

Appendix A

PROPOSED CHANGES TO THE TERMS OF REFERENCE OF THE APPEALS COMMITTEE

Meeting	11 October 2021
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Background documents	Joint Negotiating Committee for Local Authority Chief Executives National Salary Framework and Conditions of Service Handbook
Location/Contact for inspection of background documents	https://www.local.gov.uk/sites/default/files/documents/Chf%20Exec%20Handbook%2013Oct16.pdf
Main consultees	None
Planned dates	8 December 2021: Recommendation to the County Council Meeting to adopt the Constitution Committee's preferred option regarding changes to the Appeals Committee's terms of reference and other associated changes to the Constitution.
Purpose of report	To propose changes to the County Council's Constitution regarding the disciplinary appeal process for the Chief Executive, Statutory Officers and any other Chief Officer to whom the council's employment related procedures expressly apply.
Recommendations	<ol style="list-style-type: none"> 1. To consider the options for changes to the Appeals Committee's Terms of Reference to enable the Council to consider any potential disciplinary issues from the Chief Executive, the Head of Paid Service, the Chief Finance Officer (Section 151 Officer), the Monitoring Officer and other Chief Officers together with other associated changes. 2. To make recommendations to the County Council on the preferred changes to the Appeals Committee's Terms of Reference and other associated changes.
Reasons for recommendations	To ensure the Council has the appropriate committee structure in place to be in a position to quickly consider any potential disciplinary issues for the Chief Executive, the Head of Paid Service, the Section 151 Officer, the Monitoring Officer and other Chief Officers.
Resource Implications	None

Background

1. The Constitution Committee considered a report at its June meeting about proposed changes to the Appeals Committee's terms of reference for considering appeals from the Chief Executive, the Head of Paid Service, the Chief Finance Officer (Section 151 Officer), the Monitoring Officer and other Chief Officers during the disciplinary process. The Committee sought further clarification about the proposed changes and asked for the Assistant Director of Legal Services to provide the Committee with the options for considering such appeals. This report provides:
 - a more detailed explanation of the overall process for the Council's consideration of disciplinary procedures relating to the Chief Executive, Statutory Officers (Head of Paid Service, Chief Finance Officer (Section 151 Officer) and the Monitoring Officer) and other Chief Officers and
 - a range of options regarding member's determination of such appeals from the statutory officers together with some proposals for ancillary changes.

Procedural Context

2. Local Authority Chief Executives are protected under specific regulations that make distinctive provision, compared to other employees regarding disciplinary matters. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) aim to protect the Chief Executive from unwarranted political interference in their role as Head of Paid Service of the Authority. Even with the distinctive role of Head of Paid Service, disciplinary action will need to be based on clear evidence and elected members will want to ensure:
 - They understand the procedure to be used;
 - Seek appropriate advice at every stage;
 - Do not compromise the outcome of any proceedings;
 - Allow every opportunity for a fair procedure to operate.
3. The JNC Conditions of Service Handbook for Chief Executives also recommends the adoption of a model Disciplinary Procedure and Guidance for the Chief Executive in order to deal with allegations of conduct or capability in the absence of a locally agreed procedure. It is also recommended this procedure and guidance should be adopted in respect of other officers who hold a statutory role. This would be applicable to the Chief Finance Officer (Section 151 Officer) (Executive Director – Corporate Resources) and the Monitoring Officer (Director of Policy, Performance and Governance) ('the Statutory Officers')
4. The Disciplinary Procedure and Guidance issued by the JNC also recommends the establishment of various standing committees for potential disciplinary issues to be considered quickly. The Guidance recommends the following are established:

- An Investigating and Disciplinary Committee (IDC); The purpose of the IDC is to consider allegations of conduct or capability and to consider if suspension is appropriate in cases of alleged gross misconduct. The IDC may also be required to meet at short notice to consider allegations. It is also suggested that the chair of this committee has the delegated power to suspend the Chief Executive/Statutory Officers in an emergency. The IDC also has an important role to consider the report of an Independent Investigator.
- An Independent Panel: The purpose of the IP is to consider any oral representation of the Chief Executive and invite the IDC to respond of the points made by the Chief Executive. The IP may ask questions of both the IDC and the Chief Executive. The IP is required to review the decision of the IDC and prepare a report to Council containing clear rationale if the IP disagrees with the recommendation to Council to dismiss

It should be noted the IP is only required if there is a proposal to dismiss the Chief Executive or statutory officers which would require a decision by full Council. The IP will be made up of two independent persons (appointed by the Council for the purpose of the council members' conduct regime under Section 28 (7) of the Localism Act 2011).

Appointments to the panel are required to be in accordance with the following priority order:

- 1) An independent person who has been appointed by the council and who is a local government elector in the authority area;
 - 2) Any other independent person who has been appointed by the Council and;
 - 3) An independent person who has been appointed by another council or councils.
- An Appeals Committee; The purpose of the AC is to hear appeals against action taken short of dismissal, and to take a decision either to confirm the action taken, or to impose no sanction or a lesser sanction

5. The disciplinary procedure is summarised at Appendix 1.

Gloucestershire's Constitution – current position and proposed options regarding the Appeals Committee's Terms of Reference and other associated issues

6. The Constitution already has the following arrangements in place in line with the model Disciplinary Procedure and Guidance for the Chief Executive

- A Panel of the Appointments Committee acts as the Investigating and Disciplinary Committee through a politically-balanced panel comprising up to 5 members; one of which will be a Cabinet Member.
- An Independent Panel: The Council's protocol on disciplinary action for the Statutory Officers confirms the arrangements for establishing an Independent Panel in line with the model code.
- The Appeals Committee: The Constitution already has an arrangement in place for considering disciplinary matters concerning the Council's Chief Officers through referral to the Appeals Committee and confirms as follows:

Individual appeals by the Chief Executive or Directors reporting directly to the Chief Executive under the Council's Managing Performance Improvement Procedure and any other employment related procedure that expressly provides for a right of appeal to elected members.

The Committee comprises 15 County Councillors and requires County Councillors to complete training approved by the Monitoring Officer before taking part in decisions by the Committee.

7. The Appeals Committee's existing terms of reference provide the Committee to act as an umbrella appeals committee to hear and determine appeals concerning a range of functions. However, historically, the main business of the Appeals Committee business has focussed on education appeals including school transport appeals.

The Appeals Committee has also considered more discrete areas such as appeals from complaints regarding the GFRS Pension.

Proposed Options for the Committee's consideration

8. The following options are now open to the Constitution Committee to consider regarding
 - appeals from the Chief Executive or Statutory Officer against the IDC's decision to take action short of dismissal or
 - a non-statutory Chief Officer appeal regarding disciplinary action:
- Option 1: No changes made to the Appeals Committee: This would result in the full Committee Membership (15 members) considering the appeal from the Chief Executive, Statutory Officers or a non-statutory Chief Officer. If this option was preferred, an amendment would be required to confirm that the Chief Executive and Statutory Officers have a right of appeal to the Committee as set out in Part 1 of Appendix 2.

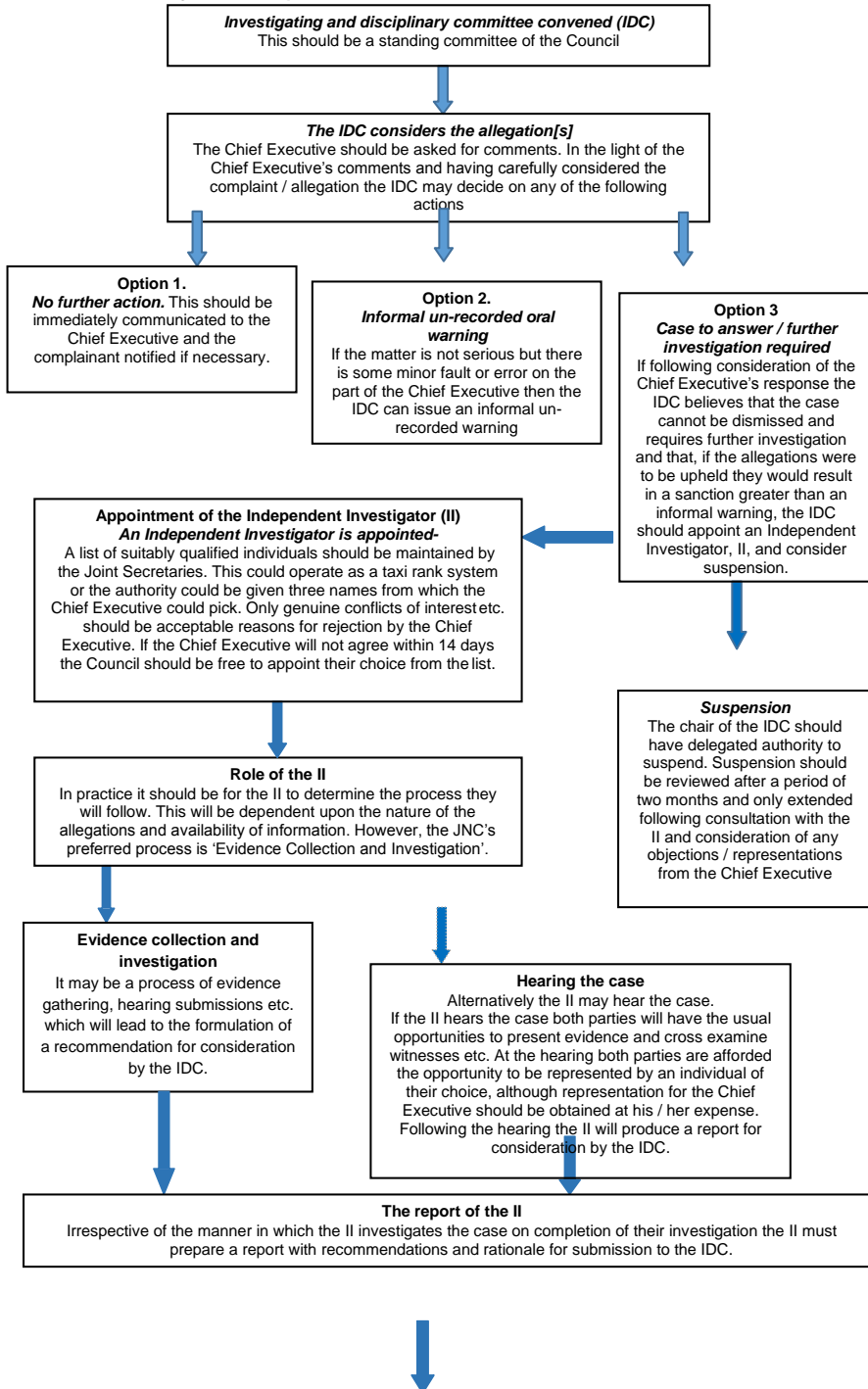
- Option 2: Retention of the existing Appeals Committee with the creation of a stand alone Disciplinary Appeals Committee. The DAC would be a stand-alone appeals Committee operating through a politically balanced committee comprising up to 5 members, none of whom must be a member of the Investigating and Disciplinary Panel and one of whom must be a member of the Cabinet. Part 2 of Appendix 2 sets out the proposed changes to the Constitution for this option.
- Option 3: Amend the Appeals Committee's terms of reference to create a sub-committee to determine the appeals. This would involve retaining the Appeals Committee's power to determine appeals concerning a range of functions with a discrete sub-committee for considering appeals:
 - To allow individual appeals brought by the Chief Executive, Chief Finance Officer (Section 151 Officer), Monitoring Officer or any other Chief Officer to whom the council's employment related procedures grant an express right of appeal to elected members and
 - For appeals for such officers to operate through a politically balanced sub-committee comprising up to 5 members, none of whom must be a member of the Investigating and Disciplinary Panel and one of whom must be a member of the Cabinet.

The proposed amendments to the Constitution are set out in Part 3 of Appendix 2 for this option.

9. Independent Panel: In addition to the proposed options mentioned above, by way of a tidying up exercise it would also be wise to include a reference to the Chief Executive within the terms of reference of the Independent Panel for completeness in addition to the statutory officer roles. Appendix 3 sets out the proposed change.
10. Power to suspend in cases of urgency: The Disciplinary Procedure and Guidance issued by the JNC also suggested that the chair of this committee should be granted the delegated power to suspend the Chief Executive and Statutory Officers in an emergency. The Constitution does not include such provisions and Appendix 4 sets out the proposed change to provide such an authority to the Chair of the Investigating and Disciplinary Panel.

Appendix 1

Disciplinary Procedure for Local Authority Chief Executives (note this process includes statutory officers)



Consideration and Decision of the IDC

If the II has held a full hearing the IDC will limit their hearing to a consideration of the II's report. They may decide to call witnesses for clarification. The Chief Executive and II should attend this meeting and both parties afforded the opportunity to summarise their case. The hearing should be conducted in accordance with the ACAS code of practice. If the II did not hear the case then the IDC should now afford the Chief Executive the opportunity for a hearing to allow the postholder to challenge the recommendations of the II, call witnesses etc. The same rule regarding costs of representation would apply in this context

Recommendations of the IDC

Following either consideration of the report of the II or a full hearing of the case the IDC will essentially have three options

1. No case to answer
2. Disciplinary action short of dismissal
3. Dismissal

No case to answer

Appropriate communication should be prepared in agreement with the Chief Executive to ensure that as far as possible there is no damage to the postholder's reputation. The IDC should consider reimbursement of any reasonable expenses incurred by the employee.

Action short of dismissal

A decision to take action short of dismissal should be communicated in writing to the Chf Exec with rationale for the decision. The Chf Exec has the right of appeal to the appeals committee against this decision

Recommendation to dismiss

If there is a recommendation to dismiss, the reports of the IDC and the II should then be sent to Independent Panel (IP) for its consideration. The Chief Executive may make written representations to the IP

Composition, role and process of the IP

The IP should be a committee of the Council, appointed under section 102(4) of the Local Government Act 1972, and should comprise only independent persons (at least two) appointed under S28(7) of the Localism Act 2011. Appropriate training should be provided to these Independent members. Both parties should be present or represented* at the meeting. The IP should receive any oral representations from the Chief Executive, in which case it should invite any response on behalf of the IDC to the points made, and may ask questions of either party. The IP should review the decision and prepare a report for Council. This report should contain clear rationale if they disagree with the recommendation to dismiss.

* the IDC should nominate a person to attend on its behalf

Report to full Council

Following consideration by the IP a report should be presented to Council. This report should comprise the recommendation of the IDC, the II's report and any comments on the recommendation for dismissal from the IP. In the light of this information Council should consider the recommendation to dismiss. The Chief Executive should be provided with a right of appeal against the decision and allowed to attend this meeting and address Council. The II may also be invited to attend to provide clarification if required. Following this consideration Council should either confirm or reject the recommendation to dismiss. It may at this stage impose a lesser sanction. This stage in the process constitutes the Chief Executive's final right of appeal.

Part 1

Option 1

No changes to the Appeals Committee except to confirm the Chief Executive and statutory officers right of appeal (original text from the Constitution below)

3.1 APPEALS COMMITTEE

The role of the Appeals Committee is, in essence, to act as a forum for hearing and determining complaints by employees, pupils and other individuals and to make arrangements for the determination of certain appeals in accordance with the law and under the Council's own grievance and other procedures. The duties of the Appeals Committee are set out in Table 3.01.

Table 3.01: The duties of the Appeals Committee

1.	Individual appeals by <u>the Chief Executive, the Head of Paid Service, the Chief Finance Officer (Section 151 Officer) and Monitoring Officer together with</u> Directors reporting directly to the Chief Executive under the Council's Managing Performance Improvement Procedure and any other employment related procedure that expressly provides for a right of appeal to elected members.
2.	The making of arrangements for the determination of admission appeals in accordance with Section 94(1) and (4) of and Schedule 24 to the School Standards and Framework Act 1998.
3.	The making of arrangements for the determination of appeals by Governing Bodies concerning children to whom Section 87 of the School Standards and Framework Act 1998 applies in accordance with Section 95(2) of and Schedule 25 to that Act.
4.	The making of arrangements for the review of decision to exclude pupils in accordance with Section 52 of the Education Act 2002 and regulations made thereunder.
5.	Appeals under Regulation 11 of the Access to Personal Files (Social Services) Regulations 1989.
6.	Appeal against the exercise of the Council's functions as a Social Services Authority.
7.	Act as an independent appeal panel and assess appeals lodged by parents, guardians, carers and other professionals against the decision of the County Council to decline requests for transport.

8.	Subject to any other requirements of the Constitution, any other appeals (where a right of appeal exists either by law or where the Council has expressly determined there shall be a right of appeal) against executive or non-executive decisions made by or on behalf of the Council.
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Appeals Committee Membership:

15 County Councillors

County Councillors shall have completed training approved by the Monitoring Officer before taking part in decisions by this Committee

Note: For the purpose of hearing appeals relating to home to school transport there shall be a panel of three members taken from the 15 trained members of the committee.

Part 2 - Option 2

Disciplinary Appeals Committee

3.4 DISCIPLINARY APPEALS COMMITTEE

The role of the Disciplinary Appeals Committee is, to act as a forum for hearing individual appeals brought by the Chief Executive, Head of Paid Service, the Chief Finance Officer (Section 151 Officer), Monitoring Officer or any other Chief Officer relating to employment related procedures and to make arrangements for the determination of such appeals in accordance with the law and under the Council's own grievance and other procedures. The duties of the Disciplinary Appeals Committee is set out in Table 3.04

Table 3.04: The duties of the Disciplinary Appeals Committee

1.	<u>Individual appeals brought by the Chief Executive, Head of Paid Service, the Chief Finance Officer (Section 151 Officer), Monitoring Officer or any other Chief Officer to whom the council's employment related procedures grant an express right of appeal to elected members.</u>
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Disciplinary Appeals Committee Membership

5 County Councillors

- 1. At least one of whom must be a Member of the Cabinet

2. Will operate through a politically balanced Committee none of whom must be a member of the Investigating and Disciplinary Panel

County Councillors shall have completed training approved by the Monitoring Officer before taking part in decisions by this Committee.

3.1 APPEALS COMMITTEE

The role of the Appeals Committee is, in essence, to act as a forum for hearing and determining complaints by employees, pupils and other individuals and to make arrangements for the determination of certain appeals in accordance with the law and under the Council's own grievance and other procedures. The duties of the Appeals Committee are set out in Table 3.01.

Table 3.01: The duties of the Appeals Committee

1		Deleted: 1.
2	The making of arrangements for the determination of admission appeals in accordance with Section 94(1) and (4) of and Schedule 24 to the School Standards and Framework Act 1998.	Deleted: Individual appeals by the Chief Executive, the Head of Paid Service, the Section 151 Officer and Monitoring Officers together with Directors reporting directly to the Chief Executive under the Council's Managing Performance Improvement Procedure and any other employment related procedure that expressly provides for a right of appeal to elected members.
3	The making of arrangements for the determination of appeals by Governing Bodies concerning children to whom Section 87 of the School Standards and Framework Act 1998 applies in accordance with Section 95(2) of and Schedule 25 to that Act.	Deleted: 2
4	The making of arrangements for the review of decision to exclude pupils in accordance with Section 52 of the Education Act 2002 and regulations made thereunder.	Deleted: 3
5	Appeals under Regulation 11 of the Access to Personal Files (Social Services) Regulations 1989.	Deleted: .
6	Appeal against the exercise of the Council's functions as a Social Services Authority.	Deleted: 4
7	Act as an independent appeal panel and assess appeals lodged by parents, guardians, carers and other professionals against the decision of the County Council to decline requests for transport.	Deleted: .
8	Subject to any other requirements of the Constitution, any other appeals (where a right of appeal exists either by law or where the Council has expressly determined there shall be a right of appeal) against executive or non-executive decisions made by or on behalf of the Council.	Deleted: 5.
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Appeals Committee Membership:

15 County Councillors

County Councillors shall have completed training approved by the Monitoring Officer before taking part in decisions by this Committee

Note: For the purpose of hearing appeals relating to home to school transport there shall be a panel of three members taken from the 15 trained members of the committee.

Part 3 - Option 3

Proposed amendments to the Appeals Committee Terms of Reference

3.1 APPEALS COMMITTEE

The role of the Appeals Committee is, in essence, to act as a forum for hearing and determining complaints by employees, pupils and other individuals and to make arrangements for the determination of certain appeals in accordance with the law and under the Council's own grievance and other procedures. The duties of the Appeals Committee are set out in Table 3.01.

Table 3.01: The duties of the Appeals Committee

1.	Individual appeals brought by the Chief Executive, the Head of Paid Service, the Chief Finance Officer (Section 151 Officer), Monitoring Officer or any other Chief Officer to whom the council's employment related procedures grant an express right of appeal to elected members.
2.	The making of arrangements for the determination of admission appeals in accordance with Section 94(1) and (4) of and Schedule 24 to the School Standards and Framework Act 1998.
3.	The making of arrangements for the determination of appeals by Governing Bodies concerning children to whom Section 87 of the School Standards and Framework Act 1998 applies in accordance with Section 95(2) of and Schedule 25 to that Act.
4.	The making of arrangements for the review of decision to exclude pupils in accordance with Section 52 of the Education Act 2002 and regulations made thereunder.
5.	Appeals under Regulation 11 of the Access to Personal Files (Social Services) Regulations 1989.
6.	Appeal against the exercise of the Council's functions as a Social Services Authority.
7.	Act as an independent appeal panel and assess appeals lodged by parents, guardians, carers and other professionals against the decision of the County Council to decline requests for transport.

Deleted: Directors reporting directly to the Chief Executive under the Council's Managing Performance Improvement Procedure and any other

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8.	Subject to any other requirements of the Constitution, any other appeals (where a right of appeal exists either by law or where the Council has expressly determined there shall be a right of appeal) against executive or non-executive decisions made by or on behalf of the Council.
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Appeals Committee Membership:

15 County Councillors

County Councillors shall have completed training approved by the Monitoring Officer before taking part in decisions by this Committee

For appeals brought by the Chief Executive, Head of Paid Service, Chief Finance Officer (Section 151 Officer), Monitoring Officer or other Chief Officer, as detailed at item 1 in Table 3.01 above, the Appeals Committee will operate through a politically balanced sub-committee comprising up to 5 members, none of whom must be a member of the Investigating and Disciplinary Panel and one of whom must be a member of the Cabinet

Note: For the purpose of hearing appeals relating to home to school transport there shall be a panel of three members taken from the 15 trained members of the committee.

Appendix 3

Proposed change to the Panel Terms of Reference to include a reference to the Chief Executive

5. DISCIPLINARY ACTION

The Chief Executive, Head of Paid Service, Monitoring Officer and Chief Finance Officer (Section 151 Officer)

5.1 The Chief Executive, the Head of Paid Service, Monitoring Officer or Chief Finance Officer (Section 151 Officer) may not be dismissed by the Authority unless full council has approved that dismissal and the procedure set out in the following paragraphs has been complied with.

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5.2 The Authority must invite independent persons appointed pursuant to section 28(7) of the Localism Act 2011 to form a Panel for the purpose of advising the Authority on matters relating to the dismissal of the Chief Executive, Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (Section 151 Officer).

5.3 The invitation may be extended to independent persons appointed by another Authority.

5.4 The Authority must appoint to the Panel those independent persons who accept the invitation in the following priority order-

- an independent person who has been appointed by the Authority and is a local government elector;
- any other independent person who has been appointed by the Authority;
- an independent person who has been appointed by another Authority or Authorities.

5.5 The Panel may consist of more than two persons but need not do so.

5.6 The Panel must be appointed at least 20 days before the meeting of full council to consider the disciplinary action against the Chief Executive, the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (the Section 151 Officer).

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5.7 Before taking a vote at the full council meeting whether or not to approve a dismissal the Authority must take into account, in particular-

- any advice, views or recommendations of the Panel;
- the conclusions of any investigation into the proposed dismissal; and
- any representations from the relevant Officer.

5.8 Any remuneration, allowances or fees paid by the Authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as an independent

5.9. County Councillors may not be involved in the disciplinary action against any officer save as part of the duties of the Appointments Committee, or as referred to in Table 3.1 above or in these Officer Employment Procedure Rules. person under the Localism Act 2011.

Appendix 4

Proposed changes to the Panel (operating as the Investigating and Disciplinary Committee)

3.2 APPOINTMENTS COMMITTEE

The purpose of the Appointments Committee is to enable Members to play a full role in deciding which persons should be employed, or not, as the Council's most senior Officers and to determine terms of employment.

Table 3.02: The duties of the Appointments Committee

To be responsible for:

1. Recommending to the full Council the appointment (on a permanent or temporary or

acting up basis) of the Chief Executive/Head of Paid Service.

2. Determining any disciplinary matters short of dismissal in relation to the Head of Paid Service, Monitoring Officer and Chief Financial Officer.
3. Making recommendations to full Council regarding dismissal of the Head of Paid Service, Monitoring Officer and Chief Financial Officer.
4. The appointment (on a permanent or temporary or acting up basis) of the Chief Finance Officer, Monitoring Officer, the Chief Fire Officer and all Executive Directors, including the statutory posts of Director of Childrens Services, Director of Adult Social Care and Director of Public Health.
5. The dismissal of the Chief Fire Officer, the Executive Director of Children's Services, the Executive Director of Adult Social Care and Public Health and the Executive Director of Economy, Environment and Infrastructure.
6. Determining the terms of employment and any variation to those terms of employees of the Council including terms of employment and exercising employer discretions in relation to pensions.
7. Subject to any other provisions of the Council's Constitution, determining any other matters affecting employees of the Council.

Appointments Committee Membership:

7 County Councillors

1. At least one of whom must be a Member of the Cabinet;
2. At least one of whom should be a Cabinet Member whose portfolio of duties includes responsibility for the service in which an appointed Officer would be employed. This requirement should be met by a County Councillor appointed to membership of the Appointments Committee being substituted by the appropriate Cabinet Member of the same political party in order to meet political balance requirements. This requirement will not apply in connection with the appointment (on a permanent or temporary or acting up basis) of the Chief Executive/Head of Paid Service (including their terms and conditions of employment and any variation to those terms and conditions). Failure to comply with this requirement will not invalidate any proceedings of the Appointments Committee.
3. For decisions relating to the conduct and capability of those officers listed under items 2 and 3 in Table 3.02 above the Appointments Committee will operate through a politically-balanced sub-committee acting as an Investigating and Disciplinary panel comprising up to 5.

4. The Chair of the Investigating and Disciplinary Panel referred to at Paragraph 3 has authority to suspend the Chief Executive, the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (the Section 151 Officer) in cases of urgency, in consultation with the Director of People and Digital Services. The Chair will review such suspension after a period of two months and shall only extend following:

4.1 consultation with the Independent Investigator and

4.2 consideration of any objections / representations from the Chief Executive, the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (the Section 151

Officer).

5 For decisions on the appointment of those officers detailed at item 4 in Table 3.02 above the Appointments Committee will operate through a sub-committee acting as an interviewing panel comprising up to 5 (politically balanced), 6. Council has resolved that for joint appointments with the NHS in Gloucestershire, which are within the remit of the Appointments Committee, a sub-committee should be established comprising up to 5 members to be drawn from the Appointments Committee's membership and shall be politically balanced.

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Note 1: Reference should be made to the consultation required under paragraph 2 of the Officer Employment Rules to be found in Part 4 of the Constitution.

Note 2: There is granted to the Chief Executive express delegated authority (in consultation with Cabinet Members, Group Leaders and relevant Scrutiny Chair) to appoint on an interim basis to the position of Director within the employment of the Council for a maximum period of up to six months.