



Disciplinary Policy and Procedure

October 2015

All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format please contact HR Support on 01856873535 extension 2250 or email hrsupport@orkney.gov.uk

Contents

1. Policy statement	4
2. Scope of the policy	4
3. General principles.....	5
4. Roles and responsibilities	8
4.1. Managers	8
4.2. Employees	8
4.3. Human Resources	8
4.4. Trade unions	9
5. Conduct standards.....	9
6. Investigation	11
7. Disciplinary hearing	13
8. Disciplinary action / sanctions.....	15
9. Appeal	16
10. Appeal outcomes	18
11. Other provisions.....	19
11.1. Fraud and other financial misconduct	19
11.2. Misconduct allegations and trade union representatives.....	19
11.3. Casual / relief workers.....	20
11.4. Chief Officials - Heads of Service / Executive Directors.....	20
11.5. Chief Executive	20
11.6. Anonymous information	20
11.7. Third party evidence.....	21
11.8. Member of the public / service user complaints	21
11.9. Record keeping	21
11.10. Grievance being raised during a disciplinary procedure.....	22
11.11. Police investigations and criminal charges, prosecutions or convictions	22
11.12. Sickness absence during the disciplinary process	22
11.13. Re-arranging investigations / hearings / appeals	23
11.14. Precautionary suspension.....	24
11.15. Right to be accompanied at meetings	26
11.16. Role of the individual accompanying the employee	26
11.17. Investigations, hearings and appeals – note taking.....	27
11.18. Statutory duty to refer conduct matters	28
Appendices.....	29
Appendix 1: Disciplinary procedure summary record.....	29
Appendix 2: Notification of appeal against disciplinary action	37

Appendix3: Precautionary suspension meeting guide.....	41
Appendix 4: Investigating Officers guide (disciplinary investigation meeting) ...	45
Appendix 5: Chair of hearings guide	54
Appendix 6: Chair of appeal hearing's guide.....	58

1. Policy statement

1.1. It is the aim of Orkney Islands Council to ensure that all employees are treated in a fair and equitable manner. Employees are expected to adhere to acceptable standards of conduct in the course of their employment. Where such standards are not met, a formal process should only be followed where there is no other reasonable alternative. In all cases, the primary objective is to assist and support the employee to improve and maintain their conduct to the required standards. Dismissal on grounds of conduct should only be considered as a last resort, or where the conduct is considered to constitute gross misconduct.

1.2. Where concerns arise over potential misconduct, action is required in the interests of both the Council and the employee. A failure to deal with it may adversely affect colleagues and service delivery, and as a result other staff may become disillusioned and dissatisfied. In this way, the efficiency and the quality of Council services can quickly deteriorate.

1.3. This Disciplinary Policy and Procedure provides a mechanism whereby misconduct problems in or relating to the working environment or working relationships can be raised and addressed. Every effort should be made to deal with these matters promptly within the timescales outlined in the policy and as fairly as possible.

1.4. Executive Directors are responsible for the management of their Service and therefore have ultimate responsibility for ensuring appropriate standards of conduct are maintained by employees and for the fair and effective implementation and operation of this policy and procedure.

1.5. Executive Directors and the Head of Human Resources and Performance are responsible for arranging appropriate training and briefing on the use of this policy and procedure and the maintenance and updating of records to facilitate its smooth operation.

1.6. Anyone carrying out the role of either Investigating Officer, Chair of a hearing or Chair of an appeal hearing must have attended the Council briefing session on Disciplinary Policy and Procedure and the relevant session(s) on undertaking investigations and / or chairing a disciplinary hearing / appeal.

1.7. Following the introduction of the new policy, there will be a 12 month phasing in period to allow for the volume of training required to be carried out.

1.8. Where time periods are referred to in this policy, they are specified as either calendar days (Sunday – Saturday) or working days which assume a five day working pattern (Monday – Friday).

2. Scope of the policy

2.1. The disciplinary policy and procedure will apply to all employees of Orkney Islands Council including: Scottish Joint Council (SJC) / Single Status employees including Heads of Service, teachers and other employees covered by Scottish

Negotiating Committee for Teachers (SNCT) conditions of service, Orkney College Academic staff, Chief Officers including Executive Directors and the Chief Executive.

2.2. In the case of misconduct issues relating to staff groups who are required to be professionally registered i.e. Teachers with The General Teaching Council for Scotland (GTCS) or Social Services Workers with the Scottish Social Services Council (SSSC), and the Council has a statutory duty to ensure that the relevant regulatory body is informed in accordance with their requirements and employees will be advised in writing of any such referral being made. Responsibility for decisions in relation to ongoing professional registration as a result of misconduct issues will be for the relevant professional body, however this policy and procedure will apply in relation to those misconduct issues so far as they relate to an individual's employment with the Council.

2.3. The Disciplinary Policy and Procedure will be reviewed by the Head of Human Resources and Performance or their nominated representative in conjunction with recognised trade unions in line with the schedule for the review of all Council Human Resources policies and procedures, normally every three years. Should changes to employment law, best practice recommendations or schemes of Conditions of Service dictate, a review within this timescale can be carried out by agreement with the Head of Human Resources and Performance.

2.4. Appendices to the policy and procedure and subsequent guidance issued in respect of facilitating the proper use of this policy and procedure shall be revised and updated by the Head of Human Resources and Performance or their nominated representative as appropriate. Such revisions, other than where they would constitute substantive change to practice; shall not normally require further consultation with the recognised trade unions or that the policy is formally submitted to Council for approval.

3. General principles

3.1. Disciplinary procedures should not be seen as a punitive process, their intent is to highlight to employees where their standards of conduct / behaviour have fallen short of those expected and to provide an opportunity for them to improve.

3.2. This policy and procedure takes account of relevant employment legislation; guidance contained in the April 2009 ACAS Code of Practice on Disciplinary and Grievance Procedures as well as the relevant provisions from National Conditions of Service including the Scottish Negotiating Committee for Teachers Handbook of Conditions of Service.

3.3. Employees should be made aware of the expected standards of conduct / behaviour and the expectation that they will adhere to such standards.

3.4. Employees should be made aware of and have ready access to this policy and procedure. The policy and procedure shall be available on the Council Portal and other intranet sites, the Council website and from Human Resources.

3.5. Issues in respect of an individual's capability to undertake the duties and responsibilities of the job are not managed under the Disciplinary Policy and

Procedure. Capability matters shall be managed in accordance with the Council Capability Policy and Procedure or GTCS Framework on Teacher Competence for SNCT employees.

3.6. All matters of misconduct will be dealt with in accordance with this policy and procedure to ensure a fair, consistent and transparent process.

3.7. Minor matters of misconduct should be dealt with, at least in the early stages through the use of informal advice, guidance and counselling with the objective of encouraging and helping employees to improve.

3.8. Any disciplinary sanction / action taken will be on the basis of this being considered as reasonable and will have given due-regard to the specific circumstances of the case and any mitigation put forward.

3.9. Any matter of misconduct that is considered to require action being taken under the formal stages of this policy will be dealt with as promptly as circumstances allow and without unnecessary delay.

3.10. No formal disciplinary action / sanction will be taken against an employee without an investigation being carried out to establish the facts of the case and those subsequently being considered at a disciplinary hearing.

3.11. Under statute there is no right to be accompanied to any meeting in the disciplinary procedure that could not result in a formal warning being issued; or the taking of some other disciplinary action; or the confirmation of a warning or some other disciplinary action. The Council however agrees that it is best practice to allow at all formal stages of this procedure an employee to have the opportunity to be accompanied by either a work colleague or a trade union representative or official employed by a trade union (see 11.15 for further information).

3.12. Formal stages are defined as investigation meeting, disciplinary hearing and appeal. The Council will not unreasonably prevent an employee from being accompanied at any stage in the process.

3.13. There is no right to be accompanied or represented by a Solicitor or other legal representative at any stage of the internal disciplinary procedure.

3.14. Family members, other than where the family member is a work colleague or a trade union representative / official employed by a trade union, or they are carrying out additional support for an employee with a disability, will not normally be permitted to accompany employees at any stage of the internal disciplinary procedure.

3.15. There is a right of appeal against any disciplinary action taken / sanction applied. Precautionary suspension, adjustment / limitation of duties or temporary redeployment pending an investigation are not classified as a disciplinary action or sanctions and as such there is no right of appeal in respect of these.

3.16. An employee shall not normally be dismissed for a first instance of misconduct, unless the conduct is considered to constitute gross misconduct. In these circumstances dismissal may be with or without notice, see section 8.

3.17. An employee may be suspended normally on full pay from their employment as a precautionary measure, where it is considered necessary to ensure a full and fair investigation. Precautionary suspension will normally be considered as a last resort, will be for as short a period as possible, and is considered a protective measure, rather than a disciplinary sanction. Precautionary suspension does not infer that any allegations have been substantiated, or that they will be substantiated or that subsequent formal disciplinary action may be taken.

3.18. Where the decision is taken to instigate an investigation under the disciplinary procedures the employee(s) under investigation will, as part of the formal investigation process be provided with details of the allegations (see Appendix 4, specifically Sharing of Allegations) and provided with the opportunity to fully respond to these.

3.19. The decision to implement the disciplinary procedures will be entirely based on the available information in respect of the alleged misconduct. The protected characteristics of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation will have no impact or bearing on the decision.

3.20. All stages of the disciplinary procedure, including investigation, hearing and appeal are considered to be confidential. Everyone involved including the employee, their accompanying colleague / trade union representative and any witnesses are required to maintain that confidentiality, other than where discussion of this is necessary to enable the employee to respond to the allegations or for management / Human Resources to be able to undertake their duties and responsibilities efficiently and effectively.

3.21. Any Officer of the Council undertaking the role of either Investigating Officer or Chair of a disciplinary hearing or appeal should have attended the relevant Council training / briefing sessions.

3.22. A disciplinary hearing which is considering a matter of potential Gross Misconduct, or repeated misconduct where there is the potential for dismissal, must be chaired by either an Executive Director or Head of Service.

3.23. In exceptional circumstances, with the agreement of Human Resources, the authority to chair a disciplinary hearing (as in 3.22) may be delegated by the relevant Chief Officer to a Service Manager level post (a middle or senior management post, which reports directly to a Head of Service).

For Teachers and other employees covered by SNCT Conditions of Service, delegation of authority to chair a disciplinary hearing for potential gross misconduct and / or where there is the potential for the outcome to be either a final written warning or dismissal can be to another Executive Director, any Head of Service within the Council or to a Service Improvement Officer.

4. Roles and responsibilities

4.1. Managers

Managers should:

- Ensure that all employees for whom they are responsible are made aware of the required standards of conduct.
- Ensure that such employees are made aware of and have access to this policy.
- Ensure that good standards of conduct, and special effort by individuals and teams, is acknowledged, encouraged and reinforced.
- Ensure that they are fully aware of and comply with the provisions of this policy and procedure, identifying and dealing with issues which arise in a fair, consistent, confidential, timely and supportive manner.
- Ensure that they seek advice from Human Resources where necessary and appropriate in respect of dealing with misconduct issues.

4.2. Employees

All Council employees should:

- Ensure that they are aware of the standards of conduct expected of them.
- Seek further guidance in respect of the standards of conduct expected of them if they are unclear.
- Adhere to the standards of conduct whilst at work.
- Ensure that their conduct out with the work environment could not be seen as inconsistent with the required standards of conduct.
- Co-operate with management in respect of any action / process arising out of the disciplinary procedure.
- Highlight to the appropriate manager where they feel able to do so, instances where they perceive the conduct of other employees to be inconsistent with the required standards of conduct expected of employees of the Council.

4.3. Human Resources

Human Resources will:

- Write, review and implement this policy and procedure in consultation with the recognised trade unions within the Council.
- Design, deliver or source relevant training and briefings to managers in respect of the operation of this policy and procedure.
- Support employees through the provision of advice in respect of this policy and procedure.
- Provide relevant advice and support to managers in respect of dealing with misconduct issues.
- Act as professional adviser to the Investigating Officer and Chair of any disciplinary hearing or appeal in respect of employment law, recommended best practice, and the relevant National Terms and Conditions of Service.

4.4. Trade unions

Trade union roles and responsibilities include:

- Work to support the Council in respect of the design, implementation, and operation of this policy and procedure.
- Support their members, including the provision of advice and representation through the stages of the procedures, ensuring that their members are aware of their rights and responsibilities under this and other relevant policies.
- Support the Council in the requirement to monitor and evaluate the impact and effectiveness of this policy and procedure.

5. Conduct standards

5.1. As a public sector employer, the Council must maintain, and is entitled to expect, the highest standards of conduct from its employees.

5.2. It is unlikely that any policy and procedure will cover all possible misconduct issues, but the information in this section contains guidance on the categories of conduct and examples of acts that would be considered as misconduct / gross misconduct.

5.3. The Council defines misconduct as ‘any type of behaviour or conduct at work that falls below the standard required by the Council or is in breach of Council policies or procedures’.

5.4. The Council defines gross misconduct as ‘behaviour or conduct that is so serious in itself, or have such serious consequences that the relationship of trust and confidence, which is needed between the employer and employee, has been damaged irreparably and as a result such behaviour or conduct could lead to summary dismissal without notice for a first offence’.

5.5. The following are examples of the types of conduct or behaviour that the Council would consider to be misconduct:

- Breaches of the Employee Code of Conduct (not covered under gross misconduct).
- Poor-timekeeping and / or abuse of flexi-time.
- Breach of the Council smoking policy.
- Breaches of the Council’s guidelines for employees on the use of social media (not covered under gross misconduct).
- Breaches of the Council’s policy on substance misuse.
- Absence from work without reasonable cause or authorisation or failure to comply with the absence reporting and / or certification procedures.
- Negligence or carelessness in carrying out the duties and responsibilities of the post including failure to follow Council procedure designed to meet its legal obligations properly. For example, failure to obtain relevant criminal history checks, or check eligibility to work in the UK prior to allowing an employee to commence work; or minor breach of financial or procurement regulations.

- Refusal to carry out or wilful disregard for reasonable instructions or orders.
- Conduct or behaviour not conducive to good order or working relationships.
- Minor misuse of Council property, resources or information resources.
- Minor breaches of safety regulations, policies or procedures.
- Minor misuse of IT / Intranet / email / telecommunications / social media.
- Minor breach of Council standing orders; policies, practices or instructions.
- Failure to disclose to the Council any private interest, business activity, employment or voluntary activity where such activities could conflict with the interests of the Council or adversely affect the Council's business affairs or public image.

This is not a definitive list and does not constitute a formal set of rules which any formal action under the disciplinary policy and procedure must be linked to.

5.6. The following are examples of the types of conduct or behaviour that the Council would consider to be gross misconduct:

- Harming a child or vulnerable adult or placing a child or vulnerable adult at risk of harm.
- Unauthorised use or removal of Council property, resources or information.
- Theft or wilful damage to Council property / resources or property / resources not belonging to the Council whilst engaged or purporting to be engaged, on Council business.
- Fighting, assault (including indecent assault) or threatening or violent behaviour towards any person whilst engaged or purporting to be engaged, on Council business.
- Serious breaches of the Council's policy on substance misuse.
- Wilful acts of discrimination including bullying / victimisation and harassment as defined in the Council Dignity at Work Policy and Procedure.
- Wilful breach of safety regulations, policies or procedures.
- Dishonest or fraudulent acts including, but not limited to deliberate falsification of work records, attempts to cover up mistakes whilst carrying out work duties and abuse of Sickness Absence Procedures.
- Wilful provision of false or misleading information or non-disclosure of information.
- Wilful breaches of confidentiality including unauthorised communication with the media and inappropriate use of social media.
- Wilful abuse of the authority vested in a post.
- Criminal conviction, civil liability or other unacceptable conduct which renders the employee unsuitable to carry out the duties of the post, whether or not the incident / conduct occurred at work.
- Acceptance of any fee or reward which may be considered to conflict with an employee's duties (i.e. bribes or incentives) including cash, gifts or free services or failure to properly disclose and / or record any allowed fee or reward of these kinds that would otherwise be acceptable.

- Wilful refusal to undertake contractual obligations between the employee and the Council.
- Wilful breach of Council standing orders; policies, practices or instructions.
- Gross carelessness or negligence in performing duties and responsibilities of the post, including exposing the Council to legal action by ignoring a Council procedure or policy in place to avoid this, for example knowingly employing a person not allowed to work in the UK.
- Serious misuse of IT / Intranet / email / telecommunications / social media – as defined under IT user policies and the Council guidelines for employees on the use of social media.
- Any action whether at work or elsewhere which undermines the implied term of mutual trust and confidence upon which every contract of employment relies or could bring the Council into disrepute.
- Breach of relevant professional codes of practice / conduct where there is a requirement for the individual to hold registration with the professional body in order to undertake the duties and responsibilities of the post.

This is not intended to be a definitive list and does not constitute a formal set of rules which any formal action under the disciplinary policy and procedure must be linked to.

5.7. Dependent on the circumstances of the allegations / incidents it may be possible for examples of conduct / behaviour listed as examples of misconduct to be considered as potential gross misconduct and vice versa.

6. Investigation

6.1. As soon as an employee's manager is aware of alleged misconduct, they should contact Human Resources to discuss the matter and seek advice in respect of the way forward, which may include the need to consider precautionary suspension (see 11.11).

6.2. A full and thorough investigation must be carried out timeously in order to establish the facts of the case. At the outset of the process the employee shall be advised that allegations relating to inappropriate conduct have arisen which require to be investigated under the Council disciplinary policy and procedure and given an overview / summary of the allegations. As part of the subsequent formal investigation process the employee will be provided with full details of the allegations and the opportunity to fully respond to these.

6.3. The ACAS Code of Practice on Disciplinary and Grievance Procedures requires that 'if it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, within the notification'.

6.4. It is important to remember that at the investigation stage, there has been no decision made that there is a disciplinary case to answer; this is a decision that is

taken following conclusion of the investigation by a separate officer after consideration of the Investigating Officer's report and recommendation, and only where the investigation recommends that the allegations should be considered at a disciplinary hearing.

6.5. The manager will normally be responsible for the investigation and will undertake it personally as Investigating Officer. However where the manager is implicated or involved in any aspect of the matter under investigation, or where it is considered by the Executive Director / Head of Service or other manager requesting the investigation that an alternative manager undertake the role, a different Investigating Officer will be appointed.

6.6. Where an employee believes that the Investigation Officer appointed is not appropriate, they may submit specific concerns in writing to the relevant Executive Director / Head of Service within three calendar days of having been advised of who the Investigating Officer is. The decision as to who undertakes the role of Investigating Officer rests with the relevant Executive Director / Head of Service, with advice from Human Resources.

6.7. An officer from Human Resources will assist the Investigating Officer by providing professional advice and guidance in respect of the investigation.

6.8. The investigation will normally involve interviewing the individual who is the subject of the investigation and any potential witnesses or other individuals who may be believed to hold relevant knowledge or information, and the gathering of any other relevant materials.

6.9. The Investigating Officer will seek to compile sufficient information and evidence for a management decision to be reached on whether or not the allegations should be considered at a disciplinary hearing.

6.10. The Investigating Officer will write to individuals and normally provide at least seven calendar days' notice of the investigation meeting arrangements i.e. date, time, location, purpose of the meetings. Meetings may be arranged with less than seven days' notice should individuals be agreeable to such an arrangement. In addition they will remind them of their ability to be accompanied by either a work colleague, trade union representative or official employed by a trade union.

6.11. The Investigating Officer should make arrangements for a note of the investigation meetings to be produced, and issued for agreement by the employee as an accurate reflection of the meeting.

6.12. In some straight forward instances, e.g. misconduct related to persistent poor timekeeping, there may be no requirement to undertake a formal investigation interview and the role of the manager as the Investigating Officer is simply to pull together all of the relevant information and prepare the investigation report for consideration.

6.13. The Investigating Officer must ensure that any witnesses interviewed are advised that, should the case progress to a disciplinary hearing, then the investigation notes produced would be used as evidence. Furthermore witnesses

should be advised that they would therefore require to be shared with the individual being investigated, and that the witnesses may be required to attend the hearing as a witness.

6.14. Following completion of the investigation meetings the Investigating Officer is required to prepare a formal report outlining the facts in respect of the alleged misconduct and making a recommendation as to whether the matter should be considered at a disciplinary hearing or not. Additionally, the Investigating Officer should ensure that the Disciplinary Procedure Summary Record (Appendix 1) is completed and submitted along with their report.

6.15. The Investigating Officer should confirm in writing to the employee under investigation that the investigation has been concluded and the report submitted for consideration, the recommendation(s) and who the report has been submitted to.

6.16. The report will normally be submitted to the Investigating Officer's Line Manager or Head of Service, who will then independently consider the report and decide on the appropriate way forward, i.e. should the matter be considered at a disciplinary hearing or not. If a hearing is considered necessary they would then act as Chair of the disciplinary hearing.

6.17. Following consideration of the report and recommendations, the Manager / Head of Service shall confirm the decision as to the way forward in writing to the employee, as soon as possible and normally within 14 working days of having received the completed report.

7. Disciplinary hearing

7.1. The Chair of the Hearing should write out, to confirm arrangements for any disciplinary hearing, ensuring that the employee is provided with at least seven calendar days' notice of the arrangements for the hearing, i.e. date, time, location, purpose of the meeting, who will be attending, and confirming the nature of the allegations. In addition they will remind the employee of their ability to be accompanied by either a work colleague, trade union representative or official employed by a trade union.

For Teachers and other employees covered by SNCT Conditions of Service, the Chair of a disciplinary hearing shall be in accordance with Part 2 Appendix 2.11 Disciplinary Framework of the SNCT Handbook:

Potential misconduct: Head Teacher; Service Improvement Officer; any Head of Service or Executive Director within the Council.

Potential gross misconduct: Any Head of Service or Executive Director within the Council.

7.2. There is no right to be accompanied or represented by a Solicitor or other legal representative at any stage of the internal disciplinary procedure.

7.3. Family members, other than where the family member is a work colleague or a trade union representative / official employed by a trade union, or they are carrying

out additional support for an employee with a disability, will not normally be permitted to accompany employees at any stage of the internal disciplinary procedure.

7.4. The employee should also be provided with a copy of the Disciplinary Policy and Procedure and investigation report and appendices. The employee should also be asked to advise if they wish to call witnesses and reminded to submit copies of any documentation that they intend to refer to at the hearing no later than three working days in advance of the hearing date, so this information can be shared with the Investigating Officer.

7.5. The Investigating Officer(s) will attend the Hearing to present their investigation report and recommendation. They must also provide confirmation of any witnesses that they intend to call to the hearing no later than three working days in advance of the hearing date, so this information can be shared with the employee.

7.6. It is the responsibility of the party calling witnesses to inform their witnesses of the arrangements of the hearing and that they are requested to attend.

7.7. The Chair of the hearing should make arrangements for the hearing to be noted for their information. Such a note is not subject to agreement by the employee or their representative and is only shared upon specific request.

7.8. The Chair will be accompanied by an Adviser from Human Resources, who would wherever possible have had no previous involvement in the formal investigation process. The HR Adviser will also provide the Chair with all relevant professional advice in respect of employment legislation, relevant conditions of service and recommended best practice.

7.9. Any hearing that is considering a matter of potential gross misconduct will normally be chaired by an Executive Director / Head of Service. In exceptional circumstances, with the agreement of Human Resources the authority to chair such a disciplinary hearing may be delegated by the relevant Chief Officer to a Service Manager level post (a middle / senior management post, which reports directly to a Head of Service).

7.10. Having heard all the evidence presented the Chair will adjourn the hearing and all parties will leave the room, allowing the Chair to consider the evidence presented with advice from the HR Adviser. It is normal that an outcome would try to be reached on the day, particularly where the allegations being considered may constitute gross misconduct.

7.11. Where it is not considered possible to reach an outcome on the day, the Chair can reconvene the hearing and advise the employee that they will confirm the outcome in writing, normally within seven calendar days.

7.12. On conclusion of the hearing the Chair must write to confirm the decision to the employee, normally within seven calendar days, advising of their right of appeal in respect of any disciplinary action / sanction.

7.13. Where this timescale is unable to be achieved a suitable alternative must be agreed with the employee and subsequently confirmed in writing ensuring that the

reason for the delay and agreement to an alternative timescale was agreed and noted.

8. Disciplinary action / sanctions

8.1. The Chair of the hearing is free to consider any actions that they feel are fair, reasonable and appropriate on the basis of the evidence presented at the hearing. In the majority of circumstances the outcomes would be either:

- Insufficient evidence to support allegations and therefore no case to answer.
- Insufficient evidence to support formal disciplinary action; however some other outcome is considered appropriate e.g. management of work performance under the Council Capability Policy and Procedure etc.
- Sufficient evidence to support formal disciplinary action.

8.2. Where the Chair considers there to be sufficient weight of evidence to support formal disciplinary action the sanctions available to them are as follows:

- Formal verbal warning: will normally be issued in cases of minor offences.
- Written warning: will normally be issued in the case of more serious offences, either similar or different, or when there has been a less serious offence, but the individual has already received a formal verbal warning.
- Final written warning: will normally be issued when there has been a written warning for a previous offence. Certain types of conduct, though not quite gross misconduct, may be so serious that, following a disciplinary hearing, a final written warning may be given for a first offence.
- Other sanctions as an alternative to dismissal:

Considered in cases where it was felt that dismissal would be a reasonable option, however it is considered that the employment relationship could continue; the Chair could if they wish consider a final written warning with additional sanction short of dismissal.

Such actions could include:

- A. Disciplinary transfer or demotion (without pay protection) to another post.
- B. A period of suspension without pay.
- C. Loss of spinal column increment.
- D. The period for which any final written warning was valid could be extended (normally up to no more than twice the normal duration, however in very exceptional circumstances an indefinite final written warning that remains valid for the duration of the employment with the Council may be considered).

Any sanction as an alternative to dismissal needs to be given serious consideration and should be able to be considered by the Chair as reasonable in relation to the misconduct and the circumstances surrounding it.

- Dismissal, would normally be the potential outcome where:

A. There are further repeated offences where the system of warning has been exhausted – in this instance dismissal would normally be with notice and payment in lieu of notice.

B. The allegations are considered to constitute gross misconduct, and it is not considered possible that the employment relationship can continue. In these circumstances dismissal would be summary – without notice or payment in lieu of notice.

8.3. Disciplinary warnings will be live for the following periods of time:

Formal verbal warning: current for six months from date of the hearing.

Written warning: current for 12 months from date of the hearing.

Final written warning: current for 18 months from date of hearing.

For teachers and other employees covered by SNCT Conditions of Service, the periods of validity for disciplinary warnings are in accordance with Part 2 Appendix 2.11 Disciplinary Framework of the SNCT Handbook.

8.4. Disciplinary warnings will be disregarded for disciplinary purposes after their expiry date (in accordance with section 8.2).

9. Appeal

9.1. All employees have a right to appeal against a decision taken to impose a formal disciplinary action / sanction. Details of the right of appeal will be clearly set out within the outcome letter from the disciplinary hearing.

9.2. Appeals for all levels of disciplinary action / sanction other than dismissal will be chaired by a separate and normally more Senior Officer of the Authority, in normal circumstances this will be a Service Manager / Head of Service, or an Executive Director.

9.3. Appeals against dismissal from employment with the Council will be heard by the Staff Appeals Sub Committee of the Council.

For Teachers and other employees covered by SNCT Conditions of Service, appeals against disciplinary action / sanctions shall be chaired as follows:

Appeal against formal verbal / written warning: Normally a more senior officer than who chaired the disciplinary hearing from an Executive Director, any Head of Service within the Council or a Service Improvement Officer.

Appeal against final written warning / dismissal: Human Resources Sub-committee.

9.4. Where the disciplinary hearing was chaired by an Executive Director it is acceptable that any appeal against disciplinary action, up to and including final

written warning / action short of dismissal (excluding SNCT employees) can be chaired by a different Executive Director.

9.5. All appeals must be submitted using the Notification of Appeal against Disciplinary Action Form (Appendix 2) within 14 calendar days of receipt of the letter confirming the outcome from the disciplinary hearing and should clearly indicate the grounds on which an appeal is being submitted.

9.6. Employees submitting appeals not using the form and / or not stating grounds of appeal will be written to and asked to resubmit their appeal. Timescales for hearing appeals shall not start until a properly completed appeal is received.

9.7. Appeals will be arranged as soon as reasonably possible, normally within 28 calendar days, however appeals heard by the Human Resources Sub-committee may take longer to arrange, particularly during periods of Council recess.

9.8. In the vast majority of cases appeals will normally be made on the basis of one or more of the following grounds:

- Perceived unfairness of the decision.
- The level of the disciplinary action / sanction not being considered reasonable or consistent with the facts presented.
- New evidence / information that was not available at the time of the investigation and / or hearing has come to light and has a significant impact on the facts of the case.
- Procedural irregularities in the investigation and / or hearing, which would have significantly impacted on the decision reached.

These grounds are not exhaustive and employees will be free to provide specific details of alternative grounds of appeal should they wish.

9.9. Any notification of appeal received out with the 14 calendar day period will not normally be considered unless there are exceptional circumstances which prevented the appeal being submitted within the timescale. The Head of Human Resources and Performance in consultation with the Head of Legal Services will make the decision as to whether or not an appeal received out with the timescale is to be heard.

9.10. Normally within 14 calendar days of receiving the appeal, the employee will receive written confirm of the arrangements for the appeal. The employee will be provided with at least seven calendar days notice of the appeal hearing arrangements, i.e. date, time, location, purpose of the meeting, and who will be attending. In addition, they will remind the employee of their ability to be accompanied by either a work colleague, trade union representative or official employed by a trade union.

9.11. There is no right to be accompanied or represented by a Solicitor or other legal representative at any stage of the internal disciplinary procedure.

9.12. The employee should also be asked to advise if they wish to call witnesses and reminded to submit copies of any documentation that they intend to refer to at the

hearing no later than three working days in advance of the hearing date, so that it can be shared with the Investigating Officer.

9.13. The Chair of the disciplinary hearing will attend the appeal to present their management case in respect of their decision to take disciplinary action.

9.14. The Chair of the appeal should make arrangements for the hearing to be noted for their information. Such a note is not subject to agreement by the employee or their representative and is only shared upon specific request.

9.15. The Chair of the appeal will be supported by an Adviser from Human Resources, who would wherever possible have had no previous involvement in the formal disciplinary process in relation to this case.

9.16. The Human Resources Sub-committee considering any appeal will be supported by Advisers from both Human Resources and Legal Services. The Advisers will provide the Chair of the appeal / Human Resources Sub-committee with relevant professional advice in respect of employment legislation, relevant conditions of service and recommended best practice.

9.17. Having heard all the evidence presented the Chair will adjourn the appeal and all parties will leave the room, allowing the Chair / Human Resources Sub-committee to consider the evidence presented with advice from their HR Adviser. It is normal that an outcome would try to be reached on the day, however where this is not possible the Chair can reconvene the appeal and advise the employee that they will confirm the outcome in writing within seven calendar days.

9.18. On conclusion of the appeal the decision will be confirmed in writing to the employee, normally within seven calendar days, advising that there is no further right of appeal internally to the Council.

9.19. The decision of the appeal hearing is final, although this does not preclude an individual from making an application to an Employment Tribunal.

10. Appeal outcomes

10.1. Having read all of the correspondence from the original disciplinary hearing and considered all of the information presented at the appeal the Chair of the appeal, with advice and guidance from their HR Adviser, is able to consider any of the following outcomes:

- Uphold the original disciplinary action / sanction.
- Reduce the level of the original disciplinary action / sanction.
- Remove any action short of dismissal, but uphold the final written warning.
- Dismiss the allegations, completely removing the original disciplinary action / sanction.
- Re-instate an employee following appeal against dismissal, with a lower level of disciplinary action / sanction (Human Resources Sub-committee only).
- Re-instate an employee following appeal against dismissal, with no other disciplinary action / sanction (Human Resources Sub-committee only).

10.2. The Chair of the Appeal / Human Resources Sub-committee has to be satisfied that the action taken would be considered to be reasonable taking account of the circumstances and any mitigation put forward.

11. Other provisions

11.1. Fraud and other financial misconduct

11.1.1. Where any matter of suspected fraud or other financial misconduct is identified and is being considered for investigation under the disciplinary procedures, the Chief Internal Auditor and Head of Finance must be advised prior to the start of any investigation, in accordance with the Council Financial Regulations.

11.1.2. Depending on the circumstances a representative from Internal Audit may be appointed as an Adviser to the Investigating Officer or they may simply be advised of the outcome of the investigation and provided with a copy of the investigation report and appendices for information. The Chief Internal Auditor / Head of Finance may subsequently undertake their own investigation into the potential for financial systems, procedures or controls to have failed / been breached, rather than the conduct of an employee.

11.1.3. The responsibility for deciding whether or not the Police should be contacted in respect of any allegations of fraud or other financial misconduct, rests with the relevant Executive Director.

11.2. Misconduct allegations and trade union representatives

11.2.1. Where allegations of misconduct come to light in respect of an employee who is also a known trade union representative, the normal disciplinary procedures will be followed. However in advance of procedures starting, the allegations and need for an investigation should be advised in writing to an official employed by the relevant trade union.

11.2.2. Advice and guidance from Human Resources must be sought in respect of all misconduct allegations in respect of employees who are also trade union representatives.

11.2.3. All recognised trade unions within Orkney Islands Council should provide the Head of Human Resources and Performance with a regularly updated list of all Council employees who are trade union representatives. This list should include the names and work locations of those individuals who undertake the roles of Trade Union Steward, Branch Officer, Health and Safety Representative and Learning Representative.

11.2.4. Where the Head of Human Resources and Performance has not been advised by a recognised trade union that an individual employee is a representative of the trade union, allegations of misconduct in respect of that employee will be progressed in accordance with the provisions of this policy and procedure without notification being provided.

11.2.5. In such circumstances, it may not be considered competent to raise objection or grounds of appeal against any potential disciplinary sanction on procedural grounds of the trade union not having been notified.

11.3. Casual / relief workers

11.3.1. Although this policy and procedure does not normally apply to casual workers, natural justice requires that accusations about conduct of a casual worker should be addressed using a fair process, with the person being allowed the opportunity to explain their side of the incident. This policy and procedure may be referred to along with advice from Human Resources to establish an appropriate approach.

11.3.2. If, after investigation, it is decided that action should be taken a decision will usually have to be made on whether it is appropriate to continue to offer work to the person or not.

11.3.3. A casual worker, for whatever reason, can decide that they no longer wish to accept work. For certain types of incident there may still be a requirement to refer the casual worker to Disclosure Scotland, Care Inspectorate or their Professional Body, please see the Council Guidance on Referrals to Disclosure Scotland, the Care Inspectorate and Professional Bodies.

11.3.4. In the circumstances where a member of Casual staff has a pattern of regular working on a continuous basis for four weeks or more the provisions of this policy and procedure will apply.

11.4. Chief Officials - Heads of Service / Executive Directors

11.4.1. Allegations of misconduct in respect of Executive Directors or Heads of Service will be dealt with in accordance with the provisions of the Council disciplinary policy and procedure. Specific arrangements in respect of who would undertake the role of Investigating Officer and Chair of any disciplinary hearing will require to be decided on a case by case basis by the relevant Executive Director or the Chief Executive with advice from Human Resources.

11.5. Chief Executive

11.5.1. Should any allegation of misconduct be raised in respect of the Chief Executive this will be dealt with in accordance with Appendix A of the Chief Executive Disciplinary Framework of the Scottish Joint Negotiating Committee for Chief Officials, Scheme of Salary and Conditions of Service for Chief Officials.

11.5.2. Any allegations of misconduct in respect of the Chief Executive should be raised in writing with the Head of Human Resources and Performance.

11.6. Anonymous information

11.6.1. Occasionally managers will receive anonymous information in respect of alleged misconduct of their staff. Any anonymous information should be treated with extreme caution. Furthermore, information received anonymously cannot be used in a disciplinary hearing.

11.6.2. Such information may result in an investigation under the disciplinary policy and procedure which subsequently provides information on which a disciplinary hearing may be arranged and disciplinary action may be taken, up to and including dismissal.

11.7. Third party evidence

11.7.1. Some investigations may involve the need to take evidence from third parties i.e. service users, pupils, members of the public or other individuals. It is ultimately a decision for the Investigating Officer, with advice from their Human Resources Adviser as to whether this is necessary and from whom evidence should be taken.

11.7.2. The Investigating Officer cannot compel third parties to participate in an investigation meeting, but reasonable effort should be made to meet with them and take their evidence. The same procedures and standards for evidence should be followed with statements being prepared for agreement and signature for any third party. Further guidance in respect of interviewing third parties is contained in the Investigating Officers Guide (appendix 4).

11.8. Member of the public / service user complaints

11.8.1. Where a member of the public or a service user makes a complaint in respect of possible misconduct of Council staff, it may be more appropriate for the investigation of the complaint to be carried out under the Council disciplinary policy and procedure, rather than any of the Council's complaints procedures. Each case will take account of the circumstances of the complaint raised and should involve discussion between the relevant Complaints Officer and Human Resources.

11.9. Record keeping

11.9.1. It is important that accurate record keeping is maintained throughout the disciplinary process. All disciplinary records must be kept confidential in accordance with the Data Protection Act 1998.

11.9.2. A record of all formal disciplinary action taken will be retained confidentially by Human Resources, and the nature, reason and level of disciplinary action will also be summarised and used for statistical purposes and to establish patterns and consistency. All such records will be disregarded for disciplinary purposes after the expiry of the disciplinary action (as detailed in section 8.2).

11.9.3. Unless there is a statutory requirement to retain notes and correspondence relating to the disciplinary action, all documentation will be removed from the employee's personnel file and securely destroyed after the expiry of the designated time period for the disciplinary sanction / warning. Disciplinary case files are maintained by Human Resources and will be securely destroyed following the relevant time period as detailed in the Council retention schedule, see below:

Disciplinary papers	Retention period
Individual case files relating to discipline of employees.	Until the termination of employment relationship with the Council and then a further six years.

Disciplinary case files involving children or vulnerable adults.	Until the termination of employment relationship with the Council and then a further 50 years.
--	--

11.10. Grievance being raised during a disciplinary procedure

11.10.1. In the course of a disciplinary case, an employee may potentially raise a grievance. Raising a grievance would not automatically result in the disciplinary process being stopped. It may be that the issues are perfectly able to be noted and considered as part of the investigation and / or hearing process and therefore would not require to be considered separately.

11.10.2. Where the grievance could have a significant impact on the disciplinary process, e.g. who the Investigating Officer is; it may be necessary to suspend the disciplinary procedure for a short period to deal with the grievance. Advice should be sought from Human Resources in respect of any grievance raised in respect of a disciplinary procedure.

11.11. Police investigations and criminal charges, prosecutions or convictions

11.11.1. Where an employee is charged with, is subject to prosecution for, or is convicted of a criminal offence which is not related to and does not impact on their employment, this in itself will not be reason for disciplinary action. Where these are serious enough to warrant commencing the disciplinary procedures, the main consideration should be whether the offence / alleged offence, is one that makes the employee unsuitable for the work they carry out, or damages the reputation of the Council.

11.11.2. Where there is an ongoing Police investigation in respect of allegations which may result in an employee being unsuitable for the work they carry out, or damages the reputation of the Council, it may be necessary to consider precautionary suspension (see 11.14). In normal circumstances the Council would not usually wish to commence disciplinary procedures whilst a Police investigation is ongoing, however the Council may; should it wish to.

11.11.3. Advice should be sought from Human Resources in relation to any disciplinary process involving criminal charges, prosecution or convictions.

11.12. Sickness absence during the disciplinary process

11.12.1. Whilst dealing sympathetically with any employee who is on sick leave, it is important to act promptly to establish what the alleged disciplinary problem is and to gather information before memories fade, including that of the employee off sick.

11.12.2. Where an employee on sick leave is subject to disciplinary action or goes off sick during the disciplinary process, then the following steps should be taken:

- Establish from the employee if they are able to attend any meetings (investigation, hearing or appeal).

- If the employee advises they are not able to attend, then steps should be taken to establish an indicative timescale from the employee as to when they will be able to attend any meetings.
- Where the employee is unable to participate within a reasonable timescale, a referral should be made as soon as possible to Occupational Health to seek advice in respect of the employee's fitness to engage with the disciplinary process and attend meetings.
- Where Occupational Health advise that the employee is fit to attend meetings, then the process would continue in accordance with the normal procedure and the employee would be expected to attend meetings. Should the employee choose not to engage with the process then it is possible that the process may proceed in their absence and decisions made on the basis of the available information.
- Where Occupational Health advise that the employee is not fit to attend meetings, the process of meeting with the employee would wait until such time as the advice from Occupational Health was that they were fit to attend to meetings; however any other aspect of the process could still continue i.e. investigation meetings with witnesses, gathering documentary evidence etc.

11.13. Re-arranging investigations / hearings / appeals

11.13.1. It is a reasonable expectation of an employee under their contract of employment to attend investigation meetings under the disciplinary procedure as long as they are provided with a minimum of seven calendar days' notice in writing of the arrangements.

11.13.2. It should be noted that any employee who is subject to a precautionary suspension as part of the disciplinary procedure are required to make themselves available to attend meetings. It is strongly recommended that any meetings are, where ever possible, arranged within the employee's normal working pattern (with the exception of night / shift workers, where it may not be possible to arrange meetings within their normal working pattern).

11.13.3. The Council considers that where an employee has a genuine reason for not being able to attend a meeting e.g. they are unable to get trade union representation etc., then it would be reasonable to look to try and reschedule this meeting to a mutually convenient date, taking account of the need to ensure the process progresses at a reasonable pace.

11.13.4. Where an employee fails to attend a scheduled meeting and does not give notice or a reasonable explanation for this, the Council would look to re-schedule the meeting for a date no later than 14 calendar days from the original meeting date, ensuring that the minimum seven calendars days' notice is again provided. The employee would also be advised in writing that should they fail to attend this meeting then the Council would be left with no other alternative than to progress in their absence and make any recommendation or decision on the basis of the available information.

11.14. Precautionary suspension

11.14.1. There may be instances where it is considered inappropriate for an employee to be in the workplace whilst they are subject to the disciplinary procedures and therefore the use of precautionary suspension may be appropriate.

11.14.2. There is no definitive list of circumstances that would warrant precautionary suspension, however some examples of circumstances where precautionary suspension may be considered are:

- If substantiated, the employee's conduct would be sufficiently serious to be considered as gross misconduct and provide grounds for summary dismissal.
- The employee is considered to be creating a situation whereby they are a danger to themselves, other employees, services users or members of the public.
- The alleged conduct has a significant bearing on the employee's duties and responsibilities.
- The employee has been accused of bullying, harassment or other conduct contrary to the Council's Dignity at Work policy.
- The employee has acted in a violent way or threatened violence.
- It facilitates investigation into allegations of misconduct or irregularity where the employee's continued presence may prejudice the investigation.
- It is a necessary precaution in the Council's interest in circumstances which involve or may involve criminal proceedings against the employee.
- The allegations under investigation are of a highly sensitive nature.

11.14.3. The use of precautionary suspension must be carefully considered and only used where there are no other reasonable alternative courses of action possible such as temporary redeployment to alternative duties, limitation of duties or responsibilities, or a temporary change of work location. Where such alternatives are considered appropriate there shall be no loss of pay.

11.14.4. Should an employee not be in agreement with the alternative arrangements, the Council shall have no alternative but to instigate precautionary suspension.

11.14.5. Precautionary suspension is not a punitive measure and its use does not imply that any allegations have or will be substantiated, or that disciplinary action will be taken.

11.14.6. Any precautionary suspension must be authorised by an Executive Director or Head of Service with advice from Human Resources prior to any decision being taken.

11.14.7. Precautionary suspension will normally be with full pay; however where an employee is receiving half pay or no pay under their terms and conditions of employment e.g. under the occupational sick pay scheme, that contractual entitlement shall apply during the period of the precautionary suspension.

11.14.8. For casual / relief staff, where it is necessary to implement precautionary suspension, normal contractual pay (as per 11.14.7) will be made for any work that has already been agreed with them, in advance of the notification of precautionary

suspension. Other than this the member of staff will simply be considered as not available for the offer of any casual / relief work.

11.14.9. Where an employee has annual leave booked prior to the commencement of a period of precautionary suspension; the booked period of annual leave will remain in place and will not be credited as a result of sickness absence unless a GP medical certificate is provided and the correct sickness absence notification procedures have been followed.

11.14.10. During any period of precautionary suspension an employee should be provided with a dedicated support contact. This will be an appropriate individual normally from within their Service who will not be involved in the disciplinary procedures in any way. The support person will be the primary point of contact for any advice, support or information not relating to the disciplinary procedures for the employee.

11.14.11. During a period of precautionary suspension the employee should be reminded of the following:

- They should not attend their normal place of work without authorisation; where the normal place of work is also accessible to the individual as a member of public (i.e. community rooms in a community school), rather than as an employee of the Council there will normally be no issue in the employee accessing it on that basis, however such access should still be cleared in advance through the nominated support contact.
- They should not be in contact with work colleagues to discuss the ongoing disciplinary procedures.
- They should not be in contact with service users / clients / customers to discuss the ongoing disciplinary procedures or work related issues.
- They must return any items of Council property including ID badge, keys, mobile phone, laptop, correspondence / paperwork etc.
- They will not have remote access to email or electronic files, managers must ensure that IT are advised to restrict this access.
- They are required to make themselves available to attend meetings in respect of the disciplinary process. Accordingly should they become ill during the period of precautionary suspension they must report this to their nominated support contact and certify the sickness absence in the normal manner including the provision of a GP Fit Note for any period of sickness absence over seven calendar days.
- They should not undertake paid or voluntary work for other organisations during their normal working hours.

11.14.12. Precautionary suspension will be for as short a period as possible and the continuing requirement for precautionary suspension should be reviewed; normally after an initial period of four weeks, then on a two weekly basis thereafter should the need for precautionary suspension continue. The instigation, extension of, and lifting of any period of precautionary suspension will be confirmed in writing to the employee.

11.15. Right to be accompanied at meetings

11.15.1. Under statute there is no right to be accompanied to any meeting in the disciplinary procedure that could not result in a formal warning being issued; or the taking of some other disciplinary action; or the confirmation of a warning or some other disciplinary action. The Council however agrees that it is best practice to allow at all formal stages of this procedure an employee to have the opportunity to be accompanied by either a work colleague or a trade union representative or official employed by a trade union.

11.15.2. For clarity formal stages are classified as investigation meetings, hearings, and appeals and do not include informal meetings to advise that a disciplinary investigation will be carried out or a meeting to advise that it is necessary to instigate a precautionary suspension. The Council will not unreasonably prevent an employee from being accompanied at any stage in the process.

11.15.3. The right to be accompanied is normally limited to one individual, unless for example an employee with a disability required additional support.

11.15.4. In accordance with current case law the Council holds the view that there is no right to be accompanied or represented by a Solicitor or other legal representative at any stage of the internal disciplinary procedure and the Council does not consider that such representation is appropriate under internal Council procedures.

11.15.5. It should be noted that any work colleague or trade union representative, who is a Solicitor or legal representative by profession, and attends meetings under the Council disciplinary procedures to accompany employees, does not do so in their professional role or act in that capacity at the meetings.

11.15.6. Although the choice of which work colleague or trade union representative accompanies them normally rests with the with the employee, where the choice of individual could present a conflict to the investigation or they may be a witness to the issues under investigation, or the choice of a specific representative would result in an unreasonable delay to the process, the employee may be advised to seek an alternative individual to accompany them and the meeting re-arranged to allow this where necessary.

11.15.7. Family members, other than where the family member is a work colleague or a trade union representative / official employed by a trade union, or they are carrying out additional support for an employee with a disability, will not be permitted to accompany employees.

11.16. Role of the individual accompanying the employee

11.16.1. The role that the individual undertakes when accompanying an employee at a formal meeting under the disciplinary procedure is largely set by the employee themselves and can include:

- Addressing the meeting on behalf of the employee.
- Conferring with the employee during the meeting.

- Summing up the employee's position.
- Responding on the employee's behalf on any views expressed.
- Taking notes on behalf of the employee.
- Attending as a means of moral support.
- Attending to ensure procedures are adhered to.

11.16.2. The individual accompanying an employee cannot respond to questions asked of the employee about the facts of the case or their actions. The employee is required to answer questions put to them at investigation, hearing and / or appeal.

11.17. Investigations, hearings and appeals – note taking

11.17.1. It is imperative that at all formal stages of the disciplinary procedures accurate records of the discussions and outcomes are maintained for future reference. The normal approach in maintaining these records is that formal investigation meetings and disciplinary hearings and appeals (excluding appeals heard by Human Resources Sub-committee, where a formal Committee Minute shall be taken) shall have notes taken and then subsequently typed up.

11.17.2. It is the responsibility of the Investigating Officer or Chair of the disciplinary hearing or appeal to make arrangements for notes to be taken and for the notes to be typed up and issued for agreement.

11.17.3. Investigation meeting notes are not intended to be a formal minute or verbatim record; they are a general summary of the discussion and information provided. These should be typed up, reviewed for accuracy by the Investigating Officer and HR Adviser then sent to the employee at their home address asking them to review them, and to sign and return them confirming that they are an accurate reflection of the discussion.

11.17.4. Any minor grammar or other adjustments from the employee should simply be annotated on to the note and the note signed and returned. Where an employee believes there are significant inaccuracies to the note, they should provide a written update to them and return the note to the Investigating Officer.

11.17.5. The Investigating Officer and HR Adviser should review the amendments, with reference to hand written notes where necessary and where they are in agreement that the amendments accurately reflect the discussions at the interview the note should be amended and reissued to the employee for signature.

11.17.6. Where the requested amendments are not considered an accurate reflection of the discussion, then the note will not be amended and the employee should be advised of this. In such circumstances the requested amendments can be appended to the original statement, with a clear statement from the Investigating Officer that these amendments were requested by the employee but were not considered to be an accurate reflection of the discussion at the investigation.

11.17.7. Should an employee decline to sign an investigation note for any reason, it is still considered reasonable for that note to be submitted as a record of the investigation and the information contained in it used as evidence.

11.17.8. The hand written notes from investigation meetings shall be retained by Human Resources only until such time as the typed up notes have been agreed, or until the conclusion of the internal disciplinary process where the notes are not agreed.

11.17.9. Notes from disciplinary hearings and / or appeals are again not intended to be a formal minute, but only a note of the discussion for the Chair of the hearing / appeal's reference. Notes from hearings / appeals are not subject to agreement with an employee or their representative. The note of the hearing / appeal should be shared with the employee or their trade union representative upon request.

11.18. Statutory duty to refer conduct matters

11.18.1. The Council has a large number of employees who, as a contractual requirement of their post, require to be registered with a professional body and / or be a member of the Protection of Vulnerable Groups scheme.

11.18.2. The Council, as the legal employer has a statutory duty to ensure that these bodies are notified of relevant misconduct matters in respect of appropriate employees, in accordance with each organisation's various requirements.

11.18.3. The relevant Executive Director or Head of Service are responsible for ensuring that the relevant referrals are made at the appropriate time and for ensuring that the employee is advised in writing where any such referral is made, normally by being copied into the actual referral.

11.18.4. Reference should be made to the separate Council Guidance on Statutory Duty of Referral for Conduct and Capability Matters and advice should be sought from Human Resources prior to any referral being made.



Appendices

Appendix 1: Disciplinary procedure summary record

Employee details	
Name:	
Job title:	
Work location:	
Line manager:	
Contact address:	
Contact telephone number:	
Contact email address:	
Is the employee a member of the PVG Scheme?	Yes / No.
Does the employee work in a Care inspectorate registered service?	Yes / No.
Is the employee required to be registered with a professional body?	Yes / No.
If Yes, which:	SSSC NMC HCPC GTCS Other:
Do any of the above bodies require to be notified of the start of the investigation?	Yes / No.
Has notification been sent, with a copy to Human Resources?	Yes / No.
Allegation(s)	
Date allegation(s) received:	
Summary of allegation(s):	
If substantiated could the allegations constitute gross misconduct?	Yes / No.

Financial irregularities	
Does Internal Audit require to be notified in respect of the allegations?	Yes / No.
Date of notification:	
Who notified:	
Notified by:	
Role of Internal Audit in the investigation:	Report to be copied.
	Adviser to Investigating Officer.
Known witnesses – details of any known witnesses at this stage.	
Name:	Job title:
Trade union representative / officer	
Is the employee a trade union representative or officer?	Yes / No.
If Yes, for which trade union?	
Has the trade union full time officer been notified?	Yes / No.
Full time officer notified:	
Date and time of notification:	
Method of notification:	
Notified by:	
Seek advice from Human Resources and do not start discussions with the employee or formal investigation until the full time trade union officer has been notified.	

Current live disciplinary warnings / sanctions			
Disciplinary warning / sanction	Date issued	Valid until	Summary details
Verbal warning.			
Written warning.			
Final written warning.			
Alternative action short of dismissal			
Consideration of precautionary suspension			
Is adjustment / limitation of duties / responsibilities necessary or appropriate?			Yes / No.
If not appropriate, please confirm why?			
What limitation / adjustment of duties / responsibilities was implemented?			

Is temporary redeployment necessary or appropriate?	Yes / No.
If not appropriate, please confirm why?	
What temporary redeployment was implemented?	
Is precautionary suspension necessary or appropriate?	Yes / No.
If Yes, please confirm the reasons why?	
Suspension authorised by:	
Meeting held to advise of suspension:	
Present at meeting.	Manager:
	HR representative:
Date suspension confirmed in writing:	
Arrangements put in place to remove remote access to email and files.	Yes / No.
All Council property returned by employee.	Yes / No.
Initial suspension review date (after four weeks, further reviews after every two weeks):	

Investigation		
Officer instructing investigation (and who report goes to):		
Investigating officer:		
Adviser(s) to the investigation (HR/Audit):		
Note taker for the investigation arranged.		Yes / No.
Date employee advised in writing of the allegations and arrangements for disciplinary investigation meeting:		
Representation		
Has employee advised they wish to be / were they accompanied / represented at the investigation meeting?		Yes / No.
Has the employee advised that they wish all correspondence to be sent to their representative instead of to them?		Yes / No.
Name of representative:		
Trade union representative or work colleague:		
Contact address:		
Contact email:		
Contact telephone number:		
Investigation concluded		
Date investigation was concluded and report submitted:		
Date employee advised in writing that investigation has been concluded and report submitted for consideration:		
Does the report recommend:	Progressing to disciplinary hearing.	Yes / No.
	Management of capability / work performance issue.	Yes / No.
Other recommendations please summarise below:		

Outcome from the investigation	
Were the report recommendation(s) accepted?	Yes / No.
Is a disciplinary hearing to be convened?	Yes / No.
Date employee advised in writing of the investigation outcome:	
Disciplinary hearing	
Chair of hearing:	
HR Adviser to Chair:	
Management representative (Investigating officer):	
Date of hearing:	
Note taker for hearing:	
Date employee advised of disciplinary hearing arrangements:	
Was employee provided with the investigation report, appendices and other relevant paperwork?	Yes / No.
Has employee submitted correspondence for consideration?	Yes / No.
Has this correspondence been shared with management?	Yes / No.
Has employee / management advised they are calling witnesses?	Yes / No.
Have names of witnesses been passed to both sides?	Yes / No.
Outcome from the hearing	
Was disciplinary action taken?	Yes / No.
Verbal warning.	Written warning.
Final written warning.	Other sanction alternative to dismissal.
Dismissal (with notice).	Dismissal (without notice).
Date employee advised in writing of the decision of the hearing:	
Detail other action taken / outcome:	

Statutory duty to refer conduct matters

On the basis of the outcome of the disciplinary hearing do any of the following bodies require to be notified in accordance with to separate guidance on statutory duty of referral for conduct and capability matters?

Please remember that each case may require referral to more than one organisation i.e. disciplinary action being taken against a social care worker in a residential unit for older people will require referral to Disclosure Scotland (PVG Scheme Member), Care Inspectorate (worker employed in a registered Service) and Scottish Social Services Council (as the employee is required to be professionally registered).

Disclosure Scotland.	Yes / No.
Care Inspectorate.	Yes / No.
Scottish Social Services Council (SSSC).	Yes / No.
Nursing and Midwifery Council (NMC).	Yes / No.
Health and Care Professions Council (HCPC).	Yes / No.
General Teaching Council for Scotland (GTCS)	Yes / No.
Other Professional Body (required under contract).	Yes / No.

Please specify which professional body:

Referral(s) sent by:	Name:
	Position:

Date referral(s) sent, copied to Human Resources and employee for information:

Once complete this form should be returned to Human Resources. This form will be retained along with copies of the case files in accordance with the Councils' published retention schedule for disciplinary papers as indicated below:

Disciplinary case files	Retention period	Relevant period in this case
Individual case files relating to discipline of employees.	Until the termination of employment relationship with the Council and then a further six years.	
Disciplinary case files involving children or vulnerable adults.	Until the termination of employment relationship with the Council and then a further 50 years.	

Equalities monitoring information

To ensure that Orkney Islands Council treats all employees fairly, and to comply with legislation, we collate and analyse equality monitoring information about disciplinary procedures. The information will help the Council to identify whether there is any indication of discrimination or discriminatory practices, but it will not be analysed in such a way that would identify individuals. You do not have to complete this section of the form but it would be really helpful if you could.

I don't want to provide any of this information

Date of Birth _____

Prefer not to answer

National identity

Prefer not to answer

<input type="checkbox"/> Scottish	<input type="checkbox"/> English
<input type="checkbox"/> Welsh	<input type="checkbox"/> Northern Irish
<input type="checkbox"/> British	<input type="checkbox"/> Other

Ethnic Group

(please select the box that best matches your ethnic group or background)

Prefer not to answer

White

<input type="checkbox"/> Scottish	<input type="checkbox"/> Other British
<input type="checkbox"/> Irish	<input type="checkbox"/> Eastern European
<input type="checkbox"/> Polish	<input type="checkbox"/> Gypsy/Traveller
<input type="checkbox"/> Other white ethnic group	

Mixed

Any mixed or multiple ethnic group

Asian

Indian (including Scottish/British)
 Pakistani (including Scottish/British)
 Bangladeshi (including Scottish/British)
 Chinese (including Scottish/British)
 Other Asian background

Caribbean or Black

Caribbean (including Scottish/British)
 Black (including Scottish/British)
 Caribbean or Black (Other)

African

African (including Scottish/British)
 African Other

Other ethnic background

Arab (including Scottish/British)
 Other

Do you consider that you have a disability?

Prefer not to answer

Yes No

Marital Status

<input type="checkbox"/> Prefer not to answer	<input type="checkbox"/> Single
<input type="checkbox"/> Married/Civil Partnership	<input type="checkbox"/> Divorced
<input type="checkbox"/> Widowed	<input type="checkbox"/> Separated
<input type="checkbox"/> Living with partner	

Pregnancy/maternity

Were you pregnant at the time of, or had given birth within 26 weeks prior to, incident(s)?

Prefer not to answer/not applicable

Yes No

Religion or belief

<input type="checkbox"/> Prefer not to answer	
<input type="checkbox"/> None	<input type="checkbox"/> Church of Scotland
<input type="checkbox"/> Roman Catholic	<input type="checkbox"/> Other Christian
<input type="checkbox"/> Muslim	<input type="checkbox"/> Buddhist
<input type="checkbox"/> Sikh	<input type="checkbox"/> Hindu
<input type="checkbox"/> Jewish	<input type="checkbox"/> Pagan
<input type="checkbox"/> Other (you may specify if you want to)	

How would you describe your Gender?

Prefer not to answer

Male Female Other

Do you identify as Transgender?

(An individual who lives, or wants to live, full time in the gender opposite to that they were assigned at birth?)

Prefer not to answer

Yes No

Sexual Orientation

<input type="checkbox"/> Prefer not to answer	
<input type="checkbox"/> Heterosexual	<input type="checkbox"/> Gay
<input type="checkbox"/> Lesbian	<input type="checkbox"/> Bisexual
<input type="checkbox"/> Other (you may specify if you want to)	



Appendix 2: Notification of appeal against disciplinary action

Employee details			
Name:			
Job title:			
Work location:			
Line manager:			
Contact address:			
Contact telephone number:			
Contact email address:			
Appeal against			
Disciplinary action short of dismissal.	<input type="checkbox"/>	Dismissal.	<input type="checkbox"/> (please tick one).
Name of Individual who will accompany me to appeal hearing (Work colleague or trade union representative / official only).			
Name:			
Contact address:			
Contact telephone number:			
Contact email address:			
Status:	Work colleague.		
	Trade union representative or official (state trade union below).		
Trade union:			
I would like all arrangements made with and correspondence and papers sent to my trade union representative rather than to me.			Yes / No.

Detail of disciplinary action taken		
Date of disciplinary hearing:		
Chair of disciplinary hearing:		
Disciplinary action taken:	Verbal warning.	
	Written warning.	
	Final written warning.	
	Other sanction alternative to dismissal.	
	Dismissal (with notice or pay in lieu of notice).	
	Dismissal (without notice).	
Date of letter confirming outcome:		
Date outcome letter was received:		
Grounds for appeal		
Perceived unfairness of the decision reached.		
The level of the disciplinary action / sanction is not considered reasonable or consistent with the facts presented.		
New evidence / information that was not available at the time of the investigation and / or hearing has come to light and has a significant impact on the facts of the case.		
Procedural irregularities in the investigation and / or hearing process, which would have significantly impacted on the decision reached.		
Other, please specify below.		
Specific detail of grounds of appeal		
<p>Please continue on a separate sheet if required.</p>		

Documentation in support of appeal

New information or documentation should only be submitted where it has either genuinely come to light since the original disciplinary hearing or where it is considered that it has a significant impact on the decision reached at the previous stage in the process.

Should you intend to submit documentation and you are not including it with the Notification of Appeal against Disciplinary Action, this must be submitted to Human Resources no later than three working days before the appeal hearing.

I intend to submit additional documentation as part of my appeal.	Yes / No.
---	-----------

I enclose this documentation with this form.	Yes / No.
--	-----------

I will submit this separately, in advance of the hearing.	Yes / No.
---	-----------

Witnesses

Attendance of witnesses at an appeal should only be where the information that they have to provide is considered as having a significant impact on the decision reached at the previous stage in the process.

It would not be considered necessary to call witnesses to an appeal hearing simply to cover information already presented at investigation or disciplinary hearing.

Please detail below the names of witnesses that you would wish to attend, or indicate that you do not intend to call witnesses.

I intend to call witnesses as part of my appeal.	Yes / No.
--	-----------

Names of witnesses to be called:

Employee declaration

I confirm that the information provided as part of this appeal submission is accurate and truthful.

Signature:

Date:

Please complete the equalities monitoring information over the page and then submit the Notification of Appeal against Disciplinary Action, within 14 calendar days of receiving the written outcome from disciplinary hearing to the Head of Human Resources and Performance.

Once complete this form should be returned to Human Resources. This form will be retained along with copies of the case files in accordance with the Councils' published retention schedule for disciplinary papers.

Equalities monitoring information

To ensure that Orkney Islands Council treats all employees fairly, and to comply with legislation, we collate and analyse equality monitoring information about disciplinary procedures. The information will help the Council to identify whether there is any indication of discrimination or discriminatory practices, but it will not be analysed in such a way that would identify individuals. You do not have to complete this section of the form but it would be really helpful if you could.

I don't want to provide any of this information

Date of Birth _____

Prefer not to answer

National identity

Prefer not to answer

<input type="checkbox"/> Scottish	<input type="checkbox"/> English
<input type="checkbox"/> Welsh	<input type="checkbox"/> Northern Irish
<input type="checkbox"/> British	<input type="checkbox"/> Other

Ethnic Group

(please select the box that best matches your ethnic group or background)

Prefer not to answer

White

<input type="checkbox"/> Scottish	<input type="checkbox"/> Other British
<input type="checkbox"/> Irish	<input type="checkbox"/> Eastern European
<input type="checkbox"/> Polish	<input type="checkbox"/> Gypsy/Traveller
<input type="checkbox"/> Other white ethnic group	

Mixed

Any mixed or multiple ethnic group

Asian

Indian (including Scottish/British)
 Pakistani (including Scottish/British)
 Bangladeshi (including Scottish/British)
 Chinese (including Scottish/British)
 Other Asian background

Caribbean or Black

Caribbean (including Scottish/British)
 Black (including Scottish/British)
 Caribbean or Black (Other)

African

African (including Scottish/British)
 African Other

Other ethnic background

Arab (including Scottish/British)
 Other

Do you consider that you have a disability?

Prefer not to answer

Yes No

Marital Status

<input type="checkbox"/> Prefer not to answer	<input type="checkbox"/> Single
<input type="checkbox"/> Married/Civil Partnership	<input type="checkbox"/> Divorced
<input type="checkbox"/> Widowed	<input type="checkbox"/> Separated
<input type="checkbox"/> Living with partner	

Pregnancy/maternity

Were you pregnant at the time of, or had given birth within 26 weeks prior to, incident(s)?

Prefer not to answer/not applicable

Yes No

Religion or belief

<input type="checkbox"/> Prefer not to answer	
<input type="checkbox"/> None	<input type="checkbox"/> Church of Scotland
<input type="checkbox"/> Roman Catholic	<input type="checkbox"/> Other Christian
<input type="checkbox"/> Muslim	<input type="checkbox"/> Buddhist
<input type="checkbox"/> Sikh	<input type="checkbox"/> Hindu
<input type="checkbox"/> Jewish	<input type="checkbox"/> Pagan
<input type="checkbox"/> Other (you may specify if you want to)	

How would you describe your Gender?

Prefer not to answer

Male Female Other

Do you identify as Transgender?

(An individual who lives, or wants to live, full time in the gender opposite to that they were assigned at birth?)

Prefer not to answer

Yes No

Sexual Orientation

<input type="checkbox"/> Prefer not to answer	
<input type="checkbox"/> Heterosexual	<input type="checkbox"/> Gay
<input type="checkbox"/> Lesbian	<input type="checkbox"/> Bisexual
<input type="checkbox"/> Other (you may specify if you want to)	

Appendix 3: Precautionary suspension meeting guide

(including temporary redeployment and / or adjustment or limitation of duties).

There is no definitive list of circumstances that would warrant precautionary suspension, however some examples of circumstances where precautionary suspension may be considered are:

- If substantiated, the employee's conduct would be sufficiently serious to be grounds for summary dismissal.
- The employee is considered to be creating a situation whereby they are a danger to themselves, other employees, services users or members of the public.
- The alleged conduct has a significant bearing on the employee's duties and responsibilities.
- The employee has been accused of bullying, harassment or other conduct contrary to the Council Dignity at Work policy.
- The employee has acted in a violent way or threatened violence.
- It facilitates investigation into allegations of misconduct or irregularity where the employees continued presence may prejudice the investigation.
- It is a necessary precaution in the Council's interest in circumstances which involve or may involve criminal proceedings against the employee.
- The allegations under investigation are of a highly sensitive nature.

Once it has been decided that allegations of misconduct require to be investigated, consideration must be given to the practicality and appropriateness of that individual continuing to undertake their normal duties and responsibilities, working at their normal work location and / or is able to continue at work during the investigation.

In many instances it will be entirely appropriate that the employee continues at work and carrying out their normal duties and responsibilities; however in the instances that this is not the case prompt action requires to be taken to instigate the appropriate course of action. In normal circumstances any such action should be put in place as soon as the decision has been taken to investigate the allegations or within 48 hours of the decision.

The decisions to instigate precautionary suspension or other adjustments to the duties / responsibilities and / or work location should be made by an Executive Director or Head of Service in consultation with Human Resources.

Communication of the decision to instigate precautionary suspension or other adjustments to the employee can be carried out by any appropriate manager.

A meeting must be arranged with the employee as soon as possible to advise of the allegations and of the decision to instigate precautionary suspension or other adjustments to the duties / responsibilities and / or work location.

There is no requirement for such a meeting to be advised in writing, for there to be formal written notice, or for the employee to be accompanied by a work colleague or a trade union representative. However where representation is requested and can be

quickly and easily accommodated at that time then this can be facilitated. The meeting should not be delayed to allow this to be accommodated.

An Adviser from Human Resources should be in attendance at the meeting.

Precautionary suspension meeting reminders

1. Introduce the individuals present at the meeting and explain their roles (where they are not already known).
2. Advise the employee that allegations of misconduct have been received that require to be formally investigated under the Council disciplinary policy and procedure.
3. Give the employee a brief summary of the nature of the allegations - remember that this meeting is not an investigation meeting and is not an opportunity for the employee to refute the allegations or provide a response to these; they will be able to provide a response and any mitigation in the investigation.
4. Confirm that as a result of the allegations and the requirement to investigate them, it has been decided that it is necessary to instigate precautionary suspension or other adjustments to their duties / responsibilities and / or work location with immediate effect.
5. Provide specific details of any adjustments to the duties / responsibilities and / or work location. Whilst such adjustments do not require the agreement of the employee, should they not be in agreement with them, there will be no alternative other than to instigate precautionary suspension.
6. Where precautionary suspension is being instigated the following must be confirmed to the employee:
 - 6.1. Precautionary suspension is not a punitive measure and its use does not imply that any allegations have / may be substantiated or that disciplinary action will be taken.
 - 6.2. Precautionary suspension will be with normal contractual pay, they would suffer no financial detriment through suspension.
 - 6.3. Casual / relief staff - where it is necessary to implement precautionary suspension, normal contractual pay will be made for any work that has already been agreed with them, in advance of the notification of precautionary suspension. Other than this the member of staff will simply be considered as not available for the offer of any casual / relief work.
 - 6.4. The period of precautionary suspension will be for a short a period of time as possible and the need for the precautionary suspension will be reviewed; normally after an initial period of four weeks, then on a two weekly basis thereafter.
 - 6.5. During the period of precautionary suspension they should not attend their normal place of work without prior authorisation; where the normal place of work is also accessible to the individual as a member of public (i.e. community rooms in a

community school), rather than as an employee of the Council there will normally be no issue in the employee accessing it on that basis, however such access should still be cleared in advance through the nominated support contact.

6.6. During the period of precautionary suspension they should not be in contact with work colleagues to discuss the ongoing disciplinary procedures.

6.7. During the period of precautionary suspension they should not be in contact with service users / clients / customers to discuss the ongoing disciplinary procedures or work related issues.

6.8. They must return any items of Council property including ID badge, keys, mobile phone, laptop etc. (arrange this as soon as possible, if not able to be done at the meeting).

6.9. During the period of precautionary suspension they will not have remote access to email or electronic files; managers must ensure that IT are advised to restrict this access.

6.10. During the period of precautionary suspension they are required to make themselves available to attend meetings in respect of the disciplinary process. Accordingly should they become ill during the period of precautionary suspension they must report this to their nominated support contact and certify the sickness absence in the normal manner including the provision of a GP Fit Note for any period of sickness absence over seven calendar days.

6.11. Payment for sickness absence during precautionary suspension shall be in accordance with the contractual entitlement to occupational sick pay.

6.12. They should not undertake paid or voluntary work for other organisations during their normal working hours.

6.13. Advise that the arrangements for the investigation will be confirmed in writing in due course by the Investigating Officer.

6.14. Confirm who the dedicated support contact will be and that they will be the primary point of contact for advice / support / information not relating to the disciplinary procedures for the employee.

7. Ensure that the employee fully understands the adjustments and / or requirements of the period of precautionary suspension (again remember this is not the time to enter into discussion in respect of the allegations).

8. Confirm that the need to instigate precautionary suspension or other adjustments must be made to the duties / responsibilities and / or work location will be confirmed in writing within seven calendar days.

9. Where precautionary suspension has been instigated, the employee should be accompanied to collect any personal belongings (where necessary) and then should leave the work premises at that time, it is important that an employee not be permitted to access Council records / systems as these could be critical to the investigation.

Following the meeting

1. Ensure that the relevant managers are advised of the adjustments or precautionary suspension, if they are not already aware.
2. Ensure that the nominated support person is aware of the precautionary suspension, its restrictions and the requirements of their role.
3. Consideration as to what, if anything may be necessary to be communicated to the team / work colleagues. Any communication must be kept to an absolute minimum and to only individuals that have an absolute need to know. It is a confidential process and general work colleagues must not be advised that an individual has been suspended on a precautionary basis or is subject to an investigation under the Council disciplinary policy and procedure.
4. Ensure IT are advised of the need to restrict access to remote email and files.
5. Ensure all items of Council property are returned by the employee as soon as possible.
6. Ensure confirmation of the adjustments / precautionary suspension are confirmed in writing to the employee.
7. Ensure that the continuing need for the adjustments / precautionary suspension are reviewed by the relevant Executive Director / Head of Service; normally after an initial period of four weeks, then on a two weekly basis thereafter and the outcome of this confirmed in writing to the employee and copied to the relevant managers and Human Resources.
8. Where the adjustments / need for precautionary suspension is no longer required, these are confirmed to the employee and appropriate individuals.
9. Ensuring that the return to work / normal duties is managed in a supportive way for the employee and work colleagues as appropriate.

Appendix 4: Investigating Officers guide (disciplinary investigation meeting)

You will be advised by your Manager, senior officers within your Service, or contacted by Human Resources and asked to carry out an investigation under the Council's disciplinary policy and procedure.

As Investigating Officer you will be provided with an outline of the known facts which will give you the following information:

1. Name, job title and service of employee under investigation.
2. Information as to the known facts of the situation that give rise to the need for the investigation.
3. Information as to the allegations and possible breach(es) of policy or procedure or unacceptable behaviour or conduct to be investigated.
4. The names of any known witnesses or other individuals involved who you may wish to consider speaking to as part of the investigation. (It should be noted that where this is provided, this is not an exhaustive list of witnesses and further witnesses may arise from the investigation).
5. Confirmation of who the investigation report should be sent to and the anticipated timescale that the investigation should aim to be concluded within.

You should take time to re-familiarise yourself with the Council disciplinary policy and procedure before planning the investigation. Remember that advice and guidance is available from HR should you be unclear on any aspect of the investigation.

You should remember that your role as Investigating Officer is to carry out an independent investigation in order to establish to a reasonable degree of certainty what actually happened, and where possible, why this happened. You should maintain an impartial position and not take a position in support of either management or the employee under investigation. You also have a responsibility to ensure that the confidentiality of the investigation process is maintained at all times by all of those involved including witnesses.

Review the evidence to hand and identify the list of individuals (employee under investigation and witnesses) that will require to be interviewed. Remember that where an incident may have taken place in front of a large number of individuals there is no requirement to interview everyone, a representative sample should be selected initially.

You should make arrangements to conduct investigation meetings including making arrangements for notes to be taken, produced and issued and confirming the arrangements in writing to each individual.

Remember that the employee under investigation and witnesses should be given a minimum of seven calendar days' notice of the meeting and are entitled to be accompanied to the meeting by a work colleague or a trade union representative / official employed by a trade union.

An employee under investigation or a witness can agree to the meeting being held within the seven calendar day notice period, although this cannot be insisted upon.

Review the evidence to hand and identify any other documentation you require to access to inform and support the investigation. Make arrangements to get access to and take copies of this information, as it will be required to be appended to the investigation report.

For each investigation meeting to be carried out you should prepare a list of questions that you wish to ask to ensure that you get all the appropriate information. Although you will have a prepared list of questions, dependant on the responses, you may need to ask further probing / follow up questions at the investigation and these should be added to the list.

Where an individual advises that they are unable to attend the scheduled investigation meeting, you should clarify the reason for this, and where it is considered reasonable the investigation meeting should be re-arranged, normally within 14 calendar days, ensuring that seven calendar days' notice is again provided in writing. It should be noted that in normal circumstances an investigation would only be re-arranged once. If you are at all unsure you should seek advice from Human Resources.

Should an individual who is subject to the investigation under the disciplinary policy and procedure go off sick and advise that they are unfit to attend the investigation meeting, a referral to Occupational Health should be made as a matter of priority to seek independent advice as to whether they are fit to participate in the process and attend meetings or not.

Where the advice from Occupational Health is that the individual is fit to participate and attend then the investigation meeting should be arranged and the employee will be expected to attend.

Where Occupational Health indicates that the employee is not fit to participate or attend then the investigation meeting would be delayed until such time as Occupational Health indicates that they are fit to attend. During this time it is appropriate and sensible that other aspects of the investigation progress to avoid further delay.

Investigation meetings will have a note taker present so that the production of the note of the meeting should be straight-forward, however it is important that as Investigating Officer you still take your own notes of key information for your own benefit.

Following the investigation meeting the meeting notes should be typed up into a statement, the format of the statement will normally be the questions that were asked followed by the detail of the responses given. This statement will then be sent to the individual employee for them to sign as and return as an accurate reflection of the meeting.

Where an individual advises of amendments / changes to the statement it is your role as Investigating Officer to consider these requested changes. This should

involve checking the hand written notes to be able to verify any requested amendments reflect the discussion at the meeting and where necessary arranging for the note of the meeting to be amended and re-issued for signature.

Should the individual refuse to sign the statement on this basis, they should be asked to confirm this in writing; however this will not prevent the statement being used as a record of the discussion or delay the conclusion of the investigation.

During the investigation meetings it may become clear that you will need to arrange investigation meetings with other individuals. Where this is the case, you need to give consideration as to the need and benefit of this, will there be any additional information or corroboration of information that these individuals will be able to provide that you do not already have.

These meetings should be arranged in the same way as already indicated ensuring that individuals are given a minimum of seven calendar days' notice and advised of their right to be accompanied. An employee can agree to the meeting being held within the seven calendar days' notice period, although this cannot be insisted upon.

Once you have concluded all appropriate investigation meetings and have gathered all appropriate documentation you should review all of the information gathered and prepare the investigation report.

The investigation report does not require to be a particularly complex or lengthy document, however it must ensure that it documents all of the appropriate information gathered as part of the investigation either to substantiate or refute the allegations under investigation.

It is recommended that the investigation report is structured as follows:

1. Background information

This should be a brief summary of the circumstances surrounding the disciplinary matter e.g. the employee under investigation, their role, any previous disciplinary history, what happened, where it happened, who was involved and an outline of the investigation process.

2. Details of the allegation

A summary of the standards / rules / procedures that have been breached and why it is considered a disciplinary matter.

3. Chronology of events

A summary of information / evidence gathered to outline what has happened, when it has happened etc. This should also indicate where corroboration or conflicting information was gathered.

4. Investigation evidence

A summary of the appendices to the report i.e. investigation statements and other supporting documentation. Specific and detailed reference should be made to what

points from this information is relevant to the investigation and where there is evidence to support the allegations or not.

5. Mitigating circumstances

Any information that the employee under investigation and / or witnesses may have provided in mitigation for or against the allegations.

6. Recommendation

On the basis of the information gathered you should make a recommendation in respect of what if any action should be taken in respect of this case. It can also be appropriate in this section to make recommendations for management, perhaps where internal policies / procedures had not been implemented or followed and these had contributed to the situation.

There are a range of options in terms of possible recommendations including:

- A. The matter is dealt with informally.
- B. Formal disciplinary hearing should be convened.
- C. Insufficient evidence to support any form of action.
- D. No evidence to substantiate allegation.
- E. The matter is dealt with through capability in respect of poor work performance, rather than as a conduct issue.

Once the report has been drafted, a draft copy of this along with copies of all the appendices should be forwarded to Human Resources, who will be happy to review and provide advice and guidance in respect of concluding this.

Once finalised the report should be sent to the Head of Service / Manager who requested that the investigation was carried out and copied to Human Resources. They will consider all of the information and the recommendation then decide on the appropriate way forward, which may include convening a formal disciplinary hearing.

Regardless of the recommendation, you should write out to the employee under investigation at this stage and confirm that the investigation has been concluded and the report has been forwarded for consideration and that they will be advised in writing of the decision. Human Resources will be able to provide a template letter for you. Should a disciplinary hearing be convened the employee will be provided with a copy of the investigation report, investigation statements and any other supporting documentation that was submitted with the report, therefore this information will not be provided to the employee under investigation at this stage.

Where a disciplinary hearing is to be convened, as Investigating Officer you will be required to attend the meeting to present the findings of your investigation, this will normally be on the basis of the investigation report.

Sharing of allegations

It is important that in advance of any investigation meeting the employee who is the subject of the allegation(s) has a reasonable awareness of the allegations under investigation. The purpose of the investigation meeting is to provide the employee with full details of the allegations and to allow them to respond to them.

This approach does not require the Council to adopt a position of full disclosure in advance of the investigation meeting, and that such an approach is reasonable and is not contrary to natural justice.

It is important to remember that at the investigation stage, there has been no decision made that there is a disciplinary case to answer. This is a decision that is taken following conclusion of the investigation by a separate officer after consideration of the Investigating Officer's report and recommendation by a separate officer of the Council.

It is recommended that the following information is shared with an employee subject to investigation under the disciplinary policy and procedure, in advance of any investigation meeting:

- Summary of the allegations raised, where possible including dates, times and locations.
- Summary of the conduct standard(s) that may have been breached, if the allegations are substantiated.
- Indication as to whether if substantiated the allegations may be misconduct or gross misconduct.
- Where the allegations require to be notified to Disclosure Scotland, Care Inspectorate and / or a relevant professional body.

In some exceptional circumstances i.e. particularly complex investigations that may focus around large, complex documents it may be sensible to consider providing greater detail, or sharing the documents with the employee in advance of the investigation meeting.

The decision as to whether or not it is necessary to share such information in advance of the investigation meeting sits with the Investigating Officer, having taken advice from Human Resources.

At the investigation meeting it is important the specific and full detail of the allegation(s) under investigation are shared with the employee, which will include who has raised the allegation(s) in order that they can respond to them as part of the investigation and prior to any recommendation being made.

It is critical that at all times the investigation is carried out in accordance with the Council disciplinary policy and procedure and in a timely manner, as failure to do so could result in the Council being unable to take disciplinary action if this was considered appropriate or ultimately in the employee being able to raise a claim with an Employment Tribunal.

If you are at all unsure at any point during the investigation process please contact Human Resources for advice.

Investigating officers guide to third party evidence

In some investigations it will be necessary to consider evidence from third parties i.e. pupils, service users, members of the public or other individuals who are not Council employees.

You should ensure that the same procedures are followed for third party investigation meetings as for investigating meetings with employees:

- They should be written to with arrangements for the investigation meeting.
- They should be provided with a minimum of seven calendar days' notice of the meeting.
- They should be reminded that they can be accompanied to the meeting by an appropriate individual of their choice – this may include parent(s), other family member, guardian, social worker, advocate etc.
- A note of the meeting should be produced and sent out for agreement and signature.
- You should not advise a third party that the matter is being investigated under the Council disciplinary policy and procedures, it is sufficient to advise them that the matter is being investigated under the Council's employment procedures.
- Third parties will not be advised of the recommendations or outcome the investigation, although if they are the complainant, the Council must ensure that an appropriate response is sent to their complaint in accordance with the relevant complaints process, you should liaise with Human Resources and the relevant Complaints Officer.

You must take greater care in deciding whether it is necessary, possible and practical to interview third party witnesses. You should also give consideration to whether the information that they are likely to be able to give is critical to the investigation or could be gained from other individuals (employees of the Council) or in other ways, and therefore it may not even be necessary to interview the third party.

Interviewing pupils

Questioning of pupils needs to be sensitively handled. A pupil should not normally attend any formal hearing. All meetings should be in comfortable familiar settings with familiar adults present. These can be identified by the pupil or the parent / carer in discussion with the younger pupils and maybe their Head Teacher).

The purpose of the meeting is to find out what happened. It is not to ask a pupil what they thought or felt and to have their information verified by other sources e.g. other pupils, adults etc. The pupil should not be told who else will be approached as this could affect the quality of their replies.

For certain age ranges, it may be preferable for the Investigating Officer to have the pupils' Head Teacher or other senior teacher known to them present at the meeting, which may lead to a more considered response from the young person.

It is important that the Investigating Officer has appropriate skills for interviewing younger children, and training for Investigating Officers is essential.

Dependant on the pupil's age, they should be allowed to read and sign a copy of the note of the meeting, for younger pupils, their parent / guardian could sign to agree that the note of the meeting is an accurate reflection of discussion. If a parent disagreed with the note of the meeting, this should be recorded by the Investigating Officer.

If a parent raises concerns about the procedure the Investigating Officer can record these. If the parent wishes to complain about the procedure, this can be done so via the Council complaints procedure.

It is important that the pupil knows that the Investigating Officer will take their comments seriously. They should be given reassurance that they should not feel guilty, and should be told what will happen as a result of them being interviewed. Reassure them that nothing will be held against them for having reported the incident or what they saw or heard etc.

Points to consider:

- Interview each pupil individually.
- Where practical, try to remove all contact with other pupils until all interviews have been completed.
- Listen carefully and ask open questions to clarify (e.g. who, what, when, how etc.).

Don't lead the pupil e.g. don't start the interview by saying you are looking into an incident with X in the IT suite – start by asking when the pupil was last in the IT suite and what they were doing in there. Then establish if they can remember who else was there, and if necessary whether X was there.

If they can remember, ask how they can be certain of this i.e. what happened to make them remember that X was / wasn't there.

Don't ask leading questions:

- Was it your teacher / coach / friend that did this to you?
- Are you sure that's what happened?
- Why did you let them do that to you?
- Why do you think this happened?
- I expect you must be very upset about this?

Younger pupils may prefer to talk and draw at the same time or even do a drawing of what happened and talk it through. Diagrams can be used where appropriate e.g. to clarify statements.

At the end of the meeting the adult should go through what has been said or written (in a way respectful of the needs and understanding of each young person), allowing them to make any extra comments or change things. The written record should be made in the pupil's own words, and the parents / carers will need to know that a copy of the notes of the pupil's evidence will be made available to the relevant people, including the individual under investigation, should the matter progress to a formal disciplinary hearing. At the end, the pupil should be asked if they are happy with what has been written.

Interviewing service users

Great care needs to be taken in deciding whether a service user should be interviewed as part of a formal disciplinary investigation, either as a witness or as the complainant.

The overriding factors in the decision as to whether it is necessary to interview a service user in a formal investigation:

- Does the service user have the capacity to effectively engage in an investigation meeting.
- Will the service user be caused unacceptable levels of stress by involving them in a formal investigation meeting.
- Will the formal investigation meeting add any new information that has not already been obtained in other means or cannot be obtained by other means i.e. statement taken from them by a relevant professional or observations by a third party.
- Would not interviewing the service user potentially result in a situation that the Council could be accused of not carrying out a fair and thorough investigation, and as a result impact on the potential outcome of the disciplinary process.

Where a service user has support provided by the Council through Orkney Health and Care, the Council's Housing or Homelessness Service, or another service that suggests that service user may be particularly vulnerable, it is sensible to seek advice from the relevant service / professional in considering whether the service user is able to be, or capable of being, involved in the investigation. In such circumstances, details of the allegations under investigation should not be shared and the discussion should only focus on the ability of the service user to effectively engage in the formal investigation process.

Should the decision be taken to interview a service user, careful thought must be given to the arrangements for the investigation including support available to them; the location of the meeting, duration of the meeting - it may be necessary to keep the meeting short and have more than one meeting etc. Again advice should be sought from the relevant professionals within, for example, Orkney Health and Care as to how best to carry out the investigation meeting and it may be appropriate to have a professional from the relevant service to support the service user through the interview process.

It is not appropriate that a service user who either provides a written statement or in interview as part of a disciplinary investigation is called as witness to a hearing, the Council will rely on the written submissions.

Investigation Officer interview reminders

Introduction

1. Welcome the individual and confirm the purpose of the meeting as outlined in the letter sent.
2. Introduces those present explaining their role at the meeting.
3. Satisfy yourself that any individual attending with the employee is appropriate to be present at the investigating meeting.
4. Where the employee does not have anyone with them, check with the employee that they were aware that they could have a work colleague / trade union representative with them and that they are happy to progress with the investigating meeting.
5. Provide detail of the specific allegations made for the employee.

Conclusion

1. Confirm that a note of the meeting will be typed up and issued to the employee to check that it is an accurate reflection of the meeting and that the employee should sign and return this as soon as possible.
2. Outline the process going forward so the employee understands what will happen next and the likely timescales for this, this must include:
 - 2.1. Are more investigation meetings still to take place (do not confirm with whom).
 - 2.2. The investigation report will be written and submitted to (confirm name of who the report will go to) and anticipated timescale.
 - 2.3. Confirm that the employee will receive written confirmation from the Investigating Officer that the report has been prepared and submitted for consideration, but this will not at that stage confirm the recommendation of the report.
 - 2.4. The employee will subsequently receive written confirmation from (who report has been submitted to) as to the outcome of the investigation and the way forward.

Appendix 5: Chair of hearings guide

Your role is to ensure that the investigation report is independently considered and that where appropriate to decide on whether or not formal disciplinary action is appropriate.

Receiving the investigation report

1. Having received the report from the Investigating Officer you should ensure that you thoroughly read the report and all appendices to enable you to consider whether the recommended way forward is both fair and reasonable.
2. You can seek advice and guidance from Human Resources should you feel this is necessary in order for you to reach a conclusion, this should not normally be the same individual from Human Resources who was involved in the investigation.
3. Should you feel it necessary, based on the evidence presented, decide to reject the report recommendation and take an alternative course of action.
4. Once you have reached your decision you must ensure that you confirm the outcome of the investigation in writing to the employee, normally within seven calendar days of receiving the report.

Making arrangements for a disciplinary hearing

The ACAS Code of Practice on Disciplinary and Grievance Procedures requires that if it is decided that there is a disciplinary case to answer i.e. that a disciplinary hearing should be arranged, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting.

Where the way forward is for a disciplinary hearing to be arranged to consider the allegations, this should be progressed as soon as reasonably possible.

You should liaise with Human Resources to ensure that an HR Adviser has been allocated to act as your adviser at the hearing. The HR Adviser will support you to ensure that procedurally arrangements for the hearing are in accordance with the Council policy and procedure, these include:

1. Notifying the employee in writing of the arrangements for the hearing, ensuring that they are provided with a minimum of seven calendar days' notice in order that they can make any necessary arrangements.
2. Remind the employee of their right to be accompanied to the hearing by a work colleague, trade union representative or official employed by a trade union.
3. Notify the Investigating Officer of the arrangements of the hearing, so that they can attend in order to present their investigation and conclusion.
4. Ensure that the employee is provided with a copy of the investigation report and appendices in order that they can prepare their case for the hearing.

5. Remind the employee and Investigating Officer that they can call witnesses to the hearing and that the names of these must be provided no later than three working days in advance of the hearing. Once received the names of all witnesses called must be provided to both the employee and Investigating Officer in advance of the hearing (it is the responsibility of the employee or Investigating Officer to notify witnesses that they are calling of the arrangements for hearing and that they are requested to attend).

6. Remind the employee that they can submit documentation for consideration and reference at the hearing and that this must be submitted no later than three working days in advance of the hearing, so that it can be shared with the Investigating Officer in order for them to prepare.

7. Ensure that arrangements are made to hold the hearing, ensuring that rooms are available for any adjournments and to accommodate witnesses, it is recommended that separate rooms for management and employee witnesses are provided.

8. Ensure that arrangements are made for the hearing to be noted.

Structure of the disciplinary hearing

1. Ensure that at the start of the hearing the Investigating Officer, employee and any representative are called in at the same time, it is important that there is no inference that the Investigating Officer has been present in the room prior to the start of the hearing, as this could be seen as unfair and partial.

2. Thank everyone for attending, introduce everyone present and confirm their role / function at the hearing.

3. Confirm the purpose of the meeting, as a disciplinary hearing under the Council disciplinary policy and procedure to consider the allegations as outlined in the letter sent to advise of the arrangements.

4. Confirm the structure of the hearing, normally as follows:

- Investigating Officer will present their report and recommendations.
- (Where relevant) witnesses called by the Investigating Officer will be called individually and will have questions asked of them initially by the Investigating Officer, then by the employee or their representative and the Chair of the hearing and / or HR adviser.
- The employee or their representative will be able to ask questions of the Investigating Officer.
- The Chair and / or HR Adviser will be able to ask questions of the Investigating Officer.
- The employee or their representative will be able to present their case including any mitigation for consideration.
- (Where relevant) witnesses called by the employee will be called individually and will have questions asked of them initially by the employee or their representative, then by the Investigating Officer, the Chair of the hearing and / or HR adviser.

- The Investigating Officer will be able to ask questions of the employee in respect of their presentation / information submitted / evidence to the investigation.
- The Chair and / or HR Adviser will be able to ask questions of the employee in respect of their presentation / information submitted / evidence to the investigation.
- The Investigating Officer will be offered the opportunity to briefly sum up their investigation / recommendation, no new information should be presented at this stage.
- The employee or their representative will be offered the opportunity to briefly sum up their case / any mitigation, no new information should be presented at this stage.
- The Chair of the hearing will adjourn the hearing at this stage and ask both the Investigating Officer, the employee and any representative to leave the room.
- The Chair of the hearing will now consider all of the information submitted and presented in order to come to decision as to whether disciplinary action is warranted. The adjournment should be for as long as is necessary in order for there to be a decision reached.
- The hearing should be reconvened and the decision confirmed and the employee should also be advised of their right of appeal in respect of any disciplinary action taken.

5. Although it is preferable to reach a decision on the day, particularly in cases of gross misconduct the Chair of the hearing can decide to write out with the decision within seven calendar days.

Conclusion of the disciplinary hearing

1. The outcome of the hearing should be confirmed in writing within seven calendar days.
2. The outcome of the hearing should be copied to the relevant management within the Service.
3. The outcome of the hearing should be copied to Human Resources for retention on the master files.
4. Ensure that any required notification / referral of the outcome of the disciplinary hearing is sent to Disclosure Scotland / Care Inspectorate or professional body, with copies of the referral being sent to the employee and Human Resources.

Burden of proof

It is important to remember that a disciplinary hearing is not a court or legal process, it is an employment procedure. An employee is not found guilty or innocent of any allegations, as Chair of the hearing you are weighing up the evidence presented in respect of the allegations under investigation to establish whether there is reasonable weight of evidence to support the allegations.

If you are satisfied that there is reasonable weight of evidence, the decision you reach in respect of the level of disciplinary action / sanction should be able to be

seen as 'reasonable'. The standard that any Employment Tribunal would ultimately consider is that where another employer was to consider the evidence presented and action taken would they consider the outcome as 'reasonable'.

Possible disciplinary action / sanctions

- Formal verbal warning: current for six months for date of hearing, normally issued in the case of minor offences.
- Written warning: current for 12 months from date of hearing, normally issued in the case of more serious offences, either similar or different, or when there has been a less serious offence, but the individual has already received a formal verbal warning.
- Final written warning: current for 18 months from date of hearing, normally issued when there has been a written warning for a previous offence. Certain types of conduct, though not quite gross misconduct, may be so serious that, following a disciplinary hearing, a final written warning may be given for a first offence.
- Other sanctions as an alternative to dismissal: considered in cases where it was felt that dismissal would be a reasonable option, however it is considered that the employment relationship could continue, the Chair could if they wish consider a final written warning with additional sanction short of dismissal.

Such actions could include:

1. Disciplinary transfer or demotion (without pay protection) to another post.
 2. A period of suspension without pay.
 3. Loss of increment.
 4. The period for which any final written warning was valid could be extended (normally up to no more than twice the normal duration, however in very exceptional circumstances an indefinite final written warning that remains valid for the duration of the employment with the Council may be considered).
- Dismissal.

Dismissal would normally be the potential outcome where:

1. There are further repeated serious offences where the system of warning has been exhausted – in this instance dismissal would normally be with notice and payment in lieu of notice.
2. The allegations are considered to constitute gross misconduct, it is not considered possible that the employment relationship can continue and in these circumstances dismissal would be summary – without notice or payment in lieu of notice.

Appendix 6: Chair of appeal hearing's guide

It is important to remember that role of an appeal against disciplinary action / sanction is that of an independent review of the decision reached by the Chair of the original disciplinary hearing, in order to establish was the decision reached fair and reasonable on the basis of the information available to the chair of the hearing at the time.

An appeal should not be a general opportunity for the employee to re-run their case; rather they should focus on their specific grounds of appeal in respect of the outcome reached at the original disciplinary hearing.

Receiving notification of an appeal against disciplinary action

1. All notification of appeals are submitted to the Head of Human Resources and Performance using the standard Notification of Appeal against Disciplinary Action form (Appendix 2).
2. The relevant appeal Chair will be advised by Human Resources that an appeal has been submitted and that they are required to make arrangements to hear.
3. The appeal Chair will be allocated a representative from Human Resources to act as your professional adviser (for appeals against dismissal heard by Human Resources Sub-committee, the Sub Committee will have an adviser from both Human Resources and Legal Services) in respect of employment legislation, conditions of service and recommended best practice at the hearing.
4. You will also be provided with the notification of appeal and all of the papers from and the note of the original disciplinary hearing for reference.

Making arrangements for an appeal hearing

The HR representative will support you to ensure that arrangements for the appeal hearing are in accordance with the Council policy and procedure, these include:

1. Notifying the employee in writing of the arrangements for the appeal hearing, ensuring that they are provided with a minimum of seven calendar days' notice in order that they can make any necessary arrangements.
2. Remind the employee of their right to be accompanied to the appeal hearing by a work colleague, trade union representative or official employed by a trade union.
3. Notify the Chair of the original disciplinary hearing of the arrangements of the hearing, so that they can attend.
4. Ensure that the employee is provided with a copy of the investigation report and appendices in order that they can prepare their case for the hearing.
5. Remind the employee and chair of the original disciplinary hearing that they can call witnesses to the appeal hearing and that the names of these must be provided no later than three working days in advance of the appeal hearing. Once received the names of all witnesses called must be provided to both the employee and Chair

of the original disciplinary hearing in advance of the appeal hearing (it is the responsibility of the employee or chair of the original disciplinary hearing to notify witnesses that they are calling of the arrangements for appeal hearing and that they are requested to attend.

6. Remind the employee that they can submit documentation for consideration and reference at the appeal hearing and that this must be submitted no later than three working days in advance of the hearing, so that it can be shared with the Chair of the original disciplinary hearing in order for them to prepare.

7. Ensure that arrangements are made to hold the appeal hearing, ensuring that rooms are available for any adjournments and to accommodate witnesses, it is recommended that separate rooms for management and employee witnesses are provided.

8. Ensure that arrangements are made for the appeal hearing to be recorded and noted.

Structure of the appeal hearing

1. Ensure that at the start of the appeal the Chair of the original disciplinary hearing, employee and any representative are called in at the same time, it is important that there is no inference that the Chair of the original disciplinary hearing has been present in the room prior to the start of the appeal hearing, as this could be seen as unfair and impartial.

2. Thank everyone for attending, introduce everyone present and confirm their role / function at the appeal hearing.

3. Confirm the purpose of the meeting, as an appeal hearing under the Council Disciplinary Policy and Procedure to consider the grounds of appeal (as advised in the Notification of Appeal against Disciplinary Action form) in respect of the disciplinary action / sanction taken at the previous disciplinary hearing.

4. Confirm the structure of the hearing, normally as follows:

- The employee or their representative will be able to present their appeal.
- (Where relevant) witnesses called by the employee will be called individually and will have questions asked of them initially by the employee or their representative, then by the Chair of the original disciplinary hearing, the Chair of the appeal hearing / Human Resources Sub-committee and adviser(s).
- The Chair of the original disciplinary hearing will be able to ask questions of the employee in respect of their appeal.
- The Chair of the appeal hearing / Human Resources Sub-committee and adviser(s) will be able to ask questions of the employee in respect of their appeal.
- The Chair of the original disciplinary hearing will present their report and reasons for the decision reached.
- (Where relevant) witnesses called by the Chair of the original disciplinary hearing will be called individually and will have questions asked of them initially by the

Investigating Officer, then by the employee or their representative and the Chair of the appeal hearing / Human Resources Sub-committee and adviser(s).

- The employee or their representative will be able to ask questions of the presentation of the Chair of the original disciplinary hearing.
- The Chair of the appeal / Human Resources Sub-committee and adviser(s) will be able to ask questions of the presentation of the Chair of the original disciplinary hearing.
- The Chair of the original disciplinary hearing will be offered the opportunity to briefly sum up, no new information should be presented at this stage.
- The employee or their representative will be offered the opportunity to briefly sum up, no new information should be presented at this stage.
- The Chair of the appeal hearing will adjourn the appeal at this stage and ask both the Chair of the original disciplinary hearing, the employee and any representative to leave the room.
- The Chair of the appeal hearing / Human Resources Sub-committee and adviser(s) will now consider all of the information submitted and presented in order to come to decision in respect of the appeal. The adjournment should be for as long as is necessary in order for there to be a decision reached.
- The appeal hearing should be reconvened and the decision confirmed to the employee.

5. Although it is preferable to reach a decision on the day, the Chair of the appeal hearing / Human Resources Sub-committee can decide to write out with the decision within seven calendar days.

Conclusion of the appeal hearing

1. The outcome of the hearing should be confirmed in writing within seven calendar days, ensuring that where necessary; the employee is advised that there is no further right of appeal in respect of the disciplinary matter under the Council Disciplinary Policy and Procedure.
2. The outcome of the hearing should be copied to the relevant management within the Service.
3. The outcome of the hearing should be copied to Human Resources for retention on the master files.
4. Ensure that any required notification / referral of the outcome of the appeal hearing is sent to Disclosure Scotland / Care Inspectorate or professional body, with copies of the referral being sent to the employee and Human Resources.

Appeal outcomes

1. Having read all of the correspondence from the original disciplinary hearing and considered all of the information presented at the appeal the Chair of the appeal / Human Resources Sub-committee, with advice and guidance from their adviser(s), is able to consider any of the following outcomes.

- Uphold the original disciplinary action / sanction.
- Reduce the level of the original disciplinary action / sanction.
- Remove action short of dismissal, but uphold the final written warning.
- Dismiss the allegations, completely removing the original disciplinary action / sanction.
- Re-instate an employee following appeal against dismissal, with a lower level of disciplinary action / sanction including action short of dismissal; (Human Resources Sub-committee only).
- Re-instate an employee following appeal against dismissal, with no other disciplinary action / sanction. (Human Resources Sub-committee only).

2. The Chair of the appeal / Human Resources Sub-committee has to be satisfied that the action taken would be considered to be reasonable taking account of the circumstances and any mitigation put forward.