

DISCIPLINARY POLICY AND PROCEDURE

Policy Schedule		
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Version Control

The first draft of the policy should be labelled '**Draft version 0.1**' and dated. Further draft versions should be labelled '**Draft version 0.2, 0.3**' etc. and dated.

The final original version of the policy may be labelled '**Final Version 1.0**' and dated. This version will be submitted for the appropriate approvals.

If amendments are necessary following EAC then subsequent versions of the policy may be labelled '**Draft Version 1.1, 1.2**' whilst being drafted and reviewed and the version re-submitted for approval should be labelled '**Final Version 2.0**' and dated.

If revisions are required subsequently and following implementation of policy, version should be labelled as follows –

Example

Final Version 2.1 – reason for change (eg legal update)

Version Control

Version	Author	Date	Changes
Draft 1.1 – 1.3	MH	July 20	ACAS guidance added and timescales revised re notice for hearings/deadlines and new organisation job titles, suspension advice added
Draft Version 1.4	MH	August 20	ACAS guidance added and new organisation job titles, suspension advice added. To CCF for approval.
Final V2	MH	October 20	For EAC approval

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POLICY STATEMENT

The Council promotes and expects high standards of behaviour and conduct for all employees and takes appropriate corrective action where those standards are not met. The Council's Disciplinary Policy and Procedure provides a framework for ensuring that employees are made aware of unacceptable conduct and for developing ways of correcting any such issues when required.

Disciplinary rules and procedures are designed to assist in the standard setting for conduct and behaviour. It is important that managers and employees understand them.

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 on disciplinary and grievance procedures and relevant legislation including the Employment Act 2008.**

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 <http://insite/media/1255/disciplinary-policy-for-directors-and-ads.doc>. This policy does not apply to school-based staff who are under the control of Governing Bodies or to Volunteers and Agency workers.

2. KEY PRINCIPLES

- 2.1 All records will be kept confidential and retained in accordance with the Data Protection Act 2018. All matters relating to disciplinary issues or outcomes must be kept strictly confidential by managers and employees unless relevant to the investigation process. Data collected as part of the investigation stage and any subsequent stages of disciplinary action must be held securely and accessed by and disclosed to individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported under the Council's Data Protection Policy. It may also constitute a disciplinary offence which will be dealt with under this disciplinary policy and procedure.
- 2.2 Where any deficiencies in the performance on the part of the employee arise from a lack of aptitude or skill rather than any willful or negligent failure to carry out their duties the Managing Performance Policy and Procedure will apply.

- 2.3 In exceptional circumstances where a member of staff with a disability requires additional support, reasonable adjustments will be made, for example their support worker can accompany them. Their role is to provide moral support and advice as required.
- 2.4 Separate guidance exists for dealing with problems arising from alcohol dependence or substance abuse (Drugs and Alcohol Policy <http://insite/media/1337/drug-alcohol-policy.pdf>). However, significant problems of misconduct arising from behaviour whilst under the influence of alcohol or drugs, particularly in cases of failure to engage with support offered, may also be dealt with under this procedure.
- 2.5 An employee who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover ups will have the right not to be dismissed or victimised for speaking out on such malpractice. Please see the Council's Whistleblowing Policy (<http://insite/media/2808/confidential-whistleblowing-code.pdf>).
- 2.6 Council employees are expected to maintain standards of conduct both at work and outside of work. The Council's Code of Conduct (and relevant professional Codes of Conduct) expands further on some of these standards (<http://insite/media/2809/code-of-conduct-for-employees.pdf>). Examples of misconduct are listed in Appendix 6.
- 2.7 Audio or visual recordings at any stage of the Disciplinary Procedure will not be permitted.
- 2.8 **Referrals to Professional Bodies and the Disclosure and Barring Service** Where a post requires registration with a Professional Body e.g. Health & Care Professions Council (HCPC), the Council is required to advise the Body of any concerns related to conduct or competence. Contact with the professional body can be made before, during or after any actions taken, depending on the circumstances of the case. In relation to professionals registered with the HCPC and their Fitness to Practice, HCPC will always be notified in the case of any dismissals, resignations during a disciplinary process or downgrading to a level below that of a registered health professional e.g. Assistant. The HCPC recommend that health and care professionals take an active part in managing their own fitness to practice. Where a registrant has an understanding of their impaired fitness to practice they should speak to their manager or seek advice from the HCPC at the earliest opportunity.
- 2.9 There may be a need to refer the circumstances of a particular case to other professional bodies, e.g. The Teaching Agency
- 2.10 The Council has a legal duty to refer information to the Disclosure and Barring Service (DBS) where it has removed an individual from working or volunteering or has concerns in respect of an individual's contact with children or vulnerable adults. For further information see the Council's Policy on the Referral to the DBS (<http://insite/media/2234/appendix-h-referrals-to-the-dbs.pdf>)

PROCEDURE

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 the People Service HR Business Partnering Team. The aim of the preliminary investigation is to gather sufficient evidence to determine if a problem exists and if a formal investigation is required. In most cases the first step is for the manager (or their nominee) to make brief preliminary enquiries to assess whether further action may be required. This may include meeting with the employee and asking them for a response on the matter. If a preliminary meeting is to be held with the employee it is important to inform them that they can bring a trade union representative or work colleague or support worker to the meeting to accompany them if they so wish. If the employee confirms that they are a member of a recognised Trade Union every effort should be made to have a trade union representative present. Unavailability of the representative will not however delay the meeting.
- 3.2 Where application of suspension or formal disciplinary action is being considered against a Trade Union Official or Representative, the case must first be discussed with a Senior Trade Union Representative or Regional Official in accordance with the ACAS Code of Practice.
- 3.3 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 advise the police. Advice from the HR Business Partnering Team should be sought before disciplinary proceedings are embarked on. The Council's Audit Section must be informed if the case involves any financial irregularities.
- 3.4 In certain cases (e.g. where current and ongoing fraud is suspected) it may be appropriate not to inform the employee at this stage in order to allow necessary observations and collection of evidence to take place. Under statutory provisions, covert surveillance may be conducted though this will require the approval of designated senior officers in accordance with the Regulation of Investigation Powers act 2000 (RIPA). Advice must be sought from the Associate Director for Regulatory Services and the Council's Monitoring Officer.
- 3.5 The preliminary investigation may recommend an alternative resolution to a formal investigation. Please refer to Section 6 of this Policy, Informal Action.
- 3.6 If no further action is taken all information gathered as part of the preliminary investigation will be destroyed in accordance with the requirements of the General Data Protection Regulations.
- 3.7 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. In cases of potential gross misconduct 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. Please refer to Section 5 of this policy, Suspension.

3.8 **Investigations involving multiple employments / working**

It is possible for employees to have more than one employment relationship with Slough Borough Council. Following a concern being raised, an assessment of the situation will be carried out to consider whether the concern is relevant to one or both/all of the employment relationships. This assessment should be reviewed throughout the investigation to ensure the situation is managed appropriately.

4. **SAFEGUARDING**

4.1 Allegations concerning those working with children should be dealt with under the Local Safeguarding Children Board (LSCB) guidance, which sets out how to manage allegations which concern both adults at risk and children through liaison between the LSCB Local Authority Designated Officer (LADO) and the Adults Local Authority Designated Officer (ALADO).

4.2 Disciplinary investigations need not wait until after the resolution of any safeguarding concerns (unless there are on-going police enquiries in which case the HR Business Partnering Team will advise when the investigation should commence). Please refer to Section 13 of this Policy.

4.3 **Resignation during investigation**

It is important that every effort is made to reach a conclusion in all cases of safeguarding allegations that have a bearing on the safety or welfare of children or vulnerable adults. If an employee tenders their resignation or refuses to co-operate with the process, this will not prevent the investigation into a safeguarding allegation continuing in line with safeguarding procedures. Wherever possible, the person should be given a full opportunity to respond to the safeguarding allegation and make representations about it. In respect of cases other than safeguarding, the employee's resignation will be considered and accepted if there are no underlying reasons to do otherwise. Any future reference request provided by the council will state the reason for leaving.

4.4 **Absence of employee at Hearing**

In cases where it is necessary to proceed with a hearing in the absence of the employee and it is known this will be necessary in advance of the hearing, the employee will be offered the opportunity to make additional written submissions to the hearing and/or allow their representative to make statements on their behalf at the hearing. Where non-attendance is not known in advance, after consideration of the circumstances, if postponement is not considered appropriate, the hearing will proceed with consideration of any written submission from the employee already received and, where requested and available, appropriate contributions from their representative.

4.5 Similar consideration as outlined above will be given to the need to proceed with investigatory processes in the employee's absence, where this is appropriate.

4.6 If the case is a safeguarding matter, managers should refer to the Safeguarding Policies for Children and Adults. It may be necessary to conduct a hearing in their absence and reach a judgement about whether the safeguarding allegation can be regarded as substantiated on the basis of all the information available. In these

circumstances, the hearing panel may also make a decision regarding the sanction that would have been applied had the employee remained in employment.

5. SUSPENSION

- 5.1 Suspension, or temporary removal of the employee from the workplace, may be necessary if there is a serious allegation of misconduct and 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. It should be made clear that the suspension is temporary, not an assumption of guilt and not a disciplinary sanction.
- 5.2 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.
- 5.3 If it is necessary to suspend an employee, formal approval should be taken from the Executive Director of the employing directorate or nominated Associate Director in consultation with Human Resources. Please see the Suspension Decision Form. 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. The employee should be asked to confirm their full contact details and e-mail address if available.

Please refer to the Suspension Conversation Checklist.

- 5.4 A Contact Officer will be nominated by the Commissioning Manager. Please also refer to Appendix 1 for details of roles and responsibilities. This will be an employee with no involvement in the case. It is important that the suspended employee feels comfortable with the nominated Contact Officer. However should there be a valid reason for why the Contact Officer is not suitable then the Commissioning Manager should consider appointing a new Contact Officer. The Contact Officer must not be connected to the investigation or the suspended employee. They will provide the employee with a communication link with the council should the suspended employee need to contact members of staff during the suspension including making arrangements for witnesses to attend a formal hearing on their behalf. 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.
- 5.5 The employee will retain the pay they would have received if at work during the period of suspension (based on their average earnings for the 12 week period prior to suspension).
- 5.6 Suspension must be subject to regular review by the Commissioning Manager (every 4-6 weeks) and may need to continue beyond the period of the investigation. Please also refer to Appendix 1 for details of roles and responsibilities.
- 5.7 Suspension must be confirmed in writing to the employee by the Commissioning Manager. If the Investigating Officer finds through the progress of the investigation that

the matter is not so serious to warrant continued suspension they will report their findings in this respect to the Commissioning Manager and the HR Services Officer for a decision in respect of lifting the suspension. If suspension is lifted this must be confirmed in writing to the employee by the Commissioning Manager. The Investigating Officer should update the Commissioning Manager and the employee regularly on progress towards completion of the investigation and ensure the Contact Officer is updated similarly.

- 5.8 In the employee's absence their line manager may require access to their work/ IT system etc. in order to ensure day to day business is not impacted. The line manager will advise the employee.
- 5.9 The suspended employee must make themselves available for any meetings and notify their line manager through their nominated Contact Officer if they wish to take annual leave or sickness absence while suspended from work.
- 5.10 The suspended employee will be provided with information in respect of the EAP support that is available in the suspension letter. <http://insite/people/health-and-wellbeing/employee-assistance-programme/>.

6. INFORMAL STAGE

- 6.1 If conduct is not satisfactory but is minor in nature, for example a pattern of late arrival for work/issues with punctuality, then a manager can take informal management action. This is not formal disciplinary action and is not a disciplinary warning. The concerns should be discussed in a private meeting between manager and employee. Examples of circumstances where informal management action might be appropriate are:
- Employee is advised of the need to improve a particular skill, e.g. communication style and an action plan can be put in place to support this.
 - Employee's conduct needs addressing but a formal sanction is considered too severe, e.g. an issue that could be resolved through improved self-awareness
- 6.2 The format of the meeting should include;
- A clear explanation of why the employee's conduct is unsatisfactory.
 - Listen to the employee's response
 - The required level of improvement discussed and (wherever practicable) agreed with the employee. These should be in measurable terms such as quantity, quality, frequency, timing, etc.
 - How management will assist the employee (if applicable) to meet the required standards
- 6.3 A written record of the meeting should be provided to the employee confirming the informal management action taken.

7. INVESTIGATIONS

- 7.1 Before taking any disciplinary action an appropriate level of investigation must be undertaken. This may require the engagement of an Investigating Officer. It is the

Executive/Associate Director or line manager as appropriate who commissions an investigation (they become the Commissioning Manager at this point). They will commission another manager (who could be from another service) to undertake the investigation and undertake the role of Investigating Officer. They will provide the terms of reference and scope of the investigation to the Investigating Officer. The Investigating Officer should be provided with sufficient dedicated time to complete the investigation within a reasonable timeframe (4-6 weeks). In some more complex cases it may be appropriate to appoint an external Investigating Officer. The People Service Business Partnering HR team will support the Investigating Officer in respect of carrying out the responsibilities of their role but will not take part in the decision making process.

7.2 An investigation will normally be concluded within 4-6 weeks. Where it is envisaged this will not be possible the Commissioning Manager and employee should be informed by the Investigating Officer and they should be kept regularly updated in respect of the progress of the investigation.

7.3 The Investigating Officer (IO) will:

- establish the facts of the case and gather evidence
- interview the employee and any appropriate witnesses
- ensure the employee and witnesses are warned they must keep matters confidential and not collude with other witnesses or they could become subject to disciplinary action
- take notes/arrange for notes to be taken/agree notes of meetings with the employee and any witnesses
- ensure witnesses are aware of the purpose of the investigation and that any information obtained may be used/relied on in the course of any subsequent disciplinary hearing and they may be required to attend a hearing to give evidence
- ensure the employee under investigation is:
 - 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
- report what is likely to have happened based on balance of probability and confirm their findings with the People Service HR Business Partnering team and the Commissioning Manager
- after completion of the investigation retain the report for an appropriate period of time

7.4 At the end of the investigation stage, the Investigating Officer will provide a report to the Commissioning Manager which confirms:

- recommend whether based on the findings of their investigation there is no case to be answered and no further action is required
- whether it can be dealt with 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)
- based on their findings and conclusion recommend if there is a case to answer at a formal disciplinary hearing

7.5 If it is decided by the Commissioning Manager that there is a case to answer at a

formal disciplinary hearing the Investigating Officer will:

- arrange the “bundle” of all the documents and evidence they have acquired during the investigation and the investigation report to be relied upon in a disciplinary hearing for the Commissioning Manager to present
- attend the disciplinary/appeal hearing as a witness and in a fact giving capacity. They should not be there to give their opinion or present the case against the employee.
- make any additional management recommendations if appropriate and requested to be considered separate to the disciplinary hearing, confirming details of whom and how the recommendations will be reviewed

Please refer to Appendix 1 for the role and responsibilities of an Investigating Officer, Appendix 2 for guidance on how to carry out an investigation and Appendix 3 Investigation Report Template. Please also refer to the ACAS guidance on conducting workplace investigations.



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7.6 The Commissioning Manager will;

- Confirm their decision to the employee in writing in respect of the outcome of the investigation and whether the matter will proceed to a Disciplinary Hearing
- Present the management case to the hearing panel (or arrange for another appropriate peer manager to do so)

Please refer to Appendix 1 for the role and responsibilities of the Commissioning Manager.

8. NOTIFICATION OF DISCIPLINARY HEARING

- 8.1 If as a result of the investigation the Commissioning Manager believes there is a case to answer they will convene a disciplinary hearing to consider the allegations. This decision must be taken in consultation with the People Service HR Business Partnering team.
- 8.2 The employee will be advised in writing by the Commissioning Manager that the matter is progressing to a formal disciplinary hearing and the date of the Hearing to take place within 25 working days and will provide 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.
- 8.3 The letter should include as appropriate:-
- a) Date, time and place of the hearing;
 - b) The specific allegations against the employee;
 - c) The names and job titles of the members of the Panel conducting the hearing and

the manager presenting the management case (usually the Commissioning Manager);

- d) The name of the Investigating Officer attending to provide facts and information in respect of the investigation;
- e) Copies of all written evidence which will be referred to by management side (the "bundle") including a copy of the Investigation Report;
- f) Names of any management witnesses who will be attending in person at the hearing;
- g) The employee's right to be accompanied by a Trade Union representative or work colleague or in exceptional cases their support worker where the employee has a disability, see 2.3 above (a second copy of the letter should be provided for use by the representative);
- h) Reference to the employee's right to call 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;
- i) 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);
- j) The requirement that the employee should confirm their attendance at least 5 working days prior to the hearing;
- k) Consequences of non-attendance (i.e. that the hearing can proceed without the employee).

8.4 The letter should be sent to the home address by recorded delivery and home e-mail if available and marked private and confidential.

8.5 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.

9. DISCIPLINARY HEARINGS

9.1 The Disciplinary Panel

The panel hearing the case will normally consist of three officers:-

- a nominated senior manager to chair the hearing (normally from the employee's service)
- another manager independent from the section or service concerned
- a Human Resources representative.

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

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

- Disciplinary action up to and including dismissal - Executive or Associate Director
- Disciplinary action up to final written warning - Associate Director/Senior Manager

9.3 **Witnesses**

Witnesses should only be called where relevant. They should only be present to give evidence and to be questioned. Witnesses will be informed that they should keep matters confidential and should not collude with any other witnesses or they could become subject to disciplinary action. 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.

9.4 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 their behalf. They should liaise with their Contact Officer to make arrangements for witnesses to be released.

9.5 **The Disciplinary Hearing**

The Council has a guide for the hearing process, which is attached as Appendix 7. However, the Chair of the Panel has the discretion to vary this to ensure fairness in the proceedings. The Chair of the Panel must arrange for a note taker.

9.6 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.

9.7 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. The note taker will remain to capture the deliberations of the panel as these notes may be relied on in an Employment Tribunal.

9.8 The Chair of the Panel presents the decision. This will normally be given verbally to both parties following the hearing. 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.

9.9 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.

- 9.10 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 8.

10. DISCIPLINARY ACTION

The following formal actions are available:

- 10.1 **First 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.
- 10.2 **Final 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.
- 10.3 **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. The Associate 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.
- 10.4 **Impose a financial penalty or other requirement:** This includes 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. This can be done either independently of or in addition to other formal sanctions on the basis of the gravity of the offence.
- 10.5 **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.

10.6 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 immediately (summarily) terminate 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.

10.7 **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 performance management 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.

10.8 **Expiry of disciplinary action**

Disciplinary action taken will normally be disregarded for disciplinary purposes after the warning has expired. The decision to dismiss will not be based on an expired warning but there may be occasions where the existence of such a warning will explain the reasoning behind a decision to dismiss e.g. where an employee's conduct is satisfactory throughout the period a warning is valid, but ceases to be satisfactory very soon thereafter.

11. **APPEALS**

11.1 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 Associate Director to be received within 5 working days of the date of receipt of the notification letter that confirms the disciplinary action to be taken. They must provide details of their grounds. An appeal hearing is not a re-hearing but will focus on the grounds for appeal provided by the employee.

11.2 The letter should state that they wish to appeal on one or more of the following grounds with detail to support :-

- 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.

Appeals against action less than dismissal are heard by an Officer Appeals Panel.

11.3 **The Officer Appeal Panel**

The Officer Appeal Panel hears appeals against disciplinary action short of dismissal. It will consist of three officers:-

- a nominated senior 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).

11.4 **Appeal Panel - Appeals against dismissal**

Appeals against dismissal are heard by a panel of 3:-

- minimum of one Executive Director/Associate Director
- one senior manager
- HR representative

12. **Appeal Hearing Arrangements**

12.1 The arrangements for appeals are that the employee will be given at least 15 working days' written notice of the appeal hearing which should be heard as soon as possible. This will normally be within 25 working days of the employee receiving the letter confirming the outcome of the original disciplinary decision.

12.2 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 (usually the Chair of the Disciplinary Panel);
- f) Copies of relevant paperwork, including a copy of the Disciplinary Policy and Procedure (the "bundle");
- g) Name(s) of any management witnesses who will present evidence at the hearing;
- h) Reference to the employee's right to call their 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 and whether they will be accompanied at least 5 working days prior to the hearing.

12.3 The letter should be sent to the home address by recorded delivery and home e-mail if available and marked private and confidential.

12.4 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.

- 12.5 The Council has a model process for the appeal hearing process, which is attached as Appendix 7. However, the Chair of the Appeals Panel has the discretion to vary this to ensure fairness in the proceedings. The Chair of the Appeal Panel must arrange for a note taker.
- 12.6 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. The note taker remains to capture the panel's deliberations as these notes may be relied on in an Employment Tribunal.
- 12.7 The Chair of the Panel presents the decision. This will normally be given verbally to both parties after the hearing. However it may be agreed with the employee to confirm the decision in writing following the hearing. 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.

12.8 **OUTCOME OF APPEAL PANELS**

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.

13. **RELATIONSHIPS WITH OTHER PROCEDURES/PROCESSES**

- 13.1 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. An employment investigation may run in parallel to a police, audit and/or child protection or adult abuse investigation, and should not be held up by any such investigations unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.
- 13.2 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.
- 13.3 **Criminal Offences**
A criminal offence does not necessarily require internal disciplinary action to be taken. It depends what impact the employee's action has on their employment with the Council and whether it breaches any other Council policies or procedures e.g. Code of Conduct. Where an employee has been reprimanded/imprisoned a

decision may be made in their absence. Managers should take advice from the People Service HR Business Partnering team in these instances.

13.4 **Grievances**

Where an employee subject to the disciplinary procedure raises a grievance advice should be sought from the People Service HR Business Partnering team. 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.

13.5 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.

13.6 **Performance**

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 Managing Performance Policy and Procedure.

Appendix 1

ROLES AND RESPONSIBILITIES

MANAGERS

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 relevant Associate Director (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
- ensure that all documentation relating to disciplinary issues are retained in accordance with the GDPR.

COMMISSIONING MANAGER

The Commissioning Manager is the Executive Director/Associate Director or line manager where appropriate of the employee who is subject to the Disciplinary Policy and Procedure. The responsibilities of the Commissioning Manager will include:

- a. Informing the employee in writing of the allegations and the process to be followed, who will be investigating the allegations and providing a copy of the Disciplinary Policy;
- b. Appointing and informing the Investigating Officer of the allegation(s), terms of reference and scope of the investigation (along with the relevant HR Service Officer);
- c. Keeping up to date with the progress of the investigation by regularly checking with the Investigating Officer that they are adhering to the timing schedule agreed in the investigation plan and terms of reference;
- d. Ensuring the employee is kept up to date with the progress of the investigation
- e. Deciding if the matter needs to progress to a formal disciplinary hearing
- f. Advising the employee in writing if the matter is progressing to a formal disciplinary hearing and the date of the hearing to take place within 25 working days and providing at least 15 working days written notice.
- g. Presenting the management case at the disciplinary/appeal hearings.

INVESTIGATING OFFICER

The Investigating Officer is commissioned to undertake to investigation into the disciplinary matter. They produce a report for the Commissioning Manager to confirm their findings and conclusions based on the balance of probability and the outcome of their investigation but it is the Commissioning Manager who will make the decision in respect of if the matter should proceed to a hearing. They also attend disciplinary and appeal hearings as a witness to provide facts in respect of the investigation. They should aim to complete their investigation in 4-6 weeks and keep the Commissioning Manager and the employee advised of progress and any cause for delay.

CONTACT OFFICER

The Contact Officer role is to ensure that an employee who has been suspended is able to keep in touch with the workplace and the progress of the investigation. The Contact Officer acts as a communication point for the employee if they have any queries or need any information and also passes on information to the employee from their manager/the workplace as required. The Contact Officer will also assist the employee if they wish to call witnesses to attend a hearing on their behalf.

PEOPLE SERVICE HR BUSINESS PARTNERING TEAM

The HR Business Partnering team provide advice and guidance in the operation and application of this policy and its associated procedures. An HR representative may also be a member of a hearing panel and in this role will be part of the decision making process.

WITNESSES

Witnesses to potential misconduct will be interviewed as part of the investigation process. Witnesses will be informed by the Investigating Officer that they should keep matters confidential and should not collude with any other witnesses or they could become subject to disciplinary action. Any evidence they provide will be relied on and they may be called to present their evidence at a hearing. They should only be called where relevant. They should only be present to give evidence and to be questioned. Details of proposed witnesses should be communicated to either party in advance of the hearing and witness statements should be provided by both sides, wherever possible.

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 their behalf. They should liaise with their Contact Officer to make arrangements for witnesses to be released.

EMPLOYEES

Employees have a contractual responsibility to be aware of and conform to the Council's values, rules, policies and procedures and to co-operate with any investigations, to attend any meetings, interviews and hearings convened in accordance with this policy and its associated procedure.

Employees must arrange for their own representation and present written submissions and witness statements in their response if they wish it to be considered as evidence by the Investigating Officer and hearing panel.

They must provide contact details for their representative to the delegated manager or Investigating Officer. They must provide a list of the names of any witnesses they wish to call to a hearing in writing to the delegated manager at least 5 working days prior to the hearing.

TRADE UNION REPRESENTATIVES

The standards required from employees will apply to Trade Union Representatives. They can attend interviews and hearings in support of the employee but can not answer questions on behalf of the employee.

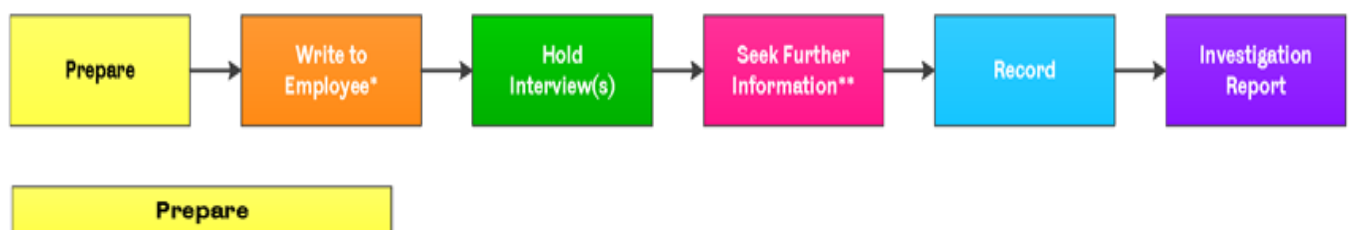
Appendix 2

How to carry out an Investigation

For the Disciplinary/Grievance Procedures

The below checklist is for guidance purposes only, as it is recognised that a manager will need to determine how best to manage any investigation given the individual circumstances of each case.

Please ensure that all discussions during this process are fair, appropriate and above reproach.



- Clearly define the allegations/grievance in need of investigation.
- Consider the nature and likely scope of the investigation based on the allegation/issue(s) of concern. In the case of a formal grievance, the scope of the investigation should be discussed with the employee who has submitted a formal grievance.
- Decide how best to conduct the investigation - In many cases this can be a very simple/quick process, however, this will depend on the specific circumstances of the case e.g. whether the facts are disputed or clear and the seriousness of the matter. An investigation can simply be the gathering of facts looking at existing documentation e.g. relating to the previous in/formal management processes undertaken to address an issue. In other instances it may require the planned and systematic gathering of data, interviewing of relevant witnesses and analysing relevant documents, records, policies, etc. to determine next steps.
- Consider what information you need to gather, from whom and how this will be obtained.
- Consider the timescales of the investigation. Taking into consideration, where appropriate, the need to conduct interviews, collate witness statements, gathering information and write the investigation report etc.
- Identify if there are any potential barriers to obtaining information and how these can be addressed.
- If appropriate, identify any witnesses who could help with investigations, determining whether these should be interviewed or whether a written statement should be sought, Initial contact with a potential witness is often in the form of a telephone conversation or email to: explain the situation; check their potential relevance; seek their agreement to participate in the process etc.
- Consider other resources you may need during the investigations e.g. note taking, specialist advice/guidance.

- If appropriate, prepare interview plan(s) and consider the specific issues that need to be explored during these interviews.
- Prepare the questions you may wish to ask, ensuring that the questioning (open, closed and probing questions) is appropriate e.g. for obtaining information/facts, exploring feelings or opinions. Avoid using leading questions.
- If appropriate, provide regular updates to those involved.
- **PLEASE NOTE:** It may be necessary to continually consider the need to amend your plan depending on the findings throughout the investigation.

Write to Employee*

*and Witness(s) if applicable

- Any employee subject to an investigation should be made aware that an investigation will be undertaken, and should be provided with a brief summary of the reasons for this and the practical measures involved.
- Include any paperwork/information which will be needed to be seen or considered prior to the interview.
- Advise and if necessary assist the employee (*and any witnesses) to access the counselling and support available to them.
- Take appropriate steps to ensure the confidentiality of the investigation process.
- If applicable, notify the witness' manager of their involvement in the investigations, so that they can attend any relevant meetings.

Hold Interview(s)

(Only if appropriate)

- Thank the interviewee for attending and make any necessary introductions (include an explanation of roles). Please note that employees have the right to be accompanied to the investigative meeting by a Trade Union representative or workplace colleague.
- Confirm that it is a fact-finding meeting. It is important to remain objective.
- Explain the need for confidentiality/implications for breaching this e.g. potential impact on investigation/disciplinary action.
- Explain that the SBC prohibits the electronic recording of meetings and that written notes will be taken throughout the interview.
- The investigator officer should confirm notes will be shared/signed by the interviewee to agree they are an accurate reflection of the meeting. Where the interviewee disagrees with an aspect of the record they will be able to annotate the notes before returning to the investigator.
- Confirm the area/allegation around which the employee or witness will be asked to comment. (When interviewing the employee under investigation ensure they understand the allegations being made against them and provide details of the allegations/grievance).
- Explain that the evidence/information may be used in a subsequent formal hearing/grievance meeting and that they may be required (or in the case of witnesses requested) to attend, depending on the outcome of the investigation.

- Check if interviewee has any questions regarding the process.
- Seek evidence/information using any prepared and supplementary questions.
- In questioning the employee under investigation, explore possible explanations/special circumstances. Ask them to respond to any allegations and if they are able to produce any evidence/information to support their response.
- Check if the interviewee wishes to provide any further information or raise any questions before the interview concludes.
- Explain next steps and indicative timescales and that it may be necessary to hold additional interviews should further evidence arise.

Seek Further Information**

** If appropriate

- Seek any relevant supporting information/evidence to substantiate information provided by the employee/witnesses.
- Consider whether other documentation may be helpful for the investigation. For example: Work Rota's, attendance records, medical reports, incident reports, minutes from meetings, appraisal/training/development records, emails, letters etc. (permission of the employee may be required for some of these examples). Also consider any wider documentation that may feed into informing expectations e.g. local agreements,
- Check as to whether the employee(s) is under investigation, employment record may provide any background or special/mitigating circumstances.
- Should you identify any information that may warrant immediate action please raise this with the manager who instigated the investigation as a matter of urgency.

Record

- After each interview forward the record, as appropriate, for signing, to the interviewee.
- If the interviewee disputes the accuracy of the record, asked them to: identify what is in dispute; offer their interpretation/recollections of the discussions by annotating the record provided, before signing and returning the record.
- In the case of witness statements gain the individual's consent to share this with other relevant parties.
- Maintain a record of all evidence gathered.

Investigation Report

- **See Investigation Report Template in Appendix 3**
- Ensure all documentation associated with the investigation is retained securely and only shared with discretion and confidentially. Tone/Style should be considered as all relevant information will be shared with key parties including the employee under investigation.

Appendix 3: Investigation Report Template

CONFIDENTIAL INVESTIGATION REPORT- <NAME>	
Allegation/Issue	Grievance/Disciplinary
Name/Designation of employee subject to investigation (if appropriate)	<Name, Job title>
Name of complainant (if appropriate)	
Investigator	<Name, Job title, Service area> ,
HR Support/Link	<Name, Job title, contact number>

Background

- Identify how the situation came to light (based on the factual information provided by the instigating manager); what actions have already been taken prior to the investigation commencing; what communications have taken place.
- Provide brief details of the 'subject' of the investigation, their employment history, current role and how long held etc.
- Note if employee suspended and when, whether redeployed for duration of investigation or if there are any specific changes in place to allow the investigation to take place i.e. line management responsibility removed, budget responsibility suspended, taken off usual duties but still within service area etc.

Executive Summary (Optional - delete if appropriate)

- This may be suitable for complex investigations and should provide a brief summary of the main findings/conclusions.

Remit of Investigation

- Agree terms of reference and remit of investigation, i.e. what allegations/concerns were identified as in need of investigation (provide concise bullet points list of all allegations that will be expanded upon in "Findings" section).
- State policy under which the investigation was carried out (e.g. SBC Grievance Policy and Procedure)

Investigation Process

Explain how the investigation progressed, including reasons for decisions which were made and the direction the investigation went including:

- A brief description of the method(s) used to gather information.
- Use table template to record what interviews/statements were undertaken, when, and their appendix number within the bundle of evidence
- If the investigator has not interviewed all individuals suggested by the 'subject' of the investigation the decision should be recorded in this section (including reasons e.g. character reference only).

- A timetable of events. (Detailing any delays in the investigations).
- What documents/evidence were reviewed (Record of Evidence)

Findings

Provide a summary of the findings and observations:

- Present the findings separately for each point/allegation/issue of concern in turn, by confirming the facts established by the investigation, identifying the sequence of events, cross-referencing any documentation and highlighting any mitigating factors e.g. lack of procedural guidance, management action or expected documentation and any other actions / behaviours which may have compounded or aggravated the situation
- Avoid using vast extracts from statements - only quote directly from the statements where it is necessary. It is the investigator's responsibility to analyse all the statements and draw out all corroborative evidence. Interviewees are not always articulate during interviews and the investigator should therefore use their own words to concisely convey the findings.
- If the evidence is inconclusive or there is no evidence to substantiate an allegation - say so. The instigating manager wants to know whether there is any evidence to support the allegations - it is also the investigator's responsibility to explain how significant the evidence is - this should come across throughout the report.
- Note any specific actions that demonstrate a breach of policy or standards of conduct/performance that did not meet those normally expected.
- Refer back to the agreed remit of investigation, ensuring that you cover all the points.

Conclusion

NOTE: When reviewing the evidence, investigators need to aim to demonstrate a reasonable belief as to what happened, based on their assessment of the evidence available. The standard of proof for internal investigations and any subsequent disciplinary hearing or grievance meeting is based on the "balance of probabilities", i.e. that on the basis of the evidence it was more probable than not that the alleged misconduct was committed. Investigators are not required to demonstrate beyond reasonable doubt, unlike in criminal investigations, but do need to act reasonably on behalf of the employer.

- For each allegation/concern/issue provide an overall fact based opinion on a) whether there is any evidence to support the allegations and b) the strength of the evidence.
- Support the conclusions with the strongest evidence without repeating the text in the main body of the report (where possible) - the conclusions should be clear and concise.
- Identify to the reader the strengths and weaknesses in the evidence - emphasising the importance of any issues and where evidence can be open

<p>to different interpretation / scenarios.</p> <ul style="list-style-type: none"> • Draw out key facts which demonstrate particular breaches of policy e.g. Code of Conduct, Harassment, Financial Regulations, service policies & procedures etc. ▪ If there are any special circumstances/mitigating factors ensure that they are clear within the conclusions and it is important to explain their significance. 	
<p>Appendices</p> <ul style="list-style-type: none"> ▪ Chronology of events; witness statements; investigatory interview notes; about the Job documents; organisational structure; medical advice etc. 	
Signed by Investigatory Officer	
Date	

Appendix 4: Record of witnesses

The following table gives the names of the people who provided statements for this investigation.

Name	Post	Reason	Date	Appendix

Appendix 5: Record of Evidence

Date	Item	Appendix (attached with report)
Investigation Statements		
Supporting Documentation		

Appendix 6

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 Slough Borough Council 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.

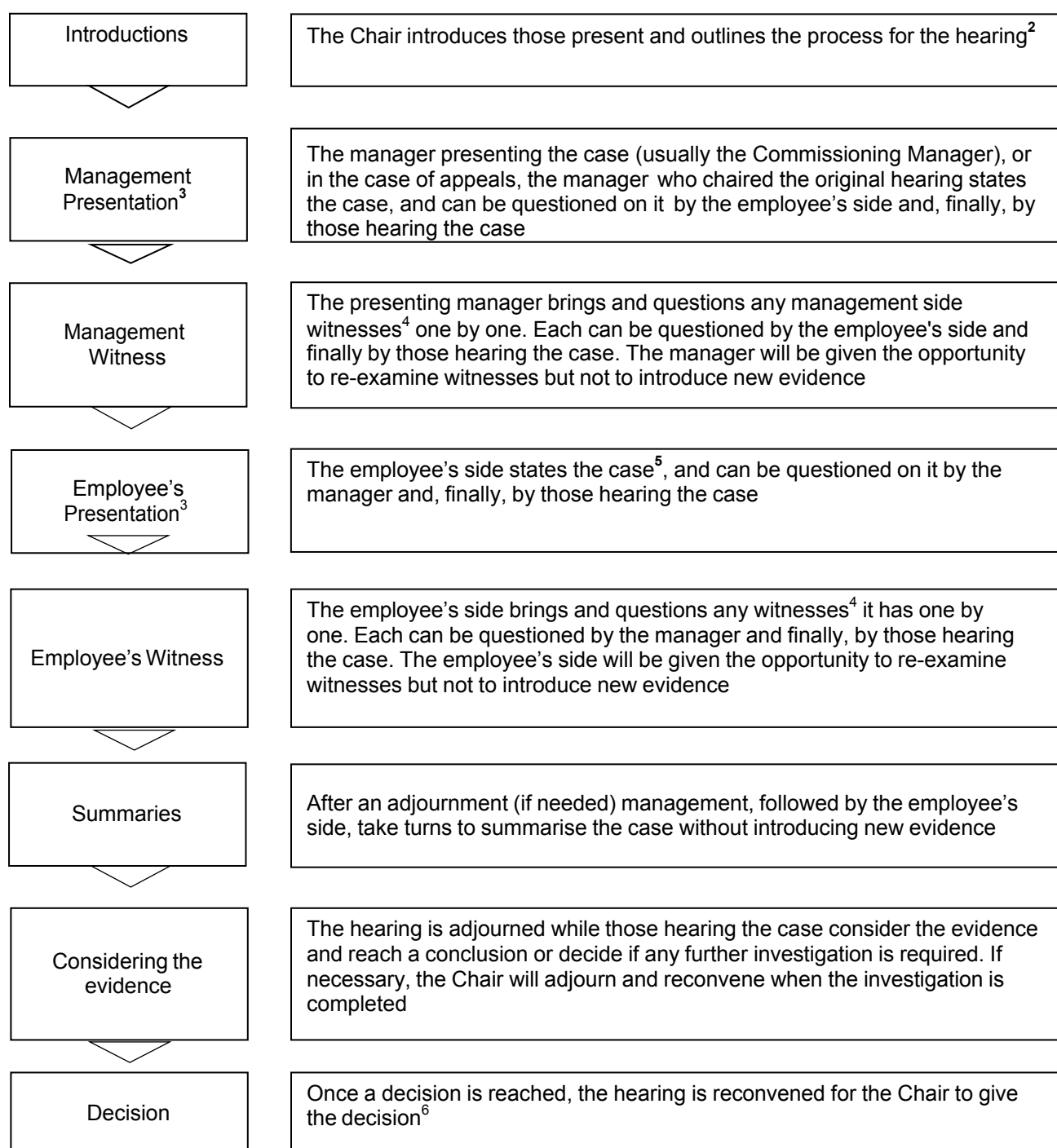
Gross Misconduct

- 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 7

MODEL PROCESS FOR DISCIPLINARY/ APPEAL HEARINGS ¹



¹ Notes should be taken of the hearing and decision. No audio or visual recordings 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 will 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 be a work colleague, trade union representative or support worker) 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 8

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 9

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 Associate 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.