

**MANAGEMENT GUIDANCE NOTE****INVESTIGATING COMPLAINTS BY SERVICE USERS AGAINST EMPLOYEES****1. INTRODUCTION**

- 1.1 In view of the diverse nature of the services the Council provides and the heightened expectations of service users, employees of the Council are increasingly vulnerable to allegations and complaints. Whilst the Council's Disciplinary Procedure sets out the procedure to be followed in pursuing investigations into allegations of a disciplinary nature, guidance is hereby provided to assist managers in dealing with complaints or inquiries concerning employees in a fair, sensitive and systematic manner.
- 1.2 At the outset, it should be emphasised that constructive and effective use of a complaints procedure can lead to improvements in service delivery and that complaints do not necessarily give rise to disciplinary proceedings. Indeed, those which do tend to be the exception rather than the rule. Equally, it is recognised that some complaints are made maliciously, or with some other ulterior motive, and are not a genuine reflection of the service delivered. It is therefore important that employees who are the victims of malicious complaints, which are without foundation, receive appropriate management support.
- 1.3 From time to time, different parts of the Council's services are governed by specific statutory provisions or regulations, which control aspects of service delivery. This guidance note is subject to any express provision contained in any such statute or regulation.

2. ESTABLISHING THE COMPLAINT

- 2.1 Before a complaint can be properly and fairly investigated it needs to be put in writing either by letter or by completion of a departmental complaints form. Anyone making a verbal complaint should be advised of this requirement and offered the opportunity of being sent a complaints form.
- 2.2 The Council aims to encourage openness at all times and as such, anonymous complaints should not normally be pursued. In cases where there are sound and justifiable reasons for pursuing an anonymous complaint, the complaint should be investigated only with the approval of the Head of Department.
- 2.3 However, a complaint cannot be properly investigated without disclosing sufficient details to the employee(s) concerned. In disciplinary proceedings against an individual employee arising out of the complaint, the complainant may be identified. The complainant should be advised that this is possible at an early stage.
- 2.4 Complainants who are prepared to be identified but have difficulty with putting their complaint in writing may prefer to make complaint in person in which case, the Head of Department should nominate an appropriate officer to take a statement which should be signed by both the complainant and the interviewer.



MANAGEMENT GUIDANCE NOTE

- 2.5 In all cases, it is essential that the nature of the complaint is sufficiently specific, and properly documented, to enable a thorough inquiry to be carried out. It is also imperative that inquiries are carried out as expeditiously as possible with the aim of achieving a speedy resolution of matters.

3. INVESTIGATING THE COMPLAINT

3.1.1 The process of investigating complaints against employees often places individual workers, groups of employees and workplaces under considerable stress, whilst at the same time being expected to maintain effective service delivery. This process can also be stressful for managers conducting the investigations.

3.1.2 It is important that both employees and management operate within a recognised framework so that such inquiries can be properly and fairly carried out. The framework also needs to reflect the vulnerability of Council employees to allegations and complaints, particularly in 'caring' settings, and the anxiety such investigations can cause individuals. The following guidelines have therefore been devised:-

3.2 Deciding whether to pursue an investigation

3.2.1 Firstly, management need to gather full details of the complaint and decide whether the complaint merits investigation. If the complaint is ostensibly disciplinary in nature, the matter must be pursued under the Disciplinary Procedure and in accordance with the advice given in paragraphs 3.4 to 3.8.2. The Head of Department should nominate an appropriate and experienced person for this purpose, who should consult a representative of the Personnel Department about any complaint of a serious nature.

3.3 Inquiries not of a disciplinary nature

3.3.1 On occasion, it may be necessary to interview employees as part of an investigation which is not disciplinary in nature (ie not involving specific complaints of misconduct or inappropriate behaviour). The types of investigation which might fall into this category include:

- (i) complaints received under the Council's various performance and service reviews
- (ii) investigations under statutory complaints procedures
- (iii) management reviews and inquiries resulting from procedural and operational concerns

3.3.2 It is very important however, not to create a climate within the Council where all investigations are labelled 'disciplinary' when the purpose of the investigation, and expected outcome, is clearly different. Such investigations should be kept as informal and low profile as possible with the questioning of employees forming part of the usual manager/employee relationship and such discussions being restricted to these individuals only. It is inappropriate and potentially counterproductive to set up formal meetings with employees when pursuing complaints of this nature.

3.3.3 However, where during the course of such informal discussions it becomes evident that it would be more appropriate to pursue the matter under the Disciplinary Procedure (eg possible negligence, misconduct or inappropriate behaviour on the part of the employee may have occurred), the manager involved should immediately bring a halt to the informal discussion and thereafter arrange a formal investigatory interview (as described later in the guidance note) where the employee can be represented.

- 3.3.4 From time to time, it is appreciated that it may be necessary to conduct major service or operational reviews which would necessarily involve the interviewing of employees. In the interests of maintaining good industrial and employee relations, it is advisable to first inform the trade union(s) of the intention to conduct such an inquiry. This should include providing details of the reasons for and purpose and method of the enquiry, the name(s) of the officer(s) conducting the inquiry, the expected timescales and any arrangements for debriefing/feedback.
- 3.3.5 This arrangement should alleviate, as far as possible, any employee concerns and gain employee commitment to, and compliance with, the investigative process.
- 3.3.6 Again, if at any stage of the inquiry it becomes clear that disciplinary action may need to be considered, the officer(s) conducting the inquiry must immediately inform the head of department who will then determine, in consultation with a representative of the Personnel Department, whether all or any part of the inquiry should cease and the matter be dealt with as a disciplinary investigation under the Disciplinary Procedure.

3.4 Investigating complaints that are ostensibly disciplinary in nature

- 3.4.1 As stated earlier, such investigations must be pursued under the Council's Disciplinary Procedure. Further guidance on carrying out such investigations is provided below.

3.5 Informing the employee(s) of the complaint

- 3.5.1 The employee(s) who is/are the subject of the complaint should be made aware at the outset by their manager that a complaint has been received, regardless of whether it is proposed to pursue the matter further and whether it is an anonymous complaint. This should avoid as far as possible the employee(s) concerned learning of the complaint from another source which is both inappropriate and unsatisfactory from an employee relations point of view. Whilst it is the Council's aim to encourage openness at all times, the confidentiality of the complainant should be protected where this is requested and there are justifiable reasons for doing so.
- 3.5.2 If further investigation is required, the employee(s) who is/are the subject of the complaint, should be advised that the complaint will be discussed in more detail at an investigatory interview. It is important to avoid discussing the specifics of the complaint at this initial stage.
- 3.5.3 It may be necessary to suspend the employee(s), with pay, to allow for the investigation to be carried out unhindered - a protection for all concerned. When considering this action, reference should be made to the guidance on suspension included in the Guide to the Disciplinary Procedure.

3.6 Arranging the investigatory interview

- 3.6.1 Before interviewing employees who are the subject of a complaint as part of the formal investigative process, they must receive in writing:-
- (i) clear confirmation of the status of the interview
 - (ii) the specific complaints/allegations being investigated

(iii) the opportunity to be accompanied by a work colleague or trade union representative at the interview

3.6.2 Employees must be given sufficient notice (as well as sufficient detail of the complaint) to facilitate preparation of a response. A model letter for this purpose is appended to *the Council's Disciplinary Procedure*.

3.7 Conducting the investigatory interview

- 3.7.1 This is the stage where the specific complaint/allegations are formally put to the employee, who must be given an adequate opportunity to provide an explanation, including any mitigating circumstances where appropriate.
- 3.7.2 At the conclusion of this process, the person conducting the interview should summarise and adjourn the meeting. During the adjournment, the manager must consider all information arising from the interview and decide whether the employee's alleged conduct or behaviour is serious enough to warrant proceeding to a disciplinary hearing in accordance with the Council's Disciplinary Procedure, or whether no further action is required. Alternatively, an internal counselling session and/or further training may suffice as a means of addressing the issue.
- 3.7.3 Adjournments may of course be necessary in the course of the investigatory interview. For example, the employee's response to the complaint/allegation may raise unexpected issues that require further analysis or investigation and it would be unfair not to allow for this. This being the case, the employee should be so advised and arrangements should be made to complete the investigatory interview at another time.
- 3.7.4 Where, as a result of the interview, it transpires that the employee's alleged behaviour or conduct is serious enough potentially to warrant summary dismissal (ie the employee's conduct appears to have destroyed the employment contract between the employer and the employee), the employee should be immediately suspended, with full pay, in accordance with the 'suspension procedure' referred to earlier in this guidance note.
- 3.7.5 A representative of the Personnel Department will be able to assist the manager in his/her deliberations at this critical stage of the process and must be consulted (unless in exceptional circumstances where it is not possible to contact anyone in Personnel) prior to suspension being actioned.

3.8 Interviewing employees who are not the subject of the complaint

- 3.8.1 As part of the investigative process, it may prove necessary to interview other employees who are not the subject of the complaint (eg to gather witness statements or other relevant background information) and if this is the case, they should also be informed prior to interview of the complaints/allegations being investigated and be given the opportunity to be accompanied by a work colleague or trade union representative.
- 3.8.2 The role of the colleague/representative in these circumstances is to advise where necessary on procedure, provide moral support and act as an observer. It is important however, that they are not personally involved in the case under investigation. In the interests of employee relations, the appropriate trade union(s) should be advised at the outset if such interviews are necessary.

4. FURTHER ADVICE

- 4.1 Further advice on the procedures for investigating complaints/allegations against employees is available from the Personnel Department.

