

Disciplinary Procedure



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1. Introduction

Council policy

The Council is committed to providing a working environment where individuals are treated with fairness, dignity and respect; the Procedure is designed to ensure that there are fair and objective arrangements for dealing with disciplinary issues in the workplace.

The Procedure applies to all employees employed directly by the council and follows the guidance contained within the ACAS statutory Code of Practice on Disciplinary and Grievance Procedures (March 2015), and ACAS guidance “Bullying and harassment at work” (June 2014).

The Procedure should not be viewed primarily as a means of punishing individuals but as a way of helping and encouraging employees to improve unsatisfactory conduct and behaviour. It is intended to make sure allegations of misconduct are dealt with promptly, fairly and consistently in accordance with the council’s policies, employment legislation and “Best Practice”.

2. General

Advice and support

Human Resources will support and advise managers considering allegations of misconduct and monitor all formal disciplinary cases to make sure that they are dealt with in accordance with the Procedure, employment and equalities legislation, and “best practice”.

Employees are entitled to be accompanied by a trade union representative or a fellow work colleague at any meetings under the “Formal Process”. (See “Representation”).

Confidentiality

In the interests of natural justice and to avoid prejudicing the outcome of any disciplinary investigation, the proceedings must be kept strictly confidential. All those involved in the process including witnesses will be required to maintain confidentiality at all times and must not discuss or disclose details of allegations, witness statements or the outcome of meetings.

Fairness and objectivity

It is important to make sure that the disciplinary process is conducted in a fair and unbiased manner. The persons carrying out an investigation (the Investigating Officer) and conducting the Disciplinary Hearing (the Hearing Officer) must, in order to remain impartial, have had no prior involvement in the case being investigated, that is, as a witness to the alleged misconduct.

Advice must be sought from Human Resources where there any concerns as to “impartiality”.

Gross misconduct/misconduct

Gross misconduct is conduct of such a serious nature that the Authority cannot allow the employee to continue in their job. Employees found guilty of gross misconduct will usually be dismissed.

Misconduct is conduct of a lesser degree than gross misconduct. Employees found guilty of misconduct will usually be issued with a written warning. Examples of what may be considered as gross misconduct/misconduct are detailed in the Disciplinary Rules (Appendix 1).

Representation

Employees may only be accompanied or represented at meetings during the formal process (at 5.2-5.4), and by a fellow worker, a trade union representative or an official employed by a trade union.

In exceptional cases, as determined in consultation with Human Resources, the employee may be accompanied or represented by a legal representative at formal hearings and appeals; this will only apply where:

- i) the potential outcome may determine the outcome in other proceedings for example where there is no further stage in the process that results in the employee being barred from future employment; or
- ii) agreed as a reasonable adjustment for a disabled employee

It is the employee's responsibility to arrange their representation and to inform their representative of the arrangements (time and dates) of meetings.

Records

The ACAS Code of Practice recommends that records should be kept of disciplinary hearings, detailing the following:

- the nature of any breach of the disciplinary rules or unsatisfactory performance;
- the employee's defence or mitigation;
- action taken and the reasons for it;
- whether an appeal was lodged and its outcome; and
- any subsequent developments

Records should be confidential and kept in accordance with the requirements of the procedure and the Data Protection Act 1998. The employee should receive copies of any meeting records although in certain circumstances e.g. the protection of a witness, some information may be withheld.

Monitoring

The application of the Procedure will be monitored closely and reviewed annually in consultation with management and the trade unions.

3. Special Cases

Criminal offences

Criminal offences or charges are not automatic reasons for dismissal. The line manager, with Human Resources, should consider all the facts and whether the charge/offence is relevant to the person's employment and sufficiently serious to warrant investigation and action under the Procedure.

Special cases (child protection, vulnerable adults or fraud)

Managers must seek advice from Human Resources where there are allegations of misconduct relating to fraud, child protection issues or concerning vulnerable adults before taking any action under the Procedure.

Trade Union Officials

Managers must seek advice from Human Resources where there are allegations of misconduct against a trade union shop steward, branch official, Health and Safety or Learning Representative. The Branch or Regional Official must be contacted before starting a formal investigation under the Procedure.

Work colleagues not directly employed by the council

Managers must seek advice from Human Resources on dealing with any allegations of misconduct concerning agency workers or work colleagues not directly employed by the council.

4. Roles and Responsibilities

Employee's responsibility

Employees are required to comply with the Employee's Code of Conduct and the council's policies and procedures, as well as any other arrangements that apply in their service area or department.

Employees must comply with arrangements detailed in this Procedure which are designed to make sure that disciplinary issues are dealt with fairly and objectively. Employees are required to:

- Fully co-operate with the process
- Maintain confidentiality
- Attend meetings at the time and place designated
- Give as much notice as possible when they or their representative cannot attend formal meetings and be reasonable when suggesting alternatives, (which must be within five working days of the original date)
- Follow the terms of any suspension.

Manager's responsibility

Managers must make sure that employees are made aware of the standards expected, as detailed in the Employee's Code of Conduct and the council's policies and procedures, as well as any other arrangements that apply.

Managers must comply with arrangements detailed in this Procedure which are designed to make sure that disciplinary issues are dealt with fairly and objectively. Managers are required to:

- Notify the employee of any concerns about unsatisfactory conduct and behaviour
- Maintain confidentiality
- Try and resolve minor issues informally with the employee through informal discussion and advice
- In all other cases, establish the facts promptly before recollections fade and deciding on whether a formal investigation is required
- Consult Human Resources before proceeding to the formal stages of the Procedure

Disciplinary investigations

Disciplinary issues will usually be investigated by the employee's immediate supervisor or manager or an interim manager, or if they are already involved in the case another manager will take the role of Investigating Officer.

Advice must be sought from Human Resources, detailing the reason(s), where there any concerns as to "impartiality" of the nominated Investigation Officer or their authority to carry out an investigation. (It is the employee's responsibility to raise their concerns prior to the investigation meeting as objections will not be considered later in the process or at a hearing without good reason). Any disagreement will be referred to the Director of Human Resources whose decision is final.

Note: In some cases, managers may decide to suspend employees during an investigation; this does not imply guilt and employees will be paid as normal.

Disciplinary hearings

Hearings will be conducted either by a Director or Group Manager (or equivalent), or an interim manager covering a substantive post at that level, with the authority to chair a disciplinary hearing and to issue any disciplinary sanctions, for example, issue warnings or dismissal.

Advice must be sought from Human Resources, detailing the reason(s), where there any concerns as to the "impartiality" of Hearing Officer or their authority to conduct an hearing. (It is the employee's responsibility to raise their concerns prior to the Hearing). Any disagreement will be referred to the Director of Human Resources whose decision is final.

In the case of JNC officers, the Assembly will appoint a JNC Disciplinary Panel consisting of the Leader (who shall be Chair), Deputy Leader(s) of the Council, the relevant Portfolio Holder(s), and two non-Cabinet councillors (selected by the Chief Executive, in consultation with the Leader, from a pool of four non-Cabinet councillors appointed by the Assembly), to:

- (a) make decisions in respect of the suspension of the Chief Executive in accordance with paragraph 5, Chapter 3, Part 4 of the Constitution for the purposes of investigating alleged misconduct;
- (b) make decisions in respect of disciplinary action, including dismissal, in respect of all JNC Officers with the exception of the Head of Paid Service, Monitoring Officer and Chief Finance Officer;
- (c) make decisions in respect of disciplinary action, excluding dismissal, in respect of the Head of Paid Service, Monitoring Officer and Chief Finance Officer; and
- (d) make recommendations to the Assembly in relation to the dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer, subject to the provision below.

In respect of (d) above, the membership of the JNC Disciplinary Panel shall be extended to include at least two Independent Persons appointed by the Council under the Localism Act 2011, with priority to an Independent Person(s) appointed by the Council who is a local elector, followed by an Independent Person(s) appointed by the Council who is not a local elector and finally an Independent Person(s) appointed by another authority.

Human Resources

Procedural advice must always be sought from Human Resources. A Human Resources Adviser will attend all formal Disciplinary Hearings and Appeals (at 5.3-5.4), to make sure a thorough and fair process for all concerned in line with the council procedures and “Best Practice”.

Human Resources will be available to give appropriate support and advice during the process; this will include:

- talking through the process to be followed
- where to go for further help and support

Head of Human Resources

The Head of Human Resources and his/her named representative, has the overriding authority to make sure that all disciplinary cases are dealt with appropriately and in accordance with this Procedure, employment legislation and “Best Practice”.

5. Disciplinary Process

It is essential that any allegations of misconduct are investigated and the facts established promptly before recollections fade. Investigations do not need to be time consuming, but speed should not be at the expense of thoroughness.

In accordance with the principals of natural justice, employees will be advised at each stage, by the Investigating Officer, of the precise nature of the complaint and specific allegation(s) against them and given the opportunity to respond before any decision is made. The individual will also have the right of appeal against any disciplinary action taken after a Hearing.

No disciplinary action will be taken until the matter has been investigated and employees will not be dismissed for a first breach of discipline except in the case of gross misconduct.

5.1 Informal

Most minor issues can be resolved informally by the line manager through informal advice and discussion, consultation and training, as appropriate. Where the allegations are of such a serious nature that they cannot be dealt with informally, the matter will be investigated through the Formal Process at 5.2 to 5-3.

Where there is suspected gross misconduct; or working relationships have broken down, including bullying and harassment; or risks to individuals or to council property etc, managers should consider, in consultation with Human Resources, whether to suspend the employees pending investigation of the allegation or allegations.

5.2 Formal Investigation

Managers must consult Human Resources before proceeding to the formal stages of the Procedure.

Investigation

The Investigating Officer should establish the facts as quickly as possible, and decide whether there is an issue to be dealt with informally or a case to be dealt with using the formal procedure. This includes getting the employee's version of events and obtaining witness statements.

It is important to remember that disciplinary investigations are stressful for all concerned, that is, the employee; witnesses; the Investigating Officer and colleagues. Therefore, consideration should be given as to what priority and support is allocated to enable the manager to carry out a full investigation as speedily as possible.

It is not possible to set rigid timescales for the completion of investigations but the Investigating Officer must seek advice as soon as possible from

their Manager and Human Resources if this is likely to take longer than four weeks. The employee should be kept regularly advised of the progress of the investigation.

Employees may be accompanied at any meeting under the Formal Process either by a trade union representative or work colleague. If a chosen representative is unable to attend a meeting, the Investigating Officer will reschedule the meeting to a mutually convenient time, not more than five working days after the originally notified date, in accordance with the ACAS Code of Practice. This deadline may be extended by agreement provided the meeting is held within 20 working days of the originally notified date. The statutory right to be accompanied applies specifically to hearings which could result in:

- i) The administration of a formal warning to a worker by their employer.
- ii) The taking of some other action in respect of a worker by their employer
- iii) The confirmation of a warning issued or some other action taken.

The Investigating Officer should obtain all the relevant facts and information as quickly as possible, by collecting written evidence and interviewing witnesses as appropriate. Witnesses should be interviewed or asked to provide written statements. A record should be taken of interviews and the notes of meetings and witness statements signed and dated by the witness. Witnesses must be reminded of the need to maintain confidentiality and that they may be required to attend future hearings.

The Investigating Officer must notify the employee as soon as practicable that an investigation is being carried out and the reason for this. As soon as the Investigating Officer has clarified the allegations they should arrange an investigative meeting. The employee must be formally notified in writing of the arrangements for the meeting and the specific allegations.

The purpose of the meeting is to give the employee the opportunity to respond to the allegations and to raise any concerns, as part of the fact finding process.

Following the meeting it may be necessary to seek further information or to interview/re-interview witnesses to check facts. Where new information is obtained during the investigation, the investigative meeting should be reconvened in order to give the employee the opportunity to respond.

Once the investigation is completed, the Investigating Officer will need to decide whether or not there is a case to answer at a hearing. Their decision should take into consideration the following:

- Has the employee admitted to any of the allegations?
- Has the employee broken any rules and procedures?
- Are the rules known to employees and have they been applied consistently?

- Is it reasonable to expect the individual to know their conduct was wrong?
- If there has been a breach of discipline does it require formal action or can it be dealt with informally by counselling, training and development?

The employee will be notified in writing of the outcome of the investigation and the recommendations.

5.3 Disciplinary Hearing

The arrangements for the Hearing are detailed at Appendix 3.

A Disciplinary Hearing will be conducted by a Corporate Director, Divisional Director or Group Manager (Hearing Officer) with the authority to chair a disciplinary hearing and to issue sanctions. A Human Resources Adviser will provide procedural advice to the Hearing Officer.

The Hearing Officer conducting the meeting will arrange for a note taker to be present. If the employee disagrees with the notes of the meeting, they can ask for their version to be attached to the minutes.

The management case should normally be presented by the Investigating Officer who will arrange for the employee to be formally advised in writing of the date and arrangements for the hearing including:

- the specific allegations against them;
- whether it may result in a dismissal;
- their right to be represented;
- their right to present evidence and call witnesses;
- copies of the evidence and the names of the witnesses to be presented.

The employee or their representative is responsible for arranging:

- i) Their witnesses and notifying them of the time and date of the Hearing.
- ii) Provision of their evidence or documentation to be presented at the Hearing.

Details of the information to be presented and the names of witnesses to be called should be made available to the Hearing Officer, Investigating Officer and employee, a minimum of five working days before the day of the Hearing.

If the employee's chosen representative is unable to attend, the Hearing will be rescheduled to a mutually convenient time no more than five working days after the date originally proposed. This deadline may be extended by agreement provided the meeting is held within 20 working days of the originally notified date.

The employee will be notified in writing that if they fail to attend the re-arranged Hearing without good reason, or to arrange representation, the case may be heard in their absence.

Outcome

When considering an outcome the Hearing Officer should consider the following:

- Has there been as much investigation as is reasonable in the circumstances?
- Have the requirements of the Disciplinary Procedure been properly complied with up to this point including advance notice to the individual of the matters to be considered?
- Have I paid sufficient regard to any explanation put forward by or on behalf of the employee?
- Do I genuinely believe that the employee has committed the alleged misconduct?
- Have I reasonable grounds to sustain that belief on the balance of probabilities (is it more likely than less likely the individual committed the alleged misconduct)?

If the answer to all of the above points is yes;

- Is the misconduct serious enough to warrant the disciplinary decision I am contemplating?
- Whether the Disciplinary Rules indicate what the likely penalty will be as a result of this particular misconduct?
- Have I had regard to any mitigating circumstances put forward by, or on behalf of, the employee and a response by management?
- Is the decision reasonable in all the circumstances (talking into account the individual's service history and the action taken in similar cases)?

After full consideration of the evidence presented, the Hearing Officer may decide from the following outcomes:

i) Adjournment

To adjourn pending further investigation of issues raised at the Hearing, before reconvening to decide on the outcome or to continue the Hearing.

ii) No action

Where there is no case to answer or the matter does not warrant a warning, the employee should be informed that the matter is being dropped and that no further action will be taken.

The outcome and any recommendations must be confirmed to the employee in writing and the records and documentation from the investigation will be destroyed.

Line Managers will need to consider how they will re-introduce the person back into the workplace, especially where they have been suspended pending the outcome of the disciplinary proceedings.

iii) Counselling, advice, referral to Occupational Health

Where the inappropriate behaviour, or misconduct, can be dealt with through additional training, support, advice or counselling (from the line manager or the council's Occupational Health service or Employee Welfare Line) where there are concerns as to the individual's health.

The Hearing Officer must inform the employee of the outcome in writing and the arrangements for any identified support. The employee must also be informed that if they fail to respond to the support or there is no improvement in their behaviour over the following six months, the matter will be referred back for a decision on any deferred disciplinary action.

Note: Managers must make sure that any support agreed is provided, as it will be unfair to refer the case back to the Hearing Officer for a decision if they have not complied with the outcome.

iv) Written warning

The Hearing Officer should ensure that the employee is clear about both the reasons for the warning, and the consequences of failure to heed it.

- i. **First Written Warning** – For a period of six months. First written warnings are normally given for a minor offence.
- ii. **Second Written Warning** – For a period of 12 months. Second written warnings are usually given for a more serious offence or an accumulation of minor offences.
- iii. **Final Written Warning** - For a period of 12 months. Final warnings are usually given for further instances of misconduct or a first instance of gross misconduct, depending on the seriousness of the case.

In exceptional cases, where agreed with the Head of Human Resources, a final written warning may be extended to 18 months where the misconduct is so serious - verging on gross misconduct - that it cannot realistically be disregarded for future disciplinary purposes.

v) Dismissal

If the misconduct is of such a serious nature that the authority cannot allow the employee to continue their job, they may be dismissed without notice. Dismissal following cumulative warnings or by reason of capability, will be with pay in lieu of notice.

Note: Action will be taken to recover any monies misappropriated or lost in fraud cases or through breaches of Standing Orders and Financial Regulations or any other policies and procedures.

vi) Disciplinary transfer or Demotion

In exceptional cases, as agreed by the Head of Human Resources, for example where allegations of bullying or harassment are upheld or the employee no longer holds qualifications that are a requirement of the post, a transfer or demotion may be considered as an alternative to dismissal. This sanction will not be considered in all disciplinary cases and only where there is a suitable post immediately available.

In all cases, the Hearing Officer will notify the employee in writing of the outcome of the Hearing, including any recommendations, within five working days, along with the right to appeal as appropriate.

5.4 Appeal

Employees have the right to appeal against any disciplinary action and if they wish to do so, they should write to Human Resources within 10 working days of receiving the letter confirming the outcome of the Hearing, stating the grounds for the appeal.

Appeals against First and Second Written Warnings will be heard by a Corporate or Divisional Director within 20 working days of receipt of the written notification of appeal in Human Resources. (See i) below).

Appeals against Final Written Warnings and Dismissal will be heard by the Personnel Board within 3 months of receipt of the written notification of appeal in Human Resources.

The Officer or Panel hearing the appeal may vary or confirm the decision made at a Disciplinary Hearing but cannot increase the sanction.

Note:

- i) A Director or interim manager covering a substantive post at director level or equivalent with the responsibility to chair an Appeal Hearing will hear appeals against disciplinary sanctions against officers below director level or equivalent posts. Appeals against final warnings and dismissal will be heard by Members at a Personnel Board.

- ii) A JNC Appeals Panel consisting of at least two Members of the Cabinet, one of whom shall be appointed as Chair, and two non-Cabinet councillors, (selected by the Chief Executive, in consultation with the Leader, from a pool of four non-Cabinet councillors appointed by the Assembly), subject to none having participated in any previously appointed Panel relating to the case in question, will:
 - (i) consider appeals in respect of dismissal and disciplinary action of JNC Officers;
 - (ii) consider, with the involvement of a separate independent person, appeals in respect of disciplinary action against the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer (Section 151 Officer)

This is the final stage; there is no further right of appeal.

Human Resources will automatically update the Procedure to comply with any changes to legislation, case law or ACAS guidance and notify employees of the amendments.

Appendix 1:

Disciplinary Rules

Disciplinary rules set standards of conduct at work and it is important that employees know what standards of conduct are expected of them so as not to undermine supervisory control and / or impair the effective exercise of the council's duties and responsibilities.

It is unlikely that any set of disciplinary rules can cover all circumstances that may arise, and the examples detailed are not intended to be either exhaustive or exclusive. Moreover, the rules required may vary according to particular circumstances. In drawing up the rules, the aim has been to specify as clearly and concisely as possible, those necessary for the:

- efficient and safe performance of work;
- legitimate expenditure and use of council resources; and
- for the maintenance of satisfactory employment relations between employees and the Council.

The rules, which apply to everyone employed by the Council, give guidance on how various types of behaviour are to be treated so that each individual is aware of the consequences of unsatisfactory conduct or performance. Breaches of disciplinary rules will lead to appropriate disciplinary action, taking into account:

- the seriousness and nature of the offence;
- the employee's previous record;
- mitigating circumstances
- in some instances - the nature of the job

Definitions

Gross misconduct is conduct of such a serious nature that the Authority cannot allow the employee to continue in their job. Employees found guilty of gross misconduct will usually be dismissed without notice.

Misconduct is conduct of a lesser degree than gross misconduct and if found will result in the employee being issued a warning. Recurring or repeated acts of misconduct may be considered as gross misconduct.

The following are examples of disciplinary offences only and not intended as an exhaustive list. What is listed under "misconduct" may also be considered as "gross misconduct" (and vice-versa) according to the seriousness of the case.

Managers must take advice from Human Resources as to whether an alleged offence is considered as gross misconduct or misconduct.

1. Gross misconduct

The following are examples of offences that would normally be considered as a fundamental breach of contract and gross misconduct. However they may also be considered as misconduct according to the seriousness of the offence and the nature of the employee's job:

1.1 Code of Conduct

- Failure to follow the provisions in the Employees Code of Conduct
- Any breach of the Employees Code of Conduct or the Council's rules that brings the Council into disrepute
- Unauthorised absence from work.

1.2 Absence and time-keeping

- Deliberate failure to obey reasonable instructions or to follow the Council's sickness absence and reporting arrangements, (including unauthorised absence from work).

1.3 Criminal offences in/outside of work

- Any act which could be subject to criminal proceedings and/or the failure to notify the Council of any such action.
- Failure to disclose a conviction/caution for a criminal offence whilst employed by the Council.
- Criminal offences committed inside/outside of work will be considered according to the particular circumstances of the case, but dismissal will result where: -
 - Where there is theft against the public purse (fraud)
 - Employment by the Council in any way enabled or assisted in the commission of the offence.
 - Council property was used to aid the commission of the offence.
 - Continued employment would put at risk those served or employed by the Council.
- Offences which would affect the member of staff's ability to undertake contractual duties or obligations under the Council's Code of Conduct, including failure to declare conflicts of interest

1.4 Data and information protection

- Failure to follow the Council's policies and requirements and which leads to a loss of confidential or personnel information relating to the Council, its clients or fellow employees.
- Misuse of data of confidential or personnel information relating to the Council, its clients or fellow employees

1.5 Discrimination, bullying and harassment

- Sexual misconduct at any time with any person for whom you have a responsibility and is in your care in your capacity as an employee of the Council.
- Deliberate acts of bullying and /or harassment that involve physical or mental intimidation or assault and discrimination on any grounds including; age, disability, gender, faith or religion, marital status or civil partnership, maternity or pregnancy, race, sexual orientation, socio-economic status, caring responsibilities in: -
 - The provision of facilities and services
 - Recruitment and employment
 - Failing to make reasonable adjustments where agreed for disabled people
- Deliberate acts of bullying and / or harassment against anyone raising concerns with good reason under the Council's Whistle-blowing Policy.

1.6 Finance regulations and Council procedures

- Stealing from the Council, it's Members, its staff or the public, offering or accepting bribes
- Deliberate contravention of Standing Orders and Financial Regulations or neglect of duty (deliberate or otherwise) in failure to follow procurement rules etc that results in a financial loss to the Council or damage to its reputation or affects staff employment
- Fabrication of any document, for financial gain.
- Deliberate fabrication of qualifications or information which is a stated requirement of employment or which could result in financial gain.
- Acceptance of gifts or gratuities except where allowed under the Council's Conferences, Visits and Hospitality Rules.
- Attempted use of an official position for private advantage, including the employment of people to whom you are related to or have a close personal relationship outside work; dishonest or improper use of information obtained in the Council's employment.
- Doing unauthorised private work (whether paid or not) during hours when contracted to work for the Council or during periods of sick leave.
- Making a knowingly false, misleading or inaccurate oral or written statement in respect of official business or for personal gain.
- Communicating to persons outside the Authority proceedings of any Committee meeting or the contents of any document unless required by law or authorised to do so.
- Providing employment or business references unless authorised to do so.

1.7 General misconduct

- Deliberate failure to obey reasonable instructions or to follow the Council's financial procedures when submitting and approving claims for expenditure.
- Making a false, malicious or vexatious complaint or accusation.
- Posting defamatory, offensive, incorrect or improper comments or disclosing confidential information about the Council, its clients, or fellow employees through any media including social networking sites
- Offensive or abusive behaviour.
- Being under the influence of alcohol or drugs (other than those that have been medically prescribed) so that performance of work duties is detrimentally affected or, which could endanger anyone's health and safety.

Note: Managers should refer to the drug and alcohol dependency policies and take advice from Human Resources before taking any action under this Procedure.

- Refusal to take a random (for safety critical roles) or for cause drug and alcohol test

1.8 Health and Safety

- Failure to comply with the obligation placed upon the member of staff under the terms of the Health and Safety at Work Act 1974 and any subsequent amendments.
- Failure to wear appropriate protective clothing or use necessary safety equipment provided by the council for particular duties.
- Failure to comply with accident reporting procedures.
- Fighting or physical assault at work either with fellow employees or other persons; including maltreatment of persons in the care of the Authority; threatening behaviour; intimidation or assault. This does not include reasonable self-defence in cases of assault on an employee.
- Serious breaches of health and safety regulations, endangering yourself or other people, including deliberate damage to, neglect or misappropriation of safety equipment.
- Dangerous or reckless behaviour involving risk of injury to the member of staff or to other persons or other conduct at work likely to diminish safety standards, for example using mobile phones whilst driving.
- Neglecting to carry out any instructions of a medical officer appointed by the authority or, while absent from duty on account of sickness, committing any act, undertaking any private work, or adopting any conduct calculated or liable to postpone return to duty.

1.9 Misuse of Council equipment, material and resources

- Accessing or downloading pornographic or offensive material from the web, intranet and/or any other sources etc
- Deliberate damage to or deliberate neglect of Council property.
- Misuse of materials, equipment or resources that is likely to endanger the health and safety of employees or any other persons or result in a financial loss to the Council.
- Using the Council's facilities and equipment, including e-mail, and mobile devices etc, to threaten, bully or harass employees, or Council clients.
- Unjustifiable waste of Council materials, equipment or resources.
- Failure to report any loss or damage to any property of the Council, within your area of responsibility.
- Use of waste Council material without express authority, including waste food.
- Use of Council labour, materials, equipment or resources for private purposes.

1.10 Neglect of duty

- Failure to renew or maintain accreditations, licenses or qualifications, GSCC/HSPC or CRB etc that are a requirement for the post or the responsibility of the post-holder.
- Failure to discharge obligations in accordance with a legal statute or contract of employment without sufficient cause.
- Negligent, careless or wilfully inadequate standards of work.
- Failure to account properly for or to make a prompt and true return of any money or property which comes into the possession of a member of staff during the course of duty.
- Failure to follow financial procedures when submitting and approving claims for expenditure, including the provision and checking of receipts
- Negligent, careless or wilfully downloading from an unsecured website or electronic communication resulting in any loss to the Council

2. Misconduct

The following are examples of offences that would normally be considered as misconduct. They may also be considered as gross misconduct according to the seriousness of the offence and the nature of the member of staff's job.

1.1 Absence and time-keeping

- Failure to report absence from work and the reason for such absence.
- Failure to provide an absence certificate as required under sick leave procedures.
- Failure to complete flexible hours records or time recording sheets each day or period as required.
- Bad timekeeping.

1.2 General misconduct

- Sleeping on duty unless expressly permitted as a requirement of the job role.

1.3 Health and Safety

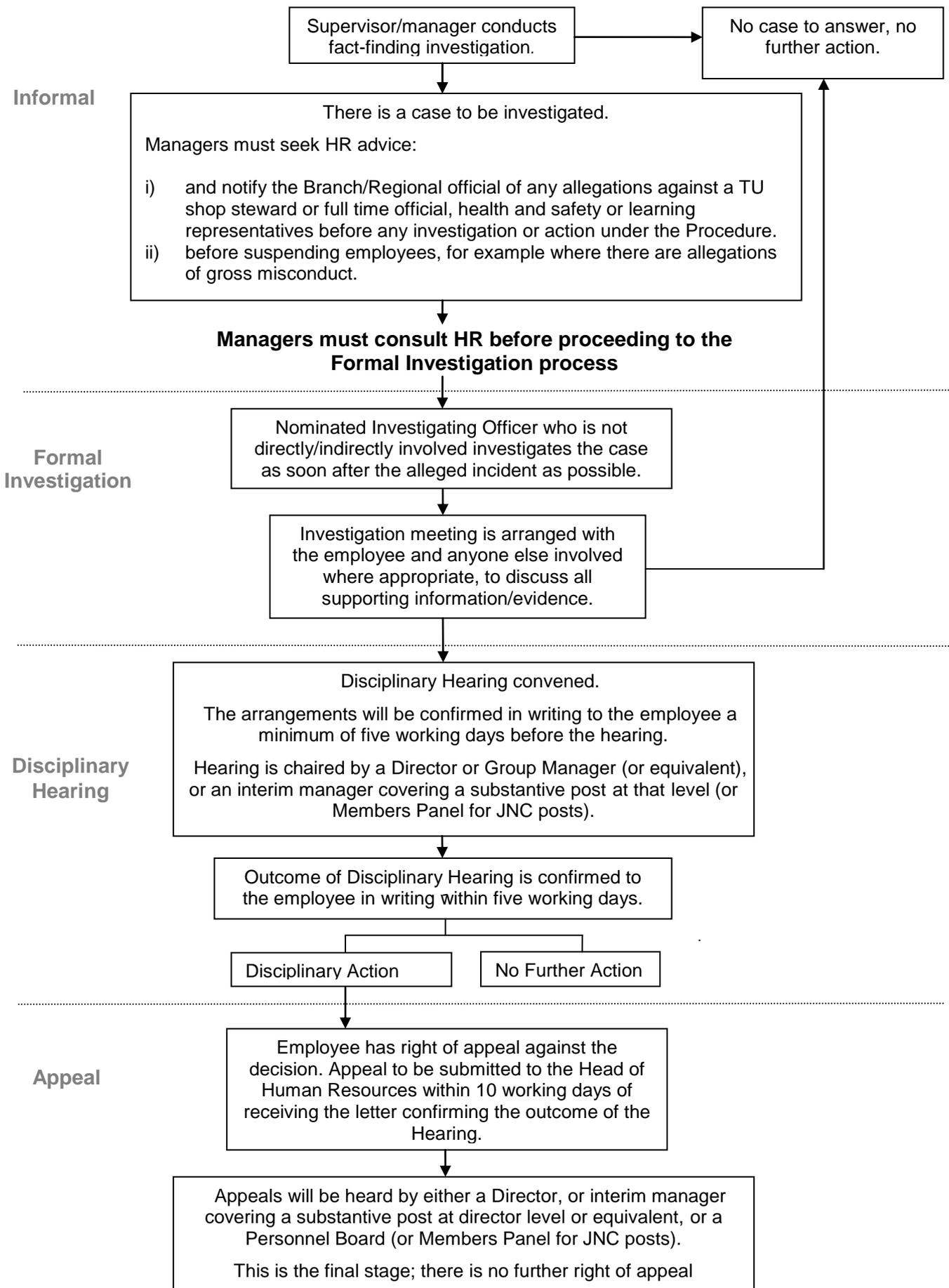
- Failure to comply with departmental hygiene requirements.
- Smoking in areas designated as no smoking.
- Failure to comply with health and safety guidance or requirements when working from home

1.4 Misuse of Council equipment, material and resources

- Unauthorised use of any Council documentation, facilities or equipment including work telephones, electronic portable devices, photocopying or scanning, stationery or supplies, web access etc for private purposes.

Human Resources will automatically update the Procedure to comply with any changes to legislation, case law or ACAS guidance and notify employees of the amendments.

Appendix 2: Disciplinary Procedure - Flowchart



Appendix 3:

Hearing Procedure

1. Introduction

- The person hearing the case (the “Hearing Officer”) will; clarify the roles of those present; check both sides have copies of the documentation and details of the witnesses to be presented; and outline the process to be followed.
- The Hearing Officer will not normally allow any further documentation or witnesses to be presented at the Hearing unless both sides agree.
- The manager presenting the case, the employee and their representative will be present throughout the Hearing except for any adjournment and when the Hearing Officer is considering their decision.
- Witnesses will only be present when they are called to give their evidence and to be questioned by the Hearing Officer, the management and staff sides.
- The Hearing Officer and HR Adviser can ask questions of the manager, the employee and their representative and witnesses at any time.
- The Hearing Officer will give the employee the opportunity to say whether they admit to any of the allegations before management presents their case.

Where the employee admits to the allegations, the Hearing Officer may consider claims of mitigation instead of having the whole case presented. The Hearing Officer will still allow management the opportunity to ask the employee or their representative questions. The employee and/or their representative will then have the opportunity to clarify any points raised during the questioning.

In such cases the Hearing would then go directly to Stage four: Summaries

2. Management case

- Management will present their case and call witnesses and refer to documents as appropriate
- After the presentation, the employee and their representative can ask the management questions
- Management will then have the opportunity to clarify any points raised during questioning.

3. Employee case

- The employee and their representative will present their case and call witnesses and refer to documents as appropriate.
- After the presentation, management can ask the employee and/or their representative questions.
- The employee and their representative will then have the opportunity to clarify any points raised during the questioning.

4. Summaries

- Both sides, starting with management, will have the opportunity to **summarise** their case if they wish. This is not a rehearing of the whole case and neither side will be allowed to ask any further questions.
- Both sides will then withdraw whilst the Hearing Officer considers their decision. If it is necessary to recall the employee, manager or a witness to clarify points of uncertainty as to the evidence presented, this must be done in the presence of both parties who will be called back together.

5. Outcome

- The Hearing Officer will recall both sides together to notify them of the outcome. If further time is needed to consider the matter, both sides will be recalled and given an indication as to when a decision is to be made and allowed to leave.
- The Hearing Officer will confirm the decision and any recommendation(s) in writing within five working days and arrange for the notes of the meeting to be issued to both parties and the Human Resources Adviser as soon as possible afterwards.

London Borough of Barking and Dagenham
Call direct on 020 8215 3000

We have tried to make sure that this information is correct at the time of going to print. However, information may change from time to time.

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