



# **Disciplinary Procedure Managers' Guide**



Support Services  
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## DISCIPLINARY PROCEDURE - MANAGERS' GUIDE

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## DISCIPLINARY PROCEDURE - MANAGERS' GUIDE

### PURPOSE

This guide is designed to assist managers apply the council's Disciplinary Procedure fairly and consistently. The law on unfair dismissal requires employers to act reasonably when dealing with disciplinary issues. What is classed as reasonable behaviour will depend on the circumstances of each case and is ultimately a matter for employment tribunals to decide.

This guide provides additional guidance on applying the Disciplinary Procedure using a frequently asked questions format. The questions relate to disciplinary questions and issues commonly encountered by managers and are not designed to cover every disciplinary circumstance. Advice on complex disciplinary matters should be obtained from Human Resources and Legal Services as appropriate.

This document should be read in conjunction with the [ACAS Code of Practice](#) on Disciplinary and Grievance Procedures, which contains the following core principles that all employers should observe in applying their disciplinary procedures:

- Use procedures primarily to help and encourage employees to improve rather than just as a way of imposing a punishment.
- Inform the employee of the complaint against them, and provide them with an opportunity to state their case before decisions are reached.
- Allow employees to be accompanied at disciplinary meetings.
- Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.
- Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give the employee an opportunity to appeal.
- Deal with issues as thoroughly and promptly as possible.
- Act consistently.

## SECTION A: DISCIPLINARY PROCEDURE – GENERAL OVERVIEW

The key aim of the disciplinary procedure is to encourage an improvement in an individual's conduct or performance. For this reason, the disciplinary procedure includes both an informal (counselling) and a formal route for addressing issues with an employee's conduct or performance.

### **What is counselling and when is it appropriate to use this to deal with a lapse in performance or conduct?**

Counselling is the informal method of addressing issues with an employee's conduct or performance. As a general rule, counselling should be used in the first instance to deal with relatively minor lapses in conduct or performance

A counselling meeting is normally a one-to-one meeting between an employee and their line manager. The aim of this meeting is to:

- explain to the employee what the problems are with their conduct or performance,
- explore the reasons for these problems (giving the employee an opportunity to raise any issues they feel have contributed to the problems)
- confirm the required improvement in performance and, what actions are required to achieve this (both by the employee and the manager)
- explain to the employee the potential consequences of a failure to achieve the required improvements

The outcome of this meeting should be recorded on the Record of Counselling form and retained by the manager out with the employees personal file

### **What is the formal disciplinary procedure and when is it appropriate to use this to deal with a lapse in performance or conduct?**

Where counselling does not result in the required improvement or where the lapse is considered to be of a more serious nature, the formal [Disciplinary Procedure \(Non-Teaching Staff\)](#) or [Disciplinary Procedure \(Teaching Staff\)](#) should be followed.

The first stage in the formal disciplinary procedure is to conduct an investigation into the alleged conduct or performance issues. The findings of this investigation will determine whether or not it is appropriate to convene a disciplinary hearing. If a disciplinary hearing is convened this may result in a range of disciplinary action being taken depending on the circumstances of each case.

## SECTION B: SCOPE OF THE DISCIPLINARY PROCEDURE

### COUNCIL DISCIPLINARY AND WORKPLACE RULES

#### **Where can the council's rules governing standards of conduct and performance be found?**

Council-wide rules and minimum standards of conduct and performance for all employees are set out in the council's [Disciplinary Code of Conduct](#) and [Code of Conduct](#) for employees. Those provisions are supplemented by rules specific to individual services/workplaces, and/or standards of conduct laid down by professional organisations. Other rules may also be implied into contracts of employment by statute (i.e. obligations imposed on employees by the Health and Safety at Work Act).

#### **How and when should rules be communicated to employees?**

Rules should, wherever possible, be put in writing to avoid misunderstanding. Employees should be advised of the rules and the standards of conduct and performance expected of them as part of their Induction. Steps should be taken to ensure that employees understand the rules and the potential consequences of breaching them.

Care must be taken to ensure that rules do not discriminate (directly or indirectly) and can be readily understood by people with little work experience, poor standards of literacy or whose knowledge and use of English is limited. Where a rule has changed, fallen into disuse or has not been applied consistently, employees must be informed of any change to the recognised practice.

#### **What happens if an employee breaches a workplace rule/standard of conduct?**

This will depend on the nature of the rule that has been breached, the extent of that breach and whether it has occurred before.

Corrective action is required if the matter:

- is potentially dangerous in so far as it breaches health and safety standards;
- will lead to financial loss or some other form of damage to the interests of the service/council;
- will encourage others to copy and therefore get out of control;
- is an error/omission fundamental to the successful performance of the employee's job;
- offends other employees.

In determining the level of corrective action required, managers should refer in the first instance to the council's [Disciplinary Code](#).

## PERFORMANCE

### **What action should be taken if an employee is performing poorly?**

In deciding what action to take to address poor work performance the following factors should be considered:

- what were the consequences or potential consequences of the employees failure in performance;
- is the employee fully aware of expected standards of performance and methods of working;
- are these standards and methods understood and applied across the team/service;
- has sufficient training been given to the employee or is more training required;
- are there other underlying issues which have contributed to the level of performance (e.g. a health or domestic problem);
- has employee previously been a good performer who has suddenly (or over a period of time) failed to perform adequately?

The answers to the above questions will help to determine whether it is appropriate to simply have a chat with the employee, hold a counselling meeting or initiate the formal disciplinary procedure.

When addressing poor performance it is important to set employees clear and achievable targets for improvement. This is particularly important in relation to formal disciplinary action. Further details can be found under Disciplinary Decision.

### **How do I decide if formal disciplinary action is appropriate?**

Formal disciplinary action in relation to poor work performance would be appropriate in either of two situations:

1. Where informal attempts (such as supervision or counselling) have failed to bring about the required improvements in performance
2. Where issues go beyond minor lapses in performance and/or where the acts or omissions have potentially serious consequences for clients, other employees or the council as a whole.

If a decision is made that formal disciplinary action is appropriate then an investigation should be conducted in order to determine whether or not it is appropriate to hold a disciplinary hearing.



## GROSS MISCONDUCT

### When is it appropriate to treat a matter as gross misconduct?

The council's Disciplinary Procedure defines gross misconduct as 'behaviour of such a nature that the council is unable to tolerate the continued employment of the individual concerned'.

Examples of behaviour that would normally constitute gross misconduct and result in summary dismissal are provided in the council's [Disciplinary Code](#). However, the list of offences is not exhaustive and if a particular offence is not shown, it does not mean it cannot constitute gross misconduct. Equally, offences listed under gross misconduct should not automatically be regarded as justifying dismissal, as consideration must be given to the relevant circumstances to ensure that a fair and reasonable decision is reached in all cases.

In law, gross misconduct is behaviour that goes to the root of the contract of employment and constitutes a fundamental breach. There are no specific means or standard against which to measure if fundamental breach has occurred. The Nominated Officer should, therefore, consider whether they can reasonably allow:

- the employee to continue to be employed in their post;
- the offence to be committed more than once before dismissing

If the answer to those questions is NO, the Nominated Officer may reasonably regard the action as gross misconduct warranting summary dismissal. If, on the other hand, the answer is YES, or if the Nominated Officer is not sure, it is likely that some lesser form of disciplinary action is appropriate.

## MISCONDUCT OUTWITH THE WORKPLACE

### **Can an employee be disciplined for an act of misconduct they have committed out with the workplace?**

Case law has established that misconduct outwith the workplace can lead to disciplinary action where it can be shown that an employee's actions have been carried out 'in the course of their employment' – for example alleged harassment during attendance at a residential training course or work-related social event such as an office party.

As the specific circumstances of such cases will be crucial in determining whether or not disciplinary action is appropriate, advice should be sought in the first instance from Human Resources

### **Can an employee be disciplined for a criminal offence they have committed outwith the workplace?**

An employee should not be disciplined solely because they have been charged with or convicted of a criminal offence. However, employees can be disciplined if the offence could detrimentally affect the individual's suitability to carry out their work. For example, it is likely there would be significant disciplinary implications for an employee committing fraud outwith their employment, if their council job involves handling money or processing financial transactions.

### **Where an employee is charged with a criminal offence, is it necessary to await the outcome of any criminal proceedings before deciding whether or not to take disciplinary action?**

It is not necessary to await the outcome of any criminal proceedings before commencing an investigation into the alleged misconduct.

Although the exact nature of the charge may not be known until the employee appears in Court, if the charge relates to the employee's job, the council should conduct an investigation to determine whether the available evidence is sufficient to justify holding a disciplinary hearing. If there is sufficient evidence, the Nominated Officer must decide whether there is reasonable belief that the alleged misconduct has occurred. Any resultant disciplinary sanction must be reasonable in all the circumstances.

If the dismissed employee is subsequently acquitted of criminal charges, it doesn't follow that a dismissal is unfair. Similarly, if the Procurator Fiscal decides not to prosecute, this does not necessarily mean that any disciplinary action would be unreasonable.

## SECTION C: APPLICATION OF THE FORMAL DISCIPLINARY PROCEDURE

### What is the first stage of the formal disciplinary procedure?

The first stage in the formal disciplinary procedure is to conduct as thorough an investigation as possible into the alleged misconduct/lapse in performance. However, before this can be done, it is necessary to determine who will take the roles of Nominated Officer and Investigating Officer

The Nominated Officer's first responsibility is to ensure that the circumstances surrounding the alleged lapse in conduct or performance are fully investigated. This will be done by appointing an Investigating Officer who will conduct a fact-finding investigation and present his/her findings to the Nominated Officer.

### Who should take the role of Nominated Officer?

The person appointed to Nominated Officer must possess the necessary level of delegated powers under the Scheme of Delegation, to cover the range of possible responses to the alleged misconduct e.g.:

- where an allegation is serious enough to constitute potential gross misconduct, an officer with the authority to dismiss must hear the case;
- where an allegation is of a less serious nature, an officer with the delegated powers to issue formal warnings should hear the case.

It is therefore **essential** that individual managers know and understand the extent of the powers delegated to them. Services should ensure that the levels of management within their structures with delegated authority to take disciplinary action are kept under review and amended as necessary in light of organisational restructuring.

A further consideration in identifying a Nominated Officer is the need for a more senior officer to be available to hear any subsequent appeal particularly where the possible disciplinary outcome could be a formal warning.

## PRECAUTIONARY SUSPENSION

### When is it appropriate to invoke a precautionary suspension?

In circumstances involving potential gross misconduct, particularly where it is considered that there are risks to council property or to the safety of other employees, and/or there are grounds to believe that an employee's continued presence in the workplace would hinder a proper and unfettered investigation. It is not a presumption of guilt or a disciplinary sanction.

Suspension in these circumstances is always on full pay. This must be confirmed in writing and the employee advised that the nature of the suspension is precautionary pending an investigation and not a disciplinary sanction.

## **Is there a limit to how long an employee should be suspended?**

There is no set time limit for how long a period of suspension should last. However, care should always be taken to ensure that the investigation (and thus the suspension) is not unnecessarily protracted as this could be construed by an Employment Tribunal as acting unreasonably and effectively constituting punitive action against the employee concerned.

## **What happens when an employee on precautionary suspension submits a medical certificate?**

The paid suspension should continue, and the certificate and any subsequent certificates should be retained but not processed.

## **INVESTIGATION**

The Investigation is a pivotal stage in any disciplinary process.

In the event of an employment tribunal, the reasonableness of a disciplinary decision and the procedure followed in coming to that decision, will often depend on how thoroughly the investigation has been conducted.

The council must have a genuine belief in an employee's guilt based on reasonable grounds. This can only be determined after carrying out sufficient investigation – suspicion is not sufficient.

A disciplinary hearing must only be convened after as much investigation, as is reasonable in the circumstances, has been carried out.

## **Who should conduct the investigation?**

This will be determined by the nature and potential seriousness of the matter concerned.

In normal circumstances an Officer within the Service will conduct the investigation. However where the allegation is potentially very serious, the Nominated Officer must consider if the matter should be investigated by:

- an officer from within the same service;
- an officer from a different service; or
- an independent person from outwith the council (if it is appropriate in the circumstances)

In deciding these matters, the Nominated officer should take advice from Human Resources and Legal Services, and keep the Head of Service and relevant Depute Chief Executive involved and fully briefed.

## **Can the same individual be both the Investigating Officer and the Nominated Officer?**

In order to maintain impartiality, the Investigating Officer should not normally also conduct the disciplinary hearing. However, it may be possible, in exceptional circumstances, for a line manager to undertake both investigative and decision-making roles. This should only be considered where matters are straightforward and well documented (e.g. poor timekeeping) and it would be impractical for a third-party to undertake the investigating role.

In all circumstances, advice should be sought from Human Resources before a decision is made that the same individual will be both investigating officer and nominated officer.

## **Who should conduct investigations into allegations involving inappropriate behaviour towards children or protected adults?**

Where it is alleged that a member of staff is abusing a young person or protected adult in receipt of the council's services, the employee's line manager and those in liaison with the employee should NOT conduct any part of an investigation.

Due to the sensitive nature of such matters, consideration should be given to appointing an independent person from outwith the Service or the council to act as Investigating Officer. In deciding if this is appropriate, the Nominated officer should seek advice from Human Resources, Legal Services and the Head of Social Policy, and keep the Head of Service and relevant Depute Chief Executive involved and fully briefed.

Specific advice on how to deal with such situations can be found in the Policy and Procedure on the [Protection of Children and Protected Adults](#).

## **What does an investigation involve?**

The extent and scope of an investigation will depend largely on the nature and potential seriousness of the allegation to be investigated.

The Investigating Officer will conduct fact-finding investigation meetings with the employee concerned and other individual(s) who were witnesses or who may have general information of relevance, and any other persons directly involved in the matter (e.g. clients, members of the public etc). It is important to keep an open mind and look for evidence which supports the employees case as well as evidence against it.

The Investigating Officer should be assisted by another officer who will take notes of the responses provided to the Investigating Officer's questions. Those notes will form the basis of written statements/transcripts of the meeting and should be subsequently typed up and passed to the individuals concerned to sign and return as a fair record of the issues discussed.

The Investigating Officer should complete a report summarising their findings and submit it for consideration to the Nominated Officer, together with the supporting statements/transcripts.

## **How long should an investigation take?**

There is no set timescale for completing an investigation; the duration will depend on the nature and complexity of the matter being investigated.

As a general rule, Investigating Officers should complete investigations as quickly as possible following the incident, when facts and recollections are fresh in witnesses' minds.

The timescale should be long enough to ensure a thorough investigation of the facts without the process being unnecessarily drawn out. The timescale also needs to be flexible to accommodate witnesses who may be unavailable due to holidays or illness, and possible delays in receiving medical or police reports etc.

### **Does an employee need to be given notice of an investigation meeting?**

An employee who is the subject of investigation, should be given reasonable advance warning of the meeting and adequate time to prepare. However, there is no formal requirement to give due notice of such a meeting.

Those required to attend a fact-finding investigation should normally be given a written instruction to attend.

### **Do individuals need to be told that the investigation meeting may lead to disciplinary proceedings?**

Yes, individuals should be advised at the outset of an investigatory meeting that it is part of a process that may result in formal disciplinary proceedings. Similarly, witnesses who are interviewed as part of the process should be advised that they may be required to attend any subsequent disciplinary hearing to speak in support of their statement.

### **Do employees have the right to be accompanied at fact-finding/investigation meetings?**

An employee who is the subject of a disciplinary investigation may be accompanied by a trade union representative at an investigatory interview. Alternatively the employee may be accompanied by a work colleague or some other person of their choice.

### **Should signed written statements always be obtained from witnesses?**

Witnesses should be encouraged to assist the investigation by giving signed written statements or transcripts, as without them cases will be considerably weakened. Written statements/transcripts are particularly important in more serious and complex cases, especially where a witness is unable to attend a subsequent disciplinary hearing.

### **What if the employee who is the subject of the investigation refuses to sign a written statement?**

The employee should be asked to sign a written statement/transcript obtained at an investigation meeting as a fair and reasonable record of the meeting. In doing so the employee should also be asked to comment on any part of the written statement or transcript that they do not agree with. If the employee fails to do either, they should be advised that the original statement/transcript will be used in any subsequent disciplinary hearing.

Where an employee has indicated amendments to the original statement/transcript, the Investigating Officer shall amend the document accordingly where they agree that it is reasonable to do so.

### **What if a witness is willing to give a statement but is not prepared to attend a disciplinary hearing?**

It is reasonable to expect that witnesses who are council employees will attend a disciplinary hearing in support of their written statements. However, where a witness is reluctant to appear in person because they consider it an unpleasant and stressful experience, or do not wish to confront the employee involved, it will be reasonable for the witness to submit a written statement to be considered at the disciplinary hearing.

### **What happens if an employee submits a grievance during the disciplinary investigation?**

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

### **What happens if an employee resigns pending an investigation or before it has been concluded?**

If during the investigation or at any other stage of the disciplinary process the employee suggests that they resign, it should be made clear to them that the final decision is theirs.

If the employee indicates that they intend to resign, the investigation should continue to conclusion in the employee's absence. The findings should be held on file for reference purposes or for use in any subsequent court/employment tribunal proceedings, especially where matters concern the safety and well-being of young and/or vulnerable people in receipt of client services.

Where an employee who is suspected of harming a child or placing a child at risk resigns before the investigation or subsequent disciplinary process has been completed, the Nominated Officer must pass all relevant information gathered to date, to the appropriate Depute Chief Executive or Head of Service in accordance with the provisions of the Policy and Procedure on the Protection of Children and Protected Adults. A decision will subsequently be made as to whether the employee concerned is to be referred to Disclosure Scotland for consideration for listing against the List of individuals Disqualified from Working with Children (DWCL).

### **What should an Investigating Officer's report contain?**

The Investigating Officers report should be restricted to a factual and impartial summary of the findings of the investigation.

The Investigating Officer must not encroach on the role of the Nominated officer by recommending that a disciplinary hearing should be convened or suggesting possible disciplinary outcomes. It is the role of the Nominated Officer to draw conclusions from the facts presented in the Investigating Officers report.

## DISCIPLINARY HEARING

### **Who decides whether a formal disciplinary hearing is to follow an investigation?**

The Nominated Officer will decide if a disciplinary hearing is to be convened, taking into account of the findings in the Investigating Officers report and all other relevant supporting information including witness statements/transcripts.

Where the Nominated Officer decides that there is insufficient evidence to justify further action under the formal disciplinary procedure, all documentation relating to the investigation must be destroyed subject to the provisions relating to the safety and well-being of young and/or vulnerable people in receipt of client services.

### **Where the Nominated Officer concludes that a disciplinary hearing should be convened, what information should be contained in the letter requiring the employee to attend?**

The letter should contain sufficient details of the allegation to enable the employee to understand the nature of the case against them. The allegation should be precisely framed and consistent with the findings and conclusion(s) drawn from the Investigating Officer's report. Vague references such as "poor work standards", or "unacceptable attitude" are not sufficient.

The letter must cover all points to be discussed at the hearing. Any attempt to introduce new matters at the hearing will not be allowed, as the employee would not have had an opportunity to prepare a response.

The letter should also contain the core procedural requirements set out in the Disciplinary Procedure such as reference to the right to be accompanied, right to call witnesses etc.

### **What other information should an employee be given in advance of the disciplinary hearing?**

Together with the letter instructing the employee to attend a disciplinary hearing, they should be sent the following:

- all written statements/transcripts from witnesses whether or not they are appearing at the hearing, including any written statement/transcript given by the employee;
- any other relevant correspondence e.g. letter of complaint
- a copy of the Investigating Officer's Report.

Where it is not possible to send the written statements with the letter, they should be given to the employee prior to the hearing.

### **What if an employee is unable to attend a disciplinary hearing on the date specified?**

The general principle is that disciplinary action should not be taken against an employee until they have had an opportunity to answer the allegations at a formal disciplinary hearing. Whilst letters convening disciplinary hearings constitute an instruction to attend, it is important that Nominated Officers respond flexibly to reasonable requests regarding the timing of a hearing in order to avoid procedural arguments concerning an employee's readiness to present their case.



It may be appropriate, for example, to agree a postponement of a hearing if the employee is having difficulty arranging representation or if a witness for the employee is unable to attend on the specified date. Equally, where cases are particularly complex, requests from employees to be given more time to prepare their case should be treated sympathetically. However it is the responsibility of the Nominated officer to ensure that delays are kept to a minimum and that disciplinary hearings are convened as soon as is reasonably possible after investigations are concluded.

### **What if an employee fails to attend a disciplinary hearing?**

If an employee fails to attend a disciplinary hearing without explanation, the Nominated Officer should write to the employee and set an alternative date. The letter should state that unless there are reasonable grounds for failing to attend the re-convened hearing, a decision may be taken in their absence. In such circumstances, the employee should be offered the opportunity to send a representative to present the case on their behalf and/or submit written submissions.

Where an employee fails to attend a further hearing without explanation, a decision may be taken based on the available evidence (including a decision to dismiss), provided the employee has been advised that failure to attend will likely result in disciplinary action being taken in their absence.

### **What if an employee indicates that they are unable to attend a hearing due to illness?**

Where an employee is on sick leave at the time the Nominated Officer is proposing to convene a disciplinary hearing, or their absence commences following their receipt of the letter instructing them to attend the disciplinary hearing, the first question to consider is:

- Does the nature of the employee's illness preclude them from attending a disciplinary hearing?

Being unfit for work does not necessarily mean that they are unfit to attend a disciplinary hearing.

Where the Nominated Officer is satisfied that the employee is fit to attend the disciplinary hearing, the employee should be instructed to attend in the normal manner. The letter convening the hearing should indicate that whilst it is accepted that the employee is unfit for work, they are considered to be fit to attend the hearing.

Where an employee does not accept that they are fit to attend a disciplinary hearing, the Nominated Officer should refer the employee to Occupational Health. Where the medical adviser states that the employee's illness is too serious to allow them to attend a disciplinary hearing, the Nominated Officer will require to defer the hearing until the employee is fit enough to attend, which may be before the employee is fit to return to work.

### **What if an employee is unable to attend a disciplinary hearing because they are in prison?**

In these circumstances, the disciplinary hearing should still go ahead and the employee must be given the opportunity to send a representative and/or send in written submissions to the hearing.

### **How should the disciplinary hearing be conducted?**

A disciplinary hearing is not a trial and should not become over-formalised.

The employee should be presented with the facts as gathered during the investigation and must be given every opportunity to put forward their case. Both sides will be given the opportunity to call witnesses (subject to these being notified in advance). Further details on how a disciplinary hearing should be conducted can be found in the Disciplinary Procedure.

A procedural guide to assist Nominated Officers conduct a disciplinary hearing is provided at Appendix B.

### **Should notes be taken during a disciplinary hearing?**

Where possible and certainly in cases where dismissal is a possible outcome it is recommended that notes are taken during a disciplinary hearing by someone who is not involved in the case. Notes should be circulated to both parties for agreement following the hearing. The notes taken do not require to be verbatim but should cover the key issues discussed during the hearing. Such notes can then be used, if necessary, to demonstrate to an external body such as an employment tribunal that a fair process has been followed.

A pro-forma for recording the discussions during a disciplinary hearing can be found at Appendix C.

### **What happens if new information emerges during the hearing?**

If at any time during the disciplinary hearing new facts emerge or points are raised which require further investigation, the hearing should be adjourned and reconvened after the additional investigations have been completed. If the additional investigations result in further, more serious allegations, it may be necessary to refer the case to a more senior Nominated Officer with delegated authority to take more severe disciplinary action. In these circumstances, a completely new hearing will require to be convened to hear all the evidence.

### **What procedural considerations require to be taken into account when dealing with disciplinary cases involving allegations of harassment and bullying?**

In the course of normal disciplinary procedures, the right to be accompanied is confined to the individual against whom the allegation/complaint has been made. However, in accordance with the council's [Policy & Procedure on Dealing with Bullying and Harassment at Work](#), the complainant, the person against whom the complaint is being made and any witnesses, are entitled to be accompanied at the investigation stage and at any subsequent disciplinary hearing by a trade union representative or some other person of their choice.

## **DISCIPLINARY DECISION**

### **In arriving at a disciplinary decision, what factors should the Nominated Officer take into account?**

The Nominated Officer must decide whether or not formal disciplinary action is merited based on the investigating officers report and the discussions held during the disciplinary hearing. Each case will depend on its own particular circumstances and the Nominated Officer must use their experience and judgement in determining those issues.

The Nominated Officer must have reasonable grounds for believing that the employee had committed the act of misconduct in question; and this belief must be the result of as full an investigation as was possible in the circumstances. The Nominated Officer's decision must

be one that falls within the “band of reasonable responses” for the circumstances. As a general guide, the Nominated Officer should consider the following factors:

- the nature of the offence(s) in terms of the actual and/or potential effects on the council, other employees, clients, or members of the public;
- whether the council’s [Disciplinary Code](#) indicates the penalty likely to result from the particular misconduct/omission in performance and whether the employee concerned was made aware of those consequences;
- the nature of the employee’s work (level of responsibility/seniority of the employee);
- the employee’s disciplinary record (i.e. live warnings on file or any relevant information retained from a previous investigation relating to the safety and well-being of young and/or vulnerable people);
- the employee’s general work record, work experience, length of service;
- the penalty imposed for similar cases in the past;
- any mitigating circumstances that should be taken into account and which might justify adjusting the severity of the disciplinary sanction (e.g. health or domestic problems, degree of provocation, inconsistency in treatment of similar issues in the past).

### **Are there any specific factors that should be considered in cases involving performance issues?**

Yes. In such cases the outcome of the disciplinary hearing will be two-fold. Firstly, a decision will be taken regarding the appropriate level of disciplinary action (as with any other type of disciplinary case). Secondly, targets for improvement will be agreed with the employee. These targets must be clear and measurable (e.g. “all letters must be responded to within 3 days of receipt” as opposed to “letters must be responded to more quickly”)

It should be made clear to the employee that their performance in relation to these targets will be monitored over a defined period of time (normally the period that the level of warning given would remain live). It must also be made clear to the employee that a failure to achieve the agreed targets will be likely to result in further, more serious, disciplinary action.

Regular reviews should be built into the overall monitoring period and the employee should be given the support necessary to allow them to achieve the required improvement in performance.

### **In deciding the appropriate disciplinary penalty, can account be taken of live warnings on file even though they do not relate to current matters?**

Wherever possible, Nominated Officers should avoid creating ‘parallel tracks’ by taking decisions in isolation from previous incidents simply because they involve different types of misconduct. For example an employee who was previously given a written warning can be issued with a final warning if they commit a relatively minor and unrelated offence. The employee should not be issued with a separate oral warning as if they have no previous disciplinary record.

The safest approach is to ensure that warnings issued are drafted widely enough to alert the employee to the fact that any further disciplinary breaches will result in an escalation of the level of warning. If there is doubt about whether an existing live warning should be taken into account in a disciplinary decision, advice should be sought from Human Resources.

**When should the outcome of a disciplinary hearing be conveyed to the employee concerned?**

The Nominated Officer should take as much time as is necessary to come to a decision that is fair and reasonable in all the circumstances. In practice this will mean adjourning the disciplinary hearing and calling a recess once all the relevant evidence has been led.

Where possible, the employee concerned should be advised of the decision on the day of the hearing. However in complex cases, particularly those that could result in a decision to dismiss, it may be necessary for the Nominated Officer to take more time to reflect on the matter and be satisfied that all relevant factors have been fully considered before reaching a final decision. In these circumstances, it may not be practicable to announce the decision on the day and instead the decision will be notified/confirmed to the employee in writing within 5 working days of the hearing.

**How much detail should be included in the letter confirming the disciplinary decision?**

A disciplinary decision must only relate to the allegation(s) set out in the letter convening the disciplinary hearing. A letter confirming the outcome of a disciplinary hearing should, therefore, be confined solely to the particulars of the allegation(s) investigated and discussed in the course of the hearing.

In addition to the standard provisions stipulated in the Disciplinary Procedures such as right of appeal, the duration of the warning etc, the letter should contain sufficient detail to enable the employee to understand the reason and justification for the level of disciplinary sanction applied.

## APPEALS

### **Does an employee have to submit written grounds of appeal before an appeal hearing can be held?**

The council's disciplinary procedure states that an employee wishing to appeal against a disciplinary decision must submit their grounds of appeal in writing within 10 working days of being notified of the disciplinary decision.

### **In an appeal against disciplinary action, who should lead the Service's case?**

This largely depends on the nature of the disciplinary action being appealed and the level of the appeal. For example, if the appeal is to the council's Appeals Committee and concerns a sensitive and complicated issue, which may have potentially damaging implications for the council if not handled carefully, it is essential that the Nominated Officer holds a case conference with their Human Resources/Legal Advisers to determine who should lead.

Where a solicitor is representing the appellant in these circumstances, the Nominated Officer should consider engaging a senior council solicitor to lead the case. In these circumstances the Nominated Officer would participate as primary witness. Alternatively, if the case is of a less sensitive and complex nature and an external solicitor does not represent the appellant, the Nominated Officer would normally lead the management's case.

### **Are there any specific factors to be considered in appeals involving child protection issues?**

Yes. Where a case identified as involving child protection issues progresses to Appeals Committee, the Head of Social Policy shall sit as a technical adviser to Committee so that the Committee can receive appropriate advice on child protection.

## SECTION D: SPECIAL CIRCUMSTANCES

### PROTECTION OF CHILDREN/PROTECTED ADULTS

#### **What should I do if an employee is accused of mistreating a child/protected adult or putting a child/protected adult at risk of harm?**

The matter, irrespective of whether or not the incident occurred at work, should be immediately reported to the appropriate Depute Chief Executive and Head of Service who will arrange for the matter to be fully investigated.

In addition where it is alleged that a member of staff is abusing a young person in receipt of the council's services the allegations must be notified immediately to the Head of Social Policy who will decide if a child protection investigation is appropriate

#### **Who can provide specialist advice and support regarding the management of cases where allegations are made concerning the mistreatment of a child/protected adult or a child/protected adult being put at risk of harm?**

Specialist advice should always be sought in cases involving allegations of mistreatment or risk to a child/protected adult. Human Resources, Legal Services and the Head of Social Policy will provide advice and support regarding such cases.

### SUSPECTED FRAUD and FINANCIAL IRREGULARITIES

#### **How should cases of suspected fraud/theft in the Council be dealt with?**

Where matters are thought to involve fraud or irregularity that affect the affairs of the council, the relevant Depute Chief Executive must immediately notify the Head of Finance.

Suspected fraudulent claims relating to Housing Benefit and Council Tax Benefit are investigated by the council's Revenue and Benefits Manager. The Revenues and Benefits Manager is also responsible, together with the council's Payroll Manager, for investigating reported matches as a result of the council's participation in the National Fraud Initiative. All other suspected frauds or irregularities are investigated in accordance with the council's Procedures Relating to the Investigation of Suspected Fraud and Irregularities which are issued by the Head of Finance.

When dealing with matters of this nature, managers must take advice from the Audit, Risk & Counter Fraud unit, Human Resources and Legal Services, as appropriate.

#### **What does an investigation under the Procedures Relating to the Investigation of Suspected Fraud and Irregularities involve?**

The council's Internal Audit Manager, following consultation with the Head of Finance and the Head of Service as necessary, will decide on the precise approach to an investigation, dependent upon the extent of the suspected fraud and the individual circumstances involved.

Where there are grounds for investigating the matter under the council's Disciplinary Procedures, the results of the Internal Audit investigation will be reported to the Investigating Officer to be included as part of the disciplinary investigation.

### **In cases of suspected fraud or theft, who decides if the Police should be involved?**

The Chief Executive in consultation with the appropriate Head of Service, Head of Finance and Chief Solicitor, as appropriate, will determine whether the matter should be referred to the police.

## **SUBSTANCE MISUSE**

### **In cases of Substance Misuse under what circumstances would disciplinary action be appropriate?**

The council's [Policy on Substance Misuse](#) recognises substance misuse as primarily a health problem that requires professional help and treatment. However the policy also recognises that the possession, supply or production of illegal drugs is a criminal offence and that any such activity occurring on council premises will be treated as gross misconduct. Equally, off-duty incidents involving the possession, use or supply of drugs may be considered a disciplinary offence if the criminal element related to the activity is deemed to fundamentally affect the employee's suitability for the post they hold with the council.

An excessive indulgence in alcohol and/or drugs on random occasion, which is **not related to a physical dependency**, will normally be regarded as a conduct problem to be dealt with as a disciplinary issue. A confirmed habitual use of alcohol and/or drugs **related to a physical dependency** that continually or repeatedly interferes with the employee's capability, health and/or conduct will normally be treated as a health/capability issue and will be dealt with outwith the Disciplinary Procedure.

### **Are there any circumstances in which disciplinary action is appropriate despite a physical dependency being confirmed?**

The existence of a physical dependency does not in itself mean that disciplinary action is not an appropriate response.

Where a conduct issue is addressed under the council's Disciplinary Procedure and the employee presents the alcohol/drug problem as a mitigating circumstance, the disciplinary process may be suspended pending a referral to the council's Occupational Health Unit/ agreed external agency.

Where dependency is confirmed, the suspension may continue on condition that the employee successfully completes any prescribed course of treatment, and that a significant improvement in the employee's behaviour is identified within a defined period. Where this happens, it would be appropriate to reconvene the original disciplinary hearing and confirm an appropriate disciplinary sanction, which may be a lesser sanction than that contemplated prior to the suspension of the disciplinary proceedings.

If dependency is not confirmed, or if an employee does not complete a prescribed course of treatment/counselling, the disciplinary process will be resumed in accordance with normal practice in cases of alleged misconduct.



**RECORD OF COUNSELLING**

(Please complete in BLOCK capitals)

Employee's Name:
Designation:
Place of Employment:

<b>Counselling:</b>
Date of meeting:
Matters Discussed:
<b>Action required by employee:</b>
<b>Action required by manager (if any):</b>
<b>Monitoring arrangements:</b>

Manager's Name:	
Designation:	
Signed:	Date:

**A copy of this record should be given to the employee.**

In accordance with the Data Protection Act 1998, this record should be treated as confidential and kept in a secure place outwith the employee's personal file.



## BRIEFING NOTE FOR CONDUCTING DISCIPLINARY HEARING

INTRODUCTION	ACTION
Nominated Officer	<ul style="list-style-type: none"> <li>• Introductions</li> <li>• Purpose of Hearing (i.e. formal Hearing convened under council's Disciplinary Procedure to consider allegation of .....)</li> <li>• Briefly explain format of Hearing</li> <li>• Invite investigating Officer to present findings of investigation</li> </ul>
INVESTIGATING OFFICER PRESENTS CASE	
Investigating Officer	<ul style="list-style-type: none"> <li>• Outline the findings of the investigation</li> <li>• Bring in Management witnesses as necessary and take through statement.</li> </ul>
Nominated Officer	<ul style="list-style-type: none"> <li>• Provide <b>Employee</b> and TU Rep. with opportunity to ask witness questions</li> <li>• Ask Investigating Officer's witnesses questions as appropriate</li> <li>• Ask Witnesses to withdraw from the room after questioning is completed but to remain in the building for possible recall in the event further clarification is necessary</li> </ul>
EMPLOYEE PRESENTS DEFENCE	
Nominated Officer	<ul style="list-style-type: none"> <li>• Ask <b>Employee</b>/TU Rep. to present their case (i.e. the response to allegations); and</li> <li>• Give <b>Employee</b>/TU Rep. opportunity to call witnesses and take them through statements/ask questions</li> <li>• Ask <b>Employee</b> (and their witnesses) questions as appropriate</li> </ul>
SUMMING UP	
Nominated Officer	<ul style="list-style-type: none"> <li>• Ask Investigating Officer to sum up case</li> <li>• Ask <b>Employee</b> (and TU Representative) to sum up case (defence)</li> </ul>
DELIBERATIONS	
Nominated Officer	<ul style="list-style-type: none"> <li>• Ask investigating Officer, <b>Employee</b> (and TU Rep.) to withdraw from room pending deliberations</li> </ul>
DECISION	
Nominated Officer	<ul style="list-style-type: none"> <li>• Call back <b>Employee</b> (and TU representative) and either: <ul style="list-style-type: none"> <li>- announce decision; or</li> <li>- formally adjourn the hearing if more time is required for deliberation</li> </ul> </li> </ul>



### Disciplinary Hearing Notes

Date:	Time:	Location:
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Employee's Name:
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Designation:
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Present:
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Does the employee want a work colleague or trade union representative present? YES/NO
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If Yes, detail name and position
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Has the employee been given copies of all paperwork relevant to this hearing? YES/NO
--------------------------------------------------------------------------------------

Has the employee been advised of the allegations against him/her?
-------------------------------------------------------------------

### Notes

Initial	

Page No:

**Disciplinary Hearing Notes Additional Sheets**

Employee's Name:
Designation:

Initial	

**Signatures:**

Nominated Officer	
	Date:

Employee	
	Date: