



## Contents

1. Introduction .....	2
2. Scope of the Procedure .....	2
3. General Principles .....	2
4. Informal Stages of the Procedure .....	3
5. Formal Stages of the Procedure .....	3
6. Suspension from duty .....	4
7. Investigation .....	6
8. Formal Disciplinary Hearing .....	7
9. Disciplinary Sanctions .....	8
10. Appeals .....	9
11. Disciplinary Offences which may constitute gross misconduct .....	10
12. Right to be accompanied .....	11
13. Confidentiality .....	12
14. Witnesses .....	12
15. Grievances raised during an investigation .....	13
16. Criminal activity and conduct outside work .....	13
17. Absence during the disciplinary process .....	14
18. Damage recompense .....	15
19. Other complaints .....	15
20. Data protection .....	15
21. Safeguarding .....	15
Appendix 1: Suspension Checklist .....	16
Appendix 2: Disciplinary Hearing Process .....	17
Appendix 3: Appeal Hearing Order of Proceedings .....	18
Appendix 4: Chief Officers Disciplinary Procedure .....	19
Appendix 5 – Template Investigation Report .....	20

## **1. Introduction**

1.1 Hyndburn Borough Council is committed to ensuring the fair treatment of all its employees and to helping and encouraging them to achieve and maintain acceptable standards of conduct. The vast majority of employees will never find themselves involved in disciplinary action, and this policy is intended to help employees to avoid ever being in that position.

## **2. Scope of the Procedure**

2.1 This document forms part of the contract of employment.

2.2 The principles of this procedure apply to all Hyndburn Borough Council employees, but there are some differences in the processes to be followed for the following groups:

- a) The Council's Constitution (Section H) outline the procedures for disciplinary action involving the statutory officers – called “relevant officers” within that section. These are the Chief Executive, who is the head of paid service, the Chief Finance Officer (S151 officer) and the Monitoring Officer. Separate legislation determines the procedures to be followed when dealing with statutory officers;
- b) Chief Officers under JNC terms and conditions are subject to separate nationally agreed Scheme of Conditions of Service and the procedural differences are outlined in [Appendix 4](#).
- c) For staff on probation, the relevant section of the Performance Improvement Policy may apply. Advice should be sought from HR on individual cases.

2.3 The procedure does not apply to individuals that the Council engages to undertake work where no employment relationship exists, for example agency workers, volunteers and work experience placements.

2.4 If concerns are performance-related, this policy should be used where the performance issue relates to negligence or an attitudinal problem on the part of the employee. Where the performance concern is related to the employee's aptitude, skills or ability, the Performance Improvement Procedure will apply.

## **3. General Principles**

3.1 All parties involved in the operation of this procedure should behave in a fair, cooperative and responsible manner. The Council reserves the right to implement procedures whenever misconduct occurs.

3.2 All Council employees have a contractual responsibility to be aware of and conform to the Council's values, standards of conduct, policies and procedures and to co-operate with any investigations, to attend any meetings, interviews and hearings convened in accordance with this policy. For managers, this includes a responsibility to discuss concerns promptly with staff where possible, so that formal procedures can ideally be avoided, but also to use formal procedures when required.

- 3.3 All disciplinary proceedings and decisions will be confidential and information will only be disclosed where an individual has a legitimate right to the information.
- 3.4 The Council will only impose a disciplinary sanction after the alleged misconduct has been investigated and determined in line with this procedure.
- 3.5 The Council will inform employees of the matters to be considered under the disciplinary procedure and give them a reasonable opportunity to respond to all relevant evidence at a disciplinary hearing if a formal warning or dismissal is being considered.
- 3.6 Where this policy uses the term “days” or “working days”, this will mean Monday to Friday inclusive unless stated otherwise. In all cases, the timescale given will apply regardless of an individual’s working pattern. An extension may be granted in exceptional circumstances.
- 3.7 The procedure is intended to operate in line with the [ACAS Code of Practice and Guidance on Disciplinary and Grievance Procedures](#).

#### **4. Informal Stages of the Procedure**

- 4.1 There will be occasions when behaviour falls short of what is expected, but is not serious enough to warrant formal disciplinary action or where the manager believes there is an alternative course of action which will achieve the required improvement. Where there are **minor** faults in the employee’s conduct, the matter should be dealt with promptly through informal discussion between the employee and line manager. Making standards clear at an early stage can avoid lengthy formal procedures later on.
- 4.2 If necessary, managers can issue an informal verbal warning that failure to improve or a repetition of the behaviour may lead to formal action. This should be recorded in meeting notes or a letter so that the employee is clearly aware of it and so that there is evidence that the expected standards had been made clear. Additional training, coaching or advice may be given in order to achieve an improvement. In some circumstances it may be appropriate to explore whether or not mediation would be beneficial.
- 4.3 There is no right to be accompanied at informal discussions (see [S12](#)).
- 4.4 The formal procedure will be used if conduct does not improve, if there is a repeated pattern of behaviour through the informal procedure or if the disciplinary matter is more serious than a minor fault.

#### **5. Formal Stages of the Procedure**

- 5.1 If following informal management action / instruction, there is no satisfactory improvement in conduct or there is alleged misconduct which is considered to be of a sufficiently serious nature, the line manager or their nominated senior officer will arrange to meet with the employee, or if a meeting is not possible, arrange an alternative means of communicating the issue. The employee should be informed that the meeting is being arranged under the Disciplinary Procedure and be informed

of their right to be accompanied for support at the meeting by a trade union representative or a work colleague (in line with [S.12](#)). The purpose of this 'management meeting' will be to:

- inform the employee of the broad areas of concern;
- if appropriate, establish the employee's initial response; and
- on the basis of this to decide what action, if any, (including conducting an investigation) should be taken.

5.2 Following this meeting the manager may decide:

- that the matter is concluded and no further action is required;
- to deal with the matter in consultation with the employee which could involve the issuing of a recorded informal verbal warning (see [S.4](#) above);
- that, due to the clear facts of the case, the matter can progress to a formal hearing without further investigation;
- that there should be an investigation under the provisions of this procedure;
- to suspend (see [S.6](#)) the employee pending the outcome of the disciplinary investigation process; or
- to refer the matter for consideration under the Performance Improvement Procedure.

5.3 As indicated above, in exceptional cases (e.g., the employee admits the misconduct) the facts may be so straightforward that an investigation is not appropriate. In such cases, the manager will take advice from HR and may move straight to a formal disciplinary hearing. In these circumstances, a decision will be taken by the Council on whether the manager who carried out the initial management meeting should also hear the case at a formal disciplinary hearing. For example, in cases of potential gross misconduct, it may be appropriate to appoint a different manager, although this will depend on the facts in each case.

5.4 In certain cases (e.g. where current and ongoing fraud is suspected) it may be appropriate not to inform the employee at this stage in order to allow necessary observations and collection of evidence to take place. Under statutory provisions, covert surveillance may be conducted though this will require the approval of designated senior officers. Advice must be sought from either the Head of Audit and Investigations, the Head of HR or the Executive Director (Legal and Democratic) before any covert surveillance takes place and the Council will ensure that it follows the Data Protection Act and ICO Codes of Practice.

## **6. Suspension from duty**

6.1 Suspension should only be used after careful consideration and advice from HR. It may be considered at the outset of a disciplinary investigation or later in the process.

6.2 Suspension is a neutral act. It is not a disciplinary sanction but is intended to protect either or both the employee's and the Council's interests. It is not possible to prejudge cases without matters being investigated and, therefore, suspension should never be seen as an assumption that an employee is guilty.

6.3 Suspension should only occur where, for example:

- the allegations may constitute gross misconduct;
- where there is concern that evidence may be tampered with, or destroyed;
- in cases where witnesses are or may feel intimidated;
- where there are health, safety or welfare concerns or where it otherwise would be difficult for the council to provide a duty of care to others within the council.

6.4 The decision to suspend should only be taken by a Head of Service (above SCP 47) or above. Other senior officers (ie, those above scale 7, SCP 29) can exceptionally be authorised to suspend by the service's relevant Executive Director or an alternative Executive Director if unavailable (for example during the period between Christmas and New Year).

6.5 As soon as the relevant officer determines that there is a case to suspend an employee, a meeting should be arranged and they should make the employee aware of this fact. Employees will be given the opportunity to have someone present with them at the suspension meeting. However, there is no official right of representation, and a failure to find a suitable representative within a reasonable timescale will not prevent a manager suspending an employee.

6.6 Confirmation of the suspension and the conditions attached to the suspension should be put in writing.

6.7 Where a period of suspension is agreed, this should be reviewed on a weekly basis by the Head of HR or their nominated HR officer.

6.8 Although this will clearly be a difficult time for employees, they are expected to act with discretion. Employees who are suspended from work are reminded of the importance of complying with the conditions attached to the suspension, which will be provided in detail and in writing. A failure to comply with the terms of suspension may have serious consequences.

6.9 A suspension checklist is attached in [Appendix 1](#).

6.10 Employees should be available to attend any meetings related to the disciplinary process. However, annual leave may be taken, if it has been authorised in advance or agreed with the individual's line manager, during the suspension period. Outside of this employees will be reasonably expected to be available to attend related meetings.

## **Suspension without pay**

6.11 In rare circumstances suspension may be without pay. Such circumstances may include employees going into Police custody suspected of a serious criminal offence where the Council is unable to follow procedures for carrying out investigations. In the event that suspension without pay is applied and this later turns out to have been an improper decision, pay will be reinstated from the date of the suspension.

## **Alternatives to Suspension**

6.12 In some circumstances it may be appropriate for an employee under investigation to work in a different area as an alternative to being suspended. Any decision to move an employee is subject to agreement by the Head of Service and does not imply that

allegations are accurate: rather it is intended as an interim measure to protect both employee and complainant. Particular attention should be paid to avoiding victimisation of staff by members of the public, for either personal or prejudicial reasons. Other alternatives could include working from home or increased management supervision.

## 7. Investigation

7.1 Where an investigation is required, this should be carried out without unreasonable delay by the appointed officer. An investigation is about establishing facts and it is the role of the investigating officer to present the evidence in a non-biased way. An investigatory interview does not constitute disciplinary action and it does not mean that a disciplinary hearing or a sanction will always follow. The nature and extent of the investigation will depend on the seriousness of the matter. The investigating officers should aim to:

- keep an open mind and avoid leading questions;
- deal with the matter promptly;
- gather evidence;
- establish uncontested / agreed facts;
- look for corroboration and present the evidence surrounding disputed facts (this means both supporting evidence and contradictory evidence);
- enable a decision by the appropriate manager whether to take matters to a hearing; and
- facilitate an efficient hearing by presenting relevant evidence logically in a clear and factual report.

7.2 The Head of Service will normally appoint the investigating officers, who will be two impartial officers, usually a line manager or supervisor of the employee plus an HR Officer, Auditor or second manager / supervisor.

7.3 The investigating officers will invite the employee to a meeting to discuss the allegations, so that the employee's response can inform their report. The employee will be given a minimum of 24 hours' notice of this interview.

7.4 If the employee does not feel well enough to attend an investigation meeting, advice will be sought from Occupational Health and, if necessary, the investigation will be concluded without this meeting. The employee will be invited to submit their response in writing or as comments on the factual accuracy of the report (see below).

7.5 If new allegations emerge during the course of the investigation and the Council decides that these should be included in the current process, the employee will be given an opportunity to respond to these also.

7.6 The investigating officers will conclude their findings and recommendations in a report (an example template is provided in [Appendix 5](#)). A copy of the report will be sent to the employee for their comments. Employees must limit their comments to the factual accuracy of the report and these will be appended to the final report. Employees will be given 5 working days to provide their comments. The purpose of the report is to allow the manager to make an informed decision on the next steps; to assist the hearing in considering the issues; and to assist the employee in understanding the

allegations and preparing their response. This timescale may be extended in exceptional cases at the discretion of the investigating officers in consultation with the Head of Service.

7.7 The Head of Service or Senior Manager (dependent on the potential seriousness of the misconduct) will receive and consider the report and determine whether or not the matter should progress to a disciplinary hearing.

### **Resignation during an investigation or before a disciplinary hearing**

7.8 If the employee resigns either during a disciplinary investigation or prior to a disciplinary hearing then the Council reserves the right to continue with the investigation and/or hearing despite the resignation. If the Council is unable to conclude the investigation then the matter will remain open on the employee's personnel record as an unresolved issue. Any future employment with the Council may be dependent on the conclusion of the matter.

## **8. Formal Disciplinary Hearing**

8.1 Where the decision is taken to hold a formal disciplinary hearing, the employee will be notified of this in writing by the Hearing Manager (who will be either the Head of Service or Senior Manager as outlined above). The employee will be given at least 5 working days' notice of the Hearing and will be sent the report and any relevant paperwork.

8.2 The Hearing Manager will ensure that a full, fair and transparent hearing is held and that details of the case remain confidential.

8.3 Managers above SCP 47 (service managers) are authorised to dismiss an employee under this procedure.

8.4 The Hearing Manager will be joined on the panel by a member of Human Resources who will advise and will also make a written record of the proceedings.

8.5 The employee will be given the details of the complaint and will have sight of the evidence that has been gathered (i.e., the investigation report and any attachments). The employee will be given the opportunity to set out their case and answer the allegations that have been made. The employee will be given reasonable opportunity to ask questions and present evidence.

8.6 Both the Hearing Manager and/or the investigating officer and the employee can call witnesses and advance notice should be given to the other party. Should the employee wish to call witnesses to the hearing it is their responsibility to contact the witnesses concerned and to advise HR at least 2 working days in advance of the hearing. If the employee has information which is relevant to their case but which was not available at the time of the investigation, this must be submitted at least 2 working days prior to the hearing.

8.7 Where it is evident that further investigation is required, or where a key witness is not available, or new evidence arises during the hearing which would not have been available prior the hearing, the Hearing Manager may take the decision to adjourn the

hearing. The hearing can be reconvened if appropriate when both parties have had the opportunity to consider this information and / or conduct further investigations.

- 8.8 Medical information and circumstances will only normally be considered on the basis of advice from the Council's Occupational Health advisor.
- 8.9 The procedure for the Hearing is outlined in [Appendix 2](#)

## **Notification of the Decision**

- 8.10 The Hearing Manager will make a decision as soon as possible once the disciplinary hearing has concluded. If the Hearing Manager is not able to make a decision within a reasonable time after the conclusion of the hearing, i.e. normally within 1 hour, the outcome will be notified to the employee within 5 working days. The notification will include the reasons for the decision, and if applicable, the sanction and information on how to appeal.

## **9. Disciplinary Sanctions**

- 9.1 The level of disciplinary sanction issued will depend on the facts of each case. If there is a 'live' disciplinary warning, account will be taken of this. It is the date of the further misconduct which determines whether an earlier warning remains 'live' and not the date of the hearing in respect of the further misconduct.
- 9.2 Where a warning is issued, this will:
  - be confirmed in writing;
  - include the reason for the warning;
  - explain that further action may be considered if there is no appropriate improvement or change and, if relevant, the timescale allowed for this;
  - that a copy of the warning letter will be kept but will be disregarded for disciplinary purposes after the relevant timescale; and
  - outline the right of appeal.
- 9.3 Possible formal disciplinary sanctions and the timescales are:
  - a) **Formal Verbal Warning:** disregarded for disciplinary purposes after **6 months**.
  - b) **Written Warning:** disregarded for disciplinary purposes after **9 months** (subject to para 9.5).
  - c) **Final Written Warning:** disregarded for disciplinary purposes after **15 months** (subject to para 9.5). In exceptional cases of gross misconduct, a longer timescale (**up to 24 months**) may be considered as an alternative to dismissal, if it is considered appropriate.
  - d) **Demotion / Loss of seniority.** This may be appropriate only as an alternative to dismissal in certain limited circumstances and is likely to accompany the issuing of a final written warning. **There is no right to this for employees as an alternative to dismissal.** The offer of an alternative position is at the Council's discretion and need not be within close proximity to the original grade. Salary protection will not apply.

Notification will give details of the complaint which has led to the decision to demote the employee, the behaviour required in the revised role, any training that may be provided for this and the right of appeal. This action will be permanent and will be confirmed in writing. The Council recognises that in the event that the proposal to demote can not be agreed with the employee then for all technical and legal purposes, a dismissal has occurred. The final written warning accompanying such action if taken, will normally be disregarded for disciplinary purposes after **24 months**.

- e) **Dismissal.** Where an employee has a current final warning, further misconduct or failure to improve conduct within a set period following the warning is likely to result in dismissal with pay in lieu of notice. Acts of gross misconduct are likely to result in dismissal. Acts of gross misconduct are so serious in themselves or have such serious consequences in themselves that they will call for summary dismissal without notice even if it is a first offence. The hearing manager will consider whether there are any alternatives, such as those listed above or a final written warning, possibly with a longer timescale (up to 24 months). The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and/or payment in lieu of notice (if applicable) and their right of appeal. The employee will be required to return keys, ID and any other items of Council property. If they have a lease car, they will be told what the arrangements for returning this and any penalty payments are. Final pay will include any payments or adjustments in respect of annual leave or other monies owed.
- 9.4 Written records of disciplinary sanctions will be retained on the employee's confidential personnel file as a record of employment history.

### **Cyclical trends**

- 9.5 There may be exceptional cases where an employee's conduct is satisfactory throughout the period a warning is in force, only to lapse very soon thereafter. Where a clear pattern of repeated misconduct emerges, or the employee keeps repeating the same type of misconduct despite warnings, the employee's disciplinary record should be borne in mind when deciding whether further disciplinary action should be taken. The cyclical nature of the misconduct may need addressing and therefore the nature of what happened has to be taken into account. A decision to dismiss an employee should not be based on an expired warning but may be part of the reason why the Hearing Manager did not reduce the sanction.

## **10. Appeals**

- 10.1 Employees have the right to appeal against any formal disciplinary sanction. The employee should appeal in writing to the Head of Policy and Organisational Development within 5 working days of receiving the letter confirming the decision. The employee must state in writing full reasons for the appeal, e.g. perverse decision, technical or procedural fault or new evidence (providing supporting evidence).
- 10.2 New evidence may be considered in the Appeal Hearing if it is included in the documents submitted before the hearing. The employee should state clearly what the evidence is, why it ought to alter the original decision and why it was not included at

the previous hearing. If there is a late submission of evidence it will be for the Chair of the Disciplinary Panel to decide whether or not this will be accepted.

- 10.3 An Appeal will be a review to consider whether the original decision was reasonable, in relation to the grounds of appeal given by the appellant. It will only consider evidence that relates to the stated ground(s) of appeal. It will not be a full rehearing, although the Head of HR has the discretion to arrange a rehearing in exceptional circumstances. If this is the case the meeting will follow the original hearing procedure and all parties and witnesses will be invited.
- 10.4 The order of proceedings for appeals is shown at [Appendix 3](#). The Council reserves the right to modify, alter, or amend the procedure after consultation with the appellant (or their representative).
- 10.5 Appeals for sanctions short of dismissal will be heard by an appropriate officer at least at the same seniority as the Hearing Manager, accompanied by an HR Officer.
- 10.6 Appeals against dismissal will be as outlined above but will be considered by the Council's Appeals Panel, comprising:
  - the Leader of the Council (or their delegated representative from the controlling group);
  - a representative from the main opposition party; and
  - A Chief Officer who has not previously heard the case.
- 10.7 The Head of Policy and Organisational Development or nominated HR Officer will be present to advise and assist members of the Appeals Panel. A majority decision will be sufficient to make a decision on the matter.
- 10.8 Appeals against dismissal will be arranged without unreasonable delay; however, due to the number of members/officers involved the panel will be arranged within 30 days of receiving the letter of appeal. This timescale can be altered by mutual agreement.

## **11. Disciplinary Offences which may constitute gross misconduct**

- 11.1 The Council will regard the following matters as potential gross misconduct which may lead to dismissal. The list is not exhaustive. Any disciplinary offence, if sufficiently serious, could be regarded as gross misconduct and lead to dismissal.
  - a. theft, fraud or deliberate falsification of records including attendance time records;
  - b. acts or threats of physical violence;
  - c. serious acts of dishonesty;
  - d. serious breaches of the code of conduct, communications policy or any policy, rules or regulations adopted by the Council;
  - e. repeated misconduct offences;
  - f. accessing of internet sites containing pornographic, sexist, racist, indecent, rude, obscene or violent material;
  - g. deliberate and/or serious damage to, or misuse of the Council's property or name and reputation;

- h. unauthorised or inappropriate possession or removal of Council property or data, or property belonging to another employee or customer, or deliberately or negligently causing the loss of such property or data;
- i. unlawful discrimination;
- j. bullying, harassment or offensive conduct, either physical, verbal or psychological;
- k. failing to manage effectively by knowingly permitting harassment or bullying to take place;
- l. any actions or omissions bringing the Council into disrepute or prejudicial to good order in the Council;
- m. posting derogatory, offensive, discriminatory or defamatory comments or images online (for example on social media) about the Council, its employees, elected members or customers;
- n. attending work with alcohol or illegal drugs in the system above the workplace cut-off levels;
- o. bringing illegal drugs or other illegal substances or weapons on to Council premises, workplaces or vehicles;
- p. causing loss, damage or injury through serious negligence;
- q. serious breach of health and safety or security rules, policies and procedures;
- r. breach of confidentiality e.g. unauthorised disclosure of information relating to an individual or the Council;
- s. unauthorised absence, or unacceptable attendance or punctuality, including failure to return from a period of annual leave or other approved leave of absence;
- t. serious insubordination, failure to follow reasonable management instructions;
- u. serious breaches of data protection or failure to report a breach in line with the Council's procedure;
- v. criminal offences which are related to, or impact on an employee's ability to fulfil the terms of their contract, or are incompatible with an employee's role, or have the potential to damage the reputation of the Council;
- w. damage to the Council by vexatious claims. This includes claims or allegations designed vexatiously to secure penalties under this procedure;
- x. significant loss of public money or property for which the employee is responsible;
- y. bribery: any act of bribery covered by the Bribery Act 2010;
- z. any other act or omission that repudiates the contract of employment, or leads to loss of trust and confidence in an employee, and or their ability to fulfil the duties for which they are employed, or brings the Council into disrepute.

11.2 Where an employee is dismissed and the Council believes that the offence may constitute a criminal offence and / or breach the standards set by the individual's professional body, the Council may report the matter to the relevant organisation.

## **12. Right to be accompanied**

12.1 In line with the ACAS Code of Practice, an employee has the right to be accompanied by a trade union official or representative or a workplace colleague where the disciplinary meeting could result in:

- a formal warning being issued
- some other disciplinary action; or
- the confirmation of a warning or some other disciplinary action (i.e., appeal hearings)

- 12.2 The right to be accompanied is limited to a trade union representative or a workplace colleague and does not include legal representation (e.g. a Solicitor) or family members / friends outside work. Providing the companion is a trade union representative or workplace colleague, then for a hearing the employee has a free choice of whom to ask.
- 12.3 The Council extends the right to be accompanied to meetings held as part of the investigation, providing this does not unduly delay the process. However, at the investigation stage, the Council reserves the right to limit that choice if the person chosen could be required as a witness, or if they would be otherwise inappropriate.
- 12.4 There is no right to be accompanied at informal meetings about conduct or performance.
- 12.5 A companion is allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. They do not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employee from explaining their case.
- 12.6 Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed. Depending on the circumstances and after obtaining the employee's agreement, it will be necessary to inform the relevant regional officer of the relevant union.
- 12.7 It is the employee's responsibility to organise their own representation for the interview or hearing. If the employee's representative is not available, an alternative date may be arranged within 5 working days and the employee will be expected to attend this. Any request for a delay longer than 5 days will be considered in light of the circumstances of the individual case. If necessary, the Hearing will proceed in the employee's absence, although the employee will be encouraged to either attend in person or submit a written statement.

### **13. Confidentiality**

- 13.1 Employees, including witnesses, and managers involved in the disciplinary process must maintain total confidentiality and cases should not be discussed with anyone other than Human Resources, the relevant trade union representative or the workplace colleague. All information gathered during the disciplinary process will be stored confidentially.
- 13.2 The Council is entitled to consider any unauthorised breach of confidentiality a serious breach of trust and may view it as potential gross misconduct.

### **14. Witnesses**

- 14.1 Employees are expected to:
  - behave responsibly and co-operate fully with a disciplinary investigation;
  - answer all questions honestly and openly;

- not to withhold any information about the allegations from the Council if it is relevant, even if specific questions are not asked;
- provide a written witness statement if requested;
- give evidence at an investigation, disciplinary, appeal or other hearing if required by the Council; and
- keep the facts of this case, including the content of any interviews, meetings, discussions or hearings, strictly confidential (see [S13](#)).

14.2 Where an employee makes or supports false or vexatious claims or where there is a failure to carry out a reasonable management instruction, this may result in disciplinary action being taken against the individual concerned.

14.3 If there are genuine grounds for the employee being concerned about giving evidence the Council will consider steps to protect the individual e.g. the seating arrangements for the hearing will be organised sensitively, written questions may be asked of the witness and written responses considered. In certain circumstances the Hearing Manager and HR Officer may wish to speak to the witness privately to verify the statements. Exceptionally, the employee's identity may be kept confidential.

14.4 The Council is not able to insist that external witnesses attend a disciplinary hearing. In such circumstances, a written statement may be provided. The Hearing Manager should consider the fact that the employee may not have the opportunity to challenge the validity of an external witness statement/complaint when making a decision on the matter (and based on the "balance of probabilities").

14.5 If an employee wishes to call other Council employees as witnesses, it will be for the individuals concerned to decide whether or not they wish to attend the hearing in this capacity.

## **15. Grievances raised during an investigation**

15.1 If the employee has concerns regarding the reasons for the disciplinary process or any other issue related to the disciplinary matter then they should raise these at the earliest opportunity to the investigating officer or hearing manager who will consider the representations.

15.2 Where an employee raises a grievance (including a complaint under the Dignity at Work Policy) during a disciplinary process it may be appropriate to:

- deal with both issues concurrently; or
- temporarily suspend the disciplinary process in order to deal with the grievance; or
- deal with the grievance once the disciplinary process has concluded, if it remains necessary.

This will depend on the circumstances of the individual case and is a matter for the Council to decide: HR will advise.

## **16. Criminal activity and conduct outside work**

16.1 In cases where the police are investigating a matter or a court case is pending, the application of the disciplinary procedure may not have to wait for the outcome of the

external investigations or proceedings. The burden of proof in internal disciplinary proceedings is on “the balance of probabilities” (i.e. it is believed to be more likely than not that an event has occurred) - whereas in criminal cases guilt has to be proven “beyond reasonable doubt” (i.e. with certainty). However criminal offences or convictions outside employment will not be considered as automatic reasons for dismissal or another disciplinary sanction. The main consideration will be whether the offence is one that makes an employee unsuitable for their type of work and/or brings the council into disrepute.

- 16.2 An employee who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover ups will have the right not to be dismissed or victimised for speaking out on such malpractice, if the report is made in good faith and in line with the Council’s Whistleblowing Policy.
- 16.3 If an employee is convicted of a criminal offence which may be relevant to their role with the Council, they should inform their manager.
- 16.4 The Council does not seek to dictate how employees conduct themselves in their personal lives outside of work. However, unlawful, anti-social or other conduct by employees (e.g. breach of communications policy through social networking) which may jeopardise the Council’s reputation or position will be dealt with in line with this procedure.

## **17. Absence during the disciplinary process**

- 17.1 Where a disciplinary process is pending any annual leave will only be approved when it does not delay the process. Where holidays have been booked in advance these would normally be approved, however, each situation will be reviewed on a case by case basis.
- 17.2 Employees are expected to attend meetings arranged in line with this procedure. Where an employee is unable to attend meetings due to sickness they must advise their manager of their inability to attend as soon as possible. If an employee’s sickness absence continues past the eighth day they will be required to submit a medical certificate.
- 17.3 The employee may be required to attend for an examination with the Council’s Occupational Health service. A referral may be made to establish if the employee is fit to attend a hearing, or if any arrangements can be made to support the employee being able to make their case to a panel.
- 17.4 Sickness absence cannot delay the disciplinary procedure unreasonably and the Council reserves the right to hold meetings in the employee’s absence as a last resort. In such cases the employee will always be given notice that this is the Council’s intention.
- 17.5 Employees who fail to attend meetings in line with this procedure without prior notification and / or reason for non-attendance will be given one further rescheduled meeting within 5 working days of the original date. Failure to attend the rearranged meeting will result in the meeting going ahead in their absence.

## **18. Damage recompense**

18.1 If an employee is found to be culpable of wilful damage/theft or theft of time, the Council reserves the right to seek reasonable recompense. This will be recompensed either through leave, time or an invoice raised for the cost of any damage. This action will be considered as part of the disciplinary sanction and notified to the employee at the conclusion of the Disciplinary Hearing. This would not be appropriate if the decision is taken to dismiss an employee.

## **19. Other complaints**

19.1 From time to time complaints may be raised alleging misconduct by a member of staff under another Council policy such as the Dignity at Work Policy, Whistleblowing Procedure or Grievance Procedure. Where an investigation is carried out under that procedure this may be used in disciplinary proceedings and it may be that no further investigation under this policy is required.

## **20. Data protection**

20.1 Written records from the disciplinary process will be kept and shared where appropriate with the employee. Records will be treated as confidential and will be held in accordance with Data Protection legislation. Some confidential monitoring of outcomes will also be recorded to evaluate the impact on the procedure and comply with equality monitoring requirements.

## **21. Safeguarding**

21.1 Where the matter concerns a safeguarding issue, i.e. there is a concern regarding the conduct of an employee in respect of a child or an adult at risk, the manager must ensure that the Designated Safeguarding Officer is aware.

## Appendix 1: Suspension Checklist

Name of employee:	
Name of manager suspending employee:	
Date of meeting/call:	
Other people present:	

Action	Tick when complete
Explain that there has been an allegation / concerns / incident that requires further investigation. Give broad details – level of detail in this discussion will be dependent on individual case circumstances.	
Explain suspension will be on full pay (see policy) and is a neutral act. It should not be regarded as prejudging the matter and may be lifted at any time if investigation suggests no longer appropriate.	
Explain proposed next steps in disciplinary investigation and confirm right to be accompanied by a colleague or trade union representative. Provide a copy of the Council's Disciplinary Procedure.	
Instruct not to enter Council premises or discuss the matter with anyone (including work colleagues or other parties in the community) other than where absolutely necessary and in the strictest confidence, for example, as part of the support provided by union representative or immediate family. Stress that requirement for confidentiality applies equally to communication through social networking sites or other electronic means.	
Provide name of contact who will keep informed of developments and who may be contacted if have any questions or concerns regarding the investigation process or any subsequent proceedings and if need to book leave/report sickness. This may be an HR officer who is supporting the investigation.	
Advise employee to seek support of trade union if a member and not already done so.	
Outline support available through Employee Assistance Programme or Occupational Health if appropriate.	
Ask if any questions regarding suspension.	
Collect Council ID, keys, equipment, data storage devices etc, for safekeeping.	
Check support at home for when employee leaves and make arrangements for employee to be escorted from the Council premises. Agree with employee how to check they returned home safely.	
Explain the details of the suspension will be confirmed in writing – liaise with HR.	

## **Appendix 2: Disciplinary Hearing Process**

1. Hearing Manager introduces those present and explains the purpose of the hearing i.e. that this is a formal hearing under the Council's disciplinary procedure.
2. Confirms the allegation and explains that the purpose of the hearing is to consider whether or not disciplinary action should be taken in accordance with the Council's Disciplinary Procedure.
3. Confirm that the person has received the letters inviting them to the meeting and a copy of the investigation report, which they have had the opportunity to comment on.
4. Confirm the employee is aware that they can be represented and note if they have a representative at the meeting.
5. The investigating officer(s) will present the management case.
6. The employee and/or their representative will be given the opportunity to ask questions of the investigating officer and/or witnesses.
7. The Hearing Manager and supporting HR Officer will be given the opportunity to ask questions of the Investigating Officer(s).
8. The employee will be given the opportunity to present their case and call any witnesses (as relevant).
9. The investigating officer can ask questions of the employee.
10. The Hearing Manager can ask questions of the employee.
11. Both parties will be asked to summarise their key points.
12. The hearing will then be adjourned to consider the facts presented and to decide what disciplinary action (if any) will be appropriate.
13. Parties will be recalled. The employee will then be advised of the outcome of the hearing.

## **Appendix 3: Appeal Hearing Order of Proceedings**

1. The employee and/or their representative will put forward the employee's case in the presence of the Hearing Manager and their representatives and call witnesses as appropriate.
2. The Authority's Hearing Manager and their representatives will be given the opportunity to ask questions of the employee and the employee's witnesses.
3. The Appeals Panel will be given the opportunity to ask questions of the employee and the employee's witnesses.
4. The Authority's Hearing Manager will put the case for the Authority in the presence of the employee and his/her representative and call witnesses as appropriate.
5. The employee and his/her representative will be given the opportunity to ask questions of the Authority's Hearing Manager, their representatives and the Authority's witnesses.
6. The Appeals Panel will be given the opportunity to ask questions of the Authority's Hearing Manager, their representatives and witnesses.
7. The employee and/or their representative may re-question the Authority's Hearing Manager and his/her witnesses.
8. Authority's Hearing Manager may re-question the employee and his/her witnesses.
9. The employee and the Hearing Manager will be given the opportunity to sum up, following which both sides shall withdraw from the hearing.
10. The Appeals Panel shall consider the case put forward. If necessary, for clarification or to resolve an outstanding query, further questions may be put to either the Authority's Hearing Manager or the employee in the presence of both sides.
11. The Appeals Panel will announce their decision in the presence of both sides. The decision will be confirmed in writing within seven working days. There is no further right of appeal.

## Appendix 4: Chief Officers Disciplinary Procedure

1. The principles outlined in the Disciplinary procedure will generally apply to all employees. However, in the case of Chief Officers, on JNC terms and conditions, there are some areas of difference in respect of the procedures to be followed for the disciplinary hearing and appeal.
2. The procedure outlined here is based on the model set out in the JNC Conditions of Service for Chief Officers (November 2008 version) and take account of the Local Authority (Standing Order) (England) Regulations 2001 SI 2001/3384.
3. A separate policy applies to those designated as "Statutory Officers" namely the Head of Paid Service, Monitoring Officer and Section 151 Finance Officer.

### **The Hearing Committee**

4. Where a formal disciplinary hearing is arranged following an investigation, a Hearing Committee will be established comprising an Executive Director and no fewer than 3 elected members. The selection of elected members will, where possible, reflect the political balance of the Council. The Executive Director will chair the committee and have the casting vote in the event of a tied decision. All Committee members will receive training on the disciplinary procedure and their role in it. An HR Officer will be present to advise the Committee.
5. The [order of proceedings](#) for this hearing will be the same as the standard Disciplinary Procedure. The sanctions available to the Committee are also the same as the standard Procedure.

### **If dismissal is proposed**

6. Where the Committee proposes dismissal it will inform the Head of Policy and Organisational Development, who will then notify all Cabinet members of:
  - the fact that the Investigating Committee is proposing to dismiss the Chief Officer concerned;
  - any other details relevant to the dismissal;
  - the period within which they can object to the dismissal, which will be 3 working days.
7. At the end of this period the Head of Policy and Organisational Development will either:
  - inform the Committee that no objections have been received; or
  - inform the Committee that an objection or objections have been received and provide details of the objections.
8. The Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well-grounded. If they are then the Committee will consider the impact of the objections and their relevance to the sanction. It may:
  - reconsider its original decision (with further investigation if required); or
  - confirm that the decision stands and inform the Chief Officer concerned of that decision.

### **Appeals**

9. The appeals process mirrors the standard Disciplinary Procedure, except that the appeal will be heard by the Management Review Committee.

## Appendix 5 – Template Investigation Report

This format is not compulsory, but gives suggested headings and structure which may be used in an investigation report.

# Investigation Report

Investigating Officer	
Assisted by	
Date of Report	

## 1. Terms of Reference

### *Things to include:*

*Who authorised the investigation and who comprises the investigation team?*

### *What are you being asked to investigate?*

### **What are the specific allegations?**

Which procedure – e.g. disciplinary / grievance / other. Note if the terms of reference changed during the period of the investigation.

## 2. List of people referred to in report

### 3. Process followed

### *Things to include:*

### *What you have done to investigate.*

*Who you have interviewed and when.*

## 4. Evidence

### *Things to include:*

Which procedures / guidance / standards are relevant? What do they say that is relevant?

### **What other evidence you have looked at.**

### *What did the witnesses say?*

Was there any evidence you were not able to get hold of / people you couldn't interview?

*Were any mitigating factors put forward?*

*Keep it factual and neutral – remember you're not the judge and jury and it's not the investigator's role to influence the outcome by being selective with evidence or using language designed to make the reader reach a particular judgment.*

## 5. Conclusion

*Things to include:*

*What are the agreed facts?*

*What are the disputed facts?*

*Remember: it is not your role to make a judgment on any disputed facts or on what should happen next. This is for the manager to decide at a hearing or through an alternative route. You can recommend that formal disciplinary action is considered, but not what you think the outcome / sanction should be.*

## 6. Appendices

The following documents are included as appendices and are referred to in this report.

<b>Appendix number</b>	<b>Description of document</b>