

# **CAERPHILLY COUNTY BOROUGH COUNCIL**

## **DRAFT DISCIPLINARY PROCEDURE**

**APRIL 2010**

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**Wherever the designation Manager is used throughout this procedure, it is taken to mean Head of Service, Line Manager, Supervisor, Officer in Charge or anyone who has a responsibility for employees through their work.**

## **INTRODUCTION**

1. Caerphilly County Borough Council requires good standards of conduct from its employees along with satisfactory standards of work and attendance. The Council's Disciplinary Procedure applies to all issues of alleged misconduct as well as failure to meet the required standards of job performance or attendance.
2. The purpose of the disciplinary procedure is to help and encourage employees to achieve and maintain acceptable standards of conduct, job performance and attendance and to ensure consistent and fair treatment for all employees.
3. This Disciplinary procedure reflects, and is consistent with, the standard dismissal and disciplinary procedure set out in the Employment Act 2008 and the ACAS Code Of Practice on Discipline and Grievance Procedures.
4. This procedure should be cross-referenced with all the relevant Council policies and the Code of Conduct. Copies of all the Council's policies can be found on the Intranet or obtained from your Manager or Directorate Personnel Unit.

## **SCOPE OF THE PROCEDURE**

5. The Disciplinary procedure applies to all employees except those school based support/teaching staff for whom the Governing Body sets the local terms and conditions of employment.
6. This procedure does not cover the Chief Executive, the Council's Monitoring Officer or the Council's Section 151 Officer as separate disciplinary procedures apply to these posts.
7. The Council's recognised trade unions have been consulted on the introduction of this procedure.
8. The effective date of this procedure is 1<sup>st</sup> April 2010. This procedure supersedes all earlier procedures and should be used to deal with all disciplinary issues that arise.

## **GUIDING PRINCIPLES**

9. Heads of Service through their Senior Officers and Supervisors have the responsibility for ensuring this procedure is applied to all the employees in their Service Area.
10. Minor acts of misconduct will be dealt with informally but where formal action is necessary this procedure will be invoked. Informal action will include counselling which will highlight to the employee their actions are unacceptable and that a repetition will lead to formal disciplinary action being taken. Any actions that are taken at the informal stage should be documented, and notes made of the meeting, to ensure that these actions are not forgotten if it is necessary to move to the formal stage of the procedure.
11. No disciplinary action will be taken against an employee until the case has been fully investigated. Managers must take advice from their Directorate Personnel Unit prior to invoking the Disciplinary procedure.
12. There are occasions where it may be appropriate for the employee not to be at work whilst the investigation is being undertaken or until such time as any subsequent disciplinary hearing is completed. Suspension in these cases is not a disciplinary sanction but a neutral act and as such it is not intended to be a punishment or a presumption of guilt. In these circumstances, this period will be with full pay for the duration of the suspension.
13. At every stage in the Disciplinary procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made. In exceptional circumstances, this may not happen. In the main these cases will relate to issues surrounding child protection or the protection of vulnerable adults.

14. The details of the alleged misconduct or a failure to meet the required standard of job performance or attendance will be set out in the letter inviting the employee to attend a disciplinary hearing.
15. At all stages of the formal procedure, the employee will have the right to be accompanied by a work colleague, a trade union representative or official. Trade union representatives must have been certified by their union as being able to accompany an employee. If an employee is to be accompanied by a work colleague, it must not be someone who is directly involved in the case as their presence may prejudice the case or they may have a conflict of interest.
16. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct. In the event of employees being dismissed as a result of gross misconduct, there will be no notice or payment in lieu of notice given.
17. The disciplinary procedure may be implemented at any stage if the employee's misconduct, job performance or attendance record warrants such action.
18. At all stages, any information gathered or presented by all participants must be treated in the strictest confidence. All information gathered in relation to the case should be kept no longer than necessary in accordance with the Data Protection Act 1998.
19. All employees will be expected to co-operate fully with any investigations. Employees involved in disciplinary investigations who are absent from work for reasons of ill health will be required to attend meetings at any stage of the disciplinary process and to respond to communications without undue delay. If employees are unable to attend these meetings, due to ill health, the disciplinary process will be progressed. In this circumstance the employee may be represented at meetings by their chosen representative. Alternatively the Council reserves the right to carry out the investigation and progress the disciplinary process in the absence of the employee and their representative.
20. If it is necessary to take disciplinary action against a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
21. Disciplinary action will be issued separately for misconduct, poor job performance and attendance. In cases of misconduct, progressive disciplinary action will be taken for each incident of misconduct even though they may not be related.
22. Written and final warnings will remain on an employee's personal file indefinitely but subject to satisfactory conduct, job performance or attendance, they will be disregarded for disciplinary purposes after their expiry date.
23. In certain cases, a final written warning may never be removed and if there is any reoccurrence of this type of conduct during the employee's employment it will lead to dismissal. In the majority of cases this would relate to final written warnings issued in relation to cases surrounding child protection and the protection of vulnerable adults.
24. An employee will have the right to appeal against any disciplinary sanction imposed. This will be the final stage of the Disciplinary procedure.
25. Where an employee's job performance is the reason for disciplinary action, the sanction imposed may be a disciplinary warning and a reduction in salary or withholding of an increment. This sanction will not be applied until a full investigation has been undertaken into the circumstances surrounding an employee's job performance. If this sanction is applied a plan will be developed and agreed with the employee to ensure that the employee's job performance reaches acceptable levels. For further information on dealing with employees' underperformance, see the Council's Managing Underperformance Procedure.
26. In cases of redundancy, probationary issues, the ending of a fixed term contract or ill health termination, please refer to the relevant procedure for the process to follow.

27. Every effort will be made to deal with the disciplinary process as promptly as possible.
28. If an employee, or the person accompanying them is disabled, accessibility issues must be considered to allow them to take part in the disciplinary process.

## **MISCONDUCT**

29. It is important that every employee understands that local government employment calls for the highest standard of conduct, responsibility and integrity and that public confidence would be shaken were the least suspicion to arise that any employee could be influenced by improper motives. Failure to maintain acceptable standards both inside and outside of work could be in contravention of the Council's Code of Conduct and/or its disciplinary procedure and lead to disciplinary action being taken against an employee for misconduct.
30. In certain cases, it may be appropriate to involve Internal Audit where the case involves potential financial irregularities (as stated in the Council's Financial Regulations). In all appropriate cases, the Council will seek restitution.
31. The following are examples of offences, which generally amount to misconduct. Depending on the nature of the offence some examples of these could be viewed as gross misconduct.
  - Unauthorised absence from work.
  - Lateness.
  - Unsatisfactory and unacceptable performance of duties.
  - Time wasting.
  - Contravention of safety procedures.
  - Unauthorised use of the telephone/e-mail/contravention of the IT Security Policy, including the misuse of social networking sites.
  - Disruptive behaviour, e.g. undermining management, team morale or the efficient running of the team, etc..

This list is not exhaustive or exclusive.

## **GROSS MISCONDUCT**

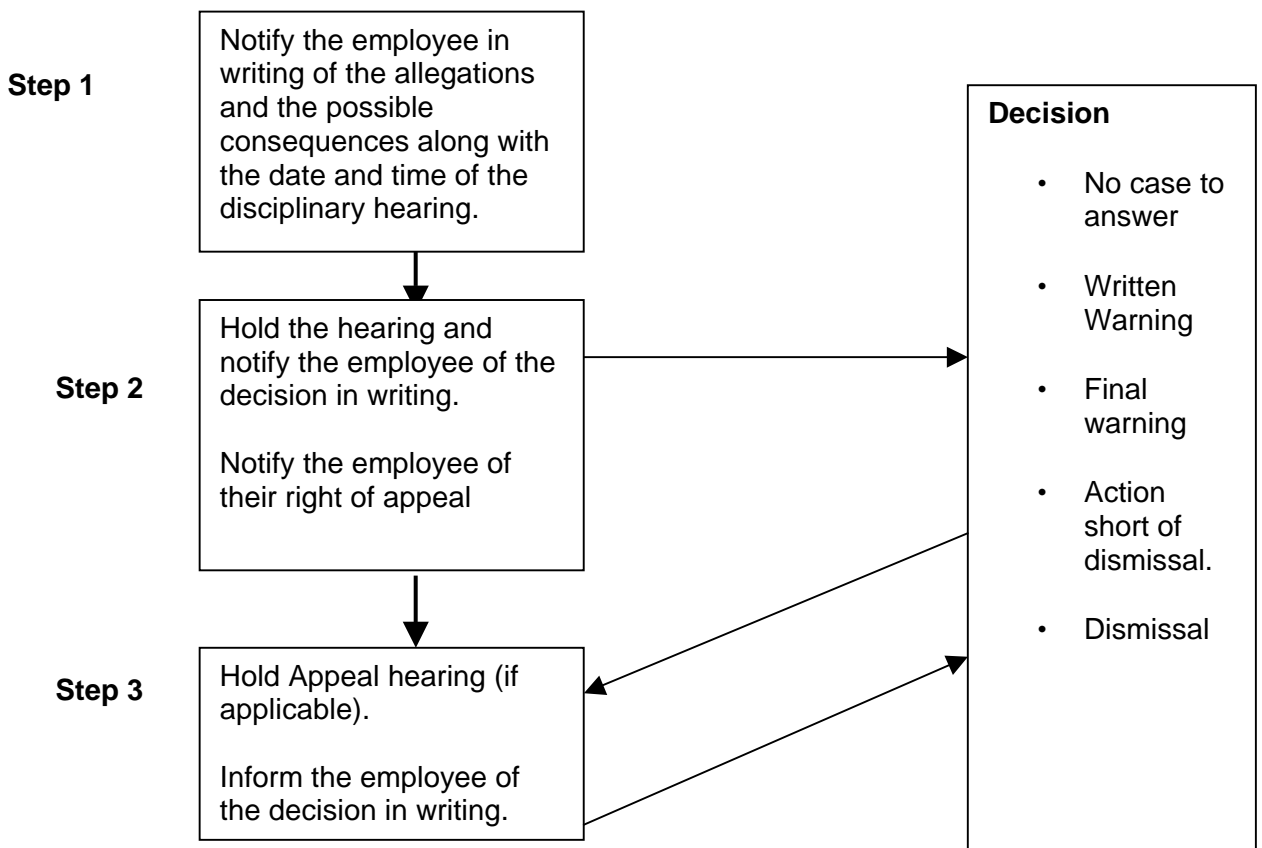
32. The following are examples of offences, which are normally regarded as amounting to gross misconduct and may be dealt with as such under the procedure:
  - Refusal to accept and act on a reasonable instruction from a Supervisor or member of management.
  - Fighting, assault, harassment, victimisation or abusive, intimidating, threatening or bullying behaviour. This includes sexual misconduct at work.
  - Theft, fraud, falsification of records (including qualifications which are a stated requirement of employment or which result in financial gain) or any dishonesty involving the Council, its employees, clients, members of the public, Elected Members, authorised visitors, or attempts to commit such offences.
  - Deliberate or reckless damage to the property of
    - the Council
    - its employees
    - visitors to Council premises.
  - Serious negligence that could lead to or result in loss, damage or injury.

- Unauthorised disclosure of confidential information or information governed by the Data Protection Act 1998 (subject to the Public Interest Disclosure Act 1998). This includes the Council's rules in relation to electronic communication systems and computers.
- Any action likely to endanger the health and safety of the employee or any other person.
- Any action or behaviour, which could damage the Council's reputation, including rudeness to members of the public or clients and inappropriate use of social networking sites.
- Serious breaches of the Council's policies and procedures or failing to comply with relevant statutory or regulatory requirements.
- Serious acts of insubordination e.g. defiance, disobedience, etc. .
- Accepting a gift, which could be construed as a bribe.
- Conviction for any serious criminal offence while a Council employee, which renders the employee unsuitable for continued employment. This would depend on the facts of the case and the risk assessment undertaken under the Employment of Ex Offenders Policy.

This list is not exhaustive or exclusive.

### DISCIPLINARY PROCESS

33. Once the investigation process has been completed the following 3-step process must be followed in all cases where disciplinary action is being considered. Step 3 is only applicable if the employee exercises their right of appeal.



## **DISCIPLINARY SANCTIONS**

### **Stage 1 - Written Warning**

34. If an employee's conduct, job performance or attendance is proven not to meet acceptable standards, they will be given a formal written warning. The employee will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of their right of appeal. A record of the written warning will be kept on the employee's personal file but it will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct, job performance and attendance.

### **Stage 2 - Final Written Warning**

35. If there is a failure to improve or the employee's conduct, job performance or attendance is proven to be unsatisfactory or if the misconduct is sufficiently serious, a final written warning will be given to the employee. The employee will be advised of the reason for the warning, the duration of the warning, that it is the second stage of the disciplinary procedure and of their right of appeal. A record of this final written warning will be retained on the employee's personal file but it will be disregarded for disciplinary purposes after 18 months (although this period may be extended depending on the circumstances of the offence) subject to satisfactory conduct, job performance and attendance.

### **Stage 3 - Dismissal**

36. If there is a failure to improve or the employee's conduct, job performance or attendance is proven to be unsatisfactory or if the misconduct is sufficiently serious, dismissal will normally result. Only the Chief Executive, a Director, a Head of Service or the next most appropriate level of management can take the decision to dismiss. The employee will be provided, as soon as reasonably practicable, with the written reasons for dismissal, the date on which their employment will terminate and their right of appeal.
37. If an employee is found guilty of an act of gross misconduct, summary dismissal without notice or payment in lieu of notice will be the normal course of action. However, in some circumstances action short of dismissal may be substituted for the dismissal. This could include a final written warning together with one of the following disciplinary transfer, demotion or reduction in salary.

### **Appeals**

38. At the appeal any disciplinary sanction imposed will be reviewed and it may be withdrawn, remain the same, or be decreased. The format of the appeal hearing will depend on the grounds for appeal. If the appeal is on the basis of the severity of the sanction or the misapplication of the procedure, then the appeal hearing will be a review of the original case. If it is the fact that new evidence has come to light, then the appeal hearing will be a re-hearing. The presentation of new evidence is the only reason that a re-hearing will be held.
39. An employee who wishes to appeal against a disciplinary decision should make their appeal in writing on the form attached at Appendix 1 within five working days of receipt of the decision, setting out the grounds for the appeal, to their Directorate Personnel Unit who will liaise with the relevant Manager to hear the appeal. Appeals will be heard by a Manager not involved in the earlier decision.
40. All appeals against dismissal must be made in writing within ten working days of receipt of the decision, setting out the grounds for the appeal, to the Head of Human Resources and Organisation Development who will arrange for the appeal hearing to be convened. If the appeal is successful an alternative sanction may be imposed.

## **OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES**

41. Where an employee raises a grievance during the investigation/hearing, the disciplinary process may be temporarily suspended in order to deal with the grievance. For example
- The grievance relates to a conflict of interest that the Manager holding the Disciplinary Hearing is alleged to have.
  - Bias is alleged in the conduct of the Disciplinary Hearing.
  - The Investigating Officer has been selective in the evidence they have supplied to the Manager conducting the Hearing.
  - There is possible discrimination.

Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

## **INTERPRETATION OF THE PROCEDURE**

42. In the event of a dispute relating to the interpretation of this procedure, Corporate Personnel Services will make the final decision on interpretation.

## **REVIEW OF THE PROCEDURE**

43. A review of this procedure will take place when appropriate. Any amendments will be consulted on with all the relevant parties. However, in the case of amendments relating to legislative requirements, the procedure will be amended and reissued.

**APRIL 2010**





<b>Will you be presenting any new evidence at the Appeal Hearing?</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>If Yes, please give details.</b>		

<b>Signature</b>		<b>Date:</b>	
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**Please forward the completed form to your Directorate Personnel Unit.**

**FOR DIRECTORATE PERSONNEL USE ONLY**

<b>Date received in Directorate Personnel Unit:</b>	
<b>Type of Appeal</b>	Review <input type="checkbox"/> Rehearing <input type="checkbox"/>
<b>Personnel Officer Allocated To Appeal:</b>	
<b>Manager/Panel hearing the Appeal:</b>	
<b>Appeal Date:</b>	<b>Outcome:</b>
<b>Date Processed:</b>	

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**Wherever the designation Manager is used throughout this scheme. It is taken to mean Head of Service, Line Manager, Supervisor, Officer in Charge or anyone who has a responsibility for employees through their work.**

These explanatory notes must be read in conjunction with the Council's Disciplinary Procedure

## **SECTION 1 - DEFINITION OF ROLES**

### **Investigating Officer**

The role of the Investigating Officer is to

- Ensure that a full and thorough investigation is undertaken prior to recommending whether: -
  1. There is no case to answer.
  2. Not to proceed to a Disciplinary Hearing but to deal with the issue informally by arranging counselling, coaching, etc.
  3. To proceed with a Disciplinary Hearing as there is a case to answer.
- Notify the employee of the outcome of the investigation.
- The Investigating Officer may enlist the support of other officers to assist with the investigation.
- Notify other interested parties as laid down in the Council's Financial Regulations.
- If appropriate, prepare a report setting out the allegations including witness statements and other relevant documentation, which will be used at the disciplinary hearing. When preparing this report, the Investigating Officer should
  - Ensure that all the relevant facts are available including documentary evidence, witness statements and disciplinary records.
  - Check whether there are any special circumstances, such as personal or outside issues, that should be taken into account.
  - Be careful when dealing with evidence from an anonymous witness. Take written statements, seek corroborative evidence and check that the witnesses' motives are genuine.
  - Check that the standards of other employees are acceptable and that this employee is not being unfairly singled out.
  - Consider the employee's explanations and check them out.
  - Allow the employee time to prepare their case.
- Present the case at the Disciplinary Hearing supported by other Officers where relevant.

### **Personnel Support**

The role of Personnel is as follows

- The provision of advice, guidance and support to Investigating Officers, Disciplinary/Appeals Officers/Panels.
- The provision of advice prior to the commencement of the disciplinary process where Personnel's attendance at the actual meeting can be discussed. It is not a pre-requisite for Personnel employees to attend all disciplinary meetings that may result in a written warning. For final written warnings and dismissal cases, Personnel employees must be in attendance.
- The provision of support to the Investigating Officer to compile the presentation at the Disciplinary Hearing.
- The provision of administrative support such as note taking at interviews, hearings and appeals, preparing Statements of Case and arranging appropriate facilities on behalf of Officers/Panels arranging suitable venues and times for the meetings and ensuring that any special requirements are made for employees/Officers/Panels in relation to their involvement with the Disciplinary procedure.

The Personnel Advisor can only advise one party during the disciplinary process e.g. if they are involved in the investigation, they cannot advise the Disciplining Officer at the Disciplinary Hearing or subsequent Appeal.

### **Disciplinary Officer/Chair of the Disciplinary Hearing**

The Disciplinary Officer/Chair should ensure the correct procedures are followed as set out in Section 4.

The Disciplinary Officer should establish what disciplinary action has been taken in similar circumstances in the past and think about the structure of the Hearing and make a list of points that they wish to cover. To ensure a consistent approach across the Council, advice should be sought from the Personnel Advisor on policy and procedures prior to the decision on the sanction being made.

The Disciplinary Officer/Chair has the responsibility of deciding the outcome of the Hearing and informing the employee of their decision, in writing, together with the reasons for doing so.

### **Appeal Officer/Chair of the Appeal Hearing**

The Appeal Officer/Chair should ensure the correct procedures are followed as set out in Section 5.

To ensure a consistent approach across the Council advice should be sought from the Personnel Advisor on policy and procedures prior to the decision being made.

The Appeal Officer/Chair has the responsibility of deciding the outcome of the Appeal Hearing and informing the employee of their decision, in writing, together with the reasons for doing so.

### **Representatives**

Employees have the right to be accompanied by a work colleague or a trade union representative/official at a disciplinary hearing or as part of the investigation process. Trade union representatives must have been certified by their union as being able to accompany an employee. If an employee is to be accompanied by a work colleague, it must be someone who is not directly involved in the case as their presence may prejudice the case or they might have a conflict of interest. A disciplinary hearing is defined as a meeting, which could result in

- A formal warning being issued to an employee, i.e. a warning that will be placed on the employee's record.
- The taking of some other disciplinary action such as suspension without pay, demotion or dismissal, or other action.
- The confirmation of a warning or some other disciplinary action, such as an Appeal Hearing.

Employees do not have the right to be accompanied at informal discussions or counselling sessions.

The representative can

- Put the employee's case.
- Sum up the employee's case.
- Respond on the employee's behalf to any view expressed at the hearing.

However, they cannot answer questions on the employee's behalf.

If an employee's representative is unable to attend the date of an interview/disciplinary hearing, the interview/disciplinary hearing may be postponed until they, or another representative, are available. However, this postponement should not be more than five working days after the original date of the interview/disciplinary hearing, unless agreed by both parties, and no further postponements will be granted.

Employees should inform the Investigating/Disciplining Officer who, if anyone, will be accompanying them at the interview/hearing.

### **Witnesses**

The Investigating Officer will interview any appropriate witnesses and produce a witness statement based on those interviews. A representative from the Directorate Personnel Unit may also be present. Witnesses will be requested to sign and date their statement as a true and accurate record and be advised that they may be required to attend any subsequent Disciplinary Hearing.

Witnesses can only be called to appear at the Hearing if they have previously submitted a signed witness statement.

## **SECTION 2 - MISCELLANEOUS**

### **Suspension**

There may be occasions where it may be deemed appropriate for an employee to be suspended from work whilst the investigation is undertaken. Examples of this could be where there is an allegation of gross misconduct, which, if proven, could lead to dismissal, where relationships have broken down or where there are risks to an employee's or the company's properties or responsibilities to other parties. Prior to suspending an employee consideration should be given to whether it is necessary to suspend or whether alternative working can be considered e.g. temporary relocation. This alternative work should relate to the employee's skill set. Suspension will be limited to the shortest possible time and kept under review.

After six weeks a formal review will be undertaken. The Head of Human Resources and Organisation Development and the Head of Legal Services or their nominated representatives will conduct this review. It will take the form of a report from the Officer who carried out the suspension giving the allegations against the employee, the progress to date and the reasons why the employee should continue to be suspended from their duties. As a result of this report, the Head of Human Resources and Organisation Development and the Head of Legal Services will decide whether suspension is still the most appropriate course of action.

Whilst suspended the employees' normal terms and conditions of employment will apply including rules relating to requests for annual leave and notification of sick leave. It may be appropriate, depending on the allegations, to impose conditions on the employee e.g. not to visit any of the Council's premises whilst they are suspended or contact other employees.

It should be appreciated that where an employee is facing a disciplinary investigation it is a stressful period so the Investigating Officer should remind the employee of the advice, information and counselling service which is available from Care First (0800 174319 - available 24 hours). This is a totally confidential service and all conversations between employees and Care First are confidential.

Employees who are suspended will be given a nominated contact in the Directorate Personnel Unit should they wish to discuss the progress of their case. However, no details of the investigation will be divulged.

Investigating Officers must remember that they have a duty of care to all the employees within a Service Area, both those who have had allegations made against them and those who are acting as witnesses.

### **TERMS OF REFERENCE FOR INVESTIGATION**

It is vital that the Investigating Officer determines the terms of reference for the investigation prior to its commencement, as this ensures that the focus of the investigation is appropriate.

They should include: -

- The issue (s) to be investigated.
- The methodology for conducting the investigation.
- The proposed time frame – this should be realistic and there should be a provision for an extension.
- The resources available to the Investigating Officer.
- Who will be provided with copies of the report at the conclusion of the investigation.

### **Police Involvement**

In certain circumstances, it may be necessary to involve the Police where criminal acts are alleged to have taken place. The decision to involve the Police will be taken following consultation with the Chief Executive and/or appropriate Director, the appropriate Head of Service and the Head of Human Resources and Organisation Development. They will also decide on whether it is appropriate to await the outcome of any police investigation and/or criminal proceedings before commencing the disciplinary process. This decision will depend upon the nature of the offences, the need to maintain confidentiality and the potential impact on the Council.

Criminal offences outside employment will not be treated as automatic reasons for dismissal or other disciplinary penalty. Each situation will be judged in the context of whether the offence committed has relevance to the employee's duties and an appropriate Risk Assessment undertaken. The major consideration will be whether the offence is one, which renders the employee unsuitable for continued employment. Employees are required to disclose criminal offences and failure to do so may lead to disciplinary action being invoked.

Where there are Police proceedings pending, the Investigating Officer has the option to wait for the outcome of the Police investigation and/or criminal proceedings before commencing the disciplinary process. However, where those investigations/ proceedings are not relevant or are prolonged, the Manager will need to consider whether to proceed with disciplinary action before the Police investigation has been concluded. Consultation with the appropriate Personnel Manager should take place before making this decision. Should the Manager wish to proceed they will need to clearly record the reasons for taking such action.

### **Notification to Statutory and Professional Bodies**

Statutory bodies regulate certain professions and in those professions employment is conditional upon continuing registration. Examples include Solicitors and the Law Society, Social Workers, etc. In these professions, the Council has a duty to report any incidents of alleged professional misconduct or serious performance issues to the appropriate registration authority. This duty to notify must be exercised quite separately to any disciplinary action. The registration authority is quite likely to undertake its own investigation. The Manager need not wait for the outcome of any such investigations before continuing with its own internal investigations and/or taking steps under the Disciplinary procedure.

In cases where the outcome of the disciplinary investigation results in action short of dismissal and a Statutory Body subsequently determines that the employee's registration is suspended or removed, the Manager should consider whether suitable alternative work is available before taking action to dismiss the employee because of conduct or capability. The advice of the Head of Human Resources and Organisation Development and the Head of Legal Services or their representatives should be sought in these cases.

### **Investigations Undertaken By External Agencies**

There may be occasions where external agencies become involved in investigations of a serious nature relating to the protection of vulnerable adults and child protection issues. It is essential that prior to the commencement of any internal disciplinary investigations, advice is sought from the Directorate Personnel Unit as to whether the disciplinary investigation should be delayed until the external investigation is concluded.

The Directorate Personnel Unit will also advise whether any evidence gained during the external investigation can be used in the internal disciplinary process.

### **Investigatory Interview**

The Investigating Officer will normally interview the employee under investigation as part of the process and reasonable notice should be given which should not normally exceed five working days. The employee should be advised that disciplinary action could be taken once the investigation is complete.

### **Exchange Of Information**

In certain cases where the evidence is detailed and complex the Investigatory report and supporting documentation should be given to the employee 10 working days prior to the date of the disciplinary hearing to allow them to study the information. Any documentary evidence the employee wishes to be considered at the hearing should be submitted to the Investigating Officer at least 5 working days prior to the disciplinary hearing.

In other cases where the information is limited then the parties can agree to an earlier exchange of information and a date for the disciplinary hearing.

At the same time as the documentation is exchanged, both parties will also declare the names of any witnesses who are to be called to provide evidence at the disciplinary hearing and the capacity in which they will appear.

The Disciplinary/Appeals Officer/Panel will have the opportunity to call other employees to the Disciplinary/Appeal Hearing to provide expert opinion to clarify issues, which have been raised as part of the Hearing.

Prior to an appeal hearing taking place, the employee or their representative must detail their grounds for appeal and provide any new documentation to be used at the appeal hearing. This should be provided to the Investigating Officer 10 working days prior to the appeal hearing taking place. The Investigating Officer will then provide any new documentation to be submitted to the appeal hearing to the employee or their representative 5 working days prior to the appeal hearing taking place.

Copies of the information/evidence to be presented at disciplinary/appeal hearings will be provided to the Disciplinary/Appeals Officer/Panel a minimum of three working days prior to the disciplinary hearing/appeal hearing taking place. The confidentiality of the case must be maintained at all times and any lapses in confidentiality will be dealt with either, in the case of employees, under the Council's Code of Conduct or, in the case of Elected Members, the matter will be referred to the Standards Committee.

## **SECTION 3 – INVESTIGATION PROCESS**

Investigations are increasingly a feature of the employment relationship. One of the main reasons for this is that employers are frequently required by Employment Tribunals to demonstrate why they reached a particular decision, for example the dismissal of an employee.

Once an employee has shown that they have been dismissed and that they are eligible to present a complaint for unfair dismissal, the Employment Tribunal will consider the facts of the case and whether procedures have been followed. The Council must overcome three hurdles: -

- It must show that the reason for dismissal was one of the six potentially fair reasons for dismissal (these are capability, conduct, redundancy, breach of a statutory enactment, some other substantial reason e.g. failure to accept new terms and conditions or retirement).
- It must show that it complied with a fair procedure.
- It must show that it acted reasonably in treating that reason as a sufficient reason to dismiss.



The Employment Tribunal will scrutinise how fair the Council's policy is and the procedure that it adopted at the time of the dismissal. An internal investigation will form part of that procedure. As soon as a Manager becomes aware that they should conduct an investigation within their Service Area, they should contact their Directorate Personnel Unit for further advice and guidance.

The Employment Tribunal cannot substitute its own decision for that of the Council's but it will determine whether the Council's action fell within the band of reasonable responses to the circumstances.

Carrying out a fair and thorough investigation provides an Investigating Officer with the opportunity to establish the facts of a particular matter and be in a much better position to decide on a course of action.

It must be emphasised that the investigation process is not a 'one way process.' An investigatory interview is the first opportunity that an employee has to respond to the issues under investigation.

## **PLANNING THE INVESTIGATION**

### **WHO SHOULD INVESTIGATE?**

The Investigating Officer should be independent of the main parties of the investigation and should not have had any involvement with any of the actions to be investigated.

The Investigating Officer should be fully briefed on how any allegations have arisen, the relevant organisational structure and any issues of immediate relevance.

It is vital that the Investigating Officer is provided with sufficient resources and time to devote to the investigation. It may be necessary to remove other duties from them on a temporary basis to accommodate them undertaking the investigation.

The Investigating Officer who recommends that there is sufficient evidence to go forward to a Disciplinary Hearing cannot be the same officer who hears the case and decides if any disciplinary action should be imposed.

### **Terms of Reference for Investigation**

See Section 2 above.

## **THE ORDER OF INTERVIEWS**

Ideally, the person whose conduct is being called into question should be seen last so that they can answer all the questions relating to the details of the case against them. If this is not possible it may be necessary to re-interview this person as a result of further information coming to light during the interviews.

To some extent the order of the witnesses may be determined by the availability of the witnesses. However, the Investigating Officer should try and plan the interviews in a reasonably logical order.

The person making the allegation or raising the issue should be interviewed first but it may be necessary to re-interview them again later on in the light of further information coming to light during the interviews with witnesses.

## **What Does the Investigating Officer Require**

### **Time**

The amount of time required to undertake an investigation is frequently underestimated by Investigating Officers at the outset. Please be realistic when doing this. The timescale will depend on the complexity of the matter under investigation, the availability of witnesses and relevant documents, the level of experience of the Investigating Officer and the seriousness of the allegation. Frequently, further allegations come to light during the investigation, which means that the investigation becomes more complex and takes more time to conclude. In this case the Investigating Officer shall ensure that all interested parties are kept informed of the new timescales.

### **RESOURCES**

If the Investigating Officer is required to interview witnesses, they will need access to a room, the use of a Note Take/Typist and confidential storage.

### **CONDUCTING WITNESS INTERVIEWS**

The terms of reference will detail the methodology of an investigation. This may include a review of any relevant documentation and witness interviews. Managers should ensure that witnesses understand the seriousness of the investigation and in particular do not speak about the investigation to anyone other than those officers involved in conducting the investigation.

It should be explained to the witness at the start of the interview that any statement that they make as part of the investigation may be used in formal action under the Council's policies and procedures at a later date. Every effort should be made for witnesses to attend Hearings in order that examination or cross-examination can take place. If witnesses are unable to attend a Disciplinary Hearing, then the Disciplinary Officer/Chair will have the authority to decide what weight can be given to the witness statements and whether they can be accepted in evidence.

These interviews should be

- Structured, with full notes taken, to be typed as soon as possible after the interview has taken place.
- Held in a confidential environment.
- With one interviewee at a time. If an employee is to be accompanied during the interview, the companion should be someone who is not a potential interviewee, as this would 'contaminate' evidence.

During the investigation, the Investigating Officer may be privy to the potential use of or reference to confidential information and this could include reference to service users or clients. There is potentially a conflict between the need to protect the confidentiality of any client information and natural justice in providing the employee with access to information, which either supports the allegation made or alternatively provides the employee with information to support their version of events.

The Investigating Officer should note why each witness has been interviewed and what their relationship is with any of the main parties to the investigation. To aid consistency, all participants should be given the same introduction as to the reasons why they are being interviewed. This introduction should explain: -

- Who the Investigating Officer is.
- The context of the interview (particularly if it is taking place under the auspices of a disciplinary or grievance procedure).
- For what purposes the statement will be used.

- The meaning of confidentiality in this context.
- How and when they can expect to see and review their statement.

## Investigation Interviews

### Questioning Techniques

The Investigating Officer has a set of questions to be asked and information to gather. The interview should be structured to ensure that all the relevant information is obtained from the relevant people. Normally during an investigation, further evidence will be uncovered which was not included in the Investigating Officer's original line of enquiry. This may mean that they need to re-interview a number of employees to find out their perception of an incident/event or whether they witnessed a specific event.

Even though the Investigating Officer may find that employees are using unspecific terms such as 'bullying' or 'inappropriate behaviour' they should not accept these without further questioning. The employee should be asked to give specific examples of such behaviour, including dates and times if possible, to support what they are saying.

Wherever possible, open questions should be used to encourage the witness to provide as much information as possible. These are questions that start with who, what, where, when, why, how, etc. Closed and probing questions may be used to seek clarity, if required.

To reinforce the idea that what the Investigating Officer is looking for is the interviewee's perception on the incident, or sequence of events, the following phrases may be useful.

- In your own words.....
- Tell me about .....
- Describe to me .....
- Give me an example of ....
- How did it make you feel?

Leading questions should be avoided, such as 'Would you describe Mr. Bloggs as aggressive or sarcastic?' ' You did everything you could to be supportive, did you?' The reason for this is that the Investigating Officer must on no account influence the interviewee's account of what happened as this could lead to a flawed and biased investigation.

It is important that the questions that are asked reflect what the Investigating Officer has gathered as a result of other interviews and reviews of any other evidence. This will help in evaluating the evidence at the end of the process.

At the end of the interview, the Investigating Officer should have gathered the following information.

- The names of those involved that the witness is aware of.
- The date and time of any alleged incidents.
- Details of what took place, in the order that it took place.
- How the witness reacts to any evidence that is inconsistent with their account of what happened.
- How the employee felt after the incident(s).
- Any steps that the employee has taken to try and resolve the situation, if appropriate.
- What the employee's preferred solution is, if appropriate.

## Notes

It is vital that notes are taken contemporaneously, in case the Investigating Officer's recollection is later called into question. It can be very useful to record responses under the question that has been asked. However, this is not always possible if the interview goes 'off track' and the interviewee gives very long responses to the questions.

Wherever possible a note taker should accompany the Investigating Officer. It may be that for particularly sensitive interviews, the note taker is not present, particularly if the witness objects. The note taker is bound by the same rules of confidentiality as everyone else involved in the investigation.

The notes should be typed up as soon as possible after the interview and sent out to the witness for signing. Two copies of the notes should be sent out, one for the employee to keep and one to be returned to the Investigating Officer. Employees are able to make small changes to the notes, for points of clarification, accuracy, etc but if the witness disagrees fundamentally with the notes of the interview, and the Investigating Officer does not agree with the witness' version, the witness may refuse to sign the notes of the interview. In this circumstance, both sets of notes should be submitted to evidence and the fact that the notes were not signed off recorded in the investigation report.

## Preparing Witness Statements

A witness statement should record the facts as stated by the witness at the interview, written (within reason) in the language that they used, following the train of events as they experienced them. If, when preparing the statement, a gap in the information is identified or there is ambiguity in what has been recorded, then the witness should be asked to clarify the situation rather than someone else putting their own interpretation on the events. The witness should be asked to sign and date the statement and in doing so they are confirming that it is a true and accurate version of events.

Witnesses should not be coerced into signing a statement if they are unhappy with it, they may ask for modifications before they are happy to sign it.

If a witness who is reluctant to participate in the investigation also refuses to sign a statement then the Investigating Officer can either omit the statement, or include it making it clear that it is an unsigned (and therefore unvalidated) statement. This will usually be given less weight at the hearing and any subsequent Employment Tribunal.

## SECTION 4 – DISCIPLINARY HEARINGS

The procedure to be followed at a Disciplinary Hearing is detailed below: -

1. At the commencement of the hearing, the Disciplinary Officer/Chair hearing the case will introduce the parties present and their role, outline the procedure to be followed and will confirm that all parties understand the procedure.  
  
NB: if the employee is not represented at the Disciplinary Hearing, they should be reminded of their right to be accompanied.
2. The Disciplinary Officer/Chair hearing the case will detail the allegations against the employee and explain that the purpose of the hearing is to consider whether any disciplinary action should be taken in accordance with the Council's Disciplinary Procedure.
3. At any stage during the hearing the Disciplinary Officer/Panel will be able to question any of the parties present.
4. The Investigating Officer will detail the case against the employee concerned. The employee, their representative and the Disciplinary Officer/Panel hearing the case can ask questions.
5. The Investigating Officer will call witnesses, as appropriate, to provide evidence in support of the allegations against the employee.

6. The employee or their representative will be able to ask questions of the Investigating Officer and any witnesses.
7. Each witness will leave the room after giving their evidence.
8. Steps 5 - 7 will also be adopted in relation to the employee or their representative's presentation of their evidence.
9. If matters come to light during a disciplinary hearing which require further investigation consideration should be given to either
  - a. adjourning the Disciplinary Hearing to enable further investigation to be carried out **or**
  - b. deciding whether the investigation should be dealt with separately and if required a separate Disciplinary Hearing convened.
10. After both parties have provided their evidence, the Investigating Officer and the employee or their representative will be given the opportunity to sum up detailing the main points of their respective cases. The Investigating Officer will sum up first. No new evidence can be submitted at this stage.
11. Following the summing up stage, all parties will withdraw leaving only the Disciplinary Officer/Panel authorised to make the final decision and the Personnel Advisor.
12. In making their decision, the Disciplinary Officer/Chair can, if required, recall any of the parties, including witnesses, involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.
13. When deciding whether a disciplinary penalty is appropriate and what form it should take, the Disciplinary Officer/Panel should consider whether the Council's policies and procedures indicate what the likely penalty will be for this particular misconduct if proven, the penalty imposed in similar cases in the past, the employee's disciplinary record (but not expired warnings), general work record, work experience, position and length of service, any special circumstances which might be appropriate to adjust the severity of the penalty and whether the proposed penalty is reasonable in view of all the circumstances.
14. The decision should be communicated in writing to the employee as soon as reasonably practicable after the Hearing. If a disciplinary penalty is imposed, the employee will be informed that they have a right of appeal. A copy of the notes (not verbatim) will also be included with this correspondence.

## **SECTION 5 - APPEAL HEARINGS**

The procedure to be followed at an appeal review hearing is detailed below: -

### **Appeal Review Hearing**

1. At the appeal any disciplinary sanction imposed will be reviewed and it may remain the same or be decreased.
2. At the commencement of the appeal review hearing, the Appeals Officer/ Chair of the Appeals Panel hearing the case will introduce all parties present, outline the procedure to be followed and will confirm that all parties understand the procedure.
3. The employee or their representative will detail the grounds of appeal against the decision made at the original disciplinary hearing. The Disciplinary Officer/Chair of Disciplinary Panel who made the decision at the original disciplinary hearing can ask questions of the employee. The Appeals Officer/ Panel can ask questions of the employee.
4. The Disciplining Officer/Chair of the Disciplinary Panel will present to the Appeals Officer/Panel the reasons for the decision that was made at the original disciplinary hearing.

The employee or their representative can ask questions of the Disciplinary Officer. The Appeals Officer/Panel can ask questions of the Disciplinary Officer.

5. After both sides have provided their evidence, the employee or their representative will be given the opportunity to sum up detailing the main points of their case. The Disciplinary Officer/Chair of the Disciplinary Panel representing the Council will be given the opportunity to sum up the main points of their case. No new evidence can be submitted at this stage.
6. Following the summing up stage, all parties will withdraw leaving only the Appeals Officer/Panel authorised to make the final decision and the Personnel Advisor. Officers who are acting as 'expert witnesses' to the case may also remain in the room at the request of the Appeals Officer/Panel. However, they will not take part in the decision making process.
9. The Personnel Advisor will only be present to provide advice on policy and procedure. They will not take an active part in formulating a decision on the case.
10. In making their decision, the Appeals Officer/Panel can, if required, recall any of the parties involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.
11. The decision should be communicated in writing to the employee as soon as is reasonably practicable. The decision of the appeals review hearing will be final. A copy of the notes (not verbatim) will also be included with this correspondence.

### **Appeal Re-hearing**

The procedure to be followed at an appeal re-hearing is detailed below: -

1. At an appeal re-hearing any disciplinary sanction imposed will be reviewed in the light of new evidence becoming available. As a result of this the sanction may remain the same or be decreased. As a result the re-hearing will follow the process outlined below.
2. At the commencement of the appeal re-hearing, the Appeals Officer/Chair of the Appeals Panel hearing the case will introduce all parties present, outline the procedure to be followed and will confirm that all parties understand the procedure.
3. The Appeals Officer/Chair of the Panel hearing the appeal should ask the employee to outline the grounds of their appeal.
4. At any stage during the re-hearing, the Panel will be able to questions any of the parties present.
5. The Disciplinary Officer/Chair of the Disciplinary Panel will outline the case against the employee. The employee or their representative and the Appeals Officer/Panel can ask questions of the Disciplinary Officer/Chair of the Disciplinary Panel.
6. The Disciplinary Officer/Chair of the Disciplinary Panel can call witnesses, as appropriate, to provide evidence in support of the case.
7. The employee or their representative and the Appeals Officer/Panel can ask questions of the witness(es) and will be given an opportunity to comment on any new evidence that has arisen during the appeal hearing prior to any decision being taken.
8. Each witness will leave the room after giving their evidence.
9. Steps 6 – 8 **will** also be adopted in relation to the employee or their representative's presentation of their evidence.

10. After both parties have provided their evidence, the Disciplinary Officer/Chair of the Disciplinary Panel will be given the opportunity to sum up detailing the main points of the case. The employee or their representative will be given the opportunity to sum up the main points of their case. No new evidence can be submitted at this stage.
11. Following the summing up stage, all parties will withdraw leaving only the Appeals Officer/Panel authorised to make the final decision and the Personnel Advisor. Officers who are acting as 'expert witnesses' to the case may also remain in the room at the request of the Appeals Officer/Panel. However, they will not take part in the decision making process.
12. In making their decision, the Appeals Officer/Panel can, if required, recall any of the parties involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.
13. The decision should be communicated in writing to the employee as soon as is reasonably practicable. The decision of the Appeals Panel will be final. A copy of the notes (not verbatim) will also be included with this correspondence.