

DISCIPLINARY POLICY

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OXFORD CITY COUNCIL

DISCIPLINARY POLICY AND PROCEDURE

1. POLICY STATEMENT

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. Oxford City Council policies and procedures apply to all employees. The aim is to ensure consistent and fair treatment for all in the organisation.

2. PRINCIPLES

- 2.1 Informal action will be considered, where appropriate, to resolve problems. No disciplinary action will be taken against an employee until the case has been fully investigated.
- 2.2 For formal action the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made at a disciplinary meeting. Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.
- 2.3 At all stages of the procedure the employee will have the right to be accompanied by a trade union representative, or work colleague.
- 2.4 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be dismissal without notice.
- 2.5 An employee will have the right to appeal against any disciplinary action.
- 2.6 The procedure may be implemented at any stage if the employee's alleged misconduct warrants this.

3. SUMMARY OF DISCIPLINARY PROCEDURES

- 3.1 This Disciplinary Policy is supported by 3 supporting documents incorporate 4 key documents:

Conducting Disciplinary Investigations

This document is used by an Investigating Officer to gather facts and determine whether a disciplinary meeting should be held.

Conducting a Disciplinary Meeting or Disciplinary Appeal Meeting

This document is used by a Disciplinary Meeting Chair or Disciplinary Appeal Chair to guide the procedure and decision making process of the meeting.

Conducting a Disciplinary Appeal Meeting

This document is used by a Disciplinary Appeal Meeting Chair to guide the process of review of a disciplinary sanction where this has been appealed.

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4. DISCIPLINARY ROLES

4.1 The structure of these procedures therefore identifies 3 key roles:-

The Commissioning Manager

- This person will normally be the employee's line manager and will commission an investigation. At any meeting they will be called as a witness, including to give an explanation as to why they brought the case forward

The Investigating Officer

- This person will fully investigate the allegations to determine if a disciplinary case exists and a Disciplinary meeting should be held.
- For further details of this role refer to the document *Conducting Disciplinary Investigations*.

The Disciplinary Meeting Chair

- This person will chair the meeting, which may include a panel where dismissal could be considered. This person will determine any sanction to be issued as a result of the meeting – but see section 6.2 below if dismissal is a possible outcome.
- For further details of this role refer to the document *Conducting a Disciplinary Meeting or Disciplinary Appeal Meeting*

The Disciplinary Appeal Meeting Chair

- This person will chair the meeting and determine the appropriateness of the sanction issued at the disciplinary meeting where this has been appealed. They will normally be at the same level or higher than the Disciplinary Meeting Chair
- For further details of this role refer to the document *Conducting a Disciplinary Appeal Meeting*.

4.2 Where a Disciplinary Appeal Meeting is required an independent manager not previously involved will conduct the appeal in line with the procedure outlined in *Conducting a Disciplinary Meeting*. There will be no further right of appeal following a Re-Hearing.

4.3 Any of these roles may be carried out by the employee's line manager depending on the circumstances of the allegations. If the line manager is to be a witness, then they will not undertake any of the roles above.

4.4 In each instance, the role will be held by a different individual to ensure objectivity and a fair and reasonable approach to each meeting.

5. INFORMAL PROCEDURE

5.1 Cases of minor misconduct are usually best dealt with informally. If conduct is not satisfactory and is minor in nature then a manager can give an informal warning, which is not part of the formal disciplinary procedures outlined in the documentation above.

5.2 The matter should be discussed with the employee privately and:

- State that the conduct is unsatisfactory
- Give the employee the opportunity to explain and discuss reasons for the conduct
- State clearly the conduct expected, including any timescales for improvement if appropriate
- State that if the conduct does not improve to the required standard, the formal procedures will then be instigated.

5.3 The Line Manger will then confirm this discussion in writing confirming again that this is not part of the formal procedures.

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6. FORMAL DISCIPLINARY SANCTIONS

6.1. This will normally be either:

an improvement note for unsatisfactory conduct or performance if conduct or performance does not meet acceptable standards. This will set out the conduct or performance problem, the improvement that is required, the timescale, any help that may be given and the right of appeal. The individual will be advised that it constitutes the first stage of the formal procedure. A record of the improvement note will be kept for 6 months, but will then be considered spent – subject to achieving and sustaining satisfactory performance or,

a first warning for misconduct if conduct does not meet acceptable standards. This will be in writing and set out the nature of the misconduct and the change in behaviour required and the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A record of the warning will be kept, but it will be disregarded for disciplinary purposes after a specified period (eg, twelve months).

final written warning if the misconduct is sufficiently serious, or if there is further misconduct or failure to improve performance prior to the expiry of a first written warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this written warning will be kept by the supervisor but will be disregarded for disciplinary purposes after twelve months subject to achieving and sustaining satisfactory conduct or performance.

6.2. Dismissal or Other Sanction

6.2.1 If there is further misconduct or failure to improve performance the final step in the procedure may be dismissal or some other action short of dismissal such as demotion or disciplinary suspension or transfer (as allowed in the contract of employment). **Dismissal decisions can only be taken by a Head of Service or above**, and the employee will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal.

6.2.2 If a sanction short of dismissal is imposed, the employee will receive details of the complaint, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy of the written warning will be kept by the line manager but will be disregarded for disciplinary purposes after twelve months subject to achievement and sustainment of satisfactory conduct or performance.

6.3. Gross Misconduct

6.3.1 The following non-exhaustive list provides some examples of offences which are normally regarded as gross misconduct:

- theft or fraud
- physical violence or bullying
- deliberate and serious damage to property
- serious misuse of an organisation's property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination
- unlawful discrimination or harassment
- bringing the organisation into serious disrepute
- serious incapability at work brought on by alcohol or illegal drugs
- causing loss, damage or injury through serious negligence

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- a serious breach of health and safety rules
- a serious breach of confidence.

6.3.2 If you are accused of an act of gross misconduct, you may be suspended from work on full pay (see section 7 below). This period will be long enough to allow completion of a full investigation while acknowledging that this should be for as short a period as possible. If, on completion of the investigation and the full disciplinary procedure, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

7 SUSPENSION

7.1 A member of staff may be suspended from work with pay during a disciplinary investigation. The action of suspension does not imply guilt or that any decision about the outcome has been reached.

7.2 A preliminary assessment of the situation will take place to determine whether it is necessary to suspend an employee pending an investigation. An employee may be suspended from duty in the following circumstances:

- a. in serious situations of alleged gross misconduct where dismissal is a possible outcome;
- b. where there are grounds for doubt as to the suitability of an employee to continue working e.g. pending criminal investigations or where there is a serious risk to the reputation of the Council;
- c. where there is a reason to be concerned that the employee or others may be placed at risk if the employee remains in his/her position during an investigation;
- d. where it is considered possible that the employee may influence witnesses or interfere with relevant evidence and the investigation.

7.3 A line manager must seek the approval of a Head of Service or more senior officer and, wherever possible, consult with Human Resources before suspending an employee.

7.4 The employee will be advised of the reasons for suspension, which is with pay, and the expected duration. Employees may have a witness present with them at the point of suspension, but there is no right of representation. Failure by the employee to find a suitable witness will not prevent a manager suspending the employee. During any period of suspension the employee must remain contactable and available to attend any meetings related to the suspension. Meetings may be requested at short notice. The employee must comply with all the requirements specified at the time of suspension. Where annual leave has been pre-booked prior to suspension this may be taken.

7.5 Any suspension will be confirmed in writing to the employee. Suspension will be regularly reviewed and the time period kept to a minimum subject to the circumstances of the case. Suspension can happen at any stage of a disciplinary investigation

8 APPEALS

8.1 An employee who wishes to appeal against a disciplinary decision must do so within five working days. There are two types of appeal; a review of the sanction or a re-hearing (details of these are set out in the Council's 'Conducting a Disciplinary Appeal Meeting' document). The Disciplinary Appeal Meeting Chair will hear all appeals and his/her decision is final.

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9 RELATIONSHIP WITH OTHER POLICIES

- 9.1 If an employee wishes to raise a grievance whilst they are subject to the disciplinary process they must follow the Grievance Procedure. The manager receiving the grievance will seek Human Resources advice to determine the most appropriate route for the grievance to be heard. If the grievance relates to the disciplinary process then it will be considered as part of this disciplinary procedure. If the grievance is about another unrelated matter then the grievance procedure may either be invoked to run concurrently or, exceptionally, delayed until disciplinary process is complete.

The Council's Performance Improvement Policy and Procedure should be used for issues of performance.

10 MONITORING & REVIEW

- 10.1 The Chief Executive, as Head of Paid Service, has overall responsibility for employees and will receive regular monitoring information including diversity information regarding formal disciplinary action and appeals from Human Resources.



CONDUCTING A DISCIPLINARY INVESTIGATION

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1. THE ROLE OF THE INVESTIGATING OFFICER

- 1.1 The role of the Investigating Officer is to establish the facts of the case by:
- Interviewing the employee(s) regarding the allegations and any witnesses.
 - Obtaining any other relevant documentary evidence.
 - Preparing a comprehensive report that contains all the relevant factual information, copies of statements received and any other relevant documentary evidence.
 - Providing the Disciplinary Meeting Chair with a summary of issues and factors to be considered, and any contradictory evidence.
- 1.2 The Investigating Officer is commissioned by the Commissioning Manager (usually the employee's line manager) who is responsible for deciding whether the individual has a case to answer, based on the facts established throughout the course of the investigation into the specific allegations). The Investigating Officer is not responsible for making a decision about what course of action should be followed at a Disciplinary Meeting.
- 1.3 The Investigating Officer should agree terms of reference with the Commissioning Manager the investigation outlining the issue(s) to be investigated, proposed timeframe and the circulation details for the report produced.
- 1.4 It is essential that the Investigating Officer keeps details of the investigation confidential from anybody who should not receive a copy of the report and that no personal opinion is expressed within the investigation interviews or the report itself.
- 1.5 All documentation will be provided electronically unless in exceptional circumstances. Where agreed by all parties involved, electronic recording equipment including audio recording equipment may be used to record any interviews or meetings.

2. CONDUCTING THE INVESTIGATION

Investigations will normally consist of four main stages:

- Planning
- Establishing facts
- Evaluating
- Reporting

2.1 PLANNING

Effective planning is a key component of any successful investigation as it will help the Investigating Officer to define the parameters of the investigation and keep focus on what is relevant. A good initial plan will help to reduce the disruption of unforeseen circumstances. The plan should be agreed with the person commissioning the investigation (as previously stated, they will normally be the line manager **but will not be** the Disciplinary Meeting Chair) in order that they understand the actions to be taken prior to any formal Disciplinary Meeting.

Defining the Allegation - A good investigation plan starts with a precise definition of the allegation. Knowing exactly what the Investigating Officer is trying to establish will help focus. Ambiguity about the exact nature of the allegation may cause difficulties later on in the investigation.

To help focus the investigation in the right areas, the Investigating Officer should ensure clarity about the nature of the misconduct and which parts of the Code of Conduct or Council policies may have been breached. One of the greatest dangers is becoming distracted by issues that only serve to muddy the waters and increase the amount of time and effort spent on an investigation.

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As a matter of natural justice, the employee concerned should be informed of the allegations made against them and told that an investigation will be carried out, unless the Investigating Officer in agreement with an HR representative determines that there are good reasons why it is necessary to conceal the investigation from them (such as in cases of ongoing theft). If, the allegation is sufficiently serious as to suggest that it is an issue of gross misconduct, suspension may be considered and this will be carried out in line with the Council's Disciplinary Policy.

Action plan - The Investigating Officer should set out how the necessary information is to be obtained. The plan should include the witnesses to be interviewed, the order in which the interviews will be conducted, the questions to be asked and the subject areas to be covered. It should also include any documents to be obtained and any visits to other locations that would be useful.

It is usually best to secure all relevant documents before beginning the interviews as they may have an impact on the questions to be asked. The Investigating Officer should also consider what documents, if any, are to be issued to the interviewee before the interview.

Information/evidence required - It is helpful to work out what further information or evidence may be needed in order to determine whether the alleged misconduct occurred. Being as focused and precise as possible, being clear about what information is needed at this stage will help avoid delays and distractions later on.

An investigator only has to do as much of an investigation as is reasonable. It is necessary to keep a sense of proportion as exhaustive detail is usually only needed where there is a particularly complex or major issue.

If necessary the Investigating Officer should call for specialist help in order to clarify details. For example, an auditor or Health and Safety expert or a technical expert may be involved in any investigations that involve their specific knowledge base (in consultation with the Commissioning Manager or HR as required)

Where conflicting information/evidence is received the investigating officer should make enquiries to ascertain (as far as possible) which evidence or information is accurate.

Clear timeline - It is beneficial to include target dates for completion of the various stages of the investigation and an overall target date for completion of the final report. Where possible, this should be within 10 working days of the start of the investigation.

2.2 ESTABLISHING FACTS

In the vast majority of investigations the Investigating Officer will need to gather documents and conduct interviews to establish the facts of a case.

Gathering documents and background information - The Investigating Officer will need to obtain the background information and other documentary evidence identified as relevant to the investigation. It may be a requirement to obtain written statements from witnesses as opposed to going through the process of interviewing them, although these are usually only successful where the information sought is very straightforward. They will not be helpful where there is a need to probe the answers given for further information, test an individual's responses, or where there is some doubt about the credibility of an individual's account of events.

Where written statements are required, the request should:

- be made in writing
- explain the reasons for the request
- be precise about the information needed
- set a deadline for responding

Planning interviews - The Investigating Officer should already have identified the people to be interviewed and the areas to be covered within the investigations plan, and also considered the

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order in which they should be approached. These interviews should be arranged as soon as possible to ensure that memories of any incidents do not get the opportunity to fade.

It is beneficial to plan the order of the interviews so that each witness is interviewed only once, although repeat interviews are sometimes unavoidable.

Interviewing the person who is the subject of the investigation first may save time if, for example, they admit to the alleged misconduct.

It may also help establish which facts, if any, are disputed. However, the Investigating Officer may learn things during other interviews that need to be discussed with the employee involved, requiring a second interview – this should be explained at the start of the first interview.

The individual being investigated should be aware of the people being interviewed as part of the investigation and be given the opportunity to suggest further interviewees. If they request that certain people are not interviewed, the investigator should attempt to find out why, and explain the reasons behind why the individual being investigated made the request in the final report.

Interviews should be conducted in a private setting, away from interruptions. There may be a need to make special provisions for witnesses whose first language is not English, or who have disabilities, learning difficulties or other needs that can be reasonably accommodated.

It is important to prepare a list of the core questions before commencement of the interview process, although other questions can be asked throughout the course of the interview based on information given by the interviewee.

Right to be accompanied - The Investigating Officer should write to the individual to arrange an interview, and must inform them of the appointment to investigate the allegations and advise them of their right to be accompanied by a work colleague or trade union representative at investigation interviews. If the employee wishes to be accompanied, a short period of time should be allowed to arrange this.

The employee is responsible for notifying their accompanying person of the interview and only in exceptional circumstances should the interview be postponed to allow for representation. If there is no accompanying person the Investigating Officer should confirm with the employee at the beginning of the interview that they have chosen not to be accompanied.

It is not appropriate for an accompanying person to be someone who may be interviewed as a witness as part of the investigation.

Whether or not the employee is accompanied, the Investigating Officer should have someone with them as note-taker.

Confidentiality - All information gathered during an investigation interview must be treated as confidential and as such all interviewees are reminded that they must not discuss the matter with any person not involved in conducting the investigation.

The interview - It is important that the Investigating Officer remains impartial and keeps an open mind throughout the investigation interviews.

At the beginning of the interview, the Investigating Officer should initially advise the interviewee:

- The format for the interview
- That notes will be taken

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- That they will receive a written statement of the information they provide and will have the opportunity to make any corrections before it is finalised
- That they need to sign and date the statement as an accurate record when it has been finalised
- That their evidence may form part of a Disciplinary Meeting and they may be required to give evidence at that meeting
- That all discussions during the interview are confidential, and must remain so

Note: In this context, confidential means that whilst the interview is held in a confidential setting, the content of the subsequent statement may be used as part of the formal disciplinary process or in an employment tribunal.

During the interview the Investigating Officer should:

- Make the purpose of the interview clear (fact finding).
- Use open questions (questions that don't have a yes or no answer) to gain an overall picture of events.
- Query and probe in order to clarify and obtain accurate and full information i.e. using phrases such as....in your own words..., tell me about..., describe to me..., give me an example of..., how did it make you feel?
- Use closed questions (questions that have a yes or no answer) to obtain specific facts.
- Not ask leading questions (questions that attempt to guide the interviewee's answer).
- Separate fact from opinion.
- Separate direct observation from third-party comment.
- Not be accusatory.
- Allow allegations to be put forward and note responses.
- Challenge the interviewee where necessary, but in a non-adversarial manner. It is important to ensure that questions are posed to reflect what the interviewer has encountered as a result of previous interviews and reviews of documentation. This will assist evaluating evidence at the end of the process.

At the conclusion of the interview the Investigating Officer should:

- Ask the interviewee if there is anything else that they would like to add.
- Explain that there may be a need to meet with them again depending on the outcome of any other interviews.
- Tell the interviewee what will happen next and when, e.g. "I intend to complete the investigation by (date) and I will let you know if you will be needed to give further evidence at a disciplinary meeting" or "I will now be completing my report regarding the investigation and [name of manager] will be in touch with you shortly".
- Provide the interviewee with a copy of the notes of the meeting, and ask them to sign and date them. If the interviewee does not agree to the contents of the notes, they should be asked to make amendments, signing against the changes made. If the changes that the interviewee makes do not match the notes of the interviewer/note taker, discuss these matters with the interviewee. If the interviewee insists on the changes being made, this should be referred to in the report. If changes are to be made then this should be done using electronic 'track changes' so that it is easy to identify where the changes have been made.

At the end of each interview, the Investigating Officer should have obtained:

- The date, time and place of the alleged incident(s).
- The names of those involved in the alleged incident.
- Details of what actually happened and the order of events.
- Details of how the individual reacts to any other document or witness evidence that is inconsistent with their account.
- How the individual felt after the incident.
- Any steps taken by the individual to resolve the situation.

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Record of Interview - A record of interview should include:

- The witness' name, position and duration of employment.
- The date, time and place of the incident(s).
- Where the witness was at the time of the incident, and how was it that they could see or hear what happened.
- Information about the nature of the working relationship between the witness and the employee, and the length of time the person has worked there in that capacity.
- When other people are identified in a statement, their full name and position should be included.
- Circumstantial evidence (evidence that is drawn not from direct observation of a fact at issue but from events or circumstances that surround it), should be used only if the statement includes details of why the witness came to the particular conclusion from the circumstances.
- If a witness wants to remain anonymous, take a statement in any event. It may be necessary later to erase parts of the statement if there is good reason to preserve anonymity.
- The Investigating Officer should check as far as possible whether the witness has some ulterior motive – obtain corroborating evidence where possible.

The following format for statements should be followed:

- All statements should be typed.
- Handwritten statements, which are subsequently typed, must be retained.
- The exact words spoken by the Investigating Officer and the witness should be recorded, without editing or paraphrasing where possible.
- Audio recordings of interviews are allowed but are subject to the agreement of both parties.
- Amendment to statements should be made by the employees themselves and initialled accordingly.
- On completion of a typed statement, the employee will be asked to read it and will be asked to sign the following statement at the end:
I (Name)..... have read the above statement and I have been able to correct, alter or add anything as I wish. The statement is true to the best of my knowledge and belief. I have made it of my own free will."
- All statements are confidential and should only be circulated to authorised personnel.
- Individual witnesses are entitled to a copy of their statements, but these are still covered by the need for confidentiality.

Witnesses should not be coerced into signing a statement if they are unhappy with it. It may be that a witness asks for modifications before they sign it. If a witness who is reluctant to participate in the investigation also refuses to sign a statement, then the Investigating Officer should include it, but making it clear in the report that it is unsigned. This will usually be given less weight when reviewed alongside other statements. Trade union representatives may also act as witnesses where appropriate.

Investigations of property - searching of desks and cupboards for evidence

Before conducting a search of desks and/or cupboards belonging to the employee under investigation, the Investigating Officer should invite the employee and any accompanying person to be present during the search. Where for some reason this is not practical, an independent manager should be present to witness the search.

Where the search reveals that a possible criminal offence has been committed, the search should automatically be suspended and the matter reported to the police. The desk or cupboard should be kept secure from interference until the police have arrived.

Searching employee e-mails and computers - **It may be necessary to search and monitor an employee's work e-mails as part of a disciplinary investigation, if this is deemed necessary. Any such search will be in accordance with the Council's Internet and E-mail Usage Policy, and**

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investigators should be mindful that any method used to extract information about suspected breaches of the disciplinary policy must be lawful e.g. not contravene data protection legislation.

Suspected criminal or fraudulent activity - **the Council does not have the authority to undertake a search of personal belongings; or detain an employee against their wishes.**

If the employee's manager believes a criminal offence has been committed, the Council may be under a duty to notify the police. Further advice from the Head of Human Resources & Facilities and the Monitoring Officer should be obtained.

Depending on the nature of the offence, it may appropriate to carry out an independent internal investigation, even if the police are involved in a criminal investigation. In this situation contact Human Resources to seek the advice and guidance of the police on how best to continue internal enquiries without prejudicing any potential criminal case.

In cases of alleged fraud, it is the responsibility of the Investigating Officer to contact the Section 151 Officer who will liaise with the Monitoring Officer and Head of Human Resources to determine whether the matter needs to be referred to the police. The police should only be contacted following approval by the Monitoring Officer and the Head of Human Resources and Facilities.

2.3 EVALUATING

The Investigating Officer will need to review all the evidence gathered to determine if there are any gaps in it.

The Investigating Officer must be able to take a view on all disputed relevant matters. While absolute certainty is desirable, it is sufficient for the Investigating Officer to form an opinion based on the balance of probabilities. If this cannot be done further information may need to be sought.

Whilst each case must be judged on its own merits, there are some considerations which may help the Investigating Officer to form a view:

- Direct witness evidence (particularly from eye witnesses) who have no obvious reason to be biased either way, will usually be stronger than indirect evidence or evidence from those with an obvious bias when relating to the surrounding circumstances.
- Evidence which is inconsistent with documents produced at the time may be questionable.
- Evidence which contains inherent contradictions of its own may be questionable, as is evidence which is vague or omits significant details.
- Anonymous evidence may be less reliable.
- The demeanour of witnesses at interview may affect the weight given to their evidence.
- Consider whether the witnesses may have been influenced by others.
- Different individual's perceptions of the same events may differ, particularly when emotions are running high.

The Investigating Officer will need to weigh up all of the evidence and decide whether it is likely that the misconduct did occur and it is appropriate for the individual to be subject to attend a Disciplinary Meeting, in order for an appropriate sanction to be considered. It is useful to bear in mind that, under a disciplinary procedure, an employer has to show it has acted on reasonable belief after a reasonable investigation has been conducted.

2.4 REPORTING

When the investigation is concluded, the Investigating Officer should write up the findings in an investigation report.

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The report must contain all relevant issues (including any conflicts of evidence) as this will form the basis of the case put forward at the Disciplinary Meeting.

Below is a suggested structure for a full and formal report:

Contents - All pages should be numbered and the contents page should detail where each section of the report, including appendices, can be found.

Introduction and background - After reading this section, the reader should understand:

- Why the investigation was deemed necessary
- The terms of reference of the investigation
- Why the person leading the investigation was selected for the role
- Any other factors regarding the organisation or individuals which may be relevant at this stage for the reader to know

It is also important to add that, before commencing the investigation, the Investigating Officer was provided with a copy of the Disciplinary Policy together with this document and that the process outlined in these documents was followed.

Methodology - In this section, the Investigating Officer should detail how the information was found. If this involved interviewing people, a full list of interviewees and their job titles should be given, together with a brief rationale as to why they were interviewed. If the investigation involved activities such as reviewing documentation or watching video tapes, then these should also be detailed.

Chronology of events - This is a timeline and sets out briefly, in chronological order, dates and details of the main events.

Overview of allegations - Set out the details of the allegations so it is clear who has made them and in what form they were made. The Investigating Officer should make reference to any specific documents in which allegations were made, for example letters of complaint, and point to where these can be found in the appendices.

Allegations and findings - This will be the largest section of the report. In this section, the Investigating Officer should describe the evidence gathered, how it was evaluated, findings and the reasons. Mitigating factors should be described in full and their relative contribution evaluated.

The Investigating Officer should be clear about which findings relate to which allegations. Where conflicting views were given, the Investigating Officer should describe why a particular version of events was preferred. Consistencies and inconsistencies should be outlined and explanations given for these, if known. Risks presented to the organisation should be detailed in the findings. These may be:

- Litigious.
- Reputational
- Financial.
- Health and safety.
- Regarding employee relations

The Investigating Officer may describe what was believed, either by fact or inference, providing full reasons. It is important to remember that report is likely to be disclosed in legal proceedings.

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Conclusions and recommendations - The Investigating Officer should refer back to the terms of reference at this stage, and then state the conclusions. It is for the commissioning manager (in consultation with HR) to determine whether it is believed that there is a case to answer under disciplinary proceedings and proceed accordingly, or determine that no formal meeting should proceed

Appendices - These should be clearly labelled and contain information that is relevant to the investigation but had no place in the main body of the report. Typical appendices could include:

- Copies of signed witness statements
- Copies of documents reviewed during the investigation process
- Copies of interview questions used, and guidance given to interviewees about the investigation process

Executive summary - In longer, more detailed reports, it may be useful to have a section which summarises the background, methodology, findings and conclusions of the investigation.

When the report has been completed, it should be given to the manager who requested the investigation with a copy issued to the HR Business Partner for the Service Area.

3 AN INVESTIGATING OFFICER'S ROLE AT A DISCIPLINARY MEETING

If as a result of the investigation the commissioning manager reasonably considers that there is a case to answer, it is likely that a Disciplinary Meeting will be arranged. The Investigating Officer is likely to be required to attend the meeting in order to present the findings of the investigation.

At the Disciplinary Meeting the Investigating Officer should:

- Make an opening statement to set the scene, explaining how it is intended to substantiate the case and indicating that the witnesses will be called. This should be brief and to the point.
- Present the case to the panel.
- Explain how the investigation was conducted, what (if anything) was said by the employee(s) and how the statements from anyone not attending the Disciplinary Meeting were obtained.
- Sum up the investigation findings. This needs careful preparation. It is not an opportunity to introduce new evidence or to voice opinion. It is a gathering of the points of the case that were set out in the introduction. It should be short and to the point giving areas recommended for consideration in coming to a decision
- On conclusion of this, the Investigating Officer should leave the meeting remaining available close by if required to answer any points of clarification for the Panel that are not clear from the employee(s), witnesses or report provided.

CONDUCTING A DISCIPLINARY HEARING

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1. POINTS TO CONSIDER

- 1.1 All those involved in disciplinary issues should remember that the meeting is an opportunity for the employee to hear the complaint(s) or allegation(s) made against them, put their case forward and to be treated under a fair process.
- 1.2 Attending a disciplinary meeting may be a distressing experience for employees and it is also a difficult time for the disciplinary panel. The meeting must be conducted with sensitivity, with absolute confidentiality and in a fair and consistent manner.
- 1.3 The HR representative is available to provide support and advice to the Disciplinary Meeting Chair (and other parties) if needed. They form part of the disciplinary panel and will assist in making a decision about the outcome of the meeting.
- 1.4 The point of the meeting is to
 - establish the facts, not catch people out;
 - establish whether the employee is prepared to accept that they may have done something wrong, then decide on the steps which should be taken to remedy the situation;
 - give the employee the opportunity to state their case and answer any allegations that have been made. They should be able to ask questions, present evidence and call witnesses. The accompanying person may also ask questions and should be able to confer privately with the employee;
 - listen carefully and be prepared to wait in silence for an answer as this can be a constructive way of encouraging the employee to be more forthcoming.
- 1.5 It is possible that the disciplinary meeting may not proceed very smoothly – people may be upset or even angry. If the employee becomes upset or distressed allow time for them to regain composure before continuing. If the distress is too great to continue then adjourn and reconvene at a later date however, the issues should not be avoided.
- 1.6 During the meeting emotions may not be fully controlled, and while this can be helpful in finding out what has actually happened, abusive language or conduct should not be tolerated.
- 1.7 If an employee raises a separate grievance during a disciplinary meeting, the Disciplinary Meeting Chair may adjourn the meeting in order that the grievance is dealt with first.

2. PREPARING FOR THE DISCIPLINARY MEETING

- 2.1 Prior to a disciplinary meeting, a full investigation of the alleged misconduct will have been conducted and a written report from the Investigating Officer will be given to the commissioning manager (who will not be the Disciplinary Meeting Chair) who will reasonably determine if there is a case to answer (in consultation with HR).
- 2.2 In the event of a Disciplinary Meeting being scheduled, letters and accompanying paperwork should be sent to the employee's home by first class mail, or handed to them personally. The paperwork will include:-
 - a copy of the investigation report and Disciplinary Policy,
 - the date, time and venue for the meeting (usually within 10 working days of the letter),
 - the right to be accompanied by a trade union representative or a work colleague,
 - details of any witnesses to be called during the meeting,
 - The deadline for submission of any documentation to be considered during the meeting (normally 3 working days before the date of the meeting to allow this to be circulated).

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- 2.3 All documentation will be provided electronically unless in exceptional circumstances. Where agreed by all parties involved, the meeting may be recorded using electronic recording equipment (including audio).
- 2.4 The documentation must also be copied to the Investigating Officer. Both parties are responsible for making arrangements for their witnesses to attend and should ensure at least 3 working days notice.
- 2.5 The meeting should be held as privately as possible, preferably away from the normal work location in a suitable room where there will be no interruptions. Appropriate consideration should be made should there be issues of understanding or language difficulties. The Disciplinary Meeting Chair, with support from their HR representative, should consider the structure of the meeting and make a list of points to be covered.

3. THE RIGHT TO BE ACCOMPANIED

- 3.1 It is a statutory right for a worker to be accompanied, by a fellow worker or trade union official, at formal disciplinary and grievance meetings. Particularly where this is the first formal process for an employee, they may be overawed or feel intimidated by some meetings, and the accompanying person can help the individual to make all the necessary points. The trade union representative will usually come from an Oxford City Council recognised union.
- 3.2 The accompanying person can address the meeting, but not answer questions on behalf of the employee.

4. DEALING WITH DELAYS

- 4.1 If the employee is genuinely unable to attend the disciplinary meeting, e.g. because they are ill, they should be offered an alternative at a reasonable date and time. If the accompanying person cannot make the meeting, the employee must propose another date and time which is no more than five working days after the day originally proposed, beginning with the first working day after that day.
- 4.2 If the employee fails to attend the rearranged meeting, this stage of the procedure is complete and a decision may be made on the available information. Even if this is the case, the employee should still receive notification of the decision in writing and include confirmation that they have the right to appeal.
- 4.3 If the date of the meeting has to be changed for any reason other than the attendance of the employee or their representative, the employee should be offered a reasonable alternative date and time. It is important that the employee is notified as soon as possible of any delays.

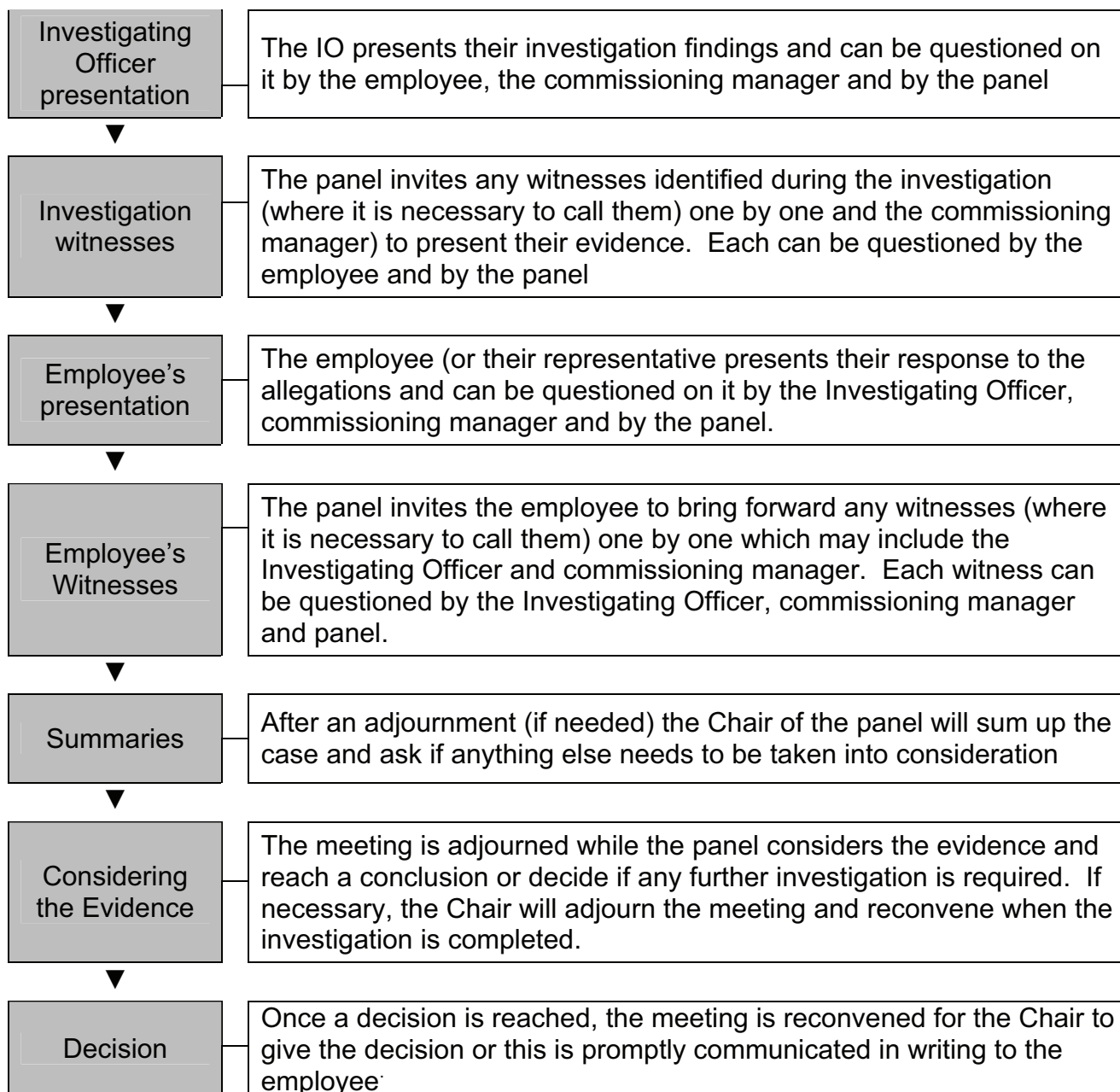
5. STRUCTURE OF THE DISCIPLINARY MEETING

- 5.1 The Disciplinary Meeting Chair will introduce those present. In most instances the other people in attendance will be:-
- the employee concerned and their representative (or person accompanying them)
 - a supporting HR representative advising the Chair
 - in exceptional cases, it may be appropriate for another specialist to be present to assist the Disciplinary Meeting Chair where there is a need for professional/technical advice.
- 5.2 The Disciplinary Meeting Chair should explain that the meeting is being conducted as part of the disciplinary procedure and a written record of the meeting will be made. It should be stated if any witnesses have been asked to give evidence and if so who they are.

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5.3 The role of the accompanying person if present should be explained. If the employee is unaccompanied, the Disciplinary Meeting Chair should confirm that the employee understood that they had the right to be accompanied, but chose not to exercise this right. Although the employee may confer with their representative at any time during the meeting, the Disciplinary Meeting Chair has the right to ask the employee personally to answer any questions put to them.

5.4 Running order for the meeting



5.5 Witnesses should be released from the meeting when they are no longer required.

5.6 While the employee may submit late evidence or evidence on the day, it is at the discretion of the Disciplinary Meeting Chair as to whether or not this is accepted as evidence during the meeting.

5.7 **Adjournment** - Any party may request that the Disciplinary Meeting Chair grant a short break at any time in the proceedings. If the Chair considers that more than a short break for deliberation is necessary then the meeting should be formally adjourned. If at any time those present become too

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upset to continue or the meeting is becoming heated, the Chair should arrange for an adjournment to allow people to compose themselves before continuing.

6. MAKING A DECISION

- 6.1 Decision making is a two-stage process: the Disciplinary Meeting Chair is responsible for making the decision and will need to decide whether the allegations are substantiated before deciding on the appropriate disciplinary action.
- 6.2 In coming to a conclusion on the facts of the case, the Disciplinary Meeting Chair will need to decide 'on the balance of probabilities' whether the employee concerned carried out the alleged misconduct. It requires a conclusion based on evidence rather than instinct or intuition.
- 6.3 In most Disciplinary Meetings, evidence is put forward that is in some ways contradictory and the disciplinary panel will need to come to a conclusion as to where the truth lies. To do so, the Disciplinary Meeting Chair will need to use judgement and management experience to balance the evidence for and the evidence against. The Disciplinary Meeting Chair should consider how likely it is that the act or omission happened, e.g. how unusual would it be for the alleged act to have occurred? Does any of the evidence sound more far-fetched than the rest? If two people are directly contradicting one another, is there any corroborating evidence that adds weight to one or other of them?
- 6.4 Generally, the less likely the act or omission is to have occurred, the greater the burden of proof required. In conjunction with the HR representative, the Disciplinary Meeting Chair will need to identify evidence that corroborates one side or the other.

7. MAKING FINDINGS OF FACT

- 7.1 If the Disciplinary Meeting Chair cannot come to a judgement about where the truth lies because there is not sufficient evidence to do so, it will not be possible to make a finding that the act or omission did occur as alleged. In this case, the Disciplinary Meeting Chair would not be able to take any disciplinary action and the case will be dismissed and all relevant paperwork destroyed.
- 7.2 If it is concluded that the alleged misconduct did occur in full or in part, the Disciplinary Meeting Chair should record the findings and the reasons for those findings, then move on to considering the appropriate disciplinary sanction.

8. MITIGATION

- 8.1 In many cases, the employee concerned will have offered an explanation about what happened and why. In some cases, the misconduct may be admitted and the only evidence put forward by the employee relates to mitigating circumstances. Based on the facts, the Disciplinary Meeting Chair will then need to consider any mitigation put forward by the employee to decide what sanction should apply. The Disciplinary Meeting Chair will also need to take account of the employee's previous unspent disciplinary record in deciding what level of action is appropriate.

9. THE DECISION

- 9.1 Having considered mitigation, it is important to also consider the seriousness of the misconduct in the context of the employee's previous record and the circumstances of the case. The HR representative should be able to advise on any precedents to ensure the decision is consistent with them.

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9.2 The Disciplinary Meeting Chair should work with the HR representative to establish the exact wording of the findings and any sanction. The Disciplinary Meeting Chair should also consider any arrangements that may need to be put in place to assist the employee to improve and/or be monitored. Any findings that would support improvement in the future for the individual or the wider team should be recorded in the written decision.

9.3 At this stage, the Disciplinary Meeting Chair should complete the Test of Reasonableness template at [Appendix 1](#).

10. TEST OF REASONABLENESS

10.1 Has there been as much investigation as is reasonable in the circumstances?

10.2 Have the requirements of the disciplinary policy been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this meeting?

10.3 Has there been sufficient regard paid to any explanation put forward by or on behalf of the employee?

10.4 Is there a genuine belief that the employee committed the misconduct?

10.5 Are there reasonable grounds for sustaining that belief on the balance of probabilities?

10.6 Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?

10.7 Has there been regard paid to any mitigating circumstances put forward by, or on behalf of, the employee e.g. health, domestic, bereavement?

10.8 Is the decision within the band of 'reasonable' responses of a 'reasonable' employer in the circumstances?

11. THE SANCTION

11.1 Full details are available in the Council's Disciplinary Policy. In summary, the options available are:

- To take no action if the allegations are unfounded. If this is the case, all papers relating to the meeting will be destroyed.
- To recommend that the employee is counselled and/or supported by their line manager or another in connection with the complaint(s) or allegation(s). This option is appropriate if the misconduct is of a minor nature and the employee has a clean employment record.
- To issue the employee with either a verbal or written warning if the complaint(s) or allegation(s) is/are substantiated.
- To dismiss the employee if there is a current final warning on file or if the misconduct is serious enough to move straight to dismissal (a list of some gross misconduct allegations is included in the Council's Disciplinary Policy). The employee will be required to work their period of notice, or if the dismissal is effective immediately, they will be paid in lieu for their contractual notice.
- To summarily dismiss the employee, if the misdemeanour is serious enough to be considered as gross misconduct, and dismissal is considered to be a suitable penalty. In this case, the dismissal will be effective immediately and will be without notice. Any other contractual entitlements such as outstanding holiday pay will be made to the employee.
- To transfer to a lower graded job or differing terms and conditions, if available, without any protection of pay or benefits.
- To consider a financial penalty e.g. making good a financial loss suffered by the Council, or paying back money falsely claimed, losing pay.

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- Any other sanction that the Disciplinary Meeting Chair considers reasonable and appropriate in the circumstances.
- 11.2 Once that decision is made, written confirmation of the decision will be given within five working days of the meeting or where this is not possible written confirmation of when the decision will be notified. This will be sent to the employee's home by First Class post or handed to them personally. In any event, this should be no more than 14 days from the date of the meeting.
- 11.3 The employee will be advised of their right to appeal against the decision and informed who that appeal should be lodged with and in what timescale.

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APPENDIX 1 – TEST OF REASONABLENESS TEMPLATE

For completion by Disciplinary Meeting Chair during the decision-making process

Name of Employee _____

Date of Disciplinary Meeting _____

Disciplinary Meeting Chair _____

Consider	Information Taken into Account
Has there been as much investigation as is reasonable in the circumstances?	
Have the requirements of the disciplinary policy been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this meeting?	
Has there been sufficient regard paid to any explanation put forward by or on behalf of the employee?	
Is there a genuine belief that the employee committed the misconduct?	
Are there reasonable grounds for sustaining that belief on the balance of probabilities?	
Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?	
Has there been regard paid to any mitigating circumstances put forward by, or on behalf of, the employee eg health, bereavement etc	
Is the decision within the band of “reasonable” responses of a “reasonable” employer in the circumstances?	



CONDUCTING A DISCIPLINARY APPEAL HEARING

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1. THE RIGHT TO APPEAL AND APPEAL REASONS

- 1.1 An employee has the legal right to appeal against the decision made following a formal Disciplinary Meeting. They must be notified of this right in the letter advising them of the outcome of the Disciplinary Meeting. The deadline to submit an appeal is five working days from when the employee receives notification of the decision in writing either by first class post or a hand delivered letter.
- 1.2 The employee should outline their reasons for appeal in their submission and state clearly:-
- a) Where the facts and evidence are not in dispute, but the sanction is considered too harsh;
 - b) Where the facts and evidence presented during the Disciplinary Meeting are disputed, the procedure has allegedly not been followed or where substantial new evidence has arisen which would have had a bearing on any sanction issued
- 1.3 Appeals submitted under 1.2(a) will be conducted **as a review of the sanction only**. Appeals submitted under 1.2(b) will be conducted as a re-hearing. It is expected that the vast majority of appeals will be submitted under 1.2(b) and as such a re-hearing will be necessary
- 1.4 If the employee does appeal, an Appeal Meeting Chair will be appointed and an Appeal Meeting arranged.
- 1.5 On appointment, the Disciplinary Appeal Chair will first consider the appeal letter and determine, with the support of their HR representative, whether an appeal meeting is to consider a Review or a Re-Hearing. As stated in 1.3, it is expected that It is expected that the vast majority of appeals will be submitted under 1.2(b) and as such a re-hearing will be necessary. There is a risk that in considering an appeal as a review information presented may give rise to the need for a re-hearing so the HR representative should ensure that in receiving the written notification from an employee of a wish to submit an appeal on the basis of a review only that they understand they are accepting the judgement of the Disciplinary Panel but not the sanction, so it will not be possible for the appeal to be upheld in terms of dismissing the case. It may be that the sanction changes

2. THE PURPOSE OF AN APPEAL AND POINTS FOR THE CHAIR TO CONSIDER

- 2.1 The purpose of an appeal is to enable an independent review of the 'reasonableness' of the outcome of the Disciplinary Meeting. In the context of the Appeal Meeting, the Disciplinary Appeal Meeting Chair should consider the following points:
- Has a thorough and sufficient investigation been conducted?
 - Has the procedure has been followed properly?
 - Was the Disciplinary Meeting Chair's decision to take disciplinary action reasonable based on the evidence relating to the case?
 - Was the disciplinary action decided upon reasonable, given the circumstances of the case?
 - Is the treatment of the employee consistent with the Council's general approach to similar cases?
 - Has the matter been handled fairly and appropriately and is it consistent with the Disciplinary Procedure?

3. OTHER POINTS TO CONSIDER

- 3.1 All those involved in disciplinary issues should remember that the meeting is an opportunity for the employee to hear the complaint(s) or allegation(s) made against them, put their case forward and to be treated under a fair process.

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3.2 Attending a disciplinary appeal meeting may be a distressing experience for employees and it is also a difficult time for the disciplinary appeal panel. The meeting must be conducted with sensitivity, with absolute confidentiality and in a fair and consistent manner.

3.3 The HR representative is available to provide support and advice to the Disciplinary Appeal Meeting Chair (and other parties) if needed. They form part of the disciplinary appeal panel and will assist in making a decision about the outcome of the meeting. However the Disciplinary Appeal Meeting Chair will be responsible for making decision

3.4 The point of the meeting is to

- establish the facts, not catch people out;
- give the employee the opportunity to state the basis of their appeal, their case and answer any allegations that have been made. They should be able to ask questions, present evidence and call witnesses. The accompanying person may also ask questions and should be able to confer privately with the employee;
- listen carefully and be prepared to wait in silence for an answer as this can be a constructive way of encouraging the employee to be more forthcoming.

3.5 It is possible that the disciplinary appeal meeting may not proceed very smoothly – people may be upset or even angry. If the employee becomes upset or distressed allow time for them to regain composure before continuing. If the distress is too great to continue then adjourn and reconvene at a later date however, the issues should not be avoided.

3.6 During the meeting emotions may not be fully controlled, and while this can be helpful in finding out what has actually happened, abusive language or conduct should not be tolerated.

3.7 If an employee raises a separate grievance during a disciplinary appeal meeting, the Disciplinary Appeal Meeting Chair may adjourn the meeting in order that the grievance is dealt with first.

4. PREPARING FOR THE DISCIPLINARY APPEAL MEETING

4.1 In the event of a Disciplinary Appeal Meeting being scheduled, letters and accompanying paperwork should be sent to the employee's home by first class mail, or handed to them personally. The paperwork will include:-

- a copy of employees appeal submission
- a copy of the letter issuing the disciplinary sanction and Appeal Meeting Procedure
- a copy of the investigation report and Disciplinary Policy,
- the date, time and venue for the meeting (usually within 10 working days of the letter),
- the right to be accompanied by a trade union representative or a work colleague,
- details of any witnesses to be called during the meeting,
- The deadline for submission of any documentation to be considered during the meeting (normally 3 working days before the date of the meeting to allow this to be circulated).

4.2 All documentation will be provided electronically unless in exceptional circumstances. Where agreed by all parties involved, the meeting may be recorded using electronic recording equipment (including audio).

4.3 The documentation must also be copied to the Investigating Officer. Both parties are responsible for making arrangements for their witnesses to attend and should ensure at least 3 working days notice.

4.4 The meeting should be held as privately as possible, preferably away from the normal work location in a suitable room where there will be no interruptions. Appropriate consideration should be made should there be issues of understanding or language difficulties. The Disciplinary Appeal Meeting Chair, with support

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from their HR representative, should consider the structure of the meeting and make a list of points to be covered.

5. THE RIGHT TO BE ACCOMPANIED

5.1 It is a statutory right for a worker to be accompanied, by a fellow worker or trade union official, at formal disciplinary and grievance meetings, including appeals. Particularly where this is the first formal process for an employee, they may be overawed or feel intimidated by some meetings, and the accompanying person can help the individual to make all the necessary points. The trade union representative will usually come from an Oxford City Council recognised union.

5.2 The accompanying person can address the meeting, but not answer questions on behalf of the employee.

6. DEALING WITH DELAYS

6.1 If the employee is genuinely unable to attend the disciplinary appeal meeting, e.g. because they are ill, they should be offered an alternative at a reasonable date and time. If the accompanying person cannot make the meeting, the employee must propose another date and time which is no more than five working days after the day originally proposed, beginning with the first working day after that day.

6.2 If the employee fails to attend the rearranged meeting, this stage of the procedure is complete and a decision may be made on the available information. Even if this is the case, the employee should still receive notification of the decision in writing. There is no further right of appeal.

6.3 If the date of the meeting has to be changed for any reason other than the attendance of the employee or their representative, the employee should be offered a reasonable alternative date and time. It is important that the employee is notified as soon as possible of any delays.

7. STRUCTURE OF THE DISCIPLINARY APPEAL MEETING

7.1 The Disciplinary Appeal Meeting Chair will introduce those present. In most instances the other people in attendance will be:-

- the Disciplinary Meeting Chair (in the case of a review only)
- the HR representative from the disciplinary meeting (in the case of a review only)
- the commissioning manager
- the employee concerned and their representative (or person accompanying them)
- a supporting HR representative not previously involved in the case.
- an Elected Member to observe proceedings but not to participate in the decision.
- in exceptional cases, it may be appropriate for another specialist to be present to assist the Appeal Meeting Chair where there is a need for professional/technical advice.

7.2 The Appeal Meeting Chair should explain the purpose of the appeal meeting which is

- a) In the case of a review of the sanction - to determine whether the outcome from the original meeting was correct and whether the disciplinary sanctions imposed at that meeting should be upheld, overturned or replaced with another sanction.
- b) In the case of a re-hearing – to mirror the Disciplinary procedure as stated below

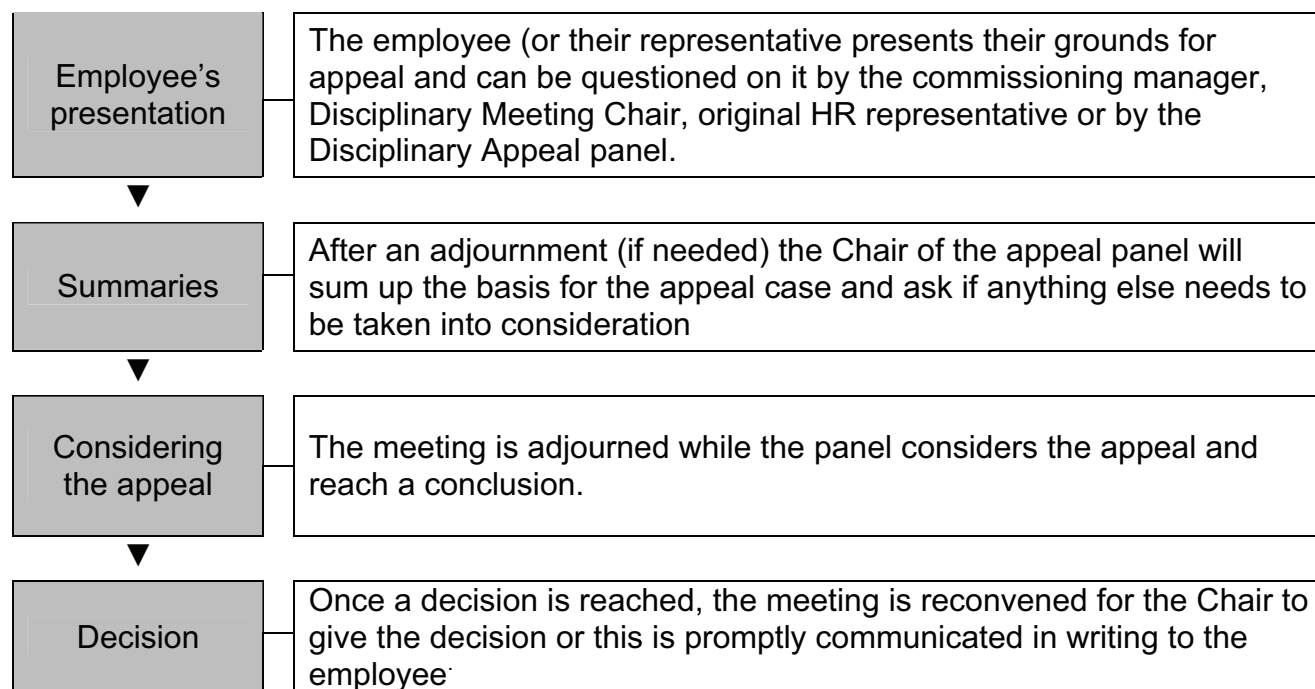
7.3 The Appeal Meeting Chair should explain that the meeting is being conducted as part of the disciplinary appeals procedure and a written record of the meeting will be made. It should be noted if any witnesses have been asked to give evidence and if so who they are.

7.4 The role of the accompanying person if present should be explained. If the employee is unaccompanied, the Appeal Meeting Chair should confirm that the employee understood that they had the right to be

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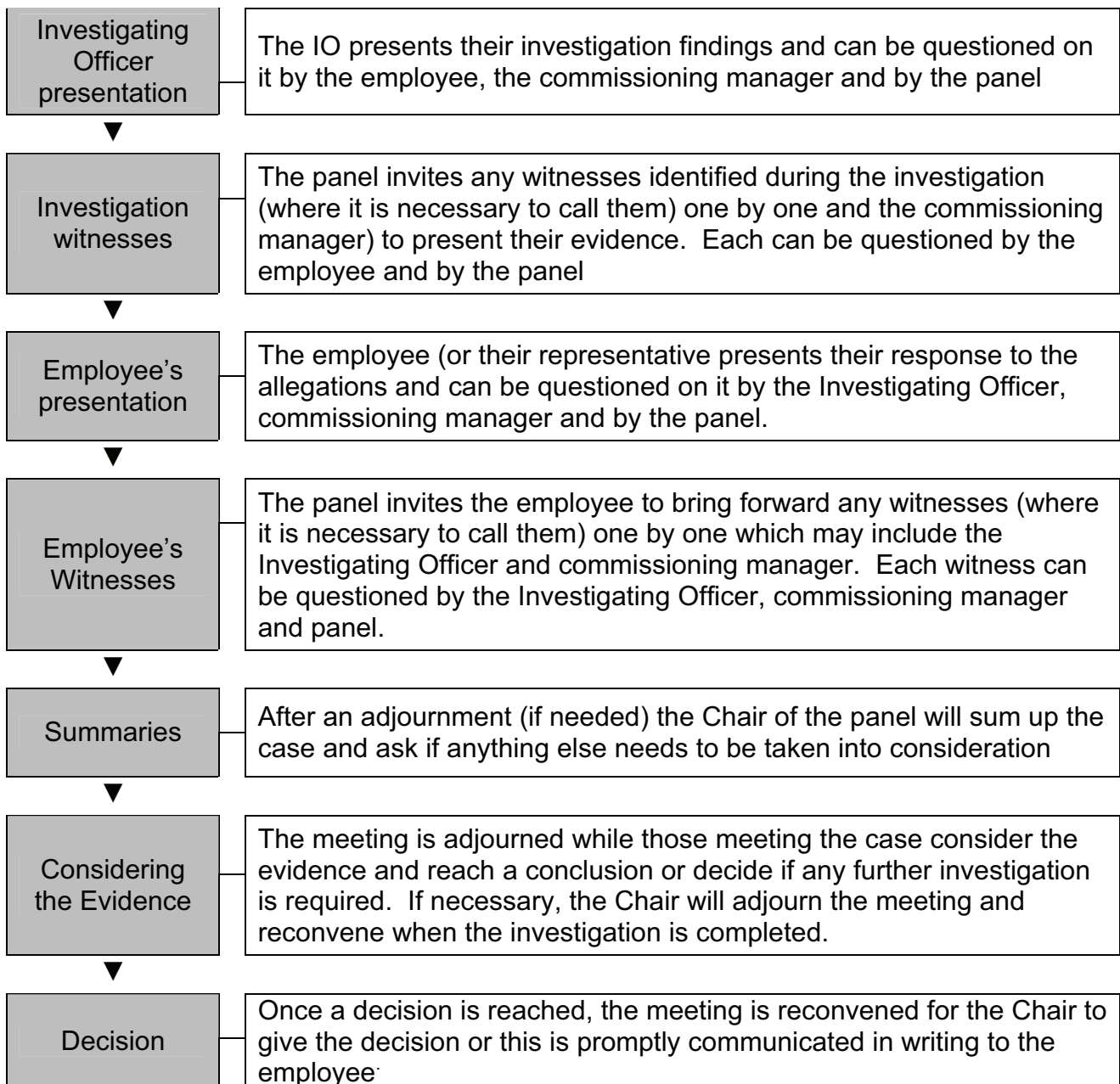
accompanied, but chose not to exercise this right. Although the employee may confer with their representative at any time during the meeting, the Appeal Meeting Chair has the right to ask the employee personally to answer any questions put to them.

7.5 Running order for a review



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7.6 Running order for a re-hearing



7.7 Witnesses should be released from the meeting when they are no longer required.

7.8 While the employee may submit late evidence or evidence on the day, it is at the discretion of the Disciplinary Appeal Chair as to whether or not this is accepted as evidence during the Appeal meeting.

7.9 **Adjournment** - Any party may request that the Disciplinary Appeal Chair grant a short break at any time in the proceedings. If the Chair considers that more than a short break for deliberation is necessary then the meeting should be formally adjourned.

7.10 If at any time those present become too upset to continue or the meeting is becoming heated, the Chair should arrange for an adjournment to allow people to compose themselves before continuing.

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8. MAKING A DECISION

8.1 In coming to a conclusion on the appeal (which as a re-hearing will be the entire case), the Disciplinary Appeal Meeting Chair will need to decide 'on the balance of probabilities' whether there is merit in the appeal or if the employee concerned carried out the alleged misconduct. It requires a conclusion based on evidence rather than instinct or intuition.

8.2 In most cases, evidence is put forward that is in some ways contradictory and the disciplinary appeal panel will need to come to a conclusion as to where the truth lies. To do so, the Disciplinary Appeal Meeting Chair will need to use judgement and management experience to balance the evidence for and the evidence against, or consider the merits of an appeal against a sanction (review).

8.3 In a re-hearing, The Disciplinary Appeal Meeting Chair should consider how likely it is that the act or omission happened, e.g. how unusual would it be for the alleged act to have occurred? Does any of the evidence sound more far-fetched than the rest? If two people are directly contradicting one another, is there any corroborating evidence that adds weight to one or other of them?

8.4 Generally, the less likely the act or omission is to have occurred, the greater the burden of proof required. In conjunction with the HR representative, the Disciplinary Appeal Meeting Chair will need to identify evidence that corroborates one side or the other

9. MAKING FINDINGS OF FACT

9.1 If the Disciplinary Appeal Meeting Chair cannot come to a judgement about where the truth lies because there is not sufficient evidence to do so, it will not be possible to make a finding that the act or omission did occur as alleged. In this case, the Disciplinary Appeal Meeting Chair must uphold the employee's appeal and dismiss any sanction

9.2 If it is concluded that the alleged misconduct did occur, the Disciplinary Appeal Meeting Chair should record the findings and the reasons for those findings, and confirm the original decision

9.3 A review of sanction will be more about judgement and precedent than making findings of fact because in submitting an appeal against a sanction, the decision is not in question, merely the level of sanction applied

10. MITIGATION

10.1 In many cases, the employee concerned will have offered an explanation about what happened and why. In some cases, the misconduct may be admitted and the only evidence put forward by the employee relates to mitigating circumstances. Based on the facts, the Disciplinary Appeal Meeting Chair will then need to consider any mitigation put forward by the employee to decide what sanction should apply. The Disciplinary Meeting Chair will also need to take account of the employee's previous unspent disciplinary record in deciding what level of action is appropriate.

11. THE DECISION

11.1 Having considered an appeal against sanction or mitigation in a re-hearing, it is important to also consider the seriousness of the misconduct in the context of the employee's previous record and the circumstances of the case. The HR representative should be able to advise on any precedents to ensure the decision is consistent with them.

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11.2 The Disciplinary Appeal Chair should work with the HR representative to establish the exact wording of the findings and any sanction. They should also consider any arrangements that may need to be put in place to assist the employee to improve and/or be monitored. Any findings that would support improvement in the future for the individual or the wider team should be recorded in the written decision.

11.3 At this stage in a re-hearing, the Disciplinary Appeal Chair should complete the Test of Reasonableness template at [Appendix 1](#).

12. TEST OF REASONABLENESS (RE-HEARING)

12.1 Has there been as much investigation as is reasonable in the circumstances?

12.2 Have the requirements of the disciplinary policy been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this meeting?

12.3 Has there been sufficient regard paid to any explanation put forward by or on behalf of the employee?

12.4 Is there a genuine belief that the employee committed the misconduct?

12.5 Are there reasonable grounds for sustaining that belief on the balance of probabilities?

12.6 Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?

12.7 Has there been regard paid to any mitigating circumstances put forward by, or on behalf of, the employee e.g. health, domestic, bereavement?

12.8 Is the decision within the band of 'reasonable' responses of a 'reasonable' employer in the circumstances?

13. DECISION AND SANCTIONS

13.1 When considering a **review**, the appeal panel can either:

- Uphold the appeal against sanction on the basis that the panel considers the original sanctions imposed were too severe and not in the band of reasonable action, they may replace the original decision with a lesser sanction. The Appeal Meeting Chair cannot replace the original decision with more severe disciplinary action, or
- Dismiss the appeal and uphold the original decision

13.2 When considering a **re-hearing**, the appeal panel can decide to:

- Uphold the appeal in full and dismiss the case. The panel must be able to justify that there is sufficient evidence to warrant an overturning of the original panel's decision. Circumstances may include new evidence being presented, a review of the process has uncovered flaws in how the disciplinary was conducted, or if mitigating circumstances have been uncovered which were not previously taken into account. If this is the case, all papers relating to the meeting will be destroyed.
- substitute a different disciplinary sanction(s) providing it is not more severe than the original one;
- dismiss the appeal and uphold the original decision.

13.3 For reference, the possible sanctions are:

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- To recommend that the employee is counselled and/or supported by their line manager or another in connection with the complaint(s) or allegation(s). This option is appropriate if the misconduct is of a minor nature and the employee has a clean employment record.
- To issue the employee with either a verbal or written warning if the complaint(s) or allegation(s) is/are substantiated.
- To dismiss the employee if there is a current final warning on file or if the misconduct is serious enough to move straight to dismissal (a list of some gross misconduct allegations is included in the Council's Disciplinary Policy). The employee will be required to work their period of notice, or if the dismissal is effective immediately, they will be paid in lieu for their contractual notice.
- To summarily dismiss the employee, if the misdemeanour is serious enough to be considered as gross misconduct, and dismissal is considered to be a suitable penalty. In this case, the dismissal will be effective immediately and will be without notice. Any other contractual entitlements such as outstanding holiday pay will be made to the employee.
- To transfer to a lower graded job or differing terms and conditions, if available, without any protection of pay or benefits.
- To consider a financial penalty e.g. making good a financial loss suffered by the Council, or paying back money falsely claimed, losing pay.
- Any other sanction that the Disciplinary Appeal Chair considers reasonable and appropriate in the circumstances.

13.4 Once that decision is made, written confirmation of the decision will be given within five working days of the meeting or where this is not possible written confirmation of when the decision will be notified. This will be sent to the employee's home by first class post or handed to them personally. In any event, this should be no more than 14 days from the date of the meeting.

13.5 There is no further right of appeal.

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APPENDIX 1 – TEST OF REASONABLENESS TEMPLATE (RE-HEARINGS ONLY)

For completion by Disciplinary Appeal Meeting Chair during the decision-making process

Name of Employee _____

Date of Appeal Meeting _____

Disciplinary Appeal Chair _____

Consider	Information Taken into Account
Has there been as much investigation as is reasonable in the circumstances?	
Have the requirements of the disciplinary policy been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this meeting?	
Has there been sufficient regard paid to any explanation put forward by or on behalf of the employee?	
Is there a genuine belief that the employee committed the misconduct?	
Are there reasonable grounds for sustaining that belief on the balance of probabilities?	
Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?	
Has there been regard paid to any mitigating circumstances put forward by, or on behalf of, the employee eg health, bereavement etc	
Is the decision within the band of “reasonable” responses of a “reasonable” employer in the circumstances?	

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