

Classification	Item No.
Open	

Meeting:	Employment Panel
Meeting date:	5 th March 2022
Title of report:	Bury Council Constitution Update: Employees' Code of Conduct and Officer Employment Procedure Rules
Report by:	Director of People & Inclusion
Decision Type:	Council
Ward(s) to which report relates	All

Executive Summary:

The Council's constitution was reviewed and updated during the municipal year 2020/21. In considering the new Constitution, Members agreed that it would be reviewed annually to ensure that the changes proposed as a result of the review were fit for purpose. Following agreement at Standards Committee and Council in November 2021 Members agreed a work programme for future review which included both the Employees' Code of Conduct and the Officer Employment Procedure Rules. The constitution stipulates that oversight of the Council Constitution is a function of the Standards Committee. However, these elements of the Constitution are pertinent to the work of the Employment Panel.

The Employees' Code of Conduct and the Officer Employment Procedure Rules have been reviewed taking account of feedback from Members and Officers, contextual changes and best practice. Copies of the revised sections of the Constitution are set out below for the Employment Panel's endorsement. Subject to this, they will be included within the full Constitution for approval by Council in May.

The proposed changes to the Officer Employment Procedure Rules also necessitate a small amendment to the Terms of Reference for the Employment Panel, which are also proposed below.

Recommendation(s)

The Employment Panel is asked to:

1. Review the suggest revised Employees' Code of Conduct and the Officer Employment Procedure Rules and forward for onward consideration to Annual Council as part of the full constitution review.

2. Subject to agreement of the revised Officer Employment Procedure Rules as part of the annual Constitution review, agree a revision to the Employment Panel Terms of Reference as detailed below.

Key considerations

1. Background and Context

- 1.1 The Constitution sets out how the Council operates; how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. The Council has a legal duty to publish an up-to-date Constitution and review regularly.
- 1.2 The Constitution must contain:
 - a) the Council's standing orders/procedure rules;
 - b) the members' code of conduct;
 - c) such information as the Secretary of State may direct;
 - d) such other information (if any) as the authority considers appropriate
- 1.3 A Constitution Direction was issued by the Secretary of State in December 2000 requiring 80 matters to be included within council constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of the rights of inhabitants of the area.
- 1.4 Bury's Council Constitution is organised into 9 Parts (many divided into a number of sections). The existing Council's Constitution is available on the Council's external website.
- 1.5 As part of the annual review of the Constitution Officers have considered the Employees' Code of Conduct and the Officer Employment Procedure Rules. These documents are relevant to the work of the Employment Panel and the proposed changes are summarised below for the Panel's consideration with the full documents appended.

2. Employees' Code of Conduct

- 2.1 The Employee' Code of Conduct is a key part of the Council's overall employee policy framework setting out the Council's core expectations of staff as public servants. The existing Code of Conduct is clear and robust. However, a number of minor amendments are proposed to ensure the document fully reflects standards and expectations in a number of areas which have evolved over recent years specifically:
 1. Reference to the Whistleblowing Policy has been included
 2. Inclusion of expectations around the handling and disclosure of personal and sensitive data has been added
 3. Wording around Employee/Councillor relationships has been strengthened
 4. Reference to the Declaration of Interests process in relation to outside commitments and personal interests has been added

5. Reference to the Gifts and Hospitality declaration process has been added.
- 2.2 The full proposed revised Code is appended below as Appendix 1.

3. Officer Employment Procedure Rules

- 3.1 This part of the Constitution sets out the Council's arrangements for the appointment of Officers, including Chief Officers and the Chief Executive. In response to feedback from Members and Officers a number of revisions are proposed specifically:
1. At present the Constitution specifies the arrangements for the appointment of Chief Officers and the Head of Paid Service where this is not proposed to be made exclusively from existing employees but does not include a procedure where this is the proposal. Arrangements for this eventuality have now been included.
 2. The Leader of the Council has been included as a full Member of the appointment panel for Head of Paid Service
 3. The relevant Cabinet Member(s) have been included as full Member(s) of the appointment panel for Chief Officers and Deputy Chief Officers as defined. This had been normal practice via the former Human Resources and Appeals Panel but does not align with the current wording of the procedures
 4. The requirement to inform Members of the Cabinet of any appointments to Chief Officers/Deputy Chief Officer roles has been retained. However, clarification has been added to confirm that this is for information only and that the ultimate appointment decision rests with the Employment Panel.
- 3.2 The full proposed revised Procedure Rules are appended below as Appendix 2. A small revision to the Terms of Reference of this Committee is required to ensure they align with point 3 above. Revised Terms of Reference are appended below as Appendix 3.

Community impact/links with Community Strategy

An up-to-date Constitution will ensure decisions are taken lawfully and in an open and transparent manner.

Equality Impact and considerations:

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

Equality Analysis	<i>Please provide a written explanation of the outcome(s) of either conducting an initial or full EA.</i>
An up to date Constitution will ensure decisions contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.	

Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
Legal Challenge	An up-to-date Constitution will ensure decisions are taken lawfully and in an open and transparent manner.

Consultation:

The proposed changes have been shared with the Trade Unions and supported at the most recent Joint Consultative Committee.

Legal Implications:

Members are asked to consider a revised Employees' Code of Conduct and the Officer Employment Procedure Rules and revision to the Employment Panel Terms of reference. These documents are part of the rolling review of the constitution. If members are minded to agree then Council will be asked to agree to the constitution revisions at its annual meeting in May 2022.

Financial Implications:

There are no financial implications arising from this Report.

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Section 2 - Employees' code of conduct

Local Employees/Officers' Code of conduct, consistent with a model code yet to be issued by the Secretary of State, will be inserted here in due course.

1.0 Standards

1.1 Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to councillors and fellow employees with impartiality. Employees will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of their immediate supervisor any deficiency in the provision of service. Employees must report to their immediate supervisor any impropriety or breach of procedure. The Council also has a Whistleblowing Policy which sets out arrangements for raising certain types of concerns and the associated legal protections.

2.0 Disclosure of Information

2.1 It is generally accepted that open government is best. The law requires that certain types of information must be available to members, auditors, government departments, service users and the public.

2.2 Committee agendas and most reports and background papers are required by law to be available for public inspection. Detailed guidance is available from the Director of Law and Democratic Services. Obstruction of a Member of the public who wishes to exercise these rights is a criminal offence.

2.3 No employee shall communicate to the public the proceedings of any 'closed' Committee or meeting associated with the business of any Committee, nor the content of any document relating to the authority, unless required by law or expressly authorised by the Chief Executive to do so. Employees making unauthorised communications shall render themselves liable to disciplinary action.

2.4 Employees should follow any specific ground rules adopted by the authority in relation to commercially sensitive information or personal and sensitive personal data.

2.5 Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a councillor which is personal to that councillor and does not belong to the authority such as details of her/his marital/domestic arrangements, should not be divulged by the employee without the prior approval of that councillor, except where such disclosure is required or sanctioned by the law

3.0 Political Neutrality

3.1 Employees serve the authority as a whole. It follows they must serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.

3.2 Subject to the authority's conventions, employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.

3.3 Employees, whether or not politically restricted, must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work.

3.4 Should the authority decide to appoint political assistants in accordance with the Local Government and Housing Act 1989 these employees would be exempt from the standards set in paragraphs 3.1 to 3.3.

4.0 Relationships

4.1 **Councillors** - Employees are responsible to the authority through its senior managers. For some, their role is to give advice to councillors and senior managers and all are there to carry out the authority's work. Mutual respect between employees and councillors is essential to good local government. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and must therefore be avoided.

4.2 **The Local Community and Service Users** - Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the authority.

4.3 **Contractors** - All relationships of a business or private nature with external contractors or potential contractors, should be made known to your immediate supervisor and recorded via the Council's declaration of interest process which shall be available for inspection by Members of the Council. Orders and contracts must be awarded on merit by fair competition against other tenders, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

4.4 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to their immediate supervisor and this should be recorded via the Council's declaration of interests process.

5.0 Appointment and Other Employment Matters

5.1 Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with them. Where a Senior Officer has power to engage an employee they shall not appoint any relative to such a position without first referring the proposed appointment to the Director of People and Inclusion.

5.2 Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, etc.

6.0 Outside Commitments

6.1 Some employees have conditions of service which require them to obtain written consent to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the authority's interests. Employees are advised to discuss any such issues with their immediate supervisor and disclose this via the Council's declaration of interests process.

6.2 Apart from those employees whose conditions of service require them to obtain written consent to take any outside employment, it is not intended that employees be prevented from taking outside employment except where such employment would conflict with the authority's interests.

6.3 Employees should have regard to the ownership of intellectual property or copyright arising out of and during the course of their employment and act in accordance with any rules of the authority which may be in force.

7.0 Personal Interests

7.1 Employees must declare to their immediate supervisor any non-financial interests that they consider could bring about conflict with the authority's interests and disclose this via the Council's declaration of interests process.

7.2 Employees must declare to their immediate supervisor any financial interests which could conflict with the authority's interests and disclose this via the Council's declaration of interests process.

7.3 In the case of any matter under consideration by the Council or any other application to the Council where employees or any close relative have a personal interest, whether pecuniary or otherwise, they should, if such matter or application falls to be dealt with by the Department in which they are employed, inform their immediate supervisor of their interest as soon as they become aware of the matter or application concerned. The immediate supervisor must then ensure that all aspects of the matter or application are conducted or supervised by an employee more senior to the individual who has declared the personal interest. On no account must employees be directly involved in the processing of any matter or application in which they or any close relative have a personal interest.

7.4 The definition of a close relative shall be as set out in the the Local Conditions of Service (Appendix H). A copy of the document is available on the Council's intranet or through Human Resources.

7.5 Employees should declare to their immediate supervisor membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct.

7.6 Any declarations referred to in Section 7 shall be recorded in a register kept for that purpose by Human Resources for inspection by Members of the Council.

8.0 Equality Issues

8.1 All local government employees should ensure that policies relating to equality issues as agreed by the authority are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equality.

9.0 Separation of Roles During Tendering

9.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the authority. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness and at time discretion and confidentiality.

9.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors, in accordance with any policies and rules determined by the Council.

9.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.

9.4 Employees contemplating a management buyout should, as soon as they have formed a definite intent, inform their immediate supervisor and withdraw from the contract awarding processes.

9.5 Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in

awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

10.0 Use of Financial Resources

10.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money for the Council and to the local community and to avoid legal challenge to the authority.

11.0 Corruption

11.1 Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If charged with this offence it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

11.2 Rewards corruptly obtained will put your job at risk and are punishable by up to seven years' imprisonment.

12.0 Gifts and Hospitality

12.1 There can be little doubt that the acceptance of gifts by employees from persons who have, or may seek to have, dealings with their authority would be viewed by the public with grave suspicion and would make the employee concerned and the Council extremely vulnerable to criticism. An employee should, therefore, tactfully refuse any personal gift which is offered to him/her or a close relative by, or indirectly attributable to any person or body who has, or may have, dealings of any kind whatsoever with the Council or, who has applied, or may apply, to the Council for any planning or other kind of decision.

12.2 The only exceptions to this rule are:

- (a) small gifts of only token value often given by way of trade advertisements to a wide range of people, e.g. calendars, diaries, tape measures and similar articles of use in the workplace; or
- (b) small gifts of only token value given on the conclusion of a courtesy visit, e.g. to a factory or other premises

12.3 If there is any doubt about whether a gift may be accepted the gift should be politely and tactfully refused. Any gifts or hospitality should be declared as part of the Council's process and recorded by Human Resources.

12.4 Employees are reminded that under provisions of Section 117 of the Local Government Act 1972, they are forbidden to accept any fee or reward other than their proper remuneration and any person who contravenes this provision would be liable, on summary conviction, to a fine not exceeding £2,500. (Subject to review).

12.5 In the event of an employee receiving a gift without warning, which does not fall in any of the exceptions mentioned above, this should immediately be reported to a Chief Officer who will be responsible for deciding whether the gift should be returned.

12.6 If any employee becomes aware that he/she has been included as the beneficiary in the Will of a client, for whom the Council offers or used to offer a service where there is a connection with the employee's work, the above rules apply.

12.7 Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the local authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the authority should be seen to be represented. They should be properly authorised and recorded in a register kept for that purpose by Human Resources.

12.8 When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the authority.

12.9 When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the authority may be taking affecting those providing the hospitality.

12.10 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the authority gives consent in advance and where the authority is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment etc. are required, employees should ensure that the authority meets the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

12.11 Employees must refuse offers of hospitality where any suggestion of improper influence would be inferred. Special caution is necessary where hospitality is offered by a person or body having or seeking business with, or a decision from the authority, particularly where the offer is to an individual employee.

12.12 Concerning offers of hospitality there should be no cause for concern if the offer is made by another non-commercial public body but in all other cases offers of hospitality must be treated with caution.

12.13 Hospitality should only be accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion and not extravagant and where it is apparent that no cause could reasonably arise for adverse criticism about the acceptance of hospitality.

13.0 Sponsorship - Giving and Receiving

13.1 Where an outside organisation wishes to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

13.2 Where the authority wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to their immediate supervisor of any such interest. Similarly, where the authority through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

13.3 Any declaration of an interest will be recorded in a register kept for that purpose by Human Resources. The register will be available for inspection by Members.

14.0 Interpretation

14.1 Any interpretation of this Code should be determined by the Director of People and Inclusion after consultation with the Cabinet Member for Corporate Affairs and Human Resources.

15.0 Disciplinary Action

15.1 Any serious contravention of this Code may result in disciplinary proceedings.

16.0 Grievance Procedure

16.1 An employee who has a grievance arising from the interpretation of the Code shall have access to the Council's Grievance Procedure.

16.2 Any officer or Member who has been involved in an interpretation of the Code which results in a grievance arising should not be involved in the consideration of that grievance.

17.0 Application of Code

17.1 The Code embodies general guidance for all employees of the Council. It is recognised, however, that specific arrangements may be made at Departmental level to address circumstances/situations encountered by certain employees.

Appendix 2:

Section 8 - Officer employment procedure rules

(Standing Orders relating to Staff)

4.8.1. Recruitment and Appointment

(a) Declarations

- (i) The Council will draw up a statement requiring any candidate for appointment as an Officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.
- (ii) No candidate so related to a Councillor or an Officer will be appointed without the authority of the relevant Chief Officer or an Officer nominated by him/her.

(b) Seeking support for appointment

- (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) No Councillor will seek support for any person for any appointment with the Council.

4.8.2. Recruitment of Head of Paid Service and Chief Officers

- (i) Where the Council proposes to appoint a Chief Officer from amongst its existing officers the Executive Director of the department concerned should:
 - (a) Consult with the appropriate Cabinet Member(s) and prepare a report to the Employment Panel with the rationale, evidence around existing officers' suitability and why it is not considered necessary to advertise externally.
 - (b) If agreed, expressions of interest would be sought from relevant existing Officers outlining how the criteria for the role are met and a shortlist will be prepared.
 - (c) An appointment process will follow as outlined below.
- (ii) If it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:
 - (a) draw up a statement specifying:
 - (i) the duties of the officer concerned; and
 - (ii) any qualifications or qualities to be sought in the person to be appointed.

- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph(a) above to be sent to any person on request.
- (d) follow an appropriate recruitment process as outlined below.

4.8.3. Appointment of Head of Paid Service

- (a) The full Council must confirm the appointment of the Head of Paid Service following the recommendation of such an appointment by a sub-group of the Employment Panel with the Leader of the Council as a full member of the Appointment Panel.
- (b) An offer of an appointment as Head of Paid Service must not be made by the Council until:
 - (i) The Council has notified the Director of People and Inclusion of the name of the person to whom the Council wishes to make the offer and of any other particulars which the Council considers are relevant to the appointment;
 - (ii) The Director of People and Inclusion has notified (for information) every member of Cabinet of:
 - (a) the name of the person to whom the Council wishes to make the offer;
 - (b) any other particulars relevant to the appointment which the Council has notified to the Director of People and Inclusion;
 - (iii) and the Director of People and Inclusion seeks agreement on the appointment from a meeting of Full Council.

4.8.4. Appointment of Chief Officers and Deputy Chief Officers

- (a) A sub-group of the Employment Panel of the Council will appoint Chief Officers and Deputy Chief Officers, with the relevant Member(s) of the Cabinet as full member(s) of the Appointment Panel for these purposes.
- (b) The Chief Officer and Deputy Chief Officers posts subject to Rule 4 of the Officer Employment Rules are as defined in Section 2 of the Local Government and Housing Act 1989.

4.8.5. Other Appointments

(a) Officers below Deputy Chief Officer

The appointment of officers below Deputy Chief Officer (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.

(b) Assistants to political groups

The appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

4.8.6. Disciplinary Action - Head of Paid Service, Monitoring Officer and Chief Finance Officer

(To be considered in conjunction with the Disciplinary Procedure for Head of Paid Service, Section 151 Officer and Monitoring Officer - Appendix A)

(1) The Head of Paid Service, Monitoring Officer and S151-Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and will be reviewed after two months.

(2) The Council must approve the dismissal or other disciplinary action in relation to the Head of Paid Service, the Monitoring Officer or the S151-Chief Finance Officer following the recommendation of dismissal or disciplinary action by the Employment Panel (the Investigating and Disciplinary Committee - IDC) and an Independent Panel.

(d) The IDC will set up an initial meeting to inform the officer of the allegation, hear any representations and evidence from the officer and determine whether or not there is a case to answer. If it is determined that there is a case to answer an independent investigator will be appointed.

(e) Following receipt of the investigation report the IDC will conduct a Hearing to consider the findings/ recommendations, hear the officer's case and question any witnesses.

(f) If a disciplinary sanction/dismissal is proposed the Panel will notify the Director of People and Inclusion who will, through Democratic Services, notify every Member of the Cabinet of the name of the person and relevant details of the sanction or dismissal and give the opportunity for them to object/period of time to do this.

(g) Objections should be made through the Leader on behalf of the Cabinet to the Director of People and Inclusion; and either:-

(i) the Leader has, within the period specified in the notice under Rule 6(d)(ii)(c), notified the Panel that neither he/she nor any other Member of the Cabinet has any objection to the making of the offer;

(ii) the Director of People and Inclusion has notified the Panel that no objection was received within that period from the Leader; or

(iii) the Panel is satisfied that any objection received from the Leader/Cabinet within that period is not material or is not well founded.

(h) The IDC's proposed decision will then be put to an Independent Panel:

(3) The Independent Panel will be established comprising of two or more independent panel members:

- an independent person appointed by the Council who is a local government elector
- any other independent person appointed by the Council
- an independent person who has been appointed by another Council
- The Panel will:
 - hear the evidence of the investigator
 - hear oral representation from the officer
 - hear evidence from any witnesses
 - hear the response/proposals from the IDC

The Panel will consider all of the evidence and review the proposed decision from the IDC. A report will be prepared by the Independent Panel for Council with a clear recommendation as to whether or not they feel the officer should receive a disciplinary sanction or be dismissed. If they disagree with the IDC's proposals to issue a disciplinary sanction or dismiss, the report should include a clear rationale of the reasons why.

If the Panel are in agreement with the IDC's proposals the officer should be informed of this in writing and given the right of appeal.

(4) Under the 2015 regulations any decision to issue a disciplinary sanction or dismiss will be taken by full Council, who will take into account any advice, views or recommendations of the Independent Panel.

A special meeting of Council will be set up by Democratic Services and will take place at least 20 working days after the meeting of the Independent Panel.

At the meeting, which will also act as the officer's appeal if they have appealed, the case will be reviewed (a full re-hearing will not take place).

In addition:

- the officer will make representation first as this will effectively be their opportunity to appeal
- the advice, views and recommendations of the Independent Panel will be taken into consideration
- the conclusions from the investigation will be considered Council may

decide:

- to remove the disciplinary sanction or determine a lesser sanction
- to overturn the dismissal and award a lesser sanction (formal warning or action short of dismissal)
- to confirm the disciplinary sanction or dismissal of the officer

Decisions must be approved by way of a vote.

4.8.7. Disciplinary Action - Chief Officers and Deputy Chief Officers (other than the Head of Paid Service, Monitoring Officer and Chief Finance Officer)

(a) The Employment Panel shall approve the dismissal of or other disciplinary action in relation to Chief Officers and Deputy Chief Officers (other than the Head of Paid Service, Monitoring Officer or the Chief Finance Officer).

(b) Notice of the dismissal of the Chief Officer or Deputy Chief Officer (other than the Head of Paid Service, Monitoring Officer or the Chief Finance Officer) must not be given by the Director of People and Inclusion until:

(i) the Panel has notified the Director of People and Inclusion of the person who the Panel wishes to dismiss and other particulars which the Panel considers are relevant to the dismissal;

(ii) the Director of People and Inclusion has notified every Member of the Cabinet of;

(a) the name of the person who the Panel wishes to dismiss;

(b) any other particulars relevant to the dismissal which the Panel has notified to the Director of People and Inclusion; and

(iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the Director of People and Inclusion and; Either:

(i) the Leader has, within the period specified in the notice under Rule 7(b)(ii)(c), notified the Panel that neither he/she nor any other Member of the Cabinet has any objection to the dismissal;

(ii) the Director of People and Inclusion has notified the Panel that no objection was received by him within that period from the Leader; or

(iii) the Panel is satisfied that any objection received from the Leader/Cabinet within that period is not material or is not well founded.

4.8.8. Disciplinary Action - Other Officers

Other than hearing Appeals against dismissal, Councillors shall not be involved in the dismissal of or disciplinary action in relation to any Officer below Deputy Chief Officer except where such involvement is necessary for any investigation or enquiry into alleged misconduct and also through the Council's Disciplinary, Capability and Related Procedures as adopted from time to time, which may allow a right of appeal to Members in respect of such action.

Appendix A

Disciplinary Procedure for Head of Paid Service, Section 151 Officer and Monitoring Officer

Background

The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) provide a degree of protection for chief executives and certain statutory chief officers (section 151 and monitoring officers) against unwarranted political interference in their roles as Head of Paid Service, Section 151 Officer and Monitoring Officer.

These changes have been incorporated into the Council Constitution and new procedures are required to be formalised.

Scope

This procedure sits alongside the Model Disciplinary Procedure and Guidance as outlined in the Joint Negotiating Committee for Local Chief Executives National Salary Framework and Conditions of Service Handbook (updated 13 October 2016) and will be used to manage the disciplinary process for the Head of Paid Service, Section 151 Officer and Monitoring Officer.

Should any cases involving allegations against any of these three officers also implicate other officers and there is one investigation, this higher level procedure will be used for all officers under investigation.

Where the procedure refers to a Hearing, the process will follow the Council's Hearing Procedure.

Democratic Services, in conjunction with HR, will be responsible for arranging all meetings / hearings.

Right to be accompanied

The JNC procedure provides that at all stages, officers have the right to be accompanied by a trade union representative or some other person of their choice at their own cost. The only exception being, if an emergency suspension needs to take place where there is a serious risk identified.

The disciplinary procedure cannot be delayed, however, due to the unavailability of representative although every effort will be made to arrange dates that are mutually convenient.

The statutory right to be accompanied applies in disciplinary hearings where decisions around disciplinary action, a disciplinary sanction or an appeal are

taken. In these cases should the officer's representative be unavailable to attend we will postpone the Hearing for up to a week when the Hearing will go ahead regardless of the representative's availability.

Informal Resolution

If possible, an informal resolution should be sought and the Council will pay full regard to the principles within the ACAS handbook. The advice of the Joint Secretaries may also be sought. Formal action should be a last resort.

Formal Procedure

Suspension

The decision to suspend the Chief Executive, S151 Officer or Monitoring Officer must be considered carefully taking into account the nature of the allegations, the effect on the officer and potential reputational damage to the Council.

The Deputy Chief Executive has delegated authority to suspend in relevant circumstances in conjunction with the Leader of the Council and relevant Cabinet Member. Suspension should be reviewed by the IDC after 2 months.

Investigating and Disciplinary Committee - initial meeting

As part of the procedure, an Investigating and Disciplinary Committee (IDC) is required to be set up. This committee will be politically balanced and will consist of a panel of five members, including at least one cabinet member. Members appointed to the panel should have no prior knowledge or conflicts of interest in the case/officer involved.

Prior to the initial meeting, the Council should shortlist three people (or less if three are not available) from a list of independent investigators held by the Joint Secretaries to conduct an investigation should the IDC decide that this is the appropriate way forward.

The IDC's initial role will be to inform the officer of the allegations in writing, providing any evidence that might require investigation. The officer will be invited to put forward any written representations and evidence to the meeting (this includes any written evidence from witnesses they wish to be considered at this stage). The officer will also be invited to attend the meeting to make oral representations. If they do not attend their written representations will be taken into account.

At the meeting, the IDC will consider any evidence presented by the officer, either in writing or in person, and determine if it is appropriate to call the witnesses at this stage before any decision is taken. The IDC may decide:

- no further formal action is taken, or
- there is a case to answer and an investigation is required, or

- to consider other actions (for example mediation, use of a different procedure, mutual termination etc.)

If the IDC decides that there is a case to answer they will appoint an independent investigator.

They will also consider if it is appropriate to suspend the officer. If the officer has already been suspended under emergency powers, the IDC will review the decision to determine whether or not the suspension stands. Suspension will be further reviewed by the IDC after 2 months.

The officer will be informed of the decision in writing.

Investigation

The Joint Secretaries hold a list of independent investigators. Once the options of independent investigators from the list are determined suitable by the Council, the officer will be invited to select an investigator from the list (if no selection is made within 14 days of the names being supplied the Council should select an investigator from the list).

The role of the investigator will be to establish the facts and collate evidence. The investigation should remain confidential, impartial, and should be speedy and thorough.

The investigator will prepare a report to the IDC outlining:

- the facts of the case
- findings and evidence
- their opinion as to whether or not they believe that the evidence gathered supports the allegation and the need for disciplinary action to be taken
- their recommendations as to what disciplinary action they believe to be appropriate

IDC - Hearing

On receipt of the investigation report, the IDC will conduct a Hearing which will:

- consider the findings, report and recommendations of the independent investigator including any new material evidence material to the allegations
- give the officer the opportunity to state their case
- question any witnesses where relevant The IDC

may decide on the following outcomes:

1. No further action should be taken - the officer should be informed and appropriate communication prepared to ensure no damage to the officer's reputation
2. The issue should be resolved informally or through another procedure

3. The case should be referred back to the investigator for further investigation - this should be only when it is absolutely necessary in order to make a decision (for example to investigate any new evidence)
4. To take action short of dismissal (ie to issue a disciplinary sanction) - the officer should be notified of this and given the right of appeal
5. To recommend to Council to dismiss the officer

Where the IDC proposes to recommend to dismiss the officer, the Leader and all members of the Cabinet should be informed and given the opportunity to object. This part of the process should be carried out by the Deputy Chief Executive in conjunction with Democratic Services and any objections from the Cabinet should be made through the Leader.

The IDC will then reconvene to consider any objections and reaffirm their proposed recommendations to dismiss.

The IDC's proposed recommendations to dismiss should then be put to an Independent Panel.

The IDC will reconvene once the report from the independent panel is received to consider the recommendation to dismiss. If the recommendations to dismiss do not change, the officer will be informed of the decision at this point and given the right to appeal. This will be to full Council.

Should the IDC decide not to dismiss, other options should be considered (see above IDC outcomes).

Independent Panel

If a recommendation to dismiss is made by the IDC an Independent Panel (IP) will be established comprising of three independent panel members (or at least 2) who are:

- an independent person appointed by the Council who is a local government elector in this borough
- an independent person appointed by the Council for the purpose of the Council members conduct regime under the Localism Act 2011
- an independent person appointed by another Council for the purpose of the Council members conduct regime under the Localism Act 2011

The IP will be held in accordance with the Council's Hearing Procedure and will take place at least 20 working days before the meeting of the Council. The IP will offer advice, views or recommendations to the Council at which the recommendation for dismissal will be considered. It will:

- receive the IDC recommendations and reasons - presented by the Chair of the IDC
- receive the report from the independent investigator, who will be invited to the IP to provide clarification if required

- receive oral/written representations from the officer, who will be invited to attend
- hear evidence from any witnesses
- ask questions of either party

The IP will consider all of the evidence and formulate any advice, views or recommendations it wishes to make to Council on the proposal to dismiss the officer. A report will be prepared for the IDC / Council. If they disagree with the IDC's proposals to dismiss, the report should include a clear rationale of the reasons why.

Council

Where there is a proposal to dismiss the Head of Paid Service, S151 Officer or Monitoring Officer, Council must approve the dismissal before notice of dismissal is issued.

A special meeting of Council will be set up by Democratic Services and will take place at least 20 working days after the meeting of the Independent Panel.

Given the thoroughness and independence of the previous stages it will not be appropriate for Council to undertake a full re-hearing of the case and the meeting will review the case, the proposal to dismiss and any other evidence/representations. This stage will also act as the officer's appeal against the proposal to dismiss. In addition:

- the officer will attend and make representation first as this will effectively be their opportunity to appeal
- the Chair of the IDC will attend and present the proposal to dismiss/reasons
- the advice, views and recommendations of the Independent Panel will be taken into consideration
- the conclusions from the investigation will be considered Council will

have three options:

- to confirm the dismissal of the officer - this should be communicated to the officer as soon as possible
- to reject the proposal to dismiss the officer, ie no sanction - this should be communicated to the officer and communications prepared to ensure as far as possible there is no damage to their reputation
- Impose a lesser sanction or refer back to the IDC to determine the lesser sanction

Appeals Committee

Appeal Hearings against disciplinary action (action short of dismissal) will be heard by an Appeals Committee which will be politically balanced, include at

least one cabinet member and will comprise of five elected members who were not members of the IDC.

Its purpose is to hear the officer's representation and review the case/decision taken by the IDC, IP and consider the investigation report along with any other evidence relating to the case. They will also conduct any further investigations necessary to enable them to reach a decision.

The Panel may decide:

- to confirm the sanction given
- no sanction should be given - communications should be agreed with the officer to ensure as far as possible no damage to their reputation)
- a lesser sanction should be given

The decision of the Appeals Committee is final.

Section 8 - Officer employment procedure rules

[\(Standing Orders relating to Staff\)](#)

4.8.9. Recruitment and Appointment

(c) Declarations

(ii) The Council will draw up a statement requiring any candidate for appointment as an Officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.

(ii) No candidate so related to a Councillor or an Officer will be appointed without the authority of the relevant Chief Officer or an Officer nominated by him/her.

(d) Seeking support for appointment

(iii) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

(iv) No Councillor will seek support for any person for any appointment with the Council.

4.8.10. Recruitment of Head of Paid Service and Chief Officers

(i) Where the Council proposes to appoint a Chief Officer from amongst its existing officers the Executive Director of the department concerned should:

- (d) Consult with the appropriate Cabinet Member(s) and prepare a report to the Employment Panel with the rationale, evidence around existing

officers' suitability and why it is not considered necessary to advertise externally.

- (e) If agreed, expressions of interest would be sought from relevant existing Officers outlining how the criteria for the role are met and a shortlist will be prepared.
- (f) An appointment process will follow as outlined below.
- (ii) If it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:
 - (e) draw up a statement specifying:
 - (i) the duties of the officer concerned; and
 - (ii) any qualifications or qualities to be sought in the person to be appointed.
 - (f) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
 - (g) make arrangements for a copy of the statement mentioned in paragraph(a) above to be sent to any person on request.
 - (h) follow an appropriate recruitment process as outlined below.

4.8.11. Appointment of Head of Paid Service

- (c) The full Council must confirm the appointment of the Head of Paid Service following the recommendation of such an appointment by a sub-group of the Employment Panel with the Leader of the Council as a full member of the Appointment Panel.
- (d) An offer of an appointment as Head of Paid Service must not be made by the Council until:
 - (i) The Council has notified the Director of People and Inclusion of the name of the person to whom the Council wishes to make the offer and of any other particulars which the Council considers are relevant to the appointment;
 - (ii) The Director of People and Inclusion has notified (for information) every member of Cabinet of:
 - (a) the name of the person to whom the Council wishes to make the offer;
 - (b) any other particulars relevant to the appointment which the Council has notified to the Director of People and Inclusion;
 - (iii) and the Director of People and Inclusion seeks agreement on the appointment from a meeting of Full Council.

4.8.12. Appointment of Chief Officers and Deputy Chief Officers

(c) A sub-group of the Employment Panel of the Council will appoint Chief Officers and Deputy Chief Officers, with the relevant Member(s) of the Cabinet as full member(s) of the Appointment Panel for these purposes.

(d) The Chief Officer and Deputy Chief Officers posts subject to Rule 4 of the Officer Employment Rules are as defined in Section 2 of the Local Government and Housing Act 1989.

4.8.13. Other Appointments

(c) Officers below Deputy Chief Officer

The appointment of officers below Deputy Chief Officer (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.

(d) Assistants to political groups

The appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

4.8.14. Disciplinary Action - Head of Paid Service, Monitoring Officer and Chief Finance Officer

(To be considered in conjunction with the Disciplinary Procedure for Head of Paid Service, Section 151 Officer and Monitoring Officer - Appendix A)

(5) The Head of Paid Service, Monitoring Officer and S151-Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and will be reviewed after two months.

(6) The Council must approve the dismissal or other disciplinary action in relation to the Head of Paid Service, the Monitoring Officer or the S151-Chief Finance Officer following the recommendation of dismissal or disciplinary action by the Employment Panel (the Investigating and Disciplinary Committee - IDC) and an Independent Panel.

(d) The IDC will set up an initial meeting to inform the officer of the allegation, hear any representations and evidence from the officer and determine whether or not there is a case to answer. If it is determined that there is a case to answer an independent investigator will be appointed.

(e) Following receipt of the investigation report the IDC will conduct a Hearing to consider the findings/ recommendations, hear the officer's case and question any witnesses.

(f) If a disciplinary sanction/dismissal is proposed the Panel will notify the Director of People and Inclusion who will, through Democratic Services, notify every Member of the Cabinet of the name of the person and relevant details of the sanction or dismissal and give the opportunity for them to object/period of time to do this.

(g) Objections should be made through the Leader on behalf of the Cabinet to the Director of People and Inclusion; and either:-

(i) the Leader has, within the period specified in the notice under Rule 6(d)(ii)(c), notified the Panel that neither he/she nor any other Member of the Cabinet has any objection to the making of the offer;

(ii) the Director of People and Inclusion has notified the Panel that no objection was received within that period from the Leader; or

(iii) the Panel is satisfied that any objection received from the Leader/Cabinet within that period is not material or is not well founded.

(h) The IDC's proposed decision will then be put to an Independent Panel:

(7) The Independent Panel will be established comprising of two or more independent panel members:

- an independent person appointed by the Council who is a local government elector
- any other independent person appointed by the Council
- an independent person who has been appointed by another Council
- The Panel will:
 - hear the evidence of the investigator
 - hear oral representation from the officer
 - hear evidence from any witnesses
 - hear the response/proposals from the IDC

The Panel will consider all of the evidence and review the proposed decision from the IDC. A report will be prepared by the Independent Panel for Council with a clear recommendation as to whether or not they feel the officer should receive a disciplinary sanction or be dismissed. If they disagree with the IDC's proposals to issue a disciplinary sanction or dismiss, the report should include a clear rationale of the reasons why.

If the Panel are in agreement with the IDC's proposals the officer should be informed of this in writing and given the right of appeal.

(8) Under the 2015 regulations any decision to issue a disciplinary sanction or dismiss will be taken by full Council, who will take into account any advice, views or recommendations of the Independent Panel.

A special meeting of Council will be set up by Democratic Services and will take place at least 20 working days after the meeting of the Independent Panel.

At the meeting, which will also act as the officer's appeal if they have appealed, the case will be reviewed (a full re-hearing will not take place).

In addition:

- the officer will make representation first as this will effectively be their opportunity to appeal
- the advice, views and recommendations of the Independent Panel will be taken into consideration
- the conclusions from the investigation will be considered Council may

decide:

- to remove the disciplinary sanction or determine a lesser sanction
- to overturn the dismissal and award a lesser sanction (formal warning or action short of dismissal)
- to confirm the disciplinary sanction or dismissal of the officer

Decisions must be approved by way of a vote.

4.8.15. Disciplinary Action - Chief Officers and Deputy Chief Officers (other than the Head of Paid Service, Monitoring Officer and Chief Finance Officer)

(c) The Employment Panel shall approve the dismissal of or other disciplinary action in relation to Chief Officers and Deputy Chief Officers (other than the Head of Paid Service, Monitoring Officer or the Chief Finance Officer).

(d) Notice of the dismissal of the Chief Officer or Deputy Chief Officer (other than the Head of Paid Service, Monitoring Officer or the Chief Finance Officer) must not be given by the Director of People and Inclusion until:

- (i) the Panel has notified the Director of People and Inclusion of the person who the Panel wishes to dismiss and other particulars which the Panel considers are relevant to the dismissal;

- (ii) the Director of People and Inclusion has notified every Member of the Cabinet of;

- (a) the name of the person who the Panel wishes to dismiss;

- (b) any other particulars relevant to the dismissal which the Panel has notified to the Director of People and Inclusion; and

- (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the Director of People and Inclusion and; Either:

- (iv) the Leader has, within the period specified in the notice under Rule 7(b)(ii)(c), notified the Panel that neither he/she nor any other Member of the Cabinet has any objection to the dismissal;

- (v) the Director of People and Inclusion has notified the Panel that no objection was received by him within that period from the Leader; or

- (vi) the Panel is satisfied that any objection received from the Leader/Cabinet within that period is not material or is not well founded.

4.8.16. Disciplinary Action - Other Officers

Other than hearing Appeals against dismissal, Councillors shall not be involved in the dismissal of or disciplinary action in relation to any Officer below Deputy Chief Officer except where such involvement is necessary for any investigation or enquiry into alleged misconduct and also through the Council's Disciplinary, Capability and Related Procedures as adopted from time to time, which may allow a right of appeal to Members in respect of such action.

Appendix A

Disciplinary Procedure for Head of Paid Service, Section 151 Officer and Monitoring Officer

Background

The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) provide a degree of protection for chief executives and certain statutory chief officers (section 151 and monitoring officers) against unwarranted political interference in their roles as Head of Paid Service, Section 151 Officer and Monitoring Officer.

These changes have been incorporated into the Council Constitution and new procedures are required to be formalised.

Scope

This procedure sits alongside the Model Disciplinary Procedure and Guidance as outlined in the Joint Negotiating Committee for Local Chief Executives National Salary Framework and Conditions of Service Handbook (updated 13 October 2016) and will be used to manage the disciplinary process for the Head of Paid Service, Section 151 Officer and Monitoring Officer.

Should any cases involving allegations against any of these three officers also implicate other officers and there is one investigation, this higher level procedure will be used for all officers under investigation.

Where the procedure refers to a Hearing, the process will follow the Council's Hearing Procedure.

Democratic Services, in conjunction with HR, will be responsible for arranging all meetings / hearings.

Right to be accompanied

The JNC procedure provides that at all stages, officers have the right to be accompanied by a trade union representative or some other person of their choice at their own cost. The only exception being, if an emergency suspension needs to take place where there is a serious risk identified.

The disciplinary procedure cannot be delayed, however, due to the unavailability of representative although every effort will be made to arrange dates that are mutually convenient.

The statutory right to be accompanied applies in disciplinary hearings where decisions around disciplinary action, a disciplinary sanction or an appeal are

taken. In these cases should the officer's representative be unavailable to attend we will postpone the Hearing for up to a week when the Hearing will go ahead regardless of the representative's availability.

Informal Resolution

If possible, an informal resolution should be sought and the Council will pay full regard to the principles within the ACAS handbook. The advice of the Joint Secretaries may also be sought. Formal action should be a last resort.

Formal Procedure

Suspension

The decision to suspend the Chief Executive, S151 Officer or Monitoring Officer must be considered carefully taking into account the nature of the allegations, the effect on the officer and potential reputational damage to the Council.

The Deputy Chief Executive has delegated authority to suspend in relevant circumstances in conjunction with the Leader of the Council and relevant Cabinet Member. Suspension should be reviewed by the IDC after 2 months.

Investigating and Disciplinary Committee - initial meeting

As part of the procedure, an Investigating and Disciplinary Committee (IDC) is required to be set up. This committee will be politically balanced and will consist of a panel of five members, including at least one cabinet member. Members appointed to the panel should have no prior knowledge or conflicts of interest in the case/officer involved.

Prior to the initial meeting, the Council should shortlist three people (or less if three are not available) from a list of independent investigators held by the Joint Secretaries to conduct an investigation should the IDC decide that this is the appropriate way forward.

The IDC's initial role will be to inform the officer of the allegations in writing, providing any evidence that might require investigation. The officer will be invited to put forward any written representations and evidence to the meeting (this includes any written evidence from witnesses they wish to be considered at this stage). The officer will also be invited to attend the meeting to make oral representations. If they do not attend their written representations will be taken into account.

At the meeting, the IDC will consider any evidence presented by the officer, either in writing or in person, and determine if it is appropriate to call the witnesses at this stage before any decision is taken. The IDC may decide:

- no further formal action is taken, or
- there is a case to answer and an investigation is required, or

- to consider other actions (for example mediation, use of a different procedure, mutual termination etc.)

If the IDC decides that there is a case to answer they will appoint an independent investigator.

They will also consider if it is appropriate to suspend the officer. If the officer has already been suspended under emergency powers, the IDC will review the decision to determine whether or not the suspension stands. Suspension will be further reviewed by the IDC after 2 months.

The officer will be informed of the decision in writing.

Investigation

The Joint Secretaries hold a list of independent investigators. Once the options of independent investigators from the list are determined suitable by the Council, the officer will be invited to select an investigator from the list (if no selection is made within 14 days of the names being supplied the Council should select an investigator from the list).

The role of the investigator will be to establish the facts and collate evidence. The investigation should remain confidential, impartial, and should be speedy and thorough.

The investigator will prepare a report to the IDC outlining:

- the facts of the case
- findings and evidence
- their opinion as to whether or not they believe that the evidence gathered supports the allegation and the need for disciplinary action to be taken
- their recommendations as to what disciplinary action they believe to be appropriate

IDC - Hearing

On receipt of the investigation report, the IDC will conduct a Hearing which will:

- consider the findings, report and recommendations of the independent investigator including any new material evidence material to the allegations
- give the officer the opportunity to state their case
- question any witnesses where relevant The IDC

may decide on the following outcomes:

6. No further action should be taken - the officer should be informed and appropriate communication prepared to ensure no damage to the officer's reputation
7. The issue should be resolved informally or through another procedure

8. The case should be referred back to the investigator for further investigation - this should be only when it is absolutely necessary in order to make a decision (for example to investigate any new evidence)
9. To take action short of dismissal (ie to issue a disciplinary sanction) - the officer should be notified of this and given the right of appeal
10. To recommend to Council to dismiss the officer

Where the IDC proposes to recommend to dismiss the officer, the Leader and all members of the Cabinet should be informed and given the opportunity to object. This part of the process should be carried out by the Deputy Chief Executive in conjunction with Democratic Services and any objections from the Cabinet should be made through the Leader.

The IDC will then reconvene to consider any objections and reaffirm their proposed recommendations to dismiss.

The IDC's proposed recommendations to dismiss should then be put to an Independent Panel.

The IDC will reconvene once the report from the independent panel is received to consider the recommendation to dismiss. If the recommendations to dismiss do not change, the officer will be informed of the decision at this point and given the right to appeal. This will be to full Council.

Should the IDC decide not to dismiss, other options should be considered (see above IDC outcomes).

Independent Panel

If a recommendation to dismiss is made by the IDC an Independent Panel (IP) will be established comprising of three independent panel members (or at least 2) who are:

- an independent person appointed by the Council who is a local government elector in this borough
- an independent person appointed by the Council for the purpose of the Council members conduct regime under the Localism Act 2011
- an independent person appointed by another Council for the purpose of the Council members conduct regime under the Localism Act 2011

The IP will be held in accordance with the Council's Hearing Procedure and will take place at least 20 working days before the meeting of the Council. The IP will offer advice, views or recommendations to the Council at which the recommendation for dismissal will be considered. It will:

- receive the IDC recommendations and reasons - presented by the Chair of the IDC
- receive the report from the independent investigator, who will be invited to the IP to provide clarification if required

- receive oral/written representations from the officer, who will be invited to attend
- hear evidence from any witnesses
- ask questions of either party

The IP will consider all of the evidence and formulate any advice, views or recommendations it wishes to make to Council on the proposal to dismiss the officer. A report will be prepared for the IDC / Council. If they disagree with the IDC's proposals to dismiss, the report should include a clear rationale of the reasons why.

Council

Where there is a proposal to dismiss the Head of Paid Service, S151 Officer or Monitoring Officer, Council must approve the dismissal before notice of dismissal is issued.

A special meeting of Council will be set up by Democratic Services and will take place at least 20 working days after the meeting of the Independent Panel.

Given the thoroughness and independence of the previous stages it will not be appropriate for Council to undertake a full re-hearing of the case and the meeting will review the case, the proposal to dismiss and any other evidence/representations. This stage will also act as the officer's appeal against the proposal to dismiss. In addition:

- the officer will attend and make representation first as this will effectively be their opportunity to appeal
- the Chair of the IDC will attend and present the proposal to dismiss/reasons
- the advice, views and recommendations of the Independent Panel will be taken into consideration
- the conclusions from the investigation will be considered Council will

have three options:

- to confirm the dismissal of the officer - this should be communicated to the officer as soon as possible
- to reject the proposal to dismiss the officer, ie no sanction - this should be communicated to the officer and communications prepared to ensure as far as possible there is no damage to their reputation
- Impose a lesser sanction or refer back to the IDC to determine the lesser sanction

Appeals Committee

Appeal Hearings against disciplinary action (action short of dismissal) will be heard by an Appeals Committee which will be politically balanced, include at

least one cabinet member and will comprise of five elected members who were not members of the IDC.

Its purpose is to hear the officer's representation and review the case/decision taken by the IDC, IP and consider the investigation report along with any other evidence relating to the case. They will also conduct any further investigations necessary to enable them to reach a decision.

The Panel may decide:

- to confirm the sanction given
- no sanction should be given - communications should be agreed with the officer to ensure as far as possible no damage to their reputation)
- a lesser sanction should be given

The decision of the Appeals Committee is final.

Appendix 3

EMPLOYMENT PANEL TERMS OF REFERENCE

1. FUNCTION

The Employment Panel is responsible for the employment functions as set out in the Officer Employment Procedure Rules; including;

- acting as the Investigating and Disciplinary Committee for statutory officers of the Council
- Appeals against dismissal and grievances by employees of the Council
- applications for premature retirement and
- Appointment Panel for Chief and Deputy Chief Officers.

2. MEMBERSHIP

2.1 The Employment Panel will be Chaired by the Cabinet Member with responsibility for human resources. The Committee will be a politically balanced committee of the Council with nine members.

2.2 A politically balanced 3 member panel will be convened to fulfil the appeals functions.

2.3 A politically balanced 6 member panel will be convened to fulfil the employment functions, the 5th/and if necessary 6th member will be the Cabinet Member(s) with responsibility for the portfolio area under consideration.

2.4 Any panels convened must comprise of the 9 members appointed to the Employment Panel except in instances when a Cabinet Member is required to fulfil an employment function as detailed in point 2.3.

3. KEY RESPONSIBILITIES OF THE BOARD

- 1. Be the appropriate body including acting as the Investigating and Disciplinary Committee.**
- 2. To fulfil the employment functions as set out in part 4 section 8, the Officer Employment Procedure Rules in relation to: Chief Officers and Deputy Chief Officers including the Head of Paid Service (to include Returning Officer and Electoral Registration Officer functions), Deputy Chief Executive; Director for Adults and Communities, Director of**

Children and Families; Director of Public Health, Monitoring Officer and S151 Officer.

- 3. Review the annual pay policy statement and make recommendations to Council.**
- 4. Be a consultee on all terms and conditions including policies for all staff.**
- 5. Approve the performance and development framework for annual assessment of the Chief Executive.**
- 6. Appeals against dismissal and grievances by employees of the council and applications for premature retirement.**
- 7. The Chair of the Employment Panel has delegated authority to suspend the Head of Paid Service.**

5. MEETINGS

The Employment Panel is a Committee of the Local Authority and so as such the Access to Information provisions will apply. The Panel will meet four times a year.

The **date and timings** of the meetings will be fixed in advance by the Council, as part of the agreed schedule of meetings.

Additional meetings may be convened at the request of the Chair, and with the agreement of the Council Leader.

The meeting will be Chaired by the Cabinet Member with responsibility for the human resources function. The Chair will be appointed annually and the appointment would be ratified by Council. **In the absence of the Chair** - a replacement Chair will be elected for the duration of the meeting.

A **quorum** of three will apply for meetings.

The Director of People & Inclusion or their representative will act as the **lead officer**.

The agenda and supporting **papers** shall be in a standard format and circulated at least five clear working days in advance of meetings.

Meetings will be **clerked** by a representative of Democratic Services.

Public Engagement

Agendas will be available to view by members of the public in line with Access to Information Requirements on the Councils website at <https://www.bury.gov.uk/index.aspx?articleid=10465>