

APPENDIX A

DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

CAERPHILLY COUNTY BOROUGH COUNCIL

DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

1. Scope of Procedure

- 1.1 This Procedure applies to all “Statutory Officers” of the Council, namely the Head of Paid Service, the Monitoring Officer and Chief Finance Officer (Section 151 Officer).
- 1.2 This Procedure has been adopted by the Council for the purpose of dealing with disciplinary, capability and other similar issues in relation to Statutory Officers of the Council. For the avoidance of doubt, this Procedure also applies to a breakdown of trust and confidence between the Statutory Officer and the Authority.
- 1.3 Minor conduct issues can often be resolved informally. Formal steps will be taken under this Procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 1.4 The objective of this Procedure is to:-
 - (i) encourage employees to achieve and maintain acceptable standards of behaviour;
 - (ii) provide a fair and consistent method of dealing with alleged failure to maintain acceptable standards of behaviour;
 - (iii) minimise disagreements about disciplinary matters; and
 - (iv) reduce the need for disciplinary action and dismissals.
- 1.5 Save where alternative arrangements have been agreed in advance between the Council and the Chief Executive or the Statutory Officer, the steps set out in this Procedure should be followed. The parties recognise that 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 fair consideration to reasonable proposals to modify the Procedure accordingly.
- 1.6 This Procedure does not form part of a Statutory Officer’s contract of employment and it may be amended at any time, subject to overall compliance with the Local Authorities (Standing Orders) (Wales) Regulations 2006.
- 1.7 Any disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All individuals involved must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

2. Roles and Responsibilities

- 2.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Statutory Officer, the matter will be referred to an Investigating and Disciplinary Committee (“Investigating and Disciplinary Committee”) for consideration.
- 2.2 The Investigating and Disciplinary Committee shall be responsible for conducting the preliminary investigation which is further referred to in paragraph 5 below.
- 2.3 The Investigating and Disciplinary Committee should:-
 - (i) include no fewer than three elected members;
 - (ii) should not include any member with a direct personal involvement in the complaint;
 - (iii) should be politically balanced.
 - (iv) include a member of the Executive.
- 2.4 The Investigating and Disciplinary Committee shall appoint a chair person to oversee the function of the Committee (“Chair”).
- 2.5 The Investigating and Disciplinary Committee shall undertake a preliminary investigation into the allegations of conduct or capability, or other issues under investigation in order to determine whether a case to answer appears to exist which requires further consideration by a Designated Independent Person. The Investigating and Disciplinary Committee may choose to appoint a Chief Officer of the Council or an independent person to carry out the preliminary investigation on its behalf and whoever undertakes that role shall be referred to as the “Preliminary Independent Investigator” in this Procedure.
- 2.6 The Investigating and Disciplinary Committee shall be advised throughout by a suitable adviser who may be employed by or independent of the Council, (“the Independent Adviser”) who shall ordinarily be accompanied by a member of the Council’s HR Team, save in cases where a conflict of interest could arise, in which case the Chair shall appoint a nominee, who may be an external adviser.
- 2.7 Save where the Investigating and Disciplinary Committee is satisfied, following a preliminary investigation, that the issue requires no further action or can be resolved informally, the matter must be referred to a Designated Independent Person, who shall be responsible for determining the matter in accordance with paragraph 5 below.

3. Timescale

- 3.1 The Procedure does not generally incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the

circumstances of a particular case. Where time limits do apply, they are included within the relevant section of this Policy. However, it is implicit that all stages of the Procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

4. Suspension

- 4.1 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 Investigating and Disciplinary Committee, it is believed that the Statutory Officer's continuing presence at work might compromise the investigation or otherwise impair the efficient exercise of the Council's functions.
- 4.2 Suspension may also be necessary if an allegation is such that, if proven, it would amount to gross misconduct.
- 4.3 In ordinary cases, power to suspend a Statutory Officer will rest with the Investigating and Disciplinary Committee. However, in cases which in the reasonable opinion of the Leader of the Council (or in his absence the Deputy) are urgent cases, the Leader of the Council (or in his absence his Deputy) shall have power to suspend a Statutory Officer.
- 4.4 Save in urgent cases, prior to imposing suspension in any case, the Investigating and Disciplinary Committee shall inform the Statutory Officer, in writing, of the reason for the proposed suspension and the Statutory Officer shall have the opportunity to make representations before a decision is taken.
- 4.5 In urgent cases, the Statutory Officer shall be informed of such reasons in writing within 2 working days and make representations to the Investigating and Disciplinary Committee, which shall be considered within 5 working days.
- 4.6 The necessity for the Statutory Officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided. Further specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Statutory Officer's suspension, whilst avoiding any compromise to the investigation or to the efficient exercise of the Council's functions.
- 4.7 Absence from duty during any period of suspension shall be on full pay.
- 4.8 Any suspension must not last longer than 2 months from the day on which it takes effect unless a Designated Independent Person has used their power to direct a continuation of the suspension after the expiry of that period.

5. Preliminary Investigation

- 5.1 The Chair of the Investigating and Disciplinary Committee will be responsible for informing the Statutory Officer, in writing, of the allegations or other issues under investigation. The date of this notification shall be the “Commencement Date” for the purpose of this Procedure.
- 5.2 The Chair of the Investigating and Disciplinary Committee shall be responsible for determining the arrangements for conducting a preliminary investigation, as set out in paragraph 2.2 above.
- 5.3 The Chair of the Investigating and Disciplinary Committee shall, where a decision has been taken to appoint another to conduct the preliminary investigation on its behalf, determine the terms of appointment of the Preliminary Independent Investigator, agree any remuneration payable to the Preliminary Independent Investigator (if appropriate), and provide facilities and all available information regarding allegations or other issues under investigation as are necessary to enable the Preliminary Independent Investigator to fulfil their role.
- 5.4 The Investigating and Disciplinary Committee or Preliminary Independent Investigator will be entitled to interview witnesses and carry out such enquiries as they deem necessary. This may include examining the Council’s email, internet, and other IT systems, including the accounts of the Statutory Officer. The Statutory Officer shall fully cooperate with the Investigating and Disciplinary Committee or Preliminary Independent Investigator and shall make themselves available for such interviews and meetings and provide any relevant documentation or information as the Investigating and Disciplinary Committee or the Preliminary Independent Investigator deems necessary.
- 5.5 The Statutory Officer shall be given reasonable facilities and access to the Council’s premises and systems as well as personal files/diary, etc. to allow them to prepare their responses on such terms as may be agreed by the Investigating and Disciplinary Committee or Preliminary Independent Investigator.
- 5.6 The Investigating and Disciplinary Committee or Preliminary Independent Investigator shall prepare a short report following their investigation which shall be submitted to the Chair of the Investigating and Disciplinary Committee for their consideration (“Preliminary Investigation Report”) and it is expected that this will be done within 7 working days of the Commencement Date. A copy of the Preliminary Investigation Report shall be provided to the Statutory Officer within seven working days of receipt by the Chair of the Investigating and Disciplinary Committee.

- 5.7 The Statutory Officer shall, if they so wish, request further information and documents in relation to the Preliminary Investigation Report, within five working days of receipt by the Statutory Officer of the Preliminary Investigation Report.
- 5.8 Once the period for requesting further information has elapsed and any request for information and documents made under 5.7, the Chair of the Investigating and Disciplinary Committee shall summon a meeting of the Investigating and Disciplinary Committee.
- 5.9 Before determining whether the allegations or other issues warrant referral to the Designated Independent Person for further consideration. The Chair of the Investigating and Disciplinary Committee shall advise the Statutory Officer, in writing, that:-
- they are required to attend a meeting with the Investigating and Disciplinary Committee;
 - they may make oral representations to the Investigating and Disciplinary Committee at that meeting; and
 - they may put forward written representations and/or evidence, including written witness evidence, which they wish the Investigating and Disciplinary Committee to consider at this stage. Any such written representations, witness statements or supporting evidence must be submitted to the Chair of the Investigating and Disciplinary Committee at least three working days before the meeting. The Investigating and Disciplinary Committee will give careful consideration to the allegations or other issues, the Preliminary Investigator's Report, supporting evidence and any representations put forward by the Statutory Officer before taking further action.
- 5.10 The Investigating and Disciplinary Committee shall decide within 1 month of the referral of the allegation to it whether:-
- (i) the issue requires no further formal action under this Procedure (in which case they will consider what other steps, if any, should be taken, for example a requirement for training) and would ordinarily lift any suspension immediately; or
 - (ii) there is a case to answer which requires further investigation and the issue should be referred to a Designated Independent Person, in which case the following paragraphs of this Procedure shall apply.
- 5.11 The Investigating and Disciplinary Committee shall inform the Statutory Officer of the decision, in writing, as soon as practicable.

6. The Role of the Designated Independent Person

- 6.1 The identity of the Designated Independent Person must be agreed within one month of the decision to appoint a Designated Independent Person. If the Chair of the Investigating and Disciplinary Committee and the Statutory Officer (or their representative) have not agreed the appointment of a Designated Independent Person within that timeframe, the Council will appoint the individual nominated by the Welsh Government.
- 6.2 The Chair of the Investigating and Disciplinary Committee shall determine the terms of appointment of the Designated Independent Person, agree the Designated Independent Person's remuneration, procure the necessary facilities, including access to sources of information and people identified as relevant to the case and provide all available information about the allegations or other issues under investigation as shall be necessary to enable them to fulfil their role.
- 6.3 The Designated Independent Person should operate on the basis of a combination of independent investigation using their powers to access information, and a formal hearing, at which the allegations and supporting evidence (including evidence provided by witnesses) are presented by the Council's representative, and the Statutory Officer or their representative is able to present their case.
- 6.4 Once appointed, the Designated Independent Person will consider whether it is appropriate to terminate or continue any suspension arrangements within 2 months of the commencement of any suspension.
- 6.5 The Investigating and Disciplinary Committee must, after consulting the Designated Independent Person, attempt to agree a timetable within which the Designated Independent Person is to undertake the investigation. Where there is no agreement, the Designated Independent Person must set a timetable which they consider appropriate.
- 6.6 It will be the responsibility of the Designated Independent Person to carry out a further investigation into the allegations or other issues under investigation and to submit a report ("Investigation Report") to the Investigating and Disciplinary Committee:-
 - (i) 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 a need for action under this Procedure for some other substantial reason; and
 - (ii) Recommending what, if any, disciplinary action or range of actions appears to be appropriate for the Council, through its Investigating and Disciplinary Committee, to take

against the Statutory Officer having regard to all the circumstances of the case.

7. Receipt of the Designated Independent Person's Report

- 7.1 Within three working days of receipt of the Designated Independent Person's Report, the Chair of the Investigating and Disciplinary Committee, or his nominee, shall send a copy to the Statutory Officer.

8. Pre-Disciplinary Hearing Procedure

- 8.1 If the Investigation Report recommends disciplinary action is taken against the Statutory Officer, the Chair of the Investigating and Disciplinary Committee shall summon a meeting of the Investigating and Disciplinary Committee as a Disciplinary Hearing ("Disciplinary Hearing").

- 8.2 The Chair of the Investigating and Disciplinary Committee or their nominee shall give the Statutory Officer not less than ten working days written notice of the date of the Disciplinary Hearing with the Investigating and Disciplinary Committee. The notice shall include:-

- (i) the time and place of the Disciplinary Hearing;
- (ii) who will be in attendance at the Disciplinary Hearing including the members of the Investigating and Disciplinary Committee;
- (iii) a copy of the Designated Independent Person's Report and any supporting documentation (including any witness statements where relevant) and the allegations to be considered at the Disciplinary Hearing;
- (iv) confirmation that the Disciplinary Hearing is convened under this Procedure and could result in disciplinary action;
- (v) confirmation that the Statutory Officer may be accompanied at the Disciplinary Hearing by a trade union representative, an official employed by a trade union or a fellow work colleague ("Companion");
- (vi) confirmation that the Statutory Officer may ask any person to be present as a witness or adduce any documents or written statements in support of their response, provided full details of such witnesses and copies of any such documents or statements are provided to the Chair of the Investigating and Disciplinary Committee, or their nominee, at least five working days before the date of the Disciplinary Hearing, for distribution to all parties.

- 8.3 Within two working days, the Statutory Officer shall either agree the date for the Hearing or propose to the Chair or a nominee, a

postponement for the date of the Hearing for a period not exceeding ten working days setting out the reasons for the request. For the avoidance of doubt, the postponement includes any postponement due to the availability of the Statutory Officer's Companion. If the Statutory Officer requests a postponement, the Chair of the Investigating and Disciplinary Committee or their nominee and the Statutory Officer (or his representative) shall agree the date for the Hearing. If they cannot agree the date within one working day, the Chair of the Investigating and Disciplinary Committee, having taken appropriate advice, shall determine the date of the Disciplinary Hearing.

- 8.4 The Statutory Officer and their Companion must make every effort to attend the Disciplinary Hearing (whether reconvened or otherwise). Failure to attend without good reason may be treated as misconduct in itself. If the Statutory Officer fails to attend without good reason, or persistently fails to do so, the Disciplinary Hearing may proceed in their absence and a decision may be made based on the available evidence.
- 8.5 At least five working days before the date of the Disciplinary Hearing the Statutory Officer shall give to the Chair of the Investigating and Disciplinary Committee, or their nominee:-
- (i) Full details of any witnesses they wish to call;
 - (ii) Copies of any documents which they wish to refer to in support of their response;
 - (iii) Any written statements or submissions which they wish to submit; and
 - (iv) Details of the Companion they wish to bring to the Disciplinary Hearing.
- 8.6 The Chair of the Investigating and Disciplinary Committee or their nominee shall provide a copy of such documents and information to the Investigating and Disciplinary Committee as soon as reasonably practicable thereafter and no later than three working days prior to the Disciplinary Hearing.

9. The Investigating and Disciplinary Committee Hearing

- 9.1 The procedure for the Disciplinary Hearing will be as follows:-
- (i) the Chair of the Investigating and Disciplinary Committee will explain the purpose of the Hearing and the procedure to be followed;
 - (ii) the Designated Independent Person, or their nominee will present the complaint and introduce evidence in support of the complaint, including the Designated Independent

Person Report, documents and witness evidence either in person or in writing as previously notified;

- (iii) the Statutory Officer or their Companion, and the Investigating and Disciplinary Committee and Independent Adviser, will have the opportunity to ask questions of the Designated Independent Person and/or his nominee, including direct questions to the witnesses;
- (iv) the Statutory Officer or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
- (v) the Designated Independent Person, or their nominee, and the Investigating and Disciplinary Committee and the Independent Adviser will have the opportunity to ask questions of the Statutory Officer and/or their Companion, including direct questions to the witnesses;
- (vi) both sides will sum-up their presentations, commencing with the Designated Independent Person or his nominee.

9.2 The Statutory Officer's Companion can address the hearing, put and sum up the Statutory Officer's case, make representations on behalf of the Statutory Officer to any views expressed at the Disciplinary Hearing and confer with the Statutory Officer during the Disciplinary Hearing. The Companion does not, however, have the right to answer questions on the Statutory Officer's behalf. If the Statutory Officer's choice of companion is unreasonable, the Investigating and Disciplinary Committee may request that another companion be selected e.g. where the companion may have a conflict of interest or prejudice the Disciplinary Hearing.

9.3 The Disciplinary Hearing may be adjourned if the Investigating and Disciplinary Committee need to carry out any further investigations such as re-interviewing witnesses in the light of any new points which are raised at the Disciplinary Hearing. The Statutory Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.

9.4 When the Investigating and Disciplinary Committee has heard all of the evidence submitted they will adjourn to consider what, if any, further action should be taken. The range of options available to them include:-

- (i) taking no further action;
- (ii) recommending informal resolution or other appropriate procedures be followed;

- (iii) referring back to the Designated Independent Person for further investigation and a further report;
- (iv) taking disciplinary action against the Statutory Officer.

9.5 In the case of disciplinary action, the Investigating and Disciplinary Committee may impose the necessary penalty up to the maximum recommended by the Designated Independent Person and this can include the following:-

- (i) a recorded or oral warning;
- (ii) a written warning;
- (iii) a final written warning;
- (iv) a final written warning accompanied by:-
 - (A) suspension on half pay or no pay for a specified period; and/or
 - (B) relegation (i.e. reduction in salary) for a specified period and/or on specified terms; and/or
 - (C) demotion;
- (v) dismissal (whether summary or on notice)
- (vi) alternatively the Investigating and Disciplinary Committee may explore other alternatives such as but not limited to early retirement, secondment, or redeployment to a more junior post where there are issues relating to capability or loss of trust and confidence in the Chief Officer in their current role.

9.6 For the avoidance of doubt, the actions set out in paragraph 9.5 (iv) above shall only be applied in circumstances where the Investigating and Disciplinary Committee has decided that appropriate disciplinary action would include dismissal but that action short of dismissal would be more appropriate due to mitigating or other circumstances.

9.7 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that period.

9.8 All others present at the Disciplinary Hearing (other than the Independent Adviser) will withdraw while the Investigating and Disciplinary Committee consider their decision.

9.9 Where practicable, the decision of the Investigating and Disciplinary Committee will be delivered orally after an adjournment. However, in

order to ensure that the Investigating and Disciplinary Committee shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Statutory Officer in writing within five working days of the Disciplinary Hearing, or as soon thereafter as is reasonably practicable.

- 9.10 A letter will be sent out to the Statutory Officer which outlines the decision and the action, if any, to be taken and will set out the rights of appeal (“Decision Letter”).
- 9.11 Where the Investigating and Disciplinary Committee has determined that dismissal or action short of dismissal is the appropriate action in the circumstances, the Council must approve that dismissal before notice of dismissal is given.

10. Appeal Process

- 10.1 This procedure provides for different arrangements for appeals against dismissal and appeals against action short of dismissal.

Appeals against dismissal

- 10.2 The Local Authorities (Standing Orders) (Wales) Regulations 2006 require any decision to dismiss the Council’s Head of Paid Service by the Investigating and Disciplinary Committee shall be subject to approval by Full Council. In view of this requirement and to provide an appeals process, the meeting of Full Council will fulfil the function of an appeal meeting if one is made. In these circumstances:
 - (a) Where an appeal is made, the appeal will be considered by full Council following the procedure set out at 10.8 to 10.16 below; and
 - (b) Where no appeal is made, the Full Council will consider the recommendation to dismiss by the Investigating and Disciplinary Committee and approve that decision or otherwise determine an alternative disciplinary penalty.
- 10.3 Where the case involves a Statutory Officer, other than the Council’s Head of Paid Service, there is no requirement for Full Council to approve the dismissal. As a result of this, the Statutory Officer may appeal the decision of the Investigation and Disciplinary Committee to Full Council.

Appeals against action short of dismissal

- 10.4 A Statutory Officer (including the Council’s Head of Paid Service) shall have the right to appeal the Investigating and Disciplinary Committee’s decision to the Council’s Appeals Committee. The Appeals Committee will consider the report of the Designated Independent Person and any other relevant information considered by the Investigating and Disciplinary Committee.

- 10.5 Any appeal must be made in writing to the Chair of the Appeals Committee or their nominee as set out in the Decision Letter within ten working days of the date of the Decision Letter including the grounds of appeal (“Notice of Appeal”).
- 10.6 Within five working days thereafter the Statutory Officer must inform the Chair of the Appeals Committee of the following details in relation to the Notice of Appeal and provide the following information:
- (i) whether the Statutory Officer is to be accompanied at the appeal hearing by a Companion and if so by whom;
 - (ii) whether they wish to call witnesses and if so, their names and the nature of the evidence they will provide;
 - (iii) copies of any additional documents or information relevant to the appeal that was not provided at the Disciplinary Hearing;
- 10.7 The appeal hearing will normally take the form of a review of the decision taken by the Investigating and Disciplinary Committee.
- 10.8 The Appeals Committee will consider the appeal as soon as reasonably practicable after the Notice of Appeal has been received. It will invite the following persons to be present at an appeal hearing:
- (i) the Statutory Officer, who may be accompanied by a Companion; and
 - (ii) the Chair of the Investigating and Disciplinary Committee or another member of the Committee if so nominated by the Chair, to explain their reasons for their decision and to answer any questions.
- 10.9 The Procedure for convening the Appeal Hearing will follow that set out above in relation to the Disciplinary Hearing.
- 10.10 The Appeals Committee shall be advised by an independent adviser who shall not usually be the same adviser who advised the Investigating and Disciplinary Committee.
- 10.11 The Appeals Committee may take into account any additional information which has become available in relation to the allegations or other issues under investigation following the Disciplinary Hearing.
- 10.12 The Appeals Committee may decide to uphold or dismiss the original decision of the Investigating and Disciplinary Committee or impose a different sanction, as long as it is no higher than originally recommended by the Designated Independent Person and within the range of penalties as set out in paragraphs 10.4 and 10.5.

- 10.13 The decision reached will be final and there is no further right of appeal.
- 10.14 If it is not practicable for the Appeals Committee to provide their decision orally at the conclusion of the appeal hearing, it will be notified to the Statutory Officer, in writing, within five working days of the date of the appeal hearing, or as soon thereafter as is reasonably practicable.