

Disciplinary Policy, Procedure and Guidelines



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Disciplinary Policy

1. Introduction

- 1.1 The purpose of the disciplinary policy and procedure and disciplinary rules is to help and encourage employees to achieve and maintain acceptable standards of conduct, efficient and safe performance of work and to maintain satisfactory relationships between employees and the Council.
- 1.2 The policy and procedure has been drafted in line with the ACAS Code of Practice on Disciplinary and Grievance procedures (April 2009), adhering to the basic principles of fairness, reasonableness and transparency.
- 1.3 Template letters **are available on the Council's Intranet site to complement the** procedure. These letters will need to be adapted to individual circumstances and managers should seek advice from the Human Resources Employment Relations Team.
- 1.4 The Council has a responsibility to maintain the highest standards of employee conduct. All employees are expected to comply with the Code of Conduct for Employees, Council policies, their conditions of service, and appropriate legislation.
- 1.5 Managers have the prime responsibility for the day-to-day management and discipline within their teams.
- 1.6 Managers are advised that in order to avoid possible cases of unfair treatment or discrimination, they should seek advice and assistance from HR Employment Relations if they have not been previously involved.

2. Scope

- 2.1 This policy applies to employees at all levels of the Council, up to and including Heads of Service/Operational Directors/Corporate Directors. It excludes employees engaged at or based at Schools, who may wish to adapt the policy for their own use.
- 2.2 This policy and procedure does not cover issues of poor performance, which should be dealt with using the [Council's Capability Procedure](#).
- 2.3 This policy and procedure should not be used where employment is terminated in circumstances other than serious indiscipline such as:

At the end of a predetermined limited or fixed term contract for which an employee has been specifically engaged;

- On the grounds of redundancy;
- Where following a period of probationary service, dismissal arises from unsuitability for confirmation of appointment;
- On the grounds of capability due to ill-health.

3. General Policy Principles

- 3.1 Wherever possible, potential disciplinary issues and minor breaches of discipline will be resolved informally, as part of the day to day management of employees, without recourse to formal action. This should be the normal approach taken, except in cases of serious or gross misconduct or where a series of minor breaches of discipline have occurred, warranting formal action.
- 3.2 Informal discussion and/or counselling may be used to finding solutions to identified problems, so that any shortcomings in conduct can be remedied. A brief note of any meetings should be kept by the manager for reference purposes and a copy given to the employee.
- 3.3 At every stage in the procedure the employee will be advised of the nature of the complaint and given the opportunity to prepare and present his or her case before any decision is made.
- 3.4 At all formal stages of the procedure the employee will have the right to be assisted by a representative of a Trade Union or work colleague. There is no right to be accompanied during informal discussions.
- 3.5 An employee will have the right to appeal against any formal disciplinary sanction taken.
- 3.6 The procedure **may be implemented at any stage if the employee's** alleged misconduct warrants such action.
- 3.7 An employee will only be suspended if absolutely necessary (e.g. where the allegations are so serious as to warrant suspension or for the protection of the employee and/or others). Suspension will always be on contractual pay. A suspension should be reviewed at least every two weeks with a view to ending it as soon as possible.
- 3.8 No formal disciplinary action, including investigation, will be taken against a union or employee representative until the circumstances of the case have been discussed with a full-time official of that union.
- 3.9 No parties involved in a disciplinary process should disclose any confidential information in relation to the disciplinary case, except as required or permitted in accordance with this procedure. Any person who does so may themselves be subject to disciplinary action.

4. Criminal offences inside and outside of work

- 4.1 Criminal charges or convictions for offences inside or outside of employment are not automatic reasons for disciplinary action or dismissal. ER advice should be sought before any investigation is carried out.
- 4.2 Misconduct should not be referred to the police without the most careful consideration and a genuine and reasonable belief that the allegation, if established, could properly be regarded as criminal. It is important to consider the strength of the allegations. The manager must contact the Employment Relations Manager before proceeding with a referral to the police.
- 4.3 The employee should be written to and given an opportunity to respond to the allegations. Managers will need to consider whether it is necessary to suspend the employee pending the investigation of the allegations.

- 4.4 Court proceedings are separate to the internal disciplinary process. It does not automatically follow that employees found guilty of an offence in court will be subject to disciplinary action. Similarly, employees found not guilty of an offence in court may still be subject to disciplinary action.
- 4.5 It is important to remember that there is a different standard of proof required at court. In court, the matter must be proved beyond reasonable doubt whereas in a disciplinary case, the matter is determined on the facts presented and the balance of probabilities.

Disciplinary cases relating to potential criminal offences including fraud, theft and financial irregularities

- 4.6 Where an employee is suspected of committing a financial irregularity or theft in **contravention of the Council's Disciplinary** procedure and Financial Standing Orders, the manager should refer to the [Council's Crime Response Plan](#) for specific guidance on the procedure to be followed. This is to ensure that any subsequent criminal prosecution is not compromised.
- 4.7 Whenever possible, before taking any action, the manager should consult with the relevant Departments, particularly Internal Audit, Human Resources and the Borough Solicitor & Secretary so as not to breach the relevant legislation or compromise the investigation.
- 4.8 In the event that the person being interviewed confesses or begins to confess to a criminal offence then a caution should be given. Please refer to the **Council's** Crime Response Plan for specific guidance on the procedure to be followed, including how and when to give a caution.

Disciplinary cases where ICT irregularities are suspected

- 4.9 If there are concerns that there has been a serious misuse of ICT facilities, in breach of **the Council's [E-mail and Internet Policy](#)**, the same principles in relation to any potential investigative work apply but there is also a specific procedure to follow. This procedure **is part of the Authority's overall** Crime Response Plan.

5. Raising grievances in the course of disciplinary action and proceedings

- 5.1 Employees cannot 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.
- 5.2 Where a grievance is raised during the disciplinary procedure, the relevant Head of Service/Operational Director (if necessary in consultation with the Head of Human Resources) will take a view of the grievance and determine how it should be dealt with.
- 5.3 In exceptional circumstances the disciplinary procedure may be suspended for a short time to investigate a grievance concerning issues that are directly relevant to the disciplinary procedure. This will only occur where there is sufficient information to support a complaint of serious concerns about a fundamental part of the disciplinary process.

- 5.4 A suspension of the process is to allow a preliminary consideration of the grievance by an independent manager i.e. one not involved in either the complaint or the disciplinary case. This manager should consider all inter-related issues before deciding whether the disciplinary process or a full investigation of the complaint should take precedence. If the grievance and disciplinary are inter-related a single manager may hear them concurrently.
6. Employees who go on sick leave in the course of disciplinary proceedings
- 6.1 The Council recognises that it can be stressful to be notified of a disciplinary investigation or to be called to a disciplinary hearing and that an employee may go off sick with stress and obtain a Fit Note from their GP. However, the Council has an obligation to conduct a thorough investigation into alleged misconduct and to proceed with investigations and disciplinary hearings promptly and without undue delay.
- 6.2 During the disciplinary process, the Council will look at the timing of any absence and the stated reason. Support is available for employees who are subject to disciplinary proceedings and it will therefore not be considered acceptable for an employee to **go off with 'stress'** or any other related medical condition as soon as they are aware that they have been made subject to disciplinary proceedings.
- 6.3 An employee who is off sick will still be required to co-operate fully in respect of the **Council's Disciplinary Procedures**, which includes attendance at investigation meetings and disciplinary hearings whilst they are off sick.
- 6.4 Employees who are off sick must remain contactable. The manager must verify with the employee their telephone and home e-mail contact details. (Note: e-mail will be the primary method of written communication to the employee whilst on sickness absence). Managers must use the [Egress](#) facility if communicating confidential **matters to employees' private email addresses**.
- 6.5 Employees who are off sick are not being asked or required to return to work and therefore a letter or Fit Note from their GP may not be acceptable evidence of unfitness to attend an investigation meeting or a disciplinary hearing.
- 6.6 **If an employee's illness is physical then a reasonable time for postponement of an investigation meeting or disciplinary hearing will be given, but unless the illness is very severe, normally a postponement of 5 working days will be permitted.**
- 6.7 In the absence of medical opinion that an employee is mentally unfit to attend a hearing (i.e. cannot understand what is going on or is unable to discuss the matters in hand with their representative) then they will be expected, after one postponement, to attend an investigation meeting and/or disciplinary hearing.
- 6.8 Everything will be done to accommodate any reasonable requests for breaks etc. in the course of investigation meetings and disciplinary hearings.
- 6.9 Employees who are off sick may also be given one or more of the following options, as appropriate:
- sending a recognised Trade Union representative or a work colleague (currently employed by the Council) in their place
 - sending written submissions
 - attending at a neutral location (not on Council premises)

- 6.10 If an employee is unable or unwilling to attend an investigation meeting or disciplinary hearing after one postponement, the Council will proceed in the **employee's absence and make** a decision on the evidence available at that time.
- 6.11 If an employee is advised of a disciplinary investigation or hearing and subsequently goes off sick with stress or any psychological condition (which is not pre-existing), the **employee's manager should** notify their Head of Service/Operational Director and Employment Relations Advisor. If an employee subsequently fails to attend disciplinary investigation meetings and/or disciplinary hearings, (after one postponement) or fails to give reasonable co-operation with the disciplinary process, the Head of Service/Operational Director will have the discretion to withdraw occupational sick pay.
7. Allegations concerning a Trade Union Representative
- 7.1 Where allegations concern a Trade Union representative, the case must be discussed at the earliest opportunity with the Branch Secretary/Convenor or full time official, who should be invited to accompany the individual to any meetings under the procedure. Advice must be sought from the Employment Relations Manager before commencing any investigation or action under the procedure.
8. Allegations concerning the abuse of children or vulnerable adults
- 8.1 Where employees **undertake 'regulated activity'** as part of their job, as defined by the Disclosure and Barring Service (DBS) the Council has an obligation to notify the DBS of any cases of alleged abuse of children or vulnerable adults.
- 8.2 A referral will not be made until an investigation and evidence gathering has been undertaken by the manager and/or an Employment relations Adviser. This is in order to establish if the allegation has foundation.

Disciplinary Procedure

1. Informal stage

- 1.1 An initial informal discussion is often more effective in dealing with minor conduct issues than a formal disciplinary investigation and hearing. **If the employee's** manager has concerns about conduct they should meet with the employee to discuss their concerns.
- 1.2 A prompt, informal discussion can often prevent the repetition of minor misconduct and stop it from escalating into more serious misconduct.
- 1.3 The employee will be told of the expected standards of conduct required, and given an opportunity to explain their conduct and any mitigating circumstances. They should be advised when the matter will be reviewed again, which should generally be within three months. Should further problems arise before the review date, the manager may take further action before the timescale has elapsed. The employee should be made aware that this could happen.
- 1.4 Notes of the discussion should be written for reference purposes and retained by the manager and a copy given to the employee. The notes should detail:
 - The nature of misconduct discussed;
 - The required standard of conduct;
 - The employee's comments made at the meeting;
 - Any training, support or additional supervision that is to be provided;
 - The likely consequence of further breaches of conduct.
- 1.5 Informal discussions may not always be the most appropriate action. Where a manager is uncertain as to whether or not informal action is appropriate they should seek advice from their HR Employment Relations Adviser.
- 1.6 Any case involving fraud, a criminal act, corruption and/or deliberate misuse of Council equipment will not be considered minor for the purposes of this procedure.

2. Formal stage

2.1 Investigation

- 2.1.1 A full and impartial investigation must be undertaken if the manager considers:
 - Informal discussion is inappropriate in view of the potential severity of the allegation/incident
 - Informal discussion has already taken place but the misconduct has been repeated or has persisted

Note: Where a repeated pattern of misconduct has been clearly established, an investigation may not be required; in this case the manager should seek advice from their HR Employment Relations Adviser.

- 2.1.2 It is critical that investigations are carried out promptly. It is particularly important to interview witnesses promptly, before memories fade.
- 2.1.3 The investigation will normally be conducted by a senior member of staff, supported by an HR Employment Relations Adviser if necessary.

2.1.4 The employee under investigation must be informed, verbally and then in writing:

- That an investigation is being carried out.
- The nature of the complaint or allegation under investigation.
- The name of the person leading the investigation.
- Their right to be accompanied and/or represented at investigatory meetings by a recognised Trade Union Representative or a work colleague.
- That notes will be kept of the meeting and if needed will be used at a later stage

They must also be given a copy of the Council's disciplinary procedure and disciplinary rules.

2.1.5 The employee will be given 5 working days notice of any investigatory meetings. However with the consent of all parties this period of notice may be reduced as it is desirable that such meetings should take place as soon as possible.

2.1.6 The aim of the investigation is to establish the facts. The investigating officer will present the management case in the event that a case proceeds to a disciplinary hearing.

2.1.7 The employee and any witnesses will be interviewed separately in the course of investigatory meetings.

2.1.8 An investigation meeting may be postponed at the discretion of the investigating officer if the chosen representative is unavailable. The investigating officer shall generally agree such a postponement where a reasonable alternative date and time within 5 working days is proposed by the employee/representative.

2.1.9 Any witnesses to be called should be written to in advance to be advised that they may be required to attend an investigatory meeting.

2.1.10 Witnesses will not normally need to be accompanied to an investigation meeting. They may however request to be accompanied by a Trade Union representative or a work colleague where there are special circumstances in which they feel that they require such support. For example, this might be where the witness is alleged to have experienced bullying, harassment or discrimination.

2.1.11 Where a witness is accompanied at an investigation meeting, it should be made clear that the role of the person accompanying them is to provide support and not to speak on behalf of the witness.

2.1.12 Notes of the meeting should be taken by a designated note-taker. A copy of the notes should be provided to the employee, as soon as is reasonably practicable and the employee should be invited to note on a separate sheet if they feel there are any inaccuracies or omissions, or if they wish to add their own comments.

2.1.13 Notes of the meeting, witness statements and any supporting documents should be signed and dated and retained as possible evidence at any future disciplinary hearing, if appropriate.

2.1.14 The investigating manager will prepare a report of their investigation indicating their findings to the manager who will determine whether or not a disciplinary hearing is required. If it is decided that it is not appropriate to convene a disciplinary hearing the employee will be informed in writing that no disciplinary action is being taken.

2.2 Suspension

2.2.1 In the case of alleged serious misconduct or gross misconduct a preliminary investigation should be carried out without delay to ascertain whether there is any substance to the allegations.

2.2.2 If there appears to be substance to the allegations then it may be necessary to suspend the employee. This should only be used in exceptional circumstances, for example:

- **Where the severity/nature of the misconduct means that the employee's presence in the workplace cannot be tolerated;**
- Where their continuing presence could hinder investigations (e.g. they may influence witnesses or interfere with relevant evidence);
- Where the employee is being charged with a serious criminal offence that is potentially inconsistent with their position;
- Where there is a clear and real concern that the employee or others may be placed at risk by them remaining in the workplace.

The examples above are neither exclusive nor exhaustive

2.2.3 An employee can only be suspended by an officer with the necessary delegated authority within a relevant Department in consultation with the Head of Human Resources (or his/her representative).

2.2.4 The suspension may be invoked at any stage of the investigation, should new evidence come to light.

2.2.5 Wherever possible, alternatives to suspension such as temporary redeployment/relocation or working from home should be carefully considered.

2.2.6 In cases of personal harassment or bullying, if suspension or temporary relocation is deemed appropriate, it may be the alleged harasser who is suspended or moved to a different work location or asked to work from home on a temporary basis. This must not be done before consultation with the relevant Head of Service/Operational Director and an Employment Relations Adviser.

2.2.7 Suspension should not be treated or viewed as a form of discipline or penalty for the employee.

2.3 The Suspension Process

The decision to suspend

2.3.1 When deciding whether to suspend an employee, the manager should consider all the circumstances and in particular should address the following issues:

- Are there reasonable grounds for the suspension?
- What are the implications of suspension for the employee?
- What is the risk to the Council, service users/clients, or other employees?
- Is suspension necessary for a proper investigation of the allegations?
- How long will the suspension last?
- Would moving the employee to other duties remove the need for suspension?

Note: In all contracts of employment, there is an implied term that the employer will act in a way that will maintain trust and confidence. If an employer has not properly considered whether suspension is appropriate, or the manner in which the suspension is imposed is unreasonable, the term could be breached.

- 2.3.2 The manager should contact an Employment Relations Adviser for advice on whether suspension is appropriate, giving full details of the alleged misconduct.

Practical arrangements

- 2.3.3 If it has been agreed to proceed with suspension and following a preliminary investigation, the manager should agree with the ER Adviser the practical arrangements for implementing the suspension, to include:
- Notifying the employee to attend a suspension meeting;
 - Safeguarding of relevant documents, records and other items of Council property;
 - Handing over keys and other equipment, which may include a work mobile or IT equipment;
 - Accompanying the employee back to the workplace to collect personal belongings if required;
 - Limiting or removing access to IT systems – please see further guidance below;
 - Guidance about contact with other employees whilst on suspension e.g. it may be necessary in some circumstances for a suspended employee to be prohibited from contact with particular named employees;
 - Escorting the employee from the premises;
 - **How the employee's absence from work will be communicated to colleagues, external contacts and service users;**
 - **Agreeing what the others in the employee's team may be told**

Note: At all times, managers must be mindful of the dignity of the employee and the stress that can be caused by a suspension. For example, if an employee is to be escorted from the premises this should be done with the minimum of fuss and at a time and in a way that does not draw unnecessary attention.

Access to IT systems and networks

- 2.3.4 When a decision to suspend has been taken, the manager should also consider the **implications of maintaining the individual's access to their e-mail account and the Council's IT systems and networks**. There may be instances where it is advisable to restrict or remove access to these IT systems. For example:
- Employees who have administration rights to Council IT systems;
 - Instances of child/vulnerable adult abuse where employees have access to client information systems;
 - Where soft copy evidential documents may be deleted or tampered with;
 - Instances of harassment/bullying where cyber bullying may continue or witness intimidation may take place;
 - Where an employee works from home and therefore may have the access to continue to work from home.

Preparing a suspension letter

- 2.3.5 The manager may prepare a suspension letter before meeting the employee, with guidance from an Employment Relations Adviser. If this is not possible or practicable, a letter will be issued following the meeting (see [Template Letters](#)). The letter must be signed by the Head of Service/Operational Director or a manager with the necessary delegated authority.

The letter should include:

- A statement confirming that suspension is not a disciplinary action
- The reason for suspension

- The length of the suspension and arrangements for reviewing (this should be done every 2 weeks)
- Actions that will be taken during the suspension
- That suspension will be on full contractual pay
- Details of who the employee may contact within the Council and for what purpose
- A requirement that the employee be contactable by telephone and/or e-mail whilst on suspension
- Support available

Advising the employee of suspension

- 2.3.6 When the above arrangements are in place, the manager should convene a suspension interview as soon as possible after the alleged misconduct. The employee has the right to be accompanied by a recognised Trade Union representative or a work colleague. However, the unavailability of a representative must not delay convening the suspension interview or the suspension itself.
- 2.3.7 Under normal circumstances, the manager should ask the employee to attend a suspension meeting, giving a brief outline of the reasons for the meeting, advising the employee that they have the right to have a recognised Trade Union representative or work colleague present at the suspension meeting and also remind the employee that suspension is not a disciplinary action. . Where possible this should be confirmed in writing in advance of the meeting (see [Template Letters](#))

The suspension meeting

- 2.3.8 The manager should chair the meeting, and state from the outset that suspension is not a disciplinary action and does not itself imply any presumption of guilt on the part of the employee.
- 2.3.9 The employee should be advised that brief notes of this meeting will be made by the manager.
- 2.3.10 Where the meeting takes place without an employee representative present (either because the employee declined this right or because no representative was available), manager should inform the employee why the suspension is proceeding without such representation. The manager should note these reasons for the record.
- 2.3.11 The manager should inform the employee:
- Of the reason for the suspension
 - Of the likely duration of the suspension and that it will be reviewed every 2 weeks with a view to them returning to work as soon as possible
 - That suspension will be on full pay
 - Of the conditions of the suspension, which should include:
 - No access to Council premises
 - No use of Council equipment or resources
 - No contact with Council employees (and others where applicable, e.g. service users, contractors etc.)
 - The requirement to be contactable by telephone and/or home e-mail and available for work and to attend meetings during normal working times
 - The requirement to notify any periods of sickness during the suspension, in the normal way.
 - The requirement to return all Council property for the duration of the suspension

- 2.3.12 The employee should be given a named contact at the Council with whom they may communicate for the purposes of obtaining information in order to prepare his/her case. Such access may be reasonably restricted or denied, but a decision should be given within one working day.

Note: Employees will not generally be prevented from using Council facilities as a member of the public, (e.g. libraries) or be prevented from social contact outside of a work context with fellow employees who may be friends or relatives of the suspended employee.

- 2.3.13 The manager must verify with the employee their telephone and home e-mail contact details. (Note: e-mail will be the primary method of written communication to the employee whilst on suspension). Managers must use the [Egress](#) facility if **communicating confidential matters to employees' private email addresses**.
- 2.3.14 The manager should also discuss with the employee what will be communicated to colleagues and service users/external contacts to explain their absence from work, and how the Council **will respond to any enquiries from the media about the employee's absence from work**.
- 2.3.15 During the suspension interview, the manager should allow the employee the opportunity to comment on the alleged misconduct and the decision to suspend, and any comments made by the employee will be noted for the record.
- 2.3.16 At the end of the meeting, the manager must give or send the original copy of the suspension letter to the employee and inform them of their right to representation at any further meetings which may occur as a result of the investigation into the alleged offences.
- 2.3.17 If the employee is a member of a recognised Trade Union, he/she will be responsible for forwarding a copy of the suspension letter to their Trade Union representative.
- 2.3.18 The manager needs to be sensitive to reactions from the employee including shock, stress or distress and may need to consider offering the employee support either to their home or a place of safety. Even at this stage it may be still be feasible to consider alternatives to suspension. If suspension is not initiated then any pre-prepared documentation not subsequently used should be destroyed.

Impact on Pay

- 2.3.19 Suspension will be on contractual pay. However, the Council reaffirms that suspension is not a disciplinary action, and therefore will seek to avoid the employee suffering any short term unexpected financial loss as a result. **An employee's pension will not be affected by suspension.**

Sickness and Holiday

- 2.3.20 If the employee becomes ill during the suspension the normal sickness absence procedure will apply (i.e. notification, monitoring of absence and trigger points etc.) The normal contractual sick pay entitlements will come into force for the period of the illness. However, the suspension rules remain unchanged. Annual leave entitlement, where appropriate will continue to be accrued throughout the suspension and the employee may request annual leave in the normal way

Suspension Reviews

2.3.21 The manager and ER Adviser should review the suspension every 2 weeks whilst the investigation is carried out, keep a written record of each review, and ensure that the Head of Service/Operational Director is kept up to date.

2.3.22 The review should:

- Assess whether the conditions for suspension are still met
- Consider whether the suspension can be lifted and the employee allowed to return to work in their substantive post, or whether they could work in a different location or capacity (only after full discussion and agreement with the employee).

2.3.24 The manager will keep the employee informed of each review. Records of suspension should be written by the manager (with a copy forwarded to the Head of Service/Operational Director) when either the suspension is lifted or a hearing arranged.

Support during Suspension

2.3.25 Throughout all stages of the suspension process the employee will be given as much information as possible about the allegations or issues of concern, subject only to protecting the interests of any other party.

2.3.26 Suspended employees may experience significant levels of stress and sensitivity must be shown throughout the suspension. For example, managers should be sensitive about dispatching letters to suspended employees which will arrive on a Friday or Saturday where employees may have no opportunity to contact anyone within the Council.

2.3.27 The manager should also ensure that a support officer is identified and that this person maintains regular contact with the employee. The employee should be made aware of the availability of the [Employee Helpline Service](#).

2.3.28 Although suspension should not lead to social isolation it may be necessary in some circumstances for a suspended employee to be prohibited from contact with particular named employees (e.g. witnesses).

2.3.29 The manager should ensure that all employment matters relating to an individual employee remain confidential. Should there be a press enquiry or other request for a statement regarding the position of any employee, the manager must first inform HR Employment Relations and then the individual employee of this enquiry. **The Council's** Marketing and Communications Service is available to assist with any press enquiries.

Ending the suspension

2.3.30 Suspension can only be ended by the relevant Head of Service/Operational Director. If the manager wishes to end a suspension, he/she must write to the Head of Service/Operational Director stating:

- Why they feel it is no longer necessary for the employee to remain on suspension.
- That there are no safeguarding risks if the employee returns to work.

If the Head of Service/Operational Director agrees to the suspension being lifted, the manager should write to the employee to confirm this.

2.4 Disciplinary Hearing and Chair

2.4.1 Where it is believed that there is a disciplinary case to answer a formal disciplinary hearing will be convened.

2.4.2 The hearing should be chaired by a senior manager at an appropriate grade who has had no previous involvement in the case, to the extent that they can be impartial.

2.4.3 The Chair will convene the hearing and issue correspondence accordingly as set out below.

2.4.4 The Chair will be assisted by an HR representative, who will provide guidance on the procedural aspects of the process.

2.5 Notification of a formal hearing

2.5.1 The manager will notify the employee in writing, of the intention to hold a disciplinary hearing. The letter instructing the employee to attend the disciplinary hearing should:

- Give the employee at least 5 working days notice of the hearing;
- Set out the date, time and place of the hearing and the name/s of the members of the disciplinary hearing panel;
- Confirm the nature of the alleged offence, conduct or complaint. This should be set out as one or more disciplinary charges specifying in each case the allegation and the Disciplinary Rule which it is alleged that the employee has breached;
- Advise the employee of their right to be represented at the hearing by either a recognised Trade Union representative or a workplace colleague;
- Advise of the names of any witnesses intended to be called and copies of any documents or statements which will be produced. This will include the investigation report;
- Advise that the offence, if proven, may result in formal disciplinary sanction being given;
- Where there are allegations of gross misconduct or where the employee already has a live final written warning, the letter should indicate that the outcome could be dismissal;
- Advise of the requirement that the employee advise the manager of the name of their representative and the names of any witnesses to be called, usually at least 3 working days before the hearing;
- Advise of the requirement to provide copies of any documentation material at least 5 working days prior to the hearing. (NB. A disciplinary panel shall have discretion to consider documentation submitted after this deadline where they consider it to be relevant to the disciplinary charge(s)).

2.5.2 Where possible, the letter should include as an attachment any documents that the manager will present at the hearing, although these can be sent under separate cover provided they arrive no later than 5 working days before the hearing. These should include any conclusions and recommendations to the panel.

2.6 Attendance at a formal hearing

2.6.1 The following may attend a disciplinary hearing:

- The employee facing disciplinary action;
- The Chair who will hear the case;
- An HR representative who shall act as an impartial adviser to the Chair;
- **The employee's representative;**
- The manager or presenting officer;

- The investigating officer;
- A note taker;
- Any witnesses invited to attend, (who shall remain only for the duration of their evidence).

Note: Where there is a requirement for other representatives/employees to attend for training purposes, this may be granted with the consent of the Chair.

2.7 Postponement of a hearing

- 2.7.1 If it is necessary to postpone a hearing, an alternative date should be set which is no more than 5 working days later than the original date. It will be for the Chair to make the decision to postpone and there should normally be no more than one postponement of a hearing. Following one postponement, the hearing may proceed in the absence of the employee.

2.8 Conducting the disciplinary hearing

- 2.8.1 The order of business at a disciplinary hearing will normally be as follows:
The Chair of the panel will:

- Introduce those present and explain their role;
- Explain the purpose of the hearing and how it will be conducted;
- State precisely what the complaint or series of complaints is;
- Ask the investigating officer to detail the case by presenting the evidence, calling witnesses if appropriate;
- Giving the employee and/or their representative the opportunity to question the witnesses and any evidence presented;
- Ask any questions of the witnesses and the investigating officer;
- Give the employee and/or their representative the opportunity to state their case, present evidence and call witnesses. The employee should be encouraged to explain any mitigating circumstances which exist;
- Give the presenting officer the opportunity to question witnesses and any evidence presented;
- Ask any further questions necessary to establish the facts and clarify any points of doubt;
- Give the presenting officer the opportunity to sum up their case;
- Give the employee and/or their representative the opportunity to sum up their case;
- Adjourn the hearing to give proper consideration to the matters raised before reaching a decision. In certain circumstances further information may need to be gathered, in which case this should be undertaken as quickly as possible and the hearing reconvened to consider any new evidence before a decision is reached;
- The decision will be communicated to all parties and confirmed in writing, as soon as possible, giving the reasons for the decision;
- If the decision is not made within 10 working days, the employee will be notified in writing and given an expected date for the decision.

2.9 Deciding the outcome of a disciplinary hearing

- 2.9.1 Having considered everything they have heard at the disciplinary hearing, the disciplinary panel shall consider first of all whether the procedure has been correctly applied and, if so, whether the disciplinary charges have been proven on the balance of probabilities.

2.9.2 Where the disciplinary charges have been found proven the panel shall consider whether or not to apply any disciplinary sanction. In deciding on the appropriate disciplinary sanction, no account should be taken of any lapsed warnings.

2.9.3 The possible outcomes of hearing are:

- No further action
- Written warning
- Final written warning
- Dismissal with notice
- Summary dismissal (i.e. without notice)

Note: If the outcome is 'no further action' or a written warning this may be supplemented by management advice, guidance and/or recommendations for counselling, development, monitoring as appropriate.

2.10 No further action

2.10.1 If no further action is to be taken, this must be clearly indicated in the letter confirming the decision. The panel may feel it is appropriate to set out for the employee expected standards of behaviour in order to avoid further allegations or incidents which may lead to disciplinary action. This does not, however, constitute a written warning.

2.10.2 If the panel recommends development activities, these should include a monitoring period for reviewing progress.

2.11 Written warning

2.11.1 A written warning will be issued for serious matters or repetition or continuation of an offence which previous informal discussions have failed to curtail or resolve. A written warning will generally be given for a first offence of misconduct (other than gross misconduct).

2.11.2 The Chair of the panel has the authority to determine the appropriate duration of the warning having regard to the seriousness of the offence and any mitigating circumstances. This will normally be from 1 to 2 years, but in any case no more than 3 years.

2.11.3 The letter, signed by the Chair will include the following:

- Details of the complaint and the improvement required (if required) within a given time.
- Details of the warning and its expiry date.
- The likely consequences of further misconduct would be further disciplinary action which could lead to a further sanction, up to and including dismissal.
- **The employee's right of appeal, the procedure for lodging an appeal and the time limit for doing so.**

2.11.4 The letter should be sent to the employee within 5 working days and copied to the Employment Relations Adviser. A copy should be retained on the **employee's personal** file. The employee is responsible for forwarding a copy to their Trade Union representative.

2.11.5 Once the duration of the warning has expired, it must not be considered as part of any future disciplinary action or referred to for the purposes of employment references. However, where the case involves safeguarding issues the letter will remain on the employees personal file and may be referred to.

2.12 Final written warning

2.12.1 A final written warning will be issued if:

- A written warning has already been issued and another offence has occurred, or
- Where the conduct is of such a serious nature that a first written warning is not deemed appropriate, or
- Where the offence could have warranted dismissal but the Chair decides that this is not appropriate in all the circumstances (including having regard to any mitigating circumstances).

2.12.2 The Chair has the authority to determine the appropriate duration of the warning having regard to the seriousness of the offence and any mitigating circumstances. This will normally not exceed 3 years. However, in exceptional circumstances where the misconduct verges on gross misconduct, the final written warning may be retained indefinitely and any recurrence of similar serious misconduct may lead to dismissal proceedings. The Chair should seek advice on this from their Employment Relations Advisor.

2.12.3 The letter, signed by the Chair will include the following:

- Details of the complaint (and the improvement required) within a given time.
- Details of the warning and its expiry date.
- The likely consequences of further misconduct would be dismissal.
- **The employee's right of appeal, the procedure for lodging an appeal and the time limit for doing so.**

2.12.4 The letter should be sent to the employee within 5 working days and copied to the Employment Relations Advisor. A copy should be retained on the **employee's personal** file. The employee is responsible for forwarding a copy to their Trade Union representative.

2.12.5 Once the duration of the warning has expired, it must not be considered as part of any future disciplinary action or referred to for the purposes of employment references. However, where the case involves safeguarding issues the letter will remain on the employees personal file and may be referred to.

2.13 Dismissal

2.13.1 Only Heads of Service/Operational Directors have the delegated authority to dismiss.

2.13.2 Dismissal will normally be with notice but where gross misconduct is found, it should be summary dismissal (without notice). Gross misconduct is defined as serious enough to constitute a fundamental breach of the contract of employment.

2.14 Dismissal following a final written warning

2.14.1 If during the life of the final written warning, the employee commits any further misconduct, the manager should inform the employee that a further disciplinary Hearing will be convened which could result in their dismissal.

2.14.2 **The employee's manager should then inform the** Head of Service/Operational Director (or other officer who chaired the previous disciplinary Hearing) who will convene a hearing, the aim of which will be to hear the evidence and to enable the employee to put forward any mitigating circumstances.

2.14.3 The Hearing will be conducted in line with procedure as outlined above. Only an officer with delegated authority to dismiss may do so. Dismissal will be with contractual notice.

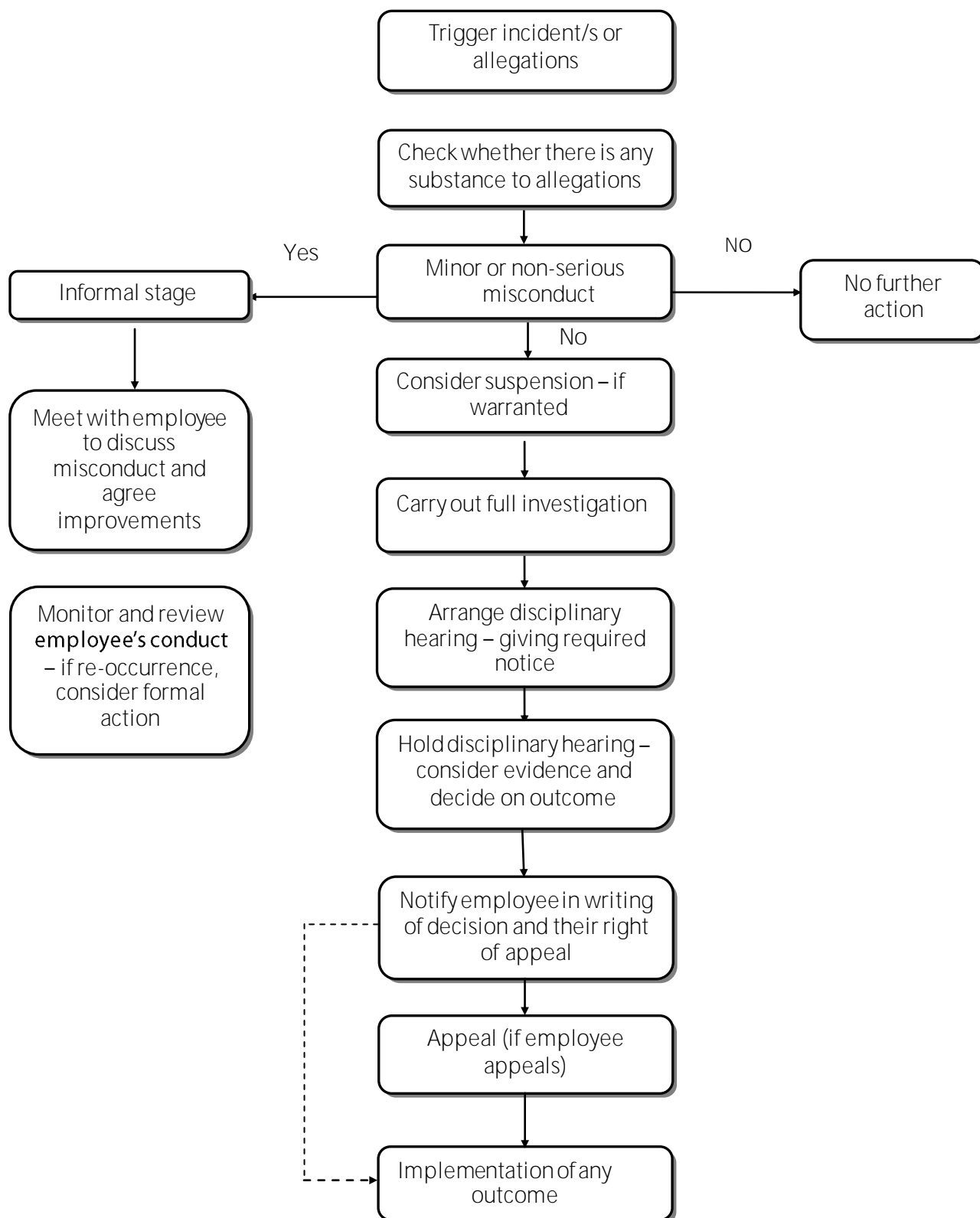
2.15 Appeals against disciplinary action

2.15.1 Appeals will be heard in accordance with the Council's [Appeals Procedure](#).

2.15.2 Appeals against a final **written warning must be made to the employee's** Head of Service/Operational Director, in writing, within 7 working days **of the employee's** receipt of the final written warning.

2.15.3 Appeals against dismissal must be made to the Head of Human Resources, in writing, within 7 working days **of the employee's receipt of the notice of dismissal.**

Overview of Disciplinary Process



Disciplinary Rules

1. Introduction

- 1.1 The disciplinary rules are set out so that all employees understand the standards of conduct expected of them. The rules also give an indication of action and/or behaviour which is considered unacceptable. The aim is to specify those rules which are necessary for the safe and efficient performance of work and to maintain satisfactory working relationships. The rules required may vary according to particular circumstances.
- 1.2 The lists below are not exhaustive and the Council reserves the right to take action for matters not listed or alluded to. Employees should also refer to other Council policies and procedures and the relevant national Scheme of Conditions of Service, where other rules and standards are implied. In addition, employees are required to work in accordance with relevant statutory obligations, professional standards, health and safety regulations and other rules governing their profession or working environment.
- 1.3 Breaches of these rules may lead to disciplinary action being taken in accordance with the Disciplinary procedure. Employees may be suspended from work as part of the Disciplinary procedure. Misconduct may lead to dismissal, although the employee will be entitled to appropriate notice. Gross misconduct, however, may lead to dismissal without notice. The form of disciplinary action taken will vary depending on:-
 - The seriousness and nature of the offence;
 - **The employee's previous record;**
 - Mitigating circumstances; and
 - In some instances - the nature of the job.
- 1.4 In considering individual offences, the level and severity of misconduct will be a key element in deciding upon the action to be taken. Some misdemeanours, which would normally result in a warning, could in extreme circumstances warrant summary dismissal.

2. Examples of misconduct offences

- 2.1 Misconduct will not normally warrant dismissal without a previous warning (please also refer to Gross Misconduct, section 3 below).

General Conduct

- Failure to carry out a reasonable management instruction;
- Abuse of authority in relation to a colleague or a member of the public;
- Rudeness towards or conduct likely to cause harm or offence to a parent, colleague, member of the public or a fellow employee;
- Refusal to comply with appropriate standards of appearance and / or personal hygiene acceptable to management;
- Behaviour at work likely to offend decency;
- Failure to wear the appropriate uniform provided by the Council;
- Sleeping on duty;
- Unauthorised absence from duty;
- Failure to notify line manager of absence from duty, and reasons, including non-attendance at an approved course of training;
- Failure to provide appropriate medical certification as required by the appropriate sick leave procedures;

- Improper use of IT, e-mail etc.;
- Breaches of information security and data protection policy;
- Persistent lateness;
- Persistent absenteeism;
- Neglect of Duty;
- Failure to discharge obligations in accordance with a statute or contract of employment;
- Negligent or inadequate standards of work.
- Acceptance of gifts or gratuities (where an employee is offered a gift or gratuity this must be reported to their manager). In this particular area there needs to be a good deal of common sense and reasonableness, and it will be left to the **manager's** discretion in each case, having regard to all the circumstances; However, as an example it is not expected that inexpensive promotional tokens (e.g. pencils, calendars etc.) would come within this category;
- Failure to hand lost property to an appropriate employee;
- Conduct prejudicial to the Council's **interest whether** committed at work, or committed outside working hours (depending on the nature of the offence, the **duties of the employee's** post and any damage to the reputation and integrity of the Council). This includes activities via the internet, on social networking sites and personal blogs.

Health and Safety

- Failure to wear the appropriate protective clothing provided by the Council for particular duties;
- Failure to comply with the accident reporting procedure(s);
- Failure to follow safety instructions and codes of practice and safety policy statements issued from time to time by the Council and Service establishments;
- Failure to comply with hygiene requirements;
- Failure to obey a lawful and reasonable instruction, including deliberate failure to observe any operational regulations and rules of the Council;
- Dangerous or reckless behaviour involving risk of injury to other persons or oneself;
- Being under the influence of drugs, including alcohol, during working hours, so that performance of duties is detrimentally affected;

Deliberate Misuse and Falsification of Information

- Making false and / or deliberately misleading statements, whether verbally or in writing, in respect of official business;
- Failing within a reasonable period of time to report any matter which it is a duty to report;
- Deliberate destruction or damage to any documents required for the purposes of the Council;
- Unauthorised disclosure of confidential information relating to the business of the Council, its employees, or the public with whom it has dealings;

Unauthorised Private Work

- Engaging in employment, including self-employment, during off-duty hours when such employment conflicts with, or is detrimental to the interest of the Council or in any way weakens public confidence in the conduct of the Council;
- Private work which might involve any dealings with the Council must be disclosed and can only be undertaken with the **Manager's approval**.

3. Examples of Gross Misconduct Offences

- 3.1 Gross misconduct is misconduct that is so serious that it destroys the relationship of trust and confidence that the Council needs to have in an employee and the dismissal of the employee is a reasonable sanction to impose notwithstanding any lack of history or conduct. A dismissal for gross misconduct is justified at the first offence and, depending on the circumstances, the employee may be dismissed without notice (i.e. summary dismissal).
- 3.2 It is not usually the number of offences, but rather the nature of a single disciplinary offence that determines gross misconduct. However, repeated disciplinary offences which, individually might otherwise have amounted to misconduct might, when aggregated, amount to Gross Misconduct.
- 3.3 This may include acts committed outside working hours as well as those committed at work, depending on the nature of the offence, the duties of the **employee's post**, and any damage to the reputation and integrity of the Council.
- 3.4 The following are examples of offences which may be deemed gross misconduct and may lead to summary dismissal without any previous written or verbal warnings having been given.

Dishonesty, fraud and corruption

- Failure to disclose a conviction for a criminal offence (unless under the terms of the **Rehabilitation of Offenders Act 1974 the conviction is "spent"**), and the post is exempt;
- Undertaking private work during hours when contracted to work for the Council- this includes unpaid voluntary work, unless it has been approved;
- Falsification of any information used in support of or connected with an application for a post with the Council, including failure to disclose any known relationship with a Council Member or Council employee;
- Improper use of official position for personal and/or financial advantage or for the private advantage of some other person or organisation including soliciting or accepting bribes;
- Misrepresentation as to status, qualification, experience and health;
- Deliberate falsification of time sheets, bonus sheets, claim forms, sickness self-certification forms, invoices, receipts, accounts etc;
- Theft or misappropriation of, or malicious damage to, property of Council, service users/clients or other employees;
- Theft or misappropriation of Council materials or equipment.

Note: In case of fraud or financial irregularities Managers are reminded of their particular responsibilities under paragraph G20 of the Accounting Regulations and of the need to consult the Chief Finance Officer.

Harassment, bullying and discrimination etc.

- Acts of harassment, victimisation, intimidation, incitement or discrimination against any individual or group (e.g. includes colleagues, visitors, pupils and parents) Note this includes misuse of the internet and social media)

Improper use of equipment etc.

- Unauthorised use of Council vehicles, whether during or outside the working day;
- Unauthorised use of any Council equipment and / or facilities for private purposes;

- Use of Council labour for private purposes;
- Use of wasted Council materials and/or equipment without express authority;
- Unauthorised interference with a computer (e.g. misuse of a password to gain entry to a computer for the purpose of extracting information to which the employee is not entitled and /or deliberate corruption of computer records).

Neglect of Duty

Gross negligence and / or dereliction of duty.

Other Gross Misconduct

- Fighting with or physical assault on fellow employees, managers or members of the public, including maltreatment of service users/clients;
- Gross indecency, sexual offences or grossly offensive behaviour or language;
- Misuse of the Internet (including social media, e-mail) such that it is of a sexual, racist or other serious matter, or is potentially a criminal act;
- Non compliance with a safety code such as to endanger life or cause injury;
- Malicious damage to Council property and causing waste, loss or damage to Council property;
- Serious insubordination;
- Serious incapacity at work through the taking/consumption of drugs/alcohol/other substances;
- Serious breach of Health and Safety rules.

Guidelines on Informal Disciplinary Action

1. Wherever possible, try to resolve potential disciplinary issues and minor breaches of discipline informally, as part of day to day management and supervision. This should be the normal approach taken, except in cases of serious or gross misconduct.
2. You can use informal discussion and/or counselling to find solutions to identified problems, so that any shortcomings in conduct can be remedied. However, serious breaches of discipline, and particularly those involving alleged gross misconduct, must be dealt with formally.

3. Preparing for an informal discussion

Before meeting with the employee for an informal discussion, you should be as well prepared as possible. The following steps will help:

- Make sure you are clear about the problem/behaviour/misconduct and the changes you expect from the employee. Write this down if necessary.
- Consider the possible outcomes you want from the meeting and how you will state these to the employee.
- Gather all the facts and ensure you have copies of any written standards of conduct/behaviour and/or the disciplinary rules concerned.
- Think about the employee and how they are likely to react and behave. Think of the questions you need to ask to seek their views and to find a solution to the problem.
- Book a suitable venue and make sure you clear your diary of all other commitments at the time of the meeting.
- When notifying the employee of the meeting, make sure that they understand its purpose. Note: as this is informal action, they do not have the right to be accompanied at the meeting and the action will not be recorded on their personal file.

4. The informal discussion

The following will help you to make the discussion more productive:

- Try to put the employee at ease, but come to the point quickly and clearly. Remind them of the purpose of the meeting and that it is an informal discussion at this stage.
- Tell them you will be taking notes, but this is for reference only if you need to follow up any agreed action and that no note will be put on their personal file.
- Describe clearly and simply the behaviour/conduct you have asked to see them about, and state dates/times wherever possible. Then explain why this contravenes the expected standards. If necessary, re-iterate the expected standards and refer to any written examples you have brought to the meeting.
- If the employee states they are/were unaware of the standards, then you will need to state that regardless of this, these are the standards you expect from now on and that everyone is expected to maintain them. Do not get drawn into discussion

about other colleagues.

- Invite the employee to state their understanding of the situation and check that they acknowledge the issue. Wherever possible, summarise what they have said to check your understanding.
- Once they have acknowledged the issue, discuss methods of improving. Make suggestions where you can, but encourage the employee to suggest how they can improve. If the employee is unable or unwilling to suggest improvements then clearly state your expectations and seek their agreement. (Note: if the employee refuses to acknowledge there is a problem, make a note of this, but clearly state your views and the improvement/changes you expect.)
- Agree specific actions where you can and a date by which you expect to see an improvement (this may be immediately or over a reasonable length of time.
- Make clear to the employee the consequences if they do not improve or meet the standards, i.e. formal action might be taken.
- Make it clear the date you will review this with them.
- Close the meeting by summarising the discussion and the actions agreed.

5. Following up the discussion

- Follow up by making a record of the discussion, highlighting the particular issue, key points of discussion, actions and dates for review. If necessary, confirm this in writing to the employee.
- Keep your own note of the meeting and diarise the dates for reviewing improvements.
- If the employee has met the required standards/improvements, acknowledge this to them.
- Notes of the discussion should be kept by the manager (or his/her nominee for reference purposes and a copy given to the employee.

Undertaking a Disciplinary Investigation: Guidance for Investigating Officers

1. Introduction

Your responsibilities

As investigating officer your responsibilities are to:

- Gather all the relevant facts promptly before employees' memories fade
- Establish the exact nature of the allegations and the evidence to substantiate these
- Summarise your findings in an investigation report
- Recommend whether or not the allegations should be considered at a disciplinary hearing
- Present evidence at any disciplinary hearing and answer questions as required
- Attend any appeal hearing as a witness, where required
- Follow the procedure
- Attend a disciplinary hearing, if required, to report back on your findings

In carrying out an investigation you should:

- Ensure the investigation is carried out as quickly as possible
- Ensure you have adequate time away from the workplace to conduct the investigation (which may reallocation of normal duties)
- Be thorough and fair
- Remain impartial and objective, do not make assumptions
- Consider whether there are any mitigating circumstances
- Maintain confidentiality as appropriate
- Talk to employees and, where appropriate, service users/others concerned with the incident as appropriate to establish the full facts
- Seek supporting evidence, including any that is favourable to the employee
- Obtain statements from witnesses and keep notes of investigation meetings
- Compare statements and notes and attempt to resolve any discrepancies
- Follow the procedure

2. The Process

Step 1 - Preparation

- Plan your investigation before you begin – consider what information you need to gather. Before meeting with the employee and other witnesses, plan the questions you should ask.
- Throughout the investigation you may contact an HR Employment Relations Adviser for advice, for example, in the preparation of questions.
- Decide how best to conduct the investigation. This will depend on the complexity of the case. For example, you may decide, in some circumstances, a witness statement will suffice. In other circumstances, you may decide to meet with witnesses, but ask them to produce a statement before the meeting. Or, you may choose to meet the witness / employee in person in the first instance.
- Decide the order in which you will meet witnesses and the employee. You can meet with them more than once if necessary.

- Plan where to hold investigation meetings - this should be in a private place that will be free from interruptions.
- Witness notes should be signed by both the witness and the person conducting the interview and the date and time should be recorded.
- Try to have another person present to take notes. If this is not possible, you should take notes of key points raised at the meetings. The notes do not need to be verbatim. You should give a copy of the notes to the employee/witness following the meeting and ask them whether he/she would like to add any comments on a separate sheet (e.g. comments, omissions etc.) Where the employee/witness provides alternative notes of the meeting both versions should be included in the evidence supporting your investigation report.

Step 2 - Meeting the employee/s under investigation

- If there is more than one employee under investigation, meet each employee separately.
- Where the matter under investigation is particularly sensitive, it is advisable, to have another appropriate person present (e.g. a representative from Human Resources)..
- Introduce yourself (and if someone else is taking notes, explain their role) and remind them of the purpose of the meeting – i.e. to ascertain the facts.
- Ensure employee/s under investigation are provided with the correct procedure that is being used.
- Advise the employee that in order for a full and thorough investigation to take place, information will have to be disclosed and shared to appropriate individuals at appropriate times during the process.
- Remind all parties of confidentiality and not to disclose to others, any information about the investigation.
- Ensure all parties are aware that you will only disclose to others, information **relating to the investigation, on a “need to know” basis.**
- Confirm that all records and notes will be kept secure and viewed only by individuals involved in the current process or later when appropriate action may need to be taken.
- Remind the employee of their right to be accompanied by a Trade Union representative or work colleague. Ensure that the employee understands the allegations that have been made. Ask him/her to respond to these allegations and produce evidence to support his/her response.
- The Trade Union representative/work colleague is not permitted to answer questions on behalf of the employee but may contribute to the discussion.
- Ask questions to find out exactly what happened (include a diagram or drawing if necessary). **Use open questions to gain information, clarify the issues e.g. ‘what happened then?’ and to check your understanding of what has been said.**
- Find out if there are any witnesses and establish their names and job roles.

- Summarise the content of the discussion (checking with the note-taker, if there is one) and check that the employee understands what is being recorded.
- Send the typed statements to the employee and invite them to add comments on a separate sheet if they wish to do so..

Remember when interviewing the employee:

- Be sensitive to their feelings but remain detached and do not get emotionally involved
- Remain neutral and do not be drawn into giving your opinion
- Check the accuracy of your understanding (summarise before moving on to a new point or question)
- Focus on facts

Step 3 – Meeting witnesses

Note: You may decide it is not necessary to interview every witness, and a written statement will suffice. Witness statements should contain the following:

- The name (and job title if an employee) of the person giving the statement
- Details of the date, place and time of the incident being investigated
- Confirmation of the names and job titles of all those present
- The reason for the witness being able to comment on the incident
- Position in which the witness was able to see the incident
- Full details of what was witnessed, the sequence of events, names of other persons present, facts
- Sketch or plan if appropriate
- Date, time and place the statement was taken
- The signature of the witness

If you interview witnesses:

- You may wish to ask witnesses to write a personal statement prior to meeting with them. Where appropriate you could ask them to respond to certain questions.
- Where a witness provides a written statement you need to be happy that you have got all the information that you require from them and that there are no unanswered questions. If you are not satisfied you can re-interview the witness.
- Discuss with HR Employment Relations if a witness is unwilling to get involved.
- Witnesses will not normally need to be accompanied to an investigation meeting. They may however request to be accompanied by a Trade Union representative or a work colleague where there are special circumstances in which they feel that they require such support. For example, this might be where the witness is alleged to have experienced bullying, harassment or discrimination.
- Ask them to explain what happened, or where you have asked for a written statement in advance, to gain clarification and/or further information about points that they have made.
- Use open questions to gain information, clarify the issues e.g. ‘what happened then?’ and to check your understanding of what has been said.
- Don’t lead the witness, but do encourage them to concentrate on the main facts.

- Advise witnesses that their statements and responses to questions will be made available to the employee and to the management side if the investigation results in a disciplinary hearing. Witnesses also need to be made aware that they may be called to give evidence at a disciplinary hearing.

Step 4 - Gather other evidence

- Ask and seek supporting evidence to substantiate information provided by witnesses and/or the employee. Keep copies to use as supporting documentation.
- You may need to look at documents such as :
 - work rotas
 - attendance reports
 - shift/handover notes
 - incident reports
 - minutes of team meetings
 - one to one records
 - performance management documentation,
 - emails, letters
 - training records, development plans.
 - procedures
 - other appropriate records or data (e.g. swipe card records, CCTV footage)
 - legislation related to the case
- You may need to visit other sites or locations if necessary
- **Look at the employee's background and employment record as well as any special circumstances that need to be taken into account.**
- Ensure that the information you gather is appropriate, compatible and proportionate.
- Ensure that information is not obtained by deception
- **Be mindful of the employee's right to access records held about them under the Data Protection Act 1998.**
- Contact other services such as ICT, Audit etc. for advice where necessary

Step 5 - Preparing an investigation report:

Once you have completed the investigation you will need to write a report, which you should give to HR Employment Relations, to be included in the documentation used at any subsequent disciplinary hearing.

The summary and recommendation section of your report should be given to the manager so that he/she can confirm whether the allegations should be heard at a disciplinary hearing. It is important that you do not discuss the full details of the case with the manager as this could prevent them from hearing any subsequent appeal.

Your report should be clear, concise and presented in a logical format. It should:

- Outline the allegations
- Analyse the evidence against the allegations

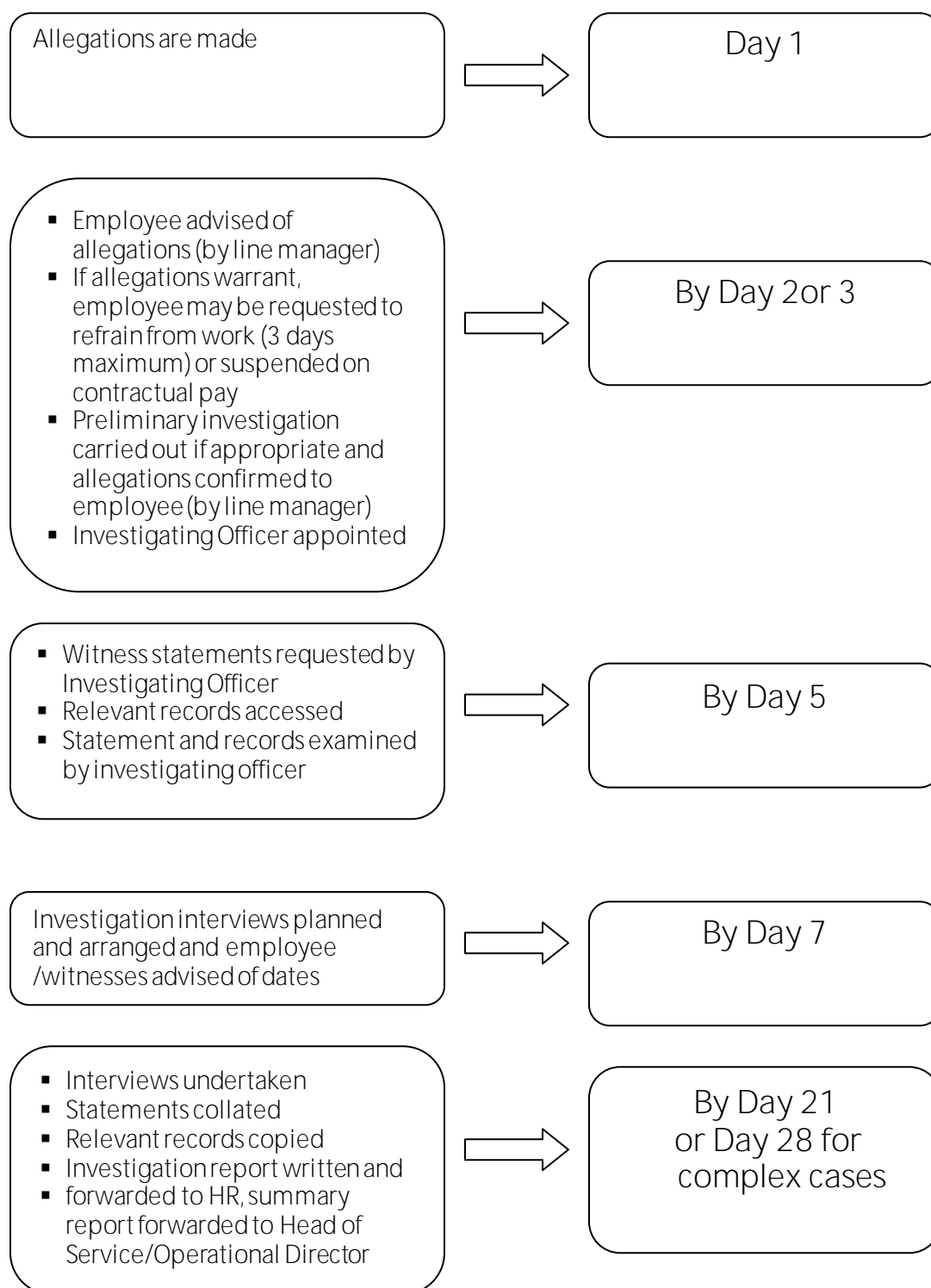
- Provide full supporting evidence. Make sure you include all the relevant facts so that it would make sense to someone unfamiliar with the case. Include those facts favourable to the employee.
- Contain a summary of events as evidenced by your investigation, referring to supporting evidence in the appendices as appropriate.
- Make recommendations – based on the findings of your investigation you can recommend that the case is:
 - Withdrawn
 - Handled informally (which may include management guidance)
 - Considered at a disciplinary hearing

See [Investigation Report Template](#) for a suggested format.

Guidelines on timescales for an investigation

To ensure a fair process, the investigation must be carried out promptly. As investigating officer it is important you treat the investigation as a priority.

All cases are different and timescales will vary from case to case depending upon the complexity of the allegations, but the following provides a guide as to the duration of each stage of the investigation. If timescales are slipping, contact HR.



Data Protection in Relation to Disciplinary Records

Security of Sensitive Data

1. Disciplinary records are subject to the requirements of the Data Protection Act 1998 and because of the nature of their content are deemed to be sensitive data.
 - All records relating to the case should be password protected on IT systems and any paper files should always be locked away, when not being used. Such records should never be available to casual scrutiny.
 - The Manager should decide which colleagues within the Council really need access to information before discussing details or sharing information on the case.

Access to Records during the Investigation

2. The Subject Access Rights Data Protection Act 1998 gives employees a right of access to information held about them. However, during a disciplinary investigation information should not be provided until it is clear that this will not lead to a criminal investigation.
 - If an investigation takes only a couple of weeks, it would be reasonable to wait until it is concluded before sharing the information with the employee.
 - If the investigation is not concluded within a couple of months, then by that time it should be possible to judge whether it relates to a criminal offence and therefore non-disclosure is still legitimately available. If the case is still deemed to be non-criminal, then reasonably staged disclosures could be made to the employee.

Access to Records during the Disciplinary Action

3. **There are some further restrictions on employees' access to their records, other than the above-mentioned criminal investigations.** However, Managers need to be aware that, in general, even during disciplinary action employees are entitled to copies of the information held about them:
 - All documents, letters, reports, emails and notes about the employee held in the Council (whether in one file or grouped by subject e.g. Leave cards, Performance Management Reviews) on paper or electronic format, form part of the employees distributed personal file. These records are available to an employee via a Subject Access Request (SAR).
 - Any records created by the Council, or for the Council, as result of the disciplinary action whether retained on file or in an IT system are also available, even during the disciplinary process, to the employee upon receipt of a written SAR (This could be an email request to the Manager or to the Human Resources Service).
 - There are three possible exemptions to the disclosure of information to the employee during the disciplinary process:
 - If there is a strong possibility that the case will lead to a criminal prosecution. In that event, the manager will be working closely with Internal Audit and they will advise what information can be released and when, so as not to prejudice a criminal investigation.

- **The identity of anyone acting as a 'whistle blower', possibly employees interviewed during the investigation process, or external parties not employed by the Council. However, the information supplied by 'whistle blowers', or external parties and the content of reports must be supplied, whilst retaining the anonymity of these vulnerable employees and third party data.**
 - The details of the Council's negotiation position. These details may be withheld to the extent to which access would be likely to prejudice any negotiations between the employer and employee.
- The Council has to comply with a SAR within 40 days. By law, the Council is obliged to supply as complete a record as it can manage. The Act does not require the employee to state which part of their personal file they wish to see, where it is stored or why they want to see it. However, some employees only request to see specific parts of their personal file.
 - If the request has come via the HR Service, they will be seeking a swift response, a copy of the specified records or for all records on this employee, as they will be co-ordinating a response from all the areas that hold parts of the employee's distributed personal record.
 - The Manager may not remove or change any data in the personal file at the time of a SAR, in order to make the information acceptable to the employee. It is a criminal offence to change the contents of a record, because of a Subject Access Request.
 - Managers are strongly advised to filter all records and remove non-essential notes and files, as soon as the Appeals Period has closed. The details of the Council's negotiation position will of course, no longer be exempt from disclosure, by this stage. Any paper records must be disposed of via shredding or use of the Council's confidential waste disposal facility.
 - As soon as a Warning Period is complete, the Manager should check with their ER Adviser that the disciplinary record has been **removed from the employee's personal file and destroy all 'spent' documentation held within the Council.**
 - Once the duration of the warning has expired, it must not be considered as part of any future disciplinary action.
 - Expired warnings should not be referred to when providing an employment references. However, if the warning relates to a safeguarding issue, the manager must seek advice from HR Employment Relations in the first instance.