

# Disciplinary Procedure

## 1 Introduction

- 1.1 One of the aims of this procedure is to help and encourage employees to achieve and maintain the Council's high standards of acceptable conduct and conduct related work performance, and to ensure that any disciplinary action is consistently and fairly applied. Conduct related work performance means that the issue usually involves a measure of personal blame on the employee's part, arising, for example, from lack of motivation or inattention to work matters.
- 1.2 If the employee's work performance falls below acceptable standards, the early and less formal stages of the procedure are designed to help managers to motivate and encourage employees to reach the required standards through advice, guidance and counselling.
- 1.3 Of course, in some cases, the problem may be more serious at the outset, or it may be that counselling or an informal warning did not lead to improvement to an acceptable standard. In such cases, the formal procedure will come into operation.
- 1.4 The disciplinary procedure should be seen as an aid to good management and not primarily as a means of imposing sanctions or as necessarily leading to dismissal. Other than in the most serious cases, managers have a range of options at their disposal and dismissal is the ultimate sanction that can be applied against misconduct by employees.
- 1.5 The disciplinary procedure is readily available in all workplaces, and to all employees for reference purposes.

## 2 Purpose and Scope of the Procedure

- 2.1 The purpose of the procedure is to ensure that:
  - employees keep the rules and standards of conduct that the Council sets and that they are treated fairly and consistently when they fail to do so
  - the council's policies, procedures and standards are complied with (including those relating to matters of equality of opportunity and other related issues)
  - managers have both an informal and formal framework for dealing with issues of conduct and negligent work performance.

### 2.2 Application of the Procedure

This procedure applies to all Council employees, except:

- those employed at schools/colleges under LMS who will be subject to a separate code
- temporary employees who have been employed by the Council continuously for less than thirteen weeks have special arrangements. Refer to paragraphs (115 to 119) which sets out how such Employees should be treated with regard to disciplinary issues.

- employees within the purview of the Joint Negotiating Committee for Chief Officers of Officers of Local Authorities and,
- the Chief Executive.

### **2.3 The procedure does not apply:**

- on termination of fixed term and other temporary contracts
- on grounds of redundancy
- on the grounds of lack of capability or ill health (where the procedures for Managing Poor Work Performance or Managing Long Term Sickness apply)
- where following a period of probationary service dismissal arises from unsuitability for confirmation of appointment (separate procedure applies)

## **3 Probationary Employees**

- 3.1 Where the line manager believes that a probationary employee has committed an act of misconduct, then the matter will be dealt with in accordance with the disciplinary procedure. The employee has the right of appeal against the outcome of that process to the next level of management. The appeal must be lodged within five working days of the 'outcome letter'.

## **4 Setting Standards of Conduct and Performance at Work**

- 4.1 The disciplinary procedure provides both an informal and formal mechanism for dealing with issues of misconduct and poor work performance done deliberately or through negligence. There will be some cases of misconduct which are so serious that they warrant immediate formal disciplinary action.
- 4.2 But in many cases, particularly with regard to minor breaches of discipline, the best way for managers to tackle such problems is to talk the matter over with the employee. In this way, the employee is made aware of the problem and given the opportunity to correct it, so there is no need to invoke formal disciplinary action. This should be a two way process aimed at pointing out any shortcomings and to ascertain any difficulties or problems the employee may be facing. The emphasis should be on guiding the employee in order to try to remedy the problem, for the manager to assist and help the employee to improve where possible, and to advise the employee of the Council's expected standards. Standard setting letters should be confirmed in writing with a review date set in.
- 4.3 Standard setting letters are not part of the formal disciplinary process although they may prove important if the case proceeds and the formal procedure is later instigated. Managers should clear the wording of these letters with their Human Resources Teams. They should also set a review date which will be agreed by both sides. If this remedial action results in improved work performance, then managers must acknowledge this in writing to the employee.
- 4.4 The standard setting stage is an informal one to one interview between the manager and the employee.

## **5 Oral Warnings**

- 5.1 Oral warnings fall within the scope of the Council's overall disciplinary process, and although they are part of the formal disciplinary procedure, they do not require a

formal disciplinary hearing. They are relevant in cases where employees have engaged in minor offences or shortcomings in conduct, or conduct related performance, and/or have not improved as a result of the standard setting stage.

- 5.2 The employee's manager should arrange to meet with the employee to discuss the problem. The employee can be accompanied by a trade union representative or work colleague. It is essential that the main dialogue is conducted between the manager and the employee. Nevertheless, the representative is there to represent the employee and to help them during the process.
- 5.3 At the outset of the meeting the employee should be told the reason for the discussion. The manager should explain the employee's shortcomings in conduct or conduct related work performance, remind the employee of the standards expected, and outline how the employee is falling short of those standards. The employee will then be given the opportunity to respond to what has been said, and to put their own case. If after considering the employee's explanation, the manager considers that standards of conduct or conduct related work performance should improve, the employee should be given positive support and a time scale for improving their standard of conduct, be advised about the consequences of failing to improve within the timescale given, and told that if there is no improvement, or, if improvement is not maintained then it may be necessary to move onto the next stage of the disciplinary procedure. All of the above should be confirmed in writing. However, one of the most important factors for managers to take into account when considering action to be taken is whether there are extenuating factors which should be taken into account. If there are, it is vital that these are spelt out, and fully considered, before a decision is taken.
- 5.4 An oral warning carries the status of a first recorded warning. It should be confirmed in writing, placed on the employee's personal file, and remain on file for a period of six months. There are no rights of appeal against an oral warning.

## **6 Fairness and Natural Justice - Key Points and Principles**

- 6.1 Maintaining standards of acceptable conduct and work performance calls for objectivity and fairness. It is important to keep an open mind and not prejudge the issues.
- 6.2 The attitude and conduct of employees who obey the rules will be seriously affected if managers fail to apply the same rules and considerations to each case.
- 6.3 While consistency is important, it is essential to take account of the situations and people involved. Any decision to discipline an employee must be reasonable in all the circumstances.
- 6.4 Employees have a right to be fully represented at the more formal stages of the procedure by a trade union representative or work colleague who may speak on the employee's behalf. A second representative may attend in the capacity of note-taker or as observer, or in more serious or complex cases, the employee may be accompanied by a second person in any case, to assist the main representative during the proceedings as and when require. In genuinely exceptional circumstances, the employee may be represented by an external representative. However that person must not be a legal representative.

- 6.5 Following notification to the appropriate trade union and to the individual, and if the Council's Occupational Health Physician has no objection, a disciplinary investigation can be held during a period of employee sickness absences.
- 6.6 Any individual who is the subject of a formal disciplinary hearing will receive ten working days notice of the date of that hearing, together with a written statement giving the grounds for that hearing including clear and specific details about the complaint. This is to allow the employee enough time to consider and respond to the allegations, and to prepare adequately for the hearing. (A model letter is attached as Appendix C).
- 6.7 At all stages of the disciplinary process the employee will be entitled to state his/her case before decisions are reached.
- 6.8 If an employee initiates a grievance in response to disciplinary proceedings which have been started against the aggrieved employee, the grievance cannot be considered until the disciplinary process has been completed.
- 6.9 Where an employee is unable to attend a hearing s/he will be entitled to be represented in his/her absence. When a manager intends to proceed with disciplinary action in the absence of the employee, it is advisable that this action is taken with the agreement of the appropriate trade union. However, where there is no agreement, and neither the employee nor the representative attends the hearing, then the chair of the hearing will:
- try to find out why they have failed to attend, how reasonable the explanation is, and when the employee is likely to be available
  - take into account the effect on the Council of any delay to the procedure
  - decide whether it is reasonable to delay the hearing or to go ahead.
- 6.10 The decision to proceed must be reasonable in the circumstances. If the failure to attend is wilful, deliberate or tactical this should not allow a delay to the disciplinary process.
- 6.11 Following receipt of a medical certificate from the employee's GP the Council's Occupational Health Physician will advise on the effect of a medical condition on an employee's ability to attend a disciplinary hearing.
- 6.12 In any event, normally a hearing will only be arranged on one further occasion and will then go ahead should the employee fail to attend. This is not intended to penalise an employee whose illness genuinely precludes attendance. However, it is unsatisfactory to have a hearing adjourned indefinitely, especially if the employee is suspended and a hearing should be arranged as soon as possible. Each case should be evaluated on its merits but delays should be kept to a minimum.
- 6.13 No disciplinary action should be taken against a Branch Secretary or other full time trade union official, until the circumstances have been discussed with a Regional Official of the union concerned, and the Assistant Chief Executive, Human Resources. In the same way, no disciplinary action should be taken against trade union stewards until the Branch Secretary of the relevant trade union has been contacted. This does not mean that trade union representatives cannot be

disciplined for legitimate reasons.

- 6.14 Disciplinary hearings can be heard by Executive Directors, Assistant Chief Executives or Heads of Service, but are more usually heard by Senior Officers of third tier level and above.
- 6.15 In exceptional circumstances, and having heard representation from both sides, the hearing officer can allow written evidence to be submitted e.g. if a witness is in hospital, or is recovering from a serious illness, or is a member of the public who does not wish to attend the disciplinary hearing to give evidence. Any that is submitted should be made available to all parties. Normally written evidence cannot be submitted on the day of the disciplinary hearing.
- 6.16 The Council takes its commitment to equality of opportunity very seriously. Any form of discriminatory behaviour, harassment or bullying is completely unacceptable within the workplace and the Council will take whatever steps are necessary to ensure that employees observe this commitment at all times and all employees should be aware that offences against the Council's Equality and Diversity Policy, or related policies, or the display of any material or literature that could offend other persons (colleagues or customers) will be regarded as serious disciplinary matters which may amount to gross misconduct.
- 6.17 All managers have an absolute duty to act on any disclosure of information which is in the public interest, and to protect those employees who speak out. Failure to do so will be a disciplinary matter. Victimising employees who raise concerns or deterring them from speaking out about irregularities, malpractice, abuse, illegal or fraudulent activity will be treated as serious disciplinary offences.
- 6.18 Where it has been determined that an employee has maliciously accused colleagues, the employee will be subject to disciplinary action.
- 6.19 Provided that all the parties concerned with disciplinary proceedings are agreed, legitimate variations may be made to the procedure in particular cases. Such variations must be soundly based and be reasonable in the circumstances.

## **7 Employees' Responsibilities**

7.1 Every employee should:

- get to know and comply with the Council's rules and standards
- co-operate with any disciplinary investigation
- attend any disciplinary hearing s/he is called to unless there is a good reason for not doing so
- arrange to be represented if s/he wishes
- arrange for any witnesses to attend on their behalf
- respond to management efforts to improve standards of conduct and work performance

## **8 Disciplinary Hearing - The Formal Disciplinary Procedure in Operation**

8.1 A formal disciplinary hearing is appropriate in the following circumstances:-

- if the employee's conduct related work performance, and/or conduct does not improve after:-
  - the standard setting stage/counselling
  - the issue of an oral warning
  - a previous disciplinary hearing and the issue of a written warning or
  - if a serious disciplinary offence has allegedly occurred

## **9 Investigating the Case**

- 9.1 Managers play a large part in disciplinary proceedings and conducting an investigation can place a lot of responsibility on the investigating manager. Normally the employee's line manager will conduct the investigation. Unless the allegation is one of gross misconduct, or the case is very complex, or of a particularly sensitive nature, in which case the investigation will be conducted by a senior officer of third tier level or above.
- 9.1.1 The investigating manager will be responsible for:-
- investigating the complaint promptly and carefully before memories fade
  - collecting evidence, relevant facts and taking witness statements
  - ensuring that as far as possible, all parties involved in a potential disciplinary case are interviewed
  - unless it would hinder the investigation ( e.g. where there are allegations of fraud, child abuse or elderly persons' abuse) talking to the employee to get his/her version of events
  - when doing so making it plain that the investigation is not a disciplinary hearing
  - telling the employee that s/he can be accompanied by a trade union representative or work colleague, and although that person can support the employee and assist the process when required, they cannot speak on the employee's behalf
  - deciding if disciplinary action is necessary
  - issuing the complaint
  - submitting full details to a disciplinary hearing.
- 9.2 To assist the investigation but not to pre judge the issue in any way, the investigating officer should obtain the employee's personal details, such as length of service, past disciplinary record and any current warnings, as well as any necessary records or relevant documents.
- 9.3 Although the investigation should be carried out swiftly, while matters are fresh in people's minds, nonetheless it must be thorough and fully concluded before any next step is taken. Enquires should be conducted with thought and care. Snap decisions made in the heat of the moment should be avoided. The disciplining of an employee is a serious matter and should never be regarded lightly or dealt with casually. It is not part of the investigation (or of the investigator's role) to assume or try to establish guilt or culpability. The Investigating Officer's role is to gather evidence and all the facts, which should be recorded. S/he must not be selective and must not highlight facts that strengthen or suppress any facts that weaken the case. Everyone who has been involved should be asked to provide a statement.

Their comments should be noted without comment although where contradictory statements are made this should be questioned and attempts made to try reconcile contradictions. They will be asked to sign the statements as a true record. It should be made clear to those asked to provide statements or evidence, that they are expected to make time available as a matter of urgency, so that the matter can proceed and be settled in good time. Keeping an investigation hanging over an employee is in no-one's interests.

## **10 Dealing with Difficult Cases**

- 10.1 In some very complex or sensitive cases it may be wise to arrange for an independent person from another service area to investigate the case. When there is a complaint of racial or sexual harassment it is advisable to interview the complainant as part of the investigation, as well as the person complained against and any witnesses.
- 10.2 Where a tenant, customer or member of the public makes a complaint about an employee's conduct, or conduct related work performance, the employee's line manager will interview the tenant, or member of the public on a confidential basis, and proceed in the normal way.
- 10.3 Exceptions can be made in cases involving children under the age of sixteen or vulnerable clients, where it may be more appropriate to use a third party such as a teacher or social worker to conduct the interview. For the purpose of this procedure parental consent would be required before any child under the age of sixteen could be called to a disciplinary hearing to give evidence. Where consent is not given, the manager concerned would have to present a written statement instead and any supporting evidence available.
- 10.4 Having gathered all relevant facts the investigating manager should decide whether:
  - Not to proceed. There may be no case to answer.
  - To provide managerial guidance/counselling for the employee. This is an attempt to correct a situation and prevent it from getting worse, without having to resort to a formal disciplinary hearing.
  - The matter is minor so there is no need to arrange a formal disciplinary hearing but the Oral Warning section of the procedure may apply.
  - To arrange a disciplinary interview. This will be necessary when the matter is more serious and it appears that there has been a disciplinary offence which requires appropriate disciplinary action.
- 10.5 If, following the investigation, the manager decides that no disciplinary action should be taken, the employee will be notified in writing of this. In cases of alleged bullying, harassment, discrimination or abuse, all records of the investigation will be retained in a sealed envelope on the employee's personal file. The intention here, is not in any way to victimise the employee, but to act prudently, in case the pattern is repeated and it is necessary to refer to the notes at some future date. In all other cases, records of the investigation should not be retained.

## **11 Suspension**

- 11.1 The Assistant Chief Executive, Human Resources will be contacted prior to any suspension taking place.
- 11.2 Suspension should be for a brief period, unless there are exceptional circumstances, in which case the period may be extended. It is not a punishment, does not imply guilt and is therefore with pay.
- 11.3 Suspension will be carried out by a senior officer of third tier level and above.
- 11.4 The employee must be suspended where:-
- their continued presence in the workplace would impede the investigation or
  - would constitute a serious risk to themselves, clients, employees, or council property
  - if an alleged breach of the rules amounts to gross misconduct
- 11.5 As an alternative, and provided the employee is in agreement, a temporary transfer may be appropriate in some cases where misconduct is alleged.
- 11.6 Gross misconduct is misconduct so serious that dismissal is a reasonable sanction, even for a first offence. An employee suspected of misconduct this serious would not be allowed to remain at work while the case is under investigation.
- 11.7 Normally the employee will be told the reason for the suspension. Where this is inappropriate, (for example it may prejudice an investigation) the employee should be given broad reasons. It is for example, appropriate to tell an employee about suspension pending an investigation into alleged falsification of attendance sheets without going into detail.
- 11.8 The employee has the right to be accompanied by a trade union representative or work colleague when being informed of the suspension. Before the suspension management will need to have conducted a brief enquiry to satisfy themselves that suspension is appropriate.
- 11.9 Suspension should be confirmed in writing within three working days. (A model letter is attached as Appendix A).
- 11.10 Normally the disciplinary hearing will take place within twenty working days of the first day of suspension but the period of suspension may be extended if investigations have not been completed. Suspension must be reviewed by management after twenty working days and reviewed after that at two weekly intervals. Extensions only apply in exceptional circumstances and then in consultation with the Assistant Chief Executive, Human Resources, so that suspensions process can be monitored on a corporate basis. (A model letter is attached as Appendix B).
- 11.11 A suspended employee shall be excluded from the workplace during the period of suspension unless otherwise agreed by the relevant Head of Service. Accordingly, a suspended employee who seeks access to information (or other employees) in the workplace for the purpose of preparing a case should apply to the Head of Service to make the necessary arrangements. The terms of suspension may also restrict the suspended employee's access to other Council premises or to other



employees or clients or customers of the Council.

- 11.12 In addition, a suspended employee shall not undertake any additional employment during periods when (but for the suspension) the employee would normally be at work for the Council. Failure to comply with these obligations may result in dismissal for gross misconduct. This will be detailed in the letter of suspension to the employee. (A model letter is attached as Appendix A)

## **12 The Disciplinary Hearing**

- 12.1 The disciplinary hearing will be convened, normally within twenty working days of management deciding there is a case to answer.

- 12.2 The object of the disciplinary hearing is:-

- to ensure that the case has been carefully investigated as far as reasonably practicable for both parties to have the opportunity to make representations before any decision is taken concerning disciplinary action
- to discover the truth, not to catch people out for the hearing officer to decide on the level of sanction to apply if appropriate.

- 12.3 The employee will be informed in writing with a minimum of ten working days notice of the intention to hold a disciplinary hearing. (A model letter is attached as Appendix C). This letter, which will be copied to the employee's representative should contain the following information:-

- the date, time and location of the hearing
- the name of the manager hearing the case
- the name/s of any advisers to the hearing
- that the employee has the right to be represented by a trade union representative or work colleague, and if the case is more serious or complex, the employee may be accompanied by a second person to assist the main representative during the proceedings, as and when required
- specific details of the nature of the allegations
- in cases of gross misconduct, or where an employee has a final written warning, that the hearing may result in dismissal.
- that the employee has the right to call witnesses and to produce documentary evidence.
- The main documentary evidence should be attached to the letter where reasonably practicable, or in any event be submitted to the employee and their representative as soon as possible.

- 12.4 In any case, all documentary evidence to be submitted by management and the employee must be exchanged no later than three working days before the disciplinary hearing. Both parties must also advise the hearing officer of the details of any witnesses to be called to give evidence to the disciplinary hearing.

- 12.5 The Disciplinary Panel should have had no previous involvement in the case. Normally the panel will consist of the Head of Service or senior officer of third tier level or above, who will chair the disciplinary hearing and a representative from the Human Resources Team to advise. Where practicably possible a note-taker will attend to make the fullest notes of the proceedings. Otherwise the HR

adviser will undertake to do this. The role of the adviser is particularly important where the case involves gross misconduct, or where a final written warning has been previously issued. The chair has discretion to moderately increase the size of the panel, especially if s/he needs an expert present to advise on technical or specialist issues, or, if there is a need for a representative panel when there is a race or gender dimension to the case.

12.6 The manager who conducted the investigation and drafted the allegation can also present the management case at a disciplinary hearing and may be assisted by a Personnel adviser or technical adviser as appropriate.

12.7 The employee and their representative will be in attendance, and will present their case in accordance with the procedure.

### **13 Procedure at the Disciplinary Hearing**

13.1 The chair of the disciplinary hearing, otherwise known as the hearing officer, will start by introducing the parties present at the hearing, explain the purpose of the hearing, read the allegations or nature of the complaint against the employee and refer to the documentary evidence. Both parties should be asked to confirm the details of any witnesses they may wish to call. The Human Resources Adviser will explain the procedure to be followed.

13.2 Normally the evidence in support of the complaint should be presented by the manager who investigated the case and drafted the written allegation.

13.3 At the conclusion of the presentation, the other parties may ask questions on the presentation in the following order:-

- the employee or their representative
- the Chair of the Disciplinary Hearing
- the Advisers who may, when appropriate, ask questions through the Chair

13.4 The manager presenting the case may then call witnesses who can be questioned in the same way. Witnesses other than the employee will remain outside of the hearing until called and will withdraw once they have given evidence. They should only be recalled if the Chair requires clarification on any point.

13.5 The employee or the employee's representative may then state their case, answer questions on the presentation and call any witnesses.

13.6 Once each party has completed their questioning, witnesses should not be recalled. However the hearing officer retains the right to recall witnesses during the deliberation process if further clarification is required. If this does happen, both sides should be recalled to the disciplinary hearing.

13.7 If any further facts emerge, the hearing officer will decide whether additional investigation is required. If it is, then the disciplinary hearing will be adjourned and reconvened when the new investigation is completed.

13.8 Both parties can ask for a short adjournment at any stage in the proceedings. The hearing officer will consider such requests and decide on the length of any

adjournment. Both parties will have the opportunity to sum up, with the manager who has presented the case against the employee going first. No new evidence can be introduced during the summing up.

13.9 The hearing officer should then ask both parties to withdraw, come to a clear view about the facts and reach a decision on the basis of the evidence presented in the course of the hearing. If the facts are disputed, then as part of the decision making process, the hearing officer will decide on the balance of probability what version of the facts is true. If the employee agrees s/he has done something wrong the hearing officer will decide on the level of sanction to apply. Before deciding the penalty s/he should seek clarification from the Personnel representative on any procedural aspects and consider:-

- the gravity and nature of the offence and whether the procedure gives guidance
- the penalty applied in similar cases in the past
- the employee's disciplinary record and length of service
- any mitigating circumstances
- whether the proposed penalty is reasonable in the circumstances
- in some instances the nature of the employee's job

13.10 The hearing officer can if s/he chooses, reconvene the disciplinary hearing to:

- clearly inform the employee of the decision, and, if appropriate, the penalty to be applied
- explain any right of appeal and how to exercise such a right
- in the case of a written warning, explain what improvement is expected, how long the warning will last, and what the consequences of a failure to improve will be.

13.11 The decision should be confirmed in writing within five working days to the employee, their representative, and to management presenting the case. This timescale may be extended in exceptional circumstances. The letter should:

- outline the hearing officer's decision, give the reasons for that decision, and where appropriate tell the employee that s/he has the right to appeal against the outcome of the hearing by writing to within five working days of receipt of the letter confirming the disciplinary action. (Model letters are attached as Appendices D & E).

## **14 Disciplinary Sanctions**

14.1 The following formal sanctions are available:

- Oral warning expires after six months
- Written warning expires after twelve months
- Written warning with limitation, e.g. (deduction of bonus for a set period in cases of proven conduct related sub standard work, removal from the flexi time scheme where it is established that the employee has abused the scheme). This sanction can be reviewed, either during the period of the warning, or can apply for the entire period.
- Final written warning normally expires after two years
- Dismissal with appropriate notice

- Dismissal without notice where gross misconduct is established
- Transfer, demotion or loss of increments as an alternative to dismissal
- Any reasonable combination of these sanctions

## **15 Written Warnings**

- 15.1 Where there is an accumulation of minor offences or in the case of a more serious offence the employee should be given a formal written warning.
- 15.2 Consideration of dismissal via the route of formal written warnings is normally done through a three stage process; namely: an oral warning, a written warning and a final written warning. This does not, however, mean that three warnings must always be given before any dismissal is considered. There may be occasions when misconduct is considered not to be so serious as to justify dismissal, but serious enough to warrant only one written warning which will be both first and final.
- 15.3 A final written warning should contain a statement that any further misconduct may lead to dismissal.
- 15.4 When issuing a warning, the hearing officer should make it clear that any further disciplinary lapse may result in further disciplinary action, including dismissal, (where there is a final written warning already in place).

## **16 Dismissal with Notice**

- 16.1 Except in cases of gross misconduct dismissal would only apply after a previous final written warning had been issued.

## **17 Dismissal without Notice**

- 17.1 In cases of gross misconduct dismissal without notice is appropriate, but it may be considered unreasonable to dismiss an employee for gross misconduct if s/he has not been suspended on the basis that if the employer can keep the employee in the workplace up to the hearing then perhaps the case is not one of gross misconduct.
- 17.2 Gross misconduct is generally seen as misconduct serious enough to destroy the trust and confidence between the employer and the employee such that any further working relationship is impossible.

## **18 Transfer**

- 18.1 Transfer to another area of work within the employing service area may be considered appropriate in very limited circumstances. Before making the decision to transfer, the hearing officer must check that there is a suitable vacancy into which the employee can transfer and must discuss the situation with the Head of Service in the new work area and the Assistant Chief Executive, Human Resources or representative. Transfers cannot be undertaken without the agreement of the employee. Payment would be made at the grade and rate of pay applicable to the new job.

## **19 Demotion or Loss of Increments**

19.1 This sanction could be appropriate:

- where the employee is considered to be blameworthy of a serious offence but there are mitigating circumstances to justify disciplinary action short of dismissal and/or
- where the employee previously had an excellent work record, the offence was out of character and was committed at a time when the employee was experiencing severe emotional/domestic problems.

19.2 The employee would receive the level of payment commensurate with the lower grade.

19.3 The hearing officer may decide to issue a final warning in conjunction with the transfer or demotion to another area of work within the employing service area. Demotion is a very serious sanction and should only be done in consultation with the Assistant Chief Executive, Human Resources .

## **20 Extended Time for Warnings**

20.1 In exceptional circumstances, and in consultation with the Assistant Chief Executive, Human Resources , the time limit on warnings can be extended beyond the usual expiry period. This is particularly likely to happen when the employee is on a period of sickness absence following the issue of a warning, or, where a final warning is issued in circumstances which verge on gross misconduct but where it has been decided to give the employee a last chance by issuing a final written warning rather than dismissing him or her.

## **21 Spent Warnings**

21.1 Spent warnings should be disregarded only for the purpose of disciplinary proceedings. They should be removed from the personal file, but held separately, so that they can be referred to for other managerial purposes (e.g. appointments) and be taken into account as appropriate. Management should not therefore destroy the spent warnings.

21.2 Unless there are exceptional circumstances any disciplinary action should be disregarded for disciplinary purposes after the period of satisfactory conduct specified.

21.3 Such warnings will cease to be 'live'. There may however be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse again soon after the expiry of the warning. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record should be kept in mind in deciding how long any current warning should last.

21.4 Exceptionally there may be circumstances where written warnings can never be disregarded for future disciplinary purposes because the nature of the misconduct is so serious. In such circumstances, and following consultation with the Assistant Chief Executive, Human Resources , it should be made very clear in the decision letter that the final warning will never be removed, and that any future misconduct will lead to dismissal.

## **22 Hearing the Appeal**

- 22.1 The appeal is not designed to rehear the case. Its purpose is to examine the grounds of appeal that the employee may raise, to investigate any valid grounds, and to remedy any defects in the decision resulting from the disciplinary hearing. The appellant must be clear, specific and thorough about their written submission of the grounds for appeal. The grounds of appeal must be in writing and should effectively form the appellant's case statement for the appeal hearing. They will normally be submitted within ten working days of the date of the letter confirming the outcome of the disciplinary hearing. If the appellant requests a modest extension of time for submission of the appeal details, and, if the request is granted, then it may be appropriate to extend the timescale for the date of the appeal hearing accordingly.
- 22.2 Normally appeals can be raised on one or more of the following grounds:
- the procedure - a failure to follow procedure had a material effect on the decision
  - the decision - the evidence did not support the conclusion of the hearing officer
  - the penalty - too severe given the circumstances of the case
- 22.3 An employee may appeal against any level of formal disciplinary action above oral warnings. The appeal panel must hear any appeal where the grounds are clear, specific and thorough, even if they are not persuaded by the merit of the arguments in the appeal papers. New evidence will not be considered unless the appellant can demonstrate that it may significantly affect the previous decision process and, it has genuinely come to light since the disciplinary hearing or, it was really impossible for the employee to produce the evidence at that hearing. This ground of appeal is not an opportunity to state the case with different evidence. It is worthwhile for the chair of the appeal panel to ask the management representative for their views on the request for consideration of new evidence. The chair should also clarify the grounds with the employee before the appeal hearing gets underway.

## **23 Those Authorised to Hear Appeals**

- 23.1 Normally the appeal will be heard by a higher level of management than that chairing the disciplinary hearing, accompanied by a Human Resources Adviser who should not have been involved in the disciplinary hearing.
- 23.2 The terms Appeals Hearing Officer denote a Head of Service, a Member of the Council's Strategic Management Team or an Independent person.
- 23.3 Except in cases of dismissal, or where the disciplinary decision was made by an Executive Director or Assistant Chief Executive, an employee who wishes to appeal against the outcome of a disciplinary hearing chaired by the Head of Service or nominated Senior Officer, will do so by writing to the Executive Director or Assistant Executive for the service area setting out the grounds of appeal. This must be done within ten working days of the date of the letter confirming the disciplinary action. The Executive Director or Assistant Chief Executive will decide whether to hear the appeal, or whether to nominate another Head of Service, with no previous involvement in the case to deal with the matter.

23.4 Where the disciplinary action has resulted in dismissal, the appeal will be heard by an Appeals Panel comprising a member of the Council's Strategic Management Team, who will be from a different service from that where the employee works, and the Independent Person. The employee must lodge the appeal within ten working days of the date of the decision letter by writing to the Assistant Chief Executive (Human Resources) specifying the grounds of appeal. The Assistant Chief Executive, Human Resources will liaise with the Head of Committee Services (or representative) who will arrange for the appeal to be heard. The Appeals panel may confirm, amend or reject the disciplinary sanction but cannot increase its severity.

23.5 The Appeal will be heard as soon as possible. Generally this will be within 30 working days of registration of the appeal. The employee will be given at least ten working days written notice of the date, time and place of the meeting of the appeal panel, together with a written case statement specifying the hearing officer's /Appeals Panel's rationale for reaching his/her decision following the disciplinary hearing, and the response to the employee's grounds of appeal.

23.6 The employee can be represented as in paragraph 6.4 above. S/he may call witnesses, but normally no new witnesses, and produce documents relevant to the appeal. All documentary evidence produced at the appeal will be made available to all parties at least two working days before the appeal hearing together with details of the name of their representative, if any, and the name/s of any witnesses to be called on the employee's behalf.

23.7 The decision of the Appeal Hearing Officer/Panel shall be final and there shall be no further internal right of appeal.

## **24 Presentation of the Appeal**

24.1 The appellant or his/her representative will present the grounds for the appeal in the presence of the management representative. In more serious or complex cases, the employee may be accompanied by a second person to assist the main representative during the proceedings as and when required. Witnesses will attend one at a time and will only be present whilst they are giving their evidence.

24.2 Witnesses should attend in person, but there may be exceptional circumstances where witnesses are unable to attend and written statements may be submitted as evidence.

24.3 The management representative may ask questions of the appellant.

24.4 The Appeal Hearing Officer may ask questions of the appellant.

24.5 The appellant may then call any witnesses.

24.6 The management representative may ask questions of any witnesses.

24.7 The Appeal Hearing Officer may ask questions of any witnesses.

## **25 The Management Response**

- 25.1 The management representative will respond to the appeal in the presence of the appellant.
- 25.2 The appellant or representative may ask questions of the management representative.
- 25.3 The Appeal Hearing Officer may ask questions of the management representative.
- 25.4 The management representative may call any witnesses to give evidence.
- 25.5 The appellant or representative may ask questions of any witnesses.
- 25.6 The Appeal Hearing Officer may ask questions of any witnesses.

## **26 Summing Up**

- 26.1 The appellant or the representative will have the opportunity to sum up his/her case. This summing up may take into account statements made during the proceedings, but no new evidence can be introduced at this stage.
- 26.2 Likewise, the management representative will have the opportunity to sum up their case.

## **27 Deliberation of the Panel**

- 27.1 Both parties will be asked to withdraw. The Appeal Hearing Officer/Panel may recall the appellant or the management representative to clear up any points of uncertainty. Both parties will be present during the recall.

## **28 The Decision**

- 28.1 The decision is made by the Appeal Hearing Officer/Panel in private. The Appeal Hearing Officer can, if they choose give the decision on the day. Both parties will be recalled to hear the decision, which will be confirmed in writing as soon as possible, and in any event within five working days of the date of the appeal hearing.

## **29 Role of Directorate Personnel Teams**

- 29.1 Employees in these units provide an advisory and support service to line managers on disciplinary issues and may attend disciplinary hearings in this context. They also sit as advisers to Disciplinary Hearing Officers.

## **30 Role of Corporate Human Resources**

- 30.1 Employees in this unit are available to provide advice on precedent and procedure at all stages of the disciplinary process. They may attend hearings if requested to do so, particularly where disciplinary cases are very complex or very sensitive. They also advise the Appeal Hearing Officer

## **31 Role of Internal Audit**



- 31.1 The Chief Internal Auditor may nominate an employee from the Internal Audit Service to participate in the disciplinary investigation, attend disciplinary hearings as witnesses, and generally assist the presenting officer in disciplinary cases where the allegations relate to fraudulent activity, financial mismanagement or other related issues.

## **32 Employee's Resignation**

- 32.1 If at any stage of the procedure the employee wishes to resign, the Executive Director, Assistant Chief Executive or Head of Service, or the Chair of the disciplinary hearing or appeal (as appropriate) may decide to accept the employee's resignation (with or without notice) and subject to any conditions which may apply.

## **33 Criminal Offences**

- 33.1 The fact that a police investigation or a charge is pending is not in itself a reason for delaying or withholding disciplinary action if the offence alleged is relevant to the employment, and enough evidence is available to enable the person hearing the complaint to be reasonably satisfied as to the relevant facts. On the other hand, a criminal offence committed outside the employment shall not be treated as an automatic reason for dismissal or other disciplinary decision. The main consideration is whether the offence is relevant to the duties of the employee and makes the employee unsuitable for employment in that type of work. An employee shall not be disciplined solely because a charge is pending or because of absence through having been remanded in custody. (The Council's Management Guidelines on the Rehabilitation of Offenders Act 1994 and Exemptions, and the ACAS advisory handbook on Discipline at Work should be adhered to).

## **34 Monitoring**

- 34.1 This procedure will be monitored on a regular basis. Human Resources Teams will ensure that managers complete and submit appropriate monitoring information for consideration by Directorate Management Teams. The information will be forwarded to Corporate Human Resources, so that the monitoring information can be analysed corporately and presented to Committee on a cyclical basis by the Assistant Chief Executive, Human Resources.

## **35 Temporary Employees**

- 35.1 Temporary employees with less than 13 weeks continuous service with the Council are not subject to the arrangements as set out in this procedure, but where there are disciplinary issues about these employees the rules of natural justice still apply.
- 35.2 The employee's line manager will investigate the complaint and arrange a meeting with the employee to discuss the issues.
- 35.3 The investigating manager will inform the employee in writing of the following:
- the date, time and place of the meeting
  - the substance of the complaint
  - the employee's right to be heard and to produce evidence and call witnesses

- the employee's right to be represented by a trade union representative or work colleague
- the identity of the person responsible for presenting the complaint and shall enclose any documentary evidence available. Reasonable notice will be given to the employee of the above, such notice to be at least two working days.

35.4 At the meeting a representative from the Human Resources Team should be in attendance to provide professional advice. The Council's decision is final and there is no right of appeal.

## **36 Reference**

- The Employment Rights Act 1996
- The Disability Discrimination Act 1995
- The Race Relations Act 1976
- The Sex Discrimination Act 1975 and 1986
- The Trade Union and Labour Relations (Consolidated) Act 1992
- IDS studies
- ACAS advisory handbook on Discipline at Work

## **37 Examples of Gross Misconduct**

37.1 Gross misconduct is defined as misconduct of such a serious nature that the Council is justified in no longer tolerating the employee's continued presence at the place of work. Dismissal is appropriate even for a first offence and without notice. The examples of gross misconduct below are given so that all council employees can judge what would compel the Council to dismiss them. This is not a complete list, since the circumstances of each case are different.

## **38 Examples of Gross Misconduct Include:-**

- Serious failure to comply with or apply the Council's Equal Opportunities or related Policies.
- Serious acts of discrimination, harassment, bullying, the making of remarks, or verbal abuse against employees, clients or members of the public on the grounds of race, colour, sex, marital status or disability. The display within the workplace of any literature, or material that could seriously demean or offend the decency of others.
- Serious breach of the Code of Conduct.
- Gross incompetence resulting from gross wilful negligence.
- Serious negligence which causes unacceptable loss, damage or injury.
- Serious acts of insubordination.
- Culpable lack of care towards clients.
- Serious incapability through abuse of alcohol or drugs (subject to use of the Council's policy for dealing with employees suffering from alcohol or drug misuse when appropriate).
- Sexual misconduct at work.
- Sexual offences.
- Falsification of qualifications which are a statutory or essential requirement or which allow applicant to succeed in getting a job.
- Deliberate falsification of attendance sheets, bonus sheets, subsistence and

expense claims etc.

- Acceptance of bribes or other corrupt practices.
- Serious breach of financial regulations including fraudulent activity and or financial irregularity.
- Serious breach of the Council's Standing Orders
- Unauthorised disclosure of highly confidential matters relating to the business of the Council.
- Unauthorised removal, possession or use of property, materials or equipment belonging to the Council, an employee, client or member of the public.
- Theft.
- Malicious damage to the Council's property.
- Serious breaches of safety regulations including deliberate damage to or misappropriation of safety equipment endangering other people.
- Acts of violence including the physical assault of an employee, client, or member of the public.
- Being convicted of a serious criminal offence unconnected with the Council but which makes the employee unsuitable to remain in the Council's employment.
- In exceptional circumstances being charged with a serious criminal offence unconnected with the Council, but which makes the employee unacceptable for continued employment with the Council.
- Holding unauthorised paid employment during paid Council time or during any period of sickness absence.
- Failure to follow the rules of suspension set out in paras 38 to 49.
- Unauthorised or inappropriate use of soft ware and related IT equipment, including Internet abuse.
- Any action/s which brings the Council and its reputation into disrepute.