

ANGUS COUNCIL CHIEF EXECUTIVE'S CAPABILITY PROCEDURE

Stage 1

- 1.1 In the first instance any question or complaint with regard to the Chief Executive's capability will be referred to an Assessment Group.
- 1.2 The Head of HR, IT & Organisational Development and the Leader of the Council will discuss the capability question or complaint and the Leader will appoint an Assessment Group. Where the Leader has raised the capability issue or complaint then the matter will be discussed with the Depute Leader or where they too have involvement the Convener of the Scrutiny and Audit Committee. The Head of HR, IT & Organisational Development will verbally make the Chief Executive aware of the capability question or complaint and that an Assessment Group is being called to consider the matter.
- 1.3 This group will be made up of a cross party group of three elected members representing, as far as is practicable, the political balance of the council. Members of the group will not participate in any of the remaining stages of the procedure. Only councillors who have received recent and appropriate training should be members of the Assessment Group. The HR Manager will support the group.
- 1.4 The Assessment Group will meet with the Chief Executive to discuss the nature of the capability question or complaint. The Chief Executive should be given a minimum of five working days prior written notice of such a meeting and the letter will advise of the right of representation at that meeting by a representative of an appropriate trade union or a work colleague. The HR Manager will be present to support this meeting.
- 1.5 If the Assessment Group concludes that there is a question of substance as to the Chief Executive's capability they will advise the Chief Executive of the ways in which performance should improve and a period of time after which the matter will be reviewed. This will be recorded in an agreed improvement plan setting out a timescale and measureable improvement targets. This period should be sufficient to allow the Chief Executive a reasonable opportunity to show the required level of improved performance.
- 1.6 If the Assessment Group considers that there is evidence of incapability which is not likely to be remedied within a reasonable period of time, or if a previous warning has been issued to the Chief Executive in regard to performance then the Assessment Group will refer the matter to an Investigating Officer.
- 1.7 If subsequent to a period of time allowed for improved performance there remains a question as to the capability of the Chief Executive the matter will be referred to an Investigating Officer.

Stage 2

- 2.1 The Investigating Officer will be agreed between, and be independent of both, the council and the Chief Executive. In the event of a failure to agree it will be for the Joint Secretaries to the SJNC to recommend an Investigating Officer.
- 2.2 The investigation should be conducted within a reasonable period. If the investigation is likely to extend beyond four weeks following appointment of the Investigating Officer, the Chief Executive will be kept informed of progress by the Head of HR, IT & OD on a weekly basis.
- 2.3 It is for the Investigating Officer to determine how best to investigate the capability question or complaint. However, the Investigating Officer will be expected to:
 - Invite the Chief Executive to a formal meeting to discuss, and question the Chief Executive on the capability question or complaint and prepare a signed statement. The Chief Executive should be given a minimum of five working days prior written notice of such a meeting and the letter will advise of the right of representation at that meeting by a representative of an appropriate trade union or a work colleague.
 - If applicable, meet with and interview any witnesses to or parties associated with the capability question or complaint, a signed statement being prepared to record each interview.
 - Review any documentation associated with the capability question or complaint.

- 2.4 At the conclusion of the investigation, the Investigating Officer will prepare a report for the Assessment Group outlining the findings of the investigation. The report will include a recommendation as to whether the Investigating Officer considers there are sufficient grounds to the capability question or complaint, to proceed to a Hearing Panel.
- 2.5 Upon receipt of the report from the Investigating Officer the Assessment Group will decide whether or not the matter should proceed to a Hearing Panel.
- 2.6 The Chief Executive will be advised in writing of the decision of the Assessment Group no later than 10 working days following the meeting of the group. A copy of the report from the Investigating Officer will accompany that letter.
- 2.7 Where the Assessment Group decision is that no further action is necessary, no record of the capability question or complaint will be entered on the Chief Executive's personal file.

Stage 3

- 3.1 The Hearing Panel should be set up comprising of 3 councillors (cross party representing as far as possible the political balance of the Council). This panel must exclude members of the Assessment Group and any councillor who is party to the complaint giving rise to the investigation or who has been interviewed and provided a statement during the investigation.
- 3.2 The Head of HR, IT & Organisational Development will advise the panel. A record of the meeting and decision reached will be taken.
- 3.3 The Chief Executive will be given a minimum of ten working days prior notice in writing of the hearing. The letter will provide full details of the capability question or complaint, advise that the panel will refer to the report from the Investigating Officer and advise of any witnesses that may be called and include any associated statements. The letter will also advise the Chief Executive of their right to be represented at the hearing and ask the Chief Executive (or their representative) to provide in advance of the hearing any relevant papers that they may present as part of their case and the names of any witnesses they may wish to call.
- 3.4 The hearing will be held no later than four weeks from the date of the letter.
- 3.5 The Chief Executive may seek a postponement of the hearing to enable representation; such postponement should, save where it is agreed by the Chair of the Hearing Panel and the Chief Executive that there are exceptional circumstances, be for no more than ten working days.

Conduct of the Hearing (4)

- 4.1 The role of the Hearing Panel is to conduct a fair hearing into the capability question or complaint so that a reasonable decision can be made, based on the information presented. The conduct of the hearing will be as follows:
 - A. The investigating Officer on behalf of the Assessment Group will present their case.
 - B. Members of the Hearing Panel and the Chief Executive (or their representative) will have the opportunity to question the Investigating Officer and any witnesses called.
 - C. The Chief Executive (or their representative) will present their case.
 - D. Members of the Hearing Panel and the Investigating Officer will have the opportunity to question the Chief Executive (or representative) and any witnesses called.
 - E. The Investigating Officer will summarise their case, introducing no new evidence.
 - F. The Chief Executive (or their representative), will summarise their case introducing no new evidence.
 - G. Both parties will withdraw to enable the Hearing Panel to make a decision in private.
 - H. Following the adjournment the parties will reconvene and the Convener of the Hearing Panel will advise the Chief Executive of the panel's decision. If the Hearing Panel is unable to provide a decision on the day of the hearing, they will reach a decision as soon as possible but in any event, the decision will be confirmed in writing to the Chief Executive within 10 working days of

the hearing. The letter will also include details of to whom the Chief Executive can appeal the decision of the Hearing Panel, should they wish to do so, together with the associated timescale.

- 4.2 If the Hearing Panel concludes that the Chief Executive is not carrying out his/her duties and responsibilities to the level of capability that the council believes is required, the Hearing Panel will consider issuing a written warning with the provision of a reasonable amount of time for the Chief Executive to meet the requirements of the post. This period should be sufficient to allow the Chief Executive a reasonable opportunity to show the required level of improved performance. The Hearing Panel will advise the Chief Executive of the ways in which performance should improve and a period of time after which the matter will be reviewed. This will be recorded in an agreed improvement plan setting out a timescale and measureable improvement targets or; if a previous warning has been issued or, the Hearing Panel judges the incapability to be fundamentally irremediable confirm dismissal with notice.
- 4.3 The Chief Executive will have the right to appeal the decision of the Hearing Panel to the Appeal Committee.

Stage 5

- 5.1 The Appeal Committee will exclude members of the Hearing Panel and Assessment Group and, as far as is practicable, be made up of a cross party group of elected members representing the political balance of the council. Any councillor who has been party to the complaint giving rise to the process, or who was interviewed or gave a statement in the investigation process will not be a member of the Appeal Committee.
- 5.2 The Head of HR, IT & Organisational Development and the Head of Legal and Democratic Services will advise the Appeal Committee. A record of the meeting and decision reached will be taken.
- 5.3 The Appeal Committee will ideally be held within 20 working days of receipt of the appeal.
- 5.4 The Chief Executive will be given a minimum of ten working days prior notice in writing of the date of the Appeal Hearing and be provided with a copy of any associated paperwork (at the same time) that will be presented on behalf of the Hearing Panel as part of their case. The letter will advise the Chief Executive of their right to be represented and advise of any witnesses that may be called and ask the Chief Executive (or their representative) to provide to the Committee Officer no later than 5 working days in advance of the appeal any documentation that they intend to refer to and the names of any witnesses they may call.
- 5.5 The conduct of the Appeal Hearing will follow that of the Hearing Panel, however it will be for the Chief Executive (or representative) as appellant to present their case first and be allowed to summarise their case last.
- 5.6 It is the responsibility of the Appeal Committee to determine whether the appeal from the Chief Executive should be upheld, upheld in part or dismissed. If upheld in part the Appeal Committee must also determine the impact of this decision on any sanction implemented by the Hearing Panel.
- 5.7 The convener of the Appeal Committee will advise the Chief Executive of the decision of the Appeal Committee. If the committee is unable to reach a decision at the conclusion of the hearing they will do so as soon as possible but in any event the decision will be confirmed in writing to the Chief Executive within ten working days of the date of the appeal hearing.
- 5.8 At the conclusion of the appeal stage a confidential report noting the outcome should be submitted to Full Council for information only. If the appeal is successful no record will be kept on the Chief Executive's personal file.