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Date: 9th September 2014

Dear Sir/Madam,

A meeting of the **Investigating and Disciplinary Committee** will be held in the **Core Room 1.3 - Penallta House, Tredomen, Ystrad Mynach** on **Monday, 15th September, 2014** at **5.00 pm** to consider the matters contained in the following agenda.

Yours faithfully,

A handwritten signature in black ink that reads 'Chris Burns'.

Chris Burns
INTERIM CHIEF EXECUTIVE

A G E N D A

- 1 To appoint a Chair.
- 2 To receive apologies for absence.
- 3 Declarations of interest-
Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on this agenda in accordance with the Local Government Act 2000, the Council's Constitution and the Code of Conduct for both Councillors and Officers.

To approve and sign the following minutes: -

- 4 Investigating and Disciplinary Committee - 3rd April 2014 (minute nos. 1-4).
- 5 Proposed changes to the procedures in the Terms Of Reference as a result of Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014.

A greener place Man gwyrdach

Correspondence may be in any language or format | Gallwch ohebu mewn unrhyw iaith neu fformat



To receive and consider the following items which in the opinion of the proper officer are exempt items taking into account consideration of the public interest test and that the press and public should be excluded from this part of the meeting. The public interest test is attached.

The following items contain exempt information by virtue of Paragraph 12 of Schedule 12a of the Local Government Act, 1972 (As Amended).

- 6 To receive an update on the referral(s) previously made under the Council's Disciplinary Procedure for Statutory Officers

Circulation:

Councillors W. David, N. George, S. Morgan, J.A. Pritchard, D. Rees, J. Taylor and R. Woodyatt

For information substitutes Councillors R.W. Gough and Mrs J. Summers

And Appropriate Officers



INVESTIGATING DISCIPLINARY COMMITTEE

MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, YSTRAD MYNACH ON 3RD APRIL 2014 AT 5:00PM

PRESENT:

Councillor H. David - Chairman

Councillors:

Mrs B. Jones, G. Kirby, Ms J. Pritchard, D. Rees, J. Taylor and R. Woodyatt.

By Invitation:

Substitute Member Councillor R. Gough

Together with:

S. Rosser (Interim Chief Executive), L. Donovan (HR Service Manager), A. Price (Barrister) and E. Sullivan (Democratic Services Officer)

APOLOGIES

An apology for absence was received from Councillor Mrs J. Summers (Substitute Member).

1. DECLARATIONS OF INTEREST

There were no declarations of interest received at the start or during the course of the meeting

2. MINUTES - 29TH OCTOBER 2013

RESOLVED that the minutes of the Investigation and Disciplinary Committee held on 29th October 2013 (minute nos. 1 - 5, on page nos. 1 - 2), be approved as correct record and signed by the Chair.

3. EXEMPT MATTER

Members considered the public interest test certificate from the Proper Officer and concluded that on balance the public interest in maintaining the exemption outweighed the public interest in disclosing the information. By a show of hands this was unanimously agreed and it was

RESOLVED that in accordance with Section 100A(4) of the Local Government Act 1972 the public may be excluded from the remainder of the meeting because of the likely disclosure to them of exempt information as identified in paragraph 12 of Schedule 12A of the Local Government Act 1972 (As Amended).

4. TO REVIEW REFERRAL(S) PREVIOUSLY MADE UNDER THE COUNCIL'S DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS AND DETERMINE STEPS TO BE UNDERTAKEN

Members received a verbal update from the Interim Chief Executive on the present position of the referrals made under the Council's Disciplinary Procedure for Statutory Officers.

The key events, issues and estimated timescales were outlined and the options available to the Committee detailed. The Interim Chief Executive advised that external legal advice had been sought with regard to potential options going forward. These would be collated and a report presented to the next appropriate meeting of this Committee.

The Chair thanked the Interim Chief Executive and having fully considered the information presented, Members noted the update.

Following the update from the Interim Chief Executive and for the reasons given at the meeting Councillor H. David and Councillor G. Kirby resigned their places on the Committee.

It was moved and seconded that the meeting be closed at this point in the proceedings so that arrangements could be made to recruit and train replacement Members. It was also moved and seconded that a further meeting would not be scheduled until these arrangements had been made and the outcome of the Magistrates Court Hearing on the 22nd April 2014 was known and by a show of hands this was unanimously agreed.

The meeting closed at 17:35 p.m.

Approved as a correct record, and subject to any amendments or corrections agreed and recorded in the minutes of the next meeting, they were signed by the Chair.

CHAIRMAN



INVESTIGATING AND DISCIPLINARY COMMITTEE – 15TH SEPTEMBER 2014

SUBJECT: PROPOSED CHANGES TO THE PROCEDURES IN THE TERMS OF REFERENCE AS A RESULT OF LOCAL AUTHORITIES (STANDING ORDERS) (WALES) (AMENDMENT) REGULATIONS 2014

REPORT BY: INTERIM HEAD OF LEGAL SERVICES AND MONITORING OFFICER

1. PURPOSE OF REPORT

- 1.1 To propose amendments to the disciplinary procedures set out in this Committees Terms of Reference as a result of certain changes made to the Local Authorities (Standing Orders) (Wales) Regulations 2006 by the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014 in relation to the dismissing and conducting disciplinary investigations of certain officers of the Council.
- 1.2 To seek approval for the Council's Interim Head of Legal Services and Monitoring Officer to make the necessary changes to the disciplinary procedures to reflect the changes referred to in paragraph 4.4 and 4.5 of this report.
- 1.3 To confirm that the changes to be made in accordance with paragraph 1.2 will be followed in relation to the current proceedings.
- T1.4 o note that a separate report will be presented to Council to propose additional and consequential amendments to the Constitution and the Committees Terms of Reference.
 - a) to reflect the requirements of the 2014 Regulations and
 - b) to reflect a review of current procedures.

2. SUMMARY

- 2.1 To seek approval to amend the disciplinary procedures set out in the Committees Terms of Reference to reflect certain requirements of the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014.

3. LINKS TO STRATEGY

- 3.1 As part of its Terms of Reference the Investigating and Disciplinary Committee has the power to review and amend the Disciplinary Procedures A & B from time to time having regard to any changes to the model procedures outlined in the JNC Conditions of Service for Chief Officers that may be implemented from time to time. The JNC Conditions are based on the Local Authorities (Standing Orders) (Wales) Regulations 2006 and associated amendments.

4. THE REPORT

- 4.1 The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014 (the 2014 Regulations) came into force on 1st July 2014 and amended the Local Authorities (Standing Orders) (Wales) Regulations 2006 (the 2006 Regulations) relating amongst other matters to the process for dismissing and conducting disciplinary investigations of certain officers of authorities.
- 4.2 As part of its Terms of Reference this Committee has the power to review and amend the Disciplinary Procedures A and B from time to time having regard to any changes to the model procedures outlined in the JNC Conditions of Service for Chief Officers that may be implemented from time to time.
- 4.3 This report advises the Committee of the specific changes introduced by the 2014 Regulations which affect both Disciplinary Procedures A and B and proposes amendments to both procedures to give effect to those changes as set out in Appendix 1 and 2.

Disciplinary Procedure A

- 4.4 The changes of particular relevance for consideration by this Committee in respect of Disciplinary Procedure A are as follows:-
- 4.4.1 The role of the Head of Democratic Services is to be given the same protection as the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (Section 151 Officer) as regards the process under which local authorities can take disciplinary action against them, which requires that a Designated Independent Person is involved in the process.
- 4.1.2 The protection in 4.4.1 above now extends to an officer who was at the time of the alleged misconduct in one of the positions above, even if they are no longer in that post, when the disciplinary procedures commenced.
- 4.1.3 The posts of Head of Democratic Services and Monitoring Officer are added to the list of posts who are not subject to appointment, dismissal or the taking of disciplinary action by the Head of Paid Service or by an officer nominated by the Head of Paid Service. The Monitoring Officer is already included in Disciplinary Procedure A, so this change has only required the inclusion of Head of Democratic Services to Disciplinary Procedure A as set out in Appendix 1.
- 4.1.4 Minor consequential amendments have also been made to refer to the 2014 Regulations and reference to Welsh Ministers.

Disciplinary Procedure B

- 4.5 The changes of particular relevance for consideration by this Committee in respect of Disciplinary Procedure B are as follows:-
- 4.5.1 The amendment referred to in 4.4.1 has resulted in a change to paragraph 1 of Disciplinary Procedure B so as to exclude the Head of Democratic Services.
- 4.5.2 In addition the 2014 Regulations extend the scope of Disciplinary Procedure B to include an officer who was at the time, of the alleged misconduct in one of the positions referred to in Disciplinary Procedure B even if, they are no longer in that post when the disciplinary procedures commenced.
- 4.5.3 Minor consequential amendments have also been made to refer to the 2014 Regulations.
- 4.6 Members will note this report seeks approval to make specific changes to the Disciplinary Procedures A and B as a result of the 2014 Regulations. Further changes will be proposed in a report to Council to reflect the additional requirements of the 2014 Regulations including changes to the Officer Employment Procedure Rules and appropriate definitions.

4.7 In view of the above changes, this report seeks Committees approval for the Interim Head of Legal Services and Monitoring Officer to make the necessary changes to Disciplinary Procedures A and B as set out in Appendix 1 and 2 of this report.

5. EQUALITIES IMPLICATIONS

5.1 There are no equalities implications as a result of this report.

6. FINANCIAL IMPLICATIONS

6.1 There are no financial implications as a result of this report.

7. PERSONNEL IMPLICATIONS

7.1 The personnel implications as set out in this report.

8. CONSULTATIONS

8.1 The views of the consultees have been reflected in this report.

9. RECOMMENDATIONS

9.1 To authorise the Council's Interim Head of Legal Services and Monitoring Officer to make the changes to the Disciplinary Procedures A and B as set out in Appendix 1 and 2 to this report.

9.2 To confirm that the changes to be made in accordance with paragraph 9.1 will be followed in relation to the current proceedings.

9.3 To note that a separate report will be presented to Council to propose additional and consequential amendments to the Constitution and the Committees Terms of Reference

- a) to reflect the requirements of the 2014 Regulations and
- b) to reflect a review of current procedures.

10. REASONS FOR THE RECOMMENDATIONS

10.1 To give effect to the requirements of the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014.

10.2 The Council is legally required to make these changes.

11. STATUTORY POWER

11.1 Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014.
Local Government Act 1972.

Author: Lisa Lane, Solicitor
Consultees: Lynne Donovan, HR Service Manager

Background Papers:

Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended by the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014
Explanatory Memorandum to the Local Authorities (Standing Orders) (Wales) Regulations (Amendment) Regulations 2014

Appendices:

Appendix 1 Disciplinary Procedure A
Appendix 2 Disciplinary Procedure B

Appendix 1

Disciplinary Procedure A

APPENDIX A

DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

Approved by Council 21.3.13

CAERPHILLY COUNTY BOROUGH COUNCIL

DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

1. Scope of Procedure

1.1(a) This Procedure applies to all the following officers "Statutory Officers" of the Council, namely the Head of Paid Service, the Monitoring Officer and Chief Finance Officer (Section 151 Officer) Head of Democratic Services and an officer in relation to whom disciplinary action is proposed where the officer was, but at the time of the proposed disciplinary action no longer is an officer referred to in this paragraph and the alleged misconduct or as the case may be the reason for the proposal for dismissal occurred during the period when the officer was an officer referred to in this paragraph

1.1(b) The officers referred to in 1.1(a) above are referred to collectively in this procedure as "Statutory Officers"

1.1

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 as amended by the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014.

- 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 Ministers](#).
- 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 [as amended by the Local Authorities \(Standing Orders\) \(Wales\) \(Amendment\) Regulations 2014](#) 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.

Appendix 2

Disciplinary Procedure B

APPENDIX B

Disciplinary Procedure For Other Chief Officers

Approved by Council 21.3.13

CAERPHILLY COUNTY BOROUGH COUNCIL
DISCIPLINARY PROCEDURE FOR CHIEF OFFICERS

1. Scope of Procedure

1.1(a) This Procedure applies to all Chief Officers, Deputy Chief Officers) of the Council and any other officer referred to in paragraph 1.1(b) below other than those designated as "Statutory Officers" namely the Head of Paid Service, the Monitoring Officer Chief Finance Officer (Section 151 Officer) and the Head of Democratic Services.

1.1(b) An officer in relation to whom disciplinary action is proposed who was but at the time of the proposed disciplinary action no longer is an officer referred to in paragraph 1.1(a) above and where the alleged misconduct or as the case may be the reason for the proposal for dismissal occurred during the period when the officer was an officer referred to in paragraph 1.1(a) above other than those designated as "Statutory Officers" namely the Head of Paid Service, the Monitoring Officer and Chief Finance Officer (Section 151 Officer).

1.1(c) Reference to Chief Officer(s) in this procedure shall include the persons specified in paragraphs 1.1(a) and (b) above

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 Chief Officers of the Council. . For the avoidance of doubt, this Procedure also applies to a breakdown of trust and confidence between the Statutory Chief 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 Chief 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 Chief Officer's contract of employment and it may be amended at any time, subject to overall compliance with the Local

- 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 Chief Officer, the Chief Executive will be responsible for conducting the preliminary investigation which is further referred to in paragraph 5 below.
- 2.2 The Chief Executive 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 an Investigating and Disciplinary committee ("Investigating and Disciplinary Committee"). The Chief Executive 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.
- 2.3 Save where the Chief Executive is satisfied, following a preliminary investigation, that the issue requires no further action or can be resolved informally, the matter must be referred to the Investigating and Disciplinary Committee, which 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 Chief Executive, it is believed that the Chief 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 Prior to imposing suspension in any case, the Chief Executive shall inform the Chief Officer, in writing, of the reason for the proposed suspension and the Chief Officer shall have the opportunity to make representations before a decision is taken.
- 4.4 The necessity for the Chief 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 Chief Officer's suspension, whilst avoiding any compromise to the investigation or to the efficient exercise of the Council's functions.

4.5 Absence from duty during any period of suspension shall be on full pay.

5. Preliminary Investigation

5.1 The Chief Executive will be responsible for informing the Chief 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 Chief Executive shall be responsible for determining the arrangements for conducting a preliminary investigation, as set out in paragraph 2.2 above.

5.3 The Chief Executive 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 the allegations or other issues under investigation as are necessary to enable the Preliminary Independent Investigator to fulfil their role.

5.4 The Chief Executive 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 Chief Officer. The Chief Officer shall fully cooperate with the Chief Executive or Preliminary Independent Investigator and shall make themselves available for such interviews and meetings and provide any relevant documentation or information as the Chief Executive or Preliminary Independent Investigator deems necessary.

5.5 The Chief 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 Chief Executive or Preliminary Independent Investigator.

5.6 The Chief Executive or the Preliminary Independent Investigator shall prepare a short report following their investigation which, where required, shall be submitted to the Chief Executive for their consideration ("Preliminary Investigation Report"). A copy of the Preliminary Investigation Report shall be provided to the Chief Officer within seven working days of receipt by the Chief Executive or where completed by the Chief Executive within seven working days of its completion.

5.7 The Chief Officer shall, if they so wish, make representations in relation to the Preliminary Investigation Report, within five working days of receipt by the Chief Officer of the Preliminary Investigation Report.

5.8 Before determining whether the allegations or other issues warrant referral to the Investigation and Disciplinary Committee for further consideration, the Chief Executive shall advise the Chief Officer, in writing, that:-

- they are required to attend a meeting with the Chief Executive;

- they may make oral representations to the Chief Executive at that meeting; and
 - they may put forward written representations or evidence, including written witness evidence, which they wish the Chief Executive to consider at this stage. Any such written representations, witness statements or supporting evidence must be submitted to the Chief Executive at least three working days before the meeting.
6. The Chief Executive will give careful consideration to the allegations or other issues, the Preliminary Investigator's Report, supporting evidence and any representations put forward by the Chief Officer before taking further action.
- 6.1 The Chief Executive shall decide 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) and would ordinarily lift any suspension immediately; or
 - (ii) The issue should be referred to the Investigating and Disciplinary Committee, in which case the following paragraphs shall apply.
- 6.2 The Chief Executive shall inform the Chief Officer of the decision, in writing, as soon as practicable.
- 7. The Role of the Investigating and Disciplinary Committee and appointing an Investigator**
- 7.1 If the Chief Executive decides that the matter should be referred to the Investigating and Disciplinary Committee, it shall be its responsibility to appoint a Chief Officer of the Council, or an independent person, to carry out any further investigation required into the allegations or other issues as soon as practicable. This Investigator can be the same person who carried out the preliminary investigation.
- 7.2 The Investigating and Disciplinary Committee should:-
- (a) no fewer than three elected members;
 - (b) should not include any member with a direct personal involvement in the complaint;
 - (c) should be politically balanced; and
 - (d) should include a member of the Executive.
- 7.3 The Investigating and Disciplinary Committee shall appoint a chairperson to oversee the function of the Committee ("Chair").
- 7.4 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 Investigating and Disciplinary Committee shall appoint a nominee.

- 7.5 The Chief Executive shall determine the terms of appointment of the Investigator, agree the Investigator's remuneration (if appropriate), procure the necessary facilities and provide all available information about the allegations or other issues under investigation as shall be necessary to enable them to fulfil their role.
- 7.6 The Chief Officer will be informed that the matter has been referred to the Investigating and Disciplinary Committee, the members of the Investigating and Disciplinary Committee and that an Investigator has been appointed who, subject to availability, may be the same person who carried out the preliminary investigation.

8. Responsibilities of the Investigator

- 8.1 It will be the responsibility of the Investigator to carry out a further investigation into the allegations or other issues under investigation and to prepare a report ("Investigation Report"):-
- (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 Chief Officer having regard to all the circumstances of the case.

9. Pre-Disciplinary Hearing Procedure

- 9.1 Within seven working days of receipt of the Investigation Report, the Chief Executive, or their nominee, shall send a copy to the Chief Officer. If the Investigation Report identifies allegations of misconduct and a need for further action, the Chief Officer will be sent, in addition to the Investigation Report, written notice of the specific allegations to be considered by the Investigating and Disciplinary Committee at the Disciplinary Hearing and any supporting documentation.
- 9.2 The Chief Officer shall, if they so wish, request further information and documents relating to the allegations within five working days of receipt of the Investigation Report.
- 9.3 Any additional information and documentation requested would be provided by the Investigator, where relevant, within seven working days or such other time as appropriate in the circumstances.
- 9.4 Once the period for requesting further information has elapsed or once a response has been provided by the Investigator further to paragraph 9.3 above, the Head of People Management and Development or their nominee shall give the Chief 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 Investigator'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 Chief 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 Chief Officer may ask any person to be present as a witness or adduce any documents or written statements in support of his response, provided full details of such witnesses and copies of any such documents or statements are provided to the Chief Executive, or their nominee, at least five working days before the date of the Disciplinary Hearing, for distribution to all parties.
- 9.5 Within two working days, the Chief Officer shall either agree the date for the Hearing or propose to the Head of People Management and Development or their 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 Chief Officer's Companion. If the Chief Officer requests a postponement, the Head of People Management and Development or their nominee and the Chief 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.
- 9.6 The Head of People Management and Development or their nominee shall then formally give notice to the Investigating and Disciplinary Committee (and the Chief Officer if the Hearing has been postponed) of the date for the Disciplinary Hearing and shall submit a report to the Investigating and Disciplinary Committee, including the Investigation Report, supporting evidence and any representations provided by the Chief Officer.
- 9.7 The Chief 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 Chief 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.
- 9.8 At least five working days before the date of the Disciplinary Hearing the Chief Officer shall give to the Head of People Management and Development, 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.

9.9 The Head of People Management and Development or their nominee shall provide a copy of such documents and information to the Chief Executive and the Investigating and Disciplinary Committee as soon as reasonably practicable thereafter and no later than three working days prior to the Disciplinary Hearing.

10. The Investigating and Disciplinary Committee Hearing

10.1 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 Chief Executive, or their nominee (who may include the Investigating Officer) will present the complaint and introduce evidence in support of the complaint, including the Investigation Report, documents and witness evidence either in person or in writing as previously notified;
- (iii) the Chief Officer or his Companion, and the Investigating and Disciplinary Committee and Independent Adviser, will have the opportunity to ask questions of the Chief Executive and/or their nominee, including direct questions to the witnesses;
- (iv) the Chief Officer or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
- (v) the Chief Executive, or their nominee, and the Investigating and Disciplinary Committee and the Independent Adviser will have the opportunity to ask questions of the Chief Officer and/or their Companion, including direct questions to the witnesses;
- (vi) both sides will sum-up their presentations, commencing with the Chief Executive or their nominee.

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

10.3 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 Chief Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.

10.4 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 Investigator for further investigation and a further report;
- (iv) taking disciplinary action against the Chief Officer.

10.5 In the case of disciplinary action, 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 dismissal or on notice); and
- (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.

10.6 For the avoidance of doubt, the actions set out in paragraph 10.5 (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.

10.7 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.

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

10.9 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 Chief Officer in writing within five working days of the Disciplinary Hearing, or as soon thereafter as is reasonably practicable.

- 10.10 The letter will outline the decision and the action, if any, to be taken and will set out the rights of appeal ("Decision Letter")

11. Appeal Process

- 11.1 The Chief Officer shall have the right to appeal the Investigating and Disciplinary Committee's decision, to the Appeals Committee. Any appeal must be made in writing to the Chair of 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").
- 11.2 Within five working days thereafter the Chief 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 Chief 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;
- 11.3 Having considered the Notice of Appeal, the Appeals Committee will determine whether the appeal hearing will take the form of a full re-hearing or a review of the decision taken by the Investigating and Disciplinary Committee.
- 11.4 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 Chief Officer, who may be accompanied by a Companion; and
 - (ii) the Chair of the Investigating and Disciplinary Committee or another members of the Committee if so nominated by the Chair, to explain their reasons for their decision and to answer any questions.
- 11.5 The procedure for convening the Appeal Hearing will follow that set out above in relation to the Disciplinary Hearing.
- 11.6 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.
- 11.7 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.
- 11.8 The Appeals Committee may decide to uphold or dismiss the original decision of the Investigating and Disciplinary Committee or impose a different sanction within the range of penalties as set out in paragraphs 10.4 and 10.5.

- 11.9 The decision reached will be final and there is no further right of appeal.
- 11.10 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 Chief Officer, in writing, within five working days of the date of the appeal hearing, or as soon thereafter as is reasonably practicable.



INVESTIGATING AND DISCIPLINARY COMMITTEE 15TH SEPTEMBER 2014

PUBLIC INTEREST TEST – EXEMPTION FROM DISCLOSURE OF DOCUMENTS SCHEDULE 12A LOCAL GOVERNMENT ACT 1972

**SUBJECT: TO CONSIDER REFERRAL(S) UNDER CAERPHILLY COUNTY
BOROUGH COUNCIL DISCIPLINARY PROCEDURE FOR STATUTORY
OFFICERS**

REPORT BY: INTERIM DEPUTY MONITORING OFFICER

I have considered grounds for exemption of information to be presented to the Committee and make the following recommendations to the Proper Officer:-

EXEMPTIONS APPLYING TO THE REPORT:

Information relating to a particular individual(s) (para 12).

FACTORS IN FAVOUR OF DISCLOSURE:

There is a public interest in the way in which the Council deals with staffing issues.

PREJUDICE WHICH WOULD RESULT IF THE INFORMATION WERE DISCLOSED:

The reports contains detailed information regarding personal information which affects a particular individual/s and the affairs of that individual/s.

MY VIEW ON THE PUBLIC INTEREST TEST IS AS FOLLOWS:

That paragraph 12 should apply. My view on the Public Interest Test is that whilst there is a need to ensure transparency and accountability of a Public Authority for decisions taken in relation to staffing issues, this must be balanced against the fact that these matters have not yet been concluded at this stage outweigh the need for the information to be made public.

The information is not affected by any other statutory provision which requires the information to be publicly registered.

On that basis I feel that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.

RECOMMENDED DECISION ON EXEMPTION FROM DISCLOSURE:

On that basis I feel that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, and that the report should be exempt.

Date: 2 September 2014

Signed:



Post: Interim Deputy Monitoring Officer

I accept/do not accept recommendation made above.

Signed:



CHRIS BURNS

Proper Officer

Date:

5/9/14
