

# ANGUS JOINT NEGOTIATING COMMITTEE FOR TEACHERS

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8 November 2018

Dear Colleague

## **AJNCT/11 (AMENDED) DISCIPLINARY PROCEDURES FOR ANGUS TEACHERS**

In 2016, the local agreement on Disciplinary Procedures for Angus Teachers was amended.

This agreement has now been revised further.

This amendment to the local agreement was approved by the Angus Joint Negotiating Committee for Teachers at its meeting on 25 September 2018, and subsequently ratified by the Staffing Sub-Committee on 6 November 2018.

Yours sincerely

**JIM HAMMOND  
MIKE CALLAGHAN**

Joint Secretaries

Enc.

cc: Chief Executive  
Strategic Director – People  
Head of HR, IT and Organisational Development

## DISCIPLINARY PROCEDURES FOR ANGUS TEACHERS

### 1. Introduction

- 1.1 Where a teacher's conduct or long running underperformance gives rise to serious concern, disciplinary action may be taken by the authority in accordance with the undernoted agreed disciplinary procedures. As the aim of the disciplinary process is to seek improvement in performance or conduct, assistance to enable improvement to occur is essential.

### 2. Principles

- 2.1 Disciplinary rules and procedures are necessary for promoting orderly employment relations as well as fairness and consistency in the treatment of individuals. They enable organisations to influence the conduct of workers and deal with problems of poor performance and attendance, thereby assisting organisations to operate effectively. Rules set standards of conduct and performance at work; procedures help ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them.
- 2.2 All teachers will be made aware of the standards of conduct and performance expected of them. Expectations for teachers are set out in the GTCS Standards for Full Registration. In particular teachers will be aware of what constitutes gross misconduct (see Appendix 1). All problems involving minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, support and counselling. It is essential that all problems of this nature are fully discussed and that support is provided with the objective of encouraging and helping teachers to improve. It is essential also that teachers are aware that support and counselling are available at all times even where it has been necessary to take disciplinary action under the procedures.
- 2.3 Disciplinary procedures must comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. Where the concern relates to the performance of an individual's teaching the procedures must comply with the General Teaching Council Scotland (GTCS) Framework on Teacher Competence. Where the concern relates to the performance of an administrative or managerial function of a promoted post the procedures must comply with AJNCT/29, Procedures for Dealing with Head Teacher Competence and AJNCT/30 Procedures for Dealing with Depute Head Teacher and Principal Teacher Competence.
- 2.4 If a formal disciplinary process is considered necessary, the agreed procedure will comply with the following principles.
- (a) The initiation of disciplinary actions/sanctions will be accompanied by appropriate support mechanisms.
  - (b) No disciplinary action will be taken until the matter has been fully investigated. Any decision, thereafter, to impose a disciplinary sanction must not be taken by the person who conducted the initial investigation. In addition any appeal will not be heard by the same person who issued the disciplinary sanction.
  - (c) The council does not consent to the audio recording of meetings on mobile phones or other electronic devices by managers, employees, representatives or witnesses. This is expressly prohibited.

(d) Apart from gross misconduct (see appendix 1), no teacher will be dismissed for the first breach of discipline.

(e) There will be a right of appeal against all disciplinary sanctions.

(f) No disciplinary action will be initiated against a trade union representative until the matter has been discussed with a full-time official of the trade union concerned.

(g) A teacher will have the right to be represented at all stages of the disciplinary process, including investigatory meetings by a work colleague, a trade union representative, or an official employed by a trade union. Any request for any other representation must be made in advance of any meetings.

(h) Where a teacher raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended to deal with the grievance.

2.5 Should a teacher's poor health impact on procedures, a meeting will be arranged to discuss this and advice from occupational health will be sought, where appropriate, in discussion with Human Resources.

### 3. **The Investigatory Stage**

3.1 In situations where either a complaint has been received or where a teacher's conduct or performance has given cause for concern, the employer will appoint an investigating officer.

3.2 The investigating officer will, if possible, interview all of the parties involved (including the teacher in question, informing them of the complaint) and, if appropriate, prepare signed and dated statements from all of these witnesses. The investigating officer will then produce a report which will enable another representative of the employer to decide whether the matter should be further progressed through the formal disciplinary process. This decision is not taken by the investigating officer and the investigating officer should not, as far as possible, have any function at a future disciplinary hearing other than presenting the facts of the investigation to that hearing. The teacher involved must be advised immediately that a complaint or concern has been lodged, of the nature of any complaint, of the process which will be followed and of the right to be represented (see appendix 2).

3.3 The investigatory process will be conducted as speedily as possible consistent with the principles of fairness and natural justice and every effort will be made to ensure that, in most cases, the investigation takes no longer than 15 working days, as far as possible. Where the investigation is likely to take longer, the teacher will be fully informed.

3.4 All teachers will be entitled to be represented at all hearings and meetings as part of the disciplinary process including investigatory hearings. In addition, in most cases, the teacher whose conduct or performance has given rise to the investigation will be interviewed and must be given a clear indication of the nature and purpose of the investigation and the procedures that will be followed at the interview in advance of any meeting with the investigating officer.

3.5 Once the investigation is completed the teacher will be advised of the outcome of the investigation. Where following an investigation no further action is to be taken in terms of the disciplinary procedures then all references to the investigation should be removed from the teacher's personal file and destroyed.

3.6 In cases where a teacher's long running underperformance has given cause for concern a report will be presented to the senior manager in accordance with the GTCS Framework on Teacher Competence, AJNCT/29, Procedures for Dealing with Head

Teacher Competence or AJNCT/30, Procedures for Dealing with Depute Head Teacher and Principal Teacher Competence presenting the facts of the information gathered during that procedure. In reaching this stage the teacher will have been involved and will have been given a clear indication of nature of the underperformance and the procedures being followed in advance of any meetings.

#### **4. Use of Precautionary Suspension**

4.1 Any use of “precautionary suspension” as part of the disciplinary procedure must comply with the principles and procedures set out below.

##### 4.2 Principles Underpinning Precautionary Suspension

- precautionary suspension must not be associated with any presumption of guilt and must therefore be on full pay)
- precautionary suspension must only be used in the most serious cases of misconduct or long running underperformance or where the teacher's presence at her/his normal place of work could prejudice the investigation
- when the allegations against a teacher relate to child protection concerns, the initial procedures set out by the council's Child Protection Guidelines will apply – specifically in terms of whether or not precautionary suspension is appropriate
- precautionary suspensions will be authorised by a Strategic Director, Head of Service, Service Leader of the council
- all precautionary suspensions should be regularly reviewed throughout the period of the suspension

##### 4.3 Procedures to be followed when a Precautionary Suspension is effected

###### 4.3.1 Script to Advise Teacher

An agreed “script” should be followed by whoever conveys the initial decision about suspension to the teacher concerned (usually the Head Teacher). That script should include reference to:

- the nature of the complaint, without normally sharing the identity of the complainant
- assistance should be offered to the teacher to leave the premises and get home
- advice should be given on how to go about picking up any personal possessions left behind on the day
- emphasis should be laid on the precautionary nature of the suspension (including a clear statement – that suspension does not carry any presumption of guilt, and – if appropriate – that the suspension may be necessary at least partly to protect the teacher)
- the teacher should be told that he/she will be able to maintain social contact with his/her colleagues, who will be urged to refrain from discussing any aspects of the allegation including via social media

- reference should be made to the likelihood of a further meeting being arranged within two weeks (see below), and the teacher should be strongly advised to contact her/his trade union representative

#### 4.3.2 Script to Advise School Staff

The Head Teacher should brief orally all school staff either on the day of the suspension or (at the latest) on the working day following the suspension. This briefing will enable the staff to be advised by the Head Teacher:

- that an allegation has been made
- of the name of the member of staff involved, and an explanation given that leave of absence has been granted in accordance with agreed procedures
- that no member of staff is authorised to discuss any matter relevant to the allegation with any other individual or corporate body (eg the Press); staff should also be urged to refrain from discussing these matters amongst themselves, or via social media,
- that the teacher concerned has been advised that she/he can maintain normal social contact with colleagues on the staff and that staff are urged to refrain from discussing the specific allegations with the teacher, or via social media
- if a school produces a Daily Information Sheet which routinely lists staff absences, then the suspended teacher's name only should appear on that list.

#### 4.3.3 Confirm Suspension in Writing

- the formal letter of suspension should be signed by a Strategic Director, Head of Service or Service Leader of the council; where possible that letter will be handed directly to the teacher or be sent to the teacher's home address on the same day as the teacher is suspended.
- the formal letter of suspension should include advice to the suspended teacher that she/he ought to be in touch with her/his trade union representative.
- the formal letter of suspension should remind the teacher that support is available through the council's employee assistance programme.
- the formal letter of suspension should indicate that a meeting involving the teacher and an identified officer, who will not chair any potential future hearing will be arranged within 10 working days of the date of the suspension. The teacher has the right to be accompanied at this meeting.

#### 4.3.4 Suspension Review Meeting/Contact during suspension

- a meeting should be arranged within 10 working days of the suspension having been given initial effect, the purpose of which should be simply to reiterate the contents of the original suspension letter, to emphasise the precautionary nature of the suspension, to provide an understanding of the way the legal system operates (if a police investigation is underway), to reiterate the available support, and to provide an opportunity for the teacher to seek clarification of procedural matters. This meeting cannot address any specific aspects of the allegations which are being investigated but it can

and should provide an opportunity to set out, as unambiguously as possible, ways in which contact can be maintained between a teacher and her/his representative and the identified officer.

- thereafter, the suspension will be kept under regular review, and the responsible officer will write within 20 working days of the formal meeting (and – if necessary – every 20 working days thereafter) to make the teacher aware of the position at that time.

## **5. Investigatory Stage Outcomes**

- 5.1 Once the investigatory stage is completed the teacher will be advised of the outcome of the investigatory stage
- 5.2 Where there is no foundation to the issue being investigated, no further action will be taken in terms of the disciplinary procedures and no reference will be kept on the teacher's personal file.
- 5.3 A decision to proceed with a disciplinary hearing will be based on the evidence secured during the investigatory stage.

## **6. The Disciplinary Hearing**

- 6.1 A disciplinary hearing cannot be chaired by the person who conducted the investigation or has been involved in the teacher's long running underperformance.
- 6.2 Once a decision has been taken to proceed to a disciplinary hearing, the teacher will be informed, in writing, about:

details of the allegations or areas of underperformance  
the date for the hearing  
who will chair the hearing (see 6.1)  
the procedures to be followed at the hearing  
any rights under the disciplinary procedure, and

provided with copies of the evidence that will be used during the disciplinary hearing including any written evidence and the names of any witnesses that will be called. The teacher should also provide the employer with any written evidence that will be led in his or her defence and the names of any witnesses within a reasonable time before any hearing. It is the teacher's (and/or representative's) responsibility to arrange for the witness/es to attend the hearing. Where relevant, witnesses should ensure they have approval to attend the hearing from their head teacher/line manager.

- 6.3 Should a possible outcome of the hearing be to dismiss a teacher, the teacher will be informed of this in writing at the time they are informed of the hearing.
- 6.4 The teacher (and/or representative) will be given every opportunity to present his/her case, to provide additional documents for the hearing, to call and question witnesses and to sum up his/her case.
- 6.5 At the conclusion of the hearing, the disciplinary officer (see 7.3 and 7.4 below) will either announce his/her decision (to be confirmed in writing thereafter) or indicate that the decision will be communicated in writing within the agreed time limits (see section 9 below).
- 6.6 The retention of information on the teacher's personal file will be dealt with in accordance with section 10.

## 7. Disciplinary Sanctions

- 7.1 All disciplinary sanctions will be recorded in writing and will remain in the teacher's personal file during the period of currency of the warning (see section 10 below). In being advised of the disciplinary sanction which is being applied, the teacher should be advised also of any improvements which will be expected of her/him and the availability of appropriate support to allow her/him to achieve and maintain these improvements.
- 7.2 The following disciplinary sanctions will be available.
- (a) Formal Oral Warning.- For minor breaches of discipline, misconduct or continued poor performance; the warning must include reference to the fact that any further breach may render the teacher open to further disciplinary action.
  - (b) Written Warning.- For more serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a formal oral warning; the teacher must be informed that a further breach may result in further disciplinary action being taken.
  - (c) Final Written Warning.- For serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a written warning. The teacher must be warned that any further breach may result in dismissal.
  - (d) Dismissal.-
    - (i) For serious repeated misconduct or long running underperformance during the currency of a final written warning or for gross misconduct for which no previous warning exists. The teacher must be informed in writing of the effective date of dismissal and whether the dismissal is summary or with notice.
    - (ii) The following punitive sanctions are available in conjunction with a final written warning as an alternative to dismissal: demotion, transfer or suspension of an increment. Where a teacher does not agree to the application of the punitive sanction then the council will have no alternative but to dismiss the teacher.
- 7.3 The Head Teacher will have overall responsibility for the management of teachers within her/his school and will have the authority to issue oral and written warnings, under the agreed disciplinary procedures of the council.
- 7.4 The Strategic Director (or nominated officer) will have the authority to apply all forms of disciplinary sanction described in this section and to dismiss a teacher, under the agreed disciplinary procedures of the council. This is included in the Scheme of Delegation which will be notified to AJNCT on an annual basis.
- 7.5 In cases involving long running underperformance issues the GTCs Framework on Teacher Competence will be followed at all times or in the case of promoted teachers, AJNCT/29, Procedures for Dealing with Head Teacher Competence and AJNCT/30, Procedures for Dealing with Depute Head Teacher and Principal Teacher Competence. Before taking action for dismissal the officer must ensure that the GTCs Framework on Teacher Competence has been followed.
- 7.6 The Strategic Director (or nominated officer), if required due to the circumstances, will make a referral to the GTCs and Disclosure Scotland.

## 8. Appeals

8.1 Teachers will have the right of appeal against all disciplinary sanctions imposed by the council. The table below outlines the appropriate level at which appeals should be heard.

<b>Nature of Warning</b>	<b>Issued by</b>	<b>Appeal Heard By</b>
Oral warning	Head Teacher or nominee	Head of Service / Service Leader
Written warning	Head Teacher or nominee	Head of Service/Service Leader
Final written warning	Head Teacher or nominee	Head of Service / Service Leader

8.2 Appeals procedures are set out in Appendix 2.

8.3 Appeals against dismissal will be to a Sub Committee of the Children and Learning Committee, comprising 5 Councillors who are members of the Children and Learning Committee (or their substitutes), one of whom will normally be either the Convener or the Vice Convener of the Children and Learning Committee

## 9. Time Limits

9.1 The undernoted time limits will apply. Any time limits set should not prejudice a teacher's rights in cases of dismissal to submit a claim to an Employment Tribunal.

<b>Aspects of Disciplinary Procedure</b>	<b>Time Limit (Working Days)</b>
Precautionary suspension	Formal Meeting – within 10- working days; thereafter – a review every 20 working days
Notification of decision to proceed to disciplinary hearing	10 working days notice (minimum) but could be shorter by agreement in individual cases
Notification of decision of disciplinary hearing	5 working days (maximum)
Time limit to lodge appeal	10 working days (maximum) from date of notification of decision of disciplinary hearing
Date of notification of appeal hearing	No later than 20 working days from receipt of notice of appeal
Notification of outcome of appeal hearing	5 working days (maximum)

9.2 Time limits for the duration of warnings are set out below. Warnings will normally be disregarded after the appropriate length of time, except in cases of breaches of child protection policies (see 9.4 below).

<b>Level of Warning</b>	<b>Time Limit (Months)</b>
Oral warning	6 months
Written warning	9 months
Final written warning	12 months

9.3 If an appeal is successful and the original disciplinary sanction withdrawn, any written reference will be expunged from the teacher's personal file and the teacher notified accordingly.

9.4 Any disciplinary sanction which has been imposed and which relates to a breach of the council's child protection policies can remain on a teacher's file for a longer period of time than defined in 9.2 above. Record retention is outlined in 10 below.

## 10. **Records Retention**

10.1 The undernoted records retention schedule will apply to ensure compliance with the data protection law and Scottish Council on Archives records retention schedule, Section 15 Human Resources, Administering of Employees Files.

Description	Trigger	Retention Period	Disposal Action (at end of period)
No Warning	Date of decision not to proceed with warning	Immediately	Destroy
Oral Warning	Date of Warning	6 months*	ACAS Code of Practice – Continued retention on Employee File. Disregarded for Disciplinary Purposes.
Written Warning	Date of Warning	9 months*	ACAS Code of Practice – Continued retention on Employee File. Disregarded for Disciplinary Purposes.
Final Written Warning	Date of Warning	12 months*	ACAS Code of Practice – Continued Retention on Employee File. Disregarded for Disciplinary Purposes.
Dismissal	Date of Dismissal	6 years*	Destroy
* Warnings/ Dismissals involving children	Date of Warning	25 years	Destroy

## 11. **Data Protection**

The council processes personal data during the investigation, hearing and appeal stages of the disciplinary procedure in accordance with its data protection policy, human resources data protection policy and employee privacy notice. Data collected from the point at which the council investigates a matter under the disciplinary procedure is held securely and is accessed by, processed by and disclosed to, managers, human resources and individuals, only for the purposes of completing the disciplinary procedure. Disclosure to professional and other relevant bodies will be made, as required. Further information can be found at Employee Matters – [Human Resources – Data Protection](#) or contact [Human Resources](#).

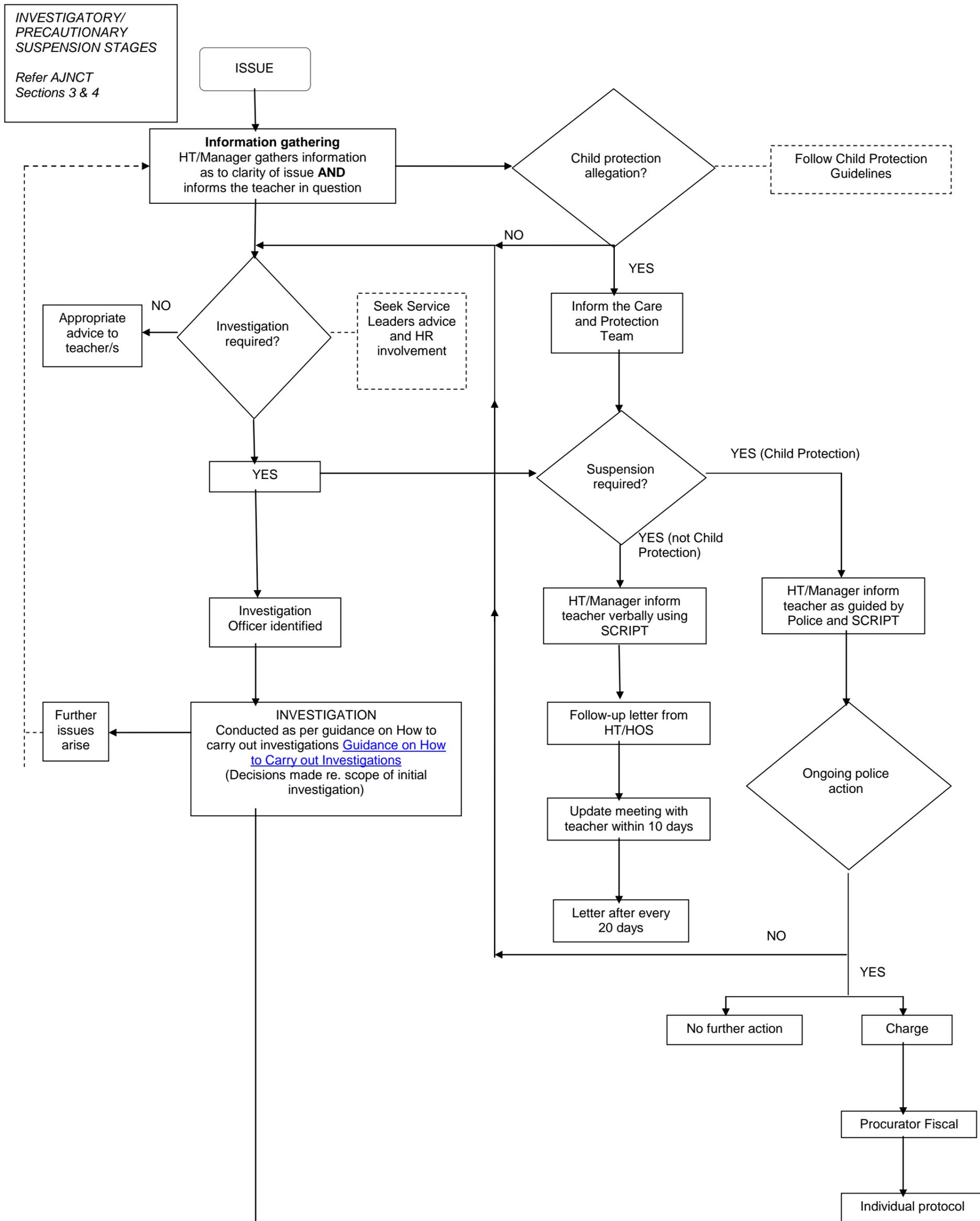
**ANGUS COUNCIL  
DISCIPLINARY PROCEDURES FOR ANGUS TEACHERS  
GROSS MISCONDUCT**

The ACAS Code of Practice on Disciplinary and Grievance Procedures recommends that staff should be made aware of what kinds of behaviour are likely to be construed as a gross misconduct. SNCT/18 also contains a requirement that teachers will be made aware of what constitutes gross misconduct (instancing as examples sexual offences, assault or dishonesty).

It is not possible to compile an exhaustive list of examples of gross misconduct and it should be emphasised that any individual serious disciplinary offence will be considered on the basis of the merits of the case. However, the undernoted provides an indication for teachers of the types of offence which Angus Council is likely to consider as possible gross misconduct.

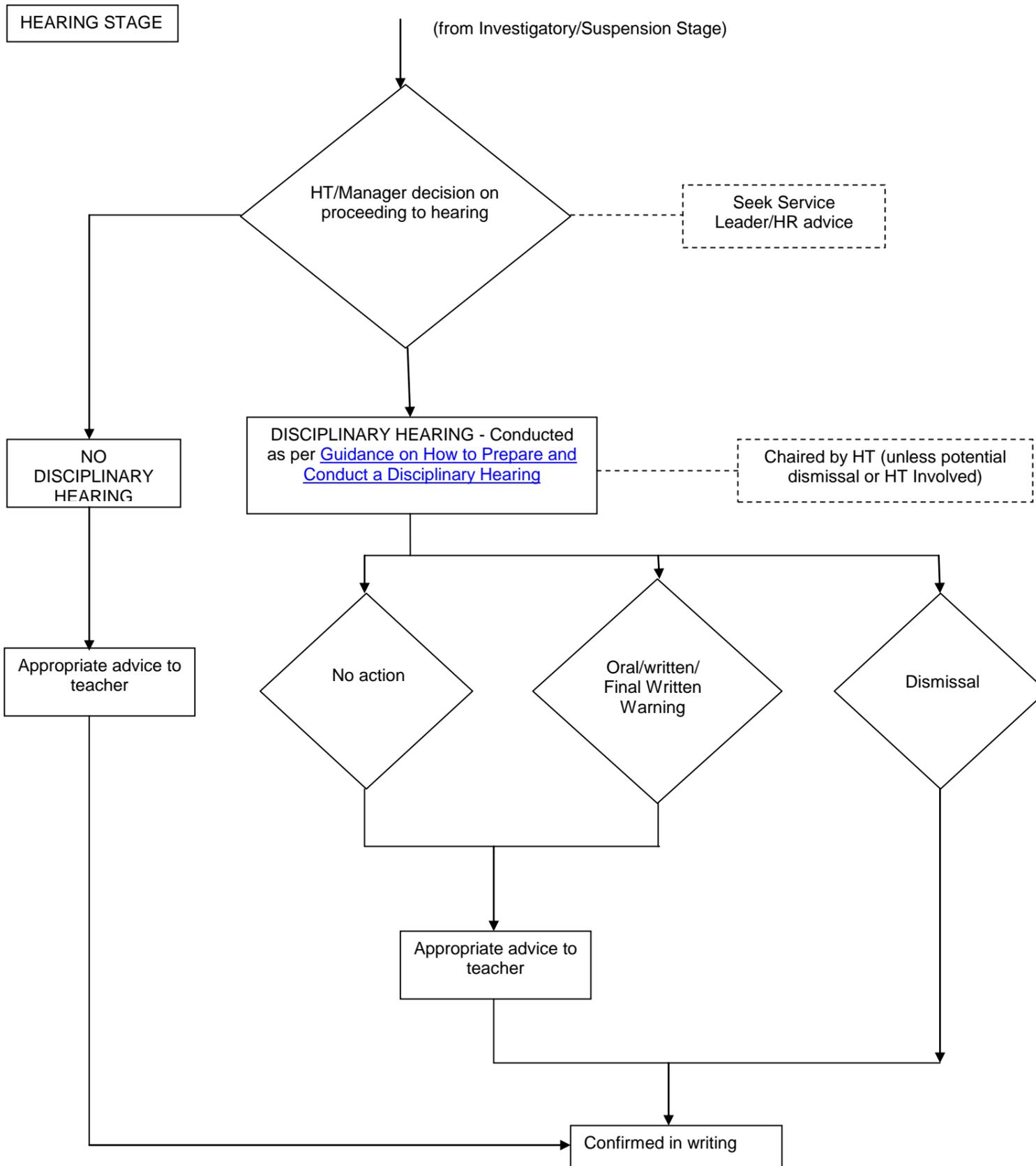
- physical assault
- sexual offence
- theft
- fraud
- serious negligence
- serious insubordination
- deliberate damage to council property
- serious breach of confidentiality

AJNCT 11 – DISCIPLINARY PROCEDURES FOR ANGUS TEACHERS



(to Hearing Stage)  
[Flowchart Conducting a Hearing](#)

**AJNCT 11 – DISCIPLINARY PROCEDURES FOR ANGUS TEACHERS**



- [Guidance on How to Carry out Investigations](#)
- [Guidance on How to Prepare and Conduct a Disciplinary Hearing](#)
- [Guidance on How to present the Management Case](#)
- [Guidance on How to write an Investigation Report](#)
- [Guidance on How to write the Management Case](#)

**ANGUS COUNCIL  
SPECIAL APPEAL SUB-COMMITTEE OF THE CHILDREN AND LEARNING COMMITTEE  
DISCIPLINARY APPEALS - PROCEDURE**

- 1 The Strategic Director, or their representative, shall put the council's case, calling any witness(es) he/she may wish, in the presence of the Appellant and the Appellant's representative.
- 2 The Appellant or Appellant's representative shall have the opportunity to ask questions of the council's representative and of any witness(es) called by the council.
- 3 Members of the Sub-Committee shall have the opportunity to ask questions of the Strategic Director or thier representative and of any witness(es) called by his or her representative.
- 4 The Appellant or Appellant's representative shall put the Appellant's case, calling any witness(es) he/she may wish, in the presence of the Strategic Director or their representative.
- 5 The Strategic Director or their representative shall have the opportunity to ask questions of the Appellant, Appellant's representative and of any witness(es) called by or on behalf of the Appellant.
- 6 Members of the Sub-Committee shall have the opportunity to ask questions of the Appellant, the Appellant's representative and of any witness(es) called by or on behalf of the Appellant.
- 7 The Strategic Director or their representative shall have the opportunity to sum up the council's case, but in doing so cannot introduce any new material.
- 8 The Appellant or Appellant's representative shall have the opportunity to sum up their case, but in doing so cannot introduce any new material.
- 9 The Strategic Director or their representative and the Appellant and the Appellant's representative and any other parties present who are not members of the Sub-Committee or Advisers or Clerk to that Sub-Committee shall then withdraw.
- 10 The Sub-Committee (with their Clerk and up to two advisers) shall deliberate in private, only recalling the Strategic Director or their representative and the Appellant and the Appellant's representative to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
- 11 If practicable, the Sub-Committee shall announce its decision to the Strategic Director or their representative and the Appellant and the Appellant's representative at the conclusion of the Hearing. In any event, the decision shall be confirmed in writing to the Appellant and/or the Appellant's representative by the Service Leader – Legal and Democratic within 10 days.
- 12 The form of the decision of the Sub-Committee to be announced under 11 shall be one of the following, as appropriate:-  
  
"That the grounds of the Appeal have been substantiated, and the Appeal be upheld";  
  
"That the grounds of the Appeal have been substantiated in part and the Appeal be upheld to the extent that .....";  
  
"That the grounds of the Appeal have not been substantiated and the Appeal be not upheld".

## ANGUS COUNCIL DISCIPLINARY PROCEDURES

### GUIDANCE ON HOW TO CARRY OUT INVESTIGATIONS

A senior manager of the employing directorate will appoint an investigating officer to gather information relating to a particular allegation or issue regarding conduct (as opposed to performance). The purpose of an investigation is to enable an informed decision to be made about the most appropriate course of action, which, in some cases may be formal action e.g. a disciplinary hearing, informal action or no action.

An investigating officer is appointed on the basis that they have had no direct involvement in the matter/s under consideration. The role of the investigating officer is to gather the relevant facts of the case which is likely to include interviewing witnesses, preparing signed and dated statements from the witnesses and gathering other relevant documentary evidence, such as policies, procedures and training records.

The purpose of this guide is to provide the appointed investigating officer with an understanding of the investigation process and outline their role and responsibilities in carrying this out effectively. It should be read in conjunction with the relevant disciplinary procedure:

- The council's [Disciplinary Procedure](#) (for local government employees)
- [Disciplinary Procedure for Angus Teachers - AJNCT/11](#) (for teachers, music instructors and associated education professionals)

Advice, guidance and support is available from Human Resources and contact should always be made prior to (or in the early stages of) embarking on an investigation.

#### **Contents**

1. Issues to consider prior to commencing an investigation
2. Preparing for investigatory meetings
3. Issues which may occur during the investigation meeting/process
4. Carrying out investigatory meetings
5. Taking employee/witness statements
6. Investigation report
7. Investigation outcomes

#### **1. Issues to consider prior to commencing an investigation**

##### **Contact with Human Resources**

Contact should be made prior to, or at the very early stages of starting an investigation. If the case appears particularly time consuming or complex, more support/assistance may be necessary. A more straightforward investigation can be completed promptly with minimal support.

### **Suspected fraud or corruption**

Prior to commencing an investigation where fraud is suspected, the investigating officer must immediately contact the council's Counter-fraud team this can be done by telephoning a member of the Counter-fraud team or by emailing [reportfraud@angus.gov.uk](mailto:reportfraud@angus.gov.uk). The investigating officer must also refer to the [Fraud Investigation Framework guidance](#).

### **Investigations involving allegations about children and/or vulnerable adults**

Prior to commencing an investigation where allegations relate to children and/or vulnerable adults, the investigating officer must immediately contact the council's Care and Protection Team or the Adult Protection & Review Officer for advice and guidance on appropriate next steps.

### **Allegations made against Residential Workers**

Where the allegations made are against residential workers the investigating officer must refer to the Scottish Government website and the publication "Allegations against residential workers: How Agencies Should Respond, found here: <http://www.gov.scot/Resource/Doc/346281/0115226.pdf> – in particular section Part Two and Appendix 1.

### **Data Protection**

Investigation officers only have access to relevant information about the employee relating to the matter they are investigating and not unrestricted right of access to all information held about an employee under investigation. Human Resources will provide advice on whether access is justified.

The council processes personal data during the investigation, hearing and appeal stages of the disciplinary procedure in accordance with its data protection policy, human resources data protection policy and employee privacy notice. Data collected from the point at which the council investigates a matter under the disciplinary procedure is held securely and is accessed by, processed by and disclosed to, managers, human resources and individuals, only for the purposes of completing the disciplinary procedure.

Employee and witnesses providing personal data should be advised that their data, in the form of their statement, may be used in the hearing and appeal stages of the disciplinary procedure and disclosed to the employee under investigation, trade union or employee representative, managers, human resources and individuals involved. Disclosure to professional and other relevant bodies will be made, as required (see below **Membership of Professional Bodies**).

### **Consideration of precautionary suspension**

In cases where precautionary suspension is being considered, the investigating officer must immediately contact and seek advice from Human Resources, for example, if the worker is registered with a professional body a referral at the point of suspension may be necessary.

Precautionary suspension requires careful consideration and is only appropriate where the circumstances of the case justify it, for example in cases of alleged gross misconduct; or where the individual's presence in the workplace could compromise the investigation or if there is a risk to an employee's health or safety. Alternatives to suspension must always be considered, e.g., temporary measures, reallocation of duties, provision of other useful work or a change of work location. Suspension without due consideration could result in the employee raising a claim for breach of their employment contract.

The investigating officer must firstly ensure they have the authority to suspend then consult with Human Resources before suspending the employee. The investigating officer will then make arrangements to meet with (accompanied by an appropriate colleague), or to contact the employee to confirm the decision to suspend. The suspension from work will be on the employee's normal pay, for as short a period as possible, should be kept under review and made clear that the suspension is not considered a disciplinary action.

Any suspension and reason for it should be kept confidential, where possible. It may be necessary to explain the employee's absence, and managers should discuss with the employee how they would like it to be explained to colleagues. Other considerations could include whether it is necessary to escort the employee from the workplace and the return of any workplace pass/ or keys and/or IT access if necessary, advice should be sought from Human Resources in advance, when considering these options.

### **Suspension of a Teacher, Music Instructor or associated educational professional**

Refer to specific guidance in relation to the application, communication and review of the suspension of a teacher which can be found in the [Disciplinary Procedure for Angus Teachers - AJNCT/11](#) (for teachers, music instructors and associated education professionals), Section 4.3. When a precautionary suspension is affected, the investigating officer must use the 'script' for informing the teacher of the precautionary suspension as referred Section 4.3.1 and in regards to informing school staff of the precautionary suspension, refer Section 4.3.2.

### **Suspension – Employee on Local Government terms and conditions**

Managers conveying the initial decision to suspend an employee should refer to the following "script".

- The nature of the matter requiring investigation;
- Emphasis that suspension is on a precautionary basis and this carries no presumption of guilt and should not be regarded as prejudging the outcome of the investigation nor of any subsequent disciplinary hearing.
- The suspension allows an investigation to be undertaken impartially and fairly.
- If appropriate advise that the suspension is considered necessary partly to protect the employee;
- Advise that how long the process will take cannot be anticipated and no definitive timescale can be given;
- Advise the employee that they should not attend their place of work unless instructed by management to do so, nor should they make contact with anyone connected with their work other than their appointed representative. (Advise the employee that if they meet with colleagues out with working hours, the employee should not discuss the suspension or the reasons for it).
- Advice on how they may obtain or collect any personal belongings which are in their place of work;
- Offer assistance to the employee to leave the place of work and get home;
- Inform employee that if at any stage it is considered appropriate that the suspension be lifted they will be informed accordingly.
- Advise the employee of the council's Employee Assistance Programme, provided by PAM Assist which offers counselling (0800 882 4102).

### **Confirming the suspension in writing**

The manager must confirm the suspension verbally to the employee and confirm it thereafter in writing by issuing a [Precautionary Suspension letter](#). **Human resources assist in drafting suspension letters, managers must always liaise with Human Resources when preparing and prior to issuing precautionary suspension letters.**

Where possible the letter will be handed directly to the employee at work, emailed securely or be sent by recorded delivery to the employee's home address (managers must check the current/correct address for corresponding) on the same day of the suspension or as soon as thereafter.

It is essential that a suspension is kept under review and timescales regularly monitored. See below further guidance: **Timescales**.

### **Criminal charges or offences**

A criminal charge or conviction will not normally in itself be an automatic reason for suspension/disciplinary action, consideration needs to be given to what effect the charge or conviction has on the employees suitability to do their job and the relationship with the council as their employer, work colleagues and others connected to their work e.g., pupils, service users, members of the public.

However, if the employee is registered, for example with the Scottish Social Services Council (SSSC) the manager must make a referral as soon as they know about it if the employee is charged by the Police or convicted of a criminal offence. In terms of PVG a court must refer people if they are convicted of certain offences or convicted of an offence the court decides is serious enough to prevent them from regulated work with children or protected adults. (See below **Membership of Professional Bodies** for more information on referring employees).

### **Trade Union/ Employee representation at investigatory interviews/hearings**

Employees against whom there are allegations or concerns may be represented at investigatory meetings by a work colleague, trade union representative, or an official employed by a trade union. They should be invited to the meeting in writing using the [Investigatory Meeting Invite letter](#) and be given a clear indication of the nature and purpose of the investigation and the procedure that will be followed in advance of meeting with the investigating officer. If an employee's chosen representative is not available at the time proposed for the interview, the interview should be postponed to a time proposed by the employee provided that the alternative time is both reasonable and ideally, not more than five working days after the date originally proposed. The meeting will only be postponed once.

The representative should be allowed to address the investigatory meeting in support of the employees' case, respond on their behalf to any views expressed, and to confer with the employee during the meeting. They do not have the right to answer questions on the workers behalf or to address the investigatory meeting if the employee does not wish them to, or prevent the facts of the case being investigated.

Please note that witnesses may not be accompanied or represented during an investigation. Should a witness/or witnesses feel extremely distressed it is appropriate for the investigating officer (accompanied by a Human Resources Adviser, if necessary) to offer support and advice to each individual to reassure and support them through the process.

### **Timescales for Investigation**

As above, it is essential that suspension is kept under review and timescales regularly monitored throughout the period of suspension and investigation.

Specific time limits are outlined in the Disciplinary Procedure for Angus Teachers - AJNCT/11 (for teachers, music instructors and associated education professionals), refer section 9.

Wherever possible, the investigation should be concluded as soon as practicable and without unnecessary delay. In all cases, the employee subject to an investigation should be kept up to date by the investigating officer with the timescales should there be any unforeseen delays in concluding the process.

It is particularly important that an investigation proceeds promptly when an employee has been suspended pending the outcome of an investigation/disciplinary hearing.

**Note:** There may be occasions where it is appropriate to request written statements in advance (or in lieu) of an investigatory meeting for some or all witnesses if this helps to progress matters.

### **Membership of Professional Bodies**

The investigating officer should ask the employee under investigation whether they are a member of any professional body and to provide details of membership to the investigating officer.

In some but not all cases referral to a professional body is required following the outcome of disciplinary proceedings. However, there are certain circumstances where a referral must be made at a much earlier stage. It is important that you review the guidance available to you on the relevant professional bodies' website and seek advice from Human Resources as soon as possible after becoming aware the employee is a member of a professional body. The council has a statutory duty to ensure that professional bodies are notified of misconduct in respect of registered workers, and non-registered workers.

Guidance on referring employees:

Disclosure Scotland – Protection of vulnerable groups

<https://www.mygov.scot/pvg-referrals/>

Duty to report any harmful behaviour (even if it takes place outside of work, or after the employee has left employment) that might affect whether the person is allowed to work with children or protected adults, whether the person is a member of the PVG Scheme or not.

A referral is necessary if the harmful behaviour meant the employee:

- was dismissed as a result;
- would have been dismissed but left before they could be;
- was transferred permanently away from work with children or protected adults.

If any of the above disciplinary actions were taken, managers must make a referral to Disclosure Scotland within 3 months of the decision being made.

Scottish Social Services Council (SSSC)

[www.sssc.uk.com](http://www.sssc.uk.com)

<http://www.sssc.uk.com/about-the-sssc/multimedia-library/publications?task=document.viewdoc&id=3101>

The above flowchart available on the SSSC website provides definitive advice in terms of referring a worker.

In summary however, registered workers must be referred in the following circumstances: suspended; dismissed; demoted; resigned during a disciplinary investigation where the employer would have considered dismissal; anything that requires referral to Disclosure Scotland; charged or convicted of a criminal offence; or any other circumstances where there are concerns that behaviour or actions raise serious concern about their fitness to practice. The SSSC website provides further information and guidance on when an immediate referral is required and behaviours that call into question a worker's fitness to practise.

In the case of non registered workers you must still tell the SSSC if you dismiss a worker; a worker resigns and, had they not done so, you would have considered dismissing them or a worker abandons their job and, had they not done so, you would have considered dismissing them. You should let SSSC know when the disciplinary process ends.

Nursing and Midwifery Council

[www.nmc.org.uk](http://www.nmc.org.uk)

<https://www.nmc.org.uk/concerns-nurses-midwives/dealing-concerns/services-employers/making-a-referral-as-an-employer/>

General Teaching Council for Scotland

[www.gtcs.org.uk](http://www.gtcs.org.uk)

<http://www.gtcs.org.uk/nmsruntime/saveasdialog.aspx?IID=5973&SID=9133>

The legal requirement to refer a teacher is in the event of a dismissal on the grounds of misconduct or incompetence, or due to a resignation pending dismissal.

A discretionary referral can be made at any stage if there are concerns about the conduct of a teacher, even if formal disciplinary action has not concluded or if the teacher remains in employment but serious concerns remain about his/her fitness to teach.

## 2. Preparing for investigatory meetings

Thorough preparation is vital. The investigating officer must be aware of the background facts before starting the interview and have an investigation plan (which should be flexible) as to what information is needed.

Prior to the interview, the investigating officer should therefore:-

- Establish the general nature and background to the allegation(s);
- Be familiar with any documentation about the standards expected – e.g. council or professional standards or training records;
- If appropriate, establish if there are any previous disciplinary warnings, and whether these are still active. Human Resources or a senior manager may be required to assist in establishing this from the employee's personal file;
- Assess the key points needed to investigate based on the nature of the allegation and plan and prepare a list of questions to ask witnesses and the employee under investigation (see Section 4);
- Make a detailed list of all further relevant information that might be required and gather this evidence;
- Make any preliminary checks for example review flexi records or talk to colleagues for interim information, as necessary;
- Consider any evidence available, prior to the investigatory meeting and collect any immediately identifiable documentary evidence throughout the investigation process;
- Identify any witnesses to be interviewed and decide on order of interviews. Ideally the person raising the issue/allegation should be interviewed first and the person whom the allegation is against should be last. There may be a need to re-interview witnesses during the investigation process. Additional witnesses are likely to be identified during the investigation and must also be interviewed;
- Ensure dates and times of incidents are accurate and clearly detailed/listed chronologically;
- Consider how you will handle any negative or defensive reaction to your questions, during the meeting;
- Gather evidence which supports the allegation and also contradicts it where applicable. Note: It is not the role of the investigating officer to prove the guilt of any party but to investigate if there is a case to answer at a disciplinary hearing;
- The investigating officer should refer to the relevant Disciplinary Procedure eg for Local Government Employees **OR** Angus Teachers – AJNCT/11 (for teachers, music instructors and associated education professionals) – refer section 9 for specific timescales that apply in the case of this procedure;
- Invite the employee to an investigatory meeting in accordance with that procedure.

### **3. Issues which may occur during the investigation meeting/process**

#### **Failure to attend**

A failure to attend may be for good reason and therefore it is important to get an explanation as to why they did not attend and to consider reconvening. The meeting will only be reconvened once.

Where an employee is persistently unable or unwilling to attend an investigation meeting without good cause, the employer should consider making a decision based on the evidence available. The employee may wish to provide a written statement if they feel able to do so to assist the investigation progressing, or allow their representative to talk on their behalf. In these circumstances, advice should be sought from Human Resources.

Should the investigatory meeting require to be rescheduled, this should be confirmed with the employee in writing [Inv Reschedule Ltr](#)

#### **Alcohol and Drug Misuse**

Please seek advice from Human Resources should any issues of this nature arise during the course of an investigation.

#### **Employees with a disability**

It may be appropriate to consider reasonable adjustments to support an employees' attendance at an investigatory meeting in the case of employees with a disability. Please seek advice from Human Resources, if required.

#### **Further or Counter Allegations**

If further allegations emerge which relate directly to the initial investigation, the investigating officer/manager should include these within the remit of the investigation. The employee should be advised of any additional concerns or allegations being investigated.

If the allegations do not relate, or are made against other parties, these should be dealt with separately to the investigation. Please seek advice from Human Resources should this issue arise.

#### **Malicious or Deliberately False Allegations**

If an allegation is considered to be malicious or deliberately false please seek advice from Human Resources on appropriate and next steps to take.

### **4. Carrying out investigatory meetings**

#### **The investigating officer must-**

- Arrange to be accompanied by a colleague [eg Clerical Officer] available and able to take an accurate record of the employee/witness statements;
- Make the employee feel as comfortable as possible;
- Tell the employee the meeting is an investigatory meeting and explain the issues that will be discussed, clearly outlining that it is not a disciplinary hearing but a meeting which is necessary to establish facts. Bear in mind the matter may be a

sensitive issue and the employee may be very distressed, and at all times when conducting interviews, remember to take this into consideration and offer a comfort break if necessary;

- Explain that the information they provide will be used as part of the disciplinary procedure and shared with senior management if required involved in any further stages of the procedure;
- Inform the employee that the information gathered, processed, retained and disposed of will be in accordance with data protection requirements;
- Begin by outlining the allegation(s) and put any known, relevant facts of the allegation to the employee;
- Ask the employee/witness to explain in their own words what happened/what they witnessed in relation to the matter under investigation;
- If any witness statements have been taken first, ask any questions around the points contained in any witness statements or any other evidence;
- Probe if the explanation is incomplete, inconsistent with the known facts, or is evasive;
- Establish if the employee has any documentary evidence or witnesses to refute the allegation;
- Summarise the key points of the employee's response to the allegations;
- Arrange for statements to be typed, checked, signed and returned as soon as possible;
- Explain that once the investigation has been completed, a report will be prepared and submitted to a relevant manager who will decide next steps. If no further action the investigating officer should retain a copy and destroy after 6 months. The investigation report is not held on the employees personal file;
- Explain that this manager will decide what actions are considered appropriate – no action, informal action, formal action;
- Explain that if formal action is to be taken the information provided, including the investigation report, will be provided and used as evidence. The investigation report is retained by the manager making the decision to proceed to a hearing until the outcome of the disciplinary process;
- Tell the employee that they will be informed of the outcome in writing as soon as possible;
- Emphasise the confidentiality of the interview and that it should not be discussed with anyone else;

During the interview the investigating officer must focus questions so as to establish the facts. They must take care not to express their own opinion(s), or get distracted by side issues or make emotional judgements.

### **Example questions to ask:**

#### **Open:**

- Explain to me exactly what you saw/heard or did
- Describe exactly what happened
- Talk me through what you saw/heard or did

#### **Closed:**

- What time did this happen?
- How many times did this happen?
- Were your concerns raised with anyone?
- Who else was there or knew about this?

#### **Probing:**

- What exactly do you mean by...
- You mentioned earlier that ... tell me more about this
- What concerns you most about what happened?
- What else can you tell me about what happened?
- Can you elaborate on that?
- Is there anything else you feel is relevant for me to know?

The investigating officer must listen effectively to what the employee/witness is saying, so that the need for follow up questions and further probing can be identified.

## **5. Taking Employee/Witness Statements**

The employee/witnesses should be made aware that they may be required to discuss their statement should the matter progress to a disciplinary hearing and that the information will be shared with senior managers, the employee under investigation and other witnesses/parties involved in the disciplinary process. The employee is provided with a written statement to check for accuracy and sign.

If the investigating officer is faced with reluctance by a witness to give evidence it is their role, supported by Human Resources or another manager where appropriate, to explore why the employee is reluctant, provide reassurance and seek to resolve and alleviate these concerns. Whilst not ideal, it may be necessary to accept an anonymised witness statement. In this case, the statement should still be used as evidence but the name of the witness and any reference which may identify them should be removed from the body of the document.

It is essential to record the statement, in the first person "I did, I saw" on the Employee [Statement form](#) (redacting the notes for guidance). This can be done at the time of the investigatory meeting or typed up from notes afterwards. It is important that statements are not taken fully verbatim but instead record the main facts.

It may be appropriate to produce a statement in a question and answer format providing the answers are contained in the statement in the first person.

In order to ensure that an accurate record of the interview is taken the investigating officer should summarise the information before concluding the meeting. The statement should be easily referred to and understood by both parties after the process is complete.

The employee/witness may wish to make minor amendments and this can be done in writing, initialled by the employee/witness providing the statement before returning it to the investigating officer.

Where the employee/witness does not agree to signing the statement, it may be necessary to meet and discuss their concerns with a view to reaching agreement and obtaining a signed statement **OR** the employee/witness remains reluctant and is asked to submit the statement by a specified date, returning it unsigned.

Where evidence is required from a third party who is not an employee, the individual may not want to attend a meeting to provide a witness statement. One option is for the manager to take a statement over the phone, and then send it to the witness for him or her to check, sign and date. Another option is for the witness to provide a signed and dated written witness statement of their recollection of the events.

## **6. Investigation Report**

The final statements gathered during the investigation, along with any other relevant documentation, must be prepared and collated by the investigating officer, along with a brief, impartial summary report. The investigating officer should refer to the guidance on [How to write an investigation report](#) and use the [Investigation Report form](#).

## **7. Investigation Outcomes**

At the conclusion of an investigation, the investigating officer will submit and/or discuss their report to/with an appropriate senior manager. The senior manager required to consider the report will not have been directly involved in the investigation process. This manager will make the decision regarding next steps in terms of no action; informal action; formal action – the matter requires to be considered at a disciplinary hearing. Next step decisions may be made in conjunction with advice from Human Resources if necessary.

- No further formal action **OR** informal action e.g. training/supervision/coaching/counselling refer template [Outcome of Investigation No Further Action letter](#). These letters are not held on the employees' personal file but should be retained by the manager.
- Formal action - disciplinary hearing\*see note below and refer [Invite to Hearing letter](#).

**\*NOTE: No disciplinary proceedings can be initiated against a trade union representative until the matter has been discussed with a full-time official of the union concerned.**

If it is considered that there is a case to answer at a disciplinary hearing, the investigating officer and manager making this decision have further roles:

The investigating officer in deciding who to call as witness/es at the hearing and advising the Chair and Human Resources, in preparing and presenting the management case at the hearing; to ask any relevant questions of witnesses and to answer any questions about the investigation process and findings. Investigating officers should refer to the Guidance on [How to write the management case](#) and [How to present the management case](#).

The Chair of the hearing will liaise with the investigating officer and Human Resources to prepare an 'Invite to disciplinary hearing letter' in which all witnesses being called to the hearing are named; collate all documentary evidence and issue to employee in advance of the hearing and in accordance with the relevant disciplinary procedure. Managers, as Chair at a hearing should refer to the Guidance on [How to prepare and conduct a disciplinary hearing](#).

There is a further role for the investigating officer following their decision on who will be called as witnesses as the investigating officer is also required to prepare and brief witnesses in advance of their attendance at the disciplinary hearing.

Human Resources  
April 2018

## ANGUS COUNCIL - DISCIPLINARY PROCEDURES

### GUIDANCE ON HOW TO PREPARE FOR AND CONDUCT A DISCIPLINARY HEARING

This guidance provides managers with an understanding of the steps required to prepare and chair a disciplinary hearing, and outline their role and responsibilities in carrying this out effectively. It should be read in conjunction with the relevant disciplinary procedure:

- The council's [Disciplinary Procedure](#) (for local government employees);
- [Disciplinary Procedures for Angus Teachers - AJNCT/11](#) (for teachers, music instructors and associated education professionals).

In addition, advice, guidance and support is available from Human Resources throughout the disciplinary process. A representative from Human Resources will always attend disciplinary hearings to support the Chair.

Please note that all correspondence to the employee should be hand delivered to them in work where possible, or emailed securely or posted using **Recorded Delivery** and clearly marked "**Personal - to be signed for by addressee only**". (Note: Managers must also ensure that the address on correspondence is current and correct).

#### **Deciding whether the matter should progress to a formal hearing**

- Review the investigation report provided by the investigating officer along with statements and evidence obtained during the investigation and consider what action to take.
- If you decide that the matter does not warrant a disciplinary hearing and no action should be taken, then, following discussion with Human Resources, you must inform the employee of this conclusion and provide any necessary advice or guidance. All documentary evidence obtained during the investigation is retained by Human Resources and destroyed after 6 months.
- If you decide that the matter does warrant a disciplinary hearing then you should liaise with the investigating officer who will present the management case and the relevant manager who will Chair the hearing to agree a suitable date and time for the hearing to take place, ensuring that witnesses are also available if required to attend.
- A decision will need to be made in conjunction with the investigating officer on which, if any witnesses will attend the hearing. How witnesses are advised and/or prepared for the hearing will be the responsibility of the investigating officer who is presenting the management case.

#### **Preparing for a Disciplinary Hearing**

- You are now required to make arrangements for the disciplinary hearing.

- You should check in conjunction with the investigating officer the availability of all parties required to attend, investigating officer/manager presenting management case; Human Resources representative, witnesses on behalf of management and confirm the employee's attendance in advance of issuing a letter to the employee.
- You should also arrange a suitable venue, with separate holding rooms for the employee and witnesses, if required.
- Your decision to progress to a hearing and the arrangements for this are then confirmed in writing to the employee. You should liaise with Human Resources who will assist you in preparing an "*Invite to Hearing letter*". The employee is entitled to receive written notice of the hearing allowing a minimum of seven calendar days notice in advance for local government employees or a minimum of 10 working days (excluding school holidays) for teachers, music instructors and other education professionals.
- You should check with Human Resources and verify if the employee has any current or live warnings which may result in dismissal and include relevant wording in the invite to hearing letter.
- The employee is advised of the nature of the allegations; the witnesses management intend calling and of their right to be represented, in accordance with the relevant procedure. Copies of the investigation report, all the statements and relevant documentation that will be considered at the hearing are also sent to the employee as enclosures to the invite to hearing letter.
- You will ask the employee to advise you of the name of their representative and to provide details of any witnesses they intend to call in advance of the hearing. You will also ask them to provide any documentary evidence they will issue in their defence allowing at least two calendar days to provide this, prior to the hearing.
- If you are considering dismissal ensure that the letter inviting the employee to the hearing states this as a possible outcome and ensure that the Chair has the authority to dismiss. Only managers with the authority to dismiss can do so.
- Ensure you are familiar with the relevant Disciplinary Procedure and the content of the invite to hearing letter issued to the employee, the allegations made against them, and all documentary evidence provided.

### **Responsibility and tips to maintain pace and control of the hearing**

- As Chair it is your responsibility to:
  - maintain control in a facilitative and non-domineering manner;
  - maintain the pace of the hearing, ensuring the discussion does not get bogged down on peripheral matters, and that adequate time is given to key issues;
  - ensure correct use of adjournments or changes of subject to prevent any discussion becoming overheated;
  - avoid being drawn into arguments and stay in control;
  - ensure effective use of summaries to ensure clarification on important points;
  - ensure all parties are given every opportunity to put forward their case.

## **Conducting the hearing**

- As Chair it is your responsibility to introduce those present and their roles and reasons for being there. The employee representative may respond on behalf of the employee and confer with the employee during the hearing as required but they cannot answer questions on the employee's behalf, or address the hearing if the employee does not wish them to or prevent the employer from explaining their case.
- Briefly explain the format of the hearing, refer [Flowchart Conducting a Hearing](#), and the purpose, which is for you to determine whether the allegations are substantiated and what sanctions are appropriate.
- Confirm with the employee that they received the letter, evidence and relevant procedure in due time to prepare their case.
- Confirm that they are aware the meeting is a disciplinary hearing and confirm they are aware of the allegations as outlined in the letter. If allegation/s are potentially gross misconduct or misconduct following a succession of warnings or, employee on a final written warning, confirm the seriousness and possibility that if substantiated the outcome may result in their dismissal.
- Advise the employee that the council does not consent to the audio recording of meetings on mobile phones or other electronic devices by managers, the employee, their representative or any witnesses. This is expressly prohibited.
- Ask the investigating officer presenting the management case to begin their presentation of evidence gathered during the investigatory process. This will involve the investigating officer providing a background to why an investigation was carried out and calling the relevant witnesses to go over their statement/s as they go through each allegation.
- When a witness is called they will give their statement and be questioned by the investigating officer presenting the management case, by you as Chair, by the Human Resources representative and the employee and/or their representative.
- Give employee/ representative opportunity to ask any questions or comments on the evidence presented.
- The employee, who the allegation/s are against then states their case, presents any evidence and if appropriate calls their witnesses.
- You, the Human Resources representative and the investigating officer presenting the management case then have the opportunity to question the witnesses and the employee.
- You should then, in turn, ask the investigating officer presenting the management case and the employee or their representative to summarise the main points of their case.

### **Adjournment to consider the information presented**

- You will then adjourn the hearing so that only you and the Human Resources representative are present to discuss and consider the facts from the hearing.
- You can either ask the employee to wait whilst you make your decision or, if you feel you are unable to make the decision on that day, inform the employee that they will hear from you in writing, within 10 working days for local government employees, or five working days for teaching and other education professionals.

### **Deciding the Outcome**

- You should be aware of any previous disciplinary warnings which may still be active for disciplinary purposes - this may require you to check and seek advice from Human Resources.
- Once you have made findings of facts, you have to reach a conclusion about the seriousness of any misconduct and then, separately, you have to decide on an appropriate sanction. In deciding an appropriate sanction you should consider any strong mitigating factors presented during the hearing.
- You are then required to make a decision as to whether a disciplinary sanction is necessary. To facilitate this you should consider all the matters raised and evidence given during the hearing and discuss your considerations with the Human Resources representative present.
- Taking into account the circumstances you may decide that:
  - no disciplinary sanction is necessary – the employee's case supported the fact for example, that they did nothing wrong or what happened was out with their control. OR
  - or to issue a disciplinary sanction such as an oral, written or final written warning or a more serious sanction which may include a financial penalty, demotion or dismissal. OR
  - you are unable to reach a decision and consider that further information is necessary and the outcome will be confirmed in writing once reached.
- The Human Resources representative will assist you on consistency and the appropriateness of sanctions you are considering, if required. However, it is essential that the outcome is your decision, which you may be required to defend, either in an appeal hearing or in an employment tribunal.
- A first offence may be considered sufficiently serious to warrant an oral warning, written or in some cases a final written warning; with final written warnings a further act of misconduct within a set period will normally result in dismissal.
- Some misconduct, termed gross misconduct, may be so serious that it warrants dismissal – without notice and can apply to a first offence provided this is set out in the employee's invite letter.
- Other sanctions to consider may include demotion to a lower graded job; training or retraining; counselling; coaching etc.

## Confirm your decision

- Invite the employee back to the hearing along with their representative. The investigating officer and any witnesses are not called back to the hearing for the delivery of the outcome to the employee. If appropriate, and following the hearing, you may need to update the investigating officer if they are the employees' manager, or update the employees' manager, on any relevant information they need to know in relation to the employees' employment.
- If you feel unable to reach a decision as further information or time is required, inform the employee as to when they can expect written notification of the decision, or if further information is required what this will entail.
- If you have made a decision, verbally summarise the following:
  - the original allegations
  - what the employee said to admit or refute each allegation;
  - important points from witnesses or evidence which support the allegations;
  - details of your consideration of the employee's case/response which substantiates (or otherwise) the allegations;
  - which of the allegations you consider are substantiated and what outcome decision you have reached;
  - your rationale for this decision if appropriate and finally,
  - the length of any disciplinary sanction issued and
  - what happens next;
  - state that a further act of misconduct within a set period of time would normally result in a more serious sanction.
- You should now confirm your decision in writing to the employee. The Human Resources representative who accompanied you at the hearing can assist you with drafting an outcome letter; it is not simply for you as the Chair to sign off, but for you to draft/amend a draft so that it accurately reflects your own views. You should never sign off an outcome letter if you are not satisfied that it reflects your views and decisions accurately. If Human Resources assist you with a draft it is essential that you question or challenge the content if you do not understand it.

Template warning letters are available to be adapted accordingly to each individual case. **Human resources assist in drafting these letters, managers must always liaise with Human Resources when preparing and prior to issuing warning letters for:**

- Oral Warnings
- Written Warnings
- Final Written Warnings or
- in the case of Dismissal [for misconduct or gross misconduct].

As Chair you also have a duty to arrange for the [SSSC/GTCS or other professional body or PVG/Disclosure Scotland] to be advised of disciplinary proceedings and outcomes, where required, see below.

## **Data Protection**

The council processes personal data during the investigation, hearing and appeal stages of the disciplinary procedure in accordance with its data protection policy, human resources data protection policy and employee privacy notice. Data collected from the point at which the council investigates a matter under the disciplinary procedure is held securely and is accessed by, processed by and disclosed to, managers, human resources and individuals involved and where the statement is from a witness, this will be disclosed to the employee under investigation, trade union or employee representative, only for the purposes of completing the disciplinary procedure. Disclosure to professional and other relevant bodies will be made as required.

## **Referrals to Professional Bodies**

To establish the requirements and circumstances when a referral is necessary the investigating officer should refer to the relevant professional bodies' website and seek advice from Human Resources as required. The council has a statutory duty to ensure that professional bodies are notified of misconduct in respect of registered workers, and non-registered workers.

There are other professional bodies to which employees are required to be registered and managers need to be aware of any that apply to employees being disciplined for allegations of misconduct.

Normally referral to a professional body would be made following the outcome of disciplinary matters. However, there are certain circumstances where a referral must be made at an earlier stage for example at the point of suspension (if the employee is suspended). Refer Guidance on [How to Carry out Investigations](#).

## **Appeal**

The right of appeal is in accordance with the relevant procedure:

- The council's [Disciplinary Procedure](#) (for local government employees);
- [Disciplinary Procedures for Angus Teachers - AJNCT/11](#) (for teachers, music instructors and associated education professionals).

If there is an appeal the Chair of the hearing will present the management case at the Appeal Hearing.

Human Resources  
April 2018