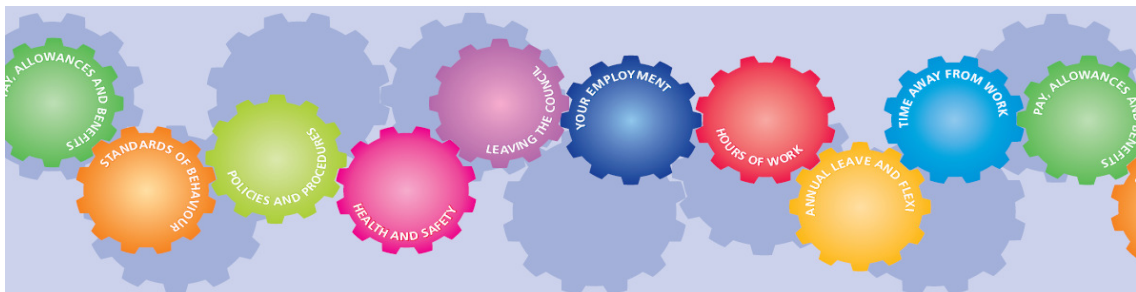


MANAGEMENT GUIDANCE

DISCIPLINARY PROCEDURE

1st December 2011



DISCIPLINARY PROCEDURE

INDEX

SECTION	PAGE
1 The Council's Commitment	3
2 Managing employee conduct	3
3 Legal context	4
4 Adverse impact analysis	4
5 Employees covered by this procedure	4
6 Employees not covered by this procedure	4
7 Outline of policy and procedure	4
8 Timescales	5
9 Right to be accompanied	5
10 Role of Human Resources	6
11 Stages of the procedure – flowchart	8
12 Investigation	10
13 Suspension	10
14 Notification of disciplinary hearing	12
15 Disciplinary hearing	13
16 Appeal hearing	15
17 Disciplinary sanctions	16
18 Examples of misconduct	17
19 Examples of gross misconduct	18
Good practice management guidance	20
20 Resolving disciplinary issues informally	20
21 Keeping your own notes	20
22 When suspension is the right course of action	21
23 Conducting the investigation	22
24 Preparing for the disciplinary hearing –statement of case	25
25 Hearing the case – The disciplinary hearing	27
26 Criminal offences	27
27 Disciplinary action against trades union representatives	28
28 Avoiding or dealing with delay or postponement	28
29 Appendix 1 – model procedure for the hearing	30
30 Appendix 1-making and giving the decision	31
31 Appendix 1- the balance of probabilities	32
32 Appendix 1 – checklist	32
33 Appendix 11 – the range of sanctions	34
34 Appendix 11 – notice in cases of dismissal	36
35 Appendix 111- Hearing the appeal	37
36 Appendix 111 – written records	38
37 Appendix 111 – Monitoring and review of the procedure	39
38 Levels of authority for action	40

1 THE COUNCIL'S COMMITMENT

Hammersmith and Fulham Council is committed to the effective management of employee conduct and to improving and maintaining good discipline at work through developing and promoting rules and procedures for handling disciplinary matters in a fair, consistent and systematic way.

2 MANAGING EMPLOYEE CONDUCT

This disciplinary procedure provides managers with a structured framework that will enable them to:

- Help and encourage all employees to achieve and maintain the highest standards of conduct
- Remedy any problems of misconduct promptly and effectively
- Keep employees informed of the action they face if they fail to meet the Council's standards of conduct
- Deal with disciplinary matters lawfully, fairly, consistently and in line with the principles of natural justice (e.g. ensure there is a reasonable investigation and the employee knows the case against them, has the opportunity to properly prepare and put their case to a disciplinary hearing heard by an impartial decision maker and, is afforded a right of appeal).

This procedure is the means by which rules are observed and standards of good behaviour are properly maintained. It sets out the written rules that communicate the high standards of behaviour expected of Council employees and the consequences of failing to comply with them.

The Council's procedure on disciplinary matters is focused on helping and encouraging employees to improve their conduct and behaviour; not just with applying disciplinary penalties in all cases. It aims for an outcome, which is fair and constructive and is in pursuit of the Council's delivery of excellent services to the community.

Managers are responsible for making sure that their employees know the expected Council standards of behaviour, enforcing rules and ensuring that breaches of these are tackled promptly. Where a potential disciplinary issue comes to light, the manager will act in accordance with this procedure and without delay.

This policy complements and is consistent with current and developing policies on:

- Employee Code of Conduct
- The Employee Handbook
- The Equal Opportunities Policy
- The Harassment and Bullying Procedure
- The Grievance Procedure

3 LEGAL CONTEXT

The framework for managing employee conduct takes into account the provisions of the Employment Rights Act 1996, the Employment Relations Act 1999, the Employment Act 2002, the Employment Act 2008 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

4 ADVERSE IMPACT ANALYSIS

The Council wishes to ensure that its policies and procedures do not impact unfairly on employees with reference to race, sex, age, religion or belief, sexual orientation or disability. Managers are therefore required to ensure that their application of this policy and procedure does not have this adverse impact, for example, in the unbalanced use of formal processes on particular groups of employees.

5 EMPLOYEES COVERED BY THIS PROCEDURE

This procedure applies to all permanent and temporary employees.

6 EMPLOYEES NOT COVERED BY THIS PROCEDURE

This procedure does not apply to:

- School based staff and teachers all of whom are subject to a separate code
- Chief Officers whose terms and conditions of employment are determined by the National Joint Council for Chief Officers in Local Authorities
- Agency workers, where disciplinary issues will be referred to the person's employing agency
- In respect of any act or omission of the employee which makes them totally unsuitable for employment with the Council, (other than breaches of his/her contract of employment with the Council) that happened prior to his/her employment with the Council, this would be subject to swift disciplinary proceedings.

7 OUTLINE OF POLICY AND PROCEDURE

Dealing with formal discipline in the Council can be seen as a four-stage mandatory process (five if it is necessary to suspend the employee before any disciplinary hearing).

1. Investigation
2. Brief Suspension* (If Appropriate)
3. Notifying the Employee of any Disciplinary Hearing
4. Disciplinary Hearing
5. Appeal

*In some cases the suspension can take place prior to the investigation
The procedure provides for disciplinary matters to be investigated, for the employee to be told of any allegations against them, for the case to be considered in a disciplinary hearing and if necessary, for the employee to have a right of appeal.

8 TIMESCALES

Investigation

In appointing the Investigation Manager consideration should be given as to whether s/he has the time capacity to undertake and complete the investigation in the timescales set out below.

Unless the case is particularly complex (e.g. involves interviewing a large number of witnesses, or allegations of major fraud, or child abuse, where external agencies may be involved; in such circumstances the timescale may need to be extended.

In Normal Cases:

The Investigation Manager will:

- Investigate the matter promptly
- Normally complete the investigation within 6-12 weeks, depending on the complexity of the case.

If this is not possible, the Investigation Manager will keep their line manager and the employee informed in writing on a confidential basis about:

- Progress in the investigation
- The timetable for its completion, and
- The reason for any delay

Formal Disciplinary Hearings

Those managers that have authority to hear formal disciplinary cases will:
Seek to hear the case without undue delay, normally within 3 - 4 weeks of the decision that disciplinary action is required.

Appeal Hearings

Those managers that have authority to hear employee appeals will:
Deal with any appeal without undue delay, normally within 3 - 4-weeks.

9 RIGHT TO BE ACCOMPANIED

Employees have a right to take advice and guidance and to be accompanied or represented by a trade union representative or work colleague at any formal stage of the Disciplinary Procedure. The formal stage will be used

where the matter is more serious or, where an informal approach has been tried but is not working. The employee does not have the right to be accompanied on the same basis during any informal process. The intention of the informal process is for the manager and the employee to have a two way conversation aimed at discussing shortcomings in the employee's conduct and encouraging improvement in a one to one setting between the employee and the line manager. Legal representation, specialist employment law advisers and similar, will not be allowed because it would normally be inappropriate for an employee to be represented by a legal representative at an internal disciplinary hearing or appeal. There are however, exceptional circumstances where it maybe appropriate to permit the attendance and assistance of a legal representative (e.g. where there are criminal allegations against an employee which, if resulted in a dismissal, must result in that employee's professional body that authorises them to work in that profession striking them off)

The role of the representative is to provide advocacy and support to the individual, to participate by offering advice during any meetings and to confer with the employee where the need for clarification arises, but not to answer questions on the employee's behalf (unless agreed by the Investigation Manager), or to prevent the employee from stating their own case, if they wish to do so.

At any formal hearing e.g. disciplinary hearing or appeal hearing, the representative can, if the employee wishes, address the hearing to present the employee's case, ask questions of the other side, sum up the employee's case and confer with the employee where the need for clarification arises. The representative must not answer questions put directly to the employee unless this is agreed by the Hearing Manager.

It is important that representatives do not have a conflict of interest that may prejudice the case.

10 ROLE OF HUMAN RESOURCES

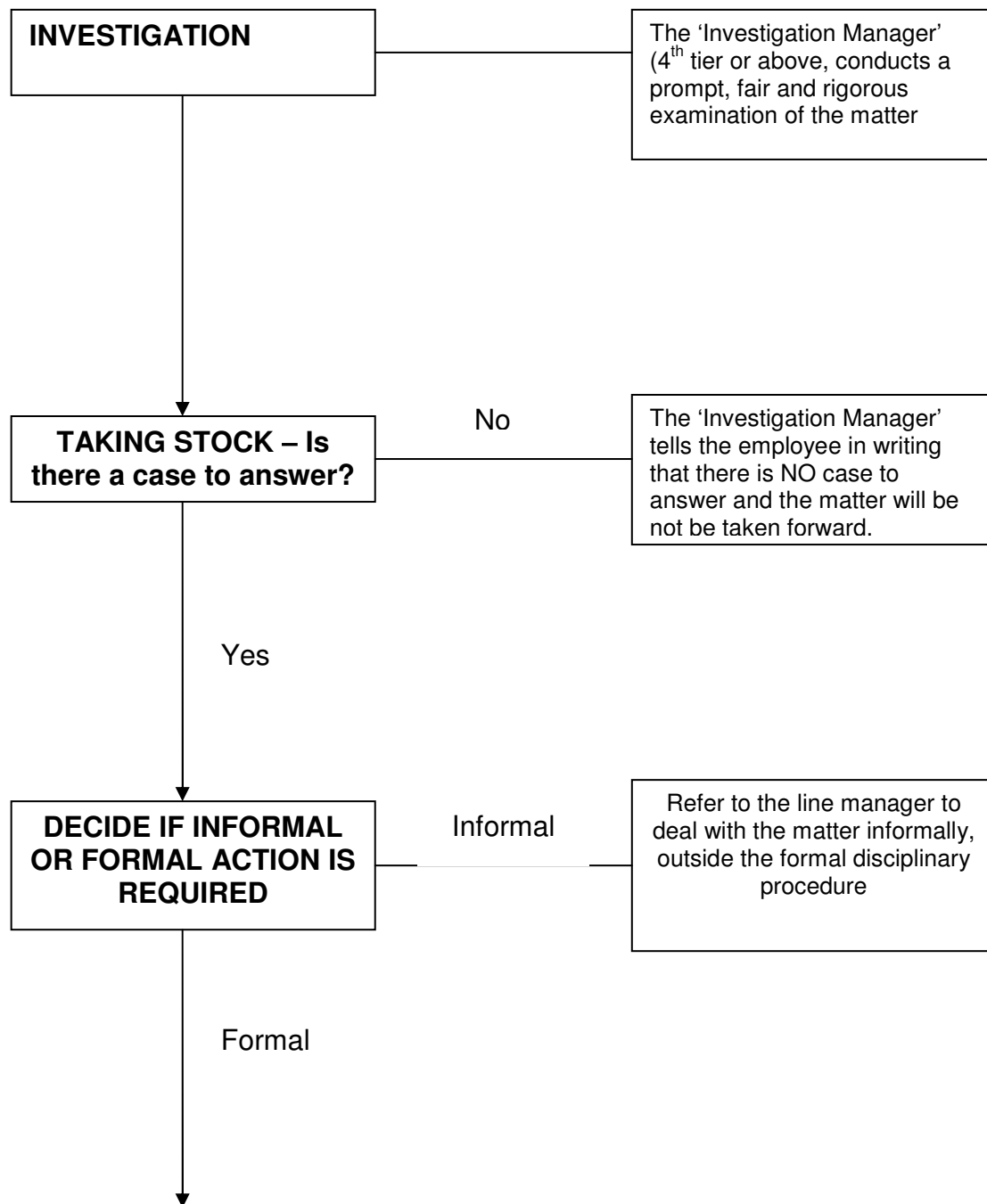
At all stages of the Disciplinary Procedure Human Resources staff may be consulted for advice. The responsibilities of HR include:

- Providing advice to managers on the informal action stage
- Providing advice to managers on the issues to consider when taking a decision to suspend an employee
- Providing advice to managers when taking formal disciplinary action, including advice on complex and/or contentious cases, formulating allegations, putting together disciplinary hearing case documentation and arranging the hearing
- Ensuring that the investigation managers and the respective managers responsible for hearing disciplinary cases and any appeals are aware of the legal and any other sensitive aspects of a case
- Advising at disciplinary hearings and disciplinary appeal hearings
- Providing advice to managers on the wording of written outcome letters
- Advising on the interpretation of Council policy

- Undertaking monitoring requirements on suspensions and progress on disciplinary investigations /hearings and, appeals to ensure the process is completed in accordance with set timescales and time limits and, evaluation and wider application of learning from the case
- Retaining confidential records of disciplinary matters on employee personal files in accordance with HR record keeping practices and the requirements of the Data Protection Act 1998.

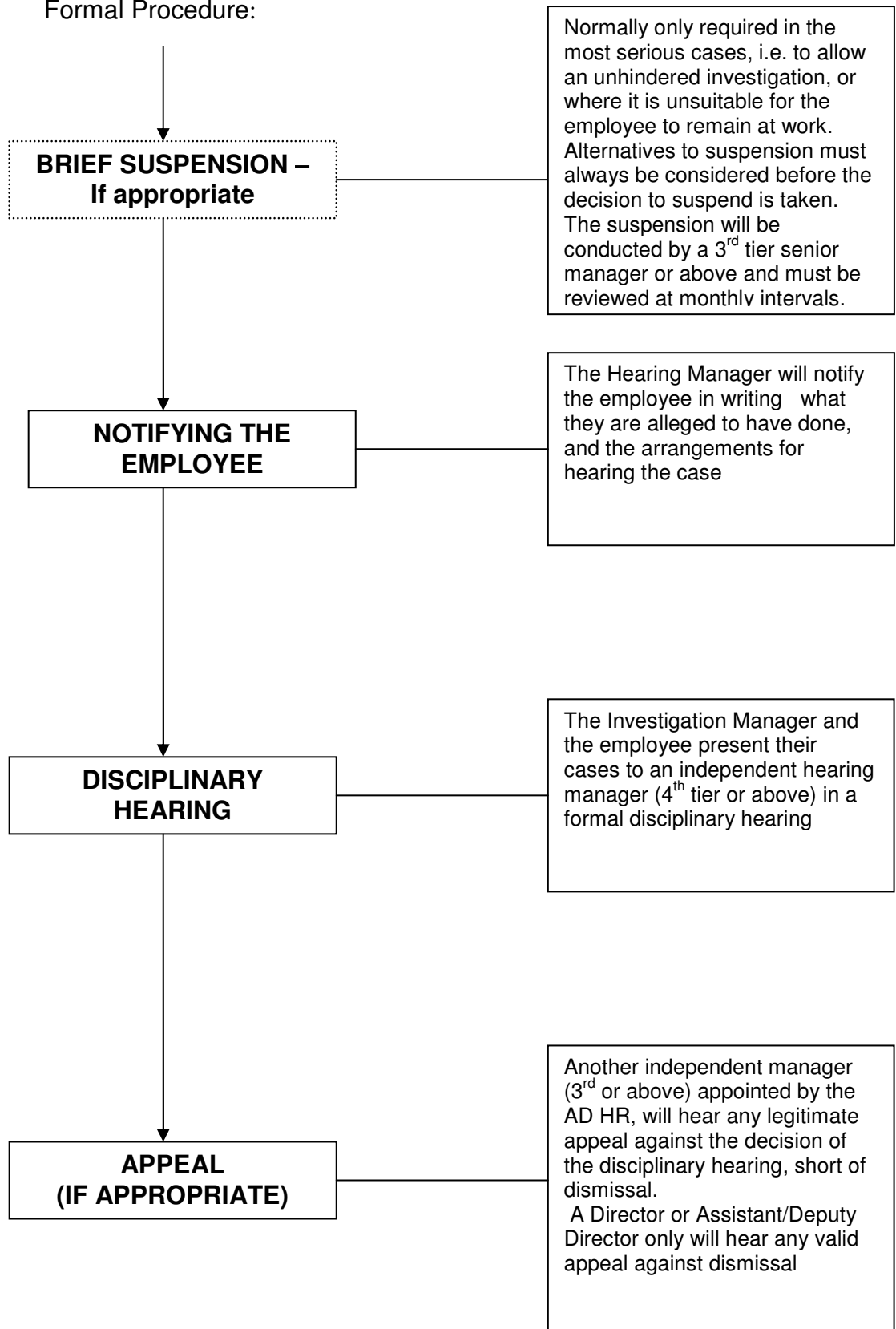
11 STAGES OF PROCEDURE

LEVELS OF AUTHORITY



continued ↓

Formal Procedure:



12 THE DISCIPLINARY INVESTIGATION

The Investigation Manager will

- Be appointed to undertake the investigation. This will normally be the employee's line manager, but there may be times when a more senior manager, or a manager from a different service area, or an independent consultant carries out an investigation
- Plan the investigation to ensure the matter is dealt with fairly, effectively and promptly
- Gather relevant facts without undue delay
- Write to the employee regarding the investigation
- Meet with the employee, outline the nature of the allegation and hear the employee's explanation
- Meet with any witnesses without any undue delay
- Gather evidence and take any witness statements promptly before memories fade
- Keep evidence secure and confidential
- Produce an investigation report with appendices of all the relevant documentation submitted and relied upon to come to a decision to proceed with the disciplinary process
- Take stock of all the evidence and decide whether:
 - The employee has a case to answer in a formal disciplinary hearing
 - The matter can be dealt with by way of the informal process, and outside of a formal disciplinary hearing
 - There is no case to answer
- If appropriate consult with an HR adviser and refer the matter to a formal disciplinary hearing to be conducted by another independent manager
- If necessary prepare a written statement of the case in the form of an investigatory report for later submission to a formal disciplinary hearing

The employee is entitled to:

- Be told in writing the purpose of any investigatory meetings
- The opportunity to be accompanied by a trade union representative or work colleague
- Be told the nature of any allegation against them at the time
- Give any explanation and to give their own account of events.
- Be told in writing if there is no case to answer at a disciplinary hearing.

13 SUSPENSION

There may be instances where suspension with pay is necessary while the investigation is carried out. Suspension should never be automatic and only be imposed after careful consideration. It should be made clear to the employee that the suspension does not involve any prejudgement of the case, and does not imply guilt.

It is only necessary where one or more of the following conditions apply:

1. Gross misconduct is alleged and it is necessary to remove the employee from the normal workplace because the nature of the allegations poses a risk to people or property and/or
2. The investigation could be hindered by the employee's continued presence at work, and/or because of the nature of the allegation/s, the employee's presence in the workplace poses a risk, and/or relationships in the workplace have broken down, and:

another option, which temporarily transfers the employee with their agreement to a different place of work during the process, is not possible and is not appropriate in the circumstances.

- The suspending manager is normally one with authority to do so – i.e. a 3rd tier senior manager or above. However, if such a manager is not available, the most senior manager on duty may send the employee home pending discussions with the relevant senior manager and the HR adviser which should take place no later than one working day after the employee is sent home; following which a decision will be made as to whether the suspension should be confirmed, or the employee should be temporarily transferred to another workplace, or return to their normal workplace.
- **The suspending manager will normally:**
 - Conduct a brief preliminary enquiry into the facts of the case and consider alternatives to suspension to satisfy him/herself that suspension is appropriate before making any decision to suspend:
 - Explain any action of removal from the workplace to the employee
 - Tell them they must be available to co-operate with the investigation
 - Say how long the investigation is likely to last
 - Notify any suspension to the appropriate HR Relationship Manager
 - Review suspension at monthly intervals if the matter is on going and confirm in writing to the employee
 - Confirm the terms of the suspension in writing to the employee, including the notification arrangements for any sickness absence and requests for annual leave during suspension

The employee is entitled to

- Be told the reason why they are being suspended
- Be told of any conditions that apply to the suspension
- Be told they are being suspended from all their employment with the Council if they hold more than one job
- Have the suspension confirmed in writing, normally within three working days

14 NOTIFICATION OF THE DISCIPLINARY HEARING

Having completed the investigation and carefully considered all the available evidence and concluded the employee has a case to answer in a disciplinary hearing, the Investigation Manager will write a statement of case in the form of an investigatory report. Having done that the Investigation Manager will discuss the findings of the report with the HR Adviser. If the case is one of gross misconduct, the Hearing Manager will be at Assistant Director Level or above.

The Hearing Manager will:

Carefully consider the content of the investigatory report in conjunction with the HR Adviser and notify the employee in writing of:

- The date, time and place for the disciplinary hearing
- The issues and allegations that will be considered
- Who will hear the case and who will present it from the management side
- The names of any management witnesses
- Arrangements for providing and exchanging documents, witness statements and the investigation manager's written report of the investigation, otherwise known as the 'case statement'
- If the case appears to be either;
 - gross misconduct; or
 - further misconduct following a final written warning;
- Ensure that the employee is informed that their job is at risk if it is
- Their right to be accompanied or represented
- Give the employee a copy of the Disciplinary Procedure

The employee is entitled to:

- Reasonable notice (at least 5 working days) in writing of the date of the hearing and other details as set out above
- The opportunity to be accompanied or represented by a trade union representative or work colleague
- Request a postponement of the hearing to another reasonable time within 5 working days after the original date (which can be extended by agreement) – only if their representative will not be available at the time proposed
- Submit evidence, documents and the names of witnesses relevant to their case.

Management will arrange for the employee to receive any additional documents and the final list of names of witnesses at least 5 working days before the hearing.

The employee, who is responsible for arranging their own witnesses to attend the hearing and, for co-ordinating and submitting their own documents; will arrange for management to receive the documents and information they themselves wish to submit at least 3 working days before the hearing.

15 DISCIPLINARY HEARING

The Hearing Manager will:

- Be responsible for the proper control and fair conduct of the hearing
- Conduct the hearing as a fact-finding process, ensuring good order and natural justice
- Ensure the parties are courteous to each other and that matters are directed to the Hearing Manager as chair of the hearing
- Decide on any dispute about procedure at the outset
- Allow each of the parties to:
 - Put their side of the matter;
 - Hear the case put by the other side;
 - Ask questions of the appropriate persons present at the hearing;
 - Bring evidence and call witnesses;
- Ensure that all the necessary facts are considered before making a decision on the case; if necessary by requiring other witnesses/evidence to be called/produced
- Carefully consider and evaluate the evidence presented by the parties at the hearing
- Decide the facts of the case on the balance of probabilities
- Consider how serious the offence is
- Take into account the advice given by the HR adviser present at the hearing
- Consider what management action (if any) to take to improve conduct, if appropriate
- Apply any appropriate disciplinary sanction, acting consistently in relation to similar offences of other employees and explain any conditions that apply to it
- Ensure that adequate notes are taken (not formal minutes) bearing in mind that a record of the hearing may be needed for an appeal or future Employment Tribunal case
- Be an impartial decision maker
- Confirm the decision in writing within 10 working days, give the reasons for it and set out any right of appeal.

The employee is entitled to:

- Be notified of the arrangements for the hearing as set out above
- The opportunity to be accompanied or represented by a trade union representative or work colleague (but not a legal representative)
- Give any explanation and to put their side of the matter
- Bring relevant witnesses to give evidence relevant to their case
- Question the evidence of the management witnesses
(Exceptionally, in cases where a management witness has stated in writing that s/he does not wish to attend the hearing and /or have their identity disclosed to the employee subject to disciplinary action because of genuine fear of reprisal/ intimidation, or at the Hearing

Manager's discretion in other special circumstances; the employee and/or their representative may not be permitted to directly ask questions of a particular witness or witnesses. In such cases the Hearing Manager may hear that witness's evidence in the absence of the employee and their representative, but they will normally have the opportunity to test the evidence, either through a shuttle system of written questions and answers or via video link).

The Head of Employee Relations will determine the most appropriate arrangements in the interests of a fair and reasonable process for the parties involved in the case.

- A letter confirming the decision, the key issues considered in reaching the decision and any right of appeal
- Appeal against any decision issued

The appeal must:

- Be on specified grounds as set out on page 15
- Set out in full the grounds of appeal
- Be lodged within 10 working days of the date the employee receives the decision letter.

16 APPEAL HEARING

The Appeal Hearing Manager will:

- Conduct the meeting to establish the facts, ensuring good order and natural justice
- Decide any dispute about procedure
- Consider the grounds of appeal and, if appropriate, reconsider the decision of the disciplinary hearing
- Allow each of the parties to:
 - Put their side of the matter
 - Hear the case put by the other side
 - Ask questions of appropriate persons attending the hearing, bring evidence and call witnesses
- Reject any ground of appeal that is not valid and explain the reason for this
- Reconsider the original decision and, if necessary, change the findings or reduce the severity of the management action
- Confirm the decision and the reasons for it to the employee and the relevant managers in writing within 10 working days.

The employee is entitled to:

- Reasonable written notice (normally 10 working days, but can agree less by mutual agreement) of the date of the hearing
- To be accompanied or represented by a trade union representative or work colleague
- Request a postponement to another reasonable time if the representative is not available at the time proposed
- Put the grounds of appeal and bring evidence relevant to their appeal
- Hear and be able to question the management case
- Written notification of the decision and reasons for it

The appeal will examine the grounds of appeal. It will not normally constitute a full rehearing and will be on one or more of the following grounds:

Procedure – failure to follow procedure had a material effect on the decision

The facts of the case – the decision is unreasonable based on the facts presented to the Hearing Manager

Sanction – no reasonable Hearing Manager would have come to such a harsh decision given the circumstances of the case

New evidence – Only new evidence that could not reasonably have been raised at the disciplinary hearing and the absence of which had a material effect on the disciplinary decision, can be considered. The appeal is not to be used to re-argue the case with different evidence.

17 DISCIPLINARY SANCTIONS

The following formal sanctions are available:

<u>WARNINGS</u>	<u>NORMAL DURATION</u>
First Written Warning	12 months
Second Written Warning	24 Months
Final Written Warning	36 months.

Consideration of Warnings in deciding the sanction:

Previous live written warnings maybe taken into account when deciding what level of sanction to give an employee. The previous written warning need not be for the same offence currently being decided upon, however the weight the warning is given should be dependent on its relevance to the current offence. Lapsed warnings should not be given any weight, unless a very short time has elapsed between the alleged offence and its expiry and the warning is for the same conduct as the alleged offence.

Dismissal:

Either in response to proven allegations of gross misconduct, or in response to proven allegations of misconduct whilst the employee has a final written warning on file, or in circumstances where a warning would be futile because there is no prospect of it securing an improvement in the employee's conduct.

Alternative Options to Dismissal

Demotion:

Having decided that dismissal is appropriate and consistent with how other employees in the Council have been treated in relation to the same or similar offences, the Hearing Manager may, in exceptional circumstances and, where there are substantial mitigating circumstances in place, consider demotion as an alternative option to dismissal. In order for the demotion to take effect, the employee must agree to the demotion as a sanction, otherwise dismissal will be the appropriate sanction.

The sanction of demotion will always be accompanied by a final written warning.

Final Written Warnings that may never removed

In exceptional cases where it is decided not to dismiss because of the particular circumstances of the case, e.g. very strong mitigating factors: nonetheless the misconduct may be so serious that the Council would be justified in never removing the final written warning. Such instances should be rare as it is not good employment practice to keep an employee permanently under the threat of dismissal. Where it does apply the Hearing Manager should specify the final written warning may never be removed, and any recurrence of serious misconduct will lead to dismissal. The Council undertakes to review such warnings on a three yearly basis from the date of issue.

18 EXAMPLES OF MISCONDUCT

It is impossible to list every type of act, which would result in disciplinary action for misconduct. The examples of misconduct below are given so that all Council employees have a general understanding of the type of act which would result in such action.

Repeated lateness for work and/or unauthorised absence from work

- Repeated failure to follow absence-reporting rules
- Negligence at work leading to injury or loss of or damage to Council or public property
- Refusal to obey a reasonable management instruction
- Misuse of the Council's IT systems during working time e.g. personal shopping, social networking
- Misuse of the Council's work time e.g. by misuse of the Council's email system, phones and mobile phones
- Acts of discrimination, harassment, bullying, the making of remarks, or verbal abuse against employees, Council Members, clients or members of the public on the grounds of race, colour, nationality or ethnic or national origins, age, use of mental health services, sex, marital status, religious belief, sexual orientation or disability. The display within the workplace of any literature or material that could affect the dignity of others
- Breach of the Code of Conduct for Employees or the Employee Handbook
- Inadequate standards of work due to negligence, deliberate failure to perform, or unprofessionalism
- Being disrespectful or engaging in abusive or threatening behaviour towards an employee, Council Member, client or member of the public
- Breach of the Code of Conduct for Employees by engaging in other business or additional employment without the express consent of the Council
- Failure to declare an interest, direct or indirect, in any Council contract, which has been or is, proposed to be entered into by the Council
- Failure to discharge obligations in accordance with statute or contract of employment
- Breach of Council policy, procedure or professional practice
- Breach of the terms of suspension.

19 EXAMPLES OF GROSS MISCONDUCT

It is impossible to list every type of act, which would result in disciplinary action for gross misconduct. The examples of gross misconduct below are given so that all Council employees have a general understanding of the type of act, which would result in such action

- 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, Council Members, clients or members of the public on the grounds of race, colour, nationality or ethnic or national origins, age, use of mental health services, sex, marital status, religious belief, sexual orientation or disability. The display within the workplace of any literature or material that could seriously and adversely affect the dignity of others
- Serious breach of the Code of Conduct or the Employee Handbook
- Grossly inadequate standards of work due to negligence or wilful failure to perform or serious lack of professionalism
- Serious negligence, which causes unacceptable loss, damage or injury
- Serious acts of insubordination
- Serious lack of care towards clients
- Being under the influence of alcohol or drugs at work
- Sexual misconduct at work
- Sexual offences
- Falsification of qualifications which are a statutory or essential requirement of employment or which allow the employee to succeed in getting another job with the Council or which result in additional remuneration
- Falsification of Council documents/forms e.g. attendance sheets, bonus sheets, subsistence and expense claims, application forms completed by staff, etc.
- Acceptance of bribes or other corrupt practices, such as improper use of an official position for private gain or the private gain of some other person
- Serious breach of financial regulations security regulations, standing orders or other corporate standards including fraudulent activity and /or financial irregularity

- Unauthorised use and/or disclosure of confidential information relating to the business of the Council, its Members and employees or the members of the public with whom it has dealings
- Unauthorised removal, possession or use of property belonging to the Council, its Members, an employee, client or member of the public
- Theft of monies or property belonging to the Council, its Members, an employee, client or member of the public, including Housing Benefit and Council Tax Benefit fraud
- Wilfully causing serious damage to the property of the Council, its Members, its employees, its clients or the public
- Serious breaches of safety policies or practices including deliberate damage to or misappropriation of safety equipment endangering other people
- Acts of violence including the physical assault of and serious threatening or abusive behaviour towards an employee, Council Member, client or member of the public
- Committing a criminal offence unconnected with the Council but which makes the employee unsuitable for continued employment with the Council. (e.g.) committing an offence of dishonesty against another public sector body such as another local authority, the Department of Work and Pensions or the National Health Service)
- Undertaking unauthorised paid work during paid Council time or during any period of sickness absence
- Unauthorised or inappropriate use of software and related IT equipment, including social networking sites, as well as processing, storing or transmitting discriminatory, offensive, obscene, sexually explicit or libellous material via email, the internet or the intranet
- Any action, which brings, or has the potential to bring the Council and its reputation into disrepute
- Any conduct which conflicts with, or detrimentally affects the Council's interest, or in any way weakens the confidence of the Council or the public in the employee. An employee's non repayment of overpayment of salary to the Council; or non repayment of overpayment of Housing Benefit or wilful non-payment of monies (for example, Council Tax or housing rent) owed by them to the Council, any other local authority or public authority would fall into this category.

GOOD PRACTICE MANAGEMENT GUIDANCE

20 RESOLVING DISCIPLINE ISSUES INFORMALLY

Minor cases of misconduct may best be dealt with by informal advice, coaching and counselling, rather than through the formal Disciplinary Procedure. Therefore counselling or informal corrective discussions should normally be held unless the offence is repeated or serious enough to warrant immediate use of the formal procedure. As the manager you need to ensure that you discuss work problems with the employee at an early stage with the objective of encouraging and helping them to improve. These discussions are usually informal one to one meetings.

During these discussions you must explain to the employee:

- What they are said to have done wrong
- The proper standard of conduct expected
- How the conduct will be reviewed and over what period
- That this stage is not part of the formal Disciplinary Procedure
- That it may be necessary to move to the formal Disciplinary Procedure if the employee's conduct does not improve within a specified period

21 Keeping your own notes

As the manager you should retain your own notes of informal corrective discussions with the employee, as they may be relevant if it becomes necessary to take formal disciplinary action against the employee at a later stage. You must keep these notes secure and confidential but not on the employee's personal file. Give the employee a copy of the notes.

Depending on the circumstances of the case you may decide to write to the employee to outline the discussions at the meeting, and to confirm the correct standards of work required and any other agreed actions. Do remember this is not a formal warning although a copy of the letter should be placed on the employee's personal file.

If, over time, your informal corrective discussions with the employee have not brought about sufficient improvement, then you should begin the formal Disciplinary Procedure promptly.

22 When is Suspension the Right Course of Action

Suspension is the right course of action if, having given the matter careful consideration, as the manager responsible for the suspension you are clear that it is unsuitable for the employee to continue at their normal workplace pending completion of the investigation and any disciplinary hearing (e.g. because relationships have broken down, or there are risks to the Council's property or to other staff or clients) or the employee's continued presence in their normal workplace may hinder the investigation, and you are satisfied there are no other possible appropriate alternatives to suspension such as temporary transfer to another place of work in the Council.

Where gross misconduct is alleged, suspension will normally be appropriate, but consideration may be given to alternatives to suspension.

You must always tell the employee in writing that:

- They are required to stay away from work (or to transfer to another workplace if appropriate) in order to protect the Council's interests and to enable the conduct of a smooth, fair and prompt investigation
- During the suspension they must not enter the workplace or make any contact with colleagues to discuss the case, without prior authorisation from the designated point of contact in the Council
- You are the point of contact with the employee during suspension
- Suspension is not a punishment and does not imply guilt
- Suspension is on full pay as long as the employee is available to assist with, or respond to the disciplinary process

If, as the line manager, you do not have the necessary authority to suspend, either refer the matter to the relevant more senior manager who does, or simply send the employee home and ask the more senior manager to authorise the suspension within one working day.

Managers should be just as prompt in lifting suspension if the investigation shows that it is suitable for the employee to return to their normal workplace pending completion of the disciplinary process and there is no risk of prejudice to the investigation, or the employee has no case to answer.

Employment Tribunals do not look favourably on suspensions which become unnecessarily protracted.

Review the suspension and record progress at monthly intervals.

Keep in regular contact with the employee.

Unless the case is particularly complex e.g. allegations of child abuse or major fraud, aim to conclude the investigation within 6-12 weeks of the first day they are suspended.

If you have good reason to extend this period for a specific and brief period you will need to make a case for this to a more senior manager by outlining:

- The reason for the delay
- The likely date that the investigation will be completed

23 THE INVESTIGATION

As the Investigation Manager you must:

- Devise clear terms of reference for the investigation
- Set out in writing to the employee the allegations against them which lead you to arrange the investigatory meeting and explain that there will be an investigation to establish the facts, during which they will have the opportunity to give their response to the allegations and their own account of events.
- Give sufficient time for the employee to prepare and obtain a trade union representative or work place colleague to accompany them to the meeting if they wish.
- Ensure the employee is aware that they can provide details of any potential witnesses who can support their account of events.
- Decide on the witnesses you want to interview. Meet with witnesses promptly before memories fade.
- Meet with the employee directly.
- Tell the employee that they can be accompanied when you are interviewing them.
- Take advice from an HR adviser, particularly if you feel the scope of the investigation is wide, or the issues are complex/contentious.
- Not involve more senior managers in the detail of the case if they are likely to be involved in hearing the case.
- Arrange for a note-taker to be present at any meeting where possible to ensure you can carefully listen to any explanations being offered and to respond accordingly. Ensure the note-taker is informed of the confidential nature of the meeting. The notes of the investigation meeting with the employee under investigation can be made available to them and to their representative.

Setting out the allegation

- Set out a clear description of what the employee is said to have done
- Avoid general statements
- Be specific, give times, dates, names etc
- Specify which of the Council's rules or standards have been broken
- Say if the allegation amounts to misconduct or gross misconduct
- If the employee has any current warnings on file, tell them the effect these may have on the decision arising from the disciplinary hearing.
- Include only one alleged action or omission per allegation

The employee should be given sufficient detail of the allegation/s against them in advance of any disciplinary hearing to allow them the opportunity to prepare their case in advance. The employee is entitled to know not only what it is

alleged they have done before a disciplinary hearing, but also the basis for it, i.e. the reason for taking disciplinary action against them

Take statements

The most helpful statements are:

- Taken soon after the alleged incident
- Typed up later for ease of use
- Signed and dated

Collect evidence

Gather all the evidence available including names of witnesses, any written evidence including copies of relevant records, incidents forms, and letters of complaint. Keep original copies of documents that you will use in evidence. Check the employee's personal file for any current warnings.

Dealing with witnesses

As the Investigation Manager you must:

- Ensure all witnesses provide a statement or account of the events
- Prepare in advance your questions for the witnesses
- Inform the witnesses that you are conducting a disciplinary investigation, refer them to the procedure and inform them of their rights and responsibilities
- Emphasise the confidentiality aspects of the investigation and that you do not expect them to discuss any aspect of the investigation with other colleagues. However, they can discuss the case with their trade union representative or a representative from the Human Resources. as appropriate
- Inform the witnesses that they should raise any questions or concerns directly with you
- Produce a written statement of the key points discussed and provide the witness with a copy
- Notify the witnesses that they may be required to be a witness at a disciplinary hearing if necessary and they will be briefed on the process and supported throughout
- Acknowledge that the witnesses may be feeling nervous and anxious
- Ensure the witnesses are notified of the time and venue of any hearing, that a room is available for them to sit in, that they are briefed and prepared on the process and their involvement at the hearing
- Ensure witnesses are kept up to date with the progress of the investigation at regular intervals, whilst maintaining confidentiality
- Subject to the conditions of confidentiality inform the witnesses of the outcome of the investigation once completed, e.g., the investigation is now complete and appropriate management action has been taken, or

that the case is being referred to a disciplinary hearing which they will be required to attend as a witness

Conducting the investigation meeting:

As the Investigation Manager you must;

- Introduce those present and explain roles. Remind the employee and any others present of the purpose of the meeting and that it is a formal meeting in accordance with the Disciplinary Procedure
- Check the employee has a copy of the Disciplinary Procedure
- If the employee is unaccompanied confirm that they are prepared to proceed
- Explain that your role as Investigation Manager is to collect the facts, conclude the findings and make a decision as to whether, or not, there is a case to answer under the Disciplinary Procedure
- Tell the employee and any others present that the meeting is confidential and whatever is discussed should not be shared with other colleagues
- Inform the employee that you will be asking a number of questions and that they will have the opportunity to fully respond to the complaint and/or allegation/s and provide you with their own account of events
- Remind the employee of the complaint/allegation/s. Ask them to provide their own account of events and probe if not happy with the explanation being offered. If any written complaints or witness statements have been received show them, if you have not already done so. Give them the opportunity to fully respond
- Inform the employee that they can ask questions for clarifications, present evidence and name any witnesses to support their account of events
- Tell the employee that there will be a summary of the key points discussed at the meeting and that they will be provided with a copy
- Ask the employee if they have any questions or are unsure about any aspect of the process
- Work through each allegation giving the employee the opportunity to respond to each one
- Listen carefully to any explanations given and respond accordingly. It is important that you seek clarification where necessary and probe areas of uncertainty. Check if there are any special circumstances that need to be taken into account
- Summarise and conclude the key points during the meeting if you find this helpful
- Call for an adjournment if necessary, this will allow time to reflect and think about the next steps

- If counter allegations are made, inform the employee that they will be addressed at the end of the meeting
- Inform the employee of the next steps and the approximate time-scale
- Discuss your findings with an HR adviser, particularly if you feel the scope of the investigation is wide, or the issues are complex or contentious

Taking stock and assessing the evidence

- At the conclusion of the investigation consider the following:
- Has the employee broken the rules?
- Are you applying the rules consistently?
- Is it reasonable to expect the employee to know that their conduct was wrong?
- Is there a case to answer i.e. do you have reasonable belief that the employee has done wrong and should the matter proceed to a disciplinary hearing?
- Is the case about misconduct or incapability (For misconduct use the Disciplinary Procedure for Incapability use the Council's Process for Managing Employee Performance)
- Is the case one of misconduct or gross misconduct?

24 DISCIPLINARY HEARING

A model procedure for conducting the Disciplinary Hearing is set out in Appendix 1 at page 30.

The Investigation Manager's Preparation for the disciplinary hearing

If, following your investigation, you consider that there is a case for disciplinary action to reflect the seriousness of the behaviour you will write a statement of case in preparation for a disciplinary hearing.

The statement of case must include:

- Background on the employee, e.g. start date, job title and role and what conduct has been like prior to this incident
- Full details of the complaint and/or allegations, including all evidence for and against the allegations and relevant documentation
- A summary of the scope of the investigation, including the sequence of events in order of occurrence. You will need to attach any written documentation
- A conclusion and summary of the findings including any witness statements
- A summary of the concerns and impact to the service
- Your management recommendations

- You will ensure an HR adviser reads through the statement before it is sent to the employee. to ensure it is compliant with good practice
- Having consulted with the Assistant Director Human Resources, the HR adviser will arrange a Hearing Manager who will decide on the date and venue for the hearing and will notify all parties of the date at the earliest opportunity.
- If you are relying on any witnesses to support your case you must arrange for them to be present to give evidence at the hearing. The normal process is for you, as the Investigating Manager, to call in the witnesses during your presentation of the Management Statement of Case and to ask them questions based on their statement.
- You should prepare questions in advance of the hearing and brief the witnesses and explain the process to them. It is important that you inform the witnesses that the employee who is being investigated will be able to ask them questions but that it will be in a supported and controlled environment.

Given the employee has a legal right to be accompanied or represented in a disciplinary hearing it is advisable to consult the employee and their representative before setting the date for the hearing.

The employee is entitled to receive from the Investigation Manager:

- Reasonable notice of the hearing, usually 10 working days, unless the employee is willing to agree to a lesser notice period in consultation with their representative as appropriate
- Information about the deadlines for submitting evidence and declaring witnesses (normally 5 working days before the hearing for management, and 3 working days for the employee)
- A copy of the Management Statement of Case with a letter confirming the date, time and venue for the hearing, a reminder of their entitlement to be accompanied or represented, and a statement that a disciplinary penalty may result if the allegations are substantiated. This must be done in sufficient time to allow them to prepare their own case before the hearing. A copy is also sent to the employee's representative.

The aim of notifying the employee is to give them adequate information so that they can:

- Understand the allegation and respond to them
- Understand how serious the matter is
- Prepare for the case
- Arrange to be accompanied or represented
- At least three working days before the hearing the employee must submit relevant documents that they will be referring to during the hearing, the name(s) of any witnesses and their representative. Should this timeframe not be met, the manager responsible for hearing the

case may elect, to either proceed with the hearing, defer the hearing to some later date, or restrict the hearing to those matters already raised and not allow the introduction of any additional documents or witnesses by the employee, if they consider it reasonable to do so.

The Hearing Manager should prepare in advance of the hearing by:

- Reading through the Disciplinary Procedure (and Code of Conduct if relevant)
- Reading the management statement of case and witness statement thoroughly
- Taking time to read and consider any documentation the employee has provided before the hearing
- Making a note of any questions they would like to ask at the hearing or to seek any points of clarification

25 HEARING THE CASE – THE DISCIPLINARY HEARING

Disciplinary investigations and disciplinary hearings are separate processes under this policy. This means that the same manager may not conduct the investigation and hear the disciplinary hearing of the same or related case. But, both the disciplinary investigation and disciplinary hearing form the total investigation into the allegations against the employee.

As the Investigation Manager you are responsible for presenting the management statement of case at the disciplinary hearing.

A disciplinary panel will hear the case. Normally the disciplinary panel will consist of a manager with authority to chair the hearing (the Hearing Manager) and make the decision and another officer (normally an HR adviser to advise on matters of policy, procedure and precedent. The Hearing Manager will be responsible for allocating a note taker.

The Hearing Manager:

- Will not hear any case in which they are a witness, or conducted the disciplinary investigation
- Has discretion to call expert witnesses or other witnesses, especially if they need advice on technical or specialist issues. The role of the expert witness will be fully explained to all the parties. Witnesses can also be questioned by the employee side.

26 CRIMINAL OFFENCES – OUTSIDE OF WORK

In criminal cases it is not good practice to dismiss an employee purely because s/he has been charged with, or convicted of a criminal offence relating to a matter outside of work.

Instead as Investigation Manager you must:

- Carry out your own investigation (this may mean contacting the police or other external organisations to answer questions and/or obtain documentation of their investigation and evidence in respect of the same allegations against the employee)
- Assess the available facts
- Evaluate and use any information or evidence supplied by external sources
- Treat the matter as an internal issue that is separate from any police investigation
- Decide whether the employee's alleged misconduct affects their suitability for continued employment; has an adverse impact on relationships with colleagues/service users and/ or, has the potential to damage the Council's reputation. If so, follow the normal Disciplinary Procedure
- Determine what is the impact of the criminal offence on the employee's colleagues, and /or service users?

Does the criminal offence actually (rather than potentially) damage the Council's reputation?

Generally it is not advisable to delay the Council's disciplinary process until after the conclusion of the criminal proceedings unless the court hearing is imminent or where the police make a compelling case to do so.

The correct approach is usually to start the Council's disciplinary process in the normal way, and proceed with the hearing on the basis of the known evidence and circumstances.

27 DISCIPLINARY ACTION AGAINST TRADE UNION REPRESENTATIVES

Trade Union representatives are subject to the same standards of good conduct as other staff. But to avoid any claim of victimisation of a trade union official, in all cases of potential disciplinary action against a trade union representative, no disciplinary action should be taken until the circumstances of the case have been discussed with a full time official (e.g. a Regional Officer or full time local branch official) depending on the circumstances of the case.

28 AVOIDING OR DEALING WITH DELAY /POSTPONEMENT

Where an employee is unable to attend a hearing due to sickness or other legitimate reason, s/he will be entitled to be represented in their absence. Where an employee presents a medical certificate which states that the employee is not fit to work, this may not be sufficient to amount to a good reason not to attend a disciplinary hearing, unless the fit note specifically states the employee is not fit to attend a disciplinary hearing.

Alternatively you may wish to consider a short delay if the employee is likely to be able to attend the hearing within a reasonable period. It is advisable to discuss the case with the HR adviser and to determine whether it would be

appropriate to refer the employee to be seen in the Occupational Health Service.

Where the employee is not represented in their absence and provides no good reason for non-attendance, as Hearing Manager, you may reserve the right to proceed in the employee's absence.

Where you decide to grant a postponement because the employee has provided a legitimate reason for non-attendance, you will normally grant only one postponement.

When notifying the employee of a reconvened hearing, as Hearing Manager you should:

notify the employee that you reserve the right to proceed with the reconvened hearing in their absence, if they fail to attend without good cause.

Inform the employee that if the hearing does proceed in their absence any submissions made on the employee's behalf by a representative, or made by the employee in writing or on the telephone will be considered.

APPENDIX 1

29 MODEL PROCEDURE FOR THE HEARING AND ORDER OF EVENTS

Introduction	The Hearing Manager introduces those present, explains the purpose of the hearing and outlines the procedure for the hearing.
Employee Admits Allegation	The Hearing Manager will ask the employee if they admit to the allegation/s. If the employee does, s/he may present any mitigating circumstances. The Investigation Manager will then have the opportunity to respond accordingly; following which the Hearing Manager may proceed to the decision stage
Management Presentation	The Investigation Manager states the management case, and is questioned on it by the employee's side, then by the Hearing Manager, and the HR adviser
Management Witnesses	The Investigation Manager questions own witnesses in turn. Each one is questioned by the employee's side and then by the Hearing Manager and the HR adviser. Any witness shall withdraw after giving evidence and answering any questions put to them.
Employees Presentation	The employee's side states their case and is questioned on it by the Investigation Manager and then by the Hearing Manager and the HR adviser.
Employee's Witnesses	The employee's side questions own witnesses in turn. Each is questioned by the Investigation Manager and then by the Hearing Manager and the HR adviser. Any witness shall withdraw after giving evidence and answering any questions put to them.
Re examination	At the Hearing Manager's discretion, a party may be allowed to ask further questions of their own witnesses arising from the questioning of the other party.

Summaries

After an adjournment (if needed) each side (management first) takes turns to summarise the case without introducing new evidence

Decision

Normally the Hearing Manager will adjourn to consider the case, consult with the HR adviser, then decide on the appropriate sanction; recall the Investigation Manager and the employee's side and give the decision, although this may not always be practical, particularly where the case is complex, or, there is a large volume of documentary evidence to consider. In any event, the Hearing Manager will provide the employee with the decision in writing within 10 working days of the hearing. The Hearing Manager retains the right to recall witnesses during the deliberating process if further clarification is required. If this does happen, both sides should be recalled into the hearing.

30 MAKING AND GIVING THE DECISION

Where possible the Hearing Manager will give the decision on the day of the hearing and will call for a brief adjournment before reaching a decision and:

- Come to a clear view about the facts
- If the facts are disputed, decide on the balance of probabilities what version of the facts is true

Before deciding the penalties consider:

- The seriousness of the offence
- The individual's disciplinary record –previous warnings [if relevant] and length of service
- Any mitigating circumstances
- Whether the proposed penalty is reasonable in the circumstances
- The need to ensure consistency of treatment of employees

Reconvene the hearing to:

- Clearly inform the employee of the decision and the penalty.
- Explain the right of appeal and how it operates.
- In the case of a written warning, explain what improvement is expected, how long the warning will last and what the potential consequences of a failure to improve may be. A reconvened hearing may not always be practical, particularly where the case is complex, or, there is a large volume of documentary evidence to consider. In any event, the Hearing Manager will provide the employee with the decision in writing normally within 10 working days of the hearing.

31 THE BALANCE OF PROBABILITIES

As the Hearing Manager and decision maker you will take responsibility for deciding the facts of the case on the balance of probabilities. You do not have to be one hundred percent certain of what actually happened, but you must be at least fifty one percent certain. You are entitled to prefer one version of events to the other, provided that you believe it more likely to be true.

Ask yourself:

- Which version of events do you genuinely believe?
- Why do you prefer that version?
- Is your preference reasonable, what is the evidence to support it, what is the evidence against your preference?
- Could you justify it to others?

- If you decide that the case against the employee is proven, consider separately what penalty to apply.

32 CHECK LIST

As the Hearing Manager you should consider the following factors when deciding on the disciplinary penalty:

- Has there been a reasonable investigation?
- Has the employee had reasonable notice of the matters to be considered at the hearing?
- Has the Disciplinary Procedure been reasonably followed?
- Have you paid sufficient regard to any explanation offered by the employee?
- Do you genuinely believe that the employee has committed the alleged misconduct?
- Do you have reasonable grounds for that belief on the balance of probabilities, given the evidence you have heard?
- Does the Disciplinary Procedure indicate what the likely penalty will be?
- Is the misconduct serious enough to warrant the sanction you are considering?
- Have you given due consideration to any mitigating circumstances?
- Is the decision appropriate having regard to all the relevant facts and consistent with how other employees in the Council have been treated in relation to the same or similar offences?
- Is the proposed sanction something that the employee knew was a possible outcome?
- What penalty has been imposed in similar cases in the past?
- Are there any special circumstances which have a bearing on the severity of the penalty decision:
- Does the employee have a current disciplinary record (i.e. live warnings)?

- Is there a pattern of behaviour?
- Has the employee apologised; is unlikely to repeat the offence; learnt from their mistakes and can be trusted in the future?
- On the other hand is the employee defensive, non apologetic; cannot see what the problem is, suggesting they cannot be trusted not to re-offend?
- What is the employee's general record – work experience, position and length of service with the Council?
- Is the sanction reasonable in all the circumstances?

33 SANCTIONS

Written Warnings

As the Hearing Manager you should use written warnings with the aim of securing an improvement in conduct, telling the employee directly and formally what standards of conduct are required and what action you will take if the employee is involved in any further misconduct.

You may want to give a **first warning** where:

- Informal corrective discussions have not effected the required improvement, and/or
- For offences where the matter warrants formal rather than informal approach

You may give a **second written warning** where:

- The employee has failed to improve to the required standard in response to the first warning
- You consider that issuing a second written warning as part of a sequence of warnings may be a means to assist the employee in improving
- Where the employee has committed a further offence related or unrelated within the time scale specified in the first warning; or
- Where you consider that a first warning would be too lenient a penalty, but a final written warning would be too harsh e.g. accumulation of offences

You may give a **final written warning** where:

- There has been a failure to improve conduct sufficiently in response to a second written warning
- There has been a further offence related or unrelated during the life of the second written warning
- You consider the offence is very serious

Although managers often apply warnings in sequence, you do have discretion to apply the level of warning warranted by the seriousness of the case. You may also set a maximum period for a warning to remain in force giving you the authority to review and de-activate the warning before the end of the period, if the conduct becomes very satisfactory.

There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse very soon thereafter. Where a pattern emerges you may bear the employee's previous disciplinary record in mind in deciding on the level of warning to apply and consequently how long any warning should last.

Dismissal

Dismissal can be the appropriate sanction where either an allegation of gross misconduct is proven, or where the employee has committed a further act of misconduct (as specified in page 17 of this procedure), during the life of a final written warning, or in circumstances where a warning would be futile because there is no prospect of a warning securing an improvement in the employee's conduct e.g. an intransigent employee unwilling to change his/her conduct even after being warned at the hearing that dismissal would be a likely consequence of such intransigence.

An Alternative Option to Dismissal

Demotion

This sanction amounts to a downgrading of the employee and you can only consider this sanction where the disciplinary offence would normally warrant dismissal, but there is substantial mitigation, for example,

- The employee has an excellent work record and the offence is out of character, or
- Some other substantial mitigating circumstances or reason.

Demotion is not an opportunity to export problems relating to the employee's conduct to other managers outside the employing service area.

Demotion cannot take place without the agreement of the employee unless the Council has a clear right to demote the employee, the employee because it is set out in the employee's contract of employment. If the employee does not accept the demotion, or the Council has no contractual right to demote the employee then dismissal is the appropriate sanction. If the employee accepts demotion, or, if the Council has a contractual right to demote the employee then s/he must also be issued with a final written warning.

Before reaching a decision to relegate the employee, you must check there is a known suitable vacancy into which the employee can be downgraded, normally in the same service area, and discuss the matter with the appropriate manager. You must ensure that the demotion can be achieved in a reasonable timescale, that the matter is not allowed to drift, and that the employee has the range of skills to do the job they are demoted to. Importantly, the employee is entitled to receive appropriate induction and training in the new job. The employee will receive a reduction in grade and salary conditions in accordance with the new job.

The employee must be told the reason for the demotion and, if possible, how long it will be before they can apply for, or be considered for promotion. This would normally be in line with the duration of the final written warning.

34. NOTICE IN CASES OF DISMISSAL

Dismissal for gross misconduct will always be 'summary dismissal' i.e. there is no notice period. Dismissal other than for gross misconduct will be on contractual notice, or summary dismissal with pay in lieu of contractual notice.

Confirming the outcome of the Disciplinary Hearing

As Hearing Manager you will confirm the outcome of the disciplinary hearing to the employee in writing, normally within 10 working days of the date of the hearing. Where you have decided on disciplinary action, you must confirm to the employee in writing:

- The nature of the misconduct found
- The penalty
- The reasons for the penalty
- The employee's right of appeal
- To whom the right of appeal should be addressed
- Where the penalty is a written warning the letter must confirm details of:
 - The duration of the warning and the implications of any further action resulting in proven misconduct,
 - The improvement in conduct expected. As far as possible set out specific objectives so that the employee is clear about the required standard of conduct expected of them.
 - The likely consequences of any further misconduct which in the case of a final written warning must include dismissal as a likely consequence.

35. HEARING AN APPEAL

The appeal must be in writing and must be clear and specific about the grounds for appeal. Appeals can be raised on one or more of the grounds set down on page 15. The right of appeal can be disallowed where the letter of appeal does not meet these requirements.

One appeal is allowed at each stage of the formal disciplinary procedure. It does not apply to informal corrective discussions or counselling meetings.

The appeal must be lodged within 10 working days of the employee receiving the letter confirming the disciplinary decision.

The employee must provide to the manager who conducted the disciplinary hearing and to the appeal panel at least 10 working days prior to the appeal hearing, any new evidence raised as a ground of appeal.

The manager who conducted the disciplinary hearing and the employee will provide each other and the appeal panel with any documents to be used by them and the names of any witnesses to be called by the seventh working day before the appeal hearing.

The employee will be given reasonable notice (normally 10 working days) notice of the date of the appeal hearing.

The format of the appeal hearing will be similar to the disciplinary hearing as set out on page 30 except that the appellant will present their case first.

For appeals against sanctions other than dismissal, the appropriate senior manager will chair the meeting with an HR adviser present. This manager will not have been previously involved, directly or indirectly with the case. The senior manager's decision will be final.

For appeals against dismissal, the appeal will be heard by a director, or an assistant director with the director's delegated authority to hear the appeal with an HR adviser present. Its decision will be final. In the event the dismissal decision is overturned at the appeal hearing and the employee is either reinstated or reengaged, continuous service will apply.

The panel hearing the appeal will be entitled to refuse to consider documentation and/or hear witnesses presented or called by the parties, which it considers are not relevant to the grounds of appeal.

The appeal hearing will not normally constitute a full re-hearing of the case. It will only address the specific grounds of appeal set out in the employee's letter of appeal.

The manager presenting the management case at the appeal hearing will be entitled to introduce his/her own new evidence in response to any new evidence introduced by the employee.

The Appeal panel has the authority to:

- Confirm the disciplinary decision.
- Impose a lesser sanction within the available range of sanctions as specified.
- Overturn the disciplinary decision.

36 WRITTEN RECORDS

Managers should make and retain all relevant records. It is advisable to retain records of the outcome of informal action taken in accordance with this procedure. It is essential to maintain full written records regarding formal disciplinary action. Records should be arranged chronologically (earliest to latest) and include correspondence relating to:

- The nature of the disciplinary action
- A copy of the written allegation/s
- Details of the disciplinary investigation and the outcome
- Details of any suspension
- Details of suspension reviews
- Details of the disciplinary hearing and the outcome
- Whether an appeal was lodged
- Outcome of any appeal
- Any follow up developments.

Once the disciplinary process is completed the respective managers responsible for investigating the disciplinary matter, hearing the disciplinary case and for hearing any appeal should send the records to the HR adviser providing advice on the case, to be retained in accordance with HR record keeping practices.

The managers should take notes at all disciplinary meetings for their own purposes sufficient to enable them to make key decisions.

Such records must be treated in the strictest confidence and stored in accordance with the requirements of the Data Protection Act 1998. However, depending on the circumstances of the case certain information may need to be withheld, in order, for example, to protect a witness.

All letters confirming the outcome of the disciplinary hearings and appeals will be held on the employee's personal file. Lapsed warnings will be retained on the employee's personal file. Once the duration for the warning has expired the lapsed warning cannot be relied on to support any future allegation of misconduct, unless a very short time has elapsed between the alleged offence and its expiry and, the warning is for the same conduct as the alleged new offence. However, lapsed warnings can be relied on to refute any claim for leniency on the basis of the employee's assertion of having good character and a previous unblemished disciplinary record.

37 MONITORING AND REVIEW

The Council will consistently monitor the application of the Disciplinary Procedure and regularly evaluate its effectiveness against key performance indicators. The procedure will be reviewed, updated and amended as necessary. Employees and the recognised trades unions will be consulted on any proposed changes to the procedure.

38 LEVELS OF AUTHORITY FOR ACTION

