**DISCIPLINARY PROCESS/GUIDANCE**

**Investigation**

A prompt and thorough investigation should be conducted into any matter that is reasonably suspected or believed to contravene any of the Council’s policies or rules. .

Investigations are normally the responsibility of the line manager. If the line manager has had previous involvement, which may call into question the integrity of the investigation, another manager should conduct the investigation

The purpose of the investigation is to gather evidence and facts which supports or contradicts the allegations or concerns raised. The investigation is intended to be fair and objective.

The extent of the investigation will depend on the circumstances and seriousness of the case and may require employees and witnesses to establish the facts. Where practically possible, all witness statements shall be in the form of questions and answers by the investigating officer and should be signed and dated.

In exceptional circumstances, investigators could agree to anonymise a witness statement. For instance, this might be done where a witness has a genuine fear of reprisal.

An investigator may want to corroborate the basis for these fears, for example, reports of intimidation or threatening behaviour - as well as investigate any reason for witnesses to fabricate them.

Once it's agreed that a witness can talk anonymously, the interview should be conducted in the normal way, but afterwards an investigator should consider what might need to be omitted or redacted to prevent identification.

Where possible, anonymity should be avoided as it's likely to put the employee under investigation at a disadvantage. It is much harder to challenge evidence when it is given anonymously.

If the matter is serious enough to become subject to legal proceedings, an employer may be required by a court to disclose the names of anonymous witnesses.

The employee who is under investigation can be accompanied by a TU representative or fellow worker and be made aware of the nature of the allegations or concerns being expressed. Employees don't have a right to bring anyone else\*.

Witnesses will not ordinarily be entitled to the right to representation, depending on the appropriateness and scale of the investigation.

*\* If an employee is disabled, it may be a reasonable adjustment to allow someone else, such as their carer to accompany them.*

This is an anxious time for employees, and every effort should be made to commence and conclude investigations in a timely and efficient manner. The HR Advisory team should be advised of all disciplinary cases.

The investigating manager will assess the findings from their investigation and decide on one of the following outcomes;

1. Proceed to a disciplinary hearing
2. Take management action under another Council policy
3. Determine that no further formal action be taken.

Where an investigation has been commissioned by another manager, the investigating officer will report back to the manager who commissioned the report in order, with recommendations.

The employee should be informed of the outcome of the investigation as soon as is reasonably possible.

**Stages of an Investigation**

**Disciplinary Hearing**

Where practically possible, a different manager to the one who conducted the investigation, should conduct the disciplinary hearing. This may not always be the case for misconduct, where to enable a speedy resolution of the case, the line manager may hear the case.

All notifications of a disciplinary hearing must state whether the misconduct is deemed at this stage as;

1. Misconduct
2. Gross misconduct

The letter will set out the details of the alleged misconduct, the right to be accompanied, the purpose of the hearing and any supporting docments that are being used as evidence by management. A copy of the Disciplinary Policy and Procedure should also be provided, or, details of how it can be accessed.

The employee should advise if they intend to attend the hearing and if they intend to be accompanied, who that person will be.

**Misconduct Hearing**

The Hearing Manager will;

**Gross Misconduct**

The arrangements for gross misconduct hearings will be made by Human Resources.

**The Panel will comprise of at least one manager**, who has not previously been involved in the case and a HR representative who will act in an advisory capacity,

The employee will receive;

**Attendance of Employees**

Where an employee is unable to attend a disciplinary hearing and advises that they are unable to do so and is acceptable to the panel, the hearing will be rearranged once; this time three days working notice will be given to the employee of the revised timings.

Should an employee provide a fit note which cites stress as a reason for non attendance, this in isolation is not adequate grounds to postpone the hearing. Further accompanying medical advice, from the employees GP or specialist should be submitted, detailing the medical reason for the employee being unable to attend.

If the employee is unable or fails to attend the re-arranged hearing, it may take place in their absence, after due consideration.

Other options may include allowing;

* The employee to make a written submission.
* The TU representative to present the employee’s case, if they have been given express permission to do so

**Gross misconduct hearing**

The Chair of the panel will manage proceedings and ensure that a written record of the hearing is made.

The sequence of events will normally be;

**Disciplinary Outcomes**

The purpose of a warning is to give an employee an opportunity to improve and alert them that further misconduct may result in their dismissal.

**Appeals**

Employees have a right of appeal against disciplinary action imposed against them, **except for informal action.**

They must do so within ten working days of the date of the communication sent to them advising them of the outcome of their hearing.

The appeal should be made in writing to the Director of HR&OD. The appeal letter must clearly set out the grounds for appeal, and if any further clarification is necessary it will be asked to provide this information within two working days of the request.

The appeal process is not intended to be ‘re-hearing’. The employee will need to be able to demonstrate one of the following;

**Arrangements for Appeals**

The same or next level of management, independent of the process may hear any appeal.

An Executive Director, or, Director will hear an appeal where an employee has been dismissed.

On receipt of the grounds of the appeal, the Chair of the Disciplinary Panel will be asked to prepare a response to the employee’s appeal and to attend the appeal hearing. They may be accompanied at the appeal hearing by the officer who presented the management case at the disciplinary hearing.

Witnesses may be called only where their presence is essential to the issue of the appeal. The Chair of the Appeal Panel will determine whether attendance is necessary; both parties should therefore inform the HR Adviser at least three working days before the hearing that they wish to bring witnesses and their reason for doing so.

The appeal hearing should take place within 14 working days of receipt of the employee's written notice of appeal. Where this timescale cannot be met the employee should be informed of the reason for the delay.

The employee will receive, in writing, five working days’ notice of the appeal hearing. They will be provided with management’s written submission and receive a copy of the Disciplinary Policy, either via intranet or hard copy as appropriate.

The letter of notification will also invite the employee to forward details of any witnesses and provide written submissions that they may be relying upon not less than three working days in advance of the hearing.

**Appeal Hearing**

The hearing will confine itself to the specific grounds of appeal and will not be a full re-hearing of the case. New evidence will only be considered where it significantly affects the previous decision and to not allow it would result in an unjust outcome.

The panel has the discretion to adjourn the hearing for additional information to be acquired if deemed necessary. If so, the employee will be informed of the expected duration of any adjournment. Where further information is gathered, the employee will be allowed a reasonable period of time, with their representative, to consider the new information prior to the reconvening of the appeal hearing.

The Chair will manage the proceedings and will;

The Panel must then decide, using both sets of representations, together with any extra information that has been presented/obtained, whether to;

1. Allow the Appeal
2. Reject the Appeal
3. Substitute a lower level warning

The Appeal Panel’s decision is final and there is no further right of appeal. Appellants and the Management side with have the decision confirmed to them in writing, ideally within five working days of the appeal hearing.