

People Team

Disciplinary Guidance

1 Contents

How to use this guide	3
1 What is Misconduct?	3
2 The Informal Process.....	3
3 The Formal Process.....	4
Chief Executive, Directors, Chief Finance Officer (S151) or Monitoring Officer	4
Suspension	4
Disciplinary Investigation	5
What is the investigation process?.....	5
What are the Terms of Reference?.....	6
Who should be the Investigating Officer?	6
What is the role of the Investigating Officer?	6
What is the role of the person being investigated?	6
What is the role of the People Consultancy Team?	6
What is the role of the Accompanying Person?	7
What does the planning process look like?.....	7
Written witness statements	8
Investigation interviews.....	8
Taking notes	9
Searching employee e-mails and computers	10
Suspected criminal or fraudulent activity.....	10
Safeguarding allegations	11
The Investigation Report.....	12
Deciding whether there is a case to answer	12
What happens next?	13
4 Disciplinary Hearing.....	14
What is the hearing process?	14
Who should be the Hearing Manager?	14

	What is the role of the Hearing Manager?	14
	Possible outcomes.....	15
	What is the role of the People Consultancy Team?	15
	What is the role of the Accompanying Person?	15
	What does the planning process look like?	16
	What happens in the meeting?	17
	Taking notes	18
	Failure to attend.....	19
	Making the decision	19
	Sharing the decision	20
	The outcome letter	20
5	Appeal Process.....	22
	What is the Appeals Process?	22
	Submitting an appeal	23
	Who should hear the appeal?	23
	What is the role of the Appeal Manager?	23
	Possible outcomes.....	23
	What is the role of the People Consultancy Team?	24
	What is the role of the Accompanying Person?	24
	Planning Process	24
	What happens in the meeting?	25
	Taking notes	25
	Failure to attend.....	26
	If further investigation is needed:	26
	Making the decision	27
	The outcome letter.....	27

How to use this guide

This guide has been written to accompany the Disciplinary Procedure, which sets out the process that employees and managers must follow.

This guide outlines the steps that should be taken to ensure that employees are treated fairly and consistently.

For any support regarding this process please reach out to the People Consultancy team at employeerelations@oxford.gov.uk.

1 What is Misconduct?

- 1.1 If an employee does something wrong that goes against Oxford City Council's policies or procedures, it could be considered to be misconduct. Some examples include:
 - Lateness
 - Refusing to do work
- 1.2 Some wrong doings could be considered so serious that they are considered to be 'gross misconduct'. Some examples include:
 - Dishonesty
 - Theft
 - Fraud
 - Physical violence

2 The Informal Process

- 2.1 If the act of misconduct is minor, the line manager should deal with this informally.

It is also possible to resolve cases informally where the manager is confident that the behaviour will improve straight away.
- 2.2 If handling informally, the line manager should have a conversation with the employee to:
 - Confirm that the conduct is unsatisfactory
 - Give them the opportunity to explain and discuss the reasons for what happened
 - Clarify the conduct expected
 - Explain that if their conduct doesn't improve the formal disciplinary procedure may be instigated
- 2.3 The line manager should then send the employee a written summary of the conversation and save a copy to their personal file.
- 2.4 A record of the informal conversation will be kept but will normally be disregarded after 6 months.

3 The Formal Process

Chief Executive, Directors, Chief Finance Officer (S151) or Monitoring Officer

- 3.1 If an investigation is into the actions of the Chief Executive, a Director, Chief Finance Officer or Monitoring Officer the procedure set out in the Constitution involving the Investigation and Discipline Committee must be followed as appropriate.

Suspension

- 3.2 Once it has been established that the formal process needs to be instigated, the first step is to determine whether or not suspension is appropriate.
- 3.3 It might be necessary to suspend an individual for all or part of the disciplinary investigation if:
- They are accused of gross misconduct where dismissal is a possible outcome
 - It is not suitable for them to continue working
 - The employee or others may be at risk
 - There is a risk that the employee may influence witnesses or interfere with the investigation
- 3.4 Any decision to suspend must be approved by the relevant Head of Service or more senior officer and the People Consultancy team notified.
- 3.5 If suspension goes ahead a meeting must be arranged with the employee to set out:
- The allegations raised
 - The decision to suspend
 - The reason(s) for suspension
 - Confirmation that pay will continue
 - Confirmation that suspension is not assumption of guilt in any way
 - The expected duration (suspension will normally be reviewed every 14 days and must last no longer than is necessary to investigate the allegations raised)
 - The need to be contactable and available to attend any meetings at short notice
 - That they must not visit their place of work or contact colleagues without the authority of their line manager
 - That computer access may be removed
 - Where annual leave has been pre-booked prior to suspension this may be taken
 - That confirmation of their suspension will be sent in writing
- 3.6 The meeting should be held by a manager more senior than the employee involved (most likely the employee's line manager).
- 3.7 The employee can have a witness present to observe the meeting, but there is no right of representation. The witness should be a Trade Union

representative or work colleague. If the employee can't find a suitable witness, the suspension meeting can still go ahead.

- 3.8 A letter summarising the suspension discussion must be sent to the employee.

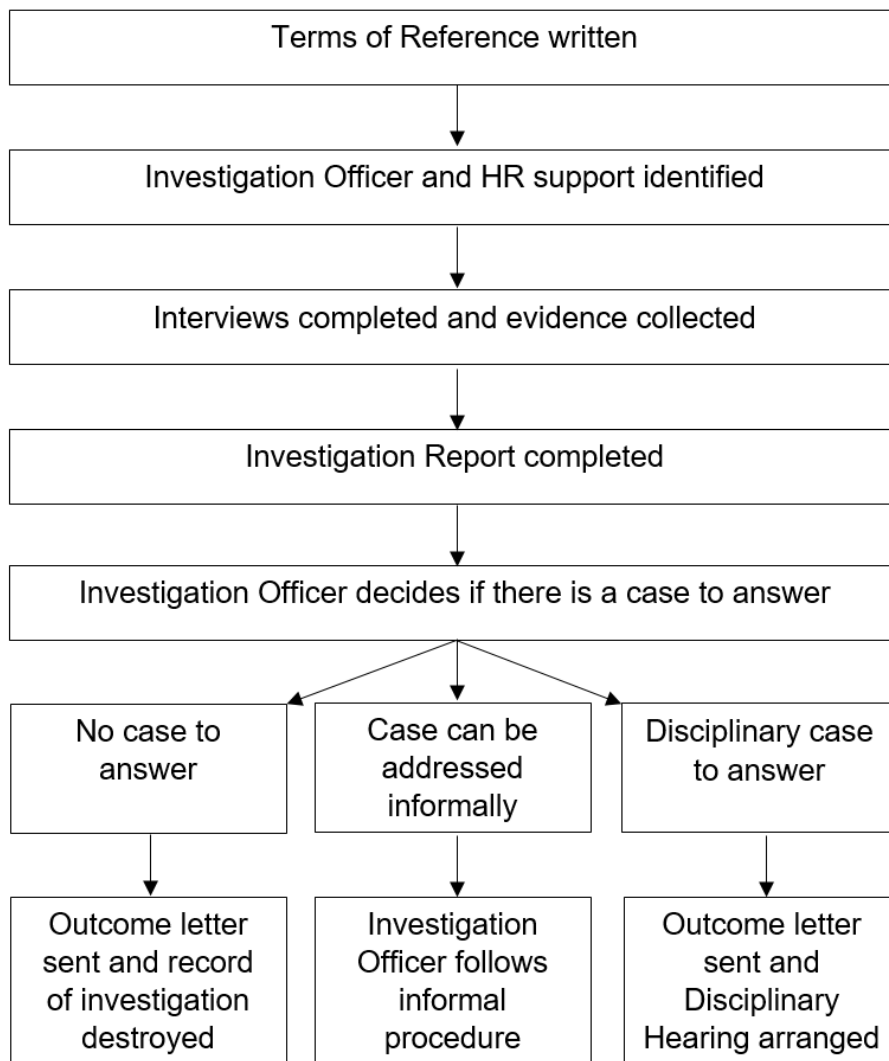
Disciplinary Investigation

- 3.9 If the alleged misconduct is more serious, or an informal or formal warning has not seen the improvement in behaviour required, it may be appropriate for a disciplinary investigation to be carried out. The aim of the investigation is to establish the facts about the alleged misconduct and determine whether there is a disciplinary case to answer.

- 3.10 The investigation process is solely for the purpose of fact finding but, if the Investigating Officer decides there is a disciplinary case to answer, it can lead to the formal process being instigated via a disciplinary hearing.

What is the investigation process?

- 3.11 This flowchart sets out the steps to be completed as part of the investigation process. More information on each step follows on.



What are the Terms of Reference?

- 3.12 This is a summary document which should be prepared by the Investigating Officer at the start of any investigation outlining:
- The allegations to be investigated
 - Any relevant information/ evidence already gathered related to the case
 - The facts that need to be established
 - Timescales

Who should be the Investigating Officer?

- 3.13 The Investigating Officer should be someone who:
- Has not been involved in the alleged misconduct
 - Is at least the same, if not more senior than the employee being investigated
 - Has received training on conducting investigations
- 3.14 Usually it is most appropriate for the employee's line manager to carry out the investigation, but there could be situations where this isn't appropriate – in which case someone else should be identified. If the line manager considers it wouldn't be appropriate for them to carry out the investigation they should contact the People Consultancy Team for advice.

What is the role of the Investigating Officer?

- 3.15 The Investigating Officer has to gather the facts of the case by:
- Interviewing the employee about the alleged misconduct
 - Interviewing any witnesses
 - Obtaining any other relevant documentary evidence
 - Preparing a report that contains all the relevant factual information, copies of statements received and any other relevant documentary evidence

What is the role of the person being investigated?

- 3.16 If being investigated, employees are expected to:
- Cooperate fully with the investigation process
 - Provide names of relevant witnesses if asked
 - Disclose documents when requested
 - Attend meetings when required

Failure to do so could lead to further disciplinary action

What is the role of the People Consultancy Team?

- 3.17 A member of the People Consultancy Team can support the Investigating Officer throughout the disciplinary investigation.
- 3.18 They may attend any planned investigation interviews and keep the concerned employee updated on investigation progress.

- 3.19 They can help to ensure that the right process is followed in line with the Council's Disciplinary Procedure and the ACAS guidance on the Disciplinary Procedure.
- 3.20 If the Investigating Officer would like support from the People Consultancy team they should contact employeerelations@oxford.gov.uk.

What is the role of the Accompanying Person?

- 3.21 Any employee being interviewed as part of a disciplinary investigation has the right to be accompanied by a Trade Union representative or work colleague.
- 3.22 If the employee concerned is a Union Representative, they must be offered the opportunity to involve a full time Union official, and with the employee's agreement the Council may contact the Union directly.
- 3.23 The employee is responsible for notifying their accompanying person of the interview. If there is no accompanying person the Investigating Officer must confirm with the employee at the beginning of the interview that they have chosen not to be accompanied.
- 3.24 It is not appropriate for an accompanying person to be someone who may be interviewed as a witness as part of the investigation.
- 3.25 If an employee's chosen companion isn't available at the proposed meeting time, the Investigating Officer must postpone the meeting to a time proposed by the employee provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.
- 3.26 The accompanying person is allowed to:
- Set out the employee's case
 - Raise any points related to the case (they may not respond to questions on the employee's behalf)
 - Talk with the employee during the meeting
 - Take notes
 - Sum up the employee's case at the end of the meeting

What does the planning process look like?

- 3.27 It is really important to plan an investigation to make sure that the right people are involved and the necessary evidence is reviewed as quickly as possible.
- 3.28 When planning the investigation, the Investigating Officer should:
- Confirm which parts of the Code of Conduct or Council Policies may have been breached
 - Notify the employee concerned in writing of the allegations made against them and that an investigation will be carried out
 - Decide what information is needed and how it will be obtained

- Identify initial witnesses to be interviewed and the order that the interviews should be carried out
- 3.29 The Investigating Officer 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.
- 3.30 For more complex investigations, if necessary, the Investigating Officer should call for specialist help 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.

Written witness statements

- 3.31 Once the Investigating Officer has identified who they need to speak to as part of the investigation they need to decide whether to request a written statement or an interview (which could be held remotely or in person).
- 3.32 A written statement might suffice if:
- There are very specific questions or points to be clarified
 - The witness is not an employee (e.g. customer or client)
 - The witness is too ill to attend an interview
- 3.33 If requesting a written statement, the Investigating Officer should contact the employee via email:
- Confirming what they are investigating
 - Enclosing a list of questions
 - Requesting their written response to the attached questions
 - Reminding them of the need to keep what they share confidential (but agreeing to their reviewing of the questions with a work colleague or union rep for support)
 - Explaining what the statement will be used for
 - Giving a deadline to respond by

Investigation interviews

- 3.34 Where the Investigating Officer needs to interview employees they should email a meeting invitation that:
- Confirms what they are investigating
 - Provides meeting details (date, time, location and attendees)
 - Outlines what to expect from the meeting
 - Reminds them of the need to maintain confidentiality
 - Outlines their right to be accompanied by a Trade Union representative or work colleague
- 3.35 The Investigating Officer should consider the interviews as an opportunity to acquire information, not to interrogate or challenge employees.
- 3.36 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. The interviews can be held remotely, but if it is more appropriate for it to take place in person this should be arranged.

- 3.37 The individual being investigated should be told who is being interviewed as part of the investigation and be given the opportunity to suggest anyone else who it may be helpful to interview.

At the start of the interview the Investigating Officer needs to confirm:

- Who is present
- The role of the accompanying person, if present
- That the employee is happy to continue if no accompanying person is present
- The format for the interview
- That notes will be taken
- That the interviewee will receive a copy of the meeting notes and will have the opportunity to make any amendments before they are finalised
- That their evidence may form part of a Disciplinary Hearing
- That all discussions during the interview are confidential and must remain so (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 information
- Use closed questions (questions that have a yes or no answer) to obtain specific facts
- Avoid asking questions that attempt to guide the interviewee's answer

At the end of the interview the Investigating Officer should:

- Ask the interviewee if there is anything else that they would like to add including any witnesses they believe should be spoken to
- Explain that there may be a need to meet again depending on the outcome of any other interviews
- Confirm that a copy of the meeting notes will be provided

Taking notes

- 3.38 The Investigating Officer may want to have a member of the People Consultancy team with them at any interviews to take notes.
- 3.39 The notes should capture:
- The date and place of the interview
 - Names of all people present

- A record of the discussion had
 - Any refusal to answer a question
 - The start and finish times, and details of any adjournments
- 3.40 The notes do not need to record every word that is said but they should accurately capture the key points of any discussion.
- 3.41 In exceptional circumstances an audio recording of meetings can be taken with the agreement of the interviewee. However, this can sometimes complicate the matter. Knowing they are being taped may be intimidating to an interviewee, making them less able to talk openly about the matter. It can also be time consuming because a transcript of the recording will need to be typed up so that it can be used as a witness statement.
- 3.42 After any interview, a copy of the meeting notes needs to be sent to the interviewee. The document should be saved with added protections so that only tracked changes can be added to prevent accidental editing. To do this on Microsoft Word go to File>Protect Document>Restrict Editing. The interviewee should then review the notes and confirm via email that the notes reflect the discussion had, or attach the edited document.
- 3.43 If the interviewee does not agree to the contents of the notes, they should make amendments using Track Changes. If the changes that the interviewee makes do not match the notes of the interviewer/note taker, a separate version should be saved and referred to in the Investigation Report.

Searching employee e-mails and computers

- 3.44 It may be necessary to search and monitor an employee's work e-mails as part of a disciplinary investigation. Any search must be carried out in accordance with the Council's Employee Data Monitoring Policy, and investigators should be mindful that any method used to extract information about suspected breaches of the disciplinary procedure must be lawful e.g. not contravene data protection legislation.

Suspected criminal or fraudulent activity

- 3.45 The Council does not have the authority to undertake a search of personal belongings; or detain an employee against their wishes.
- 3.46 If the Investigating Officer believes a criminal offence has been committed, the Council may notify the police. Further advice from the Head of People or the Monitoring Officer may be obtained.
- 3.47 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. If employees are unable to or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Council may make a disciplinary decision based on the available evidence.

- 3.48 In cases of alleged fraud, it is the responsibility of the Investigating Officer to notify the Section 151 Officer who will liaise with the Monitoring Officer and Head of People to determine whether the matter needs to be referred to the police.

Safeguarding allegations

- 3.49 Where there are any allegations of misconduct that may also be a safeguarding concern, the manager must refer to the Safeguarding Allegations Policy and Procedure and immediately notify the Head of Business Improvement.
- 3.50 The Head of Business Improvement will determine the most suitable course of action.

The Investigation Report

- 3.51 When all investigating has been done, the Investigating Officer will need to write up the findings in an Investigation Report. It should include the following:

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

- Why the investigation was deemed necessary
- The terms of reference of the investigation
- Any other factors regarding the organisation or individuals which may be relevant at this stage for the reader to know
- Confirmation that the Investigating Officer was provided with a copy of the Disciplinary Procedure together with this document and that the process outlined in these documents was followed

Methodology

- A list of interviewees and their job titles
- A list of any other evidence reviewed

Investigation findings

- Interview findings – pulling out any things said in interviews relevant to the allegations
- Facts established – clarifying the facts against each allegations
- Summary of findings – outlining whether there is a disciplinary case to answer against each allegation and why

Conclusion & Recommendations

- State whether overall there is a disciplinary case to answer
- Highlight any mitigating factors identified
- Highlight any complexities or inconsistencies of the investigation

Appendices

Include the full versions of:

- Signed witness statements
- Finalised interview meeting notes
- Documents relevant to the investigation

Deciding whether there is a case to answer

- 3.52 When deciding where there is a disciplinary case to answer, the Investigating Officer should consider:
- Are there facts that prove the allegation(s) raised?
 - Is there mitigation to justify the actions taken by the employee in question?
 - What was the impact of the misconduct on other people and/or the organisation?

What happens next?

3.53 No case to answer:

- The employee should be notified in writing that no formal action will be taken and any recommendations highlighted to them
- Any record of the investigation should be destroyed

3.54 Informal Resolution:

- Where there is evidence of misconduct, but the Investigating Officer determines it was minor, this can be addressed informally
- The Investigating Officer should have an informal conversation with the employee and follow this up in writing (please refer to point 2.2)
- Any record of the investigation should be destroyed

3.55 Disciplinary case to answer:

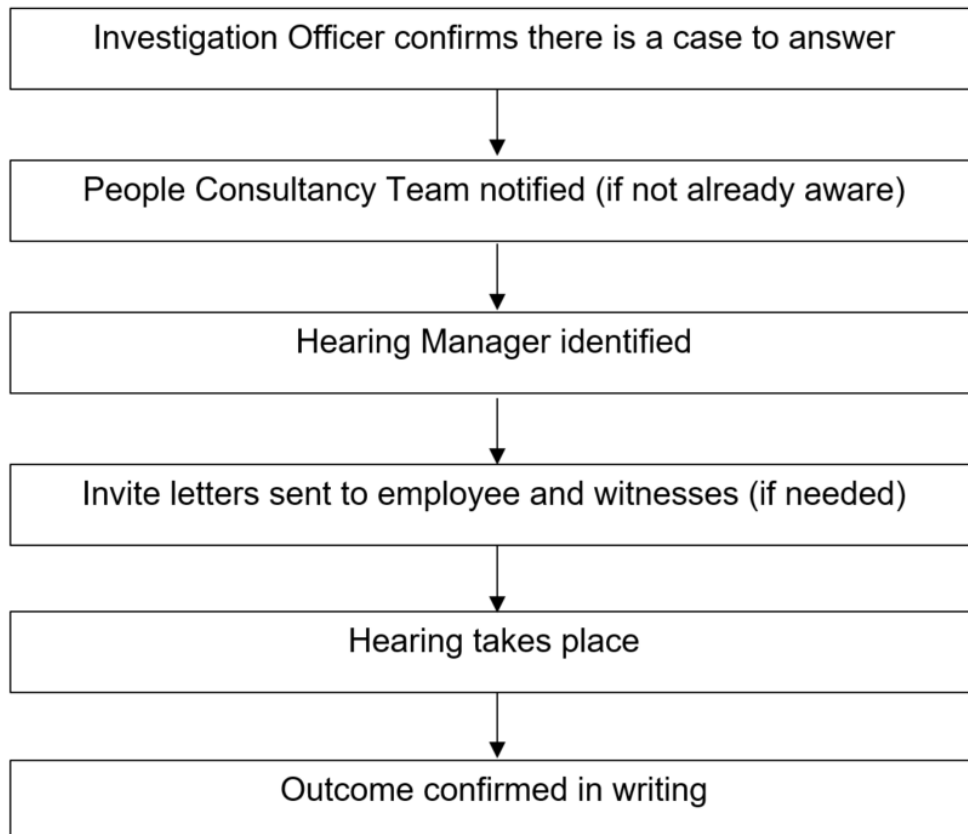
- The Investigating Officer must contact the People Consultancy team.
- The employee must be notified in writing of the allegations being taken forward to a disciplinary hearing along with details of what to expect next

4 Disciplinary Hearing

- 4.1 If there is a case to answer, someone from the People Consultancy team will help to identify an appropriate Disciplinary Hearing Manager.

What is the hearing process?

- 4.2 This flowchart sets out the steps to be completed as part of the disciplinary



hearing process. More information on each step follows on.

Who should be the Hearing Manager?

- 4.3 The Hearing Manager should be someone more senior than the employee concerned. It could be the Investigating Officer's line manager, provided they have not been involved in the investigation process.
- 4.4 If dismissal is a potential outcome, the Hearing Manager must be a Head of Service or above.

What is the role of the Hearing Manager?

- 4.5 The Hearing Manager's role is to chair a disciplinary hearing and:
- Review all relevant information
 - Ask further questions of the employee concerned and any witnesses
 - Consider any mitigation the employee wants to raise

4.6 At the end of the hearing, the Hearing Manager will decide whether formal action should be taken.

Possible outcomes

4.7 The Hearing Manager can decide:

- a) To take no action
If the allegations are unfounded this might be appropriate.
- b) First written warning
This is suitable if the conduct does not meet acceptable standards. This warning remains live for disciplinary purposes for 6 months.
- c) Final written warning
If the misconduct is sufficiently serious, or if there is further misconduct prior to the expiry of a first written warning, a final written warning may be issued. This warning will remain live for disciplinary purposes for 12 months.
- d) Dismissal
If there is further misconduct prior to the expiry of a final written warning, or if the misconduct constitutes gross misconduct, dismissal may be appropriate.
- e) Other sanction
Other action short of dismissal can also be put in place if there is misconduct prior to the expiry of a final written warning for gross misconduct. This may include demotion, a financial penalty or transfer.

What is the role of the People Consultancy Team?

- 4.8 A member of the People Consultancy team will support the Hearing Manager through the process, advising on the planning process, the meeting itself and helping them when determining the most appropriate outcome.
- 4.9 The supporting People Consultant will prepare the disciplinary hearing pack.
- 4.10 They can help to ensure that the right process is followed in line with the Council's Disciplinary Procedure and the ACAS guidance on the disciplinary procedure.

What is the role of the Accompanying Person?

- 4.11 The employee has the right be accompanied to the hearing by a Trade Union representative or work colleague.
- 4.12 If the employee concerned is a Union Representative, they should be offered the opportunity to involve a full time Union official, and with the employee's agreement the Council may contact the Union directly.
- 4.13 The employee is responsible for notifying their accompanying person of the interview. If there is no accompanying person the Investigating Officer must

confirm with the employee at the beginning of the interview that they have chosen not to be accompanied.

- 4.14 It is not appropriate for an accompanying person to be someone who has been involved in the investigation as a witness.
- 4.15 If an employee's chosen companion isn't available at the proposed meeting time, the Hearing Manager must postpone the meeting to a time proposed by the employee provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.
- 4.16 The accompanying person is allowed to:
- Set out the employee's case
 - Raise any points related to the case (they may not respond to questions on the employee's behalf)
 - Talk with the employee during the meeting
 - Take notes
 - Sum up the employee's case at the end of the meeting

What does the planning process look like?

- 4.17 The People Consultant supporting the case will prepare a disciplinary hearing pack including:
- Investigation Report
 - Investigation Appendices (including witness statements)
- 4.18 The hearing pack should then be shared with the Hearing Manager to review and identify any witnesses they believe will need to attend the hearing (for example if clarification is needed or further questions need to be asked).
- 4.19 Meeting invitations should then be sent out. The invite letter for the employee concerned should include:
- Date, time and location (meeting should take place within 5 and 10 working days of the letter)
 - The right to be accompanied
 - Details of any witnesses to be called during the meeting
 - The deadline for submission of any additional documentation to be considered during the meeting (3 working days before the meeting)
 - Option for them to request witnesses to attend the hearing (must give names at least 3 days before the meeting)
 - An indication of potential outcomes
 - A copy of the disciplinary hearing pack
 - A copy of the Disciplinary Procedure

At the employee's request, a hard copy of the hearing pack can be posted to them.

- 4.20 The meeting invite for the witnesses should include:
- Date, time and location
 - Confirmation that they won't be required to stay for the full meeting

- Confirmation of the reason they have been asked to attend (e.g. to provide additional clarification or respond to additional questions)
- 4.21 When planning the location, the Hearing Manager should think about the best place to hold the meeting. It should be held as privately as possible, preferably away from the normal work location in a suitable room where there will be no interruptions. Hearings should be held in person, but by exception they can take place remotely.
- 4.22 Consideration needs to be given to any adjustments needed for anyone with underlying ill health or language difficulties.
- 4.23 The Hearing Manager should consider the structure of the meeting and make a list of points to be covered and questions to be asked.

What happens in the meeting?

At the start of the hearing the Hearing Manager needs to confirm:

- Who is present
- The format for the meeting
- That notes will be taken
- That the employee will receive a copy of the meeting notes and will have the opportunity to make any corrections before it is finalised
- The role of the accompanying person, if they are present
- That the employee is happy to continue, if they do not have an accompanying person
- The witnesses scheduled to attend the meeting

During the hearing the Hearing Manager should:

- Clarify the allegations being considered
- Outline the possible outcomes
- Ask any questions relevant to the case
- Give the employee the opportunity to set out their case, ask questions, present evidence and call relevant witnesses
- Offer breaks as needed
- Adjourn the meeting to consider all information and determine the appropriate outcome
- Release witnesses from the meeting when they are no longer required

- 4.24 Throughout the meeting, the Hearing Manager should seek to:
- Establish the facts
 - 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
- 4.25 If the employee submits late evidence or evidence on the day, it is up to the Hearing Manager to choose whether or not this is accepted as evidence during the meeting.
- 4.26 Witnesses attending a hearing are only there to respond to questions asked

by the Hearing Manager or to provide clarity on action taken.

- 4.27 It is possible that the hearing may not proceed smoothly – people may be upset or even angry. If the employee becomes upset or distressed it is important to allow time for them to regain composure before continuing. If the distress is too great to continue then the Hearing Manager should adjourn and reconvene at a later date.
- 4.28 During the meeting emotions may not be fully controlled, however abusive language or conduct should not be tolerated.
- 4.29 If an employee raises a grievance during the hearing, and it is related to the same case the Disciplinary Hearing Manager may need to adjourn the meeting in order that the grievance is dealt with first.

Taking notes

- 4.30 A member of the People Team will attend the hearing to take notes.
- 4.31 The notes should capture:
- The date and place of the hearing
 - Names of all people present
 - A record of the discussion had
 - Any refusal to answer a question
 - The start and finish times, and details of any adjournments
- 4.32 The notes do not need to record every word that is said but they should accurately capture the key points of any discussion.
- 4.33 An audio recording of the hearing can be taken with the agreement of the employees involved. However, this can sometimes complicate the matter. Knowing they are being taped may be intimidating to an employee, making them less able to talk openly about the matter. It can also be time consuming because a transcript of the recording will need to be typed up.
- 4.34 After the hearing, a copy of the meeting notes should be sent to the interviewee. The document should be saved with added protections so that only tracked changes can be added. To do this on Microsoft Word go to File>Protect Document>Restrict Editing. The employee should then review the notes and confirm via email that the notes reflect the discussion had, or attach the edited document.
- 4.35 If the employee does not agree to the contents of the notes, they should make amendments using Track Changes. If the changes that the employee makes do not match the notes of the interviewer/note taker, a separate version should be saved.

Failure to attend

- 4.36 If the employee is genuinely unable to attend the disciplinary hearing, e.g. because they are ill, they should be offered an alternative at a reasonable date and time.
- 4.37 If the accompanying person cannot make the hearing, the employee must propose another date and time which is no more than five working days after the day originally proposed.
- 4.38 If the employee fails to attend the rearranged meeting without good reason, a decision may be made on the available information but the Test of Reasonableness form must be completed with as much information as is available when coming to a decision. If this is the case, the employee must receive notification of the decision in writing and include confirmation that they have the right to appeal.
- 4.39 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 must be offered a reasonable alternative date and time. It is important that the employee is notified as soon as possible of any delays.

Making the decision

- 4.40 The Hearing Manager needs to decide 'on the balance of probabilities' whether the employee carried out the alleged misconduct. This should be evidence based.
- a) Not enough evidence
If there isn't enough evidence to come to a judgement about whether the allegation took place the case would be dismissed and all relevant paperwork destroyed.
- b) Sufficient evidence
If the Hearing Manager concludes that on the balance of probabilities the alleged misconduct did take place they then need to consider the appropriate sanction to apply.
- 4.41 They need to think about:
- The seriousness of the misconduct
 - Any mitigating circumstances raised
 - The employee's previous unspent disciplinary record
 - Treating all employees fairly and consistently. The penalty imposed in any previous case of a similar nature should usually be taken into consideration, although it should not be treated as a precedent. (The People Consultant supporting the case can help with this.)
- 4.42 At this stage, the Hearing Manager should complete the Test of Reasonableness Form.

Sharing the decision

- 4.43 When the Hearing Manager has determined the outcome, they must communicate this to the employee.
- 4.44 They must reconvene the meeting and confirm:
- What they considered when making their decision
 - Whether they believe on the balance of probabilities that the alleged misconduct took place
 - What their decision is
 - The employee's right to appeal the decision (if outcome is a formal warning, dismissal or sanction short of dismissal)
- 4.45 Written confirmation of the decision must be given within 5 working days of the meeting, including confirmation of the employee's right to appeal.

The outcome letter

- 4.46 The outcome letter needs to outline the decision taken, and any points considered when coming to the final decision.
- 4.47 For no action taken it must also cover:
- Confirmation that all papers relating to the meeting will be destroyed
 - Any recommendations or actions to be taken, with the owner and deadline for completion
- 4.48 For a first written warning it must also cover:
- The nature of the misconduct
 - The change in behaviour required
 - That a final written warning may be considered if there is no sustained satisfactory improvement or change
 - That a record of the warning will be kept but normally be disregarded for disciplinary purposes after 6 months
 - The right to appeal
- 4.49 For a final written warning it must also cover:
- The nature of the misconduct
 - The change in behaviour required
 - That failure to improve may lead to dismissal
 - That a record of the warning will normally be kept but disregarded for disciplinary purposes after 12 months
 - The right to appeal
- 4.50 For procedural dismissal it must also cover:
- The nature of misconduct
 - The reasons for dismissal
 - The date that employment will end
 - The notice that the employee is required to work, or if dismissal is effective immediately confirmation that they will be paid in lieu of their contractual notice

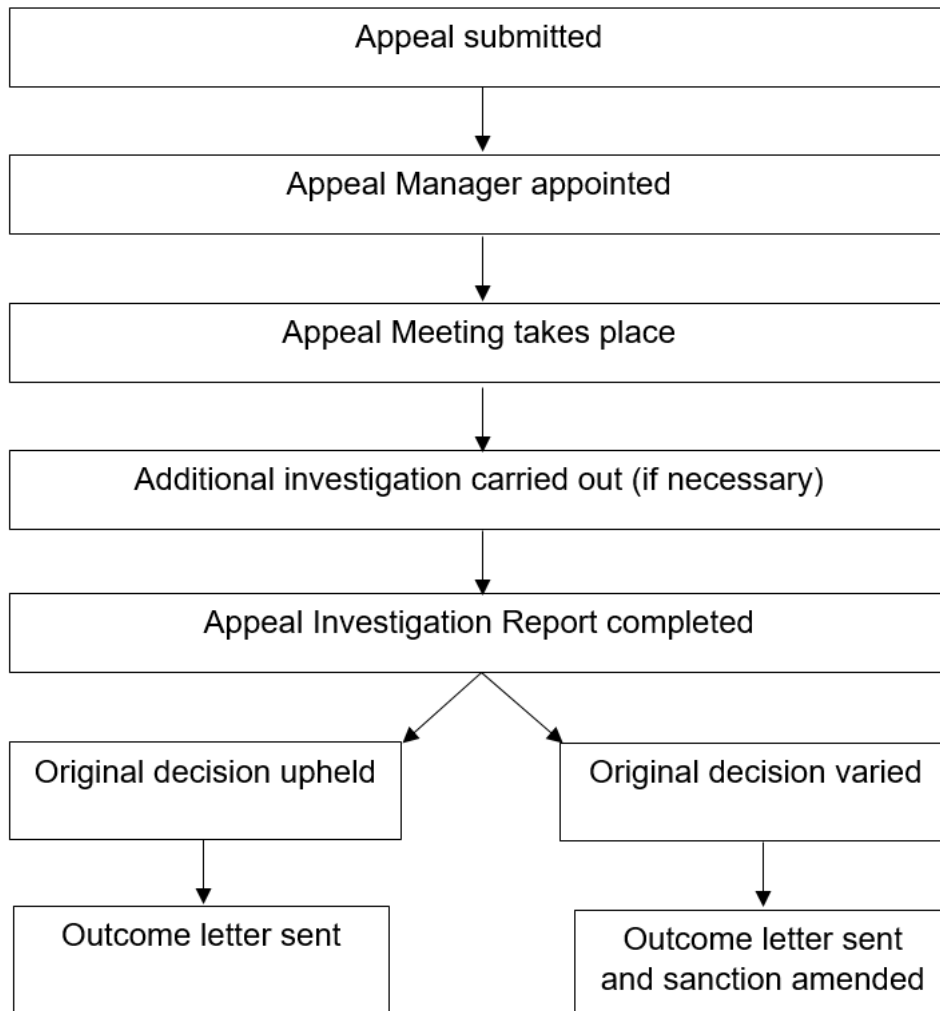
- Confirmation that any outstanding contractual entitlements such as holiday pay will be made to the employee
 - The right of appeal
- 4.51 For summary dismissal it must also cover:
- The nature of misconduct
 - The reasons for dismissal
 - Confirmation that the dismissal is effective immediately and without notice
 - Confirmation that any outstanding contractual entitlements such as outstanding holiday pay will be made to the employee
 - The right of appeal
- 4.52 For other sanctions short of dismissal (demotion, financial penalty etc.) it must also cover:
- The nature of the misconduct
 - That failure to improve may result in dismissal
 - That a record of the sanction will be kept but normally be disregarded for disciplinary purposes after 12 months
 - The right of appeal

5 Appeal Process

- 5.1 Employees have the right to appeal a disciplinary outcome if they consider:
- The outcome is too severe
 - Any part of the procedure was wrong or unfair
 - They have new evidence to show
- 5.2 When an appeal is raised, the Council is required to review the case to see if:
- The procedure was followed in a fair way
 - The outcome was fair

What is the Appeals Process?

- 5.3 The following flowchart sets out the steps to be completed as part of the appeals process. More information on each step follows on.



- 5.4 In some exceptional instances the Appeal Manager may determine that a re-hearing of the case is necessary to fairly determine the appeal outcome. In such situations the employee will be informed of the reasons for this and a meeting will be arranged following the steps outlined for a disciplinary hearing. The outcome of this meeting will be final and there is no further right of appeal.

Submitting an appeal

- 5.5 An appeal must be submitted to the People Consultancy Team within 7 calendar days of the disciplinary hearing outcome letter being received.
- 5.6 When submitting an appeal, the employee must state what their grounds are (as set out in point 5.1).
- 5.7 If the employee is appealing against a dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. If the appeal is successful, they will be reinstated with no loss of continuity or pay.
- 5.8 At the point of submitting their appeal, the employee can request for an Elected Member to attend their appeal meeting. If attending, the Elected Member can observe proceedings, but cannot participate in the decision. If Elected Member attendance is requested the Portfolio Holder with responsibility for People will be approached first. If they are unavailable then an available member of Cabinet will attend.

Who should hear the appeal?

- 5.9 The appeal will be heard by someone more senior than the Disciplinary Hearing Manager, and who has not been involved in the case previously. This is usually coordinated by the People Consultancy team.

What is the role of the Appeal Manager?

- 5.10 The Appeal Manager's role is to:
- Meet with the employee to understand more about the appeal raised and ask any relevant questions
 - Carry out any additional investigation if required
 - If additional investigation is needed, prepare a report that contains all the relevant factual information, copies of statements received and any other relevant documentary evidence
- 5.11 They will then need to decide whether:
- The original outcome was fair
 - They need to change the original outcome, if it's clear it was not right

Possible outcomes

- 5.12 The Appeal Manager can decide:
- a) To uphold the original decision
If they believe the original outcome was fair.
 - b) To vary the original decision

- c) The Appeal Manager may revoke the original decision or substitute a different penalty. They cannot increase the severity of the original disciplinary outcome.

What is the role of the People Consultancy Team?

- 5.13 A member of the People Consultancy team will support the Appeal Manager through the appeal process.
- 5.14 They will attend any investigation interviews and keep the employee updated on investigation progress.
- 5.15 They can help to ensure that the right process is followed in line with the Council's Disciplinary Procedure and the ACAS guidance on the Disciplinary Procedure.

What is the role of the Accompanying Person?

- 5.16 Any employee has the right to be accompanied by a Trade Union representative or work colleague.
- 5.17 If the employee concerned is a Union Representative, they should be offered the opportunity to involve a full time Union official, and with the employee's agreement the Council may contact the Union directly.
- 5.18 The employee is responsible for notifying their accompanying person of the meeting. If there is no accompanying person the Appeal Manager should confirm with the employee at the start of the meeting that they have chosen not to be accompanied.
- 5.19 If an employee's chosen companion isn't available at the date and time proposed, the Appeal Manager must postpone the meeting to a time proposed by the employee provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.
- 5.20 The accompanying person can:
- Set out the employee's case
 - Raise any points related to the case (they cannot respond to questions on the employee's behalf)
 - Talk with the employee during the meeting
 - Take notes
 - Sum up the employee's case at the end of the meeting

Planning Process

- 5.23 Before meeting with the employee, the Appeal Manager should review the disciplinary hearing pack, the disciplinary hearing meeting notes and the hearing outcome letter alongside the appeal submission.
- 5.24 It will be helpful to identify any questions or points of clarity that the Appeal Manager wants to raise with the employee.

- 5.25 The Appeal Manager must then send an invite letter to the employee, to include:
- Date, time and location (meeting should take place within 2 weeks of the appeal submission wherever possible)
 - The right to be accompanied
 - The deadline for submission of any additional documentation to be considered during the meeting (3 working days before the meeting)
 - An indication of potential outcomes
- 5.26 When planning the location, the Appeal Manager needs to think about the best place to hold the meeting. It should be held as privately as possible, preferably away from the normal work location in a suitable room where there will be no interruptions. The meeting can be held remotely, but if it is more appropriate for it to take place in person this should be arranged.
- 5.27 Consideration should be given to any adjustments needed for anyone with a disability, underlying ill health or language difficulties.

What happens in the meeting?

At the start of the meeting the Appeal Manager should confirm:

- Who is present
- The format for the meeting
- That notes will be taken
- That the employee will receive a copy of the meeting notes and will have the opportunity to make any corrections before it is finalised
- The role of the accompanying person, if they are present
- That the employee is happy to continue, if they do not have an accompanying person

During the meeting the Appeal Manager should:

- Clarify the points of appeal
- Outline the possible outcomes
- Ask any relevant questions
- Give the employee the opportunity to raise any points
- Offer breaks as needed
- End the meeting to consider all information and decide whether further investigation is required
- Explain to the employee that they will receive an outcome letter, and that the People Consultant will keep them updated on progress.

Taking notes

- 5.28 A member of the People team will attend the hearing to take notes.
- 5.29 The notes should capture:
- The date and place of the hearing
 - Names of all people present
 - A record of the discussion had

- Any refusal to answer a question
 - The start and finish times, and details of any adjournments
- 5.30 The notes do not need to record every word that is said but they should accurately capture the key points of any discussion.
- 5.31 An audio recording of meetings can be taken with the agreement of the employees involved. This can, however, complicate the matter. Knowing they are being recorded may be intimidating to an employee, making them less able to talk openly about the matter. It can also be time consuming because a transcript of the recording will need to be typed up.
- 5.32 After the meeting, a copy of the meeting notes should be sent to the employee. The document should be saved with added protections so that only tracked changes can be added. To do this on Microsoft Word go to File>Protect Document>Restrict Editing. The employee should then review the notes and confirm via email that the notes reflect the discussion had, or attach the edited document.
- 5.33 If the employee does not agree to the contents of the notes, they should make amendments using Track Changes. If the changes that the employee makes do not match the notes of the interviewer/note taker, a separate version should be saved.

Failure to attend

- 5.34 If the employee is genuinely unable to attend the appeal meeting, e.g. because they are ill, they will be offered an alternative at a reasonable date and time.
- 5.35 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.
- 5.36 If the employee fails to attend the rearranged meeting, a decision may be made on the available information but in any case the Test of Reasonableness form may be completed with as much information as is available when coming to a decision. If this is the case, the employee must receive notification of the decision in writing.
- 5.37 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 will be offered a reasonable alternative date and time. It is important that the employee is notified as soon as possible of any delays.

If further investigation is needed:

- 5.38 After meeting with the employee, the Appeal Manager might decide they need to carry out further investigation steps if they need to:
- Find or look at new evidence raised
 - Re-check evidence already used
 - Talk to the same witnesses again

- Find and talk to new witnesses

5.39 If this is the case, the Appeal Manager will need to follow the steps in the investigation stage (see point 3.11).

5.40 The Appeal Manager will then compile a written investigation report setting out the findings, before determining the outcome.

Making the decision

5.41 When deciding the appropriate outcome, the Appeal Manager will consider:

- Has a thorough and sufficient investigation been conducted?
- Was the Hearing Manager'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?

The outcome letter

5.42 When the Appeal Manager has determined the outcome, they must communicate this to the employee in writing, where possible within two weeks of the appeal meeting.

5.43 The outcome letter needs to outline the decision taken and detail any points considered when coming to the final decision.

5.44 The letter also needs to confirm that the decision is final and there is no further right of appeal.

This page is intentionally left blank