

Resources

Human Resources and Organisational Development

Disciplinary Policy, Procedure & Toolkit

Altogether better



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1. Policy Outline

1.1 What is the policy about?

Durham County Council (DCC) expects the highest standards from all employees. The aim of the Disciplinary policy and accompanying procedure is to maintain standards of conduct and job performance within DCC and to provide a prompt, fair and consistent method of dealing with any alleged shortcomings.

Use of the disciplinary procedure should be primarily to help and encourage employees to improve, rather than merely being a method for imposing punishment. The issue should be dealt with as thoroughly and promptly as possible.

1.2 Who does the policy apply to?

This policy covers all employees except for school-based employees where schools need to give consideration to their own procedures. Where schools are using these procedures, suitable advice should be sought from within Children and Young People's Service or Human Resources & Organisational Development, where appropriate. Certain Conditions of Service may include for additional or alternative rules in relation to disciplinary procedures and these should be considered where appropriate - for example, the conditions applying to Chief Officers. The policy is recommended as good practice to all other groups associated with the Council who have the discretion in their employment to adopt our policies. Apart from schools, this will include such groups as voluntary sector organisations.

1.3 Scope of the policy

A disciplinary matter arises when an employee breaches Council rules or fails to meet the required standards with regard to conduct/behaviour. This procedure should also be used to deal with unsatisfactory performance - situations where employees don't meet their employer's expectations in the way they do their job, referred to as capability. Issues concerning poor performance due to negligence or gross incompetence that may result in a potential danger or a breach of a duty of care will be dealt with as a conduct issue under this procedure.

Issues of ill-health are dealt with under the Council policy on Sickness Absence. This policy does not apply to termination of employment on the grounds of redundancy, the termination or non-renewal of a fixed term contract or situations where probationary employees do not reach required standards of performance. Further guidance on other procedures that may lead to a dismissal can be found in the Council's Dismissal Procedures.

More information about the general standards expected of employees of the Council can be found in the Code of Conduct. In addition, the Confidential Reporting Code provides procedures as to how staff can raise concerns about issues connected to the workplace. There is also a Bullying & Harassment Policy that links to these procedures where appropriate.

1.4 Training and monitoring

The Disciplinary Policy, Procedure & Toolkit will be covered as part of employee induction, training and development.

Training can be procured to enable managers to acquire or enhance their skills in handling disciplinary matters.

It is the responsibility of Services, where appropriate, to notify the Independent Safeguarding Authority (ISA) who have responsibility for taking decisions on whether to bar individuals from working with vulnerable adults and/or children through the implementation of the Government's Vetting and Barring Scheme. ISA operate two new barred lists which are the 'Children's Barred List' and 'Vulnerable Adults Barred List'. These replace the three previous lists which were the Protection of Children Act List (POCA); Protection of Vulnerable Adults List (POVA); and List 99.

1.5 Support

It is recommended that employees who are involved in a disciplinary process are advised to contact their Trade Union Representative at the earliest opportunity so that the union can offer them appropriate advice, guidance and support. Support can also be sought from FirstAssist Telephone Counselling Service - telephone 0800 068 5155 or 0800 716017 and quoting scheme number 33679, if asked. Due to the nature of protection issues, there are Staff Care Officers available in Children & Young People's Service (0191 3836523) and Adults, Wellbeing & Health (0191 3834968).

1.6 Confidentiality

It is essential that all parties concerned have a duty of confidentiality regarding matters dealt with under this procedure. Whilst it is accepted that the very nature of disciplinary investigations and procedures make total confidentiality difficult to achieve, all parties have an obligation to ensure confidentiality as far as possible and to handle information sensitively and only for its proper purpose. Any breach of confidentiality could impact upon the outcome of individual cases.

Under the Data Protection Act 1998 individuals have the right to see their own personal data held subject to the rights of confidentiality of any third parties involved in that information.

1.7 Dealing with abuses of the policy

Employees who attempt to abuse this policy may themselves face disciplinary action. DCC takes false or misleading accusations very seriously which may result in further action taken through this policy and procedure. This will not include ill-founded allegations that were made in good faith.

1.8 Publicising/distribution of the policy

A copy of this policy is available from key personnel within the Services and will be made available to employees on request. A copy can also be viewed via the Intranet.

New employees will be informed of the existence of this policy in recruitment and induction information.

Parties involved in the processes within this policy will be allocated a copy as part of the formal notification process.

1.9 Reviewing the policy

The operation of this policy will be kept under review and such changes will be made to the policy as deemed appropriate following necessary consultation with the trade unions.

1.10 Equality and Diversity

We are committed to including equalities in everything we do. This includes the elimination of unlawful discrimination, promoting diversity as a positive force and valuing & celebrating our diverse workforce and community.

If necessary, an equality impact assessment will be carried out in the preparation of this policy and the assessment will be reviewed on an ongoing basis.

1.11 Alternative formats

Where any alternative format is required, any initial enquiry should be made through your manager or by following the instructions below:

Please ask us if you would like this document summarised in another language or format.

العربية (Arabic) (中文 (繁體字)) (Cantonese) اردو (Urdu)
polski (Polish) ਪੰਜਾਬੀ (Punjabi) Español (Spanish)
বাংলা (Bengali) हिन्दी (Hindi) Deutsch (German)
Français (French) Türkçe (Turkish) Melayu (Malay)

hrpolicyteam@durham.gov.uk
0191 383 4203

 Braille  Audio  Large Print

1.12 Forms/letters

Forms/letters relating to this policy and procedure will be downloadable from the Intranet.

Sample forms/letters are included at the back of this document for information purposes only.

1.13 Further information

If you would like any further advice on this document you can contact the Resources, Human Resources and Organisational Development, Employee Relations Team on 0191 383 4191 (Internal - Ext. 4191).

1.14 External investigators

The Council in consultation with Human Resources and Organisational Development reserves the right to appoint external personnel to investigate situations where it is deemed appropriate.

2. Procedure

2.1 Core principles

In handling disciplinary cases employers must act fairly and reasonably. The Council will treat employees in accordance with the following core principles of reasonable behaviour:

- Use of the procedure should primarily be to help and encourage employees to improve rather than just as a way of imposing a punishment;
- Any issues raised should be dealt with promptly and not unreasonably delayed;
- The policy will be applied consistently;
- No disciplinary action will be taken against an employee until the case has been fully investigated and the facts of the case have been established. Any action that is taken must be reasonable in the circumstances;
- Employees will be informed of the basis of the problem and given the opportunity to state their case before decisions are reached. This includes at the commencement of any investigation and at the conclusion of the investigation before any decision is made to proceed to a hearing;
- Having conducted an investigation, should there be a case to answer, the employee should be informed of the case against them in writing and invited to attend a formal disciplinary hearing;
- Employees will have the legal right to be accompanied by a trade union representative or a work colleague during the disciplinary hearing. If an employee makes any request to be accompanied by a legal representative at a disciplinary hearing, advice should be sought from Human Resources & Organisational Development before any decision is made.
- The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action;
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice or payment in lieu of notice;
- Employees will be provided with a written explanation for any disciplinary action taken and what improvement and/or standard of performance is expected;
- An employee will have the right to appeal against any disciplinary action imposed;
- Where any allegations involve child or adult protection safeguarding issues, there may be a requirement for legal/social care interventions - see section on protection of children and vulnerable adults for further information.

2.2 Responsibilities

Employees

All employees have a responsibility to conduct themselves to the highest standards at all times and to conform to Council rules, policies and procedures and the Code of Conduct.

Any employee involved in a case should not unreasonably delay meetings or other parts of the procedure.

Managers

Managers are responsible for:-

- Ensuring that employees are aware of Council rules, practices and procedures and for applying the policy fairly and consistently;
- Developing a culture where employees are supported and assisted in achieving the required standards of conduct;
- Identifying potential capability issues amongst their staff and for providing informal support to employees. Managers will also have the responsibility, in consultation with Human Resources and Organisational Development, for identifying when the informal stages of capability have been unsuccessful and making recommendations that the formal procedure should be invoked;
- Applying the policy fairly and consistently and ensuring that they deal with any issues equitably without direct or indirect discrimination on the grounds of age, disability, nationality, race, religion, sex, sexual orientation, or trade union membership;
- Seeking advice and guidance from Human Resources and Organisational Development if unsure as to how to implement the Policy.

Human Resources and Organisational Development

The Council as a single employer must ensure that fair and equitable treatment is given to employees and that its policies and procedures are operated consistently throughout services. It is important that a representative from Human Resources and Organisational Development is involved throughout the disciplinary process. The Council has determined that relevant officers have an obligation to seek advice and guidance from Human Resources and Organisational Development when contemplating disciplinary action. Disciplinary hearings should be arranged in consultation with Human Resources and Organisational Development as a representative must be in attendance at the hearing.

Investigating officer

The role of the investigating officer is to ascertain the facts regarding all relevant issues as fairly and promptly as possible. The investigating officer will normally be expected to present the case at the formal disciplinary hearing where applicable. They will be expected to answer to their prepared report in any hearing. For further details on this role and advice as to who should carry out the investigation see the section regarding investigations.

Hearing officer

The Council has delegated responsibility for disciplinary action to Corporate Directors. Given the size and complexity of the Council and the need to deal with disciplinary matters promptly Corporate Directors must nominate officers within their service as Hearing Officers. Hearing Officers will hear evidence from both parties at a formal disciplinary hearing and make a decision regarding the outcome of the hearing including what, if any, disciplinary action will be taken. Hearing Officers will be delegated to deal with all levels of disciplinary action including dismissal and should be fourth tier or above within the senior management structure. Corporate Directors are required to provide the names of Hearing Officers to the Head of Human Resources and Organisational Development.

2.3 The law on disciplines and dismissals

When dealing with disciplinary cases, managers need to be aware both of the law on unfair dismissal and the statutory framework contained in employment legislation. This policy and procedure complies with the legislative framework and the ACAS (Advisory, Conciliation and Arbitration Service) statutory Code of Practice, released in 2009.

The key factor in the legislative framework is the focus on being procedurally accurate when carrying out disciplinary action. It is therefore essential that when dealing with disciplinary matters this procedure is followed. If an employee is dismissed and, providing they are eligible, makes a claim to an Employment Tribunal and the procedure has not been followed, the dismissal may automatically be ruled unfair. A failure to follow the actual procedures and the ACAS Code could lead to an increase in compensation.

The law on unfair dismissal requires employers to act reasonably. Therefore, even where the relevant procedure has been followed the dismissal may still be unfair if the employer has not acted reasonably. What is classed as reasonable will depend upon the circumstances, and is ultimately a matter for Employment Tribunals to decide. However, the core principles employers should work to are as set out in this procedure.

All records should be kept meticulously, as this will be vital should a case be pursued at an Employment Tribunal. Since the burden of proof is on the employer to show that the dismissal is not unfair or unreasonable, keeping records is essential. Types of records that should be kept by employers include records of meetings, emails, notes of telephone calls, copies of correspondence and details of support given. The records should include the complaint against the employee, the employee's defence, disciplinary hearing notes, findings & actions taken, the reason for the actions taken, whether an appeal was lodged, the outcome of any appeal, information about any grievances raised within the disciplinary procedure and any subsequent developments. Record storage and maintenance must be in secure and confidential circumstances.

2.4 Misconduct

Except in cases of gross misconduct, no employee will be dismissed for a first breach of discipline. However, dismissal may occur if the employee has previous 'live' warnings on record. The following are examples of misconduct:

- Unauthorised absence;
- Poor time keeping;
- Smoking in areas designated as non-smoking;
- Insubordination or using abusive language;
- Misuse of Council facilities including computer facilities (e.g. e-mail and Internet);
- Refusal or failure to carry out a reasonable lawful management instruction;
- Unacceptable behaviour or attitude;
- Leaving the workplace without permission or due cause;
- Non-compliance with Council policies and procedures including Equalities Policies and the Code of Conduct.

This list is neither exclusive nor exhaustive and each case will be determined on the individual facts.

2.5 Gross Misconduct

Gross misconduct is misconduct that is so serious that the Council can no longer tolerate the employee's continued presence at work. It is misconduct that destroys the trust and confidence in the working relationship between the employer and the employee making any further working relationship impossible. Gross misconduct is so serious it may justify dismissal without notice or payment in lieu of notice (summary dismissal).

The following are examples of offences which may constitute gross misconduct. This list is neither exclusive nor exhaustive and each case will be determined on the individual facts.

Examples are:

- Theft or fraud;
- Deliberate falsification of timesheets;
- Physical violence or bullying;
- Deliberate and serious damage to Council and other property;
- Unlawful discrimination, harassment or victimisation;
- Serious misuse of the Council, or an associated organisation, property or name;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- Serious insubordination;
- Serious incapability at work through drugs, substances or alcohol;
- Bringing the Council, or an associated organisation, into serious disrepute;
- Gross negligence which causes, or might cause, unacceptable loss, damage or injury;
- A serious breach of health and safety rules;
- Criminal or other serious misconduct outside the workplace which reflects adversely upon the Council or on the employee's suitability for the post;
- Knowingly providing false information on any matter relating to the employee's employment;
- A serious breach of confidence;
- Allegations against another person that are frivolous, malicious or made for personal gain;
- Criminal or serious misconduct involving children or vulnerable adults.

In cases which may lead to a finding of gross misconduct it is particularly important to give careful consideration to suspending the employee. For guidance see the section on suspensions. However, it remains important to follow a fair procedure in circumstances involving gross misconduct as for any other disciplinary situation.

2.6 Financial irregularities

If the alleged misconduct is of a financial nature or the circumstances indicate that an investigation by the Internal Audit Section is required e.g. misuse of the internet then this should be put in hand immediately and resources and equipment should be secured and where

appropriate made available to the Police (i.e. in the cases relating to pornography). In accordance with the Council's Financial Regulations, Corporate Directors who become aware of any financial irregularities or suspect irregularities, or of any circumstances which may suggest the possibility of irregularities, shall notify the Manager of Internal Audit & Risk immediately.

2.7 Protection of children and vulnerable adults

If the alleged misconduct is a matter related to the protection and safeguarding of children or vulnerable adults the appropriate officer within Children and Young People's Service or Adults, Wellbeing & Health must be informed immediately, and advice sought before progressing with the disciplinary process. Services will also be responsible for informing the appropriate professional bodies.

The alleged misconduct may also have to be considered within the Durham Local Safeguarding Children Board's 'Allegation against Staff, Carers & Volunteers' procedures. This should be done through contacting the Local Authority Designated Officer (LADO) - the Safeguarding Services Manager on 01207 562144.

In addition, it may be necessary to also refer to guidance based on the Department for Children, Schools & Families - 'Handling Allegations of Abuse made against Adults who Work with Children & Young people'. Further information can be obtained from the LADO.

Where alleged misconduct involves a vulnerable adult there is a need to refer to the Safeguarding Adults Inter-agency Procedural framework which can be accessed via the Council intranet.

2.8 The Regulation of Investigatory Powers Act 2000 (RIPA)

Under no circumstances should an employee be investigated by the use of surveillance techniques without prior approval and completion of appropriate authorisation. This is to prevent any breaches of the Human Rights Act 1998 and to comply with The Regulation of Investigatory Powers Act 2000 (RIPA). Further information and guidance can be found on the Council Intranet under RIPA. Managers should contact Internal Audit for further advice regarding RIPA Regulations.

2.9 The right to be accompanied

Employees have a statutory right to be accompanied by a work colleague, a trade union representative or an official employed by the trade union at formal disciplinary hearings and any appeal. A trade union representative who is not an employed official must have been reasonably certified by their union as being competent to accompany the employee. The individual accompanying the employee must not be someone whose presence would prejudice the hearing or who might have a conflict of interest. The employee should advise who is accompanying them before any hearing.

An employee may ask an official from any trade union to accompany them at a disciplinary hearing, regardless of whether or not they are a member or the union is recognised.

If an employee makes any request to be accompanied by a legal representative at a disciplinary hearing advice should be sought from Human Resources & Organisational Development before any decision is made.

The representative may play a full part, including addressing the meeting to put and sum up the employee's case, responding on behalf of the employee to any view expressed, asking questions of witnesses, summing up the employee's case and conferring with the employee during the hearing. However, they should not answer questions that are put to the employee. For further guidance on postponing a hearing if the employee's representative is unavailable see the section on the disciplinary hearing.

Although there is no statutory right to be accompanied during the informal stages in relation to cases of conduct or capability, including the investigation, every effort should be made to accommodate a request from an employee. It is up to the employee to arrange for someone to attend the interview in this capacity. If their chosen representative is not available to attend the employee should arrange for a replacement representative to accompany them, or attend on their own. Interviews will not normally be postponed in these circumstances.

2.10 Informal action - capability

Lack of capability is defined as situations where an employee consistently fails to perform their duties to an acceptable standard and this failure is not due to ill-health or misconduct. As indicated earlier, where issues concerning poor performance due to negligence or gross incompetence could result in a potential danger or a breach of a duty of care, then they will be dealt with as a conduct issue.

When a capability problem cannot be resolved by day to day management support, advice and guidance this procedure must be followed. Short term issues should be handled through counselling and day to day management.

The informal stage should be a positive process with the aim of helping the employee to overcome the issue of lack of capability and to continue to serve as a valuable member of the Council staff. The formal procedure should only be invoked after the informal stage has been exhausted, which should include the following:-

- The issues/concerns should be constructively drawn to the attention of the employee and a strategy for sustained improvement devised;
- The manager should arrange a meeting with the employee giving reasonable notice of the arrangements and purpose of the meeting. The manager should explain the manner in which performance is not satisfactory, ensure that the employee understands the required performance and define and agree targets for improvement. The targets, together with a comprehensive programme of support, should be defined in an action plan;
- The employee should be given the opportunity of expressing their views on the concerns and to provide explanations. Consideration should be given to other factors that might be affecting performance e.g. health issues, personal reasons, workload etc and appropriate action and support put in place;

- A reasonable time period should be set within which the employee should achieve the improved performance. Regular review meetings should be held throughout this period to discuss and record progress and give feedback as appropriate;
- The employee should be made aware of the implications if improvement is not achieved i.e. convening a formal disciplinary hearing;
- Brief written records must be kept of all meetings and associated documentation and should be shared with the employee;
- If it becomes apparent that the poor performance is caused by lack of willingness or refusal to carry out reasonable duties, then this should be dealt with as a conduct issue rather than capability;
- Care should be taken that any informal action does not unintentionally turn into part of the formal process.

The following are examples of considerations when compiling a programme of support:-

- In-service training;
- Individual coaching by the manager or experienced member of staff;
- Observation by the employee of good practice;
- A modified workload or responsibilities for a specified period;
- Work sharing/team working with experienced persons;
- Visits to other suitable workplaces;
- Temporary attachment to another workplace.

At the end of the review period a further meeting should be arranged with the employee to assess progress and again the employee should be given reasonable notice of the arrangements for, and purpose of, the meeting. If satisfactory improvement has been made the employee should be informed of this, in writing, and encouraged to maintain the improvement. If this is not the case, the manager will determine whether to extend the period of review or to convene a formal disciplinary hearing. For guidance see the section on formal disciplinary hearings. This decision will be confirmed in writing.

A report should be compiled by the manager in preparation for the hearing demonstrating that the informal stage of the procedure has been exhausted. A suggested framework for the report should include:

- A brief introduction to the circumstances of the case;
- Relevant background information on the employee including job description;
- A chronology of events and outline of timescales including how the issues/concerns came to light and the events that have happened since i.e. review meetings with the employee;
- Details of the issues/concerns and the support programme that has been in place;
- A summary of findings;
- All documentary evidence should be attached as appendices i.e. action plan, minutes of meetings.

In the period leading up to the hearing the employee should continue to be provided with professional support, advice and guidance as agreed in the review process. This may include the withdrawal of support when an acceptable level of performance has been reached to test whether this level can be sustained.

2.11 Informal action - conduct

On becoming aware of an employee's alleged misconduct the manager will make initial enquiries about the incident or situation to determine the appropriate course of action. This will normally involve a discussion with the employee to provide them with an opportunity to respond and explain any factors affecting their behaviour/conduct. The manager will then decide on the appropriate course of action. Care should be taken that any informal action does not unintentionally turn into part of the formal process. The outcome may be:

(1) That there is no case to answer:

It may become evident that there is no problem or there may be a perfectly reasonable explanation. If so, this should be made clear to the employee. During the discussion it may become apparent that the problem is not in fact disciplinary and that other procedures may be more appropriate.

(2) Informal discussion:

Minor cases of misconduct are usually best dealt with informally. In many cases the right word at the right time and in the right way will often be a more satisfactory way of dealing with issues. Every reasonable effort should be made to address conduct issues informally and the aim should be to deal with issues promptly and secure the required improvement.

When it is established, either prior to an investigation or as the result of an investigation, that the matter is not serious enough to warrant proceeding to a disciplinary hearing but that there is a need for an informal warning, the manager should discuss this matter with the employee. The aim of the discussion is to ensure that the member of staff understands the concerns and that the reasons for this are explored. The employee should be made fully aware of the standards expected of them. Notes should be taken throughout and a copy provided to the employee. An employee may also choose to attach their comment to the document.

(3) Letter of management advice:

Depending upon the nature of the misconduct, a letter of management advice may be issued. Letters of management advice inform employees of where their conduct has fallen short of the Council's standards/expectations, the change or improvement that is expected of them and that a failure to achieve the standards set out may result in disciplinary action being taken. The letter will remain on the employee's personal file and if there are further matters of a similar nature it may be referred to and, if appropriate, disciplinary action may be taken following a full investigation. The letter is NOT a formal disciplinary warning and there is, therefore, no right of appeal. The letter should:

- include a clear statement of what was discussed with regard to the employee's conduct and the required improvement;
- define clearly support and remedial action provided by management;
- confirm any timescales and review dates if applicable;

- make it clear that any further incidents of the same or a similar nature in the future may result in formal disciplinary action being taken which could ultimately lead to dismissal.

Where the letter of management advice is issued in relation to 'safeguarding' issues, it is necessary and appropriate for this document to remain 'live' and not subject to any particular time limit.

However, where the letter has been issued for a 'non-safeguarding' issue, managers should normally include a review period, which should be appropriate to the case. There may be other exceptional cases where the manager feels a review period is not necessary. However, in most circumstances, this period would normally be for no more than 12 months. Where a time limit is included, the letter of management advice should be disregarded after that time is reached. However, the letter can be extended where the manager concludes the required improvement has not been made.

See the toolkit for an example letter of management advice.

(4) Conduct a more detailed investigation:

It may become necessary to carry out a more detailed investigation to establish if there are sufficient grounds for an allegation of misconduct. See the section on the investigation.

2.12 Suspension

2.12.1 When to consider suspension

Suspension should only apply in very serious situations and transferring the employee to alternative council premises may also be considered.

Suspension is NOT a disciplinary sanction and must be without prejudice on full pay. It is essential that THE PERIOD OF SUSPENSION SHOULD BE KEPT AS BRIEF AS POSSIBLE and should only be used:

- If the allegations appear to constitute gross misconduct;
- Where there are sufficient grounds for doubt as to the suitability of the employee to continue at work such as:-
 - the continued presence of the employee within the workplace could place the employee or others at risk;
 - where there is concern that the investigation could be impeded i.e. it is possible that the employee may influence witnesses or interfere with relevant evidence;
 - where there is a criminal investigation or proceeding.

In cases which may lead to a finding of gross misconduct it is particularly important to consider suspension in the light of the nature of the alleged misconduct and the potential risks in allowing the employee to remain in the workplace. Where allegations are made which, if proved, would fundamentally break the trust between employer and employee then advice should be sought from Human Resources and Organisational Development.

The employee should be verbally advised by a senior manager about the suspension and the allegation(s) relating to the decision. The employee should also be told about the right to be accompanied at subsequent interviews and the procedure to be followed. They should also be advised how their pay is to be calculated during the suspension. The suspension must be confirmed in writing and should be sent out to the employee within 2 working days of the decision to suspend, together with a copy of the disciplinary procedures. The letter should make clear the specific allegations made against the employee. A copy of this letter should be sent to Human Resources and Organisational Development.

During the suspension an employee should remain away from their place of work. It is recognised that the employee needs to cooperate with those conducting the investigation and may also need to discuss their circumstances with parties who are assisting them within the process, for example, the person who is accompanying them to meetings. However, the employee should not discuss any aspect of the case with other Council employees/colleagues or other parties connected with the investigation or with any other inappropriate parties. An employee must remain available for work during their normal working hours and attend meetings as appropriate.

Employees should be provided with a point of contact for any issues regarding work and the investigation and this contact should be a two way process. Suspended employees may experience significant levels of stress and sensitivity must be shown throughout the suspension. Employees should also be provided with the details for FirstAssist Telephone Counselling Service. See the toolkit for an example letter confirming suspension.

2.12.2 Reviewing suspension

A period of suspension should not be any longer than necessary and every effort should be made to ensure that it is as brief as possible. During the suspension the employee should be kept informed of progress, including any subsequent review of the suspension and the likely timescale of the investigation, on a regular basis and a note of this contact should be kept. However, the employee should be updated in writing where the allegations develop during the course of any investigation. Human Resources and Organisational Development advice should be sought with regard to any ongoing suspensions.

2.12.3 Sickness and annual leave during suspension

If an employee becomes ill during the suspension the normal contractual sick pay entitlements will come into force for the period of the illness. Employees should comply with the sickness absence reporting procedures in full. However, the suspension will continue and the rules of the suspension will remain unchanged.

Employees must be available for work during their normal working hours and to attend meetings as appropriate, therefore, approval for annual leave must be sought in accordance with normal procedures.

2.13 The investigation

To ensure the fair handling of disciplinary matters it is essential to carry out a **prompt** and adequate initial investigation. This does not mean exploring every possible avenue but it does mean:

- Enquiring into the circumstances and establishing the facts of the case;
- Giving the employee a chance to offer an explanation;
- Gathering of evidence relating to the case;
- Taking a balanced view on whether there are sufficient grounds for an allegation of misconduct.

The investigating officer should write to the employee informing them that a detailed investigation will be conducted and inviting them to an interview as part of the investigation. The letter should include the allegations under investigation and the terms of reference for the investigation. For an example letter see the toolkit.

2.14 The role of the investigating officer

The investigating officer's role is to ascertain the facts regarding all relevant issues as fairly and promptly as possible. There should be as much investigation into the matter as is reasonable. What will amount to a reasonable investigation will depend very much on the circumstances of the particular complaint of misconduct. If it is something which the employee readily admits to having done, the extent of the investigation may well be confined to that, or obtaining a measure of confirmation of it. If during the investigation further alleged misconduct is uncovered, a letter should be issued to the employee informing them that this will also be investigated.

Investigating officers will look at the whole case from all angles. It is important to bear in mind that there is a duty to pursue all reasonable lines of enquiry, whether these support or conflict with the case which is being investigated. All relevant people should be interviewed and any related documentation examined e.g. copies of applicable rules and procedures, personnel files and records, training records and notes of relevant meetings etc. The timescale for conducting the investigation should be completed as quickly as possible and the employee should be kept fully informed throughout the investigation process.

Internal Audit is responsible for initiating or overseeing all fraud investigations. Therefore, during the course of any investigation, if the nature of the allegation changes to a suspicion of fraud or irregularity, Internal Audit should be informed immediately so that further advice can be given. The Council's Anti-Fraud & Corruption Policy and Fraud Response Plan should be referred to for further guidance.

At all times, in cases of irregularities all resources and equipment should be secured and where appropriate made available to the Police (i.e. in the cases relating to pornography)

The investigating officer should keep notes of the sequence of events throughout the investigation including a chronology of dates of interviews and details of any delays e.g.

interviews cancelled and absence of any parties etc. This will be invaluable when compiling the final report.

The investigating officer must produce a report showing the findings and containing a recommendation as to whether it is appropriate for a disciplinary hearing to be convened. It is not the role of the investigating officer to make recommendations regarding the scope of disciplinary action to be taken. This will be the decision of the Hearing Officer who hears evidence from both parties. The investigating officer will normally be expected to present the case at the hearing and appear as a witness at any appeal. They will be expected to answer to their prepared report in any hearing.

Where the investigating officer recommends, in safeguarding cases, that a disciplinary hearing is convened, the report should include reference to any risks potentially linked to the Council's safeguarding duties.

If there is a suspicion of safeguarding involving children or vulnerable adults during a disciplinary investigation then the relevant safeguarding team (Local Safeguarding Children's Board or Safeguarding Adults Board must be informed)

2.14.1 Who should be the investigating officer?

It is essentially a manager's function to deal with alleged misconduct and to progress the matter to the point where a recommendation is made that a disciplinary hearing should be convened. In larger services there may be a number of officers with investigatory experience who could be utilised. There may also be circumstances where it is considered appropriate that the immediate manager does not carry out the investigation, for example if there is a conflict of interest. It is essential that the investigation is fair and impartial to avoid leading to a subsequent conclusion that there was a procedural flaw. Whichever method applies the investigating officer should not participate in the decision making at the disciplinary hearing.

2.14.2 Investigation interviews

The investigating officer will need to consider who they need to interview e.g. respondent, witnesses to the alleged incident(s), work colleagues, service users etc. A decision to interview children or young people must be carefully considered and advice sought where necessary. If, for example, the complaint has been received from colleagues about an employee's conduct, it will be necessary not only to interview the complainants and obtain statements from them, but also to interview some, at least, of those who have not complained but who can be expected to know, or have an opinion about, whether the complaints are justified. If a complaint is received from a member of the public or other person who is not an employee, that person should be seen and invited to make a written statement setting out the details of the complaint. See the toolkit for additional guidance on investigation interviews.

2.14.3 Witnesses and statements

Any witness to the alleged misconduct should be asked to provide a signed written statement and there may be an expectation to attend a hearing if required. Where witnesses wish to remain anonymous consideration needs to be given to balancing the interests of the parties,

the need to protect witnesses and the right of the employee to a fair hearing. Ultimately it will be for the Hearing Officer to decide how much weight to give to evidence from anonymous witnesses. See the toolkit for additional guidance on witnesses and statements.

2.14.4 Concluding the investigation

The concluding part of the investigation should be a final interview with the employee facing the allegations to outline the final concerns/allegations and provide a further opportunity for them to respond. On completion of the investigation a report should be prepared with the findings. The evidence collected should be analysed to establish whether there are sufficient grounds to merit moving to a formal disciplinary hearing. The investigating officer will bear in mind the test to be applied is whether the facts are established "on a balance of probabilities" - i.e., that they are more likely than not to have occurred. Ultimately that will be a test for the hearing officer. This means, as opposed to 'beyond all reasonable doubt' in criminal proceedings, on balance does the evidence support the conclusion more than it conflicts with it. See the toolkit for a suggested framework for the investigation report.

The outcomes at this stage may be no further action, informal discussion, a letter of management advice or a recommendation that a disciplinary hearing be convened. The employee should be informed of this decision. In the event that a disciplinary hearing is convened the report will form the basis of the employer's case to be presented at the hearing. The report should not contain any issues not discussed previously at the final investigation interview with the employee.

2.15 Formal disciplinary hearing

2.15.1 Convening a disciplinary hearing

If it is considered necessary to convene a disciplinary hearing the employee will be informed of this in writing. The employee should be given at least 7 working day's notice of the hearing to allow sufficient time to prepare and arrange representation. The letter will be sent recorded delivery and will include:

- Informing the employee that there is to be a disciplinary hearing;
- The date, time and location of the hearing;
- The name of the Hearing Officer;
- Sufficient information about the alleged misconduct or poor performance and its possible consequences to allow the employee to answer the case - see further information below.
- A copy of the report and supporting documents including statements (The employee has a responsibility to provide his/her representative with a copy);
- The right to be accompanied by a trade union representative or work colleague;
- A copy of the disciplinary procedure;
- A copy of the procedure to be followed at the meeting (see the toolkit);
- Names of any witnesses that the manager is requesting to attend;
- Requesting from the employee confirmation of attendance, the name of their representative, the name of any witnesses the employee intends to call and copies of any additional documentation that the employee intends producing at the hearing. (This information should be provided at least 2 working days prior to the hearing);

- Enquiring as to whether the employee has any reasonable adjustments for the hearing venue, for example, accommodating the needs of a person with disabilities.

The letter must include reference to the potential range of outcomes if the hearing concludes that there has been a breach of disciplinary rules, up to and including dismissal. This factor is relevant in all cases, but particularly so in circumstances that involve safeguarding issues. See the toolkit for an example letter inviting the employee to a hearing which provides an appropriate form of words for this requirement.

2.15.2 Postponing the hearing

The employee must make all reasonable efforts to attend the hearing. If the employee's chosen representative is not available on the original date for the hearing, the employee has the right to have one postponement. This should normally be within 5 working days of the original date. This time limit can be extended by mutual agreement. The employee should also be offered one alternative date if they are unable to attend due to unforeseen circumstances, such as illness.

If the employee fails to attend and a valid reason is not provided, the employee will be informed of an alternative date and that if he/she fails to turn up without a valid reason then the hearing will proceed and decisions taken in their absence.

2.16 The outcome of the hearing

When deciding whether disciplinary action is appropriate and what form it should take, the Hearing Officer should give consideration to:

- Whether the rules of the Council indicate what the likely action will be as a result of the particular misconduct;
- The action/penalty imposed in similar cases in the past;
- The employee's disciplinary record (including current warnings), general work record, work experience, position and length of service;
- Any special circumstances which might make it appropriate to adjust the severity of the action;
- Whether the proposed action is reasonable in view of all of the circumstances;
- Whether any training, additional support or adjustments to work are necessary.

Whilst consistency is important, this does not mean that similar offences will always call for the same disciplinary action. Each case must be looked at on its own merits and any relevant circumstances taken into account for example, health or domestic problems, provocation, ignorance of the rule or standard involved.

The outcome of the hearing may be:

- No further action - where there is no case to answer
- Letter of management advice - although management advice may be issued outside of a disciplinary hearing, it can also be given as an outcome of a hearing in cases of minor

misconduct. In capability cases, there may be a reference to continuing with an action plan.

- Formal disciplinary action

2.16.1 Formal disciplinary action

First Formal Action - Written Warning

Where an employee is found guilty of misconduct a written warning will be issued setting out the nature of the misconduct and the improvement in behaviour required. The employee should be informed that the warning is part of the formal disciplinary process and what the consequences will be as a result of a failure to change behaviour. This could be a final written warning and ultimately, dismissal. The employee should also be informed that they may appeal against the decision.

In cases of incapability the written warning will be based around an 'improvement note' which will clearly state the performance problem, where improvements are still required and the redefined level of continued professional support, advice and guidance to be provided. The length of the timescale to the next review period which is now on a formal basis will also be outlined at this stage. The employee should be informed that failure to improve to a satisfactory standard could result in further action, up to and including dismissal, being taken on grounds of incapability.

Depending upon the seriousness of the situation, this stage may be omitted in cases of both misconduct or incapability and it may be justifiable to move directly to a final written warning.

Under normal circumstances a written warning will be disregarded for disciplinary purposes after **12 months**, subject to satisfactory conduct or performance.

Final Written Warning

Where there is a failure to improve or change behaviour, and previous live warning(s) have not resulted in sufficient improvement, the employee should be issued with a final written warning. In circumstances where an offence is sufficiently serious to warrant only one written warning, but not serious enough to justify dismissal, a first and final written warning will be issued. The warning will give details of the complaint, warn that failure to improve or modify behaviour may lead to dismissal or other sanction and advise of the right of appeal. Under normal circumstances a final written warning will be disregarded for disciplinary purposes after **18 months**, subject to satisfactory conduct or performance

In cases of incapability the final written warning will clearly state where improvements are still required and the redefined level of continued professional support, advice and guidance to be provided. The length of the timescale to the next review period will be decided at this stage and the employee should be informed that in the absence of satisfactory improvement, the likely outcome would be dismissal on grounds of incapability.

Dismissal

If the employee's conduct still fails to improve and previous live warning(s) have not resulted in sufficient improvement, dismissal will normally result. The employee should be provided with written details of the reasons for dismissal, the date on which employment will terminate, the appropriate period of notice and their right of appeal. An employee should not be dismissed for a first breach of discipline, except in cases of gross misconduct.

Dismissal without notice

In very serious cases where an employee is found guilty of gross misconduct that has resulted in a fundamental breakdown of trust and confidence in the employment relationship, dismissal will be without notice or payment in lieu of notice i.e. with effect from the date of the hearing. More details about what can constitute gross misconduct can be found earlier in the procedures.

Time limits for warnings

Except in special circumstances agreed by Human Resources and Organisational Development, any disciplinary action taken should be disregarded for disciplinary purposes after the specified period of satisfactory conduct. Warnings should then cease to be live and should be disregarded for future disciplinary purposes. Exceptionally, there may be circumstances where the misconduct is so serious or verging on gross misconduct, a time limit in excess of the 18 months will be determined. Also, there may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last. There must be sound justification for this decision and under no circumstances should a warning be indefinite as it is not good employment practice to keep someone permanently under threat of dismissal.

In addition, the fact that a warning has expired does not mean that the misconduct in respect of which the warning was given can never be taken into account in any subsequent disciplinary process. However, care again must be taken in these circumstances and consultations must take place with Human Resources and Organisational Development.

2.16.2 Other disciplinary action

In exceptional circumstances, it may be appropriate to apply other action in conjunction with the formal warning process if the Hearing Officer considers the nature of the conduct warrants this, or as an alternative to dismissal. Advice should be sought from Human Resources and Organisational Development, but this may include:

- Demotion to a lower grade
- Disciplinary transfer

2.16.3 Written confirmation of the outcome of the hearing

The employee will be informed of the decision verbally at the end of the hearing. It is essential that this decision is confirmed in writing to the employee and should be sent out recorded delivery within 2 working days of the hearing by the Hearing Officer. The written notification should include:

- Names of those attending the hearing;
- A clear statement of the nature of the misconduct or incapability;
- The required level of improvement expected and the level of continued professional support, advice and guidance if appropriate;
- For capability, the timescale of the next review period;
- The disciplinary action;
- The length of time a warning will remain live;
- The consequences of further misconduct or failure to improve;
- The right of appeal including the timescale for lodging an appeal and how it should be made;
- The fact that formal disciplinary action may well form part of any future reference and will form part of the reference if working with vulnerable groups.
- Where the outcome of the disciplinary hearing results in dismissal, the employee should be provided with details (as identified in the 'Dismissal' section). In addition, the employee will be required to return all work apparatus including identification cards.

For an example letter confirming the outcome of a hearing see the toolkit.

The employing Service should ensure that case details are logged away on the appropriate file and the case closed, pending any appeal.

2.17 Right of appeal

Employees have the right of appeal against formal disciplinary action taken against them. The opportunity to appeal is essential to natural justice. Employees may appeal on various grounds, for example, that the evidence did not support the findings, that there is new evidence to be considered or that the level of sanction was too severe. Defects in the original procedure may often be remedied through a properly held appeal. Appeals should be lodged within 10 working days of receipt of the letter confirming the disciplinary action and must clearly state the grounds for the appeal.

The appeal will be heard by the Council's Appeal Panel and a representative from Legal Services and a representative from Human Resources and Organisational Development will be in attendance to provide advice and guidance to Members on the panel.

Clearly, the case should have been conducted thoroughly within earlier proceedings. However, in cases where a statutory officer of the Council believes that there may be implications for the safeguarding of vulnerable adults, young people or children, the Corporate Director (Children & Young People's Services) or the Corporate Director (Adults, Wellbeing & Health) will be offered the opportunity to make a statement, either in person, through a nominee, or in writing. This will allow the Panel to be made aware of his or her views and ensure that their statutory obligations on behalf of the Council can be considered.

The appeal should be proceed without unreasonable delay and employees have a right to be accompanied. After the employee has put their case, the Hearing Officer will be required to present the case to the Appeal Panel. This will usually be with the assistance of the Investigating/Presenting Officer.

It will depend upon the grounds for appeal as to whether the appeal will require a re-hearing of facts or whether it may be limited to particular issues such as the extent of the sanction imposed. For the procedure to be followed at the appeal hearing see the toolkit.

New evidence, where presented, should be considered. Generally there is a possibility to admit new evidence to ensure principles of natural justice. However, both sides would need appropriate time to consider the same so it is possible that a short adjournment would be called. This decision would be addressed by the Appeal Panel following advice from the Appeal Clerk.

Where possible, once a decision is reached at the appeal hearing, the employee will be given verbal notification of the decision and the reasons at the conclusion of the hearing. The outcome should not result in any increase in a disciplinary penalty. This will then be confirmed in writing by recorded delivery as soon as possible thereafter. The decision made at this stage is final and concludes the Council's disciplinary procedure.

Where any decision has been overturned, the Appeal Panel may give consideration to any other implications such as training requirement or rule clarification.

2.18 Dealing with special situations

2.18.1 Trade Union Representatives

Although normal disciplinary standards apply to their conduct as an employee, disciplinary action against a trade union representative can be construed as an attack on the union. No disciplinary action should therefore be taken until the case has been discussed, after obtaining the employee's agreement, with a full-time trade union official. Advice should be sought from Human Resources and Organisational Development if the trade union representative refuses to give consent.

2.18.2 Criminal charges or convictions

If an employee is subject to a criminal investigation, this will be a separate issue to the internal disciplinary investigation. The internal disciplinary investigation does not necessarily have to wait for the completion of the criminal investigation, but care should be taken and the investigating officer should consult with the police officer concerned so as not to obstruct the course of the criminal inquiries. It may be that the criminal investigation will have to be completed first. In which case, the timescale for the internal investigation will have to be reviewed. The employee should be kept informed of the position.

Where the police are involved they should not be asked to conduct any investigation on behalf of the Council. Witnesses may be required to provide a statement and requested to attend the Hearing if appropriate.

The fact that a criminal investigation leads to no formal charges does not necessarily mean that there should be no disciplinary investigation as they are two separate matters and dealt with on different burdens of proof. It is important to remember that the burden of proof that an employer is working to is 'on the balance of probabilities' and not 'beyond all reasonable doubt' as in criminal proceedings.

If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody. Careful consideration should be given to a criminal conviction. It may relate to an offence either in work or outside of work. In the latter case, consideration must be given as to the likely effect upon the employee's ability to carry out his or her duties. The following should be considered:-

- Is the offence, or alleged offence, one that makes the employee unsuitable for their type of work?
- Will there be an effect on the reputation of the Council given the nature of the business?
- Does the incident involve or affect other employees?

Where any criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, the Council should consider whether alternative work is appropriate and available.

Where an employee, charged with or convicted of a criminal offence, refuses or is unable to co-operate with the disciplinary investigation and proceedings, this should not deter the Council from taking disciplinary action. The employee should be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

Where cases may involve safeguarding issues involving vulnerable adults or children there will be specific requirements on how to proceed with a disciplinary case. Further details can be found in the earlier section 'protection of children & vulnerable adults'.

2.18.3 What if the employee raises a grievance?

Where an employee raises a grievance during the disciplinary process the disciplinary process may be suspended in order to deal with the grievance.

Where the disciplinary and grievance cases are related it may be appropriate to deal with the issues concurrently and advice should be sought from Human Resources and Organisational Development where appropriate.

2.18.4 Handling group dismissals

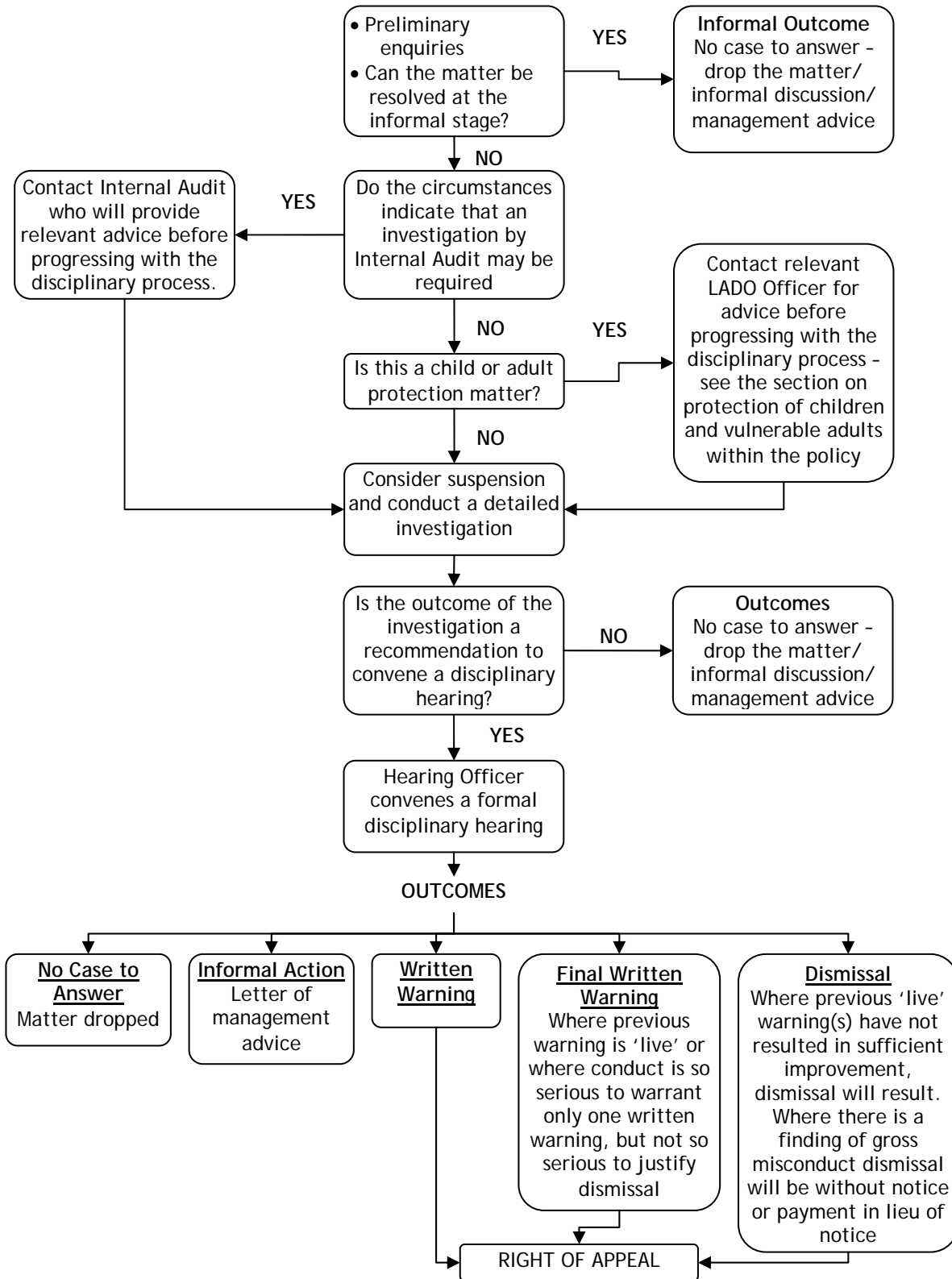
Where two or more employees are suspected of misconduct, and despite a thorough investigation it is inconclusive as to who is to blame, it may be fair to dismiss one or more employees in relation to the same incident without the dismissal being unfair. Individual hearings should be held with the employees involved before a decision is made on what, if any, disciplinary action is to be taken. . The following principles should be considered in

these situations and advice should be sought from Human Resources and Organisational Development:-

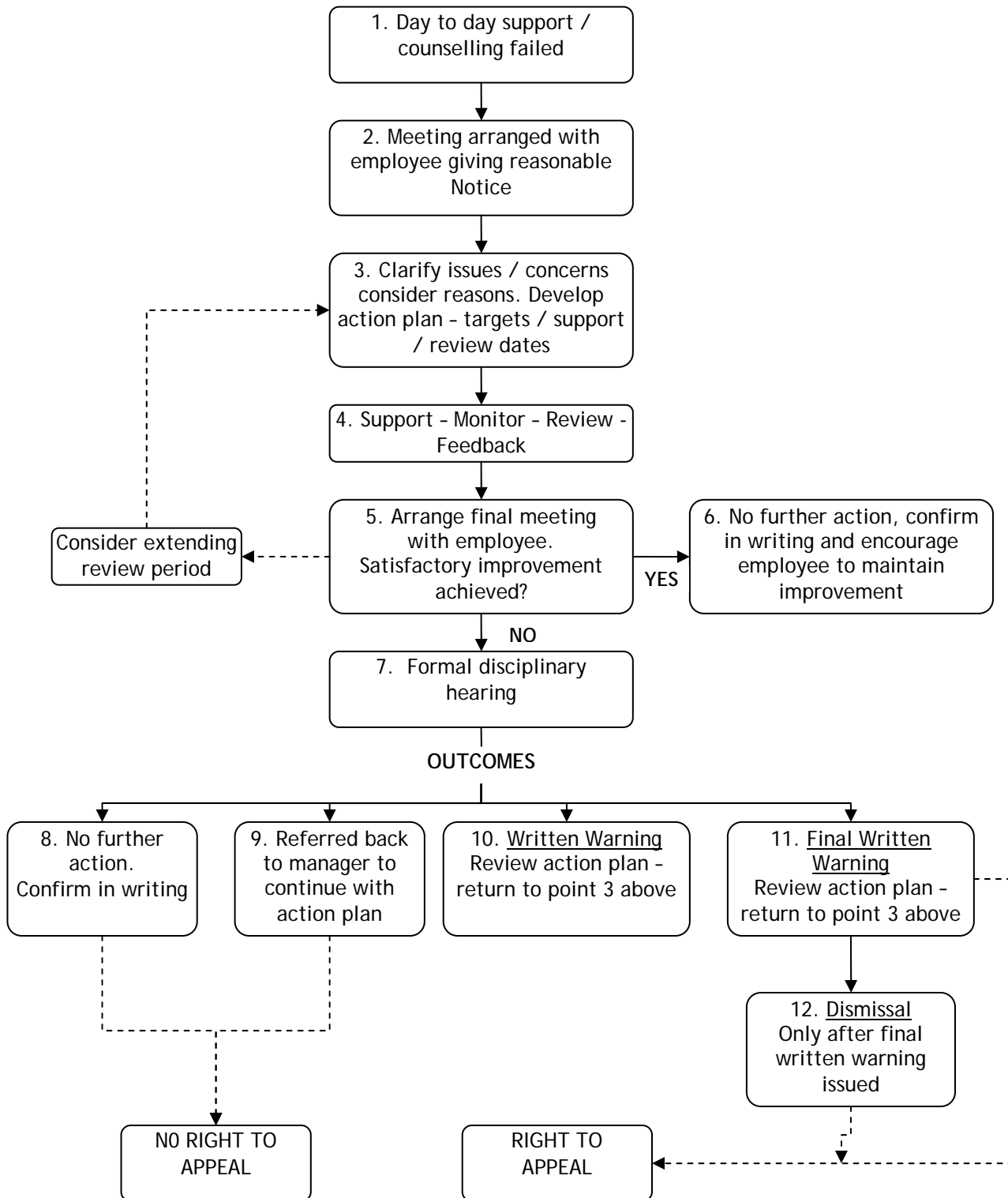
- Would the conduct, if committed by an individual, justify dismissal?
- Was it reasonable to identify this particular group of employees as having been capable of committing the alleged misconduct?
- Could each individual in isolation have committed the act?
- Has a thorough investigation been conducted?
- As a result of the investigation, is it reasonable to believe that more than one person was involved?
- Given the evidence, can the culprit be identified?

3. Toolkit

3.1 Flowchart - Conduct



3.2 Flowchart - Capability



3.3 Preparation for the investigation interview

Sound preparation for the interview will make establishing the facts easier to achieve. The investigating officer must know what he or she is trying to establish. At the interview it is good practice to:

- Arrange a suitable venue that is fully accessible and ensure that you will not be disturbed. Also, check with the interviewee as to whether they have any special requirements;
- Allow the employee to be accompanied by a trade union representative, or an official employed by a trade union or work colleague. Although there is no right at this stage it is good practice to allow this and the opportunity should be extended to all employees being interviewed including witnesses;
- Draft your main questions in advance;
- Try and put the employee at his or her ease. Outline who you are and your role and explain the purpose of the interview;
- Begin by outlining the matters to be discussed and explaining that the interview is by way of a preliminary enquiry. Start off by saying "I am looking into what happened on...when...and want to ask you some questions about it."
- Avoid an accusatory tone. Use probes like "I'm not quite sure what you meant when you said..... Would you like to explain it?"
- Use open questions (who, what, where, when, why, with whom, how) and ask follow up questions to check understanding;
- Avoid leading questions and multiple questions;
- Question the employee further if an explanation is given which is incomplete, inconsistent, evasive or otherwise unsatisfactory;
- Avoid interruptions or the main purpose of the interview, which is to hear the employee's side of the story, can be lost;
- Remind the interviewee that the proceedings are confidential and that matters raised should not be discussed outside the interview;
- Remain impartial throughout the interview. It is important not to indicate agreement or judgement. Decisions can only be made at the end of the investigation when all available evidence can be analysed and balanced;
- Keep an open mind and look for evidence that supports the employee's case as well as evidence against.

All interviews should be formally recorded and signed by all present. For an example of an interview record form see the toolkit. The Investigating Officer may need administrative support during the process, for example, to take notes or send correspondence.

During the interview if the interviewee confesses to a criminal act or the interviewer believes that a criminal act may have been committed, then the interview should be suspended immediately and the matter referred to Human Resources & Organisational Development and/or Internal Audit for further advice.

3.4 Witnesses and statements

The following guidance should be followed in relation to statements:

- Statements should be in writing and need to be accurate with regard to date, time and place of each incident;
- Include the opportunity and ability of the witness to observe clearly and with accuracy;
- Include evidence such as knowledge of a system or arrangement, or the reason for their presence and why certain small details are memorable;
- Consider possible reasons for fabrication;
- Seek corroborative evidence;
- Is their fear genuinely sufficient to not require them to be involved in the disciplinary process further? If so, a decision will need to be made whether or not to continue with the disciplinary process;
- If the process does continue and progresses to a disciplinary hearing, the Hearing Officer should interview the witness themselves and be satisfied about the weight to be given to the information;
- The written statement, if necessary with omissions to avoid identification, should be made available to the employee or their representative;
- If at any stage in the disciplinary hearing the employee raises issues to be put to a witness who cannot attend then consideration should be given to an adjournment so the relevant questions can be put to them;
- In cases involving anonymous witnesses it is particularly important that full and careful notes are taken. Where possible, corroborative evidence to support any anonymous allegations should be sought. In addition, if possible, comment may be included about possible motives linked to anonymous allegations.

3.5 Investigation Report

A suggested framework for the report should include:

- A brief introduction to the circumstances of the case;
- Relevant background information on the employee e.g. post details, relevant letters of management advice, live disciplinary warnings;
- A chronology of events and outline of timescales - including how the allegation(s) came to light, the events that have happened since i.e. suspension, dates of interviews; reasons for any delays in the process;
- A list of interviewees;
- What appropriate support mechanisms may have been offered to the employee, for example - training, mentoring, the telephone counselling service, Occupational Health etc;
- An outline of each allegation and the findings for each allegation;
- A balance of evidence and summary of findings;
- A recommendation as to whether the matter should be referred to a disciplinary hearing;

- All documentary evidence should be attached as appendices. For example, witness statements and interview records and, if appropriate, copies of the relevant rule or policy/ procedure as well as evidence as to how that has been communicated to employees.
- In cases where there may be implications for the safeguarding of vulnerable adults, young people or children, a statement may be included from a statutory officer of the Council - the Corporate Director for Children & Young People's Service or Adults, Wellbeing & Health, or their nominee.

3.6 Preparing for a disciplinary hearing

When arranging the disciplinary hearing careful consideration should be given to providing a suitable venue that is fully accessible and includes refreshments. Any reasonable adjustments for the parties involved should be requested. The room should be as comfortable and as private as possible, bearing in mind the sensitivity and confidentiality of the matter, and the fact that interviewees might not be comfortable being interviewed at their own place of work, a neutral venue should be considered. Every effort should be made to provide 2 additional rooms to that used for the hearing to accommodate the employee, together with their representative and any witnesses, as well as the investigating officer and any witnesses.

There must be a representative from Human Resources and Organisational Development present at the hearing to provide advice and guidance and ensure that the correct procedure is followed. It is good practice to have a note taker, not involved in the case, who will normally be from the employing service.

A witness called to a disciplinary hearing is likely to feel apprehensive about the process. The investigating officer should meet with the witness in advance of the hearing to outline the process, reassure them and answer any questions that they may have. They should also have provided the witness with a copy of the disciplinary procedure.

Preparation prior to the hearing will be invaluable when presenting the case. The investigating officer will need to ensure that they have ordered all of the information required in an easily accessible way. The investigation report will form the basis of the presentation. All supporting information should be included as appendices and the information in support of allegations cross referenced. The investigating officer should make notes of any issues that they feel need to be challenged or clarified during the employee's statement of case. It will also be useful to prepare a summing up statement in advance of the presentation, bearing in mind that this may need to be amended if new points arise during questions or submission of the employee's case.

Prior to the hearing the Hearing Officer should schedule two diary dates within five working day's for the hearing and ensure that they have the necessary documentation required including:

- The employee's personal file;
- A copy of the full documentation supplied to the employee i.e. the investigation report and supporting evidence such as witness statements;

- The procedure to be followed at the hearing and the Disciplinary Policy, Procedure and Toolkit.

The Hearing Officer should also have been advised in advance of the hearing as to who the employee is bringing along as their companion.

The Hearing Officer should also be clear as to whether the investigation has concluded that there are any risks to the Council's safeguarding duties and whether a statement to that effect has been included from either the Corporate Director (Children & Young People's Service or the Corporate Director (Adults, Wellbeing & Health), or their nominee. The statutory officer or a nominee could also be asked to attend the disciplinary hearing to highlight any such safeguarding concerns.

Within the hearing, the details of the complaint should be set out clearly, the evidence should be carefully examined and the employee given sufficient opportunity to ask questions, present evidence and produce their own witnesses. The Hearing Officer should keep notes as to how the disciplinary hearing proceeds and the nature of the evidence heard.

3.7 What problems may arise?

If the employee becomes upset or distressed during the hearing allow time for them to regain composure before continuing. If the distress is too great to continue then adjourn and subsequently consider reconvening at an appropriate time, however, the issues should not be avoided. During the hearing there may be some 'letting off steam' and this can be helpful in finding out what actually happened. However, abusive language or behaviour during the hearing should not be tolerated.

An adjournment is also useful to allow time to check matters further particularly if there is any dispute over facts. If new facts emerge, consider whether to reconvene the hearing.

3.8 Example letter of management advice

Contact tel. no.

E-mail

(Date)

Strictly Personal and Confidential

(Name)

(Address)

Dear

Letter of Management Advice

Further to our meeting held on (day, date, time), I write to confirm the outcome of the meeting. Present at this meeting were (details).

After carefully considering the issues that we discussed I have decided not to take formal disciplinary action but to provide you with Management Advice.

- Include a clear statement of the issues discussed with the employee with regard to their conduct;
- Outline the expectations of the Service/Council with regard to the standards of conduct/behaviour required and the expected improvement;
- Refer to any support that is to be provided to the employee, by whom and over what timescale;
- Inform the employee of the dates of any necessary review meetings and timescales.

You should be aware that if any further incidents of this or similar behaviour occur in the future they may result in formal disciplinary action being taken, which could ultimately lead to dismissal.

If you require further clarification regarding any aspects of this letter please contact me as soon as possible.

Yours sincerely

(Name)

(Job title)

3.9 Example letter confirming suspension

Contact tel. no.

E-mail

(Date)

Strictly Personal and Confidential

(Name)

(Address)

Dear

Suspension from Duty

I refer to the meeting/interview held on (day, date, time) between (names including representative if appropriate) regarding the following allegation(s):-

Insert details about specific allegation(s)

I am writing to confirm that you are suspended from duty on full salary with immediate effect and without prejudice. I would emphasise that the decision to suspend you is not a disciplinary measure and does not make a presumption regarding any issues raised. As explained at our meeting, it is also a measure, (insert reason, for example, to enable an investigation to be carried out), which is both in the interests of yourself and the Council. (Insert name and job title) will be the Investigation Officer and will contact you in due course to explain how this process will continue and how you will contribute.

Until this matter is resolved you should remain away from your place of work. Clearly you may need to discuss the circumstances relating to this case with someone assisting you with the process, for example, a trade union representative. However, you have a duty to ensure that you treat the matters being considered here in confidence. You must not discuss any aspect of the case with other County Council employees/colleagues or other parties connected with the investigation or with any other inappropriate parties.

In addition, you should remain available for work during your normal working hours throughout the period of your suspension and attend meeting(s) as appropriate. (Insert name, job title and contact details) will be your point of contact during the period of your suspension should you wish to contact the County Council. Should you become ill during the period of suspension, you should comply with the sickness absence reporting procedures. Your sickness pay entitlement will commence, however, the suspension will remain in place. You must also seek approval for any annual leave.

The above is in accordance with the Council's Disciplinary Policy, Procedure and Toolkit, a copy of which is enclosed.

I would also advise you that if you have not already done so, it is in your own interest to seek advice and support from your Trade Union. You can also contact FirstAssist, the Council's telephone counselling service, for support. They can be contacted on 0800 068 5155 Or 0800

716017, quoting Scheme Number 33679 if asked (where appropriate, include details to Staff Care Officers).

Yours sincerely

(Name/Job title)

(Copy to Human Resources and Organisational Development)

3.10 Example invitation to interview as part of the investigation

Contact tel. no.

E-mail

(Date)

Strictly Personal and Confidential

(Name)

(Address)

Dear

Disciplinary Investigation

Further to the meeting/interview on (details) or date of suspension letter (where appropriate) I write to confirm that I am investigating the allegation(s) (specific details).

As part of the investigation please can you attend an interview on (date, time, venue). I must emphasise that this is not a formal disciplinary hearing. The purpose of the meeting is to enable me to gather evidence and to provide you with an opportunity to respond to the issues raised and let me know of any other information you deem relevant to the investigation. You may request to be accompanied by a trade union representative, an official employed by the trade union or work colleague.

May I remind you that you must not discuss any aspect of the investigation with anyone else beyond someone assisting you with these circumstances, for example, the person accompanying you to the interview. In the meantime you should continue to comply with the terms of your suspension letter (if appropriate).

The above is in accordance with the Council's Disciplinary Policy, Procedure and Toolkit, a copy of which is enclosed.

If you require any further clarification regarding this letter please contact me.

Yours sincerely

(Name)

(Job title)

3.11 Example interview record form

RECORD OF INTERVIEW (continue on further sheets where appropriate)

INTERVIEWEE.....	DATE.....	
Location.....	Time Commenced.....	Time Ended.....
Page...of ...	Others present:	

The above is an accurate and fair record of the interview

Signed Interviewer_____ Date_____

Signed Interviewee_____ Date_____

3.12 Example invitation to disciplinary hearing

Contact tel. no.
E-mail
(Date)

Strictly Personal and Confidential

(Name)

(Address)

Dear

Disciplinary Hearing

I am writing to inform you that you are required to attend a disciplinary hearing on (insert date, time, venue).

At this hearing consideration will be given to disciplinary action being taken against you, in accordance with the Council's Disciplinary Policy, Procedure and Toolkit (attached), with regard to the allegation(s) that (insert details).

At the hearing I will be considering the attached report of the Investigating Officer. I also enclose, for your information, a copy of the procedure to be followed at the hearing. You have the right to be accompanied at the hearing by a trade union representative, an official employed by the trade union or work colleague. Please advise me at least 2 working days before the hearing as to who will accompany you.

The Investigating Officer does not propose to call upon any witnesses during the hearing/The Investigating Officer intends to call the following witnesses for clarification purposes (insert names of witnesses). If you wish to submit a written statement or other documentation to me prior to the hearing, or if you arrange for any witnesses to attend in support of your statement of case, please ensure that this information is supplied to me at least 2 working days before the hearing.

Please confirm that you will be attending the hearing by signing the attached copy of this letter and returning it in the envelope provided.

If you require any special arrangements at the hearing i.e. accessible venue, please let me know by (date).

I can advise that you can also contact FirstAssist, the Council's telephone counselling service, for support. They can be contacted on 0800 068 5155 or 0800 716017 quoting Scheme Number 33679 if asked (where appropriate, include details to Staff Care Officers).

You need to be aware that if the outcome of this disciplinary hearing is that you have breached disciplinary rules, the disciplinary action which could be taken is the full range of disciplinary sanctions up to and including dismissal.

Yours sincerely

(Name)

(Job title)

cc: Human Resources and Organisational Development

3.13 Procedure to be followed at the hearing

Introduction

The Hearing Officer will invite all parties present to introduce themselves and their role in the hearing. N.B. A representative from Human Resources and Organisational Development (HR/OD) must be present at the hearing.

Statement of case by the Employer

1. The INVESTIGATING OFFICER will put the case in the presence of the EMPLOYEE and his/her representative and will call witnesses.
2. The EMPLOYEE (or his/her representative) will have the opportunity to ask questions of the INVESTIGATING OFFICER on the evidence given by them.
3. The HEARING OFFICER and the HR&OD OFFICER will have the opportunity to ask questions of the INVESTIGATING OFFICER and his/her witnesses.

Statement of case by the Employee

4. The EMPLOYEE (or his/her representative) will put the case in the presence of the INVESTIGATING OFFICER and will call witnesses.
5. The INVESTIGATING OFFICER will have the opportunity to ask questions of the EMPLOYEE and his/her witnesses.
6. The HEARING OFFICER and the HR&OD OFFICER will have the opportunity to ask questions of the EMPLOYEE and his/her witnesses.

Summing Up

7. The INVESTIGATING OFFICER and the EMPLOYEE (or his/her representative) will have the opportunity to sum up their cases if they so wish.

Parties to Withdraw

8. The INVESTIGATING OFFICER and the EMPLOYEE (and his/her representative) to withdraw.

Consideration by Hearing Officer

9. The HEARING OFFICER and HR&OD Officer will deliberate in private, only recalling the INVESTIGATING OFFICER and the EMPLOYEE (and his/her representative) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

Decision

10. When the HEARING OFFICER has reached a decision the INVESTIGATING OFFICER and the EMPLOYEE (and his/her representative) will be invited back in and informed of that decision verbally.

3.14 Example confirmation of the outcome of the hearing

Contact tel. no.

E-mail

(Date)

Strictly Personal and Confidential

(Name)

(Address)

Dear

Disciplinary Hearing Outcome

I write to confirm the outcome of the Disciplinary Hearing held on (details) which you attended with (representative details if applicable). As you know, the purpose of the hearing was to consider the allegation(s) as set out in the report of (details). A copy of the report had previously been supplied to you. Also present at the hearing were (details).

(Insert details of allegations)

I have given very careful consideration to all the evidence presented at the hearing including the submission provided by you and (insert name of representative and witnesses if applicable). In reaching a decision I have concluded that:

Insert bullet points of findings together with details of any mitigating factors raised by the employee and the Hearing Officer's response. Also, if appropriate, include the details of earlier live warnings. In cases of incapability define the level of continued professional support, advice and guidance to be provided and the length of the next review period which is now on a formal basis. It should be clear that failure to improve to a satisfactory standard could result in further action, up to and including dismissal, being taken on grounds of incapability.

Insert the following outcomes as appropriate:

(1) I have, therefore, decided to issue you with (insert level of warning). This warning will remain on your file for disciplinary purposes for a period of (insert timescale). Should you again transgress disciplinary rules during this period, this warning may be taken into consideration for disciplinary purposes and any subsequent sanction taken against you could ultimately/is likely to result in your dismissal. You should also be aware that this warning may form part of any future reference.

(2) I have, therefore, decided that you be dismissed. This decision will be forwarded to the relevant officer within (insert name of service) and you will be issued with the appropriate paid notice to terminate your employment in line with legislation.

(3) Your suspension from work is lifted with effect from (details). You should meet with (details) as a matter of urgency to discuss your return to work.

(4) I have concluded that your actions constitute a fundamental breach of trust and confidence in the employment relationship between yourself and the County Council. Accordingly, it has been decided that these actions represent gross misconduct and that your employment with the County Council should cease with immediate effect.

You have the right of appeal against this decision to the Appeals Committee of the County Council. If you wish to exercise this right, you should do so, in writing, to (insert name) within 10 working days of receipt of this letter stating the grounds for your appeal.

Yours sincerely

(Name)
(Job title)

Cc: Human Resources and Organisational Development

3.15 Procedure to be followed at the appeal

Introduction

The Chair of the APPEALS PANEL will invite all parties present to introduce themselves and their role in the hearing. A representative from Legal Services and Human Resources and Organisational Development will be in attendance. The purpose of the hearing, how it will be conducted and the powers of the APPEALS PANEL should be explained.

Statement of case by the Employee

- 1 The EMPLOYEE (or his/her representative) will put the case in the presence of the PRESENTING OFFICER and will call witnesses.
- 2 The PRESENTING OFFICER will have the opportunity to ask questions of the EMPLOYEE and his/her witnesses.
- 3 The members of the APPEALS PANEL and the representative from LEGAL SERVICES will have the opportunity to ask questions of the EMPLOYEE and his/her witnesses.

Statement of case by the Employer

- 4 The PRESENTING OFFICER will put the case in the presence of the EMPLOYEE and his/her representative and will call witnesses.
- 5 The EMPLOYEE (or his/her representative) will have the opportunity to ask questions of the PRESENTING OFFICER and his/her witnesses.
- 6 The members of the APPEALS PANEL and the representative from LEGAL SERVICES will have the opportunity to ask questions of the PRESENTING OFFICER and his/her witnesses.

Summing Up

- 7 The PRESENTING OFFICER and then the EMPLOYEE (or his/her representative) will have the opportunity to sum up their cases if they so wish.

Parties to Withdraw

- 8 The PRESENTING OFFICER and the EMPLOYEE (and his/her representative) withdraw from the hearing.

Consideration by the APPEAL PANEL

- 9 The members of the APPEALS PANEL and the representative from LEGAL SERVICES will deliberate in private, only recalling the PRESENTING OFFICER and the EMPLOYEE (and his/her representative) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

Decision

- 10 When the APPEALS PANEL has reached a decision the EMPLOYEE (and his/her representative) and the PRESENTING OFFICER will be invited back in and informed of that decision.