

## DISCIPLINARY PROCEDURES FOR MISCONDUCT

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## SUMMARY DISCIPLINARY PROCEDURES FOR MISCONDUCT

This section is a simplified summary only and not a substitute for the full disciplinary procedures.

### Equal opportunities statement

- 1 Scottish Borders Council is committed to treating all employees fairly. Managers and staff will not harass, victimise or discriminate, directly or indirectly on grounds of age, race, sex, disability, sexual orientation, religion or belief, gender reassignment/ gender identity, marriage or civil partnership, pregnancy or maternity, or trade union membership and activity.

### Employee representation

- 2 Employees have a right to be accompanied in formal investigations and at disciplinary hearings and appeals, for advice and support. This will normally be by either a workplace colleague or an accredited trade union representative. The choice of workplace colleague is subject to approval by the commissioning manager but all reasonable requests will be approved. If the employee's nominated trade union representative is unable to attend an investigatory meeting, disciplinary hearing or appeal within a reasonable period, the commissioning manager may, after taking advice from HR, instruct that the interview, hearing or appeal take place with an alternative accredited trade union representative. In cases which may result in dismissal, involvement of the employee's solicitor as a representative may be allowed at the discretion of the manager hearing the case (see **para 24**).

### Minor misconduct

- 3 Cases of minor misconduct are normally handled through counselling by line managers initially, rather than through disciplinary action. This can involve setting targets or standards, together with timescales for improvement. Conduct is then monitored regularly for a period. A record will be kept for a period of 6 months from the end of the monitoring period.

### More serious misconduct

- 4 If minor misconduct does not improve sufficiently, or more serious misconduct occurs, a short fact finding exercise or investigation will take place to establish whether to call a disciplinary hearing. Where appropriate the employee may be required to take special paid leave during this period. In principle, investigations will be completed within 1 working week and, in more complex cases, will not last longer than 6 weeks. However, it is recognised in some more complex cases the investigation may take longer.

### Disciplinary hearings

- 5 The disciplinary hearing is the opportunity to review the complaint against the employee, establish the facts and for the manager to decide whether or not disciplinary action needs to be taken. Attendance at a disciplinary hearing does not automatically mean that disciplinary action will be taken.
- 6 Employees will be given at least 2 weeks' notice in writing of their disciplinary hearing and given reasons for their hearing. They can prepare a written statement before the hearing and bring witnesses.

- 7 At the hearing, the manager will explain what will happen during the hearing and outline the complaint against the employee.
- 8 The manager will call the investigating officer and witnesses to present evidence and answer questions from both the manager and the employee.
- 9 The investigating officer will present their findings and the employee will be asked to respond.
- 10 The investigating officer and the employee can bring in any witnesses, to present evidence and answer questions.
- 11 The hearing will then adjourn for a short period so that the manager can consider all that has been said and review any documents that have been presented for the hearing.
- 12 When deciding whether or not to discipline the employee, the manager will consider whether the complaint has been established, the employee's current disciplinary record, general conduct, their response to the complaint, any mitigating circumstances and whether it is reasonable to discipline in this case.
- 13 Wherever possible, the manager will reconvene to advise the employee verbally of their decision. It will normally be one of the following:
  - Case dismissed
  - Disciplinary action
  - Misconduct established but no disciplinary action
- 14 There are four levels of disciplinary action which can be taken. These remain 'live' for a period of time and any further misconduct can result in a higher level of disciplinary action being taken at another hearing:
  - Verbal warning - remains live for 6 months
  - Written warning - remains live for 12 months
  - Final written warning - remains live for 18 months
  - dismissal
- 15 Gross misconduct may result in summary dismissal without notice and without pay in lieu of notice. Occasionally, the Council may propose an alternative to dismissal, for example demotion together with a final warning.
- 16 The result of the disciplinary hearing will be confirmed in writing to the employee, normally within 1 week of the hearing.
- 17 Employees have the right to appeal against disciplinary action if they believe it is wrong or unjust. Their letter will tell them who they can appeal to and they need to do so in writing within 2 weeks of the date of the letter (a template appeal form is included in the full procedures).

## **Appeals**

- 18 Appeals will be heard as soon as practically possible and in principle will be heard within 4 weeks of receiving the employee's appeal form. The employee will be given at least 2 weeks' notice of the hearing.
- 19 If the disciplinary hearing involved a Director, or resulted in a decision to dismiss, the appeal will be heard by the Council Staffing Appeals Committee, which is a panel of elected members.

- 20** The outcome will be confirmed in writing and there is no further right to appeal within the Council.

### **Professional misconduct**

- 21** In cases of professional misconduct, the relevant professional bodies will be notified (eg the General Teaching Council, the Scottish Social Services Council). The Social Services Council also requires the employee to report to them when an allegation is made.

## **SECTION 1: GENERAL**

### **1 SCOPE OF THE PROCEDURES**

- 1.1** These disciplinary procedures apply to all employees of Scottish Borders Council (including those on teaching conditions) with the exception of the Chief Executive.
- 1.2** The procedures exclude Agency staff, freelance or self-employed people and anyone else who is not directly employed by the Council under a contract of employment.

### **2 EMPLOYER / EMPLOYEE RESPONSIBILITIES**

- 2.1** Scottish Borders Council recognises that the effective delivery of services is dependent on acceptable standards of conduct from all its employees. The Council acknowledges its responsibilities as an employer to determine appropriate standards of conduct and to make employees aware of these standards through its managers.
- 2.2** Employees also have a responsibility to familiarise themselves with the rules and procedures relating to their employment and to maintain acceptable standards of conduct.
- 2.3** The main sources of reference regarding conduct are listed below, as updated and re-named from time to time. The list is neither exhaustive nor exclusive:
- Terms and conditions of employment
  - Induction process
  - Departmental/service instructions and procedures
  - Department standards
  - Managers' verbal instructions
  - HR Policies and Procedures
  - Health and Safety Policies and Procedures
  - Child Protection Procedures
  - Adult Protection Procedures
  - Professional Codes of Conduct (e.g. General Teaching Council for Scotland Code of Practice on Teacher Competence and Code of Professionalism and Conduct and the Scottish Social Services Council Code of Practice for Social Service Workers)
  - Financial Regulations
  - Scheme of Delegation
  - E-mail, Internet and Telephony Acceptable Use policy
  - Code of Practice on Data Protection

### 3 PURPOSE OF THE PROCEDURES

- 3.1** Many cases of minor misconduct are best handled informally or in counselling meetings and should not progress to a disciplinary hearing. Formal disciplinary hearings can be both time-consuming and unsettling for managers and employees and so should only be used when normal good practice management does not achieve the required improvement or change in conduct.
- 3.2** These procedures are intended to enable managers to deal with issues of misconduct in a structured and consistent way by:
- resolving cases of minor misconduct without recourse to disciplinary action
  - taking formal disciplinary action if an employee's misconduct gives rise to more serious concern or does not improve sufficiently within a reasonable period

### 4 PRINCIPLES

- Minor issues of misconduct will normally be handled as part of positive day to day line management, without recourse to disciplinary action.
- If disciplinary action is considered necessary, it will be used to correct conduct rather than to punish employees.
- All employees must be treated fairly and with dignity. The Council will not tolerate discrimination under equal opportunities legislation (**see para 19**).
- Disciplinary hearings will only be held after fact-finding or an investigation has taken place.
- In all cases where an allegation of misconduct relates to conduct involving a child (someone under the age of 16) or young person (someone aged 16-17) the line manager/ commissioning manager will refer the matter to the Child Protection Unit. A referral is made by contacting the Children and Families Duty Team by telephone (01896 662787 or skype: "Children and Families Duty Team") or out of hours the Emergency Duty Social Work Team (01896 75211) and then following up by completing the Confirmation of Child Protection Referral Form.

The full Child Protection Procedures can be found [here](#)

- In all cases where an allegation of misconduct involves an adult at risk (a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed) the line manager/ commissioning manager will refer the matter to Adult Protection (tel: 0300 100 1800 - Customer Advice & Support Services- or out of office hours on 01896 752111). (
- In the case of a young person (someone aged 16-17) a referral will be made to both the Child and Adult Protection Units if appropriate).
- Attending a disciplinary hearing does not mean that disciplinary action will automatically be taken.
- Disciplinary hearing letters will clearly define if the allegations fall within misconduct or gross misconduct.
- At any formal investigatory meeting, disciplinary hearing or appeal, employees have the right to be accompanied (**see para 24**).
- Disciplinary action must be fair, reasonable and justifiable.
- Before taking any form of disciplinary action, managers will take account of any mitigating circumstances. Each disciplinary case will be treated on its own merits, taking into account individual circumstances.
- Employees have the right to appeal against any disciplinary action taken.



- Details of the disciplinary case will remain confidential to those involved and individuals must not discuss the case outwith the formal process, except with their representative.
- Employees will not be dismissed for a first breach of discipline, except in the case of gross misconduct.

## 5 RESPONSIBILITY FOR THE PROCEDURES

5.1 The Chief Executive and each Director is responsible for applying these disciplinary procedures within their Department and for ensuring that line managers:

- are fully competent to manage minor misconduct through positive day to day line management without unnecessary recourse to formal disciplinary action
- understand which level of discipline they are authorised to give
- have the skills and understanding necessary to manage formal disciplinary cases effectively. This includes having completed the Disciplinary Procedure e-learning on [SBlearn](#)

5.2 There may be occasions when it is appropriate for investigations and/or disciplinary hearings to be conducted by Officers from another Department and these employees must also be competent in the process.

5.3 These disciplinary procedures represent a process that can lead to dismissal and is subject to sometimes complex employment law. The procedures therefore need to be followed carefully and diligently by managers, as the responsibility for carrying out disciplinary action rests solely with the authorised managers. Specialist advice and coaching is available from the Council's HR Case Management Team at each stage. Dismissal cannot take place without the involvement of HR.

5.4 The Director People, Performance & Change has delegated authority from the Council to make minor changes to these procedures in agreement with the relevant trade unions.

5.5 The terms of these procedures will be reviewed at least every two years or at the request of either Scottish Borders Council or the trade unions.

## 6 ASSOCIATED POLICIES AND PROCEDURES

6.1 Other policies, procedures and guidelines need to be followed when dealing with other issues, such as:

- Poor performance (which can also be linked to misconduct in some instances)
- ill health
- redundancy
- retirement
- a statutory duty or restriction which prevents the employment being continued (eg where a driver loses their driving licence and is banned from driving)
- ending fixed-term contracts

The HR Case Management Team should be contacted for further advice:  
[askhr@scotborders.gov.uk](mailto:askhr@scotborders.gov.uk) or telephone 01835 825052/53.

## SECTION 2: THE 3 STAGES OF MANAGING MISCONDUCT

### 7 THE 3 STAGES OF MANAGING MISCONDUCT

There are 3 stages in the management of conduct. These are summarised here and in the flowchart at **Appendix 1**. They are explained in more detail in the following sections of the procedures:

In all cases where an allegation of misconduct relates to conduct involving a child (someone under the age of 16) or young person (someone aged 16-17) the line manager/ commissioning manager will refer the matter to the Child Protection Unit. A referral is made by contacting the Children and Families Duty Team by telephone (01896 662787 or skype: "Children and Families Duty Team") or out of hours the Emergency Duty Social Work Team (01896 75211) and then following up by completing the Confirmation of Child Protection Referral Form.

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In all cases where an allegation of misconduct involves an adult at risk (a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed) the line manager/ commissioning manager will refer the matter to Adult Protection (tel: 0300 100 1800 - Customer Advice & Support Services- or out of office hours on 01896 752111.)

In the case of a young person (someone aged 16-17) a referral will be made to both the Child and Adult Protection Units if appropriate).

A referral does not prevent a disciplinary investigation proceeding. The two processes can run in tandem.

In the case of employees registered with the Scottish Social Services Council (SSSC) a referral must be made immediately if the employee is charged with or convicted of a criminal offence or the allegations raise serious concerns about the employee's fitness to practice. (see Appendix 6).

In the case of teachers a referral should be made immediately to the General Teaching Council for Scotland where the allegations involve conduct fundamentally incompatible with being a teacher (e.g. sexual abuse, violence, child protection concerns.)

#### 7.1 Stage 1 – Day to day line management

Often all that is needed to correct misconduct is for a manager to draw the matter to the attention of the employee, explain why it is unacceptable and clarify the standards required. The manager should keep in the employee file a record of the meeting, in case it is needed for future reference, for example if conduct does not improve. The employee files must be securely stored. The record will be kept for a period of 6 months from the date of the meeting or the end of the monitoring period, whichever is the later.

See **Section 3** for more details.

This is not disciplinary action but it is an important first stage in managing conduct positively.

## 7.2 Stage 2 – Fact finding and investigations

If a line manager criticises an employee's conduct, they need to have facts or evidence to support the criticism. See **Section 4** for more details.

For many matters of misconduct, facts or evidence can be readily established by, for example, reviewing employee records (such as absence, timekeeping etc) or through discussion with the employee and only a brief investigation will be required.

For more serious incidents, a more detailed investigation may be required which can involve witnesses. The purpose of this investigation is to establish initially whether there is a case for the employee to answer at a disciplinary hearing.

When making the decision to instruct an investigation, the line manager/ commissioning manager must again consider whether the conduct investigated involves children, young people or adults at risk.

In all cases where an allegation of misconduct relates to conduct involving a child (someone under the age of 16) or young person (someone aged 16-17) the line manager/ commissioning manager will refer the matter to the Child Protection Unit. A referral is made by contacting the Children and Families Duty Team by telephone (01896 662787 or skype: "Children and Families Duty Team") or out of hours the Emergency Duty Social Work Team (01896 75211) and then following up by completing the Confirmation of Child Protection Referral Form.

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In all cases where an allegation of misconduct involves an adult at risk (a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed) the line manager/ commissioning manager will refer the matter to Adult Protection (Tel 0300 100 1800 – Customer Advice & Support Services or out of office hours on 01896 752111.)

In the case of a young person (someone aged 16-17) a referral will be made to both the Child and Adult Protection Units if appropriate).

If it is apparent that the issue is minor and readily corrected through discussion between the manager and their employee, Stage 1 above should be followed. If, however, the investigation indicates that the issue is more serious, Stage 3 below should be followed.

## 7.3 Stage 3 – Formal disciplinary hearings

If the misconduct is sufficiently serious, or if day to day line management has not resulted in satisfactory conduct, a disciplinary hearing is normally held. See Section 5 for more details. This can result in a formal warning being issued to the employee which remains live on their personal file for a specified period of time or in dismissal.

Employees have the right to appeal against a disciplinary warning or dismissal if they believe the warning is wrong or unjust (**see Section 6**).

The disciplinary hearing is formal. If the misconduct continues, further disciplinary hearings can be held which may lead to dismissal in due course.

For cases of gross misconduct, employees may be dismissed at their first hearing.

## SECTION 3: DAY TO DAY LINE MANAGEMENT

### 8 MANAGING MINOR MISCONDUCT

The Council supports a proactive, positive style of line management. Minor issues of misconduct should be dealt with by the appropriate manager through counselling and/or training, with an emphasis on improving standards and learning from mistakes, rather than apportioning blame.

- 8.1 Line managers are expected to meet both informally and formally with their employees on an on-going basis. Line managers should take the opportunity to re-affirm standards and expectations, and give employees feedback on how they are getting on. Employees should feel comfortable asking questions, raising work issues and discussing anything that impacts on them.
- 8.2 Any minor issues of misconduct need to be dealt with promptly by the line manager through face to face discussion. An informal approach is often all that is needed to correct unacceptable behaviours.
- 8.3 Where the informal approach does not succeed and conduct is still unacceptable, formal counselling and review meetings need to be called. In these meetings the line manager should explore the reasons for the misconduct, and offer guidance, counselling and/or training as appropriate. This can also involve the setting of targets and timescales for improvement.
- 8.4 These meetings should be recorded and a copy kept by both parties, so that expectations and commitments are clearly understood. It may be necessary at this stage for the line manager to caution the member of staff that disciplinary action may become necessary if there is insufficient improvement or change in behaviour (see **Appendix 2** for template letter).
- 8.5 These meetings are not disciplinary hearings and will not result in a disciplinary warning. As such, they are normally held on a one to one basis and the employee does not have the right to bring an employee representative or to appeal. However, in the event that the line manager is accompanied the employee is also entitled to bring an accredited trade union representative/ workplace colleague (**see para 24**).
- 8.6 If the counselling and review meetings lead to the required improvement, the manager should give positive feedback to the employee and encourage them to keep up these standards. Support and monitoring should continue as appropriate.
- 8.7 If the counselling and review meetings do not result in acceptable standards of conduct, the line manager should consider progressing to the formal process: an investigation and potentially a formal disciplinary hearing. The line manager is required to contact the HR Case Management Team before making arrangements for a disciplinary hearing.

## SECTION 4: FACT FINDING AND INVESTIGATIONS

### 9 PURPOSE OF FACT FINDING AND INVESTIGATIONS

- 9.1 The purpose of fact finding and investigations is to establish sufficient basic facts to enable a management decision to be made on whether:
- the matter relates to conduct (ie behaviour) or a different issue. (Please refer to the relevant policy if the matter does not concern misconduct)
  - to dismiss the case
  - refer the matter back for counselling (**see Section 3**)
  - to hold a disciplinary hearing

### 10 PRINCIPLES OF FACT FINDING AND INVESTIGATIONS

- Be efficient and make the investigation a priority
- Stay open-minded and objective
- Do not let personal feelings – yours or other people’s – get in the way
- Treat the employee with respect at all times
- Keep it short – only collect sufficient relevant information to establish how to proceed
- Be discrete – retain confidentiality (**see para 11**) and comply with the Data Protection Act
- Keep written records of relevant meetings, discussions, emails etc

### 11 RECORD KEEPING AND CONFIDENTIALITY

- 11.1 All records and papers concerning the investigation and any disciplinary hearing or appeal must remain confidential\*.
- 11.2 Confidentiality must also be maintained in verbal discussions so that only those who need to be involved, are involved. Apart from maintaining respect for the individual employee, confidentiality protects the integrity of the process so that, as far as possible, objectivity can be achieved at every stage.
- 11.3 In addition, some information gathered from or about individuals as part of the investigation might be confidential to those concerned (eg medical details or client information). In these cases, care should be taken to refer to these people in an anonymised way eg Client A, Client B etc. If in doubt, seek further advice from the HR Case Management Team.

### 12 ROLE OF THE LINE MANAGER IN INVESTIGATIONS

- 12.1 If the matter requires an investigation, the line manager should inform the employee of the complaint, and advise them that there will be an investigation and the expected timescales.

To instruct an investigation managers must be trained in disciplinary matters having at least completed the Disciplinary Procedure e-learning on [SBlearn](#).

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\* The records must be kept in accordance with the Data Protection Act, which includes the employee’s right to request access to certain data.

If the line manager has not completed this training they must ask another manager who has completed the training to commission the investigation.

When making the decision to instruct an investigation, the line manager/ commissioning manager must again consider whether the conduct investigated involves children, young people or protected adults.

In all cases where an allegation of misconduct relates to conduct involving a child (someone under the age of 16) or young person (someone aged 16-17) the line manager/ commissioning manager will refer the matter to the Child Protection Unit. A referral is made by contacting the Children and Families Duty Team by telephone (01896 662787 or skype: "Children and Families Duty Team") or out of hours the Emergency Duty Social Work Team (01896 75211) and then following up by completing the Confirmation of Child Protection Referral Form.

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In all cases where an allegation of misconduct involves an adult at risk (a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed) the line manager/ commissioning manager will refer the matter to Adult Protection (Tel 0300 100 1800 – Customer Advice & Support Services or out of office hours on 01896 752111.)

In the case of a young person (someone aged 16-17) a referral will be made to both the Child and Adult Protection Units if appropriate).

- 12.2** In most cases, the line manager will be responsible for organising the investigation and then Chair any disciplinary hearing. The line manager, taking advice from the HR Case Management Team, will commission someone to act as an investigating officer(s). The commissioning manager will chair the disciplinary hearing. See **Appendix 3** for a list of managers authorised to take disciplinary hearings.

The line manager/ commissioning manager must confirm the appointment to the investigating officer(s) in writing, stating that the investigation is to be conducted under the Disciplinary Procedures for Misconduct and including a completed Investigation Brief (Appendix 4) and a copy of this procedure.

All investigating officers must be trained in disciplinary matters having at least completed the Disciplinary Procedure e-learning on SBlearn.

- 12.3** At all times, the line manager needs to demonstrate fairness. Their decision on the most appropriate follow-up action (see para 9) must be both reasonable and justifiable. As such there may be circumstances in which alternatives to **para 12.2** are preferable, for example:

- the line manager could carry out the investigation but refer the potential disciplinary hearing to a colleague or their senior manager
- their senior manager could commission a different investigating officer and chair any disciplinary hearing (ie no line manager involvement)
- their senior manager could refer the case to another Officer who undertakes (or commissions) the investigation and chairs any hearing

- 12.4** In any case if, without pre-judging the case, the misconduct appears to have the potential to result in disciplinary action which is beyond the authority of the line manager, they should refer the matter to their senior manager.

## **13 CARRYING OUT FACT FINDING AND INVESTIGATIONS**

- 13.1** The extent of any fact finding exercise or investigation is determined by the apparent seriousness and complexity of the matter. In all cases, the investigation should be completed promptly. More detailed guidance on investigating complex cases is available on the intranet or from the HR Case Management Team.
- 13.2** For a range of minor day to day matters, only a simple fact finding exercise is needed. Example:
- The line manager thinks that an employee is not letting them know when they are taking odd days of sick leave. The fact finding exercise may involve checking whether the employee is reporting to someone else (eg a secretary or a colleague) and checking the attendance records. If the employee is new, the most appropriate action may be a counselling meeting, where the manager checks the employee's understanding of the procedures for reporting in sick, and the correct procedures are clarified.*
- 13.3** Where the minor misconduct continues (despite the counselling meeting above) or a more serious incident occurs (including gross misconduct), the investigation is likely to be more extensive. Examples:
- 1. The line manager has monitored conduct over a 6 month period and met with the employee about their lateness. The line manager gathers and reviews records of the employee's timekeeping and reasons for lateness to date before deciding whether to progress to a disciplinary hearing.*
  - 2. There have been complaints that an employee has been swearing and shouting at colleagues. The investigation is likely to include interviewing and recording meetings with the employee, the affected colleagues and witnesses. As soon as it is clear that a disciplinary hearing is justified, arrangements can be put in place. In some instances, consideration may be given to sending the employee home on full pay (ie special paid leave – **see para 18**) while the investigation takes place.*
- 13.4** If the commissioning manager decides to use an investigating officer, they must provide a clear remit before the investigation starts. If the allegations are unclear at the start, the investigation has the potential to become unfocused and lengthy.
- 13.5** The commissioning manager will write to the investigating officer, confirming their appointment and that the investigation is to be conducted under the Disciplinary Procedures for Misconduct. Details of the allegation and other relevant factors will be provided in a completed Investigation Brief (Appendix 4).
- 13.6** The investigating officer must be suitably trained having at least completed the Disciplinary Procedure e-learning on [SBlearn](#) and have the skills required to conduct the investigation. The investigating officer will normally be a Council officer but an external investigator may be appointed where the commissioning manager, in discussion with the HR Case Management Team, considers this to be appropriate.
- 13.7** The investigating officer should only compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary they should limit themselves to collecting relevant information and in no way attempt to draw conclusions about potential disciplinary action or otherwise stray into the business of the disciplinary hearing.
- 13.8** Investigations may need to include interviews with the key people involved and the gathering of written statements and other material. See **Appendix 4** for templates to support an investigation.

**13.9** The line manager/ commissioning manager will review the information gathered in the investigation and decide on the appropriate action to take (**see para 9**). This can include one or more of the following options:

- to dismiss the case (no record of the investigation will be kept on the employees file and the report will be destroyed)
- to deal with the matter through counselling and review
- to progress to a formal disciplinary hearing
- the line manager/ commissioning manager must also again consider whether the circumstances require a referral to Child Protection or Adult Protection in the Public Protection Unit.
- In all cases where an allegation of misconduct relates to conduct involving a child (someone under the age of 16) or young person (someone aged 16-17) the line manager/ commissioning manager will refer the matter to the Child Protection Unit. A referral is made by contacting the Children and Families Duty Team by telephone (01896 662787 or skype :”Children and Families Duty Team”) or out of hours the Emergency Duty Social Work Team (01896 75211) and then following up by completing the Confirmation of Child Protection Referral Form.

The full Child Protection Procedures can be found here

- In all cases where an allegation of misconduct involves an adult at risk (a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed) the line manager/ commissioning manager will refer the matter to Adult Protection (Tel 0300 100 1800 – Customer Advice & Support Services or out of office hours on 01896 752111.) .
- In the case of a young person (someone aged 16-17) a referral will be made to both the Child and Adult Protection Units if appropriate).

**13.10** Some incidents may need to be investigated by those who have legal, regulatory or policy responsibilities and have particular obligations to meet, for example Internal Audit or Social Work. In these cases the appropriate investigative processes and requirements may have to take precedence.

## **14 INVESTIGATION TIMESCALES**

**14.1** Investigations should be given priority over other work as far as possible, as undue delays can be detrimental to both the employee and the workplace. Investigations should start promptly and be completed as soon as possible.

**14.2** In relatively simple cases it is expected that an investigation will be concluded within **1 week**. For more complex cases, the investigation may take longer to complete but should not exceed 6 weeks, other than in exceptional circumstances.

**14.3** There may be occasions when an investigation is delayed due to the intervention of an external agency, such as the Police or the Social Work Department. Advice should be sought in such circumstances from the HR Case Management Team.

## **15 PROFESSIONAL MISCONDUCT**

**15.1** Where a line manager has concerns about an employee’s professional conduct, their integrity, or suitability for a position of trust in relation to children, young people or protected



adults, the manager must notify the HR Case Management Team and consider notifying the appropriate 3rd party organisation. Guidance is provided at [Appendix 5](#).

- 15.2** Where a line manager has concerns that an employee's conduct is in breach of their profession's code of conduct or incompatible with their professional responsibilities, the manager must notify the HR Case Management Team and consider the appropriate 3<sup>rd</sup> party organisation (e.g. CIPFA, RICS, CIPD, Law Society of Scotland or other regulatory body).
- 15.3** Where the line manager has concerns that an employee's conduct may constitute a criminal offence they should discuss the matter with their Director and the HR Case Management Team and if appropriate report the matter to the Police.

## **16 POLICE ENQUIRIES, CRIMINAL CHARGES OR OFFENCES**

- 16.1** The Council can carry out an internal investigation (or disciplinary hearing) into a matter which is the subject of a police investigation or which awaits the outcome of a court case. The fact that a police investigation is taking place does not usually mean the postponement of a management investigation and/or subsequent hearing.
- 16.2** No action should be taken, however, which might prejudice or undermine a police enquiry. If there is any suggestion that either the management investigation or the disciplinary hearing should be postponed, this must be discussed with the HR Case Management Team in order that appropriate correspondence can be set up with the Police or Procurator Fiscal to enable an audit trail to be established.
- 16.3** If an employee is charged with, or convicted of, a criminal offence which is not related to their employment, this is not in itself reason for disciplinary action. However, after investigation, a formal hearing may be warranted where consideration is given to the seriousness and impact of the offence or allegation in relation to the employee's job and/or contract of employment

## **17 GRIEVANCE CASES**

- 17.1** If the employee raises a formal grievance during the investigation which is related to the case, consideration should be given to either:
- suspending these procedures until the grievance procedure has been completed
  - considering the grievance during the disciplinary process
  - continuing the disciplinary process but with, for example, a different disciplining manager
- 17.2** This decision should be taken by the HR Case Management Team, who may consider other variations which enable the issues to be progressed fairly and reasonably.
- 17.3** If an employee raises a grievance which is not considered wholly genuine or may be vexatious (eg perhaps for the purpose of delaying the progress of these procedures), this may be regarded as misconduct and subject to disciplinary action. See the [Grievance Policy and Procedures](#).

## **18 SPECIAL PAID LEAVE**

- 18.1** In some cases of misconduct (for example potential gross misconduct), a period of special paid leave may be necessary. It can only be given by an authorised manager following approval from the Director People, Performance & Change See [Appendix 3](#) for authorised managers and [Appendix 6](#) for a sample letter. This period of special paid leave (or

'suspension') takes place when it is important that the employee is not in the workplace, usually as a matter of urgency.

- 18.2** Special paid leave does not form part of the disciplinary process; it is not disciplinary action and does not imply any pre-judgement of the case. The employee continues to be paid their normal pay during this period.
- 18.3** The reasons special paid leave include instances where the employee:
- could adversely influence or interfere with the investigation
  - is considered disruptive, a threat to other employees or to the organisation
  - is apparently unfit for work and so a danger to their self and/or others (in which case an occupational health assessment should also be arranged to obtain advice about the individual's health at work)
  - is reasonably believed to be incapable of carrying out their duties because they are under the influence of a substance such as alcohol or drugs
  - is accused of bullying, harassment or victimisation
- 18.4** The line manager, or other appropriate manager, will speak directly to the employee and then write within **5 working days** (see **Appendix 6**) to confirm:
- the reasons for the special paid leave
  - its start date and its anticipated end date
  - the name of a 'support person' who the employee can contact for support during the period off work. The support person can be a Council Officer chosen by the employee, provided that they have no connection with or involvement with the investigation and they agree to act as a support person. A support person's role is to keep in contact with the employee and to monitor their welfare in case additional support is required. The support person can also provide responses to questions on issues such as process but they should not discuss the case with the individual.
- 18.5** If the employee is a trade union representative, a discussion will take place with an official employed by the trade union, after obtaining the employee's agreement as to who the matter will be reported to within the union. If the employee gives their agreement, that discussion will take place before any action is taken in respect of the employee.
- 18.6** An employee on special paid leave may remove any personal belongings from the workplace if they wish to do so. In that event they should contact their line manager who will facilitate this.
- 18.7** Periods of special paid leave will be kept under review by the manager, normally at maximum intervals of **2 weeks**.
- 18.8** It is recognised that an extended period of special paid leave can be detrimental and, as such, care must be taken to keep the period of absence from work as short as possible. The manager can end the period at any time, once the reason for the special paid leave no longer applies.
- 18.9** As an alternative to special paid leave, consideration may be given to temporary redeployment to a different role or location if appropriate.
- 18.10** The employee or any witnesses should not discuss the case with anyone else in the workplace other than the 'support person', line manager, their trade union representative, a workplace colleague acting on their behalf in terms of **para 24.1** or HR Case Management Team during this period.

- 18.11** The manager should maintain contact with the employee whilst on special paid leave. Payslips and other information that would normally be issued whilst in the workplace will be forwarded to the employee at their home, or to them at their alternative workplace. The employee should not feel isolated from the workplace during this period.
- 18.12** If an employee is registered with the Scottish Social Services Council (SSSC) a referral must be made immediately if they are placed on special paid leave. (see Appendix 6).

## SECTION 5: FORMAL DISCIPLINARY HEARINGS

### 19 EQUAL OPPORTUNITIES

- 19.1** Disciplinary hearings are held and disciplinary action taken in a fair and consistent manner, recognising that each case is treated on its merits, taking into account individual circumstances. Due regard is given to an employee's current disciplinary record, work record, length of service, their personal and any domestic circumstances etc which may explain an employee's behaviour.
- 19.2** All employees are entitled to be treated fairly. Managers must not harass, victimise or discriminate directly or indirectly on grounds of race, colour, ethnic or national origin, religion or belief, gender, gender reassignment, sexual orientation, marital status, disability, age, or trade union membership and activity.
- 19.3** If any employee has difficulty understanding or complying with the arrangements for disciplinary hearings, they should contact their line manager, a member of HR or a trade union representative at the earliest opportunity for appropriate support.

### 20 MISCONDUCT

- 20.1** Employees cannot be dismissed for a first breach of discipline, except in the case of gross misconduct. Examples of misconduct are at **Appendix 8**.
- 20.2** Where the misconduct is of a minor nature, employees normally participate in counselling and review meetings before being called to a disciplinary hearing. Managers must ensure that the basic facts are established, an appropriate level of investigation is carried out and that advice is obtained from the HR Case Management Team before deciding to progress to a disciplinary hearing.

When looking at how to progress, where the conduct involves a child, young person or adult at risk, the commissioning manager will refer the matter to the Child Protection Unit or Adult Protection Unit.

A child is someone under the age of 16. A young person is someone aged 16-17.. A referral is made to the Child Protection Unit by contacting the Children and Families Duty Team by telephone (01896 662787 or skype: "Children and Families Duty Team") or out of hours the Emergency Duty Social Work Team (01896 75211) and then following up by completing the Confirmation of Child Protection Referral Form.

The full Child Protection Procedures can be found [here](#)

An adult at risk is a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed

Adult Protection can be contacted on 0300 100 1800 - Customer Advice & Support Services- or out of office hours on 01896 752111.

- 20.3** Having received one disciplinary warning, any further incidents of misconduct during the period that the warning is 'live', may result in a higher level of disciplinary action being taken at the next disciplinary hearing.

## 21 GROSS MISCONDUCT

- 21.1** 'Gross misconduct' is behaviour that, in the view of the Council, seriously undermines the contract between the Council and the employee (see examples of gross misconduct at Appendix 8).
- 21.2** In such circumstances a disciplinary warning is not normally appropriate because it is no longer reasonable to allow the employee to continue to work. The normal outcome is dismissal without notice (ie 'summary dismissal') unless 'action short of dismissal' (**see para 32**) is considered to be a feasible alternative by the Council.

## 22 LEVELS OF DISCIPLINARY ACTION

- 22.1** Disciplinary action is intended to be corrective rather than a punishment. It can start at any level, depending on the following:
- the nature and seriousness of the misconduct
  - the employee's overall employment record including any current disciplinary warnings
  - any mitigating circumstances
  - what is reasonable and justifiable in the circumstances.
- 22.2** There are four levels of disciplinary action which can be taken:

Verbal Warning (6 months)	This is the first stage of disciplinary action and is used for less serious disciplinary offences. This level of warning remains live on an employee's personal file for 6 months.  If conduct does not meet the required standards within this period, a further disciplinary hearing may result in a final warning.
Written Warning (12 months)	This is the second stage of disciplinary action. This level of warning remains live on an employee's personal file for 12 months.  This warning can be given after a verbal warning when there is insufficient improvement in conduct during the period in which the verbal warning is in force. If the employee's conduct does not meet the required standards within the live period, the next disciplinary hearing can result in dismissal.  The disciplinary process can also start at the Written warning level. This can happen when one or more incidents take place which are sufficiently serious to require starting at a higher level of warning than the verbal warning. Further misconduct within 12 months can result in a Final Written Warning.
Final Written Warning (18 months)	This is the third stage of disciplinary action. This level of warning remains live on an employee's personal file for 18 months  This warning can be given after a verbal or written warning when there is insufficient improvement in conduct during the period in which the prior warning is in force. If the employee's conduct does not meet the required standards within the live period, the next disciplinary hearing can result in dismissal.  The disciplinary process can also start at the Final warning level. This can happen when one or more incidents take place which are sufficiently serious to require starting at a higher level of warning than the verbal or

	written warning. Further misconduct within 18 months can result in the employee's dismissal.
Dismissal	Dismissal for misconduct is normally preceded by a lower level of warning. However, in the case of gross misconduct, dismissal may be regarded as the appropriate course of action without any prior warnings. This is called 'summary dismissal' ( <b><u>see para 28.3</u></b> ). There is no notice given for a summary dismissal.

## 23 ARRANGING A DISCIPLINARY HEARING

- 23.1** The disciplining manager must contact the HR Case Management Team **before** any disciplinary hearing is arranged for advice on the case. This is to ensure that:
- all appropriate steps have been taken
  - sufficient investigation has taken place to establish whether to proceed to a disciplinary hearing
  - advice is given on the fair application of the disciplinary procedures
- 23.2** Only managers who are authorised to discipline staff can take forward a disciplinary case. If it is considered that disciplinary action may need to be taken at a level higher than the authority of the line manager, a more senior manager must chair the disciplinary hearing.
- 23.3** The person who chairs the disciplinary hearing ("the Chair") is responsible for ensuring that all appropriate arrangements are made for the hearing and that all the necessary people are able to attend, including any management witnesses and advisors.
- 23.4** The Chair may be accompanied by a member of the HR Case Management Team who provides professional advice. Where appropriate a legal advisor may be required. The hearing should be noted, so a note taker may also be present.
- 23.5** The Chair will give the employee at least **2 weeks'** notice in writing of the hearing (see **Appendix 8 – Letter 1**). The letter shall include:
- the complaint against the employee
  - the date, time and venue of the hearing
  - the employee's right to be accompanied (**see para 24**)
  - the employee's right to call witnesses and the timescales for submitting a written response to the case together with any supporting documentary evidence
  - the procedure that will be followed during the hearing
  - the fact that disciplinary action (or dismissal) may result from the hearing
- 23.6** A copy of any management report or investigation report will be sent to the employee in advance of the hearing and, wherever possible, with their letter.
- 23.7** The employee is required to submit any written evidence that they intend to refer to at the hearing and advise the Chair of the hearing of the names of any witnesses they would like to call, at least **4 days** prior to the hearing.

- 23.8** Where a disciplinary hearing is to be convened for a trade union representative, after obtaining the employee's agreement, the case will be discussed with a senior trade union representative or full-time official prior to the hearing as to who the matter will be reported to within the union.

## **24 EMPLOYEE REPRESENTATION**

- 24.1** Employees have a statutory right to be accompanied to formal disciplinary hearings and appeals by someone who is either:

- a workplace colleague
- an accredited trade union representative who is trained or experienced in being a representative in disciplinary hearings (as certified by the trade union)
- an official employed by a trade union
- Solicitors will not be accepted as representatives, except in certain hearings that may lead to dismissal where they may be allowed as companions at the discretion of the Council. This will apply mainly when a decision to dismiss will potentially have a wider effect on the employee than the loss of their employment with the Council, for example where it will lead to a referral to the General Teaching Council or Scottish Social Services Council.

No one else is permitted.

The accredited trade union representative/ workplace colleague can address the meeting or hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. They do not, however, have the right to answer questions on the employee's behalf.

- 24.2** If the employee wishes to be accompanied, they need to make a request to the Chair, giving the name of the person proposed. All reasonable requests will be approved. Exceptions can include a colleague whose attendance might create a conflict of interest.
- 24.3** No one is obliged to agree to a request by the employee to accompany them. If they do agree, they will be given reasonable time off to familiarise themselves with the case. Further advice is available from the HR Case Management Team on the role and responsibilities of the accompanying person.

## **25 INABILITY TO ATTEND THE DISCIPLINARY HEARING**

- 25.1** If the accredited trade union representative/ workplace colleague cannot attend the hearing, in principle it can be re-scheduled once within **2 weeks**.
- 25.2** If an employee is unable to attend the hearing, they must contact the Chair of the hearing at the earliest opportunity to explain the reason. If the Chair, in consultation with the HR Case Management Team as appropriate, considers the reason to be valid and sufficient, the hearing will be postponed. The hearing should be rearranged as soon as possible taking into account the circumstances for the delay.
- 25.3** It is recognised that employees and witnesses may feel stress at the prospect of attending a disciplinary hearing. However, hearings will not normally be postponed for longer than **2 weeks** as a result of any stress related sick leave. Employees should consider using the Occupational Health counselling service.

- 25.4** If the employee cannot (or does not) attend a re-scheduled hearing, consideration may be given to convening a hearing in their absence. The employee will be notified of this and given the opportunity to send their accredited trade union representative/ workplace colleague to attend on their behalf and/or submitting a written statement.

## **26 HOLDING THE DISCIPLINARY HEARING**

### **a. Overview**

- 26.1** Attending a disciplinary hearing does not mean that disciplinary action will automatically be taken. It is an opportunity to clarify the issues. The line manager/ commissioning manager will Chair the hearing and can ask questions and clarify issues at any stage throughout the hearing.
- 26.2** The employee will be asked to respond to the complaint against them and the Chair will reach a decision, based on the balance of evidence (verbal and/or documentary) on whether disciplinary action is necessary and, if so, which level of disciplinary action should be given. Should the Chair need more evidence or advice, the hearing can be adjourned for it to be provided.

### **b. Participants in the hearing**

- 26.3** In cases of, for example, deteriorating conduct where one to one meetings have been recorded, investigating officers and witnesses may not be necessary.
- 26.4** Hearings normally consist of the employee (with an accredited trade union representative/ workplace colleague if preferred) and the authorised disciplinary manager (with a colleague or advisor, if preferred).
- 26.5** In more serious cases (for example, involving specific incidents of misconduct), the manager may call an investigating officer and witnesses to the hearing to present the case and evidence and help clarify the facts of the case.
- 26.6** Employees who are accompanied need to decide beforehand what their respective roles will be during the hearing. The role of the accompanying person is covered briefly in **para 24.1**.

### **c. Introducing the hearing**

- 26.7** The Chair will make the necessary introductions. The approach should be formal and polite, with a view to establishing the facts.
- 26.8** The Chair will explain that the purpose of the hearing is for them to consider whether disciplinary action needs to be taken in accordance with the Council's disciplinary procedure. The procedure for the hearing will also be outlined, with the employee asked to confirm they understand the procedure.

### **d. Presenting the management complaint**

- 26.9** The Chair will state clearly the complaint or allegation and ask the employee to respond.
- 26.10** The Chair will then call upon the investigating officer (if used) to present their case and any witnesses, as appropriate. This can include discussing the contents of any records, documents or witness statements



**26.11** Occasionally, (for example, in some cases of bullying and harassment) the anonymity of witnesses may need to be maintained. In such cases, witness statements can be anonymised and/or the individuals may not be required to attend a hearing where they could be questioned by the employee. The investigating officer shall explain the reasons for anonymity being maintained at the start of the hearing. The employee (and/or workplace colleague/ accredited trade union representative) shall have the opportunity to challenge the need for anonymity. The Chair shall make a decision on this. If the Chair decides to maintain the anonymity of witnesses, they must consider whether a fair hearing requires that the employee (and/or workplace colleague/ accredited trade union representative) be given an opportunity to put questions to the witnesses by other means, for example by the employee and/or workplace colleague/ accredited trade union representative) submitting written questions to be answered by the witnesses..

**26.12** The employee (and/or accredited trade union representative/ workplace colleague) will be given the opportunity to ask questions including questions to any investigating officer or witnesses.

**26.13** The Chair (and colleague/advisor) will have a further opportunity to question any investigating officer or witnesses on issues raised during the employee's questions.

**e. Presenting the employee's response**

**26.14** The employee (and/or accredited trade union representative/ workplace colleague) will be given the opportunity to state their response to the complaint or allegation and present evidence. This may include calling witnesses if appropriate and discussing any witness statements and the contents of any other documents.

**26.15** The Chair (and colleague/advisor) will be given an opportunity to ask questions including questions to any witnesses.

**26.16** The employee (and/or accredited trade union representative/ workplace colleague) will be given a further opportunity to question any witnesses on issues raised during the management's questions.

**f. Final questions and clarification**

**26.17** The Chair (and colleague/advisor) may use this stage to clarify any issues and to check that what has been said is understood.

**26.18** If not already indicated, the employee should be asked whether there are any special circumstances which have not been covered but which may need to be taken into account.

**g. Summing up**

**26.19** The investigating officer will sum-up the case, without introducing any new material.

**26.20** The employee (and/or accredited trade union representative/ workplace colleague) will sum-up their response, without introducing any new material.

## **h. Adjournments**

- 26.21** The employee (and/or accredited trade union representative/ workplace colleague) can request an adjournment during the hearing which, if considered reasonable by the Chair, will normally be allowed.
- 26.22** At the end of the hearing, the Chair will adjourn to allow full consideration of all the matters raised, before a decision is taken as to whether or not disciplinary action is warranted and if so to what level.
- 26.23** Occasionally, the Chair may require further fact finding or investigation and, in these or similar circumstances, the disciplinary hearing may need to be reconvened at a later date to enable further information to be provided and a decision to be made. Any additional written information will be copied to all parties. The hearing will be reconvened as soon as possible.

## **i. Outcome of the disciplinary hearing**

- 26.24** The Chair is accountable for the decision, as the disciplining manager. In reaching a decision, the Chair will take into account:
- advice from any advisors
  - the employee's disciplinary record
  - the employee's general conduct record
  - action taken in similar cases in the Council
  - the employee's response to the case (including any mitigating circumstances)
  - whether it is reasonable to discipline in this case and the appropriate level of discipline
- 26.25** The Chair's decision will normally be one of the following:
- case dismissed and any allegations withdrawn
  - upheld in part and appropriate action taken
  - disciplinary warning
  - dismissal (**see paras 28 – 32**)
- 26.26** A letter (see **Appendix 8 – Letter 2 or 3**) will be sent to the employee to confirm any disciplinary action taken and must be copied to the HR Case Management Team for retention on the personal file. If disciplinary action is taken, it must include the following information:
- the offence and why it is unacceptable
  - the level of disciplinary action taken and how long it remains live (**see para 22.2**)
  - the required changes in behaviour and how they will be monitored
  - details of any supportive action that the Council will take
  - the fact that failure to improve or a recurrence of the unacceptable behaviour within the specified timescales can lead to further disciplinary action (including dismissal where appropriate)
  - the right of appeal and a named manager to whom the appeal should be sent
- 26.27** The Chair will normally advise the employee orally of the result of the hearing immediately after the adjournment, indicating any disciplinary action to be taken, the consequences of further misconduct and any conditions which may apply. This will be followed up in writing, within **10 working days except in exceptional circumstances** (see **Appendix 8**).

**26.28** In some cases, it might not be possible to give an oral decision immediately after the adjournment. In this event, the decision is given in writing, again within **10 working days** of the hearing **except in exceptional circumstances**. However, if further information is needed before a decision can be reached, the Chair will notify the decision as soon as possible.

**26.29** Where misconduct is established but the line manager/ commissioning manager decides that no disciplinary action should be taken, a record of the concerns should be kept by the line manager and the situation monitored. The employee will be advised of this in writing and cautioned of the consequences if their conduct does not improve to a satisfactory level.

**j. Follow-up action**

**26.30** The outcome of the hearing may require the commissioning manager to notify the relevant professional body and/ or Disclosure Scotland. **Appendix 6** gives guidance on the requirements to notify certain registered bodies. The manager should be aware that other roles will be governed by different professional bodies and referrals should be made as required by that body.

**26.31** Disclosure Scotland **must** be notified by the commissioning manager if the employee was employed in regulated work and has:

- Harmed a child or protected adult or placed a child or protected adult at risk of harm and been dismissed as a consequence;
- For these purposes a child is anyone under 18.
- A protected adult is anyone over 16 in receipt of a care or support service.
- Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual resigned, retired or was made redundant before SBC could take action to dismiss them;
- Harmed a child or protected adult or placed a child or protected adult at risk of harm and as a consequence was transferred to a position within SBC which is not a position involving work with children or protected adults;
- Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual was on a fixed term contract which was about to expire or had expired before the organisation could consider dismissal proceedings.

**26.32** The PVG Scheme does not apply to all jobs and volunteering. It only applies to 'regulated work'. There are 2 types of regulated work – work with children and work with protected adults. Regulated work is usually jobs including:

- caring responsibilities
- teaching or supervising children and/or protected adults
- providing personal services to children and/or protected adults
- working directly with children and/or protected adults

There are many kinds of roles, both paid or unpaid. Some examples are:

- child-minder
- girl guide leader
- teacher

It can also apply to certain positions of trust within organisations, even where the role does not involve any direct contact with children or protected adults. Examples of this include:

- membership of certain council committees
- trustees of charities focused on children
- trustees of charities focused on protected adults

**It is a criminal offence to fail to comply with the duty to make a referral to Disclosure Scotland.**

SSSC **must** be notified by the manager if a Social Care Worker is dismissed for misconduct or resigns when, but for the resignation, dismissal would have been considered.

SSSC must also be notified when a referral is made to Disclosure Scotland.

GTCS **must** be notified by the manager if a teacher is dismissed for misconduct or incompetence or resigns or otherwise stops working for SBC in circumstances where dismissal for misconduct or incompetence would have been considered.

It is good practice to make a referral to GTCS if a referral is made to Disclosure Scotland.

**26.33** The line manager must continue to review the employee to check whether the required improvements or change in behaviour take place. There may also be a requirement for the line manager to provide additional coaching or training.

**26.34** If the required changes do not take place or a further offence is committed while the warning is still live, a further disciplinary hearing is likely to result in the next level of disciplinary action being taken.

## **27 MEDIATION**

**27.1** The conciliation service, Acas, encourages the use of mediation in certain circumstances, particularly where working relationships might have been damaged during disciplinary action and some support might be needed to re-establish relations between colleagues or between line managers and employees. Managers should refer to the HR Case Management Team for advice on mediation services which may be provided internally or externally sourced.

## **28 DISMISSAL**

**28.1** The Council is committed to considering any measures short of dismissal in order to achieve the necessary change in behaviour. The Council recognises, however, that in some cases dismissal is the correct option. This may be as a consequence of progressing from lower levels of disciplinary action or as a result of fundamentally unacceptable incidents or actions by the employee.

**28.2** The authority to dismiss, or take 'action short of dismissal' (**see para 32**) as a form of disciplinary action can be delegated no lower than a manager reporting directly to a Director level post. Advice must be taken from the HR Case Management Team when managers are considering dismissal.

**28.3** In some cases, **summary dismissal** is necessary. This occurs in cases of gross misconduct where the seriousness of the case is such that the member of staff can be dismissed without notice or pay in lieu of notice. An investigation is always carried out before a decision to dismiss is reached.

## **29 FAIR DISMISSAL**

**29.1** In law, there are only a limited number of fair reasons for dismissal:

- conduct (eg behaviour)
- capability (eg skills, aptitudes, or health)
- redundancy
- a statutory duty or restriction which prevents the employment being continued (eg where a driver loses their driving licence and is banned from driving)
- some other substantial reason

**29.2** In demonstrating whether a dismissal has been fair, an employer must also show that:

- there was a valid reason for the dismissal
- they acted reasonably in regarding that reason as being sufficient to warrant dismissal

## **30 DISMISSAL PROCEDURE**

**30.1** An investigation will be carried out before a hearing can be convened, as covered in **Section 4**, before a dismissal can take place.

**30.2** A disciplinary hearing will be arranged, as covered in **Section 5** In this case the hearing will be chaired by a manager with the authority to dismiss.

**30.3** In the letter inviting the employee to attend, they will be advised that the hearing could lead to disciplinary action which may include dismissal (see **Appendix 8** – Letter 1). This does not imply a pre-judgement but does alert the employee to the seriousness of the matter. Employees should be encouraged to be accompanied at this hearing (**see para 24**).

**30.4** After the hearing, confirmation of the decision to dismiss will be given in writing (see **Appendix 8** – Letter 4 or 5), including:

- the reason for the dismissal
- the date on which employment ends
- the right to appeal (**see Section 6**)

## **31 PERIODS OF NOTICE**

**31.1** Where employees have progressed through the disciplinary warnings to dismissal as a result of, for example, failure to improve or change behaviour, they will receive either their contractual period of notice or pay in lieu of notice, as determined by the Council.

**31.2** In cases of gross misconduct, however, which result in summary dismissal (**see para 28.3**), the employee's contract of employment will end on the date of dismissal. They are not entitled to a period of notice and will not be paid in lieu of notice. They will be paid their salary up to the date of dismissal and payment for any leave accrued but not taken as at the date of dismissal.

## **32 ALTERNATIVES TO DISMISSAL (ACTION SHORT OF DISMISSAL)**

- 32.1** In exceptional circumstances, as an alternative to dismissal, and in conjunction with a final written warning, one or more of the following may be proposed:
- demotion
  - transfer to another post
  - transfer to another location
- 32.2** Where an employee agrees to the alternative to dismissal, they still have the right to appeal.
- 32.3** Where an employee does not agree to the alternative to dismissal, there is no alternative but to dismiss. The employee has the right to appeal against dismissal.

## **SECTION 6: APPEALS**

### **33 RIGHT TO APPEAL**

- 33.1** Employees have the right to appeal against any disciplinary action, including dismissal, if they believe that the decision was wrong or unjust. See **Appendix 9** for a template employee appeal form. Managers will continue to treat employees fairly and with respect throughout the process.
- 33.2** The purpose of the appeal hearing is for the employee to present their case for objective review. Depending on the grounds for the appeal, the Chair of the Appeals panel will decide (in consultation with the HR Case Management Team) whether there should be a review of the level of disciplinary action taken or, alternatively, a re-hearing of the case if, for example, new evidence is identified which could not have been foreseen at an earlier stage.
- 33.3** The appeal may be submitted by either the employee or by their accredited trade union representative. Any appeal must be in writing and received by the named manager within **2 weeks** of the date of the letter confirming the disciplinary action. The employee's letter must include full details of why they do not agree with the disciplinary decision, together with any evidence to support the case.
- 33.4** If the appeals procedure is not complied with, the employee will lose the right to appeal unless there are exceptional circumstances. Whether such circumstances exist is a decision taken by the Chair of the appeal in consultation with the HR Case Management Team.

### **34 THE APPEALS PANEL**

- 34.1** The appeal will normally be chaired by the manager of the person who chaired the disciplinary hearing. If the disciplinary hearing was held by someone outwith the employee's management line, the appeal will normally be chaired by a senior manager in the employee's management line. If in doubt, advice should be sought from the HR Case Management Team. Appeals against dismissal will be heard by the Staffing Appeals Committee.

**34.2** The appeal is heard by at least 2 panel members (including the Chair) who will have received training in employment law and the conduct of appeal hearings. The aim is for the appeal hearing to be objective so, wherever possible, appeals are heard by managers who have not previously been involved in the case.

**34.3** The appeals panel can reduce the level of disciplinary action.

## **35 ARRANGING AN APPEAL HEARING**

**35.1** The Chair of the appeal hearing will arrange to hear the appeal as soon as possible, and other than in exceptional circumstances within **4 weeks** of receiving the employee's written request for appeal.

**35.2** The Chair will normally give the employee at least **2 weeks'** notice in writing of the hearing, giving details of:

- the date, time and venue of the hearing
- the employee's right to be accompanied by an accredited trade union representative/ workplace colleague
- the employee's right to call witnesses and the timescales for submitting a written case together with any supporting documentary evidence
- the procedure that will be followed during the hearing

**35.3** The Chair of the disciplinary hearing is responsible for the management case at the appeal hearing. They and the employee will each be requested to submit a written statement of their case, including any papers to which they wish to refer, to the Chair of the appeal hearing. These must be received at least 10 working days before the date of the appeal hearing. The Chair of the appeal hearing arranges for each submission to be copied to the other party. If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 working days before the date of the appeal.

## **36 HEARING THE APPEAL**

**36.1** The appeals procedure follows similar steps to the disciplinary hearing except that, in an appeals hearing, the employee presents their case before the disciplining manager presents their response. See **Appendix 10** for more details.

## **37 COUNCIL STAFFING APPEALS COMMITTEE**

**37.1** If a Director was involved in the disciplinary hearing or the disciplinary hearing resulted in a dismissal the appeal will be heard by Elected Members rather than Officers. The request for an appeal hearing must be sent to the Director People, Performance & Change who will arrange with the Clerk to the Council for it to be heard by the appropriate Council Appeals Committee at the earliest opportunity.

**37.2** The Council Staffing Appeals Committee will comprise 3 Elected Members who have received training in employment law and the conduct of hearings. The employee will be given a minimum of **2 weeks'** notice of the hearing.

- 37.3** The Clerk to the Council will notify the employee of the Appeals Committee procedure and advise them of the right to be accompanied.
- 37.4** The management representative and the employee (or accredited trade union representative/ workplace colleague) will each be asked to submit a written statement of their case, including any papers to which they wish to refer, to the Clerk to the Council to be received at least 10 working days before the date of the appeal hearing. If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 working days before the date of the appeal.
- 37.5** The Clerk to the Council will arrange for the papers, including the statements of case to be sent to the management representative and the employee, as well as to the Committee Members and any advisors at least one week before the appeal hearing.
- 37.6** **Appendix 11** gives guidance to managers and employees on preparing papers for the Appeals Committee.
- 37.7** The Appeals Committee can reduce the level of disciplinary action but cannot increase it.

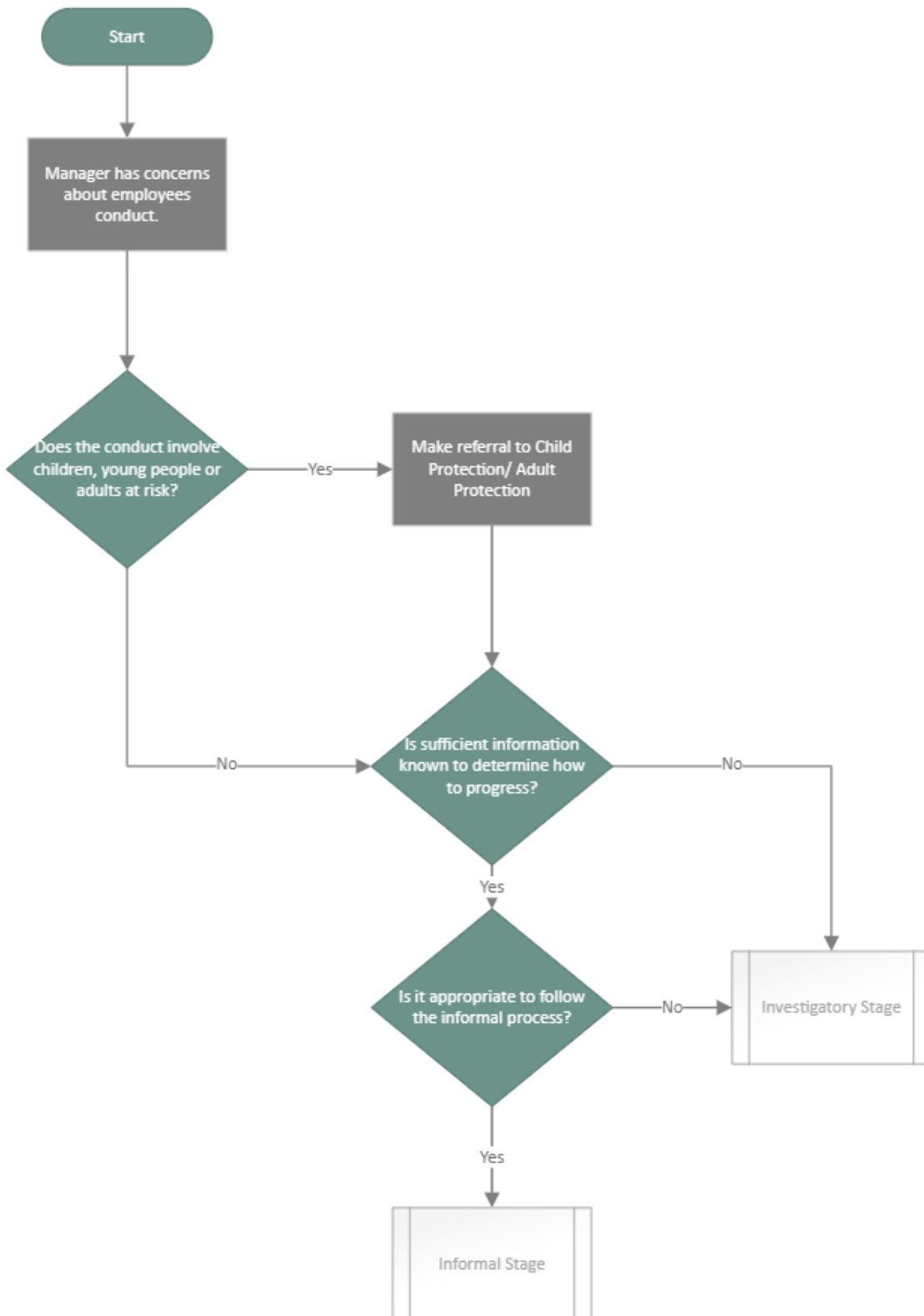
## **38 DECISIONS OF APPEALS PANEL AND COUNCIL STAFFING APPEALS COMMITTEE**

- 38.1** The decision is normally one of the following:
- the appeal is upheld and the case dismissed, with the record of disciplinary action removed from the employee's personal file
  - the level of disciplinary action is reduced (or referred to the Director People, Performance & Change for a re-hearing)
  - the appeal is upheld in part and the disciplinary action may remain the same, be reduced or dismissed
  - the appeal is dismissed and the disciplinary action upheld
  - exceptionally, the Panel/ Committee may request further information from the employee and/or the disciplining manager before reaching a decision.
- 38.2** The decision of the Panel/ Committee is final and will be confirmed to the employee within **2 weeks** of the hearing other than in exceptional circumstances when the decision will be confirmed as soon as possible. There is no further level of appeal under the disciplinary policy and procedures.

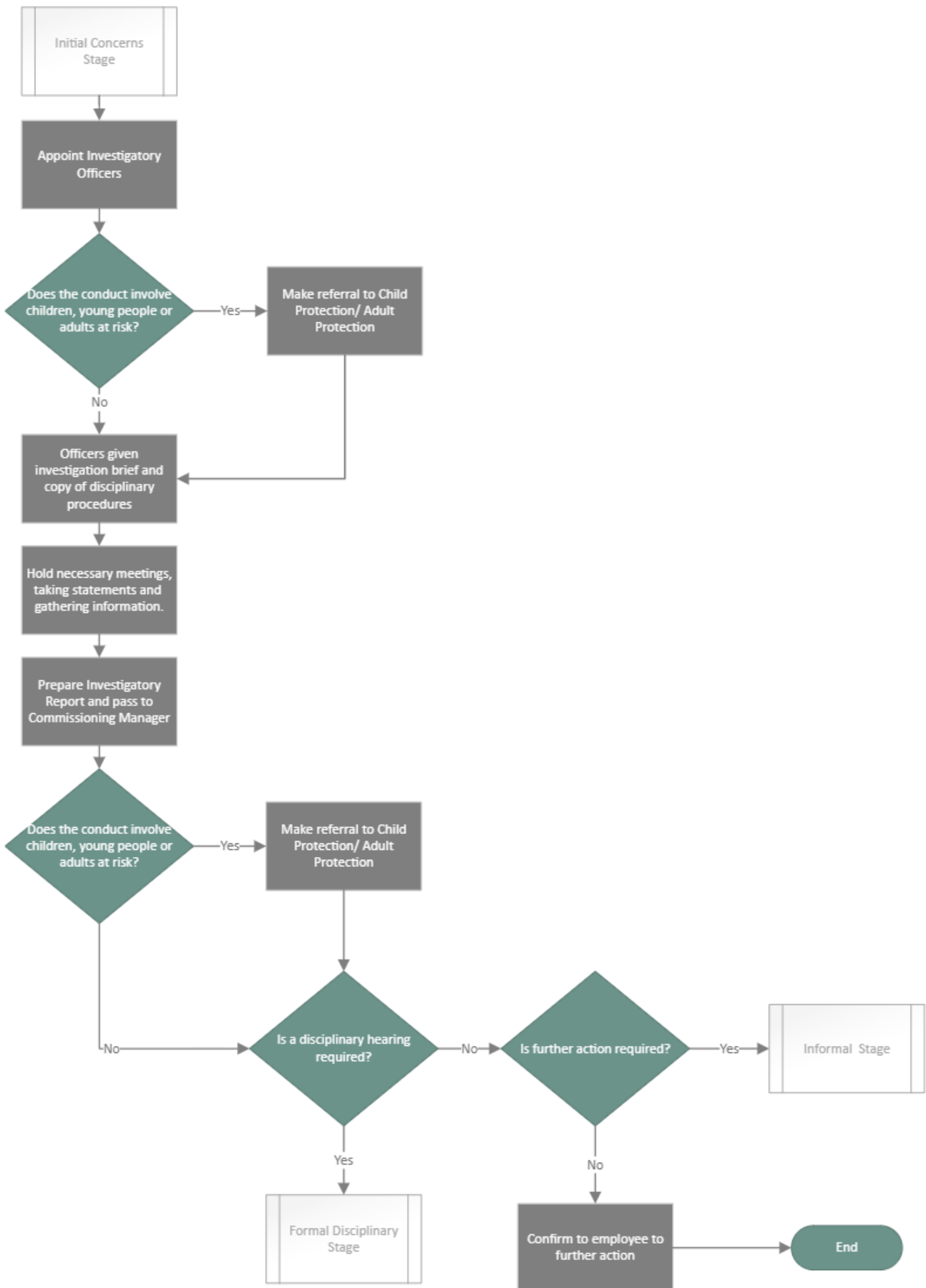


### APPENDIX 1 – FLOWCHARTS FOR MANAGING MISCONDUCT

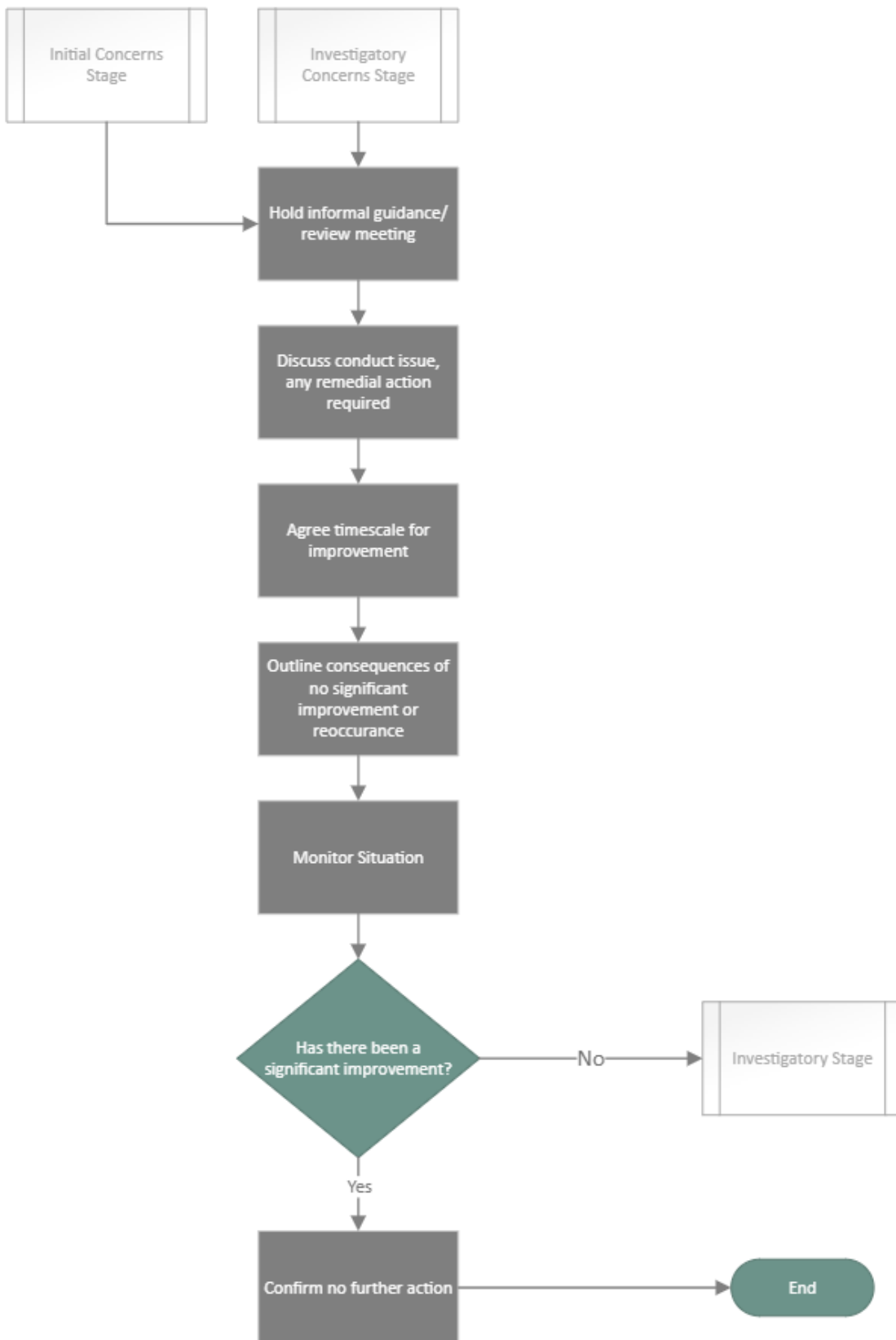
#### Managing Misconduct - Initial Concerns Stage



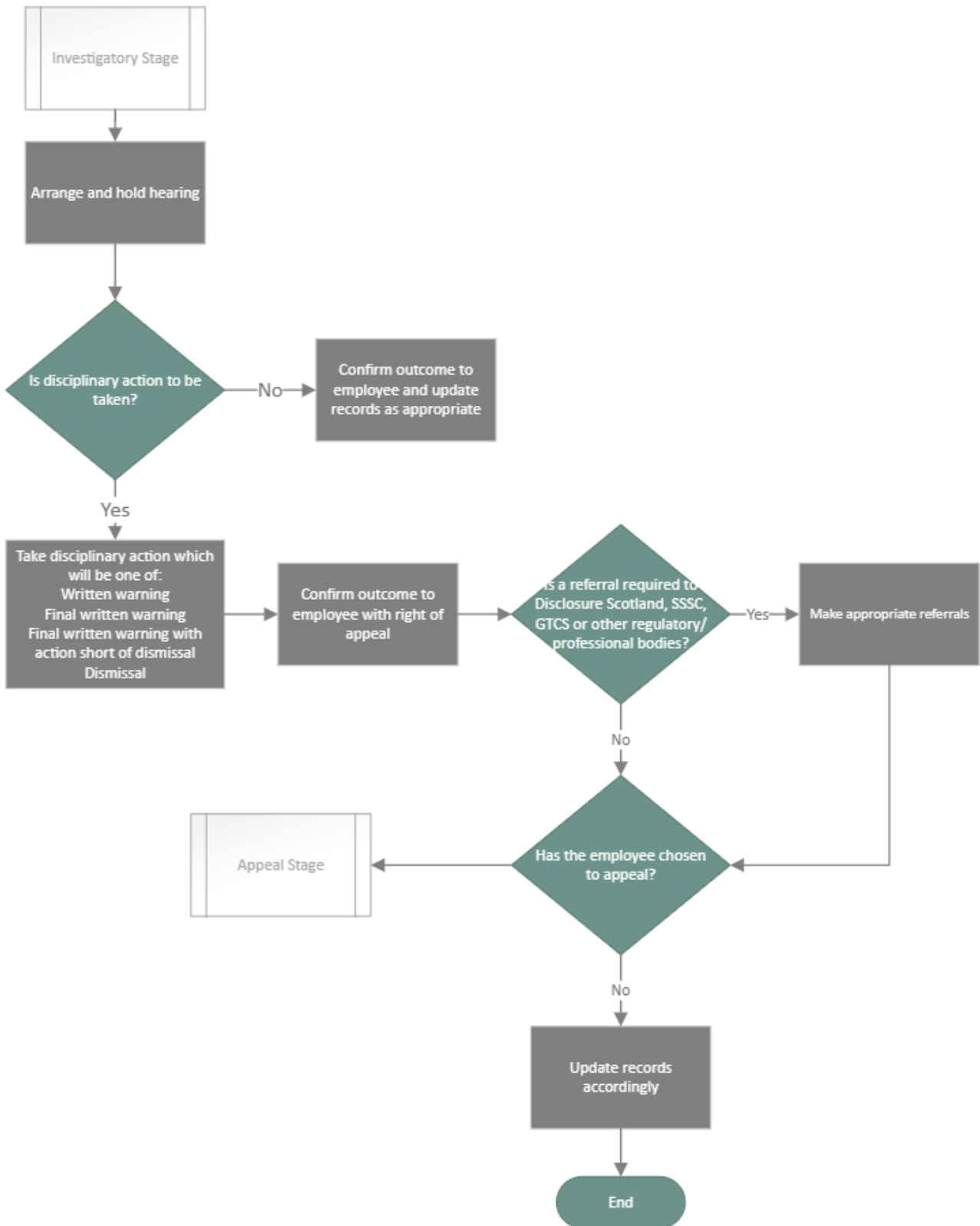
### Managing Misconduct - Investigatory Stage



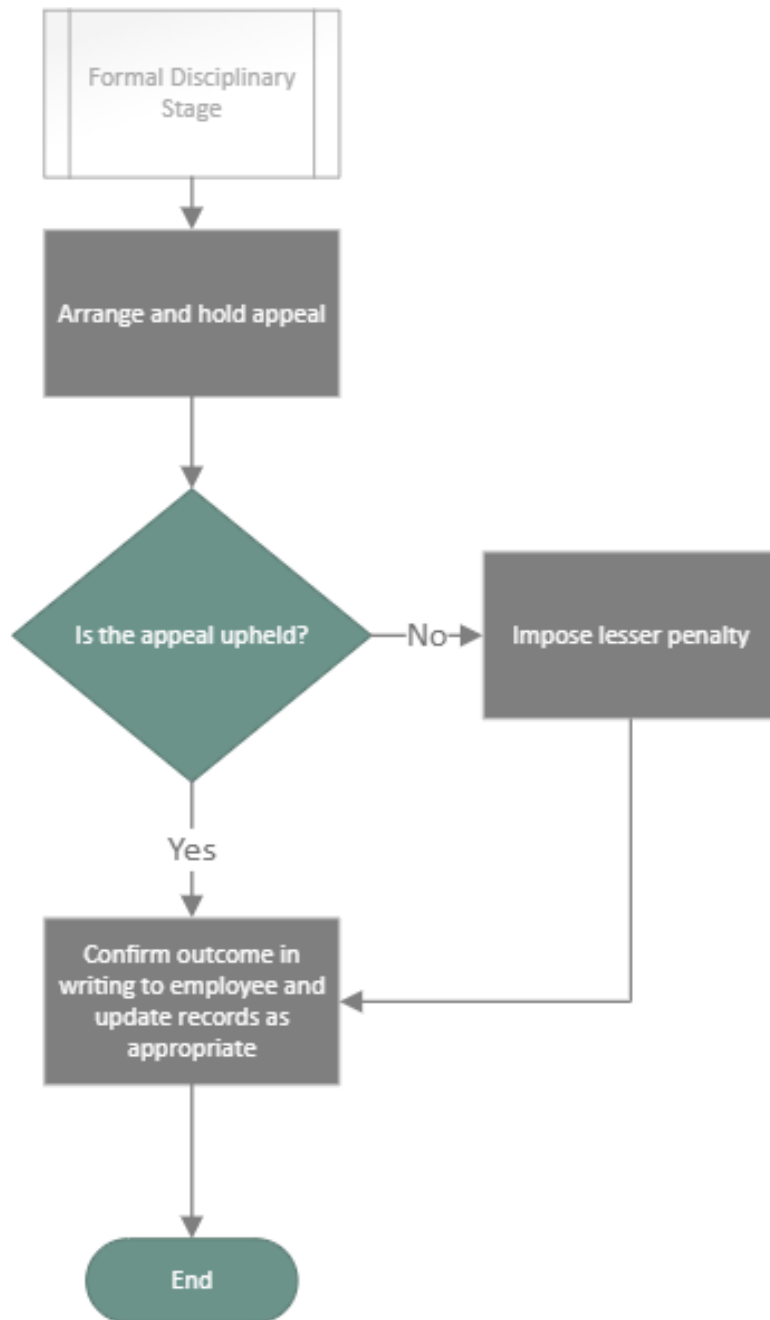
### Managing Misconduct - Informal Stage



### Managing Misconduct - Formal Disciplinary Stage



## Managing Misconduct - Appeal Stage



## APPENDIX 2 – SAMPLE LETTER FOLLOWING A COUNSELLING AND REVIEW MEETING

NOTE: This is a sample letter and should be adapted to suit the circumstances, taking into account the requirements of **Section 3 - Managing minor misconduct** of the disciplinary procedures.

### Confidential

EMPLOYEE'S HOME ADDRESS

DATE

Dear

### Confirmation of counselling and review meeting

Thank you for attending the meeting with me on *(date)*. I write to confirm the key points of our discussion.

*include:*

- *summary of the nature of the misconduct issue*
- *the expected standards of conduct*
- *where the gaps exist*
- *any factors provided by the employee*
- *the action required by the employee including any review dates*
- *any support to be provided by the manager*
- *the likely consequences of not meeting these standards.*

I confirm that such conduct is not acceptable and I caution you that *if your conduct does not meet the necessary standards*, then the formal disciplinary procedure may be followed.

Yours sincerely

**Name**  
**Job title**

## APPENDIX 3 – MANAGERS AUTHORISED TO TAKE DISCIPLINARY ACTION AND APPEALS

The tables below give guidance on the level of managers who are normally authorised to issue periods of special paid leave, give disciplinary warnings, dismiss and to hear appeals. Directors will confirm the appropriate levels for their Department.

### 1. All staff (except teaching staff)

Action	Normally taken by	Appeal normally heard by
Period of special paid leave	Line manager or more senior manager, with the agreement of the Director People, Performance & Change	No right to appeal
Day to day management of conduct	Line manager or supervisor	No right to appeal
Verbal Warning	Line Manager	Senior manager to whom line manager reports
Written Warning	Line manager	
Final Written Warning	Line manager or more senior manager	
Action short of dismissal	Senior manager, Chief Officer or Director	Manager to whom the senior manager, or Chief Officer reports.  Where Director has been involved, Council Staffing Appeals Committee.
Dismissal	Senior manager, Chief Officer or Director	Council Staffing Appeals Committee.

### 2. Teaching Staff

Action	Normally taken by	Appeal normally heard by
Period of special paid leave	Headteacher (or Depute in their absence) or more senior manager, with the agreement of the Director People, Performance & Change	No right to appeal
Day to day management of conduct	Principal Teacher, Depute Headteacher or Headteacher	No right to appeal
Verbal Warning	Head Teacher	Senior manager to whom line manager reports eg Quality Improvement Officer, Chief Education Officer or-Director Education & Lifelong Learning
Written Warning	Head Teacher	
Final Written Warning	Quality Improvement Officer, Chief Education Officer or Director Education & Lifelong Learning	
Action short of dismissal	Quality Improvement Officer or Director Education & Lifelong Learning	Senior manager to whom line manager reports eg Quality Improvement Officer, or Director Education & Lifelong Learning
Dismissal	Quality Improvement Officer, Chief Education Officer or-Director Education & Lifelong Learning	Council Staffing Appeals Committee.

**APPENDIX 4 – INVESTIGATION BRIEF**

<b>Investigation Brief – Disciplinary Procedures for Misconduct</b>	
Details of allegation:	
Commissioning manager:	
Relevant documentation:	
Background Information	
Referred to Child Protection Unit                      Yes/ No	
If Yes please state the reason for referral:	
If no please state why you consider a referral is not required	
Referred to Adult Protection Unit                      Yes/ No	
If Yes please state the reason for referral:	
If no please state why you consider a referral is not required	
People to interview:	



[Type here]

[Type here]

[Type here]

Target date for completion	
Revision to target date with reasons	

## APPENDIX 5 – TEMPLATES FOR INVESTIGATIONS

NOTES: These templates are for guidance only and may be varied to suit the circumstances. More detailed guidelines on investigations are contained in Appendix 13 .

### CONTENTS:

- a. Sample letter to attend an investigation meeting
- b. Note of investigation meeting
- c. Statement from witness
- d. Statement from person under investigation
- e. Investigation report

**a. Sample letter to attend an investigation meeting****Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

**Investigatory meeting**

I would be grateful if you could attend an investigatory meeting

on     *(date)*  
at     *(time)*  
in     *(venue)*

The purpose of the meeting is to investigate a complaint that *(insert details of complaint or allegation)*. (For witnesses, substitute this sentence with: *You are being called as a witness*).

I will be assisted at this meeting by *(name, job title)*. The investigation is being carried out in accordance with the Disciplinary policy and procedures for misconduct (a copy is enclosed). You have the right to be accompanied by an accredited trade union representative or work colleague, although you should understand that this is an investigatory meeting and not a disciplinary hearing. All reasonable requests will be approved.

Please confirm your attendance at this meeting and the name of your accredited trade union representative/ accompanying workplace colleague at your earliest convenience.

Yours sincerely

**Name**  
**Job title**

Enc.

cc:     *(Name of person also to be present at meeting)*

**b. Note of investigation meeting**

**CONFIDENTIAL**

**NOTE OF INVESTIGATION MEETING**

**Date of meeting:**

---

**1. DETAILS OF INTERVIEWEE**

a) Incident under investigation:

b) Name of interviewee:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

c) Name of interviewee's accredited trade union representative/ workplace colleague, if any:

Job title / Name of trade union:

---

**2. DETAILS OF INVESTIGATING OFFICERS**

a) Name:

b) Name:

Job title:

Job title:

Relationship to  
person under  
investigation:

Relationship to  
person under  
investigation:

---

**3. SUMMARY OF INVESTIGATION**

Briefly summarise the reason for the investigation (eg the nature of the complaint):

---

#### 4. NOTE OF THE MEETING

(Name of investigating officer) opened the meeting by introducing everyone present before giving a brief explanation of the reason for the meeting and the procedure to be followed. The following questions were asked:

**Q1. Details of question:**

**Summarised response:**

**Q2. Details of question:**

**Summarised response:**

*(Continue to list all questions)*

**Q3. Do you have anything more to add in respect of this matter?**

**Summarised Response**

---

#### 5. DECLARATION

I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.

I understand that I cannot discuss these proceedings with anyone other than my accredited trade union representative/ accompanying workplace colleague, and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.

I declare that my contribution to this investigation meeting has been accurate and true. I have been given a copy of my statement to check its accuracy and to make any amendments or comments if I disagree with it. I accept that if I do not sign, or return comments within the given timescale, then the statement may still be used

Interviewee's signature:

Date:

Investigating officer's signature:

Date:

Investigating officer / Note taker's signature:

Date:

**c. Statement from witness**

NOTE: If the witness is unavailable for interview, they can complete an investigatory statement instead. In some instances, the investigating officer(s) may wish to have both an interview and statement.

**CONFIDENTIAL**

**INVESTIGATION STATEMENT**

---

**1. DETAILS OF WITNESS**

a) Incident under investigation:

b) Name of witness:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

---

**2. DETAILS OF INVESTIGATING OFFICERS**

a) Name:

b) Name:

Job title:

Job title:

Relationship to  
person under  
investigation:

Relationship to  
person under  
investigation:

---

**3. MY STATEMENT**

---

#### 4. DECLARATION

I declare that:

- I understand that I may be required to clarify points raised during the investigation.
- I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.
- I understand that I cannot discuss these proceedings with anyone other than my representative, and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.
- This statement is a true and fair account.

Employee's signature:

Date:

---

**d. Statement from person under investigation**

NOTE: If the person under investigation is unavailable for interview, they can complete an investigatory statement instead. In some instances, the investigating officer(s) may wish to have both an interview and statement.

**CONFIDENTIAL**

**INVESTIGATION STATEMENT**

---

**5. DETAILS OF WITNESS**

a) Incident under investigation:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

---

**6. DETAILS OF INVESTIGATING OFFICERS**

a) Name:

b) Name:

Job title:

Job title:

Relationship to  
person under  
investigation:

Relationship to  
person under  
investigation:

---

**7. MY STATEMENT**

---



## 8. DECLARATION

I declare that:

- I understand that I may be required to clarify points raised during the investigation.
- I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.
- I understand that I cannot discuss these proceedings with anyone other than my representative or immediate family members (provided that I ensure they retain confidentiality), and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.
- This statement is a true and fair account.

Employee's signature:

Date:

---

**e. Investigation report**

NOTE: The content of this template is an example only and should be varied to suit each case.

**CONFIDENTIAL****INVESTIGATION REPORT**

---

**1. REPORT OVERVIEW**

a) Report to: *(Name of commissioning manager)*

b) Date report completed:

c) Report from the following investigating officer(s):

Name:

Name:

Job title:

Job title:

Relationship to  
person under  
investigation:

Relationship to  
person under  
investigation:

d) Name of person under investigation:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

---

**2. SUMMARY OF INVESTIGATION REMIT**

Briefly summarise the reason for the investigation (eg the nature of the complaint):

---

**3. THE REPORT****Contents**

1. Introduction
2. Background
3. Investigation
4. Summary

## 5. Appendices

1. Statement / note of meeting with the person under investigation
2. Witness statements / notes of meetings
3. Other relevant documentation – eg emails, correspondence etc.
4. Job Description / Role Profile

## 1. INTRODUCTION

*(Names of investigating officers)* were commissioned by *(Name of manager, job title)* to investigate the complaints and report their findings to *(Name, job title)*.

If in the process of the investigation, further complaints or allegations came to light, *(give details of the complaints or allegations)* and, under advice from *(name of commissioning manager)*, they have been included here as they are relevant to the case.

## 2. PROCESS

The investigation commenced on *(date)* and finished on *(date)*.

The people interviewed were:

- |          |            |
|----------|------------|
| 1. Name: | Job title: |
| 2. Name: | Job title: |
| 3. Name: | Job title: |
| 4. Name: | Job title: |

Specialist advice was sought from *HR/Legal Services* (delete as appropriate) on the following:

- 
- 
- 

## 3. INVESTIGATION

Outline the investigation eg briefly recap of what prompted the investigation, who was involved, why the witnesses were selected, why the questions were chosen, evidence that supported or conflicted with other evidence, the nature of other evidence collected (eg supporting documents) etc

**Allegation number 1:** *(specify the allegation or complaint)*

The investigating officer(s) found that there was evidence to support this allegation because:

- 
- 

The investigating officer(s) found that there was conflicting evidence in respect of this allegation because:

- 
-

The investigating officer(s) found insufficient evidence to support this allegation because:

- 
- 

**Allegation number 2:** *(specify the allegation or complaint)*

The investigating officer(s) found that there was evidence to support this allegation because:

- 
- 

The investigating officer(s) found that there was conflicting evidence in respect of this allegation because:

- 
- 

The investigating officer(s) found insufficient evidence to support this allegation because:

- 
- 

The Investigators found no evidence to support this allegation

**Allegation number 3:** *(specify the allegation or complaint)*

*Continue as above*

4. **SUMMARY** *(The investigating officer must not make recommendations – the manager is responsible for assessing the investigation (eg whether more information is needed at this stage) and deciding whether to proceed to a disciplinary hearing.)*

Investigating officer's signature:

Date:

## APPENDIX 6 – GUIDELINES ON REQUIREMENTS TO NOTIFY REGISTERED BODIES

### CONTENTS:

1. Guidelines on requirements to notify registered bodies
2. Scottish Social Services Council
3. General Teaching Council
4. Care Inspectorate
5. Disclosure Scotland
6. Protection of Vulnerable Groups (Scotland) Act 2007

## 1. GUIDELINES ON REQUIREMENTS TO NOTIFY REGISTERED BODIES

### 1. Scope of guidelines

These guidelines provide a framework within which line managers should work when dealing with employees who work with children and vulnerable adults. These employees may be registered with certain professional bodies eg Scottish Social Services Council, General Teaching Council, or hold posts which are subject to a Disclosure check or PVG registration with Disclosure Scotland or are involved in service provision which is regulated by the Care Inspectorate. These guidelines are intended to provide general advice in these areas - more detailed advice and support can be provided by the HR Case Management Team.

For other professions, for example law, finance and human resource management, the guidelines laid down by the relevant professional institutes and/or governing bodies must be followed in all cases of potential professional misconduct of whatever nature, together with the Council's disciplinary procedures as appropriate. Advice and support can be provided by the HR Case Management Team.

An integral part of an employee's profession is maintaining the standard of conduct expected of them. Their relationships with colleagues, clients, pupils, and the general public must be professional, appropriate and justifiable otherwise their suitability to remain in their profession may be brought into question.

Where a line manager has concerns in respect of an employee's conduct, their integrity or their suitability for a position of trust in relation to children, young people or vulnerable people, they must give consideration to whether they need to notify the appropriate organisation. In addition, where employees' conduct or performance give rise to serious concerns line managers will also consider whether disciplinary action is appropriate, in line with the relevant Scottish Borders Council policies, procedures and guidelines.

Please refer to the following guidance in respect of the Scottish Social Services Council and the General Teaching Council.

### 2. Scottish Social Services Council (SSSC)

The SSSC Codes of Practice have been developed to raise standards in social services and describe the standards of conduct and practice required of employers and social service workers. Registration is required for those working in social services and this register is a public record that those registered have met the requirements for entry onto the register and have agreed to abide by the standards set out in the Code of Practice for Social Service Workers. In Scottish Borders Council all employees within Social Work and SB Cares, whether registered with SSSC or not, are required to sign up to and meet this Code of Practice. Some employees in other departments, for example nursery nurses, also require to register with SSSC.

The Regulation of Care (Scotland) Act 2001 states that Scottish Borders Council must notify the SSSC immediately when:

- ❖ A social service worker is dismissed on grounds of misconduct; or
- ❖ The social service worker resigned or abandoned their position where, but for the resignation or abandonment:
  - The worker would have been dismissed on the grounds of misconduct; or
  - Dismissal on such grounds would have been considered by SBC.

In the above circumstance, Line Managers must notify SSSC of the dismissal, resignation or abandonment; and in doing so provide the SSSC with an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

A referral should also be made immediately by the Line Manager if Scottish Borders Council has taken the decision to suspend or redeploy a social service worker pending the outcome of an investigation into the conduct of that worker under this Disciplinary Procedure. The SSSC will make a separate decision about whether immediate action is required to remove a worker's name from the Register pending further inquiries.

Additionally, Line Managers on behalf of Scottish Borders Council are required to inform the SSSC about any misconduct by registered social service workers that might call into question their registration and must inform the social service worker that a report has been made to the SSSC.

An Employers' Referral form is available at this link:

<https://www.sssc.uk.com/knowledgebase/article/KA-02100/en-us>

This can be used for providing information about a registered worker or a non-registered worker who may apply for registration in the future.

### **3. General Teaching Council Scotland (GTCS)**

The General Teaching Council for Scotland is the professional regulatory body for teachers in Scotland. They maintain and enhance professional standards for Scottish teachers and support new teachers through the standard for Full Registration. Their primary role is to ensure the fitness of individual teachers to be members of the teaching profession. Registration with GTCS is in effect a licence which means that a currently registered teacher is in a position to take up employment in local authority schools in Scotland.

The Public Services Reform (General Teaching Council for Scotland) Order 2011 states that the GTCS must be notified by an employer of the following:

- ❖ If a registered teacher who is dismissed for misconduct;
- ❖ If a registered teacher who is dismissed for incompetence;
- ❖ If a registered teacher resigns or abandons their position in circumstances where, but for their abandonment or resignation they would either have been dismissed for misconduct, or dismissal for misconduct would have been considered by the Council;
- ❖ If a registered teacher resigns, or abandons their position, in circumstances where, but for their abandonment or resignation they would either have been dismissed for incompetence, or dismissal for incompetence would have been considered by the Council.

When notifying the GTCS the Line Manager on behalf of the Council must provide an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

Further information and a link to the Employers' Referral Form is available at the following link:

<https://www.gtcs.org.uk/regulation/referral.aspx>

### **4. Care Inspectorate**

The Care Commission was established in 2002 as the independent regulator set up under the Regulation of Care (Scotland) Act 2001 to regulate Care in Scotland. Social Care and Social Work Improvement Scotland (SCSWIS), subsequently renamed the Care Inspectorate, replaced the Care Commission through the Public Services Reform (Scotland) Act 2010. The Care Inspectorate

register and inspect Scottish Borders Council services against a set of National Care Standards. The standards outline the quality of service that care service users have the right to expect from Scottish Borders Council.

Any allegation of misconduct against any persons employed in the care service must be reported by the Service Manager to the care service without delay.

Additionally, where one of our external providers or one of our own managers is deemed unfit, it must be reported to the Care Inspectorate immediately. Being declared 'unfit' will be based on health, competence or where an offence has been committed and will be determined by an appropriate person within Scottish Borders Council.

It is the responsibility of the Service Manager to report appropriate details to the Care Inspectorate. Please refer to their website <https://www.careinspectorate.com> for further information.

## 5. Disclosure Scotland

Disclosure Scotland was developed under the guidance of the Scottish Executive and introduced a system of disclosing criminal history information to individuals and organisations for specific types of employment and other purposes. Scottish Borders Council should report to Disclosure Scotland any reasonable suspicion that an offence has been committed.

There are, however, some occupations which are defined as “notifiable occupations” where Disclosure Scotland have an obligation to notify Scottish Borders Council if someone employed by the Council in these occupations is convicted. Any notification will come to HR who will inform the line manager immediately.

Scottish Borders Council has robust recruitment procedures in place which incorporate Disclosure checks for posts which require them. Further information on either Disclosure or SBC’s Recruitment Policy & Procedure can be found on the Council’s Intranet page under HR Policies and Procedures. Please also refer to the Disclosure Scotland website <https://www.mygov.scot/organisations/disclosure-scotland> for further information.

## 6. Protection of Vulnerable Groups (Scotland) Act 2007

This act applies to Scottish Borders Council as it employs people to work with children and protected adults both paid or unpaid. The Act provides for Scottish Ministers to keep lists of individuals who are disqualified from working with children or protected adults. The Act expands on the measures previously contained in the Protection of Children (Scotland) Act 2003 and plugs a gap in previous safeguards which allowed unsuitable people to move from one childcare post to another without detection if they had not been convicted of an offence. All people working with children or protected adults are obliged to be registered under the appropriate Protecting Vulnerable Groups (PVG) Scheme. A check on somebody’s status under the relevant scheme can be made by application to Disclosure Scotland.

People can be referred to the Scottish Ministers for possible inclusion on the list by regulatory bodies such as the General Teaching Council Scotland (GTCS) or the Scottish Social Services Council (SSSC), by the courts or by organisations such as Scottish Borders Council.

We have a duty to refer an individual to the Scottish Ministers for consideration for inclusion on the appropriate list who is or has been working with children or protected adults if the individual has (whether or not in the course of their work):

- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and been dismissed as a consequence;



- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual resigned, retired or was made redundant before SBC could take action to dismiss them;
- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and as a consequence was transferred to a position within SBC which is not a position involving work with children or protected adults;
- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual was on a fixed term contract which was about to expire or had expired before the organisation could consider dismissal proceedings.

**It is a criminal offence for an organisation to fail to comply with the duty to make referrals to the Scottish Ministers.**

Scottish Borders Council also has a duty to refer an individual if information which was not available to SBC at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available. A referral will be required where SBC has formed the opinion that, if the information had been available at the time SBC would have dismissed the individual or would have considered dismissing the individual on the grounds that the individual had (whether or not in the course of the individual's work) harmed a child or vulnerable adult or placed a child or vulnerable adult at risk of harm.

Line managers wishing to make such a referral to the Scottish Ministers should refer to the HR Case Management Team for guidance on individual cases.

Referrals to the Scottish Ministers should be made in addition to notifying the police and any relevant professional bodies as appropriate.

A referral form is available directly from Disclosure Scotland, available on the internet on

<https://www.mygov.scot/pvg-employer-referral/>

## APPENDIX 7 – SAMPLE LETTER CONFIRMING PERIOD OF SPECIAL PAID LEAVE

Dear

### Confirmation of period of special paid leave

Further to our meeting on (date), this letter confirms that, in accordance with the Council's Disciplinary Procedures for Misconduct, you are on a period of special paid leave for the following reasons:

This period of special paid leave started on *date* and is expected to end on *date*. You are to remain away from work until advised further. If the end date changes, I will let you know. Your period of special paid leave is part of the investigation process; it is not disciplinary action and does not imply any pre-judgement of the case.

*(Insert if appropriate)* Bearing in mind your role I will consider whether I am required to inform the *Scottish Social Services Council / General Teaching Council / Care Inspectorate* of your period of suspension and the reason for it. Consequently you may be contacted by the appropriate body. Additionally, I would remind you of your own obligations to inform them yourself of any relevant changes regarding your employment status that may impact on your professional standing.

As part of the investigation, you will be contacted soon to attend an investigatory meeting so please remain contactable. You have the right to be accompanied by someone, who must be either a workplace colleague, an accredited trade union representative (who is certified as being trained or experienced in being a representative for disciplinary hearings) or an official employed by the trade union. All reasonable requests will be approved.

Your contract of employment and all normal employment procedures still apply. For example, if you want to go away or are sick during this period please contact me / your line manager to enable the necessary authorisation/documentation to be given/completed. You will continue to be paid during this period.

Please do not attend work or attempt to influence anyone who may be involved in the investigation process unless you want them to represent you formally or accompany you to a meeting. Every effort will be made to investigate this alleged misconduct fairly and promptly.

I appreciate that this time may be stressful for you. I have arranged for *(name/title)* to be a support person for you. They have agreed to this but I must make it clear that they have not been given any detail of the reasons for your period of special paid leave and will not take part in the investigation in any way. Consequently, *(name)* will not be able to give any opinion on the matters under investigation but will, however, be able to act as a general support to you and keep you in touch with workplace issues. You may contact *(him/her)* either by phone/email *(insert contact details)*.

The Staff Wellbeing Handbook which is available on the intranet and on the Employee pages of the SBC website also has a list of supports available, Further details of support are also listed on the Employee pages.

If you think you would benefit from counselling please let me know and I will make a referral through Occupational Health.

I would like to draw your attention to the free professional confidential counselling service 'VIVUP' which is available to all employees. If you feel that you would benefit from this you may refer yourself by freephone 0800 023 9324.

I enclose a copy of the Council's Disciplinary Procedures for Misconduct for your information. If you require any further clarification please do not hesitate to contact me.

Yours sincerely

**Name**  
**Job title**

## APPENDIX 8 – EXAMPLES OF MISCONDUCT AND GROSS MISCONDUCT

### MISCONDUCT

The following list, which is neither exhaustive nor exclusive, gives an indication of the types of misconduct which can result in a disciplinary warning:

- Damage to Council property or to property not belonging to the Council.
- Unauthorised use or misuse of Council property and/or facilities, or of those not belonging to the Council.
- Poor timekeeping or unauthorised absence from work.
- Carelessness or negligence which creates risk or damage.
- Failure to follow reasonable instructions or procedures, or otherwise fulfil contractual obligations.
- Abusive or threatening behaviour toward any person (Please note that this may also constitute gross misconduct, particularly if the person is a child aged under 16, young person aged 16-17 or adult at risk –a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed– please see below under “Gross Misconduct”.)
- Minor abuse of authority, including acts and omissions.
- Less serious breach of relevant Codes of Practice, Regulations, Policies and Procedures, eg Code of Conduct for Scottish Borders Council Employees, Financial Regulations and Policy and Guidelines on the use of e-mail and the Internet.
- Less serious discriminatory acts or omissions which breach, or are inconsistent with, the Council’s. Equality, Diversity and Human Rights Policy.
- Less serious breaches of Health and Safety rules.
- Unauthorised disclosure of personal information or disclosure of a password to electronically held data.
- Attempts, whether successful or not, to access information without authorisation.
- Making malicious, frivolous or vexatious allegations

### GROSS MISCONDUCT

The following list, which is neither exhaustive nor exclusive, provides examples of acts regarded as gross misconduct, which can result in summary dismissal without notice or pay in lieu of notice.

- Theft of Council property, or of property not belonging to the Council whilst engaged, or claiming to be engaged, on Council business.
- Serious damage to, or misuse of, Council property or resources or of property or resources not belonging to the Council, whilst engaged or purporting to be engaged on Council business.
- Physical or indecent assault.

- Indecent, abusive or threatening behaviour.
- Dishonest or fraudulent acts e.g. deliberate falsification of time sheets or other attendance records, work records, expenses claims or other records, whether computerised or manual, relating to the financial transactions of the Council.
- Provision of false or misleading information, or non-disclosure of information, either during the recruitment process or in subsequent employment.
- Serious breach of contract.
- Serious breach of confidentiality.
- Serious abuse of authority, including acts and omissions.
- Serious breach of trust and/or confidence caused by the actions of the employee.
- Serious breach of security systems (including premises, data etc)
- Significant non-disclosure of an interest, whether direct or indirect, in a contractual arrangement between an agency or other concern and the Council.
- Criminal conviction / civil liability or other unacceptable conduct which renders the employee unsuitable to carry out the duties and responsibilities of the post, whether or not the conduct occurred on duty.
- Serious breach of relevant Codes of Practice, Regulations, Policies and Procedures, eg Code of Conduct for Scottish Borders Council Employees, Financial Regulations and Policy and Guidelines on the use of e-mail and the Internet.
- Serious breach of Child or Adult Protection procedures.
- Abusive or threatening behaviour toward a child, young person or adult at risk.  
("Child" is a person under 16, "young person" is a person aged 16-17," adult at risk" is a person aged 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed)
- harming a child, young person or adult at risk  
  
"Harm" includes physical harm (eg inappropriate physical restraint or assault), psychological harm (eg emotional abuse), theft (eg embezzlement)
- placing a child, young person or adult at risk at risk of harm  
  
"Risk of harm" includes attempting to harm (even if unsuccessful), trying to make someone else cause harm, encouraging someone to self-harm, reckless behaviour or incompetence that may cause someone to be harmed as a result, even if that was not the intention.
- inappropriate behaviour involving pornography
- inappropriate behaviour of a sexual nature involving a child, young person or adult at risk
- giving inappropriate medical treatment to a child, young person or adult at risk

- Gross carelessness or negligence.
- Serious breach of Health and Safety rules.
- Serious discriminatory acts or omissions contrary to, or inconsistent with, the Council's Equality, Diversity and Human Rights Policy including:
  - the selection or non-selection of any person for a post within the Council
  - the provision or non-provision of any rights or benefits to any person employed by or having contact with the Council
  - other forms of less favourable treatment, such as any form of harassment, victimisation or intimidation.
- Difficulty in carrying out the duties of the post due to the influence of alcohol or misuse of drugs.
- Drinking alcohol or taking illegal drugs during working hours or whilst on standby.
- Serious insubordination
- Bringing the Council into disrepute

## APPENDIX 9 – SAMPLE LETTERS FOR DISCIPLINARY HEARINGS

### NOTES:

These are sample letters only and must be adapted to fit the circumstances. Before finalising letters, it is important to have **read Section 5: Formal disciplinary hearings**, which covers the content of letters, timescales, options for hearings etc.

It is important that employees receive their letters promptly and confidentially. Managers should hand them personally to employees or send them by recorded delivery to home addresses. Alternatively, agreement may be made with the employee to email the letter.

### CONTENTS:

- a. Invitation to a disciplinary hearing
- b. Outcome of the disciplinary hearing – no disciplinary action
- c. Outcome of the disciplinary hearing – 1<sup>st</sup> or final warning
- d. Outcome of the disciplinary hearing – normal dismissal
- e. Outcome of the disciplinary hearing – summary dismissal

**a. Invitation to attend a disciplinary hearing**

**Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

**Notice of Disciplinary Hearing**

I write to invite you to attend a disciplinary hearing on *(date)* at *(time)*, at *(venue)* for the following reasons:

*Briefly state the complaint against the employee*

I will chair the hearing and *(name and job title)* will also attend the hearing with me. At the hearing, the matter will be explored in more detail. You will be given the opportunity to fully explain your position and to make me aware of any relevant factors. You should note that disciplinary action *(including dismissal)* may be taken as a result of this hearing.

A copy of the Council's Disciplinary Policy and Procedures for Misconduct is enclosed and I advise you to familiarise yourself with it prior to the hearing. The section on 'Formal disciplinary hearings' is of particular relevance to you. If there is anything that you do not understand, please contact me.

You have the right to be accompanied at the disciplinary hearing. See the sub-section on 'Employee representation' in the attached procedures for further information. This person can be a workplace colleague, an accredited trade union representative (who is trained or experienced in being a representative in disciplinary hearings, as certified by the trade union) or an official employed by a trade union. It is your responsibility to arrange this. No one else can accompany you. *OR As the hearing may lead to dismissal, your solicitor may be allowed to attend as your companion, subject to Council discretion.* Your choice of companion needs to be approved by me, so please let me know asap who you would like to bring.

Your accredited trade union representative/ accompanying person can address the hearing but cannot answer questions on your behalf. If your chosen person is unavailable at the time given above, we will try to re-schedule the hearing within 2 weeks.

You have the right to call witnesses or submit statements or other documents. Please let me have the details by *(date – 4 days before the hearing)* at the latest. It is your responsibility to arrange for the attendance of these witnesses.

*Either* – The management witnesses are *(names and job titles)* and the investigating officer is *(name and job title)*. I enclose copies of the documents which will be referred to at the hearing.

*Or* – Details of the management witnesses, investigating officer and copies of any documents which will be referred to at the hearing will be sent to you by the same date.



The disciplinary hearing will be run in line with sub-section 26 'Holding the disciplinary hearing' in the attached procedures.

If you have any queries prior to the hearing, or any special requirements at the hearing (eg to accommodate a disability, language difficulties etc) please do not hesitate to contact me.

Yours sincerely

**Name**  
**Job title**

Enc

## b. Outcome of the disciplinary hearing – no disciplinary action

NOTE: There may be follow-up action required, even though disciplinary action is inappropriate, for example monitoring, setting targets, training. Outline any such action in this letter or indicate that a meeting will take place to discuss this further. It is important to ensure that such a meeting takes place asap.

### **Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

### **Outcome of Disciplinary Hearing**

On *(date)* you attended a disciplinary hearing with myself and *(name of colleague/advisor)*. You were accompanied by *(name, work colleague/accredited trade union representative)* OR You chose not to be accompanied at the hearing.

The disciplinary hearing was held for the following reasons:

*Briefly state the complaint against the employee*

*Insert a summary of the key points raised at the hearing, the employee's response, and any key factors that you took into account..*

At the hearing, having considered all the points raised, I concluded that there was insufficient evidence to support the case against you and therefore no formal disciplinary action was appropriate in terms of the Disciplinary Procedures for Misconduct.

I confirm that the results of the investigation in relation to this particular issue will not be retained on your personal file, nor will they be included in any reference.

The papers from the investigation will be destroyed.

*Include as required: As I indicated at the hearing, improvement is expected of you and you are required to meet the following standards:*

*State the standards required*

*(Detail any supportive action you will take.) Your conduct will be monitored by me by (indicate how you will monitor their conduct). If you do not meet these standards, you may be asked to attend another disciplinary hearing in due course.*

I would like to thank you for your assistance and co-operation during the disciplinary process and regret any inconvenience or distress that these proceedings may have caused you.

Yours sincerely

**Name**  
**Job title**

**c. Outcome of the disciplinary hearing – 1st or final warning**

**Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

**Outcome of Disciplinary Hearing**

On *(date)* you attended a disciplinary hearing with myself and *(name of colleague/advisor)*. You were accompanied by *(name, work colleague/ accredited trade union representative)* OR You chose not to be accompanied at the hearing.

The disciplinary hearing was held for the following reasons:

*Briefly state the complaint against the employee*

*Insert a summary of the key points raised at the hearing, the employee's response, any key factors that you took into account, why the misconduct was unacceptable, any mitigating circumstances and the reasons for giving this level of warning.*

At the hearing, having considered all the points raised, I issued you with a Verbal Warning/ Written Warning / *Final Written Warning* under the Disciplinary Procedures for Misconduct. In accordance with the procedures, this warning will remain live on your file for a period of 6 (for a Verbal Warning), 12 (for a *Written Warning*) or 18 (for a *final written warning*) months from the date of the hearing.

As I indicated at the hearing, improvement is expected of you and you are required to meet the following standards:

*State the standards required*

*(Detail any supportive action you will take.)* Your conduct will be monitored by me by *(indicate how you will monitor their conduct)*. If there is any other misconduct during this period, you may be asked to attend a further disciplinary hearing which could result in a *written warning/ final written warning / dismissal*.

You have the right to appeal against this warning if you believe the decision was wrong or unjust. Any appeal should be made in writing to *(name)* within 2 weeks of the date of this letter. The letter of appeal must state clearly the full grounds on which you are appealing and should not be simply that you feel unhappy with the outcome of the disciplinary hearing. An appeals form is included in the Disciplinary procedures at **Appendix 9**.

Should you require further information on the disciplinary or appeals process, please refer to the Disciplinary Procedures for Misconduct, or ask me.

Yours sincerely

**Manager**  
**Job title**

#### d. Outcome of the disciplinary hearing – dismissal

NOTE: Dismissal letters must be approved by the HR Case Management Team before being sent, due to the legal implications.

**Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

#### **Outcome of Disciplinary Hearing**

On *(date)* you attended a disciplinary hearing with myself and *(name of colleague/advisor)*. You were accompanied by *(name, work colleague/ accredited trade union representative)* OR You chose not to be accompanied at the hearing.

The disciplinary hearing was held for the following reasons:

*Clearly state the case against the employee*

*Insert a summary of the key points raised at the hearing, the employee's response, any key factors that you took into account, why the misconduct was unacceptable, any mitigating circumstances and the reasons for deciding on dismissal.*

At the hearing, having considered all the points raised, I concluded that you should be dismissed for misconduct in line with the Disciplinary Procedures for Misconduct. I believe you have been given support and advice on your conduct over a period of time and have received previous disciplinary warning(s) to indicate that your conduct was unacceptable. However, you have not reached the required standards and your contract of employment with the Council will now end.

The decision to dismiss you means that, in accordance with your contract of employment, you are entitled to *(number)* months' period of notice and will be required to continue to work during that period. Your employment ends on *(date following period of notice)* and all employment benefits will cease to accrue from this date.

By the time you leave the Council, you must *(insert/amend as appropriate and consider if it is appropriate to give the name of a contact person to assist with this)*:

- return any security passes, property, keys, car parking permits, alarm code details, system passwords and security codes
- *return any Scottish Borders equipment and property in your possession. This includes all electronic equipment such as laptops or mobile phones, ID badge, keys, uniforms and personal protective equipment, any documents or other information belonging to the Council, both paper and electronic and any passwords to any electronic files. You must also ensure that any Council information stored on another device or in the cloud is deleted .*
- ensure all outstanding Council expenses have been brought up to date, by submitting receipts and expense descriptions, within 2 days of leaving the Council
- return your Council vehicle
- repay any relocation expenses or outstanding loans as per the relevant agreement e.g. Relocation Receipt & Undertaking, Travel Loan agreement
- collect your personal belongings.

You have the right to appeal against this decision if you believe the decision was wrong or unjust. Any appeal should be made in writing to the Director People Performance & Change within 2 weeks of the date of this letter. You must state clearly the full grounds on which you are appealing, which cannot simply be because you are unhappy with the outcome of the disciplinary hearing. An appeals form is included in the Disciplinary procedures at **Appendix 9**.

Should you require further information on the disciplinary or appeals process, please refer to the Disciplinary Procedures for Misconduct.

(Where appropriate – see **Appendix 5**)

In addition, in view of the circumstances of your dismissal I require to notify the Scottish Social Services Council/ General Teaching Council for Scotland/ Disclosure Scotland/ other professional body (*add/ delete as appropriate*) of the fact of your dismissal and the circumstances which led to it. They will consider your registration/ whether you should be listed as barred from working with children and/ or protected adults. (*delete as appropriate*).

Yours sincerely

**Name**  
**Job title**

#### e. Outcome of the disciplinary hearing – summary dismissal

NOTE: Dismissal letters must be approved by the HR Case Management Team before being sent, due to the legal implications.

**Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

#### **Outcome of Disciplinary Hearing**

On *(date)* you attended a disciplinary hearing with myself and *(name of colleague/advisor)*. You were accompanied by *(name, work colleague/credited trade union representative)* OR You chose not to be accompanied at the hearing.

The disciplinary hearing was held for the following reasons:

*Clearly state the case against the employee*

*Insert a summary of the key points raised at the hearing, the employee's response, any key factors that you took into account, why the misconduct was unacceptable, any mitigating circumstances and the reasons for deciding on dismissal.*

At the hearing, having considered all the points raised, I concluded that your actions constituted gross misconduct and I took the decision to summarily dismiss you in line with the Disciplinary Procedures for Misconduct.

The decision to summarily dismiss you means that, in accordance with your contract of employment, you are not entitled to any notice period and your dismissal takes place immediately. Your employment ends on *(date of disciplinary hearing)* and all employment benefits will cease to accrue from this date.

You must *(insert/amend as appropriate and consider if it is appropriate to give the name of a contact person to assist with this)*:

- return any security passes, property, keys, car parking permits, alarm code details, system passwords and security codes
- return any Scottish Borders equipment and property in your possession. This includes all electronic equipment such as laptops or mobile phones, ID badge, keys, uniforms and personal protective equipment, any documents or other information belonging to the Council, both paper and electronic and any passwords to any electronic files. You must also ensure that any Council information stored on another device or in the cloud is deleted . If this is not immediately possible, arrangements will be made to collect these from your home
- ensure all outstanding Council expenses have been brought up to date, by submitting receipts and expense descriptions, within 2 days of dismissal
- return your Council vehicle immediately. *(Specify the alternative arrangements to be made for the journey home)*
- repay any relocation expenses or outstanding loans as per the relevant agreement e.g. Relocation Receipt & Undertaking, Travel Loan agreement

- collect your personal belongings - you will be accompanied to/from your workplace by (*specify by whom*). (*If the employee is unable to collect them immediately after the disciplinary hearing, specify the arrangements for them to be delivered to the employee or collected from the Council*).

You have the right to appeal against this decision if you believe the decision was wrong or unjust. Any appeal should be made in writing to the Director People Performance & Change within 2 weeks of the date of this letter. You must state clearly the full grounds on which you are appealing which cannot simply be because you are unhappy with the outcome of the disciplinary hearing. An appeals form is included in the Disciplinary procedures at **Appendix 9**.

Should you require further information on the disciplinary or appeals process, please refer to the Disciplinary Procedures for Misconduct.

(Where appropriate – see **Appendix 5**)

In addition, in view of the circumstances of your dismissal I require to notify the Scottish Social Services Council/ General Teaching Council for Scotland/ Disclosure Scotland/ *other professional body (add/ delete as appropriate)* of the fact of your dismissal and the circumstances which led to it. They will consider your registration/ whether you should be listed as barred from working with children and/ or protected adults. (*delete as appropriate*).

Yours sincerely

**Name**  
**Job title**

## APPENDIX 10 – EMPLOYEE APPEAL FORM

**CONFIDENTIAL****APPEAL AGAINST DISCIPLINARY ACTION**

You have the right to appeal against any disciplinary action, including dismissal, if you believe that the decision was wrong or unjust. This form must be received by the manager named in your disciplinary letter within **2 weeks** of the date of that letter.

*Please read the appeals procedure in the Disciplinary Procedures for Misconduct before completing this form. If you need help, contact your accredited trade union representative, your line manager or the HR Case Management Team*

**Section 1: Your details**

Name:

Job title:

Department / Section:

Date you started work: a) at SBC:                      b) in this job:

Level of disciplinary action received (please tick box):    1<sup>st</sup> warning                      Final warning                      Dismissal                      Did this disciplinary action follow on from previous disciplinary action?    Yes     No 

Name of the Chair of your disciplinary hearing:

Date of your disciplinary hearing:

**Section 2: Your reasons for the appeal**

a) What reason was given for your disciplinary action? *(See your disciplinary letter or attach a copy of the letter to this application)*

b) Please state why you believe the disciplinary action was wrong or unjust:



c) What evidence do you have to support your case? *(Attach any documents and list them here)*

### Section 3: Arrangements for an appeal

Who would you like to accompany you to an appeal hearing?

- No one  *Go to 'Section 4: Declaration' below*

- Name:

- a) Are they:
- An accredited trade union representative who is trained or experienced in being a representative in disciplinary hearings (as certified by the trade union) or
  - an official employed by a trade union or
  - a workplace colleague
  - a solicitor (for certain appeals against dismissal, subject to the approval of the council)

b) Please state when you or your accredited trade union representative/ accompanying person will **not** be available over the next 4 weeks:

### Section 4: Declaration

I have read and understood the Disciplinary Policy and Procedures for Misconduct and I believe that my appeal meets the criteria for a hearing. I believe that all the information provided by me is accurate and true.

Name:

Signature:

Date:

## APPENDIX 11 – HOLDING AN APPEAL HEARING

### HOLDING AN APPEAL HEARING

#### Introducing the hearing

1. The Chair will make the necessary introductions and clarify the role of each person present. The approach should be formal and polite, with a view to establishing the facts.
2. The Chair will explain that the purpose of the hearing is for the panel to consider the appeal against disciplinary action, in accordance with the Council's disciplinary procedure. The procedure for the hearing will also be outlined, with the employee asked to confirm they understand the procedure.

#### Presenting the employee's case

3. The employee (and/or workplace colleague/ accredited trade union representative) will be given the opportunity to state their case and present evidence. This may include calling witnesses if appropriate and discussing any witness statements and the contents of any other documents.

#### Questions on the employee's case

4. The management representative (and any advisors) will be given an opportunity to ask questions to clarify the employee's case, including questions to any witnesses.
5. The employee (and/or workplace colleague/ accredited trade union representative) will be given a further opportunity to question any witnesses on issues raised during the panel's questions.
6. The appeals panel (and any advisors) will have a further opportunity to question any witnesses on issues raised during the employee's questions.

#### Presenting the management case

7. The manager will state clearly the complaint or allegation. They will outline the case briefly by going through the evidence which has been gathered. This may include calling witnesses if appropriate, discussing any witness statements and the contents of any other records and documents.
8. Occasionally, in exceptional circumstances, (for example, in some cases of bullying and harassment), the anonymity of witnesses may need to be maintained. In such cases, witness statements can be anonymised and/or the individuals may not be required to attend a hearing where they could be questioned by the employee. The manager shall explain the reasons for anonymity being maintained at the start of the hearing. The employee (and/or workplace colleague/ accredited trade union representative) shall have the opportunity to challenge the need for anonymity. The appeals panel shall make a decision on this. If the appeals panel decides to maintain the anonymity of witnesses, they must consider whether a fair hearing requires that the employee (and/or workplace colleague/ accredited trade union representative) be given an opportunity to put questions to the witnesses by other means, for example by the employee and/or workplace colleague/ accredited trade union representative) submitting written questions to be answered by the witnesses.

### Questions on the management case

9. The employee (and/or workplace colleague/ accredited trade union representative) will be given the opportunity to ask questions to clarify the management case, including questions to any witnesses.
10. The management representative will be given a further opportunity to question any witnesses on issues raised during the panel's questions.
11. The appeals panel (and any advisors) will have a further opportunity to question any witnesses on issues raised during the employee's questions.

### Final questions and clarification

12. The appeals panel (and any officers/advisors) may use this stage to clarify any issues and to check that what has been said is understood. Where either party is asked to clarify any point, the other party will normally have the opportunity to comment.

### Summing up

13. The manager will sum up the case, without introducing any new material.
14. The employee (and/or workplace colleague/ accredited trade union representative) will sum up their response, without introducing any new material.

### Adjournments

15. Either party can request an adjournment during the hearing which, if considered reasonable by the Chair, will normally be allowed.
16. At the end of the hearing, the Chair will adjourn to allow full consideration of all the matters raised, before a decision is taken on whether or not to support the appeal.
17. The appeals panel, together with any advisers, will deliberate in private, only recalling the manager(s) or the employee to clarify points of uncertainty on the evidence already given. If a recall is necessary, both parties will be asked to return.
18. In some cases, the appeals panel may require further information and, in this or similar circumstances, the appeal hearing may need to be reconvened at a later date to enable further information to be provided and a decision to be made. Any additional written information will be copied to all parties. The hearing must be reconvened as soon as possible.

### Outcome of the hearing

19. The appeal panel's decision is normally one of the following:
  - the appeal is upheld and the case dismissed, with the record of disciplinary action removed from the employee's personal file
  - the appeal is partially upheld and the level of disciplinary action is reduced
  - the appeal is dismissed and the disciplinary action upheld
  - exceptionally, the Chair may request further information from the employee and/or the previous decision maker before reaching a decision.
  - exceptionally, the panel may refer the matter back to be reheard, either by the original decision maker or another manager.

20. The decision of the Appeals Panel is final and will be confirmed in writing to the employee within **2 weeks** of the hearing, other than in exceptional circumstances when the decision will be confirmed as soon as possible. There is no further level of appeal under the disciplinary policy and procedures.

## APPENDIX 12 – FORMAT FOR PREPARING PAPERS FOR THE COUNCIL STAFFING APPEALS COMMITTEE

In the event of dismissal, an employee may appeal to a Council Staffing Appeals Committee, for the appeal to be heard by elected members. An appeal to this Appeals Committee may also take place where a Director takes some other form of disciplinary action which the employee does not accept.

The receipt of the Committee papers will be the first sight or knowledge the members have of a particular case. This is to ensure the members' objectivity in hearing the appeal. It would be especially useful therefore for both the manager and the employee to ensure that their papers:

- are arranged in logical order
- have each page numbered
- include a content index
- have pages cross referenced where necessary.

The manager and the employee will each be asked to submit a written statement of their case, including any papers to which they wish to refer, to the Clerk to the Council to be received at least 10 working days before the date of the appeal hearing.

The Clerk to the Council will arrange for the papers, including the statements of case to be sent to the manager and the employee, as well as to the Committee members and any advisors.

At the appeal hearing there is a running order of events (see [Appendix 10](#) 'Holding an appeal hearing'). The statement of case by the employee follows the introduction by the Chair. The employee may be accompanied ([see para 24](#)) and the manager may be supported by an HR or Legal adviser.

Each party must decide whether to call witnesses or whether they wish to rely on their formal submissions. Witnesses may be useful if it is considered there is likely to be any contentious issues and a first hand account would carry more weight.

If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 days before the date of the appeal.

Irrespective of the formal submissions, it would be normal for the parties to begin with a verbal summary. This would normally be an abbreviated version of the statement of case, which can be referred to as need be. It would be helpful if a copy of the script for the verbal summary (if available) could be given to the Council Staffing Appeals Committee on the day.

This Appendix provides a template, as guidance, for managers and employees to use when preparing papers for the Council Staffing Appeals Committee. Whilst it is important for sufficient information and papers to be provided to enable the Committee to reach a decision, both parties should be selective about what they submit, because an excessive quantity of papers can sometimes reduce rather than increase clarity.

**a. Appeal papers: management template**

NOTE: This template is intended to indicate the layout of the submission. It does not, however, restrict the actual content of the manager’s submission, which is likely to vary according to the details of the case.

**CONFIDENTIAL**

**COUNCIL STAFFING APPEALS COMMITTEE**

<b>APPEAL AGAINST DISCIPLINARY ACTION: MANAGEMENT CASE</b>	
<b>Name:</b> <b>Job Title:</b> <b>Dept:</b>	
<b>Name of employee:</b> <b>Job title:</b> <b>Dept:</b>	

**CONTENTS**

SECTION	DESCRIPTION	PAGE
1	Employee details	
2	Summary	
3	Case details	
4	Rationale for decision	
5	Conclusion	
<b>APPENDICES</b> ( <i>Examples of papers</i> )		
1.	Dates of counselling and review meetings and summary of key content.	
2.	Final warning letter dated xx from Scottish Borders Council	
3.	Letter dated xx inviting employee to attend disciplinary hearing (which resulted in dismissal)	
4.	Dismissal letter dated xx from Scottish Borders Council	
5.	Witness statement dated x.	
6.	Investigatory Report	

## 1. EMPLOYEE DETAILS

Name:

Job title:  Grade:

SBC employment start date:  Date of dismissal:

Total SBC service:  Years in post:

## 2. SUMMARY

### **Example**

Mr X was dismissed by *(name of manager)* on *(date)*. The reason for dismissal was *(reason)*. This followed a final written warning that was issued on *(date)*.

## 3. CASE DETAILS

Include here, as appropriate:

- a concise history of the case, indicating when issues first arose and how they developed, how they were managed, standards set, monitoring arrangements etc
- any previous disciplinary action prior to the current disciplinary action
- the circumstances which led to the recent disciplinary hearing
- any mitigating circumstances that were considered
- reference to the investigation report / fact finding exercise
- reference to the response by the employee and/or workplace colleague/ accredited trade union representative at the hearing
- any new evidence.

## 4. RATIONALE FOR DECISION

Include a summary of why the decision was taken to dismiss the employee. Was 'action short of dismissal' considered?

Explain why you do not agree with the employee's specific reasons for appeal.

## 5. CONCLUSION

Pull together the key overriding points of the case and conclude that dismissal was the most appropriate course of action. This section may include the impact of the misconduct on other staff / the public, the impact on the Council, the risks of not dismissing the employee, action in other similar cases across the Council, likelihood of improvement, or any relevant new evidence.

Signature:

Date:

**b. Appeal papers: employee template**

NOTE: This template is intended to indicate the layout of the submission. It does not, however, restrict the actual content of the employee's submission, which is likely to vary according to the details of the case. The employee can choose to use the initial 'Appeal against disciplinary action' form at [Appendix 9](#) instead of this form. However, for more in depth submissions, especially those with substantial documentary evidence, it would be helpful to the Council Staffing Appeals Committee for this template to be used.

**CONFIDENTIAL**

**COUNCIL STAFFING APPEALS COMMITTEE**

<b>APPEAL AGAINST DISCIPLINARY ACTION: EMPLOYEE CASE</b>	
<b>Name of employee:</b>	
<b>Job Title:</b>	
<b>Dept:</b>	
<b>Name of dismissing manager:</b>	
<b>Job title:</b>	
<b>Dept:</b>	

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SECTION	DESCRIPTION	PAGE
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2	Summary	
3	Case details	
4	Reason for your appeal	
5	Conclusion	
<b>APPENDICES</b> <i>(Examples of papers)</i>		
1.	Dates of counselling and review meetings and summary of key content.	
2.	Relevant correspondence, emails, records of conversations to support the appeal.	
3.	Supporting Documents, for example showing good conduct, or of meeting standards / targets, or evidence that an offence was not committed.	
4.	Dismissal letter dated xx from Scottish Borders Council	
5.	Witness statement dated x.	



## 1. PERSONAL DETAILS

Name:

Job title:  Grade:

SBC employment start date:  Date of dismissal:

Total SBC service:  Years in post:

Name of line manager:  Manager's job title:

## 2. SUMMARY

### **Example**

I was dismissed by *(name of manager)* on *(date)*. The reason for dismissal was *(reason)*. This followed a final written warning that was issued on *(date)*.

## 3. CASE DETAILS

Include here, as appropriate:

- a concise history of your case, indicating when issues first arose, how your manager handled them, how you responded, standards set, monitoring arrangements etc
- any previous disciplinary action prior to the current disciplinary action
- the circumstances which led to the recent disciplinary hearing
- any mitigating circumstances that should have been considered
- reference to any key issues in the investigation report / fact finding exercise
- reference to the issues you raised at the hearing and how the management responded
- any new evidence.

## 5. REASON FOR YOUR APPEAL

Include a summary of why you believe the decision to dismiss you was wrong or unjust. Why you do not agree with the management's decision to dismiss you.

## 5. CONCLUSION

Pull together the key overriding points of the case. This section might include mitigating circumstances (eg record of good conduct, your long service record, temporary personal problems etc), the likelihood of you reaching the required standards of conduct, the reasons why the offence (if any) would not recur, or relevant new evidence.

Signature:

Date:

**APPENDIX 13 - GUIDELINES ON CONDUCTING INVESTIGATIONS**

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## GUIDELINES ON CONDUCTING INVESTIGATIONS

### 1 INTRODUCTION

These guidelines should be used when investigating either internal disciplinary investigations or complaints of grievance and should therefore be read in conjunction with the relevant disciplinary or grievance procedure.

The guidelines provide a brief framework within which to work and are neither intended to be entirely definitive nor provide specific legal or professional advice.

Some incidents may need to be investigated by those who have legal/regulatory/policy responsibilities and particular obligations to meet, for example Internal Audit or Social Work. In these cases the appropriate investigative processes/requirements may have to take precedence.

The purpose of investigations is to establish facts in order to answer the question whether or not the employee has a case to answer. The investigators' role is to gather evidence concerning the specific allegations. The evidence collected may or may not support the allegations, and it is not the role of the investigators to "build a case" against an employee.

What must be made clear to those under investigation is that the investigation, whilst forming part of either the disciplinary or grievance process, does not amount to disciplinary action in itself. Any formal disciplinary action must only be determined within a formal disciplinary hearing and a hearing should not be held until there has been an investigation.

In cases of misconduct the law is quite clear that the employer may be deemed to have acted unreasonably if the allegation/complaint is not investigated fully and fairly and the employee has not had the opportunity to state their defence and offer explanation or mitigation. In conducting investigations the employer must act reasonably and avoid doing anything which may lead to accusations of bias or discrimination.

### 2 TIMESCALES

Investigations should be carried out as soon as possible, before recollections fade and be conducted as speedily as possible consistent with the principles of fairness and natural justice.

In less complex circumstances it is expected that an investigation should be concluded within one week to ensure that the service suffers minimum disruption. Speed of investigation however should not compromise the integrity of the investigation.

More complex cases may take longer but should not exceed 6 weeks other than in exceptional circumstances.

If the investigation is taking longer than 6 weeks the appropriate Director and HR Business Partner must be formally notified. The employee under investigation must also be kept informed of the anticipated timescales together with any reasons for delay.

There may be occasions when an investigation is delayed due to the intervention of an external agency, such as the Police or the Child Protection Agency. Advice should be sought in such circumstances from the HR Case Management Team.

Case law exists to demonstrate the fact that undue delays in conducting an investigation can lead an Employment Tribunal to a conclusion of unfair dismissal, as can failure to provide all witness statements to the employee under investigation and failure to interview witnesses who may have relevant evidence, even if these defects may not have affected the outcome.

### 3 WHO INVESTIGATES

Each investigation will require at least one Investigating Officer, normally two because when conducting interviews the use of a second investigator or at least a note taker is essential to ensure sufficient and accurate notes can be made and to protect against any misunderstanding. Where the complaint concerns an allegation of harassment or discrimination it is essential two investigators are present.

All investigating officers in disciplinary investigations must be trained in disciplinary matters having at least completed the Disciplinary Procedure e-learning on [SBlearn](#).

The investigators will ordinarily be appointed from within the relevant Department. It is recommended that at least one investigator must be independent of the section/office where the alleged incidents occurred. The investigators need to be of sufficient seniority and wherever possible at least one should have had prior experience of investigations. The HR Case Management Team will advise on the appointments of investigators and give clear advice where it appears that there may be conflicts of interest, particularly where the investigator is the manager of the department in question.

To avoid any potential conflict of interest it is important that roles within disciplinary and grievance matters are kept discrete. This means that an investigator should not be appointed if they have previously been involved in giving advice on the matter in question to the employee under investigation. Neither should an investigator be appointed if they are a witness to any relevant incident or event and an investigator must not later become involved in making disciplinary decisions. Care should also be taken to avoid any personal conflicts such as the involvement of a family member or friend. Obviously if a manager is the subject of a complaint then it is not appropriate for them to be involved either as investigator or decision maker. Additionally if a complaint has been made against a manager it is advisable that a more senior officer carries out any investigation.

Advice from the HR Case Management Team must be sought in cases involving child protection and vulnerable adults' issues. Where investigations take place involving alleged financial irregularities, Internal Audit must be informed and they will advise if they wish to assist in the investigation.

Before embarking on an investigation the investigators will be given a written remit by the commissioning manager. (A commissioning manager is usually the manager who will ultimately decide whether or not a disciplinary hearing would be appropriate and who would normally chair that hearing should there be one) The remit must detail what the investigators are being asked to investigate. The Investigators should ensure that they receive full details of what they are being asked to investigate including any documentation that already exists and in particular any written complaint(s). This will enable a focus on what is trying to be established. If the allegations are unclear at the start the investigation has the potential to be unfocused.

For investigations under the Council's Disciplinary Procedures, an Investigation Brief will be prepared (see Appendix 4 of the Disciplinary Procedures for Misconduct.)

In all cases where an allegation of misconduct relates to conduct involving a child (someone under the age of 16) or young person (someone aged 16-17) the line manager/ commissioning manager will refer the matter to the Child Protection Unit. A referral is made by contacting the Children and Families Duty Team by telephone (01896 662787 or skype: "Children and Families Duty Team") or out of hours the Emergency Duty Social Work Team (01896 75211) and then following up by completing the [Confirmation of Child Protection Referral Form](#).

The full Child Protection Procedures can be found [here](#)

In all cases where an allegation of misconduct involves an adult at risk (a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed) the line manager/ commissioning manager will refer the matter to Adult Protection (0300 100 1800 - Customer Advice & Support Services- or out of office hours on 01896 752111.)

In the case of a young person (someone aged 16-17) a referral will be made to both the Child and Adult Protection Units if appropriate).

When they receive their remit, investigators should check whether any child/ adult protection matters arise and ensure the appropriate referral has been made.

If a child/ adult protection issue comes to light in the course of an investigation, investigators must alert the commissioning manager and ensure that the appropriate referral is made.

The HR Case Management Team are available to give advice to investigators but are unable to routinely assist in conducting investigations. They will offer advice on all cases and may support in serious or complex cases, for example those involving alleged harassment or discrimination.

#### 4 THE ROLE OF AN INVESTIGATING OFFICER

Anyone appointed as an investigator must read these guidelines before embarking on an investigation to ensure that they understand the role.

In carrying out investigations, investigators are advised to prepare thoroughly by assembling any relevant documentation, deciding which witnesses may be required, and notifying individuals in advance (where possible).

As stated in the introduction, the role of the investigator in assembling evidence is to pursue relevant facts whether or not those facts support or oppose the allegations under investigation. It is not the role of investigators to “build a case” against an employee and it is important therefore that investigators maintain a neutral position. If neutrality is not maintained it could lead to a biased investigation. Investigators during the course of an investigation may hear two or more opposing accounts of events, each of which is equally convincing. If the first view heard is assumed to be the truth and questions follow on from this then unconscious bias may occur. It is important that the investigators ask each person for their version of events, and probe and challenge where accounts differ. The investigators can then cross-reference evidence as much as possible. All of the accounts should be referred to in the Investigatory Report.

Investigators should remember that someone holding a belief is a fact i.e. it is a “fact” that someone believes something to be true, in which case it will be the investigators’ role to establish the evidence for this, normally in the first instance with the person who has the belief.

Investigators need to be thorough and cover not only the specific allegation but also include relevant context in their investigation. If not, this could mean that any subsequent hearing has to be postponed to allow further information to be gathered, for instance, if an employee raises matters during the hearing which have not previously been investigated (such as evidence from a witness, custom and practice etc). For example a complaint may exist that an employee has done /not done something which is believed to constitute misconduct/gross misconduct. The employee under investigation might admit it immediately and it may be tempting to conclude the investigation at this point. However in reality there may be other information that may be critical to a hearing which should be ascertained. The investigation should therefore probe further. If say a person is accused of and admits to not following a particular procedure which has had unacceptable consequences. Whilst on the surface this seems fairly straightforward, further probing of employee and witnesses may reveal a lack of training, a lack of understanding, a more general culture of not following procedures, management turning a blind eye etc. The investigators are not expected to draw any conclusions from their findings but it will be more difficult for the commissioning manager to determine whether or not to call a disciplinary hearing or later to come to an appropriate conclusion at hearing without an understanding of context.

When the Investigators have concluded their investigations they must prepare a report for the appropriate commissioning manager. This report will form the basis of any decision that manager makes regarding necessary action. The investigators will lay out the evidence in the report but must not make recommendations either about the need for a Disciplinary hearing or any suitable outcome. This role belongs to the commissioning manager.

#### 5 SPECIAL PAID LEAVE

Periods of Special Paid Leave for alleged misconduct may have been put in place before the appointment of investigators – please refer to Section 18 of [the Council’s Disciplinary Procedure](#). However, there may be occasions when, during the course of the investigation, investigators decide a period of special paid leave is appropriate. This may be because new evidence comes to light in which an employee is implicated in something more serious than was first suggested/known. In this case the investigator(s) will recommend a period of special



paid leave to the commissioning manager who will then seek advice from the Director People Performance & Change, who must approve any period of Special Paid Leave.

The HR Case Management Team can also give advice to the investigators and/ or commissioning manager but any decision requires the approval of the Director People Performance & Change.

If a person is put on a period of special paid leave they should always be given written confirmation (See [Appendix 2](#)).

Any period of special paid leave should not lead to any assumption of guilt.

## **6 THE ROLE OF ACCOMPANYING PERSONS**

Employees have the right to be accompanied at formal investigatory meetings. The accompaniment rights vary dependant on circumstances.

Where an employee is being investigated for potential disciplinary matters they may be accompanied by a Trade Union Representative or workplace colleague.

Where an employee raises a grievance and an investigation follows that employee's right to accompaniment is limited to a Trade union representative or a colleague.

Offers of accompaniment should also be given to witnesses in the investigatory process.

The representative may accompany the employee but may not answer questions on their behalf. Having said that they may speak up for the employee and generally act in a representative capacity. Also the representative may raise any procedural matters and request clarification of the process.

The responsibility to ensure that a Trade Union representative or colleague accompanies the employee at an investigation lies with that employee although if the representative is already known the investigating officer may want to contact them in advance of arranging a meeting date for reasons of efficiency.

The investigators will need to consider if the accompanying person an employee calls for is appropriate. If not the investigators will have the right of veto but they must explain the reasons to the parties involved. For example if an employee calls for a person who is going to be called as a witness in their own right then it would not be appropriate for that person to also act as an accompanying person as allegations put to an employee together with responses heard by the witness may influence the evidence the witness may later give themselves. Another factor for the investigators to consider is the appropriateness of an employee calling upon their manager as an accompanying person. This may be particularly important where allegations involve procedure and practice and that manager will be called to give account of their own expectations of employees.

## **7 PREPARATION FOR THE INVESTIGATION**

Effective planning and preparation are key essentials of any successful investigation. Depending on the complexity of the matter(s) to be investigated a project plan may be a useful tool to adopt. (See [Appendix. 1](#)).

Investigations will frequently involve interviewing witnesses. The process of investigating an allegation may be stressful for some individuals and it is important to ensure everyone involved, including investigators themselves, are supported as appropriate. Support should be arranged by the relevant line managers.

The Investigators should make clear to everyone what they are doing, what they expect and need, and focus on gathering evidence.

The Investigators should prepare a programme of meetings with the employees they need to interview and make appropriate arrangements with appropriate line management for the release of those employees to participate in the investigation process. Employees required for interview should be given a reasonable period of notice. (See [Appendix 3](#)). Once dates are known meeting rooms should be arranged, as these are always difficult to obtain at short notice.

As far as possible it may be useful to determine the order in which people are interviewed to avoid, wherever possible, having to interview the same person more than once. Depending on the circumstances, however it may be entirely appropriate to go back and interview someone again having gathered further evidence which may require more explanation/exploration. Managing expectations is an important part of this process and forewarning someone that there may be a need to see them again will help in this aspect.

Although investigators will not be able to fully predict the exact path of an investigation the more planning and preparation that takes place will enable them to better respond to any matters arising.

It will be usual to start the investigation with the complainant in order to elicit the precise details of their complaint.

If an employee is absent and this causes a significant problem, seek advice from the HR Case Management Team. If the reason for absence is sickness the investigators will need to establish the likely recovery time. In cases of more lengthy absence it may be necessary to seek advice from Occupational Health about the fitness for someone to participate in the investigation process. Advice will be given on this by the HR Case Management Team.

If an employee requests a postponement of the meeting because they are unable to get a Trade Union/Professional representative or work colleague to accompany them on the proposed date, a new date should be arranged which is mutually acceptable to all involved, provided the new date falls within 5 working days of the original date.

If there is no mutually acceptable date available within 5 working days of the originally proposed date then it is for managers, in conjunction with the HR Case Management Team, to decide how reasonably to proceed.

Judgement needs to be exercised by the Investigators in proceeding with the investigation if employees or witnesses are not available to participate in an investigation, in circumstances where it would not be reasonable or appropriate to delay the investigation.

Written statements may be offered by people who are unwilling to take part in investigatory meetings although these are only usually useful in very straightforward cases and are not as helpful where further probing of an issue is necessary.

## **8 DOCUMENTARY EVIDENCE**

If documentary evidence has been identified as relevant at either the planning stage or later within the investigation the investigators will need to gather it. This may include for example gathering relevant corporate or departmental policies and procedures if allegations exist that suggest an employee has breached these.

Evidence may also take other forms. For example, in cases of alleged computer abuse, records of computer usage will be available from the IT Department. Records of various types are useful in determining different things, for example, fuel records or internet usage records.

Any anonymous written complaint or allegation must be handled and stored sensitively and appropriately.

Depending on the circumstances photographic evidence may be helpful, for example, to record the physical layout or the state/location of equipment.



Timesheets may prove useful where there are cases involving hours of duty.

The personnel file should also be checked to ensure there are no live warnings or other relevant information.

## 9 AT THE START OF AN INVESTIGATION MEETING

At the start of an investigation meeting with the employee under investigation or a witness, it should be made clear to the individual that: -

- the purpose of the meeting is to ask questions relating to allegations and record responses. The person to whom the allegations refer should be assured that no opinion has yet been reached as to the validity of the allegations or to the outcome of the investigation. Everyone involved in the investigation should be advised of the possible next steps.
- after the meeting the person will be given a record of the meeting and asked to sign it as an accurate record or, alternatively, detail on the record any parts with which they do not agree, indicating their alternative version.
- they may be required to attend any subsequent hearings(s) either in order to formally respond to allegations that have been made against them or as a witness.
- they are required to maintain confidentiality on matters discussed. Any breach of this confidentiality could be deemed to be a disciplinary offence in itself.

Investigators should remember that the process of being interviewed in an investigation is stressful for some individuals. This should be acknowledged. Explaining the procedure and likely timescales may help to allay some concerns.

Additionally investigators should be prepared to allow for breaks in the meeting and the interviewee and any accompanying person should be advised that breaks will be given on the request of any party.

## 10 INTERVIEWING THE EMPLOYEE UNDER INVESTIGATION

There is no prescriptive order in which to interview people. In potential disciplinary cases interviewing the employee under investigation first may save time if for example the employee admits to the allegations. However it may, depending on the circumstances, be better to interview others first to inform the discussion with the employee under investigation.

At whatever juncture the employee is interviewed it is important to capture the information needed later to complete a statement. For example name and job title etc. (See [Appendix 4](#))

Investigators must give an employee the opportunity at the investigation stage to respond to any allegations against them and give their version of events including any reasons for the behaviour/conduct.

The investigators should advise the employee of the precise details of the allegations and give the opportunity for a response. For example it would not be sufficient to tell the person that there had been a complaint about misuse of equipment (as this is too broad and could mean anything) if the allegation was about alleged misuse of computer equipment by downloading appropriate material which is in direct contravention of the email and internet policy. Similarly it would not be sufficient to ask an employee if they are aware of any financial irregularities involving Client A if the allegation really is that that employee has been taking/borrowing money from the Client. The difficult question must ultimately be asked even if this is preceded by other contextual questions.

No copies of written complaints are given over at this stage nor will an employee about whom allegations have been received be given the names of the person(s) making the complaint. These details, where they exist, will be revealed if it is later determined that a disciplinary hearing will be held at which stage the employee, has the right to see all the supporting evidence. The important thing to focus on is: did someone do/not do a particular thing and

not who made the allegation about it. If the source is known then they will be expected to participate fully in the investigation

There are occasions when an allegation comes in anonymously. The anonymous allegation may be as valid as one from a known source. The important thing is that it will be the investigation which will inform the commissioning manager and help them decide on whether or not to hold a disciplinary hearing or take some other sort of appropriate action.

## 11 INTERVIEWING WITNESSES

Witness statements should be taken as quickly as possible before memories fade. The Investigators will normally be entitled to interview any employee of the Council who they feel could provide any information to assist the investigation. There may be occasions however where people are reluctant to participate in an investigation. In these circumstances the Investigators may encourage participation but must not coerce people.

Reliable evidence is required in any investigation and there is always a chance with people who, for whatever reason, may not want to participate that their evidence may not be valid. The investigators should make a record of anyone refusing to take part and note the reasons given.

If members of the public and /or employees of other organisations are interviewed it should be ensured that two investigators are present.

If it is necessary to interview children, permission will need to be sought beforehand from the parent/ guardian and if there is a need to interview either children or vulnerable service users the interviews should be conducted by someone with relevant professional experience with the investigating officer present as appropriate. The parent or guardian should be present in all circumstances where children under 16 have to be interviewed.

Witnesses should be informed at the start of the interview that if the case results in a disciplinary hearing, they may be required to give evidence. They need to be aware that anonymity cannot be guaranteed although if there is a genuine fear of reprisal this will be taken into consideration.

The employee under investigation and witnesses can be interviewed more than once if further evidence comes to light.

Where there is more than one witness it is important that they are interviewed separately to ensure individual evidence and avoid the possibility of collusion. This will give the opportunity to find any similarities or differences in events and cross check these where necessary.

As with the employee under investigation, it is important that when witnesses are interviewed information needed to complete a witness statement is captured. For example name, and job title of the witness and their relationship to the employee about whom allegations exist. (See [Appendix 5](#)).

Full notes should be made at the time of the interview. At the conclusion of the interview it is best practice for witnesses to be invited to read through any notes the investigator has made and then sign them. Statements should be produced and taken back to the witness for signature. The original notes on which the statement was based must be retained until the conclusion of any hearing and any subsequent appeal.

Investigators have to distinguish between those witnesses who have first- hand knowledge of the incident/complaint and those who only have indirect or “hearsay” knowledge of it. In the simplest terms someone who says, “I saw that person doing something in particular” is going to be much more reliable than someone who says, “I heard that that person did something in particular”. There is less value in this type of indirect evidence except where it may confirm or contradict someone else’s evidence e.g. Person A says Person B was there and Person B denies this.

Opinion should only be relied upon where it is given in a professional capacity, for example, an auditor's opinion on a matter of fraud.

The sort of information that should be sought from a witness includes:-

- What the witness actually saw/heard
- When and where they saw/heard it
- Whether they could see clearly (it may have been dark or was at distance)
- Whether they could hear clearly (it may have been noisy)
- Could the witness be mistaken about these events
- Any circumstantial evidence such as why the witness happened to be where they were and what they may have seen/heard leading up to the incident and
- Whether there is a reason why the evidence may be tainted, for example because the witness has a personal grudge against the person under investigation
- What was their own understanding of formal procedure and practice
- How did custom and practice match up to the formal way
- What circumstances, if any, would warrant deviation from procedure
- What do they know of any influencing factors the employee may have been under
- What is the personal relationship to the employee i.e. friend/colleague
- Is the witness on good terms with the employee
- Were any actions out of character
- Can any reasons be suggested for the conduct

## 12 TELEPHONE INTERVIEWS

Whilst not recommending these as the norm these may prove to be a speedy and effective way of obtaining information from witnesses should communications difficulties exist or for example if witnesses are not local. Best practice would indicate that face to face interviews are preferable and telephone interviews should only occur in circumstances where it is important to speak to someone who cannot attend for interview.

As a matter of protocol if the investigators determine that a telephone interview will suffice then similar provisions should be made as would exist in a face to face interview. The witness should be first contacted to make him/her aware of the request and a time agreed to call back and discuss the matter. Arrangements may need to be made by either the investigating officer or witness for privacy and appropriate time put aside to take the call.

Notes should be taken of the call and transcribed onto a witness statement. The witness should then be afforded the same opportunity to agree or amend this statement.

## 13 GENERAL QUESTIONING TECHNIQUES

Investigators should ask for advice from the HR Case Management Team on questioning techniques if they have not been trained in this area as the value of an effective investigation relies heavily on what the employee and witnesses say. The responses given to investigators will often depend on the formation of their questions and the depth and breadth of questions asked. If the questioning is weak this may result in an ineffective investigation.

Whilst investigators should have some prepared questions before starting an investigation meeting this does not mean that further questions should not be asked of either the employee or witness on an individual basis in relation to responses given or information supplied. Whilst investigators may prepare well in terms of what questions to ask it would be unlikely that additional questioning will not be required.

Questioning should therefore be thorough but the person being questioned should be made to feel as comfortable as possible.

Direct questions should be asked. If a question is vague e.g. "Can you think of any complaint that has been raised against you" it may not have any value.

It is important that the employee or witness is allowed to do most of the talking to enable the investigators to elicit as much information as possible. Interruptions should be avoided when accounts are being given, other than to prompt as necessary. For example “...and what happened then?” “You said such and such.....can you explain that in more detail?”

**Questions that are likely to help gain information:**

**Open:** introduces a general area of questioning which require explanations;

e.g. “describe what you saw on that day”

These type of questions encourage a detailed response and are helpful in obtaining information and assessing capability.

**Probing:** finds out what lies behind a statement:

e.g. “What exactly do you mean by that?” ”...”When was this?” ..... “what did you think of that?” ..... “Why was that”

These questions elicit more specific information and allow you to explore important or uncertain points.

**Closed:** checks facts:

e.g. “How many times did you see that?”

These questions can help focus an evasive or talkative individual. They are useful for confirming information and establishing facts.

**Questions to avoid:**

**Leading:** encourages a person to answer in a particular way:

e.g. “You saw that person approach his colleague – did you think he was going to strike him?”

The answers to these questions are less reliable as the question indicates the answer expected.

**Multiple:** asks several questions at once:

e.g. “Can you tell me how you dealt with an angry pupil, what the outcome was and how you would tackle a similar problem again?”

These questions are confusing and the person is unlikely to be able to remember everything you have asked.

**Hypothetical:** asks a person how they would handle a particular situation:

e.g. “How would you deal with a difficult pupil?”

People are unlikely to be able to imagine the situation in its real context and their answer will be based on how they think you should handle the situation, not what they would do in reality. Instead ask them to describe situations they have encountered and how they behaved.

e.g. “Have you ever had a similar situation to deal with?” .....”What did you do?”

**Discriminatory:** questions about childcare, domestic and personal circumstances and health. For example, in an investigation over a female employee’s grievance involving hours of work a question such as “Did you leave early because you have childcare responsibilities?” may be viewed as discriminatory. This is because the woman may assume

that childcare and other family commitments are viewed as having a negative impact on her motivation, commitment to the job, attendance or availability to work overtime. Because such discriminatory assumptions would not be likely to be made about a male employee, questions of this nature are viewed as discriminatory on the grounds of gender. It would suffice to ask “Why did you leave early?”

Any questions which could be viewed as discriminatory on the grounds of sex, religion, disability, sexuality, faith, gender, etc must be avoided.

#### **14 DURING THE COURSE OF THE MEETING**

The individual does not have the right to ask questions of the investigators, other than ones relating to the investigation process itself or for points of clarity.

The Investigators should not get into debate or argument with the individual or their representative. Where such issues arise investigators should take a note of what is said but not offer an opinion.

During the course of the investigation the Investigators may re-interview the employee being investigated or any witnesses to obtain clarification on any points or ask further questions if other events are brought up during the course of the investigation.

#### **15 SURVEILLANCE**

It is important that no form of surveillance should be started in connection with an investigation without reference to the HR Case Management Team.

There may be a difference between overt and covert surveillance. Overt surveillance is surveillance done in plain view, for example when a manager goes out to visit some workers and openly observes (i.e. the workers are aware of being observed) what is being done. Covert, is by definition, secret and thus covert surveillance is not conducted with the knowledge of the observed. It could still entail a manager going out to observe employees but doing so with the intention that they will not be seen in order to witness what the employees do when they are not being supervised and have no knowledge of being observed. It is this latter form of surveillance that requires written permission in advance.

If a manager wishes to know what activities an employee is conducting via email/internet a request will need to be made to CGI with written authority given by an appropriate Director.

#### **16 CONFIDENTIALITY**

The fact that an investigation is taking place is not in itself confidential information. However information gathered through an investigation process should be treated as confidential. Interviewees should be reminded of the need for confidentiality both before and after investigatory interviews although this will not preclude discussion with Trades Unions and /or legal advisors.

Another aspect which should be taken into consideration, is that there may be some information gathered in an investigation, which should not be allowed to go into the public domain, such as specific medical details or information about clients. Whilst the investigation and any subsequent disciplinary hearing /appeal are internal processes there is always the possibility that ultimately any written report may be produced in a public forum such as an Employment Tribunal. All confidential information of this nature should therefore be deleted from the investigatory report and referenced in some other way. For example in an investigation in Social Work where clients are involved they must be referenced Client A, Client B etc. rather than by real name.

#### **17 DATA PROTECTION ACT**

Investigators should note that the Data Protection Act applies to personal data processed in relation to investigations.



This means that individuals have a right to see information concerning them. If requests are received responses should be given even if there might be an impact on the investigation or on any forthcoming proceedings. The only reason not to respond would be if a response were likely to prejudice a criminal investigation.

In order to ensure investigations comply with the requirements of the Data Protection Act it should be ensured that:-

- No evidence is gathered by deception
- Records used in the course of investigations are of good enough quality to support any conclusion drawn from them
- Records are kept securely
- Unsubstantiated allegations are removed unless there is an exceptional reason for retention

Investigators should not retain information about employees because it might have relevance to the investigation if it is either:

- Incompatible with the purpose the information was gained for, or
- Disproportionate to the seriousness of the matter under investigation

## 18 DOCUMENTS AND EMAILS

Transcripts of telephone conversations/meetings may form part of the investigation. Contemporaneous notes (i.e. notes taken at the time of a conversation/meeting) tend to have more credibility than notes that are written up at some later time.

Copies of emails may also form part of investigatory evidence.

Any other written evidence should be logged and entered into the Investigating Officer's report with a clear audit indicating author, date and status.

## 19 STATEMENTS

Occasionally the Investigators may receive a request from a person being investigated, from a complainant or from a witness that an investigation should be taped. It is not the Council's practice to allow the taping of conversations, as this suggests some sort of mistrust, and any such request should normally be refused. Exceptions are made if a request relates to a disability. If this is the case clarity should be sought from Occupational Health that taping would be the most appropriate adjustment and is reasonable in terms of addressing the disability.

Investigators will, within a reasonable period of time following a meeting with the employee/witness, draw up a record of the meeting. (see appendix [5](#) & [6](#)) This record will reflect what questions were asked along with the responses. Individuals will be given this record of their own interview and after been given sufficient time to go through it will be asked to sign it to confirm that it represents a true record.

Individuals should be informed that any record of their investigation meeting/statements may be referred to in any future action and that they may be required to attend any hearing that is necessary.

## 20 DISPUTED RECORD OF INVESTIGATION MEETING

The Investigators should, wherever possible, ensure that the content of any witness statements/record of meeting is agreed with the individual concerned. In the event that a record of an investigation meeting is disputed by the individual concerned, the Investigators should:-

- either amend the notes (if they agree with the individual's proposed amendments) or

- endorse the notes to the effect that the individual disputes the Investigators' version (highlighting the areas under dispute).

## 21 EVALUATION

The Investigators should review all the evidence gathered to determine if any gaps are evident. If there are these areas may need to be revisited before finalising a report

The investigators should in their findings be able to conclude on whether there is evidence of the allegations or not or whether there is any dispute surrounding any particular allegation.

Where there is conflicting evidence, the investigators should record this. It is not the role of the investigators to decide whether evidence should be taken as accurate or not.

It is not the role of the investigators to recommend whether or not a disciplinary hearing should be held and neither should they recommend action of any sort, formal or informal. It is the role of the commissioning manager to decide whether or not a hearing should be held and any formal disciplinary action should only come from a hearing.

## 22 REPORTING

When the investigation is concluded the Investigators should prepare an investigation report for the commissioning manager. (See [Appendix 7](#))

The report should include:

- Confidential marking
- Draft or final report marking
- Date prepared
- A Glossary of Names and Abbreviations
- An introduction.
- The name(s) of the Investigating Officer(s).
- Process undertaken.
- People interviewed.
- Any specialist advice taken.
- The initial allegations
- Any further allegations which came to light during the investigation and were included in the investigation because they were relevant to it.
- Details of any relevant Policies and Procedures that may have been breached

Findings of fact :-

- Evidence to support the allegations
- No evidence to support the allegations
- Any conflicting evidence regarding the allegations
- Any explanation/circumstances in mitigation.
- All supporting documentation

There may sometimes be other issues of a more general nature, such as deficiencies in policy or procedures, which have come to light as a result of an investigation. Where these have a wider aspect and do not relate directly to the employee the investigators should not include them in their investigation report. These aspects however should not be lost and the investigators should write a separate memo recording any issues they feel merit the attention of the commissioning manager and the HR Case Management Team.

## 23 OUTCOME OF THE INVESTIGATION

The commissioning manager will be responsible for making any decision based on the investigation report.

This decision may include

- A disciplinary hearing to consider whether the allegation is upheld and if so determine disciplinary action or
- Some other form of management action
- No action

The manager at this stage should simply consider the report in making that decision and should not seek to interview witnesses or take representations from the parties involved.

If the commissioning manager feels that the report has omitted relevant details they may refer the report back to the investigators for more facts to be gathered.

Whilst the report may contain details of findings of fact which either support the allegations or not the commissioning manager is free to decide whether to accept these in calling a hearing. For example the report may conclude that there was insufficient evidence of an allegation but the manager may still decide to call a disciplinary hearing in order to hear some of the evidence first hand. If this is the case the commissioning manager must record in writing their reasons for doing so and if appropriate take advice from the HR Case Management Team, in order to avoid accusations of persecution or bias.

The evidence obtained in support of an employer's case does not have to prove the matter "beyond all reasonable doubt", as would be the case in criminal proceedings. The employer may take action if, after sufficient investigation, there are reasonable grounds to believe an offence has been committed and this is substantiated by evidence.

The commissioning manager will inform the employee(s) of the outcome of the investigation including whether a disciplinary hearing will be called or not.

If a disciplinary hearing is called this must be done in accordance with the [Disciplinary Procedure](#) and all supporting documentation gained through the investigation, including the investigation report must be given to the employee in advance of the hearing.

Where following an investigation no further action is to be taken in terms of the disciplinary procedures then all references to the investigation should be removed from the employee's personal file.

## **24 PRESENTING THE INVESTIGATION AT A HEARING**

It is the practice for investigators to be called to present their findings at a disciplinary hearing. The key to this is preparation. Before the hearing the investigators should write out their presentation. It should include a summary which captures the essence of the evidence relating to the individual.

Investigators may choose to call witnesses if they believe that a witness may be able to better portray some particular evidence from a first-hand perspective. This may be especially useful for the chair of the hearing where evidence is not consistent as it will allow the chair to probe matters themselves in order to take a more balanced view of matters. If investigators decide to call witnesses they should prepare in advance, as far as they are able, the questions they wish to ask them.

## **25 ACCESS TO INVESTIGATION REPORT**

If the commissioning manager determines that the issue is to be considered at a disciplinary hearing the employee being investigated will be given a copy of the investigation report together with its supporting evidence as part of the documentation made available to them.

No documents relating to the investigation should be placed on the employee's personal file. The documents should be held in a separate, secure and confidential location to ensure the Council meets its obligations in respect of data protection. Only in exceptional circumstances



will these documents be further referred to for employment purposes concerning the employee.

Where the investigations concern matters relating to the safety and wellbeing of young people and/or vulnerable adults in receipt of client services the documents shall be available for inspection by the employee and the employee may add a personal note to the record. If there is further disciplinary investigation relating to the employee, the documents should be examined and, where considered relevant may be taken into account to the extent required by the circumstances of the case. Where a previous allegation is taken into account in any disciplinary decision, the written notification shall indicate this fact and the reasons for doing so.

In the case of disciplinary matters arising from a grievance/complaint the complainant is not entitled to receive a copy of the report, but is entitled to know whether or not the matter will be pursued in accordance with the appropriate Scottish Borders Council procedure. For reasons of confidentiality the complainant must not be given any details of outcome, other than that appropriate action has been taken. (even if that action did not include disciplinary action).

## **26 ANONYMOUS REPORTS/UNSIGNED STATEMENTS**

Occasionally information is received anonymously. Any anonymous letters/statements should be treated with some caution and any such material received should be immediately placed into a clear plastic wallet. This would enable the police to later examine the letter for finger prints if this became necessary (for example if it transpires that the letter is malicious or worthy of police investigation).

Information received anonymously is still valid and may still lead to an investigation which provides information on which further decisions can be based.

Anyone against whom an anonymous allegation is made should be informed that a complaint has been received and be invited to comment. A response may lead to other people being included in the investigation.

Depending on the nature of the allegation there may also be documentary evidence that can be examined which would either substantiate the allegations or not.

The final outcome of any investigation or discussion should be recorded, in writing.

## **27. THIRD PARTY EVIDENCE**

Some investigations may involve taking third party evidence from members of the public, from councillors or from other persons, for example, contractors. The same principles should be applied to third party evidence as is applicable to other evidence.

## **28 POLICE ENQUIRIES**

The fact that a police investigation is taking place does not usually mean the postponement of a management investigation and/or subsequent hearing.

The important thing to note is that no action should be taken which might prejudice/undermine a police enquiry. If there is any suggestion that either the management investigation/hearing should be postponed this must be discussed with the HR Case Management Team in order that appropriate correspondence can be set up with the Police/Procurator Fiscal to enable an audit trail to be established.

## **29 DISCRIMINATION/HARASSMENT**

In dealing with investigations into particularly sensitive cases of discrimination/harassment the investigators may wish to consider whether or not it is possible to try and match the gender of the complainant. For example if a woman complains of extreme sexual harassment from a man then the complainant may be more comfortable being interviewed by another

woman rather than a man. In all cases the investigators should always be sensitive to the issues involved.

### **30. WHISTLEBLOWING/CODE OF CONDUCT FOR EMPLOYEES**

Some investigations may arise as a consequence of “whistleblowing”. (Please see the [Employee Code of Conduct](#) for further information). If this occurs, please advise the Internal Auditor for monitoring purposes and seek advice from the HR Case Management Team. .

### **31 CONTACTS**

#### **HR Case Management Team**

Telephone 01835 825052/3 or

Email: [askhr@scotborders.gov.uk](mailto:askhr@scotborders.gov.uk)

## GUIDELINES ON CONDUCTING INVESTIGATIONS

### Sample letters/reports



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5	<a href="#">Witness Statement</a>	25
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Appendix 1

Sample Investigation Plan	
Investigation plan	
Details of allegation	
Commissioning manager	
Relevant documentation e.g. Disciplinary/Grievance Policy & Procedure Codes of Practice/ Policies	
Complainant advised of right to have union representative or workplace colleague and date	
People to interview	Scheduled dates for interview
Complainant	
Person(s) complained about	
Witnesses	
Specialist advice	
Action plan Detail proposed approach- interviews, gather documentary evidence etc.	
Target date for completion	
Revision to target date with reasons	

## Appendix 2

**Sample letter confirming period of special paid leave**

Dear

**Confirmation of period of special paid leave**

Further to our meeting on (date), this letter confirms that, in accordance with the Council's Disciplinary Procedures for Misconduct, you are on a period of special paid leave for the following reasons:

This period of special paid leave started on *date* and is expected to end on *date*. You are to remain away from work until advised further. If the end date changes, I will let you know. Your period of special paid leave is part of the investigation process; it is not disciplinary action and does not imply any pre-judgement of the case.

*(Insert if appropriate)* Bearing in mind your role I will consider whether I am required to inform the *Scottish Social Services Council / General Teaching Council / Care Inspectorate* of your period of suspension and the reason for it. Consequently you may be contacted by the appropriate body. Additionally, I would remind you of your own obligations to inform them yourself of any relevant changes regarding your employment status that may impact on your professional standing.

As part of the investigation, you will be contacted soon to attend an investigatory meeting so please remain contactable. You have the right to be accompanied by someone, who must be either a workplace colleague, an accredited trade union representative (who is certified as being trained or experienced in being a representative for disciplinary hearings) or an official employed by the trade union. All reasonable requests will be approved.

Your contract of employment and all normal employment procedures still apply. For example, if you want to go away or are sick during this period please contact me / your line manager to enable the necessary authorisation/documentation to be given/completed. You will continue to be paid during this period.

Please do not attend work or attempt to influence anyone who may be involved in the investigation process unless you want them to represent you formally or accompany you to a meeting. Every effort will be made to investigate this alleged misconduct fairly and promptly.

I appreciate that this time may be stressful for you. I have arranged for *(name/title)* to be a support person for you. They have agreed to this but I must make it clear that they have not been given any detail of the reasons for your period of special paid leave and will not take part in the investigation in any way. Consequently, *(name)* will not be able to give any opinion on the matters under investigation but will, however, be able to act as a general support to you and keep you in touch with workplace issues. You may contact *(him/her)* either by phone/email *(insert contact details)*.

I would like to draw your attention to the free professional confidential counselling service 'VIVUP' which is available to all employees. If you feel that you would benefit from this you may refer yourself by freephone 0800 023 9324.

I enclose a copy of the Council's Disciplinary Procedures for Misconduct for your information. If you require any further clarification please do not hesitate to contact me.

Yours sincerely

**Name**  
**Job title**

## Appendix 3

**Sample letter to attend an investigation meeting****Confidential**

EMPLOYEE'S HOME ADDRESS

DATE

Dear

**Investigatory meeting**

I would be grateful if you could attend an investigatory meeting

on     *(date)*  
at     *(time)*  
in     *(venue)*

The purpose of the meeting is to investigate a complaint that *(insert details of complaint or allegation)*. (For witnesses, substitute this sentence with: *You are being called as a witness*).

I will be assisted at this meeting by *(name, job title)*. The investigation is being carried out in accordance with the Disciplinary policy and procedures for misconduct (a copy is enclosed). You have the right to be accompanied by an accredited trade union representative or work colleague, although you should understand that this is an investigatory meeting and not a disciplinary hearing. All reasonable requests will be approved.

Please confirm your attendance at this meeting and the name of your accredited trade union representative/ accompanying workplace colleague at your earliest convenience.

Yours sincerely

**Name**  
**Job title**

Enc.

cc:     *(Name of person also to be present at meeting)*

## Appendix 4

**Note of Investigation Meeting****CONFIDENTIAL****NOTE OF INVESTIGATION MEETING**Date of meeting:  

---

**5. DETAILS OF INTERVIEWEE**

a) Incident under investigation:

b) Name of interviewee:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

c) Name of interviewee's accredited trade union representative/ workplace colleague, if any:

Job title / Name of trade union:  

---

**6. DETAILS OF INVESTIGATING OFFICERS**

a) Name:

b) Name:

Job title:

Job title:

Relationship to  
person under  
investigation:Relationship to  
person under  
investigation:  

---

**7. SUMMARY OF INVESTIGATION**Briefly summarise the reason for the investigation (eg the nature of the complaint):  

---



## NOTE OF THE MEETING

(Name of investigating officer) opened the meeting by introducing everyone present before giving a brief explanation of the reason for the meeting and the procedure to be followed. The following questions were asked:

**Q1. Details of question:**

**Summarised response:**

**Q2. Details of question:**

**Summarised response:**

*(Continue to list all questions)*

**Q3. Do you have anything more to add in respect of this matter?**

**Summarised Response**

---

## 6. DECLARATION

I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.

I understand that I cannot discuss these proceedings with anyone other than my accredited trade union representative/ accompanying workplace colleague, and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.

I declare that my contribution to this investigation meeting has been accurate and true. I have been given a copy of my statement to check its accuracy and to make any amendments or comments if I disagree with it. I accept that if I do not sign, or return comments within the given timescale, then the statement may still be used

Interviewee's signature:

Date:

Investigating officer's signature:

Date:

Investigating officer / Note taker's signature:

Date:

## Appendix 5

**STATEMENT FROM WITNESS**

NOTE: If the witness is unavailable for interview, they can complete an investigatory statement instead. In some instances, the investigating officer(s) may wish to have both an interview and statement.

**CONFIDENTIAL****INVESTIGATION STATEMENT****9. DETAILS OF WITNESS**

a) Incident under investigation:

b) Name of witness:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

**10. DETAILS OF INVESTIGATING OFFICERS**

a) Name:

b) Name:

Job title:

Job title:

Relationship to  
person under  
investigation:

Relationship to  
person under  
investigation:

**11. MY STATEMENT**

---

## 12. DECLARATION

I declare that:

- I understand that I may be required to clarify points raised during the investigation.
- I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.
- I understand that I cannot discuss these proceedings with anyone other than my representative, and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.
- This statement is a true and fair account.

Employee's signature:

Date:

Appendix 6

**STATEMENT FROM PERSON UNDER INVESTIGATION**

NOTE: If the person under investigation is unavailable for interview, they can complete an investigatory statement instead. In some instances, the investigating officer(s) may wish to have both an interview and statement.

**CONFIDENTIAL**

**INVESTIGATION STATEMENT**

---

**13. DETAILS OF WITNESS**

a) Incident under investigation:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

---

**14. DETAILS OF INVESTIGATING OFFICERS**

a) Name:

b) Name:

Job title:

Job title:

Relationship to  
person under  
investigation:

Relationship to  
person under  
investigation:

---

**15. MY STATEMENT**

---

## 16. DECLARATION

I declare that:

- I understand that I may be required to clarify points raised during the investigation.
- I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.
- I understand that I cannot discuss these proceedings with anyone other than my representative or immediate family members (provided that I ensure they retain confidentiality), and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.
- This statement is a true and fair account.

Employee's signature:

Date:

---

**Appendix 7****INVESTIGATION REPORT**

NOTE: The content of this template is an example only and should be varied to suit each case.

**CONFIDENTIAL****INVESTIGATION REPORT****4. REPORT OVERVIEW**

a) Report to: *(Name of commissioning manager)*

b) Date report completed:

c) Report from the following investigating officer(s):

Name:

Name:

Job title:

Job title:

Relationship to  
person under  
investigation:

Relationship to  
person under  
investigation:

d) Name of person under investigation:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

**5. SUMMARY OF INVESTIGATION REMIT**

Briefly summarise the reason for the investigation (eg the nature of the complaint):

**6. THE REPORT****Contents**

6. Introduction

7. Background

8. Investigation
9. Summary
10. Appendices
  5. Statement / note of meeting with the person under investigation
  6. Witness statements / notes of meetings
  7. Other relevant documentation – eg emails, correspondence etc.

## 2. INTRODUCTION

*(Names of investigating officers)* were commissioned by *(Name of manager, job title)* to investigate the complaints and report their findings to *(Name, job title)*.

If in the process of the investigation, further complaints or allegations came to light, *(give details of the complaints or allegations)* and, under advice from *(name of commissioning manager)*, they have been included here as they are relevant to the case.

## 2. PROCESS

The investigation commenced on *(date)* and finished on *(date)*.

The people interviewed were:

- |          |            |
|----------|------------|
| 5. Name: | Job title: |
| 6. Name: | Job title: |
| 7. Name: | Job title: |
| 8. Name: | Job title: |

Specialist advice was sought from *HR/Legal Services* (delete as appropriate) on the following:

- 
- 
- 

## 3. INVESTIGATION

Outline the investigation eg briefly recap of what prompted the investigation, who was involved, why the witnesses were selected, why the questions were chosen, evidence that supported or conflicted with other evidence, the nature of other evidence collected (eg supporting documents) etc

**Allegation number 1:** *(specify the allegation or complaint)*

The investigating officer(s) found that there was evidence to support this allegation because:

- 
- 

The investigating officer(s) found that there was conflicting evidence in respect of this allegation because:

-

•

The investigating officer(s) found insufficient evidence to support this allegation because:

•  
•

**Allegation number 2:** *(specify the allegation or complaint)*

The investigating officer(s) found that there was evidence to support this allegation because:

•  
•

The investigating officer(s) found that there was conflicting evidence in respect of this allegation because:

•  
•

The investigating officer(s) found insufficient evidence to support this allegation because:

•  
•

The Investigators found no evidence to support this allegation

**Allegation number 3:** *(specify the allegation or complaint)*

*Continue as above*

5. **SUMMARY** *(The investigating officer must not make recommendations – the manager is responsible for assessing the investigation (eg whether more information is needed at this stage) and deciding whether to proceed to a disciplinary hearing.)*

Investigating officer's signature:

Date: