

# **Ealing Council**

## **Disciplinary Policy & Procedure**

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## CONTENTS PAGE

<b>1.</b>	<b>AIM .....</b>	<b>3</b>
<b>2.</b>	<b>SCOPE AND PRINCIPLES .....</b>	<b>3</b>
<b>3.</b>	<b>TIMESCALES .....</b>	<b>4</b>
<b>4.</b>	<b>RIGHT TO REPRESENTATION .....</b>	<b>4</b>
<b>5.</b>	<b>APPLICATION OF PROCEDURE .....</b>	<b>5</b>
<b>6.</b>	<b>ROLE OF HUMAN RESOURCES REPRESENTATIVES .....</b>	<b>5</b>
<b>7.</b>	<b>ROLE OF MANAGERS .....</b>	<b>5</b>
<b>8.</b>	<b>DISCIPLINARY RULES.....</b>	<b>6</b>
	Gross Misconduct .....	6
	Other Misconduct .....	6
<b>9.</b>	<b>ABOUT THE PROCEDURE .....</b>	<b>6</b>
	Confidentiality .....	6
	Records.....	7
	Trade Union Representation .....	7
	Discipline and Grievances.....	7
	Criminal Offences.....	7
	Suspension .....	8
<b>10.</b>	<b>INFORMAL ACTION .....</b>	<b>9</b>
<b>11.</b>	<b>FORMAL ACTION .....</b>	<b>10</b>
	Misconduct.....	10
	Minor misconduct - Verbal Warning procedure .....	10
<b>12.</b>	<b>DISCIPLINARY INVESTIGATION .....</b>	<b>11</b>
<b>13.</b>	<b>DISCIPLINARY HEARING .....</b>	<b>13</b>
	Non-attendance by Employee .....	14
	Disciplinary Hearing Procedure.....	15
	Decision .....	15
	Disciplinary Measures/Outcomes.....	15
	Live Warnings .....	16
	Written Notification .....	17
<b>14.</b>	<b>APPEALS .....</b>	<b>17</b>
	Timing of Appeal Hearing.....	18
	Appeal Hearing Procedure and Process .....	18
	Outcomes.....	19
	Notification of Decision.....	19
<b>15.</b>	<b>MONITORING AND REVIEW .....</b>	<b>20</b>
	<b>Appendix 1.....</b>	<b>21</b>
	Initial Disciplinary Action - Verbal Warning.....	21
	<b>Appendix 2.....</b>	<b>23</b>
	<b>Types of Misconduct .....</b>	<b>23</b>
	Gross misconduct .....	23
	Other types of misconduct: .....	24
	<b>Appendix 3.....</b>	<b>25</b>
	Procedure to be followed at Disciplinary Hearings.....	25
	<b>Appendix 4.....</b>	<b>28</b>
	The Disciplinary Appeal process for cases NOT involving Demotion or Dismissal	28
	<b>Appendix 5.....</b>	<b>30</b>
	Procedure at Disciplinary Appeal Hearings For Cases Involving Demotion/Relegation or Dismissal .....	30

## **DISCIPLINARY POLICY & PROCEDURE**

### **1. AIM**

- 1.1 The aim of this procedure is to provide fair, equitable and effective arrangements for achieving and maintaining the standards of conduct and behaviour required by the Council.
- 1.2 The procedure sets out the steps to be taken and takes account of the best practice, legislative requirements and guidance contained in the ACAS Code of Practice on Discipline and Grievance Procedures.

### **2. SCOPE AND PRINCIPLES**

- 2.1 This procedure applies to all employees who have a contract of employment with the Council, except for chief officers, teaching and support employees in schools who are covered by similar arrangements. Issues relating to agency workers should be referred to the persons employing agency.
- 2.2 Actions and/or sanctions to deal with the conduct of a new employee during the probationary period, or for all internal appointments (except for assimilations, redeployments and medical redeployments) during a performance review period, should be dealt with under the Council's Probation and Performance Review Procedure. This is contained in the Local Terms and Conditions of Service, Part 2, paragraph 2.3 and Part 3, paragraph 2.3 to 2.7.
- 2.3 The procedure will apply to all matters relating to:
  - Conduct in the workplace;
  - Breaches of Council policy, such as the Code of Conduct, Fraud & Corruption and the Equality & Diversity policy, rules and standards;
  - Activities and behaviour outside the workplace which may impact adversely on the employee's employment with the Council;
  - Allegations of misconduct arising from action under other Council policies, procedures and guidance, such as Dignity at Work.
- 2.4 Separate procedures and guidance exist for dealing with the management of sickness absence and medical capability, and unsatisfactory performance. Where in the course of investigating an incident of alleged misconduct it transpires that it is an issue of medical capability or unsatisfactory performance rather than misconduct, the matter should be referred for action under the relevant procedure. The same manager nominated to handle the misconduct under the Disciplinary Procedure will normally follow through under the relevant Managing Unsatisfactory Performance or Medical Capability Review procedure.
- 2.5 The procedure is designed to establish the facts of a case quickly and to deal consistently with disciplinary issues. No disciplinary action will be taken until the matter has been investigated and employees will be entitled to state their case before decisions are reached.

- 2.6 Managers have the right to initiate the procedure at any stage depending on the specific circumstances of the case. For example, when considering whether informal or formal action is appropriate, however, an investigation must take place prior to a formal disciplinary hearing. The employee will have access to any evidence that the presenting manager wishes to rely on at the formal Disciplinary Hearing, through witnesses or documentary evidence.
- 2.7 Minor instances of misconduct and poor practice should initially be dealt with in an informal way e.g. counselling, training, and setting clear standards for improvement.
- 2.8 Either a 2nd or 3rd tier officer (see definitions under Part 1, Annexe 3 of the Local Terms and Conditions of Service) in cases of serious or gross misconduct, and a 3rd or 4th tier officer in cases of other misconduct should generally hear Disciplinary Hearings. Other than in exceptional circumstances, the Hearing Officer should be more senior than the Presenting Officer and should always be at least the same grade.
- 2.9 A HR Advisor will attend in an advisory capacity to the Hearing Officer at Disciplinary Hearings.
- 2.10 An employee should not be summarily dismissed (that is without notice) except in cases of a finding of gross misconduct. If an employee is dismissed for some other misconduct, such a dismissal will be with notice.
- 2.11 Employees have the right to appeal against any formal disciplinary sanction imposed. There is, however, no right of appeal against any informal action taken by management.

### **3. TIMESCALES**

- 3.1 All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this procedure are followed without delay. Where the handling of the case would be compromised by the need to comply with the timescales and in the event more time is needed, the timescales may be extended. In this case, the employee must be informed in writing and given the reasons for the extension, together with details of any steps to be taken to resolve the disciplinary case within this period.
- 3.2 Where a trade union representative or work colleague chosen by the employee (who is the subject of disciplinary action or an investigation) to accompany them at any stage of the formal procedure cannot attend on the date proposed, an alternative date may be arranged. This should normally be within five working days, beginning with the first working day after the original date proposed by the employer.
- 3.3 The meeting would not normally be postponed a second time.

### **4. RIGHT TO REPRESENTATION**

- 4.1 Employees who are the subject of disciplinary action/investigation have the right to advice and guidance, and to be accompanied/represented by a trade union representative or work colleague at any formal stage of the procedure. This does

not extend to representation at day to day management/supervision meetings, or any informal action.

- 4.2 In exceptional circumstances, a representative who is not a work colleague or trade union representative may be permitted, for example, if there are medical reasons or as a reasonable adjustment (see 12.4). This will be at the sole discretion of the officer conducting the meeting (i.e. the Investigation Officer for Investigation Meetings, and the Hearing Officer for Disciplinary Hearings. Legal representation, specialist employment law Advisors and similar, will not be allowed.
- 4.3 Employees and their representatives should be consulted on the timing of meetings/hearings to consider an allegation(s) under this procedure.

## **5. APPLICATION OF PROCEDURE**

- 5.1 Managers who participate in any formal stage of the procedure must have an understanding of the operation and requirements of the Disciplinary Procedure.

## **6. ROLE OF HUMAN RESOURCES REPRESENTATIVES**

- 6.1 At all stages of this procedure, in addition to those stages where there is a specific requirement, the Director of Human Resources or their representative should be consulted for advice. The designated HR representative for each Directorate will ensure that the Disciplinary Procedure is implemented fairly and consistently through monitoring, and providing advice and support to managers.
- 6.2 The role of the Human Resources department includes the following:
- Providing advice to managers on informal action;
  - Providing advice to managers on taking a decision to suspend an employee;
  - Providing advice to managers on taking formal disciplinary action, including advice on complex cases, framing allegations, disciplinary hearing case documentation and arranging appointment of hearing officers;
  - Ensuring that the investigating/hearing officers/appeal hearing officers are aware of the legal and any other sensitive aspects of a case;
  - Advising at disciplinary hearings and/or disciplinary appeals hearings;
  - Advising on outcome letters;
  - Advising on interpretation of council policy;
  - Monitoring suspensions and progress on disciplinary investigations/ hearings to ensure that the process is completed as quickly as possible.
- 6.3 The role of the HR Advisor at investigations and disciplinary/appeals hearings is primarily to provide advice to the Investigating/Hearing Officer on procedural matters. The HR Advisor may also ask questions in order to seek clarification of points for the Hearing Officer/Appeal Panel.

## **7. ROLE OF MANAGERS**

- 7.1 The role of Managers includes the following:
- Undertaking investigations, prepare reports, draft allegations and hear cases;

- Ensuring that all relevant paperwork and full details of the allegations and witnesses are supplied to the employee;
- Making arrangements for administering the process including arranging for notes to be taken and written up.

7.2 Either a 2nd or 3rd tier officer (see definitions in Part 1, Annexe 3 of the Local Terms and Conditions of Service) in cases of serious or gross misconduct, or a 3rd or 4th tier officer in cases of other misconduct should generally hear Disciplinary Hearings. Other than in exceptional circumstances, the Hearing Officer should be more senior than the presenting officer and should always be at least the same grade.

7.3 Managers should consult with their HR section before instigating disciplinary action and at all stages of the process.

## **8. DISCIPLINARY RULES**

8.1 The following guide and further details in Appendix 2, outline situations that could result in disciplinary action being taken. This list is not exhaustive and there may be actions that are not listed, but may nevertheless, be the subject of disciplinary action.

### **Gross Misconduct**

8.2 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 work. Where the allegation(s) is considered to potentially be gross misconduct, then this may result in the employee's immediate suspension from work. If the allegation(s) are substantiated, then this could result in summary dismissal without notice. Examples of gross misconduct are detailed in Appendix 2, although this is not an exhaustive list. Further information on suspension is provided in paragraphs 9.12 to 9.20 below.

### **Other Misconduct**

8.3 There is also other misconduct, which might be serious enough to merit dismissal, where the Hearing Officer decides that no lesser sanction would be sufficient. Misconduct of a serious or minor nature may result in the issuing of a written, final or indefinite final written warning. Examples include, inappropriate behaviour e.g. hostility or rudeness, failure to comply with attendance or time-keeping requirements. Examples of misconduct are contained in Appendix 2.

8.4 Cumulative or repeated acts of misconduct may lead to dismissal, with notice in situations where an act of misconduct is committed while an earlier warning is still in force.

## **9. ABOUT THE PROCEDURE**

### **Confidentiality**

9.1 At all stages of the procedure confidentiality must be observed. Circulation of information will be that which is necessary to ensure a fair investigation and

hearing. Unnecessary disclosure of confidential information at any stage may lead to disciplinary action.

### **Records**

- 9.2 Written records of proceedings must be kept on the employee personnel file and managed appropriately. Tape recording of meetings is not permitted. Managers should keep their own records and Human Resources should retain a record and the outcome retained on the employee's Personnel file.

### **Trade Union Representation**

- 9.3 Where an employee under investigation is an official of a recognised trade union; the local Branch Secretary or paid official of that union must be informed before proceedings commence, except where immediate action may be required. In any event, the Director of Human Resources or nominated representative should be consulted about cases involving trade union representatives, before any action is taken under this procedure.

### **Discipline and Grievances**

- 9.4 Employees cannot generally raise a grievance to complain about, or object to the fact that the Council may take disciplinary action, including the fact that the Council is commencing, or contemplating commencing the investigation stage of the procedure.
- 9.5 The only exception would be if the grievance is that the disciplinary action amounts to, or would amount to unlawful discrimination, or that the true reason for the disciplinary action is not the reason given.
- 9.6 In such cases, consideration should be given to suspending the disciplinary procedure for a short period whilst this is looked into. The decision about whether or not to suspend the disciplinary action, and for how long, is at the sole discretion of the Council.
- 9.7 In any cases involving the above, advice must be sought from a HR Advisor before proceeding.

### **Criminal Offences**

- 9.8 Sometimes an allegation about conduct at work or related to work, leads to criminal action against an employee, and/or an investigation by the police or other external agency, and/or an investigation by the Council's Audit and Investigation section. In these circumstances (and subject to paragraph 9.9), the Council is not obliged to await the final outcome of the criminal proceedings or of the external investigation. The Council may conduct its own investigation and take its own disciplinary action. At its sole discretion, the Council may choose to await the final outcome of the criminal proceedings or of the external investigation before commencing its own disciplinary action. In such cases, the delay between the date of the alleged misconduct and the date of the commencement of disciplinary action will not be a reason for the Council to forego disciplinary action.

- 9.9 Notwithstanding paragraph 9.8, and notwithstanding the general obligation on the Council to act promptly, there will sometimes be over-riding reasons to delay the commencement of disciplinary action. For example, where there are allegations of abuse against children or vulnerable adults (whether or not in the course of employment), the needs of the child or vulnerable adult might have to be addressed and investigated as a priority before disciplinary action is commenced. Advice must be sought from the Local Authority Designated Officer for Child Protection and reference made to the London Child Protection Procedures, Safeguarding Adults Policy or other guidance from the Department for Children, Schools and Families and procedures regarding Allegations Against Teachers or Schools Support Staff. HR should be involved and attend strategy meetings where appropriate. There may also be specific legislation (for example regarding money laundering or terrorism), which prevents the Council notifying the employee of the alleged misconduct. In such cases, the delay between the date of the alleged misconduct and the date of the eventual commencement of disciplinary action will not be a reason for the Council to forego disciplinary action.
- 9.10 Criminal acts committed or alleged to have been committed, other than in the course of employment, may warrant disciplinary action where the offence affects the interest and / or reputation of the Council and / or the performance of the employee's contract of employment or where the existence of the charge could seriously undermine the trust and confidence the employer has in the employee.
- 9.11 Where disciplinary issues arise involving potential or actual criminal offences, advice must be sought from Director of Human Resources or their nominated representative prior to making a decision.

### **Suspension**

- 9.12 A suspension should only be used after initial enquiries have been made and it is unavoidable as other options are not appropriate. A decision to suspend an employee must be considered and authorised by a Head of Service, in conjunction with the Director of Human Resources or their nominated representative. The suspension meeting may however, be conducted by the designated manager following the decision made by the Head of Service. The employee should be told of the reason for the suspension. Where this is not possible, for example, where it may prejudice an investigation, then s/he should be given broad reasons.
- 9.13 An employee may be transferred to other duties, or suspended from duty during formal disciplinary proceedings. Where there is a possibility of a charge or dismissal for gross misconduct, or where there has been a serious break down in relationships, or where it may not be suitable for the employee to remain at work i.e. if their presence could hinder or interfere with the investigation, then suspension may be appropriate. The same manager who made the decision to suspend should make decisions on this.
- 9.14 Alternatives to suspension must also be considered where feasible, for example, transferring the employee to another workplace, working from home or special leave. Consideration should also be given to the potential detrimental effect of suspension on both the employee, and the service. The reason as to why suspension is considered appropriate should be provided to the employee.



- 9.15 The suspension should be confirmed in writing within two working days of the alleged incident being reported with the reasons for the suspension.
- 9.16 Consideration should be given to suspending an employee from any other positions a person may hold with the Council, although alternatives to suspension must be considered as detailed above. The HR section will be able to check whether an employee holds more than one contract of employment with the Council.
- 9.17 All reasonable steps should be taken to notify the employee's trade union representative prior to the suspension. Reasonable efforts made should also be made to enable the trade union representative/work colleague to accompany the individual, although this will not always be possible. A HR Advisor should be present at the suspension meeting.
- 9.18 A suspension should not be used as a punishment. An employee who is suspended pending a disciplinary investigation will be suspended on full contractual pay. NB: "Full contractual pay" means basic salary, contractual overtime and any contractual allowances but does not include voluntary overtime. This may also: include any authorized deductions (e.g. for payment of rent etc) and / or be at half or nil pay in accordance with the Council's sick pay scheme and / or be at a rate of pay appropriate to any contractual variation in effect at the time.
- 9.19 All suspensions must be reviewed and authorised by the Director of Human Resources or their nominated representative after 20 working days, in conjunction with the Head of Service who made the original decision. Thereafter, a suspension must be reviewed every 20 working days and a written explanation provided. If the employee (or their representative) makes representations to the Director of Human Resources or their nominated representative, then these will be considered. The Head of Service must act promptly to lift the suspension if it becomes clear that there is no longer a justification for suspension (whether or not the disciplinary action is to continue).
- 9.20 Employees will not be permitted to enter Council premises except on legitimate business as a member of the public to access Council Services or to visit their trade union representative. They must also not contact work colleagues by any means or for any reason, unless they have express written permission from the Council to do so. Employees must make themselves available as required during normal working hours and comply with the Council's policies and procedures, e.g. sickness and leave arrangements.

## **10. INFORMAL ACTION**

- 10.1 Cases of minor infringement of rules and standards should be dealt with through counselling, management guidance, instructions and training; rather than the formal Disciplinary Procedure. The manager should confirm informal discussions and action to the employee in writing.
- 10.2 The following section deals with minor disciplinary issues and should not be used for cases involving serious or gross misconduct, where formal action should be instigated immediately. Performance issues should be dealt with under the Managing Unsatisfactory Performance Procedure.

- 10.3 Before taking any formal disciplinary action, if appropriate, line managers should initially try and resolve the matter informally through discussions with the employee as part of their day-to-day management responsibilities. For example, this may involve counselling, training, setting clear standards for attendance and conduct and so on.
- 10.4 Where improvement in conduct is required, the employee should be told what standards are expected, how this will be reviewed and over what time period. Any informal disciplinary discussions should be noted, with a copy given to the employee concerned. Employees should also be made aware of what action could be taken if they fail to improve. A trade union representative or work colleague may attend with the employee, although this will be solely at the discretion of the manager.
- 10.5 If the employee subsequently achieves the required improvements, then the employee should be informed of the need to maintain that improvement. A copy should be placed on his/her Personnel file. The employee may comment on the content of the note if he or she wishes, and this should also be placed on the Personnel file.
- 10.6 Where the required improvement is not reached or maintained, then the informal action may be referred to in any formal action subsequently taken under either the disciplinary or other relevant procedures.
- 10.7 If during an informal meeting it becomes clear that the matter is more serious than first thought, the meeting should be adjourned and a decision made as to whether formal action should be taken immediately. Managers should contact the Human Resources department for further advice at this stage. The employee should be kept informed of any decisions and advised of any timescales.
- 10.8 Any informal action of a similar nature can be referred to if the matter is subsequently referred for formal action under this procedure.

## **11. FORMAL ACTION**

- 11.1 The object is to provide a framework for dealing with employees in a fair, equitable and expeditious manner. The formal procedure is designed to be used only if attempts to resolve potential problems through normal supervision and discussion, and/or informal action have been unsuccessful, or in cases of more serious misconduct.

### **Misconduct**

- 11.2 Disciplinary action may be taken for misconduct and gross misconduct, examples of which are included at Appendix 2. The lists are not exhaustive.

### **Minor misconduct - Verbal Warning procedure**

- 11.3 If despite informal discussions conduct does not meet acceptable standards, employees may be given a verbal warning. A verbal warning may also be given if appropriate, as a sanction for minor forms of misconduct without prior warning.

- 11.4 The employee's line manager should arrange to interview the employee concerned on a one to one basis. (See procedure for the meeting at Appendix 1). An employee has the right to be accompanied by a trade union representative or work colleague.
- 11.5 If the outcome of the meeting is that a verbal warning should be given, then the manager will advise the employee of the reason for the warning, that the warning is the first stage of the disciplinary process, the improvements required and any time periods.
- 11.6 Employees should also be advised of their right to appeal against the decision to a Head of Service, or if they made the decision to their manager, within 2 working days of the verbal warning being given.
- 11.7 A brief note of the warning will be kept on the employee personnel file and a copy given to the employee. However, the warning will lapse after six months, subject to satisfactory conduct.
- 11.8 If the misconduct persists, managers should consult the Human Resources department with a view to proceeding with other formal action, as excessive use of verbal warnings must be avoided.
- 11.9 Where a manager becomes aware of alleged or suspected serious misconduct by an employee, it should be reported to the Head of Service concerned and advice should be sought from Human Resources. In all cases an investigation should be carried out. Suspension should also be considered where appropriate (see paragraphs 9.12 to 9.20 above).

## **12. DISCIPLINARY INVESTIGATION**

- 12.1 The Head of Service will appoint a person to investigate normally within **5** working days of the initial referral. It is important that investigations are undertaken promptly.
- 12.2 The Investigating Officer will usually be the employee's manager (or a more senior manager), although the Council has the right to appoint any suitable employee, or in exceptional cases, a suitably qualified third party. Employees are required to co-operate with any investigation and, if requested to do so, to attend an investigation meeting at which they may be represented by a trade union representative or work colleague.
- 12.3 A Human Resources representative will be appointed to assist and advise the investigating officer. Human Resources should ensure that the Investigation Officer is advised on any legal or other sensitive aspects of the case.
- 12.4 Managers must consider whether any reasonable adjustments need to be made to the disciplinary process and appropriate arrangements made to meet any special needs. For example, as recommended in the Disability Rights Commission Code of Practice on Employment and Occupation 2004, an employee with learning disabilities asks if a friend can attend the hearing. The manager might permit it as a reasonable adjustment.
- 12.5 The purpose of the investigation is to establish:

- The nature of the alleged misconduct;
  - The employee's response;
  - Any supporting evidence and,
  - Any other relevant circumstances.
- 12.6 The Investigating Officer will make a recommendation either that specific allegations should be dealt with at a formal hearing, or that there should be no formal disciplinary action.
- 12.7 In all cases, the Investigating Officer conducting the investigation should be as objective as possible and not pre judge the issues of the case. The Investigating Officer will also need to determine whether any other parties should be involved such as Audit and Investigation Officers or the police, and liaise with them accordingly.
- 12.8 The Investigating Officer should interview all the parties involved separately. Statements should be obtained from witnesses at the earliest opportunity and records kept of what was said. Where reasonably possible, notes of what was said will be supplied to the interviewee(s) who will be invited to confirm their agreement. However, the Investigating Officer can refer to the notes even if it is not reasonably possible to send copies to the interviewees, or if the interviewee fails to confirm agreement. Where the interviewee seeks to amend the note of what was said, then the Investigating Officer's report will comment on whether s/he agrees that the interviewee's amendment is merely correcting an inaccuracy in the original notes, or is in the Investigating Officer's opinion, providing new evidence.
- 12.9 It may be necessary to interview members of the public, the police, minors or vulnerable clients. In such cases, advice must be sought from Human Resources and the appropriate procedures used where required i.e. London Child Protection Procedures, Safeguarding Adults Policy or other guidance from the Department for Children, Schools and Families and procedures regarding Allegations Against Teachers or Schools Support Staff, internal Audit and Investigation etc. The Investigating Officer should ensure that any enquiries are not open to subsequent charges of collusion. For example, it is inappropriate to talk to individuals informally about an alleged incident and then send them away to think about it before taking a formal statement. It is also important that witnesses are interviewed separately.
- 12.10 The investigation should be completed as soon as possible, after the alleged misconduct depending on the complexity of the case, and the availability of witnesses and evidence. Except in exceptional circumstances, it should normally be completed within **20** working days, following appointment of the Investigating Officer. The outcome of the management investigation should be discussed with Human Resources. Where it has not been possible to interview the employee during the investigation, then the Investigating Officer should consider deferring production of the report for a short while until that has been done. However, while the Investigating Officer will normally meet the employee that is not always essential. In particular, if there is evidence that the employee would be unable to attend a meeting in the immediate future, then it is permissible for the Investigating Officer to finalise their report in the absence of a meeting. In such cases, the employee should have the opportunity to make written representations if practical.

- 12.11 The Investigating Officer will draw up a report of the investigation for the Head of Service having taken advice from Human Resources, as to whether there is on balance a disciplinary case for the employee to answer, will make a decision. This should normally be completed within **10** working days. If as a result of the investigation it is found that formal disciplinary action is not appropriate, management should decide whether any other action is necessary in accordance with Council procedures or other guidelines (e.g. Medical Capability Review). The employee should be notified of any decision in writing, normally within **5** working days of the completion of the decision.
- 12.12 If no further action is taken, records of the investigation will be removed from the employee's file, except where there are allegations involving vulnerable service users/children, in which case the paperwork will be retained at least until the person reaches normal retirement age or for a period of 10 years from the date of the allegation if that is longer (in accordance with the London Child Protection Procedures and Department for Children, Schools and Families guidance). A copy of the investigation itself will be retained by Human Resources and kept in accordance with all other employee relations' cases.

### **13. DISCIPLINARY HEARING**

- 13.1 If there is found to be a case to answer, then a Disciplinary Hearing will be arranged within **10** working days the date of which will be as soon as possible in all the circumstances. The Head of Service will identify a Hearing Officer who will make the arrangements to hold the hearing with advice from Human Resources. It is important that the Hearing Officer is impartial and has not had any previous involvement in the case. Where the allegations may lead to dismissal then a Director or Head of Service will normally conduct the Disciplinary Hearing. In all other cases, the hearing may be conducted by 3rd or 4th tier in cases of minor misconduct. Where possible the Hearing Officer should be more senior than the presenting officer and should always be at least the same grade.
- 13.2 Arrangements to hold a Disciplinary Hearing will then be made in accordance with the following paragraphs.
- 13.3 The Investigating Officer should draft the allegations with advice from their Human Resources section. These should set out in detail each and every aspect of the misconduct, including the type of misconduct (see Appendix 2) the times and dates and where appropriate, refer to the standard the employee is alleged to have breached, for example, by referring to relevant sections of the Code of Conduct.
- 13.4 The Hearing Officer must inform the employee by letter, at least **5** working days before the Hearing of the following:
- The date, time and place of the hearing;
  - The details of the alleged misconduct including whether it is deemed minor, serious or gross as well as the possible consequences including where relevant dismissal;
  - The identity of the manager who will be presenting the case;
  - The right to be accompanied by a trade union representative or work colleague;
  - The right to call witnesses and to produce relevant information;

- Enclose a copy of the procedure (Appendix 3), together with any supporting evidence (including the report of the Investigating Officer must also be enclosed with the written notice of the hearing; if the case is particularly lengthy or complex then longer notice should be given;
- Notification that the Investigation Officer may call some or all of the witnesses who are referred to in the report, particularly if the manager intends to rely on the evidence. If the employee specifically wants to question any of those witnesses, then the employee should notify the Hearing Officer and the Investigation Officer immediately, who may then choose to invite that witness to attend.

- 13.5 An employee may choose to submit written evidence prior to the disciplinary hearing. This must be provided to the manager conducting the Disciplinary Hearing and officer presenting the case at least **3** working days before the date of the disciplinary interview, and include the names of any witnesses the employee proposes to call.
- 13.6 Evidence produced later than the timescales mentioned above will not necessarily be considered. The Hearing Officer has discretion to allow evidence that has been submitted late in exceptional circumstances, having heard representations from both parties, and having taken into account the reasons for the delay, the importance of the evidence and whether or not a short postponement would be a fair and practical alternative to complete exclusion of the evidence.
- 13.7 The Hearing Officer should make arrangements for a note taker to attend and to take notes on their behalf, a copy of which will be made available to the employee.
- 13.8 A Human Resources representative will attend to provide advice on procedure and practice to the Hearing Officer, and ask questions where appropriate.
- 13.9 The Investigating Officer will normally present management's case at the Disciplinary Hearing.
- 13.10 The Hearing Officer, Investigating Officer, HR Advisor, note taker, or employee's representative, should not be anyone who is implicated in the case.

### **Non-attendance by Employee**

- 13.11 If the employee does not attend the Disciplinary Hearing, the hearing may either proceed in their absence or be adjourned, taking into account the reasons for the non-attendance. **If the reason for not attending is non-availability of an employee's representative refer to paragraphs 3.2 and 3.3 of this procedure.**
- 13.12 If non-attendance is due to a medical reason, the employee must inform the Hearing Officer as soon as possible. Written confirmation together with a medical certificate must be submitted, stating specifically the reasons why the employee is unable to attend the Disciplinary Hearing (a certificate which merely states that the employee is unfit for work is not sufficient; the certificate must relate specifically to the employee's ability to attend the Disciplinary Hearing). The cost of obtaining the medical certificate will be reimbursed. The employee may also be referred to the Occupational Health Unit to ascertain whether they are fit to attend the hearing.

- 13.13 If it is decided to adjourn the Disciplinary Hearing, the hearing will be rearranged. If the employee again fails to attend, the hearing will normally go ahead in their absence after considering all the circumstances of the case. Where an employee is unable to attend, they may arrange for representation at the hearing in their absence, or make written submissions.

### **Disciplinary Hearing Procedure**

- 13.14 The Disciplinary Hearing will be conducted in accordance with the arrangements set out in Appendix 3. The Hearing Officer should ensure that all the relevant facts have been presented by both parties prior to summing up and may decide that further information / witnesses are required. The Hearing Officer may adjourn the hearing where appropriate for any reason. The parties will be given reasonable notice of the hearing being reconvened, and at least **5** working days notice of this. The Hearing Officer will make the final decision on any matters raised at the hearing.

### **Decision**

- 13.15 A decision will be taken following careful consideration of the evidence provided by both parties. Following completion of the Disciplinary Hearing, all parties other than the Hearing Officer, the Human Resources representative and the note taker will withdraw.
- If a decision is reached quickly, the Hearing Officer may recall the parties to give this decision orally, and confirm in writing, within **5** working days of conclusion of the Disciplinary Hearing.
  - If a decision is delayed or postponed, the Hearing Officer will inform the parties of the decision in writing, within **5** working days of conclusion of the Disciplinary Hearing. Ideally the notes of the disciplinary hearing should accompany the letter, however, if these are not available they should be sent as soon as possible.

### **Disciplinary Measures/Outcomes**

- 13.16 Disciplinary measures/outcomes that may be reached are as follows:

#### **a) No Disciplinary Action to Be Taken**

In which case all correspondence relating to the hearing should be removed from the individual personnel file. The only exception being cases where there are allegations involving vulnerable service users/children in which case the paperwork will be retained in accordance with 12.12. The employee concerned and manager presenting the case should still receive confirmation of the outcome in writing, but should be advised that no record (other than the above) has been kept on the personnel file.

#### **b) A Formal Warning**

This will be recorded and the employee should be advised that any further disciplinary lapse might result in further disciplinary action, including dismissal. In reaching a decision about which sanction to apply, the Hearing Officer should take into account all of the circumstances of the case.

#### **c) A Final Written Warning**

The employee should be advised that any further disciplinary lapse might result in further disciplinary action, including dismissal. In exceptional circumstances, an indefinite final written warning may be given (see paragraph 13.18 below).

**d) Relegation to a Lower Point within the Employee's Grade**

Where the employee is considered to be blameworthy of an allegation(s) but there are deemed to be mitigating circumstances to justify disciplinary action short of dismissal, the sanction may be relegation (downgrading). The relegation could also be accompanied by a transfer to a completely new work area, together with a final written warning. The service area should be consulted. The relegation may be in a different work area / job and payment will be commensurate to the grade of the new post. The date this will take effect from should be provided.

**e) A Combination of (b) to (d) above.**

**f) Demotion and/or Transfer as an Alternative to Dismissal to a Similar or Lower Graded Post**

A transfer may be considered appropriate in circumstances where it would not be appropriate to allow the employee to return to their former work area. In cases of gross misconduct, this would only be appropriate if there is substantial mitigation. A transfer would normally be accompanied by a written warning. Before reaching such a decision, the Hearing Officer must check that there is a suitable vacancy into which the employee can transfer; and must discuss the situation with the divisional/section head in the new work area. Payment would be made at the grade or pay rate applicable to the new job and not the rate applicable to the employee's previous job. If the employee refuses to accept the new employment, then the original dismissal will stand. Where demotion or transfer is proposed as an alternative to dismissal, payment will also be made at the rate applicable to the new job. An employee's refusal to accept such an offer will result in dismissal. If gross misconduct then dismissal will be without notice and in all other cases dismissal with notice.

**g) Dismissal With or Without Notice**

Dismissal is an appropriate sanction for very serious misconduct, or for further misconduct after previous warnings. Other than for gross misconduct, dismissal is with notice. In cases of gross misconduct, the Council has the right to dismiss summarily (i.e. without notice).

**Live Warnings**

13.17 Warnings will cease to be "live" following the specified period of satisfactory conduct. They will be disregarded for future disciplinary purposes only, but will be retained on an employee personnel file **for 5 years**, following which employee's may apply for the warning to be removed (except in cases involving children or other vulnerable clients, see paragraph 12.12). The following time periods shall apply to formal warnings and in the event that an employee leaves the Council, it will expire after the same time period:

- Formal verbal warnings will be disregarded after 6 months of satisfactory conduct:
- Formal written warnings will be disregarded after 12 months of satisfactory conduct:
- Formal final written warnings will be disregarded after 18 months of satisfactory conduct.



- 13.18 Exceptionally, there may be circumstances where the misconduct is so serious, for example, either verging on gross misconduct or relating to issues involving children or care of vulnerable clients, that it cannot be disregarded for future disciplinary purposes. In such circumstances, the written warning may not be disregarded and any recurrence may lead to dismissal. However, the employee will be entitled to seek a review by the Director of Human Resources or nominated representative of this decision, no earlier than two years from the date the warning is imposed.
- 13.19 In all cases where a formal verbal or written warning is given to an employee, the employee will be notified in writing of the period over which the warning will be regarded as “live”. A spent warning should be disregarded only for the purpose of future disciplinary proceedings. For other managerial purposes (e.g. appointments including promotions and secondments, references), the warning would remain on the record and be taken into account as appropriate. Managers should not therefore remove the spent warning from the personnel file.

### **Written Notification**

- 13.20 The letter to the employee should normally be sent within **5** days of the Disciplinary Hearing, together with a copy of the notes of the hearing. The outcome letter must set out the following, if relevant:
- The reason for the decision and the disciplinary sanction; covering details of the allegations, including which were upheld and why, the factual issues covered, how the decision was reached, which version of events was preferred and why this was;
  - The implications and consequences of future misconduct;
  - Recording arrangements for disciplinary warnings;
  - The date (if any) from which any written warning or final written warning will be disregarded for the purposes of this procedure (in exceptional circumstances such warnings may be effective indefinitely);
  - The effective date of dismissal;
  - The right of appeal and,
  - Any further action required, including the lifting of suspension (where appropriate) and date of return to work, relegation, training, standard setting etc.

## **14. APPEALS**

- 14.1 An employee has the right of appeal against disciplinary action taken under this procedure, on the following grounds:
- The process followed was flawed;
  - The disciplinary sanction was not appropriate and/or reasonable in all the circumstances and / or;
  - New evidence has come to light, which if it had been available at the original hearing may have resulted in the Hearing Officer reaching a different conclusion.
- 14.2 Appeals must be registered within **5** working days of the date of the letter informing the employee of the outcome of the Disciplinary Hearing, and should be sent to the Executive Director of the employing department. The appeal notification must incorporate a statement setting out clearly the grounds for the appeal, specifying

the reasons or state that the full grounds of appeal will follow. If these are not received within a further **10** days (i.e. within **15** days of the date of the outcome letter), then the employee will be deemed to have failed to appeal, and no further action will be taken in relation to the notice of appeal. If the employee wants a short extension of time for lodging the full grounds of appeal, then the employee must make a written request within the time limit. The request will normally be granted where the reason is that the Council failed to supply the notes of the hearing promptly. Otherwise, the request will only be granted in exceptional circumstances, such as severe ill health, or pre-planned holiday abroad. The duration of the extension will be at the discretion of the Executive Director of the employing department, but will not normally be longer than **20** working days.

- 14.3 Appeals against disciplinary action excluding dismissal or demotion will be heard by the Executive Director or a nominated Director, who has not previously been involved in the case, and who would normally be (except in exceptional circumstances) more senior than the original Hearing Officer, supported by a Human Resources representative (see procedure at Appendix 4).
- 14.4 Appeals against dismissal or demotion will be heard by the Council's Appeals Committee (see procedure in Appendix 5).
- 14.5 If an employee lodges an appeal against dismissal, then the employee will not be reinstated, nor be entitled to have the termination date delayed, pending the outcome of the Appeal Hearing.

### **Timing of Appeal Hearing**

- 14.6 The Appeal Hearing will be normally held no later than **20** working days from receipt of the notice of appeal or of the full grounds of appeal. The employee and (if appropriate) their representative, will be given at least **5** working days written notice of:
- The date, time and place of the hearing;
  - Details of the panel hearing the appeal;
  - The employee's right to attend and be represented at the appeal by a trade union representative or work colleague.
- 14.7 Provided the employee has been given the appropriate notice of the date of the hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual.

### **Appeal Hearing Procedure and Process**

- 14.8 Appeal Hearings will be conducted in accordance with the arrangements set out in Appendices 4 and 5. The Appeal Hearing will take the form of a review of the original hearing and not a full rehearing of the issues. A decision on whether the appeal should take the form of a rehearing will be made following advice from the Director of Human Resources or nominated representative. The Appeal Hearing should address the arguments set out in the grounds of appeal and determine whether the decision made at the original hearing was reasonable in all the circumstances.

- 14.9 The presenting manager (the manager who was responsible for the original decision), will prepare a statement in response to the employee's submission. This should be provided to the employee within **10** working days of receipt of the notice of the appeal or of the full grounds of the appeal, if sent later. If further clarification or elaboration is considered necessary, either or both parties will be asked to provide this information, at least **2** working days before the appeal hearing.
- 14.10 New evidence will only be considered in exceptional circumstances. This will be at the discretion of the appeal panel/officer and will only be admitted where it may significantly affect the previous decision, as provided for in the grounds.

### **Outcomes**

- 14.11 **Possible outcomes of an Appeal Hearing considering appeals against a warning:**
- i) A decision to uphold employee appeal and either revoke the decision completely or impose a lesser sanction;
  - ii) Deny appeal and confirm decision to issue reprimand, warning or withhold annual increment;
  - iii) Submit case back to employing department for a new hearing.
- 14.12 The decision of the Appeal Panel will be final.
- 14.13 **Possible outcomes of an Appeal Hearing considering appeals against demotion or dismissal are:**
- i) An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;
  - ii) A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
  - iii) To make any appropriate recommendation;
  - iv) Any combination of the above or;
  - v) To submit the case back to the employing department for a new hearing (In the event that the Committee believe that a Disciplinary Hearing was so flawed as to render the decision unsafe OR that important evidence was either not available or not appropriately considered at the original hearing AND feel unable to rehear the case and/or substitute a new decision for the original hearing then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate) or;
  - vii) To deny the appeal and confirm the demotion/dismissal.
- 14.14 The decision of the Appeal Panel will be final.

### **Notification of Decision**

- 14.15 The decision will be given orally on the day of the hearing, unless it is not practical to do so. In all cases, the decision of the Appeal Hearing will be confirmed in writing within **5** working days of the conclusion of the hearing.
- 14.16 Where the disciplinary action is rescinded, all records will be removed from the employee personnel file and destroyed, except in cases involving children and other

vulnerable clients. A copy of the investigation will be retained in accordance with Human Resources record keeping practices.

## **15. MONITORING AND REVIEW**

- 15.1 The Council will monitor performance under this procedure against the relevant performance indicators. The impact and performance of the procedure should be reviewed on a quarterly basis.
- 15.2 This procedure will be reviewed on a regular basis and changes and improvements made where necessary by the Director of Human Resources or nominated representative. The recognised trade unions will be consulted on any proposed changes to this procedure, in accordance with the relevant provisions of Part 1 of the Council's Local Agreement on Terms and Conditions of Employment (paragraphs 3.3 to 3.8 inclusive).

## **Appendix 1**

### **1. Initial Disciplinary Action - Verbal Warning**

- 1.1 It is important that minor incidents of misconduct or poor working practice are dealt with quickly as soon as they arise. Firstly, so the employee is made aware of the problem and given the opportunity to correct it, thus removing the need for further formal disciplinary action. Secondly, should there be further incidents it can be demonstrated that the employee's attention has been drawn to the problems and the expected standards explained to them.
- 1.2 Action taken can be in the form of a verbal warning that sets out what standards are required of the employee, depending on the nature and extent of the problem.

#### **Verbal Warning Procedure:**

- 1.3 A verbal warning is appropriate for isolated or minor incidents of misconduct. In relation to the process, the employee's line manager should arrange to interview the employee concerned on a one to one basis. An employee has the right to be accompanied to this meeting by a trade union representative or other employee.

#### **Meeting:**

- 1.4 The meeting should be conducted as follows:
- 1.5 At the outset of the meeting, the manager should advise the employee of the reason for the discussion and remind him or her of the standards expected for improvement of conduct e.g. lateness, failure to follow procedures, poor timekeeping, etc. Where appropriate, issue a verbal warning, advising her/him that any further incidents could lead to further formal disciplinary action being taken. The manager should try and establish why the breach has occurred and explore any underlying reasons for the misconduct with the employee and provide support as appropriate e.g. management guidance, training or coaching.
- 1.6 The employee should be told the period of time management intends to allow for improvement of conduct and what will happen if they do not improve within this period. If appropriate, the employee should be advised that it might be necessary to proceed to the next stage of the formal disciplinary procedure.
- 1.7 A record should be kept of the verbal warning and any actions recommended should be confirmed to the employee in writing and a copy placed on the employee's Personnel file. The employee may comment on the content of the note if s/he wishes and this should also be placed on the Personnel file.
- 1.8 If the required standards are reached within the stated period, then this should be confirmed in writing to the employee and a copy placed on the Personnel file for six months. If the required standards are not reached/maintained, then the manager may issue a further verbal warning or proceed to other formal disciplinary action as appropriate.
- 1.9 Verbal warnings and standard setting letters may be used as evidence in formal action taken under either the Disciplinary or Managing Unsatisfactory Performance procedures.

**Appeal process:**

- 1.10 If the employee wishes to appeal, s/he must appeal to the Head of Service within **2** working days of the verbal warning being given.
- 1.11 Any appeal must be in writing and clearly state the reasons. Employees cannot appeal against the right of the manager to issue a verbal warning, only about whether the warning was justified in all the circumstances.
- 1.12 The appeal meeting should take place within **14** days of receipt of the full grounds of appeal (see Appendix 4 for appeal process for cases not involving demotion or dismissal).

## Appendix 2

### Types of Misconduct

#### Gross misconduct

**Gross misconduct is the kind of act or behaviour that would destroy the trust, which is the basis on which your contract of employment is made and justifies the Council in dismissing you without notice. Such misconduct would mean that the Council would not be able to put its trust in you as an employee any longer.**

If an employee is found guilty of gross misconduct, then the normal consequence will be dismissal without notice. Offences of the following nature (the list is not exhaustive) are likely to amount to gross misconduct.

- Serious failure to comply with or operate the Council's Equality and Diversity policies. Examples include; serious acts of discrimination, harassment, or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability, age, sexual orientation or religious beliefs; the display or circulation within the workplace of any literature or material (such as pornographic or racist) materials via any medium that could offend other persons;
- Serious bullying or harassment;
- Serious infringement of the Council's Health & Safety policy, procedures or guidance;
- Serious failure to comply with or operate the Council's Employee Code of Conduct e.g. holding unauthorised paid employment during paid Council time; conducting inappropriate relationships with vulnerable clients; not declaring a personal interest which may infringe the employee's impartiality;
- Serious negligence that causes or might cause loss, damage or injury;
- Bringing the Council into serious disrepute;
- Reporting for duty seriously incapable due to drinking alcohol;
- Reporting for duty under the influence of illegal drugs;
- Being in possession of, consuming, or supplying any controlled drug (other than appropriately prescribed medication) in the workplace, or in any Council vehicle, or whilst on duty;
- Serious failure to comply with or operate the Council's information systems and security standards e.g. gaining unauthorised access to passwords and breaches of the use of the email and internet policy including emails with pornographic attachments;
- Serious breach of financial procedure rules, contract procedure rules or other compulsory policy requirements;
- Unauthorised removal, possession, use or theft of property belonging to the Council, an employee, client or member of the public;
- Acts of violence including the assault of an employee, client, or member of the public during working hours or in connection with their employment of work;
- Falsification of qualifications or information to obtain employment with the Council or which are a statutory or essential requirement of employment or which result in additional remuneration;
- Deliberate falsification of records e.g. attendance sheets, timesheets, subsistence and expense claims etc;
- Acceptance of bribes or other corrupt or fraudulent practices;

- Defrauding the Council, or any other Council e.g. in relation to housing or council tax benefit, grants and housing property;
- Disclosure of highly confidential matters to public sources or the deliberate unauthorised use or disclosure of any information or computer generated information from which a living individual can be identified (subject to the Public Interest Disclosure Act 1998);
- Committing a criminal or civil offence at or away from work that renders the employee unsuitable to remain in the Council's employment or which may seriously damage the Council's reputation. Or where there are reasonable grounds to believe that a serious criminal offence has been committed which may be connected or unconnected with their employment.

### **Other types of misconduct:**

Other types of misconduct are listed below (the list is not exhaustive). These will usually result in a sanction that is less than dismissal, but dismissal may sometimes be the result depending on the circumstances.

- **Attendance and Time-keeping**  
Failure to comply with attendance and time-keeping requirements;  
Failure to follow procedures for booking and returning from leave;  
Persistent absence and/or excessive absence without medical reason.
- **Telecommunications related issues**  
Abuse of telephone, fax, e-mail or Internet for personal reasons;  
Inappropriate use of e-mail or Internet (gross misconduct in serious cases);  
Recording conversations or meetings without having been given permission by the employee/manager concerned.
- **Behaviour**  
Failure to follow a legitimate management instruction;  
Prolonged time-wasting;  
Inappropriate behaviour towards a colleague, manager or a person in the care or charge of the Council or member of the public (gross misconduct in serious cases).  
Presenting an unprofessional image of the Council and/or perform duties to an unsatisfactory standard due to drinking alcohol during breaks or immediately before work;  
Drinking alcohol whilst at work/on duty, including when on call.
- **Poor Working Practices**  
Failure to maintain proper records;  
Failure to follow Council procedures e.g. financial regulations, safety standards.
- **Malicious complaints/grievances made against another employee or manager**  
(gross misconduct in serious cases)
- **Other breaches of the Code of Conduct**



## **Appendix 3**

### **Procedure to be followed at Disciplinary Hearings**

- 1.1 The Hearing Officer will invite both parties into the room at the same time, introduce all parties present and explain the purpose of the hearing. Both parties should be asked if they intend to bring witnesses, although failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.
- 1.2 The employee will then be asked to state whether s/he admits or denies the allegation(s).

#### **Where employee admits the allegation(s)**

- 2.1 If the employee admits the allegation(s), the employee will be invited to present any mitigating circumstances to the Hearing Officer. The Hearing Officer, presenting manager and the HR Advisor may then ask questions of the employee in turn.
- 2.2 In addition, the Hearing Officer may require that witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Hearing Officer may decide to adjourn the hearing to allow for this if necessary.
- 2.3 It is for the Hearing Officer to manage the process and intervene where appropriate.

#### **Summing - up stage**

- 3.1 Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

#### **Deliberation**

- 4.1 The Hearing Officer will then ask both parties to withdraw apart from the HR Advisor and note taker. The Hearing Officer should indicate to the parties whether they should wait to be recalled for the decision. The Hearing Officer should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR Advisor as necessary.

#### **The Decision**

- 5.1 The Hearing Officer may give the decision verbally at the end of the Hearing, or in writing later. In any event, the decision must be confirmed in writing within 5 working days of the hearing to the employee, and copied to their representative and to the manager presenting the case. The HR Advisor will provide advice on the content of the outcome letter.

#### **Where employee denies allegations**

#### **Management presentation with witnesses**

- 6.1 The management representative will present the case.
- 6.2 The Hearing Officer will invite other parties to ask questions on the presentation in the following order:
- Employee and/or trade union representative;
  - Hearing Officer;
  - HR Advisor.
- 6.3 The manager presenting the case will then call witnesses individually. The Hearing Officer will explain to the witnesses the procedure to be followed.
- 6.4 The Hearing Officer will invite other parties to ask questions of the witnesses in the following order:
- Employee and/or trade union representative
  - Hearing Officer
  - HR Advisor.

### **Employee's presentation with witnesses**

- 7.1 Following the presentation of the management case, the process is then reversed, with the employee and/or trade union representative having the chance to present their case. The Hearing Officer will invite other parties to ask questions.
- 7.2 The employee/trade union representative will then call witnesses. The Hearing Officer will explain to the witness the procedure to be followed. The employee/trade union representative may then ask questions of the witness. The other parties may ask questions of the witnesses in the following order:
- Manager presenting the case;
  - Hearing Officer;
  - HR Advisor.
- 7.3 Following questioning by the other party, witnesses may be re-examined once more by the manager, employee (trade union representative), Hearing Officer or HR Advisor, if necessary, to clarify any points raised during the cross-examination.
- 7.4 It is for the Hearing Officer to manage the process and intervene where appropriate.
- 7.5 Once each party has completed their questioning, witnesses should not normally, be recalled. However, the Hearing Officer has the right to recall witnesses or seek further information if this is required. If this does happen, both sides should be recalled into the hearing. In addition, the Hearing Officer may require that other witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Hearing Officer may decide to adjourn the hearing to allow for this, if necessary.

### **Summing - up stage**

- 8.1 Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

### **Deliberation**

- 9.1 The Hearing Officer will then ask both parties to withdraw apart from the HR Advisor and note taker. The Hearing Officer should indicate to the parties whether they should wait to be recalled for the decision. The Hearing Officer should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR Advisor as necessary.

### **The Decision**

- 10.1 The Hearing Officer may give the decision verbally at the end of the Hearing, or in writing later. In any event, the decision must be confirmed in writing, within 5 working days of the hearing, to the employee and copied to their representative and to the manager presenting the case. The HR Advisor will provide advice on the content of the outcome letter.

## **Appendix 4**

### **The Disciplinary Appeal process for cases NOT involving Demotion or Dismissal**

- 1.1 The Appeal Hearing Officer should ensure that there is a management note taker. The Appeal Hearing Officer will invite the parties into the room, introduce all parties present and explain the purpose of the hearing. The appeals process will not normally take the form of a rehearing and witnesses will only be allowed with the permission of the hearing officer and where it is relevant to the issue of the appeal. Both parties should therefore be asked if they intend to bring any witnesses. Failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.

#### **Presentation by the appellant**

- 2.1 The appellant or representative presents the grounds for the appeal.
- 2.2 The Appeal Hearing Officer will invite the presenting manager, HR Advisor to ask questions of the appellant/representative on the grounds for appeal in that order.
- 2.3 The appellant/representative to call any witnesses.
- 2.4 It is open to the Hearing Officer to disallow irrelevant or repetitive questioning.
- 2.5 The presenting manager/Appeal Hearing Officer/HR Advisor may ask questions of witnesses in that order.

#### **Response to the Appeal by Management**

- 3.1 The presenting manager will respond to the appeal in the presence of the appellant.
- 3.2 The appellant (or representative)/Appeal Hearing Officer/HR Advisor may ask questions of the presenting manager.
- 3.3 The manager presenting the case will then call witnesses individually. The Hearing Officer will explain to the witnesses the procedure to be followed.
- 3.4 The appellant (or representative)/Appeal Hearing Officer/HR Advisor may ask questions of any witnesses.
- 3.5 If required, the Appeal Hearing Officer may recall witnesses or seek further evidence to ensure that he/she is aware of all the facts of the case. The Appeal Hearing may be adjourned to allow for this to happen. If recall is necessary to clear points of uncertainty, both parties will return, notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

#### **Summing Up Stage**

- 4.1 The presenting manager, followed by the appellant (or representative) will have the opportunity to sum up their case. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

### **Deliberation by the Appeal Hearing Officer**

- 5.1 Both parties will withdraw, leaving the Appeal Hearing Officer to deliberate accompanied by the HR Advisor and note taker. The Appeal Hearing Officer will indicate to the parties whether they should wait to be recalled for the decision. The HR Advisor will provide advice as necessary. The Appeal Hearing Officer should make a note of the reasoning behind his/her decision and keep this carefully filed for future reference if need be.

### **The Decision**

- 6.1 The decision is made by the Appeal Hearing Officer and may be given to the parties verbally at the end of the hearing, or later in writing. In any event, the Appeal Hearing Officer must confirm the decision in writing within 5 working days. The HR Advisor will provide advice on the content of the outcome letter.

## **Appendix 5**

### **Procedure at Disciplinary Appeal Hearings For Cases Involving Demotion/Relegation or Dismissal**

#### **Appeals against Demotion/Relegation and All Dismissals**

- 1.1 An appeal against a decision to dismiss, demote or to relegate to a lower graded post is to the Council's Appeals Committee. The Appeals Committee arrangements are set out below.
- 1.2 In any case, where an employee is dismissed either with or without notice, payment of salary/wages will cease on the effective date of dismissal. Where on appeal the disciplinary decision or other dismissal is upheld, the effective date of dismissal or relegation will be the effective date of the original decision.
- 1.3 Where an appeal is upheld, any salary/wages due will be reinstated as appropriate.
- 1.4 The intention to appeal must be notified to the employee's Executive Director within 5 working days of the date of the written confirmation of disciplinary action. The Executive Director will immediately notify the Principal Committee Administrator who will arrange for a meeting of the Council's Appeals Committee to take place following receipt of the full grounds of appeal.
- 1.5 The appellant must then provide a written statement outlining in detail the grounds of the appeal against the decision, together with any supporting documentation within 15 working days of receipt of the written confirmation of the disciplinary action. The appellant should clearly state with full reasoning, the basis on which s/he believes the decision to be at fault (i.e. why s/he believes that the procedure was incorrectly applied and/or that the evidence did not substantiate the allegations and/or that the sanction is too severe and/or that specific relevant evidence was not available or was not taken into account at the original hearing). No hearing shall be arranged until such a detailed statement has been received.
- 1.6 A representative of the Director of Human Resources will assess the case statements and review the notes of any hearing in the light of the appellant's statement. If further information, clarification or elaboration in support of the case is considered necessary, then the appellant will be asked to provide this information at least 3 clear working days before the date set for the Appeal Hearing if it is to be used. A hearing will be arranged and the employee notified of the date, time and place of the hearing.

#### **2 Appeals Committee Hearing Procedure**

- 2.1 The local authority shall appoint an Appeals Committee, which shall be constituted from among elected members who have no direct formal responsibilities specifically for the relevant employing service/department. A representative of the Service Director, Human Resources and a Committee Administrator will support the Committee.
- 2.2 The employee shall be given notice in writing at least five working days in advance of the time and place of the hearing that:

- S/he shall be allowed to be represented by his/her trade union representative, a colleague or other representative of his/her choice and;
- May call witnesses and;
- Refer to previously submitted documents relevant to his/her appeal; at the hearing;
- The employee will also be informed that the Appeal Hearing will not be a full rehearing of the case and that s/he should restrict his/her presentation to arguments about the reasonableness of the decision and/or procedural faults or failure.

- 2.3 The Chair of the Committee will outline the procedure to be followed and inform the appellant that s/he may stop and/or redirect any participant if at any time s/he believes that witnesses' testimony or evidence being produced is irrelevant to the matter under consideration.
- 2.4 The management representative(s) will present his/her justification of the disciplinary decision, or other dismissal, in the presence of the appellant and his/her representative. The management representative(s) may also call witnesses to the Appeal Hearing.
- 2.5 The appellant (or his/her representative) will then have the opportunity to ask questions of the management representative on the evidence given by him/her and any witnesses whom s/he may call.
- 2.6 The members of the Committee may ask questions of management's representatives and witnesses.
- 2.7 The appellant (or his/her representative) will present his/her case against the reasonableness of the disciplinary decision or other dismissal in the presence of the Council's representative and to call such witnesses as s/he wishes.
- 2.8 The management representative will then have the opportunity to ask questions of the appellant and his/her witnesses.
- 2.9 The committee may ask questions of the appellant and his/her witnesses.
- 2.10 The management representative and the appellant (or his/her representative) will then have the opportunity to sum up their case if they so wish.
- 2.11 The committee supported by the Human Resources representative and the Committee Administrator (who will only provide procedural and administrative support) will deliberate in private only recalling the local authority's representative and the appellant to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.
- 2.12 **Courses of action open to the Appeals Committee are:**
  - i) An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;

- ii) A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
- iii) To make any appropriate recommendation;
- iv) Any combination of the above; **or**
- v) To submit the case back to the employing department for a new hearing (In the event that the Committee believe that a disciplinary hearing was so faulty as to render the decision unsafe OR that important evidence was either not available or not appropriately considered at the original hearing AND feel unable to rehear the case and/or substitute a new decision for the original then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate); **or**
- vi) To deny the appeal and confirm the relegation, demotion or dismissal;

### **Outcome**

- 2.13 The Appeals Committee will announce the decision to the Council's representative and appellant personally on the day of the Appeal Hearing, if practical and this will in any case be confirmed in writing together with the reasoning behind the decision within 5 working days of the conclusion of the Appeal Hearing. The employee will also be reminded that there are no further rights of appeal.