

APPENDIX 1

POWYS COUNTY COUNCIL

INTERIM DISCIPLINARY PROCEDURE FOR CHIEF OFFICERS

1. Scope of Procedure

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

2. Roles and Responsibilities

- 2.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Chief Officer, the Chief Executive shall be responsible for conducting the preliminary investigation which is further referred to in paragraph 5 below. The Chief Executive may choose to appoint a Chief Officer of the Council or an independent person to carry out the preliminary investigation on his behalf and whosoever undertakes that role shall be referred to as the "Preliminary Independent Investigator" in this Procedure.
- 2.2 The Chief Executive or nominee shall undertake a preliminary investigation into the allegations of conduct or capability, or other issues under investigation in order to determine whether a case to answer appears to exist which requires further consideration by an investigating and disciplinary committee as established by the Council from time to time as set out in paragraph 7 ("Investigating and Disciplinary Committee"). The Investigating and Disciplinary Committee shall be constituted in accordance with paragraph 7.2.. The Chief Executive may choose to appoint a Chief Officer of the Council or an independent person to carry out the preliminary investigation on his behalf and whosoever undertakes that role shall be referred to as the "Preliminary Independent Investigator" in this Procedure.
- 2.3 Save where the Chief Executive is satisfied, following a preliminary investigation, that the issue requires no further action or can be resolved informally, the matter must be referred to the Investigating and Disciplinary Committee, which shall be responsible for determining the matter.

3. Timescale

- 3.1 The Procedure does not incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the circumstances of a particular case. However, it is implicit that all stages of the Procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

4. Suspension

- 4.1 Suspension is not regarded as disciplinary action under this Procedure but as a neutral act which may be implemented where, in the opinion of the Chief Executive, it is believed that the Chief Officer's continuing presence at work might compromise the investigation or otherwise impair the efficient exercise of the Council's functions.
- 4.2 Suspension may also be necessary if an allegation is such that, if proven, it would amount to gross misconduct.
- 4.3 Prior to imposing suspension in any case, the Chief Executive shall inform the Chief Officer, in writing, of the reason for the proposed suspension and the Chief Officer shall have the opportunity to make representations before a decision is taken.

- 4.4 The necessity for the Chief Officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided. Further specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Chief Officer's suspension, whilst avoiding any compromise to the investigation or to the efficient exercise of the Council's functions.
- 4.5 Absence from duty during any period of suspension shall be on full pay.
- 4.6 The Chief Executive will allocate a contact officer for the Chief Officer. The contact officer should be another Chief Officer, with no direct relationship to the Chief Officer being suspended, and be someone whom the Chief Officer should use as a point of contact for accessing any witnesses etc.

5. Preliminary Investigation

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

or where completed by the Chief Executive within seven working days of its completion.

- 5.7 The Chief Officer shall, if they so wish, make written representations in relation to the Preliminary Investigation Report, within five working days of receipt by the Chief Officer of the Preliminary Investigation Report.
6. The Chief Executive will give careful consideration to the allegations or other issues, the Preliminary Investigator's Report, supporting evidence and any written representations put forward by the Chief Officer before taking further action.
 - 6.1 The Chief Executive shall decide whether:-
 - (i) The issue requires no further formal action under this procedure (in which case they will consider what other steps, if any, should be taken) and would ordinarily lift any suspension immediately; or
 - (ii) The issue should be referred to the Investigating and Disciplinary Committee, in which case the following paragraphs shall apply.
 - 6.2 The Chief Executive shall inform the Chief Officer of the decision, in writing, as soon as practicable.
- 7. The Role of the Investigating and Disciplinary Committee and appointing an Investigator**
 - 7.1 If the Chief Executive decides that the matter should be referred to the Investigating and Disciplinary Committee, the Chief Executive shall appoint a Chief Officer of the Council, or an independent person, to carry out any further investigation required into the allegations or other issues as soon as practicable(" the Investigator"). The Investigator can be the same person who carried out the preliminary investigation.
 - 7.2 The Investigating and Disciplinary Committee should include no fewer than three elected members made up of one member of the Council's Executive Cabinet plus members of the Council's Employment and Appeals Committee and should not include any member with a direct personal involvement in the complaint or who has participated in the preliminary investigation. The Leader shall appoint the Executive Cabinet Member and the members of the Council's Employment and Appeals Committee shall be appointed in consultation of the Chair of that Committee.
 - 7.3 The Investigating and Disciplinary Committee shall appoint a chair person to oversee the function of the Committee ("Chair").
 - 7.4 The Investigating and Disciplinary Committee shall be advised throughout by a suitable adviser who may be employed by or independent of the Council, ("the Independent Adviser") who shall ordinarily be accompanied by a member of the Council's HR or Legal Teams, save in cases where a conflict of interest could arise, in which case the Chief Executive shall appoint a nominee.

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

8. Responsibilities of the Investigator

- 8.1 It will be the responsibility of the Investigator to carry out a further investigation into the allegations or other issues under investigation and to prepare a report ("Investigation Report"):-
- (i) stating in his/her opinion whether (and if so, the extent to which) the evidence they have obtained supports any allegation of misconduct, or incapability or supports a need for action under this procedure for some other substantial reason; and
 - (ii) Recommending what, if any, disciplinary action or range of actions appears to be appropriate for the Council, through its Investigating and Disciplinary Committee, to take against the Chief Officer having regard to all the circumstances of the case.

9. Pre-Disciplinary Hearing Procedure

- 9.1 Within seven working days of receipt of the Investigation Report, the Chief Executive, or his nominee, shall send a copy to the Chief Officer. This shall be accompanied by a written indication if any further action is to be taken, and if so, notice of the specific allegations to be considered by the Investigating and Disciplinary Committee at the Disciplinary Hearing and any supporting documentation.
- 9.2 The Chief Officer shall, if they so wish, request further information and/or documents relating to the allegations within five working days of receipt of the Investigation Report.
- 9.3 Any additional information and documentation requested will be provided by the Investigator, where relevant, within seven working days or such other time as appropriate in the circumstances.
- 9.4 Once the period for requesting further information has elapsed or once a response has been provided by the Investigator further to paragraph 9.3 above, the Chief Executive or a nominee shall give the Chief Officer not less than ten working days written notice of the date of the Disciplinary Hearing with the Investigating and Disciplinary Committee. The notice shall include:-
- (i) the time and place of the Disciplinary Hearing;
 - (ii) who will be in attendance at the Disciplinary Hearing including the members of the Investigating and Disciplinary Committee;

- (iii) a copy of the Investigator's Report and any supporting documentation (including any witness statements where relevant) and the allegations to be considered at the Disciplinary Hearing;
 - (iv) confirmation that the Disciplinary Hearing is convened under this procedure and could result in disciplinary action, including dismissal (where appropriate) ;
 - (v) confirmation that the Chief Officer may be accompanied at the Disciplinary Hearing by a local trade union representative, an official employed by a trade union or a fellow work colleague ("Companion");
 - (vi) confirmation that the Chief Officer may ask any person to be present as a witness or adduce any documents or written statements in support of his response, provided full details of such witnesses and copies of any such documents or witness statements are provided to the Chief Executive, or his nominee, at least five working days before the date of the Disciplinary Hearing, for distribution to all parties.
- 9.5 Within two working days of receipt of the notice under paragraph 9.4, the Chief Officer shall either agree the date for the Hearing or propose to the Chief Executive or a nominee, a postponement for the date of the Hearing for a period not exceeding ten working days setting out the reasons for the request. For the avoidance of doubt, the postponement includes any postponement due to the availability of the Chief Officer's Companion. If the Chief Officer requests a postponement, the Chief Executive or a nominee and the Chief Officer (or his representative) shall agree the new date for the Hearing. If they cannot agree the date within one working day, the Chair of the Investigating and Disciplinary Committee, having taken appropriate advice, shall determine the date of the Disciplinary Hearing.
- 9.6 The Chief Executive or a nominee shall then formally give notice to the Investigating and Disciplinary Committee (and the Chief Officer if the Hearing has been postponed) of the date for the Disciplinary Hearing. The Investigating and Disciplinary Committee will be sent a full copy of all relevant documentation including the Investigation Report and supporting evidence and any written representations and witness evidence provided by the Chief Officer.
- 9.7 The Chief Officer and their Companion must make every effort to attend the Disciplinary Hearing (whether reconvened or otherwise). Failure to attend without good reason may be treated as misconduct in itself. If the Chief Officer fails to attend without good reason, or persistently fails to do so, the Disciplinary Hearing may proceed in their absence and a decision may be made based on the available evidence.
- 9.8 At least five working days before the date of the Disciplinary Hearing the Chief Officer shall give to the Chief Executive, or a nominee:-
- (i) Full details of any witnesses they wish to call together with copies of their witness statements (it shall be the responsibility of

the Chief Officer to arrange for the attendance of their witnesses via the contact officer) ;

- (ii) Copies of any documents which they wish to refer to in support of their response;
- (iii) Any written statements or submissions which they wish to submit; and
- (iv) Details of the Companion they wish to bring to the Disciplinary Hearing.

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

10. The Investigating and Disciplinary Committee Hearing

10.1 The procedure for the Disciplinary Hearing will be as follows:-

- (i) the Chair of the Investigating and Disciplinary Committee will explain the purpose of the Hearing and the procedure to be followed;
- (ii) the Investigating Officer will present the Investigation Report and introduce the evidence relating to each allegation and/or complaint, including documents and witness evidence either in person or in writing as previously notified;
- (iii) the Chief Officer or his Companion, and the Investigating and Disciplinary Committee and Independent Adviser, will have the opportunity to ask questions of the Investigating Officer including direct questions to any witnesses;
- (iv) the Chief Officer or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
- (v) the Investigating Officer, the Investigating and Disciplinary Committee and the Independent Adviser will have the opportunity to ask questions of the Chief Officer and/or their Companion, including direct questions to any witnesses;
- (vi) both sides will sum-up their presentations, commencing with the Investigating Officer.

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

another companion be selected e.g. where the companion may have a conflict of interest or prejudice the Disciplinary Hearing.

- 10.3 The Disciplinary Hearing may be adjourned if the Investigating and Disciplinary Committee need any further investigations to be carried out, such as re-interviewing witnesses in the light of any new points which are raised at the Disciplinary Hearing. The Chief Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.
- 10.4 When the Investigating and Disciplinary Committee has heard all of the evidence submitted they will adjourn to consider what, if any, further action should be taken. The range of options available to them include:-
- (i) taking no further action;
 - (ii) recommending informal resolution or other appropriate procedures be followed;
 - (iii) referring back to the Investigator for further investigation and a further report;
 - (iv) taking disciplinary action against the Chief Officer in accordance with paragraph 10.5.
- 10.5 In the case of disciplinary action, this can include the following:-
- (i) a recorded or oral warning;
 - (ii) a final written warning;
 - (iii) a final written warning accompanied by:-
 - (A) suspension on half pay or no pay for a specified period; and/or
 - (B) relegation (i.e. reduction in salary) for a specified period and/or on specified terms; and/or
 - (C) demotion;
 - (iv) dismissal (whether summary dismissal or on notice); and
 - (v) alternatively the Investigating and Disciplinary Committee may explore other alternatives such as but not limited to early retirement, secondment, or redeployment to a more junior post where there are issues relating to capability or loss of trust and confidence in the Chief Officer in their current role.
- 10.6 For the avoidance of doubt, the actions set out in paragraph 10.5 (iii) above shall only be applied in circumstances where the Investigating and Disciplinary Committee has decided that appropriate disciplinary action would include dismissal but that action short of dismissal would be more appropriate due to mitigating or other circumstances.

- 10.7 A Final Written warning will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that period.
- 10.8 All others present at the Disciplinary Hearing (other than the Independent Adviser) will withdraw while the Investigating and Disciplinary Committee consider their decision.
- 10.9 Where practicable, the decision of the Investigating and Disciplinary Committee will be delivered orally after an adjournment with full reasons for the decision being given by letter within five working days of the Disciplinary Hearing. However, in order to ensure that the Investigating and Disciplinary Committee shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Chief Officer in writing within five working days of the Disciplinary Hearing, or as soon thereafter as is reasonably practicable.
- 10.10 The letter will outline the decision and the action, if any, to be taken and will set out the rights of appeal ("Decision Letter")

11. Appeal Process

- 11.1 The Chief Officer shall have the right to appeal the Investigating and Disciplinary Committee's decision, to an Appeals Committee consisting of no fewer than three elected members made up of one member of the Council's Executive Cabinet plus members of the Council's Employment and Appeals Committee and should not include any member with a direct personal involvement in the complaint or who has participated in the preliminary investigation or the Disciplinary Hearing. The Leader shall appoint the Executive Cabinet Member and the members of the Council's Employment and Appeals Committee shall be appointed in consultation of the Chair of that Committee.
- 11.2 Any appeal must be made in writing to the Chief Executive or his nominee as set out in the Decision Letter within ten working days of the date of the Decision Letter including the grounds of appeal ("Notice of Appeal").
- 11.3 Within five working days thereafter the Chief Officer must inform the Chief Executive of the following details in relation to the Notice of Appeal and provide the following information:
 - (i) whether the Chief Officer is to be accompanied at the appeal hearing by a Companion and if so by whom;
 - (ii) whether they wish to call witnesses and if so, their names and copies of their statements if not already supplied for the purposes of the original Disciplinary Hearing;
 - (iii) copies of any additional documents or information relevant to the appeal that was not provided at the Disciplinary Hearing;
- 11.4 Having considered the Notice of Appeal, the Appeals Committee in its absolute discretion will determine whether the appeal hearing will take

the form of a full re-hearing or a review of the decision taken by the Investigating and Disciplinary Committee and will notify the Chief Officer of their decision in writing.

- 11.5 The Appeals Committee will consider the appeal as soon as reasonably practicable after the Notice of Appeal has been received. It will invite the following persons to be present at an appeal hearing:
- (i) the Chief Officer, who may be accompanied by a Companion; and
 - (ii) the Chair of the Investigating and Disciplinary Committee or another members of the Committee if so nominated by the Chair, to explain their reasons for their decision and to answer any questions; and
 - (iii) the Investigating Officer.
- 11.6 The procedure for convening the Appeal Hearing will follow that set out above in relation to the Disciplinary Hearing.
- 11.7 The Appeals Committee shall be advised by an independent adviser who shall not usually be the same Adviser who advised the Investigating and Disciplinary Committee.
- 11.8 The Appeals Committee in its absolute discretion shall decide the extent to which (if any) it will take into account any additional information which has become available in relation to the allegations or other issues under investigation since the Disciplinary Hearing.
- 11.9 The Appeals Committee may decide to uphold/dismiss the original decision of the Investigating and Disciplinary Committee or impose a different sanction within the range of penalties as set out in paragraphs 10.4 and 10.5.
- 11.10 Where practicable, the decision of the Appeals Committee will be delivered orally after an adjournment with full reasons for the decision being given by letter within five working days of the Appeal Hearing. However, in order to ensure that the Appeal Committee shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Chief Officer in writing within five working days of the Appeal Hearing, or as soon thereafter as is reasonably practicable.
- 11.11 The letter will outline the decision and the action, if any, to be taken.
- 11.12 The decision reached will be final and there is no further right of appeal.
- 11.13