

CYNGOR SIR POWYS COUNTY COUNCIL

Disciplinary Procedure

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Cyngor Sir Powys County Council

Disciplinary Procedure

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Cyngor Sir Powys County Council Disciplinary Procedure

Policy Statement

The purpose of this procedure is to set out ways to help and encourage Council employees to achieve and maintain expected standards of conduct and performance and to ensure good working practices are implemented and maintained. It is intended to provide for staff to be treated in a fair and consistent manner, and for all those involved in disciplinary issues to have an opportunity to present their case without prejudice or victimisation. The Council has a policy and procedure for managing performance capability and sickness and due regard should be given to them in conjunction with this disciplinary policy.

The Council's procedure observes the ACAS Code of Practice on disciplinary procedures, which is issued under the Trade Union and Labour Relations (Consolidation) Act 1992 and came into effect on 6th April 2009. Employment Tribunals are required to take this Code into account when considering cases. Tribunals are entitled to make adjustments to compensatory awards where the employer or the employee has failed to comply with the Code's provisions. The Code does not cover redundancy dismissals or retirement, or the non-renewal of fixed-term contracts and these matters will be addressed through the Council's Redundancy and Retirement policies and procedures.

The procedure provides for disciplinary matters to be resolved at the earliest possible opportunity by way of **Section 1 – Informal Supervisory Support**, to avoid longer-term problems developing. However, more serious breaches of discipline or unsatisfactory work performance will result in the use of **Section 2 – the Formal Disciplinary Procedure**.

This procedure applies to employees of the Council with the exception of Senior and Chief Officers, Teachers and Head Teachers, for whom separate procedures have been agreed. Where an employee who is subject to any stages of the disciplinary procedure is also a local trade union representative, their Regional/Full-time Officer will be informed.

The principles supporting this procedure are:

- Prompt handling of problems and avoidance of unnecessary delays
- A fair and consistent approach
- Establishment of the facts
- Communication and exchange of information between manager and employee
- The right to be accompanied at formal meetings
- The right of appeal against formal decisions

The disciplinary procedure in summary

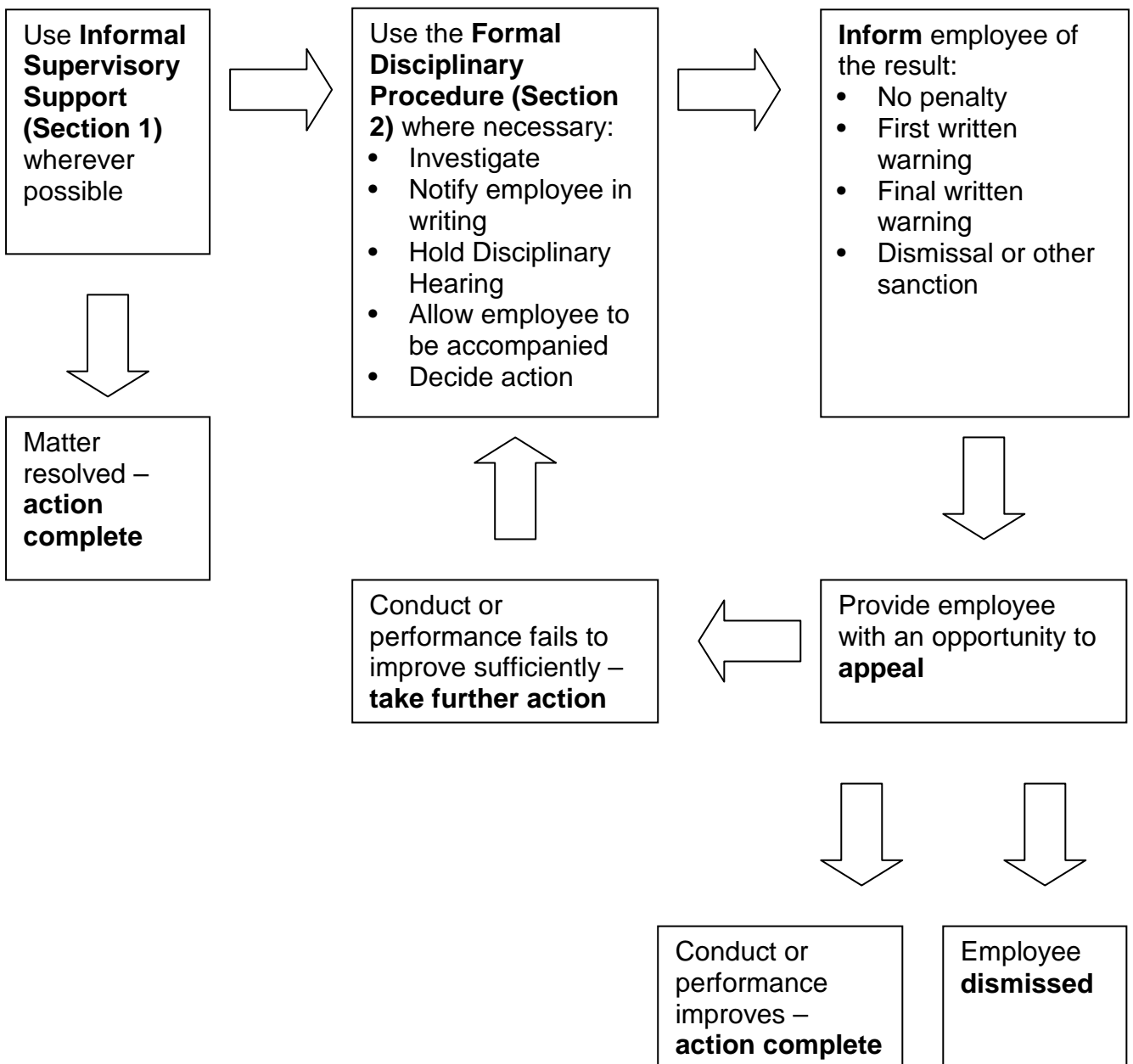
The procedure has informal and formal components, entered into as necessary.

Informal steps are described in **Section 1** under **Informal Supervisory Support**.

The Council's **Formal Procedure**, as described in **Section 2**, consists of:

- Consideration given to whether suspension is appropriate
- Investigation or information gathering
- Informing the employee of the problem
- Holding a disciplinary meeting
- Taking appropriate action
- Hearing an appeal

The flow-chart below shows the outline process for handling disciplinary matters:



Section 1. Informal Supervisory Support

- 1.1.1 Managers should meet regularly with employees for Supervision or 1-1 meetings in order to manage performance on an ongoing basis. (See guidance on holding Supervision/1-1s in the Performance Capability Procedure) However, occasionally it may be necessary to discuss minor incidents of misconduct or unsatisfactory performance via Section 1 of the Disciplinary Procedure – Informal Supervisory Support.
- 1.1.2 This will take the form of a private, one to one discussion where the line manager will give constructive feedback to the employee about their conduct or performance and discuss with them ways of improving and maintaining the improvement. Managers should pay attention to any relevant points the employee raises which they feel might have been affecting their performance, such as personal problems or ill-health and consider whether addressing these through the appropriate policies the problem might be resolved.
- 1.1.3 The line manager must ensure that they have given clear information to the employee as to what improvement action is required and when this will be reviewed. The discussion should be confirmed in writing to the employee and notes of the discussion kept for reference purposes. Guidance on how to do this, together with examples, is contained in the Performance Capability Policy.
- 1.1.4 If, during discussion, it becomes apparent that the matter is more serious than first understood, the meeting should be adjourned and the employee informed that the matter will be progressed under the formal disciplinary procedure.

Section 2. The Formal Disciplinary Procedure

- 2.1.1 The purpose of the formal procedure is to address serious cases of misconduct and/or performance. It should be noted that unsatisfactory performance can be related to capability or ill health and reference should be made to these policies in conjunction with the Disciplinary Procedure. Where appropriate, the performance capability and absence management policies will be used in the first instance before referring to the Formal Disciplinary Procedure. Progression to the Formal Disciplinary Procedure will also include instances of repeated misconduct, performance or sickness absence where Informal Supervisory Support has been in place and no improvements have been made or where improvements have not been maintained.
- 2.1.2 Where an alleged breach of discipline relates to the abuse of vulnerable adults, the 'Policy and Procedure for the Protection of Vulnerable Adults from Abuse' will apply. Where serious breaches of discipline relates to the abuse of children, the 'Child Protection Procedures' will apply.
- 2.1.3 Under the Formal Disciplinary Procedure, where there is an alleged breach of discipline, the employee will be informed in writing of the nature of the allegation(s) and if further breaches arise, or are discovered, e.g., during ensuing investigations, they will also be informed in writing of these developments.

2.2 Suspension

- 2.2.1 Careful consideration must be given to whether or not it is necessary to suspend an employee before proceeding with, or during, an investigation. Suspension may be appropriate in the following circumstances:
- Where it is felt there may be a risk to other people or to Council property;
 - To enable a full and fair investigation to be carried out unhampered.
- 2.2.2 The decision to suspend an employee must be taken by a Senior Manager (or above) in discussion with Human Resources. Consideration must be given to alternative measures, such as temporary redeployment to other duties, as suspension must be a last resort. The Head of Service must be notified as soon as possible. If it is decided to suspend the employee, the Senior Manager or their representative must arrange to meet with them as a matter of priority to inform them of their suspension. The manager will also allocate a contact officer for the member of staff. The contact officer should be a manager or supervisor, with no direct relationship to the individual being suspended or their Line Manager, and be someone whom the employee should use as a point of contact for accessing any witnesses etc.
- 2.2.3 The line manager will also confirm the suspension in writing within five working days of the suspension meeting.
- 2.2.4 Suspension will be limited to the shortest possible time. However, there may be cases where suspension continues for a period of time longer than anticipated. In such cases there shall be a review after a four week period of suspension. The purpose of this review is to ensure that the original decision is still valid. The suspended employee may make a representation about their suspension. The review will be undertaken by the Head of HR or Corporate HR Manager, who will decide whether or not the suspension should continue and set a date for a further review, or ensure that a date be set by which a disciplinary hearing should be scheduled.
- 2.2.5 Detailed information and guidance for managers and employees about suspension can be found Appendix 1. The role of the contact officer is explained in more detail in Appendix 2.

2.3 Grievances arising during the disciplinary procedure

- 2.3.1 Should an employee wish to raise a grievance regarding the matter which is the subject of the disciplinary procedure, this will be fully investigated as part of the disciplinary investigation.

2.4 Investigation/information gathering

- 2.4.1 Unless all relevant facts are to hand, there will usually be a need to obtain more information to make an informed decision on whether disciplinary action is appropriate. If this is the case, the matter will be investigated by the line manager. HR will take part in investigations depending on the complexity of the case or where there are allegations of bullying or harassment. Where such allegations implicate the line manager, then their line manager will investigate. In all cases advice from

HR must be obtained and the HR contact must be kept up-dated on the progress of any investigations.

- 2.4.2 If sufficient information is readily available and no further investigation is considered necessary to decide that disciplinary action is appropriate, then the formal procedure will be progressed.
- 2.4.3 It is the role of the investigating officer to meet with individuals to identify and record the full details of any allegation. This will involve interviewing and taking statements from any complainants or witnesses to events and therefore the investigating officer should have the support of a note-taker present. The investigator will also interview the member of staff against whom the allegation has been made. It is the responsibility of the investigator to ensure they have identified and interviewed all appropriate witnesses and any other individuals who may prove useful to the investigation, including witnesses identified by the member of staff against whom the allegation has been made.
- 2.4.4 The Council will allow employees who are being investigated to be accompanied by an accredited trade union representative or fellow colleague (provided they are not part of the investigation), but investigatory meetings will not be unduly delayed if a companion is not available.
- 2.4.5 The Council observes the Information Commissioner's Code on the monitoring of employees. (detailed in Appendix 3)
- 2.4.6 Employees interviewed as witnesses will be requested to provide signed statements in respect of their evidence and should be advised that they could be required to attend any subsequent disciplinary hearing to answer questions in relation to their statement. The Council will ensure that facilities are made available for anyone interviewed or attending a hearing as a witness, either to support the member of staff or to support the management case.
- 2.4.7 Employees are advised that they do have a responsibility to take part in this procedure if they have information about the matter that should be made available. All employees from whom statements have been taken should make themselves available to attend any future hearing to answer questions, if deemed appropriate, by either party.
- 2.4.8 The Council does not tolerate the intimidation of witnesses. Witness support and guidance about what to expect during the investigation and attending the Disciplinary Hearing is available (see Appendix 4).
- 2.4.9 The investigation should be completed as swiftly as possible. With complex cases this may be subject to an extension, but in any case it should be completed as quickly as possible, particularly if a member of staff has been suspended. It is also the responsibility of the investigating officer to ensure those involved are kept informed of how the investigation is progressing in terms of the time it is taking to conclude.
- 2.4.10 Once the investigating officer is satisfied that all necessary investigations are concluded, they will prepare a report detailing their findings from the investigation. If

the matter is to proceed to a disciplinary hearing, then this documentation will be submitted for the disciplinary panel to consider.

2.5 Informing the employee

- 2.5.1 Following the preparation of the report, the investigator will discuss with HR whether or not to proceed to a Disciplinary Hearing. If, after examining the evidence available, there is no case to answer, the investigating officer will meet with the employee to inform them. If the employee has been suspended or temporarily deployed to other duties, they will be informed of the date that they will be expected to return to their usual work. This outcome will be confirmed in writing no later than 5 working days following the meeting. The requirement for support will be identified and discussed to assist the individual to return to work.
- 2.5.2 If there is insufficient evidence to warrant a disciplinary hearing but the employee requires some form of managerial intervention, then this will be arranged by the line manager. This may take the form of Informal Supervisory Support, or developmental support such as training.
- 2.5.3 If there is sufficient evidence to warrant a disciplinary hearing, the investigating officer will write to the employee to inform them that there is a case to answer and that they will be requested to attend a Disciplinary Hearing, for which they will be given written notification of not less than 10 working days.
- 2.5.4 This notification will inform the employee of the potential consequences of the hearing and of their right to be accompanied at the hearing. A full report from the investigation will also be provided together with a copy of this Disciplinary Procedure in order for the employee to prepare to answer the case at the hearing.
- 2.5.5 It is the responsibility of the employee to reply within 5 working days, notifying the investigating officers if they can attend. It is the individual's responsibility to contact their own witnesses. If the employee is suspended, they may contact witnesses through their Contact Officer or their Union Representative. All witness statements and documentation detailing the employee's statement of their case for use in the hearing must be supplied to the investigating officers no later than 5 working days before the date of the hearing.
- 2.5.6 If a member of staff or their representative cannot, or does not, attend on the given date, the hearing may be postponed and a revised date agreed with the employee and their representative. This will be permitted on one occasion, unless in exceptional circumstances. If the member of staff (or their representative) requests a further postponement, or does not attend for a second time, the hearing will not be rescheduled and the hearing will proceed in the absence of the employee or their representative and will be based on the written documentation and/or with an alternative representative.
- 2.5.7 The Council will ensure that witnesses can attend on the date and time of the hearing. Witnesses who have been called by the Council may not be called as an employee witness. However, such witnesses may be questioned by the employee at the hearing.

2.6 Absence with no contact from the employee

2.6.1 There may be instances when a member of staff does not present for work, does not make contact and the manager is unable to make contact with them. Where an employee is absent without leave and makes no contact with the Council regarding their absence, the manager should address the employee as described below:

- Write to the employee noting their absence and non-contact with work, and request that they make contact on receipt of the letter. The letter should warn the employee that failure to make contact without good reason could result in disciplinary action being taken;
- If there is no response to the first letter, the manager should send a second letter in accordance with the steps set out in Section 2.5 above and referring to the first letter.
- Following this hearing, the decision will be communicated in writing to the employee. This must contain details of the right to appeal. In most cases continuing or persistent unauthorised absence, with no contact from the employee, will result in dismissal.

2.7 The disciplinary hearing

2.7.1 The point of the hearing is to establish the facts, decide if a breach of discipline has occurred and to arrive at a decision on what disciplinary sanction to impose, if any.

2.7.2 The disciplinary hearing is conducted by a panel and offers an opportunity for the investigating officers and the employee to present their case and be questioned on it, discuss the allegations made, ask questions and call any relevant witness.

2.7.3 The hearing panel will be chaired by a Head of Service or an appropriate senior manager to whom the authority has been delegated to take appropriate disciplinary action. They will be joined by either the Head of HR or his/her representative in arriving at a decision. The final decision rests with the Chair.

2.7.4 The format of the hearing is:

- Introductions and confirmation of the reason for the hearing
- Presentation of the management case, including witnesses and cross examination by the panel and the employee
- The employee's reply and cross-examination
- Final questions and clarification from the panel
- Summing up from the management side
- Summing up from the employee
- Adjournment for panel to make a decision
- Reconvene to inform of the panel's decision, or decision to be conveyed in writing.

2.8 Possible outcomes of the disciplinary hearing

- 2.8.1 **No disciplinary action** taken against the employee. This will be confirmed in writing.
- 2.8.2 **A Written Warning** – for cases of misconduct and unsatisfactory performance the written warning will set out clearly the unacceptable behaviour or performance and also the change and improvements that are required. The warning will also state clearly that further disciplinary action will be considered if misconduct or unsatisfactory performance is repeated. The employee will also be informed that the record of the warning will be retained on their personnel record for 12 months from the date of the hearing. After this time it will be removed from their record and therefore will not then be taken into account should future disciplinary action be necessary.
- 2.8.3 **A Final Written Warning** – if the employee has a current warning about their conduct or capability and further misconduct, unsatisfactory performance or sickness absence occurs, then a final written warning may be appropriate. This may also be seen as the appropriate sanction if the misconduct or unsatisfactory performance is seen as sufficiently significant to have a serious or harmful effect. Any further misconduct may lead to dismissal. The final written warning will be retained on the employee's personnel record for up to 24 months from the date of the hearing when it will then be removed from the file.
- 2.8.4 **Disciplinary Penalties Avoiding Dismissal** – where the hearing finds an employee's conduct or capability to be unacceptable to the point that dismissal is a possible outcome, it may be appropriate to consider alternative penalties to dismissal. These penalties can include: demotion, which will normally include a reduction in pay; loss of seniority or loss of increment; disciplinary transfer. These disciplinary penalties must be explained and confirmed in writing along with any specified period which may be appropriate. Any such actions will be viewed as an alternative to dismissal.
- 2.8.5 **Dismissal with Notice** – where the employee has either failed to respond to previous warnings and their conduct or capability remains unacceptable, or is found to be significantly serious at a first hearing, dismissal with contractual notice may be an appropriate disciplinary penalty. Where the employee's presence in the workplace would cause significant difficulty on either part, a payment may be made in lieu of notice. This may be, for example, where there has been a breakdown in trust between the employer and the employee. Advice must always be sought from HR in such cases.
- 2.8.6 **Dismissal Without Notice or Summary Dismissal** – This may be appropriate if it has been found at a disciplinary hearing that the employee's conduct amounts to gross misconduct where the mitigating circumstances are insufficient and/or where the employee's presence at work is untenable.
- 2.8.7 **All outcomes and sanctions will be confirmed and explained in writing within 5 working days of the disciplinary hearing.**

NB: Examples of Misconduct and Gross Misconduct can be found in Appendix 5. This is not an exhaustive list.

2.9 Appealing against Disciplinary Action

2.9.1 There is a right of appeal by an employee against disciplinary action arising from the formal process of a disciplinary hearing and there is a right to be accompanied in the same manner as in the disciplinary hearing.

2.9.2 To lodge an appeal, the employee must write, stating the reason for the appeal, to the Head of HR within 10 working days from the date of the disciplinary hearing.

2.9.3 Reasons for appeal on which the disciplinary action should be reviewed may include:

- failure to adhere to the procedure;
- an inappropriate or inconsistent penalty;
- extenuating circumstances that were not considered;
- bias by the person chairing the hearing; or,
- new evidence subsequently coming to light which would have affected the decision.

This is not an exhaustive or prescriptive list.

2.9.4 The Council will try to hold appeal hearings within 25 working days of receipt of the notice from the employee. If this is genuinely not possible, the employee will be informed, given the reason for the delay and informed of the next possible date for the hearing.

2.9.5 If the employee or their companion is unable to attend on the date set for the appeal hearing, they must inform HR at least 5 working days prior to the appeal hearing date and one alternative date will be arranged.

2.9.6 An appeal against disciplinary decision short of dismissal will be heard by a senior manager together with an HR Adviser, neither of whom has been involved in the case up to this point. Appeals against dismissals will be conducted by a panel of elected members together with an HR representative. Guidance for those conducting an appeal panel is available from HR.

2.9.7 The appeal panel will review the decision made by the disciplinary panel, based on the following:

- A statement from the employee about their reason for making an appeal;
- A statement from the chair of the disciplinary panel about how the disciplinary sanction was arrived at;
- Consideration of any new evidence submitted by either the employee or the investigating officer.

2.9.8 In the same way as a disciplinary hearing, the appeals panel will be able to ask relevant questions to help them arrive at a decision.

2.9.9 If the panel finds, at any stage during the appeal process, that the disciplinary proceedings were flawed, for example if procedures had not been followed, it can conduct a full re-hearing of the case so as to overcome those flaws. In such cases, other witnesses may be called to the appeal hearing, for example, the investigating

officers, so that the background circumstances can be explored and understood. Alternatively they may ask that a new investigation be undertaken by officers and presented to a differently constituted disciplinary panel.

2.9.10 The appeal panel will be able to confirm the decision and the disciplinary penalty imposed, or it may reject the original conclusions and substitute a different decision. The decision will be confirmed in writing to the employee by the panel's chair within 5 working days of the appeal hearing. If the appeal panel rejects the decision made at the disciplinary hearing, the new decision will be recorded on the individual's personnel record and the previous decision will be removed.

2.9.11 The appeal hearing is the final stage in the Council's Disciplinary Procedure and the appeal panel's decision is final.

Appendix 1 - Suspension Guidance

Depending on the nature of the complaint and to enable a full and fair investigation to be carried out, it may be necessary to suspend the employee against whom the allegation has been. Suspension may be appropriate where it is felt there may be a risk to other people or to council property or to ensure the investigation into the allegations is not impeded. However, suspension must be regarded as a last resort and guidance on alternatives to suspension can be found in the Council's Redeployment Policy. The decision to suspend must be taken by a Senior Manager (or above) in conjunction with the Head of HR or their representative and the Head of Service must be notified as soon as possible.

It is recognised that the act of suspension, whilst not imposed as a punitive measure, can sometimes cause anxiety. As such, employees are reminded that the Council has a counselling service which may be accessed if required.

The confidential Staff Counselling Service is available by ringing these direct lines:

- South of the County: Christine Turnbull: 01497 821258
- North & Centre of the County: Sally Mackenzie: 01691 670505

Carrying out a suspension meeting

A meeting will take place with the employee, led by their Supervisor or Line Manager. The employee will be given the following information:

- the reasons for the suspension;
- they will be informed that they continue to receive their normal earnings whilst they are suspended;
- that the period of time for the suspension will be kept as short as possible;
- suspension is not being imposed as a sanction prior to a disciplinary meeting if that is the outcome of the investigation;
- terms and conditions of employment remain unchanged;
- they may not undertake any other work for the duration of the suspension during the times they would normally have been at work – staff on suspension may be called for interview during the working day and are expected to be available, if called, at these times;
- they are entitled to take their annual leave entitlement as long as they have followed the relevant procedures to take leave with their line manager's approval;
- if the employee falls sick during their suspension they will be required to submit sickness certification in the usual way as determined by the Absence Management policy;
- Any contact with the people working for the Council should be done through their contact officer;
- During suspension, employees are not permitted to enter council buildings unless they are expressly called to a meeting by the investigating officer. This stipulation will not normally prevent staff using council leisure facilities and library facilities for personal leisure purposes during a period of suspension from work, provided it is not their normal place of work;
- Disciplinary action may result if the terms of the suspension are not adhered to.

Staff may wish to make contact with their trade union representative for support and guidance during suspension/investigation.

The individual will also be allocated a contact officer. The contact officer should be a manager or supervisor, with no direct relationship to the individual being suspended or their Line Manager. Their role is to provide a communication link between the employee and the organisation, for example, if the employee wishes to contact any witnesses to support their case, or if they have any questions or queries during their suspension.

The employee will be asked to confirm that their current contact details (telephone number and address) are up to date so that contact may be made during the period of suspension. These contact details will be passed on to the Contact Officer.

Following the suspension meeting the employee will be accompanied to collect any personal items they require from their desk or locker, hand over their ID card or access card and any council equipment in their possession e.g. mobile telephone, tools, keys etc. The employee will then be accompanied from the building.

The suspension will be confirmed in writing by the Line Manager within five working days and will state the reason of and terms for the suspension as stated in the suspension meeting. A copy of the disciplinary policy will also be sent to the member of staff for their information.

Within the first two days of suspension the contact officer will make contact with the suspended employee. The contact officer should establish the name of the suspended employee's representative so that they can be included in all correspondence.

Suspension will be limited to the shortest possible time. However, there may be cases where suspension continues for a period of time longer than anticipated. In such cases there shall be a review after a four week period of suspension. The review will be undertaken by the Head of HR or Corporate HR Manager, taking into account the prevailing circumstances from the investigating officer's and the employee's point of view. The Head of HR/Corporate HR Manager will decide, in light of evidence presented, whether the suspension should continue and set a date for a further review, or ensure that a date be set by which a Disciplinary Hearing should be scheduled.

Should the employee become absent due to illness during the period of suspension or at any point throughout the disciplinary process, a doctor's certificate will be required. At this point the employee's status changes from being suspended to being absent from work due to sickness/illness and the employee will be referred to Occupational Health. Occupational Health will notify the HR department to confirm if the circumstances surrounding the employee's illness indicate that it would not be appropriate to continue the disciplinary process at that time. Occupational Health will confirm when their next review with the employee will take place; reviews are carried out every two weeks. However, if Occupational Health indicates that the circumstances do not require the disciplinary process to be put on hold, the investigation etc. will continue as normal.

In some cases the investigating officer may identify, through the information they are receiving, that there is no longer a requirement to maintain the individual's suspension from work. If this becomes apparent, the individual will be asked to attend a meeting with their line manager who will confirm that they are able to return to work. This decision will

be confirmed in writing by the line manager within 5 days of the meeting and any support required to assist with the return to the work place will be made available to the employee.

Further guidance for employees about disciplinary matters can be found at:

DirectGov Employee Guidance:

http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Disciplinaryprocedures/DG_10028115 and –
<http://www.berr.gov.uk/files/file50732.pdf>

Appendix 2 - Role of the Contact Officer

The role of the contact officer is to provide contact support to suspended employee(s). This will involve taking telephone calls from the suspended employee(s), requesting information, contacting the investigating officers or the suspended employee's manager and passing information back to the suspended employee(s).

The employee will be provided with the contact officer's office number and work mobile, if they have one, when suspended.

The contact officer will be given contact details of the employee (s)he is allocated to during the course of the investigation. Any information requested that requires contact with anyone outside of this group should be checked with HR first.

The contact officer should carry out a welfare telephone call with the suspended employee during the first couple of days of suspension and thereafter on a weekly basis. The purpose of this contact is to check the welfare of the employee, to find out if they require any further support or assistance with anything and to update the suspended employee with any developments they are authorised to receive.

Suitable questions for this weekly contact may be advised by HR if the contact officer is unsure what to ask. Usual questions include:-

How is the employee managing?

Is there anything they need from work that the Contact Officer can arrange?

Do they have support from family and friends?

Is there anything that they need from the Contact Officer?

Selecting a Contact Officer

Contact officers are selected for their impartiality to the investigation by the manager in agreement with HR. Any contact officer approached to act on behalf of the authority who has prior knowledge of the investigation circumstances, knows the suspended employee or any of their family personally or feels a conflict of interest may exist should notify HR immediately, or decline to undertake the role – stating the reasons why.

If, during the suspension period, the contact officer is unavailable for a period of time, e.g., for leave, sickness absence or other personal reasons it is their responsibility to inform the manager of the suspended employee so that an alternative contact officer can be provided for the interim.

Contact officers are usually selected from a different service area of the same directorate. This is done so that the contact officer may understand better the questions being asked by the suspended employee.

Confidentiality

All information passed to the contact officer remains confidential between the manager of the suspended employee, their union representative, and the investigating officers. Any contact officer found to be discussing confidential or personal aspects of any investigation with other parties not connected with the case may be subject to disciplinary action.

Appendix 3 – Information Commissioner’s Employment Practices Code on Monitoring at Work

How does the Act affect monitoring?

- If you monitor your workers by collecting or using information about them, the Data Protection Act will apply. This can happen, for example, when you video workers to detect crime, when you check telephone logs to detect excessive private use, and when you monitor e-mails or check internet use.
- The Act doesn’t generally prevent monitoring. However, it sets out principles for the gathering and use of personal information. In short, data protection means that if monitoring has any adverse effect on workers, this must be justified by its benefit to the employer or others.
- The Act requires openness. Workers should be aware of the nature, extent and reasons for any monitoring unless, exceptionally, covert monitoring is justified.

If I want to monitor my workers, what must I do?

- Consider why you want to carry out the monitoring. This might mean asking what problem you are trying to solve, for example theft in the workplace.
- Once you are clear about the purpose, ask whether the particular monitoring arrangement will truly bring the benefit you are looking for and whether it is justified by this benefit.
- Remember:
 1. Monitoring is usually intrusive.
 2. Workers legitimately expect to keep their personal lives private.
 3. Workers are entitled to some privacy in the work environment.
- Consider whether alternative approaches or different methods of monitoring would deliver the benefits you want while being more acceptable to workers. Can you target the monitoring at an area of risk, for example the part of your premises where you think theft is occurring?
- Ensure your workers are aware that they are being monitored and why. You could tell them this by putting a notice on a notice-board or signs in the areas where monitoring is taking place. If your workers have computers, you could send them an e-mail about the monitoring. If you are open about it, they will know what to expect.
- If monitoring is to be used to enforce your rules and standards, make sure workers know clearly what these are.
- Only use information obtained through monitoring for the purpose for which you carried out the monitoring, unless the monitoring leads to the discovery of an activity that no employer could reasonably be expected to ignore, for example breaches of health and safety rules that put other workers at risk.

- Keep secure the information that you gather through monitoring. This might mean only allowing one or two people to have access to it. Don't keep the information for longer than necessary or keep more information than you really need. This might mean deleting it once disciplinary action against a worker is over.

Are there other points to consider for particular types of monitoring?

- Be particularly careful when monitoring communications, such as e-mails, that are clearly personal. Avoid wherever possible opening e-mails, especially those that clearly show they are private or personal. Monitor the message's address or heading only.
- If it is necessary to check the e-mail accounts or voice-mails of workers in their absence, make sure they are aware this will happen.
- Where video or audio monitoring is justified, target the monitoring, where possible, at areas of particular risk, and only use it where workers wouldn't expect much privacy.
- Ensure that if you use information for monitoring which is held by third parties, such as credit reference or electoral roll information, you can justify this. Take particular care with any information you hold about workers as a result of non-employment dealings with them, for example where they are also your customers.
- If you are justified in obtaining information about a worker's criminal convictions for monitoring, only do so through a 'disclosure' from the Criminal Records Bureau.
- If you monitor workers through information held by a credit reference agency, you must tell the agency what you will use the information for. Do not use a facility for carrying out credit checks on customers to monitor or vet workers.

Can I ever undertake secret monitoring?

- The covert monitoring of workers can rarely be justified. Do not carry it out unless it has been authorised at the highest level in your business. You should be satisfied that there are grounds for suspecting criminal activity or equivalent malpractice, and that telling people about the monitoring would make it difficult to prevent or detect such wrongdoing.
- Use covert monitoring only as part of a specific investigation, and stop when the investigation has been completed. Do not use covert monitoring in places such as toilets or private offices unless you suspect serious crime and intend to involve the police.

For further information about The Employment Practices Code, please visit the Information Commissioner's website at: www.informationcommissioner.gov.uk

If you have any queries you can contact our helpline on 01625 545745

Appendix 4 - Witness Guidance

Being a witness to a disciplinary matter is often a new experience for people. The Council recognises the need to support witnesses so that they feel able to come forward about things they see at work. We will keep witnesses informed about their involvement during any investigations or disciplinary proceedings to try and ensure that the experience is as stress-free as possible. Employees acting as witnesses may wish to discuss their role with a Trade Union representative or the Staff Counsellor.

As a witness, you should expect the following:

- Reasonable notice about the time, date and place of any investigation interview or disciplinary hearing at which your presence is required.
- Information about what will be expected of you during the process.
- Introductions from disciplinary panel members and others present in the room.
- Courteous and respectful questioning.
- Debriefing after the event.

Who will be involved in the disciplinary hearing?

Disciplinary hearings are formal meetings and are held in accordance with the Council's Disciplinary Procedure. A Hearing will be chaired by a senior manager, supported by a representative from HR. The hearing will be attended by the member of staff against whom allegations have been made, their Trade Union representative or companion who may be a colleague. The investigating officer will also be present and they may have a representative from HR with them.

What happens at the hearing?

You will have been given a time of arrival and on arrival you will be asked to wait outside the room to be called into the hearing. Where possible, a room will have been set aside for witnesses to wait in. Make sure you have with you a copy of your statement or documents that you have submitted to the investigating officer and/or any recorded notes from the investigation interview.

When you are called in, you should be introduced to all present and the investigating officer will ask you to go through your statement and/or answer any questions they might have. The Chair of the Hearing will invite the member of staff to ask any questions they might have, and the hearing panel may also have questions they wish to ask. When replying to questions or comments, remember:

- Take your time and speak slowly and clearly;
- Ask for questions to be repeated if you do not understand or did not hear the question;
- If you are not sure of the answer, then say so;
- If you feel harassed or intimidated by anyone, or feel that a question is unfair, then tell the Chair of the panel. The Chair may also intervene if they feel this is happening to you.

Once you have answered all that has been asked of you, you will be asked to leave the room. In most cases, witnesses are not required again and may return to work, but you may be asked to remain in the waiting area in case you are required again.

Appendix 5 - Examples of Misconduct & Gross Misconduct

A) Misconduct

- Disobeying instructions, i.e., when an employee without sufficient cause disobeys or omits or neglects to carry out a reasonable management instruction, whether in writing or not, which is in the employee's duty to obey including failure to observe the operational regulations and standing orders of the employing department.
- Abuse of authority when an employee's conduct in connection with their employment towards a fellow employee, or a member of the public, is oppressive or abusive.
- Absence from duty, for example, when an employee without sufficient cause, is absent from duty or is late for duty or other attendance; or without permission or sufficient cause leaves his/her place of work, including taking excessive refreshment breaks.
- Medical capability where an employee is consistently failing to attend their place of work and carry out their duties as defined within their contract of employment. (More details can be found within the Absence Management policy)
- Neglect of duty when an employee without sufficient cause fails to discharge the obligations which statute or his contract place upon him/her.
- Carelessness or neglect by the employee which causes any loss, damage or injury to occur to any person or property; or without sufficient cause fails to report any matter which it is his/her duty to report; or without sufficient cause fails to make an entry which it is his/her duty to make, in any book or document.
- Failure to properly account for, or to make a prompt and true return of any money or property which comes into the employee's possession in the course of his/her duties.
- Failure to carry out duties to an acceptable standard.
- Falsehood, i.e., when an employee knowingly or through neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for the purposes of the authority; or has knowingly or through neglect falsified any information used in support of an application for any post in the employment of the authority.
- Failure to adhere to any of the Council's policies as they are applicable to the employee or their role.

This list is illustrative and is not exhaustive

B) Gross Misconduct

Gross Misconduct is defined as misconduct serious enough to destroy the contract between the employer and the employee, making any on-going working relationship and trust between the two parties impossible. Such acts include, but not confined to:

- Theft.

- Fraudulent or deliberate falsification of records for own gain e.g., financial records or other official council documentation, qualifications, claims for financial reimbursement etc.
- Fighting or assault and/or showing threatening behaviour or harassment towards staff or the public.
- Deliberate damage to council property or property belonging to members of the public.
- Incapability through alcohol or being under the influence of illegal drugs.
- Serious negligence which causes unacceptable loss, damage or injury.
- Serious act of insubordination.
- Reckless or serious misuse of a council vehicle or machinery.
- Sexual misbehaviour at work.
- Serious breach of the Council's Equality & Diversity policies and Fairness & Dignity at Work Policy.
- Harassment of a colleague or other member of staff who has exercised their right and their duty to report any malpractice as defined by the term 'whistle blowing'.
- Acceptance of bribes or participation in other corrupt practices.
- Serious breaches of health and safety regulations and policies which endangers others.
- Unauthorised entry to computer records. Unacceptable use of the internet, visiting web sites that contain obscene, hateful or objectionable materials. Downloading, viewing, displaying or sharing offensive materials as described in the IM&T Users' policy.
- Being convicted of, or charged with, a serious criminal offence which renders the employee unsuitable to remain in the Council's employment.
- Participating in secondary paid employment during paid Council time.
- Failure to declare a direct or indirect interest in a company with which the authority places or intends to place business.

This list is illustrative and is not exhaustive.

Appendix 6 Disciplinary Hearing Appeal Panels Protocol

Prior to the Hearing: Agree a Chair for the Panel. The Chair will make introductions, explain the procedures, and ask most of the questions. It is ideal if the Panel can co-ordinate their questions into one set to be asked by the Chair, with an opportunity to ask questions they have subsequently thought of at the end of each question-asking opportunity.

The Committee Clerk will make a record of the attendance at the start of the meeting. She/he will then be called back to record the outcome. This minute is then sent to the subsequent Employment Committee for the full Committee to sign off. In addition there will be a Hearing feedback document to be taken to the Committee, written by the Chair and Principal HR Adviser. The feedback document detail is outlined below.

The Hearing: The Chair will introduce the panel and ask all present to introduce themselves.

Outline the Procedures: The Chair will outline the procedures for the Hearing. This is not a complete re-hearing but an appeal against some of the facts of the original case presented or the outcome delivered.

1. The Chair will ask if the original panel is satisfied there is no new evidence being presented to this panel. If there is new evidence, advice and agreement may need to be sought from the Principal HR Adviser and then all parties present.
2. The employee's case has been presented in writing; they will be asked if they wish to make any additional statements at this point. (Papers submitted should be taken as read but the employee may wish to point out a few items to reiterate their case).
3. The original hearing panel and presenting officers will then be asked if they wish to ask any questions of the employee to clarify their response.
4. The Chair of the appeal panel will then ask any questions they have of the employee's case.
5. The original hearing panel and presenting officers will be asked if they have any further comments to make on the case presented.
6. The employee will be given an opportunity to ask questions of the original hearing panel and the presenting officers.
7. The Chair of the appeal panel will then ask any questions they have of the points raised by the original hearing panel and the presenting officers.
8. The Chair will inform all parties that they can request an adjournment at any time to take a comfort break or take advice from their representatives.
9. Once all the evidence has been presented and questions answered the Appeal panel will ask all parties to leave the room for a stated period of time so they can deliberate the evidence.

10. All parties will return for the verbal verdict of the Appeal panel. The panel may uphold the original decision or change the outcome to another penalty.

11. This outcome will be sent in writing within 5 working days of the Appeal Hearing. The internal procedures will have been exhausted at this point.

Written response: The Principal HR Adviser will draft the written response for the panel to agree. The response will go out in the Chair of the panel's name.

Feedback paper: The Chair of the panel and the Principal HR Adviser will draft a feedback paper to be sent for discussion at the next Employment Committee. The paper will outline the following:-

- A brief description of the nature of the case, highlighting any complexities;
- A brief outline of the employment law related to the case;
- The relevant HR policies related to the case;
- The reason for upholding or not upholding the original decision;
- Lessons to be learned for both Officers and Members;
- Recommendations for Officers and/ or Members.