- 35.2 The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.
- 35.3 The appeal hearing will take the form of a review of the case and the decision that was taken by the Joint Personnel Committee.
- 35.4 This process should follow the Appeals Committee Procedure rules as set out in the Cherwell District Council constitution.
- 35.5 The decision of the Joint Appeals Committee will be final.

36. Appeals Against Dismissal

- 36.1 The ACAS Code of Practice was issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and came into effect by order of the Secretary of State on 6 April 2009 and replaces the Code issued in 2004. The Code requires that an employee who has been dismissed is provided the opportunity to appeal against the decision.
- 36.2 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. Before the council takes a decision on the recommendation to dismiss the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer it will take representation from the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer. Those representations will constitute the appeals process.