

**Isle of Wight Council**  
**DISCIPLINARY**  
**PROCEDURE**  
**July 2018**

# 1 Document Information

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<b>Author:</b>	Sharon Hartill - HR Lead Policy & Projects HR Operations, Resources Directorate ✉ sharon.hartill@iow.gov.uk
<b>Sponsor:</b>	Nikki Butler – HR Lead Policy & Projects HR Operations, Resources Directorate ✉ nikki.butler@iow.gov.uk
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1.0	June 2017	Updated to reflect the recommendation of Full Council on 17 May 2017 to refer appeals against dismissal back to Senior managers for decision.
1.1	January 2018	Updated to include to signposting to DBS duty to refer in paragraph 6.2.
1.2	July 2018	Updates to include potential to dismiss for first offence and updates

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		to section 8 to include additions requested by the corporate governance team.
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## **3 Introduction**

### **3.1 The Purpose of the Procedure**

The purpose of the Disciplinary Procedure is to provide a framework through which shortcomings in your conduct or behaviour can be addressed, to help you to achieve and maintain the standards expected.

The aim is to ensure consistent and fair treatment for all staff across the Council / School.

The Council reserves the right to implement the procedure at any stage, taking into account the nature and seriousness of the employee's alleged misconduct.

### **3.2 The Scope of the Procedure**

This procedure applies to all employees of the Isle of Wight Council / School and is non-contractual. For clarification, this also includes:

- all employees of the Isle of Wight Fire and Rescue Service who are covered by Grey or Gold book conditions;
- all School employees, including Support Staff, Teachers and Headteachers;
- Chief Officers.

The procedure does not cover the following:

- issues of attendance or capability, for which there are separate procedures;
- termination during or at the end of a probationary period of service (including any extended probationary period of employment);
- termination of employment by mutual consent.

NB: No disciplinary action should be taken against an accredited recognised Trade Union representative (except where suspending the employee in a case of suspected gross misconduct) until the circumstances of the allegation have been discussed with a full-time official of that Union.

## 4 Flowchart of the Procedure

*(The numbers against each heading refer to the relevant section of the procedure.)*

### 4.1 Information Action / Formal Disciplinary Procedure Stage 1

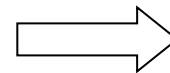
#### Deciding on appropriate action

Manager to make a judgement on the seriousness of the issue and whether it should be dealt with informally or formally and whether the misconduct requires suspending the employee from work.

#### (5) Informal action

The line manager attempts to address the misconduct or poor behaviour through informal action, agreeing an Improvement Action Plan where appropriate.

**Q. Has the required improvement been achieved?**



No further action necessary

YES

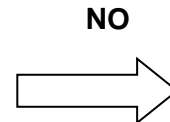
NO



#### (6) Formal action Stage 1

The manager holds a meeting with the employee to discuss the problem and decides whether there is a possible disciplinary case to answer.

**Q. Is there a disciplinary case to answer? (6.1)**



No further action necessary

NO

YES



Arrange a meeting with HR to discuss case and agree any further action.



**Q. IS FURTHER INVESTIGATION NECESSARY AND IS THE CASE SERIOUS ENOUGH TO REQUIRE AN INDEPENDENT INVESTIGATION?**

**Q. SHOULD THE EMPLOYEE BE SUSPENDED FROM WORK?**

If yes, 6.2 "Suspension from work" applies.

YES



#### (6.2) Investigation

HR and the manager agree whether the manager investigates the problem, OR refers the matter to the Head of Service (or Headteacher), who may appoint an independent investigator to carry out a detailed investigation.



#### (6.3) Investigation Report

The manager OR the independent investigator produces a report, which is sent to the manager and HR for review.

**Q. Is there a disciplinary case to answer? (6.1)**

YES



NO



No further action necessary. Employee must be informed in writing.

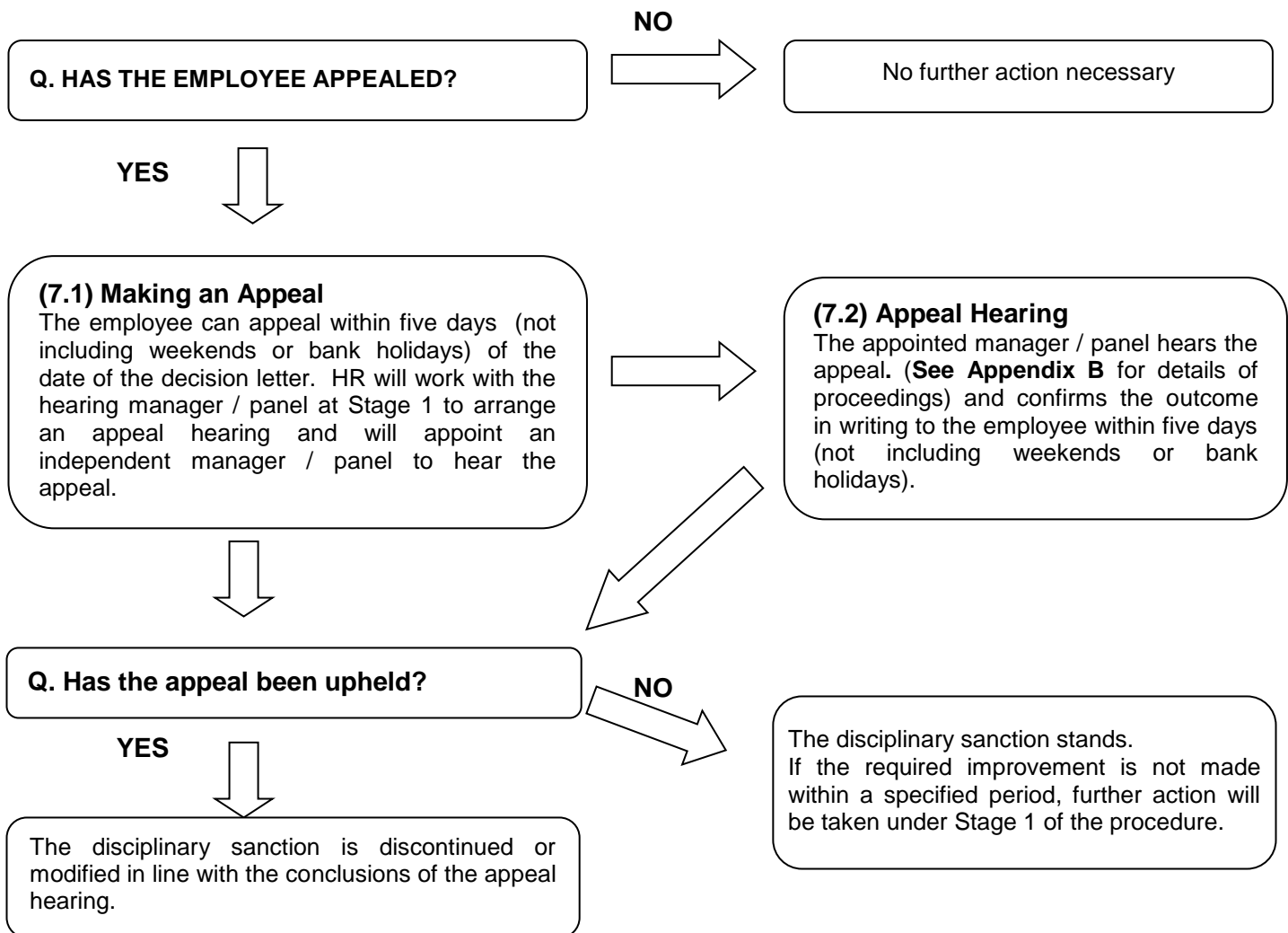
#### (6.5) Disciplinary Hearing

The employee is invited to attend a formal disciplinary hearing by the manager.

The appointed manager / panel hears the case, (see **Appendix B** for details of proceedings) and decides what, if any disciplinary sanction should be applied (see 6.7 "Possible disciplinary sanctions").

The hearing manager's decision is made and confirmed in writing to the employee within five days (not including weekends or bank holidays).. The employee has the right of appeal.

## 4.2 Formal Disciplinary Procedure Stage 2 – Appeal



## 5 Informal Action

### 5.1 Addressing Disciplinary Issues Informally

Managers should deal with minor acts of misconduct informally wherever possible and / or appropriate. However, failure to improve, further misconduct or more serious misconduct may lead to formal disciplinary action being taken.

The manager's role is to:

- Meet promptly with you to discuss the misconduct or behavioural issue in detail. Factual examples of the behavioural or misconduct issue(s) should be given.
- Give you the opportunity to explain your conduct or behaviour.
- Investigate the matter further where necessary.
- Outline the required standard of conduct or behaviour, explain the apparent shortfall and define the improvements required.
- Agree any appropriate future action with you, including additional support (e.g. coaching, mentoring), development and / or training.
- Define a timescale for monitoring and reviewing progress. Where appropriate, this review period may be included within a structured written Improvement Action Plan (IAP: see Appendix C) developed with you, which will also include establishing monitoring processes. A copy of the IAP paperwork will be given to you.
- Explain that further instances of misconduct or lack of improvement in behaviour may result in formal disciplinary action.

The manager should confirm the above points to you in writing.

### 5.2 Reviewing Conduct and Behaviour

If your conduct during the review period is satisfactory, the manager should meet with you to inform you of this. This should be confirmed to you in writing within five days of the meeting (not including weekends or bank holidays).

If your conduct is not satisfactory by the end of the review period, the manager will meet with you to explain the shortcomings and allow you to respond. The manager may decide to extend the review period if they feel that this could address the problem satisfactorily. However, if the manager considers that you have failed to attain the required standard without justifiable reason, and / or the poor standards of conduct or behaviour are therefore likely to continue, the matter will be referred to the formal stage of this procedure (see **6: Formal Procedure**).

The manager may invoke the formal procedure prior to the end of the review period if the misconduct or behaviour issue becomes serious enough to warrant it.

NB: The line manager should keep a record of all conversations with you and should also retain examples of where the misconduct or behaviour issue is evidenced.



## 6 Formal Disciplinary Procedure – Stage 1

*(Please also refer to Disciplinary Procedure – Additional Guidance on [iwight.com](http://iwight.com) or Wightnet: Documents.)*

### 6.1 Referral to the Formal Disciplinary Procedure

If informal action has not resulted in the desired improvement, the manager will invite you to a meeting.

Where the nature of the alleged misconduct or behaviour is serious enough, the formal disciplinary procedure will be initiated without any preceding informal action. The manager will meet with you to discuss the problem and allow you to explain. If the manager decides that there is a possible disciplinary case to answer, they should inform you that the problem is being referred to the formal disciplinary procedure.

The manager should ensure that -you have a copy of this procedure.

### 6.2 Suspension From Work

There may be circumstances when the manager or Headteacher (in consultation with HR) needs to consider suspending you from work on full pay, e.g.

- where serious or gross misconduct is alleged; or
- where it is considered that your presence in the workplace may hinder the investigation; or
- where it is necessary to comply with the requirements of an external regulating body.

Suspension must only be used as a last resort and after due consideration has been given to possible alternatives and the implications of suspension. Suspension must be authorised in advance, following completion of the suspension checklist in conjunction with HR, by;

- A Senior Manager; or
- by the Chair of the Governing Body; or
- in the case of a Chief Officer, by the Managing Director; or
- in the case of a Headteacher, by the Chair of the Governing Body.

Any decision to suspend will be confirmed in writing to you by the line manager within three days (not including weekends or bank holidays).

Suspension is a precautionary, not a disciplinary action pending the outcome of disciplinary proceedings. If serious misconduct is not initially suspected or believed to have occurred, but during the course of an investigation the investigator forms the opinion that a serious breach of discipline may have occurred, you may then be suspended, but in accordance with the procedure outlined above.

In the instance of suspension from regulated activity, your manager will need to consider whether it is necessary to make a referral to the Disclosure and Barring Service (DBS), following the DBS – Duty to Refer Guidance available on Wightnet [\[here\]](#).

An accredited recognised Trade Union representative should not be suspended until the circumstances of the allegation have been discussed with a full-time official of that Union.

If suspension is considered necessary your well-being should be taken into account and you will be given a nominated contact person during your suspension. Further advice, support and guidance can be obtained from the HR Adviser and Occupational Health if necessary.

The period of suspension should be kept to a minimum and reviewed regularly by the line manager or School's Headteacher in conjunction with the Chair of Governors.

Whilst on suspension you are required to be available to assist with any investigation at any time within normal working hours, unless you have agreed annual leave commitments.

You must not enter any work establishment without the prior permission of your line manager and must not contact any employees, clients, pupils or their parents, councillors or governors regarding the disciplinary case other than through a nominated officer or manager, the Headteacher, and / or their nominated Trade Union representative or workplace colleague. The person conducting the investigation is exempted from this sanction.

If you need access to work related documents in order to prepare your case, you should make a request for this information to a Senior Manager e.g. Service Manager or the Headteacher and / or the Chair of the Governing Body.

You will be asked to return all work equipment / property when suspended, including any security passes, keys, etc, or as soon as possible after the suspension at an agreed time with your manager.

### **6.3 Investigation**

The purpose of an investigation is to establish the facts of the case as far as possible and decide whether there is a disciplinary case to be answered at a formal hearing.

The manager must contact their HR Adviser at this stage if they haven't already, to discuss the concerns and to agree who would be appropriate to undertake an investigation.

The manager will normally carry out any necessary investigations into the alleged misconduct or behaviour issue, which will include meeting with yourself to allow you to state your case.

However, if the manager and HR believe that the alleged misconduct or behaviour is of a more serious nature, they should refer the matter to the relevant Senior Manager, or in the case of schools, to the Headteacher. In the case of the Headteachers, the matter should be referred to the Chair of the Governing Body. That person may then nominate an appropriate independent person to conduct a formal investigation into the case. The appointment of an investigator will be based upon an assessment of whether the appropriate skills are held but with the level of seniority also being a factor in the consideration of suitability. Within schools this will normally be a Deputy Headteacher. Within the Fire Service this will normally be a member of the Service of at least Station Manager level or above. The Council, Fire Service or School reserves the right however, to nominate any appropriate person to conduct the investigation without referral to the employee or their Trade Union representative or work colleague.

In the case of statutory roles, which includes the Head of Paid Service, Monitoring Officer and Section 151 Officer, please refer to Appendix E which sets out the appropriate procedure to be followed.

You will be informed as soon as possible that the investigation is to be undertaken and who will be conducting it.

The manager or independent investigator must:

- Review any informal action already taken.
- Meet with you to allow you to explain your side of the case.
- Record each interview that is undertaken, tape recording equipment is available unless any objection is received and provide a copy of the notes/recording to the interviewee; if a meeting is tape recorded a written summary of the key points should be provided for the purposes of the investigation
- Explore the issue further as necessary, which may include speaking to other members of staff and other witnesses, looking at written evidence (e.g. emails, records etc) and / or seeking advice (e.g. from HR).
- The meeting with you will be held towards the end of the investigation to discuss the evidence that has been gathered and you will be given an opportunity to state your case in light of that evidence. Although not a statutory right, you may be accompanied at this investigation meeting by a Trade Union representative or work colleague if you wish; however, the provision to be accompanied must not delay the prompt progress of the investigation.

Within schools the Headteacher will normally carry out investigations into allegations against a Deputy Headteacher. A member of the Governing Body, other than the Chair of Governors, will carry out investigations into allegations against the Headteacher.

#### **6.4 Investigation Report**

On completion of the investigation the manager or independent investigator will produce a report of their findings including whether there is a potential disciplinary case to answer. The report will be reviewed by HR with the manager, or School Business Manager and Headteacher (in the case of schools).

Where the investigation determines there is a potential case to answer, a formal disciplinary hearing will be arranged.

Where the investigation has established that there is no disciplinary case to answer the employee must be informed accordingly in writing by the manager.

#### **6.5 Formal Disciplinary Hearing**

If the manager or Headteacher and or the Chair of the Governing Body decides in conjunction with HR that there is a disciplinary case to answer, they will:

- agree with HR an appropriate person to hear the case (see 6.5.1 below);
- arrange a hearing date and venue, ensuring that the appropriate people are available to attend (ie the investigator, the person(s) hearing the case and their administrative support and an HR Adviser);
- prepare all documentation that will be referred to at the hearing, including the investigation report, any witness statements and a management statement;
- write a covering letter to you inviting you to a formal disciplinary hearing, providing at least seven days notice (not including weekends or bank holidays). The letter must contain enough information about the nature of the alleged misconduct or poor performance to enable you to prepare to answer the case at the hearing. The letter will also give details of

the sanctions that will be considered at the hearing, along with the names of any witnesses the manager wishes to call.

The hearing will consider any written representations from you and / or your representative. You will be given the opportunity to provide any supporting evidence to the person(s) hearing the case at least three days (not including weekends or bank holidays) prior to the hearing date. You must also provide the names of any witnesses you wish to call to the hearing within the same timescale.

Both you and your manager will receive copies of any further evidence to be presented to the person(s) conducting the hearing by the other party at least two days (not including weekends or bank holidays) prior to the hearing.

You have a right to be accompanied at the hearing by your Trade Union representative or a work colleague whose presence would not prejudice the case in any way. You must take all reasonable steps to attend the hearing. Account will be taken of any reasonable adjustments required under the Equality Act 2010.

Where either you and / or your work colleague / representative is unable to attend a hearing and provides a good reason for failing to attend, the hearing will be reconvened within five days (not including weekends or bank holidays) of the original hearing date or on another date which is mutually agreed by the parties. In circumstances where you are unable to attend a hearing for a genuine reason (e.g. health), your chosen representative may attend the hearing in your absence and will be provided with the opportunity to present your case. You will also be allowed to make written submissions to be considered in your absence. If you and / or your representative are persistently unable or unwilling to attend a disciplinary hearing, a decision will be made in your absence.

The procedure for the hearing will normally follow the procedure outlined at **Appendix B**.

#### **6.5.1 Appropriate Person(s) to Hear the Case**

The hearing should be chaired by a senior manager who has not previously been closely involved with the case or investigation (e.g. the line manager's manager, Service Manager, Headteacher). When a possible sanction to be considered is dismissal, a manager no lower than Deputy Chief Officer, Headteacher or Area Manager in the instance of the Fire Service level must hear the case.

In schools, the Headteacher will normally hear the case, however, where a Headteacher has been directly involved in the case in some way, or, is a witness of particular conduct which may constitute grounds for dismissal, any action beyond a final written warning will be referred to a Panel of Governors, which will be appointed and authorised by the Governing Body for this purpose. Where the disciplinary case involves a Headteacher, the Chair of Governors will conduct the disciplinary hearing.

In the case of a Chief Officer, a Panel of Members will conduct the hearing. The Panel should include no fewer than three elected members and should not include any member or officer with direct involvement in the matter, or who participated in the preliminary investigation.

#### **6.6 At the Hearing**

The Manager, Headteacher or Panel of Members / Governors conducting the hearing will:

- fully investigate the evidence presented, including that of any witnesses;
- provide you with the opportunity to state your case fully, including an explanation of your conduct or any mitigating factors;
- make a judgement as to what happened, based on the balance of probabilities, and what, if any disciplinary action is to be taken.

The chairperson conducting the hearing may adjourn proceedings if this is considered to be necessary and you (and your Trade Union representative or work colleague) will be informed of the period of any adjournment. If further information is to be gathered, you will be allowed a reasonable period of time, together with your work colleague or representative, to consider the new information prior to the reconvening of proceedings.

As soon as possible after the conclusion of the hearing, the person chairing the hearing will convey the decision verbally to you and to the manager who presented the disciplinary case.

After the hearing has been concluded, you will be informed in writing of the conclusions of the hearing within five days (not including weekends or bank holidays). This will include the nature of the misconduct or poor behaviour, the change in behaviour or improvement required (with timescale), and any disciplinary action that will be taken as a result of the hearing (**see 6.7: Possible Disciplinary Sanctions**). You will also be informed of the consequences of further misconduct or failure to improve behaviour.

You will be informed of your right of appeal to a named relevant person and the time period in which you must make the appeal.

## **6.7 Possible Disciplinary Sanctions**

### **6.7.1 First Written Warning**

This applies where it is found that your behaviour or conduct fails to meet acceptable standards. This will document the nature of the problem, the improvement that is required, the timescale necessary, details of any help that will be provided and the right of appeal. Failure to improve may lead to a final written warning if there is no sustained satisfactory improvement or change. A record of the warning will be held on your HR file, but it will be disregarded for disciplinary purposes after a specified period (normally six months from the date the warning is issued), subject to you sustaining satisfactory conduct or behaviour.

### **6.7.2 Final Written Warning**

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve behaviour during the currency of a prior warning, a final written warning may be given to you. In serious cases this could be the first warning given under the procedure. The final written warning will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal, or some other action short of dismissal and will refer to the right of appeal. A copy of this final written warning will be held on your HR file, but, will be disregarded for disciplinary purposes after a specified period (normally twelve months from the date the warning is issued), subject to you sustaining satisfactory conduct or behaviour.

### 6.7.3 Dismissal or Other Sanction

In cases of continued misconduct, or where it is considered that the offence constitutes gross misconduct, then dismissal or some other sanction short of dismissal will take place. Some examples of other sanctions are demotion, disciplinary suspension or transfer, loss of increment (as allowed in the contract of employment). The disciplinary sanction imposed will depend on the individual circumstances and seriousness of the particular case. First offences where unsatisfactory conduct is considered serious enough may also lead to dismissal without the need for preceding warnings to have been issued.

You will be informed in writing of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice (unless summarily dismissed for gross misconduct) and the right of appeal. If some sanction short of dismissal is imposed, the procedure will be as detailed in 6.7.2, including the right of appeal.

Where a school member of staff has been dismissed, the Headteacher or Clerk to the Governors must notify the Senior Officer responsible for Schools, in writing as soon as reasonably practicable confirming the reasons for dismissal. Where a social worker, Teacher or other regulated post holder has been dismissed, the manager must notify the Director/Head Teacher in writing as soon as reasonably practicable confirming the reasons for dismissal. The manager, school business manager or HR must also notify the relevant registration / regulatory authority in force at the time.

A record of written warnings will be kept on your HR file, but, will be disregarded for disciplinary purposes after the period specified.

**NB: Any dismissal of School staff within Community and CE Controlled schools must be confirmed by the named Director responsible for Schools.**

### 6.8 Fraud, Safeguarding and Security Breaches

In cases of alleged fraud, the Internal Audit Service must be informed (**see Appendix D** for the procedure that is to be followed in these circumstances).

In cases of allegations where you work with children and have:

- behaved in a way that has harmed a child or may have harmed a child;
- behaved towards a child or children in a way that indicates that they are unsuitable to work with children;
- possibly committed a criminal offence against or related to a child,

Department for Education procedures relating to the safeguarding of children will take precedence. Similarly, any procedures put in place regarding the protection of vulnerable adults for allegations against staff will take precedence.

The Council or School will comply with any duties to disclose suspected disciplinary offences at investigation stage that may be required by external regulatory bodies.

Any disciplinary sanction relating to staff working with vulnerable adults or children must be notified to the relevant registration / regulatory authority in force at the time.

In cases of allegations where you may have committed a security breach involving personal data, the Corporate Information Unit (CIU) must be informed. Please refer to the Information and Data Protection Incident Management [Policy](#) for further information. As well as disciplinary action, breaches of information security may amount to a criminal offence. Where there is evidence of a criminal offence, the issue will be reported to the police for them to take appropriate action. The council will co-operate with the police and other appropriate external agencies in the investigation of any alleged offence.

## **6.9 Misconduct and Gross Misconduct**

See **Appendix A** for examples of what the Council, Service or School considers potential acts of misconduct and potential acts of gross misconduct.

## 7 Formal Disciplinary Procedure – Stage 2

### 7.1 Making an Appeal

You have the right to appeal against any sanction imposed at any stage of the formal disciplinary procedure, including dismissal. The request for an appeal must be made in writing to HR or the Clerk to the Governors in the case of schools.

The appeal must be made within five days (not including weekends or bank holidays) of the date of the decision letter and must state clearly the grounds upon which an appeal is being made. Save in exceptional circumstances, you may only make an appeal on the following grounds:

- the decision: the evidence did not support the conclusion of the chairperson; and / or
- the penalty: this was too severe given the circumstances of the case; and / or
- new evidence: evidence has come to light since the disciplinary hearing and was not reasonably available at the time of that hearing; and / or
- it is considered that the Disciplinary Procedure was not followed correctly.

The appeal will normally take place within fifteen days (not including weekends or bank holidays) of receipt of your written notice of appeal, or on a date which is mutually agreed by the parties.

HR will work with the person who conducted the previous Disciplinary Hearing to arrange the appeal hearing. The appeal will be heard by a more senior manager than the person who conducted the disciplinary hearing at Stage 1.

In the case of schools, the appeal will be heard by an Appeals Committee consisting of three Governors, who will not have been involved in any part of the proceedings to date. Staff, governors and others who participated in previous proceedings may attend to give evidence, but, must be excluded during the consideration of the decision by the Committee.

In the case of Chief Officers, the right of appeal will be to another Panel of Members. Members who participated in previous proceedings may attend to give evidence, but, must be excluded during the consideration of the decision by the Committee.

HR or the Clerk to Governors will write to you to invite you to attend an appeal hearing. You have the right to be accompanied by a Trade Union representative or work colleague. You must take all reasonable steps to attend. Account will be taken of any reasonable adjustments required under the Equality Act 2010.

The appeal hearing will consider any representations from you and / or your representative. You must provide any supporting evidence for the basis of your appeal to HR or the School's Clerk to the Governors, at least seven days (not including weekends or bank holidays) prior to the appeal hearing date. You must also provide the names of any witnesses you wish to call.

The chairperson who made the decision at Stage 1 will be required to attend the appeal hearing to respond to the grounds of the appeal. The chairperson may wish to call the manager who presented the case at the Disciplinary Hearing as a witness.



All parties will receive copies of the evidence to be presented at the appeal hearing at least two clear days (not including weekends or bank holidays) prior to the hearing.

The procedure for the hearing will normally follow the procedure outlined at **Appendix B**.

## **7.2 At the Appeal Hearing**

The appeal chairperson or committee (e.g. the School's Governing Body's Appeals Committee or Panel of Members) will:

- consider all the evidence, including any new evidence presented;
- determine whether the grounds for the previous disciplinary sanction are valid;
- determine whether the sanction remains the same or should be increased, reduced or removed.

The chairperson conducting the hearing may adjourn proceedings if this is considered to be necessary and you (and your companion or representative) will be informed of the period of the adjournment. If further information is to be gathered, you will be allowed a reasonable period of time, together with your companion or representative, to consider the new information prior to the reconvening of proceedings.

As soon as possible after the conclusion of the appeal hearing, the person chairing the hearing will convey the decision verbally to you and to the manager who presented the case.

The appeal chairperson will confirm their decision in writing to you within five days (not including weekends or bank holidays) of the appeal hearing; you will also be informed of the reasons for the decision and that the decision is final.

## **7.3 Keeping Written Records**

HR (or in the case of schools the Clerk to the Governors or Business Manager) will keep a written record of the case, which will include:

- The nature of the disciplinary case;
- What was decided and actions taken;
- The reason for the actions;
- Whether an appeal was lodged;
- The outcome of the appeal;
- Any relevant subsequent developments.

Records will be kept no longer than necessary in accordance with the Data Protection Legislation.

Where applicable, copies of meeting records will also be given to you during the procedure, however, in certain circumstances (for example to protect a witness) some information may need to be withheld.

## 8 Appendix A – Misconduct / Gross Misconduct

### MISCONDUCT

The following examples of misconduct and the disciplinary sanction most likely to be applied are for illustration purposes only and are intended to help employees understand the standards required by the Council. Each and every incident of misconduct will be dealt with on its merits and reflect the particular circumstances of the case. It is possible for an incident to be regarded as minor in one service and more serious in another, where its impact is more far reaching. The Council's/School's Code of Conduct (and relevant professional Codes of Conduct) expands further on some of these standards.

This list of examples is illustrative and not exhaustive:

- Discrimination or harassment against another employee or a member of the public on the grounds of gender, disability, health including mental health, race, colour, nationality, ethnic or national origin, age, HIV status, social or economic status, legal immigration status, marital status, sexual orientation, religion, political beliefs, Trade Union membership, carer responsibilities and irrelevant criminal records and convictions.
- Bullying or other unacceptable behaviour towards another person.
- Repeated refusal to obey a reasonable and lawful instruction from a manager, Headteacher or Governing Body.
- Negligence of duties or responsibilities at work leading (or potentially leading) to either personal injury to another person (e.g. employee, pupil, member of the public) and / or loss or damage to the Council, Service or School, whether to services, property or reputation.
- Misuse of the Council, Service or School facilities, including unauthorised or deliberate misuse of computers / systems, e-mail, social networking sites, and the Internet, as referred to in the Council's or School's ICT Electronic Communications Policy.
- Improper disclosure of personal information about another individual including an employee, a pupil or parent, a Council Member, a client or a member of the public which contravenes the Council's, Service's or School's Code of Conduct or policies.
- Disclosure of information to the media or other external agency which is potentially damaging to the employer's reputation.
- Facing an allegation of a criminal offence either inside or outside their employment which would make the employee unsuitable for their type of work.
- Abuse of, or inappropriate use of authority vested in any employees by the Council, Service or School.
- Unauthorised absence.
- Consistently poor timekeeping.
- Behaviour which causes upset, disruption or offence to others.
- Undertaking unauthorised employment.
- Being under the influence of alcohol, drugs or other substances whilst on work duties.
- Breach of the Council's, Service's or School's policies.
- Smoking on work premises.
- Failure to report any matter which they are required to report, including a data breach
- Failure to wear in full, or as modified by management instruction, issued uniform and items of protective clothing.

## GROSS MISCONDUCT

Gross misconduct is misconduct of such serious nature that it fundamentally breaches the contractual relationship between the employer and the employee, destroying the trust that is integral to the relationship. Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

This list of examples is illustrative and not exhaustive:

- Serious and / or persistent acts of discrimination or harassment against another person on the grounds of gender, disability, health including mental health, race, colour, nationality, ethnic or national origin, age, HIV status, social or economic status, legal immigration status, marital status, sexual orientation, religion, political beliefs, Trade Union membership, a whistleblowing protected disclosure, carer responsibilities and irrelevant criminal records and convictions.
- Fighting with, assault on, or seriously abusive or threatening behaviour towards another person.
- Serious or repeated bullying or other unacceptable behaviour towards another person, including children and vulnerable adults
- Sexual misconduct at work.
- Any sexual approach or response to a school pupil, or the development of an intimate relationship with a pupil, whatever the provocation.
- Sexual offences, sexual insults or sexual discrimination against another person, including pupils.
- Stealing, or attempting to steal from others during the course of employment.
- Unauthorised removal and subsequent serious misuse of Council, Service or School property.
- Serious unauthorised or deliberate misuse of computers / systems, e-mail, social networking sites, and the Internet, as referred to in the Council's or School's ICT Electronic Communications Policy.
- Breaches of confidentiality as a result of inappropriate access to records held by the Council or School.
- Serious improper disclosure of personal information about another individual, including an employee, group of employees, pupils, parents, Council members or clients, that contravenes the Council's or School's Code of Conduct or policies and compromises the Council's or School's position.
- Failure to declare an interest, direct or indirect, in any Council contract which has been, or is proposed to be, entered into by the authority.
- Making false representations which could potentially result in substantial personal gain.
- Falsification of records, reports, expense claims or self certification forms, whether or not for personal gain.
- Criminal conviction for an offence, either inside or outside their employment, which would make the employee unsuitable for their type of work with the Council, Service or School.
- Serious abuse of or inappropriate use of authority vested in any employee by the Council, Service or School.
- Acceptance of bribes or other corrupt practices.
- Serious breaches of safety rules or policies affecting the safety of pupils or other persons, including deliberate damage to or misappropriation of safety equipment.
- Being untruthful and / or engaging in deception in matters of importance within the work context.

- Holding unauthorised employment.
- Being seriously under the influence of alcohol, drugs or other substances whilst on work duties.
- Possession, custody or control of illegal drugs on work premises.
- Refusal to settle a debt owed to the Council or School.
- Falsification of a qualification that is a stated requirement of the employee's employment.
- Making malicious or vexatious grievance allegations (including bullying and harassment claims).
- Making a disclosure or false or misleading information under the Council's/Schools whistleblowing policy maliciously, for personal gain, or otherwise in bad faith; or making untrue allegations in bad faith against a colleague.
- Conduct which substantially brings the name of the Council, Service or School into disrepute, or which seriously undermines confidence in the employer. This includes disclosure of information to the media or other external agency and other inappropriate actions of like kind.
- Gross negligence.

## 9 Appendix B – Order of Events at a Formal Disciplinary Hearing

### ORDER OF EVENTS AT A FORMAL DISCIPLINARY HEARING

The purpose of a formal disciplinary hearing will be to establish the facts about your conduct or behaviour and decide what, if any disciplinary action should be taken.

The format for the Formal Disciplinary Hearing will normally be as follows:

1. The Chairperson leading the hearing will introduce the parties and then explain the purpose of the hearing and how it will be conducted. The Chairperson will state that the hearing is being conducted as part of the Council's formal disciplinary procedure and confirm that a written record of the hearing is being made.
2. The Chairperson will invite the manager to state the case against you. As part of the management case any witnesses (e.g. the investigator) may be called into the hearing one at a time to present their evidence. The Chairperson, Committee or Panel members and yourself, your representative or work colleague, may ask any questions of the witnesses. The witness will then withdraw. The manager will then complete their case.
3. Both the Chairperson, yourself, and / or your representative or work colleague, may ask any questions about the management case in order to establish all the relevant facts, background and surrounding circumstances.
4. The Chairperson will invite you to state your case. With your approval, or in your absence, your representative may do this on your behalf. As part of your case any witnesses may be called into the hearing one at a time. The Chairperson, Committee or Panel members, and the other party will ask any questions of the witnesses. The witness will then withdraw and you or your representative will then complete your case.
5. The Chairperson, Committee or Panel members, and the other party (i.e. manager) may ask any questions about your presentation in order to establish all the relevant facts, background and surrounding circumstances.
6. At any point during the hearing, the Chairperson may adjourn the proceedings if it appears necessary or desirable to do so, including for the purpose of gathering further information. You or the manager may also request an adjournment at any time during the hearing.
7. Once all the evidence has been heard, the manager and then the employee may wish to sum up the key points of the hearing.
8. The Chairperson will then adjourn the hearing to deliberate with their HR Adviser. The Chairperson will try to reach a decision on the same day. If this is not possible they will inform you of their decision within five working days. This will be confirmed in writing to you and the manager by the Chairperson.
9. The Chairperson will inform you of your right to appeal against the outcome of the hearing.

## **ORDER OF EVENTS AT AN APPEAL HEARING**

The purpose of an Appeal Hearing will be to establish whether any of the grounds for the appeal should be upheld or not.

The order of events will be the same as for the Formal Disciplinary Hearing, except that at (2) the Chairperson will invite you to state the grounds for your appeal first and at (4) the manager who heard the disciplinary case at Stage 1 will then state their case.

The decision of the appeal hearing will be final and there will be no further right of appeal.

## 10 Appendix C – Protect-Personal – Improvement Action Plan

Name of employee:

Job Title:

Section:

Name of line manager:

1. Does the employee hold an up-to-date copy of her / his:
  - a. Job description YES / NO
  - b. Person specification YES / NO
  - c. Personal Development Review record/CPD YES / NO
2. Summarise the nature and extent of the improvement required:
3. Summarise any new objectives and targets set for the employee:
4. Summarise any proposed new learning activities and / or personal support to assist the employee to achieve the required behavioural standard(s):
5. Outline the timescale in which the behavioural standard(s) must be achieved by the employee:
6. Outline the monitoring process during the review period (e.g. 1:1 progress discussions):
7. Summarise any other issues raised:

Line Manager's signature:

Date:

Employee's signature:

Date:

## 11 Appendix D – Guidelines Concerning Allegations of Fraud

In accordance with the Council's Counter Fraud and Corruption Strategy, the Internal Audit Service is responsible for ensuring all allegations of fraud which may be identified by a manager, received from employees or members of the public (known as Whistleblowing) are properly investigated. Fraud may also be identified through routine audit reviews.

### THE ROLE OF THE INTERNAL AUDIT SERVICE

Where an alleged fraud is identified it must be reported to the Head of Service, or Headteacher who must immediately inform the Section 151 Officer in their capacity as the client manager for Internal Audit.

The Section 151 Officer will work with HR to ensure that any allegation of fraud is independently investigated.

Where a decision is then made to conduct a disciplinary hearing, a representative from Internal Audit may appear as a witness but will not conduct or hear the case.

There may be circumstances involving potential criminal actions where the investigation interview is recorded and conducted under caution (Police and Criminal Evidence Act 1984).

The Section 151 Officer, together with the relevant Head of Service or Headteacher, in consultation with the Chief Executive and the Monitoring Officer, may decide to refer any financial impropriety or any other matter which is against the law to the Police for investigation. Such referral will not prohibit action by the Council, Service or School under its Disciplinary Procedure.



## 12 Appendix E – Procedure for Statutory Officers

THIS SECTION IS CURRENTLY BEING REVIEWED

### 1. SCOPE

This procedure should be used only when relating to those employees carrying out one of the following Statutory roles either in a full or deputy capacity and only in relation to conduct issues:

Head of Paid Service

Section 151 Officer

Monitoring Officer

This procedure applies only to those employees who also carry out one of the specified Statutory Officers function or in relation to the deputies if the allegation of misconduct is in any way related to the exercise of the specified Statutory Officers function. All other employees are dealt with under the procedure in the main body of this policy, even if they are also carrying out a statutory function. In the event that a situation arises where it is not clear whether the allegation relates to the specified statutory role or not then an initial meeting will be held between the employee and the Strategic Manager for Human Resources, following which a determination will be made by the Strategic Manager for Human Resources as to which procedure will be followed.

Where an allegation is made relating to the conduct or capability of the Statutory Officer or there is some other substantial issue that requires investigation, the matter will be considered by a sub-committee of the Appointments Committee, appointed by the Appointments Committee in accordance with the Council's Constitution or Standing Orders.

If the matter involves the proposed termination of a Statutory Officer, it will be determined by Full Council.

Where time limits are referred to in the course of this procedure, they may be varied by consent between both parties. Unless specifically stated below the procedure and process to be followed is that set out in the main body of this policy.

### 2. COUNCIL'S RESPONSIBILITIES

The Appointments Committee sub-committee as set out in the Officer Employment Rules of the Council's constitution will consider allegations against the Statutory Officer. The remit of the committee is:

- To consider whether the protected officer should be suspended, or where suspension has already taken place, to review the suspension as necessary;
- To review the results of any investigation to consider what disciplinary action, if any, is appropriate after hearing the views of the protected officer and report its recommendations;
- Where dismissal is its recommendation, to refer the matter to Full Council alongside the sub committee's report for the authority to vote on whether it approves the proposal to dismiss;
- Where the authority approves dismissal, to action the dismissal by issuing notice of dismissal;

- Where action short of dismissal or no disciplinary action at all is appropriate, to put that in place as appropriate.

The sub-committee will consist of five people and will include at least two relevant Independent Persons (IPs). This committee must be in a position to take decisions, and appropriate actions as a matter of urgency.

In the event that the matter involves the proposed dismissal of a Statutory Officer, the sub-committee will be appointed at least 20 working days prior to a meeting of Full Council to determine the matter.

### **3. INVESTIGATOR**

If an investigation is required the process will take place in accordance with para 6.3 as set out in the Disciplinary procedure. The investigator will be appointed by the appropriate manager of the Officer to be investigated and may be another senior officer within the Council or an independent person as deemed appropriate. For the avoidance of doubt in the case of Head of Paid Service the appropriate manager would be the Council Leader. If an independent person carries out an investigation, they may not then sit on the Appointments Committee sub-committee that conducts the hearing.

### **4. RELEVANT INDEPENDENT PERSONS**

The Council's constitution sets out the rules for appointing a relevant independent person (IP). S. 28(7) Localism Act 2011(b) sets out the definition of an independent person. Relevant IPs are IPs who have been appointed by the Appointments Committee or another Council in the event of an appeal. They will be invited to be appointed to the Committee in the following priority order, as set out in the Council's constitution:

- (a) a relevant IP who has been appointed by the Council and who is a local government elector;
- (b) any other relevant IP who has been appointed by the Council;
- (c) a relevant IP who has been appointed by another council or councils.

### **4. STATUTORY OFFICER RESPONSIBILITIES**

Statutory Officers are responsible for making sure they are fully aware of Council policies and procedures, and for maintaining appropriate standards of conduct and behaviour as set out in the Code of Conduct and for co-operating with the implementation of this procedure e.g. take all reasonable steps to attend any scheduled disciplinary investigation, hearings and/or appeal hearings. The Statutory Officers are entitled to be represented by a Trade Union Representative or a work colleague.

### **5. SUSPENSION FROM WORK**

Where it is believed that suspension is a consideration in accordance with paragraph 6.2 in this procedure, the sub-committee will need to consider whether it is appropriate to suspend.

The relevant Statutory Officer shall be informed of the reason for the proposed suspension and will have the right to present information before such a decision is taken.

The Council Leader in conjunction with the Chair of the Employment sub-committee (or their nominated deputy/s if they are unavailable) will jointly hold the delegated power to suspend a

relevant Statutory Officer immediately if an exceptional situation arises whereby allegations of misconduct by a relevant Statutory Officer are such that his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the Council.

All other aspects relating to the suspension should be carried out in accordance with 6.2 of the Disciplinary Procedure.

## **6. ACTION SHORT OF DISMISSAL**

Where the decision is to take action short of dismissal the sub-committee will impose the necessary sanction.

## **7. THE ROLE OF FULL COUNCIL (PROPOSED DISMISSAL)**

Following full consideration of the evidence the sub-committee will inform the Proper Officer (as set out in the constitution) when it is proposing to Full Council that the relevant Statutory Officer be dismissed.

Prior to taking a vote on the proposed dismissal of the relevant Statutory Officer, Full Council will consider:

- The advice, views or recommendations of the Investigator and Employment Sub-Committee;
- The conclusions of any investigation into the proposed dismissal; and
- Any representations from the relevant Statutory Officer.

All of the above information and representations may be made in writing or in person as the relevant officer decides. Full Council will then vote to determine the proposed dismissal of the relevant Statutory Officer.

## **8. APPEAL**

If the appeal relates to an appeal against a sanction that is not dismissal the appeal will be heard by another sub-committee formed from members of the Appointments Committee and at least two independent persons who did not sit on the previous sub-committee that imposed the sanction.

If the appeal relates to an appeal against the dismissal which was imposed by full council the Statutory Officer may appeal to an appeals panel formed from a neighbouring Local Authority under sharing arrangement in accordance with Section 101 Local Government Act 1972. The appeals panel will consider any investigative report(s) and any other information considered relevant by the sub-committee. This may include, but is not limited to, new information, relevant objections, and the outcome of further investigations. The Statutory Officer will have the opportunity to state his/her case.

The appeals panel will give careful consideration to these matters and request any further investigation it considers necessary to reach a decision.

**The decision of the appeals panel will be final.**

## 13 Glossary of Terms

• <b>Non-Contractual</b>	The procedure does not form part of your contracts of employment.
• <b>Probationary Period</b>	A specific period of employment at the beginning of your contract, during which both you and the organisation decide if the job is suitable for you and that you feel you are suitable for the job.
• <b>HR</b>	Human Resources
• <b>Occupational Health</b>	An external agency which provides a medical and health advisory service to the Council and its employees.
• <b>Employee Assistance Programme</b>	An external agency which provides impartial and confidential advice and support to employees and their family members.
• <b>Gross Negligence</b>	A conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable injury or harm to persons, property, or both.
• <b>Sanction</b>	An action which constitutes a penalty of some kind e.g. written warning, dismissal.
• <b>Immediate Dismissal</b>	Immediate dismissal without notice or pay in lieu of notice.