

# Disciplinary Procedure

## 1. Support

- 1.1 The council will endeavour to support all those involved in a disciplinary process including managers, employees, witnesses and residents, if appropriate, during a disciplinary procedure.
- 1.2 Employees are able to access information and/or advice from various sources, including:
  - a. line managers
  - b. Trade unions
  - c. Professional bodies
  - d. HR
  - e. Occupational health
  - f. Employee assistance programme
  - e. Understanding and managing stress at work programme
  - f. Work based learning as appropriate
- 1.3 Managers, when they become aware of any health or wellbeing issues, for any of their employees involved in a disciplinary process, will offer to discuss the health and/or wellbeing issues with the employee.
- 1.4 Managers are responsible for reporting any health and wellbeing issues to the Head of Safety, Health and Wellbeing for the council.

## 2. Roles and Responsibilities

### 2.1 Managers

- 2.1.1 Managers will participate in training workshops when required. Newly appointed/promoted managers are expected to familiarise themselves with the Disciplinary Policy and Procedure, seeking HR advice if they require additional clarification or support.
- 2.1.2 Managers will ensure employees have access to the Disciplinary Policy and Procedure and are treated objectively and fairly. Managers are responsible for undertaking any activity under the Disciplinary Policy in a timely, fair, consistent and confidential manner, and for producing outcome letters and associated documents with support from HR.

### 2.2 Employees

- 2.2.1 Employees are required to understand the Council's expectations in terms of their performance and behaviour at work. Employees should contact their line manager if they require any clarification on expected standards of conduct.
- 2.2.2 Employees have a duty to co-operate fully and promptly and participate in any disciplinary procedure including disclosing the names of any relevant witnesses and providing any relevant documents and attending hearings when required.

- 2.2.3** Employees who have been identified as likely witnesses to an incident or concern have a duty to participate in a disciplinary process attending meetings or providing a written statement when required.
- 2.2.4** Employees who have concerns around the behaviour of a Council colleague should consider bringing the issue to the attention of their line manager (or, where that is not appropriate and/or practicable, a senior manager, or alternatively HR). They should also remain mindful of the need for confidentiality. Employees should consider reporting serious/and or systemic concerns through the Council's Whistleblowing Policy. The Whistleblowing Policy is likely to be the most appropriate way to report concerns which relate to fraud, corruption, or safeguarding practices.
- 2.2.5** Employees are responsible for arranging their own representation at meetings as soon as possible to avoid causing any unnecessary delay.
- 2.2.6** Employees are responsible for making sure their companion or trade union representative has all the information and documents they require to avoid causing any unnecessary delay.

### **2.3 Human Resources (HR)**

- 2.3.1** HR will advise managers on the fair and consistent application of this Policy and Procedure and provide them with guidance on such matters as informally resolving minor misconduct issues, conducting investigations, applying disciplinary sanctions and any relevant mitigation. HR will support management in formal processes, including disciplinary hearings and other meetings where trade union representatives/companions may be in attendance.
- 2.3.2** HR will also provide advice and guidance on conducting investigations, offering relevant support to Commissioning and Investigating Officers.
- 2.3.3** HR will monitor the use of the disciplinary procedure and track relevant management information.

### **2.4 Disciplinary action against trade union representatives**

- 2.4.1** No disciplinary action will be taken against an elected trade union representative until the circumstances of the case have been discussed with a senior or full-time trade union official of the union concerned. The individual must, however, confirm their status as an elected representative when advised that a disciplinary investigation is taking place.

## **3. Informal action (day to day supervision)**

- 3.1.1** It is important to provide employees with clear instructions on the standards of work and behaviour required. Wherever possible, the Council will seek to address minor breaches of discipline informally and quickly.
- 3.1.2** It is part of the normal supervisory process that employees have brought to their attention the required standards of conduct at work, particularly where these are perceived to be unacceptable and possible failings are identified.

- 3.1.3 Wherever possible, managers and employees should always seek to resolve matters informally and quickly. Nevertheless, managers should assess the seriousness of any incident and/or allegation and may determine that a formal investigation would be required.
- 3.1.4 Line managers should highlight any minor issues to employees and provide them with an opportunity to respond and/or explain the relevant context.
- 3.1.5 The manager may, in the light of the circumstances, decide to document relevant discussions as part of regular supervision notes and/or monitor the conduct of the employee (e.g. by asking clients/colleagues for feedback).
- 3.1.6 Any management concerns around the employee's performance or ability to carry out their duties are outside the scope of this Procedure and should be channelled through the Capability/Performance Management Policy and Procedure. Managers who are unclear about whether an issue or incident relates to conduct or capability should consider obtaining HR advice and/or discussing the matter with their own line managers.
- 3.1.7 Informal discussions around the conduct of an employee may be referred to as part of a formal disciplinary investigation and any subsequent hearing if the employee continues to fail to meet the required standards of conduct.
- 3.1.8 Informal meetings must not escalate into a disciplinary hearing. Disciplinary hearings can only be convened after the conclusion of a formal investigation into the allegations.
- 3.1.9 Where a manager has informally raised concerns with an employee about their conduct, but their inappropriate behaviour continues, or where misconduct allegations are serious, the managers should ask for a formal investigation into the allegations to be commissioned.
- 3.1.10 There is no right of appeal against any concerns that have been raised informally, although supervision notes should capture the views of the employee, including any disagreement. Similarly, where an issue escalates to a formal disciplinary investigation, the employee should be asked for their views on any concerns that have been raised informally.
- 3.1.11 Where a manager has raised concerns around employee behaviour, a reference to them should be included in the supervision notes which are shared with the employee. The manager may also deem it appropriate to write to the employee separately, outlining the relevant issue[s] and reiterating conduct expectations. That is typically referred to as a 'standard setting' letter. Any relevant comments by the employee should also be recorded in the letter. 'Standard setting' letters are not considered sanctions and there is no right of appeal, however employees can formally respond to such a letter if they wish to outline any disagreement or any additional observations.

## **4 Formal action**

- 4.1 Where formal action is deemed appropriate, a structured process should be adopted in line with the disciplinary procedure.
- 4.2 Where an investigation is commissioned in respect of allegations that have been raised against a trade union representative, the Assistant Director of HR or another senior officer within Human Resources will notify in confidence the Regional Officer (or another senior trade union official) as soon as reasonably practicable. Action beyond a formal oral warning will not be

taken until the circumstances of the case have been discussed with the Regional Officer (or other senior union official).

## **5. Temporary amendments/restrictions to duties and suspension**

- 5.1 When allegations of misconduct are raised against an employee, the Council will consider whether it is appropriate for the employee to continue performing their normal work duties pending any investigation or potential disciplinary hearing.
- 5.2 Commissioning Officers are required to consider the duties and activities undertaken by the employee against whom allegations have been raised and may discuss the matter with the line manager of the employee. Commissioning Officers should take into account the need to protect the integrity of any investigation, the Council's overall duty of care to the employee, and any risks to the reputation of the Council.
- 5.3 Where the Commissioning Officer believes that the employee should not continue to undertake the full range of their duties while a disciplinary investigation and/or other associated processes are ongoing, they can consider one or more the following options:
  - a. temporarily adjusting the employee's duties (e.g. minimising client/resident contact and giving them more back-office work);
  - b. temporarily restricting the employee's duties (e.g. asking a driver to only perform shunting duties within a depot as opposed to driving on the public road) and/or hours and/or access to certain types of data/information;
  - c. temporarily moving the employee to a different workplace or requiring them to work remotely.
- 5.4 If the Commissioning Officer believes that it would not be feasible, appropriate and/or sufficient to make such adjustments as the ones described in 5.3 above, the Commissioning Officer may decide to suspend the employee pending a disciplinary investigation and/or other relevant processes.
- 5.5 A decision to suspend an employee from work is not a disciplinary sanction and will not prejudice the outcome of any investigation or subsequent hearing. Nevertheless, the Council recognises that suspending an employee can have consequences on issues such as their professional development and their relationships with colleagues and clients/residents. Wherever possible, Commissioning Officers should obtain HR advice before proceeding with a decision to suspend an employee.
- 5.6 Any decision by the Commissioning Officer to make temporary alterations or restrictions to the duties of an employee against whom allegations of misconduct have been raised will not impact their remuneration, leave entitlements or any other substantive elements of their contract of employment. Similarly, any suspension will be on full pay (please refer to Appendix 3 for guidance on sick pay arrangements for employees who are ill during a period of suspension).
- 5.7 Suspension arrangements should be periodically reviewed, and management will maintain regular contact with suspended employees. Please refer to Appendix 3 for more details.

## **6. Hearings, interviews, meetings, and the right to be accompanied.**

- 6.1 To expedite the disciplinary procedure, employees will be expected to attend all meetings and any absences for example, pre-booked annual leave, will need to be authorised in advance.
- 6.2 Meetings will normally be held during an employee's working hours, and will be classed as working time for the purposes of pay, flexitime recording etc. Employees who attend meetings outside of their normal working hours may make arrangements with their line manager to take time off in lieu.
- 6.3 Meeting/hearing invitations will indicate whether discussions are to be held physically or virtually. Managers will consider any employee requests for meetings to be held in a different format (e.g. requesting a physical meeting instead of a virtual one as a result of an unreliable internet connection at home).
- 6.4 Employees have a right to bring a companion into meetings or hearings associated with this policy. Employees are entitled to choose to be accompanied to such a meeting by a work colleague or a representative of a recognised trade union.
- 6.5 The Council appreciates that there may be occasions where an employee may wish to be accompanied by individuals who are not work colleagues and/or union representatives (e.g. an interpreter, carer, member of a professional body related to the employee's duties). While there is no legal or contractual right for employees to be accompanied by such individuals, the Council will consider relevant requests on a case-by-case basis. Case-by-case consideration will also be given to requests for more than one companion, e.g. an employee wishing to bring a union representative as well as an interpreter into a hearing.
- 6.6 A formal disciplinary hearing will be held where, following the conclusion of an investigation into the allegations and the preparation of an Investigation Report by the Investigating Officer, the Commissioning Officer believes that there is a case for the employee to answer. Formal disciplinary hearings will be arranged with reasonable notice- normally a minimum of 5 working days.

## **7 Disciplinary action - sanctions**

- 7.1 Where, on the balance of probabilities, the Chair of a disciplinary hearing believes that the employee has committed the alleged misconduct, a disciplinary sanction may be applied (please see below).

## **8. Warnings**

- 8.1 All warnings should state:
  - a. The precise nature of the issue/misconduct/gross misconduct
  - b. Any support/training that the employee may need to receive to assist in ensuring they understand the Council's expectations of their conduct.
- 8.2 The timeframe for the warning, which will begin on the day of the hearing. The Chair will determine the period of validity for the warning, to a maximum of:

- 6 months for a formal oral warning
- 9 months for a formal written warning
- 12 months for a final written warning

8.3 Warnings will be automatically removed from an employee's personnel file three months after their expiry.

8.4 Formal notification/confirmation of warnings will inform employees of their right of appeal.

#### 8.5 **Stage 1 – Formal Oral or Written warning**

8.5.1 For breaches of the Council's policy, a formal oral warning for a maximum period of 6 months, or a formal written warning for a maximum period of 9 months may be issued following a formal disciplinary hearing.

8.5.2 Formal oral and written warnings may be issued when employee misconduct persists after concerns have been raised informally as part of regular supervision

8.5.3 Where a first breach of discipline concerns misconduct of a sufficiently serious nature, a formal written warning may be issued.

8.5.4 Confirmation of formal oral or written warnings will be communicated in writing to the employee [by post and, wherever possible, additionally by e-mail], including the expiry date of the warning. The notification will confirm that a copy of the warning will be placed on the employee's Personnel File and will be automatically removed 3 months after the expiry date of the warning.

8.5.5 Notification of formal oral or written warnings will reiterate that, if the employee commits any further misconduct during the period of validity of the warning, the warning will be taken into consideration at any subsequent hearing when a further sanction may result in the termination of the employee's employment.

#### 8.6 **Stage 2 – Final written warning**

8.6.1 For serious instances of misconduct, a final written warning valid for a maximum period of 12 months may be issued.

8.6.2 Final written warnings may also be issued to employees who have committed further misconduct during the period of validity of a previous disciplinary warning.

8.6.3 When an employee is issued with a final written warning, they must be clearly informed that further misconduct is likely to result in their dismissal.

8.6.4 Confirmation of final written warnings will be communicated in writing to the employee [by post and, wherever possible, additionally by e-mail], including the expiry date of the warning. The notification will confirm that a copy of the warning will be placed on the employee's Personnel File and will be automatically removed 3 months after the expiry date of the warning.

8.6.5 Where appropriate managers, with the support and advice of HR, may consider the following actions in conjunction with a final written warning:

- i. Transfer to another post or location at the same grade.
- ii. Transfer to a post at a lower grade; pay protection will not apply.

- iii. For the period of the sanction the employee may not apply for alternative posts within the council which are a promotion from their new grade.

## 8.7 Stage 3 – Dismissal

- 8.7.1 Letters/notices informing employees that they are required to attend a disciplinary hearing will normally outline potential hearing outcomes. Where dismissal is a potential hearing outcome, it will be clearly articulated as a possibility within the relevant document.
- 8.7.2 Where dismissal is a possible outcome of a disciplinary hearing, the hearing will be chaired by a manager (normally Head of Service or Assistant Director) who has the authority to dismiss [in accordance with the relevant scheme of delegation].
- 8.7.3 Dismissal with contractual notice paid: the employee may be dismissed if they have committed repeated acts of misconduct. In these circumstances the employee would be dismissed with paid notice, or with pay in lieu of notice.
- 8.7.4 Summary dismissal: for dismissal involving gross misconduct, the employment contract will normally be terminated from the date of the hearing and summary dismissal for serious offences (Appendix 1) will apply, with no payment being made in lieu of notice.
- 8.7.5 Where a decision to dismiss is made, a letter of dismissal will be issued [by post and, wherever possible, additionally by e-mail] to the employee within 14 calendar days of the hearing. The letter will confirm the reasons for dismissal and inform the individual of his/her right to appeal and will be sent by recorded delivery.
- 8.7.6 Where a dismissal decision is overturned on appeal, the contract of employment will be reinstated, and the employee will receive their contractual remuneration in respect of any intervening period.

## 9. Appeals and appeal investigations

- 9.1 Disciplinary outcome notifications (normally sent by post, and wherever possible, additionally by e-mail) will set out the employee's right to appeal within 14 calendar days of the date of the notification and will designate an appropriate officer to which any appeal should be submitted (usually a senior manager and/or a HR Business Partner). Any appeals submitted after the 14-day deadline will need to include reference to the circumstances/reasons for the delay, which will be considered on a case-by-case basis.
- 9.2 An employee wishing to appeal a disciplinary outcome and/or sanction(s) is required to submit their appeal in writing [in a letter and/or by e-mail], specifying the relevant grounds of appeal. The permissible grounds of appeal are as follows:
  - a. New evidence or information has come to light which had not been available previously and may influence the outcome and/or decision.
  - b. The appellant believes that the sanction(s) imposed was(were) too harsh and/or that mitigation has not been appropriately considered in determining the sanction(s). When requesting for sanctions to be rescinded or re-evaluated, appellants are required to set out the rationale for their request.

c. The appellant believes that there have been procedural failings in the management of the case. The appellant is required to specify the alleged failings and their perceived impact on the outcome and decision.

- 9.3 An officer receiving a disciplinary appeal should acknowledge receipt without undue delay and confirm that they will be overseeing the appeal process and chairing any hearing or make arrangements to designate an appropriate appeal Chair.
- 9.4 The factual background to a case, as established in the relevant Investigation Report and, where applicable, clarified through the evidence provided by any witnesses at the first-instance hearing, will normally inform deliberations at the appeal hearing.
- 9.5 Where an appeal involves the introduction of a substantial amount of new evidence to a case, and/or information which the Chair of the appeal hearing believes would benefit from further investigation, the Chair of the appeal hearing may commission an investigation into the relevant issues. Appeal Chairs should consider obtaining HR advice before commissioning an appeal investigation.
- 9.6 Investigations commissioned in preparation for an appeal hearing should ideally be undertaken by the Investigating Officer who compiled the original investigation report, although the Chair of the Appeal hearing will take into consideration any availability issues and/or any concerns which may have been raised about the original report.
- 9.7 As outlined above, an appeal investigation will not normally seek to revisit/challenge the findings of fact of the original investigation report. Appeal Chairs should exercise care [and obtain HR advice as appropriate] in drafting the terms of reference (TOR) for appeal investigations in order to ensure their scope is limited to the issues/evidence which require further investigation.
- 9.8 It may be worth clarifying that the right of appeal is restricted to outcomes and sanctions relating to allegations which are found to be substantiated. The Council will not consider appeals [whether for procedural failings or otherwise] in relation to any allegations that have been investigated and/or considered at a disciplinary hearing and found to be unsubstantiated.

## **10. Criminal offences**

- 10.1 Employees are required to advise their line manager immediately if they are charged with a criminal offence or receive a caution or a conviction, whether that occurs in the United Kingdom or in any other jurisdiction. This requirement applies regardless of the nature or seriousness of the allegations and includes motoring offences, but not preliminary enquiries such as an initial interview with police.
- 10.2 The Council fully supports the principle of presumption of innocence in relation to criminal allegations and will not ordinarily treat criminal charges for alleged conduct outside employment as a reason to take disciplinary action against an employee. However, the Council will assess the relevant risks to its reputation and service delivery and may decide to restrict or modify the duties performed by an employee for the duration of relevant criminal



investigations and associated processes. Employees are required to update the Council on developments around any investigation into criminal allegations against them. The Council will monitor the duration of such investigations and the extent of restrictions/modifications placed on an employee's duties- where the combination of those factors is projected to have a serious impact on performance and/or service delivery, the Council will assess the ongoing feasibility of the employment contract.

- 10.3 When an employee is convicted of one or more criminal offences, the Council will consider whether the offence(s) may make the individual unsuitable for the type of work undertaken or pose a material risk to the reputation of the Council. The Council will determine whether a disciplinary investigation is required in the circumstances. When an employee receives a prison sentence or another sanction which has an impact on their ability to undertake work for the Council (e.g. suspension of a professional registration due to 'good character' requirements), the Council will assess their ongoing suitability for their role. Any concerns around employee suitability will normally be investigated in accordance with the provisions of this Policy and Procedure. Where such concerns are not raised as allegations of misconduct, or do not result in a dismissal for misconduct, the Council may nevertheless choose to treat the matter as a frustration of contract.
- 10.4 It is important to reiterate that disciplinary action against an employee will only be taken following an investigation and a hearing.

## **11. Disciplinary records**

- 11.1 Details of formal disciplinary action will be kept confidential and treated in accordance with relevant legislation.
- 11.2 Disciplinary warnings will be maintained on the personnel file for the employee concerned. The warning will cease to have effect in any subsequent action beyond the 'live period' of the sanction and will automatically be deleted from the employee's personnel file three months after its expiry.

## **12. Malicious complaints**

- 12.1 If any misconduct allegations appear to have been raised maliciously or in bad faith, the Commissioning Officer should consider obtaining HR advice prior to determining whether the employee(s) who had raised that allegation need to be investigated for potential misconduct.

## Appendices:

### Appendix 1

Matters, including a serious and deliberate breach of any legislation, that exposes the Council to significant legal risk could be deemed gross misconduct, depending on the severity and the person's job role. Illustrative examples include, but are not limited to:

<b>Examples of actions or omissions which may constitute misconduct:</b>
Refusal or unreasonable failure to submit appropriate certification to cover sickness absence.
Breach of the council's Code of Conduct
Breach of the council's Policies and Procedures
Failure to follow reasonable management instructions
Failure to observe management responsibilities and/or appropriately maintain relevant documentation as set out in policies and procedures relating to finance, procurement, IT, HR, facilities management etc.
Lateness/poor punctuality
Minor breaches of confidentiality requirements
<b>Examples of actions or omissions which may constitute gross misconduct:</b>
Theft, fraud or offences under the Bribery Act 2018
Failing to disclose pending criminal charges or convictions (not covered by the Rehabilitation of Offenders Act)
Disclosure of sensitive confidential information to unauthorised third parties.
Breaches of Health and Safety requirements
Failure to observe safeguarding requirements for children and/or vulnerable adults.
Dishonest behaviour, including lying to, or deliberately withholding important information from, Council management or external authorities/regulatory bodies (e.g. Social Work England)
Unlawful discrimination and/or serious breaches of Council equality and diversity policies.

As indicated above, this list of examples is not part of the Disciplinary Procedure, but is provided for general information.

## Appendix 2

### Investigation procedure

#### General

##### 1. Investigating an allegation

- 1.1 Investigations into allegations of misconduct may be commissioned by managers of appropriate seniority (typically Head of Service or equivalent). Employees without line management responsibilities and less senior managers who are aware of any concerns, allegations, or incidents that may have amounted to misconduct should share the information with their line manager who will assess the relevant circumstances and decide whether the matter should be investigated/escalated further.
- 1.2 When a senior manager is made aware of an allegation of a potential breach of the Council's Code of Conduct or its policies, they will determine whether it is necessary to carry out an investigation into the allegations. Irrespective of their level of seniority or job title, a manager commissioning an investigation will be referred to as the Commissioning Officer for the purposes of this procedure.

##### 1. Roles and responsibilities

###### 1.1 Managers and senior officers

- 1.1.1 Managers and other Council officers of appropriate seniority will commission investigations, undertake and participate in them as required.

###### 1.2 Employees under investigation

- 1.2.1 Employees must co-operate promptly and to the best of their ability in any investigations. This will include informing the Investigating Officer of the names of any relevant witnesses, disclosing any relevant documents and attending investigative interviews as required.
- 1.2.2 Employees under investigation are responsible for checking the accuracy of any interview minutes/notes and highlighting any omissions or perceived inaccuracies to the Investigating Officer. They will be asked to formally confirm the accuracy of, or note any perceived inaccuracies/omissions in, meeting notes/minutes. This can be done with a physical signature or via e-mail.
- 1.2.3 If an employee is unable to attend an investigation meeting due to unforeseen circumstances, a second meeting will be arranged within 5 working days of the postponed meeting or as soon as possible acknowledging delays may be due to recognised absence.
- 1.2.4 The employee against whom allegations of misconduct have been raised will receive a letter setting out the terms of reference (TOR) for the investigation and any relevant policies the alleged conduct may have breached. The employee is not entitled to see detailed written

complaints, witness statements and other relevant evidence prior to the conclusion of the investigation. However, the allegations should be defined with sufficient clarity to allow the employee to understand the key issues/incidents that are being investigated.

### **1.3 Commissioning Officer**

- 1.3.1 In most investigations, the Commissioning Officer will be a senior manager in the service where the allegation is raised, although there may be circumstances where they work in a different service.
- 1.3.2 In a limited number of circumstances, the employee's line manager may be able to act as Commissioning Officer.
- 1.3.3 The Commissioning Officer is responsible for ensuring that the Disciplinary Policy and Procedure is followed, and the terms of reference are clearly outlined and observed.
- 1.3.4 The Commissioning Officer is required to consider the following factors (not an exhaustive list):
  - a. whether or not an informal resolution would be the most suitable way to resolve matters
  - b. the scale and scope of the investigation. Wherever possible, they should undertake a pre-investigation assessment to establish whether a desk-top review or a full investigation is appropriate to the circumstances.
  - c. any requirement to share the allegations with other Council officers/departments (e.g. the Local Authority Designated Officer), external authorities (e.g. Metropolitan Police) or professional bodies (e.g. CIPFA) which may have reasons to independently review or investigate the relevant matter(s).
  - d. the gravity of the allegation(s) and the ability of the Investigating Officer to undertake an unbiased investigation to a good standard and without undue delays.
- 1.3.5 On completion of the investigation, the Commissioning Officer will review the investigation report and determine the course of action that will be taken.

### **1.4 Investigating Officer**

- 1.4.1 An Investigating Officer designated to investigate one or more allegations or incidents can be a manager or other officer of appropriate seniority. They may be based in the service where the alleged misconduct has happened, a different service, or they can be external to the Council.
- 1.4.2 The Commissioning Officer will normally designate an Investigating Officer based on their seniority, availability, neutrality, and overall suitability to:
  - a. carry out a thorough and fair investigation to establish the facts of the case
  - b. interview the employee and any relevant witnesses
  - c. gather and preserve the integrity of any documentary evidence
  - d. maintain appropriate levels of confidentiality throughout the process
- 1.4.3 When the investigation is completed, the Investigating Officer will be responsible for writing a report detailing a summary of findings and conclusions for submission to the Commissioning Officer.

- 1.4.4 Serious and/or complex allegations will sometimes call for in-depth investigation; this may result in the process requiring a considerable amount of time. Where that is the case, the Investigating Officer will regularly update the Commissioning Officer on the progress of their investigation and likely timelines involved. The Commissioning Officer should make regular (at least every four weeks) contact with the employee under investigation to inform them that the investigation is still ongoing and, where possible, provide an indication of when it is likely to conclude.

## **1.5 Witnesses**

- 1.5.1 Witnesses are Council employees or other individuals who may have had seen or heard an incident/ concern/allegation. The term may also refer to those who may be otherwise aware of, or involved in, something related to an investigation.
- 1.5.2 Witnesses who are Council employees are required to participate in investigations by:
- a. attending meetings or providing written witness statements as requested by the Investigating Officer
  - b. providing evidence to the best of their ability and/or knowledge
  - c. formally confirming the accuracy of, or noting any perceived inaccuracies/omissions in, meeting notes/minutes. This can be done with a physical signature or via e-mail.

## **1.6 The right to be accompanied at an investigation meeting**

- 1.6.1 Investigation interviews are an integral part of a formal investigation process. Consequently, employees (including those being interviewed as witnesses) are entitled to bring a companion to them. Please refer to the Disciplinary Policy and Procedure for details.

## **Investigation process**

### **2. Stage 1: Planning**

- 2.1.1 An investigation will be started by a Commissioning Officer in response to an allegation of inappropriate conduct or a breach of policy.
- 2.1.2 The Commissioning Officer will designate an Investigating Officer in line with the considerations outlined in 1.3.4 of this Appendix.
- 2.1.3 The Investigating Officer will commence their investigation by identifying employees or other individuals with knowledge of the circumstances of the allegation who may be potential witnesses.

### **2.1 Terms of Reference (TOR)**

- 2.1.1 The initial stage of the investigation is to establish and agree what is going to be investigated.
- 2.1.2 The Commissioning and Investigating Officers will consider the allegations to identify the core issues that require investigation; these will form the TOR for the investigation.
- 2.1.3 The Investigating Officer will disclose the TOR to the employee against whom the allegations have been made.

- 2.1.4 When it is appropriate, the TOR will be disclosed to witnesses by the Investigating Officer.
- 2.1.5 Before each interview, the Investigating Officer will prepare the questions to which they are seeking responses and/or clarification.
- 2.1.6 The Investigating Officer should alert the Commissioning Officer to any additional concerns, allegations, or other important issues outside the TOR that may be raised during the investigation. The Commissioning and Investigating Officers should discuss the matter in order to determine any additions or modifications to the TOR.
- 2.1.7 As a result of the nature of an investigation, the TOR may be subject to change or expansion while the investigation process is ongoing. Following discussions with the Investigating Officer, the Commissioning Officer will determine any amendments to the TOR. The Investigating Officer will then issue the amended TOR to the employee. Amendments to TOR will normally relate to the allegations which are being investigated and be made in a manner which is timely and proportionate to the seriousness of the case.
- 2.1.8 Where an investigation uncovers evidence which appears to be substantially outside the scope of the original allegations and/or TOR, the Commissioning Officer may decide to close the investigation and commission a separate investigation with appropriate TOR, including any new allegations. Commissioning Officers should seek detailed HR advice before finalising a decision in such circumstances.

## **2.2 Case File**

- 2.2.1 Throughout the investigation, the Investigating Officer should maintain a virtual 'case file' of their documentation in order to allow easy reference and cross referencing during their investigation.
- 2.2.2 Case files should include:
  - a. an index document detailing all events and documents
  - b. an executive summary with cross referencing to documentary evidence
  - c. a timeline detailing all events
  - d. details of the allegation(s) or complaint(s) under investigation
  - e. the terms of reference and policies (including copies) which the allegation may breach
  - f. copies of all correspondence sent to the employee under investigation and witnesses
  - g. all investigation interview notes, together with relevant formal (via scanned signatures or copies of e-mails) confirmation of their accuracy, or indication of any omissions/perceived inaccuracies
  - h. any relevant written statements by the employee under investigation and/or any witnesses
  - i. any other documentary evidence, including reference to CCTV evidence, audio recordings etc

## **2.3 Investigation report**

- 2.3.1 Once completed, the investigation report needs to be included in the case file.

- 2.3.2 The conclusions or recommendations within an investigation report will be focusing on whether the evidence suggests that there is a case for the employee to answer.
- 2.3.3 Investigation reports must not include any reference to potential disciplinary hearing outcomes or sanctions.
- 2.3.4 Potential mitigating circumstances documented within an investigation report should not be factored into the assessment of whether there is a case for the employee to answer.

### **3. Stage 2: Gathering facts and evidence**

#### **3.1 Desktop review of documents and/or software files**

- 3.1.1 In certain circumstances, such as an allegation concerning documents or inappropriate access to IT systems, it may be necessary and appropriate for the Investigating Officer to carry out a desktop review of all the documentation, software and associated information relating to the investigation.
- 3.1.2 This part of the investigation process will be logged in the case file, together with an appropriate timeline and details of the information reviewed. Consideration should be given to the relevant data protection and information security requirements.

#### **3.2 Investigation interviews**

- 3.2.1 The purpose of an interview is to investigate the facts relating to the allegations raised within the TOR and the context around them.
- 3.2.2 Interviews are formal meetings/discussions between the Investigating Officer and the employee or witnesses to gather information about the allegation being investigated. Employees have a right to be accompanied to disciplinary investigation interviews in line with the relevant provisions set out in the Disciplinary Procedure.
- 3.2.3 The Investigating Officer will conduct interviews with the employee under investigation and any relevant witnesses (as defined in 1.7 of this Appendix).
- 3.2.4 Reasonable notice of investigation interviews will be given- this should normally be at least 5 working days. The provisions of the Disciplinary Policy and Procedure will apply to meeting formats.
- 3.2.5 The Investigating Officer should refer to the TOR and give an overview of the process to the employee under investigation or witness being interviewed.
- 3.2.6 Confirmation should be given that interviews are not being conducted as a disciplinary hearing [or as a substitute for one] but being undertaken as part of an investigation which will inform the Commissioning Officer's decision about whether the matter should progress to a disciplinary hearing.
- 3.2.7 During an investigation interview, the Investigating Officer will be responsible for ensuring the employee under investigation or witness being interviewed is given every opportunity to:
  - a. respond to questions on the allegation (including follow-up questions for clarification)
  - b. provide truthful information

- c. give their opinion on what happened
  - d. provide the Investigating Officer with suggestions around documentation or witnesses that may be useful in the investigation.
- 3.2.8 The Investigating Officer should encourage the employee under investigation and any witnesses to fully respond to their questions and participate in the investigation. Where the employee and/or witnesses are unable and/or unwilling to do so, the Investigating Officer will document the extent to which their questions were answered and proceed with the investigation on the basis of the information that they have available.
- 3.2.9 The employee under investigation and any witnesses who are Council employees will be notified that taking part in investigations is considered part of their duties as employees of the Council. Deliberate failure to co-operate with a disciplinary investigation will generally amount to a refusal to follow a reasonable management instruction and may be investigated as an[other] allegation of misconduct.
- 3.2.10 The discussions at investigation interviews should be documented- the Investigating Officer is responsible for the accuracy of notes/minutes and may arrange for a note-taker to attend the meeting. A copy of the notes will be sent to the interviewee for them to confirm their accuracy or indicate any omissions or perceived inaccuracies in them.
- 3.2.11 No audio/video recording of any meetings will take place unless all parties have consented prior to the meeting.
- 3.2.12 Interviews will normally be scheduled during working hours. Please refer to the Disciplinary Policy and Procedure for more details.
- 3.2.13 In certain circumstances, an HR representative may attend the interview to support and guide the Investigating Officer and explain processes to the interviewee.

#### **4. Additional allegations raised during information gathering**

- 4.1 The Investigating Officer will normally ask follow-up questions on the information provided by interviewees, particularly when it concerns potential new allegations [whether against the employee under investigation or any other parties].
- 4.2 On some occasions, evidence will be uncovered, expanded or challenged as part of the investigation. The Investigating Officer may decide to schedule additional investigation interviews with the employee under investigation or any witnesses, or alternatively make a written request for additional information/clarification. There will be no variation to the process of conducting investigation interviews, however the Investigating Officer should be mindful of the fact that the process can be stressful for participants and consider obtaining HR advice before scheduling follow-up interviews.
- 4.3 Where the Investigating Officer believes that the evidence/information uncovered goes beyond the TOR for the investigation, the Investigating Officer should liaise with the Commissioning Officer as outlined under 2.1 of this Appendix.

#### **5. Documentary evidence**



- 5.1 As part of their case file, the Investigating Officer will maintain a list of documents that have been sent to the employee under investigation, including how they were communicated with, for example: email to Council or personal address, hand-delivered, first class letter to home address, recorded delivery letter to home address.
- 5.2 The Investigating Officer should endeavour to gather relevant evidence and carry out the required interviews as soon as reasonably practicable, avoiding undue delays and minimising the risk of fading memories.
- 5.3 Investigating Officers are responsible for assessing whether the allegations and/or evidence they uncover need to be shared/escalated to any other departments, authorities, or regulatory bodies- e.g. the Council's Audit/Counter Fraud department or Social Work England.
- 5.4 Relevant documentary evidence may be requested and/or can be provided by the employee under investigation and/or relevant witnesses to the Investigating Officer during or after the interviews as appropriate and relevant.

## **6. Written statements**

- 6.1 Written statements may be used as evidence within the investigation.
- 6.2 Employees under investigation and witnesses who make a statement as part of an investigation are required to formally confirm (either by e-mail or by way of a physical signature) that they believe the statement to be a true record of their views and knowledge of relevant facts.
- 6.3 If any witnesses involved in the investigation have provided a written statement and included their name then it is acceptable to refer to them by name in other statements.
- 6.4 Witnesses will be informed that the contents of their statements and interviews will be shared with the employee under investigation. Any requests for anonymity made by witnesses who are Council employees will be considered by the Investigating Officer [who may consult with the Commissioning Officer and/or obtain HR advice prior to making a decision].
- 6.5 Where an investigation involves witnesses or complainants who are not Council employees, the Investigating Officer should ask for their permission to use their name in the investigation report and/or other relevant documents. If permission is not obtained, their details should be anonymised, e.g. Mrs X.

## **7. Confidentiality**

- 7.1 All Council employees involved with a disciplinary investigation process must maintain confidentiality throughout its course and must not discuss the matter with other employees. Witnesses who are not Council employees cannot be formally required to maintain confidentiality but will be made aware that the Council conducts disciplinary investigations in a confidential manner and asked to consider refraining from sharing any personal details of the employees involved.
- 7.2 Employees under investigation are entitled to speak to their trade union representatives or work colleagues in order to request relevant support (e.g. as companions to interviews) during the process. Employees under investigation should liaise with the Investigating Officer if they

wish to nominate any potential witnesses rather than directly approaching the individuals in question.

- 7.2 Breaches of confidentiality may lead to [separate] disciplinary action.

## **8. Stage 3: Evaluation and analysis**

- 8.1 When interviews are completed and all the evidence and supporting documentation has been gathered, the Investigating Officer will evaluate and analyse the information obtained during the investigation process.
- 8.2 As a result of that evaluation, the Investigating Officer may decide to carry out further interviews and/or obtain additional documentation. Investigations should be conducted in a manner that is timely and proportionate to the seriousness of the allegations.

## **9 Stage 4: Reporting**

- 9.1 When the investigation and evaluation stages have been concluded, the Investigating Officer will prepare an investigation report setting out a summary of the evidence, facts, as well as the views of the various parties involved. The report will include:
- a. A summary of the allegation and/or concerns raised, TOR and policies referenced.
  - b. Evidence.
  - c. Finding of facts.
  - d. Conclusions and the rationale for reaching the conclusion together with details of whether the Investigating Officer believes that there is a case to answer in respect of the allegations specified within the TOR (as they stand at the conclusion of the investigation)
- 9.2 Records of evidence referenced within the investigation report (meeting notes, witness statements, relevant documents) should be attached to the report as appendices.
- 9.3 On completion of the report, the Investigating Officer will send their report, in confidence, to the Commissioning Officer.

## **10. Potential outcomes of an investigation**

- 10.1 The Commissioning Officer will consider all the facts, evidence presented, and relevant recommendations before making any decision on whether there is a case for the employee to answer.
- 10.2 The Commissioning Officer may also chair any subsequent disciplinary hearing. Alternatively, they may elect to arrange for another manager of appropriate seniority to chair it. Commissioning Officers should consider discussing the matter with HR prior to making a decision about whether to chair a hearing.
- 10.2 The potential outcomes of an investigation into allegations of misconduct are as follows:
- a. No case to answer**

After considering the findings and recommendations detailed in the investigation report, the Commissioning Officer may conclude that the allegations are not substantiated, that there is no case for the employee to answer, and/or that no further action is to be taken. The Commissioning Officer will write to the relevant parties to inform them that the

process will conclude without further action and should consider formally thanking them for their co-operation with the process.

**b. Informal action**

The Commissioning Officer may decide that the investigation has not uncovered evidence to indicate that any actions or omissions of the employee may have been serious and/or inappropriate enough to warrant formal disciplinary action, and use the findings of the investigation as an opportunity to offer the employee who had been under investigation and/or other Council employees or departments appropriate learning and direction in order to improve systems and working practices. Where such a decision is made, the Commissioning Officer will write to the relevant parties to inform them that the process will conclude without further formal action and liaise with them and/or other relevant colleagues to ensure that improvement suggestions are considered and implemented.

**c. There is a case to answer**

Having considered the contents and recommendations of the investigation report, the Commissioning Officer may determine that the case needs to proceed to a disciplinary hearing. The Commissioning Officer will confirm the decision in writing to the employee under investigation and the Investigating Officer and will arrange for a formal disciplinary hearing to be held as soon as reasonably practicable.

## **APPENDIX 3 – Suspension Process**

### **1. General principles**

- 1.1 The Council recognises that each individual decision on whether to suspend an employee will vary depending on the circumstances of the case.
- 1.2 Where a Commissioning Officer makes the decision to suspend an employee, they should endeavour to keep the period of suspension as short as possible in order to minimise any adverse impact on the employee and the service.
- 1.3 Work colleagues should not be discouraged from maintaining contact with suspended employees but must be informed that the reasons for the suspension are confidential and that they are not permitted to discuss them with the suspended employee.

### **2. Trade Union Representatives**

- 2.1 Recognised trade union representatives are subject to the same standards of conduct as other employees and Commissioning Officers may decide to suspend them. However, Commissioning Officers should inform the Branch Secretary, Regional Officer, or other appropriate senior union official of their decision.

### **3. Suspension procedure**

- 3.1 The decision to suspend will be taken by a senior manager, normally the Commissioning Officer for any investigation into allegations of misconduct, who will meet with the employee to explain the reasons for the suspension and keep a written record of the relevant discussion.
- 3.2 The employee should be notified in writing [wherever possible by hand-delivered letter] of:
  - a. the reasons and conditions for the suspension
  - b. the factors that were considered in deciding not to restrict the employee's duties or to temporarily redeploy them to another role and why this option was inappropriate
  - c. how long the suspension is expected to last
  - d. a point of contact's details, such as a manager or a member of the HR team
  - e. confirmation that the decision to suspend does not constitute a disciplinary sanction or imply any presumption of culpability.
  - f. details of support that may be available e.g. through the employee assistance programme.
  - g. their right to contact a trade union representative

#### **4. Conditions of suspension**

- 4.1 During their suspension, the suspended employee must provide up-to-date contact details to the Commissioning Officer and the HR team.
- 4.2 The employee may be asked by the Commissioning Officer to surrender their employee identity card, Council laptop, and/or any other Council property for the period of their suspension.
- 4.3 The employee's line manager should arrange for any ongoing work to be handed over and oversee arrangements around access to the suspended employee's Council e-mail account and/or inbound telephone calls.
- 4.4 During the period of their suspension, the employee must refrain from visiting their Council workplace or other Council premises unless asked to do so by the manager who has suspended them or the Commissioning or Investigating Officers. If the employee believes that they may need to access Council premises as a resident or in any other capacity not connected to their employment, they should notify the Investigating Officer.
- 4.5 Suspended employees may visit Council premises for the purposes of meeting with their trade union representative(s). They will normally need to register as a visitor to the premises in order to ensure compliance with access requirements, fire safety protocols etc. The usual visitor registration process should be followed without any requirement to request permission from management.
- 4.6 If the employee wishes to retrieve any personal property from their workplace during the period of their suspension, they should contact HR, the Investigating Officer, or nominated contact person in order to make relevant arrangements.

#### **5. Confidentiality**

- 5.1 When a Commissioning Officer decides to suspend an employee, they need to inform the employee, their line manager, and any other pertinent stakeholders that any details about the suspension or any disciplinary investigation must remain confidential.

## **6. Employee welfare**

- 6.1 The suspended employee's line manager or another nominated welfare contact should keep the employee up to date with work-related developments and provide them with the opportunity to raise any welfare concerns.
- 6.2 The suspended employee should be notified of the council's Employee Assistance Programme contact details which the employee may avail themselves of if they wish.
- 6.3 Commissioning or Investigating Officers, as well as line managers, need to be alert to any health or wellbeing issues affecting suspended employees. Line managers, welfare contacts or any other relevant officers (e.g. HR Advisors) will offer to discuss the health and/or wellbeing issues with the employee in the first instance and consider any support that can be offered.

## **7. Review of suspension**

- 7.1 Regular contact should be maintained between the suspended employee and the Commissioning Officer through a regular update or review meeting every 4 weeks (as a minimum).
- 7.2 When it is envisaged that an investigation is likely to require a considerable amount of time, the Commissioning Officer may delegate responsibility for maintaining contact to the Investigating Officer.

## **8. Pay during a suspension**

- 8.1 A suspended employee will continue to receive their normal pay (including contractual overtime), allowances, and benefits for the whole of their period of suspension.
- 8.2 Any salary increases relating to inflation/cost of living will be awarded as normal to suspended employees.
- 8.3 A lengthy period of suspension may have an impact on an employee's ability to demonstrate the levels of performance required to achieve incremental progression. Where that is the case, the Council may decide to temporarily withhold incremental progression until the employee returns to work, at which point they can have a discussion with their line manager about the relevant practicalities (e.g. exploring the possibility of setting quarterly objectives/performance indicators as an alternative to measuring performance in the previous year).
- 8.4 Where an employee returns to work after a lengthy period of suspension and subsequently meets performance objectives that have been adjusted/extended in order to address a lack of evidence of their performance that had resulted from a lengthy period of suspension, any incremental progression they achieve will be backdated to the point in time when the employee would have received the relevant increase if they had not been suspended.
- 8.5 The employee must endeavour to remain available to attend meetings that may be convened as part of the investigation or other procedure the employee is involved in. Failure to meet this requirement, or any other conditions relating to a period of suspension, may impact employee remuneration.

## **9. Annual leave during suspension**

- 9.1 Annual leave entitlement will continue to accrue during the period of suspension.

- 9.2 Suspended employees may contact their line manager or, where applicable, use the employee self-service system to request annual leave as though they were still at work.
- 9.3 Managers should not unreasonably refuse annual leave requests submitted by suspended employees. However, management will need to ensure that requests do not cause an adverse impact on, or undue delay to, the disciplinary investigation and associated processes.

## **10. Sickness absence during suspension**

- 10.1 If an employee is suspended during a period of absence from work due to sickness, their absence should be recorded on the HR payroll system as 'sickness while suspended' and the medical certificate retained on the employee's personal file, and the Council's Absence Management Policy will apply to the handling of their sickness absence.
- 10.2 If an employee who has been suspended falls ill, their absence should be recorded on the HR payroll system as 'sickness while suspended' and the medical certificate retained on the employee's personal file, and the Council's Absence Management Policy will apply to the handling of their sickness absence.
- 10.3 Any sickness absence that occurs after, or continues beyond, the end of a period of suspension will be managed in accordance with the provisions of the Council's Absence Management Policy.

## **11. Refusing other suitable work whilst suspended**

- 11.1 If an employee does not want to return to work whilst suspended, including to any suitable alternative work offered with the Council and/or functions which may not be specified in their job description, the Council will assess whether the employee should continue to be paid during the period of their suspension.

## **12. Ending a suspension**

- 12.1 Once a period of suspension comes to an end, the employee should return to work immediately. The employee's line manager should arrange a return to work meeting on the employee's first day back to work to welcome them back, update them on work developments, and provide them with an opportunity to discuss and resolve any concerns and/or issues on which they need support.

## **13. Options if an employee believes their suspension has not been handled fairly**

- 13.1 An employee with concerns about the way in which their suspension has been handled should try to resolve the matter informally first. Many issues can be resolved quickly by having an informal conversation with a manager or a member of the HR team.
- 13.2 If the matter cannot be resolved informally, the employee could make a formal complaint, (please refer to the Council's Grievance Resolution Policy and Procedure).

## **14 Support**

- 14.1 In addition to the support mechanisms identified within the Disciplinary Policy and Procedure, managers, as and when they become aware of any health or wellbeing issues, for any of their employees who are suspended, should offer to discuss the health and/or wellbeing issues with the employee in the first instance and, where appropriate, consider notifying the Council's Head of Safety, Health and Wellbeing.