

Appendix 1

Excerpt of the Joint Negotiating Committee for Chief executives of Local Authorities National Salary Structure and conditions of Service Handbook Revised Edition 1998

16. PROCEDURES FOR REDUNDANCY, CAPABILITY AND DISCIPLINE

INTRODUCTION

- 16.1 Procedures are set out below for use in cases relating to discipline, capability and redundancy. The joint secretaries of the JNC should be notified as soon as it is proposed to use any of these procedures and both parties are also recommended to contact the appropriate side secretary as soon as possible to ascertain whether more detailed assistance might be desirable.
- 16.2 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.
- 16.3 The joint secretaries 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 either party.

GENERAL

- 16.4 The principles of natural justice and of good management practice must govern the conduct of any proceedings against the chief executive on the grounds of either alleged misconduct (i.e. ‘discipline’) or alleged inability to carry out the role of chief executive (i.e. ‘capability’). Authorities should also have full regard to the principles and standards set out in the ACAS Code of Practice on Disciplinary Procedures.
- 16.5 Any decisions in such matters must be in accordance with the requirements of the law, in particular the provisions of the Local Authorities (Standing Orders) Regulations 1993. These Regulations specify that no “disciplinary action” may be taken by an authority other than in accordance with a recommendation made by a designated independent person. “Disciplinary action” is defined in the Regulations so as to include proposed dismissal, for any reason other than redundancy, permanent ill-health, or failure to renew a fixed term contract. In other words, the designated independent person procedure covers cases both of ‘discipline’ and of ‘capability’.
- 16.6 Discipline and capability procedures should be handled as quickly as is consistent with the need to investigate the case fully and to give the chief executive a fair opportunity to reply fully to complaints.

MODEL DISCIPLINARY PROCEDURE

- 16.7 Except where alternative arrangements have been agreed in advance between the authority and the chief executive, the following model procedure should apply in cases of alleged misconduct.

- 16.8 The model procedure can be modified by mutual agreement to suit the particular circumstances of the case, but not so as to contradict the requirements of the regulations. There is an obligation on both the authority and the chief executive to give fair consideration to reasonable proposals from the other party to modify the model procedure to suit local circumstances.
- 16.9 Where a question of discipline is raised in connection with a chief executive, an Investigatory Panel (to be known hereafter as an IP) comprising a politically balanced group of not fewer than three elected members, appointed by the elected mayor or the leader of the council, should give careful consideration to any allegations. If, following careful consideration, the IP feels further investigation is required, it will instigate a preliminary and careful investigation to consider the allegations.
- 16.10 The purpose of the preliminary investigation is to determine if a question of discipline exists which, if established, could not be resolved informally, e.g. through an unrecorded informal warning.
- 16.11 Once the preliminary investigation has commenced, the chief executive should be notified in writing of the allegations which are being investigated and be given the opportunity to make representations on them to the IP before it decides to proceed further.
- 16.12 The role of an IP is to conduct a careful investigation in order to decide if there is a case for the independent person to consider further. The IP will draw up the charges the independent person will hear.
- 16.13 Fair notice should be given to enable the chief executive adequate time to prepare a response to the complaints which give rise to the investigation. During the preliminary investigation the chief executive is entitled to attend and has a right to be represented by his or her trade union representative or some other person of his or her choice, but not at the authority's cost.
- 16.14 In accordance with normal disciplinary procedures, including the ACAS guidelines, the IP must satisfy itself that there is a case to answer. Where there is evidence from third parties then this evidence must be evaluated, and if it is intended that it form the basis of the case, then these matters should be put to the chief executive in order that he or she may respond or comment before a decision is made to proceed.
- 16.15 If, following the preliminary investigation, the IP considering the allegations decide that a case exists which requires full investigation, it will be necessary for both parties to agree the appointment of an independent person in accordance with Regulation 3(1) of the Local Authority (Standing Orders) Regulations 1993. If the parties cannot agree on an independent person, in the first instance the joint secretaries will be able to advise. If agreement is still not reached the independent person has to be appointed by the Secretary of State. A decision to have a full investigation should be communicated in writing to:

- (i) the chief executive and at his or her request to any trade union of which he or she is a member, and
- (ii) the joint secretaries of the Joint Negotiating Committee.

SUSPENSION

- 16.16 In discipline cases, suspension may be appropriate where the chief executive's continuing presence at work might compromise the investigation or impair the efficient exercise of the Council's functions.
- 16.17 If at any stage it is felt appropriate, the chief executive may (subject to whatever consultation or approval may be required under the authority's standing orders) be suspended from duty by the Council or appropriate committee or sub-committee acting under delegated powers on full pay pending further investigation. Written notice stating the reasons for any such suspension shall be given. The suspension may be for a maximum of two months only and shall be subject to any direction of the independent person, appointed under paragraph 16.15, who may direct the authority to terminate the suspension, to continue it, or to vary the terms upon which it has taken place.
- 16.18 If the authority wishes to extend the period of suspension beyond two months this must be approved by the independent person.

INVESTIGATION BY THE INDEPENDENT PERSON

- 16.19 It is the duty of the independent person appointed in accordance with the 1993 Regulations to prepare a report. The report will be produced following a comprehensive investigation into any allegations. The chief executive should be given not less than ten working days notice of the commencement of the investigation and should at the same time be given full details of the allegations made against him/her. Within that time the chief executive has the right to request:-
- (i) further details of the allegations made and
 - (ii) a postponement of the investigation for a period to be agreed between the parties, or in default of agreement, for a period not exceeding 14 days.

The chief executive is entitled to be present and has a right to be represented by his or her trade union representative or some other person of his or her choice throughout the investigation. It shall be for the authority to submit evidence of the allegations against the chief executive by witnesses and the submission of relevant documents. Such witnesses shall be open to cross examination by or on behalf of the chief executive and by the independent person. The chief executive may give evidence, call any witnesses whom he or she considers appropriate and submit any relevant documents. Any such witnesses and the chief executive (if giving evidence) shall be open to cross-

examination by the authority's representative and by the independent person. The authority's representative and finally the chief executive or his or her representative has the right to sum up at the end of the investigation. In no case should the independent person hear one party without the other being present.

16.20 In order to ensure all the relevant factors are considered the independent person shall, at his or her discretion, have power at any stage in the proceedings at which he/she considers appropriate:

- (i) to direct that no further steps (whether by the authority or any committee, sub-committee or officer of theirs) should be taken in respect of their disciplinary action proposed or contemplated;
- (ii) to direct that any suspension shall end, and the chief executive shall be reinstated;
- (ii) to direct that no steps towards disciplinary action or further disciplinary action against the chief executive, other than steps taken in the presence or with the agreement of the independent person, are to be taken before a report is made in accordance with paragraph 16.21 below;
- (iv) to inspect any relevant documents in the possession, or under the control, of the authority, and any other documents which any person is prepared to show to him/her;
- (v) to require any employee of the authority to answer questions concerning the conduct of the chief executive providing that if any such employee has not been called to give evidence the person presenting the complaint on behalf of the authority and the chief executive (or his/her representative) may question the employee (in an appropriate forum) on the answers given to the independent person.

Note: The authority shall pay the remuneration of the independent person, and any costs incurred by him/her or in connection with the discharge of his/her functions under these regulations.

THE REPORT OF THE INDEPENDENT PERSON

16.21 The report of the independent person shall be presented to the council or the appropriate committee of the council acting under delegated powers and shall:

- (i) state his/her opinion as to whether (and if so the extent to which) the evidence he/she has obtained supports any allegations of misconduct against the chief executive;
- (ii) recommend the disciplinary action (if any) or range of actions which appear to him/her appropriate for the authority to take against the chief

executive. The appropriate course of action will be drawn from the following list:

- ◇ recorded oral warning
- ◇ written warning
- ◇ suspension on half pay or no pay for a specified period
- ◇ relegation (i.e. a reduction in salary) for a specified period
- ◇ an invitation to resign or accept retirement
- ◇ dismissal with notice

16.22 Alternatively the independent person may recommend that the parties explore other alternatives, e.g.

- (i) early retirement
- (ii) secondment

16.23 The independent person shall at the same time send a copy of his report to the chief executive.

16.24 Before the council or appropriate committee as the case may be considers the report or the recommendations of the independent person the chief executive or his or her representative has the right to address the council or committee, but, unless the council or committee consents, has no right to call witnesses.

GROSS MISCONDUCT

16.25 When a case appears to be one of gross misconduct, normally the chief executive should (subject to whatever consultation or approval may be required under the authority's standing orders) be suspended from duty on full pay pending further investigation. The suspension will initially be limited to a period of two months. An independent person must be appointed, and will have the same powers and responsibilities as set out above. The procedure before the independent person will be as set out above.

For gross misconduct a chief executive can be dismissed without notice if such a course of action is in accordance with the recommendations in the report of the independent person.

MODEL CAPABILITY PROCEDURE

Note: The procedure for capability may need adaptation where medical fitness is in question. Authorities should bear in mind the advantage of a third medical opinion where their own medical adviser and that of the chief executive are not in agreement. In the case of permanent ill-health an independent person need not be appointed.

16.26 Paragraphs 16.7 - 16.24 of the model disciplinary procedure shall apply also to any question or complaint as to the capability of the chief executive to fulfil the duties and responsibilities of the post including any alleged failure by the

chief executive to establish and maintain a satisfactory working relationship with the council.

- 16.27 If the IP concludes that there is a question of substance as to the chief executive's capability, it should advise the chief executive informally of the nature of that question, of the ways in which the performance should improve and (unless there has been a previous warning or there is evidence of serious incapability which is not likely to be remedied within a reasonable time) a period of time after which the matter will be reviewed. This period should be sufficient to allow the chief executive a reasonable opportunity to show either an improved performance or that the conclusion of the preliminary investigation was mistaken. At this stage no record of the investigation should be entered on the individual's personal file.
- 16.28 If, after the above paragraph has been complied with, there remains a substantial question as to the chief executive's capability, an independent person will also need to be appointed in accordance with paragraph 16.15 above, except in the case of permanent ill health (see above note).
- 16.29 If, as a result of the independent person's investigation it is concluded that the chief executive is not carrying out his/her duties and responsibilities to the level of capability that the employing authority genuinely believes is required, the independent person may consider an alteration in duties and responsibilities.
- 16.30 If the independent person does not deem this appropriate he/she may consider a recorded oral warning or a written warning with the provision of a reasonable amount of time for the chief executive to meet the requirements of his/her post or (if there has been a previous written warning or the independent person judges the incapability to be fundamentally irremediable) dismissal with notice. A satisfactory outcome may alternatively be achieved by the chief executive undertaking actively to seek other employment, taking early retirement, or resigning or accepting retirement.

Note: Suspension is not normally appropriate in cases of capability except where the chief executive's continued presence at work might compromise the effective exercise of the council's functions.

REDUNDANCY

Note: An independent person need not be appointed in cases of redundancy.

- 16.31 Employing authorities should consult with the chief executive at the earliest possible stage when there is a suggestion that the chief executive's post might be abolished or proposed for abolition. If, following a proper investigation, a proposal to abolish the post of chief executive has been put forward by an employing authority, or an appropriate committee or sub-committee so that there is a possibility of the redundancy of the postholder, then the procedure of s188 of the Trade Union and Labour Relations (Consolidation) Act 1992,

requiring consultation with trade unions, should be followed. The information required to be disclosed under the Act should be communicated in writing to:

- (i) the chief executive and a representative of an independent trade union recognised by the employers for collective bargaining purposes for the chief executive; and
- (ii) the joint secretaries of the Joint Negotiating Committee.

Receipt of this information by the chief executive should commence the consultation period which shall be at least 28 days (four weeks) duration. During the course of these consultations the possibility of alternative employment should be considered. In the light of these consultations the employing authority should first consider the proposals and any representations made by or on behalf of the chief executive and only then take whatever decision it considers appropriate. The employing authority should bear in mind throughout this procedure the desirability of treating the matter as confidential until a final decision has been reached.

- 16.32 The authority should also bear in mind the application of the provisions of the Local Government (Compensation for Premature Retirement) Regulations 1982, as amended, which permit enhancement of benefits or redundancy payments. The possibilities of providing an alternative post or of extending the period of notice to assist the chief executive in finding other employment should also be considered.

Appendix 2

**Excerpt of the National Salary Framework and Conditions of Service for
Local Authority Chief Executives Joint Negotiating Committee
Handbook- April 2008**