

**Extract From Joint Negotiating Committee For Chief Officers Of Local Authorities
Conditions Of Service**

PART FOUR - DISCIPLINE, CAPABILITY AND REDUNDANCY

- 63 In general, informal conciliation is to be preferred to formal procedures if it can bring about a mutually agreed solution to the problems that have arisen. Such solutions should make it clear what specific changes in behaviour and/or performance are expected and within what timescales.
- 64 The Joint Secretaries (or their representatives) are available at any stage in the procedures to act in an impartial conciliation role, whether formal or informal if required to do so by the local parties.
- 65 The principles of natural justice and good management practice must govern the conduct of any proceedings against a chief officer on the grounds of either alleged misconduct (i.e. 'discipline') or an alleged inability to carry out their role (i.e. 'capability'). Authorities should have full regard to the principles and standards set out in the ACAS Code of Practice on Disciplinary Procedures. The following principles, which are consistent with ACAS guidance on good practice, should be used as the framework for developing a more detailed local process. Where authorities already have local procedures agreed for this group of staff they must ensure their procedures operate in a manner consistent with the following principles.

Notes 1 Any authority employing a chief officer as head of the paid service should have regard to the legal requirements regarding discipline imposed by the Local Government and Housing Act 1989. Authorities in this position should refer for guidance to paragraph 16 of the Conditions of Service for Chief Executives.

2 Those authorities wishing to incorporate the role of an independent third party, in an advisory or decision making capacity, may refer for guidance to paragraph 16 in the Chief Executives Condition of Service. This may be specifically appropriate where the officer holds a post with statutory accountabilities.

OBJECTIVES OF A DISCIPLINARY PROCEDURE

- 66 A disciplinary procedure will:
1. encourage employees to achieve and maintain standards of behaviour;
 2. provide a fair and consistent method of dealing with alleged failure;
 3. remind managers and supervisors how disciplinary matters should be handled;
 4. minimise disagreements about disciplinary matters;
 5. reduce the need for dismissals.
- 67 What form will it take?

The procedure should be tailored to the needs of the local authority, but it must:

1. be in writing;
2. not discriminate on grounds of gender, race, age, nationality, sexuality or disability;
3. specify to whom it applies;
4. explain the potential penalties;
5. deal with matters quickly;
6. give employees the right to be accompanied by a trade union representative or friend (subject to an individual's prior involvement);
7. give employees, and /or their representative, the right to put their side of the case, and to call witnesses;
8. specify who has the authority to take disciplinary actions;
9. ensure that action is not taken without careful investigation;
10. provide a right to appeal;
11. give clear details of time scales and any deadlines associated with the various stages of the procedure.

MODEL PROCEDURE

(PRE-HEARING ACTION) PRELIMINARY INVESTIGATION

- 68 The purpose of a preliminary investigation is to determine if a question of discipline exists which, if established, could not be resolved informally, e.g. though an unrecorded informal warning.
- 69 Ensure all parties, e.g. the chief executive/elected members, who are required to use the process, are fully trained in its operation.
- 70 Before progressing to a formal Investigating Committee hearing, the council will need to be certain that:
1. the chief officer has been notified, preferably in writing, of the allegations which are being investigated and given the opportunity to make representations on their behalf;
 2. the matter cannot be resolved through informal counselling;
 3. the individual has been interviewed by the appropriate manager and afforded right to be represented by their trade union or accompanied by a fellow employee of their choice. Care must be taken not to compromise individuals who may be interviewed at a subsequent stage in this procedure;
 4. it has been determined whether or not suspension is appropriate.
- 71 Where the preliminary investigation determines that there is a potential case to answer, an Investigating Committee will be established. The Investigating Committee should include no fewer than three elected members and should not include any member or officer with at direct personal involvement in the complaint or who participated in the preliminary investigation.

SUSPENSION

- 72 Where the chief officer's continuing presence at work compromises the investigation or impairs the efficient exercise of the Council's functions, the chief officer may (subject to whatever consultation or approval may be required under the authority's standing orders) be suspended from duty. The Council, or appropriate committee or the chief

executive, acting under delegated powers, may carry out such suspension on full pay. Written notice stating the reasons for any such suspension shall be given at the earliest opportunity possible.

- 73 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.

THE DISCIPLINARY HEARING

- 74 The chief officer will receive not less than ten working days written notice of the Investigating Committee's meeting. Before the meeting the chief officer has the right, if so requested, within a reasonable time, (i) to receive further details of the complaint made and/or (ii) to a postponement of the meeting for a jointly agreed period not exceeding 14 days. The chief officer may circulate a written statement to the Investigating Committee before the hearing.

- 75 At the meeting, make sure that:

1. the employee concerned knows the details of the allegation;
2. he or she has the opportunity to put his or her side of the matter.

The Investigating Committee can:-

1. exonerate the chief officer;
2. state their opinion as to whether (and if so the extent to which) the evidence they have obtained supports any allegation of misconduct against the chief officer;
3. determine the disciplinary action (if any) or range of actions which appear appropriate to take against the chief officer. The appropriate course of action will be drawn from the following list:-
 1. recorded oral warning;
 2. written warning;
 3. suspension on half pay or no pay for a specified period;
 4. relegation (i.e. a reduction in salary) for a specified period;
 5. an invitation to resign or accept retirement;
 6. dismissal with notice.

The final decision will be given to the chief officer in writing at the earliest opportunity following the hearing.

If a warning is given, it should tell the employee:

1. the level of improvement required;
2. the date by which it is to be achieved;
3. what will happen if it is not;
4. how to appeal.

Alternatively the Panel may explore other alternatives, e.g.

1. early retirement;
2. secondment;

3. redeployment to a more junior post where there are issues relating to capability.

GROSS MISCONDUCT

- 76 When a case appears to be one of gross misconduct, normally the chief officer should (subject to whatever consultation or approval may be required under the authority's standing orders) be suspended from duty on full pay. The procedure for the investigation will be as set out above.

APPEAL PROCESS

- 77 It is consistent with good practice to establish a procedure for the chief officer to appeal against the outcome of the Investigating Committee hearing. In this context it is suggested that the chief officer is allowed a full right of appeal to either the council itself or another committee. The procedure for an appeal hearing should follow the model above. Members who participated in the previous investigation may attend to give evidence but must be excluded during the consideration of the decision of the council or committee.

Note At the appeal stage those authorities wishing to incorporate the role of an independent third party should see the earlier note at paragraph 65.