

# Disciplinary Procedure



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Links and Dependencies			
ACAS Code of Practice on Disciplinary and Grievance Procedures			
Discipline and Grievances at Work - The ACAS Guide			

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ISO27001 Pre-Certification Audit for Derbyshire County Council
Equalities and Human Rights Commission Employment Statutory Code of Practice
Employment Relations Act 1999
Equality Act 2010

## 1. Purpose

The purpose of the formal disciplinary procedure is to provide a fair and consistent means of addressing and improving an employee's conduct where this fails to meet the Council's expectations.

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## 2. Scope

This policy applies to all employees, except those employed in schools where the Governing Body performs the function of the employer and those employed under JNC Chief Officer or JNC Chief Executive conditions, where other arrangements apply.

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## 3. Key Principles

This procedure has been developed in line with the ACAS Guide and the Code of Practice on Disciplinary and Grievance Procedures. It also adheres to the key principles of the Equality and Human Rights Commission Statutory Code of Practice.

- Informal action will be considered where appropriate to resolve problems.
- The Council and employees should deal with issues **promptly** and not delay meetings, decisions or confirmation of those decisions. Any concerns should be communicated as soon as practicable.
- An employee will be advised of the nature of the complaint against them and will be given an opportunity to state their case before any decision is made.
- No disciplinary action will be taken against an employee until the case has been appropriately investigated by someone at least one management tier senior to that of the employee being investigated. The most junior level of management would not normally be expected to conduct an investigation.

- Employees will be provided with written copies of relevant evidence and relevant witness statements in advance of a disciplinary hearing in a format accessible to them.
  - The employee has a right to be accompanied at formal meetings, by a colleague, trade union representative, or an official employed by the trade union.
  - Reasonable adjustments may need to be implemented to ensure disabled employees are not put at a substantial detriment
  - An employee will have the right to appeal against disciplinary action taken.
  - Neither party is allowed to electronically record meetings held as part of this procedure. The use of recording equipment by either party without consent may constitute a further disciplinary matter. In certain circumstances, the council may permit a meeting to be recorded electronically, for example, where it is a reasonable adjustment for an employee with a disability. In such circumstances, the council will take responsibility for making the recording. Requests for meetings to be recorded will be considered.
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## 4. Use of the Disciplinary Procedure

The formal disciplinary procedure should be used if:

- An employee's conduct fails to meet expectations after previous management action and/or,
- Following a specific allegation of misconduct and after a thorough investigation of the circumstances, an Investigating Officer believes there is substance to the allegation.

Where appropriate, an employee's professional body may be notified of the investigation under the disciplinary procedure. It is a management responsibility to ensure this is carried out.

In some cases, employees also have a duty to declare this, for example, social workers are required to make such a declaration to Social Work England.

Following any disciplinary sanction, management should ensure any relevant notification is made to the professional body.

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## 5. Roles and Responsibilities

Managers are responsible for implementing the disciplinary policy and procedures and for ensuring that their responsibilities under the Equality Act 2010 are carried out. This responsibility includes consideration of reasonable adjustments for disabled employees. Advice & Support will provide support and guidance to managers in complex cases. Manager guidance supplements the Disciplinary procedure.

Employees can consult their relevant Trade Union for support and assistance.

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## 6. Suspension

In certain circumstances it may be necessary to suspend an employee on normal\* pay whilst an investigation takes place into alleged misconduct. Suspension on normal pay does not form part of the formal disciplinary procedure. Suspension or alternative work arrangements will be for as short a time as possible and will be reviewed on a monthly basis.

\*Normal pay is based on contracted hours and will include enhanced rates of pay for unsociable hours in accordance with the employee's work schedule. It will not include any incidental or ad hoc payments, such as for additional hours but will include allowances such as standby and sleep in if the employee is normally included on a rota.

Further advice regarding grounds for suspension and the process can be found in the manager guidance appended to this procedure.

## 7. Action Against Trade Union Representatives

Where disciplinary action is being considered against an employee who is a trade union representative, consideration should be given, in consultation with the Advice

and Support Team, as to whether the normal disciplinary procedure should be followed or whether the matter should be referred to the relevant Trade Union.

In either circumstance, the matter should be discussed with the relevant branch secretary, or an official employed by the Trade Union.

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## 8. Examples of Misconduct

Appendix 1 identifies some examples of misconduct. This list is not intended to be exhaustive.

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## 9. The Disciplinary Hearing

The formal disciplinary procedure starts when an employee is notified that they are required to attend a disciplinary hearing. There should be a period of not less than 14 calendar days between the employee receiving written notice of the hearing and the date of the hearing. The employee should be provided with details of the alleged misconduct and be provided with copies of all relevant documents, 14 calendar days prior to the hearing. The Statement of case should not include recommendations for action by the hearing officer.

At the hearing, the Investigating Officer will explain the complaint and go through the evidence, calling witnesses as appropriate. The employee will be asked to set out their case and answer the allegations which have been made, presenting evidence and calling witnesses as appropriate.

The employee must take all reasonable steps to attend the disciplinary hearing. Should their colleague / trade union representative not be available, an employee may propose an alternative time which should be within 7 calendar days following the day of the proposed hearing. A further postponement may be considered provided that the proposed date is within a reasonable timeframe.

Notes will be taken at the hearing and will be made available to any future Appeal Hearing Officer and any future Employment Tribunal.

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## 10. Disciplinary Penalties

The senior officer chairing the hearing (The Hearing Officer) will determine what level of sanction, if any, is appropriate. The Hearing Officer must be independent and not have been involved in the investigation. The seriousness of the allegation will determine the level of sanction imposed.

### 10.1 Written Warning

This is given for cases of misconduct.

### 10.2 Final Written Warning

If the offence is sufficiently serious or a further act of misconduct occurs whilst a warning is still current, a final written warning will be given. This will explain that further acts of misconduct may result in dismissal.

### 10.3 Dismissal

If an employee commits an act of gross misconduct or a further act of misconduct whilst a warning is still current, this may result in dismissal

For cases of gross misconduct, the dismissal may be regarded as summary and there will be no entitlement to notice. In the case of other misconduct, appropriate notice will be given. Where appropriate the employee may be offered pay in lieu of notice or may not be required to attend work during the notice period.

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## 11. Disciplinary Measures as an Alternative to Dismissal

Depending upon the circumstances, the hearing Officer may recommend that alternative measures to dismissal may be applied (e.g., removal of incremental progression, redeployment, demotion to a lower graded post). These may be combined with a warning. Where the employee rejects the offered alternatives, dismissal will normally apply.

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## 12. Confirmation of Disciplinary Action

The Hearing Officer's decision will be confirmed in writing to the employee within 7 calendar days of the hearing, and include:

- The reasons for the decision.
- The disciplinary sanctions and reasons for those sanctions.
- A warning of the consequences if there is no satisfactory improvement, or further misconduct.
- The expiry date of any warning.
- The employee's right of appeal.
- The termination date of the contract in cases of dismissal.

The employee's representative / colleague should receive a copy for information, and a copy should be kept on the employee's personal file and a record of the outcome on the departmental record of Disciplinary Action.

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## 13. Expiry of Disciplinary Action

All formal warning shall normally expire after a period of satisfactory conduct and performance of 12 months (written and final written). In exceptional circumstances the hearing Officer may consider that the disciplinary warning period should exceed this.

Details of spent warnings shall remain on personal files but shall be disregarded for the purposes of any future disciplinary proceedings, except in exceptional circumstances e.g. where they demonstrate patterns of behaviour which give rise for concern.

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## 14. Appeals

The employee has a right of appeal against the outcome of a disciplinary hearing on the following grounds:

- The sanction is not appropriate
- The evidence did not support the Hearing Officer's conclusion
- New evidence has emerged which is relevant to the original case
- The investigation and/or the Hearing was conducted in a way which was procedurally unfair.

Appeals against dismissal must be registered in a letter to the Director of Organisation Resilience, People and Communications within 7 calendar days of receipt of the written notification of the hearing decision.

An appeal against any other disciplinary sanction must be registered in a letter to the appellant's Executive Director within the same timescales.

Appeals will be heard by an Executive Director, or a member of their Senior management team, normally from a different Department to that in which the original hearing was held.

The employee will receive a reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal which will take place as soon as practicable. There will be a minimum of 7 calendar days' notice of the appeal date.

Normally the appeal hearing will be a review of the investigation and of the Hearing Officer's conclusions rather than a full rehearing.

Any evidence or statements of case on which either management or the employee wish to rely, will be provided to the Appeal Hearing Officer and other party at least 7 calendar days prior to the appeal.

A legal adviser and an HR adviser will be present at any appeal against dismissal to advise on the law and procedure.

The employee has a right to be accompanied at the appeal, by a colleague or trade union representative, or an official employed by the trade union.

The employee will be informed of the outcome of the appeal in writing within 7 calendar days. that outcome is the final stage within the Council's procedures.

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## 15. Disciplinary Records

Any actions relating to individual employee discipline should be recorded and maintained on relevant case logs within the Advice and Support Team and on employee's EDRM personal files. Records will be treated as confidential and kept in accordance with the Data Protection Act [2018] and the General Data Protection Regulation which gives individuals the right to request and have access to certain personal data.

Monitoring of disciplinary action will be undertaken by the responsible Executive Director and reported to the Executive Director of Commissioning, Communities and Policy on a regular basis.

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## 16. Adjustments to Proceedings

Where an employee has a disability that may impact on their ability to participate fully in this procedure, or an employee needs assistance because English is not their first language, appropriate arrangements will be discussed with them or their representative.

Where an employee is too ill to participate in the disciplinary procedure, the council must ensure that they understand the allegations against them, that they are given an opportunity to respond, either in writing or via their representative. The process may continue in their absence if the employee has failed to attend scheduled meetings or if there is no indication that the employee will return to work following a period of absence.

## Appendix 1 – Examples of Misconduct

The following are examples of misconduct. It is not intended to be an exhaustive list. Some offences are serious enough to be deemed as gross misconduct and thereby destroy the contract between the employer and employee making any further working relationship impossible. Where this is proven to be the case, those offences

could lead to dismissal without notice. The ACAS Code of Practice provides examples of acts that may be regarded as gross misconduct. These examples include theft, fraud, physical violence, gross negligence and refusal to carry out reasonable and lawful instructions. However, the seriousness of the offence and the circumstances in which it was committed will determine which offences constitute gross misconduct.

**Abuse of the Council's ICT policies and procedures** - in respect of computer, e-mail, internet etc. e.g. accessing, downloading or distributing pornographic, obscene, offensive or illegal material.

**Abuse of position** – using an official position for private advantage or for the private advantage of some other person. Misuse of the Council's property or name.

**Abuse of a service user**

**Behaviour** – conduct which is not in accordance with the principles of mutual trust, respect and courtesy, in particular, violent, offensive, abusive, indecent or otherwise inappropriate behaviour, in any form.

**Bringing the Council into disrepute**

**Bullying, intimidation, victimisation or other forms of harassment**

**Criminal Offences** – where the offence / alleged offence has employment implications.

**Damage to Property** – deliberate damage, misuse, or use without authority of the property of the Council or fellow employees.

**Disclosure of Information** – including disclosure to a third party without authority, of personal or confidential information acquired during the course of Council employment or breach of information security which contravenes the Council's policies, procedures or guidance.

**Discrimination** – against a member of the public or colleagues on grounds of sex, sexual orientation, marriage and civil partnership, age, race, gender reassignment, pregnancy or maternity, religion or belief or disability.

**Dishonesty**

**Employees whose posts are subject to Criminal Records Checks / Other Clearance** – failure to notify line management of any activity likely to result in subsequent criminal investigation, conviction or police caution being served.

**Falsification of Records** – including the deliberate falsification of qualifications or records e.g. working time, expenses, client records or similar documents.

**Fraud**

**Incapability through alcohol or being under the influence of illegal drugs** – other than where the case would be more appropriately dealt with under separate procedures.

**Insubordination** – failure to comply with the reasonable lawful instructions of management.

**Negligence** – which causes or might cause unacceptable loss, damage or injury.

**Physical violence**

**Registration requirements** – failure to meet the registration requirements of a statutory body.

**Rules** – failure to observe the provisions of the Council’s Standing Orders, Financial regulations, Policies, Code of Conduct and other applicable rules.

**Safety** – failure to act in accordance with applicable Health and Safety Policies; any act or omission on the part of the employee which endangers the health or safety of themselves, other employees, service users or members of the public.

**Theft**

**Timekeeping / Attendance** – failure to attend work regularly and punctually during agreed working hours; failure to report inability to attend work due to illness or for any other reason, promptly, and in accordance with the Council’s procedures; prolonging absence by neglecting to act on medical advice.

## Appendix 2

# Disciplinary Procedure – Manager Guidance

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1.00	31/07/2013	Restoring Elected Member appeal process.	Nicky Keep
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ACAS Code of Practice on Disciplinary and Grievance Procedures			

## 17. Introduction

The purpose of the disciplinary procedure is to provide a fair and consistent means of addressing an employee's conduct where this fails to meet the Council's

expectations. The overall aim is to ensure the Council is objective and non-discriminatory in its approach to employee discipline issues.

Attendance or performance issues should be addressed in accordance with the Council's Attendance Management and Capability Procedures.

It is good practice that all actions taken by management in relation to issues within this document are confirmed in writing to the employee, with a copy retained on the employee's EDRM personal file.

This advice is guidance, and as each case is individual the particular circumstances will determine the approach to be taken.

However, when implemented, the Disciplinary Procedure must be followed, to ensure compliance with the requirements of employment legislation.

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## 18. Review

The Council's Disciplinary Procedure and Guidance Documents have been reviewed in the light of and are consistent with the ACAS Code of Practice and, current legal precedents. The documents will be updated in line with changing advice and codes of practice, and Our Derbyshire or the website should be referred to for the most up to date version.

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## 19. Seeking Advice

Discipline issues must be dealt with fairly, reasonably, consistently, systematically and in a timely fashion, following the laid down procedure and considering the circumstances of the specific case.

Managers should always notify the Advice & Support Team when considering taking disciplinary action.

Managers responsible for dealing with employee misconduct should seek appropriate advice from the Advice & Support Team. Managers should allocate appropriate time and priority to dealing with disciplinary cases, to ensure they are managed effectively.



A representative from HR must be in attendance at all formal disciplinary hearings.

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## 20. Acting Reasonably

The law on unfair dismissal requires employers to act reasonably when dealing with disciplinary issues. What is reasonable will depend on the circumstances of each case, however, the core principles that managers should work to are below:

- Use procedures to help and encourage employees to improve rather than as a way of imposing punishment.
- Deal with issues as thoroughly and promptly as possible.
- Ensure that the provisions of the Equality Act are adhered to. Further guidance can be found on the website under 'Our Derbyshire' – Equality & Diversity – Equality Act.
- Act consistently.
- Keep information confidential.
- Inform the employee of the complaint against them and provide them with an opportunity to state their case before decisions are made.
- Allow employees the opportunity to be accompanied at disciplinary meetings, by a colleague, trade union representative or an official employed by the trade union.
- Make sure that disciplinary action is not taken until the facts of the case have been established, and the action is reasonable in the circumstances.
- 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.

New employees may be inexperienced in working life and unsure of what is expected from them. Make sure that your induction procedures are thorough and that all

employees receive detailed training in what they have to do and how to do it. If conduct or behaviour is an issue for concern, be more explicit as to the standards which are required, and if the problem persists, consider the use of the disciplinary or capability procedures as appropriate.

It follows that managers must always apply the Council's disciplinary procedure and comply with the principles contained in these guidance notes in dealing with matters of discipline.

Where any aspect of the disciplinary procedure might place an employee at a disadvantage, then you should consider, in conjunction with the Advice & Support Team, whether any adjustments are required to the process to accommodate the employee, to ensure a fair process is followed.

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## 21. Disciplinary Records

It is important, and in both the employer's and employee's interest to keep written records during the disciplinary process. Disciplinary records should be maintained in the strictest confidence and kept no longer than necessary. See the Human Resource's Retention Schedule on Our Derbyshire – Information Security – Confidential Information – Records Retention Schedule – Human Resources, for guidance on how long documents associated with the disciplinary process should be kept.

Copies of meeting records should be given to the employee and their representative (if applicable) and a copy retained on the employee's EDRM personal file.

Where there is any indication that the employee may not fully understand the paperwork, for example if an employee has dyslexia or learning disabilities, you should ensure that reasonable adjustments are considered. For example, could the language be simplified, or additional time offered for employees to consider the paperwork, or should a face to face meeting be offered to explain the issues to them?

A copy of any letter relating to the decision of a disciplinary hearing and a copy of the hearing notes should be sent to the Advice and Support Team who will maintain a case management log of all formal disciplinary warnings, dismissal and disciplinary action detailing:

- The complaint against the employee.

- Their response to allegations made.
- Findings made, actions taken and reasons for it.
- The date action was taken.
- Whether an appeal was lodged.
- The outcome of the appeal.
- Any subsequent developments.

Template letters and statement of case are available on SharePoint – link to be inserted.

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## 22. Roles

Key roles within the disciplinary process are:

**Investigating Officer** – investigates allegations, ascertain the facts and circumstances to establish whether there is any substance to the suspected alleged act of misconduct, and normally presents the management case at any disciplinary hearing or subsequent appeal. The Investigating Officer should have the necessary skills to undertake the investigation and should be at an appropriate level of seniority (i.e. at least one management tier senior to that of the employee being investigated). The most junior level of management would not normally be expected to conduct an investigation. The Investigating Officer recommends suspension of the employee to senior management if appropriate. The Investigating Officer should be provided with sufficient information, time and co-operation to conduct an adequate investigation.

The Investigating Officer should not recommend a decision or participate in the decision making function at any disciplinary hearing relating to an investigation they have conducted.

**Hearing Officer** – chairs a disciplinary hearing and is responsible for the conduct of the hearing, the decisions and determining the appropriate action. Hearing Officers should be managers in the Leadership Job Family (Grade 15 and above). To maintain impartiality, the Hearing Officer should not have a close working or personal relationship with the employee being investigated.

**Advising Officer** (e.g. Director of Legal Services, HR Advisor) – consider the evidence provided during the disciplinary hearing and provide advice in order to assist in the Hearing Officer decision making process. The responsibility for any decision taken remains with the Hearing Officer.

**Appeal Hearing Officer** – hears the appeal brought by the employee against the decision of the Hearing Officer and determines whether to confirm, amend or reject the original decision. Appeals against dismissal are heard by an Executive Director (or a member of their Senior Management Team), normally from a different Department to that in which the original hearing was held). Appeals against other disciplinary hearing outcomes are heard by a manager more senior than the Hearing Officer. Impartiality is strengthened by having an HR advisor at the appeal who will not have had any previous involvement in the case.

**Trade Union Representative or Workplace Companion** – may address hearings, make submissions, and respond on the employee’s behalf to any view expressed at the hearing, but has no right to answer questions on the employee’s behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case.

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## 23. The Improvement Process

It may be that, rather than using the formal disciplinary procedure, the problem may be better dealt with informally by the manager working with the employee to improve their conduct. This approach is sometimes useful where the misconduct is relatively minor and caused by thoughtlessness, inexperience, or a lack of knowledge or understanding. If the shortcomings are caused by a lack of ability, rather than a failure of judgement, then the performance capability process may be more appropriate. Ask the Advice and Support Team if unsure which process is suitable. The objective of an improvement session is to identify any underlying causes for below standard conduct and to agree with the employee what action is necessary for the employee to meet the required standards.

### **Informal Improvement**

Informal improvement is a first step by which you as a manager may express your concerns regarding below standard conduct to the employee. If the problem is caused by absence due to ill health, please refer to the Attendance management and Ill health Capability Procedure Guidelines. In many cases, the right word, at the right

time, may be all that is needed to help an employee achieve the satisfactory standards expected by the Authority.

- Informal improvement is a normal part of the managerial role. Sessions can take place as the need arises without notice and without union representation.
- Wherever possible you should call the employee away from their immediate work area to a private location free from interruptions. It should be a two way discussion between you and the employee aimed at pointing out any shortcomings in conduct and encouraging improvement.
- Be constructive with your criticism and emphasise finding ways in which the employee can remedy any shortcomings. You should listen to any explanation put forward by the employee for their problems. Where appropriate, you should offer / provide training and any other support e.g. employee counselling service in order to assist the employee to improve.
- Explain to the employee that, if there is no improvement, the next stage will either be the formal improvement process or the formal disciplinary procedure. If, during the improvement meeting, it becomes obvious to you that the matter is more serious, and constitutes an act of misconduct, the discussion should be adjourned and you should make it clear that the matter will be pursued under the formal disciplinary procedure.
- A brief note of the informal improvement discussion, along with details of action taken, should be kept and a copy retained on the employee's EDRM personal file. While not an agreed document, a copy of the file note should be sent to the individual for information.
- Where the above has failed to achieve the desired improvement in an employee's conduct, a formal improvement session would be undertaken by the employee's immediate supervisor and / or manager.

### **Formal Improvement**

You should inform the employee in writing of the requirement to attend a formal improvement interview and that they may, if so desired, have a representative of their choice to support them.

- You should make it clear to the employee that the formal improvement process does not constitute part of the formal disciplinary procedure, but it is a reasonable management requirement and is not optional.
- The formal improvement process should be a two way discussion. You should state the nature of the individual's conduct you consider to be low standard and aim to identify the cause of the problem by questioning and discussion.
- If at the conclusion of the discussion you are still of the view that the employee's conduct is below the required standard, it is your responsibility to clarify the areas of concern, agree where appropriate with the employee any action necessary to assist them in meeting the required standard, and a review date at which to assess progress.
- After the interview you should confirm in writing to the employee, with a copy retained on the employee's EDRM personal file, the outcome of the meeting and the mutually agreed action plan (if appropriate) and progress review date, if relevant. This should include details of any training and specialist help / counselling sessions also agreed.
- Throughout the review period you should monitor the progress of the employee towards achieving expected standards, giving help and encouragement as necessary either through formal or informal meetings / discussions. If any matters of concern arise these should be addressed at the time they arise, rather than at the review date.
- If, during the improvement meeting it become obvious to you that the matter is more serious, the discussion should be adjourned and you should make it clear that the matter will be pursued under the formal disciplinary procedure.
- In all cases, at the end of the review period a further meeting / interview should be arranged with yourself and the employee to inform and discuss their progress. If the employee has achieved a satisfactory standard no further action is necessary. If the employee has made some progress towards achieving standards, then the review date may be extended if further progress is likely.
- However, if the employee has made no, or insufficient progress towards achieving the required standard without a relevant and acceptable reason, you should then advise the employee that their failure to improve to the

specific standard may lead to the implementation of the formal Disciplinary Procedure.

- In all cases, the employee should be informed in writing with a copy retained on the employee's EDRM personal file.
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## 24. Suspension

It may be that when an allegation first comes to light, it is of such a nature that suspension is considered. Suspension on normal pay does not constitute part of the formal disciplinary procedure.

Normal pay is based on contracted hours and will include enhanced rates of pay for unsociable hours in accordance with the employee's work schedule. It will not include any incidental or ad hoc payments, such as for additional hours, but will include allowances such as standby and sleep in if the employee is normally included on a rota.

In all cases, suspension or alternative arrangements will be for as short a time as possible and subject to ongoing review by the Investigating Officer and the Suspending Officer on a monthly basis as a minimum. It is particularly important that investigations into allegations where an employee is suspended are completed in as timely a manner as possible.

### **Reasons for suspension**

An employee may be suspended from duty on normal pay in the following circumstances, although this list is not exhaustive:

- Where an investigation is being undertaken and may be impaired in any way by the employee's continued presence at their place of work.
- Where the employer has grounds to suspect that the employee is guilty of gross misconduct.
- Where the employee has grounds to suspect that the employee may seriously damage documents, property or systems or presents a potential risk / danger

to the Council and its reputation, service users, other employees or themselves if allowed to remain in the workplace.

It should be made clear to the employee that suspension is not an assumption of guilt and is not considered a disciplinary sanction.

### **Consultation with Assistant Director / Service Director**

Before suspension, which should only be considered as a last resort when all other alternatives have been considered, the employee's manager or the investigating officer must consult with the Assistant / Service Director to determine whether suspension is necessary. It is essential that, as the Assistant / Service Director may be involved at any subsequent disciplinary hearing, any such consultation should be restricted to the nature of the allegation and the reasons for seeking suspension.

### **Alternatives to suspension**

Before suspension takes place, alternatives to suspension should always be considered first, e.g. relocation to a different work base, working from home, changes to shift patterns, for example working days instead of nights or other working arrangements which would alleviate the problem, or ceasing to carry out a particular part of the role. A checklist which prompts the issues which must be considered should be filled in for all cases where suspension is being considered and endorsed by the Assistant / Service Director.

Employees must co-operate with alternatives to suspension when a suitable alternative is identified. There must be a genuine work requirement and the employee must be offered appropriate duties.

Should alternatives to suspension not be practicable, suspension should only be used when it is necessary as detailed above and should be for as short duration as possible.

### **Support whilst suspended**

An employee who is suspended from work is likely to be concerned about the ongoing investigation. The employer's duty of care to support staff during suspension remains

To do this you can:

- Ensure the employee understands that suspension is no confirmation of guilt



- Providing appropriate and regular communication
- Ensuring the suspension only lasts as long as it is needed
- Providing contact details if the individual has concerns

### **Suspension of trade union representatives**

Suspension shall not normally be imposed upon an accredited trade union representative employed by the Council until the circumstances of the case have been discussed with a regional official of the union concerned and the Senior HR Business Partner consulted.

### **Informing the employee**

If the Assistant / Service Director decides that the employee is to be suspended from duty then the employee shall, in the first instance, be offered the opportunity to respond to the allegation.

### **Oral Confirmation.**

Where the employee is to be suspended, they shall initially be informed **orally** of:

- The reason for the suspension, reiterating that suspension does not form part of the formal disciplinary procedure.
- The allegation of misconduct and that an investigation of the case will be conducted.
- The date and time from which the suspension shall apply and that the suspension will be for as short a period as possible with initial and ongoing reviews.
- The period of suspension on normal pay (although it may often be difficult to be precise).
- That, during the period of suspension it is necessary for the employee to make themselves available during normal working hours should it be necessary to contact them at any time in order to facilitate further investigation.
- That the employee should not return to or enter their place of work during the period of suspension without the prior consent of their manager / investigating officer.

A named contact should be offered to the employee, to provide clarification on any issues relating to the suspension. The suspending officer should retrieve any Council equipment from the employee such as their security badge, uniform, laptop etc.

### **Written Confirmation**

Written confirmation of suspension should include, in addition to the above, details of the employee's rights and responsibilities as set out below, together with any other requirements. If possible, it should be handed to the employee before they leave the workplace. If not, it should be delivered to their home address by hand or by first class mail and recorded delivery as soon as reasonably practicable.

### **Employee's Rights and Responsibilities during Suspension**

- The employee will receive normal pay during the period of suspension.
- If an employee falls sick during a period of suspension, they must notify their department via their nominated point of contact on the first day of the sickness and submit medical certificates in the normal way. Sickness payments will be made in accordance with normal procedures.
- Previously agreed annual leave which falls within the period of suspension will be honoured. Other leave may be taken during the period of suspension subject to agreement and should be notified to the named contact.
- For accredited trade union representatives, time off to undertake trade union duties may be granted subject to agreement.
- An employee must not undertake additional employment with another employer during normal contracted working hours, during the period of the suspension.
- There should be regular contact with the employee during the period of suspension from the nominated point of contact, and they should receive formal notification of all stages of the disciplinary process in good time.
- The employee must ensure that they remain contactable during normal working hours and cooperate fully with the disciplinary investigation.

- The employee must not enter the workplace, nor enter into communication of any kind including e-mail and social networks with service users or work colleagues during the period of suspension without the consent of the investigating officer. The employees should not use Council equipment including IT equipment provided in connection with their employment without permission. Any contact should be made with the person who has been nominated as a contact point.

It should be recognised however, that there may be occasions when an employee may need to approach colleagues, e.g. to contact witnesses, and this will be borne in mind when considering requests for access.

Failure to observe the terms of suspension procedures may itself result in disciplinary action being taken.

### **Review of Suspension**

Following suspension, an initial review of the case should take place as soon as possible with the aim of minimising the length of the suspension. Following the initial review, ongoing reviews should take place at least monthly. The continuation of suspension should be considered by an operational manager and the employee informed of the outcome accordingly. A checklist which prompts the issues to be considered should be filled in at the time of each review.

### **Ending the Suspension**

A period of suspension may be lifted at any time, at the employer's discretion, and the employee will be notified in writing.

## **25. Investigation**

When a reasonable suspicion or allegation of misconduct comes to management's attention, the first step should be to investigate a prompt, proper and thorough investigation. The purpose of the investigation is to consider whether there is substance to the allegation and whether it is serious enough to constitute misconduct (i.e. which 'rule' has been broken). This involves:

- Investigating the facts and circumstances surrounding the alleged misconduct.
- Giving the employee the opportunity to offer a response to the allegation.
- Taking a balanced view of the information that emerges.
- Reaching a decision as to whether or not there are sufficient grounds for an allegation of misconduct and if so whether the matter should be dealt with through the formal disciplinary procedure.

It is in everyone's interest (and management's responsibility) to ensure that the investigation is carried out with the minimum of delay. This will enable information to be gathered before memories fade, minimise the impact of suspension etc.

### **Audit Services' Investigations and the Disciplinary Process**

Recognising the need for audit investigation and consideration of potential disciplinary action to be separate in order to maintain the independence of both actions and taking into account the provisions of the Council's Financial Regulations, the following process has been agreed:

- All employees are required to report matters relating to fraud, misappropriation or loss promptly to the Assistant Director of Finance (Audit) & RIPA Monitoring Officer.
- On receipt of such notifications, and prior to the start of the investigative process, the Assistant Director of Finance (Audit) & RIPA Monitoring Officer will discuss with the relevant Executive Director / Director whether any joint investigation is required, and, if so, how it should progress.
- Where there is any disagreement between Audit Services and the Executive Director / Director, the Assistant Director of Finance (Audit) & RIPA Monitoring Officer and Executive Director / Director will discuss the situation with the Head of Paid Service who will determine the appropriate investigative process to follow.

The investigation will be one of the following:

- An audit investigation as detailed above with any subsequent disciplinary action being taken on the conclusion of the audit investigation with minimal or no further management investigation.

- Joint investigations by audit / departmental management where the matter relates to both financial and other misconduct and where a two strand approach may be beneficial. In these cases, in order to ensure effective liaison with the employee or employees affected, a lead officer will be agreed between the two investigating officers and arrangements made for each such investigation to reflect the individual requirements of the case. Normally, but not always, it will be appropriate for the lead officer to be the appropriate departmental manager.
- Management investigation under the disciplinary procedure where after discussion between the Executive Director / Director and the Assistant Director of Finance (Audit) & RIPA Monitoring Officer, it is agreed that any potential fraud or financial loss to the Council, e.g. through time recording or misuse of the internet and e-mail policy, is not considered material / significant (subject always to the caveat that the designated investigating officer must inform Audit Services immediately of any new information disclosed during the investigation as it proceeds which changes the perception of the nature / potential extent of the fraud / financial irregularity). Audit will assist to establish the extent of any loss and provide specialist advice or assistance in such cases where necessary.

In respect of the above, the following will apply:

- Audit investigations will be conducted in accordance with professional best practice and the guidance in the Council's disciplinary procedure where this is likely to lead to a disciplinary hearing.
- Recognising the need for confidentiality and the possible implication of management involvement in the alleged act under investigation, there may be a need for regular communication between the Assistant Director of Finance (Audit) & RIPA Monitoring Officer and the nominated departmental manager as to the progress of the investigation.
- All relevant documentation, interview notes or witness statements obtained during the course of an audit investigation will be made available, if required, for the purposes of any subsequent disciplinary hearing. The audit report will be made available and appended to the statement of case and a hearing should follow promptly thereafter.

The over-riding consideration should be to investigate thoroughly and to address the issues as speedily as possible.

## **Management Investigations and the Disciplinary Process**

### **Informing the Employee**

When you first hear of the allegation, it may be appropriate to have a short conversation with the employee to ascertain the facts, dispel rumours etc. You can do this immediately, but the meeting should be very brief and if there is any indication that a formal investigation may be required, then a proper investigatory interview should follow with the requisite notice of 7 days and the right of representation.

The employee should be informed in writing that an allegation of misconduct has been received which requires investigation and that a named Investigating Officer has been designated to undertake the investigation. The employee must also be informed of the requirement to co-operate with the investigation, such as attending an investigatory interview.

### **Investigatory Interview**

When interviewing the employee concerned, the Investigating Officer should make it clear that it is an investigatory interview to ascertain the facts surrounding an act of suspected or alleged misconduct, not a disciplinary hearing. Another member of staff should normally be present at the interview to take notes, to enable the investigating officer to focus on listening, ensure no points are missed, and to provide an additional management witness in the event of disagreement.

The employee should be offered the facility of having a trade union representative or workplace companion present. It is important to cover in the investigatory meeting all the points which will form the basis of your case, so that the employee has a chance to respond to them, including providing copies of any relevant paperwork. If new evidence emerges as you go along you may have to have one or more additional investigatory meetings.

### **Information Gathering**

Other people believed to have information relating to the alleged misconduct should be interviewed and written statements obtained from them, if possible. This could include employees, service users, members of the public, or employees of other organisations.

The investigation must be adapted to the circumstances of the alleged misconduct. If, for example, allegations have been received from colleagues in respect of an employee's conduct, it will be necessary to not only interview the complainants and obtain written statements from them, but also to interview some, at least, of those who have not complained but who can reasonably be expected to have knowledge as to whether the allegations are justified or provide evidence.

If an allegation is received from someone who is not an employee e.g. service user or member of the public, that person should be seen and invited to make a written statement setting out the details of the allegation. If any employee is thought to have witnessed the incident, or to have information about it which might be relevant to the investigation, he or she should be seen and a written statement obtained. Where there are no witnesses to an alleged incident, it may be necessary to interview those who last spoke to the employee before the incident took place and those to who they spoke immediately after it.

### **Interview Notes**

During the course of the investigation, notes should be taken of any interviews held, and two copies should be sent to the employee who should sign and date the bottom of each page as being accurate and return one copy to the Investigating Officer. If the employee wishes to make any amendments, these will be recorded alongside the original text. These do not have to be agreed. The purpose of these notes is to aid the Investigating Officer in making an informed decision in respect of the allegation.

### **Witness Statements**

Witness statements are factual statements obtained from people who have relevant knowledge of an alleged incident or event. They may support, or not, any allegation that has been made. Witness statements are usually developed from notes taken at a meeting with the witness, and all statements should be dated and signed at the bottom of each page by the witness. Any such statements would be given to the employee under investigation if it were decided to proceed with formal disciplinary action.

Signed and dated witness statements may also be used in the absence of the witness at any subsequent disciplinary hearing, although it should be noted that they are not likely to carry the same weight as a witness attending in person.

It should be noted that interview notes and witness statements are disclosable at an Employment Tribunal.

Witnesses may be accompanied by a colleague or trade union representative if they so wish during the investigation.

Potential witnesses may be unwilling to give evidence at either an investigation or at a hearing. In these circumstances you should discuss their concerns, provide reassurance as appropriate, and encourage them to attend.

### **Investigation**

What amounts to an adequate investigation will depend on the circumstances of the particular allegation of misconduct. If it is something to which the employee readily admits, the extent of the investigation may well be confined to that, or to obtaining a measure of confirmation of it. In a disputed case the investigation will need to be as sufficient as is reasonable in the circumstances.

The main requirement is to be able to come to a fair decision on the balance of probabilities based on the question 'Is there a reasonable suspicion amounting to a belief in respect of the employee's alleged misconduct, and are there reasonable grounds for that belief?' Unlike a criminal court where the burden of proof is required to be 'beyond all reasonable doubt', the burden of proof for disciplinary decisions only needs to be 'on the balance of probabilities' i.e. you do not need direct proof of wrong doing, only a genuine and reasonable belief in the employee's guilt.

### **Outcome of Investigation**

On completion of the investigation, the Investigating Officer should decide whether or not to recommend that the formal disciplinary procedure is invoked based upon the facts and evidence obtained, and, if the disciplinary procedure is to be invoked, whether the allegation(s) constitute(s) misconduct or gross misconduct.

However, it is not appropriate for the Investigating Officer to recommend a course of action to the Hearing Officer.

The employee should be informed of the decision.

If it is not considered appropriate to invoke the disciplinary procedure, other options should be reviewed. The matter may be dropped or dealt with by an improvement session with the employee or by other actions such as arranging coaching, or training. If merited, the employee may be advised that if further misconduct occurs, action under the formal disciplinary procedure may then be necessary. A brief note of the date, time and subject of the discussion should be made, and a copy retained on the employee's EDRM personal file.



### **Sick Leave**

If the employee is on sick leave at the time of investigation, this does not necessarily preclude an investigation being conducted. Advice should be sought from the Advice & Support Team on how to proceed in these circumstances.

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## **26. Arranging the Hearing**

Where it is decided, following investigation, that the formal disciplinary procedures should be invoked, a disciplinary hearing should be arranged, chaired by the Hearing Officer at the correct level (refer to paragraph 6.2 above) to consider the matter. It is essential that the Hearing Officer has not had any previous direct involvement in the case.

When arranging a hearing, consideration should be given to the anticipated length of the hearing, in order to avoid lengthy adjournments.

### **Notifying the Employee**

There should be at least 14 calendar days between the employee receiving notice of the hearing and the date of the hearing. The employee should be notified, in writing, of the following:

- That the formal disciplinary procedure is being implemented and of the requirement to attend a disciplinary hearing.
- The location, date and time of the disciplinary hearing.
- Details of the alleged misconduct or circumstance and the grounds upon which the allegation is based.
- Who will conduct the hearing, the other panel members and if appropriate, advisers.
- The right of representation by their trade union representative, an official employed by the trade union or a workplace companion.
- The right of appeal against any action taken.
- The requirement to confirm their intention to attend the hearing and a warning that non-attendance may constitute a disciplinary offence.

- A warning that their actions may place their employment at risk (dependent upon the gravity of the alleged offence).
- Where the employee's representative is not available at the time proposed for the hearing, the employee may propose an alternative date which should not exceed 7 calendar days from that originally set. A further postponement may be considered provided that the proposed date is within a reasonable timeframe. (Only in exceptional circumstances should more than one postponement take place, and the hearing process may continue without the employee's representative).

Copies of any relevant documents should be enclosed (see 11. 'Disclosure' below).

This letter should be either handed to the employee, or delivered to their home address by hand or sent by first class mails and also by recorded delivery. A copy should be retained on the employee's EDRM Personal file.

### **Deferment**

It is good management practice and at the Hearing Officers discretion to allow one deferment of the hearing (usually up to 7 calendar days), due to circumstances such as illness. At a later stage it may be useful to be able to evidence management fairly / reasonably considering an employee's request for deferment.

## **27. Disclosure**

An employee facing disciplinary action has the right to know what is alleged and the case to which they have to answer. The document which the investigating officer intends to present at the disciplinary hearing is known as the statement of case and should be made available to the employee at least 14 calendar days in advance of the hearing. All allegations should have previously been presented to the employee together with an opportunity to comment on them.

In conducting the investigation, evidence may be gathered which does not support the management case or which the investigating officer does not intend to use at the

disciplinary hearing. A list of all such evidence, including a description of the contents, should be made available to the employee who may request copies.

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## 28. Right to be Accompanied

Employees have a statutory right to be accompanied at disciplinary hearings by a trade union representative, an official employed by the trade union, or workplace companion. There is no right for an employee to have legal representation at a disciplinary hearing. The chosen companion is entitled to take a reasonable amount of paid time off to fulfil that responsibility.

The companion should be allowed to address the hearing to put the employee's case, sum up the employee's case, and respond on the employee's behalf to any view expressed at the hearing. The companion has no right to answer questions on the employee's behalf, or address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.

In determining the reasonableness of time off the Council should look at the circumstances surrounding the matter such as the duration of the hearing and potential preparation time required. Consideration should also be given to the existing amount of time off provided to Trade Union Representatives for such activities. Trade Union Time Off should be requested in the normal manner – see separate guidance.

## 29. Employee Absence During the Hearing

There may be exceptional circumstances in which there may be no option but to conduct the hearing in the employee's absence, for example due to a custodial sentence, resignation prior to the conclusion of the disciplinary process, long term absence or sick leave. In these circumstances the employee must be so advised in advance and be offered the opportunity for their representative to attend the hearing in the absence of the employee.

Where the employee fails to attend a hearing without any notification, consideration should be given to conducting the hearing in their absence.

Further advice may be sought from the Advice and Support Team or Legal Services as appropriate.

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## 30. Disciplinary Hearing Process

The disciplinary hearing will be chaired by the Hearing Officer and shall proceed as follows:

- The Investigating Officer (or nominated officer) shall put the case in the presence of the employee and may call witnesses.
- Firstly, the employee, and then the Hearing Officer, shall have the opportunity to ask questions of the Investigating Officer and witnesses regarding the evidence given.
- The employee may put their case in the presence of the Investigating Officer and call such witnesses as they wish.
- Firstly, the Investigating Officer and then the Hearing Officer, shall have the opportunity to ask questions of the employee and witnesses.
- The Investigating Officer, followed by the employee shall have the opportunity to sum up their case if they so wish.
- The Investigating Officer and the employee, representative / companion and witnesses shall withdraw.
- Any advisors to the Hearing Officer should remain in the room while a decision is made.
- The Hearing Officer shall deliberate, only recalling the Investigating Officer and the employee to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return, even though only one may be concerned with the point requiring clarification.

- After careful consideration of all the information the Hearing Officer will recall both parties and state the action deemed appropriate. Where this is not possible due to the need to review details in the case, the Hearing Officer may defer the decision. No unreasonable delay should occur before reconvening the Hearing nor should the case be discussed with outside parties (unless further professional advice is required from either the Director of Legal Services or from HR).
- The Hearing Officer's decision will be confirmed in writing within seven calendar days and a copy retained on the employee's EDRM personal file and recorded on the case management log held by the Advice and Support Team.
- The Hearing Officer must make arrangements for notes of the hearing to be taken but these will not be a verbatim note. A copy of these notes will be provided to the Appeal Hearing Officer in the event of an appeal and any future Employment Tribunal.
- Neither party is allowed to electronically record meetings held as part of the disciplinary procedure. The use of recording equipment by either party without consent may constitute a further disciplinary matter. In certain circumstances, the council may permit a meeting to be recorded electronically, for example, where it is a reasonable adjustment for an employee with a disability. In such circumstances, the council will take responsibility for making the recording.

## 31. Confirming Disciplinary Action

Written confirmation of the disciplinary action will normally be issued within seven calendar days of the disciplinary hearing. The letter should either be handed to the employee or delivered to a home address by hand or sent by first class mail and recorded delivery, and include:

- The reasons for the decision
- The disciplinary sanctions and reasons for those sanctions.

- If the employee exercised the right of representation at the disciplinary hearing.
- A warning if the consequences if there is not satisfactory improvement or if further misconduct occurs.
- That a copy letter has been retained on the employee's EDRM personal file and on the register of disciplinary action and that it will be 'spent' after, for example, 12 months satisfactory conduct and performance and the expiry date of any warning.
- The employee's right of appeal and how to exercise it. Appeals against dismissal should be registered in a letter to the Director of Organisation Development and Policy who will determine who will hear the appeal. This will be an Executive Director, or a member of their Senior Management Team, normally from a different department to that in which the original hearing was held.
- Appeals against other sanctions should be registered with the appropriate Executive Director.
- The termination date of the contract in cases of dismissal.

Where the employee is being represented by a trade union or colleague, a further copy should be sent to them for information.

A record of any action taken will be retained on the employee's EDRM personal file and to the Advice and Support Team to be added on the case management log.

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## 32. Dismissal

Dismissal is the ultimate penalty in the disciplinary procedure; it should only be used where it is merited by gross misconduct or if an employee's conduct has failed to improve over time.

A decision to dismiss may only be taken by a member of the Leadership Job Family (grade 15 and above).

As an employer has an obligation to consider the appropriateness of alternatives to dismissal (e.g. transfer to another post) it is important that actions short of outright dismissal in the paragraph below are considered.

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## 33. Actions Short of Dismissal and Other Disciplinary Measures

Depending upon the circumstances, the Hearing Officer may consider dismissing the employee from their existing post, but offer alternative employment within the Council (e.g. redeployment, demotion to a lower graded post) or recommend that alternative measures to dismissal are applied (e.g. removal of incremental progression) with the consent of the employee. These may be combined with a warning.

Granting of such alternatives will be dependent upon the nature and circumstances of each case. The employee will be told that they are facing dismissal prior to being offered an alternative. If the employee rejects the offer, dismissal will normally apply.

In some cases, an employee may choose to resign before any disciplinary action can be taken. In these circumstances the process will not necessarily come to an end at that point. The Investigating Officer may wish to continue with the case and take the issue to a disciplinary hearing, whether the ex-employee chooses to take part or not.

## 34. Appeals Process

An employee may appeal against a decision on disciplinary action within 7 calendar days of receipt of written notification to them of the disciplinary action to be taken.

Where an employee appeals against dismissal:

- Notice must be given, in writing, to the Director of Organisation Development & Policy setting out the grounds on which the appeal is based. If no grounds are given these must be sought before proceeding.

- The Director of Organisation Development & Policy will reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal which will take place as soon as practicable. There will be a minimum of 7 calendar days prior to the appeal date. Any evidence or statements of case upon which either management or the employee wish to rely, shall be provided to the Appeal Hearing Officer at least 7 calendar days prior to the appeal. The employee will be entitled to attend before the Appeal Hearing Officer with a trade union representative or workplace companion if wishing to present the appeal.

Where an employee appeals against a disciplinary action other than dismissal, the appeal should be addressed to their Executive Director who will arrange for the case to be heard.

The template letters which inform the employee of their right to appeal set out the possible grounds of appeal. The letters state that the appeal will normally take the form of a review based on the grounds the employee has identified. However, witnesses previously called by management can be available for the appeal hearing if this is identified by the appellant in their letter of appeal. It is a management responsibility to arrange this.

Recall of witnesses would normally be because the employee is appealing on the grounds that the findings of the Disciplinary Hearing, based on the evidence and facts of the case, did not support the Hearing Officer's conclusions.

The appellant is responsible for calling their own witnesses. If a witness previously called by management has agreed to attend as a witness for the employee, consideration should be given as to whether in fact it would be more appropriate for the witness to be called by management.

The key thing is that at the appeal all parties are clear about what the procedure will be and are suitably prepared. A legal adviser and a HR adviser will be present at any appeal against dismissal. The employee has the right to be accompanied at the appeal. The employee will be informed of the outcome of the appeal in writing within 7 calendar days. That outcome is the final stage within the Council's procedures.

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## 35. Disciplinary Appeals Hearing

The role of the Appeal Hearing Officer shall be to consider matters raised which are related to the original hearing and its outcome. No unrelated matters shall be considered.

The Appeal Hearing Officer can confirm, amend or reject the original decision. Alternative disciplinary sanctions may be applied, but these should not be of greater severity than those originally applied.

The appellant shall be notified in writing, at least 7 calendar days in advance, of the time and place of the hearing. They shall be entitled to be represented by a trade union representative or colleague and shall be able to call witnesses and to present information and documents relevant to the case. Copies of any documents relevant to the case and intended for submission / consideration should be exchanged at least 7 calendar days in advance of the hearing.

The management statement of case would normally be presented by the original hearing officer as they assume ownership of the decision made at the original hearing and would call the original presenting officer as a witness. In some circumstances the original presenting officer may present the case and the original hearing officer would attend as a witness.

The Appeals Hearing shall be conducted as follows:

- The Appellant puts their case in the presence of the Presenting Officer and calls witnesses.
- The Presenting Officer, (the Presenting Officer or the Hearing Officer from the original case) followed by the Appeal Hearing Officer have the opportunity to ask questions of the Appellant and their witnesses.
- The Presenting Officer puts the case in the presence of the Appellant (and representative where applicable) and may call witnesses.
- The Appellant, followed by the Appeal Hearing Officer, have the opportunity to ask questions of the Presenting Officer and witnesses regarding the evidence given.

- The Appellant, followed by the Presenting Officer, has the opportunity to sum up their case.
- The Appellant and Presenting Officer withdraw.
- Any advisers to the Appeal Hearing Officer remain in the room during deliberation.
- The Appellant and Presenting Officer may be recalled by the Appeal Hearing Officer to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding that only one may be concerned with the point giving rise to doubt.
- The Appeal Hearing Officer will decide whether to allow or dismiss the appeal and will notify the decision personally. The decision will be confirmed in writing within 7 calendar days.

An appeal decision by the Appeal Hearing Officer will be final.

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## 36. Expiry of Disciplinary Action

All formal warnings shall normally expire after a period of satisfactory conduct and performance of 12 months (written and final written). For example, a warning given on 12 December 2016 would have an actual expiry date of 11 December 2017.

If, in exceptional circumstances, a Director or their nominated representative considers that the disciplinary warning period should be in excess of this, it should be determined and imposed at the time of the Disciplinary Hearing. Once 'spent' there is no provision for the warning to be extended.

Details of spent warnings shall remain on personal files but shall be disregarded for the purposes of disciplinary proceedings, except in exceptional circumstances.

Where an employee's conduct is satisfactory throughout the period the disciplinary warning is in force but lapses very soon after, or a particular pattern of behaviour emerges over time, the employee's disciplinary record should be borne in mind in deciding subsequent disciplinary action.

There may be exceptional circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. In such

circumstances it should be made very clear that the final written warning will remain on file and that any reoccurrence may lead to dismissal.

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## 37. Grievance

Should a grievance (understood to be any complaint including harassment) be raised by the employee during the course of the disciplinary process, the following action should be considered.

- Normally, where a grievance is raised and the issues relate to the disciplinary matter, these will be considered as part of the disciplinary process. In these circumstances advice should be sought from the Advice & Support Team.
  - Where a grievance is raised which is separate and unrelated to the matter in hand, the two processes can be run in parallel. Alternatively, the grievance can be considered separately at the conclusion of the disciplinary process.
  - Whilst there is no obligation to consider a grievance after an employee has left their employment, it is good practice to investigate any potential areas of dispute.
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## 38. Criminal Offences

Criminal offences committed outside the workplace will be dealt with on the facts of each case but always in accordance with advice contained in the appropriate ACAS Guidance. The main consideration should be whether the offence / alleged offence is one that makes an employee unsuitable for their type of work. Similarly, an employee should not automatically be dismissed solely because they are absent from work as a result of being remanded in custody.

A criminal offence involving dishonesty (e.g. theft or fraud as specified in the Financial Regulations), whether or not arising in the course of employment, is likely to be regarded as gross misconduct in the case of an individual employed in a position of trust concerning property and should be reported to internal Audit.

The need for investigation and a disciplinary hearing still applies in circumstances relating to criminal offences irrespective of the outcome of any criminal process.

Unless expressly instructed by the police to the contrary, it is possible to conduct an investigation and disciplinary process whilst police procedures are underway. Contact the Advice & Support Team for more advice.

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## 39. Adjustments to Procedures

If an employee is likely to be off sick on a long term basis, you should obtain a view from Occupational Health on adjustments that could be considered to enable the employee to participate in the disciplinary process.

It may be advisable to place the disciplinary procedure on hold and continue managing the absence through the attendance management procedure. In this case you should inform the employee that the matter has been put on hold pending their recovery. You should take advice from the Advice and Support Team in these cases.

If it is not possible to put the matter on hold, you may wish to consider inviting the employee to make written submissions, or to nominate a representative to attend on their behalf.

This action should only be considered when it is the only reasonable way to proceed in the particular circumstances and advice should be sought from the Advice & Support Team.