

Isle of Wight Council **DISCIPLINARY PROCEDURE**

Policy Information	
Policy Title	Disciplinary Procedure New v.1.3
Policy Purpose	<i>To inform of the procedure through which managers can take disciplinary action against their employees for breaches of policy and improve the standards of employees to the minimum required.</i>
Policy Contact	Rosalyn Langley, rosalyng.langley@iow.gov.uk
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Supersedes	Old Disciplinary Procedure, version 1.2
Consultation	Consulted and agreed with all recognised Trade Unions.
Scope	<p>This policy applies in its entirety to all Council employees and workers, including schools.</p> <p>Where appropriate, this policy will be updated to account for any changes in legislation without further consultation.</p> <p>This policy is non-contractual and therefore does not form part of the employee's contract of employment (and the Council reserves the right to amend or replace this policy at any time).</p>

If you have difficulty understanding this document, please contact HR on 01983 821000 ext 6300 and we will do our best to help you.

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1. INTRODUCTION

We work to ensure that we handle any issues concerning an employee's conduct promptly and fairly.

If we have any concerns about an employee's conduct, we will usually attempt to talk to them about this on an informal basis. An early conversation may be enough to identify the issue and take steps to resolve it. Most minor conduct-related issues can be resolved informally.

It is our intention that the disciplinary policy be used as a means to bring standards of work up to, or to exceed, the minimum required.

However, where an informal approach is unsuccessful, or the allegations are so serious that an informal approach is inappropriate, we will follow a formal disciplinary procedure.

This policy outlines the disciplinary procedure, the roles of those involved and the support that is available to employees.

This policy does not form part of the contract of employment, and we reserve the right to amend or withdraw it at any time.

1.1 SCOPE

This policy applies to employees [and workers], employees seconded to the Isle of Wight Council and all school staff. It does not apply to contractors, consultants or any self-employed individuals working for the organisation.

1.2 GRIEVANCES DURING THE DISCIPLINARY PROCESS

If an employee has a grievance that relates to ongoing disciplinary proceedings, it should be raised during the disciplinary procedure and not through our separate grievance procedure (for example during the disciplinary meeting or appeal stage). This will then be dealt with alongside the disciplinary process.

If a grievance is raised during disciplinary proceedings that is unrelated to those proceedings, the disciplinary proceedings and grievance procedure will normally run independently in parallel. Alternatively, we may decide to suspend the grievance process until the disciplinary process is complete.

1.3 MEDIATION

Depending on the nature of the alleged conduct, we may suggest [mediation](#) to try to resolve it. This involves the appointment of a qualified mediator, who may discuss their alleged conduct with everyone involved where appropriate and seek to facilitate a resolution. We will use mediation only where the employee, and the other individuals involved in the disciplinary issue, agree to do so.

When carrying out the Disciplinary Policy, if any difficulties in working relationships are identified, whether it be at the informal stage, following an investigation, or after a sanction has been issued, managers should give consideration to methods of conflict resolution, including whether it would be appropriate to commission workplace mediation.

Mediation can be used to address personality clashes, communication problems, and allegations or bullying and harassment, and is applicable whether the staff members involved are of a similar job grade or different jobs and levels of seniority.

Mediation does not address circumstances where a reasonable management instruction has not been followed, this is the function of the disciplinary procedure; however, disciplinary matters often go hand in hand with workplace relationship issues and it is important that both matters are considered and addressed.

For further information about workplace mediation please see the Mediation FAQs available on Wightnet [here](#) or SharePoint. Additionally, managers can seek further information about mediation from their HR Adviser.

1.4 FAIRNESS AND RESPECT

We recognise that a disciplinary procedure can be stressful and upsetting. Everyone involved in the process is entitled to be treated fairly and with respect.

We will not tolerate abusive or insulting behaviour from anyone taking part in a disciplinary procedure and treat any such behaviour as further potential misconduct.

1.4.1 Remote proceedings

Where it is not possible to hold a face-to-face meeting under this procedure, we will conduct the process remotely. We will ensure that they and their representative have access to the necessary technology for participating. Their rights will not be affected, and we will ensure that the procedure remains fair and reasonable.

1.4.2 Adjustments to proceedings

If an employee has a disability that may have an impact on their ability to participate fully in this procedure, or if they need assistance because English is not their first language, they should let us know by contacting their Manager or HR Adviser, who will make appropriate arrangements for them.

1.4.3 Recording of meetings

We will take a written record of all meetings conducted under this procedure. This will be done either by the person holding the meeting or by an additional person arranged by us to take notes. These will be shared with all parties as soon as possible following the meeting.

The employee, or any person acting on their behalf, are not normally permitted to record electronically any meeting that we hold under this procedure. This is to encourage openness and full participation. Any breach of this provision may lead to further disciplinary action, which could include dismissal.

In certain limited circumstances, we may permit a meeting to be recorded electronically, for example where it is a reasonable adjustment for an employee with a disability. Where we permit a meeting to be recorded electronically, we will take responsibility for making the recording and a copy of the recording will be shared with all parties.

Where we intend to record meetings held remotely, we will comply with our data protection obligations and obtain prior consent from all attendees.

1.4.4 Change of circumstances

Sometimes circumstances prevent parts of this procedure from being followed in full. For example, employees may be too ill to participate in a disciplinary meeting or a specified manager may be unavailable to chair the meeting. When this happens, we will do our best to ensure that employees fully understand the allegations, are given a proper opportunity to respond to them and that their response is fairly and carefully considered.

1.4.5 Postponement of meetings

We will make every effort to ensure that any meeting we hold under this procedure is scheduled for a time and place that is reasonable and within the employee's normal working hours. The employee is therefore required to attend the meeting if it is possible for them to do so. If they are too ill to attend, or have some other reasonable excuse, we will consider re-arranging the meeting to a time when their attendance is possible.

However, it is important to ensure that disciplinary procedures are completed within a reasonable timescale. We reserve the right to proceed with a meeting in the employee's absence when it has not been possible to arrange a meeting that they are able to attend after one attempt. In that case, we will make every effort to ensure that they are able to make representations in writing or through a representative.

If their trade union representative or work colleague is not available to attend the meeting, we will agree to postpone and seek to agree a mutually convenient time. However, any such postponement must be as short as is reasonable in the circumstances for all parties.

1.5 Conduct and behaviour

1.51 Gross misconduct

Gross misconduct is conduct that is so serious that it justifies dismissal without notice or payment in lieu of notice, although we will always consider the circumstances of any case before deciding on the appropriate penalty.

Examples of gross misconduct include, but are not limited to:

- Serious and / or persistent acts of bullying, discrimination, or harassment against another person on any of the discriminatory grounds, political beliefs, Trade Union membership, a whistleblowing protected disclosure, carer responsibilities and irrelevant criminal records and convictions, (whether it takes place in person or online)
- Fighting with, assault on, or seriously abusive or threatening behaviour towards another person.
- Serious or repeated bullying or other unacceptable behaviour towards another person, including children and vulnerable adults
- Any sexual approach or response to a school pupil, or the development of an intimate relationship with a pupil, whatever the provocation.
- Sexual offences, sexual insults, or sexual discrimination against another person, including pupils.
- breach of requirements relating to safeguarding of children or vulnerable adults
- Theft and dishonesty.
- Unauthorised removal of Council or School property.
- Deliberate damage to Council or School property.
- Serious unauthorised or deliberate misuse of computers / systems, e-mail, social networking sites, and the Internet, (see the Council's or School's ICT Electronic Communications Policy), including actions undertaken outside of working hours.
- Breaches of confidentiality.
- Serious improper disclosure of personal information about another individual, including an employee, group of employees, pupils, parents, Council members or clients, that compromises the Council's or School's position.

- Failure to declare an interest, direct or indirect, in any Council contract which has been, or is proposed to be, entered into by the authority.
- Making false representations which could potentially result in substantial personal gain.
- Falsification of records, reports, expense claims or self-certification forms, whether or not for personal gain.
- Criminal conviction for an offence, either inside or outside their employment, which would make the employee unsuitable for their type of work with the Council, Service or School.
- Serious abuse of or inappropriate use of authority vested in any employee by the Council, Service or School.
- Acceptance of bribes within the meaning of the Bribery Act 2010 or other corrupt practices.
- Serious breaches of safety rules or policies affecting the safety of pupils or other persons, including deliberate damage to or misappropriation of safety equipment.
- Holding unauthorised employment.
- Being seriously under the influence of / or consuming alcohol or unlawful drugs during working hours or in the workplace
- Possession, custody, or control of illegal drugs on work premises.
- Refusal to settle a debt owed to the Council or School.
- Falsification of a qualification that is a stated requirement of the employee's employment.
- Making malicious or vexatious grievance allegations (including bullying and harassment claims).
- Making a disclosure or false or misleading information under the Council's/Schools whistleblowing policy maliciously, for personal gain, or otherwise in bad faith; or making untrue allegations in bad faith against a colleague.
- smoking (including the use of e-cigarettes) in any unauthorised area
- deliberate or repeated refusal to follow reasonable management instructions
- Gross negligence.

1.52 Misconduct

Examples of misconduct for which disciplinary action is appropriate include (but are not limited to):

- Discrimination or harassment against another employee or a member of the public on any of the grounds as listed under gross misconduct.
- insulting or offensive behaviour towards others, not amounting to serious harassment or bullying.
- Refusal to obey a reasonable and lawful instruction from a manager, Headteacher or Governing Body.
- Negligence of duties or responsibilities at work leading (or potentially leading) to either personal injury to any person and / or loss or damage to the Council or School, whether to services, property, or reputation.
- Misuse of the Council, Service or School facilities, including unauthorised or deliberate misuse of computers / systems, e-mail, social networking sites, and the Internet, as referred to in the Council's or School's ICT Electronic Communications Policy, including actions undertaken outside of working hours.
- Improper disclosure of personal information about another individual including an employee, a pupil or parent, a Council Member, a client, or a member of the public which contravenes the Council's, Service's or School's Code of Conduct or policies.
- Disclosure of information to the media or other external agency which is potentially damaging to the employer's reputation.
- Facing an allegation of a criminal offence either inside or outside their employment which would make the employee unsuitable for their type of work.
- Abuse of, or inappropriate use of authority vested in any employees by the Council, Service or School.
- Unauthorised absence.

- Consistently poor timekeeping.
- Behaviour which causes upset, disruption or offence to others.
- Undertaking unauthorised employment.
- Being under the influence of alcohol, drugs, or other substances whilst on work duties.
- Failure to wear in full, or as modified by management instruction, issued uniform and items of protective clothing.
- Breach of our absence reporting procedures.

1.6 Suspension

In some cases, it may be appropriate to suspend an employee from work for a temporary period while the disciplinary matter is dealt with. This is in no way intended to indicate guilt on their part, but is an administrative measure designed to protect the business or ensure the smooth running of the disciplinary procedure. Any period of suspension will be regularly reviewed, kept as short as possible and will be on a fully paid basis.

Suspension must only be used as a last resort and after due consideration has been given to possible alternatives and the implications of suspension. Suspension must be authorised in advance, following completion of the suspension checklist in conjunction with HR, by;

- A Senior Manager; or
- by the Chair of the Governing Body; or
- in the case of a Chief Officer, by the Head of HR; or
- in the case of a Headteacher, by the Chair of the Governing Body.

Any decision to suspend will be confirmed in writing to the employee by the line manager, or other suitable manager, within three working days.

1.7 Trade union representatives

Accredited representative of a recognised trade union will have take no action under this procedure (except for suspending them in a case of alleged gross misconduct where contact with a full-time official of that Union cannot be made and there is a need to protect the employee/service) until we have had an opportunity (with their agreement) to discuss the matter with a full-time official of the union.

2 PROCEDURE/PROCESS

2.1 Informal action

We will deal with minor acts of misconduct informally wherever possible and / or appropriate. However, failure to improve, further misconduct or more serious misconduct may lead to formal disciplinary action being taken.

Allegations of misconduct

Where an allegation of misconduct is made against an employee that cannot be resolved informally, or it is not appropriate to do so, the allegation will be explained to the employee by their line manager (or, where appropriate, a different manager). The details of the allegation will also be confirmed to the employee in writing, together with a copy of this disciplinary procedure.

2.2. Suspension

There may be circumstances when the manager or Headteacher (in consultation with HR) needs to consider suspending an employee from work on full pay, e.g.

- where serious or gross misconduct is alleged; or
- where it is considered that their presence in the workplace may hinder the investigation; or
- where it is necessary to comply with the requirements of an external regulating body.

Suspension is a precautionary, not a disciplinary action pending the outcome of disciplinary proceedings and will only be taken if other options are unavailable or unsuitable i.e. temporary adjustments to working arrangements such as working from home, working under supervision, transferring to another team, etc.

In the instance of suspension from regulated activity, the manager will need to consider whether it is necessary to make a referral to the Disclosure and Barring Service (DBS), following the DBS – Duty to Refer Guidance available on Wightnet [here](#).

An accredited recognised Trade Union representative should not be suspended until the circumstances of the allegation have been discussed with a full-time official of that Union, except in the circumstances outlined in 1.7.

Whilst on suspension employees are required to be available to assist with any investigation at any time within normal working hours unless they have agreed annual leave commitments.

If, during the course of the investigation, the decision to suspend is revoked, the employee should be told as soon as possible and allowed to return to work.

If serious misconduct is not initially suspected or believed to have occurred, but during the course of an investigation the investigator forms the opinion that a serious breach of discipline may have occurred, an individual may then be suspended, but in accordance with the procedure outlined above.

2.3 Stage 1 - Investigation

There will be an investigation into the allegations to decide whether there is sufficient evidence to justify taking the matter further, following discussions with the relevant HR Adviser.

The person appointed to conduct the investigation will usually talk to the employee at an early stage to hear their response to the allegations and will talk to anyone else who may have relevant information.

Where appropriate, the investigation may also include the examination of documents, including emails and other forms of electronic communication. It is important that employees cooperate fully with the investigation process as this is the best way to ensure a fair outcome.

Once the investigation is complete, we will decide whether to proceed to a formal disciplinary meeting or whether the matter can, in fact, be resolved informally or without any further action. Employees will be notified in writing.

In the case of statutory roles, which includes the Head of Paid Service, Monitoring Officer and Section 151 Officer, please refer to Appendix C which sets out the appropriate procedure to be followed.

Where an investigation could potentially include information obtained through an interview with a child, we would strongly advise that schools speak to the LADO and take HR advice.

2.4 Stage 2 – Disciplinary Hearing

2.41 *Invitation to a disciplinary hearing*

If we consider that it is necessary to hold a disciplinary hearing, we will confirm this to the employee in writing. They will be given at least five working days' notice of any hearing, depending on the complexity of the case, to allow them to prepare and to arrange for a union representative/companion to accompany them.

They will be entitled to be accompanied by a trade union representative or work colleague. The responsibility for finding a companion rests with the employee. If their chosen companion is not a fellow employee, we reserve the right to check their credentials as an accredited trade union representative.

We will give the employee a copy of any evidence collated during the investigation in advance of the disciplinary hearing, and they will be invited to submit any further evidence that they consider to be relevant and wish to be considered during the hearing.

2.42 *The disciplinary-hearing*

The disciplinary hearing will be conducted by an appropriate representative of management. As far as possible, we will ensure that the disciplinary hearing is conducted by managers who have not previously been involved in the matter.

Where the allegation/s is/are considered to be gross misconduct, or a possible sanction to be considered is dismissal, the manager/chair of the hearing will be a senior officer of the council who has the authority to dismiss as per the Isle of Wight Council constitution, or in the case of schools either a Headteacher with delegated responsibilities to dismiss or a panel of governors.

The evidence gathered during the investigation will be presented and the employee and their union representative or work colleague will be given an opportunity to confer and to respond.

They may also call on witnesses to give evidence on their behalf, if they are willing, and their evidence is relevant to the issues being considered in the meeting.

The chair of the hearing may choose to adjourn so that further evidence can be obtained. If this happens, the hearing will be reconvened once this is done, and they will be given an opportunity to respond to any new evidence. Before the hearing closes, they (or their companion) will be given an opportunity to make any comments or representations that they think are relevant and which may explain the situation.

2.43 The outcome

The chair of the hearing will adjourn for a period to consider the outcome. The outcome will usually be communicated on the day of the hearing when the hearing is reconvened but may be given later in writing if it is considered that a decision cannot be made on the day. The outcome will, in any case, be confirmed to the employee in writing as soon as possible and, in any case, within seven working days after the hearing.

2.44 Disciplinary penalties

If the allegations are upheld to any extent, formal disciplinary action may be taken. This will usually take the form of a first written warning for a first offence. However, we reserve the right to implement this procedure at any stage depending on the circumstances and severity of the misconduct.

The warning will set out the nature of the misconduct and explain that any further misconduct (similar or otherwise) will be likely to result in further disciplinary action.

A final written warning is given in cases of serious misconduct or where there is a live first written warning in place and the circumstances justify it. It will set out the nature of the misconduct and make it clear that any further misconduct (similar or otherwise) will be likely to result in dismissal.

If found to have committed misconduct while subject to a live final written warning, the outcome may be that they are dismissed with notice.

If an employee is found to have committed gross misconduct, the outcome may result in them being dismissed without notice. In these circumstances, their contract of employment will end immediately, although this will not affect their right of appeal.

If they are dismissed with notice, we reserve the right to instruct them not to work for the duration of their notice period.

Where we find that the misconduct is sufficiently serious to justify dismissal, we may consider alternative disciplinary action such as suspension without pay, demotion, transfer to other work or a loss of seniority.

We may also consider redeployment to another role where a warning is issued, if the circumstances have concluded that it would be inappropriate for an employee to remain in their current role. i.e. if incompetence in their current role is proven and to keep them in that role would be detrimental to the organisation, employees or people we care for.

2.5 Duration of warnings

When an employee is given a warning, we will tell them how long it will remain live. This will depend on the specific circumstances. However, in general:

- a first written warning remains live for six months; and
- a final written warning remains live for 12 months.

Warnings may be live for a longer period depending on the seriousness of the misconduct and the wider circumstances of the case. Once a warning has expired, it will no longer be considered when determining the level of any further disciplinary action.

2.6 Stage 3 - Appeal

2.61 *Appealing against the outcome*

If an employee believes that a disciplinary penalty is unfair, they are entitled to appeal.

They should appeal in writing to the HR Adviser who attended at the hearing within five working days of receipt of the disciplinary outcome letter (an email will suffice).

They should also set out in writing the grounds on which they believe the outcome of the original meeting to have been unfair. These will constitute one of the following:

- **the penalty:** this was too severe given the circumstances of the case; and / or
- **new evidence:** evidence has come to light since the disciplinary hearing and was not reasonably available at the time of that hearing; and / or
- **procedure:** it is considered that the Disciplinary Procedure was not followed correctly.

2.62 *Appeal Hearing*

For staff appeal hearings including Chief Officers (excluding school staff)

HR will work with the Manager who conducted the dismissal hearing to arrange an appeal hearing. The appeal will be referred to the Appointment and Employment Committee as per the Council's Constitution.

This will be arranged as soon as is reasonably practicable but within ten working days. However, if this is not possible, the employee will be informed of the reason for any delay.

An appeal, not against a dismissal, may be conducted by another manager who has the necessary experience to chair such a hearing. They will consider the grounds that have been put forward and review the conclusion reached in the original disciplinary hearing.

However, for any sanction *short of dismissal* relating to Governance Statutory Chief Officer, the Appeals Committee has the power to hear any appeal and to take any decision either to confirm the action or to impose no sanction or a lesser sanction and any other power reasonably required to undertake its role.

Any grievance or appeal against a notice of dismissal, suspension, or issue of capability of a Governance Statutory Chief Officer or a Director will be considered by a sub-committee of the Appointments Committee, comprising three members who have not had any prior involvement in consideration of the case. Where necessary, members can be drawn from the wider

membership. The membership shall also include two independent persons when dealing with action in respect of a Governance Statutory Chief Officer.

An employee is entitled to be accompanied at the appeal hearing by a fellow employee or a trade union official.

At the hearing they will be given the opportunity to explain their grounds for appeal.

Depending on the circumstances, the hearing may either solely consider the points that they have raised, or it may reconsider the whole case and reach its own conclusion on the correct outcome.

A member of the HR department will also be present to advise the chair.

2.63 Outcome of appeal

Following the appeal hearing, the relevant the appeal chairperson will inform the employee in writing, usually within five working days, of the outcome. The decision of the Appeals Panel will be final.

If the result of the appeal is that a decision to dismiss them is overturned, they will be reinstated with immediate effect. They will be reimbursed in full for any wages lost since their dismissal. They will also be required to repay any monies paid in respect of pay in lieu of notice or holiday pay if they wish their holiday entitlement to be reinstated.

N.B. References to five working days relate only to Monday to Friday. Where a bank holiday falls this will be extended so as NOT to include the bank holiday as a working day. Weekends are never included.

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3. GUIDANCE FOR MANAGERS

For the avoidance of doubt, this guidance section does NOT form part of the formal policy and is to be regarded as best practice advice *only*.

1. Informal Action

1.1 Addressing Disciplinary Issues Informally

The manager's role is to:

- Meet promptly with the employee to discuss the misconduct or behavioural issue in detail. Factual examples of the behavioural or misconduct issue(s) should be given.
- Give the employee the opportunity to explain their conduct or behaviour.
- Investigate the matter further where necessary/appropriate.
- Outline the required standard of conduct or behaviour, explain the apparent shortfall, and define the improvements required.
- Agree any appropriate future action, including additional support e.g. coaching, mentoring, development and / or training.
- Explain that further instances of misconduct or lack of improvement in behaviour may result in formal disciplinary action.

The manager should confirm the above points to the employee in writing.

1.2 Reviewing Conduct and Behaviour

If conduct remains unsatisfactory, the manager will meet with the employee to explain the shortcomings and allow the employee to respond. The manager may decide to extend the review period if they feel that this could address the problem satisfactorily. However, if the manager considers that an employee has failed to attain the required standard without justifiable reason, and / or the poor standards of conduct or behaviour are therefore likely to continue, the matter will be referred to the formal stage of the procedure.

The manager may invoke the formal procedure prior to the end of the review period if the misconduct or behaviour issue becomes serious enough to warrant it.

NB: The line manager should keep a record of all conversations with the employee and should also retain examples of where the misconduct or behaviour issue is evidenced.

2. Suspension From Work

If suspension is considered necessary the employee's well-being should be taken into account and they will be given a nominated contact person during their suspension. The manager should consider who is best placed to be the nominated person.

The employee must not enter any work establishment without the prior permission of their line manager and must not contact any employees, clients, pupils or their parents, councillors, or governors regarding the disciplinary case other than through a nominated officer or manager,

the Headteacher, and / or their nominated Trade Union representative or workplace colleague. The person conducting the investigation is exempted from this sanction.

If an employee needs access to work related documents in order to prepare their case, they should make a request for this information to a Senior Manager e.g. Service Manager or the Headteacher and / or the Chair of the Governing Body.

They will be asked to return all work equipment / property when suspended, including any security passes, keys, etc, or as soon as possible after the suspension at an agreed time with their manager.

3 Misconduct

The examples of misconduct and the disciplinary sanction most likely to be applied are for illustration purposes only and are intended to help employees understand the standards required by the Council. Each and every incident of misconduct will be dealt with on its merits and reflect the particular circumstances of the case. It is possible for an incident to be regarded as minor in one service and more serious in another, where its impact is more far reaching. The Council's/School's Code of Conduct (and relevant professional Codes of Conduct) expands further on some of these standards. Professional Codes of Conduct sit alongside this policy and referrals to professional bodies will be made at the appropriate stage of the process.

4 Investigation

The purpose of an investigation is to establish the facts of the case as far as possible and decide whether there is a disciplinary case to be answered at a formal hearing.

The manager must contact their HR Adviser at this stage if they haven't already, to discuss the concerns and to agree who would be appropriate to undertake an investigation.

The manager will normally carry out any necessary investigations into the alleged misconduct or behaviour issue, which will include meeting with the employee to allow them to state their case.

However, if the manager and HR believe that the alleged misconduct or behaviour is of a more serious nature or the manager has already had input into the issue that could prejudice an investigation, they should refer the matter to the relevant Senior Manager, or in the case of schools, to the Headteacher. In the case of the Headteachers, the matter should be referred to the Chair of the Governing Body. That person may then nominate an appropriate independent person to conduct a formal investigation into the case. The appointment of an investigator will be based upon an assessment of whether the appropriate skills are held but with the level of seniority also being a factor in the consideration of suitability. Within schools this will normally be a Deputy Headteacher. The Council or School reserves the right however, to nominate any appropriate person to conduct the investigation without referral to the employee or their Trade Union representative or work colleague.

In all cases, a deadline of 20 working days will usually be given for the investigation, although it is accepted that, particularly in difficult cases or where there are lots of people to be interviewed, this process can be somewhat longer. In those cases the employee will be kept informed of any delays and given a new anticipated deadline.

Anyone allocated to undertake an investigation will meet with the relevant HR Adviser prior to commencement of the investigation so that the process, documentation etc. can be properly described and discussed. This will ensure that they can undertake the investigation promptly, fairly and utilising the standard council processes. A Checklist for Adviser and Investigator document will be completed to ensure that everything has been covered.

The employee will be informed as soon as possible that the investigation is to be undertaken and who will be conducting it.

The manager or independent investigator must:

- Review any informal action already taken.
- Meet with the employee to allow them to explain their side of the case.
- Record each interview that is undertaken, tape recording equipment is available unless any objection is received and provide a copy of the notes/recording to the interviewee; if a meeting is tape recorded a written summary of the key points should be provided for the purposes of the investigation
- Explore the issue further as necessary, which may include speaking to other members of staff and other witnesses, looking at written evidence (e.g. emails, records etc) and / or seeking advice (e.g. from HR).
- **If necessary**, a further meeting may be held with the employee towards the end of the investigation to discuss the evidence that has been gathered and give them an opportunity to state their case in light of that evidence. Although not a statutory right, they may be accompanied at this investigation meeting by a Trade Union representative or work colleague; however, the provision to be accompanied must not delay the prompt progress of the investigation.

Within schools the Headteacher will normally carry out investigations into allegations against a Deputy Headteacher. A member of the Governing Body, other than the Chair of Governors, will carry out investigations into allegations against the Headteacher.

5 Formal Disciplinary Hearing

If the manager or Headteacher and/or the Chair of the Governing Body decides in conjunction with HR that there is a disciplinary case to answer, they will:

- agree with HR an appropriate person to hear the case;
- arrange a hearing date and venue, ensuring that the appropriate people are available to attend (i.e. the person presenting the case, the person(s) hearing the case, their administrative support, and an HR Adviser);
- prepare all documentation that will be referred to at the hearing, including collation of the investigation report, any witness statements and a management statement;
- write a covering letter to the employee inviting them to a formal disciplinary hearing, providing at least five working days' notice. The letter must contain enough information about the nature of the alleged misconduct or poor performance to enable them to prepare to answer the case at the hearing. The letter will also give details of the sanctions that will be considered at the hearing, along with the names of any witnesses the manager wishes to call.

The hearing will consider any written representations from the employee and / or their representative. They will be given the opportunity to provide any supporting evidence to the

person(s) hearing the case at least three working days prior to the hearing date. They must also provide the names of any witnesses they wish to call to the hearing within the same timescale.

Both the employee and the manager will receive copies of any further evidence to be presented to the person(s) conducting the hearing by the other party at least two working days prior to the hearing.

Employees have a right to be accompanied at the hearing by their Trade Union representative or a work colleague whose presence would not prejudice the case in any way. They must take all reasonable steps to attend the hearing. Account will be taken of any reasonable adjustments required under the Equality Act 2010.

Where either the employee and / or their work colleague / representative is unable to attend a hearing and provides a good reason for failing to attend, the hearing will be reconvened on another date which is mutually agreed by the parties. In circumstances where they are unable to attend a hearing for a genuine reason (e.g. health), their chosen representative may attend the hearing in their absence and will be provided with the opportunity to present their case. They will also be allowed to make written submissions to be considered in their absence. If they and / or their representative are persistently unable or unwilling to attend a disciplinary hearing, a decision will be made in their absence.

The procedure for the hearing will normally follow the procedure outlined at **Appendix A**.

5.1 Appropriate Person(s) to Hear the Case

The hearing should be chaired by a senior manager who has not previously been closely involved with the case or investigation (e.g. the line manager's manager, Service Manager, Headteacher). When a possible sanction to be considered is dismissal, a manager no lower than Deputy Chief Officer or Headteacher should chair.

In schools, the Headteacher will normally hear the case, however, where a Headteacher has been directly involved in the case in some way or, is a witness of particular conduct which may constitute grounds for dismissal, any action beyond a final written warning will be referred to a Panel of Governors, which will be appointed and authorised by the Governing Body for this purpose. Where the disciplinary case involves a Headteacher, the Chair of Governors will conduct the disciplinary hearing.

In the case of a Chief Officer, a Panel of Members will conduct the hearing. The Panel should include no fewer than three elected members and should not include any member or officer with direct involvement in the matter, or who participated in the preliminary investigation.

5.2 At the Hearing

The Manager, Headteacher or Panel of Members / Governors conducting the hearing will:

- fully investigate the evidence presented, including that of any witnesses;
- provide the employee with the opportunity to state their case fully, including an explanation of their conduct or any mitigating factors;
- make a judgement as to what happened, based on the balance of probabilities, and what, if any disciplinary action is to be taken.

The chairperson conducting the hearing may adjourn proceedings if this is considered to be necessary and the employee (and their Trade Union representative or work colleague) will be informed of the period of any adjournment. If further information is to be gathered, a reasonable period of time will be given, together with their work colleague or representative, to consider the new information prior to the reconvening of proceedings.

As soon as possible after the conclusion of the hearing, the person chairing the hearing will convey the decision verbally to the employee and to the manager who presented the disciplinary case.

After the hearing has been concluded, the employee will be informed in writing of the conclusions of the hearing within five working days. This will include the nature of the misconduct or poor behaviour, the change in behaviour or improvement required (with timescale), and any disciplinary action that will be taken as a result of the hearing (**see 6.7: Possible Disciplinary Sanctions**). They will also be informed of the consequences of further misconduct or failure to improve behaviour.

They will be informed of their right of appeal to a named relevant person and the time period in which they must make the appeal.

Appendix A – Order of Events at Formal Disciplinary/Appeal Hearings

ORDER OF EVENTS AT A FORMAL DISCIPLINARY HEARING

The purpose of a formal disciplinary hearing will be to establish the facts about their conduct or behaviour and decide what, if any disciplinary action should be taken.

The format for the Formal Disciplinary Hearing will normally be as follows:

1. The Chairperson leading the hearing will introduce the parties and then explain the purpose of the hearing and how it will be conducted. The Chairperson will state that the hearing is being conducted as part of the Council's formal disciplinary procedure and confirm that a written record of the hearing is being made.
2. The Chairperson will invite the manager to state the case against the employee. As part of the management case any witnesses (e.g. the investigator) may be called into the hearing one at a time to present their evidence. The Chairperson, Committee or Panel members and the employee, their representative or work colleague, may ask any questions of the witnesses. The witness will then withdraw. The manager will then complete their case.
3. Both the Chairperson, the employee, and / or their representative or work colleague, may ask any questions about the management case in order to establish all the relevant facts, background, and surrounding circumstances.
4. The Chairperson will invite the employee to state their case. With their approval, or in their absence, their representative may do this on their behalf. As part of their case any witnesses may be called into the hearing one at a time. The Chairperson, Committee or Panel members, and the other party will ask any questions of the witnesses. The witness will then withdraw and they or their representative will then complete their case.
5. The Chairperson, Committee or Panel members, and the other party (i.e. manager) may ask any questions about their presentation in order to establish all the relevant facts, background and surrounding circumstances.
6. At any point during the hearing, the Chairperson may adjourn the proceedings if it appears necessary or desirable to do so, including for the purpose of gathering further information. The employee or the manager may also request an adjournment at any time during the hearing.
7. Once all the evidence has been heard, the manager and then the employee may wish to sum up the key points of the hearing.
8. The Chairperson will then adjourn the hearing to deliberate with their HR Adviser. The Chairperson will try to reach a decision on the same day. If this is not possible they will inform the employee of their decision within five working days. This will be confirmed in writing to the employee and the manager by the Chairperson.
9. The Chairperson will inform the employee of their right to appeal against the outcome of the hearing.

ORDER OF EVENTS AT AN APPEAL HEARING

The purpose of an Appeal Hearing will be to establish whether any of the grounds for the appeal should be upheld or not.

The order of events will be the same as for the Formal Disciplinary Hearing, except that at (2) the Chairperson will invite the employee to state the grounds for their appeal first and at (4) the manager who heard the disciplinary case at Stage 1 will then state their case.

Appendix B – Guidelines Concerning Allegations of Fraud

In accordance with the Council's Counter Fraud and Corruption Strategy, the Internal Audit Service is responsible for ensuring all allegations of fraud which may be identified by a manager, received from employees or members of the public (known as Whistleblowing) are properly investigated. Fraud may also be identified through routine audit reviews.

THE ROLE OF THE INTERNAL AUDIT SERVICE

Where an alleged fraud is identified it must be reported to the Head of Service, or Headteacher who must immediately inform the Section 151 Officer in their capacity as the client manager for Internal Audit.

The Section 151 Officer will work with HR to ensure that any allegation of fraud is independently investigated.

Where a decision is then made to conduct a disciplinary hearing, a representative from Internal Audit may appear as a witness but will not conduct or hear the case.

There may be circumstances involving potential criminal actions where the investigation interview is recorded and conducted under caution (Police and Criminal Evidence Act 1984).

The Section 151 Officer, together with the relevant Head of Service or Headteacher, in consultation with the Chief Executive and the Monitoring Officer, may decide to refer any financial impropriety or any other matter which is against the law to the Police for investigation. Such referral will not prohibit action by the Council, Service or School under its Disciplinary Procedure.

Appendix C – Procedure for Statutory Officers

THIS SECTION IS CURRENTLY BEING REVIEWED

1. SCOPE

This procedure should be used only when relating to those employees carrying out one of the following Statutory roles either in a full or deputy capacity and only in relation to conduct issues:

Head of Paid Service

Section 151 Officer

Monitoring Officer

This procedure applies only to those employees who also carry out one of the specified Statutory Officers function or in relation to the deputies if the allegation of misconduct is in any way related to the exercise of the specified Statutory Officers function. All other employees are dealt with under the procedure in the main body of this policy, even if they are also carrying out a statutory function. In the event that a situation arises where it is not clear whether the allegation relates to the specified statutory role or not then an initial meeting will be held between the employee and the Strategic Manager for Human Resources, following which a determination will be made by the Strategic Manager for Human Resources as to which procedure will be followed.

Where an allegation is made relating to the conduct or capability of the Statutory Officer or there is some other substantial issue that requires investigation, the matter will be considered by a sub-committee of the Appointments Committee, appointed by the Appointments Committee in accordance with the Council's Constitution or Standing Orders.

If the matter involves the proposed termination of a Statutory Officer, it will be determined by Full Council.

Where time limits are referred to in the course of this procedure, they may be varied by consent between both parties. Unless specifically stated below the procedure and process to be followed is that set out in the main body of this policy.

2. COUNCIL'S RESPONSIBILITIES

The Appointments Committee sub-committee as set out in the Officer Employment Rules of the Council's constitution will consider allegations against the Statutory Officer. The remit of the committee is:

- To consider whether the protected officer should be suspended, or where suspension has already taken place, to review the suspension as necessary;
- To review the results of any investigation to consider what disciplinary action, if any, is appropriate after hearing the views of the protected officer and report its recommendations;
- Where dismissal is its recommendation, to refer the matter to Full Council alongside the sub committee's report for the authority to vote on whether it approves the proposal to dismiss;
- Where the authority approves dismissal, to action the dismissal by issuing notice of dismissal;
- Where action short of dismissal or no disciplinary action at all is appropriate, to put that in place as appropriate.

The sub-committee will consist of five people and will include at least two relevant Independent Persons (IPs). This committee must be in a position to take decisions, and appropriate actions as a matter of urgency.

In the event that the matter involves the proposed dismissal of a Statutory Officer, the sub-committee will be appointed at least 20 working days prior to a meeting of Full Council to determine the matter.

3. INVESTIGATOR

If an investigation is required the process will take place in accordance with para 2.2 as set out in the Disciplinary procedure. The investigator will be appointed by the appropriate manager of the Officer to be investigated and may be another senior officer within the Council or an independent person as deemed appropriate. For the avoidance of doubt in the case of Head of Paid Service the appropriate manager would be the Council Leader. If an independent person carries out an investigation, they may not then sit on the Appointments Committee sub-committee that conducts the hearing.

4. RELEVANT INDEPENDENT PERSONS

The Council's constitution sets out the rules for appointing a relevant independent person (IP). S. 28(7) Localism Act 2011(b) sets out the definition of an independent person. Relevant IPs are IPs who have been appointed by the Appointments Committee or another Council in the event of an appeal. They will be invited to be appointed to the Committee in the following priority order, as set out in the Council's constitution:

- (a) a relevant IP who has been appointed by the Council and who is a local government elector;
- (b) any other relevant IP who has been appointed by the Council;
- (c) a relevant IP who has been appointed by another council or councils.

4. STATUTORY OFFICER RESPONSIBILITIES

Statutory Officers are responsible for making sure they are fully aware of Council policies and procedures, and for maintaining appropriate standards of conduct and behaviour as set out in the Code of Conduct and for co-operating with the implementation of this procedure e.g. take all reasonable steps to attend any scheduled disciplinary investigation, hearings and/or appeal hearings. The Statutory Officers are entitled to be represented by a Trade Union Representative or a work colleague.

5. SUSPENSION FROM WORK

Where it is believed that suspension is a consideration in accordance with paragraph 1.6 in this procedure, the sub-committee will need to consider whether it is appropriate to suspend.

The relevant Statutory Officer shall be informed of the reason for the proposed suspension and will have the right to present information before such a decision is taken.

The Council Leader in conjunction with the Chair of the Employment sub-committee (or their nominated deputy/s if they are unavailable) will jointly hold the delegated power to suspend a relevant Statutory Officer immediately if an exceptional situation arises whereby allegations of misconduct by a relevant Statutory Officer are such that his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information, or reputation of the Council.

All other aspects relating to the suspension should be carried out in accordance with 6.2 of the Disciplinary Procedure.

6. ACTION SHORT OF DISMISSAL

Where the decision is to take action short of dismissal the sub-committee will impose the necessary sanction.

7. THE ROLE OF FULL COUNCIL (PROPOSED DISMISSAL)

Following full consideration of the evidence the sub-committee will inform the Proper Officer (as set out in the constitution) when it is proposing to Full Council that the relevant Statutory Officer be dismissed.

Prior to taking a vote on the proposed dismissal of the relevant Statutory Officer, Full Council will consider:

- The advice, views or recommendations of the Investigator and Employment Sub-Committee;
- The conclusions of any investigation into the proposed dismissal; and
- Any representations from the relevant Statutory Officer.

All of the above information and representations may be made in writing or in person as the relevant officer decides. Full Council will then vote to determine the proposed dismissal of the relevant Statutory Officer.

8. APPEAL

If the appeal relates to an appeal against a sanction that is not dismissal the appeal will be heard by another sub-committee formed from members of the Appointments Committee and at least two independent persons who did not sit on the previous sub-committee that imposed the sanction.

If the appeal relates to an appeal against the dismissal which was imposed by full council the Statutory Officer may appeal to an appeals panel formed from a neighbouring Local Authority under sharing arrangement in accordance with Section 101 Local Government Act 1972. The appeals panel will consider any investigative report(s) and any other information considered relevant by the sub-committee. This may include, but is not limited to, new information, relevant objections, and the outcome of further investigations. The Statutory Officer will have the opportunity to state his/her case.

The appeals panel will give careful consideration to these matters and request any further investigation it considers necessary to reach a decision.

The decision of the appeals panel will be final.