

# Conduct Policy



WORKING TOGETHER

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## **Policy Overview**

The councils expect the highest standards of conduct from all employees, and for everyone to act with honesty, integrity, and to represent the councils to the best of their ability.

This document is part of a family of policies which provide advice and information on the expected behaviours and values of Chorley and South Ribble employees, see the Grievance, Code of Conduct, and Social Media policies for more information. This policy applies to all employees of Chorley & South Ribble Borough Councils, who have satisfactorily completed their probationary period, except for Statutory Chief Officers. The Attendance policy should be consulted in cases of sickness absence and the Capability policy for concerns related to performance.

This policy is based on the standards set out in the ACAS Code of Practice, and in accordance with relevant legislation.

## **Policy Objective**

This policy is designed to ensure that all employees are aware of, understand and maintain the high standards of conduct required by Chorley and South Ribble Councils. It clearly describes the process for reporting, investigating, and managing allegations of misconduct. This policy ensures all employees are treated fairly and consistently.

The overriding aim of this policy and procedure is to correct inappropriate conduct and overcome development needs to create a positive working environment and support a high performing workforce.

## **Chorley & South Ribble Councils' responsibilities**

### **It is the Councils' responsibility to:**

- Ensure that all employees are treated fairly and consistently.
- Ensure that employees are given enough support to be competent and confident in their roles.
- Ensure that all employees are aware of this policy and the seriousness with which allegations of misconduct are viewed.
- Ensure a proper and thorough investigation is carried out where there are grounds for suspicion of misconduct after taking appropriate advice from HR.
- Ensure that all staff involved in the disciplinary process are made aware of whom in the Council can offer advice and support
- Maintain confidentiality throughout and after the process

## **Employee responsibilities**

### **Employees are expected to:**

- Fully co-operate with the policy and procedure.
- Make yourself available for investigatory, disciplinary, or grievance, meetings and hearings.
- Make use of available employer support mechanisms, e.g. counselling and occupational health.
- Maintain confidentiality throughout and after the investigation and any disciplinary meetings.
- Co-operate with good practice and lessons learned from disciplinary matters.

## Definitions

Staff Representative	Either a Trade Union representative or a colleague of the employee (an employee of the councils who is uninvolved with the investigation).
Misconduct	Behaviour which does not meet the high standards of the councils.
Gross Misconduct	Misconduct of such a serious nature as to fundamentally undermine the relationship of trust and confidence between employee and employer. Such misconduct may result in summary dismissal.
Working days	Working days are Monday to Friday excluding bank holidays. Correspondence unless hand or electronically delivered, should be posted first class and will be deemed to have been received the next day.
Summary Dismissal	Dismissal without prior warning, notice, or pay in lieu of notice.
Investigating Officer	The manager responsible for undertaking the investigation. They will be supported by a nominated HR officer.
Hearing Officer	The manager responsible for hearing the investigation and employee's case and making a decision. They will be supported by a nominated HR officer.
Appeal Panel	Where a sanction less than dismissal is imposed the appeals officer will be a senior manager responsible for hearing the appeal and making a decision. Where an employee has been dismissed the appeal will be heard by the HR Appeals Committee and supported by a nominated HR officer.
Disciplinary	The process to resolve any issues of misconduct.
Disciplinary sanction	The outcome of the disciplinary process should an employee be found to have committed an act of misconduct.
Appeals	All employees can appeal against a sanction or dismissal under this policy.

## **Principles**

Conduct issues will be dealt with in an open and fair manner. The procedure for managing misconduct will be applied at the earliest opportunity in a fair and consistent way. The councils encourage the use of informal methods for dealing with minor lapses through the development and application of good employment practices.

Confidentiality will be maintained at all stages of the process and the employee will be kept informed of progress by their manager.

Employees who are the subject of an allegation of misconduct have the following rights:

- To be informed, in advance of any hearing, of the details of any allegations being made against them including sight of any documentary evidence.
- To be heard in good faith and not be pre-judged
- To challenge the allegations by providing their own evidence, questioning other witnesses and calling their own witnesses before a decision is reached
- To be represented by either a recognised Trade Union Representative or a work colleague uninvolved with the incident at formal meetings/hearings
- Not to be dismissed for a first breach of discipline except in the case of gross misconduct
- To be made aware, at the earliest opportunity, of serious allegations, which may be considered as gross misconduct, and which may result in dismissal
- To appeal against any formal sanction issued following a disciplinary hearing.

There is no entitlement to be accompanied by a legal representative at any part of the internal disciplinary process.

The timescales stated within this policy are not intended to be prescriptive. They are best practice guidelines and will be followed wherever practicable.

There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force or the period of review only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse the employee's previous record of conduct will be considered when deciding on the next course of action.

Meetings and hearings will be recorded using a note taker and the minutes provided. The councils will not authorise the digital recording of any meetings or hearings unless this is a reasonable adjustment recommended by occupational health.

Wellbeing support will be made available to any employee who is subject to the disciplinary process.

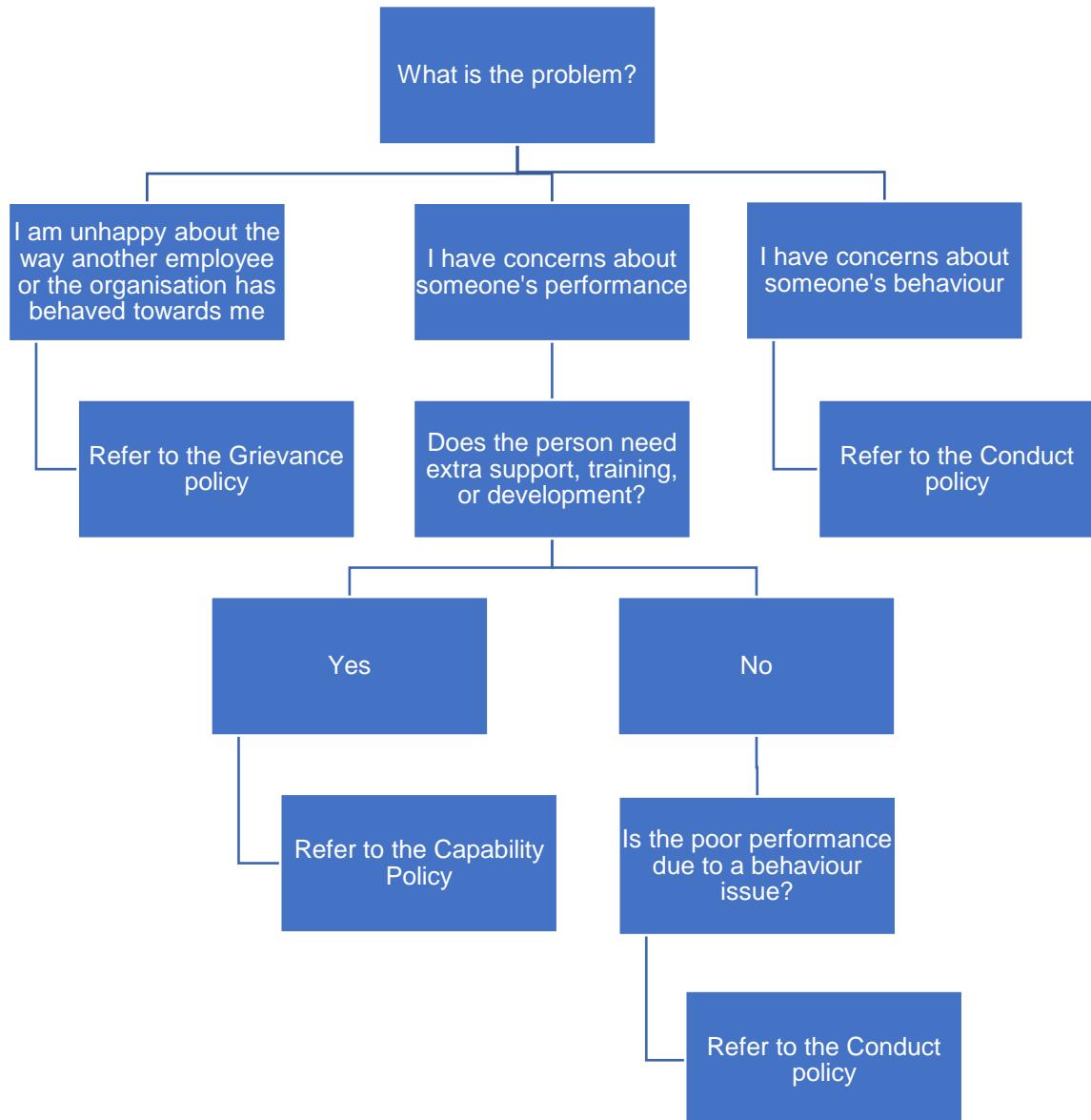
## **Reporting Allegations of Misconduct**

We expect all employees to behave ethically, lawfully and in accordance with our core values. As part of our culture of openness and accountability, we require all employees to report any conduct that falls short of these values. Employees are encouraged first to raise their concerns with their Line Manager or if this is not appropriate via HR.

Any complaints/allegations found to be malicious or vexatious will be treated as a separate disciplinary matter.

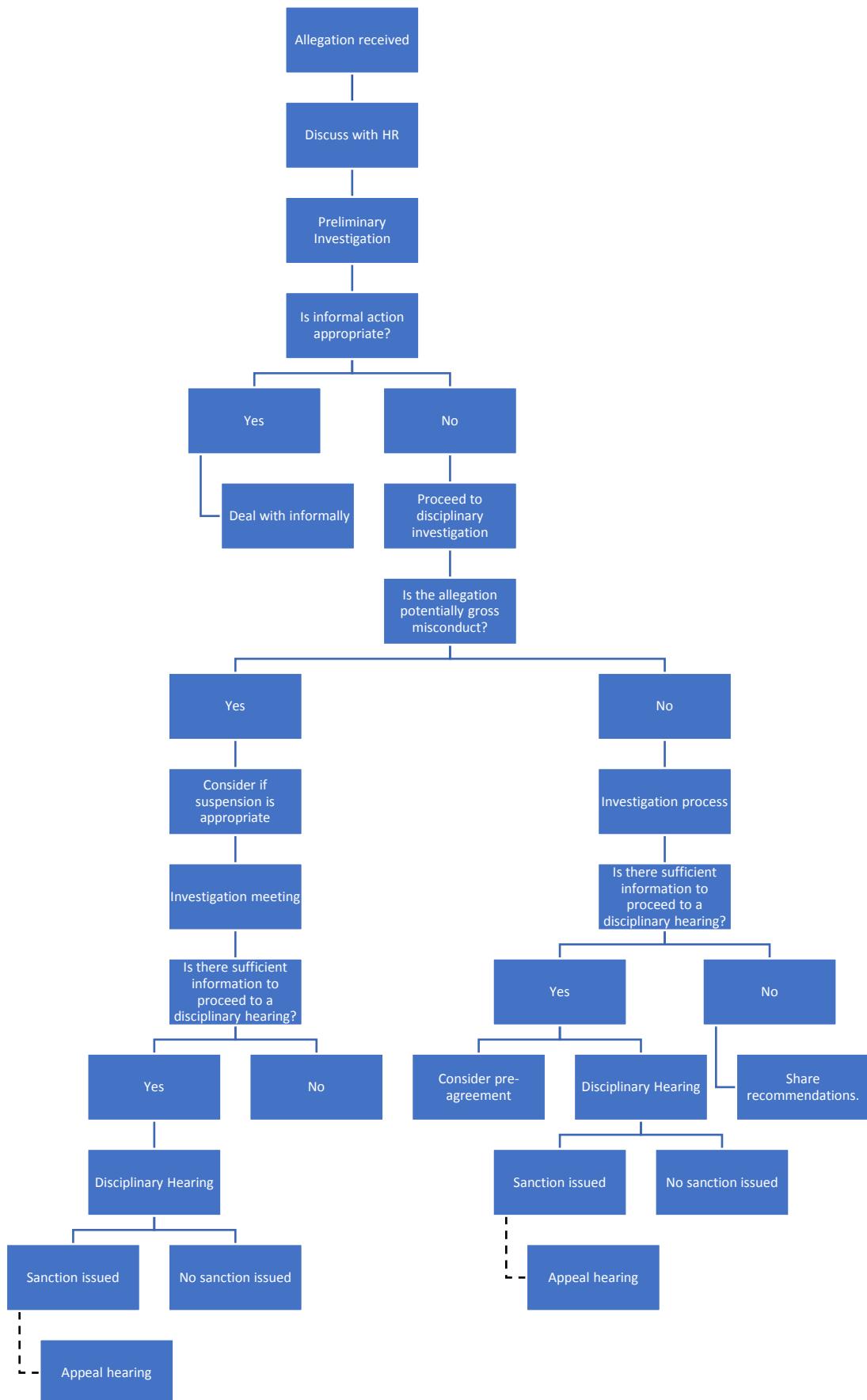
## Conduct or Capability?

Is the problem due to a current inability to act differently (capability) or an intentional choice (conduct)?



# Conduct

## Process & Procedure



## **Allegation received**

Once an allegation has been received this should be considered by an appropriate manager and HR should be consulted.

## **Preliminary Investigation**

A preliminary investigation is the first stage in assessing what action should be taken. The purpose is to establish the basic facts of an incident and agree what the next steps should be. It is not a formal investigation and doesn't seek to establish all the facts of an incident.

Following a preliminary investigation the manager will reach a decision on whether any further action is necessary. This may include a recommendation that a formal investigation is undertaken, suspension as a precautionary measure, informal action or no further action.

Before any employee is suspended authorisation must be obtained from a Director.

## **Informal Action**

Where there are initial concerns about minor misconduct managers are encouraged to deal with incidents informally by discussing issues with the employee as part of routine line management. This is a normal part of a manager's role. Concerns over conduct should be discussed and documented when they occur or as soon as possible thereafter, and should include:

- Explanation of the standards of conduct expected
- Explain that any further incidents of misconduct may lead to formal disciplinary action
- Identify any specific improvements, as SMART objectives where possible
- Agree a review period

If informal action does not bring about the required level of improvement or the potential misconduct is sufficiently serious, the line manager should instigate the formal stage of this procedure, following discussions with HR.

If, during an informal discussion it becomes apparent that the matter is more serious than initially believed the meeting should be adjourned. The employee should be advised that the matter will be dealt with under the formal stages of the procedure.

## **Formal Stage**

Where the informal stage has not resulted in the required level of improvement, has not resolved the issues, or the alleged misconduct is sufficiently serious; the formal stages of the procedure should be followed. HR will support all stages of the formal disciplinary process.

## **Gross Misconduct**

Gross misconduct is a serious issue and can result in summary dismissal. The following list is not intended to be comprehensive; these are examples of what may be considered as gross misconduct:

- Grossly offensive behaviour, including discrimination.
- Gross neglect of Health and Safety rules
- Harassment
- Inappropriate use of the councils' ICT systems which seriously breach the ICT Security Framework
- Inappropriate use of and comments on Social Media
- Serious acts of insubordination

- Wilful and deliberate damage to the councils' assets
- Incitement to or use of physical violence to anyone at all on Council premises or whilst on Council business
- Fraudulent timekeeping..
- False and misleading statements eg on application forms, on medical questionnaires, at an accident investigation or at a disciplinary investigation.
- Failure to obey instructions given by the Councils provided these are in accordance with accepted practices
- Theft or incitement to steal
- Inappropriate sexual behaviour
- Knowingly being under the influence of alcohol or non-prescribed drugs whilst on duty
- Accepting profits or bribes for personal gain
- Divulging confidential information
- Allowing one's private interests or duty to conflict with the interests of the Authority
- Covert recording of meetings

## **Suspension**

Suspension from duties may be appropriate in some cases of gross misconduct. Suspension is a precautionary measure, the purpose of which is to enable a fair, reasonable and unhindered investigation to take place. Suspension should only be imposed after careful consideration and where the following requirements have been met:

- The allegations are potentially gross misconduct
- Alternatives to suspension have been considered and are deemed not appropriate
- There is reasonable belief that the employee has committed the alleged offence.

Before any employee is suspended authorisation must be obtained from a Director.

In all cases, the employee must be informed of the nature of the allegations made against him/her. It should be noted that suspension from duty, for the purpose of conducting a disciplinary investigation, does not constitute a disciplinary action.

Alternatives to suspension may include restricted duties, close monitoring and supervision, temporary removal of some responsibilities such as budget management or line management responsibilities. This will be regularly reviewed.

## **Cooling Off Period**

In exceptional circumstances it may be necessary to send an individual home for a "cooling off" period; this should normally not exceed 24 hours. This is not a formal suspension.

## **Investigation**

In most circumstances the manager will conduct the investigation. Where this is not appropriate another suitable manager will be appointed. A nominated HR officer will support the process.

Before the investigation begins the employee will be notified in writing that an investigation has been authorised under the formal stage of the conduct and capability policy, who the investigating officers are, the allegations being investigated and the date and time of the initial meeting. During the investigation if the allegations are amended or expanded the employee should be notified of the changes.

The employee and any witnesses will be given reasonable notice (normally 5 working days) ahead of any meetings and will be advised of their right to representation. Where reasonable adjustments are required, every effort will be made to identify appropriate and/or additional measures of support. There is no right to legal representation in these meetings/hearings.

The investigation officers will make notes of the investigation meeting. The notes of the meeting will be sent to the employee to sign as a record of the meeting. Where someone fails to return a signed copy of the investigation notes to the investigation team, unsigned notes will be accepted as an accurate record and used in future proceedings

Once the investigation has been completed the investigating officers will submit their report to a Senior Manager. As a minimum the report will include the findings of the investigation team with supporting evidence, a conclusion as to whether there is sufficient evidence to proceed to a disciplinary hearing and recommendations. A final decision will be made on whether to accept the findings and the recommendations of the investigating officers.

Where the investigation concludes there is insufficient evidence to proceed to a disciplinary hearing the employee must be notified in writing of this decision and if currently under suspension appropriate arrangements will be made for the employee to return to the workplace. Other management actions may be recommended such as mediation, training, or welfare support. Employees are expected to co-operate with any recommendations.

### **Pre-agreement**

Following investigation, where it is decided that there is a disciplinary case to answer and the employee accepts they are at fault and does not dispute the key facts, the employee can be offered a choice of accepting an appropriate level of disciplinary sanction (either a verbal or first written warning) by agreement without going through a disciplinary panel. The employee will be given up to 5 working days to consider the offer of the warning by agreement. This offer will be made without prejudice.

This option will not be available where, in the Investigations Officers' view, there is sufficient evidence to present the case to a disciplinary hearing on the grounds of gross misconduct and in cases where dismissal is a potential outcome.

Where the employee agrees to accept the above offer, a meeting will be conducted by an appropriate manager to issue the disciplinary sanction. The employee will have the right representation. At the meeting, the manager will verbally share the key findings and conclusions of the investigation with the employee and their representative. The details of the sanction and the fact that it was issued by agreement will be confirmed in writing.

The employee will have no right to appeal against this decision. If the employee decides not to accept the offer of a warning by agreement this will not be disclosed to the disciplinary hearing panel.

### **Disciplinary hearing**

If there is the requirement to hold a Disciplinary Hearing, then the employee must be notified in writing of this decision at the conclusion of the investigation.

The letter inviting them to the hearing will include:

- The details of the alleged misconduct
- The date, time and place of the hearing
- The individual's right to be represented
- Details of any witnesses to be called by the employer
- Copies of any relevant documentation
- A warning that the hearing may lead to disciplinary sanctions and an indication of level
- A copy of the disciplinary procedure (contained within the conduct policy)
- Confirmation of an employees right of appeal if the hearing results in a formal sanction

If the employee's representative is unable to attend on the proposed date the employee has the right to agree an alternative date and time provided it is within 5 working days of the first proposed date. Both the employee and management will be responsible for arranging their own witnesses to attend the hearing. The Hearing Panel will consist of a Hearing Officer and HR Officer.

In preparing a case for a Disciplinary Hearing both parties must be in a position to exchange reports and any witness statements prior to the hearing along with details of any witnesses to be called. The employer is required to exchange information 10 working days before the hearing and the employee 5 working days before the hearing. All parties must respect the need for confidentiality at all times, in relation to any information exchanged.

At the hearing the management statement of case and the employee's response to the case will be taken as read. A summary outline of the case will be presented by both sides.

Both management and employee will be given a reasonable opportunity to ask questions and call relevant witnesses. Any party who intends to call witnesses must have submitted any statements from witnesses prior to the hearing in line with the timescales previously detailed.

The panel will ask questions to both sides and witnesses. The chair of the panel will have the authority to impose time limits on each party in terms of presentation of their case, questioning and summing up.

At the end of the hearing the disciplinary panel will decide whether, on the balance of probability, there is sufficient evidence to substantiate the allegation against the employee and, if so, whether or not disciplinary or any other action is justified.

Upon reaching a decision the chair of the panel will deliver the decision to both parties at the hearing. The decision will normally be confirmed in writing to the employee no later than 5 working days from the date of the hearing.

There may be occasions when a decision cannot be reached on the concluding day of the hearing. In these instances, the parties will be notified of the decision in writing.

In exceptional circumstances, where further material evidence has come to light which requires investigation, the disciplinary hearing can be adjourned by the chair pending further investigation. Where adjournment occurs, the panel should be reconvened as soon as possible.

Notes will be taken during the hearing by a designated minute taker. Digital recordings will not be authorised other than on the advice of occupational health.

## **Disciplinary Sanctions**

The following sanctions may be imposed by the Hearing Officer:

<b>Sanction</b>	<b>Further detail</b>	<b>Duration warning is live for disciplinary purposes</b>
Verbal Warning		6 months
First Written Warning		9 months
Final Written Warning		12 months
Final Written Warning and redeployment/demotion	With relocation/reassignment or demotion (subject to suitable vacancy being available – no pay protection or excess mileage is payable)	12 months
Final Written Warning and Suspension without Pay	Suspension would be for a maximum period of 4 weeks.	12 months
Dismissal		n/a

Before making a decision, the Hearing Officer should take account of the employee's 'live' disciplinary and general record, actions taken in any previous similar case, the explanations given by the employee and whether the intended disciplinary action is reasonable under the circumstances.

In cases of dismissal the employee will be provided, within 5 working days of the decision, written reasons for dismissal, the date on which the contract was terminated, as well as the right of appeal. Notice of dismissal will be confirmed in writing.

## Issues during the process

### Grievances

Where an employee raises a grievance during a disciplinary process, the disciplinary process will not necessarily be suspended whilst the grievance is investigated. Where appropriate the matters may be investigated concurrently.

### Sickness

If an employee becomes unwell at any point during the investigation, occupational health advice will be requested.

If occupational health advise that someone is too unwell to engage in the process the investigation will continue as far as possible, in their absence. This means that interviews will be conducted, and statements taken from any other witnesses to the disciplinary matter before memories start to fade.

Occupational health may advise that the employees is well enough to engage in the process and may recommend reasonable adjustments to support them.

### Appeals

Employees have the right of appeal against dismissal or a disciplinary sanction. Appeals against any sanction beneath dismissal will be heard by an appropriate senior manager. In cases where an employee has been summarily dismissed or dismissed due to capability this will be heard by the HR Appeals Committee.

Any appeal must be made within 10 working days of the date of the letter confirming the disciplinary sanction. The employee must set out the grounds for their appeal in writing. Appeals must include one of the following reasons:

- The outcome was too severe
- The decision - in that the evidence presented did not support the conclusion reached
- Any part of the capability procedure was wrong or unfair

No new evidence will be presented at the appeal hearing other than in exceptional circumstances and where the appeal panel agree to hear it.

The employee will be given at least 3 working days' notice in writing of the appeal hearing, and shall be informed of his/her right to be accompanied at the hearing by a trade union official or a work colleague.

An appeal hearing is not designed to re-hear the case but to examine the grounds of appeal. The appeal panel will consider the information presented to them. The possible outcomes of the appeal hearing are:

- Uphold the original decision,
- Overturn the original decision and reinstate the employee

The decision shall, if possible, be made known to the employee at the end of the appeal hearing and shall, in any case be confirmed in writing within three working days. There shall be no further right of appeal with this procedure.

Where the appeal against dismissal is upheld the employee's employment will be reinstated from the date of dismissal and continuity of service will be maintained.

Notes will be taken during the hearing by a designated minute taker.

