

Title

Disciplinary Policy & Procedure

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POLICY STATEMENT

The Council's aim is to deliver high quality services and it recognises that this commitment to quality must be reflected in the work and conduct of all its employees.

This will be achieved by:-

- ***promoting and valuing excellent standards of conduct and integrity among employees;***
- ***managing disciplinary matters promptly, effectively, fairly and lawfully, in accordance with the ACAS Code of Practice.***

The disciplinary procedure should be used as a management tool to improve standards of conduct in the workplace, to identify issues of poor or unacceptable conduct and lead/direct the employee towards better standards of conduct.

1. SCOPE

- 1.1 This procedure applies to all employees at Slough Borough Council. It excludes employees who are within their probationary period of service (refer to the Probationary Procedure). It also excludes the Chief Executive, Appointed S151 Officer and the Monitoring Officer and all staff employed under JNC Conditions for Chief Officers, who are covered by separate procedures. This policy does not apply to school-based staff who are under the control of Governing Bodies, however a separate policy is available for schools to adopt if they choose.
- 1.2 This policy should be read in conjunction with the Manager's Guide to Handling Disciplinary Issues Effectively and the Employee's Guide to the Disciplinary Procedure.

2. KEY PRINCIPLES

- 2.1 All matters relating to disciplinary issues or outcomes must be kept strictly confidential by managers and employees. The implementation of management recommendations should avoid reference to the name of the employee or the disciplinary proceedings from which they arose. Breaches of confidentiality relating to disciplinary issues may be treated as disciplinary allegations in their own right.
- 2.2 In applying this procedure managers are expected to:-
 - ensure that all employees are aware of the standard of behaviour that is expected of them and the action they face if they fail to meet these standards of conduct;
 - ensure, as far as is reasonably practicable, that employees are aware of any specific rules or standards of behaviour within their particular area of work which, if breached, could constitute misconduct or gross misconduct.
 - deal with matters confidentially, consistently, promptly, in line with natural justice principles and in a non-discriminatory way;
 - seek Human Resources advice at all stages of the procedure in advance of any steps being taken;

- make 'reasonable adjustments' to ensure equality of access is guaranteed for all;
- where allegations are against a trade union official, the manager must inform an appropriate official of the union and the Strategic Director of Human Resources (or their nominee) prior to formal procedures taking place, other than an informal warning;
- ensure that any employee subject to proceedings has a current copy of the procedure;
- keep adequate and accurate records of all disciplinary investigations and hearings.

2.3 In order to comply with legislative requirements, best practice and the ACAS Code of Practice, employees' have the right:-

- to be accompanied/represented by a trade union representative or work colleague at any formal meeting concerned with this procedure;
- to a minimum of 10 working days written notice of any hearing;
- to be informed of the allegations during an investigation;
- to be informed of the possible consequences if the allegations are substantiated;
- to request a reasonable postponement of a meeting if the employee or their representative is unavailable to attend for a good reason; if a postponement is necessary this will only be rearranged once within 5 working days subject to management availability;
- to state their case and have this taken into account at a disciplinary hearing before any disciplinary action is considered;
- not to be dismissed for a first offence, except in cases of gross misconduct;
- to have any recorded formal warnings given under the procedure disregarded for future action after the stated time.

2.4 If an employee resigns and formal proceedings are being considered or have started, the investigation may continue to an appropriate conclusion at management's discretion. HR advice should be taken on this and any subsequent reference requests relating to the employee.

3. PRELIMINARY INVESTIGATION

3.1 When an alleged misconduct emerges a preliminary investigation needs to be undertaken as soon as possible by the line manager or another nominated manager, and reviewed with HR. The aim of the preliminary investigation is to gather sufficient evidence to determine if a problem exists and if a formal investigation is required. If it is found that a problem exists and a formal investigation is required, then consideration needs to be given to the seriousness of this and whether suspension needs to take place. The preliminary investigation may be an adult or child protection strategy meeting involving a number of agencies. The preliminary investigation may recommend an alternative resolution to a formal investigation.

4. SUSPENSION

4.1 Suspension, or temporary removal of the employee from the workplace, may be necessary in serious cases where it would be detrimental to allow the employee to remain at work pending completion of an investigation and any disciplinary hearing,

as there may be a potential risk to the employee, colleagues, or other individuals, or risk to the investigation itself. Slough Borough Council considers that suspension is not a sanction in itself and is a neutral act.

- 4.2 If it is necessary to suspend an employee, formal approval should be taken from the Strategic Director of the employing directorate or nominated deputy in consultation with Human Resources. The suspension must be confirmed in writing at the time of the suspension or within 5 working days. As far as possible it should be agreed with the employee what will be communicated to the employee's colleagues regarding the reason for the absence from the workplace.
- 4.3 A Contact Officer will be nominated who will be an employee with no involvement in the case who will provide the employee with a communication link with the council should the suspended employee need to contact members of staff during the suspension. This is a neutral role and the Contact Officer may be asked to pass on information regarding the progress of the investigation, as well as any update on team or organisational changes.
- 4.4 Consideration should be given to whether there is a viable suitable alternative to the suspension, e.g. a temporary transfer to another location or post. Employees will normally be suspended in cases of potential gross misconduct but depending on the nature of the gross misconduct it may be possible to find alternative work as suspension should be avoided if at all possible. The employee will retain the pay they would have received if at work during the period of suspension unless they have refused suitable alternative employment within the Council.
- 4.5 Suspension must be subject to regular review, and may need to continue beyond the period of the investigation. This must be confirmed in writing to the employee. The investigating officer should update the employee regularly on progress towards completion of the investigation, and ensure the Contact Officer is updated similarly.

5. INFORMAL STAGE

- 5.1 If conduct is not satisfactory and is minor in nature then a manager can give a verbal warning, that is not a disciplinary warning. This should be discussed in a private meeting between manager and employee. The format of the meeting should include
 - the manager should state the conduct that is not satisfactory
 - discussion of any reasons for the unacceptable conduct
 - the manager should state clearly the conduct expected, including any timescales if appropriate
 - the manager should state that if the conduct does not improve to the standard required, then the manager may initiate disciplinary proceedings
 - any commitment from the manager to support the required improvement in conduct.

This should be confirmed in writing to the employee. If the employee disagrees with the verbal warning they may put their objection in writing within 10 working days of receipt of the letter and this will be kept on their personal file along with the warning.

This warning will normally be disregarded after 12 months.

6. INVESTIGATIONS

- 6.1 Before taking any disciplinary action an appropriate investigation must be undertaken. Depending on the circumstances, seriousness or complexity of the case, the line manager, or another manager (who could be from another directorate) will undertake the investigation, and will be referred to as the Investigating Officer. HR will support the Investigating Officer as appropriate. Investigating Officers should have received Slough Borough Council approved training in Handling Disciplinary Matters.
- 6.2 In some circumstances the allegations will arise from repeated minor misconduct and will be dealt with by the line manager, one to one, up to a point at which they should be investigated by an independent manager in order that management practices/procedures in the section can also be considered. The same may apply to serious misconduct or complaints where an independent Investigating Officer may be required.
- 6.3 It is recommended that for complex investigations a Human Resources representative is part of the Investigating team, who will support the Investigating Officer and attend all interviews in order to give a fuller and through consideration of any evidence and issues arising from the investigation.
- 6.4 The Investigating Officer will:
- establish the facts of the case and gather evidence;
 - interview the employee and any appropriate witnesses;
 - ensure individuals being interviewed are aware of the purpose of the investigation and that any information obtained may be used in the course of any subsequent disciplinary hearing;
 - ensure the employee under investigation is:
 - notified as quickly as possible in writing
 - given sufficient detail so that the allegation(s) being investigated can be fully explored
 - provided with a copy of the disciplinary policy and procedure
 - given an opportunity to offer an explanation and state their case;
 - conclude the investigation, taking HR advice at this stage.
- 6.5 At the end of the investigation stage, the Investigating Officer should :
- decide whether there is no case to be answered and drop the allegations
 - deal with them informally (there may be an alternative solution i.e. management recommendations, that does not lead to formal disciplinary, but may be dealt with informally by line manager or via another policy)
 - recommend if there is a case to answer at a formal hearing.

For every case this decision should be taken in consultation with HR).

If there is a case to answer at a formal hearing the Investigating Officer should:

- review the initial allegations, amend the allegations with any appropriate changes arising from the investigation and decide if the allegations constitute misconduct or gross misconduct. Examples of actions, which may constitute misconduct and

gross misconduct, are given at Appendix 1. This is not an exhaustive list and is dependent upon the circumstances of the case.

- prepare a written report on the outcome of the investigation and present the case, at the formal hearing.
- Make any additional management recommendations if appropriate to be considered separate to the disciplinary hearing, confirming details of who and how the recommendations will be reviewed.

7. NOTIFICATION OF HEARING

7.1 If as a result of the investigation there is a case to answer a Disciplinary Hearing will be convened to consider the allegations. This decision must be taken in consultation with Human Resources.

7.2 Where it has been decided to proceed to a formal disciplinary hearing the employee will be advised in writing by the Investigating Officer and given at least 15 working days written notice. Shorter notice of the hearing may be mutually agreed. In exceptional circumstances, a deferment where further time is required to prepare for a hearing will not be unreasonably refused, but such a deferment will not normally exceed 5 working days.

7.3 The letter should include as appropriate:-

- a) Marked Private & Confidential
- b) Date, time and place of the hearing;
- c) The specific allegations against the employee;
- d) The names of the members of the Panel conducting the hearing;
- e) The name of the Investigating Officer presenting the management case;
- f) Copies of all written evidence which will be referred to by management side;
- g) Names of any management witnesses who will be attending in person at the hearing;
- h) The employee's right to be accompanied by a Trade Union representative or work colleague (a second copy of the letter should be provided for use by the representative);
- i) Reference to the employee's right to call his/her own witnesses, present written submissions and witness statements; this information together with a list of the names of any witnesses must be supplied in writing to the delegated manager at least 5 working days prior to the hearing;
- j) A copy of the disciplinary policy and procedure and the notification of the disciplinary actions that may be taken by the panel (e.g. if dismissal could be considered);
- k) The requirement that the employee should confirm his/her attendance at least 5 working days prior to the hearing;
- l) Consequences of non-attendance (i.e. that the hearing can proceed without the employee).

7.4 Whenever possible, the letter should be hand delivered to the employee, where this is not possible (e.g. employee is suspended), the letter should be sent to the home address by recorded delivery.

7.5 The suitability of the venue and arrangements for the hearing should ensure equality of access, for example the hearing may need to be held at a specific venue or location that is away from the workplace to ensure confidentiality.

8. DISCIPLINARY HEARINGS

The Disciplinary Panel

- 8.1 The Panel hearing the case will normally consist of three officers:-
- a nominated manager to Chair the hearing (normally from the employee's directorate)
 - another manager independent from the section or service concerned
 - a Human Resources representative.

The Chair has discretion to call on technical or specialist officers to advise the panel (e.g. audit / legal).

- 8.2 The authority to chair a disciplinary hearing will be dependent on the potential warning that may be applied and the nominated manager will be as follows:

Disciplinary action up to and including dismissal	Assistant Director or above
Disciplinary action up to final written warning	Head of Service or above

All members, and as a minimum the Chair of the Panel, must have received Slough Borough Council approved training in Handling Disciplinary Matters.

Witnesses

- 8.3 Witnesses should only be called where relevant. They should only be present to give evidence and to be questioned. Witnesses will be warned that they should keep matters confidential and should not collude with any other witnesses. Details of proposed witnesses should be communicated to either party in advance of the hearing, as indicated above, and witness statements should be provided by both sides, wherever possible. There is guidance for witnesses in the Manager's Guide to Handling Disciplinary Issues Effectively and the Employee's Guide to the Disciplinary Procedure.
- 8.4 Where the employee who is the subject of the disciplinary hearing calls witnesses it is the responsibility of the employee to arrange their release from work so that they can attend. It is the employee's responsibility to obtain the witnesses' agreement to speak on his/her behalf and to bring any relevant material.

Conduct of Disciplinary Hearing

- 8.5 The Council has a guide for the conduct of the hearing, which is attached as Appendix 3. However, the Chair of the Panel has the discretion to vary this to ensure fairness in the proceedings. In accordance with the order laid out in the guide, the Investigating Officer and employee are invited to present their cases in relation to the allegations and call witnesses. The manager, employee and panel are able to ask questions of the Investigating Officer and employee and any witnesses.
- 8.6 A disciplinary hearing panel may receive a request to present information or evidence to the panel during the disciplinary hearing, that has not previously been seen by either the Investigating Officer or by the employee. The panel should consider the reason why this information was not made available prior to the

hearing, its relevance to the proceedings, and whether it is reasonable to include the reviewed information. The panel should decide whether the information should be included, or whether the hearing should be adjourned to permit additional investigation to take place.

- 8.7 It may be necessary for brief adjournments to take place during disciplinary hearings. Either party may request an adjournment. The Chair will consider these requests. The panel's deliberations take place in private.
- 8.8 The Chair of the Panel presents the decision. This will normally be given verbally to both parties. The decision of the Panel should be confirmed in writing by no later than 5 working days after the end of the hearing, together with information on the right to appeal. A copy of the outcome letter will be retained on the individual's personal file for the length of time stipulated in the letter. Notes of the hearing will be taken to support the panel. A copy of the notes of the hearing, but not the panel deliberations, will be agreed by the panel and given to the employee after the hearing. The notes are for information only as record of the event and should not be taken as full and formal minutes of the meeting.
- 8.9 The panel may decide
- there is no case to answer,
 - to refer the case for further investigation,
 - to take disciplinary action, in the form of a warning or sanction, and additionally,
 - to make management recommendations (that may include allegations/investigation against other employees) along with the details of who and how the recommendations will be reviewed.
- 8.10 The severity of the sanction imposed will relate to the gravity of the misconduct and before reaching a decision consideration should be given to:-
- a) the gravity of the offence and the evidence given at the hearing;
 - b) the employee's explanation;
 - c) whether, on the balance of probabilities (i.e. that it has more likely to have happened than not) the Panel considers the allegation(s) has/have been proven;
 - d) the employee's disciplinary record and general service;
 - e) any mitigating circumstances;
 - f) whether the proposed penalty is reasonable in all the circumstances;
 - g) the penalty applied in similar cases in the past, although each case must be treated on its individual circumstances
- A checklist to assist in decision taking is attached at Appendix 4.

9. DISCIPLINARY ACTION

The following formal actions are available:

- 9.1 **First Formal Written Warning**: This is the lowest form of formal warning and is generally appropriate for minor offences. The warning should contain details of the misconduct and the improvement required in a given timescale, if appropriate. The warning should be given in writing indicating that a First Formal Written Warning has been issued and should be kept on the employee's file. This will, normally, be disregarded for disciplinary purposes after 6-12 months.

- 9.2 **Second Formal Written Warning:** Generally, appropriate for serious offences or where there is an accumulation of minor offences. The warning should contain details of the misconduct and the improvement required in a given timescale, if appropriate. The warning should be given in writing and should be kept on the employee's file. This will normally be disregarded after 6-12 months. The Panel may impose a longer time period for the warning but the reason for this should be made clear to the employee and be appropriate to the circumstances of the case.
- 9.3 **Final Formal Written Warning:** Generally, appropriate for serious offences or where there is an accumulation of minor offences and a previous written warning is still "live". However, in very serious cases, the final warning may in fact be the first warning issued. The warning should contain details of the misconduct and the improvement required in a given timescale, if appropriate. Employees should be advised that any further misconduct would result in dismissal. The warning should be given in writing to the employee with a copy placed on the employees' file. This will, normally, remain "live" for a period of 12 months. The Panel can impose a longer time period for this warning but the reason for this should be made clear to the employee and must be reasonable according to the circumstances of the case.
- 9.4 **Transfer to a lower graded post or differing terms & conditions:** This should not be the norm but is available to be used in serious cases in addition to written warnings. The downgrading should be proportionate to the gravity of the offence and should be considered only after seeking Human Resource and, as necessary, Legal advice. The Strategic Director of the directorate should formally approve this sanction before it is communicated to the employee. In these circumstances, no salary or wage protection rights will apply.
- 9.5 **Impose a financial penalty or other requirement:** This includes, e.g., making good a financial loss suffered by the Council; taking back money falsely claimed by the employee; the prevention of further incremental progression or withholding an annual increment or withholding a benefit or privilege. This can be done either independently of or in addition to other formal sanctions on the basis of the gravity of the offence.
- 9.6 **Dismissal:** An employee's contract of employment can be terminated in the following instances:-
- (i) if a further instance of misconduct occurs during the currency of a Final Formal Written Warning; and/or
 - (ii) for a first incident of gross misconduct.

Dismissal for misconduct will be by contractual notice or with pay in lieu of notice. Dismissal for gross misconduct will normally be effected immediately as gross misconduct is misconduct of such a serious and fundamental nature so that it breaches the contractual relationship between the employee and the Council. In the event that an employee commits and admits an act of gross misconduct, the Council will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice. The letter to the employee should confirm the last day of service and any payments or deductions due.

9.7 A note explaining the disciplinary sanctions further is attached at Appendix 4.

9.7 **Applicability of Warnings**

Warnings may be applied in sequence. However, the Panel has the discretion to apply the level of warning warranted by the seriousness of the case. In circumstances where an employee is subject to the application of both the capability and the disciplinary procedures, warnings given under the Council's disciplinary procedure that are still current may also be taken into account when deciding on appropriate action under the Council's capability procedure and vice versa. The manager should review performance against standards expected and may decide prior to the time of expiry if it is appropriate to extend the warning on file.

10. APPEALS

- 10.1 An employee has a right of appeal against any formal sanction issued after a hearing that has been convened under this procedure. An employee wishing to appeal must submit their grounds for appeal in writing to their Strategic Director to be received within 10 working days of the date of receipt of the notification letter that confirms the disciplinary action to be taken.
- 10.2 The letter should state that he/she wishes to appeal on one or more of the following grounds:-
- the decision was based on evidence that did not support the conclusion;
 - a failure to follow procedure had a material effect on the decision;
 - proper account was not taken of any matters of fact referred to at the original hearing;
 - the action taken was too severe or inconsistent with previous decisions;
 - where new relevant evidence relating directly to the original allegation(s) has become available.
- 10.3 Appeals against dismissal are heard by the Employment Appeals Sub-Committee, and appeals against action less than dismissal are heard by an Officer Appeals Panel. The Strategic Director in consultation with HR will make the necessary arrangements for the appeal to be heard.
- 10.4 **Employment Appeals Sub-Committee**
The Employment Appeals Sub-Committee consists of three elected Members made up from members of the Employment and Appeals Committee. A separate procedure exists for appeal hearings for this Sub-Committee.
- 10.5 **The Officer Appeal Panel**
The Officer Appeal Panel hears appeals against disciplinary action short of dismissal. It will consist of three officers:-
- a nominated manager to Chair the hearing;
 - another manager independent from the section or service concerned;
 - a Human Resources representative.
- The panel has discretion to call on technical or specialist officers to advise (e.g. audit / legal).
- Appeal Hearing Arrangements for Officer Appeals**
- 10.6 The arrangements for Officer appeals are that the employee will be given at least 10 working days' written notice of the appeal hearing which should be heard as soon as possible. This will, normally be, within 15 working days of the employee receiving the letter confirming the outcome of the original disciplinary decision.

The letter should include as appropriate:-

- a) Date, time and place of the hearing;
- b) That the hearing forms part of the Disciplinary Policy and Procedure;
- c) The employee's right to be accompanied by a Trade Union representative or work colleague (a second copy of the letter should be provided for use by the representative);
- d) The names of the Panel members conducting the hearing;
- e) The name of the person presenting the management case;
- f) Copies of relevant paperwork, including a copy of the Disciplinary Policy and Procedure;
- g) Name(s) of any management witnesses who will present evidence at the hearing;
- h) Reference to the employee's right to call his / her own witnesses, present written submissions and witness statements; This information together with a list of names of witnesses to be called should be supplied at least 5 working days prior to the hearing; the written submission should include any papers being referred to;
- i) That the employee should confirm their availability to attend at least 5 working days prior to the hearing.

10.7 The Council has a model process for the conduct of the Officer appeal hearing, which is attached as Appendix 2. However, the Chair of the Appeals Panel has the discretion to vary this to ensure fairness in the proceedings.

10.8 It may be necessary for brief adjournments to take place during disciplinary hearings. Either party may request an adjournment. The Chair will consider these requests. The panel's deliberations take place in private.

10.9 The Chair of the Panel presents the decision. This will normally be given verbally to both parties. The decision of the Panel should be confirmed in writing by no later than 5 working days after the end of the hearing, outlining the main issues considered and the decision reached. The employee should be informed that there is no further internal right of appeal. A copy of the outcome letter will be retained on the employees' personal file.

11. OUTCOME OF APPEAL PANELS

11.1 The panel may decide to

- uphold the appeal and dismiss any disciplinary sanction;
- substitute a different disciplinary sanction providing this is not more severe than the original one;
- dismiss the appeal and uphold the original decision.

12. RELATIONSHIPS WITH OTHER PROCEDURES/PROCESSES

Other Agencies

12.1 Certain acts of misconduct or allegations may lead to an employee being investigated under a different procedure/process such as Child Protection, Adult Protection or a criminal investigation. Investigation under the disciplinary procedure may take place simultaneously, unless the Council decides otherwise as a result of the request of another agency.

12.2 A determination may be made at a disciplinary hearing prior to the outcome of other investigations being known. For example, whether the Council takes action in

respect of a potential criminal matter is not dependent on the outcome in court. If exceptionally, it is sensible to delay a disciplinary hearing pending the outcome of another agency's investigations then the employee will be informed. If the employee is suspended, he or she will be told that the suspension will last until the outcome is known and it will be reviewed.

Criminal Offences

- 12.3 A criminal offence does not necessarily require internal disciplinary action to be taken. It depends what impact, if any, the employee's action has on his/her employment with the Council. Managers should take advice from Human Resources and Legal Services in these instances.
- 12.4 Some workplace disciplinary offences may also be criminal offences such as theft, fraud, or sexual offences. In these instances, there may be a duty to inform the police. Advice from Human Resources and Legal Services should be sought before disciplinary proceedings are embarked on. The Council's Audit Section must be informed if the case involves any financial irregularities.

Grievances

- 12.5 Where an employee subject to the disciplinary procedure raises a grievance advice should be sought from Human Resources. The employee must submit the grievance form to their line manager, or manager's manager if their line manager is the subject of the grievance, who will determine the appropriate route for their grievance to be investigated.
- 12.6 The following principles need to be considered:-
- i) if the grievance is raised during the course of a disciplinary process and is related to the case/allegations then it should be considered as to whether it forms part of the disciplinary and can be dealt with by the investigating officer and considered at the hearing, or whether the grievance should be investigated separately before concluding the investigation. If the grievance is about another unrelated matter then the grievance procedure may be invoked and run concurrently (this would not impact on any outcome of the disciplinary process as that would be dealt with on its own merit);
 - ii) generally, an informal grievance would be dealt with during the investigatory stage, a formal stage grievance would be considered at a disciplinary hearing
 - ii) if the matter does not progress to a disciplinary hearing any outstanding grievance may be considered through the grievance procedure in the usual way.

Capability

- 12.7 In cases where there are both capability or performance issues and a neglect of duty or other misconduct then the Disciplinary Policy and Procedure will apply, otherwise refer to the Capability Procedure.

Appendix 1

EXAMPLES OF MISCONDUCT AND GROSS MISCONDUCT

Examples of misconduct and gross misconduct that may lead to disciplinary proceedings include, but are not limited to, the following:

Misconduct

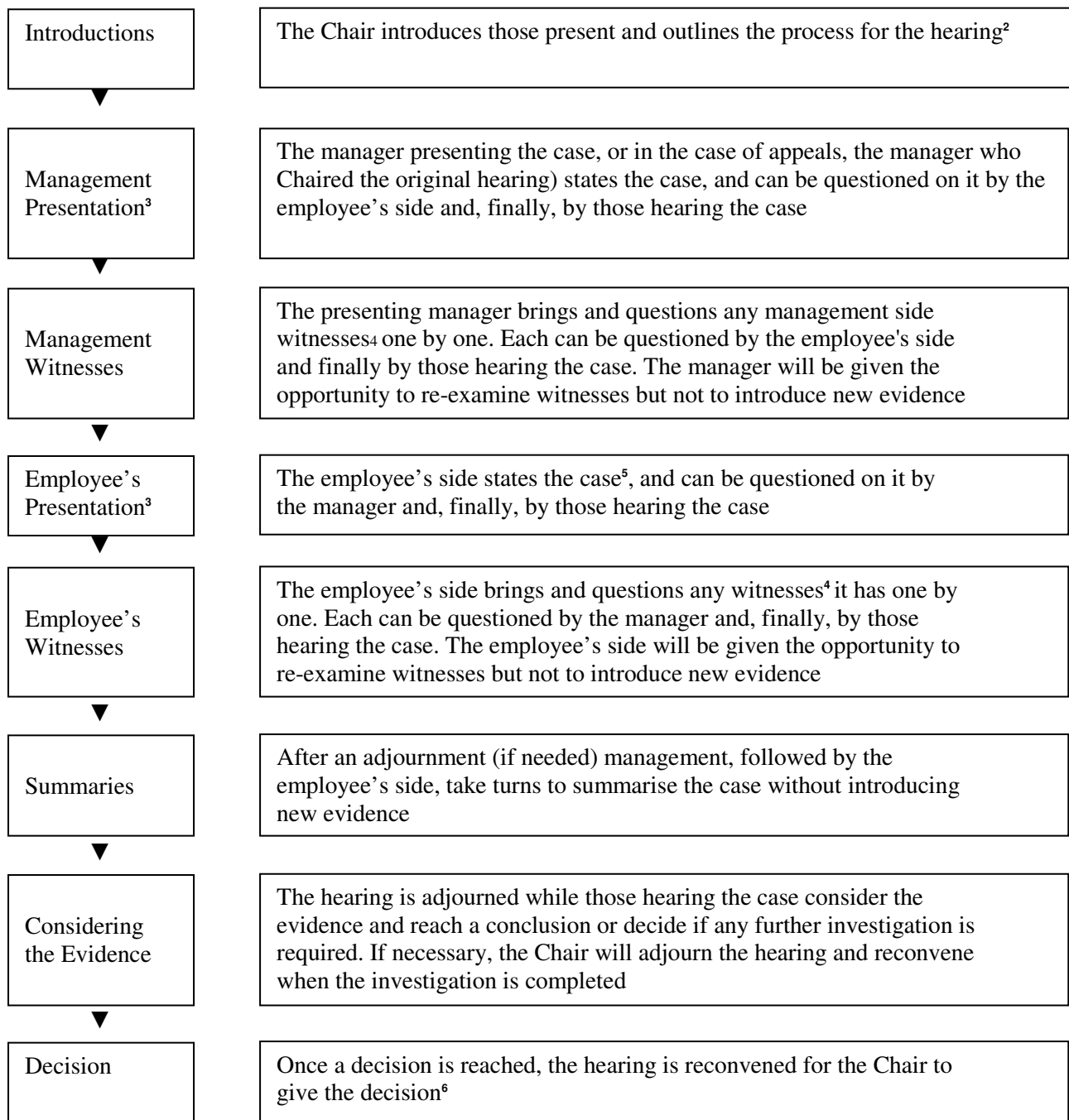
- any actions which could bring SBC into disrepute or which impact negatively on the employee's position (this may include actions outside of work);
- absence from duty;
- unauthorised employment;
- neglect of duty;
- racial, sexual, religious, disability and age discrimination;
- breaches of the Council's Dignity at Work Code of Practice including harassment and bullying;
- offensive or abusive behaviour;
- drunkenness or being under the influence of drugs other than for medical purposes.
- refusal or deliberate failure to follow a reasonable management instruction;
- sleeping on duty;
- improper disclosure of information or breach of confidentiality;
- breaches of health & safety;
- damaging or misusing or losing by theft Council property;
- refusal or failure to comply with any SBC policies and procedures and codes of conduct, including those governing the use of information technology, commercial practices, financial regulations, fraud and corruption.

Gross Misconduct

- theft including fraud and deliberate falsification of records; this may include such things as timesheet and expense claims' irregularities and undertaking paid private work at a time the employee should be working for the Council;
- serious breaches of safety rules;
- serious incapability through alcohol or use of illegal drugs on duty, buying or selling drugs on Council premises;
- fighting or other physical assault, threats of violence;
- maltreatment or neglect of those in Council care;
- serious acts of discrimination, bullying or harassment and breaches of the Dignity at Work Code of Practice;
- disclosing any serious matter which should be kept confidential (or concealing it if it should be reported);
- serious breaches of Council's codes of conduct, standing orders or financial regulations;
- sleeping on duty in a care environment unless expressly permitted;
- improper use of an employee's position for their own or another's private advantage, or an attempt to do so;
- bringing the Council into serious disrepute;
- gaining employment with the Council by misrepresentation, lies or deception;
- serious deliberate damage to property;
- breaking a law at (or even away from) work which makes employees unfit for the work they do, or which may seriously damage the Council's reputation.

Appendix 2

MODEL PROCESS FOR DISCIPLINARY/OFFICER APPEAL HEARINGS¹



¹ Notes should be taken of the hearing and decision. No audio recording of the hearing will be allowed. Notes need not be verbatim but should provide a record of the relevant evidence produced by both sides as well as the final decision. The notes are for the Council's records only but may be made available to the employee. It is the Chair's responsibility to arrange a note-taker.

² All parties are entitled to request an adjournment at any stage in the proceedings to consider their position. The Chair will decide such requests, including the length of the adjournment.

³ For appeal hearings the employee's presentation and any employee witnesses are heard before the management presentation and any management witnesses.

⁴ Witnesses only remain in the room while giving evidence and answering questions. The Panel should advise the witnesses when they can be released.

⁵ Where an employee's representative (who may only be a work colleague or trade union representative) speaks on the employee's behalf, the manager and those hearing the case still have the right to question the employee directly.

⁶ Exceptionally the decision may be relayed in writing within 5 working days of the hearing.

Appendix 3

CHECKLIST FOR DECISION TAKING AT DISCIPLINARY HEARINGS

The list below is intended to help managers structure their thoughts to help ensure fairness of process and assist in reaching a fair decision.

Before reaching a decision consider the following questions:-

- has there been as much investigation as is reasonable?
- has the employee had reasonable notice of the allegations prior to the hearing?
- has the Council's disciplinary procedure been applied reasonably?
- has sufficient regard been given to any explanation offered by (or for) the employee?
- can it be genuinely believed that the employee has committed the alleged misconduct?
- is it reasonable to have this belief (on the balance of probabilities) given the evidence heard?
- is the misconduct serious enough to justify the sanction being considered?
- has the employee (and the manager) had full opportunity to present any points to consider in mitigation?
- has due consideration been given to mitigation?
- what would be the consequences for the Council of taking/not taking the action contemplated?
- is the decision within the band of reasonable responses of a reasonable employer?
- is the decision in line with how similar misconduct has been treated by the service/Council in the past, and if not can the difference be justified?

Balance of probabilities

Decide the facts of the case on the balance of probabilities. You do not have to be sure of what happened – you are entitled to prefer one version of events over another provided that you think it more likely.

Ask yourself:-

- which version of events do I genuinely believe?
- why do I prefer the version I do?
- is my preference reasonable, what evidence supports it?
- could I justify it to others?

Once you have decided that the employee has broken the rules or committed the offence, the case is substantiated. You should then consider separately what sanction should apply, taking account of such things as how similar offences have been treated in the past, mitigating circumstances etc.

Appendix 4

DISCIPLINARY SANCTIONS

Warnings

The level of warning will depend on the seriousness of the offence, whether there are previous warnings on file that are current and the extent of any mitigating circumstances. While warnings may be applied in sequence, there is discretion to apply the level of warning warranted by the seriousness of the case; e.g. a first and final warning may be given in cases of very serious misconduct. It is not permissible for an employee to have more than one current final warning on file.

Warnings will normally remain operative for a period of 6-12 months although the manager issuing the warning has the discretion to specify an alternative period at the time it is issued should it be considered there are special circumstances, which warrant it. A lesser period may be considered for some minor misconduct whereas very serious cases may warrant a warning remaining active for a longer period especially if dismissal was a possibility or if an employee developed a pattern of 'reoffending' following the expiry of a previous warning. The length of warning should be related to the time need to improve to the standard of conduct required. Warnings related to breaches of health and safety may be extended if appropriate.

Other Penalties

These should not be seen as the norm but are available to be used in serious cases in addition to written warnings where it is considered the offence justifies it and it is allowed for under the employee's contract. These should be used with discretion taking account of contractual obligations and Human Resources advice. For example, compulsory transfer to another post on a lower grade is a 'dismissal' from the original post and should only be considered if dismissing the employee could have been justified had the alternative post not been available and offered. Deductions from pay to cover damage or other loss to the Council and its employees must be done lawfully in consultation with the employee about when/how the pay is to be deducted. Such penalties should not be considered without seeking the agreement of the relevant Strategic Director (or nominated officer) and seeking HR advice.

Pay Arrangements following Dismissal

Whether an employee is entitled to any paid notice depends on the reason for dismissal:

- gross misconduct – effective immediately on day decision given, no entitlement to notice or to pay in lieu of notice.
- misconduct following a final warning – contractual notice or pay in lieu of notice

The effective date of dismissal will be the last day of paid employment in both cases.

While in theory, an employee dismissed for misconduct could work their notice entitlement, pay in lieu is more normal in these circumstances.