

# **Disciplinary Procedure**

**For the Chief Executive**



**ORGANISATIONAL DEVELOPMENT DIVISION**

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# Version Control

This document is intended for:

- Council staff only    School-based staff only    Council & School-based staff

Version	Key Changes	Approved By

This document may be reviewed and amended at any time and without consultation in response to legal requirements or in response to an organisational requirement and where the changes do not reflect a fundamental change or affect the spirit or intent of the document.

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# 1. Scope of Procedure

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- 1.1 This Disciplinary Procedure (**Procedure**) applies to the Chief Executive of the Council (referred to in this Procedure as the **Chief Executive**) and incorporates the requirements of The Local Authorities (Standing Orders) (Wales) Regulations 2006 (**Regulations**).
- 1.2 This Procedure has been adopted by the Council for the purpose of dealing with alleged misconduct (**conduct**) and/or under-performance (**capability**), or where there is some other substantial issue that requires investigation and which, in each case, if upheld, would be recorded on the Chief Executive's personnel file. It does not apply where there is any proposal for dismissal of the Chief Executive by reason of redundancy, expiry of a fixed term contract or retirement or termination on ill health grounds.
- 1.3 Save where alternative arrangements have been agreed between the Council and the Chief Executive, the steps set out in this Procedure should be followed. The parties recognise it may be necessary to depart from the Procedure, from time to time, according to particular circumstances of a case. In such circumstances, both parties agree to give their consideration to reasonable proposals to modify the Procedure accordingly.
- 1.4 Where appropriate an informal resolution will be sought where there are allegations relating to the conduct or capability of or similar issues in relation to the Chief Executive. Where this is not appropriate or where informal resolution is not possible, this Procedure will apply.
- 1.5 This Procedure does not form part of the Chief Executive's contract of employment and it may be amended from time to time.

# 2. Responsibilities

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- 2.1 All those involved in the disciplinary process have the following responsibilities in line with this Procedure:
  - Ensuring they familiarise themselves with this Procedure.
  - Ensuring the Procedure is applied fairly and consistently.
  - Ensuring all individuals involved in this process are treated with dignity and respect.
  - Maintaining confidentiality at all times in relation to this Procedure.
  - Co-operating fully in investigations and all meetings relating to this Procedure.
  - Making every effort to attend scheduled meetings in line with the Procedure.

### 3. Issues requiring Investigation

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- 3.1 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 and Disciplinary Committee (**IDC**). Matters to be referred to the IDC will usually be overseen by the Monitoring Officer and the Chair of the IDC.
- 3.2 The IDC will be a standing committee appointed by the Council which shall be politically balanced. It shall include no fewer than three elected members and should not include any member who has a conflict of interest or who has had a prior involvement in the matter.

### 4. Timescale

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- 4.1 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 but recommend that proceedings be subject to regular review.

### 5. Suspension

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- 5.1 The IDC will consider whether it is appropriate to suspend the Chief Executive. Suspension is not regarded as disciplinary action under this Procedure but as a neutral act which may be implemented where, in the opinion of the IDC:
  - 5.1.1 The Chief Executive's continuing presence at work might compromise the investigation; or
  - 5.1.2 The Chief Executive's continuing presence at work might impair the efficient exercise of the Council's functions; or
  - 5.1.3 An allegation is such that, if substantiated, it would amount to gross misconduct.
- 5.2 The Chief Executive shall be informed of the reason for the proposed suspension and shall have the right to present information to the IDC before such a decision is taken. While suspended the Chief Executive must not visit the Council's premises or contact any service users, members, suppliers, contractors or staff unless authorised to do so by the Chair of the IDC.
- 5.3 The Monitoring Officer in consultation with the Chair of the IDC shall 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 their remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Council. In extenuating circumstances only, whereby the Monitoring Officer is unable to suspend

the Chief Executive, the delegated power to suspend will transfer to the Head of Organisational Development (in consultation with the Chair of the IDC).

- 5.4 The necessity for the Chief Executive to remain suspended shall be reviewed at regular intervals and reasonable efforts shall be made to conclude the investigation within a reasonable time. Consideration will be given as to whether alternative working arrangements might be implemented which could avoid the need for the Chief Executive's suspension, whilst avoiding any compromise to the investigation or the efficient exercise of the Council's functions.
- 5.5 Unless otherwise agreed, any suspension should last for no longer than two months but may be extended following discussion with the Designated Independent Person (**DIP**). Suspensions should not be unduly extended however, there may be extenuating circumstances whereby a suspension exceeds two months.
- 5.6 Absence from duty during any period of suspension shall be on full pay. In the event that the Chief Executive reports sick during a period of suspension, the Council's occupational sick pay scheme will be applied and upon production of the appropriate medical certificates, the Chief Executive will be paid in line with their sick pay entitlements as set out in the Chief Executive's terms and conditions of employment.

## 6. Right to be Accompanied

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- 6.1 Other than in circumstances where there is an urgent requirement to suspend the Chief Executive, they will be entitled to be accompanied at all meetings/hearings under this Procedure by a Trade Union Representative or Workplace Companion (hereafter referred to as a '**Companion**').
- 6.2 If the Companion is unable to attend any meeting/hearing the Chief Executive may propose an alternative date provided it is no more than five working days after the original date proposed for the meeting. If the Companion is unable to attend such meeting/hearing within that period the meeting/hearing may proceed and a decision may be taken if the Chief Executive fails to attend. The Chief Executive may not request the postponement of any meeting where their suspension is being considered under paragraph 5.2.

## 7. Considering the Allegations or Other Issues under Investigation

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- 7.1 The IDC will, as soon as is practicable, inform the Chief Executive in writing of the allegations or other issues under investigation.
- 7.2 The IDC may:
  - 7.2.1 make such enquiries of the Chief Executive or any other person as it considers appropriate;

7.2.2 request the Chief Executive or any other person it considers appropriate to provide it with such information, explanation or documents as it considers necessary; and

7.2.3 hear oral evidence.

7.3 The IDC will provide the Chief Executive with any evidence that the IDC is to consider and they will be given a reasonable opportunity to consider such evidence. The Chief Executive shall be invited to put forward written representations and any evidence including evidence from witnesses that they wish the IDC to consider.

7.4 The IDC will provide the opportunity for the Chief Executive to make oral representations at a meeting with the IDC before a decision is made pursuant to paragraph 7.5 below.

7.5 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.

7.6 The IDC shall decide whether:

7.6.1 the issue requires no further formal action under this Procedure; or

7.6.2 the issue should be referred to a DIP.

7.7 The IDC shall inform the Chief Executive of its decision.

Where the allegations relate to a criminal investigation, the Council will not usually wait for the outcome of any prosecution before deciding what action, if any, to take.

## **8. Appointment of a DIP**

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8.1 Where the IDC decides that the issue should be referred to a DIP, the DIP shall be agreed between the IDC and the Chief Executive, wherever possible within one month of the IDC's decision. If the parties are unable to reach agreement, the Council will appoint the person nominated by Welsh Ministers.

8.2 The IDC will be responsible for making the appointment of the DIP, providing the necessary facilities, agreeing remuneration and providing information about the allegations.

## **9. DIP's Investigation**

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9.1 It will be the responsibility of the DIP to investigate the issue/allegation. The amount of investigation required will depend on the nature of the allegations or other issues and may involve interviewing and taking statements from the Chief Executive and any witnesses and/or reviewing relevant documents. The Chief Executive must co-operate fully and promptly with any investigation.

- 9.2 On conclusion of the investigation the DIP will prepare a report (**Investigation Report**):
- 9.2.1 stating in their opinion whether (and if so the extent to which) the evidence they have obtained supports any allegation of misconduct, or incapability or supports the need for action under this Procedure for some other substantial reason; and
  - 9.2.2 recommending what, if any, disciplinary action or range of actions appears to be appropriate for the Council to take against the Chief Executive having regard to all the circumstances of the case.

## 10. Receipt and Consideration of the DIP's Report by the IDC

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- 10.1 The IDC will consider the Investigation Report and will provide a copy to the Chief Executive, together with any supporting documentation including witness statements where relevant and accompanied by written notice of the specific allegations to be considered by the IDC at a disciplinary hearing.
- 10.2 The Chief Executive will be given a reasonable opportunity to consider the information referred to in paragraph 10.1 and shall be invited to put forward written representations and any evidence including evidence from witnesses that they wish the IDC to consider.
- 10.3 The Chief Executive must make every effort to attend the disciplinary hearing.
- 10.4 The IDC shall give the Chief Executive the opportunity to state their case at the disciplinary hearing before making a decision. The Chief Executive may be accompanied to the hearing by a Companion.
- 10.5 Having considered the evidence and any other associated factors the IDC may:
- 10.5.1 take no further action;
  - 10.5.2 recommend informal resolution or other appropriate procedures;
  - 10.5.3 refer back to the DIP for further investigation and report;
  - 10.5.4 take disciplinary action against the Chief Executive short of dismissal; or
  - 10.5.5 recommend the dismissal of the Chief Executive to the Council.
- 10.6 Where practicable, the decision of the IDC will be delivered orally after an adjournment. The IDC will in any event confirm its decision to the Chief Executive in writing, normally within five working days of the disciplinary hearing (**Decision Letter**).

## 11. Action Short of Dismissal

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- 11.1 Where the decision of the IDC is to take action short of dismissal the IDC will impose the necessary penalty/action up to the maximum recommended by the DIP and which may include (but is not limited to) the following:
- 11.1.1 a first written warning;
  - 11.1.2 a final written warning;
  - 11.1.3 demotion and/or redeployment.
- 11.2 Where the Chief Executive is issued with a written warning, it will set out the nature of the misconduct, the change in behaviour required, the period the warning will remain active and the likely consequences of further misconduct in that active period. A first written warning will normally remain active for nine months; a final written warning will normally remain active for 12 months. Records of all proceedings in line with this Procedure will be kept on the employee's personal file. All records will be kept confidential and will be retained in accordance with the Disciplinary Policy & Procedure, the Council's Retention Guidelines and statutory requirements.

## 12. Where the IDC proposes Dismissal

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- 12.1 Where the decision of the IDC is to propose that the Chief Executive is dismissed, the IDC will inform the Chief Executive of its decision and put that proposal to the Council along with any necessary documentation.
- 12.2 Those Council members that form part of the IDC, will not vote in respect of any recommendation to a Full Council meeting regarding dismissal.
- 12.2 The Council will consider the proposal from the IDC that the Chief Executive should be dismissed. This shall be by way of a review of the case and the recommendation to dismiss. The Chief Executive will have the opportunity to put their case at a hearing before the Council before a decision is taken and they may be accompanied to that hearing by a Companion.
- 12.3 The Council may decide to uphold or dismiss the decision of the IDC or to impose a different sanction.
- 12.4 The dismissal of the Chief Executive may, in appropriate circumstances, be without notice or payment in lieu of notice.



## 13. Appeals

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### ***Appeals against Action Short of Dismissal***

- 13.1 Where the IDC takes action short of dismissal, the Chief Executive may appeal to the Appeals Committee within five working days of the date of the Decision Letter, setting out the grounds of appeal. The Appeals Committee will be a standing committee appointed by the Council. It shall include no fewer than three elected members and should not include any member who is a member of the IDC or who has had a prior involvement in the matter. All reasonable effort should be made for the appeal to be heard at the earliest opportunity and as far as possible should be no longer than 6 weeks from the date of the written appeal being received.
- 13.2 The Appeals Committee will consider the report of the DIP and any other relevant information considered by the IDC. The Chief Executive will have the opportunity to put their case at a hearing before the Appeals Committee, which will take the form of a review of the decision taken by the IDC, before a decision is taken and they may be accompanied to that hearing by a Companion.
- 13.3 The Appeals Committee will give careful consideration to the report of the DIP and any other relevant information and may conduct any further investigation it considers necessary to reach a decision.
- 13.4 The Appeals Committee may decide to uphold or dismiss the decision of the IDC or to impose a different sanction.
- 13.5 Where practicable, the decision of the Appeals Committee will be delivered orally after an adjournment. The Appeals Committee will in any event confirm its decision to the Chief Executive in writing, normally within five working days of the hearing.
- 13.6 The decision of the Appeals Committee will be final.

### ***Appeals against Dismissal***

- 13.7 Where the IDC has made a proposal to dismiss, the hearing by the Council referred to in paragraph 12.2 above will also fulfil the statutory appeal function. There shall be no further right of appeal.