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Discipline

Introduction

The Council's procedure on discipline provides a structured yet flexible process for managers to ensure that employees are treated in a fair, reasonable and consistent manner. It has been written in the context of employment legislation and incorporates the principles of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

The procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct.

The Procedure is accompanied and supported by a series of guidance notes. Further guidance notes will be issued as and when required.

What will be done for you

Human Resources (HR) will:-

Periodically review the guidance notes and produce additional or updated guidance as appropriate and in the light of changes in employment law.

Provide general advice on the application of the procedure.

Ensure that appropriate training is available for managers and supervisors to properly equip them to manage the procedure.

What you must do

Ensure that all employees are aware of the disciplinary procedure and the rights and responsibilities contained therein.

Ensure that the procedure is followed and that any management action fully accords with the principles of natural justice.

Remember that in reaching a decision on management action there is an important distinction between discipline and capability, i.e. disciplinary action should be decided on the basis of "the balance of probability" rather than "beyond reasonable doubt", whereas capability action relies on "matters of fact" (e.g. the employee did or did not reach specific attendance targets).

Ensure that your departmental scheme of administration (formerly scheme of delegation) specifies the level of manager who is authorised to undertake disciplinary action beyond guidance and ensure that the scheme of administration is complied with.

Ensure that managers hearing disciplinary cases are competent through appropriate training or experience.

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Ensure that the employee is made aware of his/her rights to representation by a trade union or to be accompanied by a work colleague and ensure that such representation, if requested, is facilitated, including compliance with the statutory requirement to consider a postponement of the hearings in certain circumstances (see guidance notes).

Ensure that wherever possible you comply with the recommended timescales contained in the procedure and guidance notes and that where delays are inevitable all parties are kept fully informed.

Structure and conduct all interviews and hearings to ensure that all relevant information is obtained, the facts are established and all parties are afforded an opportunity to state their case, present any relevant evidence and cross-examine witnesses before any decision is reached.

Ensure that complete, accurate and contemporaneous records are maintained on disciplinary matters in a manner that is secure, confidential and accessible for monitoring purposes.

Ensure that no disciplinary action is taken against the employee unless and until the issue has been carefully and fully investigated.

Consider whether it is necessary to suspend the employee during an investigation, taking into account the nature of the complaint. Where appropriate, suspension of part of the employee's duties and temporary relocation should be considered in the first instance (see guidance notes).

Where an investigation concludes that the employee has a disciplinary charge to answer, confirm the charge(s), what they constitute and the maximum sanction that could be applied if they are proved to the employee in writing.

Ensure that sufficient notice of disciplinary hearings or interviews is given to the employee and that the notification letter encloses copies of all relevant documents upon which the management case intends to rely.

Only consider evidence presented at the hearing when reaching a decision on disciplinary action and ensure that your decision is made objectively, is non-discriminatory, is taken on the merits of the case heard and can be objectively justified.

Ensure that the employee is advised in writing of his/her appeal rights.

In all but exceptional circumstances (see guidance notes), ensure that disciplinary warnings are disregarded for disciplinary purposes once the relevant timescale has elapsed. (Expired warnings do not have to be removed from the employee's personal file).

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What you must not do

Dismiss an employee for a first breach of discipline, except for gross misconduct.

Advise or sit as a panel member in any disciplinary case if you have been involved in the investigatory process, including the decision to proceed to formal action.

Determine any sanction arising out of disciplinary cases without first affording the employee an opportunity to raise any matters of mitigation.

What you can do

Commence disciplinary proceedings against an employee where his/her conduct outside work seriously impairs his/her ability to undertake his/her duties or calls into question his/her integrity or suitability to carry out those duties or where the Council is likely to be brought into disrepute as a result of that conduct.

Key information

Advice on managing the disciplinary procedure can be sought from The Human Resources Team

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DISCIPLINARY PROCEDURE

[1] INTRODUCTION:

Southwark Council recognises that discipline is necessary for the efficient delivery of services and for the health and safety at work of all its employees. This procedure is based on the ACAS Code of Practice on Disciplinary and Grievance Procedures and is to be used for dealing with issues of conduct, whether arising in the context of work performance or otherwise. The procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. Business Managers have discretion to decide whether an issue touching upon work performance should be more properly dealt with under the Capability Procedure.

This procedure applies to all Council employees, with the exception of those employed at schools with delegated budgets. In the absence of any formal probationary procedure, this disciplinary procedure should be used to manage misconduct concerns about or complaints against new employees.

Normal standards of conduct and discipline apply to trade union officials but where an accredited trade union official is subject to investigation or disciplinary action, the appropriate full time trade union official and the relevant Branch Secretary should normally be notified before any action is taken.

The purpose of a disciplinary hearing is to:

consider fairly allegations against an employee;
decide whether or not the allegations have been proven; and
decide what sanction should be applied if the allegations have been proven.

The fundamental principles of good management practice must apply in all cases and it must be remembered that an employer's failure to follow a fair procedure is likely to result in an employment tribunal finding the outcome of the disciplinary process unfair.

If the outcome of a disciplinary hearing is dismissal and the matter is put before an employment tribunal, the employer is required to demonstrate:

the reason, or principal reason, for dismissing the employee;
the reason for dismissal is a potentially fair reason (misconduct of an employee is a potentially fair reason); and
that they have acted reasonably and consistently in treating the reason as a fair reason to dismiss.

This procedure provides a structured yet flexible process for managers to ensure that employees are treated in a fair, reasonable and consistent manner.

[2] PROCEDURE:

(Note: This procedure is supported by a series of short guidance notes. Text printed in ***bold and italics*** within the procedure indicates that a guidance note is available on that topic.)

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[a] **Preliminary procedure –**

When a complaint is received, or matters come to light that require investigation, a manager will be nominated by the Business Manager to conduct an ***investigation***. The employee must be advised that an investigation is to take place and must be told what is to be investigated. At this point the Business Manager should consider whether either ***suspension*** from all or part of the employee's duties or temporary relocation is appropriate.

Where a Business Manager becomes aware of an alleged problem relating to ***conduct outside employment***, disciplinary proceedings may be invoked if that conduct impairs upon an employee's ability to carry out his/her duties or if the Council is likely to be brought into disrepute as a result.

Information gathered during the investigation, including ***witness statements***, may form part of the evidence to support management's case if formal disciplinary action is taken.

If the investigating manager finds that the complaint is false or trivial, s/he may recommend that the complaint be dismissed and no further action taken. Where an investigation reveals that there is a substantiated complaint but the Business Manager is satisfied that the complaint is of a minor nature, the matter will be dealt with by way of a ***guidance interview***. Guidance interviews do not constitute formal disciplinary action. Where the Business Manager is satisfied that more than a guidance interview is required, appropriate formal disciplinary action will commence.

[b] **Formal procedure –**

Departmental schemes of administration (formerly, schemes of delegation) specify the levels of management that have the authority to take the various forms of action provided for in this procedure. Managers who have been directly involved in the investigative process (including taking the decision whether or not to proceed with formal disciplinary action) may not sit on nor advise disciplinary or appeal panels, although they may present a case or appear as a witness.

The employee will be notified in writing of the disciplinary charge s/he is required to answer. The letter will advise the employee what the charge constitutes (e.g. misconduct or gross misconduct) and what the possible consequences might be if the charge is proven. The letter will include details of the arrangements for the disciplinary hearing (date, time and location) and contain an instruction for the employee to attend. The letter will also advise the employee about his/her rights to ***representation***. Finally, the letter will advise the employee that failure to attend the hearing without providing a reason acceptable to the Panel Chair may result in the hearing proceeding in his/her absence. Copies of all documents and other information upon which management intend to rely as evidence at the disciplinary hearing must accompany the charge letter.

The employee and their representative are obliged to make every effort to attend the hearing. Where an employee is persistently unable or unwilling attend, without good cause, the panel should make a decision based on the evidence available.

The ***disciplinary hearing*** will comprise two distinct parts:

part 1 – the ***panel*** hears evidence and decides whether the charge is proven; and

part 2 – the panel considers mitigation and decides on the appropriate sanction (if the charge is proven).

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The Panel Chair will ensure that the employee receives a fair and impartial hearing, is encouraged to be represented or accompanied at the hearing, is allowed to present his/her case (or have it presented), is allowed to call witnesses and to question the management presenter and any management witnesses and is allowed to submit documents in support of his/her case.

The panel may adjourn the hearing in order to seek further information (including requesting the attendance of additional witnesses), but once they are satisfied that they have heard all the relevant evidence the panel must ***reach a decision*** at the end of part 1 of the hearing and convey that decision to the employee and/or his/her representative.

Before deciding what ***disciplinary sanction*** to impose, if appropriate, the panel must allow the employee or his/her representative to make a statement of mitigation. The management presenter will also be invited to comment on the mitigation offered by or on behalf of the employee.

The possible actions arising from a disciplinary hearing are:

no further action;
guidance and/or training;
written warning;
final written warning; and
dismissal.

In addition, a number of supplementary sanctions (e.g. demotion, transfer, recovery of monies) may be applied.
Having decided upon the appropriate sanction to be applied, the panel will inform the employee or his/her representative and confirm their decision in writing. This letter will include:

- the precise nature of the misconduct proven;
- the period of time given for improvement, if appropriate, and the standard of improvement expected;
- the sanction being applied;
- the basis of the panel's decision;
- where appropriate, how long the sanction will last;
- an indication of the likely consequences of any further proven misconduct; and
- information about the employee's right of ***appeal***, including how an appeal should be made, by when and to whom.

For posts at Deputy Chief Officer level* and above, confirmation of termination can only given where no well founded and material objection has been received from any Member of the Executive. Where this is a potential outcome of disciplinary action for posts at this level advice must be sought from Human Resources.

*[1] *(Deputy Chief Officer for this purpose is defined as those who are directly accountable (for the majority) of duties to one or more Chief Officers. This excludes posts that are solely secretarial, clerical or otherwise in the nature of support services.)*

[c] **Appeals -**

Employees may appeal against a panel's decision and/or sanction as follows:

(a) written warnings;
(b) dismissal; and
(c) supplementary sanctions.

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All appeals will be heard by a panel of independent senior managers. For appeals against dismissal the panel will be chaired by a Head of Service or above.

In cases where an employee has been dismissed, the dismissal will stand (i.e. the employee will remain off the payroll) pending an appeal. If the appeal is successful and the employee is re-instated in accordance with the panel's decisions.

[3] GUIDANCE NOTES:

The following guidance notes have been prepared to accompany and support the Disciplinary Procedure:

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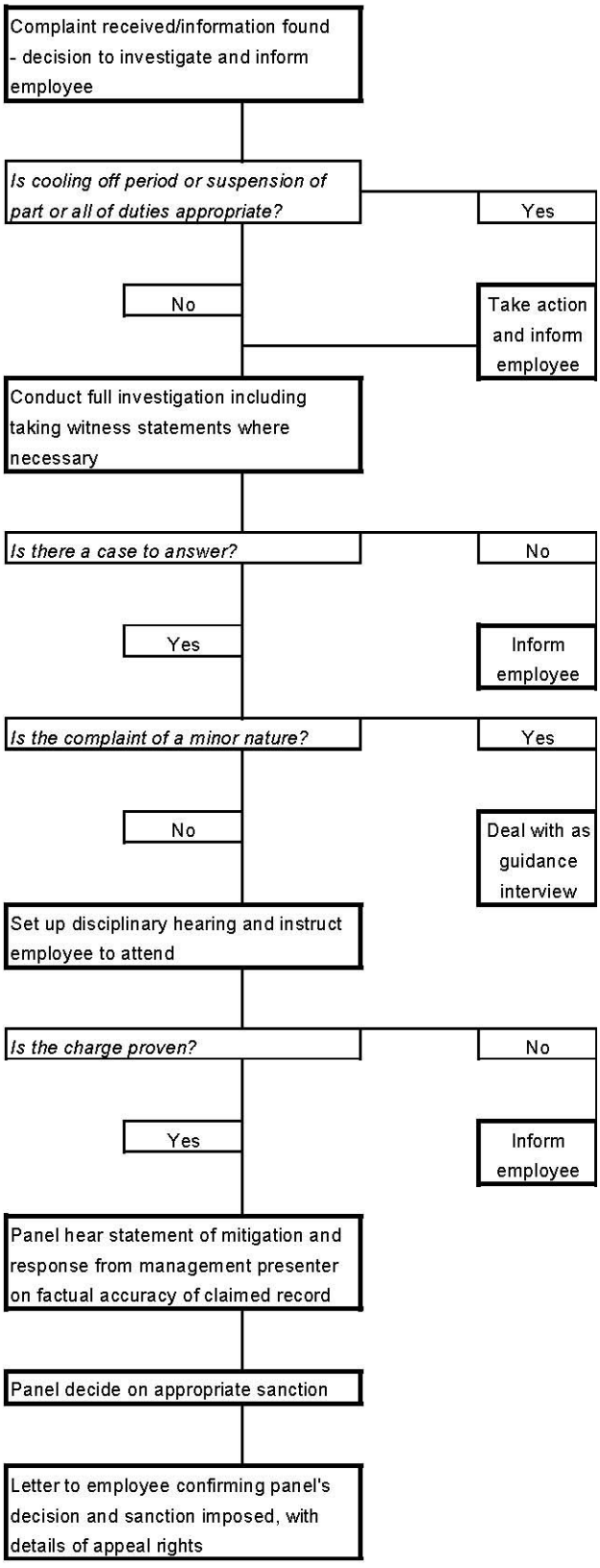
[4] FLOWCHART:

[4] FLOWCHART



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1: PRINCIPLES OF THE DISCIPLINARY PROCEDURE

The following principles underpin the Council's disciplinary procedure and accord with the ACAS Code of Practice on Disciplinary and Grievance Procedures, relevant case law and best practice.

- No disciplinary action will be taken against an employee unless and until the issue has been carefully investigated.

- The employee will be advised of the nature of the complaint and given the opportunity to state his/her case and present any relevant evidence before any disciplinary decision is reached.

- At all stages, the employee will have the right to be represented by a trade union official or a work colleague.

- Managers will ensure that decisions are taken objectively, are non-discriminatory and taken on the merits of the case.

- Matters will be dealt with quickly, accord with the principles of natural justice and the need to act reasonably.

- No employee will be dismissed for a first breach of standards except in the case of gross misconduct.

- The employee will be given an explanation for and have the right to appeal against any disciplinary action imposed above a guidance interview.

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2: GENERAL APPROACH TO CONDUCTING A DISCIPLINARY INVESTIGATION

Where a matter arises which is suspected or believed to contravene a disciplinary standard or may otherwise be a disciplinary matter, a relevant manager identified in accordance with the departmental scheme of administration will:

- Investigate it promptly;
- Ascertain the facts and assemble evidence to support them;
- Take notes of all interviews or meetings, ensure that all witness statements are agreed and signed by the person concerned and maintain a comprehensive case file;
- Ensure that all witnesses who are Council employees are advised of their right to have trade union representation or be accompanied by a work colleague;
- Maintain confidentiality and carry out the investigation as discreetly and sensitively as possible;
- Be clear as to what the allegation or concern is;
- Gather all the relevant facts and background, including, where appropriate, witness statements;
- Decide the level of information appropriate to be shared with the employee;
- Decide whether it is appropriate for the employee to be sent home for a cooling off period;
- Advise the Business Manager if in the interests of the service the employee should be suspended from all or part of their substantive duties or relocated temporarily to another workplace or to other suitable duties; and
- Make a recommendation to the Business Manager whether a full and formal inquiry is required.

The purpose of an investigation is not to build a case against an employee, but to search for evidence which supports or rebuts the allegations or concerns raised. The investigation should be adapted to the circumstances of the misconduct. If it is something that the employee admits to, the extent of the investigation may well be confined to that admission statement, an explanation of the employee's action/inaction, the details of the breach of standards and an indication of the potential seriousness of the indiscipline. If the facts are disputed, a more detailed process will be needed to establish all the relevant facts and circumstances.

From an organisational point of view it may be helpful for the investigation to be carried out by a manager who has no involvement in the day-to-day operation of the work area being investigated. This may ensure greater objectivity and be less likely to damage working relationships within the team. Consideration should also be given to whether it is appropriate for the investigation to be conducted by more than one manager, as this may give a broader perspective and increased objectivity to the information gained.

During an investigation it may be necessary to obtain witness evidence from service users or other non-employees of the Council. Care should be taken when doing so and the advice of experienced managers and/or the human resources practitioner should be sought where it is thought that such evidence may have some bearing on disciplinary charges and supporting evidence.

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The investigating manager will usually be required to produce a report which should contain all the relevant information, including a chronology of events, records of interviews, signed witness statements and any other documentary evidence. The report should also identify the methodology used and include a summary of the evidence as it relates to the proposed charge (which should be identified). Prior to making his/her recommendations the investigating manager is advised to reflect back on the investigation as objectively as possible and consider the following:

- Have the facts of the concern or complaint been established (i.e. dates, time, place, events)?
- Have all relevant parties been questioned?
- Did witnesses have the opportunity and ability to observe/hear clearly and with accuracy?
- Is there any circumstantial evidence such as knowledge of a system or arrangement or the reason for the presence of witnesses and why small details are remembered?
- Has anyone involved any reason to fabricate a complaint or concern?
- What is the credibility of the potential witnesses?
- Could the employee reasonably be expected to know if s/he was committing an act of misconduct?
- Was the misconduct committed with intent and were there mitigating circumstances?
- Am I confident that all reasonable areas that would repay investigation to support the allegations being made have been covered?

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3: COOLING OFF PERIOD AND SUSPENSION

In the first instance, the Business Manager should consider whether it is appropriate to:

- Allow the employee to continue working as normal;
- Send the employee home for a cooling off period not exceeding three days on full pay. (Clear instructions must be given to the employee regarding arrangements for their return to work.) This period should also be used by the Business Manager to determine whether further action (e.g. suspension) is necessary and advise the employee accordingly;
- Suspend part of the employee's normal duties or temporarily relocate the employee to other work or another location; or
- Suspend the employee from work on full pay. Precautionary suspensions should only be made in cases where the proper function and/or reputation of the Council is at risk, e.g. where serious misconduct is being investigated, or where the disciplinary or investigatory process might be prejudiced.

Departmental schemes of administration should identify those managers who are authorised to suspend employees or send them home for a cooling off period.

Sometimes, suspension not will be applied immediately but as an investigation proceeds it may become apparent that it is inappropriate for the employee to remain at work.

When considering suspension, managers should ensure that the SAP HR/Payroll system is inspected to check whether the employee holds multiple contracts with the Council. In certain circumstances, it may be appropriate for the suspension to apply to both posts. Advice should be sought from the Human Resources Team before considering such action.

Any action taken should not be seen as a sanction against the employee, but rather as a precautionary measure. It should be used to provide a "breathing space" only and should not imply that the employee is blameworthy.

If an employee is to be suspended, they must be informed in writing (preceded by an interview if possible). Employees have the right to be accompanied at the interview by an accredited official of a trade union or a work colleague. The interview and written confirmation should include:

- The reason for the suspension;
- The fact that the suspension will be on full pay;
- Confirmation that the suspension does not in itself infer blameworthiness;
- The expected duration of the suspension;
- The course of action to be undertaken, e.g. investigation;
- Conditions of the suspension, e.g. not entering the workplace without prior permission from a named manager, no professional contact with colleagues or clients, etc;

and

- Confirmation that the employee will be expected to be available during normal working hours to be interviewed as part of the investigation or to meet with their line manager and that if the employee wishes to be excused from this requirement at certain times, annual leave must be agreed and booked or the sickness absence management procedure must be followed in the normal way.

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When suspending an employee it may become necessary to require him/her to return keys, diaries, records or other Council property. Managers must also allow an opportunity for the employee to collect personal property from the office before the suspended employee is required to leave the premises.

Suspension will normally be on full pay. In very limited specific circumstances, however, this might not be appropriate, e.g. where the actions of an employee are delaying the carrying out of an investigation or the holding of a disciplinary hearing. Because the withholding or reduction of pay is a conduct or capability related action that is seen as additional to the suspension itself, the decision to suspend on nil pay can only be made by the Business Manager following discussion with the HR Director.

Throughout the period of suspension the Business Manager should monitor the situation to maximise the chances that investigations and/or disciplinary proceedings will be completed within the suggested timescale and regular contact with the employee must be maintained by the appropriate manager. Any reasons for delays should be recorded and notified to the employee and/or his/her representative.

If during the investigation, or at its conclusion, it becomes clear that the suspension should be lifted, the employee's return to work must be managed in such a way as to ensure proper re-induction into the workplace. Notification of the lifting of suspension and the outcome of the investigation should be in writing to the employee and/or his/her representative.

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4: DEALING WITH ANONYMOUS INFORMATION

All allegations of dishonesty or some other act of impropriety made against an employee must be investigated carefully to find out whether or not that employee has a case to answer through the Council's disciplinary procedure. Where the information is received from an anonymous source, or where the informant is known but wants his/her identity kept secret, this presents particular problems for the Business Manager dealing with the issue.

It is not uncommon for managers to receive letters or telephone calls making allegations against employees. Where there is no obvious way of determining the source of such communications, they should be treated with caution, if not suspicion. It is not the case, however, that all information received from an anonymous source will be unreliable.

Managers receiving information in this way by telephone must record all details of the call, including the gender of the caller, approximate age and accent if these are able to be identified, the time of the call and any background noise. The manager must record precisely what is said and s/he should be inquisitive, asking for details, encouraging the caller to put the complaint in writing and seeking an explanation if they decline. The caller should be asked how they know the information, whether it is direct knowledge or hearsay, whether they know the employee personally and whether anyone else knows about the information. There are many questions that can be asked to assist in the verification or otherwise of the information, depending upon the circumstances. As much detail as possible should be sought and passed to the Business Manager to determine the next steps (if any) to be taken.

Employees working nearby or those concerned with the same type of work sometimes observe or discover a colleague's wrongdoing and they may feel obliged to pass this information on to their manager. In doing so, however, they may fear reprisals or intimidation from the employee they have identified and in some cases disapproval from their peers and colleagues. The Council has a Whistleblowing Policy that can be used and the Public Interest Disclosure Act may also offer some protection in certain circumstances. Employees should be encouraged to come forward in an open way without fear of reprisal or victimisation.

Where a manager receives an anonymous letter and is unaware of the informant's identity, even more care is necessary before relying on it in disciplinary proceedings. Such letters are best treated as a springboard from which to launch an investigation, during the course of which firm evidence may be unearthed about the allegation. The instigation of formal disciplinary proceedings would then be justified.

Efforts should always be made to try to establish the identity of anonymous correspondence. Apart from obvious clues, such as postmark, handwriting, style and spelling in the letter, a check should be made to establish whether anyone has recently been disciplined or dismissed by or has any type of complaint against the person named in the letter.

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It is possible that the letter has been written by somebody from within the business unit who has some reason for wanting to “get back at” the person against whom the allegations are made. This could arise because of an employee’s good or poor performance management review, failure to gain promotion or other advancement within the organisation, professional jealousy, a personality clash or the aftermath of a breakdown in relationship between two colleagues. In these circumstances, the allegations may well be false and made simply out of spite.
Employees must be made fully aware that the making of malicious allegations against colleagues is a very serious matter and can constitute gross misconduct.

Where the allegations involve criminal activity, subject to the Business Manager’s agreement the police may need to become involved at an early stage. This does not preclude management continuing with its own internal investigation into the matter and possibly suspending individuals in the meantime.

Although managers should properly investigate anonymous tip-offs, they should not be allowed to disrupt the service delivery of the Council, nor should they be allowed to undermine overall team spirit, confidence or motivation.

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5: LEGAL IMPLICATIONS OF DISCIPLINARY INVESTIGATION AND ACTION

There is a legal requirement to provide employees with a statement of their terms and conditions of employment including disciplinary rules and procedures, within two months of joining an organisation.

The Council's disciplinary procedure has been drafted in consultation with the constituent trade unions and is incorporated into the contracts of employment of individual employees.

The ACAS Code of Practice on Disciplinary and Grievances Procedures sets out principles for handling disciplinary situations in the workplace. The code stresses the importance of dealing with issues promptly, acting consistently, and to carry out investigations to establish the facts of the case.

Case law has identified the importance of an employer generally satisfying the test of reasonableness and fairness in handling matters of misconduct, particularly in terms of adherence to procedures, of investigation and of natural justice and the provision of a fair hearing.

A disciplinary investigation may result in a variety of outcomes, including a finding that there is no substance to the concern. Where there is substance to the concern and the matter progresses to a disciplinary hearing, various sanctions may be imposed. There will be situations where dismissal will be appropriate and the Business Manager may as a result be faced with an unfair dismissal claim at the employment tribunal. It is important, therefore, that all those involved in managing the disciplinary process are aware of the scrutiny under which their actions may be placed if the matter does go to an employment tribunal.

If the claim is simply one of unfair dismissal, the Council needs to show that the reason for the dismissal was one of the five potentially fair reasons (misconduct is one of those reasons).

An Employment Tribunal will take the ACAS Code of Practice on Disciplinary and Grievance Procedures into account when considering relevant case. They can adjust awards where either the employer or employee has unreasonably failed to follow the guidance of the code.

Where there is a factual issue to be determined, the employer will not normally act reasonably unless and until a complaint is fully and fairly investigated and the employee's defence, explanation or mitigation is heard. The Council's disciplinary procedure should therefore be followed in all cases of misconduct.

In terms of dismissal for misconduct, the employment tribunal would be looking to see whether or not the employer established:

- That there was a genuine belief in the employee's blameworthiness of the misconduct at the time;
- That there were reasonable grounds upon which to sustain that belief;

and

- That the employer, at the final stage at which s/he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

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Even where there is no real dispute as to the facts of a case and an employee is admitting the misconduct, there still needs to be reasonable investigation and the importance of following the Council's disciplinary procedure cannot be overstated.

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6: REPRESENTATION

At all stages of the disciplinary process employees have the right to be represented or accompanied by an accredited official of a trade union or a work colleague, and should be so advised. The representative or work colleague may address the meeting and/or hearing and confer with the employee but may not answer questions on their behalf.

The Employment Act 2008 contains a statutory right for workers to be accompanied specifically at hearings which could result in the administration of a formal warning, the taking of some other action or the confirmation of a warning or some other action taken.

Employees are free to choose an official from any trade union regardless of whether the union is recognised by the Council or not, so long as they have been certified in writing by their union as being competent to accompany a worker. It is good practice, however, where a trade union is recognised by the Council, for an official from that union to accompany or represent the employee at a disciplinary hearing.

Every endeavour should be made to release representatives and work colleagues to enable them to attend meetings and/or hearings but securing a representative or work colleague and informing them of the time and place of the meeting and/or hearing remains the responsibility of the employee concerned.

Where the employee's chosen work colleague or trade union representative is not available at the time proposed by the manager or panel Chair, the employee may propose an alternative time. If the alternative time is reasonable (to management) and falls within five working days after the original date proposed, the manager or panel Chair must postpone the meeting or hearing to that time. This is an employee's statutory right.

Although every endeavour will be made to facilitate the attendance of the representative or work colleague, including if appropriate rearranging the meeting or hearing date, the manager or panel Chair has the ultimate right to commence and continue with a meeting or hearing, even when a particular representative or work colleague is not available, so long as the employee's statutory right (above) has been complied with.

The employee is also entitled to have another trade union official or work colleague attend the meeting or hearing for the purpose of taking notes only.

Employees are entitled to reasonable time off work to consult their trade union representative or work colleague about the disciplinary meeting or hearing. Prior permission must be sought and obtained from their line manager, however, before they absent themselves from the workplace.

It is important that the status of all representatives or work colleagues is confirmed at the start of meetings or hearings and any request by an employee to have external legal representation or accompaniment must be refused by the manager or panel Chair.

Where an accredited trade union official is subject to disciplinary action, the appropriate full time trade union official and the relevant Branch Secretary should be notified before any action is taken.

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7: CONDUCT OUTSIDE EMPLOYMENT

Disciplinary proceedings may be invoked where:

- Conduct outside employment seriously impairs an employee's ability to undertake his/her duties;
- The conduct of an employee calls into question his/her integrity or suitability to carry out his/her duties; or
- The Council is likely to be brought into disrepute as a result.

In all cases where an employee is charged with a criminal or other offence by the police outside employment it will be necessary for the Business Manager to be satisfied that there are reasonable grounds for believing that the employee has committed the offence. The fact that an employee is charged with an offence should not be regarded as an indication of guilt merely because s/he is charged. Conviction of an offence, however, is proof that the offence was committed. An interim option available to the Business Manager is suspension on full pay until such time as a full decision can be taken.

Where there are reasonable grounds for believing that the employee has committed the offence and where it is relevant to the performance of the contract of employment, disciplinary action may result. The manager does not have to wait until the matter has been brought before the courts before proceeding with a disciplinary hearing.

Where, as a result of legal proceedings, whether or not brought by the Council, an employee is convicted but not sentenced to a custodial sentence (or otherwise detained so as to frustrate the contract of employment), the Business Manager will consider the situation and will hold an investigation where it appears that the facts or circumstances of the conviction affect the individual's position as an employee of the Council. Any action taken as a result must be in accordance with the Council's disciplinary procedure.

The test to be used in determining whether disciplinary action is appropriate in employment terms is the "balance of probability" and not "beyond all reasonable doubt". It is accordingly possible (although unusual) to charge an employee with breaches under their contract of employment and find these proven before a court has decided on the "same" offence, or even if a court has delivered a "not guilty" verdict.

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8: TIMESCALES

Managers should make every effort to conclude their investigations and inform the employee of the outcome within 30 working days of notification of the allegation or concern.

A cooling off period may be used in order that as much about the circumstances of the alleged misconduct is known prior to interviewing an employee who may need to be suspended. A cooling off period should not exceed three days.

The Business Manager must monitor the progress of investigations, particularly where an employee is suspended from duty. Investigating managers should plan their activities to ensure a speedy and efficient gathering of information while the facts are easier to recall and establish.

Disciplinary hearings will normally be held within 30 working days of the employee being informed in writing of the charge s/he is required to answer.

The employee must be given at least 10 working days' written notice of when and where the disciplinary hearing is to be held. (See also Guidance Note on "Representation" for details of the statutory right and time limits of an employee to postpone disciplinary meetings and/or hearings).

Managers must make every effort to comply with these timescales and to keep the employee informed of any likely delay.

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9: DISCIPLINARY HEARINGS

Disciplinary hearings comprise two distinct parts:

> part 1: during which the panel hears evidence to enable a decision to be reached as to whether the charge is proven; and
> part 2: during which the panel comes to a decision on the appropriate disciplinary sanction to be applied, if the charge is proven.

If the employee attends the hearing without a trade union representative or work colleague, the panel Chair should confirm his/her entitlement to such representation and enquire why that right has not been taken up. Depending upon the employee's answer, especially in cases of gross misconduct or "serious" misconduct, the Panel Chair should consider advising the employee to seek representation. It may therefore be appropriate for the hearing to be adjourned or even rearranged to a later date to enable this to be done. Advice is available from the human resources team.

At the start of a hearing the panel Chair should ask those present to introduce themselves, establish the status of anyone wishing to represent or accompany the employee (see separate Guidance Note on "Representation") and advise how s/he intends to structure the hearing. An opportunity should then be given to both parties for questions or further clarification on the procedure prior to the process commencing. The Chair should then read out the charge and ask the employee whether s/he admits the charge.

The Chair should advise the employee or his/her representative that notes of the hearing will be taken for the panel and that these notes will not be made available to the employee and/or his/her representative, unless the Council is formally required to do so by, for example, an employment tribunal, or unless the matter subsequently progresses to appeal. The employee has the facility to have a note-taker present for the purpose of taking notes of the hearing.

The Chair should maintain a structure to the hearing but should avoid unnecessary formality.

The Chair must ensure that the hearing follows a fair and reasonable structure and must allow both parties (i.e. the employee and the management presenter) to:

- Attend and present their case fully;
- Call witnesses and submit relevant documentation and supporting evidence; and
- Put questions to the other party and to any witnesses called to the hearing.

Panel members may ask questions of both parties and any witnesses called to the hearing and the Chair may also require additional witnesses to be called to the hearing if this appears necessary or desirable. If the witnesses are Council employees, the Chair may instruct them to attend.

The Chair may adjourn the hearing at any stage if this appears necessary or desirable. If adjourning for the purposes of enabling further information or clarification to be obtained, the Chair will specify the nature of that information and the expected duration of the adjournment.

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The panel must only consider written or oral evidence presented at the hearing and are required to reach a decision on blameworthiness on the balance of probabilities, i.e. based on what the evidence showed probably happened, taking account of all the available evidence. The charge does not have to be proved beyond all reasonable doubt.

The normal structure of a disciplinary hearing is as follows:

- Introductions, procedure and questions/clarification;
- Charge read out and employee asked whether charge is admitted or not;
- Presentation of management case, including witnesses;
- Employee or representative questions presenting manager (and any witnesses called by management);
- Panel question presenting manager (and any witnesses called by management);
- Presentation of employee case, including witnesses;
- Management presenter questions employee (and any witnesses called by employee);
- Panel question employee (and any witnesses called by employee);
- Management presenter sums up;
- Employee or representative sums up;
- Final questions from panel to either party;
- Adjournment to consider whether charge is proven;
- Reconvene to announce panel's decision;
- Employee or representative statement in mitigation (if required);
- Management presenter comments on mitigation statement;
- Adjournment to consider sanction;
- Reconvene to announce sanction and to advise that decisions will be confirmed in writing, including any appeal rights, normally within five working days.

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10: DISCIPLINARY PANELS

In all cases, disciplinary panels should comprise at least two members, including a designated Chair. The Chair must have sufficient delegated authority under the department's scheme of administration and is responsible for determining the structure of the hearing. The Chair must be competent through appropriate training or experience. Competency to chair disciplinary hearings will be included in the induction training for new managers.

Managers directly involved in the investigation or who have been in any other way directly involved in the case or the matters leading up to the case may present the management case against the employee or give evidence, but may not under any circumstances sit on the disciplinary panel.

A Human Resources practitioner may also be invited to attend a disciplinary hearing, either as a full member of the panel or to provide advice on procedural and other relevant matters. The presence of a HR practitioner is particularly important in disciplinary cases that may, if proven, result in dismissal (i.e. where the charge may constitute gross misconduct or there is a history of proven misconduct).

The Chair must arrange for a note-taker to attend disciplinary hearings for the purpose of recording proceedings.

Wherever practicable, disciplinary panels should be balanced in terms of gender and ethnicity. This is particularly important in cases of alleged discrimination. It may also be appropriate in certain cases for consideration to be given to the inclusion on the panel of a manager from outside the business unit or a manager who has specialised knowledge or appreciation of the service area.

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11: EMPLOYEE'S ABSENCE AT DISCIPLINARY HEARINGS

Should an employee fail to attend a disciplinary hearing, the panel will have to consider whether or not to proceed in his/her absence. In doing so, the panel should take into account:

- Any reasons given by the employee or his/her representative for non-attendance;
- Whether the employee had received sufficient and adequate notice of the hearing; and
- Whether the employee had been informed that the hearing may proceed in his/her absence.

In most cases, particularly when the individual has not attended due to sickness, it is advisable to allow at least one postponement. The length of the postponement may need to take account of the need for the employee to arrange representation, prepare his/her case and the general circumstances surrounding the case. The individual should be informed in writing that the hearing will proceed on the new date and advised that if unable to attend in person, s/he should brief a representative or submit written representations.

In cases where there are grounds for believing that the employee is deliberately and unreasonably delaying the disciplinary process by refusing to attend a hearing, HR advice should be sought.

(See also the Guidance Note on "Representation" for details of the statutory right and time limits of an employee to postpone disciplinary meetings and/or hearings).

When neither the employee nor their representative attends and the proceedings continue, it is recommended that the process be adjourned after the management case is completed. The employee should then be sent a copy of the notes of the hearing thus far and any new documentary evidence presented, and offered the opportunity to submit a statement in defence or mitigation. This statement can be given in person at the reconvened hearing or in writing if the employee remains unable or unwilling to attend.

Where an employee is represented in his/her absence, it is recommended that the representative is asked to obtain a note signed by the employee authorising him/her to speak and act on his/her behalf.

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12: WITNESS STATEMENTS

The value of evidence presented in person and open to cross-examination is always likely to be stronger than that given on paper. Clearly, therefore, it is preferable for all witnesses to present their evidence in person to a disciplinary hearing and the panel Chair is responsible for ensuring that all reasonable steps are taken to facilitate this. On occasion, however, it will not be possible for a witness to attend a disciplinary hearing and in such circumstances a signed and dated written statement should be obtained and made available to the panel. Generally, employees should be required to give evidence in person with witness statements only being used where the witness has no direct link with the Council and cannot as a consequence be instructed to attend (e.g. a member of the public or an ex-employee) or where their attendance will be difficult to arrange (e.g. in cases where the witness is hospitalised or abroad and to delay the hearing would be unreasonable). Employees of the Council will, if necessary, be instructed to attend and provide evidence and be available for questioning and cross questioning.

Caution should be exercised in affording too much weight or credence to unsupported witness statements.

Occasionally, anonymous information is submitted as evidence (see separate Guidance Note on “Dealing with Anonymous Information”). Great care needs to be exercised in considering this type of information.

As with other evidence considered by a panel, the employee charged with misconduct must always be aware of what is being said and must have the opportunity to question it. Not to do so, if the witness statements are to be relied on by the panel in reaching their decision, may lead to the dismissal being unfair on the basis of procedural irregularity.

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13: CONFIDENTIAL EVIDENCE

Occasionally, “confidential” evidence from third parties may be presented and it may be argued that the nature of the information is such that it should not be disclosed to the employee, e.g. statements from work colleagues, child protection reports, etc. Great caution needs to be exercised in considering such evidence. Case law has shown that employment tribunals will expect even the most sensitive of information to be disclosed if it is to be relied on by the panel. Failure to do so is highly likely, therefore, to result in the dismissal subsequently being found to be unfair.

Sometimes individuals and organisations provide evidence on condition that it is not to be disclosed. Under such circumstances, if the originator cannot be persuaded to change his/her mind, the panel should disregard the evidence.

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14: PRESENTATION OF EVIDENCE TO DISCIPLINARY HEARINGS

Evidence presented during a disciplinary hearing is likely to consist of written material and evidence given in person by witnesses (including the employee charged with misconduct). The panel Chair is responsible for ensuring that:

- The panel is adequately informed about the circumstances surrounding the evidence;
- The employee or his/her representative has the opportunity to challenge what is presented about the alleged misconduct. (This includes the opportunity to question any witnesses presenting evidence in person);
  and
- The employee has the opportunity to put his/her own side of the story, submit documentary evidence and call witnesses in support of his/her case.

Clearly, it is preferable for all witnesses to present their evidence in person to a disciplinary hearing and the panel Chair is responsible for ensuring that all reasonable steps are taken to facilitate this. Employees of the Council will, if necessary, be instructed to attend and provide evidence and be available for questioning and cross questioning.

In all but exceptional circumstances, the employee should be provided with copies of written material in advance. If not provided in advance, the employee or his/her representative should be allowed sufficient opportunity to read and consider the material. If appropriate, an adjournment for this purpose should be offered before the employee or his/her representative is required to respond to the material.

Service users should not normally be called upon to give evidence in disciplinary hearings, except in very limited circumstances. Where relevant and considered absolutely appropriate by the panel Chair, witness evidence from service users may be given by Key Workers or other suitably qualified professionals.

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15: REACHING A DECISION

Part one of the disciplinary hearing -

At the end of the first part of a disciplinary hearing the panel must decide what took place (on the balance of probabilities) and whether this proves the stated charge.

Before announcing their decision, the panel are strongly advised to adjourn for a while to consider their position, even in apparently clear cut cases. This will ensure fairness by allowing suitable time for consideration and reflection on all the evidence presented and the process by which a decision is reached.

The panel will determine whether or not the disciplinary charge should be upheld. This decision will be taken based solely on the evidence presented at the hearing. A charge will be upheld where the panel has established a reasonable belief that the employee committed the alleged misconduct, based on the balance of probabilities, i.e. that the evidence shows that the misconduct was more likely to have happened than not. In employment cases, it is not necessary for a charge to be proven beyond reasonable doubt (as is the case in criminal law).

The Chair will advise both parties of the panel's decision. If the charge is not proven, the disciplinary process is concluded and the employee will be notified accordingly, followed up by written confirmation. If the charge (or at least one charge, where there are more than one) is upheld, the hearing shall proceed to the second part of the disciplinary hearing.

If the panel believe that they have not received sufficient information to allow them to reach a decision, or that further matters have come to light during the hearing that require further investigation, it is appropriate for an adjournment to be called.

In reaching their decision, a disciplinary panel must act with objectivity and fairness. The interests of fairness to the employee must be balanced with the interests of the Council and service users. The following questions are suggested to assist a disciplinary panel to reach its decision:

- Has there been as much investigation as is reasonable in the circumstances?
- Has the disciplinary procedure been properly complied with?
- Has the panel paid sufficient regard to the explanations put forward by or on behalf of the employee?
- Does the panel genuinely believe that the employee has committed the alleged misconduct?
- Does the panel have reasonable grounds to sustain that belief on the grounds of the balance of probability?

A "yes" response to each of these questions will mean finding that the employee has committed the act of misconduct.

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Part two of the disciplinary hearing –

If the panel reaches a decision that the charge is proven, the employee or his/her representative will be given an opportunity to make a statement in mitigation and the management presenter will be invited to comment on the mitigation statement to challenge any false claims of, for example, an unblemished disciplinary record. After the statement of mitigation and the management presenter's comments, it is again recommended that the panel adjourns to consider all the issues raised before a decision regarding a disciplinary sanction is made.

Before deciding on what sanction is appropriate, the panel should consider:

- The employee's disciplinary record and whether s/he was aware of the standards required (e.g. any relevant warnings given);
- The employee's age, position, length of service and general performance;
- Any circumstances which make it appropriate to lessen the severity of the sanction (e.g. domestic problems);
- Whether there are any codes of conduct that indicate the likely action which employees could expect to result from particular misconduct;
- Sanctions applied by management in similar cases elsewhere in the Council in the past to maintain consistency; and
- Whether the proposed sanction is reasonable in all the circumstances.

Four additional questions may assist the panel in considering what sanction to apply:

- Is the misconduct sufficiently serious to justify the sanction being considered?
- Have the mitigating circumstances presented by or on behalf of the employee been properly considered?
- Has the management response and any previous disciplinary record been properly considered?
- Is the sanction being considered within the band of reasonable responses of a reasonable employer?

In addition to providing focus to the decision making process, the consideration and documentation of these four questions, together with the five questions posed by the panel at the end of part one of the disciplinary hearing, will provide strong evidence to an appeal panel or an employment tribunal (if necessary) that the panel has acted fairly and reasonably in reaching its decision and will enable the Chair of the panel to undertake his/her potential ongoing responsibilities in those forums by being better able to justify and stand by the panel's decisions.

For posts at Deputy Chief Officer level* and above, confirmation of termination can only given where no well founded and material objection has been received from any Member of the Executive. Where this is a potential outcome of disciplinary action for posts at this level advice must be sought from Departmental HR staff.

*[1] *(Deputy Chief Officer for this purpose is defined as those who are directly accountable (for the majority) of duties to one or more Chief Officers. This excludes posts that are solely secretarial, clerical or otherwise in the nature of support services.)*

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16: DISCIPLINARY SANCTIONS

The level of disciplinary sanction imposed is determined by the seriousness of the proven misconduct, taking into account any mitigating circumstances. (See also separate Guidance Note on "Reaching a Decision").

There is a range of sanctions that a disciplinary panel may impose:

- *No further action*;
- *Guidance and/or training* – appropriate for more minor breaches of conduct. The panel must set timescales and review periods;
- *Written warning* – appropriate for more serious cases of misconduct, where there is an accumulation of minor offences or the commission of a minor offence for which an oral warning or guidance has already been given. Written warnings will remain live for nine months;
- *Final written warning* – appropriate where the misconduct is considered to be insufficiently serious to justify dismissal but sufficiently serious to warrant only one warning, or where the misconduct is considered to be serious enough to justify dismissal but where a lesser sanction is appropriate in the particular circumstances (e.g. where there are exceptional mitigating circumstances). A final written warning may be the first and last warning, even if there is no previous record of disciplinary action against the employee and it must draw the employee's attention to the fact that his/her job is at risk if s/he does not improve. Final written warnings will remain live for nine months; and
- *Summary dismissal* – appropriate in cases of gross misconduct (see below) where the breach is considered to be sufficiently serious to warrant dismissal for a first offence, or in other cases where there have been earlier warnings to which the employee has not made an adequate or appropriate response.

In addition, where appropriate, there are a number of supplementary sanctions that a panel may consider to accompany a written warning, a final written warning or dismissal, including demotion, transfer, recovery of monies. Generally, the sanctions of demotion or transfer will be applied as an alternative to dismissal where the circumstances warrant this and where an alternative post has been identified and is available. Generally, transfers and demotion should only be considered with the agreement of the employee. Advice should be sought from the local human resources practitioner if any supplementary sanctions are being considered.

Disciplinary warnings

The objective of a warning is to give the employee a chance to make amends and to put him/her on notice that further misconduct may eventually lead to dismissal.

Any warning given should be specific and leave the employee in no doubt about:

- What behaviour has been found to be unacceptable;
- What the employee must do in the future;
- The consequences of not heeding the warning; and
- The length of time the warning is to be regarded as "live".

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Disciplinary panels may take into account unexpired warnings which have been given for different types of misconduct to that currently being considered because, taken together, they add up to an overall (negative) profile of the employee.

In all but exceptional circumstances, disciplinary warnings will not count against an employee indefinitely and will be disregarded for disciplinary purposes once the relevant timescale has elapsed (nine months for a written warning or final written warning). Although disregarded for disciplinary purposes, expired warnings do not have to be removed from personal files.

Employment tribunals have established that there may be exceptional circumstances where it is not appropriate for disciplinary warnings to be disregarded, even though they have expired. Examples of where expired warnings may still have some relevance in future disciplinary action and should therefore remain live would be:

- Where an employee's disciplinary record shows that the employee maintains a satisfactory level of behaviour only for as long as warnings are active and a definite pattern can be shown to have built up; and
- Where an employee is claiming to have an exemplary disciplinary record since his/her first day of employment.

In those rare circumstances where it is considered that an expired warning may have some relevance, it is suggested that this is best dealt with by the management presenter when responding to the employee's statement of mitigation.

The ACAS advisory handbook "Discipline at Work" envisages some very limited situations where a warning is given in response to misconduct that is so serious that it should remain live indefinitely. It is anticipated that there will be very few situations where this would apply since such serious misconduct would effectively repudiate the contract of employment, be regarded as gross misconduct and warrant summary dismissal. If a disciplinary panel was minded to use this provision, it must satisfy the test of reasonableness and advice from the local Human Resources practitioner should be sought.

Oral warnings do not constitute formal disciplinary action and may be given by a manager to an employee whom they manage without reference to the disciplinary procedure. Employees are not entitled to be represented or accompanied by a work colleague or trade union representative when receiving an oral warning, although managers may choose to allow this. Oral warnings cannot be considered in any subsequent disciplinary action.

Misconduct

Misconduct is conduct which breaches the Council's rules but does not normally warrant dismissal, unless repeated after due warning. The Council does not have a formal comprehensive publicised set of "company rules", although the Council's Code of Conduct for Employees includes certain standards with which all staff are expected to comply. Additionally, individuals' contracts of employment stipulate terms that, if breached, could constitute misconduct. Examples of misconduct could include insubordination, poor time-keeping, unauthorised absence and misuse of Council facilities. (This is not an exhaustive list – see also Guidance Note on "Disciplinary Rules"). Dependent upon the degree and circumstances of any of these examples, they might constitute gross misconduct.

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Gross misconduct

Gross misconduct is misconduct of such a serious nature that it fundamentally breaches and destroys the contractual relationship between an employer and an employee. It is an act (or an omission) which makes any further working relationship and mutual trust impossible. If, on completion of an investigation and a disciplinary hearing, the Council is satisfied that gross misconduct has taken place, the result will normally be summary dismissal (i.e. dismissal without notice). Examples of gross misconduct include theft of Council property, harassment, abuse of clients or colleagues, assault, fighting, falsification of time-sheets, malicious damage to Council property and serious breaches of health and safety procedures. (This is not an exhaustive list – see also Guidance Note on "Disciplinary Rules").

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17: GUIDANCE INTERVIEWS

Although not part of the disciplinary process, a guidance interview is nevertheless a formal interview held with an employee. One manager would normally undertake the interview and can be accompanied, if required, by a Human Resources Practitioner. The employee must be advised that either an official of a trade union or a work colleague may accompany him/her at a guidance interview.

The guidance interview should follow the following format:

[1] outline the areas of concern or complaint to the employee and explain why their conduct is not acceptable;

[2] ask the employee for an explanation for the area of concern or complaint;

[3] discuss ways of resolving or overcoming the concern, e.g. guidance or training, and consider if other assistance is required;

[4] confirm the standards of behaviour required and/or any targets to be reached; and

[5] review any arrangements made at a further interview, if necessary.

The manager must keep a detailed written record of the guidance interview and any agreed outcomes.

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18: RECORDS

Every stage of the disciplinary process should be recorded and the file kept securely and confidentially for a period of not less than two years. This period may be extended if an employment tribunal or other legal claim arises within the two-year period.

Detailed notes should be kept on the file, including:

- All correspondence to and from the employee and his/her representative;
- Notes of meetings;
- Notes of hearings;
- Witness statements;
- Requests for postponements and responses to such requests;
- Reasons for lateness and/or non-attendance;
- Problems with representatives' availability; and
- Employee requests for information and witnesses.

An accurate record of all matters considered by the panel in reaching their decisions should also be retained on the file.

It should be noted that all records of disciplinary hearings should be retained after the proceedings have been concluded internally in case the matter is referred to an employment tribunal where the records may be required to be produced.

Adequate records must be maintained to enable the Council to monitor the frequency and outcome of disciplinary action against employees, the profile of those subjected to the action and the profile of the panels that considered the cases.

Disciplinary sanctions expire and should normally be disregarded for disciplinary purposes after specified periods, nine months for written and final written warnings, but see also the separate Guidance Note on "Disciplinary Sanctions".

Business Managers must take appropriate steps to ensure that any papers in the employee's personal file relating to expired disciplinary sanctions are filed in such a way as to remain secure and confidential. Papers relating to expired disciplinary sanctions must not be kept anywhere other than in the employee's personal file.

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19: DISCIPLINARY APPEALS

Employees may appeal against panel decisions and disciplinary sanctions arising from disciplinary hearings where the sanction is:

written warnings

dismissal; and

supplementary sanctions

Employees' rights of appeal, including to whom the appeal must be addressed and by when, must be included in the letter advising them of the outcome of a disciplinary hearing.

Notice of appeal against written warnings or supplementary sanctions must be received by the Chief Officer of the employing department within ten working days (2 weeks) of receipt of the decision letter.

Notice of appeal against dismissal must be received by the Head of Human Resources within ten working days (2 weeks) of receipt of the decision letter.

Appeals against all sanctions will be heard by a panel of independent senior managers. For appeals against dismissal the panel will be chaired by a Head of Service or above.

Special arrangements exist to hear appeals from staff who have been dismissed as a result of disciplinary or capability action brought on the basis of abuse, neglect, incapability, or professional conduct, where such actions relate to either a child(ren), or a vulnerable adult(s). In these cases appeals are heard by a panel of independent senior managers, but chaired by an Independent Person, as described below.

In cases where dismissal is the sanction applied, that sanction will be implemented and the employee will be removed from the payroll pending any appeal. If the appeal is successful and the employee is reinstated

Appeals Against Termination on the Grounds of Disciplinary and Capability Matters-

The Head of Human Resources will acknowledge receipt of the employee's notice of appeal and provide a further ten working days (2 weeks) for the appellant to submit a written statement. This statement must detail the grounds for the appeal and the names of any witnesses to be called by the appellant.

If there are **exceptiona**l reasons why this timescale cannot be complied with, the employee or his/her representative must notify the Head of Human Resources of the fact as soon as it is known, detail the reasons and offer a date by which the written statement will be submitted. Consideration will then be given to whether it is reasonable to grant an extension of time and the employee or his/her representative will be advised of the Head of Human Resources' decision in writing.

Since the decision to dismiss the employee will have been made using the "balance of probabilities" level of proof, under the grounds for appeal s/he can challenge either the finding of the charges proven by the disciplinary panel or the severity of the sanction, or both.

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The Head of Human Resources will forward a copy of the appellant's statement to the Business Manager, who will be given ten working days (2 weeks) in which to submit a written response. The Business Manager will also send copies of relevant documents to the Head of Human Resources, including the charge letter, the suspension letter (if applicable), the dismissal letter, the notes of the disciplinary hearing and investigation and any witness statements.

These documents, together with the two statements will be included in the agenda papers for the appeal hearing.

The hearing will be set up to occur within ten working days (2 weeks) from receipt of the Business Manager's response. Overall the maximum timeframe from receipt of the appeal by the Head of HR to the hearing date will be 40 working days (8 weeks), including any agreed extensions.

The hearing panel will comprise of three senior independent managers plus a HR adviser. There should be a quorum of three.

Panel members will make decisions by consensus or majority.

Appeals Against Termination on the Grounds of Disciplinary and Capability Matters- Special arrangements for Safeguarding Children & Vulnerable Adults.

The process of appeal is unchanged from the standard process, see above. Where the dismissal is deemed to be a matter related to safeguarding, the appeal will however be chaired by an Independent Person who is a recognised expert in the field of child care or the care of dependent adults. Other panel members will be two senior managers (one of whom has safeguarding knowledge), plus HR advisor, quorum of three – one of whom must be the external chair

The nature of the charges against an employee may mean that the Panel are asked to consider highly sensitive and personal information to clients. Appeal packs will therefore be cleared by HR with Director of Children's Services or the Director of Health & Social Care to deal with any issues over client confidentiality. Disciplinary material may include previous complaints, which are relevant, against an employee of abuse, wilful neglect, or professional misconduct, even if on investigation these did not lead to proven disciplinary action.

Where necessary HR will gain a legal view on the submission of data and how this may be handled by the Committee. In certain circumstances material may be withdrawn from appeals packs, but made available to the appellant prior to the appeal hearing through supervised access.

Appeals heard by management panel -

It is recommended that the same procedure and format that operates for appeals against termination is adopted, with the substitution of the relevant Chief Officer for the Head of Human Resources.

Chief Officers will be responsible for setting up management panels to hear appeals from employees in their departments, ensuring that the principles outlined in the separate Guidance Note on "**Disciplinary Panels**" are followed, and that appeals are heard promptly. If it is likely that a delay will occur before the appeal can be heard, the employee and his/her representative must be kept informed. This should only be necessary in exceptional circumstances, for example, where a key witness is not available due to extended sickness absence or prolonged annual leave.

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20: DISCIPLINARY RULES

The ACAS Code of Practice on Disciplinary and Grievance Procedures suggests that employers should draw up rules with which employees must comply.

The Code of Practice acknowledges that it is impossible for an employer to prescribe a common and comprehensive set of disciplinary rules covering all aspects of employment within their organisation since much depends upon local working circumstances. Disciplinary rules are therefore by necessity likely to vary across the Council according to particular circumstances, such as the nature of work and working conditions.

The following are some examples of acts that are likely to be considered as breaches of the Council's disciplinary rules that will be dealt with under the disciplinary procedure. It is stressed that this list is neither exclusive nor exhaustive.

- theft;
- fraud;
- falsification of records;
- corrupt or improper practice;
- sleeping on duty;
- physical assault and fighting;
- bullying, harassment and victimisation;
- abuse of authority;
- deliberate damage to Council property;
- insubordination;
- disobedience to reasonable management instructions;
- sexual misconduct at work;
- abuse of clients;
- conduct at work likely to offend decency;
- misuse of Council's property or name;
- improper use of the Council's electronic mail or Internet facilities (e.g. storing or sending electronic material that uses unauthorised encryption, contains programme files, is obscene, indecent, sexist, racist, defamatory, abusive, in breach of copyright or is otherwise inappropriate);
- unauthorised removal of Council property;
- bringing the Council into disrepute;
- incapacity whilst at work brought on by alcohol or illegal drugs;
- negligence which causes or might cause unacceptable loss, damage or injury;
- serious infringement of health and safety regulations endangering others;
- making false and malicious accusations against colleagues;
- serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998 and the Council's Whistleblowing policy);
- falsification of qualifications which are a stated requirement of employment or which result in financial gain;
- poor time-keeping;
- engaging in unauthorised employment during hours when contracted to work for the Council; and
- unauthorised absence.

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