



**ABERDEEN**  
**CITY COUNCIL**

# **MANAGING DISCIPLINE**

**GUIDANCE FOR MANAGERS**

# CONTENTS

## Section 1: Why have a disciplinary procedure?

---

- Legal requirement
- Operational requirement
- Who is responsible for discipline?

## Section 2: Disciplinary rules and definition of misconduct

---

- The need for workplace rules
- Employees' obligations
- The difference between misconduct and poor performance
- What is misconduct?
- What is gross misconduct?
- Repeated acts of misconduct leading to dismissal or other sanction

## Section 3: Timescales for action and life of warnings

---

- Timescales for dealing with disciplinary matters
- Life of disciplinary warnings
- Procedure for spent data

## Section 4: Counselling

---

- What is counselling?

## Section 5: Precautionary suspension

---

- What is a precautionary suspension?
- Is suspension really necessary?
- When to suspend and why
- Informing colleagues/others about the suspension
- Suspending an employee who we sponsor on the points based system
- Suspending and investigating an employee who is a trade union representative
- Dealing with allegations of gross misconduct
- The need to review the suspension
- What if the employee becomes medically unfit during the suspension

## Section 6: The investigation

---

- Who investigates?
- Right to be accompanied
- Does the employee have more than one contract of employment
- Dealing with the employee's non-attendance at the investigatory meeting

## **Section 7: The disciplinary hearing**

---

- Who conducts the hearing?
- Purpose of the hearing
- Attending the hearing
- Deciding on action
- What disciplinary sanctions are available?
- Action in cases of misconduct
- Dismissal following a previous warning
- Punitive action other than dismissal
- Giving the employee written details of any disciplinary action
- Action in cases of gross misconduct

## **Section 8: The Appeals process**

---

- Purpose of the appeals process
- Grounds for appeal
- Registering an appeal
- Who hears the appeal?
- When should the appeal be heard?
- Who should attend the appeal hearing?

## **Section 9: Links to other HR policies and procedures**

---

- Non-disciplinary investigations
- Grievances
- Bullying and/or Harassment
- Poor/sub-standard work performance
- Whistleblowing
- Complaints procedures
- Substance misuse
- Audit investigations/reports
- Handling allegations against school staff

## **Section 10: Dealing with particular cases and issues**

---

- Using management information obtained by electronic or human surveillance
- Criminal charges or convictions
- Protection of Vulnerable Groups (PVG) and the Duty to Refer
- Cases involving Statutory Registration Authorities
- Dealing with a resignation from an employee who is subject to the disciplinary process

## **LIST OF APPENDICES**

---

- Appendix 1: How to carry out counselling**
- Appendix 2: How to carry out a precautionary suspension**
- Appendix 3: How to conduct an investigatory meeting**
- Appendix 4: How to gather witness statements**
- Appendix 5: How to prepare an investigatory report**
- Appendix 6: How to present an investigation at a disciplinary hearing**
- Appendix 7: How to conduct a disciplinary hearing**
- Appendix 8: How to conduct an appeal hearing**
- Appendix 9: Model letter to confirm precautionary suspension**
- Appendix 10: Model letter to call employee involved to an investigatory meeting**
- Appendix 11: Model investigatory report format**
- Appendix 12: Model letter informing employee that case is progressing**
- Appendix 13: Model letter informing employee that case is not progressing**
- Appendix 14: Model letter to call employee to a disciplinary hearing**
- Appendix 15: Model letter to confirm first level warning**
- Appendix 16: Model letter to confirm final warning**
- Appendix 17: Model letter to confirm dismissal**
- Appendix 18: Model letter to call employee to appeal hearing**
- Appendix 19: Model letter to confirm outcome of appeal hearing**
- Appendix 20: Spent warnings – record management**
- Appendix 21: Model letter converting suspension to sickness**
- Appendix 22: Model letter converting sickness to suspension**

## **SECTION 1: WHY HAVE A DISCIPLINARY PROCEDURE ?**

### **Legal requirement**

---

The ACAS Code of Practice on Disciplinary Procedures came into effect on 6 April 2009. The procedures set out the principles for handling disciplinary situations in the workplace and will be taken into account by Employment Tribunals when considering relevant cases. This code has been incorporated within the Council's disciplinary Policy and Procedure.

The law requires employers to act **reasonably** when dealing with disciplinary issues. What is regarded as reasonable behaviour will depend on the circumstances of each case, and is ultimately a matter for employment tribunals to decide in unfair dismissal claims. However, fully complying with the disciplinary procedure and referring to this guidance note will help managers deal with disciplinary issues in a fair and consistent manner. Employment tribunals will assess a claim based on employers acting reasonably and in accordance with their policy.

### **Operational requirement**

---

A disciplinary procedure:

- is an aid to good and effective management
- helps to promote orderly employment relations
- provides a means by which rules are observed and standards are maintained
- provides a method of dealing with any shortcomings in conduct or performance
- helps to ensure that employees are treated fairly and consistently
- aims to achieve a positive change in an employee's conduct

### **Who is responsible for discipline?**

---

Whilst all supervisors/managers are responsible for managing the behaviour and conduct of employees reporting to them, and for taking appropriate remedial action when there are shortcomings in these, the Director of each service is ultimately responsible for the management and discipline of their service area.

Each Director:

- must ensure that all of their employees are made aware of the standards of conduct, behaviour and safety required of them and any disciplinary rules applying to them
- is ultimately responsible for any disciplinary action taken against employees within their service area
- should consult Human Resources about any investigation or disciplinary hearing of a serious nature
- is responsible for arranging appropriate training and briefing on the use of the procedure
- keeping records in the appropriate personal file of any breach of disciplinary rules, the action taken and the reasons for it, whether an appeal was lodged and if so the outcome and any subsequent developments (NB consistent and proper handling of disciplinary matters will be difficult unless such records of earlier decisions are retained and are easily accessible)

## ***SECTION 2: DISCIPLINARY RULES AND DEFINITION OF MISCONDUCT***

### **The need for workplace rules**

---

- rules set standards of conduct and behaviour at work and clarify to employees what is expected of them
- rules need to be clear, preferably in writing and understood by employees and those who have responsibility for applying them
- rules should be well publicised and easily accessible
- rules should be reviewed from time to time and revised if necessary
- any revisions to the rules should be communicated to all employees affected

Examples of the types of issues that rules would cover are:

- time recording
- leave and absence approval
- notifying absences
- health and safety
- smoking

- use of organisational facilities for personal use (for example, private telephone calls, private use of email and the internet, use of Council equipment for personal use)
- discrimination and harassment

## **Employees' obligations**

---

Employees have a duty to:

- familiarise themselves with the rules governing their employment as specified within their contract of employment.
- undertake work tasks and activities as agreed with their line manager
- act in a manner that is consistent with the Council's reputation
- maintain good working relationships
- comply with all statutory requirements, for example, all Health & Safety regulations
- observe all rules affecting their service area, regulations and operating procedures
- disclose to their employer the misconduct of fellow employees

## **The difference between misconduct and poor performance**

---

If an employee allegedly breaks specific rules about, or falls below acceptable standards of, behaviour then this is referred to as "**misconduct**". To deal with such situations, managers should either use counselling where informal action is required or the disciplinary procedure where formal action is required.

If the employee does not appear to be meeting the employer's expectations in how they perform their job, this is referred to as "**performance**". Such cases need to be treated differently from those involving misconduct and the procedure set out within "**Managing Performance**" should be used to deal with such cases. Poor performance must not however be confused with negligence, which usually involves a measure of blame arising, for example, from lack of motivation or lack of attention which should be dealt with under the disciplinary procedure.

If a teacher does not appear to be meeting expected performance levels in their job according to the practice and performance levels set out in the standards for full registration determined by the General Teaching Council for Scotland (GTC) and/or administrative/managerial duties this is referred to as "**competence**", the procedure set out within the GTC "**Framework on Teacher Competence**" should be used to deal with such cases.

## **What is misconduct?**

---

Misconduct is inappropriate behaviour that will normally result in disciplinary action short of dismissal being taken in the first instance.

The action taken will depend on the degree of seriousness of the misconduct, the employee's current disciplinary record and any other relevant factors. The following list is neither exhaustive nor exclusive but gives an indication of the types of misconduct which will normally result in disciplinary action short of dismissal:

- unauthorised use of Council property
- improper use of organisational facilities such as the Council's telephone, email system and the internet
- acts of discrimination, bullying and harassment
- carelessness or negligence in carrying out the duties and responsibilities of the job
- breaches of health and safety requirements
- refusal to follow reasonable instructions, comply with procedures or otherwise fulfil contractual obligations
- persistent poor timekeeping
- unauthorised absence from work and failure to comply with sickness reporting procedures
- falsifying time records
- wilful or deliberate under performance of duties
- abusive or threatening behaviour toward any person while engaged on, or purporting to be engaged, on Council business
- persistent short-term sickness absences
- inappropriate behaviour/conduct outside work that has a bearing on role within the Council

## **What is gross misconduct?**

---

Gross misconduct is an act, or acts, which have the effect of destroying the employment relationship between the employee and Council, making trust and a continued working relationship impossible.

The following list is neither exhaustive nor exclusive but gives an indication of the types of misconduct which will normally result in summary dismissal:



- dishonesty, theft, fraud and deliberate falsification of records and/or benefit claims administered by the Council
- fighting, assault on another person
- deliberate damage to Council property
- serious bullying and harassment
- serious incapability through alcohol or being under the influence of illegal drugs
- serious negligence which causes unacceptable loss, damage or injury
- serious insubordination
- serious infringement of health and safety rules
- serious breach of the Council's ICT Acceptable Use Policy
- unauthorised entry to computer records
- indecent, abusive or threatening behaviour to any person whilst engaged, or purporting to be engaged, on Council business
- wilful provision of false or misleading information, or wilful non-disclosure of information, either during the recruitment process or in subsequent employment which materially affects the contract of employment
- breach of confidentiality (subject of the Public Interest (Disclosure) Act 1988) or breach of authority vested in a job
- non-disclosure of an interest (conflict of interest), whether direct or indirect, in a contractual agreement between an agency and the Council
- serious breach of Standing Orders or Financial Regulations
- serious discriminatory acts or omissions contrary to or inconsistent with the Council's policy on equality of opportunity

**Notes:**

- **Removal from, or lapsed registration with, a Professional body, where that registration is a requirement for the post and a condition of employment, may be treated as gross misconduct.**
- **Disqualification from driving for a period of one year or more, where driving is the main task of the job, will normally result in dismissal on the grounds of capability.**

**If an employee is accused of an act of gross misconduct the line manager should first consider if alternative action other than suspension could be put in place to enable the employee to remain at work with the risk of a recurrence being assessed and managed. If this is not possible then the employee will be**

suspended from work on full pay, on a precautionary basis, whilst the allegation(s) is/are investigated.

### **Repeated acts of misconduct leading to dismissal or other sanction**

If after issuing a first level warning and/or a final warning, the employee's conduct or behaviour still fails to improve to an acceptable standard, the procedure may ultimately lead to dismissal, or action short of dismissal such as a disciplinary transfer or demotion as allowed for in the procedure. The reason behind the previous warning(s) is not necessarily significant, as the problem is that despite previous warnings, the employee's behaviour has failed to meet the standards expected by the Council. The required correction to the employee's conduct has not been achieved.

A dismissal in these circumstances is on the grounds of serious misconduct and would be **with notice (paid in lieu of)**. This is because the contract of employment has not been breached by the employee but the employer (the Council) has decided to terminate the contract. This significantly differs from how cases of gross misconduct are dealt with where dismissal is immediate (i.e. without notice or payment in lieu of notice) due to the breach of contract by the employee. This is known as a "summary" dismissal.

## **SECTION 3: TIMESCALES FOR ACTION AND LIFE OF WARNINGS**

### **Timescales for dealing with disciplinary matters**

Within the **Policy Statement** and the **Core Principles** of *Managing Discipline*, emphasis is placed on the need to deal with disciplinary issues promptly. It is in the interests of everyone involved that any issue of discipline is dealt with as quickly as possible to allow for a return to normal working. This is because it is recognised that issues of discipline affect working relationships and working arrangements.

To achieve an early resolution all cases should, where possible, be dealt with within the following timescales. Investigating officers and Chairs of hearings and appeals are responsible for achieving these timescales and employees and their companions will be expected to co-operate so that these timescales can be achieved.

<b>Disciplinary Stage</b>	<b>Timescale*</b>
Investigation	Investigatory report completed within <b>15 working days</b> from appointment as Investigating officer. If this timescale is not achieved the Investigating officer should contact the employee, their representative and their Head of Service to advise the reasons for the delay.

<b>Disciplinary Stage</b>	<b>Timescale*</b>
Disciplinary Hearing	Chair of hearing appointed within 5 working days of submission of

	<p>investigatory report.</p> <p>Hearing arranged within <b>5 days</b> of chair receiving investigatory report.</p> <p>Hearing takes place within <b>10 days</b> of chair receiving investigatory report. Employee must receive 5 working days notice of hearing.</p>
Appeal	<p>Chair of appeal hearing appointed within 5 working days of appeal being received.</p> <p>Appeal hearing takes place within <b>10 days</b> of chair of hearing receiving letter of appeal (except in case where appeal is to Appeals Committee). Employee must receive 5 working days notice of hearing.</p>

\* *It is recognised that in respect of investigations within schools there may be difficulties experienced in adhering to these timescales because of breaks due to school holiday periods. Whilst such delays are unavoidable, effort should be made to carry out the investigation as soon as possible, with the employee kept informed of any delay.*

There are some exceptional cases where it is recognised that these timescales will be difficult to achieve, for example where external agencies are involved in the investigation of issues. This may be the case where an issue relates to a criminal investigation or where child abuse or other statutory procedures are required to be followed.

Nevertheless, it is expected that issues surrounding the management of disciplinary matters will be given the highest priority by managers and that these timescales will be achieved in normal circumstances.

## **Life of disciplinary warnings**

Disciplinary warnings issued following a disciplinary hearing will be live for the following periods:

### **Level 1: First level warning**

**6 months of work** for a formal oral warning

**9 months of work** for a written warning

### **Level 2: Final warning**

**12 months of work**

Warnings will be extended to offset any period when the employee is not at work such as significant periods of sick leave or term time working so that the employee is

at work and monitored for the whole life of the sanction applied. The HR Service Centre will be responsible for making any adjustment to the life of the warning.

In exceptional circumstances where the above timescales are viewed as insufficient or inappropriate these can be increased. This may be where the misconduct is so serious, verging on gross misconduct, that it can reasonably be considered for future disciplinary purposes for a longer period of time than the above time limits permit. For example, where there has been a breach of the Council's child protection policies.

In such circumstances, the extended life of the warning, and the reasons for it, must be made very clear at the time of issuing the warning. Such instances should be very rare as it is not good practice to keep someone under threat of dismissal longer than is absolutely necessary. Any increase to the life of a warning will be based on the individual merits of the case and advice from the HR Adviser present at the hearing must be sought prior to the time limit being extended.

### **Procedure for 'spent' data**

---

In exceptional circumstances, such as cases involving the protection of children and/or vulnerable adults, disciplinary information may be retained once the warning has expired. This would include the letter confirming the disciplinary outcome, the report, witness statements and other relevant information that was relied on when reaching the decision to give a sanction.

Normally warnings are removed from the personnel file when they 'cease to be live'. A diary note will be kept to ensure that all related information is removed from files at the end of the warning period (usually 6, 9 or 12 months).

At the outcome of the disciplinary hearing the Chairperson, in conjunction with the HR Adviser, will recommend whether or not to retain the relevant information after the warning period. A nominated officer from the HR Service centre will be tasked with ensuring the documents are removed from the personal file along with relevant papers. The information will then be retained on a confidential, relevant database.

A request to access this information can be made by an Investigating Officer in relation to employees where a disciplinary issue has arisen which may amount to potential gross misconduct or involve children and/or vulnerable adults. This request must be made by completing Appendix 20.

## SECTION 4: COUNSELLING

***"In many cases, the right word at the right time and in the right way may be all that is needed and will often be a more satisfactory method of dealing with a breach of rules than a formal hearing"***

*Source - ACAS Advisory Handbook - Discipline and Grievances at Work*

### What is counselling?

---

- counselling is not part of the formal disciplinary procedure and may often be a more satisfactory method of resolving problems than a disciplinary hearing
- it is a useful management tool to identify shortcomings in conduct or behaviour, establish reasons for these shortcomings and then gain some joint commitment to overcoming these shortcomings, for example if improvement is required then the manager must ensure that the employee understands:
  - what improvement is required
  - how their conduct will be reviewed
  - over what period
  - that if the required improvement is not met within the agreed timescale then the next stage will be recourse to the formal disciplinary procedure
  - informal action may be taken which may include additional training, coaching, advice and closer supervision

**Appendix 1** details how to carry out counselling.

## SECTION 5: PRECAUTIONARY SUSPENSION

### What is a precautionary suspension?

---

When management decide to suspend an employee from duty whilst the investigation and potentially any subsequent disciplinary process, takes place.

Suspension needs to be considered where there appears to be very serious misconduct, or risk to property or to other people and there is no alternative that could be applied to safeguard against the potential risk of the alleged contractual breach recurring.

The suspension should be as short as possible and be reviewed as new and pertinent facts emerge, it is recommended this happens at 10 working day intervals.

**An HR Adviser should be consulted before any precautionary suspension is put in place. If this is not possible due to unavailability or the need to act instantly**

then the suspension should not be delayed, provided there are reasonable grounds for the suspension and an HR Adviser is contacted as soon as possible thereafter.

*Appendix 2* details how to carry out a precautionary suspension.

## **Is suspension really necessary?**

---

Suspension should be viewed as action of last resort. In cases where gross misconduct is alleged the employer will be required to demonstrate that the behaviour of the employee was so extreme it 'breached the root of the contract'. If this is the case, the employment tribunal may wish to test this by looking at how the employer responded when the alleged behaviour came to light and whether alternatives to suspension were considered. An employment tribunal may have difficulty accepting that the employee's behaviour amounted to gross misconduct if the employer failed to put in place any measures to avoid the alleged contractual breach re-occurring (for example, temporary change of location/job role, suspending the employee, see section below for more details).

However, if the allegations do not appear to amount to gross misconduct there will normally be no grounds for suspension – the only exception being where a short 'cooling-off' period is required or where the employee's continued presence in the workplace may hinder the investigation.

### **The need to consider alternatives to suspension**

Where the allegations appear to amount to gross misconduct, line managers need to look at the nature of the inappropriate behaviour and consider appropriate control measures to prevent it re-occurring. In many ways this will be very similar to undertaking a risk assessment. If there is no effective way of adequately managing the risk of re-occurrence the employee should be suspended. Precautionary action(s) other than suspension will be considered and put in place whenever it is possible and appropriate in view of the nature and type of misconduct. Such action may include a temporary:

- \* change to working arrangements
- \* change to working practices
- \* change to duties and/or job role
- \* change to work location or
- \* any other appropriate control measure to avoid the alleged breach re-occurring

It is important that such temporary precautionary measures are discussed and agreed with the employee and their representative before being put into effect. This needs to happen quickly. If the employee refuses to accept such alternative action then the employee will need to be suspended.

## **When to suspend and why**

---

A precautionary suspension should only be imposed after careful consideration of the initial details and circumstances. It must **not** be associated with any assumption of guilt.

It should only be considered for use:

- in the most serious cases of misconduct, particularly where the complaint is of gross misconduct (see paragraph below) and where there is no alternative that could be applied to safeguard against the potential risk of the alleged contractual breach recurring
- where the employee's presence at their normal place of work could prejudice or hinder the investigation or be to the detriment of themselves, colleagues, clients, property of the Council or to the investigation itself and a transfer to another work location is not feasible. For example, where the employee involved has access to records, computer systems and other data etc containing information relevant to the investigation. Suspension in this case is intended to protect the integrity of the information and avoid any suggestion that it has been removed or altered
- as a “cooling-off” period - where there has been some form of serious heated argument or altercation and where it would be better for the employee to be removed from the work situation to avert any further disruption in the workplace. By its very nature, such suspensions should be of a limited duration
- after giving consideration as to how an employee will react and the potential impact the suspension, and continuation of it, might have on an employee’s mental wellbeing. Particular care must be exercised when an employee discloses or displays warning signs of mental vulnerability during the investigatory process. HR advice should be sought in such circumstances.

There are very few circumstances where suspension will be without pay but one scenario is where the employee makes themselves unavailable for work, either voluntarily (by refusing to attend work) or not voluntarily (where they may be held in police custody).

### **Informing colleagues/others about the suspension**

When an employee has been suspended, the reason for their absence from work is confidential and should not be disclosed to colleagues. It goes without saying that such situations need careful and sensitive handling and advice can be sought from HR if required.

### **Suspending an employee who we sponsor on the Points Based System – Home Office Migration to the UK Scheme**

When an employee whom we sponsor on the points based system is suspended HR must be informed so that they can contact the Home Office. This also applies in the case of employees sponsored under this system who have been AWOL for two weeks.

### **Suspending and investigating an employee who is also a trade union representative**

Invoking the disciplinary procedure against a trade union representative can potentially be construed as an attack on the trade union and as such may lead to serious industrial relations problems. This includes suspending and investigating an employee who also happens to be a trade union representative.

To avoid such potential problems occurring, an appropriate manager should have an early discussion with a full-time official or senior representative of the trade union concerned. The purpose of the discussion is to give an assurance that the suspension and investigation relates to the individual's alleged conduct as an employee and is unrelated to the role they perform as a trade union representative. Should problems arise in the latter case then these should be reported to the relevant trade union to deal with, as that is a matter for the trade union to address.

A model letter to confirm the suspension to the employee is shown at **Appendix 9**.

## **Dealing with allegations of gross misconduct**

---

The concept of gross misconduct is that the act of indiscipline has fundamentally breached the "root of the contract" (i.e. it would be impossible for the employer/employee relationship to continue) and this would therefore result in dismissal. Consequently, to allow the employee to continue working normally without any precautionary remedial action(s) being taken may signify that the organisation does not view the alleged contractual breach to be that significant.

In **ALL** cases where gross misconduct is alleged the line manager has dual responsibilities - to ensure a similar act does not re-occur whilst the matter/incident is being investigated and also to ensure that any precautionary action taken is reasonable in a given situation. During this period the appropriate control measures need to be put in place to safeguard against any further breach. Alternative options to precautionary suspension must be considered to identify if there is any other course of action that could be taken to enable the employee to remain at work, see earlier section on 'is suspension really necessary' for potential options. If following an assessment of the situation it is viewed that there are no sufficient measures that could be put in place to avoid a repeat of the alleged act of indiscipline the employee must be suspended.

## **The need to review the suspension**

---

The suspension should be for as short a period as possible and the merits of the suspension should be reviewed at regular intervals, and as new and pertinent facts emerge. It is recommended this happens at 10 working day intervals. The suspension must not be unnecessarily protracted. The suspension does not need to last until the outcome of the investigatory/disciplinary process where it emerges that the offence is not as serious as first anticipated.

## **What if the employee becomes medically unfit during the suspension?**

---

Employees may fall sick during a period of suspension (either by self-certification, or by submitting a medical certificate). However, just because someone is unfit for work does not necessarily mean that they are unable to co-operate fully with the



investigation, although there may be times when illness does prevent this. Such situations will need to be dealt with sensitively and should be discussed with Human Resources. It may be appropriate to involve the Council's occupational health adviser, particularly when there is a need to establish whether the employee concerned is fit to attend investigatory/disciplinary meetings.

When a person is sick during suspension they must inform the Investigating Officer. The suspension will be converted to a period of sickness absence and confirmed in writing (**see Appendix 21 for model letter**). The employee is obliged to inform the Investigating officer when they are fit to return to work at which point the suspension will be reinstated (**see Appendix 22 for model letter**).

## SECTION 6: THE INVESTIGATION

### Who investigates?

---

The responsibility for managing discipline lies firmly with management. It will usually be the line manager of the employee concerned who will carry out the investigation as he/she is responsible for ensuring that standards of conduct are maintained.

Additionally, where counselling has already taken place for reasons of misconduct, the line manager will have already reinforced those standards and must therefore carry the responsibility for acting if these standards have not been met.

There may, however, be occasions where for reasons of demonstrating reasonable impartiality, it would be inappropriate for certain officers to investigate. This might occur when the manager has been closely involved in an incident of misconduct and as such may be implicated in some way and indeed, where the officer may be a witness themselves.

Therefore, if the line manager considers that the fairness and objectivity of the investigation might be compromised if they were to investigate then he/she should contact their line manager so that an alternative Investigating officer can be appointed.

### Right to be accompanied

---

Employees have a right to be accompanied at formal stages of the disciplinary process i.e. investigatory meetings and discipline/appeal hearings by a companion. This should either be a work colleague or trade union representative, but not a spouse or partner.

In certain exceptional and very limited circumstances a legal representative will be admitted to disciplinary/appeal hearings eg where an external regulatory body such as the GTC or SSSC is also going to be investigating the matter under their own procedures and there is a risk that the individual could be struck off by the regulatory body and no longer able to practice their profession. Employees are required to advise the Chair of the Disciplinary/Appeal Hearing in advance that they wish to be accompanied by a legal representative in order that HR advice can be sought to ensure the circumstances merit this.

**Appendix 10** details a model letter to call employee to an investigatory meeting

**Appendix 3** details how to carry out an investigatory meeting

**Appendix 4** details how to gather witness statements.

**Appendix 11** shows a model investigatory report format

If the employee has difficulty reading, or if English is not their first language then the content of the letter should be explained to them verbally.

## **Does the employee have more than one contract of employment?**

The Investigating officer must check whether the employee has more than one employment contract with the Council. Any action taken as a result of an employee's alleged misconduct in one post will not automatically apply to any other post the employee holds within the Council. Each case must be considered on its merits and advice should be sought from HR. The employee will be advised of the scope of the investigation and the same Investigating officer will investigate the allegations in relation to all relevant contracts.

## **Dealing with the employee's non-attendance at the investigatory meeting**

If the employee is unable to attend the meeting, they should notify the Investigating officer and give the reason for the non-attendance as soon as possible and certainly in advance of the meeting. If they fail to attend because of circumstances outwith their control (for example unforeseen transport difficulties or a family illness), they should be invited to another meeting. Where no valid reason has been given then the employee should be informed that decisions will be made in their absence should they fail to attend a rearranged hearing without good reason.

If the employee is unable to attend because his/her "companion" is not available 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-rearranged meeting go ahead as planned.

If the employee is unable attend because of illness then you need to establish when they are likely to be fit to attend. You may need to refer the employee to occupational health to establish whether they are medically fit to attend and participate in an investigatory meeting and if not, when they are likely to be fit to attend such a meeting. To avoid the matter becoming protracted, it may be that the employee may be willing to provide a written response if they are unfit to attend a meeting.

**Appendix 6 details how to present an investigatory report at a disciplinary hearing (which you should read if your recommendation is to progress to disciplinary hearing).**

***Note: Apart from providing management with an important overview of the investigative process and helping the Investigating Officer to present the evidence in a straightforward and organised way, employment tribunals expect that if evidence from an Investigating Officer is to be taken at a hearing, it should be prepared in written form.***

## **SECTION 7: THE DISCIPLINARY HEARING**

### **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.

**Appendices 6 and 7** detail how to conduct a disciplinary hearing and to present the case.

### **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.

Section 2 sets out the levels of disciplinary action that may be taken.

## **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. (See section 3 for further details)

## **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 confirming their right of appeal. The dismissal takes effect instantly and without notice.

## **SECTION 8: THE APPEALS PROCESS**

### **Purpose of the appeals process**

---

Employees who have had disciplinary action taken against them must be given the opportunity to appeal.

The appeals process is about looking at what happened previously in the disciplinary process and remedying any defects in the original disciplinary procedure. The appeal is NOT however a rehearing of the original case but rather an opportunity for the employee to highlight to an independent manager, with the power to make an alternative decision, why they believe the disciplinary action was unjust.

There is no right of appeal against any non-disciplinary action taken (e.g. a decision to counsel the employee or to suspend).

Appeals should be dealt with in accordance with the timescales in section 2.

### **Grounds for appeal**

---

An employee can choose to appeal where:

- they consider a finding or the penalty to be unduly severe or inconsistent;
- new and relevant evidence comes to light that was unavailable at the time of the disciplinary hearing; or
- they consider that the disciplinary procedure was not used correctly and they were disadvantaged because of this

An appeal on other grounds will not be considered competent.

### **Registering an appeal**

---

Apart from satisfying the above grounds, for an appeal to be considered competent it must satisfy the following:

- be in writing outlining the grounds for appeal (it is insufficient for the employee just to state that they wish to appeal without setting out their grounds)
- be made within the timescale provided for within the letter outlining the disciplinary action
- be submitted to the officer stated within the outcome letter

The manager who took the disciplinary action should receive a copy of the written appeal and be informed that they will be required to attend the appeal hearing.

If an appeal is registered which is malicious or vexatious the matter will be referred to the Head of Human Resources and Organisational Development who will provide advice on how to deal with the issue.

## **Who hears the appeal?**

---

Appeals for non-teaching staff are heard at Head of Service level or above. Appeals for teaching staff are also heard at Head of Service level or above other than in the case of a dismissal, where the appeal would be heard by a Director. In all cases the person hearing the appeal will not have had any prior involvement in the case.

Exceptions to the above are appeals against a final written warning or dismissal, where for non-teaching staff the employee has the option of having their appeal heard by the Council's Appeals by Employees Committee; or for teaching staff the Education, Culture & Sport Committee.

## **When should the appeal be heard?**

---

The manager appointed to hear the appeal should contact the employee in writing with the appeal arrangements as soon as possible, and inform them of their right to be accompanied at the appeal hearing. **A model letter for this purpose is shown at Appendix 18.**

## **Who should attend the appeal hearing?**

---

- the manager holding the appeal
- the manager who made the decision at the disciplinary hearing
- an HR Adviser to provide the manager with procedural advice and guidance
- the employee
- the employee's companion if they wish to be accompanied (see earlier section on 'Right to be accompanied').

**Appendix 8** details how to conduct an appeal hearing.

***Please note*** - In accordance with the ACAS code, there should be no increase in the disciplinary sanction as this may deter individuals from appealing. Where an appeal chair is of the view that a disciplinary sanction has been too lenient this will be reported after the conclusion of the appeal hearing to the Head of Human Resources and Organisational Development who will discuss the matter with the disciplining manager's Director.



## **SECTION 9: LINKS TO OTHER HR POLICIES/PROCEDURES**

The *Managing Discipline* procedure has been designed to deal with cases where an employee's behaviour has not met the standards required by the Council. There are other Council procedures and processes, which directly link to the disciplinary process. Many of these processes will have an investigatory stage, which will seek to collect the relevant facts surrounding the issue. For further advice on these matters contact HR.

### **Non-disciplinary investigations**

---

If an investigation conducted under another procedure results in a finding of misconduct where disciplinary action may be merited (for example, an investigation under the *Managing Bullying and Harassment Policy* or *Whistleblowing Policy* or an issue arising from an Audit Report) then the matter shall then be considered under the *Managing Discipline* Procedure.

There is no need for the matter to be re-investigated and the matter will normally proceed directly to the disciplinary hearing stage. All evidence collated as part of the investigation already conducted may be brought forward and used within any subsequent disciplinary hearing. The employee will have the opportunity to produce any new evidence at the hearing in response to the allegations made.

The principle to be applied is that there is only **one investigation** required - separate investigations under each procedure are not necessary.

### **Grievances**

---

#### **Handling grievances raised during the disciplinary procedure**

There are occasions where an employee will raise a grievance when they are subject to the disciplinary process. There is no legal requirement that a disciplinary process should be postponed while the employer deals with a grievance raised by the employee. In addition, all that the ACAS code suggests is that the disciplinary procedure 'may' be suspended while the employer deals with the grievance. Hence, where a grievance is raised, the following guidance is recommended to be followed, in the three scenarios below:-

##### **1) Grievances directly arising from the disciplinary process**

The Managing Grievances policy/procedure states that employees are not permitted to raise a grievance concerning any matter directly arising from the application of the disciplinary procedure (either at investigation or disciplinary hearing stage), it being regarded under that procedure as being non-competent. The employee would have the opportunity to raise any related concerns they may have at the appropriate stage in the disciplinary process. Hence, if any employee raises such a grievance it would be dealt with in this way.

##### **2) Grievances relating to the lead-up to the disciplinary process.**

An employee may make an allegation about the circumstances that led to the disciplinary process being initiated, rather than concerning a matter directly arising

from the disciplinary case itself. This could be for example where an employee alleges that he/she was bullied by the manager who initiated the process. The matter can therefore be heard within the disciplinary process, if this is considered appropriate and depending on the seriousness of the allegation. The allegation would be considered to amount to either a defence to the accusation of misconduct or to a mitigating factor that the employer could take into account when considering what action to take. This may be the most efficient way of dealing with the matter especially where the issues are interrelated. An adjournment may be necessary if any issues required to be looked into in more detail with it being recommended that the same investigating officer is used who looked into the conduct allegations.

Alternatively, the disciplinary process could be postponed for the grievance to be heard and dealt with first. However it should be borne in mind that this could cause an unnecessary delay.

It is a judgement for the manager to make on which option is followed, however, it is expected that it will only be in a minority of cases that the disciplinary process would be postponed if such a grievance were raised.

### **3) Grievances that are unrelated to the discipline case**

Grievances that are unrelated to the discipline case should be held out with the disciplinary process and heard through the *Managing Grievances* procedure as a separate matter. They will not hold up the disciplinary process with no postponement necessary.

Note: Where several grievance issues are raised by an employee these will be analysed and separated out with a decision made on which are related and which are unrelated to the discipline case.

## **Bullying and/or Harassment**

---

Where an investigation under the *Managing Bullying and Harassment* procedure concludes that bullying and/or harassment has occurred requiring disciplinary action to be considered, the matter will automatically be referred to the disciplinary hearing stage of the *Managing Discipline* procedure. There will be no further investigation, however the employee will be permitted to produce additional factual evidence at the disciplinary hearing.

Where an investigation concludes there is no evidence of bullying and/or harassment and the evidence suggests that the allegation was made without foundation and is vexatious then an investigation should commence.

## **Poor/sub-standard work performance**

---

There may be occasions where a case may commence under the *Managing Performance* procedure (or for teachers the GTC “Framework on Teacher Competence”) but will move to being dealt with under the *Managing Discipline* procedure as evidence begins to suggest that the poor performance relates to attitudes and behaviours rather than a latent inability to perform to the levels required in the role. When a case transfers across it will normally be to the disciplinary hearing stage, provided there has been a sufficient examination of the situation including an opportunity for the employee to respond to what is being alleged.

## **Whistleblowing**

---

Where a complaint, investigated under the *Whistleblowing Policy*, is upheld and concludes that an employee has behaved inappropriately, the matter will automatically be considered at the disciplinary hearing stage of the *Managing Discipline* procedure. There will be no need for a further investigation.

## **Complaints procedures**

---

The Council has a number of complaints procedures which allow citizens to raise areas of concern on services provided. Some of the procedures are generic and some specific (e.g. social work, education, recruitment & selection, housing). All complaints will be investigated and a response provided to the complainant. Where enquiries identify apparent shortcomings in an employee's conduct or performance then the matter will be referred to the appropriate procedure for dealing with issues of misconduct or poor performance.

## **Substance Misuse**

---

If during the course of a discipline case the employee indicates that the underlying cause of their conduct/behaviour is related to alcohol and/or substance misuse, the manager undertaking the discipline case will normally adjourn the disciplinary proceeding (except in the case of apparent gross misconduct or where it is not reasonable to accept that the employee's unacceptable conduct was directly caused by their alcohol and/or substance misuse) to allow for referral of the employee to the occupational health service for assessment, provided the employee is willing to accept support.

If an alcohol or substance misuse problem has been identified following a disciplinary referral to occupational health but the employee does not comply with, or accept support, the disciplinary procedure will be continued and the employee's alcohol and/or substance misuse problem will not be regarded as a mitigating factor in terms of deciding the level of disciplinary penalty.

If the employee commits to a support programme and supporting provisions and responds well, the disciplinary procedure should be continued and the employee's alcohol and/or substance misuse problem may be regarded as a mitigating factor and as such may be taken into account when deciding the level of disciplinary penalty.

In cases of apparent gross misconduct, the disciplinary process will continue regardless of whether the employee's actions may be attributed to alcohol and/or substance misuse.

There is no need to defer disciplinary proceedings if it is not reasonable to accept that the employee's conduct was related to their alcohol or substance misuse. In these situations the employee's misuse problem needs to be dealt with as a separate matter with the offer of assistance and support still be made.

In cases of one off incidents where there is no evidence of underlying alcohol or substance misuse problems the normal disciplinary process will be followed.

## **Audit investigations/reports**

---

The following guidance is derived from the *Internal Audit and Employee Discipline Protocol* which was agreed by CMT in June 2004. The Protocol is included in the appropriate section of the Council's Corporate Compliance documentation.

There may be occasions where the allegations being investigated require the involvement of Internal Audit (see below) and in such instances, the following process must be adhered to so as to ensure compliance with Council's Financial Regulations 8.2.1 and 8.2.2, which states:

***“All officers shall inform their Director immediately of any circumstances which may suggest an irregularity affecting the finances, property, services or policy of the Council. These shall be reported immediately by the Corporate Director to the Internal Audit Manager.***

***The Internal Audit Manager shall investigate such incidents as he/she considers appropriate.”***

It is important in such circumstances that the Investigating Officer liaises closely with Internal Audit on the process to be followed, in particular in relation to the collection and presentation of any evidence to ensure that it may be admissible in court. The employee under investigation should be advised when internal audit is going to participate in the investigation and of their obligation to co-operate fully.

### **Role of Internal Audit**

As part of the investigation, Internal Audit may wish to interview one or more employees who are key to the circumstances. If this is necessary, the Investigating Officer will advise those requiring to be interviewed accordingly. Thereafter, the Auditor will make arrangements with those individuals directly. It is emphasised that this is a “fact finding” interview and it not to be confused with an investigatory meeting under the *Managing Discipline* procedure. Nevertheless, because such an interview forms part of the investigation, the employee should be given the opportunity to be accompanied by a trade union representative or by a work colleague.

The employee should also be advised at the outset that the information they provide, and the outcome of the internal investigation, will be used by the Investigating Officer to decide whether there is any substance to the allegations and to decide what action, if any, is justified.

It is ultimately for management to decide whether recommendations contained within an internal audit report should be accepted and acted upon; and it is for management to decide whether further investigations are necessary before arriving at the relevant conclusion. Any recommendations by Internal Audit must not therefore extend to include disciplinary action, although they could include subjecting an employee to a disciplinary investigation.

Internal Audit have procedures covered to ensure that all steps are taken properly, particularly in case the allegations result in a court appearance.

### **Role of the Investigating officer**

Whilst Internal Audit will be responsible for carrying out investigations of this nature and thereafter producing a report of their findings, any investigatory meeting will be conducted by the appointed Investigating Officer. During the investigatory meeting with the employee concerned, the Investigating Officer may refer to the audit report and ask questions arising from it. He/she may also ask for further information from the Internal Auditor.

### **Role of internal audit reports within the disciplinary process**

The Investigating Officer will:

- have unrestricted access to the Internal Audit report
- decide with whom the report (and whether in whole or in part) may be shared and at what point in the investigation
- in arriving at that decision, have regard to the need to respect individual confidentiality, particularly where the report identifies more than one employee

### **Rights of access to an internal audit report**

If the Internal Audit report and/or its recommendations are considered as part of any subsequent disciplinary hearing (or appeal), the report **in its entirety** should be made available to the employee(s) whose conduct is the subject of the disciplinary hearing. The only two exceptions to releasing the full Audit report are:

- 1) where issues of confidentiality would be breached
- 2) where this includes information about a 3<sup>rd</sup> party

In such cases, the relevant parts of the report that apply to 1) and 2) may be withheld or blanked out. It is the responsibility of the chair of the disciplinary or appeal hearing, as the case may be, to ensure that this has been done.

Internal Audit may be required to attend the disciplinary hearing (if the Investigating Officer so requests) to clarify parts of their report.

### **Handling Allegations Against School Staff**

---

The Council has a duty to safeguard children in their care and the *Handling Allegations Against School Staff* procedure covers situations when a pupil or a member of the public complains about school based staff. It is recognised that school based staff are in a vulnerable position, These matters are taken seriously and will be dealt with sensitively and appropriately. An investigation under the *Handling Allegations Against School Staff* may feed into the *Managing Discipline* procedure.

## **SECTION 10: DEALING WITH PARTICULAR CASES AND ISSUES**

Certain cases and issues will need special consideration. Guidance is therefore provided to help managers deal with some of the situations that may arise. HR can also help by giving advice about individual cases.

### **Using management information obtained by electronic or human surveillance**

---

Data that is held as part of the Council's computerised systems may be used and considered as part of the disciplinary process as set out in the Council's ICT Acceptable Use Policy.

As is stated within the procedure for the use of Close Circuit TV (CCTV) the Council operates CCTV systems for a number of reasons. Principally such a system can be installed for the prevention, investigation and detection of crime (particularly, but not restricted to, vandalism or the theft of Council property) and the apprehension and prosecution of offenders. A system may also be used to enhance the safety of staff and the public. Whilst not its principal function, CCTV footage may, in appropriate circumstances, be used in connection with staff discipline.

Where information is obtained through overt or covert surveillance, HR must be consulted for advice on whether it can be considered as part of the disciplinary process. If there is any doubt about whether such information can be used then consult an HR Adviser.

### **Criminal charges or convictions**

---

Disciplinary action must not be taken against an employee merely because he/she has been charged or convicted of a criminal offence. In such cases, the issue is whether the employee's conduct merits action because of the implications it may have on their employment.

Where it is considered that the employee's conduct warrants disciplinary action then the following guidance should be borne in mind:

#### **The need to investigate**

Obviously, there is a need to investigate the facts as far as possible, come to a view about them and consider whether the employee's misconduct is sufficiently serious to warrant invoking the disciplinary procedure.

However, sometimes a matter that needs to be investigated is also being investigated by the police and this may potentially affect the pace at which matters can be progressed.

If this is the case, it is often requested by the police (and sometimes the employee) that internal proceedings are suspended until the outcome of the police case. This, of

course, can be costly as the employee may be suspended on full pay and the police investigation may take some time.

However, to proceed with an internal investigation may prejudice the outcome of the case so you must carefully consider whether it would be fair and reasonable to do so. Obviously, you should co-operate with the police as much as possible and be prepared to accept some delay if your questioning would alert someone before a police statement is taken.

Apart from the above, it is difficult to see how internal proceedings would prejudice the outcome of the case, especially as the investigations are separate and based on different concepts - especially the burden of proof.

Where the employee's conduct requires prompt attention, and where there is any real danger of prejudicing the case, you should not await the outcome of the police investigation or prosecution before taking fair and reasonable action. Where this is the case, there is no need to automatically grant a request from the police to delay progressing a disciplinary investigation.

The same is true if an employee requests that internal proceedings should await the outcome of the police case. You should consider this, but again, you must be satisfied that there is a real danger of prejudice and not merely a notional one.

If you are in any doubt about whether to commence an internal investigation whilst a police investigation is underway, then contact an HR Adviser for advice.

Where the police are called in to investigate they should not be asked to investigate on behalf of the employer, nor should they be present at any investigatory meeting or disciplinary hearing.

### **What if it is not possible to establish the facts?**

There may be occasions however, when the only substantial evidence is held by the police, which will not be disclosed unless, or until, the case comes to court. In such cases, any disciplinary proceedings will have to await the outcome of the police case.

You may be concerned that if you proceed and take disciplinary action, including perhaps dismissal, and the employee is subsequently found not guilty in the criminal case, the decision will be held to be unfair. In fact that should not be a worry. As long as the disciplinary procedure was properly followed, that the manager who took the decision had a genuine belief that the employee was guilty of misconduct, that they held that belief on reasonable grounds and have reached that belief after a reasonable investigation then it is likely that the decision will be considered fair. An Employment Tribunal will not be concerned whether the complainant was guilty of the crime, but whether the employer acted reasonably on the evidence available.

### **Relevant case law**

For example, in a case in 1982, Lord Denning, quoting an earlier judgement said, "If a man is dismissed for stealing, as long as the employer honestly believes it on reasonable grounds, that is enough to justify dismissal. It is not necessary for the employer to prove he was in fact stealing." These differing burdens of proof mean that

an employee who is dismissed before a case comes to court, and is subsequently acquitted, has no grounds for claiming reinstatement just because of the acquittal.

In a case that went to the Employment Appeals Tribunal (EAT) (*Lovie v Anderson 1999*), the EAT provided some helpful guidance on dealing with issues where criminal charges are brought against an employee in circumstances relating to the employment. This is summarised below:

- whether or not an employer should carry out his/her own investigation after being informed that criminal charges are being brought against an employee arising in connection with his or her employment is a question of circumstances
- the EAT said that it is going too far to say that the employer is precluded from carrying out any further investigation into the matter if it has already carried out some form of investigation. Equally, the employer must be careful not to trap the employee into making any sort of admission against his/her interests
- in an extreme case when the first notice that the employer gets of the problem is the intimation that the police are bringing charges against the employee, it is incumbent upon the employer to embark upon some form of investigation involving, amongst other things, an interview with the employee to give him/her the opportunity to state his/her position
- at the other end of the spectrum, the circumstances may be so blatant and sufficiently brought to the attention of the employer to warrant a reasonable belief as to guilt, that further investigations may not be necessary
- the EAT concluded that within that spectrum there are many situations that will require further consideration of the position by the employer, including an interview after charges are brought, before dismissal can reasonably be effected. It will always be a question of circumstances

In summary the guidance in *Anderson* is that in such situations the employee should always be given the opportunity to state their case before a decision is reached.

### **What if the employee refuses to co-operate?**

Where an employee, charged with or convicted of a criminal offence, refuses to co-operate with the internal disciplinary investigations and proceedings, this should not deter you from taking action. Where this occurs, the employee will need to be advised in writing that unless they take the opportunity to provide further information, a disciplinary decision will be taken on the basis of the available information and could result in dismissal.

### **What if the employee is in custody or on remand?**

There may be occasions where the employee is not available for work because he/she is in custody or on remand. In these cases, you will need to decide whether, on the basis of the needs of the service, the employee's job can be held open. If it is not reasonable to in terms of service requirements then it is possible to terminate the contract by reason of "frustration of contract". No dismissal takes place in such cases. The length of the absence will be a determining factor here, particularly where there is little likelihood of an employee returning to employment.



The doctrine of “frustration” is normally accepted by the courts only where the employee's “absence” renders all performance of the employment contract clearly impossible.

### **What if the employee has become “unacceptable” to colleagues?**

An employee who has been charged with, or convicted of, a criminal offence may potentially become unacceptable to colleagues resulting in pressures from those colleagues to dismiss the employee. This may even result in threats of industrial action. This could well be the case depending on the nature of the charge or conviction.

However, before bowing to workforce pressure, you need to bear in mind that you will have to justify the reasonableness of any decision to dismiss and consider all relevant factors before reaching such a decision. An employment tribunal will expect no less and will not take into account threats of industrial action when determining the fairness of a decision.

### **What if the criminal conviction makes it illegal for the employee to continue in their job?**

Where a criminal conviction leads, for example, to the loss of a driving licence which would make the employee's continued employment in that job illegal, you will need to consider whether suitable alternative work is available before taking a decision to dismiss. Disqualification from driving for a period of one year or more, where driving is the main task of the job, will normally result in dismissal on the grounds of capability.

## **Protection of Vulnerable Groups (PVG) and the Duty to Refer**

The Protection of Vulnerable Groups (Scotland) Act 2007 provides for a scheme whereby individuals with a known history of harm can be prevented from doing work with children and/or protected adults. Disclosure Scotland is responsible for the administration of this scheme on behalf of Scottish Ministers and makes decisions on whether individuals are unsuitable to become scheme members. It is the duty of Scottish Ministers to keep and maintain lists of those barred from working with children or protected adults.

The Act places duties on organisations to refer individuals to Disclosure Scotland when certain prescribed conditions are met.

Under the Act, organisations have a duty to make a referral (within three months of taking a final decision to dismiss an individual or move them permanently from regulated work) to Disclosure Scotland when they are satisfied that an individual's conduct meets the following criteria (referral ground):

- Harmed a child or protected adult
- Placed a child or protected adult at risk of harm
- Engaged in inappropriate conduct involving pornography
- Engaged in inappropriate conduct of a sexual nature involving a child or protected adult
- Given inappropriate medical treatment to a child or protected adult

Organisations may only make a referral when they have dismissed an individual or moved them permanently from regulated work with the group concerned or where they would or might have dismissed had the individual not left their employment before the decision was made, or had they known the information at the time the individual worked for them.

Under the Act organisations have a duty to make referrals where the above grounds have been met. The legislation states that failure to refer an individual within 3 months of the date that the duty arose is an offence.

When making a referral to Disclosure Scotland, organisations are required to supply all the relevant information that they hold (ie prescribed information as defined by the PVG Act). A standard referral form can be found at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk).

For further information on making a referral, contact Disclosure Scotland's helpdesk on 0300 0200 040 or [info@disclosurescotland.co.uk](mailto:info@disclosurescotland.co.uk)

The above must therefore be adhered to in relation to relevant Council disciplinary cases.

## **Cases involving Statutory Registration Authorities**

---

Employment in certain professions, which are regulated by statutory bodies is of course conditional upon continuing registration (for example teachers, social workers, solicitors). The Investigating Officer should check whether the employee under investigation is required to be registered with a statutory body. If this is the case they

should refer to the Codes of Conduct pertaining to their employment as part of their investigation.

Employers have a duty to report any incidents of professional misconduct to the appropriate registration authority. This duty is separate from any disciplinary action taken, and as with criminal charges, you do not need to await the outcome of any separate investigation which the registration authority carries out before applying the disciplinary procedure.

In cases where the outcome of the internal disciplinary process results in action short of dismissal, and the registration authority subsequently determines that the employee's registration is suspended or removed, you will need to consider whether suitable alternative work is available before taking a decision to dismiss. Subsequent removal from the registered body will be dealt with as a further case and dismissal will be an option.

## **Dealing with a resignation from an employee who is subject to a disciplinary process**

---

Occasionally, an employee who is subject to a disciplinary process (either at the investigatory or disciplinary hearing stage) may tender their resignation before management have the opportunity to complete (or in some cases even start) the disciplinary process.

The employee however need only serve the employer with due notice (usually either one week or one month depending on contractual requirements) in writing. The contractual/employment relationship will automatically end upon the expiry of the notice period (or earlier where this has been mutually agreed between the two parties to the contract).

The employer cannot legally force the employee to continue the employment relationship beyond the notice period for whatever reason. Therefore regardless of whether the employer wants the employee to continue in employment to enable the disciplinary process to take its course, the employer cannot technically refuse to accept the employee's resignation. The employee has a right to end the contractual relationship when they wish and the employer cannot legally prevent this from happening.

### **Implications for the disciplinary process**

If an employee hands in their notice, the disciplinary process should continue until they leave (as practically possible). Once they have left the process stops.

### **Action where the allegations have been refuted and/or where constructive dismissal has been claimed**

When acknowledging receipt of the letter the individual should:

- be assured the action taken so far is in accordance with agreed procedures
- be assured that the allegations will be fully investigated to establish whether they are founded

- be given the opportunity to rescind their resignation to allow them the opportunity to state their case and in effect prove that the allegations are false

## **HOW TO CARRY OUT COUNSELLING**

### **Introduction**

Counselling can be a recommendation made after concluding an investigation and it should be a positive and supportive process that is designed to help employees with problems that may affect their work. It is very important that this is carried out within a reasonable timeframe after notifying the employee of the outcome of the investigation.

### **Preparation**

- Ensure that you have all the relevant facts/information available that you will need to relate to at the meeting (for example, flexi-time records, time sheets, absence records, investigatory report)
- Book a private room free from potential interruptions and make sure you divert your telephone and switch off your mobile phone
- It is not appropriate for the employee or you to be accompanied at a counselling session
- Write your questions in advance, think about possible solutions and have in mind a plan for taking matters forward in a constructive and positive way that will help the employee
- Remember to hear the employee's side of the story and to ask them what they think might help to resolve matters; you may not agree or may find that their ideas are not be feasible, if so communicate this back constructively
- It is important that you are aware of any relevant workplace rules, and standards of conduct before you meet with the employee
- Remember that counselling is not a disciplinary meeting
- Ensure that the meeting is conducted thoroughly and all avenues are discussed and be aware of the conduct of other staff so that the employee does not feel that they are being victimised in any way. You should reassure the employee that counselling is to help resolve matters and not to punish

### **Carrying out counselling**

- Explain the status and purpose of the meeting and that you wish to encourage a two-way discussion that is positive and meaningful
- It is important that you point out the apparent shortcomings in conduct/behaviour and why counselling has been recommended so that the employee can understand fully before they give you an explanation

- Once the employee gives you their explanation, provide constructive criticism with the emphasis being on jointly finding ways for the employee to improve and for that improvement to be sustained
- If the employee raises any issues you may need to look into matters further if the employee provides information that you were unaware of or indeed or conflicts with the information you currently have (NB it may become evident that there is no case to answer and if so, make this clear to the employee)
- Agree and note a working plan to help the employee to improve; they need to understand what improvement is required, how their performance or conduct will be reviewed and over what period
- Agree a timeframe for improvement and plan to set up regular meetings to review the employee's progress and to discuss the extent to which the required progress is being achieved
- Agree that the working plan is to help the employee improve and at any time they can discuss their progress. You should conclude by stating that the meeting today was not part of any disciplinary proceeding
- Once you have agreed a plan you need to inform the employee that if they do not improve to the required standard requested then the next stage will be the formal disciplinary procedure
- If the meeting unveils that the matter is more serious than you first thought or if the employee is not prepared to take the necessary steps for improvement you need to adjourn. Should this arise, inform the employee that the matter will be continued under the formal disciplinary procedure explaining the reasons why
- Once the meeting has concluded or adjourned you should confirm the agreed action in writing and hold a copy of the letter in the employee's personal file
- You should also file the notes of the meeting for reference purposes

## **HOW TO CARRY OUT A PRECAUTIONARY SUSPENSION**

### **Introduction**

Suspension should be considered where there appears to be very serious misconduct, risk to property or to other people and there is no alternative that could be applied to safeguard against the potential risk of the alleged contractual breach recurring. It is important that suspending an employee is conducted carefully and that the employee understands that it is a precautionary measure and not a disciplinary action. The meeting should always happen face to face.

### **Preparation**

You should consult with HR before you arrange the precautionary suspension meeting so that HR is aware of the case and can provide ongoing support and guidance.

- Book a private room free of interruptions
- Make sure you fully understand the reasons why you need to suspend
- Try to allow the employee the facility of representation at the point of suspension. In practice, organising representation may cause a delay in suspending the employee but if the employee's representative is on site and available it is advisable to have them present. Do not delay the suspension though if this is not possible

### **At the meeting**

Inform the employee:

- Of the nature of the allegation/s and why there is a need to suspend
- That the suspension is a precautionary measure and is not a disciplinary action
- That the period of suspension will be as short as necessary whilst further investigations are conducted and that the suspension will be regularly reviewed
- That they will receive full contractual pay while suspended
- That they should collect personal items from their workplace and hand over any property of the Council, including keys, mobile phones, lap-top computers and their ID badge to you in the first instance
- That while suspended they should refrain from contacting the workplace and not make contact with employees, clients or customers of the Council. Advise that if they do need to make contact this must only be through either their Trade Union representative or the Investigating officer

- That if they are not a member of a Trade Union and wish to have a colleague to represent them, they should advise the Investigating officer who will make contact with the relevant person
- That they must be available during the period of suspension. Previously authorised annual leave which falls during a period of suspension will be unaffected and no days in lieu will be given. If they wish to request annual leave this must be requested by writing in advance to the investigating officer.

### **Concluding the meeting**

- Conclude by advising that there will be a full investigation into any allegation/s and that the appointed Investigating officer will write to them inviting them to an investigatory meeting as soon as reasonably practicable
- Give the employee a copy of the disciplinary procedure or state that you will enclose it in a letter to the employee

### **After the meeting**

- Confirm the suspension in writing using the model letter at Appendix 9
- Inform the appropriate Manager that the employee is now suspended and that an investigation can begin



## **HOW TO CONDUCT AN INVESTIGATORY MEETING**

### **Preparation**

To ensure your investigation goes smoothly and without disruption it is important to prepare beforehand. If you prepare in advance then you will be able to have a clear understanding of how to hold the investigatory meeting and find out the background and surrounding circumstances to establish the relevant facts.

- Firstly, you need to give the employee adequate notice in writing. See Appendix 10 for model letter.
- Arrange to conduct the interview in a private location, free from interruptions
- Ensure that you have a thorough understanding of the allegation/s made including dates of the alleged events
- Develop a list of relevant questions that you are going to ask to establish all facts
- You may also need to decide whether you will take notes at the meeting yourself or if you will be asking for a note taker to come along to the meeting. Be advised that the notes taken are for your benefit only and are to help you remember significant facts that come to light. If a note taker is present you must ensure that they understand and acknowledge the confidentiality entailed in being present

### **Conducting the meeting**

The investigatory meeting should be restricted to gathering the relevant facts and not passing any judgement on the employee.

- Explain to the employee that the meeting is an investigatory meeting for the purpose of hearing their response to the allegation/s. Show the employee the Managing Discipline Procedure and indicate on the document the stage you are at
- Check that the employee understands the nature/substance of the allegations made against them
- Explain the purpose and format of the meeting, and deal with any procedural issues that may arise
- Explain to the employee under investigation that if they are a member of a registered body eg GTC, SSSC, a notification may be required depending on each body's notification rules and the registered body may require sight of the full disciplinary papers, including witness statements.
- State the allegations made against the employee and ask for their response
- Ask the employee questions as a means of gathering further information and attempting to establish facts

- Probe for answers – don't always accept the first response - there may be more under the surface. Point out and question any discrepancies
- Be sure that you are being understood. Don't use jargon and do go over details a second time if the employee seems uncertain
- Give the employee the opportunity to conclude their response to the allegation/s by highlighting any aspects they consider to be particularly relevant, including introducing any mitigating circumstances
- Allow adjournments during the course of the meeting where you deem they are necessary or where the employee requests one
- Once you are reaching the end of your investigatory meeting, make sure you have covered everything, go over anything you are still not sure of
- Give the employee the opportunity to identify potential witnesses
- Advise the employee that you may need to call them to a further meeting should any other questions or allegations arise
- Advise that you confirm the outcome of your investigation at the earliest opportunity
- Give the employee a copy of the notes of the meeting and ask them to confirm the notes as an accurate account of their response(s) to the allegation(s) by signing and dating them.

## **HOW TO GATHER WITNESS STATEMENTS**

### **Introduction**

There may be an individual who has relevant information about an alleged act of misconduct committed by an employee and will be a witness. To establish the information from the witness you need to interview them and decide whether the information they present has relevance and validity to the investigation.

### **Preparation**

It is important to be aware that you cannot force a witness to give a written statement so you must ensure the witness feel that the information they hold is very important and will assist greatly with the investigation. You have to recognise that their account of the allegation/s may be biased and therefore you must prepare for this and understand that the purpose of interviewing the witness is to separate the facts to what is relevant to the investigation.

- Statements should be taken from the person who made the allegation and any witnesses
- Statements should be obtained as soon as possible after the relevant events to ensure the maximum accuracy of the information gathered
- You may wish to have someone present to take the statements for you. If so, they must be made aware of the need for confidentiality
- Ensure you arrange a quiet and confidential location for the meeting and that you are not interrupted
- Prepare for the meeting by writing down questions you want to ask and points that you wish to clarify

### **Obtaining the Witness Statement**

- Witnesses must be informed that the process is confidential and should not be discussed
- If the potential witness requests to be accompanied by a colleague or trade union representative this can be permitted but they may not answer questions on behalf of the witness
- Witnesses must be advised at the outset that the information they provide may be presented at a disciplinary hearing, should the matter reach that stage, and therefore may be copied to the employee at that time. They should further be advised that they may be requested to attend a hearing to present their evidence. In addition, witnesses must be informed that if the employee under investigation is a member of a registered body eg GTC, SSSC, a notification may be required dependent on each body's rules and the registered body may require sight of the full disciplinary papers, including witness statements. Management should indicate their support to witnesses at this stage, particularly where a witness may fear potential reprisals

- The purpose of the interview is to establish what the witness knows and to gain a clear statement of facts. It is advisable to probe and test the witness to be assured that the evidence is accurate
- The witness statement should be unambiguous and in the words of the witness. Dates and specific incidents should be noted rather than vague accusations. The statement, which should indicate the name and post of an employee, or the name of a member of the public should be typed and returned to the witness for verification and signature. The date of signing should be clearly indicated on the statement. If it is not possible to type the statement then the hand written copy should be signed. When the statement is written up it is good practice to include wording to the effect that the witness is aware their statement may be passed to an external regulatory body eg GTC, SSSC, as part of disciplinary proceeding papers, should it be required as part of an external body's own investigatory process.

### **Questioning Techniques**

An important part of the investigatory process is drawing out information using appropriate questioning techniques.

- Open Ended & Probing Questions  
Questions to get an explanation or start a new area of discussion – starting with what, why, when, how, where, who
- Probing questions  
To get more details/clarify points. Follow up on information already provided
- Closed questions  
Questions which can only be responded to with one word answers. This is to be avoided when opening up areas of discussion but they can be useful for confirming facts, e.g. Did you, can you, are you etc
- Playback question  
Used to “play back” to the employee your understanding of what they have said
- Multiple questions  
To be avoided. Asking more than one thing at a time can lead to confusion and may lead to parts of the question being unanswered
- Leading questions  
To be avoided. These can be perceived as putting words in the mouth of the witness e.g. so you did, so you were going to etc

## **HOW TO PREPARE AN INVESTIGATORY REPORT**

### **Introduction**

At the end of your investigation you need to write an investigatory report. It is essential that the report is written as promptly as possible ensuring all facts that emerged from the investigation are captured. The report should be brief, clear and concise and should only have information that relates to the alleged misconduct being investigated. Remember that HR will advise on your report and provide advice and support at all times.

### **Preparation**

It is important to prepare for your investigatory report as you need to have all supporting evidence attached to the report as appendices. All relevant evidence that is discussed / referred to throughout the investigation should also be included.

- Gather all relevant background employment history about the employee e.g. unspent disciplinary record and what level
- Formulate all witness statements (if appropriate) and any other evidence that supports the investigation
- Have all the notes that were taken at the investigatory meeting
- Make sure you have all relevant dates of the alleged misconduct and the dates of meetings

### **Writing the Report**

If you have prepared in advance you will find that writing your investigatory report should be straight forward. The report should read clearly and concisely and not include irrelevant facts that do not form any part of the investigation. The investigatory report is broken into several sections as follows:

- **Employee Details**  
This section is simply to be filled out to identify the employee who is being investigated, you also need to state if they have an unspent disciplinary record. If the employee does have an unspent disciplinary record then it would be helpful to state what this was in relation to
- **Statement of Allegations**  
You need to state the allegations. Do not go into a large amount of detail at this stage as you will be able to refer to the alleged misconduct in further sections; you only need to state the exact allegation that is being investigated, do not report any past or unsubstantiated information that does not have a direct relation to the current allegation on the report
- **How the investigation was conducted**  
This should be a short description of what steps you took to form your investigation, e.g. met with employee, consulted on code of practice etc

- Provision of statements  
Identify statement/s as an appendix, e.g.

Appendix 1 – Joe Bloggs, Supervisor. Potential witness to the allegation

- Other documentary evidence  
Identify documents as appendices, eg

Appendix 2 – Timesheet for period 1 January – 30 March

- Employee's response to the allegations  
Detail the employee's response to the allegations; please include key responses to the questions that were presented to the employee and any mitigating factors put forward
- Outcome of the investigation  
State that after investigating the alleged misconduct thoroughly you have reached a recommendation after gathering statements, evidence and responses. You should detail why you came to this decision, stating your grounds for concluding. If your conclusion is that the allegation is one of potential gross misconduct you should indicate this in the report. Please note that the hearing, if recommended will be chaired by another person and any sanction, if at all will be decided by the Chair

### **Once report is drafted**

- Proof read your report; think objectively so that you are confident that an independent person will be able to understand the full extent of the investigation. If you think that there could be some questions raised then revisit your report and add more details
- Ask yourself if you have stuck to the facts; erase any personal comments, opinions or hunches that could be deemed as bias
- Send your report to your HR Adviser to review, so they can check that everything complies with the disciplinary procedure. HR will comment and advise on amendments before you send to the Manager who appointed you as the Investigating officer

## **HOW TO PRESENT AN INVESTIGATION AT A DISCIPLINARY HEARING**

### **Preparation**

The Chair will commence the hearing by going through the format. You will be requested by the chair to present your case and may be asked questions by both the Chair and the employee.

- Read through your investigatory report so you are still clear on how the investigation was conducted, what the employees' response was and how you came to your conclusions
- If you took any witness statements, make sure that you know names and what the witness statements detail
- If a witness is to attend the disciplinary hearing, you should advise the Chair that you wish them to be called
- If necessary, seek the Chairs' permission for the introduction of new evidence ensuring that any documentation is made available to the employee and their representative. This must be done prior to the commencement of the Hearing. If the new evidence is to be accepted, all parties must be given time to consider such evidence
- You may wish to prepare a summary statement for you to present at the disciplinary hearing which should involve all the key facts and responses

### **Presenting the Investigation at the Disciplinary Hearing**

- Clarify with the Chair that the witnesses you requested to attend the hearing have arrived
- The Chair will then ask you to state precisely what the allegation/s is/are against the employee
- You will then be required to present your investigation, the evidence collected regarding the allegation/s, by outlining the facts and where necessary explaining relevant documents and calling and questioning your witnesses. You should set the scene during your introduction then allow the witnesses to have their say. The evidence given by witnesses should follow a logical sequence and you should ask simple, single questions, ensuring that relevant documents are introduced at relevant times
- After each of your witnesses have stated what they know and you have questioned the witnesses, the Chair and the employee who has had allegation/s made against them will have the opportunity to question the witnesses and yourself if necessary

- The Chair will then give the employee who has had allegation/s made against them, the opportunity to state their case, present evidence and where appropriate call and question any witnesses they may have
- After each of the employee's witnesses have given their evidence, you, the Chair and the employee who has had allegation/s made against them will then have the opportunity to question them
- You will be given the opportunity to "sum up" your case at the end of the Hearing. The aim of this part of the proceedings is to provide clarification of the facts of the case and their significance. This is important particularly as the facts of the case can be lost during the Hearing as a result of sidetracking. You should repeat the main points, stick to proven facts, refute misconceptions and demonstrate the extent to which the case has been proven
- The employee will then be given the opportunity to "sum up" their case
- Your role in the disciplinary hearing is now concluded. The Chair of the hearing will adjourn at this stage to allow for consideration of all the matters raised in addition to documentary evidence etc



## **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

Remember, your written confirmation of the decision should include all of the above (see appendices 15, 16 and 17 for model letters).

At the end of the hearing you and the HR Adviser should determine if the seriousness of the case means that a record of the warning should be retained once it is 'spent'. This would normally only be for cases involving children and/or vulnerable adults.

## **HOW TO CONDUCT AN APPEAL HEARING**

### **Introduction**

An employee has the right of appeal against any disciplinary action taken against them; they will do this in writing within a specified timescale. To hear an appeal you must prepare in advance and understand the grounds for appeal.

### **Preparation**

- Contact an HR Adviser to arrange their attendance at the hearing to provide support, guidance and advice
- Write to the employee confirming when the appeal will be heard, using the model letter (appendix 18)
- Book a room in a confidential location with a separate room for any adjournment

### **The appeal hearing**

- Present at the appeal will be the Chair, the Chair of the disciplinary hearing, the employee and his/her representative and an independent HR Adviser
- Commence the hearing by introducing everyone present, confirm their role in the appeal hearing and explain the procedure that is stated in the letter sent to the employee
- Invite the employee to state the grounds and reasons for appeal
- Invite the chair of the disciplinary hearing the opportunity to respond and give their reasons for the decision
- You and the HR Adviser may then ask appropriate questions of either party
- Both parties will be given the opportunity to make a closing statement, firstly the Chair of the Disciplinary Hearing, then the employee
- Ask employee whether he/she considers that they have had a fair hearing, and whether they have anything further to add
- Both parties will be asked to withdraw and you will make a decision in consultation with HR

### **Options available are:-**

- To uphold the appeal in full (all records of disciplinary proceedings will be removed and sanctions will be removed from file)

- To uphold the appeal in part. In such circumstances, it may be appropriate that the level of disciplinary action is reduced
- To reject the appeal

### **Factors to consider before reaching a decision**

In arriving at a fair and reasonable decision, you should:

- be prepared to overturn a previous decision if it becomes apparent that it was not soundly based and is wrong – such an outcome does not undermine authority but rather demonstrates the independent nature of the appeal
- listen carefully to both sides of the case and make a judgement as objectively as possible
- satisfy themselves that no unfair bias or prejudice affected the original decision

And, if any of the following issues form the basis for the appeal:

- consider whether the disciplinary action taken was within the 'band of reasonable responses'
- consider whether any procedural deficiencies may have unfairly affected the outcome and disadvantaged the employee (if this is the case made by the appellant)
- consider whether any areas of mitigation offered by the employee at the disciplinary hearing were properly considered by the person who took the disciplinary action
- pay particular attention to any new matters/evidence that has come to light, whether this would have affected the outcome of the disciplinary hearing, whether the employee had the opportunity to raise these matters at the disciplinary hearing. The chair should ensure that manager has an opportunity to comment on these
- resume the meeting and give your outcome as soon as reasonably practical. This would be within 24 hours unless in exceptional circumstances
- once reconvened inform the employee of the decision. This will then be confirmed in writing see Appendix 19 for model letter to be used

**MODEL LETTER – TO CONFIRM PRECAUTIONARY SUSPENSION****PERSONAL**

Dear

**PRECAUTIONARY SUSPENSION**

Following our meeting on (*date*), I write to confirm your suspension from duty, effective from that date.

**Reason for suspension**

This is a precautionary suspension, without prejudice or assumption of guilt, pending investigation into the following allegation/s \* which has/have \* been made against you:

**<Insert allegation/s\*>**

The decision to suspend you from duty was not taken lightly and was on the basis of the apparent nature and seriousness of the allegation/s\*. Your suspension is not to be regarded as a disciplinary sanction or as prejudging the matter. If at any stage of the disciplinary procedure it is determined that the suspension should be lifted, you will be informed immediately. Your suspension will be reviewed at regular intervals.

**Investigatory process**

The allegation/s\* will be investigated as quickly as possible although you will appreciate that in order for the investigation to be carried out fairly and thoroughly the Investigating officer may need to take the necessary time to obtain statements from witnesses and examine relevant documents as a means of attempting to establish the facts.

The role of the Investigating Officer is to establish the facts by gathering all relevant information then decide whether to (1) take the matter no further, (2) arrange for the matter to be dealt with informally or (3) arrange for the matter to be dealt with formally by referring it to a disciplinary hearing.

**Pay during suspension**

During the period of suspension you will receive your normal contractual pay. There will be no day in lieu of any public holiday unless you are required to attend for any work related issue on a public holiday that falls during your period of suspension.

**Annual leave during suspension**

Previously authorised annual leave which falls during a period of suspension will be unaffected and no days in lieu will be given. If you wish to submit a request for annual leave during the course of a period of suspension this should be done by writing in advance to the Investigating officer. The terms of suspension as set out in this letter will remain in place during any annual leave days.

## **Sickness absence during suspension**

Any period of sickness that occurs during the suspension should be reported to the Investigating officer. Your suspension will be converted to sickness absence for that period. You should submit appropriate self and medical certificates which will be forwarded to Payroll in order for you to receive the appropriate sick pay (assuming you qualify).

The investigation will continue and the terms of suspension as set out in this letter will remain in place. Should your situation alter and your GP subsequently declares you are fit to return to work prior to the conclusion of the investigation you must inform the Investigating officer who will convert your sickness to suspension from duty, if still appropriate.

## **Contact with workplace**

To enable the investigation to take its course, you must not contact your workplace, colleagues or clients of the Council. Your only contact should be with the Investigating Officer. You are of course permitted to contact a trade union representative and enter Council premises to meet with a trade union representative provided you refrain from entering your normal place of work. Should you not be a member of a trade union and wish to be accompanied by a colleague, you should contact the Investigating Officer who will arrange this. You are expected to make yourself available for any meeting which may be arranged as part of the investigation and to co-operate fully with the process.

The Investigating Officer assigned to investigate this matter will contact you as soon as they are in a position to do so.

Yours sincerely

## **NAME OF OFFICER CARRYING OUT SUSPENSION**

Enc Copy of Managing Discipline Policy and Procedure

cc HR Business Partner/Adviser  
HR Service Centre/Employee Personal File

- delete as appropriate



**MODEL LETTER – CALLING EMPLOYEE TO AN INVESTIGATORY MEETING**

***NB – The employee must be given at least 3 working days notice of the date of the meeting***

**PERSONAL**

Dear

**INVESTIGATORY MEETING**

I am investigating an allegation/s\* that has/have been made against you and wish to discuss the matter with you.

**Insert allegation/s\***

**My role**

My role as Investigating Officer is to establish the facts and in doing so, it is clearly important that I gather all relevant information before deciding whether there is any substance to the allegation/s\* made against you and if so, whether the matter should be dealt with formally under the disciplinary procedure. My investigation may involve obtaining statements from witnesses and examining relevant documents.

You are required to attend an investigatory meeting on *(date, time and location)* so that I can hear your response to the allegation/s\*. I will be accompanied by *(name)*.

**Nature of our meeting**

I wish to emphasise that our meeting is investigatory and should not be confused with a disciplinary hearing.

Should I determine that disciplinary action needs to be considered, then a separate disciplinary hearing will subsequently be convened and chaired by a different officer. You have the right to be accompanied by a work colleague or trade union representative if you so wish. You are not permitted to be accompanied by your partner, a spouse or legal practitioner.

**Conclusion of investigatory process**

On conclusion of my investigation I will consider all relevant issues that have emerged; consider whether there is any substance to the allegations; and make a recommendation. This could include: that the matter be progressed to a disciplinary hearing; a decision to take no action or an informal counselling session.

I will confirm my decision in writing to you.

## **Confirming your attendance**

You are expected to co-operate fully with the investigation and take all reasonable steps to attend any investigatory meetings. I have to advise that should you fail to attend the meeting without good and sufficient reason, then I may need to take decisions in your absence. This is why it is so important for you attend the meeting.

If the work colleague or trade union representative you select is unable to attend on the above date you have the opportunity to suggest another date. This alternative date must suit everyone involved and be no more than 5 working days after the original date – otherwise, you must select another companion or attend the meeting unaccompanied.

## **Procedure if matter is referred to a disciplinary hearing**

If I decide that the matter should be dealt with formally by recommending a disciplinary hearing be convened then the Chair of the hearing will invite you to a hearing.

I trust this satisfactorily explains how the investigatory process will proceed.

Please telephone me as soon as possible to confirm that the above date and time are suitable, whether you will be accompanied and, if so, by whom.

Yours sincerely

## **NAME OF INVESTIGATING OFFICER**

Enc Copy of Managing Discipline Policy and Procedure

cc HR Business Partner/Adviser  
HR Service Centre/Employee Personal File

\* delete as appropriate

**MODEL INVESTIGATORY REPORT FORMAT****1. EMPLOYEE DETAILS**

Name : \_\_\_\_\_

Post Title : \_\_\_\_\_

Employing Service : \_\_\_\_\_

Currently under a disciplinary warning?

Yes / No (*delete as appropriate*)If yes, level of warning: first level/final warning (*delete as appropriate*)**2. STATEMENT OF ALLEGATION/S**

*Set out the allegation/s and attach letter(s) of complaint if applicable {this will be the allegation/s the employee will have to respond to at the disciplinary hearing should you consider that disciplinary action is merited}*

*The allegation should mirror the wording from the suspension letter (if applicable) and also from the invite to investigatory meeting letter.*

**3. HOW THE INVESTIGATION WAS CONDUCTED**

*This should provide a brief description of what steps have been taken during the investigation in order to come to a conclusion. E.g. interviewed employee, details of witnesses, consulted any code of practice etc*

**4. PROVISION OF STATEMENTS**

*Under this heading, specify who provided statements, why and how they were obtained. Statements must be given an appendix number and this number should be referred to in the main body of the report and included as an actual appendix at the end of the report. Any statements must be signed and dated.*

*Eg. Appendix 1 – Joe Bloggs, Supervisor. Alleged witness to complaint*

**5. OTHER DOCUMENTARY EVIDENCE**

*Under this heading, specify any other documentary evidence that you referred to (e.g. timesheets, claim forms, audit records, codes of practice, terms and conditions etc)*

*Eg, Appendix 2, Time sheets for period 1 January to 31 March*

## **6. EMPLOYEE'S RESPONSE TO THE ALLEGATION/S**

*This section should clearly define the employee's response – it is not enough to say they deny the allegation without giving detail. Give detail of their key response and any reasons/clarity given or evidence presented to counteract/mitigate the allegation.*

## **7. OUTCOME OF INVESTIGATION**

*Under this heading you should indicate whether there are sufficient grounds for concluding that the employee's conduct has been unsatisfactory and what action, if any, is justified. The options available at this stage are to:*

- (1) take no further action on the basis that you have accepted the employee's explanation and/or there is insufficient evidence to support the allegation/s; or*
- (2) arrange for the employee to be counselled on the basis that it would be more appropriate for this matter to be handled that way; or*
- (3) invoke the next stage of the disciplinary procedure by referring the matter to a disciplinary hearing. If you conclude that the employee's conduct merits disciplinary action being taken against them you should indicate why*

*You should include the following – Summary of Findings, Conclusions and reasons for arriving at these and then Recommendations .*

*Details should be provided on the findings from the investigation taking into consideration the employee's response compared with witness statements (considering their credibility) and any other evidence presented e.g. facts, figures, documentation which was considered.*

*There should be a summary of all findings*

*Conclude the outcome of the investigation, what you as the Investigating Officer determine based on the evidence gathered.*

*Give recommendations as to the outcome and what the next steps should be based on the evidence presented – e.g. counselling, move forward to disciplinary hearing etc. If your conclusion is that the allegation is one of potential gross misconduct you should indicate this in the report.*

*Give clear reasons for arriving at the conclusions and for the recommendations.*

**8. INVESTIGATING OFFICER'S DETAILS**

Name:

Job title:

Service:

Signed:

Date:

**MODEL LETTER – TO INFORM EMPLOYEE THAT CASE IS PROGRESSING TO A DISCIPLINARY HEARING**

**PERSONAL**

**Date**

**Dear**

**Outcome of investigation**

I write to inform you of the outcome of my investigation into the following allegation/s\*:

***Insert allegation/s\****

Having carefully considered the facts and evidence I gathered during my investigation, I have recommended that a disciplinary hearing be convened. This hearing will be conducted by another manager who will write to you confirming the arrangements; the allegation/s\* you will be required to answer; the format of the hearing and your right to be accompanied. This letter will be accompanied by a copy of my investigatory report along with any appendices.

The hearing will be held without unreasonable delay whilst allowing you reasonable time to prepare your case and arrange to be accompanied.

At the hearing, I will present the findings of my investigation.

After hearing and considering our respective cases, the manager conducting the hearing will consider whether disciplinary action should be taken.

Yours sincerely

**NAME OF INVESTIGATING OFFICER**

cc. HR Business Partner/Adviser  
HR Service Centre/Employee Personal File

- delete as appropriate

**MODEL LETTER – TO INFORM EMPLOYEE THAT CASE IS NOT PROGRESSING TO A DISCIPLINARY HEARING**

**PERSONAL**

Date

Dear

**Outcome of investigation**

I write to inform you of the outcome of my investigation into the following allegation/s\*:

***Insert allegation/s\****

Having carefully considered the facts and evidence I gathered during my investigation, I have concluded that there is no disciplinary case to answer and as such will not be arranging for the matter to be progressed to a disciplinary hearing.

***Optional paragraph:***

***I have instead concluded that the matter should be dealt with informally and have arranged for you to have a counselling meeting with your line manager in order to bring about the required improvement.***

***I have instead concluded that <insert details of alternative solutions such as mentoring, attending specific workshops>***

I would take this opportunity to thank you for your co-operation with my investigation.

Yours sincerely

**NAME OF INVESTIGATING OFFICER**

cc. HR Business Partner/Adviser  
HR Service Centre/Employee Personal File

**MODEL LETTER – CALLING EMPLOYEE TO A DISCIPLINARY HEARING**

***NB – The employee must be given at least 5 working days notice of the date of the Hearing***

**PERSONAL**

Dear

**DISCIPLINARY HEARING**

As you will be aware, there has been a recent investigation into an allegation/s\* that has/have\* been made against you. The Investigating Officer has concluded that his/her\* investigation has unearthed sufficient evidence of unsatisfactory conduct that should be formally dealt with under the Council's disciplinary procedure. I have been nominated to conduct a disciplinary hearing, the purpose of which is for me to hear both the Investigating Officer's and your case and then decide whether disciplinary action is warranted.

You are required to attend a disciplinary hearing, which is scheduled for (*date, time and location*). At the hearing you will be required to respond to the following allegations (which could potentially amount to gross misconduct)\*:

*Insert allegation/s\*, as per the outcome of the investigatory stage*

**Format of the hearing**

I intend to conduct the disciplinary hearing as follows:

1. Firstly, I will explain the purpose and format of the meeting, and deal with any procedural issues that may arise.
2. I will then ask the Investigating Officer to state the allegation/s\* against you and present the evidence that forms the substance of the case. At this point, I will ask any supporting witnesses to make their statements, if they are to be called, or for their written submissions to be presented if they are not.
3. You and/or your companion will then have the opportunity to question the Investigating Officer and any attending witnesses about evidence that has been presented. I and my assisting colleague may also question the Investigating officer and any attending witnesses at this point.
4. I will then ask you to present your case and call any supporting witnesses, or present their written submissions if they are not being called. The



Investigating Officer will then be given the opportunity to ask questions of you and your attending witnesses in respect of the information presented.

5. I and my assisting colleague will question the Investigating Officer and yourself, as well as any supporting witness/es who may be called.
6. In addition there may be the need for a more general discussion during which both sides can raise relevant issues not already covered.
7. You will be given the opportunity to conclude your response to the allegations by highlighting any aspects you consider to be particularly relevant, including introducing any mitigating circumstances.
8. I will allow adjournments during the course of the hearing where I deem they are necessary.
9. At the end of the hearing, I will adjourn the meeting.
10. During this adjournment, I will consider all of the relevant issues that have emerged from the hearing, consider whether the allegations have been substantiated and decide what action to take.
11. I will notify you of my decision in person whenever possible and confirm it in writing, along with the reasons for arriving at that decision. I would hope to reach a decision within 24 hours of the hearing although the length of the adjournment will of course depend on the type and extent of the range of issues that I need to consider.

### **Potential outcome of hearing**

In view of the nature of the allegation/s\* being made against you, you should be aware that a possible outcome of the hearing is that disciplinary action could be taken against you *which includes the possibility of your dismissal from the Council's employment\*\**. You are advised to read the disciplinary procedure, which sets out the range of disciplinary actions that may be taken in certain circumstances.

### **Submission of evidence**

If there is any additional, relevant evidence you wish to have taken into account at the hearing, you must forward this to me at least 24 hours in advance of the hearing. If you wish to have witnesses called you must notify me immediately to ensure that I can contact them in plenty of time. I wish to clarify at this point that witnesses can not be compelled or instructed to attend the hearing.

I will be referring to documentary evidence that has been provided to me by the Investigating officer. I have enclosed for your information a copy of the report and appendices.

### **Your right to be accompanied**

You have the right to be accompanied by a work colleague or trade union representative if you so wish. You are not permitted be accompanied by your partner, a spouse or a legal practitioner.

I will be accompanied by *(insert name of officer)*

### **Confirming your attendance**

You are expected to take all reasonable steps to attend the hearing and I have to advise that should you fail to attend the hearing without good and sufficient reason, it is likely that the hearing will proceed, and a decision will be taken, in your absence.

If the companion you select is unable to attend on the above date you have the opportunity to suggest another date. However this alternative date must suit everyone involved and be no more than 5 working days after the original date – otherwise, you will need to select another companion or attend the meeting unaccompanied.

Please telephone me as soon as possible to confirm that the above date and time are suitable, whether you will be accompanied and if so, by whom.

I trust this satisfactorily explains the stage we are at in the disciplinary procedure and how the disciplinary hearing will proceed.

Yours sincerely

### **NAME OF OFFICER CONDUCTING HEARING**

Enc Copy of Investigation Report and Appendices

cc. HR Business Partner/Adviser  
HR Service Centre/Employee Personal File

### **Notes:**

\* delete as appropriate

\*\* include this wording in cases where gross misconduct is being alleged or where the employee is presently under a final warning

**MODEL LETTER – TO CONFIRM FIRST LEVEL WARNING****PERSONAL**

Dear

**FIRST LEVEL WARNING**

I refer to the disciplinary hearing held on (*date*) in the presence of (*names of officers present, including companions if applicable*) during which you were requested to respond to allegations that (*detail allegations, as per the letter inviting to hearing*). This letter confirms the disciplinary action taken in your case.

**Disciplinary decision**

Having given full consideration to the issues that emerged during the course of the disciplinary hearing, I confirm my decision that you be issued a **first level warning** within the terms of the Council's disciplinary procedure.

This first level warning will take the form of a *formal oral/written\** warning.

**Reasons for the decision and expected improvement**

My reasons for arriving at this decision are, and the expected improvement in your conduct is, as follows:

- (a) **The nature of the unsatisfactory conduct was:**
  
- (b) **The main factors that I considered before arriving at my decision were:**
  
- (c) **The expected improvement in conduct is:**
  
- (d) **The likely consequence of further misconduct or insufficient improvement is:**

Final warning

**Life of warning and monitoring of conduct**

This warning will remain on your personal file for a period of **six/nine\*** months of **work** during which time your conduct will be monitored. This period may be extended to offset any significant period when you are not at work for any reason. If

there are no further breaches of discipline during the life of this warning then it will be disregarded for disciplinary purposes and be removed from your personal file. If you commit a further offence of misconduct or fail to meet the required improvement set out in (c) above, this warning may be cited in any disciplinary proceedings resulting from that misconduct or insufficient improvement.

If you are eligible for a salary increment you should note that this warning will result in you not receiving your next salary increment. This is in accordance with the Performance Review and Development Scheme.

### **Optional paragraph to be inserted where decision is taken to retain the data beyond the life of the warning**

As the allegation(s) that has/have\* been upheld relate(s) to (*enter nature of allegations*) the warning will be removed from your personal file once it is spent but a confidential record of the warning will be retained for an indefinite period. This will only be accessed as part of the investigation process should you be subject to any further investigation into an allegation of potential gross misconduct or involving children and/or vulnerable adults.

### **Your right of appeal**

You have the right of appeal against this outcome if you consider the penalty is unduly severe or inconsistent, where new evidence emerges that may affect the decision or where there have been significant defects in the disciplinary procedure.

Should you consider you have grounds to appeal against the disciplinary action taken against you, you may do so by writing to the Director of (*Service*) within **ten working days** of receipt of this letter. To be a competent appeal, you must state the grounds on which your appeal is based and set out in sufficient detail:

- why you consider the finding or the penalty to be unduly severe or inconsistent
- the new and relevant evidence that has come to light that was previously unavailable
- why you consider that the disciplinary procedure wasn't used correctly and how you were unfairly disadvantaged because of this

Yours sincerely

### **NAME OF OFFICER CONDUCTING DISCIPLINARY HEARING**

cc HR Business Partner/Adviser  
HR Service Centre/Employee Personal File

### **Notes:**

**\* delete as appropriate**

- **The above format has been worded for specific purposes. Please consult your HR Business Partner/Adviser if you wish to change the format**

**MODEL LETTER – TO CONFIRM FINAL WARNING****PERSONAL**

Dear

**FINAL WARNING**

I refer to the disciplinary hearing held on *(date)* in the presence of *(names of officers present, including companions if applicable)* during which you were requested to respond to allegations that *(detail allegations, as per the letter inviting to hearing)*. This letter confirms the disciplinary action taken in your case.

**Disciplinary decision**

Having given full consideration to the issues that emerged during the course of the disciplinary hearing I confirm my decision that you be issued with a **final warning** within the terms of the Council's disciplinary procedure.

\*I also confirm my decision that you be **demoted/transferred** *(delete one)* from your present post of *(job title)* to the post of *(job title)* with effect from *(day following the date of the disciplinary hearing)*. \*Your precautionary suspension is also lifted with effect from *(day following the date of the disciplinary hearing)*. Your line manager will contact you to make arrangements for you to take up the post of *(job title)* as soon as possible and revised contractual documentation will follow in due course.

**Reasons for the decision and expected improvement**

My reasons for arriving at this decision are and the expected improvement in your conduct is, as follows:

**a) The nature of the unsatisfactory conduct was:**

**b) The main factors that I considered before arriving at my decision were:**

\*I also took into account the letter dated *(date)* which informed you that you had been issued with a first level warning in accordance with the disciplinary procedure. In that letter you were warned that if your conduct did not sufficiently improve, or if you committed a further act of misconduct, you were likely to receive a final warning.

**c) The expected improvement in conduct is:**

**d) The likely consequence of further misconduct or insufficient improvement is:**

Dismissal

### **Life of warning and monitoring of conduct**

This final warning will remain on your personal file for a period of **twelve months of work\*\***, during which time your conduct will be monitored. This period may be extended to offset any significant period when you are not at work. If there are no further breaches of discipline during the life of this warning, it will be disregarded for disciplinary purposes and be removed from your personal file. If you commit a further offence of misconduct or fail to meet the required improvement set out in (c) above, this warning may be cited in any disciplinary proceedings resulting from that misconduct or insufficient improvement.

If you are eligible for a salary increment you should note that this warning will result in you not receiving your next salary increment. This is in accordance with the Performance Review and Development Scheme.

### **Optional paragraph to be inserted where decision is taken to retain the data beyond the life of the warning:**

As the allegation(s) that has/have\* been upheld relate(s) to (*enter nature of allegations*) the warning will be removed from your personal file once it is spent but a confidential record of the warning will be retained for an indefinite period. This will only be accessed as part of the investigation process should you be subject to any further investigation into an allegation that relates to your professional registration. In this event, the Council may be obliged to disclose relevant retained information to your regulatory body e.g. General Teaching Council of Scotland, Scottish Social Services Council as required.

### **Your right of appeal**

You have the right of appeal against this outcome if you consider the penalty is unduly severe or inconsistent, where new evidence emerges that may affect the decision or where there have been significant defects in the disciplinary procedure.

Should you consider you have grounds to appeal against the disciplinary action taken against you, you can choose to either have your appeal heard by a Chief Official or by the Appeals Sub Committee.

If you wish to have your appeal heard by a Chief Official then you must register your appeal in writing to (name of Director), Director of (*Service*). If you choose to have your appeal heard by the Appeals Sub Committee then you must register your appeal in writing to the Clerk of the Appeals Sub Committee, Aberdeen City Council, Governance, 1<sup>st</sup> Floor Town House, Broad Street, Aberdeen, AB10 1AQ. Your appeal must be registered within **ten working days** of receipt of this letter.

To be a competent appeal you must state the grounds on which your appeal is based and set out in sufficient detail:

- Why you consider the finding or the penalty to be unduly severe or inconsistent;
- The new and relevant evidence that has come to light that was previously unavailable;

- Why you consider that the disciplinary procedure wasn't used correctly and how you were unfairly disadvantaged because of this.

Yours sincerely

### **NAME OF OFFICER CONDUCTING DISCIPLINARY HEARING**

c.c. HR Business Partner/Adviser

c.c. HR Service Centre (for action in cases of transfer/demotion) and Employee Personal File

### **Notes:**

- **The above format has been worded for specific purposes. Please consult your HR Business Partner/Adviser if you wish to change the format.**
- **\* Delete these sections if not applicable.**
- **\*\* This timescale can be extended where the misconduct is so serious that it is reasonable to consider it for disciplinary purposes for a longer period. Please consult your HR Business Partner/Adviser if you wish to extend the life of the warning.**

**MODEL LETTER – TO CONFIRM DISMISSAL****PERSONAL**

Dear

**CONFIRMATION OF DISMISSAL**

I refer to the disciplinary hearing held on *(date)* in the presence of *(names of officers present, including companion if applicable)* during which you were requested to respond to allegations that *(detail allegations, as per the letter inviting to hearing)*. This letter confirms the disciplinary action taken in your case.

**Disciplinary decision**

Having given full consideration to the issues that emerged during the course of the disciplinary hearing, I confirm my decision that you be dismissed in accordance with the Council's disciplinary procedure on the grounds of gross/serious\* misconduct.

**Reasons for the decision to dismiss**

My reasons for arriving at this decision, and the main factors I took into account, are as follows:

- a) The nature of the unsatisfactory conduct was:  
*insert information*
- b) The main factors that I considered before arriving at my decision were:  
*insert information*

\* I also took into account the letter dated *(date)* which informed you that you had been issued with a final warning in accordance with the disciplinary procedure. In that letter you were warned that if your conduct did not sufficiently improve, or if you committed a further act of misconduct, you were likely to be dismissed.

**Date of dismissal and notice entitlement*****\*\*Para (1) – to be used in cases of gross misconduct***

On the basis that I regard your misconduct as amounting to gross misconduct, you are summarily dismissed from the Council's employment **without** notice or payment in lieu of notice. Your last day of service with Aberdeen City Council was *(date)*.

Payment for any outstanding monies will be made to you as soon as possible and you are required to return the following items issued to you by the Council (list any such items, e.g. keys, protective clothing etc.

***\*\*Para (2) – to be used in cases of serious misconduct***

On the basis that I regard your misconduct as amounting to serious misconduct, whilst your last day of service with Aberdeen City Council was *(date)*, you will receive *(amount)* weeks pay in lieu of the amount of notice to which you are contractually entitled.



**\*\*\*Para (3) - to be used in cases of gross misconduct and criteria dependent**

Protection of Vulnerable Groups (Scotland) Act 2007

The Protection of Vulnerable Groups (Scotland) Act 2007 places a legal obligation on the Council to make a referral to Scottish Ministers regarding any individual who is, or has been, doing regulated work with children or with adults if they have, whether or not during the course of their employment:

- \* harmed a child or protected adult;
- \* placed a child or protected adult at risk of harm;
- \* engaged in inappropriate conduct involving pornography;
- \* engaged in inappropriate conduct of a sexual nature regarding a child or protected adult, or;
- \* given inappropriate medical treatment to a child or protected adult.

This will be progressed as the allegations and the decision to dismiss meet the criteria for a referral to Disclosure Scotland.

This could subsequently affect your ability to work with Children and/or Vulnerable Adults in the future.

Payment for any outstanding monies will be made to you as soon as possible and you are required to return the following items issued to you by the Council (list any such items, e.g. keys, protective clothing etc.

**Your right of appeal**

You have the right of appeal against this outcome if you consider the penalty is unduly severe or inconsistent, where new evidence emerges that may affect the decision or where there have been significant defects in the disciplinary procedure.

Should you consider you have grounds to appeal against the disciplinary action taken against you, you can choose to either have your appeal heard by a Chief Official or by the Appeals Sub Committee.

If you wish to have your appeal heard by a Chief Official then you must register your appeal in writing to (name of Director), Director of (*Service*). If you choose to have your appeal heard by the Appeals Sub Committee then you must register your appeal in writing to the Clerk of the Appeals Sub Committee, Aberdeen City Council, Governance, 1<sup>st</sup> Floor Old Town House, Broad Street, Aberdeen, AB10 1AQ. Your appeal must be registered within **ten working days** of receipt of this letter.

To be a competent appeal you must state the grounds on which your appeal is based and set out in sufficient detail:

- why you consider the finding or the penalty to be unduly severe or inconsistent
- the new and relevant evidence that has come to light that was previously unavailable

- why you consider that the disciplinary procedure wasn't used correctly and how you were unfairly disadvantaged because of this

Yours sincerely

## **NAME OF OFFICER CONDUCTING DISCIPLINARY HEARING**

cc HR Business Partner/Adviser  
HR Service Centre (for action) and Employee Personal File

### **Notes:**

- **The above format has been worded for specific purposes. Please consult an HR Adviser if you wish to change the format**
- **For an act or acts of further misconduct, other than gross misconduct, by an employee who is under a final warning, the employee will be liable to dismissal with pay in lieu of notice. In cases of gross misconduct the employee will be liable to summary dismissal without pay in lieu of notice. Select the paragraph that applies under the heading "*Date of dismissal and notice entitlement*"**
- **\* delete as appropriate**
- **\*\* delete this paragraph if not applicable**
- **\*\*\* delete this paragraph if not applicable**

**MODEL LETTER – CALLING EMPLOYEE TO APPEAL HEARING**

**PERSONAL**

Dear

**NOTICE OF APPEAL HEARING**

You have appealed against the *first level warning/ final warning/notice of dismissal\** confirmed to you in writing on \_\_\_\_\_.

**When the appeal will be heard**

I wish to hear the appeal on \_\_\_\_\_ (date/time) at \_\_\_\_\_ (location).

**Format of the appeal hearing**

I intend to conduct the appeal hearing using the following procedure:

1. Firstly, I will explain the purpose and format of the hearing and deal with any procedural issues that may arise.
2. I will then ask you to state your grounds and reasons for appeal.
3. I will then ask the officer who took the disciplinary action to respond.
4. I and my assisting colleague will question both the officer who took the disciplinary action and yourself.
5. I will give both parties the opportunity to make a closing statement, firstly the officer who took the disciplinary action, then yourself.
6. I will allow adjournments during the course of the hearing where they are necessary.
7. At the end of the hearing, I will adjourn the meeting.
8. During this adjournment, I will consider all of the relevant issues that have emerged from the hearing to make my decision.
9. I will then reconvene the meeting and announce my decision, along with the reasons for arriving at that decision. I will thereafter confirm my decision in writing.

**Potential outcome of hearing**

I will carefully consider your grounds for appeal, and the response made by the officer who took the disciplinary action, then decide whether there are sufficient and reasonable grounds to either:

- (a) uphold the appeal in full (whereupon all records of disciplinary proceedings will be removed); or
- (b) uphold the appeal in part. In such circumstances, it may be appropriate to reduce the level of disciplinary action taken against you; or
- (c) not uphold the appeal

The decision of this appeal hearing is final and there is no further right of appeal.

### **Your right to be accompanied**

You have the right to be accompanied by a work colleague or trade union representative if you so wish. You are not permitted to be accompanied by your partner, a spouse or a legal practitioner.

I will be accompanied by *(name of officer)*.

### **Confirming your attendance**

Please telephone me as soon as possible to confirm that the above date and time are suitable, whether you will be accompanied and, if so, by whom.

Yours sincerely

### **NAME OF OFFICER CONDUCTING HEARING**

cc HR Business Partner/Adviser  
HR Service Centre/Employee Personal File

#### **Notes:**

- the wording should be amended as appropriate
- delete as appropriate

**MODEL LETTER – TO CONFIRM OUTCOME OF APPEAL HEARING**

**PERSONAL**

Dear

**CONFIRMATION OF OUTCOME OF APPEAL HEARING**

On (*date of letter*), you appealed against the outcome of the disciplinary hearing that you *be given a first level/final warning\*/be dismissed\**.

I heard the appeal on (*date of hearing*) in the presence of (*insert names of officers present, including companions if applicable*).

This letter confirms my decision.

**Outcome of appeal hearing**

Having given full consideration to the issues that emerged during the course of the appeal hearing, I confirm my decision, namely that the decision to ***give you a first level warning/final warning/dismiss you stands\*/is revoked/ is revoked in part\*(specify if no disciplinary action is being taken or what the new disciplinary action is)***.

**Reasons for my decision**

My reasons for arriving at this decision are, and the factors that I considered relevant were:

*Enter reasons and factors*

You have now exercised your right of appeal under the Council's disciplinary procedure and my decision is final.

Yours sincerely

**NAME OF OFFICER CONDUCTING HEARING**

cc HR Business Partner/Adviser  
HR Service Centre (for action where appropriate) and Employee Personal File

\*delete as appropriate

**ABERDEEN CITY COUNCIL**

**SPENT WARNINGS – RECORDS MANAGEMENT**

Request for data search

Service \_\_\_\_\_

Employee NI number \_\_\_\_\_

I can confirm that a disciplinary issue has arisen which involves the following employee. I request that a search is undertaken on the spent warning database on the following basis:

Allegations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Investigating Officer name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**FOR COMPLETION BY HEAD OF HUMAN RESOURCES**

I can confirm a search has been undertaken of the 'spent' warning document management information system and:

- (a) No relevant information has been found
- (b) The information attached was found, which may be relevant

**Head of Human Resources** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**MODEL LETTER CONVERTING SUSPENSION TO SICKNESS ABSENCE**

Dear

**Conversion of suspension from duty to sickness absence**

I refer to my letter dated <> and your suspension from duty effective from <>.

I note that you have since submitted a medical certificate that covers the period <> to <> (both dates inclusive). In order for your sickness absence to be recorded correctly, it is necessary to convert your suspension from duty to sickness absence for that period (and any medically certified period of sickness absence beyond that) whilst the disciplinary process continues. Accordingly, your medical certificate will be forwarded to Payroll and you will receive the appropriate sick pay for the above mentioned period (assuming you qualify).

The investigation will continue and the terms of suspension as set out previously will remain in place.

Should your situation alter and your GP subsequently declares you are fit to return to work prior to the conclusion of the disciplinary process, you should note that this will result in your suspension from duty being reinstated, if appropriate.

Please contact me if you have any queries on the above.

Yours sincerely

**NAME OF INVESTIGATING OFFICER**

Cc HR Business Partner/Adviser  
HR Service Centre/Employee Personal File

**MODEL LETTER CONVERTING SICKNESS ABSENCE TO SUSPENSION**

Dear

**Conversion of sickness absence to suspension from duty**

I refer to my letter dated <> converting your suspension from duty to a period of sickness absence. I note that your GP has now provided a fit note and you are due to return to work on <date>. I write to advise that your precautionary suspension will be reinstated effective from <date>.

The investigation will continue and the terms of suspension as set out previously will remain in place.

Please contact me if you have any queries on the above.

Yours sincerely

**NAME OF INVESTIGATING OFFICER**

Cc HR Business Partner/Adviser  
HR Service Centre/Employee Personal File



Date of update	Summary of update
March 2019	<ul style="list-style-type: none"><li>- Para added on PVG and duty to refer. Reference also included in dismissal outcome letter.</li><li>- Reference to Appeals Sub Committee added to relevant Outcome letters.</li></ul>