



Chief Executive Discipline, Capability and Grievance Policy & Procedure

Local authority Chief Executives, S151 Officers and Monitoring Officers 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 these roles from unwarranted political interference in their roles.

Wokingham Borough Council has adopted as far as is practicable, the model procedures laid down in the JNC Chief Executive Handbook.

Contents

Scope	3
The right to be accompanied.....	3
Criminal prosecutions and convictions.....	4
Resigning During a Disciplinary Investigation.....	4
Sickness Absence.....	4
Grievance	5
Using this policy in relation to Capability	5
Sickness/Ill Health	5
Performance.....	5
Informal Stage	5
Suspension	6
Other appropriate actions.....	6
Formal disciplinary procedure.....	7
Deciding whether to instigate the formal procedure.....	7
Access to appropriate professional/independent advice.....	8
Investigation.....	8
Selecting the Investigator	8
Commencing the Investigation.....	9
Disciplinary Hearing.....	9
Hearing Officer	9
Presenting Manager -	10
Independent Investigator	10
Chief Executive	10
Chief Executive Support Representative	10
HR or Legal Representative	10
Witnesses	10
Note Taker.....	11
Decision	11
Disciplinary Sanctions.....	11
Other Penalties.....	12
Formal written warning	12
Final Written Warning	12
Dismissal.....	12
Approval for Dismissal at Full Council	12
Independent Panel	12
Full Council	13

Appeal	13
Appeal Committee.....	13
Presenting Manager	14
HR or Legal Representative	14
Appellant	14
Witnesses	14
Note Taker.....	14
Keeping written records	14
Process Flow – Formal Disciplinary Procedure	15

Version	Date	Description
1	28/12/18	New Policy & Procedure adapted from JNC Chief Executive Handbook
Document Approvals		
Author:		Sarah Swindley
Personnel Board:		

Scope

This policy applies to:

- The Chief Executive,
- Section 151 Officer
- Monitoring Officer

And hereon in will refer to all 3 roles as 'chief executive'.

The Council reserves the right to implement the procedure at any stage as set out below, taking into account the alleged misconduct of a chief executive.

Capability and Conduct issues will be addressed through the one disciplinary procedure. A list of typical misconduct and gross misconduct offences can be found in the Conduct policy held on the Grapevine. This list is not exhaustive and disciplinary action is not just limited to these offences.

The Council regards all forms of harassment and bullying as serious misconduct, and any employee who is found to have harassed or bullied a colleague will be liable to disciplinary action up to and including summary dismissal.

The right to be accompanied

Chief executives have a statutory right to be accompanied at formal disciplinary hearings or appeal hearings by a work colleague or trade union representative. Consideration will also be given to requests for some other person of their choice, at their own cost.

Staff being interviewed as part of a formal investigation may also be accompanied by a work colleague or trade union representative.

This right to representation does not extend to the informal stages of the disciplinary procedure or in circumstances where there is an urgent requirement to suspend the chief executive (e.g. 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). Other than that he or she will be entitled to be accompanied at all stages.

If the chief executive's trade union representative is unavailable for the date set then the chief executive will have the right to postpone the meeting for a period of up to one week. If the representative is unable to attend within that period the Council will go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

Criminal prosecutions and convictions

Chief executives subject to prosecution by the police through the criminal justice system may also be subject to disciplinary action, irrespective of whether they were convicted of the offence or not.

An assessment of the prosecution will be made and decision on how the offence or conviction impacts the chief executive's employment, or whether their action brought the Council into disrepute. Under the Conduct Policy, chief executives have a duty to report arrests or convictions.

Resigning During a Disciplinary Investigation

Where a chief executive resigns during the investigation they must be informed that it will not prevent an allegation from being followed up and any reference provided to a future employer may include their conduct/capability standards.

Sickness Absence

If a chief executive starts a period of sick leave after disciplinary allegations, during a disciplinary investigation or a period of suspension this will not prevent the operation of the disciplinary procedure. It is in the interests of the Council and the chief executive that any disciplinary allegations are resolved within a reasonable timescale. At least two attempts will be made to convene a hearing that the chief executive can attend and evidence must be provided of the reason for absence. If they are still unable to attend, the hearing can proceed with a representative of their choice in attendance. If the chief executive does not wish any other person to attend as their representative, the hearing can proceed without them and they should be asked to submit a written response for consideration at the hearing.

If appropriate an Occupational Health referral will be made to ascertain if the chief executive is capable and fit to attend a disciplinary hearing or investigation interview.

Grievance

Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently unless:

- Bias is alleged in the conduct of the disciplinary meeting
- There is possible discrimination.

If this occurs then the disciplinary process may be temporarily suspended in order to deal with the grievance.

Chief Executives may not raise a grievance against a sanction that has been given as they have the right to appeal the decision under the disciplinary procedure.

Using this policy in relation to Capability

Where the issue is related to the sickness absence or capability of the chief executive in terms of performance the Councils normal capability procedures will be followed until the informal stage is required to be instigated.

Sickness/Ill Health

Where management action is required in respect of the Ill Health of the Head of Paid Service, the Lead Specialist, Human Resources will ensure that the authority's normal sickness absence procedures are followed and report to the IDC as appropriate to the matter being investigated.

Performance

Where the issue is one of capability in terms of performance or competence, other than ill-health, the council will demonstrate the evidence of this in order for an investigation to be commenced.

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.

Informal Stage

Where potential disciplinary problems (either conduct or performance) are identified then either of the parties are able 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.

However, in most cases an informal approach will be taken before any formal action is considered. A meeting should be arranged with the chief executive to discuss the issue and:

- Provide details of the nature of the conduct or capability concerns, or allegation.
- Document the chief executives responses
- The written note of this and any subsequent discussions/reviews should be kept and a copy provided to the chief executive so that if there is a failure to improve or maintain this improvement, this conversation can be referred to when beginning any formal procedure
- Agree a plan of improvement and a period for review
- Proceed to the formal stage where the individual's conduct or capability continues to fall below the required standards

If it becomes clear during the informal/investigative meeting that formal disciplinary action may need to be taken then the interview must be terminated and the formal procedure commenced. The formal process should not be initiated during the informal interview.

Suspension

Chief executives should normally only be suspended in serious cases where there is:

- A risk that the presence of the individual may hinder or influence the investigation
- A danger the alleged misconduct might happen again
- Continued risk to customers or clients
- On committing a gross misconduct offence
- An issue relating to some other substantial reason

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.

Before making the decision to suspend the chief executive shall be informed of the reason for the proposed suspension and have the right to present information to those making the decision.

Suspension from work does not imply guilt and is not a disciplinary sanction in itself, but applied as a precaution. The decision on whether to suspend a chief executive will be made in line with S11.6.5.5 of the Constitution and the Decision Making Checklist used to ensure that all necessary suspension protocols are put in place.

Suspension is on full pay pending the outcome of the investigation and where appropriate, the disciplinary hearing. The period of suspension should be as brief as possible and initially for no longer than 2 months' then reviewed at least every 4 weeks in consultation with the Independent Investigator and after taking into account any representations made by the chief executive. Where it is identified that a period of suspension can be lifted, even before the completion of the disciplinary proceedings, the chief executive should return to duty.

The chief executive must make themselves available for interviews during the procedure and must not take alternative employment while the contract of employment still applies. Where secondary employment has already been approved, this may continue, except where potential conflict of interest is the cause of the suspension.

Other appropriate actions

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 Council 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.

Clearly this will depend on the facts of the matters. It could be that there is 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.

It is possible at any stage to consider the mutual termination of the contract. This might particularly be the case where relationships are breaking down but there is no evidence of misconduct attached to the chief executive.

Appropriate legal advice will be taken when attempting to reach a financial settlement to ensure that any payment is justified and lawful.

Formal disciplinary procedure

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.

The procedure is set out in as a flow chart in Appendix 1.

Deciding whether to instigate the formal procedure

The decision on whether to instigate the formal disciplinary procedure will be made in line with S11.6.5 of the Constitution. In complex cases it may be necessary to appoint an independent investigator to undertake a preliminary investigation in order to determine whether to instigate the formal procedure. If this is necessary then the selection of the investigator will occur in line with the process described [below](#). As soon as practicable the chief executive should be informed in writing:

- Of the allegations or other issues causing concern
- Any evidence that is to be considered in making the decision as to whether to instigate the formal procedure. If there is witness evidence relating to an allegation in exceptional cases it might be appropriate to anonymise the evidence in order to protect the identity of a witness
- The right to present oral evidence before a decision is made
- That they can put forward written representations and any evidence including written evidence from witnesses he/she wishes to be considered. At this initial consideration of the need to investigate further, witnesses will not be called.
- The right be accompanied

Fair notice should be given to enable the chief executive adequate time to prepare a response to the allegations or issues under investigation and to arrange for his companion to be available, if at all possible.

Careful consideration will be given to the allegations or other issues, supporting evidence and the case put forward by the chief executive before making the decision, which will be either:

- the issue requires no further formal action under this procedure or,
- the issue should be referred to an Independent Investigator and the IDC

Cases will vary in complexity but the threshold test for 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 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 or concern sufficient to require further investigation

The chief executive should be informed as soon as possible and the Decision Making Checklist used or updated to ensure that all necessary protocols are in place.

Access to appropriate professional/independent advice

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.

If the decision is made to instigate formal disciplinary procedure then consideration may be given to appointing external advisers, if appropriate.

Investigation

Selecting the Investigator

This process will be managed by one of the remaining Statutory Officers covered under this policy and be the point of contact for the appointed Investigator. Whether for a preliminary or formal investigation, the Council will approach the National Joint Secretaries and will be supplied with three names from the list of Independent Investigators that is held centrally 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. 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 an evidence based 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.

Remuneration for the Independent Investigator will be set at the Local Government Association's normal consultancy rate for external consultancy work.

Commencing the Investigation

The Independent Investigator will be provided with terms of reference which will include:

- The precise allegation(s) or issue(s) to be investigated
- Sources of information and people identified as relevant to the case
- Expectations regarding timescales and any known factors which could hinder their investigation, e.g. the availability of key people

Unless it is a preliminary investigation, which will always follow the former methodology, the Independent Investigator will 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.

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 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.

The amount of time required to be spent on the investigation will depend on the case. 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 person who commissioned the investigation 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.

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.

The investigation findings will be considered by the Investigating & Disciplinary Committee (IDC) at the Disciplinary Hearing.

Disciplinary Hearing

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 IDC makes its decision.

The roles in the hearing are as follows:

Hearing Officer – In the case of a Chief Executive, the hearing officer is the IDC. Their responsibilities are to:

- Appoint a chair from within the IDC to chair the hearing
- Hear the evidence presented from both sides
- Decide on whether the case is considered proven or not
- Issue a suitable sanction to the employee in proven cases

Presenting Manager - Normally the presenting manager will be the officer who commissioned the investigation and once they have introduced the reasons for moving to the formal disciplinary procedure and the appointment of the Independent Investigator, answering any questions either side may have they should be treated as a witness and leave the room while being available to be called back for any further questions.

Independent Investigator - 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.

Chief executive - The chief executive should attend the hearing to present their own case, call relevant witnesses and be allowed to question the evidence submitted by the presenting manager, Independent Investigator, witnesses that are called to give evidence, and they may also submit further evidence to support their case. The chief executive will be in attendance throughout the hearing.

Chief executive Support Representative - A work colleague or trade union representative, or some other person of the chief executive's choice may support the employee at the hearing. The companion should be allowed to address the hearing to put and sum up the chief executive's case, respond on behalf of the chief executive to any views expressed at the meeting and confer with the chief executive during the hearing. The companion does not, however, have the right to answer questions on the chief executive's behalf, address the hearing if the chief executive does not wish it or prevent the employer from explaining their case.

HR or Legal Representative - A representative from Human Resources or Legal will attend all formal disciplinary hearings. Their responsibility is to advise the IDC on the disciplinary process; ensure the hearing is conducted fairly and in accordance with the disciplinary procedures. The HR or Legal representative may ask questions during the hearing but cannot make a decision on the outcome or unduly influence the hearing panel in their decision.

Witnesses – It is the decision of the IDC as to which witnesses to call to give evidence. All witnesses called to give evidence will attend the hearing to present their evidence and to answer any questions that are raised. On the conclusion of their evidence they will leave the hearing. If the witnesses are unable to attend, their evidence should not be discounted and will 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.

Note Taker - A member of the Democratic Services team will attend to formally record details of the hearing and outcome. A copy of the notes should be passed to the employee being disciplined for them to confirm it is an accurate record of the hearing.

Decision

If during the hearing, new evidence is produced which is material to the allegation or 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

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.

If the hearing is in relation to Capability due to a Disability, 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.

Having considered any other associated factors the IDC may:

- Take no further action. 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
- 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
- Propose dismissal of the chief executive to the Council

Disciplinary Sanctions

When deciding whether a disciplinary sanction is appropriate and what form it should take, the IDC must bear in mind the need to act reasonably and consistently at all times. Factors that should be considered are:

- The extent to which standards have been breached
- Precedent i.e. has this particular breach happened before and what was the penalty; will any precedent be set for the future?
- The chief executive's employment record within the Council
- Special circumstances that may impact on the severity of the sanction. Taking into account any mitigation raised during the investigation or disciplinary hearing
- Where a chief executive has a previous disciplinary record that is still current the penalty should be escalated irrespective of the offence. Different disciplinary sanctions do not have to be issued for different offences and the Council's view is that it is the chief executive's overall conduct and behaviour that is questioned

When the case is considered proven the sanctions available are:

Other Penalties - Where the severity of the misconduct does not warrant dismissal, consideration should be given to the following sanctions which may also be combined with a first and/or final written warning:

- Suspension without pay – the length of suspension is dependent on the seriousness of the offence up to a maximum of 5 working days
- Impose a financial penalty – e.g. repaying a financial loss borne by the Council
- Demotion
- Deduction of pay in cases of unauthorised absence

Formal written warning - This penalty would normally be issued for a first time offence

Final Written Warning - There are a number of occasions where this penalty may be used:

- Where a formal written warning was issued previously and has not expired.
- Penalty Short of Dismissal. A final written warning may also be used as a punishment short of dismissal where the conduct has been unacceptable but dismissal is considered too harsh a penalty on this occasion.

- First and Final Written Warning. Where a serious misconduct has been committed that requires a penalty to convey the dissatisfaction of the chief executive's conduct or capability. It may also be used as penalty short of dismissal as described above.

All warnings will be confirmed in writing to the chief executive giving a brief explanation of the reason for the warning. Formal and final written warning will expire after a period of 12 months where no further offences have been committed. This may be escalated to 2 years in exceptional circumstances. The warnings will still remain on the chief executive's personal file but will be disregarded if no further offence is committed.

Dismissal - Where gross misconduct has been committed, the most likely outcome is dismissal.

The IDC will inform the chief executive of the decision and put that proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material. This is not a full rehearing and will not involve the calling of witnesses (see "Approval for Dismissal at Full Council").

Approval for Dismissal at Full Council

Independent Panel

The role of the Panel is to offer any advice, views or recommendations it may have to the council on the proposal for dismissal

Where the IDC is proposing dismissal, this proposal needs to go before an Independent Panel that must be appointed at least 20 days before the meeting of the council at which the recommendation for dismissal is to be considered. Appropriate training will be offered to Independent Panel members that are unfamiliar with their role under the Regulations and with matters relating to the working environment of chief executives.

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 Panel will be at liberty to ask questions of either party.

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.

Full 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 attend and be accompanied by their representative and to put forward his / her case before a decision is reached. Those representations will constitute the appeals process.

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.

The decision should be confirmed in writing to the chief executive giving a brief explanation of the decision.

Notice is as follows:

- Gross Misconduct: Summary dismissal without notice
- Misconduct and Some Other Substantial Reason: written notice in accordance with the terms & conditions of employment. The chief executive will not be required to work their notice period

Appeal

If the IDC takes action short of dismissal, the chief executive may appeal to the Appeals Committee within 5 working days' of receiving the written decision of the IDC. The Appeals Committee will consider the report of the Independent Investigator and any other relevant information considered by the IDC, e.g. new information, outcome of any further investigation, etc. The chief executive will have the opportunity to appear at the meeting and state their case.

The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision. The appeal hearing is not a re-run of the disciplinary hearing but should restrict itself to hearing the grounds of the appeal.

The decision of the Appeals Committee will be final and cannot increase the sanction of the original decision and will be communicated in writing.

The Appeal panel will consist of the following:

Appeal Committee - They will be independent of the case and have had no involvement in the matter previously. Their responsibility is to decide on whether the decision of the IDC was justified and correct. They will appoint a Chair on the day of the meeting to ensure the Appeal follows the outline process.

Presenting Manager - The presenting manager will be the IDC Chair.

HR or Legal Representative - A representative from Human Resources or Legal should attend to advise and guide the Appeal Committee and ensure the appeal hearing is conducted correctly. Where possible they should have had no previous involvement in the case.

Appellant - The chief executive.

Chief executive Support Representative - A work colleague or trade union representative, or some other person of the chief executive's choice may support the employee at the hearing.

Witnesses - If required witnesses may be called to give evidence that was not originally presented at the hearing.

Note Taker - A member of Democratic Services will attend to formally record details of the appeal hearing and outcome. A copy of the notes should be passed to the chief executive for them to confirm it is an accurate record of the hearing.

Keeping written records

Details of all formal action taken against the chief executive will be held in the chief executives registered personal file and would normally include the investigation report; notes of the disciplinary hearing and details of any warning/dismissal letters that were issued.

Grievance Procedure

Introduction

These procedures covers the following circumstances:

- Where an employee raises a grievance against the chief executive
- Where a chief executive raises a grievance

The procedure is set out in as a flow chart in Appendix 2.

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

An employee raising a grievance against the chief executive should do so using the normal Wokingham Borough Council Grievance policy and procedure. However, while operating within the context of the employee's grievance procedure 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).

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

There is a statutory right for the aggrieved employee to be accompanied by a fellow worker or a trade union representative, at any meeting that deals with the grievance.

Initial filtering of grievances

Where an employee raises a grievance against the chief executive, The Monitoring Officer will act as 'Receiving Officer' and will undertake an initial filtering to ensure that 'allegations' against the chief executive which are clearly unfounded or trivial are not taken any further, or can best be dealt with under some other 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.

If the Monitoring Officer is the person bringing the grievance against the chief executive, the subject of the Grievance or is otherwise involved in the grievance, then another appropriate chief officer and/or a Monitoring Officer from a neighbouring authority will be commissioned to act as the Receiving Officer.

A meeting will 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 will be given to adjourning the meeting for any investigation that may be necessary.

The Receiving Officer will make one of the following decisions:

- 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
- That there are other formal procedures that apply rather than the grievance procedure e.g. in cases of redundancy
- 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
- 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 will not be taken lightly.
- That an attempt should be made to resolve the grievance informally
- That the matter requires further investigation

Resolving grievances informally

Where the Receiving Officer is satisfied that the grievance is neither procedurally flawed nor patently frivolous or clearly unfounded 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 by an external mediator.

Resolving grievances formally

Formal Stage 1 - the grievance investigation and hearing

The Grievance Investigation

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.

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.

The Grievance Committee hearing

The Grievance Committee will hear the case and reach its conclusion which will be one of 3:

- 1) Upholds the grievance and this may include a decision or recommendation on how the issue can best be resolved to the satisfaction of the aggrieved employee.

2) 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 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 the Disciplinary Procedure.

3) The Committee dismisses the grievance

Formal Stage 2 - the appeal hearing

If the Committee finds against the complainant then that person has a right of appeal to the Appeal Committee, 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.

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.

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.

Where the Appeal Committee dismisses the appeal, then the matter would be regarded as having been concluded.

Procedure for dealing with grievances raised by the chief executive

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.

Should the Section 151 Officer or Monitoring Officer take a grievance out against the Chief Executive, or each other, then the process described in "Procedure for dealing with a grievance raised by an employee against the chief executive" should be followed.

As Head of Paid Service, the 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 (Head of Paid Service) grievance has to be against one or more member(s) and the Council's Monitoring Officer should act as Receiving Officer.

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.

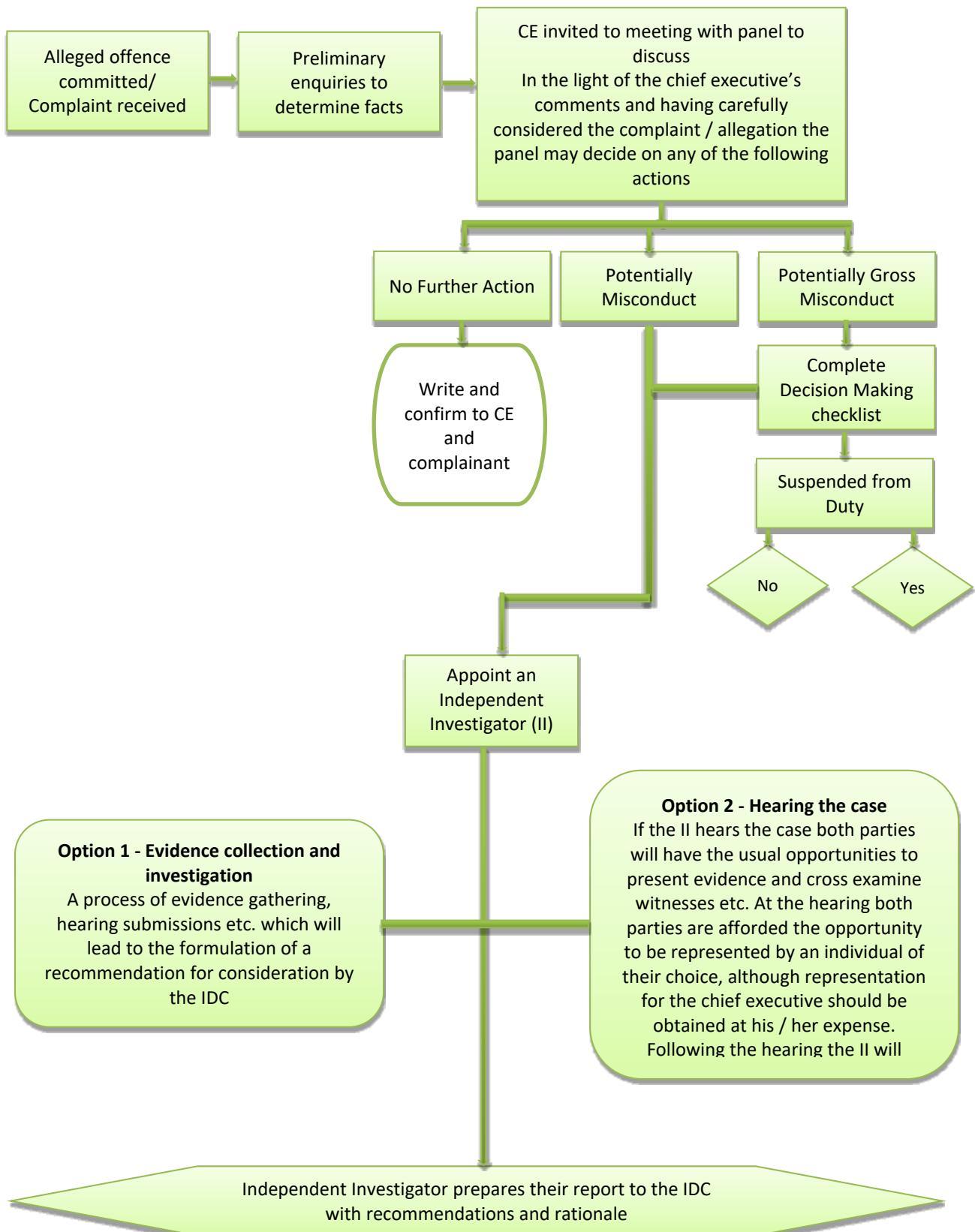
In the event that informal resolution is neither appropriate nor successful, the Receiving Officer should refer the matter to the Council's Grievance Committee. If the Grievance Committee considers it appropriate, having come to its conclusions, it might refer a matter about the conduct or behaviour of an elected member to the council's Standards Committee or other appropriate arrangements.

An appeal by the Chief Executive against the outcome of the Grievance Committee's deliberations should be to the full Council.

Grievances raised by the chief executive during disciplinary proceedings

Where a chief executive is the subject of a disciplinary / capability investigation and raises a grievance relating to the case, the Panel who decided to initiate the disciplinary proceedings 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.

Appendix 1 - Process Flow – Formal Disciplinary Procedure



Consideration and Decision 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

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 reputation. The IDC should consider reimbursement of any reasonable expenses incurred by the employee.

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 chief executive with rationale for the decision. The chief executive has the right of appeal to the appeals committee against this decision

Composition, role and process of the IP

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.

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.

Write and confirm full council decision

Appendix 2 - Process Flow – Grievance Procedure

