

DISCIPLINARY PROCEDURE FOR CHIEF OFFICERS

**Human Resources & Development
July 2011 Version 1**



DISCIPLINARY PROCEDURE FOR CHIEF OFFICERS

1. Aims and Objectives

- 1.1** The objective of this disciplinary procedure is to encourage Chief Officers to achieve and maintain appropriate and high standards of behaviour in line with the Council's Code of Conduct for Employees and to provide a fair and consistent method of dealing with alleged misconduct or shortfalls in performance.
- 1.2** 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). The following principles and procedure are derived from ACAS guidance on good practice and the legal requirements regarding discipline imposed by the Local Government and Housing Act 1989. The requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 on the appointment and dismissal of senior staff have also been followed. The Council will have full regard to relevant statutes, regulations and its Employee Procedure Rules including the JNC for Chief Officers of Local Authorities Conditions of Service.

2. Scope

- 2.1** The procedure applies to Chief Officers of the Council. This group comprises the Chief Executive (Head of Paid Service), Directors, Chief Finance Officer (Section 151 Officer) and Monitoring Officer and other Heads of Service.

3. General Guidelines and Principles

- 3.1** In general, informal resolution, following an initial consideration of the facts, is to be preferred to formal procedures if it can bring about a mutually agreed solution to the problems that have arisen.
- 3.2** In all cases, the Council's commitment to equality and diversity will be adhered to. If the employee or representative has a disability, reasonable steps should be taken to ensure that their access needs are met in order that they have no problems participating in the hearing.
- 3.3** At every stage of the procedure the Chief Officer will be advised of the nature of the complaint against him or her and the potential penalty and he or she will be given the opportunity to state his or her case before any decision is made.
- 3.4** At all stages in the procedure confidentiality must be respected by all the parties involved.
- 3.5** The Head of People & Technology is to be informed of all disciplinary and capability concerns in order that he or she may advise on the employment and legal implications and attend and be involved in any part of the

process as appropriate. In circumstances when the Head of People & Technology may be involved or implicated in a case, the Authority will engage an advisor from an external source – either from a neighbouring authority, South East Employers Organisation or the national Employers Organisation.

- 3.6** The periods given for the completion of the stages of this procedure are provided to ensure prompt decisions in the interests of both the Council and Chief Officer. The parties involved in the disciplinary matter may, by mutual consent, after consultation with the Head of People and Technology or a member of the HR team, vary the time limits specified where this is appropriate in the circumstances. Every effort will be made to prevent undue delay.

4. Record Keeping

- 4.1** Records will be kept in accordance with the Data Protection Act 1998 (unless there is a legitimate reason not to do so i.e. the protection of witnesses).
- 4.2** Copies of meeting records should be given to the Chief Officer and their representative for agreement, including any formal minutes that may have been taken.
Records will include:
The complaint against the Chief Officer
The Chief Officer's defence or response
Findings from the process, and actions taken in respect of this (including reasoning)
Whether an appeal was made, and the outcome of that appeal
Any grievance raised during the disciplinary process
Any further developments in the matter.
- 4.3** Records will be kept in accordance with the length of the time periods set for any recorded warnings or action plans for improvement. (See also paragraph 7.1 & 7.3.3) If the required improvement is met then the records will be removed from the Chief Officers personal file.

5. Representation

- 5.1** At all stages, the Chief Officer has the right to be represented by a single companion, who is either a 1) work colleague 2) trade union representative (trade union representatives must be certified as trained to act as a workers companion at discipline or grievance hearings). In some circumstances additional aides may be required e.g. an interpreter or signer. Whilst a Chief Officer is able to choose to attend with a trade union representative from a union not recognised by the Council, it is considered to be good practice for Officers to seek representation from the Council's recognised union as far as is practicable. Legal representation or family members are not allowable.

6. Suspension

- 6.1** At any point during the process, where there is evidence to suggest that the officer may be guilty of gross misconduct or where it is considered that the Chief Officer's continued presence at work compromises the investigation or impairs the efficient exercise of the Council's functions, the Chief Officer may be suspended from duty. For the Chief Executive (Head of Paid Service) Monitoring Officer or Chief Finance Officer (Section 151 Officer), this action should be taken by the Leader or by the Appointments & Investigating Committee. For a non statutory Chief Officer (Director or Head of Service) the action could be taken by the Chief Executive, acting under delegated powers. Any such suspension will be on full pay. Written notice stating the reasons for the suspension will be given at the earliest possible opportunity and it will be made clear that the suspension is not a disciplinary sanction and it will not prejudice any future disciplinary hearing.
- 6.2** The necessity for any suspension will be reviewed at regular intervals and in relation to the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer (Section 151 Officer) must not last for longer than two months unless the Designated Independent Person (see section 7.5) recommends that the suspension should last beyond that point.

7. Procedure

7.1 Informal Action

It is anticipated that the majority of cases that involve issues of minor misconduct or performance can be dealt with on an informal basis. Any solution mutually agreed at this stage should make it clear what specific changes in behaviour and/or performance are expected and within what timescales. Where notes of action points from any informal meetings are kept they should be destroyed by both parties once the shortfall in performance or conduct has been corrected.

If the issues are too significant to be dealt with in this way, or the issues dealt with continue after an informal approach has been taken, the following formal procedures should be followed.

7.2 Investigation

- 7.2.1** Where an issue has been raised concerning the behaviour or performance of a Director or Head of Service, a preliminary investigation will be undertaken by the Director's line manager i.e. the Chief Executive or Director. If the Chief Executive or the Director are personally implicated directly or indirectly in the matter which is the subject of a complaint then the investigation will be carried out by another suitable Director.
- 7.2.2** Where an issue has been raised concerning the behaviour or performance of a statutory Officer (i.e. Chief Finance Officer (Section 151 Officer),

Monitoring Officer or Chief Executive (Head of Paid Service), preliminary and careful consideration of the allegations will be undertaken by an Appointments and Investigating Committee comprising a politically balanced group of three suitably trained elected members appointed by the Leader of the Council, one of whom should be a member of the Cabinet. An HR representative will support and advise the Committee.

7.2.3 The purpose of the investigation is to establish the facts and determine if a question of discipline exists, which, if established, could **not** be resolved informally as above, e.g. through an unrecorded informal warning. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the Chief Officer and any witnesses, and/or reviewing relevant documents. At this stage the Chief Officer will be notified in writing of the allegations which are being investigated and will be given the opportunity to make representations on their behalf in an investigatory interview as well as being notified of their right to representation. The Chief Officer must co-operate fully and promptly in any investigation. This will include informing the investigating officer of the names of any relevant witnesses, disclosing any relevant documents to the investigating officer and attending investigative interviews if required.

7.2.4 Where the preliminary investigation determines that there is a potential case to answer, for non-statutory Chief Officers the matter will be referred to the Appointments & Investigating Committee to undertake the disciplinary hearing. In the case of Statutory Chief Officers (Chief Executive (Head of Paid Service), Chief Finance Officer (Section 151 Officer) or Monitoring Officer), a designated independent person will be appointed to investigate any allegations. Because of the different statutory requirements for procedures relating to Statutory Officers, these are detailed separately to those for non-statutory Chief Officers:

7.3 Procedure for non-statutory Chief Officers

7.3.1 The Appointments & Investigating Committee

The make up of the Committee should be as set out in paragraph 7.2.2 but should not include any member with direct personal involvement in the allegation.

7.3.2 The Disciplinary Hearing

Wherever possible, the location and timing of the formal hearing should be agreed with the Chief Officer. This should allow enough time to ensure that adequate preparation can be made but within as short as possible a timescale before exact details of any incidents are likely to be forgotten, but in all cases the Chief Officer will receive a minimum of ten working days written notice of the Appointments & Investigating Committee's meeting and will receive a copy of the investigation report and any other relevant papers. The Chief Officer also has the right to circulate a written statement to the committee in advance of the hearing. If the Chief Officer cannot attend the hearing, they should advise the committee in advance

or as soon as this is known. If the Chief Officer's representative cannot attend the proposed hearing date, it is allowable for the Chief Officer to put forward a reasonable alternative date. This should be no more than five working days after the date put forward by the Chief Officer's line manager. This time limit can only be extended by mutual agreement. If the Chief Officer is unable to attend due to circumstances beyond their control for example, personal illness, an alternative hearing date will be arranged. If the Chief Officer cannot attend the reconvened hearing without an acceptable reason, a decision may be taken in the Chief Officer's absence, or the Chief Officer may submit written representations for consideration by the Committee or be represented in his or her absence by his work place colleague or Trade Union representative.

The Committee will explain the nature and issues surrounding the problem raised and ensure that the Chief Officer concerned knows the details of the allegation.

The case will be presented by the Chief Executive or Director who has carried out the investigation, The Chief Officer will be given adequate opportunity to state their case and either side may support their case with relevant witnesses who may be questioned by either side and members of the Committee.

7.3.3 Potential Outcomes of the Hearing

As a result of the Hearing the Committee can;

- a) Decide that following consideration of the facts, no further action is required and the matter will not be taken forward. Records of the hearing and all associated material will be destroyed;
- b) Decide that there are some issues which should be resolved through an informal process, or facilitated mediation in the case of interpersonal issues;
- c) 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;
- d) 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:

- a) Recorded Oral Warning;
- b) Written Warning and Final Written Warning;
- c) Suspension on half pay or no pay for a specified period;
- d) Relegation (i.e. a reduction in salary) for a specified period;
- e) Demotion to a lesser role on a temporary or permanent basis;
- f) Dismissal with notice;
- g) In the case where gross misconduct has been established, summary dismissal.

The final decision will be given to the Chief Officer in writing at the earliest opportunity following the hearing and within 5 working days. In the cases of summary dismissal, this will normally be on the day of the hearing.

If a warning is given it should tell the Chief Officer;

- a) The level of improvement required;
- b) The date by which it is to be achieved (in stages if appropriate);
- c) The procedure to be followed if the level of improvement is not reached;
- d) How to appeal.

7.3.4 Gross Misconduct

Where a case appears to be one of gross misconduct, normally the Chief Officer should be suspended from duty on full pay according to the provisions listed above at paragraph 6. The procedure for the investigation will be as set out above.

7.3.5 Dismissal

If the decision to dismiss is taken by the Committee this will be given in writing to the Chief Officer stating whether the dismissal is with or without notice and the length of the notice period. The Chief Officer will be advised of the reasons for the termination, the effective date of dismissal and their right of appeal.

The Head of People & Technology will be notified of the dismissal decision, along with any relevant particulars. The Head of People & Technology will inform Cabinet, who will be allowed to raise any objection within a specified period of time. The right is merely to make representations. If the Appointments & Investigating Committee is satisfied that the objection is not material or well founded they can still dismiss. If the objection is material it will be returned to the Committee to review the decision or to direct that further investigations are made. The decision to dismiss will not be confirmed until Cabinet have had the opportunity to make representation.

7.3.6 Appeal Process

Where a Chief Officer wishes to appeal against the Committee's decision they should set out the grounds for the appeal in writing to the Head of People & Technology within ten working days of confirmation of the outcome. An appeal hearing will be convened which will follow the procedures laid out above (The Disciplinary Hearing), but with an Appeals Committee which is politically balanced and comprises three suitably trained elected members who were not involved in any part of the original disciplinary hearing, one of which should be a member of the Cabinet.

7.3.7 Capability

Where appropriate, a preliminary investigation should be undertaken when there is any question or complaint regarding the capability of a Chief Officer. If capability is related to medical fitness, advice should be sought from the Head of People and Technology, as the Absence Management Procedure may apply in some cases. If the Chief Executive or other person undertaking the preliminary investigation concludes that there is a question of substance as to the Chief Officer's capability, they should advise the Chief Officer informally of the nature of that question. There should be a full discussion covering:

- a) The reason for incapability;
- b) Problem areas;
- c) What needs to be done to improve performance, including any opportunities for training the Chief Officer;
- d) Timeframes over which improvements should be shown (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);
- e) When it is felt that there is no prospect of improving the Chief Officer's performance a satisfactory outcome may be achieved by the Chief Officer taking action to seek other employment, resigning or taking retirement.

At capability hearings an officer subordinate to the Chief Officer may give evidence of fact. Where the parties disagree on technical or professional matters it may be useful to refer to an appropriately qualified independent third party.

The relevant time frame should be sufficient to allow a reasonable opportunity for the Officer to show an improved performance.

Alternatively the Panel hearing the capability case may explore other alternatives e.g.

- a) Early retirement on grounds of efficiency;
- b) Secondment;
- c) Redeployment to a more junior post where there are issues relating to capability.

7.4 Procedure for Statutory Chief Officers (Chief Executive (Head of Paid Service) Chief Finance Officer (Section 151 Officer) and Monitoring Officer)

7.4.1 General

The joint secretaries of the Joint National Council are available at any stage to act in an impartial conciliation role, whether formal or informal, if required to do so by either party. In accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 no 'disciplinary action' may

be taken other than in accordance with a recommendation made by a Designated Independent Person. This includes proposed dismissals for disciplinary issues, capability issues (not permanent ill-health), or some other substantial reason. 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 framework for these procedures may be modified by mutual agreement, to suit the 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 statutory Chief Officer to give fair consideration to reasonable proposals from the other party to modify the framework to suit local circumstances.

7.4.2 Appointment of the Designated Independent Person

If, following the preliminary and careful consideration of the allegations (as set out above at paragraph 7.2), the Appointments & Investigating Committee decide that a case exists which requires full investigation, it will be necessary for both parties to agree the appointment of a Designated Independent Person ('DIP') in accordance with The Local Authority (Standing Orders)(England) Regulations 2001. The threshold test for the Committee in deciding whether to appoint a DIP is to consider the allegation and assess whether:

- (i) if it were proved, it would be such as to lead to the dismissal or other action which would be recorded on the statutory Chief Officer's personnel file; or
- (ii) there is evidence in support of the allegation sufficient to require further investigation.

If the parties cannot agree on an appointment, the Designated Independent Person will be appointed by the Secretary of State.

The decision to have a full investigation should be communicated in writing to:

- a) The statutory Chief Officer and at his or her request, to any trade union of which he or she is a member, and
- b) The joint secretaries of the Joint Negotiating Committee

The Appointments & Investigating Committee will draw up allegations which the independent person will investigate.

7.4.3 Investigation by the Designated Independent Person

The Designated Independent Person will prepare a report, which will be produced following a comprehensive investigation into any allegations. The statutory Chief Officer 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 statutory Chief Officer has the right to request:-

- a) Further details of the allegations made and
- b) 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 statutory Chief Officer is entitled to be present and has a right to be represented as detailed in paragraph 5, throughout the investigation. If the statutory Chief Officer has a period of long-term ill health which prevents them from participating in the process, the Authority and possibly the Designated Independent Person will make a judgement as to how long to wait before proceeding. In most cases, the Authority will need to press ahead given the importance of resolving the issues. The statutory Chief Officer should be given the opportunity to attend meetings and the hearing but will be informed that if they cannot attend, the meetings and the hearing will proceed in their absence. If this is the case, the statutory Chief Officer may make written submissions to be considered and send their representative to speak on their behalf before a decision is taken.

The Authority should submit evidence of the allegations against the statutory Chief Officer by witnesses and the submission of relevant documents. Such witnesses shall be open to cross examination by or on behalf of the statutory Chief Officer and by the Designated Independent Person. The statutory Chief Officer may give evidence, call any witnesses he or she considers appropriate and submit any relevant documents. Any such witnesses and the statutory Chief Officer shall be open to cross examination by the authority's representative and by the Designated Independent Person. The authority's representative and the statutory Chief Officer or his or her representative has the right to sum up at the end of the investigation. In no case should the Designated Independent Person hear one party without the other being present. In order to ensure that all the relevant factors are considered, the Designated Independent Person shall, at his or her discretion, have power at any stage in the proceedings at which he or she considers appropriate;

- a) To direct that no further steps (whether by the Council or any committee, sub-committee or officer of theirs) should be taken in respect of disciplinary action proposed or contemplated;
- b) To direct that any suspension shall end, and the statutory Chief Officer be reinstated;
- c) To direct that no steps towards disciplinary action or further disciplinary action against the statutory Chief 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 in accordance with paragraph (7.4.4) below:
- d) To inspect any relevant documents in the possession, or under the control of the Authority, and any other relevant documents which any person is prepared to show to him/her;

7.4.4 The Report of the Designated Independent Person

The report of the Designated Independent Person will be presented to the Appointments & Investigating Committee and shall;

- a) 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 or issues of capability about the statutory Chief Officer;
- b) Recommend the action (if any) or range of actions which appear to him/her to be appropriate for the authority to take against the statutory Chief Officer.

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

- A) Recorded Oral Warning;
- b) Written Warning and Final Written Warning;
- c) Suspension on half pay or no pay for a specified period;
- d) Relegation (i.e. a reduction in salary) for a specified period;
- e) Demotion to a lesser role on a temporary or permanent basis;
- e) Dismissal with or without notice.

Where dismissal of the Chief Executive is recommended it must be approved by Council before notice of dismissal is issued. The Chief Executive must be given the opportunity to make representations to the full Council before a decision is taken on the recommendation of the Committee to dismiss.

Alternatively the Designated Independent Person may recommend that the parties explore other alternatives, e.g.

- a) Early retirement on the grounds of efficiency;
- b) Secondment.

In the case of capability, please also refer to paragraph 7.4.8 below.

The Designated Independent Person shall at the same time send a copy of his/her report to the statutory Chief Officer. Before the Appointments & Investigating Committee considers the report or the recommendations of the Designated Independent Person, the statutory Chief Officer has the right to address the Committee and state their case.

7.4.5 Consideration of the Report by the Appointments & Investigating Committee

The Appointments & Investigating Committee will consider the report of the Designated Independent Person and the case presented by the statutory Chief Officer.

The Appointments and Investigating Committee will convene a hearing to hear from the Designated Independent Person and the statutory Chief Officer. Wherever possible, the location and timing of the hearing should be agreed with the statutory Chief Officer. In all cases the statutory Chief Officer will receive a minimum of ten working days written notice of the hearing. If the statutory Chief Officer cannot attend the hearing on the chosen date, they should advise the Committee in advance or as soon as this is known. If the statutory Chief Officer's representative cannot attend the proposed hearing date, it is permissible for the statutory Chief Officer to put forward a reasonable alternative date. This should be no more than five working days after the date put forward by the Committee. This time limit can only be extended by mutual agreement.

If the statutory Chief Officer is unable to attend due to circumstances beyond their control, for example personal illness, an alternative hearing date will be arranged. However, where they are unlikely to be able to attend a hearing within a reasonable time-scale, the hearing will proceed in their absence. If this is the case, the statutory Chief Officer may make written submissions to be considered and send their representative to speak on their behalf before a decision is taken.

Having considered all the facts the Committee may:

- a) Take no further action;
- b) Recommend informal resolution or other appropriate procedures;
- c) Refer back to the Designated Independent Person for further investigation and report;
- d) Take disciplinary or capability action short of dismissal including for the avoidance of doubt, warnings, suspension, relegation or demotion;
- e) Dismiss with or without notice.

7.4.6 Gross Misconduct

When a case appears to be one of gross misconduct, examples of which are set out in section 8, normally the statutory Chief Officer should (subject to whatever consultation or approval is required under the Authority's Constitution) be suspended from duty on full pay pending further investigation. The suspension will initially be for a period of up to two months. A Designated Independent Person must be appointed, and will have the same powers and responsibilities as set out above. The procedure before the Designated Independent Person will be as set out above.

For gross misconduct a statutory Chief Officer can be dismissed without notice if such a course of action is in accordance with the recommendations in the report of the Designated Independent Person. Where a proposal to dismiss is made, the Head of People & Technology will be notified of the person it is intended to dismiss, along with any relevant particulars. The Head of People & Technology will inform Cabinet, who will be allowed to raise any objection, within a specified

period of time. The right is merely to make representations. If the Appointments & Investigating Committee is satisfied that the objection is not material or well founded they can still dismiss (except in cases where it is proposed to dismiss the Chief Executive, see section 7.4.4 above). The notice of dismissal can only be made once the Leader of the Council has informed the Proper Officer, the Head of People & Technology, that Members have no objection to the proposal.

7.4.7 Appeals

If, at the appeal stage, there is a dispute over terms and conditions, the dispute may, at the request of either side, be reported to the Advisory, Conciliation and Arbitration Service (ACAS) by the Joint Secretaries with a request that the matter be settled by arbitration. The arbitration award shall be accepted by the two sides, and shall be treated as though it were an agreement between the two sides.

Appeals against actions short of dismissal

Appeals by statutory Chief Officers are allowable against actions short of dismissal. The statutory Chief Officer should set out the grounds for appeal in writing to the Head of People & Technology within ten working days of the letter confirming the outcome of the hearing. An Appeals Committee will be convened to hear the appeal. This will comprise three suitable trained elected members (one of whom should be a member of the Cabinet) who should not have been involved in any part of the original Disciplinary Hearing.

Appeals against dismissal

Where it is proposed to dismiss the Chief Finance Officer (Section 151) or Monitoring Officer, they may appeal against dismissal by setting out the grounds of appeal in writing within ten working days of the dismissal having taken place. There is no provision for the Chief Executive to appeal against a proposal that they be dismissed, as approval by the Council (see paragraph 7.4.4) stands in lieu of an appeal.

7.4.8 Capability

The procedure for capability may need adaptation where medical fitness is in question and action may be taken in conjunction with the Council's Absence Management Procedure. Council should bear in mind the advantage of a third medical opinion where their own medical adviser and that of the statutory Chief Officer are not in agreement. In the case of permanent ill-health a Designated Independent Person need not be appointed. The Council only requires the appointment of a Designated Independent Person to determine the appropriate level of action if, after an initial investigation by Committee, it is considered that there is an issue which cannot be addressed by an informal (and unrecorded) warning, and a reasonable period in which to improve. Where it is likely that the circumstances will result in the recording of a formal warning or sanction,

then a Designated Independent Person will need to be appointed. The model outlined above (sections 7.3 and 7.4 with the exception of the paragraph on gross misconduct) shall apply to any question or complaint as to the capability of a statutory Chief Officer to fulfil the duties and responsibilities of their post including any alleged failure to establish and maintain a satisfactory working relationship with the Council.

If the Committee undertaking the preliminary investigation conclude that there is a question of substance as to the statutory Chief Officer's capability, they should advise the statutory Chief Officer 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 period of time) a period of time after which the matter will be reviewed. This period should be sufficient to allow the statutory Chief Officer a reasonable opportunity to show an improved performance.

If, after the above paragraph has been complied with, there remains a substantial question as to the statutory Chief Officer's capability, a Designated Independent Person will need to be appointed in accordance with paragraphs 7.4.2 to 7.4.4 above, except in the case of permanent ill health. If, as a result of the Designated Independent Person's investigation it is concluded that the statutory Chief Officer is not carrying out his/her duties and responsibilities to the level of capability that the Council genuinely believes is required, the Designated Independent Person may consider an alteration in duties and responsibilities. If the Designated 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 statutory Chief Officer to meet the requirements of his/her post. If there has been a previous written warning or the independent person judges the incapability to be fundamentally irremediable then dismissal with notice would be an option. Suspension is not normally appropriate in cases of capability except where the statutory Chief Officer's continued presence at work might compromise the effective exercise of the Council's functions.

8. Gross Misconduct

Gross misconduct is conduct warranting summary dismissal (dismissal without notice). Examples of gross misconduct include (but are not limited to):

- Serious negligence
- Theft on the council's premises or of council property
- Misuse of or deliberate damage to council property or name
- Fraud
- Deliberate falsification of time/worksheets or other records
- Wilful disregard of duties or of reasonable instructions related to the employment
- Bullying or harassment, unlawful discrimination or other breach of the council's fairness at work policy
- Deliberate and serious breach of confidence relating to the council or its Affairs

- Misuse of confidential information obtained in the course of employment
- Bringing the council into disrepute
- Serious contravention of the council's alcohol and drugs policy
- Serious infringement of Health and Safety rules or procedures
- Conduct violating common decency
- Assault or attempted assault
- Conviction on a criminal charge relevant to the employee's employment
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Deliberate, or gross negligence in the, breach of the Council's Code of Conduct
- Deliberate failure to meet, or gross negligence in the discharge, of their statutory duties

9. Retention of records relating to warnings

Examples of offence	Disciplinary action	Time on personal file
Minor breach of discipline or capability	Oral warning	One year
Repetition of minor breach or more serious breach of discipline or capability	Written warning	Two years
Repetition of breach or serious breach of discipline or capability	Final warning	Three years
Failure to improve after final warning OR gross misconduct	Dismissal or action short of dismissal	Three years

10. Special Situations

In cases involving fraud and theft of Council property, the Audit and Risk Section should be informed at all stages. Nothing in this procedure precludes the Council from seeking financial redress from the Chief Officer as appropriate, for example in cases of theft. It is important to note that this procedure must be adhered to in all cases leading to dismissal, unless in exceptional circumstances the Committee has reasonable grounds to believe that by doing so they might be exposed to a significant threat i.e. violent, abusive, or intimidating behaviour or harassment. The Committee will be given additional advice and guidance if this situation arises. In some circumstances the Chief Officer may raise a grievance that is related to the case. If this happens the matter would normally be dealt with as part of the disciplinary proceedings however, the Head of People & Technology can advise dependant on the circumstances of each case.

Outline model for disciplinary processes concerning Chief Officers	Chief Executive (Head of Paid Service)	Chief Finance Officer(Section 151 Officer)and Monitoring Officer	Directors & Heads of Service
Initial decision to instigate investigation process	Council Leader	Chief Executive / Council Leader	Chief Executive / Director/Council Leader
Authority to take action	Appointments & Investigating Committee	Appointments & Investigating Committee	Chief Executive – with delegated responsibility
Initial investigation to determine whether question to answer	Appointments & Investigating Committee	Appointments & Investigating Committee	Chief Executive/Director
Decision to instigate formal investigation	Appointments & Investigating Committee	Appointments & Investigating Committee	Chief Executive / Director
Appointment of investigator on Council's behalf	Appointments & Investigating Committee	Appointments & Investigating Committee	Chief Executive / Director
Appointment of independent person	Appointments & Investigating Committee or Secretary of State if not agreed	Appointments & Investigating Committee or Secretary of State if not agreed	N/A
Decision on outcome of investigation / recommendations of independent person	Appointments & Investigating Committee	Appointments & Investigating Committee	Appointments & Investigating Committee
Dismissing body	Appointments & Investigating Committee	Appointments & Investigating Committee	Appointments & Investigating Committee
Executive objections procedure required in case of dismissal	Yes	Yes	Yes
Approval required by Council for dismissal	Yes (stands in lieu of appeal)	No	No
Appeal against actions short of dismissal	Appeals Committee	Appeals Committee	Appeals Committee
Post dismissal appeal	No	Appeals Committee	Appeals Committee