



East Herts Council

Disciplinary Policy

Policy Statement

**Policy Statement No 4 (Issue No 2)
June 2009**

Contents

1.0	Introduction	4
2.0	Principles of the Policy	5
3.0	Forms of Misconduct	5
4.0	Informal Disciplinary Process	6
5.0	Formal Disciplinary Process	8
6.0	Suspension	8
7.0	Investigation	10
8.0	Investigation Outcome	12
9.0	Hearing Timescales	13
10.0	Statement of the Case	13
11.0	Consistent Approach	13
12.0	Disciplinary Meeting	14
13.0	Disciplinary Hearing Outcomes	19
14.0	Failure to Improve	22
15.0	Cases of Alleged Criminal Activity	22
16.0	Overlapping Disciplinary & Grievance Issues	23
17.0	Appeals Procedure	24
18.0	Policy Review and Amendment	24
	APPENDIX A (Examples of Misconduct).....	25

APPENDIX B (Statement of Case Template) 31
APPENDIX C (Hearing Decision Checklist)..... 33

DISCIPLINARY POLICY

Policy Statement No 4 (Issue No 2) June 2009

1.0 Introduction

- 1.1 At East Herts our strength as an authority is due to our people and we are committed to being a fair and reasonable employer. Employees are required to demonstrate appropriate standards and at all times conform to East Herts Council's policies, practices and procedures. This policy is intended to promote fairness and equity in the relationships between the Council and its employees and sets out the action that should be taken when Council standards and/or rules are breached.
- 1.2 The purpose of this procedure is to be an aid to good management and a tool for improvement. It should not be perceived primarily as a means of imposing sanctions.
- 1.3 This policy applies to any acts of misconduct. For issues relating to performance capability, refer to the Managing Performance Policy. However, if an employee has failed to achieve a satisfactory level of performance through carelessness, negligence or refusing to carry out the duties of their post, this should be dealt with under the Disciplinary Policy.
- 1.4 These procedures have been drawn up based on legislation, the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice and have been agreed by UNISON.
- 1.5 This policy applies to all employees, except for Chief Officer level and above, where procedures set out in the Constitution are used.
- 1.6 Wherever possible, the Council will seek to resolve employment matters on an informal basis. In most cases, managers will identify any shortcomings in conduct or behaviour via normal communication, supervisory 1-1's and Performance Development Review (PDR) process, providing appropriate feedback and support. Although this may result

in a note of what was said being placed on the employees file, this will not constitute a formal warning of any kind.

2.0 Principles of the Policy

- 2.1 Each stage of the procedure will be handled with regard to the need to ensure equity and reasonableness.
- 2.2 No disciplinary action will be taken against an employee until the case has been fully investigated.
- 2.3 At every stage in the disciplinary procedure the employee will be advised of the nature of the allegation against him or her and will be given the opportunity to state his or her case before any decision is made.
- 2.4 At all stages during the disciplinary procedure the employee will have the right to be accompanied by a work colleague or trade union representative in accordance with the Employment Relations Act 1999.
- 2.5 An employee will have a right of appeal against any formal disciplinary action taken against them.

3.0 Forms of Misconduct

- 3.1 The Council recognises three types of breach of discipline - misconduct, serious misconduct and gross misconduct. The manager should discuss with HR how any breach of discipline should be categorised.

3.2 Misconduct

Misconduct is defined as behaviour that warrants disciplinary action as listed in Appendix A. In most circumstances the informal procedure should be exhausted before formal disciplinary action proceeds.

3.3 Serious Misconduct

Serious Misconduct is defined as behaviour that warrants formal disciplinary action for more serious breaches of discipline.

Serious Misconduct may include those examples listed in Appendix A and may also include:

- Failure to respond to previous live written warnings
- Prolonged and repeated acts of misconduct

If during the investigation, it is concluded that the alleged breach of discipline is more serious than first thought, then this may be escalated to Gross Misconduct. In this case suspension may be considered. Likewise, if it is concluded that the alleged breach of discipline is not as serious as first thought, this may be downgraded.

In certain cases of serious misconduct a final written warning may be issued for a first breach of discipline. If the employee already has a current warning, the level of warning may be escalated. If the employee already has a current first or final written warning for misconduct, then the employee may be dismissed with appropriate notice.

3.4 Gross Misconduct

Gross misconduct is defined as behaviour, which in the Councils view justifies dismissal. This may be without notice or payment in lieu of notice. It generally means that the misconduct is serious enough to destroy the trust and confidence between the Council and the employee and that any further working relationship would be impossible. Such behaviour may occur inside or outside of normal working hours.

4.0 Informal Disciplinary Process

4.1 Managers will guide employees on expected behaviour and give feedback on a day to day basis, at 1-1s and through the PDR process. This is part of good management/supervisory practice and therefore does not form part of any disciplinary procedure.

4.2 If a manager has concerns about an employee's conduct they should keep detailed notes of each meeting and, where appropriate follow up each session with a list of agreed actions. The informal stage also gives the manager an

opportunity to investigate the root causes of poor conduct and to address any issues as soon as they arise.

4.3 The manager should:

- Give the employee factual examples of their unsatisfactory conduct
- Ask the employee for an explanation
- Make the employee aware that if their conduct does not improve, it could result in formal action

4.4 The written record of informal meetings should be kept on the employee's file for 6 months. This may be extended to support the agreed actions or training. Any actions to be taken as a result of these meetings should be clearly stated in writing with a copy for the employee. If specific improvement is required the file note may take the form of an improvement note. This will clearly set out the improvement required by the employee and the timescales. Managers should ensure that any targets set are SMART.

4.5 These notes are NOT formal warnings and must not be worded in those terms. They are simply a record of what was discussed. If the employee disagrees with the content of the file notes, they have a right to ask for their written response to be placed on the file.

4.6 If the employee's conduct fails to improve in the given timeframe a verbal warning may be given (see Section 13.4 for more information) and/ or the formal process may be invoked.

4.7 Before progressing to formal disciplinary action, managers will need to consider whether:

- The employee had reasonable opportunity and time to know what is acceptable behaviour and has been given the opportunity to improve.
- The employee's behaviour/conduct is worse than that of other employees who are not subject to disciplinary action.
- Appropriate levels of training and guidance have been given.
- There has been appropriate supervision, target setting and monitoring of the employee's behaviour/conduct.
- Informal meetings would be more appropriate.

- The employee would benefit from counselling.

5.0 Formal Disciplinary Process

5.1 In some situations the manager may decide during the informal stage that the matter is more serious and move to step one of the formal procedure. In other cases it may be appropriate, due to the seriousness of the allegation, to move directly to step one. The manager should contact their HR Officer before taking any decision to pursue formal disciplinary action. At this point the manager must inform the employee of the situation and procedure that will be followed.

5.2 This must be confirmed to the employee in writing with the following details:

- The nature of the allegation
- The process to be followed and likely timescales
- Who will be investigating the matter and who will be their HR support
- Whom to contact about the proceedings
- Their rights to be accompanied
- If they are to be suspended
- Any other relevant information
- The importance of confidentiality
- A copy of the disciplinary policy
- Support mechanisms that are available e.g. PPC Employee Assistance Programme, Trade Unions

Please contact HR for a template letter

5.3 If any other allegations come to light during the course of the investigation, the employee will be informed directly in writing and the new allegations will be investigated. This may include investigating issues of gross misconduct which could result in suspension.

6.0 Suspension

6.1 A period of suspension may be necessary in certain cases, for example:

- Where gross misconduct is suspected
 - Where it is inappropriate for the employee to remain at the normal place of work
 - Where relationships have broken down
 - Where it is considered there are risks to staff and/or Council property or there are responsibilities to third parties.
 - The potential of the employee concerned to impede the investigation
- 6.2 Suspension is a precautionary act and not punitive or indicative of guilt. The employee will receive normal pay during the period of their suspension.
- 6.3 Prior to suspending an employee the manager must seek advice from HR, inform their Head of Service and get approval for the suspension from the departmental Director or an appropriate alternative.
- 6.4 The employee will be notified immediately, in person (if appropriate) and the decision will be confirmed in writing including the reason(s) for the suspension and the expected length of the investigation. The manager and HR will ensure that the employee is offered the appropriate support during the process. Please contact HR for a template letter.
- At the time of suspension the investigating officer should instruct the employee to handover security passes, keys, Council equipment and be advised that they should not make direct contact with colleagues or visit the council offices except with the express permission of the investigating officer.
- 6.5 If serious allegations come to light but there is no corroborating evidence at the outset, alternatives to suspension (see short term alternatives listed below) must be considered pending the outcome of a preliminary investigation.
- 6.6 Short term alternatives to suspension may include:
- Working from home
 - Working at an alternative location
 - Working in a more closely supervised environment

- 6.7 Alternatives to suspension should only be used as a short-term measure and should be reviewed on a weekly basis.
- 6.8 As soon as an investigation identifies that, on the face of the evidence, allegations of gross misconduct could be made against an employee, they may be suspended in accordance with this policy and any alternative arrangements ceased immediately.
- 6.9 Suspension will usually last until the investigation is completed or any resulting disciplinary hearing has been held. The suspension should not be seen as a form of disciplinary action and must be for as short a time as possible. The suspension must be kept under review, and time limits set for reviews to take place, these time limits must be realistic and depend on the individual circumstances of each case. The manager should inform the employee of the progress and likely timescales of the investigation, and review suspensions on at least a weekly basis.

7.0 Investigation

- 7.1 Investigations should start immediately after the event. If any new allegations or irregularities come to light in the course of the investigations they must be fully investigated as well and the employee/s notified.
- 7.2 The investigation will normally be conducted by the employee's manager. However, there may be times when it is more appropriate for a more senior manager, audit or other specialist staff to assist with or carry out the investigation. The investigator needs to ensure that the employee (and their companion) understands fully the reasons for the investigation.
- 7.3 Investigation Meetings
- 7.3.1 The manager will arrange a suitable time and venue to speak to anyone who may be able to give evidence relating to the allegations, including the employee.
- 7.3.2 The investigation meeting with the employee against whom allegations have been made should be attended by the:
- Investigating Officer

- HR advisor (where necessary)
- Employee
- Employee Representative or Colleague (if there is one)
- Note Taker (where necessary)

7.3.3 Adequate investigation is a crucial ingredient for the fair handling of a disciplinary. In all cases the manager should:

- Enquire into the circumstances surrounding the suspected or alleged misconduct
- Give the employee a chance to offer an explanation
- Take a balanced view of all the information that emerges

7.3.4 Anyone interviewed as part of the investigation is entitled to have someone with him or her; this could be a work colleague or trade union representative. This should not be someone who has already or is likely to be interviewed as part of the investigation. The manager should contact the employee directly and not go through work colleague/trade union representative.

7.3.5 If matters remain unresolved at the end of the Investigation meeting, for example if new facts are raised further meetings should be convened to ensure all the facts have been explored.

7.3.6 The investigation should normally be concluded within 10 working days of informing the employee of the allegation. Where the circumstances of the case and/or the availability of witnesses mean that this time scale is unlikely to be met, the individual will be informed, in writing, and an alternative time scale will be advised by the manager. Any subsequent delays will be communicated to the employee by the manager.

7.3.7 During the investigation it will be necessary for the manager to make records of interviews with witnesses and the employee regarding the allegation of misconduct. These records will be prepared by the manager and sent to the interviewee. If the interviewee disagrees with the content of the record, they have the right to ask for their written response to be placed on the file. The original record should not be substantially altered. Consequently, the

manager is entitled to decide whether or not to amend their records accordingly.

8.0 Investigation Outcome

- 8.1 Upon completion of the investigation, the manager will convene a meeting with the employee to explain the findings. The employee is entitled to bring their representative or work colleague. The manager may conclude that there is no case to answer, or they may issue the employee with a verbal warning (see Section 13.4 for more information).
- 8.2 If the manager deems the offence serious enough to warrant a more severe sanction they will refer the case to the Head of Service.
- 8.3 The manager will prepare a written report for the Head of Service detailing the facts and evidence gathered. This will contain details of the employee against whom the allegations have been made and brief details of the allegation. The manager should offer a judgement as to whether the case to be answered is potentially one of misconduct, serious misconduct or gross misconduct. The Head of Service will then decide whether the case warrants a Disciplinary Hearing. The manager will not make a recommendation in relation to a specific disciplinary sanction. This is for the Head of Service to decide after a Hearing has taken place.
- 8.4 If after reading the initial report provided by the manager, the Head of Service decides there is no evidence to substantiate further proceedings and it is decided that there is no case to be heard, the employee will be informed of this in writing. The initial report should not be placed on the employee's personal file. If the employee is suspended they will return to work immediately and the manager must ensure appropriate support/induction is provided. If informal action is appropriate, e.g. further training, the employee must be notified of this in writing and a copy of the letter placed on their personal file.
- 8.5 If after receiving the report the Head of Service is satisfied that there is a case to answer, they will convene a formal disciplinary hearing and act as the Hearing Officer for the

purpose of this hearing. If the Head of Service deems the offence to be one of gross misconduct then a Director will hear the case.

9.0 Hearing Timescales

- 9.1 The hearing should normally take place within 10 working days after the initial report has been received by the Head of Service, however the timescale will be dependent on circumstances of the case and availability of witnesses. All management documentation, including statement of the case and names of witnesses to be tabled at the hearing must be sent to the employee no later than 5 working days before the hearing. All documentation and names of witnesses to be tabled by the employee must be sent to the Head of Service no later than 5 working days before the hearing.
- 9.2 Where possible, and with the agreement of all parties, the disciplinary process may be completed earlier than the recommended timescales.

10.0 Statement of the Case

- 10.1 Once the Head of Service has made the decision that there is a case to answer the manager should assemble a statement of the case, which will contain details of all statements given by witnesses and the employee and any other information gathered during the investigation. It is essential that all relevant documents are signed and dated accordingly before they are included in the statement of case. This is to confirm that the information is an accurate record of the evidence given. This statement of the case should be given to the Head of Service and employee 5 working days before the hearing. The Statement of the Case will follow a standard format, see appendix B for template.

11.0 Consistent Approach

- 11.1 If a situation arises whereby a number of employees are involved in disciplinary action in respect of the same case/incident, a consistent approach must be taken. For

example ICT misuse, e.g. inappropriate use of the e-mail system, involving employees from more than one department.

11.2 If this situation occurs, the following guidance should be taken:

- Appoint one Head of Service to oversee the case and hearings, even if employees from more than one department are involved;
- The Head of Service may meet with HR and Unison to agree the approach to be taken (if appropriate);
- Aim to complete all Hearings within a one to two week timescale of each other.

12.0 Disciplinary Meeting

12.1 Step 1 – Written Notification

12.1.1 The Head of Service will inform the employee in writing before the disciplinary hearing of the following:

- The date, time and place of the hearing.
- Their right to be accompanied at the hearing by work colleague or trade union representative.
- The name(s) of any witnesses management intend to call.
- That the hearing is of a formal disciplinary nature.
- The nature of the allegations, including copies of documents and records and whether the allegations if found could constitute misconduct, serious misconduct or gross misconduct and the possible outcome if allegations are proven.
- The names of those who will be present at the hearing.

Please contact HR for a template letter

12.2 Attendees

12.2.1 The following people may be present at the Disciplinary Hearing: the manager, the Head of Service, an HR Officer,

the employee and their Representative. Also any witnesses may be present while they are giving evidence.

12.2.2 An employee and/or their representative who cannot attend the hearing should inform the Head of Service in advance, as soon as possible.

12.2.3 If an employees' representative cannot attend on a proposed date, the employee may suggest another date so long as it is reasonable and not more than 5 working days after the date originally proposed. The five-day time limit may be extended by mutual agreement, however the meeting should only be rescheduled once. If necessary, the disciplinary will be heard in the absence of representative.

12.2.4 If the employee fails to attend through circumstances outside their control, and unforeseeable at the time the hearing was arranged (e.g. illness), the HR Officer should arrange another hearing. If the absence is due to illness the employee must submit a medical certificate. Alternatively, if the employee cannot attend and is in agreement, their representative may attend on their behalf.

12.2.5 Employees and their representative/ companion are obliged to make every effort to attend the Hearing. If they fail to attend a hearing without good reason a disciplinary decision, based on the evidence available, may be taken in the employee's absence

12.3 Step 2 – The Hearing

12.3.1 The case will usually be heard by the employee's Head of Service. If the Head of Service is involved in the case or has been part of the investigation another Head of Service may hear the case.

12.3.2 If the disciplinary case directly concerns a Head of Service, the case should be heard by a Director that has not previously been involved.

12.4 The Role of HR

12.4.1 The HR Officer is responsible for advising on procedure, ensuring consistency and equality. They are also entitled to ask questions of clarification of either side. The HR Officer may take notes at the hearing unless the Head of Service decides an additional note-taker should be present.

12.5 The Role of the Companion or Representative

12.5.1 The Employment Relations Act 1999 gives every worker the right to be accompanied in any disciplinary proceeding by a fellow worker or trade union representative.

12.5.2 Under the Act itself the representative is entitled:

1. To be present
2. To address the hearing
3. To advise the worker
4. To put the workers case
5. To sum up the workers case
6. To respond on the workers behalf to any view expressed at the hearing

12.5.3 The representative can also confer with the employee during the hearing and ask witnesses questions. The companion has no right to answer questions on the employees' behalf, or address the hearing should the employee not wish it, or to prevent the employee from explaining their case.

12.5.4 A representative can only attend in a union capacity if they are a full time official, or certified by their union as having the necessary experience to perform such a role.

12.5.5 A Trade Union Steward or Officer is entitled to be represented by a full time Trade Union Official.

12.6 Witnesses

- 12.6.1 Witnesses may be interviewed as part of a disciplinary investigation in accordance with the procedure and may also be required by management or employees to attend a disciplinary hearing. Witnesses attending a disciplinary hearing are not represented as they are there to provide the facts and information and are not being investigated themselves. Written statements may be sufficient at this stage of the procedure and can be taken into account if the witness does not attend the hearing. All witness statements **must** be signed and dated by the witness.
- 12.6.2 Witnesses who are required to attend a hearing may be apprehensive about the proceedings and giving evidence face to face. The employee's representative or an HR Officer should raise these concerns at the pre-hearing review meeting to determine the best way of supporting the witness.
- 12.6.3 If an employee wishes to call witnesses it is up to that employee or their representative to make all the necessary arrangements, i.e. travel/availability/willingness to attend. If however contact is not allowed because of the terms of any suspension order, the representative should contact the witnesses. Employees without representation should liaise with the HR Officer who will make contact with witnesses.
- 12.6.4 Whenever possible, key witnesses must be prepared to answer questions related to their statements at the hearing. However, there may be exceptional circumstances to these arrangements. For example, records of interviews may stand-alone or a witness's evidence may be summarised and presented by the manager. If a witness is unable to attend, the Head of Service must bear in mind that there has not been an opportunity for either side to cross-examine this evidence. Any evidence submitted on behalf of this witness must be weighted accordingly.

12.7 The Hearing Process

- 12.7.1 The Head of Service/ Director will ensure that all the parties have the relevant documents and ensure that both sides understand the process that is to be followed.
- 12.7.2 The manager will present their case to the Hearing calling any witnesses and referring to the documents that have already been submitted. The employee and/or their representative followed by the Head of Service and HR Officer will then have the opportunity to question the witnesses.
- 12.7.3 The employee and/or their representative may then present their own evidence, give any mitigating circumstances and call witnesses. The manager followed by the Head of Service and HR Officer will then have the opportunity to question the witnesses.
- 12.7.4 Each side will then be able to sum up, making final statements which summarise the key points of their case. The manager will sum up after the employee. It is not appropriate for new evidence to be presented at this stage.
- 12.7.5 The Head of Service/ Director will then close the meeting to consider the matter, advised by the HR Officer. See appendix C for the Decision Checklist

12.8 Step 3 – Written Notification of Outcome

- 12.8.1 The decision will be confirmed to the employee, in writing, within 3 working days including details of their right to appeal (please contact HR for a template letter). If the decision can be made on the day the employee will also be notified verbally.
- 12.8.2 In exceptional circumstances the Head of Service may decide to postpone the decision in order to give more time for deliberation / clarifications. If it is necessary to clarify any of the evidence presented, including recalling witnesses, all parties will be recalled, even if the point of clarification only concerns one party.

13.0 Disciplinary Hearing Outcomes

13.1 Deciding on Appropriate Sanctions

13.1.1 Before making any decision the Head of Service/ Director should take into account the employee's disciplinary/general record, overall conduct, actions taken in any similar cases, the explanation given by the employee and whether the intended disciplinary action is reasonable under the circumstances.

13.1.2 The employee should be given written details of any disciplinary action to be taken. They should also be informed of the consequences of any further misconduct and of any improvements required. It is important to be clear how long the warning will remain live for and that the employee has the right to appeal against this decision.

13.1.3 If the Head of Service believes the case to be one of gross misconduct they will adjourn the hearing and refer the case to a Director.

13.2 Mitigating Circumstances

13.2.1 Before making any decision as to a disciplinary sanction the Head of Service/ Director must take into account any mitigating circumstances put forward at the Hearing. Mitigating circumstances relate to a specific incident that has directly affected the behaviour or conduct of an employee. If the Head of Service/ Director finds that there have been mitigating circumstances they will take this into account when issuing the disciplinary sanction at the hearing. In cases of Gross Misconduct, for example, this could lead to the outcome being mitigated and a final written warning being issued as the sanction instead of dismissal.

13.3 Sanctions

13.3.1 There are various sanctions that can be taken, depending on the seriousness of the misconduct.

13.3.2 Where the misconduct becomes a pattern, which is repeated when a warning expires, previous warnings may be taken into account to demonstrate that previous misconduct has been brought to the employees attention and will not be used in the totting up process.

13.4 Verbal Warning

13.4.1 A verbal warning will be given if, despite informal discussions, the employee's behaviour or conduct does not meet acceptable standards. At this meeting / hearing, the employee must be told:

- The reason for the warning
- That the warning is the first stage of the disciplinary procedure
- The length the warning will remain live
- The result of no improvement in conduct or behaviour
- Their right of Appeal

13.4.2 A record of this warning should be kept on the employee's file and regarded as 'live' for 6 months. After this time has lapsed it will be disregarded in any future disciplinary matters. Warnings involving children or vulnerable adults will be placed on the employee's personal file permanently. The written record should accurately reflect the verbal warning given at the meeting and should not be written before the meeting. The employee should be warned that failure to improve could result in a written warning.

13.5 Written Warning

13.5.1 If the offence is serious misconduct, or if a further offence of misconduct occurs, a written warning will be given. This will state the reason for the warning, the improvement required and the timescale. It will warn that a Final Written

Warning will be considered if there is no satisfactory improvement and will advise of the right of appeal.

13.5.2 A copy of the warning should be kept on the employee's personal file and regarded as 'live' for 12 months. After this time has lapsed it will be disregarded in any future disciplinary matters. Warnings involving children or vulnerable adults will be placed on the employee's personal file permanently. The written warning should accurately reflect the warning given at the meeting and should not be written before the meeting. The employee should be warned that failure to improve could result in a final written warning.

13.6 Final Written Warning

13.6.1 If there is still a failure to improve or a further offence occurs or if the serious misconduct is sufficient to warrant only one written warning but insufficiently serious to justify dismissal, a first and final written warning will be given. This will clearly explain the details of the complaint, warn that dismissal will result if there is no satisfactory improvement and will advise of the right to appeal.

13.6.2 A copy of the warning should be kept on the employee's personnel personal file and regarded as 'live' for 12 months. Warnings involving children or vulnerable adults will be placed on the employee's personal file permanently.

13.6.3 For an employee to be given reasonable opportunity to improve their conduct following a disciplinary warning, they need to be at work throughout the relevant warning period. If the employee is absent from work for any reason, i.e., sickness, the manager may wish to consider extending the live warning period to provide the employee with the required opportunity to improve.

13.7 Dismissal

13.7.1 Dismissal will occur where there has been gross misconduct or for serious misconduct where the employee

has a final written warning and further misconduct has taken place. Only a Director or the Chief Executive can authorise the decision to dismiss. The Head of HR must be consulted on any decision to dismiss.

- 13.7.2 Unless an employee is being dismissed for gross misconduct, they should receive the appropriate period of notice or payment in lieu of notice. Where an employee has already been issued with a final written warning, further misconduct will normally result in dismissal with notice.

13.8 Instant Dismissal without notice

- 13.8.1 Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice, or pay in lieu of notice. Only a Director or the Chief Executive can authorise the decision to dismiss. The Head of HR must be consulted on any decision to dismiss.

14.0 Failure to Improve

- 14.1 If the employee's conduct fails to improve after a sanction has been given the manager may update the Statement of Case and refer the case back to the Head of Service for a further hearing. If a first and final written warning have already been issued then a Director should hear the case. The disciplinary process Step 1 – Written Notification will then commence.

15.0 Cases of Alleged Criminal Activity

- 15.1 If the allegation involves suspected non financial criminal offences at work the manager must inform the Head of Human Resources with a view to contacting the police. If the allegation involves suspected serious financial irregularity or fraud, the Principal Internal Auditor (or nominated officer) must be informed. The Principal Internal Auditor will then arrange for any further investigation into the allegation, as

necessary. If the Principal Internal Auditor decides there is a case for reporting the matter to the police, they will consult with the Head of Financial Support Services, the Head of Service and the Head of Human Resources. These Officers will jointly decide whether to refer the matter to the police.

- 15.2 Where the employee has been charged with or convicted of a criminal offence at or outside work, or is in custody (whether in remand or following conviction) the manager should contact the Head of Human Resources to determine whether or how to apply this procedure. In particular cases a risk assessment may be appropriate.
- 15.3 Disciplinary investigations can be undertaken at the same time as a criminal investigation, except in exceptional circumstances, as advised by the police.

16.0 Overlapping Disciplinary & Grievance Issues

- 16.1 An employee may raise a grievance after disciplinary procedures have begun against them. In these instances, the Head of Service should consider suspending the disciplinary case for a short period of time (no more than one week) to consider the implications of the grievance upon the disciplinary.
- 16.2 If the grievance is related to the disciplinary it is permissible to deal with them concurrently. If the grievance is raised before the appeal stage of the disciplinary procedure, if the Head of Service thinks it is appropriate and it is related to the disciplinary, the grievance will be heard as part of the disciplinary procedure. If the employee raises the grievance after the disciplinary process has been completed, the full grievance procedure should be followed. Employees cannot raise a grievance against a disciplinary sanction. The Appeals Policy must be used in this case.

17.0 Appeals Procedure

17.1 An employee has the right to appeal against any formal disciplinary action taken against them in accordance with the Council's Appeals Policy.

18.0 Policy Review and Amendment

18.1 This policy shall be reviewed after two years or sooner in line with legislation and best practice to reflect the best possible level of support and management.

1. Examples of Misconduct

The following is intended to show the types of behaviour which the Council regards as misconduct justifying action including dismissal, with or without notice. In addition, there will be specific rules and procedures that apply to each job and non-compliance with these could be justification for disciplinary action.

The lists are examples and are not intended to be exhaustive. Omission from these lists is not sufficient grounds for an appeal.

Acts of Misconduct

1. Absenteeism and lateness e.g.
 - Frequent late arrival at work
 - Failure to comply with certification and reporting procedures as set out in the Absence Management Policy
 - Unauthorised absence
2. Dishonesty
3. Refusal to obey the reasonable and proper instruction of a supervisor/manager
4. Professional negligence, misconduct, omission or wilful failure to carry out normal duties of the post.
5. Deliberate failure to disclose any personal incapacity or information, which may be incompatible with the satisfactory discharge of the duties and responsibilities of the job.
6. Negligence in the care of property of the Council or belonging to people in the care of or receiving a service from the Council.
7. Failure to adhere to the Council's Code of Conduct
8. Misuse of equipment, materials and information, e.g.

- Inappropriate use of the internet, (e.g. accessing, distributing or storing pornographic, racist, sexist, or defamatory material)
 - Inappropriate use of the email system (e.g. sending threatening, bullying, abusive, defamatory or discriminatory messages)
 - Inappropriate use of the Council's intranet chat forums.
 - Breaches of copyright and other parties intellectual rights
 - Importing or using unauthorised software on Council equipment
 - Unauthorised use of system for private use
 - Theft of software
 - Sabotaging the system i.e. the introduction of viruses, hacking etc.
9. Bullying, i.e. the persistent demeaning and degrading of employees' through words and action, as outlined in the Harassment and Bullying at Work Policy.
10. Inappropriate behaviour or unreasonable or unacceptable conduct, e.g.
- Working under the influence of alcohol or drugs
 - swearing or abusive language
 - rudeness
 - sexual, racist or aggressive behaviour
11. Discrimination and/or victimisation contrary to the law and/or The Diversity and Equalities Policy or giving instructions or bringing pressure on another person to do so.
12. Malicious or false complaints, or victimisation against employees participating in Council procedures, e.g. grievance, harassment and bullying cases.
13. Breach of health & safety rules and regulations (see policy on Health & Safety)
14. Failure to disclose interest in Council contracts

15. Engaging in paid work outside the Council which conflicts with the duties and responsibilities in the contract of employment, or contravenes the Working Time Directive, or is without consent, where consent is needed.
16. Inappropriate or unreasonable behaviour towards clients, colleagues or members of the public.
17. Accepting gifts or hospitality from contractors, clients or members of the public without authorisation

The distinction between misconduct, serious misconduct and gross misconduct is often a matter of degree and some of the examples under misconduct and serious misconduct may be of such an extreme nature that they amount to gross misconduct.

2. Examples of Serious Misconduct

Serious Misconduct is defined as behaviour that warrants disciplinary action and may be invoked for more serious breaches of discipline. In the case of alleged Serious Misconduct, the employee will not normally be suspended, unless their presence inhibits the investigating of the case.

Serious Misconduct may include those examples indicated under Misconduct and Gross Misconduct and may also include:

- Failure to respond to previous live written warnings
- Prolonged and repeated acts of misconduct

It must be stressed that the examples given under each heading are not exhaustive nor exclusive. Omission from these lists is not sufficient grounds for an appeal.

3. Examples of Gross Misconduct

Gross misconduct is defined as behaviour, which in the Council's view justifies dismissal without notice. It generally means that the misconduct is serious enough to destroy the trust and confidence between the Council and the employee and that any further

working relationship would be impossible. Such behaviour may occur inside or outside of normal working hours and/or outside the workplace.

The following list illustrates conduct likely to amount to gross misconduct, but this list is neither exclusive nor exhaustive. Omission from this list is not sufficient grounds for an appeal.

1. Theft or misappropriation or malicious damage to property of the Council, clients, or fellow employees.
2. Falsifying records or expense claims (which results in gain to the individual), e.g. time sheets, mileage expenses
3. Threatened or actual physical assault on anyone, fighting or similar actions.
4. Serious misuse of equipment, materials and information, e.g.
 - Inappropriate use of the internet, (e.g., accessing, distributing or storing pornographic, racist, sexist, or defamatory material)
 - Inappropriate use of the email system, (e.g., sending threatening, bullying, abusive, defamatory or discriminatory messages)
 - serious breaches of copyright and other parties' intellectual property rights
 - deliberate extensive use of unauthorised software on Council equipment
 - unauthorised use of Council equipment or materials for private use (e.g. using the Council's equipment and time for running one's own business)
5. Serious professional negligence, misconduct, omission or wilful failure to carry out normal duties of the post.
6. Harassment or bullying of a serious nature or discrimination against other employees, clients or members of the public on any grounds, as outlined in the Harassment and Bullying at Work Policy.

7. Incapacity through alcohol or being under the influence of illegal drugs.
8. Breach of Council's regulations, e.g. financial or contractual
9. Non-compliance with health & safety rules and regulations which could lead to endangering of self and/or the well-being of others
10. Criminal offence relating to employment, e.g. acceptance of a bribe
11. Improper use of computer systems, equipment or data stored on the system
12. Unauthorised use of Council vehicles at any time
13. Unauthorised use of Council materials, equipment, facilities or labour for private purposes
14. Criminal offences committed outside of working hours, which are incompatible with employment role or status, and/or likely to bring the council into disrepute.
15. Unauthorised access to information held by the Council whether held electronically or manually
16. Unauthorised disclosure of information classified as confidential by the Council, including wrongful or deliberate disclosure of security passwords in relation to building security and computer systems.
17. Falsification or omission of information for personal gain, e.g. on application, medical questionnaire.
18. Improper use of position for personal gain.
19. Engaging in politically restricted activities, as defined by the Local Government and Housing Act 1989, when holding a politically restricted post

20. Failure to disclose details of any unspent criminal court convictions gained before as well as during employment. In respect of employment exempt under the terms of the Rehabilitation of Offenders Act, failure to disclose any information about convictions, cautions, reprimands, police enquiries following an allegation and final warnings (including spent convictions and juvenile convictions) gained before as well as during employment. In the case of criminal convictions obtained during the course of employment, employees are required to inform HR within 7 days of the conviction, unless it is not reasonably practicable to do so.
21. A serious breach of confidence.
22. Committing any lewd or indecent act in or outside the workplace so as to bring the Council into disrepute.
23. Serious breach of confidence or the Data Protection Act 1998 (subject to The Public Interest Disclosure Act 1998).
24. Unauthorised absence from the workplace (where the employee does not return to work).
25. Serious or repeated breach of other terms of employment or provisions of the staff handbook.

Statement of Case template

1. Introduction

This should include where relevant:

- How long the employee has worked at EHC in their current capacity
- The period of employment
- Post held of the member of staff being disciplined
- Previous performance of the staff member
- Date and times of the alleged misconduct

2. Allegation

Specific details of the allegation should be stated. This may involve more than one allegation and whilst it is important that the most serious allegation is clear, other issues (for example conduct etc) should also be raised in order for the Head of Service to be fully informed when reaching a decision.

3. Background information / Methodology

The allegation came to the attention of Management following/due to.....as a result Management instituted an investigation which involved.....

This section should also include information on:

- Who was interviewed
- Other information used

4. Investigation and Statements

This section should cover what arose from the investigation that took place. Reference must be made to the documentation gathered throughout the investigation in order to demonstrate the key facts and issues of the case involved.

The problems arising from the failure in behaviour or conduct must also be documented.

5. Conclusion

This section should pull together all the key facts, the results of the case and Management's response. It should include an indication of the seriousness with which the allegation is held and the resulting problems it's continuance or re-occurrence would cause.

Hearing Decision Checklist

1. Has there been as much investigation as is reasonable in the circumstances?
2. Have the Council's procedures been fairly followed? (Consider the principles of the policy)
3. Have I paid sufficient regard to any explanation put forward by or on behalf of the employee?
4. Do I genuinely believe that the employee has committed the misconduct, serious misconduct or gross misconduct as alleged?
5. Have I reasonable grounds on which to sustain the belief, on the balance of probabilities?
6. Is the misconduct, serious misconduct or gross misconduct sufficiently serious to justify the disciplinary action I am contemplating?
7. Have I had regard to any mitigating circumstances put forward by or on behalf of the employee?
8. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

The effect of answering yes to the first five questions is to reach a finding that the allegations have been found. Questions 6 to 8 help to determine whether the proposed sanction is reasonable.