**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.

**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.

**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. 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.

**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

38

 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