

# National Employers for local government services

To: Chief Executives in England and Wales (N Ireland for information)  
(to be shared with HR Director and Monitoring Officer)  
Regional Employer Organisations

22 August 2023

Dear Chief Executive,

## The pay of a Chief Officer who is suspended during an investigation process

Following a recent Employment Tribunal (ET) case, [Ms H Simmonds v Croydon London Borough Council](#), I wish to bring to your attention a potential issue relating to what is paid to a chief officer who is suspended during an investigation process.

### JNC Chief Officer Procedure and Acas Code of Practice

Previously, the [Acas Code of Practice on Discipline and Grievance](#) clearly stated that suspension should be on “full pay”. It will be quite common in local policies and procedures and generally understood that suspension is on full pay, the reason for this being the acceptance that a deduction of pay during suspension would constitute a penalty before a disciplinary hearing has considered a case (but what ‘full pay’ means obviously can have different interpretations).

The current version of the Acas Code says:

*“8. In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.”*

So, whilst there is no longer a reference to “full pay” in the Acas Code, the simple alternative use of “pay” creates a similar impression.

The more [general guidance on disciplinary procedures produced by Acas](#) currently says:

### ***“Pay during suspension***

*The suspended person should continue to get:*

- *their pay*
- *any benefits in their contract, for example a bonus or gym membership*

*If an employer reduces or stops an employee's pay during suspension, the employee could take legal action. There is still a risk of this even if the contract appears to allow reduced or no pay during suspension.*

*As an employer, if you're considering not paying someone during suspension, it's a good idea to get legal advice.*

*If an employee disagrees with their pay during suspension, they should try to resolve it with their employer.*

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*For more advice on pay during suspension, [contact the Acas helpline](#).*

## **Pay if someone is sick**

*Check the contract to see what it says about pay during suspension. For example, if the contract says an employee receives full pay during suspension, this might apply even if they are sick.*

*This can be a complicated area. For more advice, [contact the Acas helpline](#).”*

Other government webpages also refer to normally being paid *full pay* in order to demonstrate that suspension itself is not a punishment. See: [Disciplinary procedures and action against you at work: Suspension from work - GOV.UK \(www.gov.uk\)](#)

The guidance on the gov.uk web pages is very general but Acas has obviously recognised the legal issues associated with its guidance and relevant case law and advised caution in this area.

## **Employment Tribunal ruling**

The ET case referenced at the start of this circular concerned a chief officer of a council who had been suspended and during the suspension commenced a period of sickness. The council treated that period as sickness absence and paid sick pay in accordance with the sick pay scheme, which at some point dropped from full pay to half pay. The chief officer claimed she was entitled to full pay during the whole period of suspension.

The council's general disciplinary provisions referred to employees who were suspended as receiving 'normal pay'. The council's view is that 'normal pay' means the pay the employee would have normally received, which means that if the employee goes on sick leave during the period of suspension, they revert to sick pay which may then drop to half pay or nil pay, according to entitlement and length of absence. That is not explained in explicit detail in its policies and procedures, although the chief officer's legal representative accepted that if 'normal pay' was the correct test then this would be subject to the normal sick pay provisions.

However, the council's contracts for chief officers also stated:

*“Any disciplinary issues will be dealt with in accordance with the Council's disciplinary and capability procedures which will accord with any requirements of the Joint Negotiating position for Chief Officers of Local Authorities.”*

The ET was therefore required to consider the terms in the [Joint Negotiating Committee for Local Authority Chief Officers Conditions of Service Handbook](#) relating to pay during a period of suspension.

The relevant terms in the JNC for Chief Officers Handbook are:

*“2.5 Where the chief officer's continuing presence at work compromises an investigation or impairs the efficient exercise of the local authority'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*

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*appropriate committee or senior officer, 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.*

*2.6 Suspension protocols regarding communication and matters such as annual leave and sickness should be agreed. 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 ET found that the reference in the chief officer’s contract to the JNC for Chief Officers’ handbook was important. It said this provided a clear contractual term that suspension was on ‘full pay’ and so that meant full pay even during the period of sickness absence.

Although as an ET level decision the judgment is not binding on other ETs, the same finding could result in cases with similar facts.

### Considerations

It is not entirely uncommon for an employee who has been suspended during a disciplinary investigation to experience a period of sickness absence. In such a case they may need support and access to occupational health facilities to determine when they will be fit for work, or if they are not fit for work, whether they are fit to take part in disciplinary investigations and hearings. Given sick pay entitlements, it remains less common that investigations and periods of sickness extend for such a long period that they would have an impact on pay arrangements, but naturally the circumstances and facts of cases vary and at some point it could become an issue again.

Any council that simply incorporates the JNC for Chief Officers’ Handbook into chief officers’ contracts would appear vulnerable to losing any similar case, or, at least, of facing pressure to not reduce pay during a period of sickness. On the basis of the rationale in the ET’s judgment, and associated case law, the same finding could in some cases result in respect of disciplinary procedures applying to other staff, if those procedures and associated contractual terms refer to suspension being on full pay with no further clarification in relation to sick pay.

Therefore, our advice is as follows:

- A decision to suspend an employee should be considered very carefully. Other options to suspension while the facts of the case are investigated should be considered as alternatives.
- Where an employee is suspended, this should be for as short a time as is necessary, and the reasons for suspension and progress in the investigation should be kept under review.
- Looking forward, references in contracts, policies and procedures to pay during suspension, whether they refer to pay, full pay or normal pay, should explain more fully the situation, i.e. that pay will not be reduced merely by virtue of being suspended from duty during a period of investigation, but clarifying what that means in terms of how pay is calculated, especially in relation to sick pay in the event that an employee becomes and remains sick while suspended.

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- In light of the ET judgment, contracts of existing Chief Officers (and possibly others) and related policies and procedures will need to be considered carefully if a similar situation arises prior to the matter being clarified in contracts and policies or in relation to Chief Officers by the JNC for Chief Officers.
- While other National Agreements, such as the NJC 'Green Book', do not contain model disciplinary procedures, this ET case could, as we have set out above, still be relevant. Therefore, local contracts, policies and procedures should be checked for terminology about suspension on 'full' or 'normal' pay in case those terms are referred to without sufficient explanation, for example in relation to the treatment of pay during a period of sickness while suspended.

## **Next steps**

The National Employers will discuss this issue with the Staff Side and explore options for amending wording in the Chief Officer handbook. This could take some time, so, in the meantime, councils are advised to check their current contracts, policies and procedures in relation to this issue.

Any employees affected by this issue should be informed and kept up to date with developments before any changes are made locally, in accordance with the usual arrangements with local trade unions.

Please share this letter and subsequent updates with your colleagues in HR and Legal departments.

I shall continue to keep you informed of developments.

Yours sincerely,

**Naomi Cooke**  
**Employers' Secretary**