**Disciplinary Hearing Guidance**

**Who conducts the hearing?**

This depends on the seriousness/nature of the allegation, although it should always be a more senior officer than the Investigating Officer and someone with no prior involvement in the case.

If it is evident that the employee's behaviour/conduct potentially amounts to **misconduct** then there is no restriction on who can hear the case, provided the chair of the hearing is more senior than the person who investigated and sufficiently competent to conduct a fair and reasonable hearing.

If it is evident that the employee's behaviour/conduct amounts to potential **gross misconduct** then the hearing should be chaired by a manager at third tier level and above, but for a teacher will be the Director of Education, Culture & Sport. The same applies if the employee is already on a warning and dismissal is a potential outcome.

An HR Adviser must be present at the hearing to provide procedural advice and guidance and help the chair of the hearing to arrive at a fair and reasonable conclusion.

**Purpose of the hearing**

The hearing allows the opportunity for the employee to set out their case and answer any allegations that have been made against them and also for the management case to be heard. The employee should be allowed to ask questions, present evidence, call witnesses and question any witnesses called by the Investigating Officer. The employee’s companion is there to provide support, and the companion may speak on the employee’s behalf if the employee so wishes; however the companion must not answer questions directed at the employee.

The chair of the hearing will decide whether or not to take disciplinary action depending on the case and evidence presented at the disciplinary hearing. **A hearing must take place before any disciplinary action is taken.**

**Attending the hearing**

All reasonable steps must be made by the employee to attend the hearing. The employee will be informed in the letter notifying them of the hearing that if they fail to attend the hearing without a good and sufficient reason then it is likely that the hearing will proceed, and a decision will be made, in their absence.

If the employee's “companion” is unable to attend on the proposed date, the employee can suggest another date although it must suit everybody involved and be **no more than 5 working days after the original date**. Otherwise, the employee will need to select another companion to accompany them at the meeting or attend the meeting unaccompanied.

Should the trade union be unable to provide representation within 5 working days of the original date, you should not allow this to delay the process. You can insist that the pre-arranged hearing goes ahead as planned.

In the same way that you need to cater for an employee's disability at a hearing, you will also need to cater for a companion's disability.

**Deciding on action**

The chair decides whether or not to take disciplinary action depending on the case and evidence presented at the disciplinary hearing. Before making any decision on disciplinary action, the chair should take account of:

- the employee's disciplinary record

- action taken in any previous similar case

- the case presented by the Investigating Officer

- the explanations given by the employee including any mitigation

- and most importantly, whether the intended disciplinary action is reasonable and proportionate in the circumstances

**What disciplinary sanctions are available?**

Employees should normally be given at least one opportunity to improve their conduct before they are issued with a final warning. However, if their misconduct – or its continuance – is sufficiently serious, it may be appropriate to move directly to a final warning. In cases of gross misconduct, summary dismissal is the appropriate action, even though the employee has not previously received a warning for misconduct.

**Action in cases of misconduct**

The written confirmation of the warning, whether it be a first level (formal oral or written) or second level (final warning), must set out in sufficient detail:

 the nature of the misconduct

 the improvement required

 the timescale over which the improvement is to be achieved

In the case of a first level warning, the letter will inform the employee that it represents the first stage in the formal disciplinary process and that failure to improve or change behaviour to the required standard, or any repetition of the misconduct, or any other misconduct, within the life of the warning could lead to a final warning and, subsequently, dismissal.

In the case of a final warning, the letter will inform the employee that it represents the second stage of the formal procedure and that failure to improve or change behaviour to the required standard, or any further misconduct, within the life of the warning will lead to dismissal.

A copy of the letter should be kept in the employee's personal file for record purposes, but it should be disregarded for disciplinary purposes after a specified period. At the end of the hearing the Chairperson should determine in conjunction with the HR Adviser if a record of the warning would need to be kept for a further period of time once it is ‘spent’. This would only be applicable in exceptional cases such as when there are child protection/vulnerable adults issues.

**Dismissal following a previous warning**

If within the life of a final warning there is further misconduct, the final stage in the disciplinary process is likely to be dismissal for serious misconduct. The dismissal would be effective immediately.

The letter must explain the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice for which they will receive payment in lieu and their right of appeal.

**Punitive action other than dismissal**

As an alternative to dismissal on grounds of serious misconduct it may be possible to take other punitive action which effectively removes the employee from their job but not from Council employment. This includes a disciplinary **demotion** or **transfer** and this action would be taken in conjunction with a final warning. Where the employee however does not agree to the punitive action then there will be no option but to dismiss the employee and pay the employee in lieu of their statutory notice entitlement.

It is emphasised that punitive action is **NOT** an available sanction in cases of gross misconduct.

**Giving the employee written details of any disciplinary action**

Any disciplinary action taken must be confirmed in writing. The letter will, in sufficient detail, leave the employee in no doubt as to:

 the nature of the disciplinary penalty

 the main factors that were considered before arriving at the decision (For example why it is believed that the misconduct occurred, the extent to which any mitigation offered was taken into account and the reasons for this, why the misconduct is considered unacceptable)

 the improvement expected

 the need to sustain the improvement

 the likely consequence of further misconduct or insufficient improvement

**Action in cases of gross misconduct**

If the chair decides that the employee is guilty of gross misconduct (i.e. their act of misconduct has fundamentally breached the “root of the contract”), the employee is liable for summary dismissal and will receive a letter setting out the reasons for the dismissal and their right of appeal. The dismissal takes effect instantly and without notice.

**HOW TO CONDUCT A DISCIPLINARY HEARING**

**Introduction**

As Chair of the disciplinary hearing you must contact an HR Adviser, who will provide support, advice and guidance throughout the process. Once you have received the investigatory report and understood the allegation and how the decision was reached you will need to prepare.

**Preparation**

 Liaise with the Investigating Officer to confirm their availability for the hearing. Advise the Investigating Officer of the time, date and location of the hearing once these details have been confirmed.

 Write to the employee at least 5 working days in advance of the hearing and provided a copy of the investigatory report and all appendices (See Appendix 6 for a model letter)

 Ensure that witnesses have been called from both sides (if requested) and have confirmed their attendance.

 If the employee has not confirmed their attendance 24 hours before the hearing contact them to ensure they have received the letter: that they will be attending; if they are being accompanied and, if so, by whom

 Book a private, convenient location, free from interruptions. Divert your telephone and switch off your mobile phone. It is also important to arrange another room for any adjournments and for any witnesses

 Make a list of points you wish to cover and decide on the questions that you are going to ask

**Conducting the meeting**

 Start by introducing those present to the employee and explain why they are there

 Explain that the purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the Council's disciplinary procedure

 Explain how the hearing will be conducted (as set out in the letter calling the employee to the hearing)

 Deal with any procedural issues at this stage

 Ask the Investigating Officer to present their case

 Invite the Investigating officer to ask any supporting witnesses to make their statements, if they are to be called, or present their signed statements if they are not

 Invite the employee and his/her companion to ask the Investigating Officer and any attending witnesses’ questions

 Give the employee the opportunity to state his/her case

 Invite the employee to present evidence and call any supporting witnesses (or present their signed statements if they are not being called)

 Invite the Investigating officer to ask the employee and any attending witnesses’ questions

 If the employee becomes distressed or upset allow time for them to regain composure before continuing. Where the employee has become too distressed to continue then adjourn and reconvene later – although the employee will need to appreciate that the issues cannot be avoided

 If new evidence is presented that you believe is relevant to the investigation, or if you believe that the investigation has not been conducted thoroughly, you should adjourn and request that the Investigating officer obtains more information

**General questioning and discussion at the hearing**

 Establish the facts and whether the employee is prepared to accept that he/she has done something wrong

 Ask questions to clarify the issues and check that what has been said is understood by all those present

 Question the Investigating Officer and the employee, as well as any supporting witness who may be called

 After questioning is completed, give both parties the opportunity to make a closing statement then summarise the main points of the discussion. This allows all parties to be reminded of the nature of the misconduct, the arguments and evidence presented and ensures that nothing relevant has been missed. It also demonstrates that you have been listening attentively and allows you to check that you have understood the position of both parties

 Ask employee whether he/she considers that they have had a fair hearing, and whether they have anything further to add

 Tell the employee when and how the decision will be announced and then adjourn the hearing so that you can make your decision

 During the adjournment, consider all of the relevant issues that have emerged from the hearing, consider whether the allegation/s have been substantiated and decide what action to take

 When reaching your decision, discuss with your HR Adviser what would appear to be reasonable options based on the merits of the case – although ultimately you have the responsibility of making the decision

 Try as far as possible to reconvene the meeting within 24 hours so that you can announce your decision, along with the reasons for arriving at that decision. Confirm the decision, and the reasons for arriving at that decision, in writing, as soon as possible thereafter

If issuing a warning, make it clear to the employee as to the nature of the disciplinary action and how long the warning will last, what improvement is expected, the need to sustain that improvement, the consequences of failure to improve or further misconduct and the method and timing of appeals.

**N.B**. The length of the adjournment will depend on the type and range of issues that you need to consider and if you require more than 24 hours to reach a decision, advise the employee and their representative (if applicable) and contact them to reconvene.

**Making the decision**

In reaching your decision, you are expected to act reasonably and with impartiality in the interests of fairness to both the employer and the employee, and with the principles of natural justice in mind. A good starting point is to assume that the disciplinary action may eventually lead to an internal appeal or in dismissal cases, to a complaint to an employment tribunal whereupon you would have to justify the reasonableness of your decision.

When deciding whether disciplinary action is appropriate, and if so what form it should take, you need to carefully consider.

 Whether a fair and adequate investigation has been carried out and whether the disciplinary process has been properly followed up to this point

 Any explanation offered by the employee along with mitigation that may be relevant. For example, health or domestic problems, provocation, ignorance of the rules or standards involved or inconsistent treatment in the past (NB these special circumstances may make it appropriate to reduce the severity of the penalty)

 whether it is reasonable for you to believe that the employee has committed the alleged misconduct

 whether you have reasonable grounds on which to sustain that belief (assume here that you may have to justify that belief at an appeal hearing or employment tribunal)

 the seriousness of the case

 the action taken in similar cases in the past (you should consult an HR Adviser)

 the employee's disciplinary record (as recorded in the investigatory report and checked by the Investigating officer)

 If having considered all of these factors you find that the allegations are substantiated then you need to decide what action to take. If you find they are not, then it is unlikely that you will find that disciplinary action should be taken. However, in certain cases, you might conclude that informal or action short of a disciplinary sanction should be taken such as counselling, training and/or additional management support

**Taking disciplinary action**

The ranges of options available to you are set out in the disciplinary procedure and further issues to consider are provided below:

 **First level oral warning – 6 months of work**

 **First level written warning – 9 months of work**

 **Final warning – 12 months of work**

 **Punitive action coupled with a final warning – the action plus 12 months of work**

 **Dismissal**

(a) With notice - repeated misconduct, if the employee is currently on a final warning

(b) Without notice – gross misconduct cases

**Consideration**

Before announcing your decision to the employee you need to clearly establish:

 The nature of the misconduct, your reasons for the decision and the factors you took into account so that they can be explained

 Where issuing a warning, the level of improvement required, over what period and what the likely consequences of further misconduct will be

 The period that any warning will remain in force

 The timescales for the employee lodging an appeal and how it should be made