Appendix 1

Chief Officers Disciplinary Procedure Rules

1 The Local Authorities (Standing Orders)

The Local Authorities (Standing Orders) (Wales) Regulations 2006 ("the Regulations") set out mandatory requirements in respect of disciplinary proceedings relating to the Chief Executive, the Monitoring Officer , the Section 151 Officer and the Head of Democratic Services; they also apply to an officer who was, but at the time of the proposed disciplinary action no longer is such an officer, and where the alleged misconduct, or, as the case may be, the reason for the proposal for dismissal, occurred during the period when the officer was such an officer.(Section A "The Statutory Officers Procedure".)

The Council has also resolved to adopt a procedur moine for Corporate Directors and Heads of Department employed on JNC terms and conditions. (Section B "Process for Chief Officers other than Statutory Officers")

2 Intention

This Standing Order is intended to give effect to the Regulations, but also sets out a prescriptive disciplinary procedure, which incorporates the JNC for Chief Executives and JNC for Chief Officers for Local Authorities model procedures, with modifications, and which are to be applied in the event of an allegation against the officer/s. It will consist of initial guidance and then a procedure to be followed in all cases.

If a matter is prescribed in the Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended which is not referred to in this procedure or where there is a conflict, the Regulations take precedence.

3 Interpretations

The interpretations below are those that are set out in the 2006 Regulations as amended and the relevant parts are replicated below. (Regulation 2):

a) "The 1989 Act" means the Local Government and Housing Act 1989;

b) "The 2000 Act means the Local Government Act 2000;

c) "The 2021 Act" means the Local Government and Elections (Wales) Act 202

d) "Chief Officer" means:

i) The Chief Executive;
ii) Monitoring Officer;
iii) Chief Finance Officer

iv) Head of Democratic Services
v) A Corporate Director
vi) Head of Department

and any reference to an appointment or purported appointment of a Chief Officer includes reference to the engagement or purported engagement of such an officer under a contract of employment;

e) "Chief Finance Officer" means the officer having responsibility, for the purposes of section 151 of the Local Government Act 1972 (financial administration) for the administration of the local authority's financial affairs;

f) "disciplinary action" in relation to a member of staff of the authority means any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority, be recorded on the member of staff's personal file, and includes dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract;

g) “Head of Democratic Services” means the officer designated under section 8 of the Local Government (Wales) Measure 2011;

h) "Chief Executive " means the officer designated under section 54 of the 2022 Act (designation and reports of Chief Executive);

i) "Monitoring Officer" means the officer designated under section 5(1) of the 1989 Act (designation and reports of Monitoring Officer);

j) “Statutory Officers” means:

i) Chief Executive,

ii) Monitoring Officer,

iii) Head of Finance and

iv) Head of Democratic Services

4 General Principles

a) Informal resolution is preferred to formal disciplinary procedures where appropriate.

b) All cases where disciplinary investigation or action relating to the Chief Executive is being considered must be referred to the Monitoring Officer or nominated representative(s) who will be the Lead Officer for the purposes of these Standing Orders. In all other cases the Line Manager or nominated representative(s) will be the Lead Officer.

c) It is in the interests of all parties that proceedings be conducted expeditiously. It is recognised that it would be inappropriate to impose timescales that in practical terms could be difficult to achieve.

d) Suspension should not be automatic and should be a last resort depending upon the circumstances of the case. A Suspension Risk Assessment will inform the decision in all cases and will be regularly reviewed.

e) Other than in circumstances where there is an urgent requirement to suspend, officers covered by this policy will be entitled to be accompanied by a single nominated companion as described by Paragraph 10 of the Employment Relations Act 1999 or a trade union representative at all stages

5 Disciplinary actions

No disciplinary action (other than action to which paragraph 11 refers))in respect of the Chief Executive; its Monitoring Officer, Chief Finance Officer and Head of Democratic Services to which this procedure applies may be taken by the authority, or by a committee, a sub-committee, a joint committee on which the authority is represented or any other person acting on behalf of the authority, other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP) under regulation 9 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended (investigation of alleged misconduct).

6 Chief Officer Appointments Committee ("COAC")

The **Chief Officer Appointments Committee** will be the relevant investigation and disciplinary committee for these Standing Orders in relation to the procedures under Section A and Section B.

7 Membership of the COAC

For these purposes the COAC must:

a) Consist of at least **4** members of the authority; (the committee has already have been set).

b) Be politically balanced in accordance with section 15 of the 1989 Act; and

c) At least one member of the Executive must be a member of the COAC and the Chief Officers Appeals Committee. However, not more than half of the members of the COAC and the Chief Officers Appeals Committee are to be members of the executive of the authority.

A. Statutory Officers Procedure

8 Process of the COAC

For these purposes the COAC must within 1 month of the referral of alleged misconduct to it, consider the allegation of misconduct and decide whether it should be further investigated.

9 Considering the Allegations or Other Issues Under Investigation

The COAC will, as soon as is practicable, inform the Statutory Officer in writing of the allegations or other issues under investigation and provide them with any evidence that the COAC is to consider including the right to hear verbal evidence.

10 The Investigation Meeting

a) The Statutory Officer will be permitted to respond both in writing and verbally at the Investigation and Disciplinary Committee meeting save that the remit of the Committee is inquisitorial in nature and no cross examination will be permitted at the Meeting.

b) The Statutory Officer will be entitled to be represented by his or her trade union representative or a single nominated companion as described by Paragraph 10 of the Employment Relations Act 1999.

d) The Committee will be advised by a legal officer at all times.

e) The procedure for the Meeting will be as follows: -

i) The Human Resources Advisory Manager or their nominated deputy will outline the allegation and introduce any evidence that the Authority wishes to rely on in support;
ii) Any witnesses for the authority will give their evidence and questions will be permitted;
iii) the Statutory Officer or his representative will present their defence;
iv) Any witnesses for the Statutory Officer will give their evidence and questions will be permitted;
v) The Committee will then adjourn to deliberate and decide whether there is a case that merits further investigation;
vi) The Committee will re-convene to deliver their decision to the Statutory Officer.

f) The Committee will assess any evidence provided in support of the allegations and anything said in defence. The Committee will then decide whether it is in a position to dismiss the allegation. If it cannot, and further investigation is needed, the Committee must refer the matter to the DIP.

g) If the Committee decides that the matter requires no further action, then that will be an end to the allegation, and no record will be made on the relevant officers' personal file.

h) If the matter is to be referred to a DIP, the Committee will draw up the allegations that will form the basis of the remit of the DIP, and these will be communicated to both the DIP and the relevant officer in writing.

j) The COAC shall inform the Statutory Officer of its decision in writing.

11 Suspension

a) When carrying out its deliberations, the Committee will also consider whether suspension is appropriate. In disciplinary cases, suspension may be appropriate where the Statutory Officer's continuing presence at work might compromise the investigation or impair the efficient exercise of the authority's functions or where a repeat of the alleged offence could have serious consequences for the authority.

b) If an exceptional situation arises whereby allegations of misconduct by any Statutory Officer are such that his / her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority they may be suspended immediately pending consideration by the COAC. In the case of the Chief Executive by the Chair of the COAC or in the case of the other Statutory Officers by the Chief Executive or if conflicted by a Corporate Director. The suspension decision must be in consultation with the Human Resources Advisory Service Manager.

c) The overall suspension must be for a maximum period of two months from the date of the initial suspension (the 'Initial Suspension Period'), and the officer will continue to receive full pay for all of the period of suspension.

d) For calculation purposes, the suspension period will be deemed to commence on the date which is the day before the Chair, the Chief Executive or the Committee (as relevant) decides to suspend and then count forward two calendar months from this date or, such earlier date as may have been imposed.

e) If it is decided that suspension is appropriate, the reasons for the decision to suspend and the terms of any suspension will be communicated in writing to the Statutory Officer. In accordance with Regulation 9 of the Regulations, any suspension is subject to any direction of the DIP.

f) The authority is able to request that the DIP consider as to whether to authorise that the suspension may continue over the maximum two-month period..

g) The necessity for suspension should be reviewed by the Lead Officer at regular intervals and where possible lengthy periods of suspension are to be avoided. Consideration may also be given to home working as an alternative to suspension, but this is dependent on the allegation and the feasibility of such an arrangement.

H) Whilst suspension is a neutral act and is in no way an indication of guilt or pre-determination, in cases of potential gross misconduct the Statutory Officer should normally be suspended pending the investigation by the DIP

12 Designated Independent Person("DIP")

Where it appears to the COAC that an allegation of misconduct by the Statutory Officer should be further investigated, it must appoint a person "the designated independent person"the DIP") for the purposes of the standing order (or provisions to the like effect).

13 Appointing a DIP

In deciding whether to appoint a DIP, the COAC shall, in considering whether there is an allegation of misconduct against a Statutory Officer that requires further investigation, take into account the following factors:

(a) Is the allegation such that if it were proved it would lead to dismissal or other action which would be recorded on the officer's personal file; and

(b) There is evidence in support of the allegation sufficient to require further investigation.

In the event that this test is satisfied, the COAC will proceed to appoint a DIP.

The authority will pay reasonable remuneration to a designated independent person appointed by the COAC and any costs incurred by, or in connection with, the discharge of functions under this regulation

14 The Designated Independent Person

The DIP who is appointed:

a) Must be such person as may be agreed between the authority and the Statutory Officer within 1 month of the date on which the requirement to appoint the designated independent person arose; or

b) Where there is no such agreement, must be such person as is nominated for the purpose by the Welsh Ministers.

15 What the DIP may do

1 The DIP may direct:

a) That the authority terminates any suspension of the Statutory Officer;

b) That any such suspension is to continue after the expiry of the two-month period referred to in 11;

c) That the terms on which any such suspension has taken place are to be varied in accordance with the direction; or

d) That no steps (whether by the relevant authority or any committee, sub-committee or officer acting on behalf of the relevant authority) by way of disciplinary action or further disciplinary action against the Statutory Officer, other than steps taken in the presence, or with the agreement, of the designated independent person, are to be taken before a report is made under sub-paragraph 4.

2 The DIP may inspect any documents relating to the conduct of the Statutory Officer which are in the possession of the relevant authority, or which the relevant authority has power to authorise the designated independent person to inspect;

3 The DIP may require any member or member of staff of the relevant authority to answer questions concerning the conduct of the Statutory Officer;

4 The DIP Must make a report to the authority–

a) Stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct against the Statutory Officer; and

b) Recommending any disciplinary action which appears appropriate for the relevant authority to take against the Statutory Officer, and

c) Must no later than the time at which the report is made under sub-paragraph 4; send a copy of the report to the Statutory Officer.

5 The Statutory Officer and the authority must, after consulting the DIP, attempt to agree a timetable within which the designated independent person is to undertake the investigation.

6 Where there is no agreement under paragraph 5, the DIP must set a timetable as that person considers appropriate within which the investigation is to be undertaken.

7 The COAC must consider the report prepared by the DIP within one month of receipt of that report by the authority.

8 The procedure for receiving allegations of misconduct or a breakdown in trust and confidence is set out below.

16 The Meeting of the Chief Officer Appointment Committee

1 The COAC will meet to consider the report and shall accept the recommendations of the DIP. If the DIP recommends no disciplinary action, the Committee is bound by that recommendation. If however the DIP recommends dismissal or some other disciplinary sanction, the decision as to whether to impose a lesser sanction than dismissal remains that of the COAC.

2 The relevant officer or his or her representative will be permitted to address the COAC prior to it carrying out its deliberations. However, under normal circumstances, no evidence will be permitted to be called.

3 There may however be circumstances where new evidence has emerged since the investigation which should be admitted in the interests of fairness. It is anticipated that such circumstances should be rare and the COAC will give full consideration to any representations that new evidence ought to be admitted. Such evidence should be given to the DIP to consider whether their recommendations should be revised in the light of that information. 4 The COAC will then deliberate and decide on what disciplinary action to take, if any and this will then be communicated to the parties at the meeting if practicable, but in any event in writing setting out the reasons for the decision and informing the relevant officer of their right to appeal.

4. The power to confirm the dismissal of the Chief Executive must be exercised by Full Council itself and the COAC will only make a recommendation on dismissal to the Full Council. In respect of the Monitoring Officer, the Chief Financial Officer, the Head of Democratic Services and all other Chief Officers will be taken by the COAC subject to any appeal to the Chief Officers Appeals Committee.

B. Process for Chief Officers other than the Statutory Officers

17 General

1. Procedures are set out below for use in cases relating to discipline, and any proposal to dismiss based on a breakdown in trust and confidence.

2. Any decisions in these matters must be in accordance with the requirements of the law in respect of the rules of natural justice..

3. Any disciplinary procedures should be handled without undue delay, but this must be measured against the need to investigate the case fully and to give the relevant Chief Officer an opportunity to reply fully to the complaints.

18 Suspension due to alleged misconduct

The action to which this paragraph applies is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; provided such suspension is on full pay subject to the Councils terms and conditions of employment The decision to suspend will be made by the Line Manager.

19 The Chief Officers Appointment Committee

1. The decision to instigate a disciplinary investigation shall be for the Chief Executive or, Corporate Director if the Chief Executive is conflicted or otherwise unable to undertake the function.

2. The Chief Executive or the Corporate Director (para2) will determine the investigation procedure in consultation with the Human Resources Advisory Service Manager. Suitably qualified independent investigators may be commissioned to undertake an investigation

4. A confidential report outlining the allegations together with any documentary or other supporting evidence to support the referral must be provided in advance. Should the allegations not be substantiated by the report then the Chief Executive or the Corporate Director (para 2) may at that point determine that the disciplinary process should be brought to a conclusion.

5. If the Chief Executive (or their nominated representatives) consider based on the report that there is sufficient evidence to refer the matter to the COAC for consideration in a Disciplinary Meeting, this should be done via Democratic Services in consultation with the Human Resources Advisory Service Manager.

6. This report confidential report must be provided to the Chief Officer (subject to any necessary redactions to comply with Data Protection principles) along with a copy of this policy and procedure together with any documentary or other supporting evidence to ensure that the Chief Officer has sufficient information about the allegations against them to enable them to prepare to answer the case at a disciplinary meeting. The officer will be invited in writing to attend a COAC disciplinary meeting.

20 The Disciplinary Meeting

1 The relevant officer will be permitted to respond both in writing and verbally at the COAC Meeting.

2 The relevant officer will be entitled to be represented by his or her trade union representative or a single nominated companion as described by Paragraph 10 of the Employment Relations Act 1999.

3 The Committee will be advised by a legal officer at all times.

4 The procedure for the Committee Meeting will be as follows: -

(a) The Chief Executive (or their nominated representative) will outline the allegation and introduce any evidence that the Authority wishes to rely on in support;
(b) Any witnesses for the authority including any investigator appointed by the Chief Executive will give their evidence and questions will be permitted;
(c) the Chief Officer or his representative will present their defence;
(d) Any witnesses for the Chief Officer will give their evidence and questions will be permitted;
(e) The Committee will then adjourn to deliberate;
(f) The Committee will re-convene to deliver their decision to the relevant officer. The Committee will assess any evidence provided in support of the allegations and anything said in defence. The Committee will then decide whether the allegation(s) are upheld.

5 If the Committee decides that the matter is not substantiated, then that will be an end to the allegation, and no record will be made on the relevant officers' personal file.

6 If the COAC decides that an allegation is upheld it will decide on what disciplinary action to take, if any and this will then be communicated to the parties at the meeting if practicable, but in any event in writing within 10 working days of the meeting setting out the reasons for the decision and informing the relevant officer of their right to appeal.

21 Chief Officers Right of Appeal

1 The relevant officer will have the right of appeal against the decision of the COAC. Such appeal will be in writing and will comprehensively set out the ground/s of appeal. This is to be delivered to the Human Resources Advisory Service Manager within 10 working days of the date that the written decision is communicated to them.

2 The appeal will take the form of a review of the previous decision and will be considered by the following bodies in accordance with the 2006 Regulations as amended:

a) In respect of the Chief Executive the appeal will be to the Council. In which event, any members who have had any previous involvement in the process either as witnesses or as members of the Chief Officer Disciplinary Committee will be required to refrain from attending;

b) In respect of all other Officers, the appeal will be to the Chief Officer Appeals Committee (COAC);

c) The relevant officer or his or her nominated representative will be permitted to address Council/the COAC, but will not be permitted to adduce new evidence other than in accordance with the considerations referred to in paragraph 16.3;

d) The COAC/Council will then deliberate and decide on what action to take, if any, and this will then be communicated to the parties at the meeting if practicable, but in any event in writing setting out the reasons for the decision;

e) The decision of the COAC/Council is final and there is no further right of appeal;

22. Grievances

1. If the Chief Officer raises a complaint during the disciplinary procedure, the disciplinary procedure may be suspended in order to deal with the complaint. There is no obligation on the COAC to suspend the disciplinary procedure – that depends on each individual case, the complaint made and the disciplinary action involved.
2. Where the complaint relates to the subject matter of the disciplinary process in progress, it may be appropriate for the Chief Officer to present this information during the disciplinary proceedings.