

Contents

SUMMARY DISCIPLINARY PROCEDURES FOR MISCONDUCT	1
FULL DISCIPLINARY PROCEDURES FOR MISCONDUCT	
<i>Section 1</i>	
General	
1. Scope of the procedures	3
2. Employer / Employee responsibilities	3
3. Purpose of the procedures	3
4. Principles	4
5. Responsibility for the procedures	4
6. Associated policies and procedures	5
<i>Section 2</i>	
The 3 stages of managing misconduct	
7. The 3 stages of managing misconduct	6
7.1 Stage 1 – Day to day line management	6
7.2 Stage 2 – Fact finding and investigations	6
7.3 Stage 3 – Formal disciplinary hearings	6
<i>Section 3</i>	
Day to day line management	
8. Managing minor misconduct	7
<i>Section 4</i>	
Fact finding and investigations	
9. Purpose of fact finding and investigations	8
10. Principles of fact finding and investigations	8
11. Record keeping and confidentiality	8
12. The role of the line manager in investigations	9
13. Carrying out fact finding and investigations	9
14. Investigation timescales	10
15. Professional misconduct	11
16. Police enquiries, criminal charges or offences	11
17. Grievance cases	11
18. Special paid leave	11
<i>Section 5</i>	

Formal disciplinary hearings

19. Equal opportunities	13
20. Misconduct	13
21. Gross misconduct	13
22. Levels of disciplinary action	13
23. Arranging a disciplinary hearing	14
24. Employee representation	15
25. Inability to attend the disciplinary hearing	16
26. Holding the disciplinary hearing	16
• Overview	16
• Participants in the hearing	16
• Introducing the hearing	17
• Presenting the management complaint	17
• Presenting the employee's response	17
• Final questions and clarification	17
• Summing up	18
• Adjournments	18
• Outcome of the disciplinary hearing	18
• Follow-up action	19
27. Mediation	19
28. Dismissal	19
29. Fair dismissal	20
30. Dismissal procedure	20
31. Periods of notice	20
32. Alternatives to dismissal (action short of dismissal)	21

Section 6

Appeals

33. Right to appeal	22
34. The appeals panel	22
35. Arranging an appeal hearing	22
36. Hearing the appeal	23
37. Council Staffing Appeals Committee	23
38. Decisions of the appeals panel and the Council Staffing Appeals Committee	24

Appendices

1. Flowchart for managing misconduct	25
--------------------------------------	----

2. Sample letter template following a counselling and review meeting	27
3. Managers authorised to take disciplinary action and appeals	28
4. Templates for investigations	29
1. Sample letter to attend an investigation meeting	29
2. Note of investigation meeting	30
3. Statement from witness / person under investigation	32
4. Investigation report	34
5. Guidelines on requirements to notify registered bodies	37
1. Guidelines	38
<i>Scottish Social Services Council:</i>	
2. Sample letter to accompany form to SSSC	42
3. Notification form to SSSC	43
4. Sample letter to employee re notification to the SSSC	47
<i>General Teaching Council:</i>	
5. Sample letter to accompany form to GTC	48
6. Notification form to GTC	49
7. Sample letter to employee re notification to the GTC	51
6. Sample letter confirming period of special paid leave	52
7. Examples of misconduct and gross misconduct	54
8. Sample letters for disciplinary hearings	56
1. Invitation to a disciplinary hearing	57
2. Outcome of the disciplinary hearing – no disciplinary action	59
3. Outcome of the disciplinary hearing – 1 st or final warning	60
4. Outcome of the disciplinary hearing – normal dismissal	61
5. Outcome of the disciplinary hearing – summary dismissal	63
9. Employee appeal form	65
10. Holding an appeal hearing	67
11. Format for preparing papers for the Council Staffing Appeals Committee.	69
1. Appeal papers: Management template	70
2. Appeal papers: Employee template	72

This section is a simplified summary only and not a substitute for the full disciplinary procedures.

Equal opportunities statement

1. Scottish Borders Council is committed to treating all employees fairly. Managers and staff will not discriminate directly or indirectly on grounds of race, colour, ethnic or national origin, religion or belief, gender, gender reassignment, sexual orientation, marital status, disability, age, or trade union membership and activity.

Employee representation

2. Employees have a right to be accompanied in formal investigations and at disciplinary hearings and appeals, for advice and support. This will normally be by either a workplace colleague or an accredited trade union representative. The choice of workplace colleague is subject to approval by the commissioning manager but all reasonable requests will be approved. If the employee's nominated trade union representative is unable to attend an investigatory meeting, disciplinary hearing or appeal within a reasonable period, the commissioning manager may, after taking advice from HR, instruct that the interview, hearing or appeal take place with an alternative accredited trade union representative. In cases which may result in dismissal, involvement of the employee's solicitor as a representative may be allowed at the discretion of the manager hearing the case (see para 24).

Minor misconduct

3. Cases of minor misconduct are normally handled through counselling by line managers initially, rather than through disciplinary action. This can involve setting targets or standards, together with timescales for improvement. Conduct is then monitored regularly for a period. A record will be kept for a period of 6 months from the end of the monitoring period.

More serious misconduct

4. If minor misconduct does not improve sufficiently, or more serious misconduct occurs, a short fact finding exercise or investigation will take place to establish whether to call a disciplinary hearing. Where appropriate the employee may be required to take special paid leave during this period. In principle, investigations will be completed within 1 working week and, in more complex cases, will not last longer than 6 weeks. However, it is recognised in some more complex cases the investigation may take longer.

Disciplinary hearings

5. The disciplinary hearing is the opportunity to review the complaint against the employee, establish the facts and for the manager to decide whether or not disciplinary action needs to be taken. Attendance at a disciplinary hearing does not automatically mean that disciplinary action will be taken.
6. Employees will be given at least 2 weeks' notice in writing of their disciplinary hearing and given reasons for their hearing. They can prepare a written statement before the hearing and bring witnesses.
7. At the hearing, the manager will explain what will happen during the hearing and outline the complaint against the employee.

8. The manager will call the investigating officer and witnesses to present evidence and answer questions from both the manager and the employee.
9. The investigating officer will present their findings and the employee will be asked to respond.
10. The investigating officer and the employee can bring in any witnesses, to present evidence and answer questions.
11. The hearing will then adjourn for a short period so that the manager can consider all that has been said and review any documents that have been presented for the hearing.
12. When deciding whether or not to discipline the employee, the manager will consider whether the complaint has been established, the employee's current disciplinary record, general conduct, his/her response to the complaint, any mitigating circumstances and whether it is reasonable to discipline in this case.
13. Wherever possible, the manager will reconvene to advise the employee verbally of his/her decision. It will normally be one of the following:
 - case dismissed
 - disciplinary action
 - Misconduct established but no disciplinary action.
14. There are four levels of disciplinary action which can be taken. These remain 'live' for a period of time and any further misconduct can result in a higher level of disciplinary action being taken at another hearing:
 - Verbal warning - remains live for 6 months
 - Written warning - remains live for 12 months
 - final written warning - remains live for 18 months
 - dismissal
15. Gross misconduct may result in summary dismissal without notice and without pay in lieu of notice. Occasionally, the Council may propose an alternative to dismissal, for example demotion together with a final warning.
16. The result of the disciplinary hearing will be confirmed in writing to the employee, normally within 1 week of the hearing.
17. Employees have the right to appeal against disciplinary action if they believe it is wrong or unjust. Their letter will tell them who they can appeal to and they need to do so in writing within 2 weeks of the date of the letter (a template appeal form is included in the full procedures).

Appeals

18. Appeals will be heard as soon as practically possible and in principle will be heard within 4 weeks of receiving the employee's appeal form. The employee will be given at least 2 weeks' notice of the hearing.
19. If the disciplinary hearing involved a Director, or resulted in a decision to dismiss, the appeal will be heard by the Council Staffing Appeals Committee, which is a panel of elected members.

20. The outcome will be confirmed in writing and there is no further right to appeal within the Council.

Professional misconduct

21. In cases of professional misconduct, the relevant professional bodies will be notified (eg the General Teaching Council, the Scottish Social Services Council). The Social Services Council also requires the employee to report to them when an allegation is made.

SECTION 1: GENERAL

1. SCOPE OF THE PROCEDURES

- 1.1 These disciplinary procedures apply to all employees of Scottish Borders Council (including those on teaching conditions) with the exception of the Chief Executive.
- 1.2 The procedures exclude Agency staff, freelance or self-employed people and anyone else who is not directly employed by the Council under a contract of employment.

2. EMPLOYER / EMPLOYEE RESPONSIBILITIES

- 2.1 Scottish Borders Council recognises that the effective delivery of services is dependent on acceptable standards of conduct from all its employees. The Council acknowledges its responsibilities as an employer to determine appropriate standards of conduct and to make employees aware of these standards through its managers.
- 2.2 Employees also have a responsibility to familiarise themselves with the rules and procedures relating to their employment and to maintain acceptable standards of conduct.
- 2.3 The main sources of reference regarding conduct are listed below, as updated and re-named from time to time. The list is neither exhaustive nor exclusive:
- Terms and conditions of employment
 - Induction process
 - Departmental/service instructions and procedures
 - Department standards
 - Managers' verbal instructions
 - HR Policies and Procedures
 - Wellbeing and Safety Policies and Procedures
 - Scottish Borders Council Code of Conduct for Employees
 - Professional Codes of Conduct (e.g. General Teaching Council for Scotland Code of Practice on Teacher Competence and Code of Professionalism and Conduct and the Scottish Social Services Council Code of Practice for Social Service Workers)
 - Financial Regulations
 - Scheme of Delegation
 - Policy on the use of e-mail and the internet
 - Data Protection Act Code of Practice.
 - Alcohol and substance abuse

3. PURPOSE OF THE PROCEDURES

- 3.1 Many cases of minor misconduct are best handled informally or in counselling meetings and should not progress to a disciplinary hearing. Formal disciplinary hearings can be both time-consuming and unsettling for managers and employees and so should only be used when normal good practice management does not achieve the required improvement or change in conduct.
- 3.2 These procedures are intended to enable managers to deal with issues of misconduct in a structured and consistent way by:
- resolving cases of minor misconduct without recourse to disciplinary action,
 - taking formal disciplinary action if an employee's misconduct gives rise to more serious concern or does not improve sufficiently within a reasonable period.

4. PRINCIPLES

- Minor issues of misconduct will normally be handled as part of positive day to day line management, without recourse to disciplinary action.
- If disciplinary action is considered necessary, it will be used to correct conduct rather than to punish employees.
- All employees must be treated fairly and with dignity. The Council will not tolerate discrimination under equal opportunities legislation (see para 19).
- Disciplinary hearings will only be held after fact-finding or an investigation has taken place.
- Attending a disciplinary hearing does not mean that disciplinary action will automatically be taken.
- Disciplinary hearing letters will clearly define if the allegations fall within misconduct or gross misconduct.
- At any formal investigatory meeting, disciplinary hearing or appeal, employees have the right to be accompanied (see para 24).
- Disciplinary action must be fair, reasonable and justifiable.
- Before taking any form of disciplinary action, managers will take account of any mitigating circumstances. Each disciplinary case will be treated on its own merits, taking into account individual circumstances.
- Employees have the right to appeal against any disciplinary action taken.
- Details of the disciplinary case will remain confidential to those involved and individuals must not discuss the case outwith the formal process, except with their representative.
- Employees will not be dismissed for a first breach of discipline, except in the case of gross misconduct.

5. RESPONSIBILITY FOR THE PROCEDURES

- 5.1 The Chief Executive and each Director is responsible for applying these disciplinary procedures within their Department and for ensuring that line managers:
- are fully competent to manage minor misconduct through positive day to day line management without unnecessary recourse to formal disciplinary action
 - understand which level of discipline they are authorised to give
 - have the skills and understanding necessary to manage formal disciplinary cases effectively.
- 5.2 There may be occasions when it is appropriate for investigations and/or disciplinary hearings to be conducted by Officers from another Department and these employees must also be competent in the process.
- 5.3 These disciplinary procedures represent a process that can lead to dismissal and is subject to sometimes complex employment law. The procedures therefore need to be followed carefully and diligently by managers, as the responsibility for carrying out disciplinary action rests solely with the authorised managers. Specialist advice and coaching is available from the Council's HR staff at each stage. Dismissal cannot take place without the involvement of HR.
- 5.4 The Service Director Human Resources has delegated authority from the Council to make minor changes to these procedures in agreement with the relevant trade unions.
- 5.5 The terms of these procedures will be reviewed at the request of either Scottish Borders Council or the trade unions.

6. ASSOCIATED POLICIES AND PROCEDURES

- 6.1 Other policies, procedures and guidelines need to be followed when dealing with other issues, such as:
- Poor performance (which can also be linked to misconduct in some instances)
 - ill health
 - redundancy
 - retirement
 - a statutory duty or restriction which prevents the employment being continued (eg where a driver loses his/her driving licence and is banned from driving).
 - ending fixed-term contracts.
 - Alcohol and substance abuse

HR should be contacted for further advice.

SECTION 2: THE 3 STAGES OF MANAGING MISCONDUCT

7. THE 3 STAGES OF MANAGING MISCONDUCT

There are 3 stages in the management of conduct. These are summarised here and in the flowchart at **Appendix 1**. They are explained in more detail in the following sections of the procedures:

7.1 Stage 1 – Day to day line management

Often all that is needed to correct misconduct is for a manager to draw the matter to the attention of the employee, explain why it is unacceptable and clarify the standards required. The manager should keep in the employee file a record of the meeting, in case it is needed for future reference, for example if conduct does not improve. The employee files must be securely stored. The record will be kept for a period of 6 months from the date of the meeting or the end of the monitoring period, whichever is the later.

See Section 3 for more details.

This is not disciplinary action but it is an important first stage in managing conduct positively.

7.2 Stage 2 – Fact finding and investigations

If a line manager criticises an employee's conduct, s/he needs to have facts or evidence to support the criticism. See Section 4 for more details.

For many matters of misconduct, facts or evidence can be readily established by, for example, reviewing employee records (such as absence, timekeeping etc) or through discussion with the employee and only a brief investigation will be required.

For more serious incidents, a more detailed investigation may be required which can involve witnesses. The purpose of this investigation is to establish initially whether there is a case for the employee to answer at a disciplinary hearing.

If it is apparent that the issue is minor and readily corrected through discussion between the manager and his/her employee, Stage 1 above should be followed. If, however, the investigation indicates that the issue is more serious, Stage 3 below should be followed.

7.3 Stage 3 – Formal disciplinary hearings

If the misconduct is sufficiently serious, or if day to day line management has not resulted in satisfactory conduct, a disciplinary hearing is normally held. See Section 5 for more details. This can result in a formal warning being issued to the employee which remains live on his/her personal file for a specified period of time or in dismissal.

Employees have the right to appeal against a disciplinary warning or dismissal if they believe the warning is wrong or unjust (see Section 6).

The disciplinary hearing is formal. If the misconduct continues, further disciplinary hearings can be held which may lead to dismissal in due course.

For cases of gross misconduct, employees may be dismissed at their first hearing.

SECTION 3: DAY TO DAY LINE MANAGEMENT

MANAGING MINOR MISCONDUCT

- 8 The Council supports a proactive, positive style of line management. Minor issues of misconduct should be dealt with by the appropriate manager through counselling and/or training, with an emphasis on improving standards and learning from mistakes, rather than apportioning blame.
- 8.1 Line managers are expected to meet both informally and formally with their employees on an on-going basis. Line managers should take the opportunity to re-affirm standards and expectations, and give employees feedback on how they are getting on. Employees should feel comfortable asking questions, raising work issues and discussing anything that impacts on them.
- 8.2 Any minor issues of misconduct need to be dealt with promptly by the line manager through face to face discussion. An informal approach is often all that is needed to correct unacceptable behaviours.
- 8.3 Where the informal approach does not succeed and conduct is still unacceptable, formal counselling and review meetings need to be called. In these meetings the line manager should explore the reasons for the misconduct, and offer guidance, counselling and/or training as appropriate. This can also involve the setting of targets and timescales for improvement.
- 8.4 These meetings should be recorded and a copy kept by both parties, so that expectations and commitments are clearly understood. It may be necessary at this stage for the line manager to caution the member of staff that disciplinary action may become necessary if there is insufficient improvement or change in behaviour (see **Appendix 2** for template letter).
- 8.5 These meetings are not disciplinary hearings and will not result in a disciplinary warning. As such, they are normally held on a one to one basis and the employee does not have the right to bring an employee representative or to appeal. However, in the event that the line manager is accompanied the employee is also entitled to bring an accredited trade union representative/ workplace colleague (see para 24)..
- 8.6 If the counselling and review meetings lead to the required improvement, the manager should give positive feedback to the employee and encourage him/her to keep up these standards. Support and monitoring should continue as appropriate.
- 8.7 If the counselling and review meetings do not result in acceptable standards of conduct, the line manager should consider progressing to the formal process: an investigation and potentially a formal disciplinary hearing. S/he is required to contact HR before making arrangements for a disciplinary hearing.

SECTION 4: FACT FINDING AND INVESTIGATIONS

9. PURPOSE OF FACT FINDING AND INVESTIGATIONS

9.1 The purpose of fact finding and investigations is to establish sufficient basic facts to enable a management decision to be made on whether:

- the matter relates to conduct (ie behaviour) or a different issue. Refer to the relevant policy if the matter does not concern misconduct
- to dismiss the case
- refer the matter back for counselling (see Section 3)
- to hold a disciplinary hearing.

10. PRINCIPLES OF FACT FINDING AND INVESTIGATIONS

- Be efficient and make the investigation a priority.
- Stay open-minded and objective.
- Do not let personal feelings – yours or other people’s – get in the way.
- Treat the employee with respect at all times.
- Keep it short – only collect sufficient relevant information to establish how to proceed
- Be discrete – retain confidentiality (see para 11) and comply with the Data Protection Act
- Keep written records of relevant meetings, discussions, emails etc.

11. RECORD KEEPING AND CONFIDENTIALITY

11.1 All records and papers concerning the investigation and any disciplinary hearing or appeal must remain confidential*.

11.2 Confidentiality must also be maintained in verbal discussions so that only those who need to be involved, are involved. Apart from maintaining respect for the individual employee, confidentiality protects the integrity of the process so that, as far as possible, objectivity can be achieved at every stage.

11.3 In addition, some information gathered from or about individuals as part of the investigation might be confidential to those concerned (eg medical details or client information). In these cases, care should be taken to refer to these people in an anonymised way eg Client A, Client B etc. If in doubt, seek further advice.

* The records must be kept in accordance with the Data Protection Act, which includes the employee’s right to request access to certain data.

12. ROLE OF THE LINE MANAGER IN INVESTIGATIONS

- 12.1 If the matter requires an investigation, the line manager should inform the employee of the complaint, and advise him/her that there will be an investigation and the expected timescales.
- 12.2 In most cases, the line manager will be responsible for organising the investigation and then Chair any disciplinary hearing. The line manager, taking advice from HR, will commission someone to act as an investigating officer, The commissioning manager will chair the disciplinary hearing See **Appendix 3** for a list of managers authorised to take disciplinary hearings.
- 12.3 At all times, the line manager needs to demonstrate fairness. His/her decision on the most appropriate follow-up action (see para 9) must be both reasonable and justifiable. As such there may be circumstances in which alternatives to 12.2 are preferable, for example:
- the line manager could carry out the investigation but refer the potential disciplinary hearing to a colleague or his/her senior manager
 - his/her senior manager could commission a different investigating officer and chair any disciplinary hearing (ie no line manager involvement)
 - his/her senior manager could refer the case to another Officer who undertakes (or commissions) the investigation and chairs any hearing.
- 12.4 In any case if, without pre-judging the case, the misconduct appears to have the potential to result in disciplinary action which is beyond the authority of the line manager, s/he should refer the matter to his/her senior manager.

13. CARRYING OUT FACT FINDING AND INVESTIGATIONS

- 13.1 The extent of any fact finding exercise or investigation is determined by the apparent seriousness and complexity of the matter. In all cases, the investigation should be completed promptly. More detailed guidance on investigating complex cases is available on the intranet or from HR.
- 13.2 For a range of minor day to day matters, only a simple fact finding exercise is needed. Example:
- The line manager thinks that an employee is not letting him/her know when s/he is taking odd days of sick leave. The fact finding exercise may involve checking whether the employee is reporting to someone else (eg a secretary or a colleague) and checking the attendance records. If the employee is new, the most appropriate action may be a counselling meeting, where the manager checks the employee's understanding of the procedures for reporting in sick, and the correct procedures are clarified.*
- 13.3 Where the minor misconduct continues (despite the counselling meeting above) or a more serious incident occurs (including gross misconduct), the investigation is likely to be more extensive. Examples:
1. *The line manager has monitored conduct over a 6 month period and met with the employee about his/her lateness. The line manager gathers and reviews records of the employee's timekeeping and reasons for lateness to date before deciding whether to progress to a disciplinary hearing.*

2. *There have been complaints that an employee has been swearing and shouting at colleagues. The investigation is likely to include interviewing and recording meetings with the employee, the affected colleagues and witnesses. As soon as it is clear that a disciplinary hearing is justified, arrangements can be put in place. In some instances, consideration may be given to sending the employee home on full pay (ie special paid leave – see para 18) while the investigation takes place.*
- 13.4 If the commissioning manager decides to use an investigating officer, s/he must provide a clear remit before the investigation starts. If the allegations are unclear at the start, the investigation has the potential to become unfocused and lengthy.
- 13.5 The investigating officer should only compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary. S/he should limit him/herself to collecting relevant information and in no way attempt to draw conclusions about potential disciplinary action or otherwise stray into the business of the disciplinary hearing.
- 13.6 Investigations may need to include interviews with the key people involved and the gathering of written statements and other material. See **Appendix 4** for templates to support an investigation.
- 13.7 The line manager/ commissioning manager will review the information gathered in the investigation and decide on the appropriate action to take (see para 9). This can include one or more of the following options:
- to dismiss the case (no record of the investigation will be kept on the employees file and the report will be destroyed)
 - to deal with the matter through counselling and review
 - to progress to a formal disciplinary hearing
- 13.8 Some incidents may need to be investigated by those who have legal, regulatory or policy responsibilities and have particular obligations to meet, for example Internal Audit or Social Work. In these cases the appropriate investigative processes and requirements may have to take precedence.
- 14. INVESTIGATION TIMESCALES**
- 14.1 Investigations should be given priority over other work as far as possible, as undue delays can be detrimental to both the employee and the workplace. Investigations should start promptly and be completed as soon as possible.
- 14.2 In relatively simple cases it is expected that an investigation will be concluded within **1 week**. For more complex cases, the investigation may take longer to complete but should not exceed 6 weeks, other than in exceptional circumstances.
- 14.3 There may be occasions when an investigation is delayed due to the intervention of an external agency, such as the Police or the Social Work Department. Advice should be sought in such circumstances from HR and/or Legal Services.

15. PROFESSIONAL MISCONDUCT

- 15.1 Where a line manager has concerns about an employee's professional conduct, his/her integrity, or suitability for a position of trust in relation to children, young people or vulnerable adults, the manager must notify HR and consider notifying the appropriate 3rd party organisation. Guidance is provided at **Appendix 5**.

16. POLICE ENQUIRIES, CRIMINAL CHARGES OR OFFENCES

- 16.1 The Council can carry out an internal investigation (or disciplinary hearing) into a matter which is the subject of a police investigation or which awaits the outcome of a court case. The fact that a police investigation is taking place does not usually mean the postponement of a management investigation and/or subsequent hearing.
- 16.2 No action should be taken, however, which might prejudice or undermine a police enquiry. If there is any suggestion that either the management investigation or the disciplinary hearing should be postponed, this must be discussed with HR in order that appropriate correspondence can be set up with the Police or Procurator Fiscal to enable an audit trail to be established.
- 16.3 If an employee is charged with, or convicted of, a criminal offence which is not related to their employment, this is not in itself reason for disciplinary action. However, after investigation, a formal hearing may be warranted where consideration is given to the seriousness and impact of the offence or allegation in relation to the employee's job and/or contract of employment.

17. GRIEVANCE CASES

- 17.1 If the employee raises a formal grievance during the investigation which is related to the case, consideration should be given to either:
- suspending these procedures until the grievance procedure has been completed
 - considering the grievance during the disciplinary process
 - continuing the disciplinary process but with, for example, a different disciplining manager.
- 17.2 This decision should be taken by HR, who may consider other variations which enable the issues to be progressed fairly and reasonably.
- 17.3 If an employee raises a grievance which is not considered wholly genuine or may be vexatious (eg perhaps for the purpose of delaying the progress of these procedures), this may be regarded as misconduct and subject to disciplinary action. See the Grievance Policy and Procedures.

18. SPECIAL PAID LEAVE

- 18.1 In some cases of misconduct (for example potential gross misconduct), a period of special paid leave may be necessary. It can only be given by an authorised manager following approval from the Service Director Human Resources. See **Appendix 3** for authorised managers and **Appendix 6** for a sample letter. This period of special paid leave (or

- 'suspension') takes place when it is important that the employee is not in the workplace, usually as a matter of urgency.
- 18.2 Special paid leave does not form part of the disciplinary process; it is not disciplinary action and does not imply any pre-judgement of the case. The employee continues to be paid his/her normal pay during this period.
- 18.3 The reasons special paid leave include instances where the employee:
- could adversely influence or interfere with the investigation
 - is considered disruptive, a threat to other employees or to the organisation
 - is apparently unfit for work and so a danger to him/herself and/or others (in which case an occupational health assessment should also be arranged to obtain advice about the individual's health at work)
 - is reasonably believed to be incapable of carrying out their duties because they are under the influence of alcohol or drugs
 - is accused of bullying, harassment or victimisation.
- 18.4 The line manager, or other appropriate manager, will speak directly to the employee and then write within **5 working days** (see **Appendix 6**) to confirm:
- the reasons for the special paid leave
 - its start date and its anticipated end date
 - the name of a 'support person' who the employee can contact for support during the period off work. A support person's role is to keep in contact with the employee and to monitor their welfare in case additional support is required. The support person can also provide responses to questions on issues such as process but they should not discuss the case with the individual.
- 18.5 If the employee is a trade union representative, a discussion will take place with an official employed by the trade union, after obtaining the employee's agreement as to who the matter will be reported to within the union. If the employee gives their agreement, that discussion will take place before any action is taken in respect of the employee.
- 18.6 Periods of special paid leave will be kept under review by the manager, normally at maximum intervals of **2 weeks**.
- 18.7 It is recognised that an extended period of special paid leave can be detrimental and, as such, care must be taken to keep the period of absence from work as short as possible. The manager can end the period at any time, once the reason for the special paid leave no longer applies.
- 18.8 As an alternative to special paid leave, consideration may be given to temporary redeployment to a different role or location if appropriate.
- 18.9 The employee or any witnesses should not discuss the case with anyone else in the workplace other than the 'support person', line manager, their trade union representative, a workplace colleague acting on their behalf in terms of paragraph 24.1 or HR during this period.
- 18.10 The manager should maintain contact with the employee whilst on special paid leave.. Payslips and other information that would normally be issued whilst in the workplace will be forwarded to the employee at their home, or to them at their alternative workplace. The employee should not feel isolated from the workplace during this period.

SECTION 5: FORMAL DISCIPLINARY HEARINGS

19. EQUAL OPPORTUNITIES

- 19.1 Disciplinary hearings are held and disciplinary action taken in a fair and consistent manner, recognising that each case is treated on its merits, taking into account individual circumstances. Due regard is given to an employee's current disciplinary record, work record, length of service, their personal and any domestic circumstances etc which may explain an employee's behaviour.
- 19.2 All employees are entitled to be treated fairly. Managers must not discriminate directly or indirectly on grounds of race, colour, ethnic or national origin, religion or belief, gender, gender reassignment, sexual orientation, marital status, disability, age, or trade union membership and activity.
- 19.3 If any employee has difficulty understanding or complying with the arrangements for disciplinary hearings, s/he should contact his/her line manager, a member of HR or a trade union representative at the earliest opportunity for appropriate support.

20. MISCONDUCT

- 20.1 Employees cannot be dismissed for a first breach of discipline, except in the case of gross misconduct. Examples of misconduct are at **Appendix 7**.
- 20.2 Where the misconduct is of a minor nature, employees normally participate in counselling and review meetings before being called to a disciplinary hearing. Managers must ensure that the basic facts are established, an appropriate level of investigation is carried out and that advice is obtained from HR, before deciding to progress to a disciplinary hearing.
- 20.3 Having received one disciplinary warning, any further incidents of misconduct during the period that the warning is 'live', may result in a higher level of disciplinary action being taken at the next disciplinary hearing.

21. GROSS MISCONDUCT

- 21.1 'Gross misconduct' is behaviour that, in the view of the Council, seriously undermines the contract between the Council and the employee (see examples of gross misconduct at **Appendix 7**).
- 21.2 In such circumstances a disciplinary warning is not normally appropriate because it is no longer reasonable to allow the employee to continue to work. The normal outcome is dismissal without notice (ie 'summary dismissal') unless 'action short of dismissal' (see para 32) is considered to be a feasible alternative by the Council.

22. LEVELS OF DISCIPLINARY ACTION

22.1 Disciplinary action is intended to be corrective rather than a punishment. It can start at any level, depending on the following:

- the nature and seriousness of the misconduct
- the employee's overall employment record including any current disciplinary warnings
- any mitigating circumstances
- what is reasonable and justifiable in the circumstances.

22.2 There are four levels of disciplinary action which can be taken:

**Verbal warning
(6 months)** This is the first stage of disciplinary action and is used for less serious disciplinary offences. This level of warning remains live on an employee's personal file for 6 months.

If conduct does not meet the required standards within this period, a further disciplinary hearing may result in a final warning.

**Written
warning
(12 months)** This is the second stage of disciplinary action. This level of warning remains live on an employee's personal file for 12 months[†].

This warning can be given after a verbal warning when there is insufficient improvement in conduct during the period in which the verbal warning is in force. If the employee's conduct does not meet the required standards within the live period, the next disciplinary hearing can result in dismissal.

The disciplinary process can also start at the Written warning level. This can happen when one or more incidents take place which are sufficiently serious to require starting at a higher level of warning than the verbal warning. Further misconduct within 12 months can result in a Final Written Warning.

**Final Written
Warning
(18 months)** This is the third stage of disciplinary action. This level of warning remains live on an employee's personal file for 18 months[‡].

This warning can be given after a verbal or written warning when there is insufficient improvement in conduct during the period in which the prior warning is in force. If the employee's conduct does not meet the required standards within the live period, the next disciplinary hearing can result in dismissal.

The disciplinary process can also start at the Final warning level. This can happen when one or more incidents take place which are sufficiently serious to require starting at a higher level of warning than the verbal or written warning. Further misconduct within 18 months can result in the employee's dismissal.

Dismissal Dismissal for misconduct is normally preceded by a lower level of warning.

However, in the case of gross misconduct, dismissal may be regarded as the appropriate course of action without any prior warnings. This is called 'summary dismissal' (see para 28.3). There is no notice given for a summary dismissal.

23. ARRANGING A DISCIPLINARY HEARING

23.1 The disciplining manager must contact HR **before** any disciplinary hearing is arranged for advice on the case. This is to ensure that:

- all appropriate steps have been taken
- sufficient investigation has taken place to establish whether to proceed to a disciplinary hearing
- advice is given on the fair application of the disciplinary procedures.

23.2 Only managers who are authorised to discipline staff can take forward a disciplinary case. If it is considered that disciplinary action may need to be taken at a level higher than the authority of the line manager, a more senior manager must chair the disciplinary hearing.

23.3 The person who chairs the disciplinary hearing ("the Chair") is responsible for ensuring that all appropriate arrangements are made for the hearing and that all the necessary people are able to attend, including any management witnesses and advisors.

23.4 The Chair may be accompanied by a member of HR, who provides professional advice. Where appropriate a legal advisor may be required. The hearing should be recorded, so a note taker may also be present.

23.5 The Chair will give the employee at least **2 weeks'** notice in writing of the hearing (see Appendix 8 – Letter 1). The letter shall include:

- the complaint against the employee
- the date, time and venue of the hearing
- the employee's right to be accompanied (see para 24)
- the employee's right to call witnesses and the timescales for submitting a written response to the case together with any supporting documentary evidence
- the procedure that will be followed during the hearing
- the fact that disciplinary action (or dismissal) may result from the hearing.

23.6 A copy of any management report or investigation report will be sent to the employee in advance of the hearing and, wherever possible, with his/her letter.

23.7 The employee is required to submit any written evidence s/he intends to refer to at the hearing and advise the Chair of the hearing of the names of any witnesses s/he would like to call, at least **4 days** prior to the hearing.

23.8 Where a disciplinary hearing is to be convened for a trade union representative, after obtaining the employee's agreement, the case will be discussed with a senior trade union representative or full-time official prior to the hearing as to who the matter will be reported to within the union.

24. EMPLOYEE REPRESENTATION

24.1 Employees have a statutory right to be accompanied to formal disciplinary hearings and appeals by someone who is either:

- a workplace colleague
- an accredited trade union representative who is trained or experienced in being a representative in disciplinary hearings (as certified by the trade union)
- an official employed by a trade union.
- Solicitors will not be accepted as representatives, except in certain hearings that may lead to dismissal where they may be allowed as companions at the discretion of the Council. This will apply mainly when a decision to dismiss will potentially have a wider effect on the employee than the loss of their employment with the Council, for example where it will lead to a referral to the General Teaching Council or Scottish Social Services Council.
- No one else is permitted

The accredited trade union representative/ workplace colleague can address the meeting or hearing to put and sum up the employees case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. They do not, however, have the right to answer questions on the worker's behalf...

24.2 If the employee wishes to be accompanied, s/he needs to make a request to the Chair, giving the name of the person proposed. All reasonable requests will be approved. Exceptions can include a colleague whose attendance might create a conflict of interest.

24.3 No one is obliged to agree to a request by the employee to accompany them. If they do agree, they will be given reasonable time off to familiarise themselves with the case. Further advice is available from HR on the role and responsibilities of the accompanying person.

25. INABILITY TO ATTEND THE DISCIPLINARY HEARING

- 25.1 If the accredited trade union representative/ workplace colleague cannot attend the hearing, in principle it can be re-scheduled once within **2 weeks**.
- 25.2 If an employee is unable to attend the hearing, s/he must contact the Chair of the hearing at the earliest opportunity to explain the reason. If the Chair, in consultation with HR as appropriate, considers the reason to be valid and sufficient, the hearing will be postponed. The hearing should be rearranged as soon as possible taking into account the circumstances for the delay.
- 25.3 It is recognised that employees and witnesses may feel stress at the prospect of attending a disciplinary hearing. However, hearings will not normally be postponed for longer than **2 weeks** as a result of any stress related sick leave. Employees should consider using the Occupational Health counselling service.
- 25.4 If the employee cannot (or does not) attend a re-scheduled hearing, consideration may be given to convening a hearing in his/her absence. The employee will be notified of this and given the opportunity to send their accredited trade union representative/ workplace colleague to attend on their behalf and/or submitting a written statement.

26. HOLDING THE DISCIPLINARY HEARING

Overview

- 26.1 Attending a disciplinary hearing does not mean that disciplinary action will automatically be taken. It is an opportunity to clarify the issues. The line manager/ commissioning manager will Chair the hearing and can ask questions and clarify issues at any stage throughout the hearing.
- 26.2 The employee will be asked to respond to the complaint against him/her and the Chair will reach a decision, based on the balance of evidence (verbal and/or documentary) on whether disciplinary action is necessary and, if so, which level of disciplinary action should be given. Should the Chair need more evidence or advice, the hearing can be adjourned for it to be provided.

Participants in the hearing

- 26.4 In cases of, for example, deteriorating conduct where one to one meetings have been recorded, investigating officers and witnesses may not be necessary.
- 26.5 Hearings normally consist of the employee (with an accredited trade union accredited trade union representative/ workplace colleague if preferred) and the authorised disciplinary manager (with a colleague or advisor, if preferred).
- 26.6 In more serious cases (for example, involving specific incidents of misconduct), the manager may call an investigating officer and witnesses to the hearing to present the case and evidence and help clarify the facts of the case.
- 26.7 Employees who are accompanied need to decide beforehand what their respective roles will be during the hearing. The role of the accompanying person is covered briefly in para 24.1).

Introducing the hearing

- 26.8 The Chair will make the necessary introductions. The approach should be formal and polite, with a view to establishing the facts.
- 26.9 The Chair will explain that the purpose of the hearing is for him/her to consider whether disciplinary action needs to be taken in accordance with the Council's disciplinary procedure. The procedure for the hearing will also be outlined, with the employee asked to confirm s/he understands the procedure.

Presenting the management complaint

- 26.10 The Chair will state clearly the complaint or allegation and ask the employee to respond.
- 26.11 The Chair will then call upon the investigating officer (if used) to present their case and any witnesses, as appropriate. This can include discussing the contents of any records, documents or witness statements.
- 26.12 Occasionally, (for example, in some cases of bullying and harassment) the anonymity of witnesses may need to be maintained. In such cases, witness statements can be anonymised and/or the individuals may not be required to attend a hearing where they could be questioned by the employee. The investigating officer shall explain the reasons for anonymity being maintained at the start of the hearing. The employee (and/or workplace colleague/ accredited trade union representative) shall have the opportunity to challenge the need for anonymity. The Chair shall make a decision on this. If the Chair decides to maintain the anonymity of witnesses, they must consider whether a fair hearing requires that the employee (and/or workplace colleague/ accredited trade union representative) be given an opportunity to put questions to the witnesses by other means, for example by the employee and/or workplace colleague/ accredited trade union representative) submitting written questions to be answered by the witnesses..
- 26.13 The employee (and/or accredited trade union representative/ workplace colleague) will be given the opportunity to ask questions including questions to any investigating officer or witnesses.
- 26.14 The Chair (and colleague/advisor) will have a further opportunity to question any investigating officer or witnesses on issues raised during the employee's questions.

Presenting the employee's response

- 26.15 The employee (and/or accredited trade union representative/ workplace colleague) will be given the opportunity to state his/her response to the complaint or allegation and present evidence. This may include calling witnesses if appropriate and discussing any witness statements and the contents of any other documents.
- 26.16 The Chair (and colleague/advisor) will be given an opportunity to ask questions including questions to any witnesses.
- 26.17 The employee (and/or accredited trade union representative/ workplace colleague) will be given a further opportunity to question any witnesses on issues raised during the management's questions.

Final questions and clarification

- 26.18 The Chair (and colleague/advisor) may use this stage to clarify any issues and to check that what has been said is understood.

26.19 If not already indicated, the employee should be asked whether there are any special circumstances which have not been covered but which may need to be taken into account.

Summing up

26.20 The investigating officer will sum-up the case, without introducing any new material.

26.21 The employee (and/or accredited trade union representative/ workplace colleague) will sum-up his/her response, without introducing any new material.

Adjournments

26.22 The employee (and/or accredited trade union representative/ workplace colleague) can request an adjournment during the hearing which, if considered reasonable by the Chair, will normally be allowed.

26.23 At the end of the hearing, the Chair will adjourn to allow full consideration of all the matters raised, before a decision is taken as to whether or not disciplinary action is warranted and if so to what level.

26.24 Occasionally, the Chair may require further fact finding or investigation and, in these or similar circumstances, the disciplinary hearing may need to be reconvened at a later date to enable further information to be provided and a decision to be made. Any additional written information will be copied to all parties. The hearing will be reconvened as soon as possible.

Outcome of the disciplinary hearing

26.25 The Chair is accountable for the decision, as the disciplining manager. In reaching a decision, the Chair will take into account:

- advice from any advisors
- the employee's disciplinary record
- the employee's general conduct record
- action taken in similar cases in the Council
- the employee's response to the case (including any mitigating circumstances)
- whether it is reasonable to discipline in this case and the appropriate level of discipline.

26.26 The Chair's decision will normally be one of the following:

- case dismissed and any allegations withdrawn
- upheld in part and appropriate action taken
- disciplinary warning
- dismissal (see paras 28 – 32)

26.27 A letter (see **Appendix 8** – Letter 2 or 3) will be sent to the employee to confirm any disciplinary action taken and must be copied to HR for retention on the personal file. If disciplinary action is taken, it must include the following information:

- the offence and why it is unacceptable
- the level of disciplinary action taken and how long it remains live (see para 22.2)
- the required changes in behaviour and how they will be monitored
- details of any supportive action that the Council will take

- the fact that failure to improve or a recurrence of the unacceptable behaviour within the specified timescales can lead to further disciplinary action (including dismissal where appropriate)
- the right of appeal and a named manager to whom the appeal should be sent

26.28 The Chair will normally advise the employee orally of the result of the hearing immediately after the adjournment, indicating any disciplinary action to be taken, the consequences of further misconduct and any conditions which may apply. This will be followed up in writing, within **10 working days except in exceptional circumstances** (see **Appendix 8**).

26.29 In some cases, it might not be possible to give an oral decision immediately after the adjournment. In this event, the decision is given in writing, again within **10 working days** of the hearing **except in exceptional circumstances**. However, if further information is needed before a decision can be reached, the Chair will notify the decision as soon as possible.

26.30 Where misconduct is established but the line manager/ commissioning manager decides that no disciplinary action should be taken, a record of the concerns should be kept by the line manager and the situation monitored. The employee will be advised of this in writing and cautioned of the consequences if his/her conduct does not improve to a satisfactory level.

Follow-up action

26.31 The outcome of the hearing may require the manager to notify the relevant professional body. **Appendix 5** gives guidance on the requirements to notify registered bodies.

26.32 The line manager must continue to review the employee to check whether the required improvements or change in behaviour take place. There may also be a requirement for the line manager to provide additional coaching or training.

26.33 If the required changes do not take place or a further offence is committed while the warning is still live, a further disciplinary hearing is likely to result in the next level of disciplinary action being taken.

27. MEDIATION

27.1 The conciliation service, Acas, encourages the use of mediation in certain circumstances, particularly where working relationships might have been damaged during disciplinary action and some support might be needed to re-establish relations between colleagues or between line managers and employees. Managers should refer to HR for advice on mediation services which may be provided internally or externally sourced.

28. DISMISSAL

28.1 The Council is committed to considering any measures short of dismissal in order to achieve the necessary change in behaviour. The Council recognises, however, that in some cases dismissal is the correct option. This may be as a consequence of progressing from lower levels of disciplinary action or as a result of fundamentally unacceptable incidents or actions by the employee.

28.2 The authority to dismiss, or take 'action short of dismissal' (see para 32) as a form of disciplinary action can be delegated no lower than a manager reporting directly to a

Director level post. Advice must be taken from HR when managers are considering dismissal.

28.3 In some cases, **summary dismissal** is necessary. This occurs in cases of gross misconduct where the seriousness of the case is such that the member of staff can be dismissed without notice or pay in lieu of notice. An investigation is always carried out before a decision to dismiss is reached.

29. FAIR DISMISSAL

29.1 In law, there are only a limited number of fair reasons for dismissal:

- conduct (eg behaviour)
- capability (eg skills, aptitudes, or health)
- redundancy
- a statutory duty or restriction which prevents the employment being continued (eg where a driver loses his/her driving licence and is banned from driving)
- some other substantial reason.

29.2 In demonstrating whether a dismissal has been fair, an employer must also show that:

- there was a valid reason for the dismissal
- s/he acted reasonably in regarding that reason as being sufficient to warrant dismissal.

30. DISMISSAL PROCEDURE

30.1 An investigation will be carried out before a hearing can be convened, as covered in Section 4, before a dismissal can take place.

30.2 A disciplinary hearing will be arranged, as covered in Section 5 In this case the hearing will be chaired by a manager with the authority to dismiss.

30.3 In the letter inviting the employee to attend, s/he will be advised that the hearing could lead to disciplinary action which may include dismissal (see **Appendix 8** – Letter 1). This does not imply a pre-judgement but does alert the employee to the seriousness of the matter. Employees should be encouraged to be accompanied at this hearing (see 24).

30.4 After the hearing, confirmation of the decision to dismiss will be given in writing (see **Appendix 8** – Letter 4 or 5), including:

- the reason for the dismissal
- the date on which employment ends
- the right to appeal (see Section 6).

31. PERIODS OF NOTICE

31.1 Where employees have progressed through the disciplinary warnings to dismissal as a result of, for example, failure to improve or change behaviour, they will receive either their contractual period of notice or pay in lieu of notice, as determined by the Council.

31.2 In cases of gross misconduct, however, which result in summary dismissal (see para 28.3), the employee's contract of employment will end on the date of dismissal. S/he is not entitled to a period of notice and will not be paid in lieu of notice. S/he will be paid their

salary up to the date of dismissal and payment for any leave accrued but not taken as at the date of dismissal.

32. ALTERNATIVES TO DISMISSAL (ACTION SHORT OF DISMISSAL)

32.1 In exceptional circumstances, as an alternative to dismissal, and in conjunction with a final written warning, one or more of the following may be proposed:

- demotion
- transfer to another post
- transfer to another location.

32.2 Where an employee agrees to the alternative to dismissal, s/he still has the right to appeal.

32.3 Where an employee does not agree to the alternative to dismissal, there is no alternative but to dismiss. The employee has the right to appeal against dismissal.

SECTION 6: APPEALS

33. RIGHT TO APPEAL

- 33.1 Employees have the right to appeal against any disciplinary action, including dismissal, if they believe that the decision was wrong or unjust. See **Appendix 9** for a template employee appeal form. Managers will continue to treat employees fairly and with respect throughout the process.
- 33.2 The purpose of the appeal hearing is for the employee to present his/her case for objective review. Depending on the grounds for the appeal, the Chair of the Appeals panel will decide (in consultation with HR) whether there should be a review of the level of disciplinary action taken or, alternatively, a re-hearing of the case if, for example, new evidence is identified which could not have been foreseen at an earlier stage.
- 33.3 The appeal may be submitted by either the employee or by his/her accredited trade union representative. Any appeal must be in writing and received by the named manager within **2 weeks** of the date of the letter confirming the disciplinary action. The employee's letter must include full details of why s/he does not agree with the disciplinary decision, together with any evidence to support the case.
- 33.4 If the appeals procedure is not complied with, the employee will lose the right to appeal unless there are exceptional circumstances. Whether such circumstances exist is a decision taken by the Chair of the appeal in consultation with HR.

34. THE APPEALS PANEL

- 34.1 The appeal will normally be chaired by the manager of the person who chaired the disciplinary hearing. If the disciplinary hearing was held by someone outwith the employee's management line, the appeal will normally be chaired by a senior manager in the employee's management line. If in doubt, advice should be sought from HR. Appeals against dismissal will be heard by the Staffing Appeals Committee.
- 34.2 The appeal is heard by at least 2 panel members (including the Chair) who will have received training in employment law and the conduct of appeal hearings. The aim is for the appeal hearing to be objective so, wherever possible, appeals are heard by managers who have not previously been involved in the case.
- 34.3 The appeals panel can reduce the level of disciplinary action.

35. ARRANGING AN APPEAL HEARING

- 35.1 The Chair of the appeal hearing will arrange to hear the appeal as soon as possible, and other than in exceptional circumstances within **4 weeks** of receiving the employee's written request for appeal.
- 35.2 The Chair will normally give the employee at least **2 weeks'** notice in writing of the hearing, giving details of:
- the date, time and venue of the hearing
 - the employee's right to be accompanied by an accredited trade union representative/ workplace colleague

- the employee's right to call witnesses and the timescales for submitting a written case together with any supporting documentary evidence
- the procedure that will be followed during the hearing.

35.3 The Chair of the disciplinary hearing is responsible for the management case at the appeal hearing. S/he and the employee will each be requested to submit a written statement of their case, including any papers to which they wish to refer, to the Chair of the appeal hearing. These must be received at least 10 working days before the date of the appeal hearing. The Chair of the appeal hearing arranges for each submission to be copied to the other party. If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 working days before the date of the appeal.

36. HEARING THE APPEAL

36.1 The appeals procedure follows similar steps to the disciplinary hearing except that, in an appeals hearing, the employee presents his/her case before the disciplining manager presents his/her response. See **Appendix 10** for more details.

37. COUNCIL STAFFING APPEALS COMMITTEE

37.1 If a Director was involved in the disciplinary hearing or the disciplinary hearing resulted in a dismissal the appeal will be heard by Elected Members rather than Officers. The request for an appeal hearing must be sent to the Service Director Human Resources who will arrange with the Clerk to the Council for it to be heard by the appropriate Council Appeals Committee at the earliest opportunity.

37.2 The Council Staffing Appeals Committee will comprise 3 Elected Members who have received training in employment law and the conduct of hearings. The employee will be given a minimum of **2 weeks'** notice of the hearing.

37.3 The Clerk to the Council will notify the employee of the Appeals Committee procedure and advise him/her of the right to be accompanied.

37.4 The management representative and the employee (or accredited trade union representative/ workplace colleague) will each be asked to submit a written statement of their case, including any papers to which they wish to refer, to the Clerk to the Council to be received at least 10 working days before the date of the appeal hearing. If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 working days before the date of the appeal.

37.5 The Clerk to the Council will arrange for the papers, including the statements of case to be sent to the management representative and the employee, as well as to the Committee Members and any advisors at least one week before the appeal hearing.

37.6 **Appendix 11** gives guidance to managers and employees on preparing papers for the Appeals Committee.

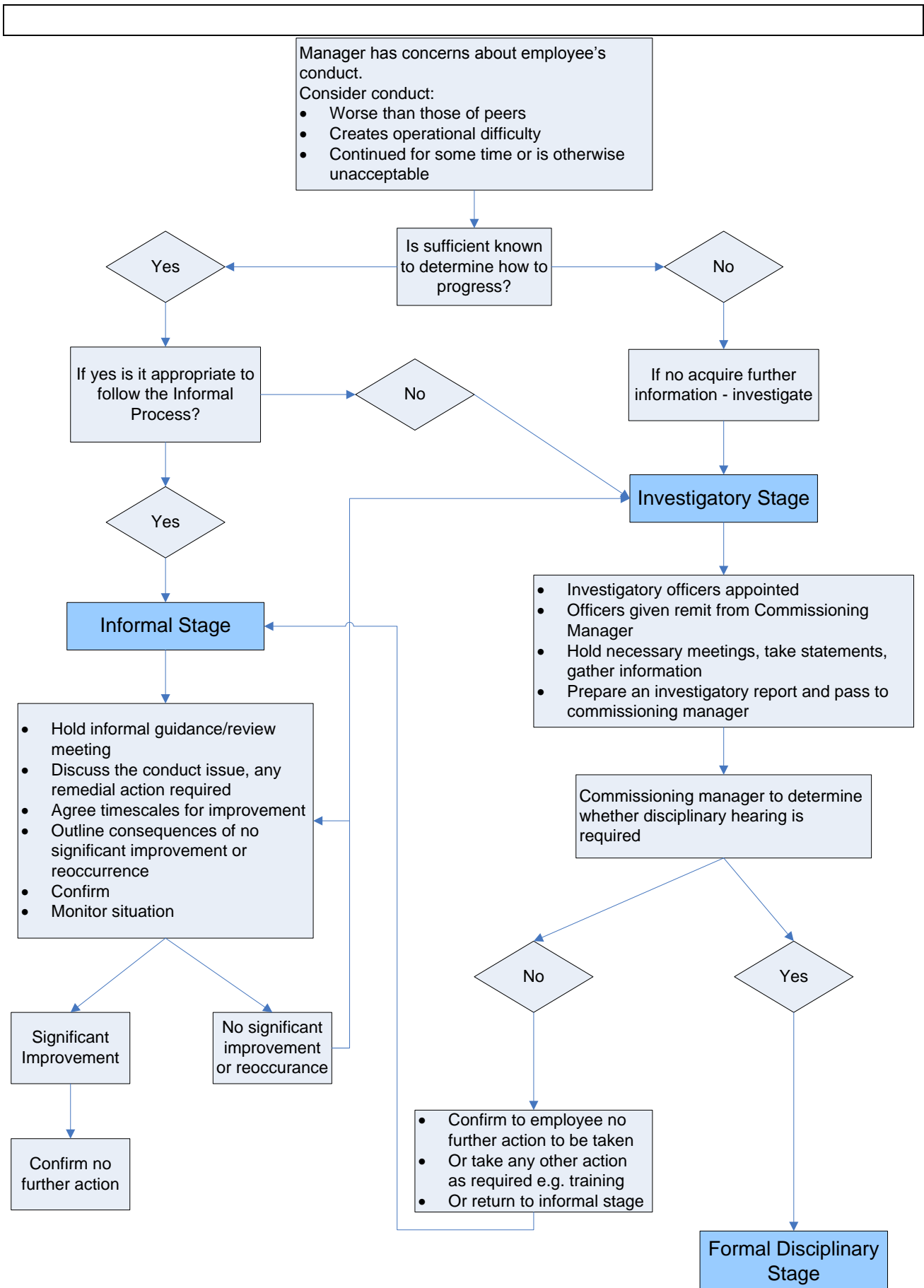
37.7 The Appeals Committee can reduce the level of disciplinary action but cannot increase it.

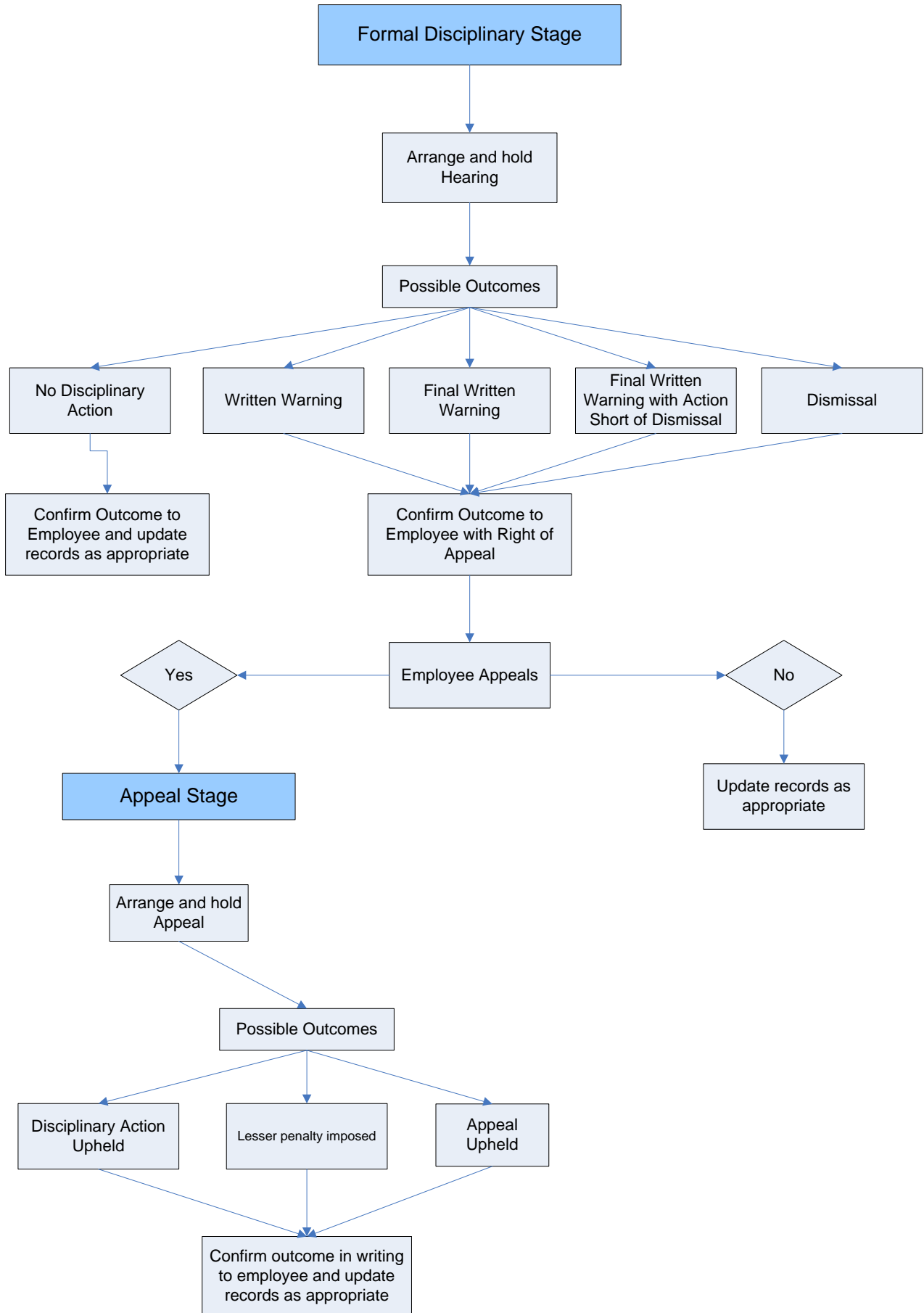
38. DECISIONS OF THE APPEALS PANEL AND THE COUNCIL STAFFING APPEALS COMMITTEE

38.1 The decision is normally one of the following:

- the appeal is upheld and the case dismissed, with the record of disciplinary action removed from the employee's personal file
- the level of disciplinary action is reduced (or referred to the Service Director Human Resources for a re-hearing)
- the appeal is upheld in part and the disciplinary action may remain the same, be reduced or dismissed
- the appeal is dismissed and the disciplinary action upheld
- exceptionally, the Panel/ Committee may request further information from the employee and/or the disciplining manager before reaching a decision.

38.2 The decision of the Panel/ Committee is final and will be confirmed to the employee within **2 weeks** of the hearing other than in exceptional circumstances when the decision will be confirmed as soon as possible.. There is no further level of appeal under the disciplinary policy and procedures.





NOTE: This is a sample letter and should be adapted to suit the circumstances, taking into account the requirements of Section 3 - Managing minor misconduct of the disciplinary procedures.

Confidential

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Confirmation of counselling and review meeting

Thank you for attending the meeting with me on *(date)*. I write to confirm the key points of our discussion.

include:

- *summary of the nature of the misconduct issue*
- *the expected standards of conduct*
- *where the gaps exist*
- *any factors provided by the employee*
- *the action required by the employee including any review dates*
- *any support to be provided by the manager*
- *the likely consequences of not meeting these standards.*

I confirm that such conduct is not acceptable and I caution you that *if your conduct does not meet the necessary standards*, then the formal disciplinary procedure may be followed.

Yours sincerely

Name**Job title**

The tables below give guidance on the level of managers who are normally authorised to issue periods of special paid leave, give disciplinary warnings, dismiss and to hear appeals. Directors will confirm the appropriate levels for their Department.

1. All staff (except teaching staff)

Action	Normally taken by	Appeal normally heard by
Period of special paid leave	Line manager or more senior manager, with the agreement of the Service Director Human Resources	No right to appeal
Day to day management of conduct	Line manager or supervisor	No right to appeal
Verbal Warning	Line Manager	Senior manager to whom line manager reports
Written Warning	Line manager	
Final Written Warning	Line manager or more senior manager	
Action short of dismissal	Senior manager, Chief Officer or Director	Manager to whom the senior manager, Chief Officer or Director reports. Where Director has been involved, Council Staffing Appeals Committee.
Dismissal	Senior manager, Chief Officer or Director	Council Staffing Appeals Committee.

2. Teaching staff

Action	Normally taken by	Appeal normally heard by
Period of special paid leave	Headteacher (or Depute in their absence) or more senior manager, with the agreement of the Service Director Human Resources.	No right to appeal
Day to day management of conduct	Principal Teacher, Depute Headteacher or Headteacher	No right to appeal
Verbal Warning	Head Teacher	Senior manager to whom line manager reports eg Quality Improvement Officer, Chief Education Officer or Director
Written Warning	Head Teacher	
Final Written Warning	Quality Improvement Officer or Chief Education Officer	
Action short of dismissal	Quality Improvement Officer or Chief Education Officer	Senior manager to whom line manager reports eg Quality Improvement Officer, Chief Education Officer or Director
Dismissal	Quality Improvement Officer, Chief Education Officer or Director	Council Staffing Appeals Committee.

NOTES: These templates are for guidance only and may be varied to suit the circumstances. More detailed guidelines on investigations are available on the intranet or from HR.

CONTENTS:

1. Sample letter to attend an investigation meeting
2. Note of investigation meeting
3. Statement from witness / person under investigation
4. Investigation report

1. SAMPLE LETTER TO ATTEND AN INVESTIGATION MEETING
--

Confidential

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Investigatory meeting

I would be grateful if you could attend an investigatory meeting

on *(date)*
at *(time)*
in *(venue)*

The purpose of the meeting is to investigate a complaint that *(insert details of complaint or allegation)*. (For witnesses, substitute this sentence with: *You are being called as a witness*).

I will be assisted at this meeting by *(name, job title)*. The investigation is being carried out in accordance with the Disciplinary policy and procedures for misconduct (a copy is enclosed). You have the right to be accompanied by an accredited trade union representative or work colleague, although you should understand that this is an investigatory meeting and not a disciplinary hearing. All reasonable requests will be approved.

Please confirm your attendance at this meeting and the name of your accredited trade union representative/ accompanying workplace colleague at your earliest convenience.

Yours sincerely

Name
Job title

Enc.

cc: *(Name of person also to be present at meeting)*

2. NOTE OF INVESTIGATION MEETING**CONFIDENTIAL****NOTE OF INVESTIGATION MEETING****Date of meeting:**

1. DETAILS OF INTERVIEWEE

a) Incident under investigation:

b) Name of interviewee:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

c) Name of interviewee's accredited trade union representative/ workplace colleague, if any:

Job title / Name of trade union:

2. DETAILS OF INVESTIGATING OFFICERS

a) Name:

b) Name:

Job title:

Job title:

Relationship to
person under
investigation:Relationship to
person under
investigation:

3. SUMMARY OF INVESTIGATIONBriefly summarise the reason for the investigation (eg the nature of the complaint):

4. NOTE OF THE MEETING

(Name of investigating officer) opened the meeting by introducing everyone present before giving a brief explanation of the reason for the meeting and the procedure to be followed. The following questions were asked:

Q1. Details of question:

Summarised response:

Q2. Details of question:

Summarised response:

(Continue to list all questions)

QX. Do you have anything more to add in respect of this matter?

Summarised Response

5. DECLARATION

I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.

I understand that I cannot discuss these proceedings with anyone other than my accredited trade union representative/ accompanying workplace colleague, and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.

I declare that my contribution to this investigation meeting has been accurate and true. I have been given a copy of my statement to check its accuracy and to make any amendments or comments if I disagree with it. I accept that if I do not sign, or return comments within the given timescale, then the statement may still be used

Interviewee's signature:

Date:

Investigating officer's signature:

Date:

Investigating officer / Note taker's signature:

Date:

3. STATEMENT FROM WITNESS

NOTE: If the witness is unavailable for interview, s/he can complete an investigatory statement instead. In some instances, the investigating officer(s) may wish to have both an interview and statement.

CONFIDENTIAL**INVESTIGATION STATEMENT****1. DETAILS OF WITNESS**

a) Incident under investigation:

b) Name of witness:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

2. DETAILS OF INVESTIGATING OFFICERS

a) Name:

b) Name:

Job title:

Job title:

Relationship to
person under
investigation:

Relationship to
person under
investigation:

3. MY STATEMENT**4. DECLARATION**

I declare that:

- I understand that I may be required to clarify points raised during the investigation.
- I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.
- I understand that I cannot discuss these proceedings with anyone other than my representative, and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.
- This statement is a true and fair account.

Employee's signature:

Date:

4. STATEMENT FROM PERSON UNDER INVESTIGATION

NOTE: If the person under investigation is unavailable for interview, s/he can complete an investigatory statement instead. In some instances, the investigating officer(s) may wish to have both an interview and statement.

CONFIDENTIAL**INVESTIGATION STATEMENT**

5. DETAILS OF WITNESS

a) Incident under investigation:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

6. DETAILS OF INVESTIGATING OFFICERS

a) Name:

b) Name:

Job title:

Job title:

Relationship to
person under
investigation:

Relationship to
person under
investigation:

7. MY STATEMENT**8. DECLARATION**

I declare that:

- I understand that I may be required to clarify points raised during the investigation.
- I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.
- I understand that I cannot discuss these proceedings with anyone other than my representative or immediate family members (provided that I ensure they retain confidentiality), and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.
- This statement is a true and fair account.

Employee's signature:

Date:

5. INVESTIGATION REPORT

NOTE: The content of this template is an example only and should be varied to suit each case.

CONFIDENTIAL**INVESTIGATION REPORT**

1. REPORT OVERVIEW

a) Report to: *(Name of commissioning manager)*

b) Date report completed:

c) Report from the following investigating officer(s):

Name:

Name:

Job title:

Job title:

Relationship to
person under
investigation:

Relationship to
person under
investigation:

d) Name of person under investigation:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

2. SUMMARY OF INVESTIGATION REMIT

Briefly summarise the reason for the investigation (eg the nature of the complaint):

3. THE REPORT**Contents**

1. Introduction
2. Background
3. Investigation
4. Summary

5. Appendices

1. Statement / note of meeting with the person under investigation
2. Witness statements / notes of meetings
3. Other relevant documentation – eg emails, correspondence etc.

1. INTRODUCTION

(Names of investigating officers) were commissioned by *(Name of manager, job title)* to investigate the complaints and report their findings to *(Name, job title)*.

If in the process of the investigation, further complaints or allegations came to light, *(give details of the complaints or allegations)* and, under advice from *(name of commissioning manager)*, they have been included here as they are relevant to the case.

2. PROCESS

The investigation commenced on *(date)* and finished on *(date)*.

The people interviewed were:

- | | |
|----------|------------|
| 1. Name: | Job title: |
| 2. Name: | Job title: |
| 3. Name: | Job title: |
| 4. Name: | Job title: |

Specialist advice was sought from *HR/Legal Services* (delete as appropriate) on the following:

-
-
-

3. INVESTIGATION

Outline the investigation eg briefly recap of what prompted the investigation, who was involved, why the witnesses were selected, why the questions were chosen, evidence that supported or conflicted with other evidence, the nature of other evidence collected (e.g supporting documents) etc

Allegation number 1: *(specify the allegation or complaint)*

The investigating officer(s) found that there was evidence to support this allegation because:

-
-

The investigating officer(s) found that there was conflicting evidence in respect of this allegation because:

-
-

The investigating officer(s) found insufficient evidence to support this allegation because:

-
-

Allegation number 2: *(specify the allegation or complaint)*

The investigating officer(s) found that there was evidence to support this allegation because:

-
-

The investigating officer(s) found that there was conflicting evidence in respect of this allegation because:

-
-

The investigating officer(s) found insufficient evidence to support this allegation because:

-
-

The Investigators found no evidence to support this allegation

Allegation number 3: *(specify the allegation or complaint)*

Continue as above

4. **SUMMARY** *(The investigating officer must not make recommendations – the manager is responsible for assessing the investigation (eg whether more information is needed at this stage) and deciding whether to proceed to a disciplinary hearing.)*

Investigating officer's signature:

Date:

Investigating officer's signature:

Date:

CONTENTS:

1. Guidelines on requirements to notify registered bodies

Scottish Social Services Council

2. Sample letter accompanying form to Scottish Social Services Council 5
3. Notification form to Scottish Social Services Council 7
4. Sample letter to employee re notification to the Scottish Social Services Council 8

General Teaching Council

5. Sample letter accompanying form to General Teaching Council 9
6. Notification form to General Teaching Council 11
7. Sample letter to employee re notification to the General Teaching Council 12

1. GUIDELINES ON REQUIREMENTS TO NOTIFY REGISTERED BODIES

1. Scope of guidelines

These guidelines provide a framework within which line managers should work when dealing with employees who work with children and vulnerable adults. These employees may be registered with certain professional bodies eg Scottish Social Services Council, General Teaching Council, or hold posts which are subject to a Disclosure check or PVG registration with Disclosure Scotland or are involved in service provision which is regulated by the Care Commission. These guidelines are intended to provide general advice in these areas - more detailed advice and support can be provided by HR.

For other professions, for example law, finance and human resource management, the guidelines laid down by the relevant professional institutes and/or governing bodies must be followed in all cases of potential professional misconduct of whatever nature, together with the Council's disciplinary procedures as appropriate. Advice and support can be provided by HR.

An integral part of an employee's profession is maintaining the standard of conduct expected of them. Their relationships with colleagues, clients, pupils, and the general public must be professional, appropriate and justifiable otherwise their suitability to remain in their profession may be brought into question.

Where a line manager has concerns in respect of an employee's conduct, their integrity or their suitability for a position of trust in relation to children, young people or vulnerable people, they must give consideration to whether they need to notify the appropriate organisation. In addition, where employees' conduct or performance give rise to serious concerns line managers will also consider whether disciplinary action is appropriate, in line with the relevant Scottish Borders Council policies, procedures and guidelines.

Please refer to the following guidance in respect of the Scottish Social Services Council and the General Teaching Council.

2. Scottish Social Services Council (SSSC)

The SSSC Codes of Practice have been developed to raise standards in social services and describe the standards of conduct and practice required of employers and social service workers. Registration is required for those working in social services and this register is a public record that those registered have met the requirements for entry onto the register and have agreed to abide by the standards set out in the Code of Practice for Social Service Workers. In Scottish Borders Council all employees within Social Work, whether registered with SSSC or not, are required to sign up to and meet this Code of Practice. Some employees in other departments, for example nursery nurses and certain other employees in Integrated Children's Services also require to register with SSSC.

The Regulation of Care (Scotland) Act 2001 states that Scottish Borders Council must notify the SSSC immediately when:

- ❖ A social service worker is dismissed on grounds of misconduct; or
- ❖ The social service worker resigned or abandoned their position where, but for the resignation or abandonment:
 - The worker would have been dismissed on the grounds of misconduct; or
 - Dismissal on such grounds would have been considered by SBC.

In the above circumstance, Scottish Borders Council must notify SSSC of the dismissal, resignation or abandonment; and in doing so provide the SSSC with an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

A referral should also be made immediately if Scottish Borders Council has taken the decision to suspend or redeploy a social service worker pending the outcome of an investigation into the conduct of that worker under this Disciplinary Procedure. The SSSC will make a separate decision about whether immediate action is required to remove a worker's name from the Register pending further inquiries.

Additionally Scottish Borders Council are required to inform the SSSC about any misconduct by registered social service workers that might call into question their registration and must inform the social service worker that a report has been made to the SSSC.

In order to supply SSSC with the appropriate details and help to meet the Council's responsibilities under both the Regulation of Care (Scotland) Act 2001 and the SSSC Code of Practice, please use the following form and letters. These can be used for providing information about a registered worker or a non-registered worker who may apply for registration in the future.

3. General Teaching Council Scotland (GTCS)

The General Teaching Council for Scotland is the professional regulatory body for teachers in Scotland. They maintain and enhance professional standards for Scottish teachers and support new teachers through the standard for Full Registration. Their primary role is to ensure the fitness of individual teachers to be members of the teaching profession. Registration with GTCS is in effect a licence which means that a currently registered teacher is in a position to take up employment in local authority schools in Scotland.

The Public Services Reform (General Teaching Council for Scotland) Order 2011 states that the GTCS must be notified by an employer of the following:

- ❖ A registered teacher who is dismissed for misconduct;
- ❖ A registered teacher who is dismissed for incompetence;
- ❖ If a teacher resigns or abandons their position in circumstances, but for their abandonment or resignation they would either have been dismissed for misconduct, or dismissal for misconduct would have been considered by the Council;
- ❖ The teacher resigning, or abandoning his position, after being informed by the employer that a disciplinary hearing is to be held by the employer in respect of the teacher's alleged incompetence. When notifying the GTCS the Council must provide an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

When notifying the GTCS the Council must provide an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

In order to supply GTCS with the appropriate details, please use the following form and letters. Additionally managers should note that relevant information from the disciplinary process will be required to be sent to the GTCS.

4. Care Inspectorate

The Care Commission was established in 2002 as the independent regulator set up under the Regulation of Care (Scotland) Act 2001 to regulate Care in Scotland. Social Care and Social Work Improvement Scotland (SCSWIS), subsequently renamed the Care Inspectorate, replaced the

Care Commission through the Public Services Reform (Scotland) Act 2010The Care Inspectorate register and inspect Scottish Borders Council services against a set of National Care Standards. The standards outline the quality of service that care service users have the right to expect from Scottish Borders Council.

Any allegation of misconduct against any persons employed in the care service must be reported to them without delay.

Additionally, where one of our external providers or one of our own managers is deemed unfit, it must be reported to the Care Inspectorate immediately. Being declared 'unfit' will be based on health, competence or where an offence has been committed and will be determined by an appropriate person within Scottish Borders Council.

It is the responsibility of the Service Manager to report appropriate details to the Care Inspectorate. Please refer to their website www.SCSWIS.com for further information.

5. Disclosure Scotland

Disclosure Scotland was developed under the guidance of the Scottish Executive and introduced a system of disclosing criminal history information to individuals and organisations for specific types of employment and other purposes. Scottish Borders Council should report to Disclosure Scotland any reasonable suspicion that an offence has been committed.

There are, however, some occupations which are defined as “notifiable occupations” where the police have an obligation to notify Scottish Borders Council if someone in these occupations is convicted. Any notification will come to HR who will inform the line manager immediately.

Scottish Borders Council has robust recruitment procedures in place which incorporate Disclosure checks for posts which require them. Further information on either Disclosure or SBC's Recruitment Policy & Procedure can be found on the Council's Intranet page under HR Policies and Procedures. Please also refer to the Disclosure Scotland website www.disclosurescotland.co.uk for further information.

6. Protection of Vulnerable Groups (Scotland) Act 2007

This act applies to Scottish Borders Council as it employs people to work with children and protected adults both paid or unpaid. The Act provides for Scottish Ministers to keep lists of individuals who are disqualified from working with children or protected adults. The Act expands on the measures previously contained in the Protection of Children (Scotland) Act 2003and plugs a gap in previous safeguards which allowed unsuitable people to move from one childcare post to another without detection if they had not been convicted of an offence. All people working with children or protected adults are obliged to be registered under the appropriate Protecting Vulnerable Groups (PVG) Scheme. A check on somebody's status under the relevant scheme can be made by application to Disclosure Scotland.

People can be referred to the Scottish Ministers for possible inclusion on the list by regulatory bodies such as the General Teaching Council Scotland (GTCS) or the Scottish Social Services Council (SSSC), by the courts or by organisations such as Scottish Borders Council.

We have a duty to refer an individual to the Scottish Ministers for consideration for inclusion on the appropriate list who is or has been working with children or protected adults if the individual has (whether or not in the course of their work):

- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and been dismissed as a consequence;

- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual resigned, retired or was made redundant before SBC could take action to dismiss them;
- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and as a consequence was transferred to a position within SBC which is not a position involving work with children or protected adults;
- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual was on a fixed term contract which was about to expire or had expired before the organisation could consider dismissal proceedings.

It is a criminal offence for an organisation to fail to comply with the duty to make referrals to the Scottish Ministers.

Scottish Borders Council also has a duty to refer an individual if information which was not available to SBC at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available. A referral will be required where SBC has formed the opinion that, if the information had been available at the time SBC would have dismissed the individual or would have considered dismissing the individual on the grounds that the individual had (whether or not in the course of the individual's work) harmed a child or vulnerable adult or placed a child or vulnerable adult at risk of harm.

Line managers wishing to make such a referral to the Scottish Ministers should refer to HR for guidance on individual cases.

Referrals to the Scottish Ministers should be made in addition to notifying the police and any relevant professional bodies as appropriate.

A referral form is available directly from Disclosure Scotland, available on the internet on <http://www.disclosurescotland.co.uk/documents/DSProtectionUnitREGULATORYBODYREFERRALFORMFeb11.doc>

2. SAMPLE LETTER ACCOMPANYING FORM TO SCOTTISH SOCIAL SERVICES COUNCIL

Conduct Section
Scottish Social Services Council
Compass House
11 Riverside Drive
Dundee
DD1 4NY

DATE

Dear

Re: Employee Name – Date of birth

Please find enclosed information in respect of the above named employee.

I confirm that I am advising the employee of this notification and informing them that you may consider contacting them directly.

I trust that this information is satisfactory but please do not hesitate to contact me should you have any additional queries.

Yours sincerely

Name
Job title

3. NOTIFICATION FORM TO SCOTTISH SOCIAL SERVICES COUNCIL

This form is to be used when there is a requirement to provide notification to the Scottish Social Services Council (SSSC) in respect of Scottish Borders Council employees.

The Regulation of Care (Scotland) Act 2001 states that:

s57A The employer of a social service worker shall -

- a) on dismissing the social service worker on grounds of misconduct; or
 - b) on the social service worker resigning or abandoning the worker's position in circumstances where, but for the resignation or abandonment-
 - i. the worker would have been dismissed on the grounds of misconduct; or
 - ii. dismissal on such grounds would have been considered by the employer
- forthwith notify the Council of the dismissal, resignation or abandonment; and the employer shall in doing so provide the Council with an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

and

s57B The employer of a social service worker shall, when requested to do so by the Council, provide it with such information as respects the worker as it may reasonably require in connection with the exercise of the functions assigned to it under this Act or any other enactment.

The Scottish Social Services Code of Practice for Employers of Social Service Workers additionally requires an employer to inform the SSSC about any misconduct by registered social service workers that might call into question their registration and inform the worker that a report has been made to the SSSC.

It is important that a referral is made immediately if you have taken the decision to suspend or redeploy a registered worker pending the outcome of an investigation. The SSSC will make a separate decision about whether immediate action is required to remove a worker's name from the Register pending further inquiries.

This form is to help you meet your responsibilities under both the Act and the Code of Practice and can be used for providing information about a worker who is registered with us or a worker who is not, but may apply for registration in future.

We cannot investigate the conduct of non-registered workers but we will hold the information you provide on file and take it into account if the workers apply for registration on any part of the Register. We will also let the workers know what information we have received from you and offer them the opportunity to submit information and /or their views about the matter that led to you referring them to the SSSC and we will also take their views into account if they apply for registration.

Please note that all information supplied to the SSSC will be shared with the worker involved and may be released as a consequence of a data protection or freedom of information request.

It may also be put before a Sub-committee of the SSSC considering an application for registration or an allegation of misconduct against a registered worker. Conduct Sub-committees are normally held in public and as a consequence information supplied may be accessed by members of the public, including the press.

Please be aware that we may ask any person involved in the circumstances which led to this referral to give evidence at a Sub-committee hearing. Please use a separate form for each worker you are referring to the SSSC.

YOUR DETAILS

Name

Job title

Organisation

Address

Telephone

Email

THE WORKER

Full name

Any other names

Date of birth

Address

Telephone Home

Work

Mobile

Email

Is the worker registered with the SSSC? Yes No

If yes, please provide their registration number:

Is the worker registered with another regulatory body? Yes No

If yes, which body?

EMPLOYMENT STATUS

Job title

Is the worker still employed by your organisation? Yes No

If not, are they employed by another organisation? Yes No Not known
If yes, which organisation?

REASON FOR REFERRAL TO THE SSSC

If the worker has been dismissed:

On what grounds?

On what date?

Please provide full details of the reasons for dismissal:

OTHER REASON FOR REFERRAL

If the worker has **not** been dismissed please include full details of any action you have taken:

INVOLVEMENT OF OTHER BODIES

Have you alerted any other bodies to this matter? Yes No

If yes, please state which organisation and give a name and contact details:

Have the Police or Procurator Fiscal been involved? Yes No

If yes, have there been any criminal charges/convictions/alternatives to prosecution/warnings?

Yes No

If yes, please provide details:

SUPPORTING EVIDENCE

Please list supporting evidence you are enclosing:

Has the worker received a copy of all the information enclosed? Yes No

If there is other evidence which you are not enclosing, please indicate what it is and why it is not enclosed.

ANY OTHER RELEVANT INFORMATION

Please include any other information which may be relevant to the SSSC in their consideration of this referral:

Please note that all information supplied to the SSSC will be shared with the worker involved and may be released as a consequence of a data protection or freedom of information request.

It may also be put before a Sub-committee of the SSSC considering an application for registration or an allegation of misconduct against a registered worker. Conduct Sub-committees are normally held in public and as a consequence information supplied may be accessed by members of the public, including the press.

FUTURE CONTACT

Would you prefer us to contact someone other than you in your organisation about this referral?

Yes

No

If yes, please provide full contact details:

Name

Date

Signed

Date

Please return this form by post to:
The Conduct Department
Scottish Social Services Council
Compass House
11 Riverside Drive
Dundee
DD1 4NY

or by email to: conduct@sssc.uk.com

**4. SAMPLE LETTER TO EMPLOYEE RE NOTIFICATION TO
THE SCOTTISH SOCIAL SERVICES COUNCIL****Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Notification to Scottish Social Services Council

The Code of Practice for Social Service Workers is a list of statements that describe the standards of professional conduct and practice required of social service workers as they go about their daily work. The Code requires that Scottish Borders Council, as your employer, adheres to the standards set out in the Code, supports social service workers in meeting the Code and takes appropriate action when workers do not meet expected standards of conduct.

I refer to recent discussions/meetings to discuss the concerns raised over

Bearing in mind that your role requires Registration with Scottish Social Services Council, I am therefore required to inform them of my concerns and the reason for them.

Consequently, you may be contacted by them if they consider suspending your registration. Additionally I would remind you of your own obligations to inform them yourself of any relevant changes regarding your employment status that may impact on your professional standing.

I trust that this information is satisfactory but please do not hesitate to contact me should you have any additional queries.

Yours sincerely

Name**Job title**

5. SAMPLE LETTER ACCOMPANYING FORM TO GENERAL TEACHING COUNCIL

GTC Scotland
Sherwood House
96 Clermiston Road
Edinburgh
EH12 6UT

Date

Dear Sir/Madam

Re: Employee Name – GTC Number

Please find enclosed information in respect of the above named employee.

I confirm that I am advising the employee of this notification and informing them that you may consider contacting them directly.

I trust that this information is satisfactory but please do not hesitate to contact me should you have any additional queries.

Yours sincerely

Name
Job title

6. NOTIFICATION FORM TO GENERAL TEACHING COUNCIL

This form is to be used when there is a requirement to provide notification to the General Teaching Council (GTC) in respect of Scottish Borders Council employees.

NAME & ADDRESS OF EMPLOYEE:**DATE OF BIRTH:****JOB TITLE & DEPARTMENT:****SCHOOL:****REGISTERED TEACHER** **GTC REGISTRATION No:****PROVISIONALLY REGISTERED TEACHER** **GTC REGISTRATION No:****NATURE OF CONCERN / ALLEGATIONS:****THE REASON FOR NOTIFICATION Please tick as appropriate**

1. Registered teacher dismissed for misconduct
2. Registered teacher dismissed for incompetence
3. Teacher resigns or abandons their position in circumstances, but for their abandonment or resignation they would either have been dismissed for misconduct, or dismissal for misconduct would have been a consideration
4. Teacher has resigned or abandoned their position after being informed that a disciplinary hearing is to be held in respect of alleged incompetence

PLEASE COMPLETE WHERE APPROPRIATE

- Date of suspension _____ Copy of letter attached
- Date investigation completed _____ Copy of report attached
- Date of dismissal _____ Copy of letter attached

ADDITIONAL INFORMATION Please use this section to add any information that you feel to be relevant

DETAILS OF PERSON COMPLETING THE FORM

Name:

Job title:

Department:

Date:

**7. SAMPLE LETTER TO EMPLOYEE RE NOTIFICATION TO
THE GENERAL TEACHING COUNCIL****Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Notification to General Teaching Council

I refer to recent discussions/meetings to discuss the concerns/allegation raised over

Bearing in mind your role as a provisionally registered / registered Teacher, I am required to inform the General Teaching Council of my concerns and the reason for them.

Consequently you may be contacted by them if they consider suspending your registration. Additionally I would remind you of your own obligations to inform them yourself of any relevant changes regarding your employment status that may impact on your professional standing.

I trust that this information is satisfactory but please do not hesitate to contact me should you have any additional queries.

Yours sincerely

Name**Job title**

Note: this is a sample letter and should be adapted to suit the circumstances, taking into account the requirements of para 18. Special paid leave in the disciplinary procedures.

Confidential

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Confirmation of period of special paid leave

Further to our meeting on (date), this letter confirms that, in accordance with the Council's Disciplinary Procedures for Misconduct, you are on a period of special paid leave for the following reasons:

This period of special paid leave started on *date* and is expected to end on *date*. You are to remain away from work until advised further. If the end date changes, I will let you know. Your period of special paid leave is part of the investigation process; it is not disciplinary action and does not imply any pre-judgement of the case.

(Insert if appropriate) Bearing in mind your role I will consider whether I am required to inform the *Scottish Social Services Council / General Teaching Council / Care Inspectorate* of your period of suspension and the reason for it. Consequently you may be contacted by the appropriate body. Additionally, I would remind you of your own obligations to inform them yourself of any relevant changes regarding your employment status that may impact on your professional standing.

As part of the investigation, you will be contacted soon to attend an investigatory meeting so please remain contactable. You have the right to be accompanied by someone, who must be either a workplace colleague, an accredited trade union representative (who is certified as being trained or experienced in being a representative for disciplinary hearings) or an official employed by the trade union. All reasonable requests will be approved.

Your contract of employment and all normal employment procedures still apply. For example, if you want to go away or are sick during this period please contact me / your line manager to enable the necessary authorisation/documentation to be given/completed. You will continue to be paid during this period.

Please do not attend work or attempt to influence anyone who may be involved in the investigation process unless you want them to represent you formally or accompany you to a meeting. Every effort will be made to investigate this alleged misconduct fairly and promptly.

I appreciate that this time may be stressful for you. I have arranged for *(name/title)* to be a support person for you. *(S/he)* has agreed to this but I must make it clear that *(s/he)* has not been given any detail of the reasons for your period of special paid leave and will not take part in the investigation in any way. Consequently, *(name)* will not be able to give any opinion on the matters under investigation but will, however, be able to act as a general support to you and keep you in touch with workplace issues. You may contact *(him/her)* either by phone/email *(insert contact details)*.

I would also like to draw your attention to the free professional confidential counselling service which is available to all employees. If you feel that you would benefit from this you may refer yourself by contacting 08701648276.

I enclose a copy of the Council's Disciplinary Procedure for Misconduct for your information. If you require any further clarification please do not hesitate to contact me.

Yours sincerely

Name
Job title

MISCONDUCT

The following list, which is neither exhaustive nor exclusive, gives an indication of the types of misconduct which can result in a disciplinary warning:

- Damage to Council property or to property not belonging to the Council.
- Unauthorised use or misuse of Council property and/or facilities, or of those not belonging to the Council.
- Poor timekeeping or unauthorised absence from work.
- Carelessness or negligence which creates risk or damage.
- Failure to follow reasonable instructions or procedures, or otherwise fulfil contractual obligations.
- Abusive or threatening behaviour toward any person.
- Minor abuse of authority, including acts and omissions.
- Less serious breach of relevant Codes of Practice, Regulations, Policies and Procedures, eg Code of Conduct for Scottish Borders Council Employees, Financial Regulations and Policy and Guidelines on the use of e-mail and the Internet.
- Less serious discriminatory acts or omissions which breach, or are inconsistent with, the Council's Equal Opportunities Policy.
- Less serious breaches of Health and Safety rules.
- Unauthorised disclosure of personal information or disclosure of a password to electronically held data.
- Attempts, whether successful or not, to access information without authorisation.
- Making malicious, frivolous or vexatious allegations

GROSS MISCONDUCT

The following list, which is neither exhaustive nor exclusive, provides examples of acts regarded as gross misconduct, which can result in summary dismissal without notice or pay in lieu of notice.

- Theft of Council property, or of property not belonging to the Council whilst engaged, or claiming to be engaged, on Council business.
- Serious damage to, or misuse of, Council property or resources or of property or resources not belonging to the Council, whilst engaged or purporting to be engaged on Council business.
- Physical or indecent assault.
- Indecent, abusive or threatening behaviour.

- Dishonest or fraudulent acts e.g. deliberate falsification of time sheets or other attendance records, work records, expenses claims or other records, whether computerised or manual, relating to the financial transactions of the Council.
- Provision of false or misleading information, or non-disclosure of information, either during the recruitment process or in subsequent employment.
- Serious breach of contract.
- Serious breach of confidentiality.
- Serious abuse of authority, including acts and omissions.
- Serious breach of trust and/or confidence caused by the actions of the employee.
- Serious breach of security systems (including premises, data etc)
- Significant non-disclosure of an interest, whether direct or indirect, in a contractual arrangement between an agency or other concern and the Council.
- Criminal conviction / civil liability or other unacceptable conduct which renders the employee unsuitable to carry out the duties and responsibilities of the post, whether or not the conduct occurred on duty.
- Serious breach of relevant Codes of Practice, Regulations, Policies and Procedures, eg Code of Conduct for Scottish Borders Council Employees, Financial Regulations and Policy and Guidelines on the use of e-mail and the Internet.
- Gross carelessness or negligence.
- Serious breach of Health and Safety rules.
- Serious discriminatory acts or omissions contrary to, or inconsistent with, the Council's Equal Opportunities policy including:
 - the selection or non-selection of any person for a post within the Council
 - the provision or non-provision of any rights or benefits to any person employed by or having contact with the Council
 - other forms of less favourable treatment, such as any form of harassment, victimisation or intimidation.
- Difficulty in carrying out the duties of the post due to the influence of alcohol or misuse of drugs.
- Drinking alcohol or taking illegal drugs during working hours or whilst on standby.
- Serious insubordination
- Bringing the Council into disrepute

NOTES:

These are sample letters only and must be adapted to fit the circumstances. Before finalising letters, it is important to have read Section 5: Formal disciplinary hearings, which covers the content of letters, timescales, options for hearings etc.

It is important that employees receive their letters promptly and confidentially. Managers should hand them personally to employees or send them by recorded delivery to home addresses. Alternatively, agreement may be made with the employee to email the letter.

CONTENTS:

1. Invitation to a disciplinary hearing
2. Outcome of the disciplinary hearing – no disciplinary action
3. Outcome of the disciplinary hearing – 1st or final warning
4. Outcome of the disciplinary hearing – normal dismissal
5. Outcome of the disciplinary hearing – summary dismissal

1. INVITATION TO A DISCIPLINARY HEARING
--

Confidential

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Notice of Disciplinary Hearing

I write to invite you to attend a disciplinary hearing on *(date)* at *(time)*, at *(venue)* for the following reasons:

Briefly state the complaint against the employee

I will chair the hearing and *(name and job title)* will also attend the hearing with me. At the hearing, the matter will be explored in more detail. You will be given the opportunity to fully explain your position and to make me aware of any relevant factors. You should note that disciplinary action *(including dismissal)* may be taken as a result of this hearing.

A copy of the Council's Disciplinary Policy and Procedures for Misconduct is enclosed and I advise you to familiarise yourself with it prior to the hearing. The section on 'Formal disciplinary hearings' is of particular relevance to you. If there is anything that you do not understand, please contact me.

You have the right to be accompanied at the disciplinary hearing. See the sub-section on 'Employee representation' in the attached procedures for further information. This person can be a workplace colleague, an accredited trade union representative (who is trained or experienced in being a representative in disciplinary hearings, as certified by the trade union) or an official employed by a trade union. It is your responsibility to arrange this. No one else can accompany you. *OR As the hearing may lead to dismissal, your solicitor may be allowed to attend as your companion, subject to Council discretion.* Your choice of companion needs to be approved by me, so please let me know asap who you would like to bring.

Your accredited trade union representative/ accompanying person can address the hearing but cannot answer questions on your behalf. If your chosen person is unavailable at the time given above, we will try to re-schedule the hearing within 2 weeks.

You have the right to call witnesses or submit statements or other documents. Please let me have the details by *(date – 4 days before the hearing)* at the latest. It is your responsibility to arrange for the attendance of these witnesses.

Either – The management witnesses are *(names and job titles)* and the investigating officer is *(name and job title)*. I enclose copies of the documents which will be referred to at the hearing.

Or – Details of the management witnesses, investigating officer and copies of any documents which will be referred to at the hearing will be sent to you by the same date.

The disciplinary hearing will be run in line with sub-section 26 'Holding the disciplinary hearing' in the attached procedures.

If you have any queries prior to the hearing, or any special requirements at the hearing (eg to accommodate a disability, language difficulties etc) please do not hesitate to contact me.

Yours sincerely

Name

Job title

Enc

2. OUTCOME OF THE DISCIPLINARY HEARING – NO DISCIPLINARY ACTION

NOTE: There may be follow-up action required, even though disciplinary action is inappropriate, for example monitoring, setting targets, training. Outline any such action in this letter or indicate that a meeting will take place to discuss this further. It is important to ensure that such a meeting takes place asap.

Confidential

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Outcome of Disciplinary Hearing

On *(date)* you attended a disciplinary hearing with myself and *(name of colleague/advisor)*. You were accompanied by *(name, work colleague/accredited trade union representative)* OR You chose not to be accompanied at the hearing.

The disciplinary hearing was held for the following reasons:

Briefly state the complaint against the employee

Insert a summary of the key points raised at the hearing, the employee's response, and any key factors that you took into account..

At the hearing, having considered all the points raised, I concluded that there was insufficient evidence to support the case against you and therefore no formal disciplinary action was appropriate in terms of the Disciplinary Procedures for Misconduct.

I confirm that the results of the investigation in relation to this particular issue will not be retained on your personal file, nor will they be included in any reference.
The papers from the investigation will be destroyed.

Include as required: As I indicated at the hearing, improvement is expected of you and you are required to meet the following standards:

State the standards required

(Detail any supportive action you will take.) Your conduct will be monitored by me by (indicate how you will monitor his/her conduct). If you do not meet these standards, you may be asked to attend another disciplinary hearing in due course.

I would like to thank you for your assistance and co-operation during the disciplinary process and regret any inconvenience or distress that these proceedings may have caused you.

Yours sincerely

Name**Job title**

3. OUTCOME OF THE DISCIPLINARY HEARING – 1ST OR FINAL WARNING**Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Outcome of Disciplinary Hearing

On *(date)* you attended a disciplinary hearing with myself and *(name of colleague/advisor)*. You were accompanied by *(name, work colleague/ accredited trade union representative)* OR You chose not to be accompanied at the hearing.

The disciplinary hearing was held for the following reasons:

Briefly state the complaint against the employee

Insert a summary of the key points raised at the hearing, the employee's response, any key factors that you took into account, why the misconduct was unacceptable, any mitigating circumstances and the reasons for giving this level of warning.

At the hearing, having considered all the points raised, I issued you with a Verbal Warning/ Written Warning / *Final Written Warning* under the Disciplinary Procedures for Misconduct. In accordance with the procedures, this warning will remain live on your file for a period of 6 (for a Verbal Warning), 12 (*for a Written Warning*) or 18 (*for a final written warning*) months from the date of the hearing.

As I indicated at the hearing, improvement is expected of you and you are required to meet the following standards:

State the standards required

(Detail any supportive action you will take.) Your conduct will be monitored by me by *(indicate how you will monitor his/her conduct)*. If there is any other misconduct during this period, you may be asked to attend a further disciplinary hearing which could result in a *written warning/ final written warning / dismissal*.

You have the right to appeal against this warning if you believe the decision was wrong or unjust. Any appeal should be made in writing to *(name)* within 2 weeks of the date of this letter. The letter of appeal must state clearly the full grounds on which you are appealing and should not be simply that you feel unhappy with the outcome of the disciplinary hearing. An appeals form is included in the Disciplinary procedures at Appendix 9.

Should you require further information on the disciplinary or appeals process, please refer to the Disciplinary Procedures for Misconduct, or ask me.

Yours sincerely

Manager

Job title

4. OUTCOME OF THE DISCIPLINARY HEARING –DISMISSAL

NOTE: Dismissal letters must be approved by HR before being sent, due to the legal implications.

Confidential

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Outcome of Disciplinary Hearing

On *(date)* you attended a disciplinary hearing with myself and *(name of colleague/advisor)*. You were accompanied by *(name, work colleague/ accredited trade union representative)* OR You chose not to be accompanied at the hearing.

The disciplinary hearing was held for the following reasons:

Clearly state the case against the employee

Insert a summary of the key points raised at the hearing, the employee's response, any key factors that you took into account, why the misconduct was unacceptable, any mitigating circumstances and the reasons for deciding on dismissal.

At the hearing, having considered all the points raised, I concluded that you should be dismissed for misconduct in line with the Disciplinary Procedures for Misconduct. I believe you have been given support and advice on your conduct over a period of time and have received previous disciplinary warning(s) to indicate that your conduct was unacceptable. However, you have not reached the required standards and your contract of employment with the Council will now end.

The decision to dismiss you means that, in accordance with your contract of employment, you are entitled to *(number)* months' period of notice and will be required to continue to work during that period. Your employment ends on *(date following period of notice)* and all employment benefits will cease to accrue from this date.

By the time you leave the Council, you must *(insert/amend as appropriate and consider if it is appropriate to give the name of a contact person to assist with this)*:

- return any security passes, property, keys, car parking permits, alarm code details, system passwords and security codes
- return any property e.g. laptops, mobile phones, printers, faxes, data records or documentation.
- ensure all outstanding Council expenses have been brought up to date, by submitting receipts and expense descriptions, within 2 days of leaving the Council
- return your Council vehicle
- repay any relocation expenses or outstanding loans as per the relevant agreement e.g. Relocation Receipt & Undertaking, Travel Loan agreement
- collect your personal belongings.

You have the right to appeal against this decision if you believe the decision was wrong or unjust. Any appeal should be made in writing to the Service Director Human Resources within 2 weeks of the date of this letter. You must state clearly the full grounds on which you are appealing, which

cannot simply be because you are unhappy with the outcome of the disciplinary hearing. An appeals form is included in the Disciplinary procedures at Appendix 9.

Should you require further information on the disciplinary or appeals process, please refer to the Disciplinary Procedures for Misconduct.

(Where appropriate – see Appendix 5)

In addition, in view of the circumstances of your dismissal I require to notify the Scottish Social Services Council/ General Teaching Council for Scotland/ Disclosure Scotland (*delete as appropriate*) of the fact of your dismissal and the circumstances which led to it. They will consider your registration/ whether you should be listed as barred from working with children and/ or protected adults. (*delete as appropriate*).

Yours sincerely

Name

Job title

5. OUTCOME OF THE DISCIPLINARY HEARING – SUMMARY DISMISSAL

NOTE: Dismissal letters must be approved by HR before being sent, due to the legal implications.

Confidential

EMPLOYEE'S HOME ADDRESS

DATE

Dear

Outcome of Disciplinary Hearing

On *(date)* you attended a disciplinary hearing with myself and *(name of colleague/advisor)*. You were accompanied by *(name, work colleague/accredited trade union representative)* OR You chose not to be accompanied at the hearing.

The disciplinary hearing was held for the following reasons:

Clearly state the case against the employee

Insert a summary of the key points raised at the hearing, the employee's response, any key factors that you took into account, why the misconduct was unacceptable, any mitigating circumstances and the reasons for deciding on dismissal.

At the hearing, having considered all the points raised, I concluded that your actions constituted gross misconduct and I took the decision to summarily dismiss you in line with the Disciplinary Procedures for Misconduct.

The decision to summarily dismiss you means that, in accordance with your contract of employment, you are not entitled to any notice period and your dismissal takes place immediately. Your employment ends on *(date of disciplinary hearing)* and all employment benefits will cease to accrue from this date.

You must *(insert/amend as appropriate and consider if it is appropriate to give the name of a contact person to assist with this)*:

- return any security passes, property, keys, car parking permits, alarm code details, system passwords and security codes
- return any property e.g. laptops, mobile phones, printers, faxes, data records or documentation. If this is not immediately possible, arrangements will be made to collect these from your home
- ensure all outstanding Council expenses have been brought up to date, by submitting receipts and expense descriptions, within 2 days of dismissal
- return your Council vehicle immediately. *(Specify the alternative arrangements to be made for the journey home)*
- repay any relocation expenses or outstanding loans as per the relevant agreement e.g. Relocation Receipt & Undertaking, Travel Loan agreement
- collect your personal belongings - you will be accompanied to/from your desk by *(specify by whom)*. *(If the employee is unable to collect them immediately after the disciplinary hearing, specify the arrangements for them to be delivered to the employee or collected from the Council)*.

You have the right to appeal against this decision if you believe the decision was wrong or unjust. Any appeal should be made in writing to the Service Director Human Resources within 2 weeks of the date of this letter. You must state clearly the full grounds on which you are appealing which cannot simply be because you are unhappy with the outcome of the disciplinary hearing. An appeals form is included in the Disciplinary procedures at Appendix 9.

Should you require further information on the disciplinary or appeals process, please refer to the Disciplinary Procedures for Misconduct.

(Where appropriate – see Appendix 5)

In addition, in view of the circumstances of your dismissal I require to notify the Scottish Social Services Council/ General Teaching Council for Scotland/ Disclosure Scotland (*delete as appropriate*) of the fact of your dismissal and the circumstances which led to it. They will consider your registration/ whether you should be listed as barred from working with children and/ or protected adults. (*delete as appropriate*).

Yours sincerely

Name

Job title

You have the right to appeal against any disciplinary action, including dismissal, if you believe that the decision was wrong or unjust. This form must be received by the manager named in your disciplinary letter within **2 weeks** of the date of that letter.

Please read the appeals procedure in the Disciplinary Procedures for Misconduct before completing this form. If you need help, contact your accredited trade union representative, your line manager or HR.

Name:

Job title:

Department / Section:

Date you started work: a) at SBC: b) in this job:

Level of disciplinary action received (please tick box):

1 st warning	<input type="checkbox"/>
Final warning	<input type="checkbox"/>
Dismissal	<input type="checkbox"/>

Did this disciplinary action follow on from previous disciplinary action? Yes No

Name of the Chair of your disciplinary hearing:

Date of your disciplinary hearing:

a) What reason was given for your disciplinary action? (See your disciplinary letter or attach a copy of the letter to this application)

b) Please state why you believe the disciplinary action was wrong or unjust:

c) What evidence do you have to support your case? (*Attach any documents and list them here*)

Who would you like to accompany you to an appeal hearing?

- No one *Go to 'Section 4: Declaration' below*

- Name:

- a) Is s/he:
- An accredited trade union representative who is trained or experienced in being a representative in disciplinary hearings (as certified by the trade union) or
 - an official employed by a trade union or
 - a workplace colleague
 - a solicitor (for certain appeals against dismissal, subject to the approval of the council)

b) Please state when you or your accredited trade union representative/ accompanying person will **not** be available over the next 4 weeks:

I have read and understood the Disciplinary Policy and Procedures for Misconduct and I believe that my appeal meets the criteria for a hearing. I believe that all the information provided by me is accurate and true.

Name:

Signature:

Date:

HOLDING AN APPEAL HEARING

Introducing the hearing

1. The Chair will make the necessary introductions and clarify the role of each person present. The approach should be formal and polite, with a view to establishing the facts.
2. The Chair will explain that the purpose of the hearing is for the panel to consider the appeal against disciplinary action, in accordance with the Council's disciplinary procedure. The procedure for the hearing will also be outlined, with the employee asked to confirm s/he understands the procedure.

Presenting the employee's case

3. The employee (and/or workplace colleague/ accredited trade union representative) will be given the opportunity to state his/her case and present evidence. This may include calling witnesses if appropriate and discussing any witness statements and the contents of any other documents.

Questions on the employee's case

4. The management representative (and any advisors) will be given an opportunity to ask questions to clarify the employee's case, including questions to any witnesses.
5. The employee (and/or workplace colleague/ accredited trade union representative) will be given a further opportunity to question any witnesses on issues raised during the panel's questions.
6. The appeals panel (and any advisors) will have a further opportunity to question any witnesses on issues raised during the employee's questions.

Presenting the management case

7. The manager will state clearly the complaint or allegation. S/he will outline the case briefly by going through the evidence which has been gathered. This may include calling witnesses if appropriate, discussing any witness statements and the contents of any other records and documents.
8. Occasionally, in exceptional circumstances, (for example, in some cases of bullying and harassment), the anonymity of witnesses may need to be maintained. In such cases, witness statements can be anonymised and/or the individuals may not be required to attend a hearing where they could be questioned by the employee. The manager shall explain the reasons for anonymity being maintained at the start of the hearing. The employee (and/or workplace colleague/ accredited trade union representative) shall have the opportunity to challenge the need for anonymity. The appeals panel shall make a decision on this. If the appeals panel decides to maintain the anonymity of witnesses, they must consider whether a fair hearing requires that the employee (and/or workplace colleague/ accredited trade union representative) be given an opportunity to put questions to the witnesses by other means, for example by the employee and/or workplace

colleague/ accredited trade union representative) submitting written questions to be answered by the witnesses.

Questions on the management case

9. The employee (and/or workplace colleague/ accredited trade union representative) will be given the opportunity to ask questions to clarify the management case, including questions to any witnesses.
10. The management representative will be given a further opportunity to question any witnesses on issues raised during the panel's questions.
11. The appeals panel (and any advisors) will have a further opportunity to question any witnesses on issues raised during the employee's questions.

Final questions and clarification

12. The appeals panel (and any officers/advisors) may use this stage to clarify any issues and to check that what has been said is understood. Where either party is asked to clarify any point, the other party will normally have the opportunity to comment.

Summing up

13. The manager will sum up the case, without introducing any new material.
14. The employee (and/or workplace colleague/ accredited trade union representative) will sum up his/her response, without introducing any new material.

Adjournments

15. Either party can request an adjournment during the hearing which, if considered reasonable by the Chair, will normally be allowed.
16. At the end of the hearing, the Chair will adjourn to allow full consideration of all the matters raised, before a decision is taken on whether or not to support the appeal.
17. The appeals panel, together with any advisers, will deliberate in private, only recalling the manager(s) or the employee to clarify points of uncertainty on the evidence already given. If a recall is necessary, both parties will be asked to return.
18. In some cases, the appeals panel may require further information and, in this or similar circumstances, the appeal hearing may need to be reconvened at a later date to enable further information to be provided and a decision to be made. Any additional written information will be copied to all parties. The hearing must be reconvened as soon as possible.

Outcome of the hearing

19. The appeal panel's decision is normally one of the following:
 - the appeal is upheld and the case dismissed, with the record of disciplinary action removed from the employee's personal file
 - the appeal is partially upheld and the level of disciplinary action is reduced
 - the appeal is dismissed and the disciplinary action upheld

- exceptionally, the Chair may request further information from the employee and/or the previous decision maker before reaching a decision.
 - exceptionally, the panel may refer the matter back to be reheard, either by the original decision maker or another manager.
20. The decision of the Appeals Panel is final and will be confirmed in writing to the employee within **2 weeks** of the hearing, other than in exceptional circumstances when the decision will be confirmed as soon as possible. There is no further level of appeal under the disciplinary policy and procedures.

In the event of dismissal, an employee may appeal to a Council Staffing Appeals Committee, for the appeal to be heard by elected members. An appeal to this Appeals Committee may also take place where a Director takes some other form of disciplinary action which the employee does not accept.

The receipt of the Committee papers will be the first sight or knowledge the members have of a particular case. This is to ensure the members' objectivity in hearing the appeal. It would be especially useful therefore for both the manager and the employee to ensure that their papers:

- are arranged in logical order
- have each page numbered
- include a content index
- have pages cross referenced where necessary.

The manager and the employee will each be asked to submit a written statement of their case, including any papers to which they wish to refer, to the Clerk to the Council to be received at least 10 working days before the date of the appeal hearing.

The Clerk to the Council will arrange for the papers, including the statements of case to be sent to the manager and the employee, as well as to the Committee members and any advisors.

At the appeal hearing there is a running order of events (see **Appendix 10** 'Holding an appeal hearing'). The statement of case by the employee follows the introduction by the Chair. The employee may be accompanied (see para 24) and the manager may be supported by an HR or Legal adviser.

Each party must decide whether to call witnesses or whether they wish to rely on their formal submissions. Witnesses may be useful if it is considered there is likely to be any contentious issues and a first hand account would carry more weight.

If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 days before the date of the appeal.

Irrespective of the formal submissions, it would be normal for the parties to begin with a verbal summary. This would normally be an abbreviated version of the statement of case, which can be referred to as need be. It would be helpful if a copy of the script for the verbal summary (if available) could be given to the Council Staffing Appeals Committee on the day.

This Appendix provides a template, as guidance, for managers and employees to use when preparing papers for the Council Staffing Appeals Committee. Whilst it is important for sufficient information and papers to be provided to enable the Committee to reach a decision, both parties should be selective about what they submit, because an excessive quantity of papers can sometimes reduce rather than increase clarity.

1. APPEAL PAPERS: MANAGEMENT TEMPLATE
--

NOTE: This template is intended to indicate the layout of the submission. It does not, however, restrict the actual content of the manager's submission, which is likely to vary according to the details of the case.

CONFIDENTIAL

COUNCIL STAFFING APPEALS COMMITTEE

APPEAL AGAINST DISCIPLINARY ACTION: MANAGEMENT CASE

Name:
Job title:
Dept:

Name of employee:
Job title:
Dept:

CONTENTS

SECTION	DESCRIPTION	PAGE
1	Employee details	
2	Summary	
3	Case details	
4	Rationale for decision	
5	Conclusion	
APPENDICES (<i>Examples of papers</i>)		
1.	Dates of counselling and review meetings and summary of key content.	
2.	Final warning letter dated xx from Scottish Borders Council	
3.	Letter dated xx inviting employee to attend disciplinary hearing (which resulted in dismissal)	
4.	Dismissal letter dated xx from Scottish Borders Council	
5.	Witness statement dated x.	
6.	Investigatory Report	

1. EMPLOYEE DETAILS

Name:

Job title:

Grade:

SBC employment start date:

Date of dismissal:

Total SBC service:

Years in post:

2. SUMMARY

Example

Mr X was dismissed by (*name of manager*) on (*date*). The reason for dismissal was (*reason*). This followed a final written warning that was issued on (*date*).

3. CASE DETAILS

Include here, as appropriate:

- a concise history of the case, indicating when issues first arose and how they developed, how they were managed, standards set, monitoring arrangements etc
- any previous disciplinary action prior to the current disciplinary action
- the circumstances which led to the recent disciplinary hearing
- any mitigating circumstances that were considered
- reference to the investigation report / fact finding exercise
- reference to the response by the employee and/or workplace colleague/ accredited trade union representative at the hearing
- any new evidence.

4. RATIONALE FOR DECISION

Include a summary of why the decision was taken to dismiss the employee. Was 'action short of dismissal' considered?

Explain why you do not agree with the employee's specific reasons for appeal.

5. CONCLUSION

Pull together the key overriding points of the case and conclude that dismissal was the most appropriate course of action. This section may include the impact of the misconduct on other staff / the public, the impact on the Council, the risks of not dismissing the employee, action in other similar cases across the Council, likelihood of improvement, or any relevant new evidence.

Signature:

Date:

2. APPEAL PAPERS: EMPLOYEE TEMPLATE
--

NOTE: This template is intended to indicate the layout of the submission. It does not, however, restrict the actual content of the employee's submission, which is likely to vary according to the details of the case. The employee can choose to use the initial 'Appeal against disciplinary action' form at **Appendix 9** instead of this form. However, for more in depth submissions, especially those with substantial documentary evidence, it would be helpful to the Council Staffing Appeals Committee for this template to be used.

CONFIDENTIAL

COUNCIL STAFFING APPEALS COMMITTEE

APPEAL AGAINST DISCIPLINARY ACTION: EMPLOYEE CASE
--

Name of employee:

Job title:

Dept:

Name of dismissing manager:

Job title:

Dept:

CONTENTS

SECTION	DESCRIPTION	PAGE
1	Personal details	
2	Summary	
3	Case details	
4	Reason for your appeal	
5	Conclusion	
APPENDICES (<i>Examples of papers</i>)		
1.	Dates of counselling and review meetings and summary of key content.	
2.	Relevant correspondence, emails, records of conversations to support the appeal.	
3.	Supporting Documents, for example showing good conduct, or of meeting standards / targets, or evidence that an offence was not committed.	
4.	Dismissal letter dated xx from Scottish Borders Council	
5.	Witness statement dated x.	

1. PERSONAL DETAILS

Name:

Job title:

Grade:

SBC employment start date:

Date of dismissal:

Total SBC service:

Years in post:

Name of line manager:

Manager's job title:

2. SUMMARY

Example

I was dismissed by *(name of manager)* on *(date)*. The reason for dismissal was *(reason)*. This followed a final written warning that was issued on *(date)*.

3. CASE DETAILS

Include here, as appropriate:

- a concise history of your case, indicating when issues first arose, how your manager handled them, how you responded, standards set, monitoring arrangements etc
- any previous disciplinary action prior to the current disciplinary action
- the circumstances which led to the recent disciplinary hearing
- any mitigating circumstances that should have been considered
- reference to any key issues in the investigation report / fact finding exercise
- reference to the issues you raised at the hearing and how the management responded
- any new evidence.

5. REASON FOR YOUR APPEAL

Include a summary of why you believe the decision to dismiss you was wrong or unjust. Why you do not agree with the management's decision to dismiss you.

5. CONCLUSION

Pull together the key overriding points of the case. This section might include mitigating circumstances (eg record of good conduct, your long service record, temporary personal problems etc), the likelihood of you reaching the required standards of conduct, the reasons why the offence (if any) would not recur, or relevant new evidence.

Signature:

Date:
