

# **Disciplinary Procedure for Head of Paid Service, Statutory Officers and Director Positions**

**Human Resources**

**January 2018**

## Contents

Version Control.....	2
Approvals.....	2
Associated Documentation .....	2
1.0 Introduction.....	<b>Error! Bookmark not defined.</b>
2.0 Equal Opportunities and fairness .....	<b>Error! Bookmark not defined.</b>
3.0 Scope.....	3
4.0 General Principles.....	3
5.0 Procedure One.....	4
6.0 Procedure Two.....	13
7.0 Review of procedures.....	22

## Version Control

Version	Description of version	Effective Date
1.0	Senior Officer Dismissal Procedure	2 <sup>nd</sup> September 2004
2.0	Disciplinary Procedure for Head of Paid Service, Statutory Officers and Director positions – revised national guidance	January 2018

## Approvals

Approved by	Date
Finance and Management Committee	2 <sup>nd</sup> Sept 2004

## Associated Documentation

Description of Documentation
National Conditions of Service and guidance

## **1.0 Introduction**

- 1.1 There are two procedures included in this document. Procedure One applies to the Council's Directors who are non-statutory officers. Procedure Two applies to the Head of Paid Service (Chief Executive) and the Council's statutory officers.
- 1.2 The principles of natural justice will govern the conduct of any proceedings commenced under these procedures. In general, informal conciliation is to be preferred if it can bring about a mutually agreed solution to the issue that has arisen.
- 1.3 These procedures:
- Specify who has the authority to take disciplinary action.
  - Ensure that action is not taken without an investigation being completed.
  - Provides a right of appeal.
  - Gives details of time scales associated with the different stages of the procedures.

## **2.0 Equal opportunities and fairness**

- 2.1 These procedures must not be used to unfairly treat or discriminate against another person. An allegation of this nature will be investigated under the appropriate Disciplinary Procedure and may consequently lead to formal disciplinary action, including dismissal, being taken.

## **3.0 Scope**

- 3.1 The procedures in this document relate to following posts:
- Head of Paid Service (Chief Executive)
  - Directors of the Council.
  - The Legal and Democratic Services Manager who is the Council's Monitoring Officer.

## **4.0 General Principles**

- 4.1 The core principles of these procedures are:
- They provide a framework for disciplinary matters to be considered in a fair and consistent manner providing all parties involved to represent their case.
  - They promote prompt action when dealing with disciplinary matters.
  - An employee has the right to be accompanied/represented as appropriate by a Trade Union representative or another employee of the Council throughout the formal Disciplinary Procedure.
  - Any alleged misconduct is described clearly and in writing.
  - Any alleged misconduct (including alleged gross misconduct) will be properly investigated to determine whether a Disciplinary Hearing is required.
  - No formal disciplinary action is taken without there having been a properly constituted Disciplinary Hearing at which the employee is able to respond to the allegation against them.

- Any formal disciplinary action is reasonable in the circumstances. This includes not dismissing an employee for a first breach of conduct **unless** it is a case of proven gross misconduct. However, even in cases of gross misconduct, mitigating circumstances should always be taken into account when deciding any disciplinary action.
- An employee is given a written explanation when formal disciplinary action is taken and informed of the consequences of any further misconduct.
- An employee has a right of appeal against any formal disciplinary action taken against them.
- All information, whether verbal or written, is kept strictly confidential. Disciplinary action may result from any breach of confidentiality.
- Records of disciplinary matters are kept to help ensure consistency. This information is regarded as highly confidential and will be kept securely. Records of disciplinary action will be securely destroyed in line with the Council's Document Retention Policy and the time periods stated in the correspondence confirming the disciplinary sanction applied.

### **Informal conciliation**

- 4.4 In general, informal conciliation is to be preferred to formal procedures wherever possible.

### **Training**

- 4.5 All parties (e.g. Head of Paid Service, Elected Members etc.) involved in any disciplinary matter considered under the procedures in this document will receive appropriate training.

### **Gross misconduct**

- 4.6 Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and employee and to make any future working relationship and mutual trust impossible. Examples of gross misconduct are in **Appendix A** (the list is not exhaustive).

## **5.0 Procedure One**

### **Scope**

- 5.1 This procedure applies to the Council's Directors with the exception of any that have designated statutory responsibility for either Section 151 Officer or Monitoring Officer. Procedure Two applies to all post with designated statutory responsibility either at Director Level or below.

### **Informal conciliation**

- 5.2 Where appropriate, before resorting to the formal procedure, every reasonable effort should be made to address and resolve an issue of conduct by informal conciliation.

## Appointment of Investigator and Preliminary Investigation

- 5.3 If the matter cannot be resolved informally, a preliminary investigation will take place to determine the grounds for any further action. This should be undertaken by the Head of Paid Service.
- 5.4 The officer may be suspended from duty (see paragraphs 5.13 to 5.17) either prior to any investigation commencing or during the investigation should information become available to indicate that suspension is appropriate.
- 5.5 An Investigator will be appointed at the discretion of the Head of Paid Service (Chief Executive). The Investigator should be
- Aware of the allegation(s) to be investigated.
  - Provided with access to sources of information and individuals identified as relevant to the issues under investigation.
  - Aware of timescales and be able to complete the investigation in these timescales.
- 5.6 After the preliminary investigation the officer must be notified in writing (**see template letter in the Toolkit**):
- Of the allegation(s) that are being investigated.
  - That they will have the opportunity to make representation on their own behalf during the investigation.
  - Whether they are to be suspended from duty.
  - Details of the Investigating Officer.
  - The timescales for completing the investigating
  - Points of contact to be used for raising any issues concerning the investigation.
- 5.7 The Investigator will interview the officer concerned. The officer must receive at least five working days' notice (or a longer period if reasonable in the circumstances) in writing of the requirement for them to attend the investigative interview. A shorter period of notice can be used if parties agree. The letter (**see template letter in the Toolkit**) should detail the allegation(s) under investigation and advise the officer of their right to be accompanied by a Trade Union representative or another employee of the Council.
- 5.8 The Investigator may inspect any documents or electronic records relating to the conduct of the officer which are in possession of the Council or which the Council has the power to authorise them to inspect.
- 5.9 The Investigator may require any employee of the Council to be interviewed and answer questions as part of the investigation.
- 5.10 The investigation should be concluded as soon as practicable and ideally within 20 working days (unless there are exceptional circumstances). All relevant parties will be informed of the need for additional time to complete the investigation.

5.11 The Investigator will make a report to the Head of Paid Service:

- Stating in their opinion as to whether (and if so the extent to which) the evidence they have obtained supports the allegation(s) of misconduct against the officer.
- Recommending any disciplinary action which they consider to be appropriate for the Council to take against the officer.

5.12 The Investigator will send a copy of this report to the officer at the time it is submitted to the Council.

### **Suspension**

5.13 The officer may be suspended from duty either before or during any investigation:

- Where there is enough evidence to suggest that the matter may be one of gross misconduct.
- Where the officer's continued presence at work might compromise the investigation.
- Where the officer's continued presence may impair the efficient exercise of the function of the Council.

5.14 The Council, appropriate Committee or the Head of Paid Service (acting under delegated powers) may carry out the suspension.

5.15 The officer will be informed in writing (**see template letter in the Toolkit**) at the earliest opportunity of their suspension. It will be made clear to the officer that suspension is not a disciplinary penalty and that it will not prejudice any future Disciplinary Hearing. The officer should also be informed of:

- The reasons for the suspension.
- Who they may contact in the Council whilst they are suspended.
- That their suspension is on full pay.
- That the suspension should not last more than 20 working days subject to the completion of the investigation.

5.16 The necessity for the officer to remain suspended should be reviewed at regular intervals. Lengthy periods of suspension should be avoided where possible.

5.17 The Investigator may recommend that:

- The Council terminates any suspension of the officer.
- That any suspension must continue after the expiry of the 20 working days.

### **Financial matters**

5.18 The Council's Section 151 Officer must be notified in the case of any allegation(s) or indications of financial irregularity.

### **No case to answer following a preliminary investigation**

- 5.19 If, following the investigation, it is decided that the officer has no case to answer; they will be informed of this in writing (**see template letter in the Toolkit**). All records of the investigation will be annotated that this is the case.

### **Convening an Investigatory Panel**

- 5.20 If it is considered that following an investigation that there is a case to answer at a Disciplinary Hearing, an Investigatory Panel will be convened by the Head of Paid Service. The officer will be notified in writing (**see template letter in the Toolkit**) that the Hearing is taking place. The officer must be given at least 10 working days' notice of the Hearing. The written notice should include:

- The date, time and location of the Hearing.
- The report completed by the Investigating Officer that will provide details of the allegation. Details of any witnesses that will be called by the Investigator.
- That the officer will have the opportunity to state their case and call and/or question any witnesses.
- The fact that the officer is entitled to be represented by a Trade Union representative or another employee at the Hearing.
- The fact that, depending on its findings, the Hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
- The right to submit a written statement to the Investigatory Panel.

- 5.21 The Investigatory Panel will consist of at least three members chosen from the Finance and Management Committee. The Panel should reflect the political balance of the Council and will be advised by a representative from Human Resources and/or a representative of Legal and Democratic Services.

### **Postponement of the Disciplinary Hearing**

- 5.22 The officer or the Council can request one postponement of the Disciplinary Hearing of up to 10 working days. A postponement may be granted in the following circumstances:

- Inability to attend owing to illness that must be supported by a Fit Note that includes the date of the Hearing.
- A request for additional time to obtain important information for their case.
- The unavailability of the officer's or the Council's representative.
- The unavailability of a key witness to the officer's or the Council's case.

### **Sickness absence during disciplinary proceedings**

- 5.23 Disciplinary proceedings are difficult and stressful. It is, therefore, in everyone's interest that they are concluded without undue delay.

5.24 In some cases the officer may become absent from work during disciplinary proceedings and may be given a Fit Note certifying them unfit for work. However, it is also appropriate to complete the disciplinary proceedings at the earliest opportunity and they should be progressed as far as possible in the absence of the officer.

5.25 The following framework will be applied where disciplinary proceedings are affected by an officer's sickness absence:

1. It will be appropriate to contact the employee concerned to try and get their agreement to proceed with the disciplinary process. The officer should be encouraged to discuss matters with their Trade Union representative, colleague or a friend.
2. Following this it may be appropriate to refer the officer to Occupational Health.

The Occupational Health referral form should ask for advice on:

- Whether the officer's current health condition is linked to the disciplinary matter.
  - Whether the employee's health condition is likely to continue until the disciplinary matter is resolved.
  - Whether the conclusion of the disciplinary process is in the interest of the employee and will aid their recovery.
  - What action can be taken by either party to help to progress the disciplinary matter.
  - Whether the officer is fit to attend interviews etc. to help conclude the matter as soon as practicable.
  - Whether the officer is able to instruct a colleague or Trade Union representative to act on their behalf.
  - Whether the officer is able to provide written representation (e.g. answering set questions) on his or her own behalf.
3. The occupational health report will be discussed with the employee and their representative. A member of Human Resources will attend the meeting to act as advisor. It should be made clear at the meeting what action is being taken and formal notes will be taken.

5.26 The officer may be referred to Occupational Health on more than one occasion to obtain updated advice and to keep the situation under review.

5.27 If the decision having taken advice, were to proceed to a Disciplinary Hearing in the absence of the officer then the Council would need to prove that:

- Advice had been sought from Occupational Health.
- The officer had been given every opportunity to attend the Disciplinary Hearing.
- Other alternatives to attending the Disciplinary Hearing had been discussed with the employee and/or their Trade Union representative or other representative e.g. allowing and encouraging the employee to send a representative to attend the Disciplinary Hearing on their behalf or offering

the employee the opportunity to make written representation for consideration at the Disciplinary Hearing.

- 5.28 It is important in these matters to maintain regular contact with the employee and any Trade Union representative. On most occasions they will want to ensure that appropriate information and progress is made. It is not in the interests of any party to leave the matter incomplete for any period of time.
- 5.29 The Council is required to conclude disciplinary proceedings, including investigations and Hearings, within a reasonable period of time. The level of detail and seriousness of the allegation will normally dictate how long this period is, but at all times an indication will be given on the timescales for these to be completed. If the timescales need to be extended for any reason, all parties will be informed.

### **Exchange of information prior to the Disciplinary Hearing**

- 5.30 Either party can submit information to be presented at the Disciplinary Hearing. They are responsible for providing this information to the appropriate officer to enable it to be exchanged by no later than 5 working days' prior to the Disciplinary Hearing.

### **Conduct of the Disciplinary Hearing**

- 5.31 The framework for conducting the Disciplinary Hearing is in **Appendix B**.
- 5.32 The officer is entitled to be represented at the Hearing by a Trade Union representative or another employee of the Council.
- 5.33 The Investigatory Panel's decision will normally be given to the officer verbally at the Hearing. The decision will then be confirmed in writing to the officer within 5 working days' of the Disciplinary Hearing.

### **Possible outcomes of a Disciplinary Hearing**

- 5.34 The Investigatory Panel may:
- Exonerate the officer. (In this case all records of the disciplinary proceedings should be destroyed) Or
  - Recommend an informal resolution Or
  - State their opinion as to whether (and if so the extent to which) the evidence they have obtained supports any allegation of misconduct against the officer.
  - Determine the disciplinary action (if any) which appears reasonable in the circumstances.

The disciplinary action that can be taken is detailed in paragraph 5.35

### **Disciplinary Hearing - disciplinary action**

- 5.35 If following an investigation and Disciplinary Hearing it is considered that formal disciplinary action is required the following options are available:

**Recorded oral warning** –If the conduct concerned is unacceptable but not serious in nature a recorded oral warning will normally be appropriate.

□ **Written warning**

If the misconduct is too serious for a recorded oral warning or if there is further misconduct while a recorded oral warning is still in force the Panel may give the officer a written warning.

□ **Final written warning**

If the offence is too serious for a written warning but not serious enough to warrant dismissal, or if there is further misconduct while a previous written warning is in force, the Panel may give the officer a final written warning. The officer must be informed that any further breach of conduct may result in dismissal.

□ **Dismissal without notice**

If the Panel is satisfied that gross misconduct has occurred, it may recommend that the officer be dismissed without notice or pay in lieu of notice. It should be made clear that the recommendation is subject to the approval of the Finance and Management Committee. The chair of the Panel will confirm the recommended dismissal to the officer in writing (**see template letter**), as soon as practicable after the Hearing.

□ **Dismissal with notice**

If the Panel is satisfied that misconduct has occurred and a final written warning is still in force it may recommend that the officer be dismissed with notice on full pay. It should be made clear that the recommendation is subject to the approval of the Finance and Management Committee. The chair of the Panel will confirm the recommended dismissal to the officer in writing (**see template letter**), as soon as practicable after the Hearing.

5.36 An employee may not be dismissed for a first breach of discipline **except in the event of gross misconduct.**

5.37 The Investigatory Panel's decision will normally be given to the officer verbally at the Disciplinary Hearing. The decision will then be confirmed in writing (**see template letter**) to the officer within 5 working days' of the Hearing. In the case of a recommendation to dismiss the process in paragraphs 5.39 to 5.45 should be followed.

5.38 This process is not required if a formal disciplinary sanction short of dismissal is applied. In this case the officer has a right of appeal to the Licensing and Appeals Sub-Committee (see paragraphs 5.46 to 5.54)

**Recommendation to dismiss by the Investigatory Panel and Appeal against the recommendation to dismiss.**

- 5.39 Where the Investigatory Panel recommends that the officer should be dismissed, they must notify the Monitoring Officer before taking further action. The Monitoring Officer will ensure that a report from the Investigatory Panel is considered by the Finance and Management Committee. This Committee must approve the dismissal of the officer before notice of dismissal is given to them. Any elected member who has been previously involved in the disciplinary matter will be excluded from this meeting.
- 5.40 The Finance and Management Committee will be entitled to seek clarification of any issue from the Investigatory Panel. The officer concerned will be able to state their case before any decision is made.
- 5.41 The officer will be given at least 10 working days' written notice of the Finance and Management Committee meeting.
- 5.42 The officer will be entitled to be represented at the meeting by a Trade Union representative or another employee of the Council.
- 5.43 The purpose of the appeal is to:
- Review the decision taken.
  - Consider whether the procedure has been correctly followed.
- 5.44 The Finance and Management Committee will:
- Approve the officer's dismissal. In this case the officer will be informed in writing that their dismissal has been confirmed.
  - Or
  - Impose a lower level of disciplinary sanction. This should be confirmed in writing.
  - Or
  - Exonerate the officer. In this case any reference of the disciplinary proceedings should be destroyed and the officer should be notified of this in writing.
- 5.45 The meeting of the Finance and Management Committee will fulfil the officer's right of appeal against their dismissal and they have no further internal right of appeal against the Committee's decision. The officer will be informed in writing of the Finance and Management Committee's decision by no later than 5 working days' of the meeting.

**Appeal against action short of dismissal taken by Investigatory Panel**

- 5.46 An officer who wishes to appeal against a formal disciplinary sanction short of dismissal should inform the Head of Organisational Development within 10 working

days' of receiving notification of the disciplinary sanction. The officer must explain their grounds for appeal specifying whether it relates to the facts of the matter, the level of the sanction imposed or whether the procedure has not been properly followed.

- 5.47 The officer's appeal will be heard by 3 members of the Licensing and Appeals Sub-Committee. The Appeals Panel should reflect the political balance of the Council. The appeal must be heard as soon as is reasonably practicable. Generally this should be within 15 working days of the appeal being registered. Members who have been previously involved in the case will be excluded from involvement in the appeal.
- 5.48 The purpose of the appeal will be to:
- Review the decision taken.
  - Consider whether the procedure has been followed correctly.
- 5.49 The officer shall be given not less than 10 working days' written notice of the date and venue of the Appeal Hearing. Both sides may call witnesses and produce documents relevant to the appeal. Information on witnesses and the documentary evidence to be produced at the appeal will be exchanged by no later than 5 working days' before the Appeal Hearing.
- 5.50 Members will be advised by the Legal and Democratic Services Manager or their representative. The officer will have the right to be represented by a Trade Union representative or another employee of the Council.
- 5.51 The Appeal Panel may:
- Upheld the appeal.
  - Reject the appeal in full.
  - Reject the appeal in part and impose a lower level of disciplinary sanction.
  - In exceptional circumstances, reject the appeal and impose a higher level of warning up to and including a final written warning.
- 5.52 The decision of the Appeal Panel will be confirmed verbally to the officer and then in writing within 5 working days of the appeal date.
- 5.53 Where, an appeal is upheld and disciplinary sanctions are revoked; all records will be removed from the officer's personal file, including any related correspondence, and destroyed.
- 5.54 The decision made by the Appeal Panel shall be final and the officer will have no further right of appeal.

## Time limits for warnings

5.55 Except in special circumstances any disciplinary action taken should be disregarded for **disciplinary purposes** after the following periods of satisfactory conduct:

- Recorded oral warning after six months (from the date of the Disciplinary Hearing).
- First written warning after 12 months (from the date of the Disciplinary Hearing);
- Final written warning after 18 months (from the date of the Disciplinary Hearing) or such other time as is considered to be appropriate.

After the stated time the warning will be removed from the personal file and disregarded for disciplinary purposes. It will be removed and disregarded after its end date unless another disciplinary issue originates before that date. If such a situation arises, the First Written Warning will continue to be “live” until the conclusion of any Disciplinary Hearing that might follow.

5.56 Depending on the nature of the misconduct, a final written warning may remain in force for a period of greater than 18 months. In this event the officer must be told at the outset and in writing how long the warning will remain in force. They should also be informed of the reason(s) for the longer time period. If an officer considers that the extended time period is unreasonable they may appeal in accordance with the procedure below in paragraphs 5.46 to 5.54.

## 6.0 Procedure Two

### Scope

6.1 Procedure Two applies to the:

- Head of Paid Service.
- Officer appointed as the Council’s Section 151 Officer
- Officer appointed as the Council’s Monitoring Officer

### Introduction

6.2 In the case of an allegation of misconduct against the Head of Paid Service, the matter shall be referred by Monitoring Officer and to the Leader of the Council. The Monitoring Officer shall advise and assist the Leader of the Council.

6.3 In the case of an allegation of misconduct against the Section 151 Officer or the Monitoring Officer the matter shall be referred to the Head of Paid Service who will be supported by a representative of Human Resources.

### Informal conciliation

6.4 Where appropriate, before resorting to the formal procedure, every reasonable effort should be made to address and resolve an issue of conduct by informal conciliation

## **Appointment of an Independent Interviewer and Preliminary Investigation**

- 6.5 If the Leader of the Council or the Head of Paid Service, as appropriate, considers that the officer has a case to answer, then the Independent Interviewer will be appointed to conduct the investigation.
- 6.6 The Leader of the Council or Head of Paid Service, whichever is appropriate may decide to suspend the officer.
- 6.7 If the Head of Paid Service, or Leader of the Council, as the case may be, consider that the allegation has no substance or material, then they shall confirm that in writing to the person who raised the allegation and that shall be the end of the matter.
- 6.8 The Independent Interviewer will produce a report on the investigation to the Leader of the Council or Head of Paid Service whichever is appropriate. This person will preferably be agreed between the Council and the officer concerned. In the absence of such an agreement, an Independent Interviewer may be nominated by the Secretary of State.
- 6.9 The Independent Interviewer should be provided with terms of reference prior to the preliminary investigation commencing. They will need to be:
- ❑ Aware of the allegation(s) to be investigated.
  - ❑ Provided with access to sources of information and individuals identified as relevant to the issues under investigation.
  - ❑ Aware of timescales.
  - ❑ Be available to complete the investigation in the timescales set.
- 6.10 Once the preliminary investigation has commenced the Independent Interviewer will notify the officer in writing (**see template letter**):
- ❑ Of the allegations being investigated.
  - ❑ That they will be given the opportunity to make representations on their behalf.
  - ❑ That they will be entitled to be accompanied at any investigative interview.
  - ❑ Details of the Investigating Officer.
  - ❑ The timescales for completing the investigating
  - ❑ Points of contact to be used for raising any issues concerning the investigation.
- 6.11 The Independent Interviewer may inspect any documents relating to the conduct of the officer which are in possession of the Council or which the Council has the power to authorise them to inspect.
- 6.12 The Independent Interviewer may require any employee of the Council to answer questions as part of the investigation.

- 6.13 The Independent Interviewer will interview the officer concerned. The officer must receive at least 5 working days' notice (or such longer period as is reasonable in the circumstances) in writing of the requirement for them to attend the investigative interview. A shorter period of notice can be used if parties agree. The letter (**see template letter**) should detail the allegation(s) under investigation and advise the officer of their right to be accompanied by a Trade Union representative or another employee of the Council.
- 6.14 Following their investigation the Independent Interviewer will make a report to the Council:
- Stating in their opinion as to whether (and if so the extent to which) the evidence they have obtained supports the allegation(s) of misconduct against the officer.
  - Recommending any disciplinary action which they consider to be appropriate for the Council to take against the officer.
- 6.15 The Independent Interviewer will send a copy of this report to the officer concerned at the time of submitting the report to the Council.
- 6.16 If in the opinion of the Independent Interviewer, the preliminary investigation reveals that the misconduct is of such a nature that it should be dealt with informally (i.e. without a recorded warning on the personal file), then the Independent Interviewer shall record this in his report to the Head of Paid Service or Leader of the Council, whichever is appropriate. No further action shall be taken other than the informal action recommended by the Independent Interviewer.
- 6.17 If it is recommended that disciplinary action is appropriate then the Council will appoint an Investigatory Panel and a Disciplinary Hearing will be convened. The panel must include at least two independent persons, defined as a person appointed under section 28(7) of the Localism Act 2011.

### **Suspension**

- 6.18 The Leader of the Council or the Head of Paid Service (as appropriate) should consider whether suspension of the officer is necessary. The officer may be suspended from duty either before or during any investigation:
- Where there is enough evidence to suggest that the matter may be one of gross misconduct.
  - Where the officer's continued presence at work might compromise the investigation.
  - Where the officer's continued presence may impair the efficient exercise of the function of the Council.
- 6.19 The officer will be informed in writing (**see template letter in the Toolkit**) at the earliest opportunity of their suspension. It will be made clear to the officer that suspension is not a disciplinary penalty and that it will not prejudice any future Disciplinary Hearing. The officer should also be informed of:

- The reasons for the suspension.
- Who they may contact in the Council whilst they are suspended.
- That their suspension is on full pay.
- That the suspension should not last more than 20 working days subject to the completion of the investigation.

6.20 The necessity for the officer to remain suspended should be reviewed at regular intervals. Lengthy periods of suspension should be avoided where possible.

6.21 The Independent Interviewer may recommend that:

- The Council terminates any suspension of the officer.
- That any suspension must continue after the expiry of the 20 working days

### **No case to answer following a preliminary investigation**

6.22 If, following the preliminary investigation, it is decided that the officer has no case to answer; they will be informed of this in writing (**see template letter in the Toolkit**). All records of the investigation will be annotated that this is the case.

### **Convening an Investigatory Panel and Disciplinary Hearing**

6.23 If it is considered that following an investigation that there is a case to answer at a Disciplinary Hearing, an Investigatory Panel will be convened by the Leader of the Council or Head of Paid Service whichever is appropriate. The officer will be notified in writing (**see template letter in the Toolkit**) that the Hearing is taking place. The officer must be given at least 10 working days' notice of the Hearing. The written notice should include:

- The date, time and location of the Hearing.
- The report which will include details of the allegation.
- Details of any witnesses that will be called by the Investigator.
- The officer will have the opportunity to state their case and call and/or question any witnesses.
- The fact that the officer is entitled to be represented by a Trade Union representative or another employee at the Hearing.
- The fact that, depending on its findings, the Hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
- The right to submit a written statement to the Investigatory Panel.

6.24 The Investigatory Panel will consist of at least three members chosen from the Finance and Management Committee. The Panel should reflect the political balance of the Council and can be advised by a representative from Human Resources and/or a representative of Legal and Democratic Services.

### **Postponement of the Disciplinary Hearing**

6.25 The officer or the Council can request one postponement of the Disciplinary Hearing of up to 10 working days. A postponement may be granted in the following circumstances:

- ❑ Inability to attend owing to illness that must be supported by a Fit Note that includes the date of the hearing.
- ❑ A request for additional time to obtain important information for their case.
- ❑ The unavailability of the officer's or the Council's representative.
- ❑ The unavailability of a key witness to the officer's or the Council's case.

### **Sickness absence during disciplinary proceedings**

6.26 Disciplinary proceedings are difficult and stressful. It is, therefore, in everyone's interest that they are concluded without undue delay.

6.27 In some cases the officer may become absent from work during disciplinary proceedings and be given a Fit Note certifying them unfit for work. However, it is also appropriate to complete the disciplinary proceedings at the earliest opportunity and they should be progressed as far as possible in the absence of the officer.

6.28 The framework in paragraphs 5.25 to 5.29 will be applied where disciplinary proceedings are affected by an officer's sickness absence.

### **Exchange of information prior to the Disciplinary Hearing**

6.29 Either party can submit Information to be presented at the Disciplinary Hearing. They are responsible for providing this information to the appropriate officer to enable it to be exchanged by no later than 5 working days' prior to the Disciplinary Hearing.

### **Conduct of the Disciplinary Hearing**

6.30 The framework for conducting the Disciplinary Hearing is in **Appendix B**.

6.31 The officer is entitled to be represented at the Hearing by a Trade Union representative or another employee of the Council.

6.32 The Investigatory Panel's decision will normally be given to the officer verbally at the Hearing. The decision will then be confirmed in writing to the officer within 5 working days' of the Hearing.

### **Possible outcomes of a Disciplinary Hearing**

6.33 The possible outcomes of a Disciplinary Hearing are explained in paragraph 5.34.

### **Disciplinary Hearing - disciplinary action**

6.34 Following an investigation and Disciplinary Hearing the formal disciplinary action that can be taken is explained in paragraph 5.35.

6.35 It should be made clear that the recommendation to dismiss the officer (with or without notice) is subject to the approval of the Full Council.

- 6.36 An employee may not be dismissed for a first breach of discipline **except in the event of gross misconduct.**
- 6.37 The Investigatory Panel's decision will normally be given to the officer verbally at the Disciplinary Hearing. The decision will then be confirmed in writing (**see template letter**) to the officer within 5 working days' of the Hearing. In the case of a recommendation to dismiss the process in paragraphs 6.39 to 6.45 should be followed.
- 6.38 This process is not required if a formal disciplinary sanction short of dismissal is applied. In this case the officer has a right of appeal to the Licensing and Appeals Sub-Committee (see paragraphs 6.46 to 6.54)

**Recommendation to dismiss by the Investigatory Panel and Appeal against the recommendation to dismiss.**

- 6.39 Where the Investigatory Panel recommends that the officer should be dismissed, they must notify the Leader of the Council or Head of Paid Service whichever is appropriate before taking further action. A report from the Investigatory Panel will be considered by the Full Council who must approve the dismissal of the officer before notice of dismissal is given to them. Any elected member who has been previously involved in the disciplinary matter will be excluded from this meeting.
- 6.40 The Full Council will be entitled to seek clarification of any issue from the Investigatory Panel. The officer concerned will be able to state their case before any decision is made.
- 6.41 The officer will be given at least 10 working days' written notice of the meeting of the Full Council.
- 6.42 The officer will be entitled to be represented at the meeting by a Trade Union representative or another employee of the Council.
- 6.43 The purpose of the appeal is to:
- Review the decision taken.
  - Consider whether the procedure has been correctly followed.
- 6.44 The Full Council will:
- Approve the officer's dismissal. In this case the officer will be informed in writing that their dismissal has been confirmed.
  - Or
  - Impose a lower level of disciplinary sanction. This should be confirmed in writing.
  - Or
  - Exonerate the officer. In this case any reference of the disciplinary proceedings should be destroyed and the officer should be notified of this in writing.

6.45 The meeting of the Full Council will fulfil the officer's right of appeal against their dismissal and they have no further internal right of appeal against the Council's decision. The officer will be informed in writing of the Council's decision by no later than 5 working days' of the meeting.

### **Appeal against action short of dismissal taken by Investigatory Panel**

6.46 An officer who wishes to appeal against a formal disciplinary sanction short of dismissal should inform the Head Organisational Development within 10 working days' of receiving notification of the disciplinary sanction. The officer must explain their grounds for appeal specifying whether it relates to the facts of the matter, the level of the sanction imposed or whether the procedure has not been properly followed.

6.47 The officer's appeal will be heard by 3 members of the Licensing and Appeals Sub-Committee. The Appeals Panel should reflect the political balance of the Council. The appeal must be heard as soon as is reasonably practicable. Generally this should be within 15 working days of the appeal being registered. Members who have been previously involved in the case will be excluded from involvement in the appeal.

6.48 The purpose of the appeal will be to:

- Review the decision taken.
- Consider whether the procedure has been followed correctly.

6.49 The officer shall be given not less than 10 working days' written notice of the date and venue of the Appeal Hearing. Both sides may call witnesses and produce documents relevant to the appeal. Information on witnesses and the documentary evidence to be produced at the appeal will be exchanged by no later than 5 working days' before the Appeal Hearing.

6.50 Members will be advised by the Legal and Democratic Services Manager or a representative from Human Resources. The officer will have the right to be represented by a Trade Union representative or another employee of the Council.

6.51 The Appeal Panel may:

- Upheld the appeal.
- Reject the appeal in full.
- Reject the appeal in part and impose a lower level of disciplinary sanction.
- In exceptional circumstances, reject the appeal and impose a higher level of warning up to and including a final written warning.

6.52 The decision of the Appeal Panel will be confirmed verbally to the officer and then in writing within 5 working days of the appeal date.

- 6.53 Where, an appeal is upheld all records will be removed from the officer's personal file, including any related correspondence, and destroyed.
- 6.54 The decision made by the Appeal Panel shall be final and the officer will have no further right of appeal.

#### **Time limits for warnings**

- 6.55 The time limits for warnings are set out in paragraphs 5.55 and 5.56.

#### **7.0 Review of procedures**

- 7.1 These procedures will be reviewed in conjunction with the Council. As a minimum, it will be reviewed every two years.
- 7.2 Human Resources is authorised to make minor amendments to the procedure e.g. changes in job titles resulting from an organisational restructure.

## Appendix A

### Examples of Gross Misconduct

Some of the offences which may be regarded as gross misconduct are:

- ❑ Serious failure to comply with the Council's Equal Opportunity and Fairness Scheme.
- ❑ Serious bullying, harassment or victimisation of another employee, client or a member of the public.
- ❑ Fighting or assault on another person during working hours or in connection with employment with the Council.
- ❑ Abusive/threatening behaviour towards another employee or a member of the public in the course of their duties.
- ❑ Theft of the Council's or an individual's property.
- ❑ Deliberate falsification of Council documents/records.
- ❑ Fraud, acceptance of bribes or other corrupt practices/acts.
- ❑ Deliberate damage to property.
- ❑ Being incapable of safely performing normal duties due to the influence of alcohol or drugs.
- ❑ Serious infringement of the Electronic Communications and Security Policy.
- ❑ Serious infringement of the Council's Social Media Policy.
- ❑ Serious breach of the Council's Alcohol and Drugs Policy (examples are given in the policy)
- ❑ Gross insubordination.
- ❑ Gross negligence.
- ❑ Misuse of the Council's property or name.
- ❑ A serious breach of the Council's Health and Safety rules/procedures.
- ❑ Failure to disclose any criminal conviction during the course of employment (consideration will be given to the nature of the employment and conviction).
- ❑ Holding unauthorised paid/unpaid secondary employment during paid Council time.
- ❑ Deliberately hindering or seeking to influence to the proper completion of a disciplinary investigation.
- ❑ Maintaining or making inappropriate contact during periods of formal suspension of an employee
- ❑ Serious breach of the employees Code of Conduct
- ❑ Serious spurious allegations against any employee or member of the public
- ❑ Contravention of the conditions relating to employment in a politically restricted post.

***This list of examples is not exhaustive.***

**Framework for conducting the Disciplinary Hearing**

1. The Chair of the Panel will begin the formal Disciplinary Hearing by:
  - Introducing those present.
  - Explaining the purpose of the Hearing.
  - Checking any arrangements for representation.
  - Ensuring documents have been exchanged.
  - Outlining the format of the Hearing.
2. The Investigator\ Independent Interviewer will present their case, referring to any documents or witnesses. If any witness is called:
  - They will question the witness.
  - The employee or their representative may question the witness.
  - The Panel may ask questions of the witness.
3. The officer or their representative may question the Investigator\ Independent Interviewer on the case they have presented.
4. The Panel may question the Investigator\Independent Interviewer
5. The officer or their representative will present the officer's response which will include referring to documents and witnesses where appropriate. If any witness is called:
  - They will question the witness.
  - The Investigator\ Independent Interviewer may question the witness.
  - The Panel may ask questions of the witness.
6. The Investigator\ Independent Interviewer may question the officer or representative on the officer's case.
7. The panel may question the officer or their representative.
8. Each side will sum up their case. New evidence cannot be introduced during the summing up. The Investigator\ Independent Interviewer will begin the summing up followed by the officer or their representative.
9. The Panel will adjourn to consider the evidence and decide whether or not the allegations are substantiated and any disciplinary action to be taken.
10. All parties will be recalled and informed of the Panel's decision and that it will be confirmed in writing. It appropriate the Panel will inform the officer of their right of appeal.

***Note: Any decision to dismiss is subject to the appropriate process in these procedures.***