

PERSONNEL COMMITTEE

15 JUNE 2015

HUMAN RESOURCES – REVISED DISCIPLINARY POLICY AND PROCEDURE

REPORT OF HEAD OF ORGANISATIONAL DEVELOPMENT

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

The Disciplinary Policy and Procedure has been updated to reflect changes in employment law and to strengthen the Council's position in relation to managing unacceptable conduct.

There will be briefing sessions for managers and the policy will be available on the Intranet, and publicised in City Voice and through Core Brief.

RECOMMENDATIONS:

1. That the Revised Disciplinary Policy and Procedure at Appendix 1 be agreed and implemented.

PERSONNEL COMMITTEE

15 JUNE 2015

HUMAN RESOURCES – REVISED DISCIPLINARY POLICY AND PROCEDURE

REPORT OF HEAD OF ORGANISATIONAL DEVELOPMENT

DETAIL:

1 Introduction

- 1.1 Winchester City Council, and the community we serve, expects a high standard of conduct at work and aims to promote positive working relationships between all employees.
- 1.2 The aim of this Policy and Procedure is to ensure that everyone is treated in the same way in similar circumstances, to ensure that issues are dealt with fairly and reasonably and that they are compliant with current employment legislation and best practice; it is intended to help employees achieve and maintain agreed acceptable standards of conduct. It has been written in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.3 The policy and procedure should be used when there are reasonable grounds to believe that an employee has failed to act in accordance with the standards of conduct and behaviour as set out in the Council's Code of Conduct or within its Policies and Procedures.
- 1.4 Wherever possible, managers are encouraged to deal with minor acts of misconduct informally on a case by case basis. Failure to improve, further misconduct or more serious misconduct may lead to formal disciplinary action being taken and may potentially result in dismissal.

2. DISCIPLINARY POLICY AND PROCEDURE

- 2.1 The current Disciplinary Policy and Procedure has been reviewed to ensure that it is legally compliant and continues to follow best practice, as set out in the ACAS Code of Practice; the revised policy gives clarity to managers and staff about the processes to be followed when dealing with misconduct issues.
- 2.3 The Disciplinary Policy and Procedure is shown in Appendix 1.
- 2.3. The policy defines the expected standard conduct along with definitions of alleged misconduct and alleged gross misconduct.
- 2.4. It is based on principles of addressing misconduct concerns early, through informal means and where this approach does not result in the required

resolution there are clear steps to follow within the policy to arrange formal meetings.

- 2.5. The formal meetings may result in a formal warning or dismissal. In certain circumstances, such as alleged gross misconduct, there is no legal requirement to exhaust a series of formal warnings before dismissal may be considered.
- 2.6. The policy includes details of the right to appeal against formal disciplinary action. It is proposed that the current process for appeals against formal written warnings is retained without change and such appeals will be heard by a more senior manager, with no significant prior involvement in the case.
- 2.7. The revised policy proposes that appeals against dismissal will be heard by the Chief Executive unless there is a statutory reason, or similar regulation within the Council's Constitution, which requires appeal to Members (e.g. for Statutory Officers) (PER272 elsewhere on this agenda refers). In cases where the decision to dismiss is taken by the Chief Executive, appeal will be to a panel of Members.
- 2.8. This proposal reflects research undertaken by South East Employers across a number of Councils within the region relating to how other Councils conduct appeals against dismissal. The majority of respondents in the survey confirmed that with the exceptions set out in 2.7 above, appeals against dismissal are considered by senior officers.
- 2.9. The revised policy defines what action should be taken where there are both capability and misconduct concerns arising at the same time. It also clarifies the Council's position when an employee's sickness absence may protract an investigation or otherwise hamper effective management of misconduct issues.
- 2.10. Guidance is provided within the procedure to define what action should be taken where allegations relate to a safeguarding concern or where external agencies may also be investigating related concerns.
- 2.11. The revised policy retains the provision for appropriate senior officers to consider suspension in circumstances where the misconduct concerns are so severe that allowing the employee to remain in the workplace is untenable due to significant risks to the reputation of the Council; health and safety or where there is a significant risk to service delivery. The decision to suspend normally rests with a Chief Officer, in consultation with the Head of Organisational Development. The exceptions relate to the statutory officers and other members of the Corporate Management Team (PER272 elsewhere on this agenda refers).

2.12. Briefing sessions will be held for managers as part of the implementation of the revised policy.

2.13. The Human Resources Department will monitor the impact of the policy.

3. Consultation

3.1 There has been consultation on the Policy with Unison and Senior Officers. Comments made during consultation have been incorporated into the Policy and Procedure.

OTHER CONSIDERATIONS:

4. COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

4.1 The need to make the best use of all available resources by the continued consistent application of policies and procedures which enable resources to be utilised effectively within the City Council is an integral part of the Corporate Strategy.

5. RESOURCE IMPLICATIONS:

5.1 Contained in the detail of the Policy and procedure.

6. RISK MANAGEMENT ISSUES

6.1 Unresolved conduct issues impact on productivity, Council Service standards, the Council's reputation with the public and the ability to deliver a cost effective service.

6.2 Failure to follow an agreed disciplinary procedure and/or the ACAS Code of Practice increases the likelihood of Employment Tribunal potentially resulting in financial and reputational risks to the Council.

6.3 A clear policy and procedure which is based on ACAS guidance and applied consistently across the Council therefore mitigates these risks at Employment Tribunal.

BACKGROUND DOCUMENTS:

Held in Organisational Development (excluding information on individuals which is exempt information).

APPENDICES:

Appendix 1 Disciplinary Policy and Procedure

Disciplinary Policy and Procedure



Winchester City Council

Disciplinary Policy and Procedure

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Disciplinary Policy and Procedure

Document History

Document Title		Disciplinary Policy and Procedure	
This Version		0.3	
Issue Date		03/06/2015	
Status:		Draft	
Version	Issue date	Author	Comments
0.1	25/02/2015	JC	Initial Draft
0.2	29/05/15	JC	Revised following comments from Officers
0.3	03/06/2015	JC	Revised incorporating comments from Unison

Winchester City Council

Disciplinary Policy and Procedure

1. Introduction

Winchester City Council expects a high standard of conduct at work and aims to promote positive working relationships between all employees.

This document defines the approach that the Council will take in terms of addressing concerns relating to an employee's conduct.

This Policy and Procedure is important so that all employees understand what is expected of them and so that concerns about conduct are addressed promptly and effectively.

The aim of this Policy and Procedure is to ensure that everyone is treated in the same way in similar circumstances, to ensure that issues are dealt with fairly and reasonably and that they are compliant with current employment legislation and best practice; it is intended to help employees achieve and maintain agreed acceptable standards of conduct. It has been written in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Wherever possible, managers are encouraged to deal with minor acts of misconduct informally on a case by case basis. Failure to improve, further misconduct or more serious misconduct may lead to formal disciplinary action being taken and may potentially result in dismissal.

This policy and procedure should be used when there are reasonable grounds to believe that an employee has failed to act in accordance with the standards of conduct and behaviour as set out in the Council's Code of Conduct or within its Policies and Procedures.

2. Scope

This policy and procedure applies to all employees of Winchester City Council, regardless of length of service, including those who are on probation.

It does not apply, to those undertaking the statutory roles of Head of Paid Service, Section 151 Officer, Monitoring Officer or to any other Chief Officer who is part of the Corporate Management Team. There are separate procedures for these officers set out in the Council's Constitution. In the case of the statutory officers the procedures in The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (or any statutory re-enactment to substantially the same effect) will apply. However, the Council will have regard to this Disciplinary Policy and Procedure in considering any cases affecting such officers insofar as it is not inconsistent with either the provisions of the Constitution or the Regulations.

In cases where there is a an underlying lack of knowledge, skill or ability resulting in an unacceptable standard of work or similar concerns relating to an employee's ability to perform their role to the required standard, the **Capability Policy and Procedure** will apply.

Where there appears to be a deliberate failure on the part of the employee to perform their role to the standards which they are capable of achieving, the **Disciplinary Policy and Procedure** will apply.

In exceptional circumstances, there may be situations where there are **both** performance concerns **and** misconduct concerns arising at the same time. In this situation, managers should seek advice from HR on the most appropriate way to address the concerns.

Although each case will be reviewed on its individual merits, it is likely that in circumstances where there are **both** performance **and** misconduct concerns, the Council's **Disciplinary Policy and Procedure** will apply.

Issues relating to **sickness absence** (whether persistent, short term absence; long term sickness absence and/or permanent ill health) will be addressed using the Council's **Sickness Absence Management Policy and Procedure**.

In cases where the employee is absent due to sickness once either the informal or formal stages of this procedure have started, the line manager should record the absence in the usual way and take advice from HR on the most appropriate way to continue.

When an employee's continuous sickness absence exceeds or where there is a Statement of Fitness for Work Certificate indicating the absence is likely to exceed **20 calendar days** in any one period of absence, the manager may, having taken

advice from HR, choose to temporarily suspend the conduct process and implement the Council's **Sickness Absence Management Policy**.

When the employee returns to work, the Council reserves the right to allow for reasonable adjustments and a period of up to one month to allow the employee to resume normal duties following sickness absence unless Occupational Health advise a longer period of time to facilitate recovery. Following this rehabilitation period, the Council will resume this procedure at the stage it was temporarily suspended prior to sickness absence.

3. Definitions

For the purpose of this Policy and Procedure the following definitions apply:

Accompanied by refers to the individual who attends **formal meetings** to provide support who is normally a trade union representative or colleague to provide support to an employee. The statutory right to be accompanied at meetings is restricted to **Formal Meetings**.

Appellant means the individual who is appealing against decisions made at meetings held within the formal stages of this procedure.

Capability is the "ability to perform a role, assessed by reference to skills, aptitude, health or any other physical or mental quality" (Employment Rights Act 1996). In cases where the concerns relate to performance, the Council's **Capability Policy and Procedure** will apply.

Conduct means the standard of behaviour expected of employees. Examples of the appropriate standards expected of staff are contained in the Council's Code of Conduct, Policies and Procedures. Specific examples of the conduct expected of employees are set out in **Appendix 2** of this Policy and Procedure.

Disability means a physical or mental impairment that has or is likely to have a '**substantial**' and '**long-term**' negative effect on your ability to carry out normal daily activities (Equality Act 2010).

- In this context '**substantial**' is more than minor or trivial – e.g. it takes much longer than it usually would to complete a daily task.
- '**Long Term**' means has lasted or is likely to last more than **12 months**

Formal Meetings are those which are held within the **Formal Stages** of this Policy and Procedure. For clarity, the following are considered to be Formal Meetings:

- Meeting where the employee is notified of Suspension
- Investigatory meetings, Formal Disciplinary Meetings
- Appeal Meetings

Formal Stages means the meetings held as set out in paragraphs **18.3** and following of this Policy and Procedure.

Gross misconduct is usually a single act, or in a case of multiple allegations an accumulation of acts which fundamentally breach the trust and confidence the Council (and/or the public) place in officers of the Council.

It is usually an act which is serious enough on its own to justify a Disciplinary Hearing concluding that the employee's dismissal should be immediate, without notice or payment in lieu of notice.

Examples of what may constitute gross misconduct are contained in **Appendix 2** of this policy and procedure.

Hearing Officer means the appropriate Senior Manager who conducts a **Formal Disciplinary Hearing**.

Informal Action means management action as set out in **Paragraph 18.2** of this Policy and Procedure, to address capability issues.

Manager means the individual's normal line manager. In exceptional circumstances, following consultation with HR, it may be appropriate to nominate another manager to fulfil the role of line manager for the purposes of this procedure.

Right to be accompanied means employees are entitled to be accompanied at meetings and hearings held under the **formal stages** of this procedure by a trade union representative or colleague.

4. Roles and Responsibilities

Line Managers are expected to:

- Ensure that all employees in their teams are aware of the standards expected from them.
- Raise concerns with the employee as early as possible during one to one/supervision meetings in the first instance and these should be recorded and a copy to be given to the employee.
- Deal with matters confidentially, promptly and fairly.
- Seek advice from Human Resources, especially before starting the formal stages of the procedure.
- Investigate issues fully with support from HR or other professionals as appropriate.
- Give the employee ample opportunity to state their case before decisions relating to potential disciplinary action are made.

- Keep adequate records of all meetings held under this procedure, including discussions with employees within the informal stage of the procedure, copies of which will be given to the employee.
- Consider the full range of support required for employees to reach the required standards.
- Take account of any reasonable adjustments as required by the Equality Act 2010.

Employees are expected to:

- Ensure that they are aware of the standards required of them in order to perform their role and to meet the needs of the service.
- Act upon any guidance and feedback given to them.
- Inform their line manager at the earliest opportunity of changes to their personal circumstances which may be relevant to their employment with the Council (e.g. any cautions, warnings, reprimands or restrictions on their ability to drive where this is relevant to their role).
- Make themselves available for meetings as required under this procedure.
- Engage fully with the people who have been identified to provide appropriate support during the application of this procedure (e.g. primary health care providers, Occupational Health, Counselling Services, and Management Coach/Mentor etc.)

Human Resources are expected to:

- Provide advice, guidance and support to line managers in relation to the application of the Disciplinary Policy and Procedure.
- Provide welfare support to employees and/or provide details of other agencies that can provide support as required.
- Clarify the procedure where the member of staff has questions, especially where the member of staff is not a member of a Trade Union.
- Ensure that there are clear and demonstrable reasons to justify decisions to bypass stages of the procedure.
- Consider each case on merit and liaise with Unison as appropriate to balance the needs of the business with the needs of the individual.
- Help with the interpretation of the Policy and Procedure to ensure a consistent approach across the Council.
- Monitor the Policy and Procedure and update it to reflect changes in employment law.

5. Key Principles

Nothing in this Policy and Procedure is intended to prevent the normal process of management where line managers highlight work well done and draw attention to areas for improvement.

It is important that employees know what standards of conduct are expected of them. This should be made clear during induction and through ongoing feedback.

Employees should also be made aware of the likely consequences of failing to meet the standards expected of them.

The member of staff will be given the opportunity to state their case, before any decision is made relating to whether appropriate management action should be taken.

No **Formal Action** will be taken against a trade union representative under this Policy and Procedure without the Branch Secretary first being notified by HR. In the same way, no **Formal Action** will be taken against the Branch Secretary without first informing the appropriate Regional Officer.

Wherever possible the investigating officer, who may be supported by HR, will present the management case if a disciplinary hearing is necessary.

Any meetings held under the **Formal** stages of this procedure should be chaired by an appropriate senior manager with no prior significant involvement in the case.

In cases where suspension with full pay is considered necessary, this period should be as brief as possible to allow for a reasonable investigation to be completed. Suspension should be kept under review and it should be made clear to the individual concerned that suspension is not considered as disciplinary action.

6. Right to be accompanied

Employees are entitled to be accompanied at meetings and hearings held under the **formal stages** of this procedure, including Appeal Meetings, by a colleague or Trade Union Representative where they are a member of that Union. There is no right to legal representation at **any** meeting, including hearings, held under this procedure.

In exceptional circumstances, following consultation with the HR Manager or Head of Organisational Development, the employee may be accompanied by someone other than a colleague or Trade Union Representative, where this may be considered a reasonable adjustment.

Each request outside the normal parameters of a colleague or Union Representative will be reviewed on its individual merit, taking into account the full circumstances of the case. Examples of additional support at a meeting may include an advocate from Solent Mind, a Community Health Practitioner or similar specialist adviser.

The employee is responsible for contacting their chosen companion to ask them to attend meetings. The chosen companion does not have to agree to accompany the employee at meetings.

If the companion is a colleague rather than a Union Representative, the chosen companion should liaise with their line manager and HR to ensure that the meeting is held at a time which does not hinder the effective service delivery within their operational role.

The Council reserves the right to refuse to allow the employee to be accompanied by an individual whose presence at the meeting may prejudice the proceedings. The companion should be allowed to address the hearing to present and summarise the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing.

The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

7. Suspension

In cases where there are reasonable grounds to believe that the alleged action constitutes **gross misconduct** (See Appendix 2) the employee may be suspended from duty on full pay. Alternatives to suspension such as temporary redeployment to an alternative role within the Council should be considered where this can be sustained and is not prejudicial to the fair investigation of the allegations.

The Council may also consider suspension where the employee's continued presence in the workplace:

- could unreasonably hinder an appropriate investigation being conducted; or
- potentially presents a significant risk to the Council's reputation; or
- potentially presents a significant risk to the health and safety of the employee or others; or
- potentially prevents effective service delivery or the Council's ability to perform effectively as a business.

The decision to suspend will be taken by the Chief Executive (or the relevant Director) in consultation with the Head of Organisational Development or, in the absence of the Head of Organisational Development, the HR Manager.

The employee will be requested to attend a meeting with the appropriate Head of Team (or other senior manager). A representative from HR will normally attend the meeting to advise the Head of Team.

The member of staff has the right to be accompanied by a union representative or work colleague.

Reasonable notice of the meeting will be given to allow the individual to be accompanied; the meeting should be held as soon as possible on the same working day and the lack of availability of a chosen companion will not be considered as a reason to delay the meeting to inform the employee of the suspension.

The employee should be told the reasons for the suspension, any conditions relating to the suspension and an estimate of the time the process will take. They should also be informed that suspension is precautionary, pending the outcome of the disciplinary process and not a form of disciplinary action.

The manager should nominate an appropriate manager who will not be involved in formal meetings as a contact point for the employee for the duration of the suspension. The employee should be informed of the support available to them.

The employee should be given a letter to confirm the suspension and leave the Council's premises immediately.

The member of staff should return small items of Council property they have on them including ID Cards, Keys, remote working devices (e.g. "Cryptocards"), mobile phones and similar devices. Following the meeting, the HR Adviser will contact IM&T to arrange for the individual's IT access to be temporarily suspended.

During suspension, the member of staff will remain on full pay and should have access to their union representative. The employee is required to be available for meetings during work time as part of the disciplinary process.

Periods of sickness during suspension should be reported and recorded in the usual way.

The employee will be permitted to take annual leave during a period of suspension especially in situations when annual leave was approved prior to the suspension. Where the employee requests leave during a period of suspension, the manager should seek advice from HR before agreeing to the leave.

The employee will be permitted to retain their company car for the duration of the suspension, except in cases where their driving licence has been revoked or other circumstances where the allegation relates to driving.

The investigating officer will need to balance the requirements of conducting an appropriate and proportionate investigation while at the same time, treating the investigation as a management priority.

As far as reasonably possible, a **Formal Disciplinary Hearing** (see **paragraph 16.5** of this policy and procedure) will be held within **one calendar month** of the suspension to consider the employee's suitability to remain employed by the Council.

In the event that the suspension needs to continue beyond the initial month, the need to suspend will be reviewed on a regular basis by the Head of Organisational Development or in their absence, the HR Manager. It would be unusual for an employee to be suspended for more than 3 months before a **Formal Disciplinary Hearing** is arranged.

In cases where **gross misconduct** is not initially believed to have occurred but during or on completion of the investigation it becomes clear that the alleged misconduct is more serious than at first thought, the Council reserves the right to suspend the member of staff as set out above.

Where the disciplinary process does not result in dismissal the Council will bear in mind the potential impact of the suspension when considering reintegration back into the workplace. It may be appropriate to offer mediation to support a return to work after suspension. Managers should seek advice from HR when considering reintegration to the workplace.

In keeping with the ACAS Code of Practice, there is no right of appeal against the decision to suspend a member of staff.

8. Safeguarding Children and Vulnerable Adults

Where an allegation relates to potential safeguarding concerns, the manager **must** raise their concerns with the Head of Organisational Development (or in his/her absence, the Head of Health and Wellbeing) **before** discussing the concerns with the individual or any other Officer of the Council.

The Council's Policies and Procedures put in place for the safeguarding of children and vulnerable adults will take precedence over disciplinary proceedings.

The Head of Organisational Development (and/or the Head of Health and Wellbeing) will act as the lead contact officer with other agencies in relation to all allegations relating to safeguarding.

The Council will comply with any duties to disclose alleged disciplinary offences, even in situations where an investigation has not been completed, where disclosure is required by an external regulating body or disclosure is required by law.

The safeguarding concerns will be referred to the appropriate external agency and only after the external agency confirms that the concerns should be addressed as an internal matter, the Head of Organisational Development (or in their absence, the HR Manager) will determine the most appropriate course of action.

9. External Agency-led Investigations

In situations where an external agency (e.g. Police, Adult Services, Childrens' Services) is carrying out an investigation, the internal investigation may be halted pending the outcome of the external investigation. During this time, if the employee is suspended, the suspension will be reviewed on a regular basis.

An internal investigation may be carried out following the conclusion of the external investigation whether or not the external investigations upheld any allegations.

While criminal offences (or other proceedings) should not be treated as automatic reasons for disciplinary action, the Council will need to carefully consider the offence, the nature of the employee's role, the employee's ability to fulfil their contractual obligations and the potential impact the offence may have on the Council's credibility with the public.

Where a member of staff facing criminal proceedings resigns with immediate effect, an investigatory meeting will be convened to determine whether having considered all of the available evidence, the matter would have resulted in a Formal Disciplinary Hearing and potential dismissal.

In the event of a custodial sentence, advice should be taken from a senior member of the HR Team.

10. Reasonable Adjustments

In cases where the employee has a disability, managers must comply with the Equality Act 2010 and must be able to demonstrate that they have considered reasonable adjustments.

Managers should discuss the matter with an HR Adviser, who may refer the individual to Occupational Health or seek advice from an external organisation.

Under the Equality Act 2010 a person has a disability if they have a physical or mental impairment that has a 'substantial and long term adverse effects on their ability to carry out typical day to day activities'.

The employee should be asked to help identify what adjustments they need the Council to consider to assist them during the application of this policy and procedure. Managers should keep a record of the reasonable adjustments which are made and give a copy of the record to the employee.

Examples of reasonable adjustments for the purposes of this policy and procedure include, although not exclusively:

- providing documents in an alternative format
- providing an induction loop, reader or interpreter as appropriate
- providing other support or allowing a companion who is not a colleague or trade union representative to attend meetings
- adjusting the timing of meetings to allow appropriate or more frequent breaks

In addition, the Council may, consider and propose modifying the standard disciplinary procedure either as a reasonable adjustment or to accommodate an employee who is absent due to sickness during the disciplinary process to ensure the effective participation of the employee in the disciplinary process.

Examples of measures which may be considered reasonable adjustments include and are not limited to the following:

- **Venue.** The Council will consider holding the disciplinary hearing at an alternative venue, either to reduce the stress caused to the employee by attending the hearing or to accommodate any physical needs that the employee may have.
- **Representation.** Where it appears to the Council that the employee's illness may affect his/her ability to explain his/her case, the manager will consider any request that the employee may have to be represented in the process by a colleague, union official or such other person as the organisation may specify. The representative may be allowed an expanded role in the process where this would assist the employee in ensuring that his/her case is fully explained.
- **Written representations.** Where the employee may have difficulty in explaining his/her case, consideration will be given to allowing the employee to rely on written representations, which may be prepared by a representative.
- **Documentation.** The organisation will take particular care to ensure that the employee receives all documentation relating to the disciplinary process sufficiently in advance to allow him/her to prepare fully, taking into account any effect that the employee's health may have on his/her ability to analyse the information and prepare a response.
- **Timings.** While being committed to the principle that matters should be dealt with promptly, the organisation may allow extra time for any stage of the disciplinary process to ensure that the employee can participate effectively. Particular attention will be given to the duration of any disciplinary hearing and its impact on the employee and the need to take appropriate breaks.

If an adjustment is reasonable to make then an employer **must** do so.

11. Sickness absence during the disciplinary process

Winchester City Council aims to ensure that all matters relating to discipline are dealt with fairly and promptly and will, wherever possible, follow the principles set out in the disciplinary procedure.

Where a meeting is postponed because of the ill health of the employee, the meeting will be rearranged once with the second date normally being within **5 working days** (variable in exceptional circumstances by mutual consent).

Depending on the nature of the illness, HR may arrange for the individual to be assessed by Occupational Health to determine the employee's fitness to attend meetings arranged in accordance with this procedure whilst absent due to sickness and/or the likely timescales for them to be fit enough to attend such meetings.

Where a **formal** meeting has been rescheduled the manager will write to the employee to inform them of the revised date for the meeting. The letter should explain that the employee will be given the opportunity to submit a written statement for the manager to consider or to instruct their representative to present their case on their behalf.

If the employee chooses not to exercise these options, or fails to attend the rescheduled meeting due to ill health, the Head of Team will take advice from HR and may decide to continue with the meeting in the employee's absence, considering all the information which is available to them at the time of the meeting.

When an employee's continuous sickness absence exceeds **20 calendar days**, the manager may choose to temporarily suspend the disciplinary process and implement the Council's **Sickness Absence Management Policy**.

When the employee returns to work, the Council reserves the right to allow a period of up to one month to allow the employee to resume normal duties following sickness absence unless Occupational Health advise a longer period of time to facilitate recovery. Following this rehabilitation period, the Council will resume this procedure at the stage it was temporarily suspended prior to sickness absence.

Circumstances may arise when the ill health of an employee prevents the disciplinary procedure from being followed because the employee is too ill to participate in the investigation, adequately prepare for a hearing or attend the hearing itself.

Where this is the case, the manager will seek advice from HR to ensure consistency across the Council. The following key principles will apply:

- The ill health of an employee will not usually be a ground for abandoning any ongoing disciplinary procedures.
- Where the absence is likely to be short (i.e. less than one calendar week), the Council will usually wait until the employee recovers and is able to take a full part in the process.
- When the absence is ongoing and it appears to the Council that the employee is likely to remain off sick for an extended period, the Council may require the employee to be assessed by Occupational Health to determine whether or not he/she is sufficiently fit to take part in the disciplinary process.

- Any employee who is signed off as sick during a period of suspension will have his/her suspension rescinded until such time as he/she becomes fit for work.
- If, following consultation with Occupational Health, it appears to the Council that the employee is fit to take part in the disciplinary process, the process will continue, although the Council may at its discretion also take any of the steps listed as reasonable adjustments above.
- Where it appears that the employee is not fit to take a full part in the standard disciplinary procedure, the organisation will consider taking any of the special measures set out below to enable the employee to participate effectively.

12. Failure to attend meetings

Employees are required to make all reasonable efforts to attend meetings and hearings under this procedure, including informal and formal meetings.

In the event that either party is not able to attend a meeting for a reason that was not reasonably foreseeable at the time the meeting was arranged, the meeting will be rearranged as soon as possible.

Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the manager should take advice from HR before proceeding. Taking into account all the circumstances of the case, the Council reserves the right to continue with the meeting in the employee's absence, taking into account the information which is available at the time.

13. Holding the hearing in the employee's absence

The Council believes that, in the vast majority of cases, it should be possible by using any or all of the measures outlined above to conduct a fair disciplinary process in which the employee fully participates.

However, there may be exceptional circumstances when the employee will not be able to attend a disciplinary hearing, whatever measures are taken.

In such circumstances, the Council reserves the right to proceed with a disciplinary hearing in the employee's absence.

Where this is the case, the employee and his/her representative will be informed of the time and location of the hearing and will remain free to attend. The representative will be free to attend, even if the employee is not present providing that the employee is in agreement with this approach.

The outcome of the hearing will be communicated in writing to the employee, paying particular attention to the need to explain the details of any factual findings made and the basis of the decision reached.

The employee will be given a full opportunity to appeal against any decision in accordance with the disciplinary procedure.

14. Records of Meetings

It is important that Managers conducting meetings, hearings or appeals under this procedure keep written records. These should include: a summary of management case, the details of the evidence against the employee, the employee's response, findings made and actions taken, the reason for the decision and details of any appeal and outcome.

A note-taker may be made available at formal meetings and appeal hearings who should provide a typed summary of the meeting.

Should any action be re-considered and effectively withdrawn on appeal, any written reference to it will be removed from the employee's personal file and the employee will be notified accordingly.

All documentation (and records) relating to the meetings and hearings under this procedure should be sent to Human Resources, who will retain a confidential record in keeping with the requirements of the Council's Retention Policy.

15. Resolving Grievances

The Council's Grievance Procedure is set out in the **Resolving Workplace Issues Policy** which states that the Policy does not apply "where separate rights of appeal are given under different procedures (for example but not exclusively issues relating to redundancy, disciplinary, capability, attendance management, job evaluation or whistle blowing etc.) or where the matter is related to a collective agreement."

This is because the employee should use formal meetings under the Disciplinary Procedure to offer any explanation or mitigation.

In exceptional circumstances, however, an employee may potentially have a grievance which relates to the way in which the Disciplinary Procedure is being applied, rather than the fact that disciplinary processes have been applied. In the first instance, they should discuss the matter with their Trade Union Representative or a member of HR.

Where an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended for no more than 8 weeks in order to resolve the grievance.

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

Depending on the nature of the grievance, it may be appropriate to appoint an alternative investigating officer to enable disciplinary matters to be progressed without unreasonable delay.

16. Resignation Pending a Disciplinary Hearing

If a member of staff resigns pending a disciplinary hearing in respect of allegations of potential gross misconduct (especially cases relating to fraud, theft or safeguarding concerns) a **Formal Disciplinary Hearing** should be convened during the member of staff's notice period. If the case is substantiated, the Council may dismiss without notice in the normal way, despite the resignation.

If the notice period is too short to allow a full investigation and **Formal Disciplinary Hearing**, advice should be taken from the HR Team. It is likely that a letter would be sent to the employee indicating the issues which are to be investigated and that had they been substantiated, this could have resulted in dismissal.

17. Revision

This policy and procedure will be reviewed every 2 years or sooner if required, taking into account changes to legislation, ACAS guidelines and best practice.

18. Disciplinary Procedure

18.1 Overview of Procedure

This Procedure is intended to be followed in a linear way which will incorporate the following stages:

- **Informal Action**
- **Investigation**
- **Formal Disciplinary Hearing**

In exceptional circumstances and subject to advice from a member of the HR Team, the Manager may by-pass the informal action stage of the procedure.

18.2 Informal Action

Where there are concerns about an employee's conduct, the line manager should establish the facts, which may include obtaining evidence from others.

Having established facts, the line manager should hold an **informal discussion** with the employee to discuss the concerns.

Meetings under the Informal Stage of the procedure are part of day to day management. There is therefore **no right to be accompanied** at meetings held under the **Informal** Stage of the Procedure. However, the principles set out in **Section 6** will apply.

Any discussions with an employee should be held with the aim of encouraging and helping them to improve to the standard required. It may be that mentoring, coaching, training or counselling is appropriate to help the employee to improve.

During the meeting the manager should:

- Clearly explain the standards which are required.
- Explain specifically in what way the individual is falling short of the required standards.
- Encourage the individual to offer their explanation for the apparent unacceptable conduct.
- Establish whether there are any external factors such as a change in personal circumstances which are adversely affecting decision making or which may account for uncharacteristic behaviour. If so, discuss what additional support the employee needs at this time.
- Identify the specific improvements required.

- Discuss and agree what steps need to be taken by both the manager and the employee will take to address these concerns.
- Identify and agree what additional support is required to enable to employee to improve.
- Agree reasonable timescales within which improvements should be made. It is unusual for a reasonable timescale to exceed **3 months**.
- Explain how the individual's conduct will be reviewed.
- Inform the employee that if the required improvement is not achieved within the agreed timescale, or is not sustained for a period of **6 months**, the formal stages of the procedure may apply.
- Explain that if there is further misconduct during the agreed review period, the manager can initiate the next stage of the procedure even if the review period has not been exhausted.

At any time during the meeting, the manager may adjourn the meeting to seek advice from HR. The employee may also request an adjournment. Such requests will be accommodated and the manager will rearrange the meeting for a mutually convenient time to allow the discussion to continue.

The manager should take into account the employee's personal circumstances, both in work and outside of work, especially in cases where a change in personal circumstances appear to be impacting on otherwise acceptable conduct.

Having considered the explanation from the employee, the manager should make a record of the discussion, including any action required and the timescales for improvement.

Appendix 1 of this procedure contains a template which can be used to record the outcome of the informal meeting. A copy of the record of informal discussion should be given to the employee and sent to HR for information.

18.3 Formal Action

Where informal action has not achieved the required improvements, or in consultation with HR, it is determined that the conduct concerns are such that immediate formal action is required without using the informal stage of the procedure, the manager should invoke the formal disciplinary procedure.

Prior to invoking the formal stage of the disciplinary procedure, managers should seek advice from an HR Adviser who will provide appropriate advice and support on the application of the Formal Stages of the procedure, including advising on letters and similar documents as required.

18.4 Investigation

It is important to carry out investigations of potential disciplinary matters without unreasonable delay. The investigation should be balanced, reasonable and proportionate to the alleged misconduct. It is not an opportunity to establish “guilt” but an opportunity to establish the facts of the case.

If the misconduct is something that the employee admits to, the extent of the investigation may well be confined to that admission statement, the details of the breach of standards and an indication of the potential seriousness of the misconduct.

In the majority of cases, the investigation will require holding investigative meetings with the individual to establish all the relevant facts and circumstances.

The line manager will usually act as investigating officer and may be supported by a member of the HR Team. Where it would not be appropriate for the line manager to act as the Investigating Officer or where specialist knowledge is required to conduct a reasonable investigation, the Head of Organisational Development will appoint an objective investigating officer.

Normally, the line manager will arrange a meeting with the employee to notify them that they are subject to an investigation. A member of the HR Team may also attend the meeting. As this is an informal meeting to convey information and not in itself an investigatory meeting, the employee does not have a right to be accompanied at the meeting, however, reasonable requests to be accompanied at the meeting will be accommodated where this does not unnecessarily delay the process.

The employee should be given **no less than 2 working days** written notice of the investigatory meeting. The notice of the investigation should include sufficient detail of the allegation(s) and a copy of this Policy and Procedure.

The employee should be advised of their right to be accompanied at the investigatory meeting by a colleague or trade union representative.

At the beginning of the investigative interview the manager should explain that the interview is part of an investigation into the alleged misconduct. They should explain the allegation(s) as set out in the letter requiring the employee to attend the investigative interview and ask the employee if they admit or deny the allegation(s).

The investigating officer should then ask questions of the employee to establish their account and response to the allegation(s).

At the end of the investigatory meeting, the employee should be advised of what they should expect to happen next (e.g. a further investigatory meeting if issues require clarification or, depending on the outcome of the investigation, notification of

a Disciplinary Hearing.) The employee and their representative should be kept informed by the investigating officer of progress at all stages of the investigation.

The Investigating Officer should check that they have examined all the relevant files, logs, case notes and other documents and that they have interviewed all the relevant people.

If the investigating officer concludes that there is no case to answer and that no further action will be taken, the employee and their representative will be notified of this in writing.

If during or following the investigation, it is clear that the alleged misconduct is more serious than originally thought, suspension on full pay should be considered as set out in **Paragraph 7** of this policy and procedure.

In cases resulting in a formal disciplinary hearing, the investigating officer will write a summary report of their investigation. The Investigation Report should be prepared in the knowledge that it might be produced in evidence at an Employment Tribunal.

The final report should be readable, structured and assist the hearing panel and the employee to understand the allegations being made. It should be concise, have numbered pages and contain clear cross-references to attached documents. It should be clear from reading the report that the investigation was as thorough as was reasonably practicable and that the manager has considered all relevant information.

Further guidance on conducting an investigation and completing the investigating officer's report is available from the HR Team. If the investigating officer concludes that formal disciplinary action is required, the employee will be notified of this in writing and a **Formal Disciplinary Hearing** will be arranged.

18.5 Arranging a Formal Disciplinary Hearing

The employee will be given a minimum of **7 working days** written notice of the **Formal Disciplinary Hearing**, which may be waived by mutual agreement.

A member of the HR team will provide support with the letter which as a minimum should inform the employee of the allegation(s) which will be considered at the **Formal Disciplinary Hearing** and advise them of the **right to be accompanied** at the meeting by a colleague or Trade Union representative.

The letter should also contain sufficient information about the alleged misconduct in sufficient detail for the member of staff to prepare their response. Without prejudice to a fair hearing, the letter should indicate all possible outcomes which are available to the Hearing Officer. Potential outcomes of the hearing are set out at Paragraph 18.7 below.

All papers and documents, including the investigating officer's report, which form management case, must be sent to the employee with the letter informing them of the **Formal Disciplinary Hearing**.

Any written evidence the employee wishes to submit should be received no later than 3 working days before the **Formal Disciplinary Hearing**.

. The details of how this is to be achieved will be set out in the letter informing the employee of the date of the **Formal Disciplinary Hearing**.

The Council will take into account reasonable adjustments required by the employee to enable them to participate fully in the Formal Disciplinary Hearing.

18.6 Conducting a Formal Disciplinary Hearing

The **Formal Disciplinary Hearing** will be chaired by a Senior Manager with no significant prior involvement in the case. A representative of HR will also attend the meeting. A note taker may also attend. In consultation with the HR Adviser, the Hearing Officer will determine the most appropriate way to conduct the Hearing.

Where the allegation(s) relate to potential gross misconduct, the **Formal Disciplinary Hearing** will be chaired by a Director or an Assistant Director.

The aim of the Formal Disciplinary Hearing is to ensure that all disciplinary issues are dealt with in an impartial and objective manner. The person conducting the Formal Disciplinary Hearing must not be the same person who conducted the investigation.

The employee subject to the allegations must be given the opportunity to respond to the allegations and to state their case.

In the event that the employee does not attend the **Formal Disciplinary Hearing**, the principles set out in **Paragraph 11** of this policy and procedure will apply.

The Hearing Officer will allow for reasonable breaks during the **Formal Disciplinary Hearing**. If one party requests an adjournment, the Hearing Officer will consider the request sympathetically but as Chair it is for the Hearing Officer to determine whether it is an appropriate time to break. For example, the Hearing Officer may request that either party answer the question they were asked before allowing a break.

While the actual conduct of a **Formal Disciplinary Hearing** will depend on the complexity of the issues being considered, the following principles apply:

The Hearing Officer will open the meeting, make introductions and confirm that the meeting is a Formal Disciplinary Hearing under the Council's Disciplinary Policy and Procedure.

The Hearing Officer will read the allegation(s) as set out in the letter arranging the hearing. The individual should be given an opportunity to state whether they accept or refute the allegation(s).

The Investigating Officer, or a member of the HR Team if appropriate, will set out Management Case, referring to any documents which have previously been submitted.

The Hearing Officer and HR Adviser may ask the Investigating Officer questions to clarify issues which arise during the presentation of management case.

The employee or their representative may ask questions of the Investigating Officer.

The employee will then be given adequate opportunity to respond to the issues raised by the manager and set out their case, including any mitigation they wish the Hearing Officer to consider.

If the member of staff is not accompanied, the Hearing Officer will ensure that the individual understands what they are being asked and that they are given ample opportunity to respond.

The Hearing Officer, HR Adviser and Investigating Officer may ask the employee questions.

Depending on the complexity of the issues being considered, the Hearing Officer may give both parties the opportunity to summarise their case. No new material should be introduced at this stage in proceedings.

The Hearing will adjourn to allow the Hearing Officer to consider the facts of the case. If at any time it appears that further investigation is required or further evidence is needed, the Hearing Officer should allow for this to happen. In some circumstances, this may include an adjournment of the Formal Disciplinary Hearing and setting a date for the Hearing to reconvene to consider additional information.

Once the Hearing Officer has reached a decision, the Hearing will reconvene both parties will be informed of the decision.

In exceptional circumstances, where it is not possible to reach a decision immediately, the decision will be given verbally to the employee no later than **3 working days** from the conclusion of the hearing.

The decision and the right of appeal will be confirmed in writing to the employee within **5 working days** of the employee being informed verbally of the outcome of the hearing.

A copy of the letter will be forwarded to HR for inclusion on the employee's personal file.

18.7 Possible Outcomes of a Formal Disciplinary Hearing

The Hearing Officer, in consultation with the HR Adviser, will consider the management case and the response offered by the individual. The facts of the case should be considered to ascertain whether there are reasonable grounds to demonstrate that misconduct has occurred. Usually this may have regard to the "balance of probability" (i.e. it is more probable than less probable that the alleged misconduct was committed). This is not as stringent a test as in a criminal court of law where the test of 'beyond reasonable doubt' applies; while the Hearing Officer should come to a conclusion based on evidence, it is not necessary to have absolute proof.

When deciding on the appropriate sanction, the Hearing Officer should consider:

- The severity of the misconduct.
- The potential impact of the misconduct on the Council's reputation.
- The employee's explanation of events, including any mitigating circumstances. In the context of a disciplinary process, "mitigation" means reasons why the misconduct should not attract so serious a sanction.
- The employee's previous record including length of service and other warnings which remain in place.
- Whether a thorough and sufficient investigation been conducted.
- Whether it is reasonable that the employee knew the standard expected of them and the potential consequences for breaching those requirements.

Except in cases of **gross misconduct**, dismissal will not be considered for a first act of misconduct.

The following sanctions should be considered by the Hearing Officer:

First Written Warning

A **First Written Warning** will normally be given when informal attempts to resolve the matter have failed or the matter is considered too serious to be resolved by informal means.

A **First Written Warning** will remain in force for a maximum of **12 months** and will be disregarded for disciplinary purposes at the end of that time.

Final Written Warning

A **Final Written Warning** may be given where:

- the conduct has not improved as a result of a First Written Warning which is still current **or**
- the individual has committed a further act of misconduct which warrants formal action **or**
- the misconduct amounts to a serious breach of the expected standards of behaviour but is not so serious that it would warrant dismissal

A **Final Written Warning** will remain in force for a maximum of **2 years** and will be disregarded for disciplinary purposes at the end of that time.

Dismissal with notice

The member of staff may be dismissed with statutory notice on the grounds of misconduct where:

- the conduct has not improved as a result of a **Final Written Warning** which is still current **or**
- the individual has committed a further act of misconduct which warrants formal action.

In cases other than gross misconduct, the Hearing Officer in consultation with HR will determine whether it is appropriate for the employee to work their notice or whether the employee should be paid in lieu of notice.

The decision will be based on the nature of the conduct concerns and the risks to the Council should the employee remain in post for the duration of their notice period.

Dismissal without notice

Following appropriate investigation and a **Formal Disciplinary Hearing**, an employee who is found to have committed **gross misconduct** may be dismissed without any previous warnings being given.

In such circumstances, dismissal will be without notice or pay in lieu of notice (i.e. summary dismissal). Payment will cease with immediate effect and the dismissed employee will be required to leave the Council's premises at the conclusion of the Formal Disciplinary Hearing.

18.8 Right of Appeal

There is no right of appeal against a management decision made at the informal stage of the procedure.

An employee may appeal against a decision made at a **Formal Disciplinary Hearing**.

There will not be a delay in implementing management decisions pending appeal, but they may be subsequently amended as a result of the appeal hearing.

As far as reasonably possible, the Appeal Hearing will be held within **28 calendar days** of the date the appeal notice is received.

Any appeal should be addressed in writing to the Hearing Officer (i.e. the manager who made the decision which is subject to appeal) within **5 working days** of the date of the letter confirming the outcome of the meeting which is being appealed, clearly stating the grounds for appeal.

18.9 Appeal against a Written Warning

An appeal against a **First Written Warning** or **Final Written Warning** will be heard by a Director or an Assistant Director with no prior involvement in the case. A representative of the HR Team will also attend the Appeal Hearing.

The employee has a right to be accompanied at the Appeal Hearing by a colleague or Trade Union Representative.

The Hearing Officer from the **Formal Disciplinary Hearing** will attend the Appeal Hearing to present management case.

The Appeal Hearing will follow the process set out at **Paragraph 16.11** of this procedure.

18.10 Appeal against Dismissal

An appeal against dismissal will be heard by the Chief Executive, supported by a representative of the HR Team. The Chief Executive may delegate to an appropriate senior manager with no prior involvement in the case.

Appeals against dismissal will be heard by the Chief Executive unless there is a statutory reason, or similar regulation within the Council's Constitution, which requires appeal to Members (e.g. for Statutory Officers). In cases where the decision to dismiss is taken by the Chief Executive, appeal will be to a panel of Members.

The employee has a right to be accompanied at the Appeal Hearing by a colleague or Trade Union Representative.

The Hearing Officer from the **Formal Disciplinary Hearing** will attend the Appeal Hearing to present management case.

The Appeal Hearing will follow the process set out at **Paragraph 15.11** of this procedure.

18.11 Conducting Appeal Hearings

The purpose of an Appeal Hearing is to determine whether the outcome from the original hearing was correct and whether the disciplinary sanctions imposed at that hearing should be upheld, overturned or replaced with another sanction.

The Appeal Hearing is not a re-hearing of the original meeting but should focus on the original decision and whether the procedure has been applied correctly.

The appellant will be given a minimum of **5 working days'** written notice of the Appeal Hearing.

All papers and documents, which have not previously been disclosed to the appellant and form management submission to the Appeal Hearing, must be sent to the employee with the letter informing them of the **Appeal Hearing**.

Any written evidence the employee wishes to submit to support their appeal which have not previously been disclosed to the Council should be received no later than 2 working days before the **Appeal Hearing**. The details of how this will be achieved will be set out in the letter confirming the arrangements of the Appeal Hearing.

The appellant (or their representative) will outline the reasons for the appeal setting out any mitigating circumstances they wish the panel to consider.

The Chair of the Appeal Hearing and/or the HR Adviser may ask the appellant questions to clarify anything which has been raised in the documentation supplied prior to the Appeal Hearing or verbal statements made during the Appeal Hearing.

The manager will have an opportunity to ask the appellant questions.

The Chair of the Appeal Hearing will ask the management representative to present their case, including confirming the basis on which the original decision was made.

The Chair of the Appeal Hearing and/or the HR Adviser may ask the presenting manager questions to clarify anything which has been raised in the documentation supplied prior to the Appeal Hearing or verbal statements made during the Appeal Hearing.

The appellant will have the opportunity to ask the management representative questions relating to either documents which have been submitted or verbal presentations made during the Appeal Hearing.

It may not always be necessary for parties to summarise their case. This will depend on a number of factors including but not limited to the length of the meeting, the time of day and the complexity of the issues being considered. If summing up is appropriate, both parties should be offered the opportunity to summarise their case.

If the Chair of the Appeal Hearing decides that summing up would be useful, a brief adjournment should be offered to allow both parties the opportunity to prepare.

The Appeal Hearing will adjourn while the Chair of the Appeal Hearing considers the information available to them and takes advice from HR.

The Chair of the Appeal Hearing should consider the following in reaching their decision:

- Have the requirements of the procedure been properly complied with?
- Was the manager's decision reasonable based on the evidence relating to the case?
- Have any mitigating circumstances put forward by, or on behalf of, the employee been considered fully?
- Were the concerns sufficiently serious to justify the sanctions imposed?
- Is the treatment of the appellant consistent with City Council's general approach to similar cases?
- Has the matter been handled fairly and appropriately?
- Is there any new evidence, which if known at the time, would have altered the decision?
- In appeals against dismissal, have all reasonable alternatives to dismissal been considered?

When the appeal is against the decision to dismiss, the Chair of the Appeal Hearing should consider the working relationship between the employee, the manager and the team concerned.

It may be appropriate to consider whether the appellant should be reinstated (i.e. return to the post from which they were dismissed) or whether it is more appropriate in the circumstances for them to be re-engaged (i.e. moved to a reasonable, alternative role within the Council where a suitable vacancy exists.)

The decision to re-engage the appellant into an alternative, existing vacancy will only be taken once the Head of Organisational Development, or in their absence the HR Manager, has been consulted. The appellant must be able to demonstrate they meet the essential criteria for the proposed role. Any offer of alternative employment must be subject to satisfactory medical clearance and/or satisfactory DBS clearance, as required by the role. If the individual is re-engaged to a role with a lower responsibility or grading, salary protection will not apply.

The Chair of the Appeal Hearing should consider whether mediation would be beneficial to support the reintegration of the appellant into the workplace.

The appellant will be informed verbally of the outcome of the Appeal Hearing, which will be confirmed in writing within **5 working days** of the hearing.

18.12 Possible Outcomes of an Appeal Hearing

An Appeal Hearing cannot replace the original decision with more severe disciplinary action and the outcome of an appeal should therefore be restricted to the following options:

1. **To uphold the appeal** - This is likely to occur when new evidence has been presented, a review of the process has identified flaws in how the disciplinary was conducted, or if mitigating circumstances have been disclosed which were not previously taken into account.

If the appeal is upheld, the Chair of the Appeal Hearing should consider whether the sanctions imposed were too severe and not in the band of reasonable action, they may replace the original decision with a lesser sanction (e.g. a dismissal may be overturned and result in a “final written warning”). Additional supporting action (e.g. coaching, further training etc) may also be suggested if appropriate.

2. **Not to uphold the appeal** - The Chair of the Appeal Hearing must be satisfied that there is insufficient evidence to uphold the appeal and that the decision of the original panel was reasonable in all the circumstances.

The decision of the Appeal Hearing is final and there is no further right to appeal.

DRAFT

Appendix 1: Record of Informal Discussion
PART A

Employee:	
Manager:	
Date of Discussion:	

Summary of Key Points Discussed:

Lined area for writing the summary of key points discussed.

Now complete Part B overleaf

PART B

IMPROVEMENT PLAN

IMPROVEMENT NEEDS	ACTION STEPS REQUIRED	SUPPORT/TRAINING REQUIRED	TARGET DATE
<p>What specific improvement/development needs have been identified?</p>	<p>What improvements/developments are to be taken and by whom?</p>	<p>What other support/training is required to enable the employee to achieve the target?</p>	<p>When should each action be completed?</p>

Signed: _____ Manager Signed: _____ Employee

Date:

Appendix 2: Definitions of Misconduct and Gross Misconduct

The Council has a Code of Conduct, policies and procedures which set the standards of behaviour and conduct for all employees; it is expected that everyone makes themselves fully aware of their contents.

The Code of Conduct, policies and procedures are intended to:

- Ensure a safe and efficient workplace and to promote positive working relationships;
- Define the high standards of conduct required of employees providing a public service
- Protect the public confidence in the Council.

Misconduct

Although it is impossible to determine what disciplinary action to take without investigating the allegation first, action against misconduct is likely to include a verbal or written warning.

The majority of cases involving misconduct will not normally warrant dismissal without a previous warning, unless there are persistent acts of misconduct following other warnings.

The examples set out below represent potential acts of misconduct that may lead to disciplinary action. The following list should not be considered as comprehensive or exhaustive but serves to guide employees and managers as to what may be subject to disciplinary action.

Examples of potential misconduct

General Conduct

- Failure to comply with the Council's Code of Conduct, Policies, Procedures, Regulations and similar documents which set out the expected standards of conduct.
- Failure to comply with a reasonable instruction or request to provide information to a manager where there is a clear business reason to support the request.
- Using threatening or abusive language and/or behaviour towards colleagues, clients, Elected Members or members of the public.
- Wilful neglect of duties and responsibilities, including failure to report any matter which employees are reasonably expected to disclose.
- Smoking (including e-cigarettes) in a non-designated area of council property.

- Disregard of medical advice or acting in a manner which may delay a return to work following sickness absence.
- Being in possession of or under the influence of illegal or controlled substances, other than those prescribed for medical reasons.

Council Resources

- Inappropriate use of Council resources, including but not limited to time, property and financial resources.
- Failure to take reasonable care of Council property, including wilful damage.
- Inappropriate or excessive use of financial resources, including the use of Corporate Credit Card, Government Procurement Cards and similar.
- Failure to settle a debt owed to the Council.

Communication

- Inappropriate use of the Council's IT Systems, including publishing online (even in a personal capacity outside of work) material which can be perceived by the public or colleagues to be discriminatory, abusive, oppressive, harassing, bullying, victimising, offensive or otherwise incompatible with the principles of public service.
- Publishing online or elsewhere, or offering for publication, any material that might undermine or damage the public confidence in the Council.
- Knowingly making false, misleading or inaccurate statements to the public or managers.

Working Arrangements

- Failure to comply with agreed arrangements relating to working hours, requests for leave and notification of absence, including repeated late attendance.
- Failure to wear in full or as modified by management instruction, appropriate uniform or specific items of clothing required under health and safety regulations, local Dress Codes agreements or similar guidelines.
- Undertaking work outside of their employment with the Council where there is a potential conflict of interest.
- Failure to declare any interest in an external contract involving the Council whether or not there is any financial gain.

Gross Misconduct

Gross misconduct is defined as misconduct of such a serious nature that the Council can no longer tolerate the employee's continued presence at the place of work.

Depending on the severity of the misconduct, the potential risks to the Council's reputation with the public and the individual circumstances of the case, acts listed as potential misconduct may be considered as gross misconduct and therefore may result in dismissal.

Allegations of gross misconduct will normally result in suspension from duty and, following a Formal Disciplinary Hearing, may result in the immediate dismissal without notice or pay in lieu of notice.

The examples set out below represent potential acts of gross misconduct that may lead to dismissal.

The following list should not be considered as comprehensive or exhaustive but serves to guide employees and managers as to what may be subject to disciplinary action.

General Conduct

- Serious failure to comply with the Council's Code of Conduct, Policies, Procedures, Regulations and similar documents which set out the expected standards of conduct.
- Acts of discrimination, bullying, harassment or similar unacceptable behaviour towards colleagues, Elected Members, clients or members of the public on any grounds.
- Deliberate actions or omissions resulting in injury, loss or damage.
- Failure to declare an interest, direct or indirect, in any Council contract which has been or is proposed to be entered into by the Council.
- Serious breaches of safety rules including the deliberate damage to or removal of safety equipment.
- Criminal conviction for an offence, either inside or outside of the workplace, which make the employee unsuitable for continued employment.
- Accepting gifts, hospitality, favours or other reward without prior authorisation.
- Use of an official capacity or powers for private gain, including the acceptance of bribes or other corrupt practices which undermine the public confidence in an individual or the Council.
- Abuse of or inappropriate use of the official position or the authority vested in any employee by the Council for personal gain or for the benefit of a third party.
- Sexual misconduct or indecency.

- Inappropriate conduct towards a child or vulnerable adult (which may amount to abuse)¹ whether or not they are clients, or the abuse takes place outside of the workplace.
- Fighting with, assault on, abusive or threatening behaviour towards a colleague, Elected Member, Client or member of the public.
- Theft or attempted theft from the Council, its employees, clients or customers.

Council Resources

- Interference with or misuse of the Council IT Systems, hardware, software or data in such a way as to threaten the continued operation, integrity or security of the Council's IT infrastructure.
- Accessing, storing, sharing or otherwise publishing materials likely to cause offence to others via the Council's IT system, including through mobile phones, tablets and similar devices.
- Conduct of a potentially fraudulent nature, including the falsification, unauthorised removal of or tampering with records including and not limited to timesheets, sickness absence records, expense claims and mileage claims etc.

Communication

- Deliberate unauthorised use of and/or disclosure of information relating to the Council's business, its members, officers or clients.
- Consistent use of offensive or obscene language, including racist, sexist or otherwise unacceptable terms.
- Serious acts of insubordination which undermine the trust and confidence in the employee.
- Deliberate failure to report the actual or suspected abuse of a child or vulnerable adult.

Working Arrangements

- Sleeping on duty unless expressly permitted (e.g. as part of an "on call" arrangement).
- Attending work under the influence of alcohol or illegal substances.
- Undertaking other employment (whether paid or not) without prior authorisation during hours when contracted to work for the Council or during periods of absence (e.g. sickness absence, annual leave, maternity leave etc.)
- Other such conduct liable to cause serious loss of public confidence in the Council or considered contrary to the interests of the Council.

¹ Abuse is defined within the Council's **Safeguarding Children and Vulnerable Adults** Policy and may include physical, emotional, financial or institutional abuse. It also includes neglect.

Appendix 3: Summary of Disciplinary Procedure

Informal/Formal Action	Result of Disciplinary Hearing	Right to Representation	Determining Officer	Duration of Warning	Appeal Heard by ²
Informal	Verbal Warning – should be noted on file	No	Line Manager	3 months, sustained improvement for 6 months	No right of appeal
Formal	Written Warning	Yes	Senior Manager (e.g. Head of Service, Assistant Director or Director)	Up to 12 months	Assistant Director or Director
Formal	Final Written Warning	Yes	Senior Manager (e.g. Head of Service, Assistant Director or Director)	Up to 24 Months	Chief Executive, Director or Assistant Director
Formal	Dismissal	Yes	Chief Executive, Director or Assistant Director	Not applicable	Chief Executive ³

² The appeal should be considered where practicable by an officer more senior than the manager who made the decision which is subject to appeal.

³ In cases where the decision to dismiss was taken by the Chief Executive (or where statute or similar regulations require) the appeal will be to Members.