

CYNGOR SIR POWYS COUNTY COUNCIL
Disciplinary Policy –
Guidance Framework

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Cyngor Sir Powys County Council Disciplinary Policy – Guidance Framework

Contents

	Page
	Introductory Statement
1	Informal Supervisory Support
2	Formal Disciplinary Procedure
2.1	Suspension Guidelines
2.1.2	Carrying out a suspension meeting
2.1.3	Role of the contact officer
2.2	Investigation Guidelines
2.3	First Formal Meeting
2.3.2	Managers guidance for conducting first formal meeting
2.4	Formal Disciplinary Hearing
2.4.3	Management Report/Hearing Pack
2.4.6	The Disciplinary Hearing
2.5	Possible outcomes of the disciplinary hearing
3	Appealing against disciplinary action
4	Other considerations
App A	Examples of misconduct
App B	Examples of gross misconduct

Cyngor Sir Powys County Council

Disciplinary Policy – Guidance Framework

Introductory Statement

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 **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 the **Formal Disciplinary Procedure**.

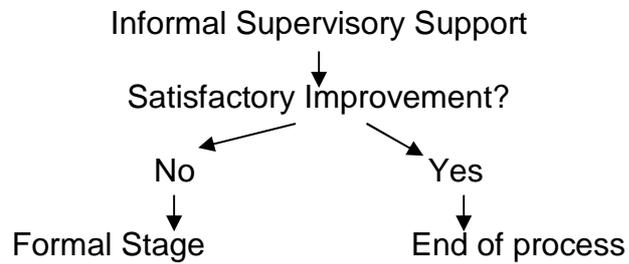
This procedure applies to employees of the Council with the exception of Teachers and Head Teachers, for whom separate procedures have been agreed. Where an employee who is subject to any stages of the disciplinary procedure is also a local trade union representative, their Regional/Full-time Officer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

Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the Council.

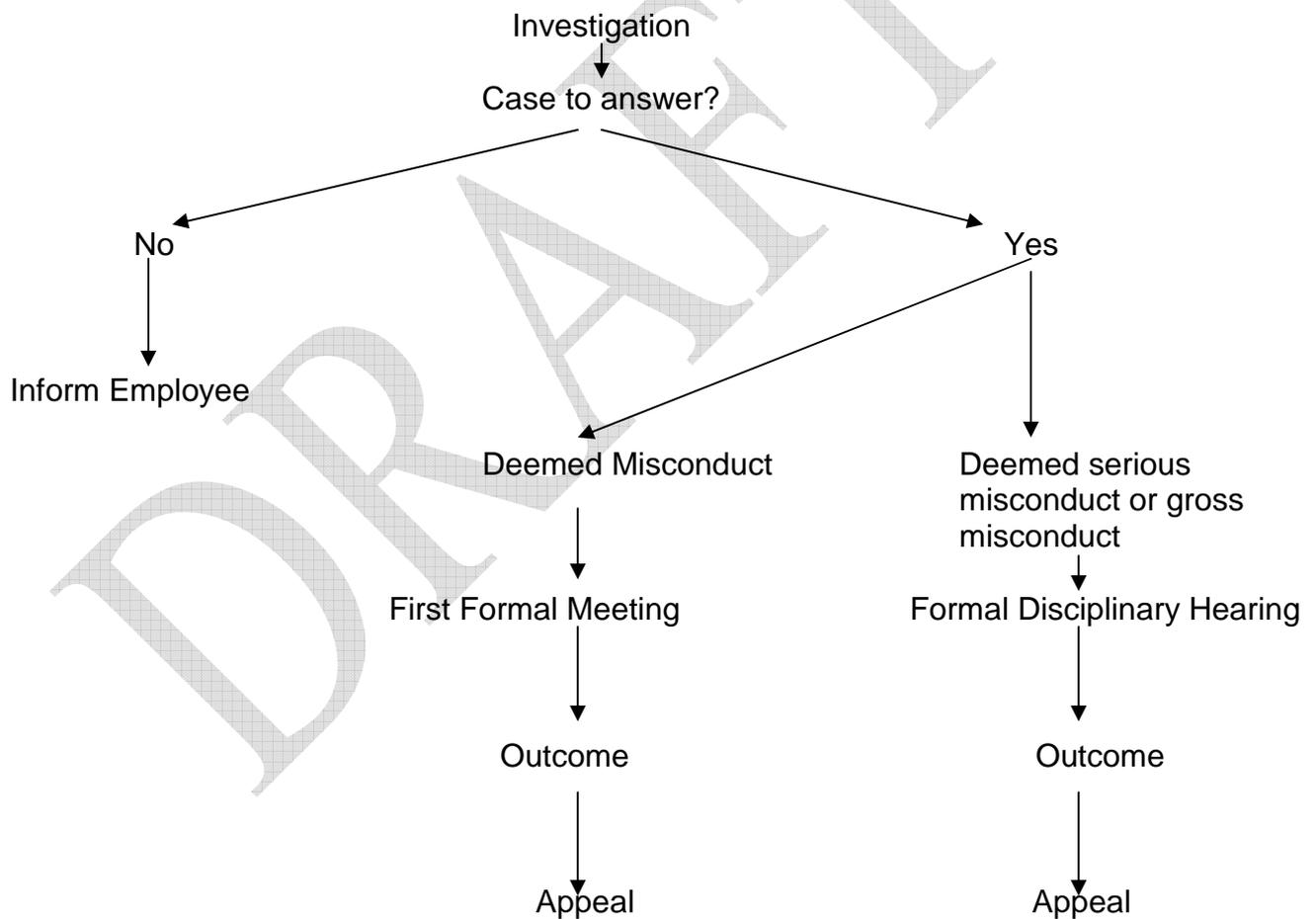
Employees have the right to be accompanied during the formal part of the disciplinary process by a colleague or a recognised trade union official of their choice.

Overall Process Flowchart

Informal Process



Formal Process



End of Powys County Council internal procedures.

1 Informal Supervisory Support

1.1: Managers should meet regularly with employees for Supervision or 1 to 1 meetings in order to manage conduct and performance on an ongoing basis. It may also be necessary to discuss minor incidents of misconduct or unsatisfactory performance at a private, 1 to 1 meeting arranged specifically to discuss those concerns. A pro-forma to help structure such meetings can be found at [LINK](#). Managers should use this opportunity to give constructive feedback about an employees conduct or performance and discuss with them ways of improving and maintaining standards. Managers should consider any relevant points raised by the employee regarding their conduct or performance and consider utilising other policies to allow the problem to be resolved. [\(Link to performance capability and ill health capability policies\)](#)

1.2: 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. [LINK TO LETTER](#) Reference should be made to the Performance Capability policy.

1.3: 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.

1.4: Whilst this is an informal process the employee should be afforded the right to be accompanied at any meeting, especially if there was the potential to become a serious matter by a work place colleague or trade union representative.

2 Formal Disciplinary Procedure

2.0.1: The purpose of the formal procedure is to address cases of misconduct/gross misconduct and/or performance. This can include unsatisfactory performance related to capability or ill health with reference to the appropriate policies. [\(state and link\)](#)

2.0.2: 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 breaches of discipline relates to the abuse of children, the 'child protection procedures will apply' [\(Sign post to relevant policy\)](#)

2.1 Suspension Guidelines

2.1.1: Depending on the nature of the complaint and to enable a full and fair investigation to be carried out 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.
- To ensure the investigation is not impeded

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 \(Link\)](#). 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 \(Link - intranet and flyer\)](#) which may be accessed if required.

South of the County: Christine Turnbull: 01497 821258

North & Centre of the County: Sally Mackenzie: 01691 670505

2.1.2: 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 following bullet points can be used as a script for the meeting):

- Commence the interview by stating the purpose is to suspend the member of staff to investigate allegations made against them.
- Inform the employee they can have someone sit in with them (unconnected to a possible investigation) while the suspension takes place. It would not be appropriate to wait for Union representation but the employee can contact the union to take advice prior to the interview commencing.
- List the reasons for suspension;
- Ask the employee if they believe there are grounds to challenge the suspension. You may need to adjourn to consider these. Two outcomes may be that you decide the suspension remains in place or that restrictions on working may be more appropriate.

- Tell the member of staff they will be suspended on full pay while any investigations take place into the allegations made against them.
- Remind the member of staff that suspension is not a punitive action (punishment), but that it allows an investigation to be carried out without prejudice.
- Remind the member of staff that all terms and conditions remain the same while the suspension is in place. For example, remind staff that any leave booked will remain in place. Inform staff that in no circumstances must they undertake any other work, paid or unpaid for the duration of their suspension for the hours they are contracted for the Council.
- Remind staff they are available to be called for interview at any time during the working day or during Powys office hours, and while appointments may need to be tied into representatives availability they must endeavour to be available during office hours while the suspension is in place. If they wish to be unavailable to be called at any time they must book leave.
- Remind staff if they fall sick during their suspension they will fall under the authorities absence management policy and must submit sickness certification in the usual way.
- Remind the employee they are not to contact any person working for the authority, or visit Council premises unless expressly invited by their managers or investigating officers. You should ask the employee if this restriction may cause them difficulty in their personal life and consider whether you might need to accommodate lifting this restriction for particular building i.e. Library, Leisure Centre, School – if these are not the places of work of the individual, or they are married or neighbours of PCC employees unconnected with the investigation. They should be informed we need to know who these people are so we can ensure they are briefed about the circumstances they are allowed contact i.e. not to discuss any PCC business or the details of the investigation. This is to protect the employee as much as the robustness of the investigation. The restriction safeguards the employee from claims of possible intimidation or collusion during the formal process.
- Notify them who their contact officer (see 2.1.3 for information relating to the role of the contact officer) will be for the duration of the suspension and give them contact details. Any contact to be made must be through their contact officer and representative.
- Staff who do not adhere to the suspension principles may be subject to further disciplinary action.
- All identification must be handed in, including badges, protective clothing, mobile phones or PDA's, and keys to council premises. Also any vehicles must remain on Council premises. These will be returned once the suspension is lifted, if appropriate.

- Staff must be reminded they will be interviewed formally by the officers nominated to investigate this case. Once the investigation is complete disciplinary action may result.
- Advise staff they may wish to engage a representative to act on their behalf. The representative may then contact the staff member's contact officer to find out who the investigating officers are if they wish to make contact. It is worth noting which Union the member of staff is with and making contact with the Union to inform them one of their members has been suspended.
- Double-check contact details for the member of staff. Address and phone numbers in particular. Check any leave they may have booked to avoid re-arranging appointments. Check any work appointments they have in the next few weeks that may need to be re-arranged.
- The above information must be given in writing with a copy of the council's disciplinary policy. [\(link to letter\)](#)
- The employee should be informed that the suspension is reviewed the last Thursday of every month or within 4 weeks by the Head of HR, whichever is soonest. If the employee wishes the Head of HR to consider anything other than the details provided by the investigating team they should write to the Head of HR with details that they feel should be considered as part of their suspension review. This might include details of reasonable restrictions they feel could be put in place i.e. suggestions for another workplace/ role.
- Notify the member of staff there is/will be a counselling leaflet enclosed with their letter to offer support at this time.

Next Steps

The employee must be given 5 minutes to collect any personal effects from their desks/ vehicles (accompanied) and escorted from the premises.

Check the employee feels able to get home unassisted. If possible arrangements may need to be made to drive the employee home.

Contact the Contact Officer to confirm the suspension took place and give them the employee's contact details, suggesting they make contact the same day. Email the contact officer a copy of the contact officer briefing.

Inform the relevant Trade Union one of their members has been suspended.

Inform the Head of HR, Communications Team and Portfolio Holder for HR and the Portfolio Holder for the relevant service that an employee has been suspended in the Service Area. Do not give any further detail than this.

Inform the direct colleagues of the employee that they have been suspended. Do not inform them of the reason but inform them that this is to allow a formal

investigation to take place and that they are not to contact the employee concerned. There then needs to be a briefing for those who may receive contact for the suspended employee giving a reason for their absence i.e. unforeseen circumstances that will require them to be out of the office for the next few weeks/ couple of months. There may need to be a more detailed briefing for the suspended employees team/ colleagues who may be required to be interviewed in any investigation. They should not discuss the details of the investigation between them and should be given a manager to discuss any concerns with and given details of the counselling service as they may suffer a reaction to a member of their team being suspended.

2.1.3: Role of the Contact Officer

The role of the contact officer is primarily to provide contact support to suspended member(s) of staff. In the main this will involve taking telephone calls from the suspended employee(s), requesting information on behalf of the employee, contacting the investigating officers or the suspended staff members' manager and passing information back to the suspended employee(s).

The member of staff will be provided with the contact officer's office number and work mobile, if appropriate, when suspended.

The contact officer will be given contact details of the members of staff (S)he is to liaise with 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 member of staff during the first couple of days of suspension and at least every week or so. The purpose of this contact is to check if everything is alright, to find out if the member of staff requires any further support or assistance with anything, to update the suspended member of staff with any developments they are authorised to receive. All communication should be recorded on a Communication sheet [\(LINK\)](#) including where messages have been left; whether they returned the call; if no response received etc.

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

- Are they managing in the circumstances?
- Is there anything they need from work the contact officer can arrange?
- Do they have support from family and friends?
- Is there anything that they need from the Contact Officer?
- If Counselling or Occupational Health are required/ involved?

Selecting a contact officer

Contact officers are selected by the manager of the member of staff in agreement with HR, for their objectivity to the investigation. Any contact officer approached to act on behalf of the authority who has prior knowledge

of the investigation circumstances, knows the suspended member of staff or any of their family personally or feels a conflict of interest may exist should notify HR immediately, or refuse to undertake the role – stating the reasons why.

Contact officers are usually selected within 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 member of staff.

Confidentiality

All information passed to the contact officer is confidential and should only be shared with the manager of the suspended staff, their union representative – if appropriate, and the investigating officers. Any contact officer found to be discussing confidential or personal aspects of any investigation may be subject to disciplinary action.

Leave or absences

If during the investigation the contact officer is unavailable for a period of time, for leave, sickness absence or other personal reasons it is their responsibility to let the manager of the suspended member of staff know so that an alternative contact officer can be provided for the interim.

Communication

The contact officer will be informed of the lead investigator and HR lead for the investigation and given their contact details.

The HR lead for the investigation will keep the contact officer apprised of any key information that they may require in order to assist the suspended employee. This is usually information around dates for interviews, and progress with the investigation i.e. any reasons for delays. This enables the contact officer to be aware of times when the suspended employee may require their support. The contact officer will not be informed of the reason for the suspension or any details of the investigation by the investigating officers. Occasionally the suspended employee will want to discuss this detail with their contact officer. Contact officers are minded that any detail shared is confidential.

Counselling & Support

All suspended employees are reminded about the Council's confidential counselling service and may be referred to Occupational Health depending on how they cope with the suspension.

Some suspended employees rely on their contact officer for emotional support, when they become frustrated with the process and/or to challenge the process itself. We recognise that this can have an impact on contact officers. Contact officers may also wish to consider contacting the counselling service if they feel they are affected by this role and can also contact a Senior HR Adviser for support in how to deal with any effects they are feeling as a result of this role.

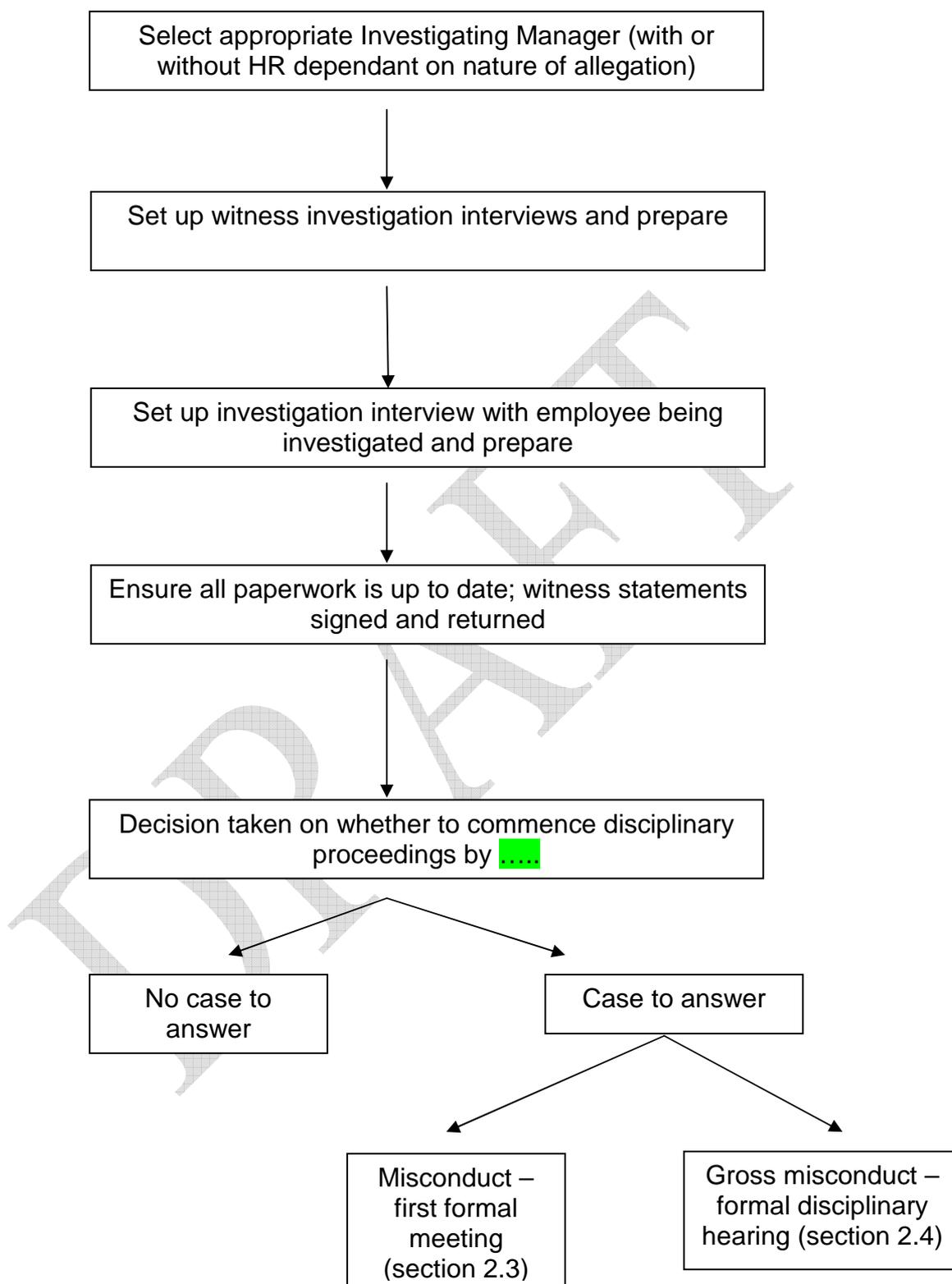
Experience & Skills Development

Being a point of contact for a suspended employee can be a rewarding role and many employees who undertake this role feel they have developed a new understanding of the formal disciplinary process that they can use in their own teams.

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2.2: Investigation Guidelines

2.2.1: The investigation should follow these guidelines:



2.2.2: It is important for employers to handle disciplinary matters professionally, objectively and fairly. Where disciplinary proceedings lead to dismissal, the dismissed employee may be able to bring a claim for unfair dismissal to an employment tribunal. In these circumstances, if it is to succeed in defending the claim, the employer must be able to show not only that the gross misconduct in question was sufficient to justify the penalty of dismissal, but also that a fair procedure was followed. A fair investigation provides the backbone of a fair conduct dismissal.

2.2.3: The investigation should be carried out by the employee's line manager (unless they would need to be interviewed as a witness – then a suitable alternative manager should be found). Consideration should be given to who may eventually hear the case should it reach the hearing stage, to ensure they also remain excluded during the investigation period. Generally HR will be involved only in cases of potential gross misconduct.

2.2.4: Whenever an employer becomes aware that there has been, or may have been, misconduct on the part of a particular employee, it will be necessary for it to conduct a full investigation into the background and surrounding circumstances to gather all the relevant facts.

The investigation might involve:

- checking if the employee has any previous disciplinary warnings on file, and whether or not these warnings are still active;
- reviewing the employee's written appraisals to check whether or not a similar problem has been discussed at an appraisal review;
- talking to other employees who may have relevant information;
- checking telephone records and/or computer records (subject to the laws on interception of communications and the employer's own policies on this matter);
- reviewing any other relevant documentation; and
- holding an investigatory interview with the employee to establish the facts.

2.2.5: **Setting up a disciplinary interviews** - Setting up a disciplinary interviews properly is as important as conducting it fairly. The manager should:

- write to the employee and any witnesses (see below), giving him or her reasonable notice of the date and time of the interview;
- state that the interview will be held under the Council's disciplinary procedure;
- provide written details of the allegations against the employee;
- inform the employee of the right to be accompanied at the interview by a work place colleague or trade union representative of his or her choice;

2.2.6: **The importance of thorough preparation** - A disciplinary interview requires thorough preparation if its aims are to be met and a positive outcome achieved. If the manager who is to conduct the interview carefully plans an explanation of the disciplinary issue, it is much more likely that the employee

will understand how and why his or her conduct is unacceptable. The interview also needs to have some structure, although this should be flexible. Prior to the interview, the manager who is to conduct the interview should therefore:

- review all the known facts
- review all relevant documents, for example previous warnings that are still active, previous appraisal review forms that contain pertinent information, telephone or computer records, customer complaints; expense claim forms and examples of work containing errors; etc.
- ensure that the dates and times of incidents are clearly listed - for example, the occasions when an employee arrived late for work should be itemised with clear details of by how much time the employee was late;
- talk with your HR advisor about the issue, how it should be handled and the possible outcomes;
- plan a list of key questions that will be put to the employee, and think carefully about how they should be phrased and
- consider if the employee is likely to react in a negative or defensive way and, if so, what the best approach to handling such a reaction will be.

2.2.7: Interviewing witnesses – Generally, to allow all evidence and information to be gathered before speaking with the employee/s being investigated, it is appropriate to interview other employees who may have relevant information about the situation. The witness should be interviewed in private to establish what he or she knows. The relevance and validity of the information obtained must then be considered.

When interviewing a witness, the interviewer should have previously invited the individual using the template letter found at [\(Link to letter\)](#):

- reassure him or her that the purpose of the interview is to gather information;
- explain that his or her assistance is important;
- seek to uncover every aspect of the "story";
- focus on facts, not opinions;
- refrain from drawing over-hasty conclusions
- state confidentially.

The interviewer should not be afraid to ask if the employee is certain about what he or she claims to have seen or heard. Witnesses can be mistaken, and there are always "two sides to every story".

The interviewer should also take care to separate facts from assumptions and opinions. It is very easy for people to jump to conclusions based on what they have seen or heard, and then assume that these conclusions represent facts. For example, it may be a fact that a particular employee fell down a flight of steps, but only opinion that this was because he or she was under the influence of alcohol at the time.

As well as considering the possibility that a witness may have been mistaken about what he or she claims to have seen or heard, the manager conducting the investigation should consider if the witness's version of events is likely to be accurate and reliable. The witness might, for example:

- be exaggerating;
- be basing the evidence on opinion or assumption, rather than on fact;
- have a personal grudge against the accused employee; or
- be allowing emotion to get in the way of rationality.

2.2.8: Interviewing the employee being investigated - As part of the investigation, it will be necessary for the employer to interview the employee themselves. To ensure that this is done effectively and fairly, the interviewing manager should:

- ensure the employee is invited in the correct manner to the meeting ([link to letter](#)) and afforded the opportunity to be accompanied at the meeting by a work place colleague or Trade Union representative
- prepare a list of relevant questions in advance of the interview;
- stick to facts and avoid making assumptions;
- point out and question any discrepancies;
- not be afraid to challenge what the employee is saying;
- be careful not to express disapproval or pass judgment on the employee;
- make sure that the whole story is uncovered;
- be very careful not to allow the interview to turn into a disciplinary hearing
- state confidentiality.

An investigatory interview is not the same as a disciplinary hearing. Essentially, the purpose of an investigatory interview is to establish what happened, while the purpose of a disciplinary hearing is to decide what to do about it.

It is important that the person conducting an investigatory interview with an employee suspected of misconduct/gross misconduct does not allow the interview to become a disciplinary hearing. The investigatory interview should be restricted to gathering the facts about what happened and remain impartial.

2.2.9: Witness statements - The manager conducting the investigation should seek to obtain written statements from all employees who are interviewed. The statements should be signed and dated. There is a pro forma ([Link](#)) which provides an introductory text to be read out before the interview and then space to type up the statement in a consistent format.

2.4.10: Permitting a companion at a disciplinary interview - All workers have the right in law to bring a "companion" to a formal disciplinary interview (and to any part of the disciplinary process). The "companion" is defined in law as a work place colleague or an accredited trade union representative. This means that there is no right, unless the employer's own procedures state otherwise, for an employee to bring along a friend, a relative or a solicitor to

the interview - unless the individual in question also happens to be an employee of the Council or a trade union representative.

The work place colleague should not have any connection with the situation being investigated. An employee has the right to be accompanied by a trade union representative irrespective of whether or not the representative is an employee of the Council. It is also irrelevant whether or not the employee is a member of the union, although it is unlikely in practice that a union would be willing to represent someone who was not one of its members.

It is important to note that:

- the employee has the right to choose his or her own companion;
- it is up to the employee, and not the employer, to ask the chosen person if he or she is willing to act as companion;
- no employee is obliged to act as another's companion;
- ensure companion knows that details discussed are strictly confidential
- if the companion is an employee of the organisation, he or she must be paid normally during the time spent accompanying the employee; and
- it is good practice to allow paid time off for the companion to assist the employee to prepare for the hearing, and to confer with the employee before and afterwards.

The chosen companion may, depending on the employee's wishes, either represent the employee at the interview or simply act as moral support. The role that the companion plays at the interview is therefore largely up to the employee.

When conducting the interview, the employer must:

- allow the companion to put forward the employee's case if the employee so wishes;
- allow the employee to confer with the companion during the hearing;
- permit the companion to respond on the employee's behalf to any views expressed at the interview; and
- allow the companion to sum up the employee's case.

However, the companion does not have the right to answer questions put to the employee.

2.2.11: Confidentiality - Statements provided by witnesses should be treated as confidential documents. It should be made clear in the interviews that the discussions had should not be divulged outside of the meeting. However, it is not possible to give a witness an absolute guarantee of confidentiality especially as if the case moves to a disciplinary hearing the employee accused of the misconduct will have access to read the statement provided.

2.2.12: Decision to commence disciplinary proceedings - Following the investigation, consideration should be made as to whether or not disciplinary proceedings are appropriate. view the matter objectively;

The investigating manager should submit the evidence and make recommendations to HR or **(the person)** who will decide whether or not a disciplinary proceedings should be instigated. This will be done in the form of an Investigating Officers Outcome Report, the pro forma for this report can be found at **(LINK)**. Whilst writing their report the Investigating Manager should

- view the matter objectively;
- take into account all the evidence, including the employee's version of events or explanation of what happened;
- decide the matter by applying the balance of probabilities principle;
- take a reasoned decision on whether or not to instigate disciplinary proceedings against the employee.

The outcome of the investigation could be:

1. No case to answer
2. Case to answer for misconduct
3. Case to answer for gross misconduct

If the decision is point 1 then the employee is written to and this outcome confirmed to them.

If the decision is point two the recommendation would be that the employee attends a first formal meeting (See 2.3 for meeting preparation & guidance),

If the decision is point three the recommendation would be that the employee attends a full disciplinary hearing. (See 2.4 for meeting preparation & guidance),

2.2.13: Communicating the outcome of the proceedings to the employee - The employee should be informed of the outcome of the disciplinary investigation as soon as is reasonably possible after the conclusion of the disciplinary interview. It would not be fair to keep the employee waiting any longer than necessary. The outcome should then be clearly communicated in writing, with the reason for the decision stated and if appropriate information regarding next steps **(Link to letters – there are two)**

2.2.14: Sickness absence during investigation – If the employee being investigated become absent due to sickness during the investigation then the Powys County Council Sickness Absence Framework should be followed and the employee supported through out that period.

When/if referred to Occupational Health it is acceptable for a manager to ask for Occupational Health's assessment on the individuals ability to attend investigation meetings or hearings.

If a witness is absent through sickness then it is appropriate to take advice on their potential return and wait until such time as they are available to meet. It

may be that in some situations that individual is not interviewed although if they are integral to the case then it would be advisable to seek advice regarding their ability to attend from their line manager or occupational health.

2.2.15: Absence with no contact from the employee - 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.

2.2.16: Raising a grievance during the investigation – If an employee involved in the disciplinary process raises a grievance that is connected to the disciplinary investigation then the disciplinary investigation should be put on hold until the grievance has been finalised. The grievance should be dealt with in line with the Powys County Councils Grievance procedure and as quickly as possible to avoid unnecessary delay to the disciplinary process.

If a grievance is raised that is unconnected with the disciplinary investigation then the two can be investigated at the same time.

******* Further guidance for conducting disciplinary interviews *******

Disciplinary interviews represent an important aspect of the Councils disciplinary procedure. They are the forum at which the employee whose conduct is under investigation and the investigating manager meet on a formal basis. A disciplinary interview provides the opportunity for the employee and manager to engage in a full and frank two-way discussion about the matter under review, including the evidence that has been gathered prior to the meeting.

Importantly, the interview allows the employee to put forward his or her side of the story and/or provide an explanation. The outcome of the meeting should be a way forward that is acceptable to both employer and employee about the means of achieving an improvement in the individual's performance or conduct, or of ensuring that there is no repeat of the misconduct/gross misconduct. However, the interview may also lead to a disciplinary penalty up to and including dismissal.

Successful disciplinary interviewing

Disciplinary interviewing is never easy, and needs considerable skill and patience. It requires the manager conducting the interview to enter into reasoned discussions with the employee about:

- the problem;
- why it is a problem;
- the effect that the employee's conduct is having on the organisation, colleagues or customers;
- the improvement or change that is required;
- any help or support required from the manager and the organisation.

It is essential for the person conducting the interview to provide clear information to the employee about the perceived problem and give specific examples of the conduct or behaviour that is viewed as inappropriate. This will help the employee to understand exactly what it is that he or she is doing wrong and why the conduct or behaviour in question is unacceptable.

General principles of disciplinary interviewing

Throughout a disciplinary interview, the person conducting it should bear in mind that one of the key aims of the interview is to give the employee a full and fair hearing. He or she should therefore:

- take time at the start of the interview to establish rapport and to make the employee feel as comfortable as possible;
- confirm the purpose of the interview and how it will be conducted;
- explain that the aim of the interview is to establish the facts and seek a resolution to the problem;
- list the issues that will be discussed;
- put all the evidence of misconduct to the employee so that he or she has the opportunity to respond fully;
- explain the problem objectively;
- give specific examples of the unacceptable conduct or behaviour;
- try to obtain the employee's agreement that the examples discussed represent unacceptable conduct.

To increase the likelihood of a successful outcome, the person conducting the disciplinary interview should:

- approach the interview with an open mind;
- be patient and not rush the interview;
- try to avoid getting into an argument with the employee;
- avoid raising his or her voice or getting emotional;
- refrain from drawing hasty conclusions;

Disciplinary issues should always be discussed in private. It would, for example, be inherently unfair - and probably very embarrassing for the employee - to speak to him or her in an open-plan area about poor timekeeping or work errors. Such behaviour would also be likely to demotivate

the employee's colleagues, who might conclude that they might be subjected to similarly inappropriate treatment in the future.

Questioning techniques

A successful outcome to a disciplinary interview is more likely to be achieved if the person conducting the interview gives consideration to the type of questions that he or she will ask the employee at the interview, and to the way the questions should be phrased.

Questions should be mainly open questions - those beginning with the words "what", "which", "why", "where", "when", "who" and "how". This list of words can also be used as a checklist to help the interviewer prepare and think through the various issues that need to be raised.

In contrast to open questions, closed questions invite only a "yes" or a "no" answer. They are not, therefore, particularly useful, other than to establish specific facts. Asking too many closed questions is likely to make the interview sound like a one-sided interrogation.

For example, instead of asking: "Did you check the safety catch on the machine?", the interviewer would be better advised to ask: "How did you go about checking safety before you started up the machine?".

The interviewer should avoid "leading" questions - those that indicate the nature of the answer that is expected, for example: "Surely, you don't think that it's acceptable to turn up half an hour late?".

Probing questions, which ask for more information on the same topic, are very useful. The following are examples of probing questions:

- Can you tell me more about what happened?
- What exactly was it that Andrew said that upset you?
- Can you give me an example?
- Can you elaborate on that?
- What exactly do you find difficult about the work?

Good question openers include "tell me more about ...", "how do you feel about ...?", "how do you cope with ...?" and "why do you think ...?".

Listening

The skill of listening is more complex than most people realise. In addition to hearing what the employee is saying, it also entails understanding and taking on board the underlying message, and indicating that this is happening. This is known as "active listening".

This means that the interviewer needs to strive not only to take in the meaning of the words that are spoken, but also to appreciate the feeling and motivation behind them. The interviewer must also provide visual and verbal indications that what is being said is being absorbed, and should try to identify with what

the employee is saying rather than viewing it exclusively from his or her own perspective. In general, the interviewer should:

- be willing to listen;
- keep an open mind;
- banish any preconceptions or assumptions;
- be patient;
- avoid making quick judgments; and
- show that he or she is listening through verbal and non-verbal feedback such as eye contact, nodding and saying, for example, "I see".

It is helpful if the interviewer occasionally repeats or summarises something that the employee has said, for example: "So, you're saying that you're unhappy with the new procedure - have I understood you correctly?". This enables the interviewer to check understanding of what the employee is saying, while showing that he or she is listening. It is also a useful technique for moving the discussion forward.

2.3 First Formal Meeting

2.3.1: Where, following the investigation, it is felt that there is a case to answer for misconduct then it may be deemed more appropriate for the employee to attend a First Formal meeting instead of a full Disciplinary Hearing.

2.3.2: Managers Guidance for Conducting First Formal Meeting

- The purpose of this meeting is to formally address an allegation of misconduct following an investigation. The meeting should offer an opportunity for the manager and employee to review the evidence and for the employee to respond to the managers concerns and inform the manager of any other relevant detail they feel should be taken into consideration.
- Managers should write to the employee using the letter found at [LINK](#) to invite them to the formal meeting. The letter should detail the reason for the meeting and be accompanied with copies of the documentation to be discussed. The employee is entitled to a work based colleague or Trade Union representation at the meeting.
- Documentation required for the meeting would include:
 - Copies of the employees statement
 - Copies of any witness statements
 - Documents used / gathered during the investigation which provide evidence/ mitigation for the case (e.g. web usage reports; CCTV images; incomplete or falsified documentation relating to their role etc)
 - The letter outlining the outcome of the investigation.
- The meeting will be chaired by the Line Manager assisted by joint decision-maker in the form of a HR Adviser.
- The format of the meeting will be as follows:
 - Introductions and confirmation of the reason for the meeting with the chair outlining the procedure to be followed;
 - Line Manager to summarise the documentation; detailing the concerns and the evidence gathered, why it is not acceptable conduct; its impact; with a confirmation of how the decision of alleged misconduct was arrived at.
 - The employee to respond to the documents and evidence, including giving any further details that have not already been discussed that they feel the pertinent to their case;
 - Adjournment for line manager to make a decision;
 - Reconvene to inform of the line managers decision, or decision to be conveyed in writing.
- If it is felt that the employees conduct is unacceptable and therefore they find the alleged misconduct as proven the panel are able to award a first written warning to the employee. This warning is based on the employee conduct in work being unacceptable.

- This warning will remain on their personnel file for a period of 12 months. Employees have the right to appeal, in writing, to their Head of Service within 10 working days of the hearing.
- If the manager feels given everything they have heard there is mitigation for the employees conduct they may decide not to award a sanction but record the expectation for the employee to improve/not do again.
- If appropriate, for either outcome, a further review plan with timescales should also be set at this meeting.
- In the outcome letter to the employee it should be made clear that should the level of unsatisfactory conduct continue or further examples of it be actioned then a formal hearing may be convened to consider a further formal sanction up to and including dismissal.
- The outcome letter detailing discussions and agreements from the meeting will be sent to the employee within ten working days of the meeting and held on their personal file.

Review meeting – Should be held within timescales agreed during the first formal meeting. This review should provide an update and indicate the next course of action. The outcomes could be:

- No further action to be taken;
- Continue to monitor until a further review date;
- Progress to the formal hearing stage, as outlined in 2.4

2.4: Formal Disciplinary Hearing

2.4.1: This Hearing process is normally designed to follow on from the First Formal Meeting outlined in the previous section (where required). However, if the conduct is deemed serious enough or gross misconduct then it may be appropriate for the manager to progress to a Formal Disciplinary Hearing without first following the First Formal Meeting process.

2.4.2: The employee will have been written to previously following the outcome of the investigation and have been notified that a hearing would be convened. When the hearing date is set the investigating manager must write to the employee once more, confirming the hearing date, time, venue, allegation and entitlement to have a representative. Accompanying this letter should also be the "Hearing Pack" consisting of a management report, a summing up of the case on behalf of the Council and any accompanying evidence/documentation that supports the case. [\(Link to invite letters, mgt report pro forma.\)](#)

Management Report/Hearing Pack

2.4.3: The "Hearing Pack" consists of a Management Report summarising the case and linking to information held in its Appendices. This document is essentially the same as the outcome report but potentially could contain more information. Its purpose is to fully demonstrate why the employee is accused of the act of gross misconduct and also provide a balanced consideration of the employee's response gained from the investigation. The Appendices may consist of any documentation from the investigation and could include (as an example - list not exhaustive).

- Job Description
- Signed interview notes from all those interviewed
- Visual or sound evidence
- Examples of work place talks given
- Training provided
- Examples of uncompleted forms
- Examples of incorrectly completed paperwork
- Examples of falsified timesheets
- Internet usage
- Emails
- Phone records
- Customers complaints
- Newspaper cuttings

2.4.4: Managers may use the following proforma guidelines to construct the Management Report. Each heading is split into smaller paragraphs underneath with sequential number (e.g: 1.1; 1.2 and 1.3 to cover the Introduction). Use Mr ... and Mrs.... when referring to employee. Link throughout Management Report to Appendices (e.g. *For notes from the investigation interview on 15th July please see Appendix 3b*)

2.4.5: Each pack requires a Front Cover [\(LINK\)](#) and a Contents Page [\(LINK\)](#) (pack will need to be paginated as part of the process). Below is an example of the contents of a typical hearing pack.

Contents	Description	Page
Invite Letter	Letter to invite TBL to Hearing dated 25th June	1
Management Report	Management Report concerning the hearing	2
Appendix 1	Job Description – Receptionist	5
Appendix 2a	Investigation statement from KP	7
Appendix 2b	Investigation statement from SR	11
Appendix 2c	Investigation statement from HC	17
Appendix 4	Internet usage records period 1.1.13 to 31.5.2013	21
Appendix 5	PCC Disciplinary Framework	52

Other information

- Packs to be sent out to those identified in the following bullet point to be received no later than 15 working days before the hearing date (include 2 days for postage);
- Copy for the employee, copy for each panel member (2); copy each for the presenting manager and HR Adviser; copy for TU rep;
- Packages internal to the Authority should carry the “Do not scan” sticker to prevent packs being scanned and sent electronically;
- Employees must confirm their attendance at the hearing or ask for a postponement no later than 5 working days before the hearing. Note: Usually only one postponement will be granted;
- Employees must send in any papers they wish the panel to consider to be received no later than 5 working days before the hearing. This time frame also applies to the invitation of witness from both the Investigating Officers and the employee.

The Disciplinary Hearing

2.4.6: The purpose 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).

2.4.7: Where the employee is unable to attend a disciplinary hearing and provides a genuine reason (e.g. medical; compassionate leave; pre-planned annual leave) for failing to attend, the hearing will be adjourned to another day. The Council will comply with 2.4.5, bullet 1, above in respect of giving notice of the rearranged hearing. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's representative (work place colleague or trade union representative) may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

2.4.8: The employee's chosen representative has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The representative may also confer with the employee during the hearing. However, there is no requirement for the Council to permit the representative to answer questions on behalf of the employee, or to address the hearing where the employee indicates that he/she does not wish this.

2.4.9: The hearing panel will be chaired by a Professional Lead. The Chair will be advised by a representative from HR. Also in attendance at the hearing will be the Investigating Manager, who is also advised by a HR representative.

2.4.10: The format of the hearing is as follows:

- Introductions and confirmation of the reason for the hearing with the chair outlining the procedure to be followed;
- Presentation of the information submitted by the Investigating Manager, including the calling of any witnesses (where appropriate) and their cross examination by all parties present.
- The employee can then ask the Investigating Manager questions based on their presentation.
- The panel then also question the investigating Manager based on their presentation.
- Employee presents their submission, including the calling of any witnesses (where appropriate) and their cross examination by all parties present.
- The Investigating Manager can then ask the employee questions based on their presentation.
- The panel then also question the employee based on their presentation.
- Summing up from the Investigating Manager;
- Summing up from the employee;
- Adjournment for panel to make a decision (timeframe to be set by Chair dependant on circumstances);
- Reconvene to inform employee verbally of the panel's decision, or decision to be conveyed in writing from the Chair of the panel within 5 working days of the hearing
- The outcome delivery will inform the employee of their right to appeal.

2.4.11: It should be noted that the Council may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (for example for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

2.5 Possible outcomes of the disciplinary hearing

2.5.1: Where, following a disciplinary hearing, the Council establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

2.5.2: **No disciplinary action** taken against the employee. This will be confirmed in writing.

2.5.3: **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.

2.5.4: **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.

2.5.5: **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 (only if a suitable alternative post is available), 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.

2.5.6: **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.

2.5.7: **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.

2.5.8: All outcomes and sanctions will be confirmed and explained in writing within 5 working days of the disciplinary hearing.

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3 Appealing against Disciplinary Action

3.1: 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.

3.2: To lodge an appeal, the employee must write, stating the reason for the appeal, to the Head of Professional Services & Commissioning within 10 working days from the date of the disciplinary hearing.

3.3: 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;
- new evidence subsequently coming to light which would have affected the decision.

This is not an exhaustive or prescriptive list.

3.4: 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.

3.5: 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.

3.6: An appeal against disciplinary decision will be heard by a **??WHO WOULD HEAR AN APPEAL??** together with a representative from HR, neither of whom has been involved in the case up to this point. Guidance for those conducting an appeal panel is available at **(APPENDIX C)**.

3.7: 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.

3.8: 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.

3.9: 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.

3.10: 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.

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

4: Other Considerations

4.1: If an employee who is an accredited representative of a trade union recognised by the Council for collective bargaining purposes is suspected of having committed a disciplinary offence, the Council will take no action under this procedure (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the Council has had a chance to discuss the matter, with the prior agreement of the employee, with a full-time official of that trade union.

4.2: This procedure will be periodically reviewed. Any amendment to it will be notified to employees in writing by the Council's HR manager and such written advice will inform employees as to the date when any amendment comes into effect. This may be by means of the Council's intranet or staff newsletter.

Appendix A – Examples of Misconduct and 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.
- Serious breach of the Councils ICT & DP related policies.
- 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.

- Bringing the Council into disrepute
- Participating in secondary paid employment at the same time as their contracted hours with the Council.
- 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.

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Appendix C – Appeals protocol

Prior to the Hearing: Agree a Chair for the Panel. Set the room, date and time and inform all relevant parties of the meeting.

Attendees should include:

- Appellant
- Appeal panel
- Original disciplinary panel
- Investigating Officers
- Any witnesses (if deemed appropriate)
- Note taker to record the meeting

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 regarding **STATE REASON FOR APPEAL**.

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 HR Adviser and then all parties present.

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).

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.

The Chair of the appeal panel will then ask any questions they have of the employee's case.

The original hearing panel and presenting officers will be asked if they have any further comments to make on the case presented.

The employee will be given an opportunity to ask questions of the original hearing panel and the presenting officers.

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.

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.

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.

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.

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 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.

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