

DISCIPLINARY POLICY AND PROCEDURE

1 Scope

- 1.1 This procedure applies in cases of employee misconduct (including breaches of the Council's Code of Conduct or other Council rules and standards); and applies to all Hackney employees (except Chief Officers and school based staff, who have their own procedures).

2 Operating principles

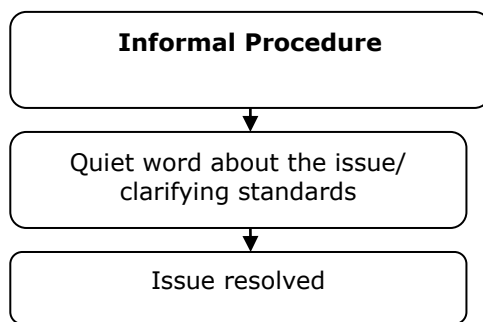
- 2.1 Managers will apply the following principles when using the Disciplinary Procedure:-

- The Council's priority is the provision of excellent public services. Managers will take action against all employees whose conduct falls below the standard required. Appropriate action may include dismissal.
- The main objective is improvement and employees will be supported in achieving the required standards. This means that:-
 - Issues will be dealt with informally and promptly where appropriate; exceptions to this will be issues that are regarded as gross misconduct
 - Where the informal process has not achieved the desired outcome, a formal process should commence.
 - Warning periods will be used to reinforce standards and to provide the employee with the opportunity to improve and may be accompanied by other support such as training and/or additional supervision where appropriate;
 - Employees will play their part in resolving any difficulties and will cooperate with any measures identified.

3 Before using this procedure

- 3.1 Where possible, managers should try to deal with issues **informally** (e.g. as part of day-to-day management or supervision). This may mean having a quiet word with the person, clarifying standards before they escalate into a more serious problem; and/or identifying any possible causes (and potential solutions) in a supportive way.
- 3.2 Informal action has the same status as normal supervision. Neither employees nor managers will be accompanied to informal meetings. However, managers should keep notes of the discussion.

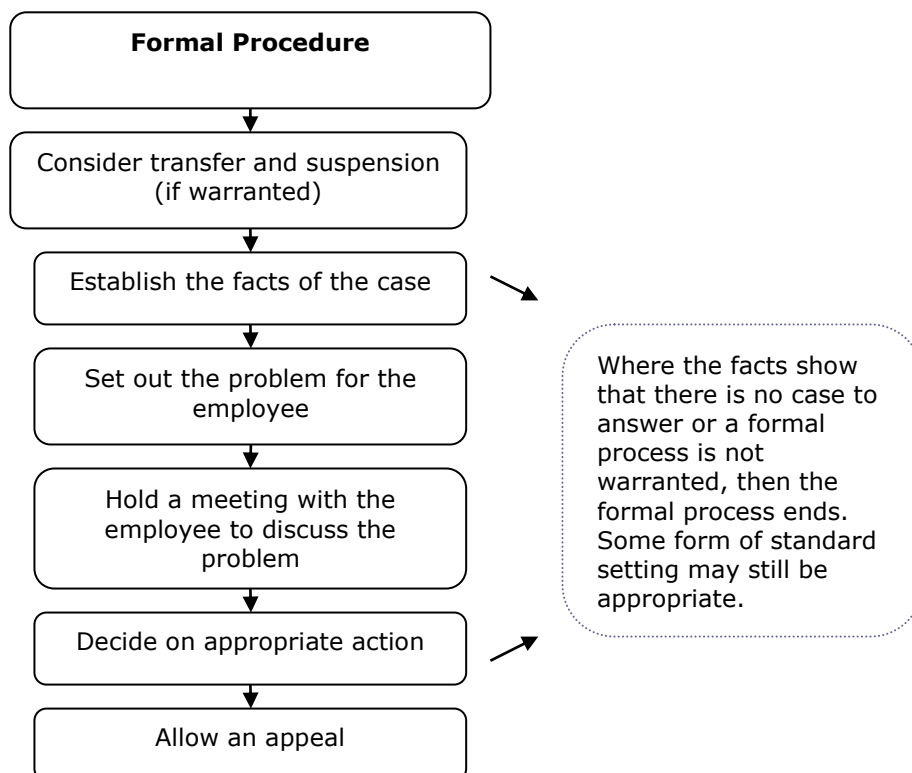
3.3 The Informal Procedure



4 The Formal Procedure

4.1 The formal process should be used where the issue is too serious for informal action and/or where informal action has not resulted in the required improvements in employee behaviour.

4.2 The procedure is summarised as follows:-



5 Temporary Transfer and Suspension

5.1 In some cases, a temporary transfer or suspension may be necessary. This would be in one or more of the following circumstances:-

- There is no reasonable alternative to suspension/transfer

- There are grounds for believing that the employee's continued presence in the workplace could result in a repeat offence or hinder the investigation

Note:

1. Suspension would only normally occur in cases of gross misconduct (*this will be for alleged conduct around, theft, violence, harassment and bullying, etc*) See Appendix 1
2. A suspension or transfer is not a presumption of guilt and does not prejudice the outcome.

5.2 Only a 4th tier (or more senior manager) may suspend or temporarily transfer an employee; and permission/approval from an AD must be obtained first.

5.3 The process is:-

1. As soon as the incident occurs/comes to light, the employee should be sent home (the most senior person present should do this if the 4th tier manager is not available);
2. Obtain authority from the appropriate AD to suspend/transfer;
3. Meet the employee (normally the next day) accompanied by their TU rep or a work colleague if they wish. Tell him or her that suspension/transfer is being considered and get their views.
4. Take a decision and (where it is suspension or transfer) confirm the decision in writing within two days.

The manager will review the suspension/transfer regularly (at least every 4 weeks) to ensure that it is still necessary and appropriate.

Note: It is the Investigating Officers' responsibility to keep the employee informed of progress.

5.4 At the meeting, the manager should advise the employee:-

- The reason for the suspension;
- The initial duration of the suspension (normally 4 weeks);
- That the suspension/transfer will be reviewed regularly;
- That the suspension/transfer will be on normal pay;
- That **the employee may not enter Council premises** without approval from their manager or the Investigating Officer (unless it is to access Council services – and they behave reasonably and do not affect the investigation)
- That **the employee must not contact any Council employee** except their manager, the Investigating Officer and their Trades Union representative or work colleague (who will accompany them during the process)
- That **the employee must be contactable and available for work** during normal working times and must follow the normal rules for sickness, leave etc.

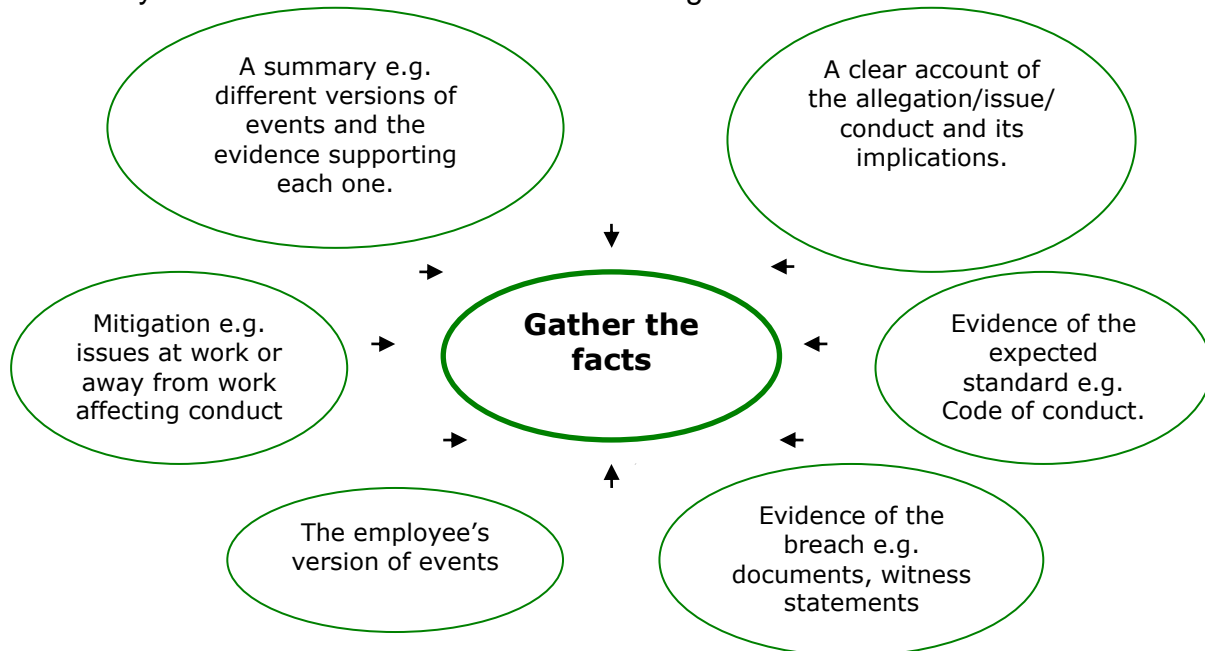
5.5 Suspensions/transfers will normally be with full pay. However, suspensions may be unpaid where the employee:-

- does not have the right to work in the UK;

- is in custody;
- fails to comply with the suspension conditions (*refer to Suspension Procedure*)

6 Establish the facts of the case

- 6.1 Any necessary investigations of potential disciplinary matters must be carried out without unreasonable delay to establish the facts of the case. Gathering the facts is likely to include one or more of the following:-



NB: This list is indicative and not exhaustive.

- 6.2 The investigation will normally be carried out by the employee's line manager. This will not normally be the same person who chairs the disciplinary meeting.

The aim of the investigation is to gather the facts. An investigation should stop when a clear picture of events has been established. For example, it may not be necessary to interview every witness to an incident.

7 Set out the allegation/problem for the employee

- 7.1 If it is decided that there is a case to answer, the manager must inform the employee in writing of the alleged misconduct. The employee must have sufficient information to understand the allegation against them and its possible consequences.

Note: The employee must be informed in writing if their alleged misconduct could constitute **gross misconduct** (examples in Appendix 1) and that gross misconduct is behaviour serious enough for an employee to be dismissed for a first offence.

- 7.2 In all cases the letter must include
- an invitation to the employee to a meeting, stating the venue, date and time of the meeting;
 - a statement of the specific allegations of misconduct in writing;
 - a requirement for the employee to take all reasonable steps to attend the meeting;

- confirmation of the employee's right to have a trade union representative or work colleague present at the meeting; *and*
- copies of any written evidence (e.g. witness statements) where applicable.

8 Hold a meeting with the employee to discuss the problem

- 8.1 The disciplinary meeting should be held without unreasonable delay, but allowing the employee reasonable time to prepare their case.

At the meeting:-

- ***The manager chairing the meeting*** will explain the complaint against the employee and go through the evidence that has been gathered. The manager may ask the investigating manager, where relevant, to confirm points and clarify evidence
- ***The employee*** will be allowed to set out their case and answer the allegation; and will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses

Note: Both the manager and the employee must give the other advance notice of their intention to call relevant witnesses.

9 Decide on appropriate action

- 9.1 At the end of the meeting the key points should be summed up and the employee asked if he or she has anything further to say. This will help to ensure that nothing important has been missed.
- 9.2 The manager will normally adjourn the meeting before deciding what action is appropriate. This will allow time to reflect and consider the information presented. This will also allow time to check anything that needs checking e.g. disputed facts.
- 9.3 The manager must confirm the decision in writing within 10 working days of making the decision.

Important note when taking a decision: Even in circumstances where there is no direct evidence of guilt or warnings, dismissal may still be fair where a manager has reasonable grounds (on the balance of probability) based on the evidence presented to believe that the employee is guilty of misconduct.

- 9.4 Where misconduct is confirmed, the manager will normally issue a written warning and/or set standards. A further act of misconduct within the timescales set would normally result in a final written warning. Should there be further misconduct within the timescales set, then the employee may be dismissed however, if there is exceptional extenuating circumstance, the final written warning period may be extended.
- 9.5 Where an employee's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This should be used where the employee's actions had, or were liable to have, a serious or harmful effect on the Council.

9.6 A first or final written warning or formal standard setting must set out:-

- the standard required (including timescales where relevant)
- the consequences of further misconduct
- the expiry date of the warning

Written warnings remain live for 1 year. Final written warnings remain live for 2 years. This means that if an employee's conduct does not improve, managers can take account of previously issued warnings where they are still live and relevant. For example, if an employee is issued with a final written warning and there is further misconduct (worthy of a warning) this can lead to dismissal if the final written warning is still live. All expired warnings will remain on the employee's record and may be referred to if similar future misconduct occurs.

9.7 A decision to dismiss will only be considered where either:-

- the employee's conduct remains unsatisfactory despite an earlier final written warning. The employee will be given contractual notice of termination of their employment; *or*
- the act of misconduct is so serious (gross) that it warrants dismissal for the first complaint. The employee will be dismissed without notice (i.e. summarily dismissed)

A decision to dismiss can only be made by a 4th tier or more senior manager

As an alternative to dismissal, the manager may consider a transfer at the same grade or a demotion to a lower grade with no salary protection. Where an employee refuses transfer or demotion they will be dismissed.

Note: A suitable job must be available at the point the decision to transfer or demote is taken.

10 Appeal

10.1 Employees have the right to appeal (normally within 10 working days) upon receiving the letter confirming the disciplinary decision. The appeal can be on one or more of the following grounds:-

- the evidence did not support the conclusions reached at the formal meeting
- the sanction was too severe given the circumstances of the case
- the procedure was not followed properly
- new evidence has emerged which the employee was unable to produce at the earlier meeting and which affects the final decision or sanction (*full details must be provided as part of the appeal process.*)

10.2 The appeal will be dealt with impartially by a manager who has not been previously involved in the case and at least of equal grade to the manager who made the

original decision. A Manager hearing an appeal against dismissal must be at least 3rd tier.

- 10.3 The manager considering the appeal will invite the employee to a meeting, unless the matter can be appropriately addressed in writing without the need for a meeting. Where a meeting is held, the employee has the right to be accompanied by a union representative or a work colleague.

If the appeal is against dismissal there will usually be a meeting – and always where the employee requests a meeting.

- 10.4 The manager considering the appeal may confirm the original decision or substitute a different decision (i.e. that there should have been no formal action taken or to reduce the level of warning/sanction issued). The manager will confirm the outcome of the appeal to the employee within 10 working days. This decision is final.

SUMMARY

Disciplinary Policy & Procedure with key points

Informal Procedure

Informal action is always best where possible and appropriate.

(See section 3)

Formal Procedure Temporary Transfer OR Suspension

A 4th tier manager may consider a temporary transfer or suspension where there is no reasonable alternative; and there could be repeat offences and/or the investigation may be hindered.

Generally:

- The initial duration is normally 4 weeks
- Transfer or suspension is on normal pay
- The employee may not enter Council premises or contact while on suspension
- The employee must remain available for work while on suspension.

(Section 4)



Establish the facts

Gather the facts/Investigate. Gather evidence that both supports and doesn't support the allegation. Include the employee's version of what has happened and why? Allow the employee to be accompanied at any investigation meeting.

Include only relevant information. Stop when there is a clear and balanced picture.

(See section 6)



Set out the allegation for the employee

Invite the employee to a meeting in writing; set out the allegation against them; provide them with the evidence including any witnesses that will attend the meeting.

(See section 7)



Hold a meeting with the employee

The Manager presenting the case will – explain the allegation and put forward the evidence (including any witnesses).

The employee will – put their case; ask questions; call witnesses

Allow the employee to be accompanied.

(See section 8)



Sum up the facts and ask the employee if he or she has anything to add. This will ensure that important facts are not missed.

Adjourn the meeting if desired. Check out anything further that needs checking.

(See section 8)



Outcomes and warnings

Level of warning:	Level of manager able to issue the warning	Length of time the warning is Current:
No action		-
Written warning		1 year
Final warning		2 years*
Dismissal	4 th tier or more senior	-
* All expired warnings will remain on the employee's record and may be referred to if similar future misconduct occurs.		

Confirm the outcome in writing.

(Section 9)

Appeal

The employee has the right of appeal normally within 10 days; on one or more of the following grounds:

- the evidence did not support the conclusions reached at the formal meeting
- the sanction was too severe given the circumstances of the case
- the procedure was not followed properly
- new evidence has emerged which the employee was unable to produce at the earlier meeting and which affects the final decision or sanction (full details must be given).

(Section 10)

Appeal Meeting

An independent manager invites the employee to a meeting, unless the matter can be addressed appropriately in writing without the need for a meeting. An appeal against dismissal will usually require a meeting (and always if the employee requests it). The manager hearing an appeal against dismissal must be at least 3rd tier.

The employee has the right to be accompanied by a union representative or a work colleague to a meeting (if held).

(Section 10)

Appeal outcomes

1. Confirm the original decision; or
2. Substitute a different decision (i.e. that there should have been no formal action taken or to reduce the level of warning/sanction issued).

Confirm the decision in writing within 10 days.

(Section 10)

Examples of Gross Misconduct

Any breaches of the Code of Conduct will normally result in disciplinary action. Some breaches (known as gross misconduct) could be serious enough to justify the Council in dismissing staff for a first offence, and without notice. It is possible that other conduct, not in itself a breach of the Code of Conduct may also amount to gross misconduct.

As a yardstick, any act which destroys the relationship of trust and confidence that the Council needs to have in an employee will constitute gross misconduct. This is not a complete list, since the circumstances of each case are different, but you should consider dismissing an employee for gross misconduct if they:-

- 1) *Serious harassment on the grounds of race, sex, disability, religion, age, sexual orientation, religion or belief*
- 2) *Cause loss, damage or injury through serious negligence (e.g. resulting in a loss to the Council).*
- 3) *Act negligently or recklessly in a way which leads to a serious breach of the Data Protection Act.*
- 4) *Try to obtain a job by lies or deception.*
- 5) *Seriously demean or offend the dignity of others or abuse their position.*
- 6) *Refusal to carry out a legitimate instruction from their manager.*
- 7) *Threaten, instigate a fight with or assault anyone.*
- 8) *Steal or damage things that belong to someone else or to the Council.*
- 9) *Commit any deliberate acts of discrimination, harassment or bullying.*
- 10) *Sell or possess illegal drugs in the workplace.*
- 11) *Consume alcohol in the workplace (unless they have been given permission by an Assistant Director or his/her deputy – e.g. at a staff leaving party).*
- 12) *Seriously breach health and safety rules.*
- 13) *Do private work when they should be at work for the Council.*
- 14) *Submit false or fraudulent claims to the Council or other bodies (e.g. income support claims, housing or other benefit claims).*
- 15) *Breach financial (or other Council) regulations.*
- 16) *Break a law at work which makes them unfit for the work they do.*
- 17) *Demonstrate serious incapability at work brought on by alcohol or drugs.*
- 18) *Refuse to repay any debt they owe to the Council.*
- 19) *Obtain Council services, property or money by fraud (e.g. falsify time sheets).*
- 20) *Ask for or accept bribes, gifts, or favours.*
- 21) *Squat in Council property or occupy the property of a Housing Association or any organisation that the Council has a nomination agreement with in such a way as to prevent a Council nominee from taking up occupation*
- 22) *Absence without Authorisation (AWOL)*
- 23) *Conceal any serious matter they should reasonably have known to report.*

Examples of Misconduct

It is not possible to list every possible offence, but the following is a guide as to what can constitute a misconduct, leading to a warning being issued. ***Please note, this list is non exhaustive and are only examples.***

1. *Persistent absenteeism and/or lateness*
2. *Poor relationship with other members of staff*
3. *Unacceptable personal behaviour*
4. *Absence without authorisation*
5. *Failure to follow absence reporting procedures*
6. *Foul or abusive language*
7. *Abusive, objectionable or insulting behaviour*
8. *Negligent failure to comply with health and safety procedures*
9. *Negligent failure to comply with equal opportunity and diversity policies*
10. *Insubordination*
11. *Inappropriate professional boundaries*
12. *Failure to comply with a specific instruction*
13. *Smoking at work (in and around any Council building)*

Disciplinary Procedure: Guidance on Special Circumstances

1 Grievances

- 1.1 Where a grievance is submitted during a disciplinary investigation, normally one of the following will apply:-
- (a) ***The grievance will be added to the matter under investigation.*** This would be appropriate where the grievance relates to the matter under investigation (e.g. it relates to the procedure, amounts to mitigation, or is put forward as part of an employee's defence or appeal) *or*
 - (b) ***Progress both matters separately.*** This would be appropriate where the grievance is not related to the matter under investigation.

2 Sickness

- 2.1 It is in the interests of good employee relations for issues to be resolved quickly. This still applies when an employee is absent due to illness, particularly if the employee is off work with stress relating to a conduct issue.
- 2.2 The following general principles will apply:-
- Disciplinary procedures will not normally be suspended because of the ill health of an employee
 - Where the absence is likely to be short, the Council will wait for the employee to recover so that they can participate fully in the process. What constitutes a short enough absence will depend on the circumstances of the case.
 - Where the absence is likely to be long term:-
 - Consult occupational health over whether the employee is fit enough to participate
 - If the employee is not fit enough to participate, consider whether any steps can be taken e.g.
 - Finding a **venue** that is not the employee's normal place of work/council premises;
 - Allowing a greater level of **representation** from the TU Rep, work colleague or someone else agreed by the Council
 - Allowing **written representations** (that may be prepared by themselves or their representative) to reduce the stress of giving evidence;
 - Ensuring that **documentation** is sent to the employee and allowing additional time for the employee to prepare their case.
 - Allowing additional **time** for the employee to participate e.g. additional time and appropriate breaks etc.
- 2.3 If the employee is absent due to illness after the meeting has been arranged, then a new date should be set. The meeting should only go ahead in the employee's

absence where the employee has been given at least two opportunities to attend; and normally where it is clear that the employee is fit enough to attend.

- 2.4 If a meeting is held in their absence, then when setting the outcome out in writing to the employee, particular care should be taken to set out the factual findings and the basis for the decision reached.
- 2.5 The absence will be managed using the Council's Sickness Absence management procedure.

3 Maternity leave

- 3.1 It is in the interests of good employee relations to resolve conduct issues quickly and a disciplinary issue can proceed while an employee is on maternity leave. However it must be appropriate (necessary in the circumstances) and non-discriminatory (i.e. it must not arise because the employee is pregnant or on maternity leave and/or she must not be disadvantaged because she is absent from work).
- 3.2 Meetings must not be arranged during the period of Compulsory Maternity Leave (i.e. the two weeks immediately following the birth of the baby).
- 3.3 Health issues should be taken into account and if the employee feels that her health or the health of her baby is being put at risk, seek medical advice and delay the proceedings if necessary.

4 Taking action against a Trades Union Representative

- 4.1 The normal procedures apply. However, it is advisable to discuss the matter early with a union official (with the employee's agreement). Action could be seen as an attack on the union if it is not handled carefully.
- 4.2 Managers must advise the relevant Senior HR Business Partner and relevant Corporate Trade Union Representative of any potential case involving a trade union official before taking formal action. Where a Corporate Trade Union Representative is the subject of a potential case, the relevant union regional officers must be informed.

5 Disabled Employees

- 5.1 Establish early whether the conduct issue could be disability related e.g. did the issue arise because the duties were unsuitable for the employee or the employee was not properly inducted taking account of the impairment/condition. For example, an employee may have a learning disability and require additional support. You may have a statutory obligation to make reasonable adjustments; which could include for example, adjusting the employee's duties, acquiring equipment or searching for a new job for them.

Further information on employees covered by the Equality Act 2010, can be found in the Management of Sickness Absence – Guidance on Special Issues.

5.2 Reasonable adjustment must be made during any investigation or meeting to ensure that the employee is treated fairly and participates fully. Adjustments could include:-

- Changing venues to somewhere more accessible;
- Measures to help the employee participate fully e.g. a signer for a hearing impaired employee;
- Allowing a greater level of representation from the TU Rep., work colleague or someone else agreed by the Council e.g. an advocate where the employee has a learning disability;
- Allowing written representations if giving direct evidence may cause an unacceptable level of stress for the employee e.g. an employee who may have mental health issues;
- Allowing additional time to prepare or additional break times during a meeting;

6 Criminal offences outside of work

6.1 If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. The manager will need to consider what effect the charge or conviction has on the employee's suitability to do the job and their relationship with the Council, work colleagues and customers.

6.2 Where a criminal charge has been brought, managers are not required to wait until the outcome of the criminal case is known before taking disciplinary action. Managers are not expected to establish whether the employee has committed the offence beyond all reasonable doubt but whether, on the balance of probability, the employee committed the alleged actions, and their relevance to employment.

Relationship between the procedures

	Discipline	Capability	Grievance												
Informal Action:	Deal with the matter informally where possible and appropriate.	Deal with the problem informally (e.g. in day-to-day management) before it escalates into a bigger problem.	Consider informal action and mediation where possible and appropriate.												
Consider suspension/transfer:	Consider suspension and transfer where there is no reasonable alternative and there could be repeat offences.	Unlikely to apply.	Unlikely to apply.												
Establish the facts:	Gather the facts/investigate. The investigation must only include relevant information and be balanced.	Gather specific examples of the shortfall in performance e.g. targets and deadlines not met etc...	The employee submits a grievance, normally within 3 months. The grievance must set out the facts and a realistic remedy sought.												
Set out the problem:	Invite the employee to a meeting and set out the allegation. Provide them with a copy of the evidence being presented.	Invite the employee to a meeting and set out the problem and an overview of the evidence that will be discussed.													
Hold a meeting:	Hold a meeting to set out the allegation and put forward the evidence. Allow the employee to put their case, ask questions and call witnesses.	Hold a meeting to review the information gathered/assess progress. Explore remedy (actions that might resolve the problem) Allow the employee to respond to any information put forward.	Hold a meeting to explore the issue with the employee. Consider any remedy. Additional information may be sought by the manager either before or after the meeting where necessary.												
Decide on appropriate action:	Adjourn the meeting for careful consideration of the facts and to gather any further information if necessary. Outcomes and warnings: <table><tr><td>Written warning issued:</td><td>1 year</td></tr><tr><td>Final warning issued:</td><td>2 years</td></tr><tr><td>Mgt tier for dismissal</td><td>4th</td></tr></table>	Written warning issued:	1 year	Final warning issued:	2 years	Mgt tier for dismissal	4th	Decide and communicate: - Required standard and current shortfall - Reviews - Additional support Issue warnings of consequences of continued poor performance. To end the process, sustained improvement must be maintained for: <table><tr><td>Warning issued:</td><td>1 year</td></tr><tr><td>Final warning issued:</td><td>2 years</td></tr><tr><td>Mgt tier for dismissal</td><td>4th</td></tr></table>	Warning issued:	1 year	Final warning issued:	2 years	Mgt tier for dismissal	4th	Confirm any action with timescales.
Written warning issued:	1 year														
Final warning issued:	2 years														
Mgt tier for dismissal	4th														
Warning issued:	1 year														
Final warning issued:	2 years														
Mgt tier for dismissal	4th														
Allow an appeal:	Allow an appeal against any formal warning or dismissal. An appeal is normally lodged within 10 working days stating grounds. The employee is met, unless the appeal can be appropriately considered without the need for a meeting.	Allow an appeal against a final warning or dismissal. Appeal is normally lodged within 10 working days stating grounds. The employee is met, unless the appeal can be appropriately considered without the need for a meeting.	Allow an appeal. Appeal is normally lodged within 10 working days stating grounds. The employee is met, unless the appeal can be appropriately considered without the need for a meeting.												
Note:	The employee has the right to be accompanied at formal meetings by a TU rep or workplace colleague.														