

# Managing Discipline

## Guidance for Managers and Employees



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# SECTION 1: INTRODUCTION

## Purpose

The purpose of this guidance is to provide managers with practical advice and guidance on how to apply the Managing Discipline policy and procedure. It sets out the principles for handling disciplinary situations in the workplace and provides details on how to carry out each stage of the procedure including conducting meetings and provides general advice and assistance on how to effectively manage conduct issues.

The procedure, which applies to all Aberdeen City Council employees, allows conduct issues and complaints to be dealt with fairly and consistently and ensures, we as an employer, act reasonably when dealing with disciplinary issues. Throughout the Discipline policy and procedure, the ACAS Code of Practice has been incorporated.

What is regarded as reasonable behaviour will depend on the circumstances of each case and is ultimately a matter for employment tribunals to decide in unfair dismissal claims. However, fully complying with the disciplinary policy and procedure will help managers deal with disciplinary issues in a fair and consistent manner.

In a disciplinary process it is important to deal with issues fairly and there are several elements to this:

- deal with issues promptly and do not unreasonably delay meetings, decisions or confirmation of those decisions.
- act consistently throughout.
- carry out any necessary investigations, to establish the facts of the case.
- inform employees of the basis of the problem and give them an opportunity to respond before any decisions are made.
- allow employees to be accompanied at any formal disciplinary meeting.
- allow an employee to appeal against any formal decision made.

## Guiding Principles

As Council employees, we are expected to behave in a way that is aligned with the Council's approved Guiding Principles and we should lead by example by demonstrating these principles.

The Guiding Principles are:

- We care about our purpose, our city and our people.
- We take pride in what we do and work to make things better.
- One team, one Council, one city.
- We trust each other and take responsibility.
- We value each other and recognise a job well done.

These principles provide a guide to maintaining positive and constructive working relationships between employees, whether as work colleagues, managers and those reporting to them or between Elected members and Council Officers. We all have a responsibility to set a positive example. Behaviour which is contrary to the Guiding Principles may be considered unacceptable or inappropriate and may be dealt using the discipline policy and procedure.

## **Who is responsible for managing discipline?**

Whilst line managers are responsible for managing the conduct of employees, and for taking appropriate remedial action when there are shortcomings in these, the Chief Officer of each service is ultimately responsible for the management and discipline of their service area.

Employees also have a responsibility to familiarise themselves and co-operate with the requirements within this policy and procedure, act in a manner that is consistent with the Council's reputation and undertake work tasks and activities as set out in job profiles, maintain good working relationships, comply with all statutory requirements and adhere to regulations and operating policies and procedures.

## **What is misconduct?**

Misconduct is defined as unacceptable or inappropriate behaviour in the workplace that will normally result in disciplinary action short of dismissal being taken in the first instance. The action taken will depend on the degree of seriousness of the misconduct, the employee's current disciplinary record and any other relevant factors.

The following list is neither exhaustive nor exclusive but gives an indication of the types of misconduct which can result in disciplinary action short of dismissal:

- Refusal to follow reasonable instructions, comply with procedures or otherwise fulfil contractual obligations.
- Carelessness or negligence in carrying out the duties and responsibilities of the job.
- Breaches of health and safety rules and requirements.
- Willful or deliberate under performance of duties.
- Persistent poor timekeeping.
- Unauthorised absence from work and failure to comply with sickness reporting procedure.
- Persistent short-term sickness absences.
- Acts of discrimination, bullying and/or harassment.
- Unauthorised use of Council property.
- Improper use of organisational facilities.
- Inappropriate behaviour and/or conduct outside work that has a bearing on the role within the Council.
- Offensive or derogatory remarks about Aberdeen City Council or colleagues on social media.

## **What is gross misconduct?**

Gross misconduct is defined as unacceptable and improper behaviour in the workplace of a serious nature and has the effect of potentially destroying the employment relationship between the employee and employer, making trust and a continued working relationship impossible. The employer must consider all the circumstances of the case, including any mitigating factors, before deciding on the appropriate disciplinary sanction, with dismissal not being inevitable.

The following list is neither exhaustive nor exclusive but gives an indication of the types of gross misconduct which may result in dismissal:

- Dishonesty, theft, fraud and deliberate falsification of records and/or benefit claims administered by the Council.
- Fighting and/or assault on another person.
- Deliberate damage to Council property.
- Under the influence of illegal drugs and/or alcohol whilst at work.
- Serious discrimination, bullying and/or harassment.
- Serious negligence which causes unacceptable loss, damage, or injury.
- Serious insubordination.
- Major breaches of health and safety rules and requirements.
- Serious breach of the Council's ICT Acceptable Use Policy.
- Unauthorised entry to computer records.
- Indecent, abusive or threatening behaviour to any person whilst engaged, or claiming to be engaged, on Council business.
- Willful provision of false or misleading information, or willful non-disclosure of information, either during the recruitment process or in subsequent employment which affects the contract of employment.
- Breach of confidentiality or breach of authority entrusted in a job.
- Non-disclosure of an interest (conflict of interest), whether direct or indirect, in a contractual agreement between an agency and the Council.
- Serious breach of Standing Orders or Financial Regulations
- Removal from, or lapsed registration with, a professional body, where that registration is a condition of employment.

## **Links to other policies**

The Managing Discipline procedure has been designed to deal with cases where an employee's conduct has not met the standards required by the Council. There are other Council procedures which directly link to the disciplinary process.

There are also certain cases and issues that will require special consideration in how to apply the policy. Guidance is therefore provided to help managers deal with some of the situations that may arise. More information on links to other policies and procedures and specific scenarios can be found in Appendix A. The Employee Relations and Wellbeing team can also provide advice.

## **Right to be accompanied**

Employees have a statutory right to be accompanied at all stages of the formal discipline process by a work colleague, trade union representative or official employed by a trade union but not a spouse or partner.

In certain exceptional and very limited circumstances a legal representative will be permitted to attend a disciplinary hearing, for example where an external regulatory body such as the GTC or SSSC is also going to be investigating the matter under their own procedures and there is a risk that the individual could be struck off by the regulatory body and no longer able to practice their profession. Employees are required to advise the Chair of the Disciplinary Hearing or Appeal in advance that they wish to be accompanied by a legal representative in order that advice can be sought from the Employee Relations and Wellbeing team to ensure the circumstances merit this.

Where the employee has a disability, an alternative companion may be agreed as a reasonable adjustment.

The employee's companion has a legal right to address the hearing but does not have a right to answer questions on behalf of the employee. They should however be allowed to ask questions and participate as fully as possible during the meetings, and where required be allowed a reasonable amount of time to confer privately with the employee.

If the employee's companion is an employee of Aberdeen City Council (whether they be a work colleague or a trade union representative), they should be allowed reasonable paid time off to prepare for and attend the meeting/hearing. This includes time for the companion to familiarise themselves with the case and confer with the employee before and after the hearing/meeting.

In advance of the discipline meetings, the employee is required to inform the person conducting the meeting who their chosen companion is. If the employee's companion is unable to attend on the proposed date, the employee can suggest another date although it must suit everybody involved and be no more than 5 working days after the original date. Otherwise, the employee will need to select another companion to accompany them at the meeting or attend the meeting unaccompanied. Should the trade union be unable to provide representation within 5 working days of the original date, you should not allow this to delay the process. The Chair can insist that the pre-arranged hearing goes ahead as planned.

## Employee Wellbeing

During a disciplinary process the health and wellbeing of an employee should be a priority at each stage. Throughout the process the employee should be communicated with regularly to update them on progress and if there are any delays.

During each stage of the procedure the employee's health and wellbeing and the potential impact the action could have on them should be considered. Management should act with compassion and ensure support is available where needed.

Support and advice can be sought from:

- Counselling Service - The Council provides a free, confidential 24-hour counselling service. The service offers a helpline for general advice and guidance, psychological guidance and emotional support and/or individual counselling. Further details can be accessed on [People Anytime](#).
- Mental Health and Wellbeing Pages – these are available on [People Anytime](#) and provide a variety of support resources, skills/training information and details about the Councils Mental Health First Aiders Network.
- Trade Unions
- Citizens Advice Bureau - [www.cas.org.uk](http://www.cas.org.uk)
- ACAS - [www.acas.org.uk](http://www.acas.org.uk)

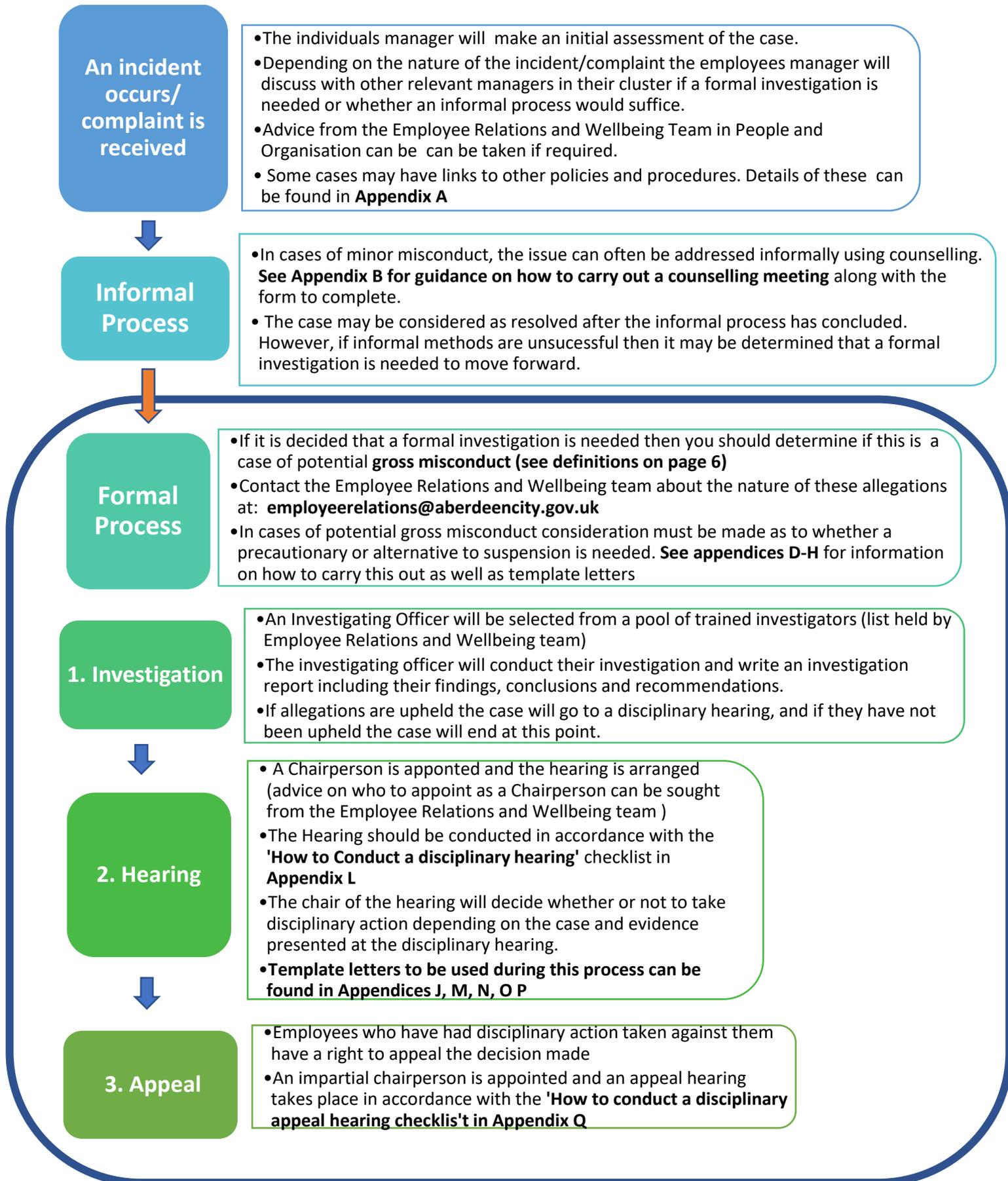
## Keeping records

It is important to keep records of a disciplinary process particularly if a case should go to an employment tribunal. They should be kept confidential and retained in the employee's personal file in accordance with data protection legislation which requires the release of certain data to individuals on their request.

Copies of any meeting records should be given to the employee concerned where they request it although in certain circumstances some information may be withheld, for example to protect witnesses.

## SECTION 2: THE PROCEDURE

### Overview of the Process



# INFORMAL PROCESS

Early intervention is often key to satisfactorily resolving conduct issues promptly. Many issues can be resolved by the line manager intervening at an early stage as part of their normal day-to-day management responsibilities: **‘A quiet word is often all that is required to resolve an issue’** (ACAS Code of Practice).

In cases of minor misconduct, they can often be dealt with informally to address the issue with the employee’s conduct. However, there will be situations where matters are more serious or where an informal approach has been tried but is not working and the formal Discipline procedure is required.

## Counselling

Where issues can be dealt with informally by early intervention, management should deal with it as soon as possible through counselling. Counselling is a useful management tool to identify issues in conduct, it is a two-way, private conversation, aimed at discussing possible shortcomings in conduct and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained. As part of the meeting the manager should complete the **Informal Counselling form template** (Appendix B) as a record of the discussion as it may become necessary to pursue the issue through the formal Disciplinary Procedure if there is a recurrence or a failure to improve to the required standard.

Where improvement is required the manager must ensure that the employee understands:

- what improvement is required.
- how their conduct will be reviewed and over what period.
- that if the required improvement is not met within the agreed timescale then the next stage will be to progress to the formal disciplinary procedure.
- additional training, coaching, advice, mediation and/or closer supervision may also be recommended as part of the informal process.

As part of the informal counselling the manager may ask the employee to write a reflective statement prior to their meeting. This will allow the employee time to consider their own behaviour, what the consequences of their actions were and how they would better handle similar scenarios in the future. This might be useful when an employee behaves uncharacteristically. A reflective statement template can be found in Appendix C.

Managers and employees should refer to the People Development pages on People Anytime for available training opportunities. [include links]

Appendix B	Informal Counselling form template and guide to carrying out meeting
Appendix C	Reflective statement template

## **PRECAUTIONARY / ALTERNATIVE TO SUSPENSION**

A precautionary / alternative to suspension should only be imposed after careful consideration of the initial details and circumstances. It must **not** be associated with any assumption of guilt. It should only be considered for use:

- in the most serious cases of misconduct, particularly where the complaint is of gross misconduct and where there is no alternative to suspension that could be applied to safeguard against the potential risk of the alleged contractual breach recurring.
- where the employee's presence at their normal place of work could prejudice or hinder the investigation or be to the detriment of themselves, colleagues, clients, property of the Council or to the investigation itself and a transfer to another work location is not feasible. For example, where the employee involved has access to records, computer systems and other data etc containing information relevant to the investigation. Suspension in this case is intended to protect the integrity of the information and avoid any suggestion that it has been removed or altered.
- as a “cooling-off” period - where there has been some form of serious heated argument or altercation and where it would be better for the employee to be removed from the work situation to avert any further disruption in the workplace. By its very nature, such suspensions should be of a limited duration.
- after giving consideration as to how an employee will react and the potential impact the suspension, and continuation of it, might have on an employee’s mental wellbeing. Care must be exercised when an employee discloses or displays warning signs of mental vulnerability during the investigatory process. Advice should be sought in such circumstances from the Employee Relations and Wellbeing team.

A precautionary suspension should be conducted in accordance with the ‘**How to carry out a precautionary suspension**’ checklist.

There are very few circumstances where suspension will be without pay but one scenario is where the employee makes themselves unavailable for work, either voluntarily (by refusing to attend work) or not voluntarily (where they may be held in police custody).

When an employee has been suspended, the reason for their absence from work is confidential and should not be disclosed to colleagues. These situations need careful and sensitive handling and advice can be sought from the Employee Relations and Wellbeing team if required.

### **The need to consider alternatives to suspension**

Precautionary action(s) other than suspension will be considered and put in place whenever it is possible and appropriate in view of the nature and type of misconduct. Such action may include a temporary:

- \* change to working arrangements.
- \* change to working practices.

- \* change to duties and/or job role.
- \* change to work location.
- \* any other appropriate control measure to avoid the alleged breach re-occurring.

It is important that such temporary precautionary measures are discussed and agreed with the employee and their representative before being put into effect. This needs to happen quickly. If the employee refuses to accept such alternative action then the employee will need to be suspended.

An Advisor from the Employee Relations and Wellbeing team should be consulted before any precautionary suspension is put in place. If this is not possible due to unavailability or the need to act instantly then the suspension should not be delayed, provided there are reasonable grounds for the suspension and an Advisor is contacted as soon as possible thereafter.

While suspension of an employee is not a disciplinary act in itself, it should only be applied in appropriate circumstances. The suspension should be as short as possible and be reviewed as new and relevant facts emerge during the investigation, it is recommended this happens at **10 working day** intervals. The suspension does not need to last until the outcome of the investigatory/disciplinary process where it emerges that the offence is not as serious as first anticipated.

## **Dealing with allegations of gross misconduct**

In cases where gross misconduct is alleged the employer will be required to demonstrate that the behaviour of the employee was so extreme it 'breached the root of the contract'. If this is the case, the employment tribunal may wish to test this by looking at how the employer responded when the alleged behaviour came to light and whether alternatives to suspension were considered. An employment tribunal may have difficulty accepting that the employee's behaviour amounted to gross misconduct if the employer failed to put in place any measures to avoid the alleged contractual breach re-occurring (for example, temporary change of location/job role, suspending the employee, see section below for more details).

Where possible the employee should be informed of the decision to suspend in a face to face meeting. There is no right to be accompanied to this meeting however, the employee can, if they wish, be accompanied by a work colleague or trade union representative providing this does not delay the meeting.

## **Suspending an employee who is also a trade union representative**

Invoking the disciplinary procedure against a trade union representative can potentially be construed as an attack on the trade union and as such may lead to serious industrial relations problems.

To avoid such potential problems occurring, an appropriate manager should have an early discussion with a full-time official or senior representative of the trade union concerned. The purpose of the discussion is to give an assurance that the suspension and investigation relates to the individual's alleged conduct as an employee and is unrelated to the role they perform as a trade union representative. Should problems

arise in the latter case then these should be reported to the relevant trade union to deal with, as that is a matter for the trade union to address.

## Contact with the workplace

During a precautionary suspension the employee should refrain from contacting the workplace, colleagues or clients of Aberdeen City Council. The employee should contact the Investigating Officer or Trade Union representative. A welfare contact will also be assigned to the employee during this period; this will normally be the line manager, however in some circumstances, for example if the line manager is a potential witness, it may be more appropriate for another manager to be the welfare contact. The welfare contact should maintain regular contact with the employee, as a minimum on a weekly basis or as otherwise agreed with the employee.

Should they require access to internal information e.g. email correspondence, documents etc which they deem relevant to the investigation, they should make the request to Investigating Officer.

## Medically unfit during suspension

Employees may fall sick during a period of suspension (either by self-certification, or by submitting a medical certificate). When a person is sick during suspension they must inform the Investigating Officer. The suspension will be converted to a period of sickness absence and confirmed in writing. The employee is obliged to inform the Investigating officer when they are fit to return to work at which point the suspension will be reinstated. While medically unfit the contractual rules on sick pay will apply and the employee will receive sick pay during that period.

Appendix D	'How to carry out a precautionary suspension' checklist
Appendix E	Template letter to confirm the precautionary suspension to the employee
Appendix F	Template letter for when the employee is sick during suspension.
Appendix G	Template letter for when the employee is fit to return.
Appendix H	Template letter to lift precautionary suspension

## FORMAL PROCESS

There are 3 key stages to the formal disciplinary process –

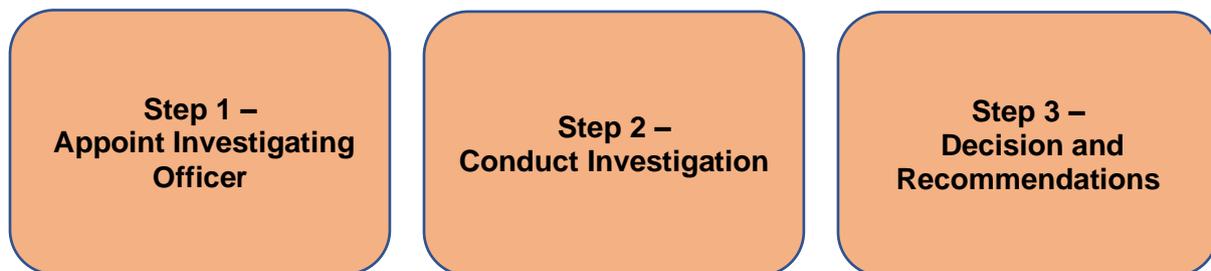


### Stage 1 - Investigation

Where informal action has already taken place for reasons of misconduct or where the misconduct warrants formal action, the manager must take responsibility and act immediately by invoking the formal disciplinary process. The first key step is to carry out a full investigation.

Please refer to the Council's **Investigation procedure** for full details on how to carry out an investigation including the relevant associated documentation and template letters.

There are **3 key steps (summarised)**:



#### Step 1: Appoint Investigating Officer

Where the Employee Relations and Wellbeing team has recommended that a formal investigation is appropriate, an Investigating Officer will be provisionally identified from a pool of trained investigators (list held by the Employee Relations & Wellbeing team).

An Investigating Officer will be appointed within **3 working days** from the time the need for an investigation has been identified.

#### Step 2: Conduct Investigation

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case.

The Investigating Officer will begin by agreeing the scope of the investigation with the commissioning manager to establish exactly what requires to be investigated, also identifying the allegation(s) against the employee. For further assistance refer to

the short video on 'How to Form Allegations' found in Appendix I. [Include link]

They will arrange to meet with the employee to seek their response to the allegation(s) or in exceptional circumstances the employee can submit a written statement. They will then gather evidence and liaise with relevant witnesses as part of the investigation.

Once the Investigating Officer is satisfied that all relevant information about the case has been gathered, they are required to write an investigation report, detailing their findings, conclusions, and recommendations. The report should be completed within **20 working days** from being appointed to Investigating Officer.

### **Step 3 - Conclusion and Recommendations**

If the allegations are substantiated based on the evidence and facts, the matter will proceed to a disciplinary hearing. The Investigating Officer will notify the employee in writing the outcome of the investigation and indicate that the Chairperson of the disciplinary hearing will write to them separately inviting them to the hearing.

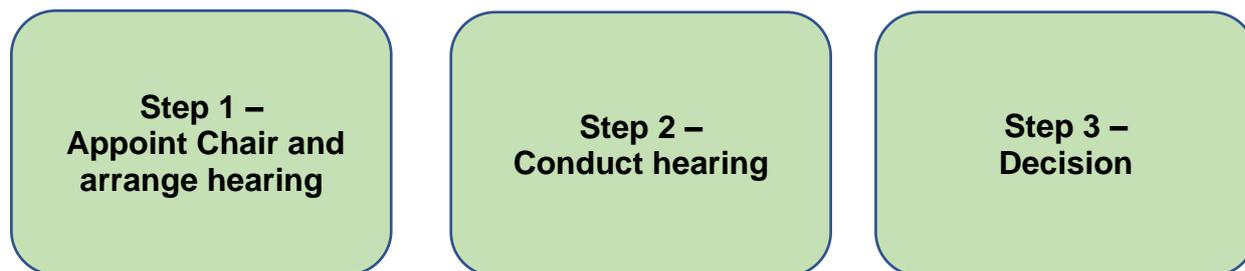
It will also be necessary for the Investigating Officer to attend the hearing to present their investigatory report and answer any questions in relation to the investigation. This involves going over their findings from the evidence gathered and how their conclusions and recommendations were reached.

Where the allegation(s) have not been upheld, the case will end at that point and the employee will be notified of the outcome.

Appendix I	'How to form allegations' video : <a href="#">Managing Discipline – The Investigation – Aberdeen City Council: People Anytime</a>
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## Stage 2 – Disciplinary Hearing

Following an investigation into an employee's conduct, if it is recommended that the matter is progressed to a disciplinary hearing, there are 3 key steps.



### Step 1 - Appoint Chair and arrange hearing

For cases that potentially amount to **misconduct** they should be heard by a more senior manager than the Investigating Officer and they should be sufficiently competent to conduct a fair and reasonable hearing.

If the employee's conduct amounts to potential **gross misconduct** then the hearing should be chaired by a senior manager at third tier level and above. For teaching staff, the hearing must be chaired by the Chief Education Officer. The same level of management applies if the employee is already on a warning and dismissal is a potential outcome.

Advice on who to appoint as chairperson can be sought from the Employee Relations and Wellbeing team.

The hearing should take place within 10 working days of the chair receiving the investigatory report. The employee must receive 5 working days' notice to attend the hearing. If for some good and sufficient reason it is not practicable to hold the hearing within this timescale then the employee must be informed as soon as this becomes evident, given an explanation for the delay and advised of the date the hearing is expected to take place.

The chairperson should:

- Arrange to hold the meeting to best accommodate the parties involved and working arrangements, this could include in a suitable private office location or via video conferencing. It is important that interruptions can be avoided and the hearing is confidential.
- Where necessary, make appropriate arrangements to cater for any disability the employee or their companion may have. Similarly, where English is not the employee's first language translation facilities may need to be provided.
- Book adequate time out in diary and be prepared to accommodate adjournments during the hearing where these are necessary.
- Consider in full the investigation report and evidence that has been submitted.

The chairperson must ensure the following are invited to attend the hearing:

- a People and Organisational Development Advisor to provide procedural advice and guidance
- the Investigating Officer to present the investigation report and evidence
- the employee

- the employee's companion, if they wish to be accompanied.
- a note taker if it is felt that this would be useful.

## **Step 2 – Conduct hearing**

The hearing should be conducted in accordance with the '**How to Conduct a Disciplinary Hearing**' checklist, and guidance on how to present the investigation findings at a hearing can be found in the investigations process here. [Include link]

The hearing allows the opportunity for the employee to set out their case and answer the allegations that have been made against them and also for the management case to be heard. The employee should be allowed to ask questions, present evidence, call witnesses and question any witnesses called to the hearing.

All reasonable steps must be made by the employee to attend the hearing. The employee will be informed in the letter notifying them of the hearing that if they fail to attend the hearing without a good and sufficient reason then it is likely that the hearing will proceed, and a decision will be made, in their absence.

## **Step 3 - Decision**

The chair of the hearing will decide whether or not to take disciplinary action depending on the case and evidence presented at the disciplinary hearing. A hearing must take place before any disciplinary action is taken.

Before making any decision on disciplinary action, the chair should take account of:

- the employee's disciplinary record
- action taken in any previous similar case
- the case presented by the Investigating Officer
- the explanations given by the employee including any mitigating factors
- and most importantly, whether the intended disciplinary action is reasonable and proportionate in the circumstances

Employees should normally be given at least one opportunity to improve their conduct before they are issued with a final warning. However, if their misconduct – or its continuance – is sufficiently serious, it may be appropriate to move directly to a final warning. In cases of gross misconduct, summary dismissal may be the appropriate action, even though the employee has not previously received a warning for misconduct.

The written confirmation of the warning, whether it be a first level (formal verbal or written) or second level (final warning), must set out in sufficient detail:

- the nature of the misconduct.
- the improvement required.
- the timescale over which the improvement is to be achieved.

A copy of the letter should be kept in the employee's personal file for record purposes, but it should be disregarded for disciplinary purposes after a specified period. At the end of the hearing the Chair should determine in conjunction with the People and Organisational Development Advisor if a record of the warning would need to be kept

for a further period of time once it is 'spent'. This would only be applicable in exceptional cases such as child protection/vulnerable adult issues.

If within the life of a final warning there is further misconduct, the final stage in the disciplinary process is likely to be dismissal for serious misconduct. The dismissal would be effective immediately. The letter must explain the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice for which they will receive payment in lieu and their right of appeal.

As an alternative to dismissal on grounds of serious misconduct it may be possible to take other punitive action which effectively removes the employee from their job but not from Council employment. This includes a disciplinary demotion or transfer and this action would be taken in conjunction with a final warning. Where the employee however does not agree to the punitive action then there will be no option but to dismiss the employee and pay the employee in lieu of their statutory notice entitlement. It is emphasised that punitive action is **NOT** an available sanction in cases of gross misconduct.

If the chair decides that the employee is guilty of gross misconduct (i.e. their act of misconduct has fundamentally breached the "root of the contract"), the employee is liable for summary dismissal and will take effect immediately without notice.

An outcome of a disciplinary hearing can also be no sanction but a counselling session (see section 3 Informal Process).

Appendix J	Template letter to invite employee to disciplinary hearing
Appendix K	How to conduct a disciplinary hearing checklist
Appendix L	Template document - Disciplinary hearing meeting notes
Appendix M	Template letter – outcome no warning / counselling recommended
Appendix N	Template letter – outcome first level warning
Appendix O	Template letter – outcome final warning
Appendix P	Template letter – outcome dismissal

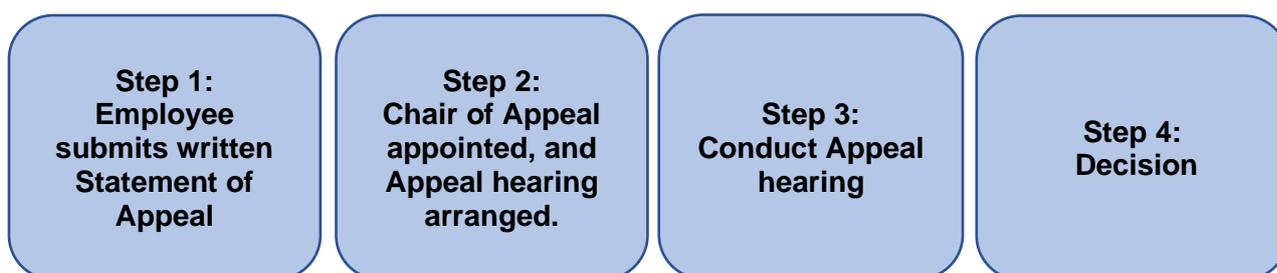
## Stage 3 – Appeal

Employees who have had disciplinary action taken against them must be given the opportunity to appeal the decision.

The appeals process is about looking at what happened previously in the disciplinary process and remedying any defects in the original disciplinary procedure. The appeal is **not** however a rehearing of the original case but rather an opportunity for the employee to highlight to an impartial manager, with the power to make an alternative decision, why they believe the disciplinary action was unjust.

There is no right of appeal against any non-disciplinary action taken (e.g. a decision to counsel the employee or to suspend).

There are **4 key steps**:



### Step 1: Employee submits a written statement of Appeal

An employee can choose to appeal where:

- they consider a finding or the penalty to be unduly severe or inconsistent;
- new and relevant evidence comes to light that was unavailable at the time of the disciplinary hearing; or
- they consider that the disciplinary procedure was not used correctly and they were disadvantaged because of this.

An appeal on other grounds will not be considered competent.

Apart from satisfying the above grounds, for an appeal to be considered competent it must be in writing outlining the grounds for appeal (it is insufficient for the employee just to state that they wish to appeal without setting out their grounds), be made within **10 working days** of receiving the outcome from the disciplinary hearing and submitted to the senior officer stated on the outcome letter.

Alternatively, appeals against a final written warning or dismissal can be lodged with the Appeals Sub Committee.

### Step 2: Arranging the Appeal Hearing

A suitable chairperson must be appointed. The appeal must be heard by a more senior manager than the one who took action at the disciplinary hearing. For

appeals against a final warning or dismissal they must be heard by a Chief Official, for teachers this must be the Chief Operating Officer.

When appointing the chairperson, they must have had no prior involvement in the case to demonstrate fairness, objectivity and impartiality in the process. It may be most appropriate to appoint a chairperson from out with the employee's service/cluster, however, this should be balanced with the requirement for any specialist knowledge and expertise, and the complexities of the case. Advice on who to appoint as chairperson can be sought from the Employee Relations and Wellbeing Team.

The chairperson is responsible for writing to the employee with the appeal arrangements. This should outline the right to be accompanied at the hearing and confirm who will be attendance.

The hearing should be held **within 10 working days** of receipt of the employee's written statement of appeal (except in cases where appeal is to Appeals Committee). If for some good and sufficient reason it is not practicable to hold the appeal hearing within this timescale then the employee must be informed as soon as this becomes apparent, provided with an explanation for the delay and advised of the date the hearing is expected to take place.

The chairperson must ensure the following are invited to attend the hearing:

- a People and Organisational Development Advisor to provide the manager with procedural advice and guidance
- The manager who took the decision at the formal disciplinary hearing stage
- the employee
- the employee's companion, if they wish to be accompanied
- a note taker if it is felt that this would be useful

Where necessary, make appropriate arrangements to cater for any disability the employee or their companion may have. Similarly, where English is not the employee's first language translation facilities may need to be provided.

### **Step 3: Conducting the Appeal Hearing**

The appeal hearing should be conducted in accordance with the '**How to Conduct a Disciplinary Appeal Hearing**' checklist. It is important that the written statement of appeal and any evidence that has been submitted is reviewed in full in advance of the hearing. Where necessary, adjournments should be accommodated.

The chairperson should keep a record of the key discussion points.

### **Step 4: Decision**

The chairperson must decide whether there are sufficient and reasonable grounds to either:

- uphold the appeal in full, whereupon all records of disciplinary proceedings will be removed; or
- uphold the appeal in part. In such circumstances, it may be appropriate to reduce the level of disciplinary action taken against you; or
- not uphold the appeal.

In arriving at a fair and reasonable decision, the chairperson should:

- be prepared to overturn a previous decision if it becomes apparent that it was not soundly based and is wrong – such an outcome does not undermine authority but rather demonstrates the independent nature of the appeal.
- listen carefully to both sides of the case and make a judgement as objectively as possible.
- satisfy themselves that no unfair bias or prejudice affected the original decision.
- consider whether previous responses were within the band of reasonable responses.
- consider whether any procedural deficiencies may have unfairly affected the outcome and disadvantaged the employee (if this is the case made by the appellant)
- pay particular attention to any new matters/evidence that has come to light, whether this would have affected the outcome of the disciplinary hearing, whether the employee had the opportunity to raise these matters at the disciplinary hearing.

The employee should be notified of the decision and the reasons for it at the hearing. This should be confirmed in writing to the employee **within 5 working days** of the hearing, and it made clear that this decision is final.

If exceptional circumstances exist whereby it is not possible to respond by this deadline then the employee must be given an explanation for the delay and told when a response can be expected.

In accordance with the ACAS code, at an appeal hearing there should be no increase in the disciplinary sanction applied as this may deter individuals from appealing. Where an appeal chair is of the view that a disciplinary sanction has been too lenient this will be reported after the conclusion of the appeal hearing to the Chief Officer – People and Organisational Development who will discuss the matter with the disciplining manager's Director.

If an appeal is registered which is malicious or vexatious the matter will be referred to the Chief Officer - People and Organisational Development who will provide advice on how to deal with the issue.

Appendix Q	How to conduct an appeal hearing checklist
Appendix R	Template letter – Invite employee to appeal letter
Appendix S	Template letter – Outcome of appeal hearing

## Timescales

It is in the interests of everyone involved that any issue of discipline is dealt with as quickly as possible to allow for a return to normal working. This is because it is recognised that issues of discipline affect working relationships and working arrangements.

To achieve an early resolution all cases should, where possible, be dealt with within the following timescales. Investigating Officers and Chairs of hearings and appeals are responsible for achieving these timescales and employees and their companions will be expected to co-operate so that these timescales can be achieved.

Disciplinary Stage	Timescale
Investigation	<p>An Investigating Officer will be appointed within <b>3 working days</b> from the time the need for an investigation has been identified.</p> <p>Investigatory report to be completed within <b>20 working days</b> from appointment as Investigating Officer.</p> <p>Progress update should be provided to the employee after <b>10 working days</b>.</p> <p>If this timescale is not achieved the Investigating Officer should contact the employee, their representative and Commissioning Manager to advise the reasons for the delay.</p>
Disciplinary Hearing	<p>Chair of hearing appointed within <b>5 working days</b> of submission of investigatory report.</p> <p>Hearing takes place within <b>10 working days</b> of chair receiving investigatory report. Employee must <b>receive 5 working days'</b> notice of hearing.</p>
Appeal	<p>Chair of appeal hearing appointed within <b>5 working days</b> of appeal being received.</p> <p>Appeal hearing takes place within <b>10 working days</b> of chair of hearing receiving letter of appeal (except in case where appeal is to Appeals Committee). Employee must receive <b>5 working days'</b> notice of hearing.</p>

There are some exceptional cases where it is recognised that these timescales will be difficult to achieve, for example where external agencies are involved in the investigation of issues, school holidays, absence etc. Nonetheless, it is expected that issues surrounding the management of disciplinary matters will be given the highest priority by managers and that these timescales will be achieved in normal circumstances.

## Life of disciplinary warnings

Disciplinary warnings issued following a disciplinary hearing will be live for the following periods:

### Level 1:

Verbal Warning – 6 months of work  
Written Warning – 9 months of work

### Level 2:

Final Warning- 12 months of work  
(may also include demotion and/or transfer)

Warnings will be extended to offset any period when the employee is not at work such as significant periods of sick leave or term time working so that the employee is at work and monitored for the whole life of the sanction applied. The Employee Relations and Wellbeing team will be responsible for making any adjustment to the life of the warning.

In exceptional circumstances where the above timescales are viewed as insufficient or inappropriate these can be increased. This may be where the misconduct is so serious, verging on gross misconduct, that it can reasonably be considered for future disciplinary purposes for a longer period of time than the above time limits permit.

In such circumstances, the extended life of the warning, and the reasons for it, must be made very clear at the time of issuing the warning. Such instances should be very rare as it is not good practice to keep someone under threat of dismissal longer than is absolutely necessary.

In exceptional circumstances, such as cases involving the protection of children and/or vulnerable adults, disciplinary information may be retained once the warning has expired. At the outcome of the disciplinary hearing the Chair, in conjunction with the People and Organisational Development Advisor, will recommend whether or not to retain the relevant information after the warning period. The employee will be informed of this decision in the outcome letter. The information will then be retained on a confidential, relevant database.

# MANAGING DISCIPLINE

## APPENDICES A – S

<b>List of Appendices</b>	
Appendix A	Links to other policies
Appendix B	Counselling form template and guide to complete
Appendix C	Reflective statement template
Appendix D	'How to carry out a precautionary suspension' checklist
Appendix E	Template letter - Confirm the precautionary suspension to the employee
Appendix F	Template letter – To confirm alternative to precautionary suspension
Appendix G	Template letter - When the employee is sick during suspension
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Appendix I	Template letter - Lift precautionary suspension
Appendix J	'How to form allegations' video available here: <a href="#"><u>Managing Discipline – The Investigation – Aberdeen City Council: People Anytime</u></a>
Appendix K	Template letter - Invite employee to disciplinary hearing
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Appendix Q	Template letter – Outcome dismissal
Appendix R	How to conduct an appeal hearing checklist
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Appendix T	Template letter – Outcome of appeal hearing

# APPENDIX A – LINKS TO OTHER POLICIES AND SCENARIOS

## LINKS TO OTHER POLICIES AND PROCEDURES

When dealing with a disciplinary process there may be links to other policies and procedures within Aberdeen City Council. Below are some examples and relevant information to consider.

- **Handling grievances raised during the disciplinary procedure**

There are occasions where an employee will raise a grievance when they are subject to the disciplinary process. There is no legal requirement that a disciplinary process should be postponed while the employer deals with a grievance raised by the employee. Where a grievance is raised, the following guidance is recommended, in the three scenarios below:-

**a) Grievances directly arising from the disciplinary process**

The Managing Grievances policy/procedure states that employees are not permitted to raise a grievance concerning any matter directly arising from the application of the disciplinary procedure (either at investigation or disciplinary hearing stage), it being regarded under that procedure as being non-competent. The employee would have the opportunity to raise any related concerns they may have at the appropriate stage in the disciplinary process.

**b) Grievances relating to the lead-up to the disciplinary process.**

An employee may make an allegation about the circumstances that led to the disciplinary process being initiated, rather than concerning a matter directly arising from the disciplinary case itself. This could be for example where an employee alleges that they were bullied by the manager who initiated the process. The matter can therefore be heard within the disciplinary process, if this is considered appropriate and depending on the seriousness of the allegation. The allegation would be considered to amount to either a defence to the accusation of misconduct or to a mitigating factor that the employer could take into account when considering what action to take. This may be the most efficient way of dealing with the matter especially where the issues are interrelated. An adjournment may be necessary if any issues required to be looked into in more detail with it being recommended that the same investigating officer is used who looked into the conduct allegations.

Alternatively, the disciplinary process could be postponed for the grievance to be heard and dealt with first. However, this could cause an unnecessary delay.

**c) Grievances that are unrelated to the discipline case**

Grievances that are unrelated to the discipline case should be held out with the disciplinary process and heard through the Managing Grievances procedure as a separate matter. They will not hold up the disciplinary process with no postponement necessary.

- **Substance Misuse**

If during the course of a discipline case the employee indicates that the underlying cause of their conduct is related to alcohol and/or substance misuse, the manager undertaking the discipline case will normally adjourn the disciplinary proceeding (except in the case of apparent gross misconduct or where it is not reasonable to accept that the employee's unacceptable conduct was directly caused by their alcohol and/or substance misuse) to allow for referral to the occupational health service for assessment, provided the employee is willing to accept support.

If an alcohol or substance misuse problem has been identified following a disciplinary referral to occupational health but the employee does not comply with, or accept support, the disciplinary procedure will be continued and the employee's alcohol and/or substance misuse problem will not be regarded as a mitigating factor in terms of deciding the level of disciplinary penalty.

If the employee commits to a support programme and supporting provisions and responds well, the disciplinary procedure should be continued and the employee's alcohol and/or substance misuse problem may be regarded as a mitigating factor and as such may be taken into account when deciding the level of disciplinary penalty.

In cases of apparent gross misconduct, the disciplinary process will continue regardless of whether the employee's actions may be attributed to alcohol and/or substance misuse.

There is no need to defer disciplinary proceedings if it is not reasonable to accept that the employee's conduct was related to their alcohol or substance misuse. In these situations the employee's misuse problem needs to be dealt with as a separate matter with the offer of assistance and support still be made.

In cases of one-off incidents where there is no evidence of underlying alcohol or substance misuse problems the normal disciplinary process will be followed.

- **Managing performance**

There may be occasions where a case may commence under the Managing Performance procedure (or for teachers the GTC "Framework on Teacher Competence") but will move to being dealt with under the Managing Discipline procedure as evidence begins to suggest that the poor performance relates to attitudes and behaviours rather than an inability to perform to the required standards in the role. When a case transfers across it will normally be to the disciplinary hearing stage, provided there has been a sufficient examination of the situation including an opportunity for the employee to respond to what is being alleged.

The Managing Performance policy and procedure should be used when an employee's standard of performance falls short of the expected standard. It should not be confused with Managing Discipline.

- **Respect and Dignity policy**

Where a complaint, investigated under the Respect and Dignity policy and procedure, is upheld and concludes that an employee has behaved inappropriately, the matter will automatically be considered at the disciplinary hearing stage of the Managing Discipline procedure. There will be no need for a further investigation.

- **Whistleblowing**

Where a complaint, investigated under the Whistleblowing Policy, is upheld and concludes that an employee has behaved inappropriately, the matter will automatically be considered at the disciplinary hearing stage of the Managing Discipline procedure. There will be no need for a further investigation.

- **Handling Allegations Against School Staff**

The Council has a duty to safeguard children in their care and the Handling Allegations Against School Staff procedure covers situations when a pupil or a member of the public complains about school-based staff. It is recognised that school-based staff are in a vulnerable position. These matters are taken seriously and will be dealt with sensitively and appropriately. An investigation under the Handling Allegations Against School Staff may feed into the Managing Discipline procedure.

## DEALING WITH PARTICULAR SCENARIOS

Certain cases and issues will need special consideration. Guidance is therefore provided to help managers deal with some of the situations that may arise. The Employee Relations and Wellbeing team can also help by giving advice about individual cases.

- **Protection of Vulnerable Groups (PVG) and the Duty to Refer**

The Protection of Vulnerable Groups (Scotland) Act 2007 provides for a scheme whereby individuals with a known history of harm can be prevented from doing work with children and/or protected adults. Disclosure Scotland is responsible for the administration of this scheme on behalf of Scottish Ministers and makes decisions on whether individuals are unsuitable to become scheme members. It is the duty of Scottish Ministers to keep and maintain lists of those barred from working with children or protected adults. The Act places duties on organisations to refer individuals to Disclosure Scotland when certain prescribed conditions are met. Under the Act, organisations have a duty to make a referral (within three months of taking a final decision to dismiss an individual or move them permanently from regulated work) to Disclosure Scotland when they are satisfied that an individual's conduct meets the following criteria (referral ground):

- Harmed a child or protected adult
- Placed a child or protected adult at risk of harm
- Engaged in inappropriate conduct involving pornography
- Engaged in inappropriate conduct of a sexual nature involving a child or protected adult
- Given inappropriate medical treatment to a child or protected adult

Organisations may only make a referral when they have dismissed an individual or moved them permanently from regulated work with the group concerned or where they would or might have dismissed had the individual not left their employment before the decision was made, or had they known the information at the time the individual worked for them. Under the Act organisations have a duty to make referrals where the above grounds have been met.

The legislation states that failure to refer an individual within 3 months of the date that the duty arose is an offence. When making a referral to Disclosure Scotland, organisations are required to supply all the relevant information that they hold (i.e. prescribed information as defined by the PVG Act). A standard referral form can be found at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk). For further information on making a referral, contact Disclosure Scotland's helpdesk on 0300 0200 040 or [info@disclosurescotland.co.uk](mailto:info@disclosurescotland.co.uk). The above must therefore be adhered to in relation to relevant Council disciplinary cases.

- **Cases involving Statutory Registration Authorities**

Employment in certain professions, which are regulated by statutory bodies is of course conditional upon continuing registration (for example teachers, social workers, solicitors). The Investigating Officer should check whether the employee under investigation is required to be registered with a statutory body. If this is the case they should refer to the Codes of Conduct pertaining to their employment as part of their investigation.

Employers have a duty to report any incidents of professional misconduct to the appropriate registration authority. This duty is separate from any disciplinary action taken, and as with criminal charges, you do not need to await the outcome of any separate investigation which the registration authority carries out before applying the disciplinary procedure.

In cases where the outcome of the internal disciplinary process results in action short of dismissal, and the registration authority subsequently determines that the employee's registration is suspended or removed, you will need to consider whether suitable alternative work is available before taking a decision to dismiss. Subsequent removal from the registered body will be dealt with as a further case and dismissal will be an option.

- **Using management information obtained by electronic or human surveillance**

Data that is held as part of the Council's computerised systems may be used and considered as part of the disciplinary process as set out in the Council's ICT Acceptable Use Policy.

As is stated within the procedure for the use of Close Circuit TV (CCTV) the Council operates CCTV systems for a number of reasons. Principally such a system can be installed for the prevention, investigation and detection of crime (particularly, but not restricted to, vandalism or the theft of Council property) and the apprehension and prosecution of offenders. A system may also be used to enhance the safety of staff and the public. Whilst not its principal function, CCTV footage may, in appropriate circumstances, be used in connection with staff discipline.

Where information is obtained through overt or covert surveillance, the Employee Relations and Wellbeing team must be consulted for advice on whether it can be considered as part of the disciplinary process and they can advise whether such information can be used.

- **Criminal charges or convictions**

Disciplinary action must not be taken against an employee merely because they have been charged or convicted of a criminal offence. In such cases, the issue is whether the employee's conduct merits action because of the implications it may have on their employment.

Where it is considered that the employee's conduct warrants disciplinary action then the following guidance should be taken into account:

### **The need to investigate**

Obviously, there is a need to investigate the facts as far as possible, come to a view about them and consider whether the employee's misconduct is sufficiently serious to warrant invoking the disciplinary procedure.

However, sometimes a matter that needs to be investigated is also being investigated by the police and this may potentially affect the pace at which matters can be progressed.

If this is the case, it is often requested by the police (and sometimes the employee) that internal proceedings are suspended until the outcome of the police case. This, of course, can be costly as the employee may be suspended on full pay and the police investigation may take some time.

However, to proceed with an internal investigation may prejudice the outcome of the case so you must carefully consider whether it would be fair and reasonable to do so. Obviously, you should co-operate with the police as much as possible and be prepared to accept some delay if your questioning would alert someone before a police statement is taken.

Apart from the above, it is difficult to see how internal proceedings would prejudice the outcome of the case, especially as the investigations are separate and based on different concepts - especially the burden of proof.

Where the employee's conduct requires prompt attention, and where there is any real danger of prejudicing the case, you should not await the outcome of the police investigation or prosecution before taking fair and reasonable action. Where this is the case, there is no need to automatically grant a request from the police to delay progressing a disciplinary investigation.

The same is true if an employee requests that internal proceedings should await the outcome of the police case. You should consider this, but you must be satisfied that there is a real danger of prejudice and not merely a notional one.

If you are in any doubt about whether to commence an internal investigation whilst a police investigation is underway, then contact the Employee Relations and Wellbeing team for advice.

Where the police are called in to investigate they should not be asked to investigate on behalf of the employer, nor should they be present at any investigatory meeting or disciplinary hearing.

### **What if it is not possible to establish the facts?**

There may be occasions however, when the only substantial evidence is held by the police, which will not be disclosed unless, or until, the case comes to court. In such cases, any disciplinary proceedings will have to await the outcome of the police case.

You may be concerned that if you proceed and take disciplinary action, including perhaps dismissal, and the employee is subsequently found not guilty in the criminal case, the decision will be held to be unfair however that should not be a worry. As long as the disciplinary procedure was properly followed, the manager who took the decision had a genuine belief that the employee was guilty of misconduct, that they held that belief on reasonable grounds and have reached that belief after a reasonable investigation then it is likely that the decision will be considered fair. An Employment Tribunal will not be concerned whether the complainant was guilty of the crime, but whether the employer acted reasonably on the evidence available.

### **What if the employee refuses to co-operate?**

Where an employee, charged with or convicted of a criminal offence, refuses to co-operate with the internal disciplinary investigations and proceedings, this should not deter you from taking action. Where this occurs, the employee will need to be advised in writing that unless they take the opportunity to provide further information, a disciplinary decision will be taken on the basis of the available information and could result in dismissal.

### **What if the employee is in custody or on remand?**

There may be occasions where the employee is not available for work because they are in custody or on remand. In these cases, you will need to decide whether, on the basis of the needs of the service, the employee's job can be held open. If it is not reasonable to in terms of service requirements then it is possible to terminate the contract by reason of "frustration of contract". No dismissal takes place in such cases. The length of the absence will be a determining factor here, particularly where there is little likelihood of an employee returning to employment.

The doctrine of "frustration" is normally accepted by the courts only where the employee's "absence" renders all performance of the employment contract clearly impossible.

### **What if the employee has become "unacceptable" to colleagues?**

An employee who has been charged with, or convicted of, a criminal offence may potentially become unacceptable to colleagues resulting in pressures from those colleagues to dismiss the employee. This may even result in threats of industrial action. This could well be the case depending on the nature of the charge or conviction.

However, before bowing to workforce pressure, you need to bear in mind that you will have to justify the reasonableness of any decision to dismiss and consider all relevant factors before reaching such a decision. An employment tribunal will expect no less and will not take into account threats of industrial action when determining the fairness of a decision.

### **What if the criminal conviction makes it illegal for the employee to continue in their job?**

Where a criminal conviction leads, for example, to the loss of a driving licence which would make the employee's continued employment in that job illegal, you will need to consider whether suitable alternative work is available before taking a decision to dismiss. Disqualification from driving for a period of one year or more, where driving is the main task of the job, will normally result in dismissal on the grounds of capability.

- **Employee has more than one contract of employment**

Any action taken as a result of an employee's alleged misconduct in one post will not automatically apply to any other post the employee holds within the Council. Each case must be considered on its merits and advice should be sought from the Employee Relations and Wellbeing team.

The employee will be advised of the scope of the investigation and the same Investigating officer will investigate the allegations in relation to all relevant contracts.

- **Cases involving Statutory Registration Authorities**

Employment in certain professions, which are regulated by statutory bodies is of course conditional upon continuing registration (for example teachers, social workers, solicitors). The Investigating Officer should check whether the employee under investigation is required to be registered with a statutory body. If this is the case they should refer to the Codes of Conduct pertaining to their employment as part of their investigation.

Employers have a duty to report any incidents of professional misconduct to the appropriate registration authority. This duty is separate from any disciplinary action taken, and as with criminal charges, you do not need to await the outcome of any separate investigation which the registration authority carries out before applying the disciplinary procedure.

In cases where the outcome of the internal disciplinary process results in action short of dismissal, and the registration authority subsequently determines that the employee's registration is suspended or removed, you will need to consider whether suitable alternative work is available before taking a decision to dismiss. Subsequent removal from the registered body will be dealt with as a further case and dismissal will be an option.

- **Dealing with a resignation from an employee who is subject to a disciplinary process**

Occasionally, an employee who is subject to a disciplinary process (either at the investigatory or disciplinary hearing stage) may tender their resignation before management have the opportunity to complete (or in some cases even start) the disciplinary process.

The employee however need only serve the employer with due notice (usually either one week or one month depending on contractual requirements) in writing. The contractual/employment relationship will automatically end upon the expiry of the notice period (or earlier where this has been mutually agreed between the two parties to the contract).

The employer cannot legally force the employee to continue the employment relationship beyond the notice period for whatever reason. Therefore, regardless of whether the employer wants the employee to continue in employment to enable the disciplinary process to take its course, the employer cannot technically refuse to accept the employee's resignation. The employee has a right to end the contractual relationship when they wish and the employer cannot legally prevent this from happening.

If an employee hands in their notice, the disciplinary process should continue until they leave (as practically possible). Once they have left the process stops.

When acknowledging receipt of the letter the individual should:

- be assured the action taken so far is in accordance with agreed procedures
- be assured that the allegations will be fully investigated to establish whether they are founded
- be given the opportunity to rescind their resignation to allow them the opportunity to state their case and in effect prove that the allegations are false

## APPENDIX B – RECORD OF INFORMAL COUNSELLING

<b>Employee</b>			
<b>Manager undertaking counselling</b>		<b>Date of Meeting</b>	
<b>Conduct issue</b>			
<b>Employee's response</b> (Discuss reflective statement if completed)			
<b>Required improvement and timescale</b> (Explain next steps if improvement not met)			
<b>Additional support to be provided</b> (E.g. training, coaching, advice, mediation and/or closer supervision)			
<b>Employee's signature:</b>			
<b>Manager's signature:</b>			

## **GUIDE TO CARRYING OUT AN INFORMAL COUNSELLING MEETING**

### **Prior to the meeting**

- Book a private room free from potential interruptions.
- It is not appropriate for the employee or manager to be accompanied.
- Be prepared for the meeting, ensure that all relevant facts/information is available that you will need to refer to at the meeting (for example, flexi-time records, time sheets, absence records etc). Think about possible solutions and have in mind a plan for taking matters forward in a constructive and positive way that will help the employee to improve and resolve the matter.

### **At the meeting**

- Explain the status and purpose of the meeting and that you wish to encourage a two-way discussion that is positive and meaningful. You should make clear that the meeting is not part of any disciplinary proceeding.
- It is important that you point out the issues in the employee's conduct and why they are being counselled so they can understand fully before they give you an explanation.
- Listen to the employee's explanation, provide feedback, jointly discuss ways for the employee to improve and for that improvement to be sustained.
- If the employee raises any issues you may need to look into matters further if the employee provides information that you were unaware of or conflicts with the information you currently have (NB it may become evident that there is no case to answer and if so, make this clear to the employee).
- Agree a plan to make the required improvement.
- Once you have agreed a plan you need to inform the employee that if they do not improve to the required standard then the next stage will be the formal disciplinary procedure.
- If the meeting unveils that the matter is more serious than you first thought or if the employee is not prepared to take the necessary steps for improvement you need to adjourn. Should this arise, inform the employee that the matter will be continued under the formal disciplinary procedure explaining the reasons why.
- Once the meeting has concluded and both parties agree to the next steps, the form should be signed by both the employee and line manager and a copy provided to the employee.

## APPENDIX C – REFLECTIVE STATEMENT

<b>Employee</b>	
<b>Statement Date</b>	
<b>Describe the incident?</b>	
<b>Describe your own behaviour?</b>	
<b>What were the consequences of your behaviour?</b>	
<b>How would you handle the same incident on reflection?</b>	
<b>What support/training do you need to ensure the incident does not occur again?</b>	

## APPENDIX D - PRECAUTIONARY SUSPENSION CHECKLIST

ACTION	MANAGER'S INITIALS	DATE COMPLETED
<b>PREPARATION</b>		
Consider alternatives to suspension e.g. change to workplace, arrangements, duties etc.		
Discuss issue with ER&W team for support and guidance.		
Book a private room free of interruptions to meet the employee face to face.		
<b>CARRYING OUT PRECAUTIONARY SUSPENSION</b>		
Inform the employee of the nature of the allegation(s) and why there is a need to suspend.		
Confirm the suspension is a precautionary measure without prejudice or assumption of guilt and is not a disciplinary action.		
Advise that the period of suspension will be as short as necessary whilst further investigations are conducted and that the suspension will be regularly reviewed by the appointed Investigating officer who will write to them in due course.		
Confirm the that the employee will receive full contractual pay while suspended and must be available during the period of suspension.		
Advise that while suspended they should refrain from contacting the workplace and not make contact with employees, clients or customers of the Council. If they need to make contact this must only be through either their Trade Union representative or the Investigating officer.		
Employee to collect personal items from their workplace and hand over any property of the Council, including keys, mobile phones, lap-top computers and their ID badge to you in the first instance.		
Give the employee a copy of the disciplinary procedure or state that you will enclose it in your letter to the employee confirming the precautionary suspension.		
<b>FOLLOWING THE MEETING</b>		
Confirm the suspension in writing using the template letter (appendix).		
Investigation Officer is to be appointed, contact ER&W team for assistance. Assign Welfare Contact if required.		
Provide a copy of the completed checklist to the Investigating officer.		

## **APPENDIX E - TEMPLATE LETTER – TO CONFIRM PRECAUTIONARY SUSPENSION - \*delete as appropriate**

### **PERSONAL**

Dear

### **PRECAUTIONARY SUSPENSION**

Following our meeting on (date), I write to confirm your suspension from duty, effective from that date.

#### **Reason for suspension**

This is a precautionary suspension, without prejudice or assumption of guilt, pending investigation into the following allegation/s \* which has/have \* been made against you:

- **<Insert allegation(s)>**

The decision to suspend you from duty was not taken lightly and was on the basis of the apparent nature and seriousness of the allegation(s). Your suspension is not to be regarded as a disciplinary sanction or as prejudging the matter. If at any stage of the disciplinary procedure it is determined that the suspension should be lifted, you will be informed immediately. Your suspension will be reviewed at regular intervals.

#### **Investigatory process**

The allegation(s) will be investigated as quickly as possible although you will appreciate that in order for the investigation to be carried out fairly and thoroughly the Investigating Officer may need to take the necessary time to obtain statements from witnesses and examine relevant documents as a means of attempting to establish the facts.

The role of the Investigating Officer is to establish the facts by gathering all relevant information then decide whether to -

- 1) take the matter no further,
- 2) arrange for the matter to be dealt with informally or
- 3) arrange for the matter to be dealt with formally by referring it to a disciplinary hearing.

#### **Pay during suspension**

During the period of suspension you will receive your normal contractual pay There will be no day in lieu of any public holiday unless you are required to attend for any work related issue on a public holiday that falls during your period of suspension.

#### **Annual leave during suspension**

Previously authorised annual leave which falls during a period of suspension will be unaffected and no days in lieu will be given. If you wish to submit a request for annual leave during the course of a period of suspension this should be done by writing in

advance to the Investigating Officer. The terms of suspension as set out in this letter will remain in place during any annual leave days.

### **Sickness absence during suspension**

Any period of sickness that occurs during the suspension should be reported to the Investigating Officer. Your suspension will be converted to sickness absence for that period. You should submit appropriate self and medical certificates which will be forwarded to Payroll in order for you to receive the appropriate sick pay.

The investigation will continue and the terms of suspension as set out in this letter will remain in place. Should your situation alter and your GP subsequently declares you are fit to return to work prior to the conclusion of the investigation you must inform the Investigating Officer who will convert your sickness to suspension from duty, if still appropriate.

### **Contact with workplace**

To enable the investigation to take its course, you must not contact your workplace, colleagues or clients of the Council. Your only contact should be with the Investigating Officer and the appointed Welfare Contact. Should you require access to internal information e.g. email correspondence, documents which you deem relevant to the investigation, please discuss this with the Investigating Officer who can arrange this.

The Welfare Contact will usually be your line manager, unless the circumstances deem that it is more appropriate for another manager to fulfil this role. If this is the case, a Welfare Contact will be identified and contact will be made to discuss and agree the appropriate level of support.

You are of course permitted to contact a trade union representative and enter Council premises to meet with a trade union representative provided you refrain from entering your normal place of work. Should you not be a member of a trade union and wish to be accompanied by a colleague, you should contact the Investigating Officer who will arrange this. You are expected to make yourself available for any meeting which may be arranged as part of the investigation and to co-operate fully with the process.

The Investigating Officer assigned to investigate this matter will contact you as soon as they are in a position to do so.

Yours sincerely

**NAME OF OFFICER CARRYING OUT SUSPENSION  
JOB TITLE**

Enc Copy of Managing Discipline Policy and Procedure

cc People and Organisational Development Advisor  
HR Service Centre/Employee Personal File

**APPENDIX F - TEMPLATE LETTER – TO CONFIRM ALTERNATIVE TO PRECAUTIONARY SUSPENSION - \*delete as appropriate**

**PERSONAL**

Dear

**TEMPORARY CHANGE OF LOCATION/WORKING ARRANGEMENTS\*(delete as appropriate)**

I write to confirm that for the duration of the investigation into the allegation made against you, you will be required to

- undertake work at [insert location]
- [insert any other alternative working arrangements].

**Reason**

This temporary change of location/working arrangements\*(delete as appropriate) has been put in place as an alternative to suspension and is without prejudice or assumption of guilt, pending investigation into the following allegation which has been made against you.

- **<Insert allegation(s)>**

This decision was not taken lightly and was on the basis of the apparent nature and seriousness of the allegation. If at any stage of the disciplinary procedure it is determined that you should return to your usual location, you will be informed immediately.

**Investigatory process**

The allegation will be investigated as quickly as possible although you will appreciate that in order for the investigation to be carried out fairly and thoroughly the Investigatory Officer may need to take the necessary time to obtain statements from witnesses and examine relevant documents as a means of attempting to establish the facts.

Your only contact in relation to disciplinary investigations should be with the Investigating Officer, so you must not discuss this with anyone other than the Investigating Officer. In light of the allegations made against you I must reiterate the importance of maintaining the confidentiality of this process in accordance with the relevant Council policy.

Yours sincerely

Cc P&OD Adviser  
HR Service Centre/Employee Personal File

## **APPENDIX G - TEMPLATE LETTER - CONVERTING SUSPENSION TO SICKNESS ABSENCE**

### **PERSONAL**

Dear

### **CONVERSION OF PRECAUTIONARY SUSPENSION TO SICKNESS ABSENCE**

I refer to my letter dated (date) and your suspension from duty effective from (date).

I note that you have since submitted a medical certificate that covers the period from (both dates inclusive). In order for your sickness absence to be recorded correctly, it is necessary to convert your precautionary suspension to sickness absence for that period, and any medically certified period of sickness absence beyond that, whilst the disciplinary process continues. Accordingly, your medical certificate will be forwarded to Payroll and you will receive the appropriate sick pay for the above period.

The investigation will continue, and the terms of the suspension as set out previously will remain in place.

Should your situation change and your GP declares you fit to return to work prior to the conclusion of the disciplinary process, your precautionary suspension will be reinstated, if appropriate.

Please contact me if you have any queries on the above.

Yours sincerely

**NAME OF INVESTIGATING OFFICER**

cc People & Organisational Development Advisor  
HR Service Centre /Employee Personal File

## **APPENDIX H - TEMPLATE LETTER - CONVERTING SICKNESS ABSENCE TO SUSPENSION**

### **PERSONAL**

Dear

### **CONVERSION OF SICKNESS ABSENCE TO PRECAUTIONARY SUSPENSION**

I refer to my letter dated (date) converting your suspension from duty to a period of sickness absence. I note that your GP has provided a fit note and you are fit to return to work on (date) therefore I write to advise that your precautionary suspension will be reinstated effective that date.

The investigation will continue and the terms of suspension as set out previously will remain in place.

Please contact me if you have any queries on the above.

Yours sincerely

### **NAME OF INVESTIGATING OFFICER**

cc People & Organisational Development Advisor  
HR Service Centre /Employee Personal File

## **APPENDIX I - TEMPLATE LETTER – TO LIFT PRECAUTIONARY SUSPENSION**

### **PERSONAL**

Dear

### **PRECAUTIONARY SUSPENSION LIFTED**

I write to confirm that your precautionary suspension has now been lifted. The decision to suspend you from duty was not taken lightly and was on the basis of the apparent nature and seriousness of the allegation(s). During the course of the investigation however, it has become apparent that a precautionary suspension is no longer appropriate and the suspension should be lifted.

I therefore expect you to report to (include place, date and time).

### **Investigatory process**

The allegation(s) will continue to be investigated as quickly as possible although you will appreciate that in order for the investigation to be carried out fairly and thoroughly I may need to take the necessary time to obtain statements from witnesses and examine relevant documents as a means of attempting to establish the facts.

My role as the Investigating Officer is to establish the facts by gathering all relevant information then decide whether to -

- 1) take the matter no further;
- 2) arrange for the matter to be dealt with informally; or
- 3) arrange for the matter to be dealt with formally by referring it to a disciplinary hearing.

I will contact you in due course to confirm the outcome of the investigation.

Yours sincerely

### **NAME OF INVESTIGATING OFFICER**

cc People & Organisational Development Advisor  
HR Service Centre/Employee Personal File

**APPENDIX J - 'HOW TO FORM ALLEGATIONS' VIDEO AVAILABLE  
HERE: MANAGING DISCIPLINE – THE INVESTIGATION – ABERDEEN  
CITY COUNCIL: PEOPLE ANYTIME [include link]**

## **APPENDIX K - TEMPLATE LETTER – INVITE EMPLOYEE TO A DISCIPLINARY HEARING - \*delete as appropriate**

### **PERSONAL**

Dear

### **DISCIPLINARY HEARING**

As you will be aware, there has been a recent investigation into an allegation(s) that has/have been made against you. The Investigating Officer has concluded that their investigation has unearthed sufficient evidence of unsatisfactory conduct that should be formally dealt with under the Council's disciplinary procedure. I have been nominated to conduct a disciplinary hearing, the purpose of which is for me to hear both the Investigating Officer's and your case and then decide whether disciplinary action is warranted.

You are required to attend a disciplinary hearing, which is scheduled for (date, time and location/Teams meeting – 5 working days' notice required). At the hearing you will be required to respond to the following allegations \*(which could potentially amount to gross misconduct):

**<Insert allegation(s)>** *(as per the outcome of the investigatory stage)*

### **Format of hearing**

I intend to conduct the disciplinary hearing as follows:

1. Firstly, I will explain the purpose and format of the meeting, and deal with any procedural issues that may arise. I will allow adjournments during the hearing where I deem they are necessary.
2. I will then ask the Investigating Officer to state the allegation(s) against you and present the evidence that forms the substance of the case. At this point, I will ask any supporting witnesses to make their statements, if they are to be called, or for their written submissions to be presented if they are not.
3. You and/or your companion will then have the opportunity to question the Investigating Officer and any attending witnesses about evidence that has been presented.
4. I will then ask you to present your case and call any supporting witnesses, or present their written submissions if they are not being called. The Investigating Officer will then be given the opportunity to ask questions of you and your attending witnesses in respect of the information presented.
5. I and my assisting colleague will question the Investigating Officer and yourself, as well as any supporting witnesses who may be called.
6. In addition there may be the need for a more general discussion during which both sides can raise relevant issues not already covered.

7. You will be given the opportunity to conclude your response to the allegations by highlighting any aspects you consider to be particularly relevant, including introducing any mitigating circumstances.
8. At the end of the hearing, I will adjourn the meeting.
9. During this adjournment, I will consider all the relevant information that has emerged from the hearing, consider whether the allegations have been substantiated and decide what action to take.
10. I will notify you of my decision in person whenever possible and confirm it in writing, along with the reasons for arriving at that decision. I would hope to reach a decision within 24 hours of the hearing although the length of the adjournment will of course depend on the type and extent of the range of issues that I need to consider.

### **Potential outcome of hearing**

In view of the nature of the allegation(s) being made against you, you should be aware that a possible outcome of the hearing is that disciplinary action could be taken against you \*which includes the possibility of your dismissal from the Council's employment (*only include this wording in cases where gross misconduct is being alleged or where the employee is presently under a final warning*). You are advised to read the disciplinary procedure, which sets out the range of disciplinary actions that may be taken in certain circumstances.

### **Submission of evidence**

If there is any additional, relevant evidence you wish to have taken into account at the hearing, you must forward this to me at least 24 hours in advance of the hearing. If you wish to have witnesses called you must notify me immediately to ensure that I can contact them in plenty of time. I wish to clarify at this point that witnesses cannot be compelled or instructed to attend the hearing.

I will be referring to documentary evidence that has been provided to me by the Investigating officer. I have enclosed for your information a copy of the report and appendices.

### **Your right to be accompanied**

You have the right to be accompanied by a work colleague or trade union representative if you so wish. You are not permitted be accompanied by your partner, a spouse or a legal practitioner.

I will be accompanied by (insert name of officer).

### **Confirming your attendance**

You are expected to take all reasonable steps to attend the hearing and I have to advise that should you fail to attend the hearing without good and sufficient reason, it is likely that the hearing will proceed, and a decision will be taken, in your absence.

If the companion you select is unable to attend on the above date you have the opportunity to suggest another date. However, this alternative date must suit everyone involved and be no more than 5 working days after the original date – otherwise, you will need to select another companion or attend the meeting unaccompanied.

Please contact me as soon as possible by (email and/or telephone) to confirm that the above date and time are suitable, whether you will be accompanied and if so, by whom.

I trust this satisfactorily explains the stage we are at in the disciplinary procedure and how the disciplinary hearing will proceed.

Yours sincerely

**NAME OF OFFICER CONDUCTING HEARING**

Enc Copy of Investigation Report and Appendices

cc. People and Organisational Development Advisor  
HR Service Centre/Employee Personal File

## APPENDIX L - HOW TO CONDUCT A DISCIPLINARY HEARING CHECKLIST

The chairperson should conduct the formal hearing following the below steps.

STEP	DETAIL	COMPLETED
<b>Prior to the Hearing</b>	Received finalised investigation report and appendices	
	Contact Employee Relations & Wellbeing team ( <a href="mailto:employeerelations@aberdeencity.gov.uk">employeerelations@aberdeencity.gov.uk</a> ) for a People & Organisational Development Advisor to support at the hearing.	
	Book a private meeting room or arrange a Teams meeting.	
	Invite employee and all relevant parties to the hearing.	
<b>At the Hearing</b>		
Introduction	<p>Make introductions and explain the purpose and format of the hearing.</p> <p>Confirm that you will allow necessary adjournments during the hearing.</p>	
Investigating Officer presents findings	Ask the Investigating Officer to state the allegation(s) against the employee and present the evidence that forms the substance of the case.	
Witnesses called (if applicable)	Then ask any supporting witnesses to make their statements, if they are to be called, or for their written submissions to be presented if they are not.	
Questions to Investigating Officer and witnesses	Give the employee and/or companion the opportunity to question the Investigating Officer and any attending witnesses about evidence that has been presented.	
Employee presents their case	The employee presents their case and can call any supporting witnesses or present their written submissions if they are not being called.	
Questions to the employee and witnesses	Give the Investigating Officer the opportunity to ask questions of the employee and attending witnesses in respect of the information presented.	
Questions from the Chairperson	<p>You and your assisting colleague will question the Investigating Officer and employee, as well as any supporting witnesses who may be called.</p> <p>At this point any general discussions can take place, where both sides can raise relevant issues not already covered.</p>	
Confirm employee has fully stated their concerns	Employee is given the opportunity to conclude their response to the allegations and highlight any aspects they consider to be particularly relevant, including introducing any mitigating circumstances.	

	Check the employee feels they have had a fair hearing and whether they have anything further to say.	
Adjournment	<p>Adjourn the hearing so that you can consider all the relevant issues that have emerged, and the evidence presented during the hearing, to consider whether the allegations have been substantiated and decide what action to take.</p> <p>Inform the employee at this point when they might reasonably expect a response bearing in mind the time limits set out in the procedure.</p>	
Communicate the decision	<p>Confirm the outcome of the meeting to the employee and if any sanctions applied, advise the length of time on their record and their right of appeal.</p> <p>Advise the decision will be confirmed in writing.</p> <p>If unable to come to decision on the day, confirm to the employee you will notify them of your decision in person whenever possible and confirm it in writing, along with the reasons for arriving at that decision. Advise you would hope to reach a decision within 24 hours of the hearing although the length of the adjournment will depend on the type and extent of the range of issues that you need to consider.</p>	
<b>After the Hearing</b>	Issue outcome letter to employee.	
	Send the paperwork to the People and Organisational Development Advisor supporting you in the case for recording and filing.	
	Make referral to Disclosure Scotland if necessary.	
	Update Professional Body with outcome of hearing if appropriate.	

**APPENDIX M – TEMPLATE DOCUMENT - DISCIPLINARY HEARING MEETING NOTES**

**DISCIPLINARY HEARINGS MEETING NOTES**

<b>Date:</b>	
<b>Location:</b>	
<b>Who is in attendance?</b>	
<b>Name</b>	<b>Role</b>
<b>Has chair explained the purpose and structure of the hearing?</b>	
<b>Is this in accordance with the guidance?</b>	
<b>If the employee is unaccompanied has the chair asked if they are willing to proceed?</b>	
<b>Has the employee been advised of the allegations and received all paperwork?</b>	
<b>Are there any preliminary/procedural issues? Disabilities and adjustments? If yes, how have these been dealt with?</b>	
e.g. disabilities/adjustments, conflicts of interest, missing paperwork, etc	
<b>INVESTIGATION REPORT</b>	
<b>What information did the investigating officer present?</b>	
<b>Questions and responses for Investigating Officer?</b>	

**Employee response and mitigation?**

**General discussion**

**What (if any) information was the investigating office unsure of?**

**Were there any points of the investigation report disputed? If yes, what facts did the employee dispute?**

**Did the employee question the credibility of the Investigating officer, or any of the witnesses?**

**Were any witnesses called? If yes, what did the witness say?**

**Did the employee state that any witnesses should be called but were not called? If yes, what was the reason given for not calling these witnesses?**

**Was the hearing adjourned to consider the outcome?**

--

**OUTCOME**

**What was the Chair's decision in relation to the allegations? Were the allegations upheld fully or partially?**

--

**What were the reasons given for the decision and the sanction imposed?**

--

**Has the employee been dismissed?**

**If yes, what is the effective date?**

**What alternatives were considered and why were these not appropriate?**

--

**Anything else to note?**

--

**APPENDIX N - TEMPLATE LETTER – OUTCOME NO WARNING / COUNSELLING  
RECOMMENDED - \*delete as appropriate**

**PERSONAL**

Dear

**DISCIPLINARY OUTCOME**

I refer to the disciplinary hearing held on (date) in the presence of (names of officers present, including companions if applicable) during which you were requested to respond to allegations that (insert allegations, as per the letter inviting to hearing).

During the hearing you were requested to respond to the following allegations:

- **Insert allegation(s)**

Having given full consideration to the issues that emerged during the course of the disciplinary hearing, I confirm my decision is that no disciplinary action is taken on the grounds that there was insufficient evidence to substantiate the allegations.

**Optional** \*However, I have recommended that you are counselled by your Line Manager in relation to (detail issue to address through counselling).

Yours sincerely

**NAME OF OFFICER CONDUCTING DISCIPLINARY HEARING**

cc People & Organisational Development Advisor  
HR Service Centre/Employee Personal File

**APPENDIX O - TEMPLATE LETTER – OUTCOME FIRST LEVEL WARNING -  
\*delete as appropriate**

**PERSONAL**

Dear

**FIRST LEVEL WARNING**

I refer to the disciplinary hearing held on (date) in the presence of (names of officers present, including companions if applicable) during which you were requested to respond to allegations that (insert allegations, as per the letter inviting to hearing). This letter confirms the disciplinary action taken in your case.

**Disciplinary decision**

Having considered the issues that emerged during the course of the disciplinary hearing, I confirm my decision that you be issued a **first level warning** within the terms of the Council's disciplinary procedure.

This first level warning will take the form of a formal verbal/written \* warning.

**Reasons for the decision and expected improvement**

My reasons for arriving at this decision are, and the expected improvement in your conduct is, as follows:

- a) The nature of the unsatisfactory conduct was:**
- b) The main factors that I considered before arriving at my decision were:**
- c) The expected improvement in conduct is:**
- d) The likely consequence of further misconduct or insufficient improvement is:**

Final warning

**Life of warning and monitoring of conduct**

This warning will remain on your personal file for a period of **six/nine\* months of work** during which time your conduct will be monitored. This period may be extended to offset any significant period when you are not at work for any reason. If there are no further breaches of discipline during the life of this warning then it will be disregarded for disciplinary purposes and be removed from your personal file. If you commit a further offence of misconduct or fail to meet the required improvement set out in (c) above, this warning may be cited in any disciplinary proceedings resulting from that misconduct or insufficient improvement.

\*If you are eligible for a salary increment you should note that this warning will result in you not receiving your next salary increment. This is in accordance with the Continuous Review and Development scheme. (This does not apply to teachers).

**\*Optional paragraph to be inserted where decision is taken to retain the data beyond the life of the warning**

As the allegation(s) that has/have\* been upheld relates to (*enter nature of allegations*) the warning will be removed from your personal file once it is spent but a confidential record of the warning will be retained for an indefinite period. This will only be accessed as part of the investigation process should you be subject to any further investigation into an allegation of potential gross misconduct or involving children and/or vulnerable adults.

**Your right of appeal**

You have the right of appeal against this outcome if you consider the penalty is unduly severe or inconsistent, where new evidence emerges that may affect the decision or where there have been significant defects in the disciplinary procedure.

Should you consider you have grounds to appeal against the disciplinary action taken against you, you may do so by writing to the Director of (Service) within **ten working days** of receipt of this letter. To be a competent appeal, you must state the grounds on which your appeal is based and set out in sufficient detail:

- why you consider the finding or the penalty to be unduly severe or inconsistent
- the new and relevant evidence that has come to light that was previously unavailable
- why you consider that the disciplinary procedure wasn't used correctly and how you were unfairly disadvantaged because of this

Yours sincerely

**NAME OF OFFICER CONDUCTING DISCIPLINARY HEARING**

cc People & Organisational Development Advisor  
HR Service Centre/Employee Personal File

**APPENDIX P - TEMPLATE LETTER – OUTCOME FINAL WARNING - \*delete as appropriate**

**PERSONAL**

Dear

**FINAL WARNING**

I refer to the disciplinary hearing held on (date) in the presence of (names of officers present, including companions if applicable) during which you were requested to respond to allegations that (insert allegations, as per the letter inviting to hearing). This letter confirms the disciplinary action taken in your case.

**Disciplinary decision**

Having given full consideration to the issues that emerged during the course of the disciplinary hearing I confirm my decision that you be issued with a **final warning** within the terms of the Council's disciplinary procedure.

Optional paragraph - I also confirm my decision that you be **\*demoted/transferred** from your present post of (job title) to the post of (job title) with effect from (day following the date of the disciplinary hearing). \*Your precautionary suspension is also lifted with effect from (day following the date of the disciplinary hearing). Your line manager will contact you to make arrangements for you to take up the post of (job title) as soon as possible and revised contractual documentation will follow in due course.

**Reasons for the decision and expected improvement**

My reasons for arriving at this decision are and the expected improvement in your conduct is, as follows:

**a) The nature of the unsatisfactory conduct was:**

**b) The main factors that I considered before arriving at my decision were:**

\*I have taken into account the letter dated (**date**) which informed you that you had been issued with a first level warning in accordance with the disciplinary procedure. In that letter you were warned that if your conduct did not sufficiently improve, or if you committed a further act of misconduct, you were likely to receive a final warning.

**c) The expected improvement in conduct is:**

**d) The likely consequence of further misconduct or insufficient improvement is:**

Dismissal

## Life of warning and monitoring of conduct

This final warning will remain on your personal file for a period of **twelve months of work**, during which time your conduct will be monitored. This period may be extended to offset any significant period when you are not at work. If there are no further breaches of discipline during the life of this warning, it will be disregarded for disciplinary purposes and be removed from your personal file. If you commit a further offence of misconduct or fail to meet the required improvement set out in (c) above, this warning may be cited in any disciplinary proceedings resulting from that misconduct or insufficient improvement.

\*If you are eligible for a salary increment you should note that this warning will result in you not receiving your next salary increment. This is in accordance with the Continuous Review and Development Scheme. (This does not apply to teachers).

### **\*Optional paragraph to be inserted where decision is taken to retain the data beyond the life of the warning:**

As the allegation(s) that has/have been upheld relates to (*enter nature of allegations*) the warning will be removed from your personal file once it is spent but a confidential record of the warning will be retained for an indefinite period. This will only be accessed as part of the investigation process should you be subject to any further investigation into an allegation that relates to your professional registration. In this event, the Council may be obliged to disclose relevant retained information to your regulatory body e.g. General Teaching Council of Scotland, Scottish Social Services Council as required.

## Your right of appeal

You have the right of appeal against this outcome if you consider the penalty is unduly severe or inconsistent, where new evidence emerges that may affect the decision or where there have been significant defects in the disciplinary procedure. Your appeal must be registered within **ten working days** of receipt of this letter.

Should you consider you have grounds to appeal against the disciplinary action taken against you, you can choose to either have your appeal heard by a Chief Official or by the Appeals Sub Committee.

If you wish to have your appeal heard by a Chief Official then you must register your appeal in writing to \*non-teaching staff - (name of Director), Director of (Service) / \*for teachers – (name of COO), Chief Operating Officer.

If you choose to have your appeal heard by the Appeals Sub Committee then you must register your appeal in writing to the Clerk of the Appeals Sub Committee, Aberdeen City Council, Governance, 1st Floor Old Town House, Broad Street, Aberdeen, AB10 1AQ.

To be a competent appeal you must state the grounds on which your appeal is based and set out in sufficient detail:

- Why you consider the finding or the penalty to be unduly severe or inconsistent.
- The new and relevant evidence that has come to light that was previously unavailable.

- Why you consider that the disciplinary procedure wasn't used correctly and how you were unfairly disadvantaged because of this.

Yours sincerely

**NAME OF OFFICER CONDUCTING DISCIPLINARY HEARING**

cc People & Organisational Development Advisor  
HR Service Centre (for action in cases of transfer/demotion)/Employee Personal File

**APPENDIX Q – TEMPLATE LETTER – OUTCOME DISMISSAL - \*delete as appropriate**

**PERSONAL**

Dear

**CONFIRMATION OF DISMISSAL**

I refer to the disciplinary hearing held on (date) in the presence of (names of officers present, including companion if applicable) during which you were requested to respond to allegations that (insert allegations, as per the letter inviting to hearing). This letter confirms the disciplinary action taken in your case.

**Disciplinary decision**

Having given full consideration to the issues that emerged during the course of the disciplinary hearing, I confirm my decision that you be dismissed in accordance with the Council's disciplinary procedure on the grounds of \*gross/serious misconduct.

**Reasons for the decision to dismiss**

My reasons for arriving at this decision, and the main factors I took into account, are as follows:

a) The nature of the unsatisfactory conduct was:

b) The main factors that I considered before arriving at my decision were:

\* I also took into account the letter dated (date) which informed you that you had been issued with a final warning in accordance with the disciplinary procedure. In that letter you were warned that if your conduct did not sufficiently improve, or if you committed a further act of misconduct, you were likely to be dismissed.

**Date of dismissal and notice entitlement**

\*Select appropriate paragraph -

***Para (1) – to be used in cases of gross misconduct***

On the basis that I regard your misconduct as amounting to gross misconduct, you are summarily dismissed from the Council's employment **without** notice or payment in lieu of notice. Your last day of service with Aberdeen City Council was (date).

Payment for any outstanding monies will be made to you as soon as possible and you are required to return the following items issued to you by the Council (list any such items e.g. keys, protective clothing etc).

***Para (2) – to be used in cases of serious misconduct***

On the basis that I regard your misconduct as amounting to serious misconduct, whilst your last day of service with Aberdeen City Council was (date), you will receive

(amount) weeks' pay in lieu of the amount of notice to which you are contractually entitled.

Payment for any outstanding monies will be made to you as soon as possible and you are required to return the following items issued to you by the Council (list any such items e.g. keys, protective clothing etc).

### **Your right of appeal**

You have the right of appeal against this outcome if you consider the penalty is unduly severe or inconsistent, where new evidence emerges that may affect the decision or where there have been significant defects in the disciplinary procedure. Your appeal must be registered within **ten working days** of receipt of this letter.

Should you consider you have grounds to appeal against the disciplinary action taken against you, you can choose to either have your appeal heard by a Chief Official or by the Appeals Sub Committee.

If you wish to have your appeal heard by a Chief Official then you must register your appeal in writing to \*non teaching staff - (name of Director), Director of (Service) / \*for teachers – (name of COO), Chief Operating Officer.

If you choose to have your appeal heard by the Appeals Sub Committee then you must register your appeal in writing to the Clerk of the Appeals Sub Committee, Aberdeen City Council, Governance, 1st Floor Old Town House, Broad Street, Aberdeen, AB10 1AQ.

To be a competent appeal you must state the grounds on which your appeal is based and set out in sufficient detail:

- why you consider the finding or the penalty to be unduly severe or inconsistent
- the new and relevant evidence that has come to light that was previously unavailable
- why you consider that the disciplinary procedure wasn't used correctly and how you were unfairly disadvantaged because of this

Yours sincerely

### **NAME OF OFFICER CONDUCTING DISCIPLINARY HEARING**

cc People & Organisational Development Advisor  
HR Service Centre /Employee Personal File

## **APPENDIX R - HOW TO CONDUCT A DISCIPLINARY APPEAL CHECKLIST**

The Chairperson should conduct the formal appeal hearing following the below steps.

Please note that this checklist applies to those appeals heard by Officers; appeals heard by the Appeals Sub Committee will follow the process laid out in the Appeals Sub Committee Procedure available on the following link <https://peopleanytime.aberdeencity.gov.uk/employee-relations/appeals-committee-procedure/>

<b>STEP</b>	<b>DETAIL</b>	<b>COMPLETED</b>
<b>Prior to the Hearing</b>	Received grounds for appeal from employee	
	Contact Employee Relations & Wellbeing team ( <a href="mailto:employeerelations@aberdeencity.gov.uk">employeerelations@aberdeencity.gov.uk</a> ) for a People & Organisational Development Advisor to support at the hearing.	
	Book a private meeting room or arrange a Teams meeting.	
	Invite employee and all relevant parties to the hearing.	
<b>At the Hearing</b>		
Introduction	Make introductions and explain the purpose and format of the appeal hearing. Confirm the appeal is <b>not</b> a rehearing of the original case.  You will allow adjournments during the hearing where they are necessary.	
Employee states grounds for appeal	Ask the employee and/or their companion to state their grounds and reasons for appeal.	
Response from disciplinary manager	Ask the manager who took the disciplinary action to respond.	
Questions from the Chairperson	You and your assisting colleague will question both the employee and the manager who took the disciplinary action.	
Closing statements	Give both parties the opportunity to make a closing statement, firstly the manager who took the disciplinary action, then the employee.	
Adjournment	Adjourn the meeting to consider all the relevant issues that have emerged from the hearing to make a decision.	

<p>Communicate the decision</p>	<p>Reconvene the meeting and announce your decision, along with the reasons for arriving at that decision. Confirm your decision is final and there is no further right of appeal.</p> <p>Advise the decision will be confirmed in writing.</p> <p>If unable to come to decision on the day, confirm to the employee you will notify them of your decision in person whenever possible and confirm it in writing, along with the reasons for arriving at that decision. Advise you would hope to reach a decision within 24 hours of the hearing although the length of the adjournment will depend on the type and extent of the range of issues that you need to consider.</p>	
<p><b>After the Hearing</b></p>	<p>Issue outcome letter to employee.</p>	
	<p>Send the paperwork to the People and Organisational Development Advisor supporting you in the case for recording and filing.</p>	

## **APPENDIX S - TEMPLATE LETTER – INVITE EMPLOYEE TO APPEAL HEARING** **- \*delete as appropriate**

### **PERSONAL**

Dear

### **NOTICE OF APPEAL HEARING**

You have appealed against the \*first level warning / final warning / notice of dismissal confirmed to you in writing on (date).

### **When the appeal will be heard**

I wish to hear the appeal on (date, time and location/Teams meeting – 5 working days' notice required)

### **Format of the appeal hearing**

I intend to conduct the appeal hearing using the following procedure:

1. Firstly, I will explain the purpose and format of the hearing and deal with any procedural issues that may arise. The appeal is **not** however a rehearing of the original case.
2. I will then ask you and/or your companion to state your grounds and reasons for appeal.
3. I will then ask the officer who took the disciplinary action to respond.
4. I and my assisting colleague will question both the manager who took the disciplinary action and yourself.
5. I will give both parties the opportunity to make a closing statement, firstly the manager who took the disciplinary action, then yourself.
6. I will allow adjournments during the course of the hearing where they are necessary.
7. At the end of the hearing, I will adjourn the meeting.
8. During this adjournment, I will consider all of the relevant issues that have emerged from the hearing to make my decision.
9. I will then reconvene the meeting and announce my decision, along with the reasons for arriving at that decision. I will thereafter confirm my decision in writing.

### **Potential outcome of hearing**

I will carefully consider your grounds for appeal, and the response made by the officer who took the disciplinary action, then decide whether there are sufficient and reasonable grounds to either:

- (a) uphold the appeal in full (whereupon all records of disciplinary proceedings will be removed); or
- (b) uphold the appeal in part. In such circumstances, it may be appropriate to reduce the level of disciplinary action taken against you; or
- (c) not uphold the appeal

The decision of this appeal hearing is final and there is no further right of appeal.

### **Your right to be accompanied**

You have the right to be accompanied by a work colleague or trade union representative if you so wish. You are not permitted to be accompanied by your partner, a spouse or a legal practitioner.

I will be accompanied by (name of officer).

### **Confirming your attendance**

Please contact me by (email and/or telephone) as soon as possible to confirm that the above date and time are suitable, whether you will be accompanied and, if so, by whom.

Yours sincerely

### **NAME OF OFFICER CONDUCTING DISCIPLINARY HEARING**

cc People & Organisational Development Advisor  
HR Service Centre /Employee Personal File

**APPENDIX T - TEMPLATE LETTER - OUTCOME OF APPEAL HEARING - \*delete as appropriate**

**PERSONAL**

Dear

**CONFIRMATION OF OUTCOME OF APPEAL HEARING**

On (date of letter), you appealed against the outcome of the disciplinary hearing that you be given a \*first level / final warning / be dismissed.

I heard the appeal on (date of hearing) in the presence of (insert names of officers present, including companions if applicable).

This letter confirms my decision.

**Outcome of appeal hearing**

Having given full consideration to the issues that emerged during the course of the appeal hearing, I confirm my decision, namely that the decision to **\*give you a first level warning / final warning / dismiss you stands / is revoked / is revoked in part** (specify if no disciplinary action is being taken or what the new disciplinary action is).

**Reasons for my decision**

The reasons for, and factors I considered when arriving at this decision were:

**<Enter reasons and factors>**

You have now exercised your right of appeal under the Council's disciplinary procedure and my decision is **final**.

Yours sincerely

**NAME OF OFFICER CONDUCTING HEARING**

cc People & Organisational Development Advisor  
HR Service Centre /Employee Personal File