



West Lothian
Council

Disciplinary Process Supplementary Guidance

Role of the Nominated Officer

Human Resources
August 2019

DISCIPLINARY PROCESS SUPPLEMENTARY GUIDANCE

ROLE OF THE NOMINATED OFFICER

1. PURPOSE

1.1 This guide is intended to assist individuals appointed to the role of Nominated Officer in carrying out their remit under the disciplinary process and should be read in conjunction with the following documents:

- the council's Disciplinary Procedures
- the Disciplinary Procedure Managers' Guide
- the Process Guide for Conducting an Investigation
- ACAS Code of Practice on Disciplinary and Grievance Procedures
- the council's Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work
- the council's Code of Practice on Promoting Appropriate Working Relationships and Behaviour
- ACAS guidance on Bullying and Harassment at Work

1.2 The content of this guide is supported by training specifically designed for managers carrying out the Nominated Officer role. For further information on available training please contact learn2develop@westlothian.gov.uk

1.3 For quick reference, the flowchart in the Appendix to this guide provides an overview of the role of Nominated Officer and the key elements involved in the role.

2. FACT-FINDING

2.1 Where a potential disciplinary matter comes to light it is important to establish the basic facts before deciding to proceed to a full investigation.

2.2 Depending on the nature of the matter, it will be the responsibility of the Head of Service, Service Manager or line manager to firstly arrange a fact-finding exercise in order to establish whether the circumstances merit a full disciplinary investigation. In making this determination, the officer carrying out the fact-finding should have regard to the council's Disciplinary Code and whether there has been a potential breach of its provisions.

2.3 An effective fact-finding should enable an initial assessment to be made as to whether there is any substance to the matter concerned, whether it is something that can be dealt with informally or whether it is likely that formal disciplinary procedures will require to be initiated. This is a crucial stage in the process as it may result in avoiding an unnecessary, time consuming and potentially distressing investigation process.

3. APPOINTMENT OF THE NOMINATED OFFICER

- 3.1 Where formal disciplinary procedures are to be initiated, the Head of Service, Service Manager or Line Manager will appoint a Nominated Officer. The Nominated Officer will be responsible for ensuring that the circumstances surrounding an allegation or complaint are fully investigated and appropriate remedial action taken as required.
- 3.2 The Nominated Officer will be appointed with the nature of the allegation/complaint in mind and as such, should possess the necessary level of powers under the service's Scheme of Officer Delegation to take appropriate action should the allegation/complaint be substantiated, which in serious cases may include dismissal.
- 3.3 The appointed Nominated Officer will normally be an officer with delegated authority for managing disciplinary matters within the service area concerned, and often the individual's own direct line manager subject to satisfying the criteria at paragraph 3.2 above. Exceptionally however, it may be necessary to appoint a Nominated Officer from out with the service. This may be appropriate for example, where the relevant Head of Service who would otherwise have undertaken the role, is precluded from doing so as he/she is a witness in the investigation.

3. HOW THE DISCIPLINARY PROCEDURE INTERACTS WITH OTHER PROCEDURES

- 3.1 Potential disciplinary matters may result from incidents/complaints investigated under other council procedures:

Bullying and Harassment Procedure

- 3.2 When making a formal bullying and harassment complaint, employees are required to provide information in support of their complaint such as: dates/times of incidents, comments, actions, witnesses etc.
- 3.3 Information obtained in those circumstances will provide part of a fact finding exercise which may lead to a formal investigation and disciplinary action.

The Council Complaints Procedure

- 3.4 Complaints received via the council's Complaints Procedure from members of the public may bring potential disciplinary matters to light in regard to the conduct of council employees. Those complaints may be channelled directly through the employing service, Corporate Communications or in some cases the Executive Management Team.
- 3.5 A fact-finding exercise will help determine whether misconduct has been a factor in the complaint and where culpability might potentially lie.

Whistle-blowing Procedure

- 3.6 Whistle-blowing is the process to be followed by employees when reporting serious misconduct/maladministration within the council. Whistle-blowing complaints may be received by line managers, the council's Monitoring Officer or through the Whistle-Blowing Hotline.
- 3.7 The employee making the whistle-blowing complaint should be asked to provide as much information as possible as to the detail of the incident(s) including:
 - the incident giving rise to their suspicion;

- when the alleged incident occurred; and
 - those involved.
- 3.8 Information gathered as part of the Whistle-Blowing reporting process be used to determine the seriousness of the complaint and where responsibility for any misconduct lies. In serious cases, investigations may be carried out by the Audit and Risk Management Unit.

Protection Procedures for Children and Protected Adults

- 3.9 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 in those cases.
- 3.10 Irrespective of whether or not the incident occurred at work, it should be immediately reported to the appropriate Depute Chief Executive and Head of Service who will arrange for the matter to be fully investigated.
- 3.11 In addition, where it is alleged that a member of staff is abusing a protected adult or child in receipt of the council's services the allegations must be notified immediately to the Head of Social Policy who will decide if an adult/child protection investigation is appropriate.

4. APPOINTING AN INVESTIGATING OFFICER

- 4.1 The Nominated Officer is responsible for appointing an Investigating Officer to conduct an impartial and thorough investigation within agreed timescales.
- 4.2 In the interest of a fair and transparent process, the officer appointed to investigate a complaint must have the scope and the authority to act independently of the Nominated Officer and should not be directly line managed by that person nor compromised through personal friendship. In this regard to ensure impartiality and integrity of the process, the Investigating Officer should be appointed from out with the immediate service area and depending on the circumstances, it may be appropriate to appoint an officer from another service entirely.
- 4.3 As with the appointment of the Nominated Officer, care must also be taken to ensure that the Investigating Officer is of sufficient seniority and standing in the organisation in relation to the person who is subject to investigation. Complaints against senior officers should not be investigated by more junior members of staff.
- 4.4 The following skills/criteria should be considered when identifying an appropriate individual for the role of Investigating Officer:
- ability to objectively examine a situation
 - experience in gathering evidence or carrying out research
 - analytical skills
 - interviewing skills – ability to question in an appropriate, thorough and relevant manner
 - ability to deal with sensitive matters
 - competent in report writing
 - good presentational skills
 - good communicator

5. INVESTIGATION BRIEF

- 5.1 The Nominated Officer will provide the Investigating Officer with a brief defining the scope and purpose of the investigation to be undertaken including information gathered during the initial fact-finding exercise.

6. THE INVESTIGATING OFFICERS REPORT

- 6.1 It is the role of the Nominated Officer to draw conclusions from the facts presented in the Investigating Officers report and determine whether the matter should proceed to a disciplinary hearing.
- 6.2 In doing so, the Nominated Officer must consider the report and supporting evidence in detail. The Nominated Officer must satisfy him/herself that the report meets the objectives of the written brief and that it contains sufficient factual detail from which conclusions can be drawn. In particular, the Nominated Officer must be satisfied that there are no aspects that require further clarification or follow up with witnesses where statements have been made that are incomplete, inconclusive or do not support or corroborate other elements of the investigation.
- 6.3 In the event that the Nominated Officer concludes that there is insufficient detail to make a decision on the matter, the Investigating Officer should be asked to seek further information/clarification.

7. POST INVESTIGATION – NO GROUNDS FOR DISCIPLINARY HEARING

- 7.1 If having considered the findings from the investigation, the Nominated Officer concludes that there are no grounds to convene a disciplinary hearing, any written statements obtained and any other documents relating to the investigation including the Investigating Officer's report will be destroyed in accordance with the terms of the council's Disciplinary Procedure (subject to the exception in relation to matters concerning the safety and well-being of young and/or vulnerable people in receipt of client services).
- 7.2 In the case of a complaint of bullying and harassment, and where the Nominated Officer concludes that there are insufficient grounds to convene a disciplinary hearing:
- the Nominated Officer will arrange to meet separately with the parties concerned (and their representatives if any) to advise of the outcome of the investigation together with the reasons for the conclusions reached. The trade union or other representative(s) may have sight of the report for the purpose of those discussions. However for reasons of confidentiality and the need to avoid or minimise any potential impact on members of the wider team who may have been party to the investigation, the Investigating Officer's report will **not be released**.
 - a full review of the findings of the investigation will only be merited if, based on representations from the parties involved, it is clear that a procedural omission or flaw has occurred that impacted materially on the original conclusion;
 - if the Nominated Officer in these circumstances is not persuaded of the case to review the original findings, there is no formal right of appeal. However it is acknowledged that the trade union or other representative is free to pursue the

matter on an employee's behalf through the council's Procedures For Hearing Employee Grievances;

- the complainant will be informed of any action short of formal disciplinary action that is to be taken in the circumstances. The outcome will be confirmed in writing to each party;
- where it is agreed by the parties concerned that it would be helpful in trying to establish ground rules for a sustainable working relationship going forward, the Nominated Officer will arrange for input from an individual trained in mediation techniques;
- the representatives of the parties involved will be consulted and kept advised of any agreed action to resolve/ improve working relationships arising from the mediation process.

8. POST INVESTIGATION – PROCEED TO DISCIPLINARY HEARING

- 8.1 Where having considered the findings from the investigation, the Nominated Officer concludes that there are grounds to convene a disciplinary hearing, he/she will notify the Trade Union representative (if any) informally of any witnesses to be called to the disciplinary hearing.
- 8.2 The Nominated Officer, Trade Union representative (if any) and HR should agree the list of witnesses to be called to the disciplinary hearing. Thereafter, the Nominated Officer will write to the employee and relevant witnesses instructing them to attend the disciplinary hearing. For reasons of confidentiality, Nominated Officers should ensure that the original Formal Compliant Form submitted by the complainant does not form part of the disciplinary paper work issued to the relevant parties (**Paragraphs 11.2 and 11.3 refer**).

9. DISCIPLINARY HEARING

- 9.1 The Nominated Officer will chair the disciplinary hearing and will be responsible for ensuring that all relevant evidence is presented.
- 9.2 The employee who is the subject of the disciplinary hearing and their representative should be given the opportunity to present their case and to question any evidence presented by the Investigating Officer.
- 9.3 The Nominated Officer should similarly question, where appropriate, any evidence presented by the employee or their witnesses.
- 9.4 If at any time during the disciplinary hearing new facts emerge or points are raised which require further investigation, the Nominated Officer should adjourn the meeting in order for additional investigation to be conducted. The hearing should then be reconvened following the completion of any additional investigation. If the additional investigation however results in further, more serious allegations, it may be necessary to refer the case to a more senior Nominated Officer with the 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.
- 9.5 In arriving at a decision, the Nominated Officer should take account of:

- the nature of the offence(s) in terms of the actual and/or potential impact 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 (ie 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 presented by the employee which might justify adjusting the severity of the disciplinary sanction (eg health or domestic problems, degree of provocation, inconsistency in treatment of similar issues in the past).

9.6 In determining disciplinary action, the nominated officer should consult HR where appropriate.

10. ACTION TO BE TAKEN FOLLOWING THE DISCIPLINARY HEARING

10.1 The Nominated Officer should confirm the outcome of the disciplinary hearing to the employee in writing including the right of appeal.

10.2 In the case of a complaint of bullying and harassment, the Nominated Officer should notify the complainant of any appropriate action being taken to prevent a re-occurrence of the unacceptable behaviour. It may be appropriate in some cases of bullying and harassment to meet with the complainant to discuss any residual issues/concerns following the conclusion of the case.

10.3 The Nominated Officer should consider any appropriate action required following the conclusion of the disciplinary process in order to:

- restore working relationships
- smooth a return to work following suspension/temporary transfer
- to aid transition to a new post as a result of a disciplinary sanction
- support an employee to avoid further incidents

Consideration should be given to mediation, training or mentoring where appropriate.

11. CONFIDENTIALITY

11.1 It is the responsibility of the Nominated Officer to ensure that all parties involved in the investigation and disciplinary process keep any information pertaining to the process strictly confidential. Confidentiality must be maintained even after the conclusion of the disciplinary process.

11.2 Care should be taken to avoid inadvertently issuing personal information (eg. contact details) identifying the complainant or any other details which have no direct bearing on the investigation when instructing the relevant parties to attend a disciplinary hearing. The original Formal Complaint Form should not be issued but relevant details can be extracted from the Form as necessary. Other documents essential to the investigation may require to be redacted.

11.3 In line with the Data Protection Act, the Nominated Officer should be alert to the need for the secure handling of sensitive and personal information while managing complaints of bullying and harassment.

Human Resources
June 2019

DISCIPLINARY PROCESS – NOMINATED OFFICER ROLE

