

Chester-le-Street

District Council

**POLICY AND PROCEDURE FOR DEALING WITH
POOR PERFORMANCE**



Human Resources
Employee communication



Working together to fulfil the needs of our communities

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1. INTRODUCTION

- 1.1 Performance issues are different from discipline as they relate to employees who would improve their performance if they could, but despite their best efforts, they are unable to do so. Capability is therefore defined as “having the ability or skill to do something; competently and efficiently.”
- 1.2 This procedure seeks to:-
- Assist employees to improve their performance, wherever possible, when such deficiencies exist.
 - Provide a fair and consistent means of dealing with performance problems without the use of the disciplinary procedure.
 - Provide an alternative means of dismissal where all other options have been explored
- 1.3 The Authority will seek to ensure that all employees are adequately trained and competent to undertake their duties. However, it is accepted that performance can vary from time to time and in the majority of cases informal counselling, training and or development will bring about an acceptable improvement. Some cases of poor performance are related to conduct, where there is a wilful refusal to improve, will be dealt with as conduct under the Discipline Procedure. However, use of the Poor Performance procedure may still ultimately lead to dismissal.
- 1.4 This policy and procedure supports strategic goal 5 of the Human Resources Service Plan which is “to operate modern and inclusive employment policies compliant with legislative requirements.”
- 1.5 This policy and procedure has clear and direct links to the following:
Recruitment and Selection Procedures, Induction Policy and Procedure, Probation Policy and Procedures, Dignity at Work Policy, Competency Frameworks, PDP Scheme and the Council’s Performance Management Framework.

2. SCOPE

- 2.1 This procedure applies to all employees of the Council.
- 2.2 This procedure does not apply to matters of conduct, which are dealt with under the Council's Disciplinary and Dismissal Policy and Procedure.
- 2.3 Incapability related to long term health issues will be dealt with in accordance with the Authority's procedure for Managing Attendance at Work.
- 2.4 This procedure should be used when the normal informal or day to day guidance given by a supervisor, and as part of the Personal Development and Performance Review Scheme, has failed to improve an employee's standard of performance and it is considered to be related to ability rather than a wilful refusal to improve. If at any stage the line manager has reason to believe that the under performance is due to poor conduct or lack of effort on the part of the employee, he/she will stop the poor performance process and may request formal disciplinary proceedings. The employee will be informed regarding the change in procedure and reminded of the right to be accompanied.
- 2.5 The HR section should be consulted to ensure that the correct procedure is followed at every stage.

3. ROLES AND RESPONSIBILITIES

- 3.1 The Council will:
- Approve policy
 - Monitor corporate results
- 3.2 The Staff Sub Committee:
- Consider appeals against dismissal
- 3.3 Chief Officers will:
- Monitor directorate performance levels
 - Ensure policy implementation
 - Develop performance strategies
 - Provide support to Service Team Managers in performance management
- 3.4 Service Team Managers, Team Leaders and Supervisors will:
- Ensure consistent policy implementation
 - Ensure all employees are aware of procedures relating to performance at work
 - Communicate clear performance standards and expectations
 - Undertake training on managing performance
 - Provide regular and frequent feedback on performance
 - Reward and recognise good performance, informally and formally
 - Identify any work related problems
 - Monitor and analyse departmental/individual performance
 - Manage poor performance
 - Develop performance improvement strategies
 - Treat all employees fairly and sensitively
 - Identify training needs, counselling and other intervention where necessary
- 3.5 The Human Resource Team will:
- Provide advice/guidance
 - Provide training on managing poor performance
 - Assist managers with individual cases
 - Attend regular meetings to advise on strategies to improve performance
- 3.6 Employees will:
- Adhere to the Authority's performance standards
 - Attend performance interviews as requested
 - Maximise performance
- 3.7 Trade Union representatives will:
- Adhere to the Councils policies and procedures
 - Advise/assist trade union members
 - Work with managers to ensure the policy is effective and fairly applied

4. PROCEDURE

- 4.1 It is important that you first make sure you are faced with poor performance rather than misconduct. The difference between poor performance and misconduct is explained below:

Misconduct is generally a failure to follow a workplace rule (whether written or unwritten). Poor performance is simply the failure of an employee to do the job at an acceptable level. An acceptable level should be capable of being measured in terms of quality, quantity, time and cost.

In all cases the cause of unsatisfactory performance should be investigated. The following guidelines will help to identify the cause and assist in ensuring the appropriate action is taken.

STAGE 1 INFORMAL COUNSELLING

- 4.2 Most performance problems can be resolved through effective communication between supervisors and their employees. The focus of this discussion should be to tell the employee exactly what must be done to bring performance up to an acceptable level, both by providing specific examples of poor performance and also suggesting ways that performance can be improved.
- 4.3 It is critical that you review the employee's performance to ensure that they clearly convey what needs to be done in the job. Be sure to ask the employee if he/she understands precisely what must be done to bring performance to an acceptable level.
- 4.4 If the employee accepts there is a problem the Supervisor will produce an informal action plan with the employee at this stage.

The agreed action plan should specify :-

- What standard/level of performance the employee is expected to achieve.
 - A realistic timescale within which improvement is to be achieved.
 - All necessary training and development to be provided.
 - Dates for regular review meetings
- 4.5 Immediately after informal counselling make a dated note on file and document the matters discussed. The employee should be given a copy.

STAGE 2 FIRST FORMAL REVIEW (FORMAL OPPORTUNITY TO IMPROVE)

- 4.6 Where an employee's ability to perform the duties of his or her post is in question despite action as in 3.1, the Supervisor will advise the individual that they are dealing with the matter under this procedure. The Supervisor accompanied by a HR Officer will arrange a formal interview to discuss the matter sympathetically with the employee, giving the employee at least 5 working days notice.
- 4.7 The employee has the right to be accompanied at interview by a Trade Union Representative, colleague or friend of their choice, who does not have a conflict of interest.
- 4.8 At the interview the employee will be given specific and unambiguous detail of how their performance is falling short, a summary of action taken so far and given the opportunity to comment.
- 4.9 If the employee's conduct is identified as having contributed to his/her unsatisfactory performance in the job, it may be more appropriate to consider action under the terms of the Disciplinary Procedure.
- 4.10 If there is any suggestion that the poor performance is linked to illness, injury or other physical or mental condition then this procedure should be suspended until advice from the Occupational Health Doctor has been sought. As an employer we have a duty under the DDA to make reasonable adjustments where any aspects of working arrangements (including premises) place a disabled person at a disadvantage.
- 4.11 If there is any suggestion that the poor performance is as a result of bullying and harassment then this procedure should be suspended until investigation has taken place under the Dignity at Work Policy.
- 4.12 Where there is no question of poor conduct, no question of permanent physical or mental conditions, and where there is no suggestion of bullying or harassment, impacting on performance, the designated officer handling the interview will proceed.
- 4.13 If the employee accepts there is a problem and seeks to achieve an improvement the Supervisor should produce an action plan with the employee, which is designed to give the employee all reasonable support and encouragement to improve their performance. Both supervisor and employee should sign and date the action plan and each retain a copy.

The agreed action plan will specify :-

- What standard/level of performance the employee is expected to achieve.
- A realistic time scale within which improvement is to be achieved, having regard to length of service, past record and complexity of the issue. The time scale should not normally exceed 3 months.
- All necessary training and development to be provided.
- Staff required to implement the action plan, ensuring that they are made aware of the part they have to play.
- Dates for regular review meetings with the employee.
- An appropriate method of monitoring, supervision and gathering evidence for the review.

4.14 The Supervisor conducting the interview will ensure that there is a written record of the interview and any subsequent review meetings, which the employee will sign and date. The employee will be given a copy of the agreed action plan and subsequent review notes.

4.15 At each stage of the process the employee must be sensitively advised that failure to improve may result in consideration of termination of employment. This will be confirmed in writing within 5 working days of the interview. The letter will also specify the right of appeal at each stage of the procedure.

STAGE 3 SECOND FORMAL REVIEW

4.16 At the end of the agreed monitoring period a further formal review will be held with the employee. This meeting should take place immediately upon the conclusion of the timescale specified in the agreed action plan.

4.17 The employee has the right to be accompanied by a trade union representative, friend or colleague of their choice, who does not have a conflict of interest.

4.18 At the review meeting the Supervisor will review the employee's performance over the support period. Where the review identifies that the required standard of performance has been achieved the employee will be notified in writing within 5 working days of the review meeting and the matter will be regarded as closed.

4.19 Where the review identifies that some improvement has taken but further improvement is required, consideration will be given to a further action plan following the procedure outlined at 3.10 above.

- 4.20 Alternatively, where it is not felt that a further action plan would produce any further improvement in performance, the Supervisor may discuss a range of career options including, voluntary redeployment either at the same grade or to a lower graded post. (See 3.33 N.B Where voluntary redeployment is accepted to a post at a lower grade, there will be no protection of pay or allowances.)
- 4.21 If no improvement has taken place and the employee continues to perform poorly, the employee should be informed that a formal hearing with the Service Team Manager will be convened.
- 4.22 The above points should be confirmed to the employee in writing.

STAGE 4 FINAL RESOLUTION

- 4.23 Before making a decision the Service Team Manager, supported by the HR and Policy Manager, will invite the employee to an interview, giving at least 5 working days notice.
- 4.24 At the interview the employee has the right to be accompanied by a trade union representative, colleague or friend, who does not have a conflict of interest. The line manager will be present as well as a HR Officer.
- 4.25 The purpose of the meeting will be to:
- Confirm the specific areas of work which are unsatisfactory.
 - Confirm the standards required and determine whether those standards have been set at an unattainable level
 - Remind the employee of the steps taken to assist him/her to improve work performance
 - Discuss the outcome of the monitoring period
 - Establish the shortcomings
 - Establish if this is due to poor performance, misconduct or ill-health
 - Consider the options available
- 4.26 The appropriate Supervisor will provide the employee with a summary of the areas which are under review, including documentary evidence, which the employee will have seen, or had explained to them at earlier review meetings.
- 4.27 The employee will be given the opportunity to put forward any explanation they may wish to offer, present relevant information and/or witnesses to support his/her case.
- 4.28 The Service Team Manager will make a decision on the basis of the information provided as to whether there is a reasonable prospect of an improvement in performance within a reasonable time scale.

- 4.29 If at the meeting the employee is able to advance acceptable reasons to counter the allegation of poor performance, no further action will be taken under the poor performance procedure and the meeting will be terminated.
- 4.30 Where the poor performance is due to misconduct any further handling of the matter will continue under the terms of the Disciplinary Procedure. The Poor Performance Hearing will be terminated at this point and a further Disciplinary Hearing will be convened under the terms of the Disciplinary and Dismissal Procedure.
- 4.31 Where the Service Team Manager determines that the standards have been set at an unattainable level, revised reasonable standards should be issued and no further action will be taken except where the employee's performance fails to meet the revised standards.

OPTIONS

- 4.32 Taking into account the support given to achieve an improvement in performance, any improvement actually achieved and any points of view put forward by the employee, the Service Team Manager will consider the following options;

Extend the period of the Action Plan

- 4.33 This will give the employee a further opportunity to achieve the required level of work performance. The Service Team Manager should at this point issue the employee with a formal warning that, unless the required improvement is made within a specified period of time, further action could be taken which could result in dismissal.
- 4.34 After the prescribed interval, the employee should be interviewed again by the nominated officer in order to be informed of the view now taken of his/her competence. If the performance is regarded as satisfactory, the employee should be informed of this fact in writing and the matter will be regarded as closed.
- 4.35 If performance is still not satisfactory, then one of the remaining courses of action identified below should be taken.

Redeployment

- 4.36 An opportunity for redeployment into alternative employment can be considered. However, it must be made to the employee that such redeployment can only be offered if a suitable vacancy arises and if the employee is suitable for that vacancy. Any redeployment will be subject to a trial period. A redeployment opportunity will not necessarily be to an equivalent post or earning level and current earnings will not be protected. During such a period appropriate retraining will be given.

- 4.37 Where redeployment is considered appropriate action following appropriate action under the poor performance procedure, the time-scale will normally be limited to a period of 28 working days.
- 4.38 Any redeployment will be with the agreement of the employee. There is no specified limit as to the number of redeployments considered, although this will depend upon reasonableness and the opportunities available at the time.
- 4.39 The employee should be formally warned that failure to perform to acceptable standards will lead to the employee returning to his/her substantive post and if there are no other suitable options, further action will be taken which could result in dismissal.

The Councils Policy on Redeployment must be followed in all redeployment cases.

Early Retirement

- 4.40 Early retirement under the provisions of the Early Retirement/Voluntary Retirement scheme can be explored in cases where poor performance results from a fundamental change to the nature of the job.
- 4.41 The employee should be formally warned that if this course of action is not appropriate and if there are no suitable options, further action will be taken which could result in dismissal.

Dismissal

- 4.42 Where all other options under this paragraph are either not suitable or have been tried and failed, appropriate notice will be given to terminate the employment on the grounds of poor performance.
- 4.43 The Service Team Manager will inform the employee in writing of the decision, together with reasons for the decision, and the right of appeal.

Attached as Appendix A is the Council's Discipline and Dismissal Policy and Procedure which must be followed in all dismissal cases.

5 APPEALS

- 5.1 The employee has a right of appeal at each stage of the procedure. Appeals should be made in writing where possible or verbally. Stage 1, Stage 2 and Stage 3 appeals will be to a manager at least one tier above the Supervisor (i.e. Service Team Manager). At stage 4 the appeal will be heard by a Chief Officer previously not involved in the process. Appeals against dismissal will be heard by the Staff Sub-Committee.

Stage of the Procedure	Officers involved	Appeal heard by
Stage 1 Informal Counselling	Supervisor and HR Officer	Manager at least one tier above the Supervisor.
Stage 2 1 st Formal Review Formal Opportunity to Improve	Supervisor and HR Officer	Manager at least one tier above Supervisor.
Stage 3 2 nd Formal Review	Supervisor and HR Officer	Manager at least one tier above the Supervisor.
Stage 4 Final Resolution	Service Team Manager, Supervisor, and HR Officer.	Chief Officer not previously involved in the process.
Appeal against Dismissal		Staff Sub-Committee

- 5.2 Any employee who is dissatisfied with action taken against them under the poor performance procedure 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 following the review interview with the line manager. In submitting an appeal the employee must give details to support their belief that they do not have a performance problem.
- 5.3 Following receipt of confirmation to appeal against the review, 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.

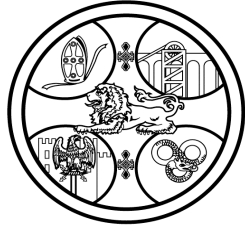
- 5.4 At the appeal the employee and immediate line manager will be given an opportunity to state their case independently. Relevant documentary evidence may be produced to support their position. The manager hearing the appeal will review all information provided and make a decision as to whether the continuation of the Poor Performance Procedure is justified.
- 5.5 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 4.7)
 - b) Uphold the decision to invoke disciplinary action but impose a lesser penalty.
 - c) Overturn the decision of the original panel.
- 5.6 On completion of the appeal hearing, the decision of the panel will be confirmed in writing and/or verbally to the employee.
- 5.7 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.
- 5.8 Final appeals against dismissal will normally be heard by the Chair of the Staff Sub-Committee and the Staff Sub-Committee. The Service Team Manager who made the decision at the Final Resolution Meeting 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.
- 5.9 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 take action but impose a lesser penalty, re-instating the employee.
 - c) Overturn the decision of the original panel.
- 5.10 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.
- 5.11 The decision of the hearing panel will be made, in writing, to the employee as soon as possible after the hearing.
- 5.12 The decision of the appeal panel is final.

6. EQUALITIES AND DIVERSITY

- 6.1 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.

7. POLICY REVIEW

- 7.1 The Head of Organisational Development is responsible for monitoring this policy and procedure and ensuring that is implemented and applied consistently. The policy will be reviewed in June 2008 or earlier if legislative changes dictate.



Chester-le-Street

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.

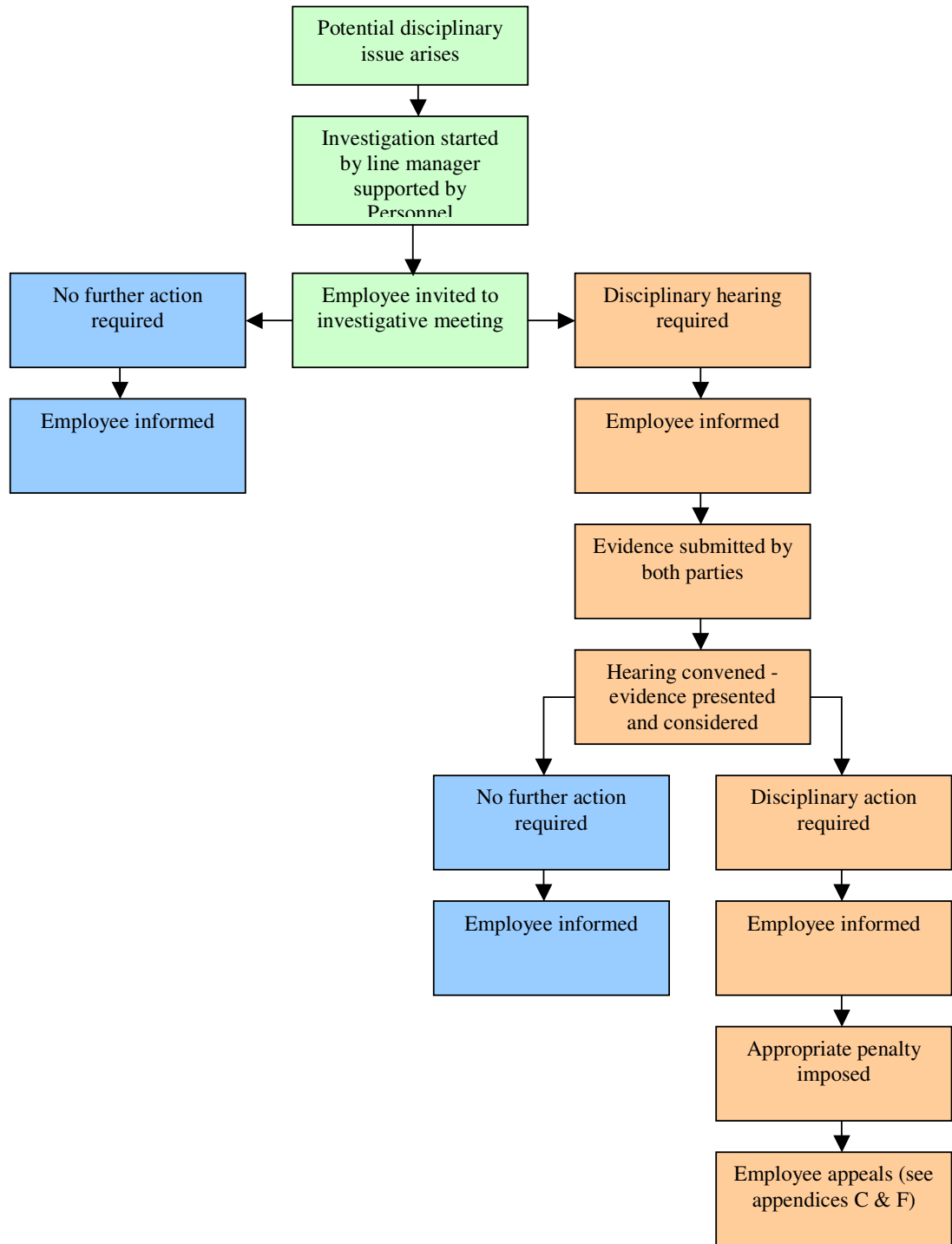
- 14.1 The HR and Policy Manager is responsible for monitoring this policy and procedure and ensuring that it is implemented and applied consistently. The policy will be reviewed every 24 months or earlier if legislative changes dictate.

GROUNDS FOR GROSS MISCONDUCT

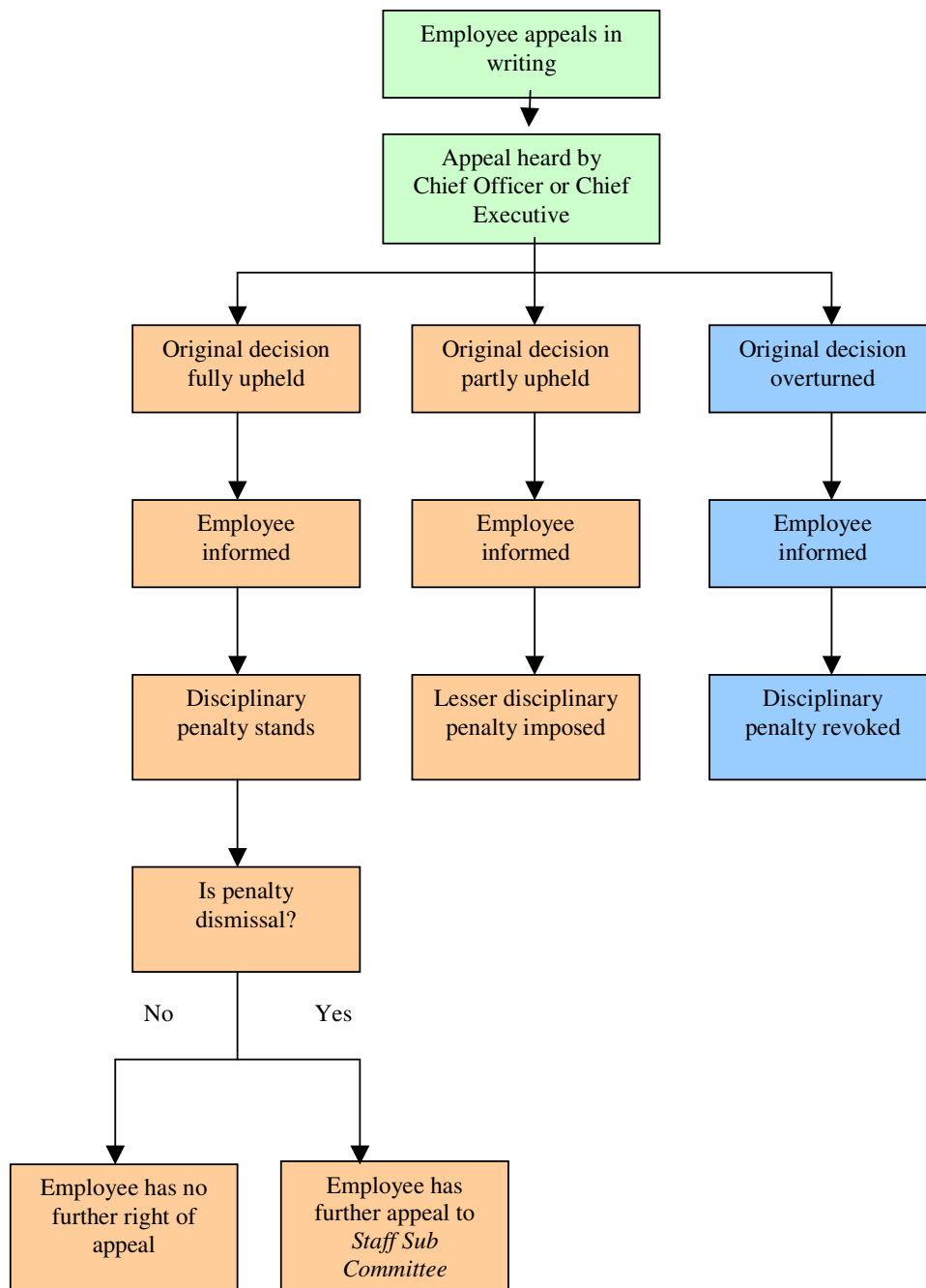
The following are examples of behaviour/offences amounting to gross misconduct. This list is not exhaustive or exclusive and there may be other offences of a similar gravity, which may constitute gross misconduct.

- 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. Both parties will be asked to withdraw while the Staff Sub-Committee consider their decision.
 8. The Sub-Committee will reconvene and inform the employee and the Chair of the original appeal panel of the decision of the panel.
 9. 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.