



Disciplinary Policy & Procedure

May 2009

Managers' Quick Reference Guide

Purpose of Policy and Procedure

The procedure provides a framework for managing misconduct. Misconduct is a breach of council rules and may attract a range of disciplinary sanctions up to and including dismissal.

Informal and Formal Resolution: Minor infringements of rules and standards are best dealt with by informal advice and guidance, coaching and counselling. Every effort should be made to resolve issues through the normal day to day supervisory processes before moving to the formal procedure unless the misconduct is serious and warrants formal action.

Role of the Manager: The manager's role is to implement the procedures fairly and consistently. The authority to take action varies at the different management levels.

Role of Human Resources and Legal Services: Human Resources are available to give advice and support and will attend all meetings where dismissal is a possible outcome and appeal hearings.

Employees Covered by the Procedure: A significant part of the workforce is covered. Exceptions include teaching staff and non-school based staff where there is a delegated budget. (Paragraph Reference 1.5).

Investigations: Investigations will normally be undertaken by the employee's manager. However in more serious cases or where the facts are not clearly established an investigator may be appointed to investigate the allegations and if necessary to present the case at any formal hearing. (Paragraph Reference 4.2)

Deciding to Hear a Case: The Hearing Manager decides based on the recommendation and supporting information in the investigator's report.

Suspension: Suspension is available to managers where it is clearly inappropriate for the employee to remain at work. (Paragraph Reference 2.12)

Sanctions: The seriousness of the misconduct will determine the level of sanction. (Paragraph Reference 2.2)

Right to be Represented: All employees have a right to be represented by a Trade Union representative or work place colleague (Paragraph Reference 1.11)

Right of Appeal: Employees have a right of appeal against disciplinary sanctions.

Timescales: Timescales are clearly prescribed in the procedure. (Paragraph Reference 1.10)

Deferring Meetings/ Hearings: Meetings/hearings may be deferred dependent on individual circumstances and/or reasons for an employee's request. (Paragraph Reference 2.4)

Records of meetings: A written record must be made for all meetings and hearings. (Paragraph Reference 2.6)

Table of Contents

- 1.1 How to Use the Code 5
- Part 1 The Policy 6
 - 1.1 Aims and Objectives 6
 - 1.2 Legal Context 6
 - 1.3 Adverse Impact 6
 - 1.4 Contract of Employment..... 6
 - 1.5 Scope..... 6
 - 1.6 Key Principles 7
 - 1.7 Authority to Take Disciplinary Action..... 8
 - 1.8 Role of Managers, Employees and Human Resources..... 9
 - 1.9 Links to Other Policies..... 10
 - 1.10 Timescales 11
 - 1.11 Right to Representation/Accompaniment 11
 - 1.12 Monitoring and Review 12
 - 1.13 Interpretation of Policy and Procedure 12
- Part 2 About the Procedure 13
 - 2.1 Disciplinary Rules - Misconduct 13
 - 2.2 Disciplinary Sanctions 13
 - 2.3 ‘Live’ Warnings and Sanctions 14
 - 2.4 Deferring Disciplinary Action 15
 - 2.5 Contractual Notice..... 16
 - 2.6 Confidentiality..... 16
 - 2.7 Record Retention 17
 - 2.8 Correspondence..... 17
 - 2.9 Recording Interviews, Meetings and Hearings..... 17
 - 2.10 Action Involving Trade Union Representatives..... 18
 - 2.11 Criminal Offences..... 18
 - 2.12 Suspension 19
 - 2.13 Qualifications and Compliance Issues 21
 - 2.14 Temporary Employees 21
 - 2.15 Return to Work Allowed..... 21
- Part 3 Informal Action Procedure..... 22
 - 3.1 What is Informal Action and Why Use it? 22
 - 3.2 Taking Informal Action..... 22
 - 3.3 Documentation and Future Action 22

3.4	Progressing to Formal Action	23
3.5	Link to Supervision and Representation.....	23
3.5	Right of Appeal.....	23
Part 4	Formal Action Procedure.....	24
4.1	Allegations.....	24
4.2	Investigation	24
4.3	Carrying Out an Investigation	25
4.4	Investigation Report	26
4.5	Convening the Disciplinary Hearing	27
4.6	Dealing with Confidential Information.....	28
4.7	Disciplinary Hearing	28
4.8	Decision	29
4.9	Dismissal Approval process	30
4.10	Right of Appeal.....	30
4.11	Appeal Hearing	33
4.12	Return to Work Allowed.....	34
Part 5	Appendices	35
	Appendix 1: Examples of Gross Misconduct.....	35
	Appendix 2: Examples of Other Misconduct	37
	Appendix 3: Temporary Employees Procedures for Dealing with	38
	Disciplinary/ Conduct Issues	38
	Appendix 4: Procedure at Disciplinary Hearing.....	39
	Appendix 5: Procedure at Disciplinary Appeal Hearings	41
	Appendix 6: Taking Action at a Glance	43
	Appendix 7: Appeals at a Glance.....	44

Introduction

1.1 How to Use the Code

The Disciplinary Policy and Procedure [hereafter referred to as the “Policy”] is in four parts:

- the policy
- about the procedure
- informal action (resolution of minor disciplinary issues) procedure
- formal action procedure

Managers and employees should read and be conversant with the first two parts before moving to the detail of the informal and formal procedures and their application.

Part 1 The Policy

1.1 Aims and Objectives

The council's Disciplinary Policy provides fair, equitable and effective arrangements for maintaining standards of conduct and behaviour at work. The framework is not about punitive action, it has been designed to encourage employees to improve their conduct/behaviour in the workplace. The council's expectations of its employees are clearly set out as are the standards and rules that must be complied with. Where behaviour/conduct falls short of the required standard this Policy provides an explanation of any disciplinary action that can be taken, and information on employee rights including rights of appeal.

1.2 Legal Context

This Policy takes account of the best practice and guidance contained in the ACAS Code of Practice on Discipline and Grievance (2009); and employment legislation including the Employment Rights Act 1996, the Employment Relations Act 1999, the Race Relations (Amendment) Act 2000, the Employment Act 2002, the Sex Discrimination Act as amended and the Disability Discrimination Act 1995. Under the last named Act, where any provision, criteria or practice applied by an employer or any physical feature of the workplace which places a disabled person at a substantial disadvantage in comparison with persons who are not disabled there is an obligation on employers to make reasonable adjustments to prevent an employee from being put at that disadvantage.

1.3 Adverse Impact

The council will ensure that the Policy is applied fairly to all employees and does not have a negative impact in relation to the council's equality strands: race, gender, faith or belief, sexual orientation, age and disability. Managers are responsible for managing the equality impact of the Policy and preventing adverse impact on any particular groups of employees wherever possible.

1.4 Contract of Employment

This Policy is part of the contract of employment between the council and its employees.

The council reserves the right to amend the Policy from time to time, after such consultation with the trade unions recognised by the council for collective bargaining purposes, for any employee to whom this Policy applies that it considers appropriate.

The Policy and Procedures can be found on the council's intranet and in departmental human resources offices. Hard copies of this document will be provided to all council employees who do not have access to the council's Intranet.

All employees must read the Policy carefully and ensure they understand the requirements it places on them.

1.5 Scope

This Policy applies to all employees of the London Borough of Brent with the exception of:

- employees in their probationary period. Issues of under-performance during the probationary period should be handled under the council's Probationary Procedure;
- teachers, and school based non-teaching staff where the school has a delegated budget (who are covered by separate arrangements);
- temporary employees with less than 12 months continuous employment with the council. For definition of temporary employee see footnote.¹
- employees within the scope of the Joint Negotiating Committees for Chief Officers and Chief Executives of Local Authorities (who are covered by separate disciplinary arrangements);
- any act or omission by an employee (other than breaches of his/her contract of employment with the council) which happened prior to their employment with the council, e.g. information given during the recruitment process. If the act or omission is relevant to the current employment it will be dealt with under a separate procedure. Where any such issues arise managers should seek immediate advice from a human resources adviser.

The council's disciplinary arrangements also do not apply to agency workers as the council does not consider agency workers to be employees of the council. Any disciplinary issues should be addressed with the employing agency.

The Policy will apply to all matters relating to:

- conduct in the workplace;
- breaches of council rules and standards;
- activities and behaviour outside the workplace which may adversely effect the suitability of the employee to do h/her job, or the relationship between the council and the employee, or the relationship between the employee and work colleagues or clients or customers; and
- allegations of misconduct arising from action under other council policies and procedures such as Fairness at Work.

1.6 Key Principles

The Policy is complementary to, not a replacement for, the effective management of employees. Good management practice involves the provision of appropriate encouragement, advice, counselling and guidance as well as management improvement tools including coaching, training and development.

The Policy embodies the following key principles for dealing with issues of misconduct fairly and consistently many of which are embodied in the council's Code of Conduct:

- high standards of behaviour must be maintained at work at all times;
- employees are expected to understand the rules and standards and comply with them;
- informal processes will be used where appropriate;

¹ A temporary employee is defined as an employee who is engaged for a period of continuous employment which has limited duration, e.g. for maternity, sickness cover or restricted funding availability. Employees will be clearly informed in the recruitment process and in the contract documentation that the employment is temporary, the estimated duration and the reason why the employment is temporary. Under a temporary contract an employee is appointed in accordance with the appropriate NJC and local terms and conditions.

- employees will be informed about concerns over their conduct and the process to be followed;
- issues will be dealt with fairly, consistently and as quickly as possible;
- employees will be given sufficient opportunity to prepare their response;
- managers will ensure that action and decisions are taken objectively and do not discriminate unfairly.

1.7 Authority to Take Disciplinary Action

Investigations	Managers with people management responsibilities who will normally be graded P01 and above, except where the appointment of a separate investigating manager is required. The Council has a pool of trained investigators from across departments who can be asked to carry out an investigation.
Suspensions	Director, Assistant Director or Head of Service
Hearings	All managers with people management responsibilities. See Note 1 below. Where it is known at the outset that the potential allegations may result in dismissal, the hearing manager will be a Director, Assistant Director or Head of Service.
Sanctions short of dismissal	All managers with people management responsibilities. [See note 1 below]
Dismissal	Director, Assistant Director or Head of Service. <i>Where the manager hearing the case is not a Head of Service or more senior manager a recommendation to dismiss will be made to the Head of Service or more senior manager [see note 2 below].</i>
Appeals against disciplinary action short of dismissal	Director, Assistant Director or another manager at the same level of seniority or at a higher level of seniority as the hearing manager.
Appeal against dismissal	Staff Appeals Sub -Committee

1. Managers with people management responsibilities include first line supervisors. Supervisors graded P01 and below will hear misconduct cases involving minor transgressions, e.g. time keeping, and have authority to issue only a written warning. If after hearing the case it transpires that the misconduct warrants a more severe sanction the Hearing Manager will make a recommendation to another manager at the appropriate level.
2. Similarly with dismissal, if a manager hears a case and it transpires dismissal is the appropriate sanction and he/she does not have the delegated authority to dismiss, a recommendation will be made to a manager at the appropriate level.

Managers will be expected to have successfully completed the learning and development programmes on the council's managing disciplinary arrangements, or to have previous

experience of participation in disciplinary processes, before using this Policy and accompanying procedures. If a new manager has been unable to attend the training before becoming involved in a disciplinary issue s/he should discuss with a Human Resources Adviser how to proceed. Managers joining the council who have previous people management experience will be required to attend a programme designed to give them information and advice on the council's disciplinary procedures. If a manager has been unable to attend the training before becoming involved in a disciplinary issue s/he should discuss with a Human Resources Adviser how to proceed.

None of the above prohibits from the engagement of specialist support, if required.

1.8 Role of Managers, Employees and Human Resources

Managers have a specific responsibility to:

- ensure that all employees understand the standards of conduct expected in the work place and the general and specific rules that apply to them;
- support employees to reach the council's standards of acceptable conduct, behaviour and performance by providing coaching and feedback;
- try to resolve problems and difficulties through normal day-to-day management processes;
- handle disciplinary matters fairly, consistently and in accordance with the principles of natural justice;
- make sure that in cases of minor misconduct, unacceptable behaviour or performance, all options are explored to achieve the desired improvement before formal disciplinary action is taken;
- keep staff informed of the action they face if they fail to meet the standards required;
- instigate formal disciplinary action where informal management action has failed to remedy the alleged misconduct or where formal action is required;
- deal with disciplinary matters promptly and effectively, ensuring timescales set out in the Policy are met wherever possible;
- ensure confidentiality is maintained at all times;
- seek advice from a Human Resources Adviser as necessary;
- inform the Head of Service and a Human Resources Adviser at an early stage where the allegation is serious misconduct and may have implications for the council/services.

Employees have a responsibility to:

- familiarise themselves and comply with the general and specific rules and procedures that apply in relation to their employment;
- co-operate with management in making sure council rules and procedures are followed;
- comply with all reasonable management instructions;
- adopt appropriate standards of behaviour towards others including employees and clients;

- co-operate with disciplinary investigations;
- tell managers as soon as possible where problems arise which may impact on their behaviour or performance at work, e.g. personal or health issues;
- report potential malpractice or fraud whenever they become aware of it.

The role of Human Resources is to:

- advise on disciplinary procedures and best practice in their application;
- advise on employment law;
- attend disciplinary hearings where there is the potential for dismissal;
- attend appeal hearings;
- monitor application of the Policy;
- ensure that the disciplinary action taken is consistent;
- take legal advice on behalf of managers where appropriate.
- Human Resources will not normally attend disciplinary hearings where dismissal is not a possible outcome except where:
 - ⇒ a manager has little or no previous experience of disciplinary hearings;
 - ⇒ a manager is experienced but new to the council;
 - ⇒ the circumstances of a case are particularly unusual.

1.9 Links to Other Policies

The Disciplinary Policy is operated in conjunction with the Code of Conduct and other rules and standards of performance relevant to the way in which employees should behave at work. Where clarification is required about how to handle issues under multiple policies and procedures advice should be taken from a Human Resources Adviser.

Managing Capability

Separate procedures exist for dealing with medical capability and under-performance. Where in the course of investigating alleged misconduct it transpires that it is an issue of under-performance or medical capability rather than misconduct, the matter should be referred for action under the relevant procedure. Normally the same manager nominated to handle the misconduct under the Disciplinary Policy will follow through under the Attendance Management Policy and Procedure or Managing Capability Code.

Where poor performance is due to negligence, carelessness, a failure to observe safe working practices, lack of application or motivation, inattention to work matters, or any other reason related to the employee's conduct then it will be handled under the Disciplinary Policy. The under-performance could include one error that has serious consequences or habitually neglecting duties and responsibilities. In these circumstances the employee is capable of undertaking the task but knowingly fails to perform the activity or comply with the standard.

Fairness at Work (FAW)

The FAW Policy and Procedure is separate from this Policy and should not be used for disciplinary matters. If an employee is dissatisfied with the disciplinary process or sanction

given to them the appeals arrangements set out in this Policy must be used (See paragraphs 4.9 and 4.10).

A complaint registered under the FAW Policy and Procedure at the commencement of or during disciplinary proceedings about an unrelated matter will not prevent the continuation of those proceedings. Where necessary a separate investigation will be conducted.

Where the complaint relates to the disciplinary allegation it will be investigated as part of the disciplinary investigation.

Where an investigation and report produced under the FAW Policy and Procedure results in a recommendation for action under this Policy the report will be used in any disciplinary proceedings.

1.10 Timescales

All parties involved in disciplinary proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this Policy are followed. The only exception to this is where the investigation or outcome of a case would otherwise be prejudiced: in such circumstances the timescales may be extended but the employee must be informed, in writing, of the reasons for the extension together with details of any action to be taken within this period. Managers must discuss any variations to the timescale with a Human Resources Adviser and inform their manager before taking any action.

For the purpose of calculating timescales all references in this document to “working” days will be taken to mean Monday to Friday excluding Bank and Public holidays.

1.11 Right to Representation/Accompaniment

Employees have the right to advice and guidance and to be represented and/or accompanied by either:

- a trade union representative (i.e. an officer employed by a trade union or a trade union official reasonably certified by the trade union in writing, as having experience of, or having received training in, acting as a workers companion at disciplinary or grievance hearings); or
- a work colleague (a person who is a council worker) ;

but not a legal representative:

- at any formal stage in this Procedure; and
- at an informal stage meeting where a decision to move to the Formal Action Procedure is likely to be taken.

Employees are encouraged to make use of this facility. It is the employee’s responsibility to organise representation on the relevant date. Employees and their representatives will, as far as is possible, be consulted on the timing of meetings/hearings.

If it is not possible for the chosen representative to attend then another representative may be selected, subject to statutory provisions set out in the paragraph below.

Where a trade union representative or work colleague chosen by the employee to accompany him/her at a formal disciplinary or appeal hearing cannot attend on the date proposed, the employee can propose an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day

after the day proposed by the employer. One postponement on these grounds will be allowed.

The representative can put forward a case on behalf of the employee and can give advice and support during the process. The representative cannot, however, answer questions for the employee. The employee must at all stages respond to questions asked during a meeting convened to address an employee's conduct.

1.12 Monitoring and Review

Application of the Policy and decisions taken on disciplinary matters will be monitored to ensure consistency and fairness. Where analysis identifies potential inconsistencies in the application of the Policy and consequential unfair or unequal treatment, these will be investigated and any necessary remedial action will be taken. Quarterly monitoring reports will be presented to corporate and departmental management teams, and the Annual Workforce Monitoring Report will include full equalities monitoring information.

This Policy will be reviewed as necessary to take account of legislative changes, operational experience and best practice. Any changes to the Policy will be undertaken in consultation with the recognised trade unions.

1.13 Interpretation of Policy and Procedure

Any disagreement between management and the employee concerning the interpretation of this Policy may be referred to the Assistant Director Human Resources or to his/her delegated representative whose decision will be final.

Part 2 About the Procedure

2.1 Disciplinary Rules - Misconduct

There are two kinds of misconduct:

- misconduct – breaches of the council’s rules and procedures which may attract a range of disciplinary sanctions up to and including dismissal; and
- gross misconduct – breaches which are considered to be so serious that the basis of trust between the council and the employee is seriously damaged or destroyed, and which will normally result in summary dismissal without notice or payment in lieu of notice.

The majority of acts of misconduct will not normally be sufficiently serious to warrant dismissal without previous warning but may, if substantiated, warrant disciplinary action of a lesser nature. However, dismissal will be a permissible sanction if an allegation of misconduct is found to have occurred during the lifetime of a final written warning, or in circumstances where a warning would be futile because there is no reasonable prospect of it securing an improvement in the employee’s conduct.

Primarily this Policy applies to conduct at work. However, there may be exceptional circumstances where conduct in an employee’s personal life may also involve sanctions up to and including dismissal where it has implications for the employee’s continued employment [*see paragraph 1.4 above*].

Examples of acts of misconduct and gross misconduct are listed at **Appendices 1 & 2** respectively. These are intended to provide guidance as to the type and nature of offence which could lead to disciplinary action. The lists are not exhaustive – other acts may arise which may warrant disciplinary action.

2.2 Disciplinary Sanctions

The seriousness of the misconduct will determine the level of sanction taking account of any mitigating circumstances and the employee’s length of service. Disciplinary sanctions which may be taken are:

- i. written warning(s);
- ii. final written warning;
- iii. relegation to a lower salary scale point within the employee’s grade;
- iv. withholding an increment;
- v. a combination of i to iv above;
- vi. dismissal with or without notice;
- vii. transfer to another job as an alternative to dismissal;
- viii. demotion to another job as an alternative to dismissal.

Sanctions do not have to be applied in sequence although this may occur in some cases. More than one written warning may also be given where the circumstances of the case justify this: however, managers must ensure that repeat written warnings are not used where a final written warning or dismissal is more appropriate.

Any formal action will be recorded on an employee's personal file and in certain specified circumstances may need to be declared to a statutory body [*see paragraph 2.13*].

Demotion or Transfer

Demotion and transfer may be offered as an alternative to dismissal where:

- allegations of gross misconduct are proven or in response to proven allegations of misconduct where there is final warning on file; and
- the mitigating circumstances are substantial; and
- the employee is suitable for other work ; and
- other suitable jobs are available (however, priority consideration for suitable jobs will always be given to employees affected by reorganisation, ill-health, redundancy and disability).

A transfer/demotion would require a contractual entitlement or agreement with the employee. The offer will be made on a salary equivalent to the minimum spinal column point for the new job. If the offer is accepted the employee must be issued with a final warning. Refusal by the employee to accept an offer will result in dismissal.

Examples of where a transfer/demotion to another job might be appropriate would include where an employee:

- would not be required to handle cash;
- work with a particular client group;
- supervise staff ; or
- could be more closely supervised.

An employee must receive the appropriate induction and training to in new job.

When considering use of the transfer or demotion advice must be sought from a Human Resources Adviser before any such offer is made to the employee.

Withholding Increments and Relegation to a Lower Salary Scale Point

An increment may be withheld for one year. On the anniversary of the withholding of the increment, it will be reinstated and the employee will be paid on the incremental point they would have reached had the increment not been withheld. Where an employee is at the maximum of the scale an increment will be taken away for one year and reinstated on the anniversary of its removal.

Where the employee is relegated to a lower scale point, incremental progression will take place on the usual anniversary dates, but starting from the relegated (i.e. lower) scale point.

2.3 'Live' Warnings and Sanctions

The following time periods will usually apply to written warnings where conduct has been satisfactory:

- first written warnings - not less than 6 months and not more than 12 months from the date issued;

- subsequent written warnings - not less than 1 year and not more than 18 months from the date issued;
- final written warnings - not less than 2 years from the date issued;
- any written warning where the misconduct involves a service user, either as a complainant or victim – not less than 2 years from the date issued.

An employee's conduct must be satisfactory for the duration of the period the sanction is effective. Any lapses in conduct will be dealt with under this Policy.

The written warning must state the period over which the warning will be regarded as "live" for purposes of future disciplinary action.

Warnings will normally be disregarded in determining future disciplinary sanctions following the expiry of the warning.

However, from time to time there may be circumstances where it is appropriate to take account of previous expired warnings at the time of further misconduct in deciding the level of the disciplinary sanction for that misconduct. Where an employee's:

- conduct is satisfactory for the period the warning is in force;
- lapses soon after the warning has expired;
- a behavioural pattern emerges; and
- there is evidence of abuse;

the employee's disciplinary record may be taken into account in deciding the appropriate sanction provided that sanction is not dismissal.

Exceptionally, in cases of gross misconduct where sanction short of dismissal can be justified, or where the misconduct is considered to be particularly serious, e.g. a breach of care standards for vulnerable adults and children but not constituting gross misconduct, a decision may be taken not to disregard final written warnings for future disciplinary purposes. It must be made absolutely clear to the employee in writing that any further misconduct, whenever it may occur, may lead to dismissal. However, the employee will be entitled to seek a review of this decision by the Departmental Director or Assistant Director in consultation with the Strategic Human Resources Manager no earlier than **3** years from the date the warning is imposed.

Documentation relating to the disciplinary action will be retained on the employee's personal file after the expiry of the disciplinary action taken [see paragraph 2.7 below].

2.4 Deferring Disciplinary Action

There may be a number of acceptable reasons to defer an investigation meeting or disciplinary hearing.

The employee is unable to attend due to ill-health

If an employee is unable to attend work due to illness whilst disciplinary action is being taken, a medical certificate must be submitted, stating the reasons why the employee is unable to attend. Provided a medical certificate is submitted, any planned investigation meeting or disciplinary hearing will be deferred. Normally this will be for up to five days but a longer postponement may be agreed in exceptional circumstances. Only one postponement will normally be granted.

Where a postponement is granted on health grounds, the Investigation/Hearing Manager will advise the employee that if s/he is unable to attend the reconvened meeting/hearing, the meeting/hearing may take place in his/her absence. Where an employee does not attend a meeting/hearing, submissions made on behalf of the employee by his/her representative or by the employee in writing or on the telephone will be taken into consideration.

If the medical condition gives cause for concern then advice should be sought from a Human Resources Adviser and the council's Occupational Health Adviser.

The employee is unable to attend for other reasons

If the employee requests a deferment the Investigation/Hearing Manager can refuse the request unless there are exceptional circumstances. If the meeting/hearing is postponed for legitimate reasons the Investigation/Hearing Manager will advise the employee that if they are unable to attend the reconvened meeting/hearing, the meeting/hearing may proceed in his/her absence. Where an employee does not attend a hearing, submissions made on behalf of the employee by his/her representative or by the employee in writing or on the telephone will be taken into consideration.

The employee does not attend and no notification is received

If the employee does not attend on the day of the meeting/hearing without prior notification, the meeting/hearing may either proceed in his/her absence or be postponed, taking into account any known facts. If the meeting/hearing is postponed the Investigation/Hearing Manager will advise the employee that if they are unable to attend the reconvened meeting/hearing, the meeting/hearing will proceed in h/her absence

The employee's representative is unable to attend.

If an employee's representative is unable to attend on the day of the hearing, the hearing must be postponed in accordance with provisions in paragraph 1.11 above. Any longer extension of the postponement will be at the discretion of the Hearing Manager and will depend on the circumstances of the request for a postponement. If the employee's representative is unable to attend a re-arranged meeting/hearing, the meeting/hearing may either proceed in the absence of the representative or be postponed taking account of the known facts. In the event the meeting proceeds the employee could consider arranging an alternative representative.

2.5 Contractual Notice

An employee who is dismissed from the council's service will normally be entitled to contractual notice or pay in lieu of notice except where:

- the dismissal is for gross misconduct in which case dismissal will be without notice or pay in lieu of notice, or
- the employee during the notice period without good reason has not attended work or failed to co-operate whilst at work in which case the employee will not be paid for any period of non-attendance or lack of co-operation.

2.6 Confidentiality

Confidentiality and privacy will be maintained at all times during the disciplinary process. This applies to all correspondence, reports and other documentation. Circulation of information will be that which is necessary to ensure a fair process. Unnecessary disclosure of confidential information at any stage of the procedure may in it self lead to disciplinary action.

2.7 Record Retention

Records must be kept detailing disciplinary action taken. This will include details of:

- the nature of any breach of disciplinary rules;
- the action taken and the reasons for it;
- any appeal lodged and its outcome; and
- any subsequent developments.

These records will be retained on the employee's personal file.

In cases of dismissal, witness statements and other evidence gathered as part of the investigation must be kept on the personal file in accordance with the council's Record Retention Policy ([Link](#)).

Where following an investigation a decision is taken that formal disciplinary action is not appropriate and the issue is handled informally, relevant documentation will be kept on the personal file.

Where following an investigation or hearing a decision is taken that there is no case to answer, the employee and, where appropriate, the trade union representative will be notified in writing within **5** days of the decision. Only a copy of the letter advising the employee of the outcome will be kept on the personal file. All other documentation will be destroyed immediately.

2.8 Correspondence

All correspondence with employees subject to disciplinary action (including letters convening hearings, details of allegations, documentary evidence and decisions of hearings) should be delivered either by 'hand' on behalf of the council, or by recorded or registered post. A further copy should also be sent through the ordinary post.

2.9 Records of Interviews, Meetings and Hearings

A written record of interviews and hearings must be made. It will not be a verbatim record but will accurately reflect all of the issues raised at the interview/hearing. The Investigator and Hearing Manager will be responsible for producing the record. See paragraphs below.

Investigation Record

The Investigating/Presenting Officer is responsible for producing the record of evidence given by the employee against whom the allegation is made and of any witnesses interviewed. The employee/witness(es) must be asked to sign and date the interview record as being an accurate record of the interview. Any disagreement concerning the record should be annotated in the document by the employee/witness(es) and reflected in the investigation report.

Disciplinary Hearing Record

The Hearing Manager is responsible for producing the record of the hearing: if necessary s/he may arrange for a note taker to attend the hearing. The record should provide:

- a summary of the case;
- details of the decision made; and
- the reasons for the final decision.

The level of detail required will depend on the seriousness of the case and any sanction – the record of a case involving a warning is likely to be shorter than of one involving dismissal.

The record may be used at any future appeal or Employment Tribunal and will also be relevant in evaluating the consistency of decision making across the council. Any dispute about the accuracy of the record will be resolved by the Hearing Manager. If the employee disagrees with the record of the hearing, they can ask for their comments to be noted for future reference even if they are not appealing against the decision.

Normally interviews, meetings and hearings will not be taped unless the Audit Team is carrying out the investigation, e.g. a case which may result in criminal proceedings against the employee. However, an Investigation/Hearing Manager may exercise his/her discretion in consultation with a Strategic Human Resources Manager where to use taping would be beneficial. The tapes will not as matter of course be transcribed but will be used to resolve any issues/disagreements arising from the proceedings. There is no obligation on the council to provide the employee and their representative with a transcribed version, however, the employee may request and be provided with a copy of the tapes. In the event of an appeal against a decision to dismiss that part of the hearing relevant to the grounds of appeal recorded on tape will be transcribed and issued with the appeal papers.

2.10 Action Involving Trade Union Representatives

Where allegations involve an employee who is an official of a recognised trade union this Policy should be followed in the normal way. However, depending on the circumstances the matter should be discussed at an early stage with an official employed by the relevant trade union after first obtaining the employee's agreement.

A Human Resources Adviser should also be notified about cases involving employees who are trade union representatives and will advise if any other action is required. This should not delay managers taking the appropriate steps under this Policy.

The contact details for branch secretaries and full time officials of trade unions recognised by the council can be found on the Intranet.

2.11 Criminal Offences

Where allegations against an employee may potentially involve criminal offences advice must be taken from a Human Resources Adviser before any action is taken under this Policy.

Where an employee is the subject of a criminal investigation or a charge is pending regarding a criminal act, this will not normally be grounds to delay or prevent a hearing taking place. However, where a request is made by the police or Crown Prosecution Service to defer taking action this may be considered. Any deferral of disciplinary action in response to such a request should not continue on an open-ended basis. If it is proposed to proceed with action against the advice of the police then advice must be sought from a Human Resources Adviser.

Managers must not rely on obtaining evidence from the police, but should conduct their own investigations prior to the hearing.

2.12 Suspension

Suspension is not a disciplinary action, and should only be used during the investigation/disciplinary process when it is clearly inappropriate for the employee to remain on duty. Suspension should never be automatic, and should only be sanctioned after careful consideration of all the relevant facts.

As an alternative to suspension an employee can be relocated to another workplace.

In the absence of any other feasible alternative to suspension, suspension is usually appropriate where:

- the allegations involve potentially serious or gross misconduct; and/or
- there is a substantial risk an investigation would be hindered by the employee's continued presence in the work place; and/or
- there has been a serious breakdown in working relations between the employee and work colleagues and /or between the employee and clients or customers.

Examples of when suspension may be appropriate are where:

- there is potential for the employee to be dismissed;
- there are concerns that evidence may be tampered with;
- there are concerns about the potential intimidation of witnesses;
- the allegations pose a risk to people or property;
- the allegations involve a member of the public/service user.

Key Principles

- Suspension will normally be with full contractual pay.
- Employees are expected to be available to the council at any time during the paid suspension period.
- Any matters involving suspension of an employee will be resolved as quickly as possible.
- A decision to suspend must be taken by an authorised manager [see paragraph 1.7 above]. In exceptional circumstances, where a manager without authority to suspend believes that the continued presence of an individual is undesirable, s/he may send the employee home pending a decision on formal suspension by an appropriate manager.
- The employee will be advised of the suspension and reasons in person unless not practicable to do so, in which case notification will be made in writing.
- The employee must be advised of his/her entitlement to be represented by a trade union official or work colleague [see paragraph 1.11 above].
- The employee should be given an opportunity to make an initial response to any allegations which the manager will take into account when making a decision to suspend.
- The employee will be informed that s/he must :
 - ⇒ not enter council premises without permission. See paragraph Entering c e.g. a breach of care standards for vulnerable adults council Premises below;

- ⇒ not use council systems, or undertake council business, without permission;
 - ⇒ not contact or approach council employees or service users;
 - ⇒ attend interviews during the suspension and co-operate with the investigation;
 - ⇒ return ID pass, authorisation cards, mobile phones/blackberries, computer system authentication tools, keys for council premises or any other council property items;
 - ⇒ comply with the council's normal sickness and leave procedures;
 - ⇒ not engage in other work (paid or unpaid) without written permission during the contracted working time with the council.
- The reasons for suspension must be confirmed to the employee by the manager in writing normally not later than the end of the working day following suspension [see Performance Toolkit: model letter ?].
 - The manager will advise the employee how long the investigation is likely to last. Suspensions should be for as short a time as possible and should be reviewed on a regular basis.
 - Suspensions should be lifted promptly where there is no risk of prejudice to the investigation if the employee returns to duty or management consider there is no case to answer.

Entering Council Premises

A suspended employee will require written permission from the suspending manager to enter any council premises, whether this is to seek access to information or prepare a case. The **only exceptions** to this are where the visit is:

- for the purposes of consulting with a representative chosen to accompany the employee during proceedings or to be interviewed in connection with the case. The employee must notify the suspending manager or other nominated manager in advance;
- to trade union offices which are separate from other council premises; or
- as a member of the public to access council services.

Withholding Pay

In cases where an employee is not able or willing to comply in full with his/her obligations under his/her contract of employment, pay may be withheld or withdrawn during suspension. Examples of behaviour leading to pay being withheld or withdrawn include:

- employee being held in police custody;
- employee fails to attend appointments with the council's Occupational Health Service without good reason;
- employee fails to assist with enquiries or to attend meetings with management without good reason.

An employee who is medically unfit for work during suspension will be treated as absent for reasons of sickness and not on suspension. The contractual sickness arrangements will apply.

In other circumstances, which will be exceptional, pay may also be withheld or withdrawn during suspension, e.g. where the employee has been suspended for a significant period of time but it is not possible for reasons beyond the council's control to hold a disciplinary hearing.

Authority to withdraw pay is vested in the Director, Assistant Director or Head of Service. Advice will be taken from a Strategic Human Resources Manager or his/her representative before a decision to withdraw pay is taken. An employee must be asked in writing to attend a meeting where details of the proposed withdrawal of pay will be considered and a decision taken. The employee has a right to be represented at that meeting. The decision will subsequently be set out in writing. Where the circumstances may prohibit a meeting being arranged an employee must be given a written opportunity to make representations and any such representations taken into account before a decision to withdraw pay is taken.

2.13 Qualifications and Compliance Issues

For certain occupations there is a requirement for an employee to hold a specific regulatory classification and/or to maintain a certain standard, in order to carry out his/her job, e.g. registration with a professional organisation. In such circumstances the employer may have a duty to report any incidents of alleged professional misconduct or serious performance issues to the appropriate registration authority or statutory body.

In such circumstances formal disciplinary action may have implications for an employee's ability to continue to undertake the duties/responsibilities of the post. Therefore, before taking any formal action, the manager should (without prejudging the case) consider the impact a disciplinary sanction may have on the employee's ability to continue to perform his/her duties. If this would be compromised by a disciplinary sanction the manager must seek the advice of the relevant Assistant Director and Human Resources Adviser either before the disciplinary meeting is held or during an adjournment.

If a statutory body, e.g. the General Social Care Council, is involved (for compliance/regulated posts) it is a requirement that serious allegations must be reported to it whilst disciplinary action is being taken against an employee. This will not preclude matters from being dealt with internally as normal: however, if registration is withdrawn by the external regulators, the case will need to be reviewed in order to assess the impact on the individual's ability to continue to do his/her job.

Where conduct issues involve employees working in either safeguarding children or vulnerable adults it is not appropriate to terminate disciplinary action if the employee resigns before this is completed. Where such circumstances arise the manager **must** seek the advice of the relevant Assistant Director and Human Resources Adviser

2.14 Temporary Employees

Where disciplinary issues arise which involve temporary employees with less than 12 months continuous service the procedure set out in **Appendix 3** will apply. If the circumstances are not clear advice should be sought from a Human Resources Adviser before action is taken. See footnote to paragraph 1.5 for definition of temporary employee.

2.15 Return to Work Allowed

Employees who return to work following suspension or, re-engagement or reinstatement on appeal against dismissal must be properly re-inducted into the work place and to the duties of the job.

Part 3 Informal Action Procedure

3.1 What is Informal Action and Why Use it?

Misconduct involving minor infringement of rules and standards is best dealt with by informal management advice and guidance, coaching and counselling, rather than by formal disciplinary action. Managers should discuss work problems with employees at an early stage with the objective of encouraging them to improve and resolve issues to the mutual benefit of the council and the employee.

In deciding whether an attempt should be made to resolve the issue informally, account will be taken of relevant issues, such as:

- the nature of the misconduct;
- previous informal interventions;
- length of service with the council;
- previous disciplinary record; and
- whether there is a reasonable prospect of informal action securing an improvement in the employee's conduct.

In circumstances of serious or repeated breaches managers should initiate action under the formal procedure.

3.2 Taking Informal Action

Problems should be discussed with the objective of helping the employee to improve his/her conduct/behaviour. The manager should meet with the employee to make clear:

- what needs to change;
- the standards, conduct and behaviour expected;
- how conduct will be reviewed;
- over what period of time the conduct will be reviewed; and
- what action will be taken if s/he fails to improve.

3.3 Documentation and Future Action

The manager will confirm in writing to the employee:

- the unacceptable conduct/behaviour;
- the summary of the informal discussions;
- the corrective action to be taken by the employee;
- any action to be taken by the manager;
- the arrangements to review the conduct and over what period;

- that informal action may lead to formal action if unacceptable behaviour/conduct is not addressed.

The documentation relating to the informal action will remain on the employee's personal file [*see paragraph 2.7 above*].

See Performance Toolkit: model Supervision Recording Sheet. This should be used in conjunction other appropriate documentation for managing informal action.

3.4 Progressing to Formal Action

A manager will make a judgement on how long to continue with the informal approach before moving to the formal procedure. Informal action will normally be kept under review for a period of up to six months. If within the specified six month period it becomes clear that informal action will not achieve the desired outcome then a manager will take an early decision to move to the formal procedure. Instances of repeated minor misconduct where informal action is not successful will be addressed under the formal procedure. Where informal action is not successful formal action must be taken.

In the event of formal disciplinary action the previous informal action will only be taken into consideration as supporting evidence where it is relevant to do so. For example, if the subject of the informal action is about attendance (timekeeping, failure to follow sickness reporting procedures etc) then it would be reasonable to take this into account at the formal stage if the formal action also concerns attendance. Conversely, if the informal action relates to timekeeping and the subject of the formal action is abusive behaviour towards another employee, the incidents maybe unrelated and it may therefore be unreasonable to take the previous informal action into consideration. Each case must be considered on its merits.

3.5 Link to Supervision and Representation

These discussions are informal and will be conducted through the council's supervision arrangements and on-going dialogue between regular supervision meetings. Because the action is informal and part of supervision there is no right to be represented. However, where:

- informal action is nearing its conclusion,
- is not proving successful, and
- a decision has been taken to hold an informal stage meeting where a decision to move to the Formal Action Procedure is likely to be taken,

an employee should be advised of his/her entitlement to be represented by trade union representative or a work colleague at that meeting.

3.5 Right of Appeal

There is no right of appeal against informal action.

Part 4 Formal Action Procedure

4.1 Allegations

Formal action under this Policy will be undertaken where:

- informal action does not rectify unacceptable behaviour; or
- there is no reasonable prospect of informal action securing an improvement in the employee's conduct; or
- allegations involve serious misconduct; or
- allegations involve gross misconduct.

The manager is responsible for arranging for the misconduct to be addressed, and for informing the Director, Assistant Director or Head of Service where the misconduct is serious and has implications for the council/service. In cases of minor misconduct it is unlikely that the Head of Service or more senior manager will need to be informed. However, people management issues will be discussed between managers in normal supervision meetings.

In appropriate cases managers will need to decide if suspension is required [see paragraph 2.12 above].

4.2 Investigation

Minor Misconduct or Where the Facts are Clearly Established

In cases of minor misconduct and/or where the facts are clearly established it will not usually be necessary to appoint a separate officer to carry out an investigation. The manager will carry out enquiries to establish the facts before proceeding to a disciplinary hearing. These will usually include one-to-one discussions between the employee and the manager.

Serious Allegations of Serious Misconduct

In serious and/or more complex cases, or where the facts are not clearly established, the service manager in consultation with an Human Resources Adviser. [see paragraph 1.6 above] may appoint a person to investigate, normally within **5** working days of the initial referral. The role of this officer [hereafter the "Investigating/Presenting Officer"] will be to establish the facts, produce a report, and if the investigation subsequently results in a formal disciplinary hearing, present the case at the hearing.

The Investigating/Presenting Officer will be one of the following:

- the employee's immediate manager (in the majority of cases);
- another manager, where counter allegations have been made against the manager (this can be a more senior manager or a manager at the same level);
- a more senior manager in cases of serious misconduct involving more than one employee;
- more than one officer where the allegations are significant and the risks to the council are high, e.g. they involve child/vulnerable adult abuse;
- a manager from another department;

- an external consultant in exceptional circumstances, e.g. lack of availability of an independent in-house resource.

Audit and Investigations Team

The Audit and Investigations Team will carry out investigations into cases of alleged fraud, corruption and financial misconduct, or conduct reported under the council's Whistleblowing Policy. The Team will be responsible for obtaining all the evidence, interviewing the employee and any witnesses. A report containing the evidence including statements relating to the allegations that have been investigated will be sent to the appointed Investigating/Presenting manager who will present the case at any subsequent hearing. The Audit Team representatives may be called upon to present their findings and respond to questions.

Notifying the Employee

An employee should normally be informed in writing about any allegations as soon as possible [*see Performance Toolkit: model letter ?*]. However, there may be circumstances where this may not be appropriate during the investigation, e.g. allegations involving fraud where it may be necessary to secure records to avoid risks that they may be destroyed. Advice should be sought from a Human Resources Adviser if it is considered that the employee(s) should not be so informed.

Obligations on Employees

Employees are required to co-operate with the investigation. If an employee refuses to co-operate s/he will be informed that the investigation will proceed, and decisions will be taken based on available facts. Further disciplinary action may be taken against an employee who refuses to comply with a reasonable management instruction in relation to an investigation.

Anonymous Allegations

Where anonymous allegations are made against an employee careful consideration must be given to these before any action is taken. Dealing with anonymous allegations can be difficult and careful judgement is required. In such cases managers must discuss with a Human Resources Adviser how to proceed.

4.3 Carrying Out an Investigation

The objectives of the investigation are to:

- determine the facts;
- establish the employee's response;
- look for any supporting evidence and interview witnesses;
- consider any other relevant circumstances; and
- make recommendations on whether or not to proceed to a hearing.

The investigation will typically involve:

- interviewing the employee who is alleged to have been involved in misconduct;
- interviewing witnesses, which could include council employees, employees of other organisations and members of the public, who may be able to provide information or evidence relevant to the investigation; and
- collecting and reviewing relevant documentation.

The Investigating/Presenting Officer will need to judge at which point it will be appropriate to interview the employee against whom the allegation has been made. In some cases it may be necessary to re-interview the employee and/or witnesses if additional information comes to light which was not known at the time of the original interview.

The council provides training for managers on how to conduct investigations. Further information on this can be obtained from a Human Resources Adviser.

Record of Interviews

A written record of all interviews should be taken [see paragraph 2.9 above].

Time Scales

The investigation should normally be completed within **15** working days following appointment of the Investigating/Presenting Officer. In complex cases such as allegations involving vulnerable adults, child abuse or major fraud timescales may need to be extended [see paragraph 1.10 above].

Where in exceptional circumstances the **15-day** timescale is exceeded the Director/Assistant Director/Head of Service must be kept informed of the progress of the investigation, the reasons for the delay, and the revised timetable for its completion. The Investigating/Presenting Officer will write to the employee to inform him/her of the delay and the reasons for it [see Performance Toolkit: model letter ?].

4.4 Investigation Report

Where a separate investigation is required (see paragraph 4.2 above) the Investigating/Presenting Officer will produce an investigation report and present it to the Hearing Manager. The report will give details of:

- the allegation(s);
- analysis of the evidence;
- the investigator's findings whether there is a case to answer (i.e. is there a reasonable prospect of the allegation(s) being found proven at a disciplinary hearing) based on the balance of probabilities taking all the evidence into consideration;
- an assessment of the seriousness of the allegation(s), i.e. misconduct, serious misconduct or gross misconduct;
- a recommendation on whether the case should or should not proceed to a disciplinary hearing;

The employee's account of the events, witness statements and supporting documentation (e.g. organisation structure, job description, letter of complaint) should be attached to the report [see Performance Toolkit: model investigation report format].

The report should not include any recommendation for specific disciplinary sanctions, as this is the responsibility of the Hearing Manager. However, it may include any mitigating factors that should be taken into consideration by the Hearing Manager.

The Hearing Manager will consider the findings of the Investigating/Presenting Officer. If s/he believes that, on the basis of the report's conclusions a formal disciplinary hearing is required to consider the allegations and evidence, s/he will ask the Investigating/Presenting Officer to convene a hearing. Where it is clear from the report that the allegations may lead to dismissal the case will normally be heard by a manager who has the authority to dismiss. If the Hearing Manager does not have the authority to dismiss every effort will be made to find another Hearing Manager who has the necessary authority.

The Hearing Manager in consultation with an Human Resources Adviser has the discretion to consider reducing the number of allegations to be heard based on the evidence presented.

Where the recommendation is not to proceed to a formal hearing and the Hearing Manager accepts this recommendation he/she will inform the employee of this decision in writing within **3** working days. All references relating to the investigation other than the letter informing the employee of the outcome will be removed from the employee's personal file [see Performance Toolkit: model letter ?].

4.5 Convening the Disciplinary Hearing

A decision to convene a disciplinary hearing should normally be communicated to the employee within **10** working days of receipt of the allegation (where a separate investigation is not required) or of completion of the Investigating/Presenting Officer's report. If a separate Investigating/Presenting Officer has been appointed (see paragraph 4.2) s/he will normally present the case at the hearing.

The Investigating/Presenting Officer must inform the employee of:

- the date, time and place of the hearing;
- who will hear the case;
- who will present the case;
- details of the allegation(s) including a copy of any written complaint;
- the council rules or standards that have been broken;
- the status of the hearing and the possible consequences including where appropriate dismissal;
- how any current 'live' warnings will be treated in reaching a decision;
- the right to be accompanied by a trade union representative or work colleague; and
- the right to call witnesses and to produce relevant information.

[See Performance Toolkit: model letter ?].

The employee must be given:

- at least **7** working days written notice of the disciplinary hearing. The employee or his/her representative may request an extension where additional time is required to prepare the case, for example, where the case is particularly complex or involves multiple allegations. The Hearing Manager will decide on such a request;

- with the written notice of the disciplinary hearing a copy of the Investigating/Presenting Officer's report (including witness statements) where an investigation has been conducted;
- access to a copy of the council's Disciplinary Policy; and
- notice that any documentation to be relied on at the hearing and the names of witnesses it is intended to call must be provided at least **3** working days before the hearing.

The employee and the Presenting Manager are responsible for arranging any witnesses and organising their attendance. Any employees of the council who are required to attend by the Presenting Manager or employee as witnesses will be released from their duties [see Performance Toolkit: model letter ?].

In all cases which may result in dismissal or where circumstances are particularly unusual, a Human Resources Adviser will be present at the hearing, their role being to give advice on the conduct of proceedings, any procedural issues and the appropriate level of disciplinary action. In certain circumstances the Hearing Manager may require other technical advice as appropriate, e.g. legal, financial, occupational health, IT. Such advisers will be invited to attend the hearing in addition to the Human Resources Adviser to advise the Hearing Manager. The disciplinary decision is the responsibility of the Hearing Manager.

4.6 Dealing with Confidential Information

If there are concerns about the disclosure to the employee of the names of witnesses or any documentation to be relied upon at the hearing e.g. the evidence given by an anonymous witness, the Presenting Manager will seek advice from the Human Resources Adviser. The Human Resources Adviser will decide whether the information should be made available to the Hearing Manager and not the employee or to both parties prior to the hearing. The Hearing Manager will be notified in advance of the hearing.

Where a witness can show good reason why s/he does not wish his/her identity to be disclosed to the other party the Hearing Manager has the discretion to hear the witness's evidence in the absence of the relevant party.

The Hearing Manager has the discretion to decide not to allow the employee and/or his/her representative to ask questions of a particular witness(s).

In both cases the Hearing Manager will take advice from a Human Resources Adviser before reaching a decision.

4.7 Disciplinary Hearing

The disciplinary hearing will be conducted in accordance with the procedure set out in **Appendix 4** although the Hearing Manager with the agreement of the Human Resources Adviser may vary all or part of the procedure if appropriate. The employee will be given every opportunity to hear the allegations made against him/her and to respond and present his/her case supported by a representative. The Hearing Manager will ensure that the hearing is conducted efficiently including the time taken to hear the case and the presentation of evidence by the parties including calling witnesses.

Documentation Submitted Late

The Hearing Manager will decide whether to consider documentation submitted by either party outside the timescales in this Policy. S/he will take into account what if any prejudice in the conduct of their case would be caused to the other party, if the documentation was

considered and whether the party submitting the documentation had a reasonable opportunity to submit it in accordance with the timescales.

Record of the Hearing

A detailed written record of the disciplinary hearing must be made [see paragraph 2.9 above].

Adjournments

The Hearing Manager may adjourn the hearing where appropriate, e.g. to check and clarify information presented, or in response to a request from the employee or their representative to adjourn where there is good reason. The parties will be given reasonable notice of the date the hearing is to be reconvened. If the hearing is not concluded within **10** working days of commencement, the Hearing Manager will review the reasons for the delay and take any steps necessary to bring the hearing to a conclusion.

4.8 Decision

The Hearing Manager is responsible for two decisions:

1. whether the allegation(s) is substantiated, based on the balance of probabilities taking all the evidence into consideration; and
2. if the allegation(s) is substantiated, the disciplinary sanction to be imposed.

In reaching a decision on any sanction the Hearing Manager will consider:

- the seriousness of the offence;
- the employee's disciplinary and performance records;
- any mitigating circumstances;
- whether the proposed penalty is reasonable in the circumstance;
- the need to ensure consistency of treatment of employees.

Warnings are intended to secure an improvement in an employee's conduct/behaviour. It is important that the employee understands the reasons for the sanction and the consequences of any further incidents of misconduct.

Where possible the Hearing Manager will give the decision verbally at the end of the hearing, after a period of adjournment to make the decision. In all cases the decision will be given in writing within **5** working days of the meeting [See Performance Toolkit: model letter ?].

Written Notification

Where the allegation(s) is substantiated the letter to the employee must set out the reasons for the decision including:

- the reasons for the findings on the allegation(s). This should include whether an allegation found proven is considered to be gross misconduct or misconduct;
- the reasons for the disciplinary sanction decided on. This should include an explanation of any mitigation or other circumstances relevant to the sanction;
- the duration of the written warning;
- the effective date of dismissal where applicable;

- the implications and consequences of any future misconduct;
- the employee's right to appeal and timescales for submitting an appeal.

In all cases where disciplinary action short of dismissal is taken, employees will be required to acknowledge in writing that they have received and read the letter informing them of the outcome of the disciplinary hearing [*see Performance Management Toolkit: model letter ?*].

Where the employee is found not to be culpable he/she will be advised in writing of the outcome of the disciplinary hearing and that all details of the alleged misconduct will be removed from the personal file [*see Performance Management Toolkit: model letter ?*].

4.9 Dismissal Approval process

Where dismissal is considered to be the appropriate sanction a case heard by a manager who does not have delegated authority to dismiss, a recommendation will be made to a Senior Manager (either the Director, Assistant Director or Head of Service) with the authority to dismiss [*see paragraph 1.6 above*] who will make the decision. The manager will set out in writing details as to the justification for the recommendation to dismiss. This will be given to the Senior Manager and to the employee within **5** working days of the hearing where the recommendation to dismiss was made. The Senior Manager will meet with the employee and the Hearing Manager within **5** working days of receipt of the recommendation to dismiss. The employee will be given the opportunity to make representations in writing before the meeting (which should be provided both to the Hearing Manager and the Senior Manager no later than **2** working days prior to this meeting) and orally at the meeting. At the end of the meeting the Senior Manager will consider the recommendation and representations and decide either to:

- confirm the recommendation,
- decide an alternative disciplinary sanction, or
- refer the case back to the manager for further action.

The employee will be invited back to the meeting and will be given the decision.

The decision will be confirmed in writing within **5** working days of the verbal notification of the decision. The employee may be represented at this meeting.

Where the Senior Manager confirms a recommendation to dismiss or imposes a disciplinary sanction short of dismissal, s/he will be the presenting manager for the purpose of any subsequent appeal.

4.10 Right of Appeal

An employee has the right of appeal against disciplinary action taken under this procedure. An appeal may be lodged on one or more of the following grounds:

1. **Procedure** - failure to follow the correct procedure had a material effect on the decision.
2. **The facts of the case** - the Hearing Manager came to a conclusion on a material point of fact, which no reasonable person could have reached.
3. **Sanction** – no reasonable Hearing Manager would have decided the particular sanction given the circumstances of the case.

4. **New evidence** is available that could not have reasonably been raised at the disciplinary hearing and the absence of which had a material effect on the decision.

Appeals will not be allowed on any other grounds.

Registering an Appeal

Appeals must be lodged within **10** working days of the date of the letter informing the employee of the outcome of the disciplinary hearing. The appeal should be submitted to the manager who took the decision either using the Appeal Registration Form which can be obtained from the Intranet, Human Resources, or the local offices of the trade union or providing in writing the information sought by the form. [see Performance Management Toolkit: Model Appeals Registration Form]. The manager will copy the appeal to the Strategic Human Resources Manager. The appeal submission must set out clearly:

- the grounds for the appeal, i.e. one or more of those four listed in the previous paragraph;
- the detailed basis, as far as possible, for each ground of appeal to be relied on;
- in the case of new evidence, details of the evidence and any supporting documentation to be relied on;
- where more than one allegation was proven the specific grounds of appeal for each of these.

Where the appeal submission does not provide the necessary information to allow it to be processed the Strategic Human Resources Manager will write to the employee seeking clarification. This may extend the timescales for hearing an appeal.

Who Hears an Appeal

Appeals against disciplinary action (excluding dismissal) will be heard by a Director or Assistant Director or another manager subject to the Appeal Hearing Manager being at the same level of seniority as, or more senior to, the Hearing Manager. Where a Director has heard the case arrangements will be made for another Director outside the department to consider the appeal. The Appeal Hearing Manager will have had no previous involvement in the case. The Strategic Human Resources Manager in consultation with the relevant senior manager will appoint an Appeal Hearing Manager.

Appeals against dismissal will be heard by the Staff Appeals Sub-Committee.

An appeal lodged against dismissal does not require the employee to be reinstated pending appeal.

The Presenting Manager for the appeal will normally be the Hearing Manager at the original disciplinary hearing.

Transfer/Demotion

Where an employee is offered demotion/transfer as an alternative to dismissal and chooses not to accept it then he/she will be dismissed. Where the employee is dismissed the right to appeal against dismissal will apply.

Timescales

Appeals Against Disciplinary Action Short of Dismissal: will as far as reasonably practicable be held no later than **15** working days from receipt of the notice of appeal or as soon as reasonably practicable thereafter. The employee and (where necessary) his/her representative will be given in writing at least **7** working days notice of:

- the date, time and place of the hearing;
- details of the person hearing the appeal and the person presenting the management case;
- his/her right to attend and be represented at the appeal;
- the requirement that any documentation to be relied upon and the names of any witnesses it is proposed to call must be provided to the Appeal Hearing Manager and Presenting Manager at least **3** working days prior to the hearing.

The appeal hearing manager is responsible for communicating this information to the employee and h/her representative.

The Appeal Hearing Manager, in consultation with a Human Resources Adviser where appropriate, will arrange for the employee to receive any documentation to be relied on by management at the appeal hearing, including the summary record of the disciplinary hearing and the names of any witnesses to be called, at least **3** working days before the appeal hearing. The documentation should be that which one or both parties consider to be relevant to the ground(s) of appeal.

The Appeal Hearing Manager will decide whether to consider documentation submitted by either party outside the timescales in this Policy. In deciding whether to consider such documentation s/he will take into account what if any prejudice in the conduct of their case would be caused to the other party if the documentation was considered, and whether the party had a reasonable opportunity to submit it in accordance with the timescales. The Appeal Hearing Manager will take advice from an Human Resources Adviser before reaching a decision.

If there are concerns about the disclosure of the names of witnesses or any documentation to be relied upon at the hearing (e.g. the record of evidence given by an anonymous witness), the Strategic Human Resources Adviser or their representative and a legal adviser will decide on what basis, if any, the information should be made available.

[see Performance Management Toolkit: model letter ?].

Appeals Against Dismissal: will be heard within **15** working days of receipt of the written notice of appeal or as soon as reasonably practicable thereafter. The relevant committee officer will write to the employee giving at least **7** working days notice of:

- the date, time and place of the meeting of the Appeals Sub - Committee;
- details of the person presenting the management case;
- his/her right to attend and be represented at the appeal;
- the requirement that any documentation to be relied on and the names of any witnesses that it is proposed to call must be provided to the committee officer and presenting manager at least **3** working days prior to the meeting.

The committee officer in consultation with a Human Resources Adviser where appropriate, will arrange for the employee to receive any documentation to be relied on by management at the appeal hearing, including the summary record of the disciplinary hearing and the

names of any witnesses to be called, at least **3** working days before the appeal hearing. The documentation should be that which one or both parties consider to be relevant to the appeal

If there are concerns about the disclosure of the names of witnesses or any documentation to be relied upon at the hearing (e.g. the record of evidence given by an anonymous witness), the Strategic Human Resources Adviser or their representative and a legal adviser will decide on what basis, if any, the information should be made available.

Hearing an Appeal in the Absence of the Employee: provided the employee has been given the appropriate notice of the date of the hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual. The rules for postponement of an appeals hearing are the same as those for the disciplinary hearing *[see paragraph 2.4 above]*.

4.11 Appeal Hearing

The appeal hearing will not be a full rehearing of the issues, but will only address the specific grounds of appeal set out in the employee's appeal submission.

The parties to the appeal should agree as much of the relevant evidence as possible prior to the hearing so that only the relevant evidence in dispute is examined.

Where the employee has lodged an appeal on grounds of new evidence the Presenting Manager will be entitled to present new evidence. The presenting manager will also be able to seek to correct any deficiencies in the Hearing Manager's decision by relying on his/her own new evidence.

Appeals against disciplinary action short of dismissal will be attended by an Human Resources Adviser, their role being to give advice on the conduct of proceedings, any procedural issues and the appropriate level of disciplinary action. In certain circumstances the Appeal Hearing Manager may require other technical advice as appropriate, e.g. legal, financial, occupational health, IT. Such advisers will attend the hearing in addition to the Human Resources Adviser to advise the Appeal Hearing Manager.

The Staff Appeals Sub-Committee will be advised by a Strategic Human Resources Manager or their representative and a representative from Legal Services. Other technical advisers referred to above may also be invited to attend.

The hearing will be conducted in accordance with the procedure set out in **Appendix 5** although the Appeal Hearing Manager, or Chair of the Staff Appeals Sub-Committee, and the panel adviser(s) may vary all or part of the procedure if appropriate. At dismissal appeals any variation will also be with the agreement of the legal adviser. The Appeal Hearing Manager or Chair of the Staff Appeals Sub-Committee will ensure that the hearing is conducted efficiently including the time taken to hear the case and the presentation of evidence by the parties including calling witnesses.

Outcomes

The possible outcomes of an appeal hearing are as follows.

1. Uphold the original decision in its entirety.
2. Allow the appeal in its entirety.
3. Allow the appeal in part (where the appeal challenges more than one finding of misconduct).

3. Increase or reduce the severity of the sanction including reducing the life of a warning. However, dismissal may not be decided where a lesser sanction i.e. final warning has been given.

Appeal Upheld on Grounds of New Evidence or Procedure

Where the Appeal Hearing Manager or Staff Appeals Sub-Committee decides to uphold the appeal on the grounds of procedure or new evidence, the Appeal Hearing Manager or Staff Appeals Sub-Committee will have the discretion to either:

- refer the case back to the original hearing manager
- refer the case back to a new hearing manager; or
- hear the case .

If the appeal is on grounds of new evidence referral to any of the managers specified above will be for the consideration of the new evidence together with any of the original evidence which is relevant to the new evidence in order to reach a decision.

Where the Appeal Hearing Manager or Staff Appeals Sub-Committee rehears a case they should adjourn the appeal hearing if further witnesses/evidence need to be called/produced in order to ensure s/he has all the necessary evidence to make a decision on the case.

Appeal Upheld

Where an appeal against dismissal is upheld, the Staff Appeals Sub-Committee has the discretion to either:

- re-instate the employee, that is maintain continuous services and any pay which has been lost as a result of the dismissal; or
- re-engage the employee, that is with a break in continuous service, in which case any lost pay will not be made up. Re-engagement will normally be appropriate where the misconduct justified dismissal but there were significant extenuating circumstances.

Where action short of dismissal is considered appropriate, the other disciplinary sanctions set out in paragraph 2.2 above, are available to the Staff Appeals Sub-Committee.

There is no further right of appeal against the decision of the Appeal Hearing Manager/Staff Appeals Sub-Committee.

Notification of Decision

The decision will be given verbally on the day of the hearing, unless it is not practical to do so. In all cases the decision of the appeal will be confirmed in writing within **5** working days of the conclusion of the hearing [*see Performance Management Toolkit: model letter ?*].

Where the appeal is upheld and no alternative disciplinary action is imposed all disciplinary documentation, including the letter to the employee, will be removed from the employee's personal file and destroyed. The appeal decision letter will remain on the employee's personal file.

4.12 Return to Work Allowed

See paragraph 2.15 above on return to work following a successful appeal against dismissal.

Examples of Gross Misconduct

It is impossible to list every type of act, which would result in disciplinary action for gross misconduct. The examples of gross misconduct below are given so that all council employees have a general understanding of the type of act, which would result in such action.

1. Serious failure to comply with or apply the council's Diversity or related Policies.
2. Serious acts of discrimination, harassment, bullying, the making of remarks, or verbal abuse against employees, council Members, clients or members of the public on the grounds of race, colour, nationality or ethnic or national origins, age, use of mental health services, sex, marital status, religious belief, sexual orientation or disability. The display, or use within the workplace of any literature or material that could seriously and adversely affect the dignity of others.
3. Serious breach of the Code of Conduct.
4. Grossly inadequate standards of work due to negligence or wilful failure to perform
5. Serious negligence, which causes unacceptable loss, damage or injury.
6. Serious acts of insubordination.
7. Culpable lack of care towards clients, including serious breaches of statutory and council policies on safeguarding children and vulnerable adults.
8. Serious incapability through abuse of alcohol or drugs (subject to use of the council's policy for dealing with employees suffering from alcohol or drug misuse when appropriate).
9. Sexual misconduct at work.
10. Sexual offences.
11. Domestic violence towards other family members where this makes the employee unsuitable to continue in his/her employment with the Council, e.g. s/he works with children and/or vulnerable adults.
12. Falsification of qualifications which are a statutory or essential requirement of employment or which allow the employee to succeed in getting another job with the council or which result in additional remuneration.
13. Falsification of council documents/forms e.g. attendance sheets, bonus sheets, subsistence and expense claims, application forms completed by Brent staff, etc.
14. Acceptance of bribes or other corrupt practices, such as improper use of an official position for private gain or the private gain of some other person
15. Serious breach of financial regulations, standing orders or other corporate standards including fraudulent activity and /or financial irregularity.

16. Unauthorised use and/or disclosure of confidential information relating to the business of the council, its Members and employees or the members of the public with whom it has dealings.
17. Unauthorised removal, possession or use of property belonging to the council, its Members, an employee, client or member of the public.
18. Theft of property belonging to the council, its Members, an employee, client or member of the public, including Housing Benefit and council Tax Benefit fraud.
19. Wilfully causing serious damage to the property of the council, its Members, its employees, its clients or the public.
20. Serious breaches of safety policies or practices including deliberate damage to or misappropriation of safety equipment endangering other people.
21. Acts of violence including the physical assault of and serious threatening or abusive behaviour towards an employee, council Member, client or member of the public.
22. Committing a criminal offence unconnected with the council but which makes the employee unsuitable for continued employment with the council, e.g. committing an offence of dishonesty against another public sector body such as another local authority, the Department of Work and Pensions or the National Health Service.
23. Undertaking unauthorised paid work during paid council time or during any period of sickness absence.
24. Unauthorised or inappropriate use of software and related IT equipment, including processing, storing or transmitting offensive, pornographic or libellous material via email, the internet or the intranet.
25. Any action, which brings or could bring the council and its reputation into disrepute.
26. Any conduct which conflicts with, or detrimentally affects the council's interest, or in any way weakens the confidence of the council or the public in the employee. An employee's wilful non-payment of monies owed by them to the council would fall into this category. (For example, the employee could afford to but did not pay Council Tax or housing rent and had no reasonable grounds to believe that the Council Tax/housing rent were not due to the council.
27. Failure to report to an appropriate council manager or to take appropriate managerial action on knowledge of serious malpractice or wrong doing by others, where that wrong doing or malpractice relates to the business of the council, its members and employees or members of the public with whom the council has dealings.
28. Serious acts of malicious falsehood i.e. – knowingly spreading in bad faith information that is false about the council, its members, employees, clients or members of the public with whom it has dealings.

Examples of Other Misconduct

It is impossible to list every type of act, which would result in disciplinary action for misconduct. The examples of misconduct below are given so that all council employees have a general understanding of the type of act, which would result in such action.

1. Repeated lateness for work.
2. Unauthorised absence from work.
3. Repeated failure to follow absence-reporting rules.
4. Negligence at work leading to injury or loss of or damage to council or public property.
5. Refusal to obey a reasonable and lawful management instruction.
6. Acts of discrimination, harassment, bullying, the making of remarks, or verbal abuse against employees, council Members, clients or members of the public on the grounds of race, colour, nationality or ethnic or national origins, age, use of mental health services, sex, marital status, religious belief, sexual orientation or disability. The display within the workplace of any literature or material that could affect the dignity of others.
7. Breach of the Code of Conduct.
8. Inadequate standards of work due to negligence or wilful failure to perform.
9. Abusive or threatening behaviour towards an employee, council Member, client or member of the public.
10. Engaging as a full-time employee in other business or additional employment without the written permission of the council. In the case of part time staff this only applies where they engage in other employment which is in conflict with their duties and responsibilities to the council.
11. Failure to declare an interest, direct or indirect, in any council contract, which has been or is, proposed to be entered into by the council.
12. Failure to discharge obligations in accordance with statute or contract of employment.
13. Breach of council policy, procedure or professional practice.

Temporary Employees Procedures for Dealing with Disciplinary/ Conduct Issues

See paragraph 1.5 for the definition of temporary employee.

The employee's manager or more senior officer will investigate where appropriate, and a meeting will be convened with the employee to discuss the issues.

Before a decision is made the employee will:

- be given **2** working days notice of the date, time and place of the meeting;
- be provided with any documentation on which the manager intends to rely and the names of any witnesses intended to be called at least **2** working days before the meeting;
- have the right to be represented [See paragraph 1.11] ;
- be afforded the opportunity to comment on any allegations, present evidence and submit mitigation.

A Human Resources Adviser will attend the meeting to advise the Hearing Manager. The disciplinary sanctions which may be applied are those set out in *paragraph 2.2* above. Where the manager concludes that the employee should be dismissed the dismissal must be approved by the Head of Service if the manager does not have the authority to dismiss.

An employee may be dismissed without being given a prior warning.

The employee will have a right of appeal to a manager of the same level of seniority as or at a higher level of seniority than the manager who made the disciplinary decision. There is no right of appeal to members against dismissal.

Procedure at Disciplinary Hearing

The conduct of the hearing will be as follows:

Introduction

- The Hearing Manager will introduce those present, explain the purpose of the hearing and outline the procedure to be followed.

Managers case

- The Presenting Manager will explain the allegations in detail. Any documentary evidence should be presented along with any witnesses' evidence. Any witnesses will withdraw after giving evidence and answering any questions put to them.
- The employee (or his/her representative) may question the presenting manager and any witnesses.
- The Presenting Manager can re-examine management side witnesses.

Case for the employee

- The employee and his/her representative will be given an opportunity to respond to the allegations and present any documentary evidence and witnesses that s/he wishes to produce. Any witnesses will withdraw after giving evidence and answering any questions put to them.
- The Presenting Manager may question the employee and any witnesses.
- The employee (or his/her representative) can re-examine employee side witnesses.

Hearing Manager

- The Hearing Manager, and any adviser may ask questions or seek clarification at any appropriate time during the hearing. The Hearing Manager may:
 - stop and/or redirect any participant if at any time s/he believes that witnesses testimony or evidence being produced is irrelevant to the matter under consideration;
 - call for any additional information/ evidence to be provided, and/or witnesses to attend if deemed necessary to establish the facts;
 - adjourn the hearing where appropriate. The parties will be given reasonable notice of the reconvening of the hearing.

Closing statements

- The Presenting Manager, followed by the employee (or his/her representative) may make final statements in summary to the Hearing Manager without introducing any new material.

Decision

- The Hearing Manager, together with any adviser, will consider the case in private and may recall the employee and their representative and the Presenting Manager to clarify points on evidence already given. If recall is necessary both parties will return.

- The Hearing Manager will give h/her decision on the day of the hearing if practical to do so. In any case the decision will be put in writing within **5** days of conclusion of the hearing.

Procedure at Disciplinary Appeal Hearings

The conduct of the hearing will be as follows:

Introduction

- The Appeal Hearing Manager or the Chair of the Staff Appeals Sub-Committee will introduce those present, explain the purpose of the hearing and outline the procedure to be followed at the hearing.

Case for the employee

- The employee (or his/her representative) will explain the grounds of appeal in detail. Any documentary evidence will be presented along with any witness evidence. Any witnesses will withdraw after giving evidence and answering any questions put to them.
- The Presenting Manager may question the employee and any witnesses.
- The employee (or his/her representative) can re-examine employee side witnesses.

Managers Response

- The Presenting Manager will present his/her response to the ground of appeal and present any documentary evidence and witnesses that he/she wishes to produce. Any witnesses will withdraw after giving evidence and answering any questions put to them.
- The employee (or his/her representative) may question the presenting manager and any witnesses.
- The Presenting Manager can re-examine management side witnesses.

Panel or Hearing Manager

- The Appeal Hearing Manager or Staff Appeals Sub-Committee, and any adviser may ask questions or seek clarification at any appropriate time during the hearing. The Chair of the Appeals Sub-Committee or Hearing Manager may:
 - stop and/or redirect any participant if at any time s/he believes that witnesses testimony or evidence being produced is irrelevant to the matter under consideration;
 - call for any additional information/ evidence to be provided, and/or witnesses to attend if deemed necessary to establish the facts;
 - adjourn the hearing where appropriate. The parties will be given reasonable notice of the reconvening of the hearing.

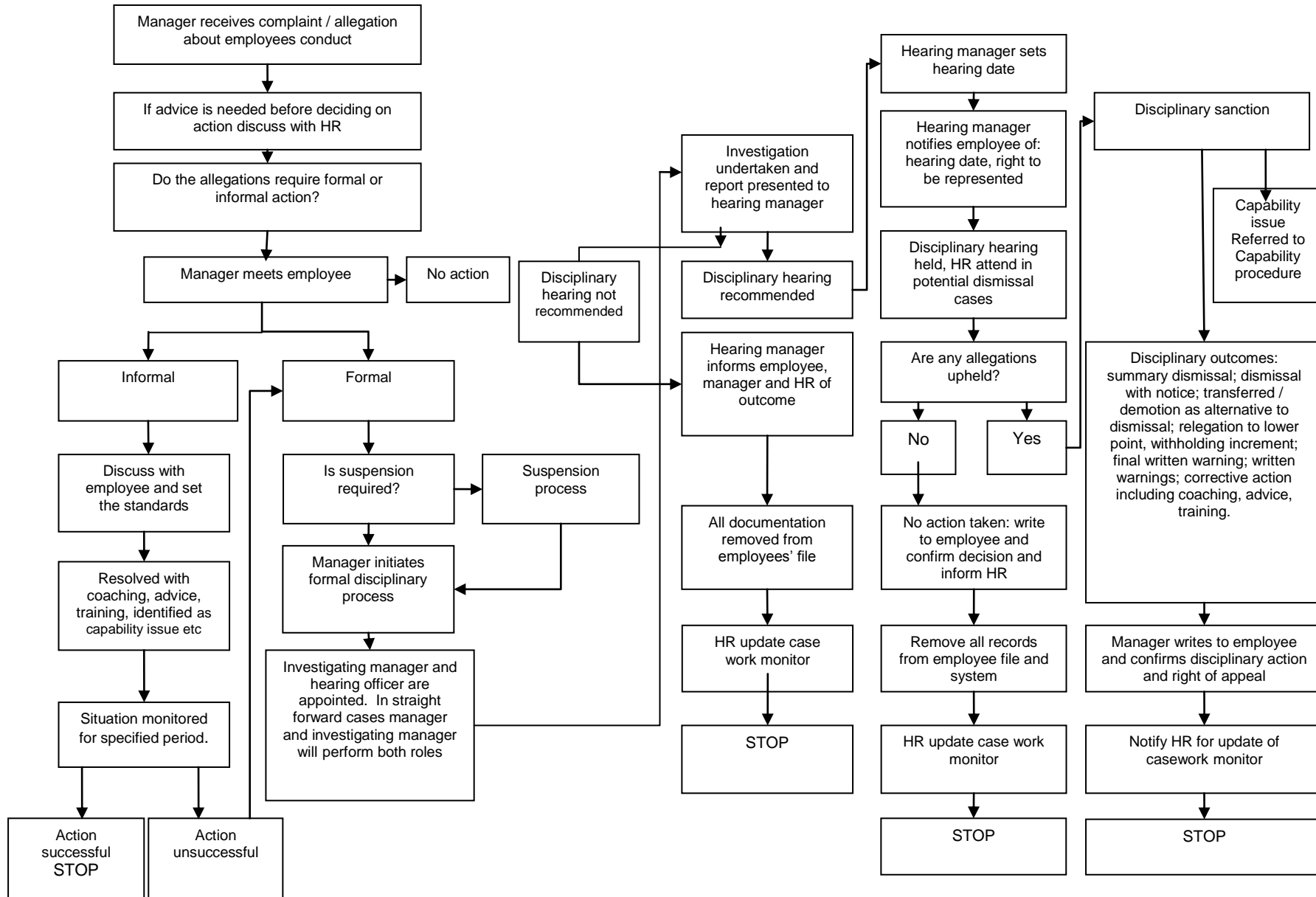
Closing statements

- The employee (or his/her representative), followed by the Presenting Manager may make final statements in summary to the Staff Appeals Sub-Committee or Appeal Hearing Manager without introducing any new material.

Decision

- The Appeals Staff Sub-Committee or Appeal Hearing Manager together with any adviser will consider the case in private and may recall the employee and their representative and the Presenting Manager to clarify points on evidence already given. If recall is necessary both parties will return.
- The Appeals Staff Sub-Committee or Appeal Hearing Manager will give their decision on the day of the hearing, if practical to do so. In any case the decision will be put in writing within **5** days of conclusion of the hearing.

Flow Chart – Taking Action at a Glance



Flow Chart – Appeals at a Glance

