

# **Chester-le-Street**

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## **District Council**

### **DISCIPLINARY AND DISMISSAL POLICY AND PROCEDURE**



**Human Resources**  
Employee communication



Working together to fulfil the needs of our communities

## Disciplinary and Dismissal Policy and Procedure

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## 1. INTRODUCTION

- 1.1 In order to ensure that the Council maintains a quality service and exceptional levels of customer care, high standards of conduct are expected from all employees when dealing with the public, their colleagues and Council members. The Council's Code of Conduct for Employees details the standards of conduct expected from all employees. Where employees fail to meet the standards expected of them, disciplinary action may be appropriate. Any disciplinary action will be fully considered and applied fairly and equitably.
- 1.2 This policy and procedure has been produced in accordance with the Employment Rights Act 2002 relating to the changes made to statutory dismissal and disciplinary procedures.
- 1.3 This policy and procedure applies to all employees of the Council, regardless of status and whether occupying a permanent or temporary post or in full-time or part-time service. The Chief Executive and Chief Officers are covered by the procedures contained within the JNC conditions of service for Chief Executives and Chief Officers respectively. A copy of this procedure is provided to all employees upon commencement of their employment. This procedure will apply in all circumstances when employment is terminated except in cases where:
  - a) the termination relates to a casual employee who has less than 13 weeks continuous service;
  - b) less than six months probationary service has been completed and dismissal arises from unsuitability for confirmation of appointment;
  - c) an employee resigns or leaves by mutual consent
  - d) an employee is dismissed on the grounds of early retirement or redundancy. The Management of Change policy details the procedure for such dismissals.
  - e) an employee is dismissed on the grounds of ill-health or capability. The procedure for such dismissals are covered in the Managing Attendance at Work policy and procedures.
  - f) an employee is retiring at normal age retirement
- 1.4 No disciplinary action shall be taken against an employee who is a Shop Steward or other local representative of a trade union or employees association until the circumstances of the case have been discussed with a full-time official or other appropriate representative of the union or association concerned.

## **2. GENERAL PRINCIPLES**

- 2.1 In every case, when determining disciplinary action to be taken, the authorised Officer or appropriate Committee shall bear in mind the need to satisfy the test of reasonableness in all circumstances. So far as practically possible, account shall be taken of the employee's record and any other relevant factors, e.g. equality/diversity needs.
- 2.2 This procedure is concerned with the process of taking disciplinary action and is not designed to cover those instances where management may consider it necessary to give an informal oral warning to an employee as part of the normal exercising of supervisory responsibility. Any such warnings should not be confused with a formal oral warning as detailed in section 6.1.
- 2.3 Except in cases of gross misconduct (see section 7), no employee shall be dismissed for a first breach of conduct. Provision will be made for counselling and warnings and the employee will be given reasonable time to improve their conduct.

## **3. INVESTIGATIONS**

- 3.1 Where it is considered that a disciplinary matter has arisen as a result of an employee's conduct, work or omission a formal investigation will as a general rule be carried out by the employee's line manager/supervisor (the Investigating Officer). In certain circumstances it may not be appropriate for the employee's line manager/supervisor to carry out the investigation. If this is the case, an alternative manager/supervisor will be nominated to conduct the investigation.
- 3.2 The Investigating Officer will seek to establish the full circumstances of the matter, which may involve interviewing witnesses. It may also be necessary for the Investigating Officer to consult with other departments (e.g. Human Resources, Legal and Democratic Services, Finance and ICT). Where the matter is thought to involve irregularities with cash, stores, Council property or exercise of Council functions, Internal Audit will be notified.
- 3.3 Written notes of any interviews with witnesses will be taken. These notes and all other evidence gathered during the investigation will be held confidentially by the Investigating Officer.
- 3.4 As part of the investigation, the employee will be invited to a formal investigative hearing and will be given an opportunity to respond to the allegations. The employee will be informed in writing or verbally if required of any formal investigative hearing at least three days in advance of hearing. In addition, the employee will be informed of the reason for the meeting, the allegations against them and their right to be accompanied by a Trade Union Representative or work colleague.

- 3.5 Any investigative hearing will be attended by a member of the Human Resources Team, who will assist the Investigating Officer.
- 3.6 Investigative meetings are held to establish the full circumstances of the alleged disciplinary offence and to decide if the issue warrants presentation at a disciplinary hearing. The meeting itself is not a disciplinary hearing.
- 3.7 If, following an investigative meeting, sufficient evidence exists to suggest the employee has committed a disciplinary offence, a disciplinary hearing will be arranged. (See section 5 for the procedure to be followed in these cases). If it is decided that no further action is necessary the employee will be informed in writing and/or verbally if required.

#### **4. SUSPENSION**

- 4.1 In certain circumstances it may be necessary to suspend an employee to ensure that a fair investigation can be conducted. Other circumstances in which suspension may be considered appropriate, include incidents of serious misconduct or where relationships have broken down or there are risks to the Council's property or to other parties. In such cases, the employee may be immediately suspended on full (basic) pay while the investigation proceeds. Suspension is not a disciplinary action. Prior to any suspension, approval must be sought from the relevant Service Team Manager and Chief Officer.
- 4.2 Where suspension is necessary, the decision to suspend will be confirmed in writing and/or verbally to the employee including details of payments that will be made during the suspension. The employee will also be informed of the reasons and terms of the suspension e.g. that they may not contact or discuss the suspension with colleagues.
- 4.3 The suspension will be reviewed after an agreed period to ensure it is not unnecessarily extended. All parties will be expected to co-operate to ensure the period of suspension is as short as possible.
- 4.4 If, at the conclusion of any investigative or formal hearing, it is decided that no further action is necessary the suspension will be terminated and the employee will receive all monies to which they would have been entitled had they not been suspended.

## **5. DISCIPLINARY HEARINGS**

- 5.1 If it is decided that there is a disciplinary case to answer, the employee will be informed in writing and/or verbally that they are required to attend a disciplinary hearing. The employee will be given five working days notification that they are required to attend the hearing. The employee will be provided with details of the alleged misconduct, the time and place of the hearing and informed of their right to be accompanied by a Trade Union Representative or work colleague. Any documentary evidence gathered during the investigation which is to be presented as part of the management case, will be provided to the employee at least five working days in advance of the hearing. This will include names of any witnesses who will be attending the hearing. If required, evidence can be provided in various media/formats e.g. large print, Braille, audio tape, etc.
- 5.2 The employee will be asked to provide any documentation they intend to rely on during the proceedings in advance of the hearing, including the names of any witnesses at least three working days in advance of the hearing.
- 5.3 The disciplinary case will be heard by a panel of Authorised Officers (see section 12). The panel will be supported by a member of the Human Resources Team, who has not been involved in the case at investigatory stage. The panel will wherever possible be representative, for example, in terms of gender, race, religion, etc. For example, if the employee being disciplined is female, then there should be a woman on the panel.
- 5.4 At the disciplinary hearing the Investigating Officer will present the management case to the panel, including all evidence gathered during the investigation. The employee or their representative will be given the opportunity to question the Investigating Officer and any witnesses. The panel may also wish to question the Investigating Officer and any witnesses. The employee or their representative will then present their case and may be questioned by the Investigating Officer or members of the panel.
- 5.5 The Chair of the panel may adjourn the proceedings at any stage if necessary. If the hearing is adjourned the Chair will clearly state the reason for the adjournment, the length of the adjournment and details of any action or information required before the hearing can proceed.
- 5.6 At the end of the hearing, the panel will discuss in private the details of the case. The employee will be informed of the decision of the panel in writing and/or verbally. This will include the reasons for the decision, details of any disciplinary action to be taken and an explanation of their right of appeal.

## **6. DISCIPLINARY ACTION**

6.1 In cases, other than gross misconduct, where there is a reasonable belief that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

i) **Formal Oral Warning**

For a minor offence/s a formal oral warning may be issued. A copy of the warning will be recorded on the employee's personal file for a period of 12 months (this period may be extended in exceptional circumstances). Formal oral warnings can be issued by managers following an investigation, providing advice has been sought from Personnel. A formal oral warning constitutes the first stage of the disciplinary procedure and repeat offences may result in further disciplinary action.

ii) **Written Warning**

A written warning may be issued for more serious initial offences or a failure to improve or change behaviour following a formal oral warning. The employee will also receive a verbal explanation of the warning. A copy of the warning will be recorded on the employee's personal file for a period of 12 months (this period may be extended in exceptional circumstances). A written warning constitutes the first or later stage of the disciplinary procedure and repeat offences may result in further disciplinary action. If required, a 'written' warning can be provided in an alternative format e.g. large print, Braille, audio tape, etc.

iii) **Final Written Warning**

A final written warning may be issued for a very serious first offence that falls short of dismissal or where there is a failure to improve or change behaviour following an earlier warning(s). The employee will also receive a verbal explanation of the warning. A copy of the warning will be recorded on the employee's personal file for a period of 12 months (this period may be extended in exceptional circumstances). A final written warning constitutes the third or later stage of the disciplinary procedure and repeat offences may result in dismissal. If required, a final 'written' warning can be provided in an alternative format e.g. large print, Braille, audio tape, etc.

iv) **Dismissal with Notice or Pay in Lieu of Notice**

Dismissal may occur where there have been subsequent offences or a failure to improve or change behaviour following an earlier warning(s).

v) **Other Penalties**

Demotion, disciplinary transfer, stoppage of pay, non-payment of annual increments, or other penalty short of dismissal may be imposed in conjunction with a warning issued or as an alternative to dismissal.

6.2 The stages do not have to be followed in strict order. For example, it may be appropriate to issue a final written warning for a very serious first offence. An employee may also be issued with more than one formal oral warning or written warning. The penalty imposed will be given full consideration to ensure it is appropriate to the behaviour/offence.

6.3 Following a disciplinary hearing, the employee will be notified in writing and/or verbally if required of the disciplinary action to be taken. Confirmation of the outcome of the disciplinary hearing will include details of the offence, the reasons for the disciplinary action imposed, the consequences the employee may face should they commit a further offence or fail to improve or change their behaviour, the employees right of appeal and the date on which the disciplinary action will expire.

6.4 If, following a disciplinary hearing, it is decided that no disciplinary action is necessary, the employee will be notified in writing and/or verbally.

**7. GROSS MISCONDUCT**

7.1 Gross misconduct is regarded as misconduct which fundamentally breaches the contractual relationship between the employee and the Authority. Examples of gross misconduct which may lead to summary dismissal are included at Appendix A.

7.2 If an allegation of gross misconduct is made, the employee will normally be suspended on full pay while an investigation takes place. (See section 4 for the procedure to be followed in these cases). The allegation will be fully investigated in accordance with section 3.

7.3 If, following an investigation, it is decided that there is a disciplinary case to answer, the procedure set out in section 5 will apply.



- 7.4 If, following a disciplinary hearing there is reasonable belief that an employee is guilty of gross misconduct, the penalty will be summary dismissal without notice. In these circumstances, the dismissal will be with immediate effect.
- 7.5 The decision to dismiss without notice will be confirmed in writing and/or verbally if required to the employee. Confirmation of the decision will include details of the offence, the reasons why summary dismissal has been imposed and the employee's right of appeal.
- 7.6 If, following an appeal, the decision to summarily dismiss is overturned, the employee will be reinstated with effect from the date of the original dismissal and will incur no loss of earnings.

## **8. CRIMINAL OFFENCES**

A criminal offence committed outside of employment will not automatically be regarded as a reason for dismissal. Each case will be considered individually with the main consideration being whether the offence is liable to make the employee unsuitable for his or her type of work or is unacceptable to other employees, Elected Members or members of the public.

## **9. RIGHT OF APPEAL**

- 9.1 Any employee who has disciplinary action taken against them has a right of appeal. Appeals should be made in writing where possible or verbally to the Head of Organisational Development within 10 working days of receipt of the letter confirming the disciplinary action.
- 9.2 Following receipt of confirmation to appeal against the decision, an appeal hearing will be scheduled. The employee will be informed in writing and/or verbally if required of the date, time and location of the hearing and their right to be accompanied by a Trade Union Representative or work colleague at least five working days in advance of the appeal hearing.
- 9.3 Appeals will normally be heard by the Chief Officer, supported by the Head of Organisational Development. The Chair of the original disciplinary hearing will present the evidence to the appeal hearing including the reasons for imposing the disciplinary penalty. The employee will then be asked to present their case for appeal (in line with 9.1 above). The Chair of the appeal hearing may wish to question the Chair of the original hearing or employee during the proceedings.

- 9.4 Following an appeal hearing, the following options will be available:
- a) Fully uphold the decision of the original panel. The disciplinary action will stand and the employee will have no further right of appeal (except in cases of dismissal, see section 9.6).
  - b) Uphold the decision to invoke disciplinary action but impose a lesser penalty.
  - c) Overturn the decision of the original panel.
- 9.5 On completion of the appeal hearing, the decision of the appeal panel will be confirmed in writing and/or verbally to the employee.
- 9.6 In cases where dismissal is the penalty imposed and the first appeal is unsuccessful, the employee will have the right to a further appeal to the Staff Sub Committee. Appeals should be made in writing where possible or verbally within 10 working days of receipt of the letter informing the employee of the outcome of the first appeal.
- 9.7 Appeals against dismissal will normally be heard by the Chair of the Staff Sub-Committee and the Staff Sub-Committee. The Chair of the original disciplinary hearing will present the evidence to the Staff Sub-Committee including the reasons for the decision to dismiss. (The Chief Officer who heard the first appeal and Investigating Officer may be called as witnesses.) The employee will then be asked to present their case for appeal against dismissal.
- 9.8 Following the appeal hearing to the Staff Sub Committee, the following options will be available:
- a) Fully uphold the decision of the original panel. The dismissal will stand and the employee has no further right of appeal.
  - b) Uphold the decision to invoke disciplinary action but impose a lesser penalty, re-instating the employee.
  - c) Overturn the decision of the original panel.
- 9.9 On completion of the appeal hearing to the Staff Sub-Committee, the decision of the appeal panel will be confirmed in writing to the employee.

## 10. REARRANGEMENT OF MEETINGS

- 10.1 If an employee cannot attend an investigative meeting, a disciplinary hearing or an appeal hearing they must inform their line manager as far in advance of the meeting as possible. The meeting will then be rearranged for a mutually convenient time.
- 10.2 If an employee fails to attend a meeting through circumstances outside of their control and unforeseeable at the time the meeting was arranged (e.g. illness) another meeting will be arranged.
- 10.3 If an employee fails to attend an original or rearranged meeting without good reason, a decision may be taken in the employee's absence.
- 10.4 If an employee's Trade Union Representative or work colleague cannot attend a meeting, it will be rearranged providing the revised date is not more than five working days after the original date of the meeting. This timeframe may be extended by mutual agreement.

## 11. GRIEVANCES RAISED DURING DISCIPLINARIES

- 11.1 If, during the disciplinary process, an employee wishes to raise a grievance, consideration will be given to suspending the disciplinary proceedings until the grievance is resolved.
- 11.2 Depending on the nature of the grievance, it may be appropriate to appoint another manager to deal with the disciplinary process to ensure impartiality. (E.g. in cases where an employee raises a grievance against the Chief Officer scheduled to hear the disciplinary case.)

## 12. AUTHORISED OFFICERS

- 12.1 In most circumstances officers authorised to carry out stages of the disciplinary process will be as follows:

<u>Stage</u>	<u>Authorised Officer</u>
Investigating Officer	Line Manager or Supervisor
Investigative Hearing Support	Human Resources Officer
Disciplinary Panel Chair Person	Service Team Manager
Disciplinary Panel Support	HR Officer/Manager not involved in investigation
Appeal Panel Chair Person	Chief Officer
Appeal Panel Support	Head of Organisational Development

- 12.2 Where the procedure is applied to a Line Manager or Supervisor, the Investigating Officer will be the Service Team Manager. Any disciplinary hearing will be chaired by a Chief Officer and appeals will be heard by the Chief Executive.

- 12.3 Where the procedure is applied to a Service Team Manager, the Investigating Officer will be the Chief Officer and the disciplinary panel will be chaired by the Chief Executive. Appeals will be heard by the Staff Sub Committee.
- 12.4 In certain circumstances it may not be appropriate for the employee's immediate line manager/supervisor, Service Team Manager or Chief Officer to carry out the investigation or disciplinary hearing. If this is the case, an alternative manager/supervisor, Service Team Manager or Chief Officer will be nominated to conduct the investigation or disciplinary hearing.
- 12.4 Where the process is applied to the Chief Executive, Chief Officers or a statutory officer (e.g. Head of Paid Service, Monitoring Officer), the procedures contained within the JNC Conditions of Service for Chief Executives and Chief Officers will apply.

### **13. EQUALITIES AND DIVERSITY**

- 13.1 Chester-le-Street District Council is committed to promoting equality and valuing diversity in both service delivery and employment. Care has been taken in drafting this policy and procedure to ensure that the Council do not unjustifiably discriminate against any minority group. This policy and procedure supports the Council's Equal Opportunities Policy and has undergone a diversity impact assessment by the Council's Equality and Diversity Project Team.
- 13.2 Dismissals and Disciplinary cases are monitored and reported on a monthly basis via the Information Bulletin and on a quarterly basis via the HR Quarterly Report. Monitoring of this policy and procedure will incorporate equalities and diversity consideration.

### **14. MONITORING AND REVIEW.**

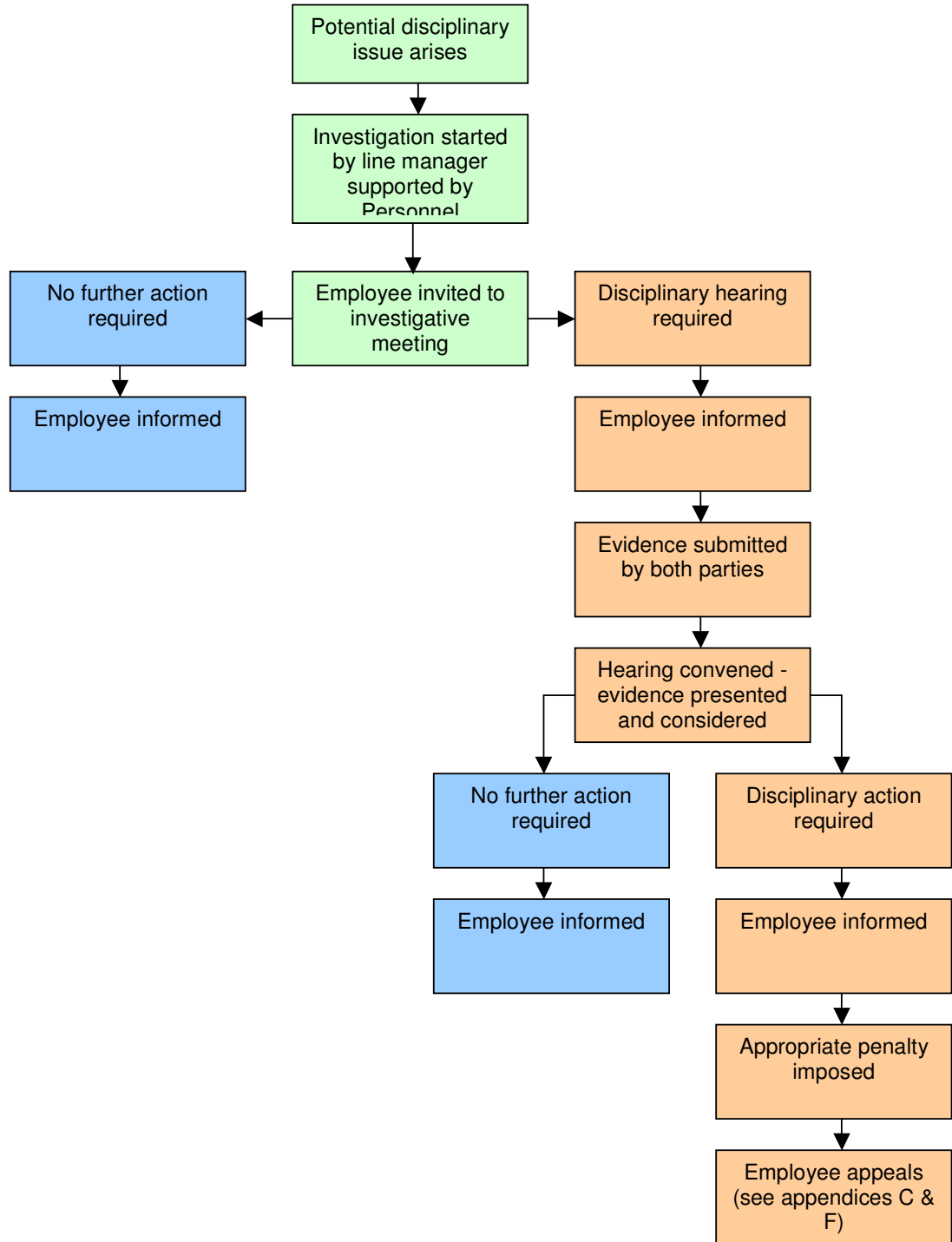
- 14.1 The HR and Policy Manager is responsible for monitoring this policy and procedure and ensuring that it is implemented and applied consistently. The policy will be reviewed every 24 months or earlier if legislative changes dictate.

## GROUNDS FOR GROSS MISCONDUCT

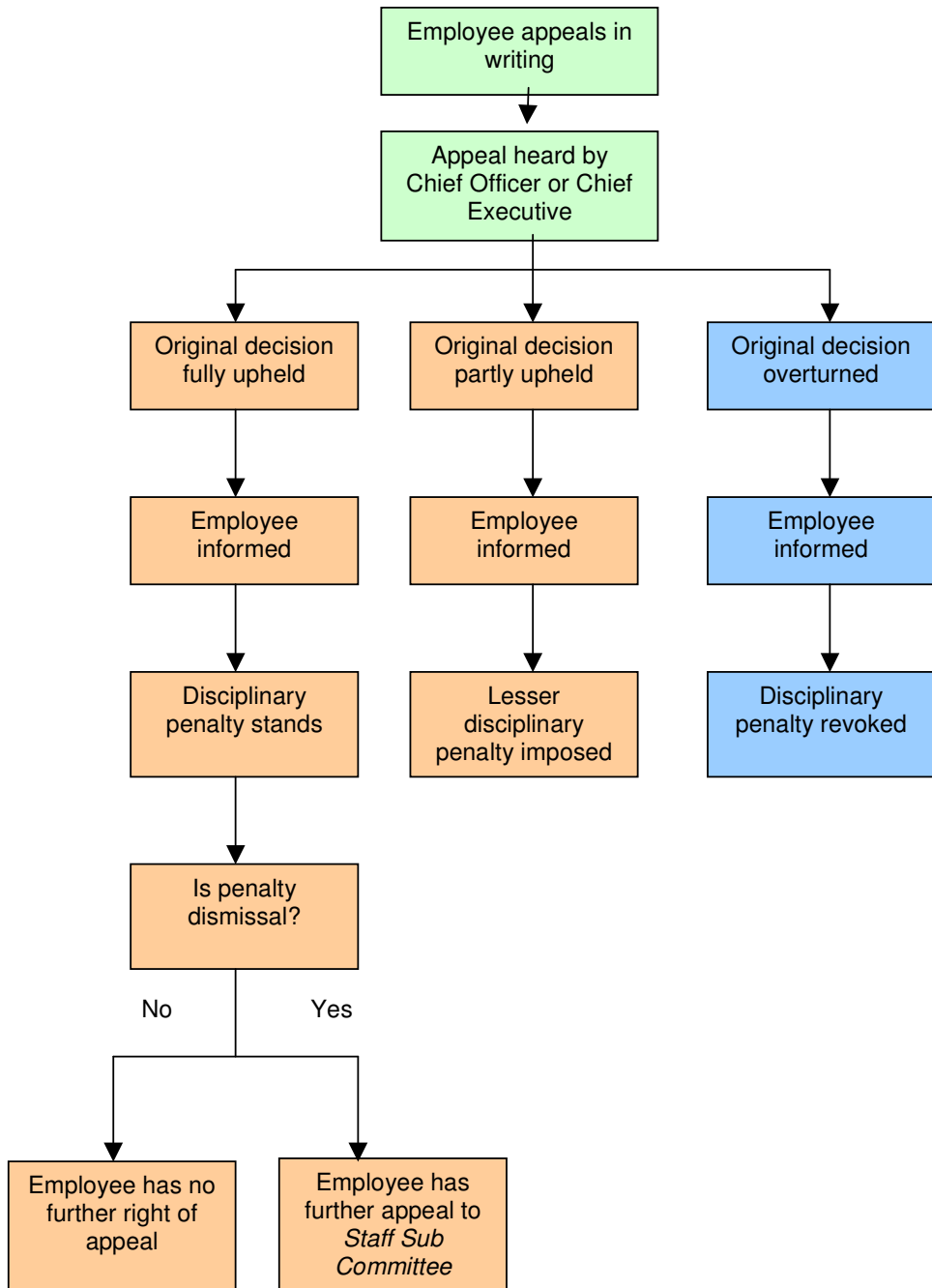
The following are examples of behaviour/offences amounting to gross misconduct. This list is not exhaustive or exclusive and there may be other offences of a similar gravity, which may constitute gross misconduct.

- Theft or unauthorised removal or receipt of stolen property belonging to the Authority, an employees, an Elected Member or a member of the public
- Malicious damage to the Authority's property
- Forgery including the deliberate falsification of records, claims or other documentation
- Threatening, fighting or physical assault against any employee, Elected Member or member of the public
- Harassing, victimising, abusing or bullying or knowingly discriminating against any employee, Elected Member or member of the public (please see the Dignity at Work Policy, which will be followed in these cases)
- Serious insubordination and/or refusal, without reasonable cause, to carry out a legitimate instruction given by an authorised member of staff
- Wilful and serious breach of confidentiality
- Wilful and serious breach of Health and Safety, Financial or IT use regulations or instructions
- Dangerous driving whilst on Authority business or premises
- Serious incapability to work due to being under the influence of alcohol or unauthorised drugs, where conduct could endanger employees, Elected Members or members of the public
- Negligence resulting in serious loss, damage or injury
- Using confidential information gained in the course of employment for personal gain

PROCEDURAL FLOW CHART - DISCIPLINARY



**PROCEDURAL FLOW CHART - APPEALS**



**GUIDELINES FOR CONDUCTING AN INVESTIGATION**

During investigations into alleged disciplinary offences, these guidelines should be followed to ensure fairness. Investigations should only be carried out by Authorised Officers (see section 12).

1. Inform the employee of the allegations made against them.
2. Inform the employee that an investigation will be conducted, by whom and the timescale for completion where possible (usually within 14 working days).
3. Invite the employee to an investigative hearing where they will have an opportunity to respond to the allegations.
4. Establish the facts of the allegations involving any other relevant teams as appropriate, for example, ICT, Finance, Legal and Democratic Services and/or Internal Audit, depending on the nature of the allegations.
5. Interview any witnesses to the alleged offence, ensuring that all statements are recorded accurately in writing and are signed by the witnesses.
6. Considering all of the evidence, including the employee's response, decide if the case warrants presentation at a disciplinary hearing.
7. Inform the employee verbally and in writing of the outcome of the investigation meeting.



**FORMAT OF DISCIPLINARY HEARINGS**

During disciplinary hearings, the following process should be adhered to. The following will normally need to be present at a hearing either to present evidence or hear the case:

- Service Team Manager (Chair)
  - HR Officer/Manager not involved in initial investigation (chair support)
  - Line Manager or Supervisor (Investigating Officer)
  - Human Resources Officer (Investigating Officer support)
  - Witnesses
  - Employee
  - Employee's representative
  - Employee's witnesses
1. The Chair of the hearing will outline the procedure to be followed and make any introductions as necessary.
  2. The Investigating Officer will state the case against the employee and call any witnesses to the alleged offence.
  3. The employee or their representative will have the opportunity to question the statements made by the Investigating Officer and any witnesses.
  4. The Chair and other panel members will have the opportunity to ask questions.
  5. The employee will present their case and call any witnesses.
  6. The Investigating Officer will have the opportunity to question the statements made by the Investigating Officer and any witnesses.
  7. The Chair and other panel members will have the opportunity to ask questions.
  8. The Investigating Officer will sum up their case.
  9. The employee will sum up their case.
  10. Both parties will be asked to withdraw while the panel consider their decision.
  11. The panel will reconvene and inform the employee and the Investigating Officer of the decision of the panel.
  12. The decision will be confirmed in writing and/or verbally to the employee.
- NB The hearing may be adjourned at any stage at the discretion of the Chair.

## FORMAT OF DISCIPLINARY APPEAL HEARING

During appeal hearings, the following process should be adhered to. The following people will generally need to be present at a hearing either to present evidence or hear the case:

- Chief Officer (Chair)
  - Head of Organisational Development (chair support)
  - Service Team Manager who chaired the disciplinary panel
  - Human Resources Officer (Investigating Officer support)
  - Employee
  - Employee's representative
1. The Chair of the hearing will outline the procedure to be followed and make any introductions as necessary.
  2. The Chair of the original disciplinary hearing will present their case, explaining how the original panel made their decision.
  3. The Chair and other panel members will have the opportunity to ask questions.
  4. The employee will present their case stating the grounds on which they are appealing.
  5. The Chair and other panel members will have the opportunity to ask questions.
  6. The Chair of the original disciplinary hearing will sum up their case.
  7. The employee will sum up their case.
  8. Both parties will be asked to withdraw while the panel consider their decision.
  9. The panel will reconvene and inform the employee and the Service Team Manager of the decision of the panel.
  10. The decision will be confirmed in writing and/or verbally to the employee.
- NB The hearing may be adjourned at any stage at the discretion of the Chair.

### **FORMAT OF DISCIPLINARY APPEAL HEARING TO STAFF SUB-COMMITTEE**

During appeal hearing to the Staff Sub-Committee, the following process should be adhered to. The following people will generally need to be present at the hearing either to present evidence or hear the case:

- Chair of the Staff Sub-Committee
  - Head of Organisational Development (Chair support)
  - Members of the Staff Sub-Committee
  - Service Team Manager who chaired the disciplinary panel
  - Human Resources Officer (Investigating Officer - support)
  - Employee
  - Employee's representative
1. The Chair of the hearing will outline the procedure to be followed and make any introductions as necessary.
  2. The Chair of the original disciplinary hearing will present their case, explaining how the original panel made their decision.
  3. The Chair and Staff Sub-Committee members will have the opportunity to ask questions.
  4. The employee will present their case stating the grounds on which they are appealing.
  5. The Chair and Staff Sub-Committee members will have the opportunity to ask questions.
  6. The Chair of the original appeal hearing will sum up their case.
  - 7.
  8. Both parties will be asked to withdraw while the Staff Sub-Committee consider their decision.
  9. The Sub-Committee will reconvene and inform the employee and the Chair of the original appeal panel of the decision of the panel.
  10. The decision will be confirmed in writing to the employee.
- NB The hearing may be adjourned at any stage at the discretion of the Chair.