



FALKIRK COUNCIL

DISCIPLINARY POLICY

(For all employees including Teachers)



August 2019

* See Addendum 1 for changes approved in August 2019

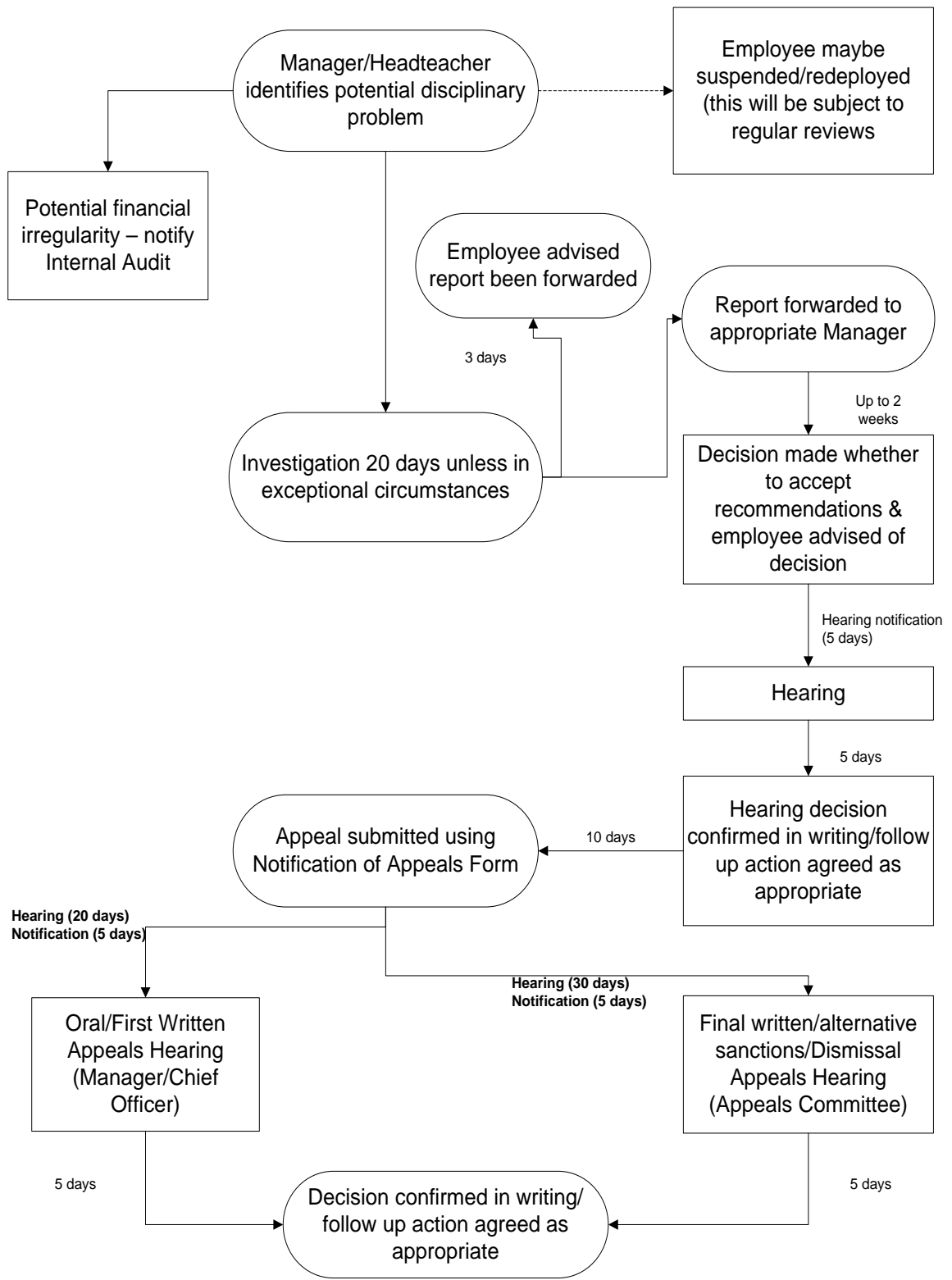
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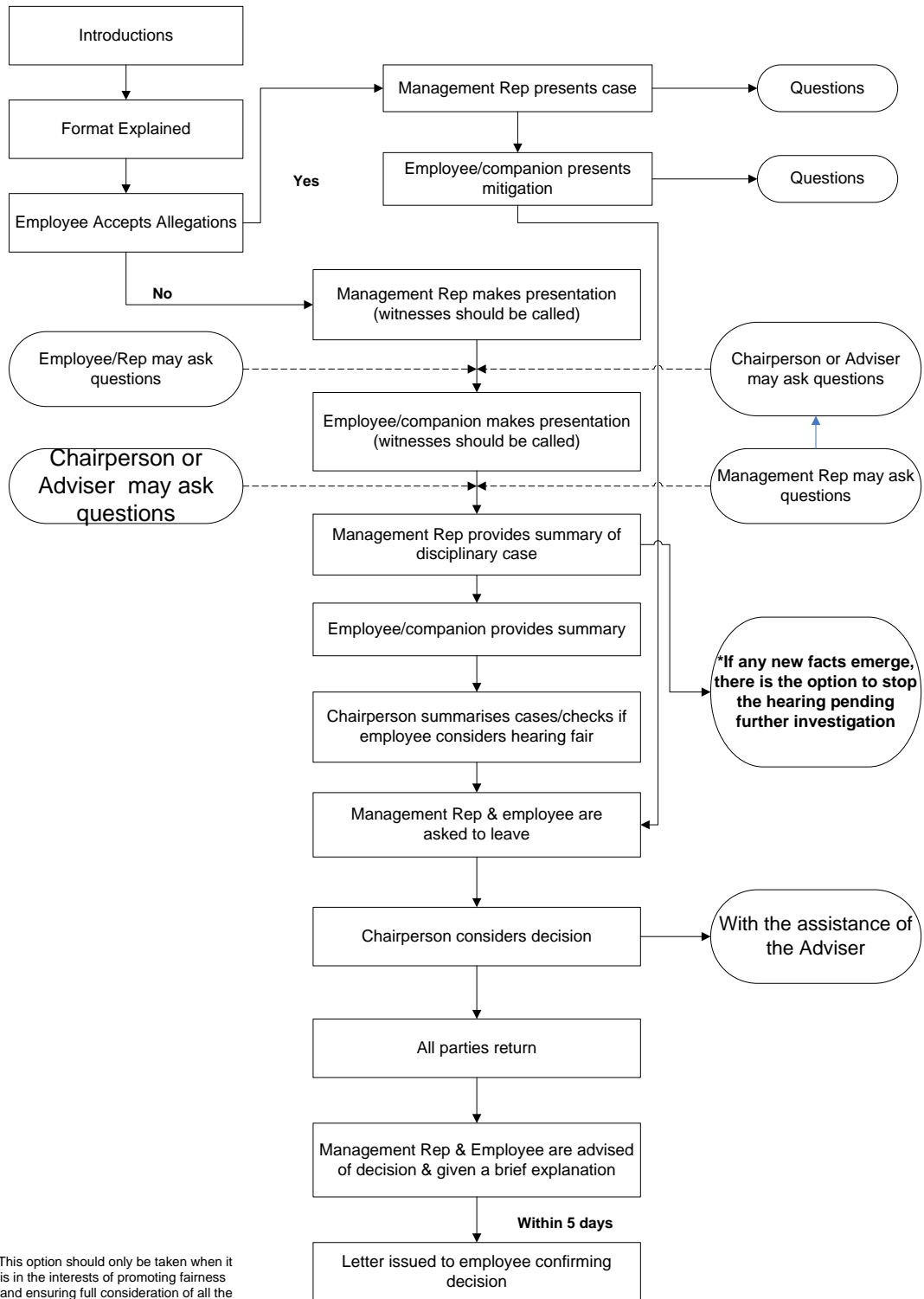
DISCIPLINARY HANDLING PROCESS

Flowchart A



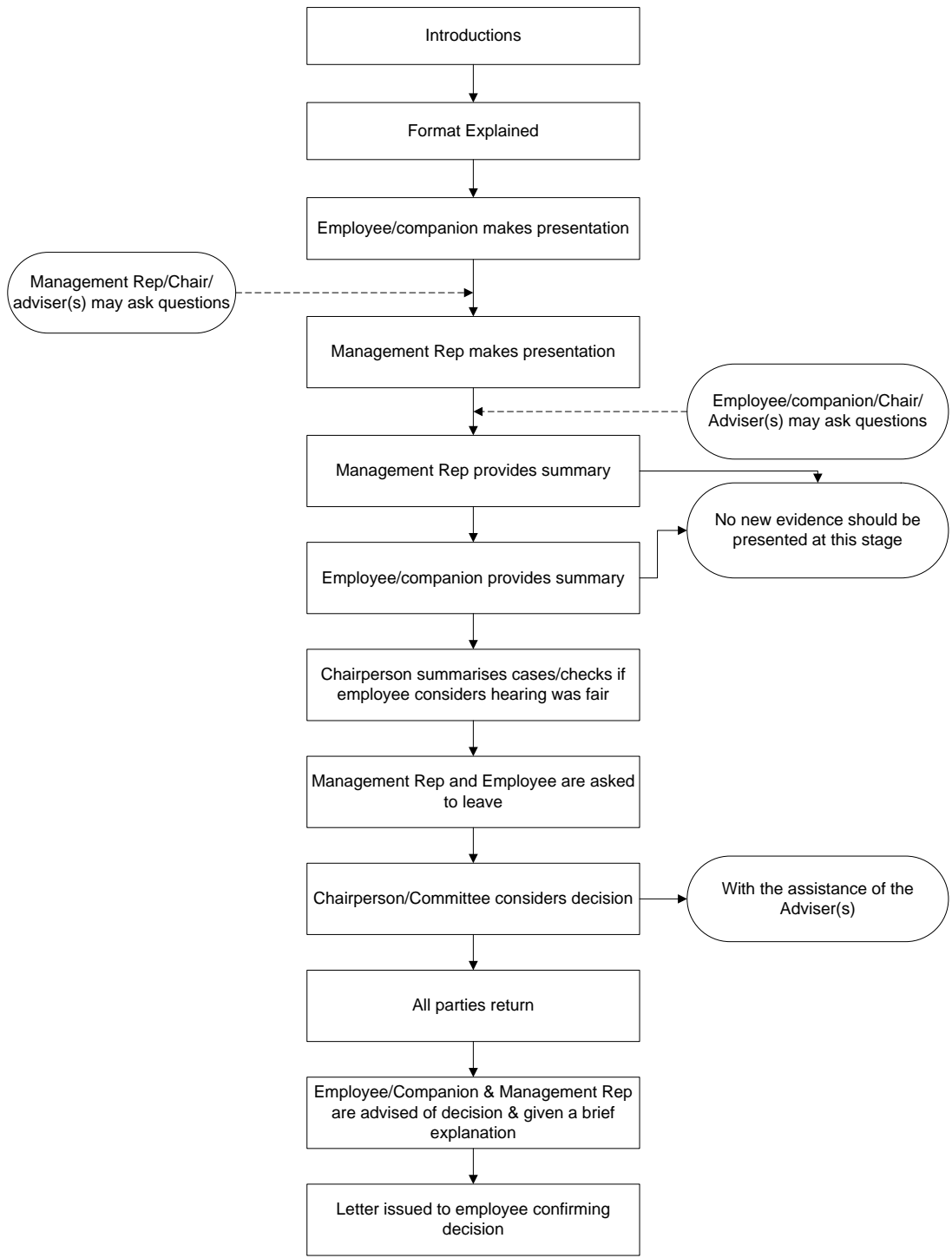
N.B. Days refer to working days.

DISCIPLINARY HEARING PROCESS **Flowchart B**



DISCIPLINARY APPEALS PROCESS

Flowchart C



PART 1 POLICY STATEMENT

1.1 POLICY STATEMENT

The Disciplinary Policy applies to all employees of Falkirk Council with the aims of promoting fairness, equity and order in the treatment of individuals and in the conduct of employee relations. Implementation of the policy helps Falkirk Council to operate effectively and to set standards of conduct at work, helping to ensure all employees are aware of, and adhere to, these standards.

The policy provides a method of dealing with any shortcomings in conduct with the aim of helping an undisciplined or inappropriately behaved employee to become effective again. The emphasis on encouraging improvement in employees is one of the overriding principles of the policy.

The rules and policies in relation to conduct within Falkirk Council can be found within National and Local Conditions of Service, the Employee Handbook, the Council's Standing Orders and the Code of Conduct for Members and Officers. These documents should be made available to all employees by their line manager. All new employees should be made aware of what is expected of them, and what they can expect in terms of support from Falkirk Council, through the induction process.

The Disciplinary Policy also ensures that Falkirk Council's employee relations operate within, and comply with, the legal framework of employment law: including the, Employment Rights Act 1996, the Employment Relations Act 2004 and the Employment Act 2008. The policy also reflects the general principles of the ACAS Code of Practice for Disciplinary & Grievance Procedures, the Human Rights Act 1998, the Equality Act 2010 and Falkirk Council's Equal Opportunities, Dignity at Work and Health & Safety & Care Policies.

PART 2 POLICY

2.1 INTRODUCTION

The Disciplinary Policy should be used primarily to help and encourage employees to improve rather than as a means of punishment. It provides a means of dealing with apparent shortcomings in conduct and can help to correct inappropriate behaviour. It should be recognised however that the use of the policy could lead to dismissal.

In order to ensure consistency and fairness throughout, it is necessary to follow the policy, in all disciplinary cases. Failure to do so may, according to the circumstances of the failure, either lead to an inability to impose a sanction or to an appeals body overturning the decision reached at the original hearing.

2.2 SCOPE

The Disciplinary Policy will be applied to matters of misconduct, i.e., employee does not observe rules of conduct or certain standards. Instances of poor performance should be managed in accordance with the Capability Procedure.

The Disciplinary Policy applies to all employees of Falkirk Council. For disciplinary matters involving Skillseekers, Modern Apprentices, Get Ready for Work Participants or those on transitional employment programmes contact Human Resources for advice on the appropriate procedure to follow.

Managers, Chief Officers and Elected Members of Falkirk Council have responsibility for ensuring that employees are aware of what is expected of them in terms of their conduct and for ensuring that the policy is implemented in a fair and consistent manner in all situations.

Trade Union representatives will provide their members with support as detailed in the Policy and will be afforded time off to do so in accordance with the Time Off for Trade Union Duties & Activities Policy.

2.3 ESSENTIAL PRINCIPLES OF THE POLICY

The following principles are necessary to ensure the integrity of application of the policy:

- **Fairness and Consistency**

The attitude and conduct of employees will be seriously affected if a manager is not seen to apply the same rules and considerations to each case. It is true though that because each case is considered on its own merits two apparently identical incidences of misconduct could have different outcomes.

- **Promptness**

In all cases any potential disciplinary matter should be dealt with as quickly as possible, whilst still being fair to employees in giving reasonable notice of any disciplinary meetings.

- **Representation**

The Employment Relations Act 1999 (as amended) provides all employees with the right to make a reasonable request to be accompanied during disciplinary proceedings. The companion can be a colleague or full-time or elected trade union official. Although there is no specific right to be accompanied by a relative, it should be recognised that in some circumstances this may be appropriate. If the employee involved in the potential disciplinary issue is a trade union official the matter should be discussed with Human Resources. In such circumstances, with the employee's consent, a full-time representative of the union should be advised before the investigation interview takes place.

What is considered to be a reasonable request to be accompanied will depend on the circumstances of each individual case. However, it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice

the investigation or hearing. Nor would it be reasonable for an employee to request to be accompanied by a companion from a remote geographical location if someone suitable and willing is available on site.

If the employee's choice of companion is not available at the proposed time of a disciplinary hearing or investigation meeting, the hearing/ meeting may be rescheduled to another time which falls within five working days of the original time in order to allow the companion to attend. If the companion is still unavailable, unless there are exceptional circumstances, the employee will be expected to make alternative arrangements to be accompanied at the rescheduled hearing/ meeting.

The companion does not have the right to answer questions on the employee's behalf. Nor may the companion address a disciplinary hearing if the employee does not wish it. They do, however, have the right to address a hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing, and to confer with the employee during the hearing. The companion may not use these entitlements to prevent the employer from explaining their case or preventing any other person at the hearing contributing to it.

Employees will be advised in writing of their right to be accompanied at each formal meeting held in accordance with the Disciplinary Policy.

- **Confidentiality**

All disciplinary proceedings and associated documentation must be treated as being confidential by all parties involved. Any notes or reports sent electronically must be password protected in accordance with Falkirk Council's Acceptable Use Policy. Retention of notes and papers associated with a particular case will be in accordance with the principles of the Data Protection Act 1998.

- **Equality Act 2010**

Where an employee has a disability covered by the Equality Act 2010, any reasonable adjustments which require to be made to assist them to participate fully in the disciplinary process will be implemented. Where English is not an employee's first language, they should be offered the use of a translator during the investigation/ hearing process.

2.4 HUMAN RESOURCES ADVISERS

HR and legal advice is available to managers at all stages of the disciplinary process. Where appropriate, information on the disciplinary process will be available to employees.

A representative from Human Resources will normally assist with investigations. There may also be occasions when it is considered appropriate for legal advice to be sought during investigations.

An independent representative from Human Resources will also assist the chairperson at all disciplinary hearings and appeals. The role of the HR representative at the hearing is to ensure consistency of approach and fairness. They can provide advice on the procedure,

other similar local or national cases, and relevant employment law as appropriate. Where necessary the hearing may be adjourned to allow the Chairperson to seek legal advice on specific points/ issues raised. In complex cases, the Chairperson may make a specific request for a Legal Representative to be in attendance at the hearing to provide advice and support where necessary. In addition, a Legal Adviser will provide guidance to the Appeals Committee.

2.5 INFORMALLY MANAGING A CONDUCT ISSUE – * SEE ADDENDUM

*There may be circumstances where it is more appropriate to deal with incidences of minor misconduct in an informal basis with a view to seeking improvement in the employee's conduct. Where improvement is required it is essential to ensure that the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. It may be useful to confirm in writing what has been decided. This letter would **not** constitute any form of disciplinary warning, but it may be appropriate to make the employee aware that if any further issues of a similar nature arise the letter may be used as evidence in any subsequent disciplinary investigation.*

If however, there is a repeat of the action which led to the concern, or if further information comes to light, the issue should be investigated on a formal basis.

Care should be taken to ensure that a consistent approach is taken in such circumstances. Human Resources can provide advice on precedent in this regard.

2.6 WHERE A POTENTIAL DISCIPLINARY MATTER ARISES

Where an issue arises which needs to be investigated in accordance with the Disciplinary Policy, the manager who becomes aware of the issue should consider what steps are necessary to progress the matter.

2.6.1 Is There a Disciplinary Issue?

If it is not clear whether the issue has the potential to be of a disciplinary nature the manager may consider it appropriate to meet with the employee concerned on an informal basis to seek clarification on the matter. If the employee's response leads the manager to conclude that no disciplinary investigation is required no further formal action should be taken.

Depending on the nature of the issue and the outcome of the informal discussion the manager may consider it appropriate to confirm the outcome of the discussion to the employee in writing and to clarify any standards expected of them in future. The matter should be handled in accordance with section 2.5.

If the employee's response leads the manager to consider that a disciplinary investigation is required, the meeting should be stopped and the employee advised that the matter will be investigated in accordance with the Disciplinary Policy, with someone else undertaking the role of Investigating Officer.

2.6.2 Notifying the Employee

If a disciplinary investigation is to be undertaken, the employee should be advised verbally, (normally by their line manager) that a disciplinary investigation is to be undertaken and advised what matter will be investigated. No detailed discussion regarding the allegation should be held with the employee and they should instead be advised that they will have the opportunity to discuss the matter fully at the investigation meeting.

If the employee involved in the potential disciplinary issue is a trade union official the matter should be discussed with Human Resources. In such circumstances, with the employee's consent, a full-time representative of the union should be advised before the investigation interview takes place.

2.6.3 Appointing an Investigating Officer

The Investigating Officer will normally be appointed by the Service Manager (or equivalent) for cases of misconduct and the Head of Service or equivalent for cases of gross misconduct. The approach taken may, however vary between different service areas. In any case, the Investigating Officer will normally hold a post which is of at least the equivalent level to the line manager of the employee being investigated.

Every effort should be made to ensure that the Investigating Officer is not closely associated with the conduct alleged. For example, where the misconduct is the failure to follow a reasonable instruction then the Investigating Officer should not be the manager who issued the instruction in the first place.

2.7 SUSPENSION

2.7.1 About Suspension

Where the alleged disciplinary offence is particularly serious or where the continued presence of the employee in the workplace may be to the detriment of themselves, colleagues or clients, or to the investigation itself, it may be necessary to suspend the employee. Suspension should only be used in cases which may be regarded as gross misconduct. It should only be implemented where it is not possible to allow the employee to continue to work and there is no reasonable means of redeploying the employee elsewhere, (or this is not considered appropriate), until the conclusion of the investigation. The Suspension Risk Assessment Toolkit (Appendix 1) should be completed to assist with, and record, the decision making process undertaken in this regard.

An employee's suspension will be reviewed at regular intervals and if any significant new information comes to light during the investigation. For example, if it is apparent during the investigation that there is no disciplinary case to answer a recommendation that the suspension is lifted should be made immediately to the appropriate Head of Service.

The employing Service should appoint a liaison officer who will act as the employee's point of contact during the period of suspension and will maintain regular contact with the employee throughout this time.

As suspension is not a disciplinary sanction, there is no right of appeal against the decision to suspend an employee.

Template letters associated with suspension are available from Human Resources.

2.7.2 Payment

Suspension is not a disciplinary sanction and is on full pay. However where an employee fails to comply with the Disciplinary Policy, e.g., where they continually fail to attend investigation meetings or hearings without good reason, then the suspension may be changed to being unpaid. Any proposal to take such action should be discussed in advance with Human Resources. If unpaid suspension is implemented the arrangements must be confirmed in writing to the employee, detailing the reason for taking this action and the expectations placed upon them.

2.7.3 Sickness Absence

Where an employee becomes ill when on suspension, they will be considered to be on sick leave for pay purposes as long as they follow the normal absence notification procedures, including the submission of appropriate certification. The restrictions put in place with regard to the suspension will continue during the period of absence.

In such circumstances depending on the reason for sickness and/ or the length of absence, the employee's line manager, or another appropriate manager, should normally refer them to the Occupational Health Unit following normal procedures in order to ensure that the employee is being given appropriate support. The manager should also ask in the referral if the employee is fit to participate in the disciplinary process.

2.7.4 Who Can Suspend?

The decision to suspend an employee can only be made by a Chief Officer. They may, however delegate the holding of the suspension meeting to another officer as appropriate.

Normally the employee should be advised verbally in advance that they are required to attend a meeting which may lead to their suspension and allowed the opportunity to be accompanied at the meeting if the circumstances permit. Where timescales allow, arrangements for the meeting should be followed up in writing.

Given the nature of suspension there may be circumstances where it is considered to be inappropriate to give the employee advance notice of the meeting.

2.7.5 The Suspension Meeting

This will generally be a brief meeting with no discussion on the detail of the allegations made as these will be considered fully during the investigation. The suspending officer will normally be assisted by a representative from Human Resources at the meeting. At the meeting, the employee should be advised of the following:

- The allegations made against the employee and that these are being treated as gross misconduct;
- That due to the nature of the allegations it is considered necessary to suspend with pay. The purpose of suspension should also be explained;
- The name of the Investigating Officer (if known);
- The steps which will be taken to finalise the investigation and the anticipated timescale;
- That the Investigating Officer will be interviewing those employees involved, they will have the chance to present their version of events during this process and will have the right to be accompanied;
- That the period of suspension will be subject to regular review to be agreed by all parties;

- The name and contact details of the liaison officer;
- That it is necessary to hand in identity card, security card, any keys and any other belongings relevant to their post and that any contact should be made only through the liaison officer;
- That they should not contact or discuss the matter with any colleagues during the period of suspension;
- That the details of the suspension will be confirmed in writing.

The employee should be given details of the Employee Counselling Service in order that they can seek support during their suspension if required.

At the conclusion of the meeting the employee should be given the opportunity to ask any questions they may have and to collect their personal belongings. They should then be escorted from the premises in a tactful manner.

The Payroll Section of must be informed of the suspension by completing an on-line form.

2.8 CRIMINAL OFFENCES/INVESTIGATIONS

2.8.1 Investigations

Should a manager become aware that an employee may be, or has been, involved in a situation that is potentially criminal, advice as to how to proceed should be sought immediately from Human Resources. This approach should be taken whether or not the alleged activity took place while the employee was on duty.

Where a disciplinary investigation finds that an employee may have undertaken a criminal activity the matter should be discussed with Human Resources/ Legal Services, in order to consider whether the police should be advised.

Where a criminal investigation is on-going advice should be sought from Legal Services and Human Resources as to the most appropriate approach with regard to the disciplinary investigation. There is no legal requirement to suspend disciplinary proceedings pending criminal investigations or proceedings but there may be circumstances where it is appropriate to do so. Any suspension of the disciplinary process must be kept under review in order to determine when the disciplinary investigation can be undertaken and consideration given to whether it is appropriate for background information to be gathered in the interim period.

2.8.2 Employees Charged or Convicted

An employee should not be disciplined merely because they have been charged with, convicted of, or investigated in relation to, a criminal offence.

Consideration should be given to whether the criminal offence is relevant to the employee's post and has implications for their employment. Human Resources and Legal Services will be able to offer further advice on this matter.

If the incident resulting in the criminal offence may be relevant to the employee's post, or happened within working time, the matter should be investigated in accordance with the Disciplinary Policy.

Where an employee is imprisoned this raises the question of whether the contract of employment has come to an end by “frustration”. Human Resources/ Legal Services will be able to advise on the appropriate approach.

2.9 ANONYMOUS INFORMATION

Depending on the information received it may be helpful to seek advice from Human Resources upon receiving anonymous information. The normal approach would be to meet with the employee who is the subject of an anonymous complaint or accusation on an informal basis, make them aware of what has been alleged and give them the opportunity to respond.

If it becomes apparent during this meeting that the information has some basis in fact, the employee should be advised that a formal investigation will be conducted in accordance with the Disciplinary Policy. There should be no further discussion of the matter in an informal context.

2.10 SURVEILLANCE

Advice should be sought from Human Resources and Legal Services if consideration is being given to using surveillance as part of a disciplinary investigation. Any surveillance undertaken may only be done on receipt of appropriate authorisation in accordance with Falkirk Council’s Policy on Direct Surveillance and Policy on the Use of Covert Human Intelligence Sources. These documents are produced by Legal Services and are available on the Underground.

While Falkirk Council does not use information from CCTV or vehicle tracking systems for the purpose of monitoring employees, where an issue arises which is so serious that it cannot be ignored and may constitute gross misconduct, advice should be sought regarding using this information appropriately as part of a disciplinary investigation.

2.11 FINANCIAL IRREGULARITIES

In the case of suspected financial irregularities initial fact finding, including informal interviews, may form part of the initial stages of the investigation. However, where it appears that disciplinary action against a specific individual is likely, the formal procedures relating to disciplinary investigations will apply.

Internal Audit must be notified, may be involved in the investigation and may have a representative on the investigation team. The Investigating Officer will be responsible for writing the final investigation report with support from other members of the investigation team as appropriate.

The Chief Governance Officer will be responsible for ensuring the Chief Executive is updated in all significant cases in accordance with Financial Regulations.

Further details on the investigation of financial irregularities are contained in Falkirk Council’s Financial Regulations.

2.12 EMPLOYEE ABSENT ON SICK LEAVE

Where the employee is absent on sick leave at any stage of the disciplinary process, depending on the reason for absence it may be appropriate to refer them to the Occupational Health Unit for advice on their fitness to proceed with the process. This ensures that attendance at any meeting will not aggravate their condition in any way. Where the sick leave is due to a mental well-being issue referral must be made to the Occupational Health Unit before proceeding to the next stage of the process.

In deciding when and how to proceed in these circumstances a reasonable assessment of all the facts is required. Detailed advice can be provided by Human Resources.

2.13 REFERRAL TO PROFESSIONAL BODIES

Where an employee must be registered with a professional body to be able to undertake the duties of their post there are certain requirements on Falkirk Council as an employer with regard to advising the body of any actual, or depending on the body's requirements, alleged misconduct.

It is the responsibility of the employee's line manager, in consultation with the appropriate Head of Service and Human Resources, to make referral to the relevant professional body in accordance with the body's protocols.

General Teaching Council Scotland

The commencement of Standards in Scotland's Schools etc. Act 2000, requires the General Teaching Council Scotland to be notified of any misconduct/ gross misconduct cases involving teachers.

Scottish Social Services Council

The Regulation of Care (Scotland) Act 2001 requires the Scottish Social Services Council to be notified, immediately, in writing, of any misconduct cases involving Social Services/Social Care employees, registered with the Council in the following circumstances:

- where an employee is dismissed;
- where an employee resigns during a disciplinary investigation/hearing;
- where a worker is suspended pending the outcome of a disciplinary investigation/hearing;
- where Falkirk Council becomes aware of a criminal conviction against an employee;
- any other circumstances which Falkirk Council feels may have a bearing on the employees' registration with the Scottish Social Services Council.

Health Professions Council

The Health Professions Council should be advised where there is evidence to suggest that the ability of an employee for whom registration with the Council is a requirement of their post to practice their profession may be impaired.

The above list is not exhaustive and consideration requires to be given to each particular case being investigated.

2.14 PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

The Act places a legal obligation on Falkirk Council to make a referral to Scottish Ministers regarding any individual who is, or has been, doing regulated work with children or with adults, if they have, whether or not during the course of their employment:

- i) harmed a child or protected adult;
- ii) placed a child or protected adult at risk of harm;
- iii) engaged in inappropriate conduct involving pornography;
- iv) engaged in inappropriate conduct of a sexual nature regarding a child or protected adult, or;
- v) given inappropriate medical treatment to a child or protected adult.

Definitions of regulated work with children and protected adults are available from Human Resources.

Any such situation should be discussed with Human Resources as soon as a potential issue arises.

2.15 POTENTIAL CHILD PROTECTION ISSUES

Where concerns are raised regarding potential child protection issues, referral should be made to the Interagency Child Protection Guidelines which must be followed in order to ensure the safety and welfare of the child/ children concerned. In Education Services, reference should also be made to the 'Safe and Well' protocols. Advice should also be sought from Human Resources and the relevant workplace manager with responsibility for child protection issues.

A planning meeting should be arranged as soon as possible after the allegation is raised (wherever possible this should be held on same day). At this meeting, a member of the line management team associated with the issue will be present, together with an appropriate senior manager and any other relevant adviser considered to be appropriate (e.g. in Education Services, the meeting may include the relevant Headteacher and Quality Improvement Officer). The purpose of this meeting would be to determine how the case should be handled and to undertake a risk assessment associated with all aspects of the allegation, such as determining whether suspension should be recommended and whether child protection referral is appropriate. The outcome of this meeting should then be communicated to Human Resources in order that advice can be given on how to proceed. Where it is impractical for all interested parties to physically attend a planning meeting within the required timescales, a telephone discussion may be considered appropriate.

2.16 POTENTIAL ADULT PROTECTION ISSUES

Where concerns are raised regarding a Falkirk Council employee relating to a potential adult protection issue, the relevant line manager will make a referral to the Duty Worker or allocated Community Care Worker of the local community care team as an adult support and protection matter. This referral will highlight clearly that an allegation has been made concerning a member of staff.

As soon as possible thereafter, a discussion will be undertaken between the manager referring the situation and the manager of the team receiving the referral as to what steps are to be taken in relation to the member of staff. Human Resources advice will be sought at this stage. The Head of Service should then be contacted by the manager who has responsibility for the employee to confirm what arrangement should be made in relation to the employee's working arrangements.

2.17 GATHERING INFORMATION FROM CHILDREN/PUPIL WITNESSES (UNDER 16 YEARS) & VULNERABLE ADULTS

Guidance on the approach to be taken when gathering information from this group of witnesses is given at Appendix 4. As soon as a manager becomes aware of an allegation/incident where there are witnesses who are under 16 years of age, if appropriate given their age and abilities and the nature of the allegation made, the children should be separated and ask to provide individual written accounts of what happened. A similar approach may be considered appropriate when an allegation concerns vulnerable adults. These accounts can then be considered at the planning meetings referred to above and as part of any subsequent disciplinary investigation as appropriate. A record of the process followed in this regard should be made using the pro forma at Appendix 4.

Disciplinary investigation meetings with children or vulnerable adults will normally only be undertaken where no written account can be given due to either the witnesses' age or abilities, where the necessary information cannot be obtained from elsewhere, e.g., from another witness or supporting evidence, or where clarification is required on the information provided. In such circumstances, in the case of children, permission must be sought from the child's parent or guardian in advance of the meeting. In addition, children who are aged under 12 years' must be accompanied by a parent or guardian to the investigation meeting. Children aged 12 years and over will be asked to decide whether they wish to be accompanied by a parent or guardian or by another appropriate adult of their choice. A similar approach may be taken as appropriate in respect of vulnerable adults based on an assessment of individual needs.

Guidance on the process to be followed at the investigation meeting is given at Appendix 4.

2.18 ALLEGATIONS MADE AGAINST A CHIEF OFFICER

The Disciplinary Policy will be followed in respect of allegations made against Chief Officers. Where allegations have been made against a Director, Head of Service or equivalent, the investigating team will be appointed by the Chief Executive, and should include the Head of Human Resources or their nominee. The Chief Executive will normally chair any disciplinary hearing required for a Director. A Director or the Chief Executive will normally chair any hearing required for a Head of Service. All appeals will be heard by the Appeals Committee of the Council.

Where allegations have been made against the Chief Executive, the Chief Governance Officer will make arrangements for an investigation to be undertaken. The procedure used will be the agreed JNC Disciplinary Procedure for Chief Executives and will take into account the principles of the Disciplinary Policy.

2.19 INVESTIGATION

Detailed guidance on the investigation process is attached at Appendix 2 and template letters are available from Human Resources.

The Investigating Officer will be appointed in accordance with Section 2.6.3. The Investigating Officer will normally be supported by a representative from Human Resources. In cases of suspected financial irregularities a representative from Internal Audit may also be part of the investigation team.

2.19.1 Preparation for Investigation Meetings

When a manager is tasked with undertaking an investigation they should contact Human Resources in order to discuss the support they will require in this regard. They should then determine what background information they consider is required to enable them to start the investigation, which witnesses they need to speak to, and when is appropriate to meet with the person whom the allegations have been made against.

*The investigation should commence as soon as possible in order that information can be obtained before memories fade and in order to minimise anxieties for those concerned. The investigation should be carried out as quickly as circumstances permit and the time from the start of the investigation to completion of the report should generally be no more than 20 working days (*SEE ADDENDUM).* There are cases where it may not be possible to meet this timescale. In such circumstances the employee must be advised in writing of the reason for the delay and the expected revised date of completion of the process. Any further changes to the expected completion date should also be notified in writing.

All employees, including witnesses, are entitled to be given 5 working days' notice in writing of an investigation meeting, although the meeting can be held earlier with the employee's consent. All have the right to be accompanied to the meeting as noted in Section 2.3 above. The letter sent to the employee whom the allegations are against should summarise the allegation made based on the information available at that point in time.

In the event that an employee whom the allegations are against does not wish to attend an investigation meeting, or is unable to attend, they can produce a written statement or appoint a representative to act on their behalf. It may be necessary in such circumstances for further written questions to be sent to the employee in order to assist the investigation process. The approach taken in this regard will depend on the individual circumstances of the case. In cases where the employee is unable to attend because of sickness, advice from the Occupational Health Unit should be sought and followed as noted in Section 2.12. Where an employee continues to be unavailable to attend investigation meetings, it may be necessary for the investigation process to be concluded without their participation.

In cases where the same allegation is made against more than one employee it may be appropriate to undertake a joint investigation, although individual investigation meetings will be held with each employee.

Questions to be asked/ areas to be covered with each employee should be prepared in advance of the meeting.

Where a further disciplinary allegation is made against an employee who is the subject of an ongoing investigation, the new allegation may be included in the same investigation rather than a new one being implemented.

2.19.2 Conducting investigation meetings

A checklist of items to be covered at investigation meetings is attached at Appendix 2.

It is essential that accurate and detailed notes are kept of all investigation meetings. The note for each meeting must accurately record:

- who was present;
- the start and finish times of the meeting and of any adjournments;
- the allegation put to the employee;
- the discussions held.

A typed copy of the note will be issued to the employee to sign or advise of factual amendments they would want to be made.

The Investigating Officer has the right to refuse to make any amendments which they consider do not accurately reflect what was said during the investigation meeting.

It is important that if an employee is not accompanied to the meeting that they are reminded of their right in this regard and their response handled and recorded in accordance with guidance at Appendix 2.

The employee should be issued the Disciplinary Equal Opportunities Monitoring Form either at the investigation meeting or with the investigation notes, and asked to return this to Human Resources. See Appendix 6. They should also be asked to complete Part 1 of the Disciplinary Summary Sheet at the investigation meeting.

The meeting can be adjourned if required at any point, e.g. to allow the Investigating Officer the opportunity to seek advice from the Human Resources Adviser or to allow the employee to discuss matters with their companion.

At the conclusion of the interview, the employee under investigation should be advised what will happen next and of the anticipated timescale for the investigation. They should also be advised that a further interview may be arranged if appropriate.

Witnesses should be advised that their statements may be provided to the employee who the allegations are against should the case progress to a disciplinary hearing and that they could be called as witnesses to any hearing.

In some circumstances, as a consequence of the information gained about a witness's involvement in, or knowledge of, the incident, it may be necessary to begin a disciplinary investigation in relation to that witness. Human Resources will advise on how to proceed in such circumstances.

Guidance on the interviewing of pupil witnesses/ children under 16 years of age and vulnerable adults is given at Appendix 4.

2.19.3 The investigation report

The Investigating Officer should write the report, outlining the findings of the investigation and making recommendations relating to whether on balance they consider disciplinary action to be appropriate, and if so, whether the case should be heard as potential misconduct or gross misconduct. The report should be written using the template within the Disciplinary Summary Sheet and Checklist (Appendix 5), detailing the following information:

- Background Information
- Details of the allegation
- Chronology of the events
- Consideration of supporting evidence
- Mitigating circumstances
- Conclusions/ recommendation

Copies of documents referred to in the supporting evidence section (including notes of investigation meetings) should be attached as appendices and listed in the chronology of events section. Not all documents collated during the investigation need be attached as appendices, only documents referred to in the final report should be included.

A draft report should be forwarded to the relevant Human Resources Adviser for comment before being forwarded to the appropriate manager within the service.

The final report should be forwarded on a private & confidential basis to the manager who commissioned the investigation. Reports recommending gross misconduct hearings should be considered by a Chief Officer, whereas reports recommending misconduct may be considered at management level depending on the role of the employee under investigation (SEE ADDENDUM).

Should a disciplinary hearing be convened the report will normally form the basis of management's case. Management's submissions to the hearing may adopt the investigation report or a separate submission may be prepared based on the evidence and findings of the report. Whichever the case the submission must be appropriate to the hearing. For example, if the investigation considered five allegations of misconduct but the recommendation (or the decision of the chairperson) was to proceed with only one allegation, the submission to the hearing would not include the details of the other allegations unless this was necessary and relevant to the allegation being considered.

Where a report (or relevant parts of a report) is being relied on at a hearing then a copy will be provided to the employee in advance of the hearing.

If reference is made to a third party in the report, or in any of the appendices, which is considered inappropriate for the employee under investigation to see, this information should be removed before issuing. In cases where a hearing is recommended the covering memo sent with the investigation report should note such special instructions regarding the papers to be issued in advance of the hearing in order to comply with Data Protection Act requirements.

Where a joint investigation has been conducted separate reports should be compiled for each employee.

Caution should be taken to ensure that any disciplinary action recommended is pitched at the appropriate level, e.g., following investigation an issue which may have initially appeared to constitute gross misconduct may more appropriately be considered as misconduct. Human Resources can provide advice in this regard.

The employee should be advised in writing by the Investigating Officer that the investigation has been concluded and the report forwarded to the appropriate manager, but not of the recommendation made.

The manager receiving the report should decide whether or not they accept the recommendations made in the report and advise the employee in writing within two weeks of its receipt of how their case will be progressed.

Where it is concluded that a disciplinary hearing is to be convened the letter to the employee will advise of arrangements for the hearing as noted in Section 2.19.4 below.

Where it is concluded that a disciplinary hearing is not to be convened, any other recommendations in the report should be implemented (i.e., any management actions put in place, counselling, training, etc) with the employee concerned and the employee advised in writing of the investigation outcome. The Investigating Officer should ensure that Human Resources have a copy of the final investigation report and associated appendices and confidentially destroy all other papers.

2.20 DISCIPLINARY HEARINGS

2.20.1 Arranging a disciplinary hearing

Detailed guidance on the hearing arrangements and process is attached at Appendix 6 and template letters are available from Human Resources.

Where an allegation is considered as potentially amounting to gross misconduct the hearing must be chaired by a Chief Officer and the employee advised in the letter inviting them to the hearing that the meeting could lead to their dismissal. Gross misconduct hearings for teachers must be chaired by either the Director of Education or a Head of Service.

*Hearings to consider allegations of misconduct may be considered at management level depending on the role of the employee under investigation. However if an employee has a live disciplinary warning on their file and a further misconduct allegation has the potential to lead to their dismissal the hearing must be convened by a Chief Officer and the employee advised that the hearing could lead to their dismissal in the letter inviting them to the hearing. Such hearings for teachers must be chaired either by the Director of Education or a Head of Service (**SEE ADDENDUM**).*

The Chief Executive will normally chair any disciplinary hearing required for a Director. A Director or the Chief Executive will normally chair any hearing required for a Head of Service.

It is the responsibility of the chairperson to make all arrangements necessary for the hearing, including distributing papers and arranging for the management representative and adviser to be present. An adviser from Human Resources will be present at all

hearings. In complex cases, the Chairperson may make a specific request for a legal representative to attend the hearing to provide advice and support where necessary.

The Investigating Officer will normally be the Management Representative at the disciplinary hearing.

Should either the Management Representative or employee or their companion, wish to call relevant witnesses at the hearing it is their responsibility to make arrangements with the witnesses but they must advise the Chairperson at least 3 working days in advance of their intention in this regard.

The employee is responsible for arranging to be accompanied by the companion of their choice.

The employee concerned must be given at least five working days' notice of the hearing in writing. This letter must give a precise statement of the misconduct or gross misconduct alleged in order to give the employee fair opportunity to prepare their response. Reference to a general type of behaviour leaving the employee to attempt to extract the detail from supporting documentation is not good practice

Papers to be referred to in support of management's case must be sent to the employee either with the letter inviting them to the hearing or at the latest 3 working days in advance of the hearing.

The employee will be asked in their letter to provide any written submissions to be considered at the hearing at least 3 working days in advance of the hearing and to advise of any witnesses they would want to bring to the hearing.

There may be cases arising from the same or similar incidents where a conjoined hearing is appropriate. In such cases the letter inviting each employee to the hearing must make the intention to conduct the hearing in this way clear and ask the employee to state any objections they have to these arrangements. The exact process to be followed in such situations will depend on the circumstances of the case, however in general all parties may attend the same hearing with their companions but all would be given the opportunity to present mitigation in private.

Should an employee fail to attend a disciplinary hearing, the appropriate approach will be agreed with Human Resources, taking account of the reasons for non-attendance. Where an employee fails to attend a hearing without good reason then a second hearing should be convened and the notification letter issued to them should advise that the hearing may be conducted in their absence. Where an employee does not attend as they have been unable to arrange for their chosen companion to accompany them the situation should be managed in accordance with Section 2.3.

2.20.2 Hearing Process

The Chairperson is responsible for ensuring the hearing is conducted fairly and in accordance with the Disciplinary Policy. Appendix 6 and Flowchart B should be followed in this regard. Although the hearing is structured as between management and the employee, the chairperson may make inquiry into any aspect of the case with a view to establishing the facts.

Adjournments can be requested by anyone in the room, but the Chairperson is responsible for deciding whether the request is appropriate. The start and finish times of any adjournment should be recorded. In exceptional cases the Chairperson can decide to postpone a hearing. Such a decision should be confirmed in writing, giving the reasons for the postponement and noting when the hearing will be reconvened. Where necessary the hearing may be adjourned to allow the Chairperson to seek legal advice on specific points/ issues raised.

If there are any questions about either the procedures being adopted or about the allegations to be considered, these should be handled at the start of the hearing. If there is any continuing disagreement, the Chairperson should make their decision as to how to proceed, in consultation with their adviser as necessary. Those present should then be advised what has been decided and why, and the decision recorded.

Any witnesses attending the hearing will be called on an individual basis by the person whose case they are supporting and will remain in the room only for as long as they are presenting their evidence/ answering questions.

The hearing process can be briefly summarised as follows:

If the employee accepts the allegation(s):

- Management Representative provides an outline of the case;
- Employee provides explanation and/or details of any mitigating circumstances;
- Chairperson summarises their understanding of cases heard, asks employee/ their representative if they consider they have had a fair hearing and deals with any points which arise;
- Hearing is adjourned - Management Representative, employee and companion are asked to leave room;
- Chairperson considers decision with advice from HR adviser;
- Management Representative, employee and companion are asked to return and are advised by the Chairperson of their decision together with a brief explanation of future action to be taken;
- If disciplinary action is taken employee is advised of their right of appeal;
- Decision is confirmed in writing within 5 working days.

If the employee does not accept the allegations/ accepts allegations in part:

- Management Representative presents their case including witness information (where applicable); employee (or companion) may ask questions; Chairperson and/or adviser asks questions;
- Employee (or companion) presents their case including witness information; Management Representative may ask questions; Chairperson and/or adviser may ask questions;
- Management Representative provides a summary of disciplinary case
- Employee (or companion) presents summary of their case;
- Chairperson summarises their understanding of cases heard, asks employee/ their representative if they consider they have had a fair hearing and deals with any points which arise;

- Hearing is adjourned - Management Representative, employee and companion are asked to leave room;
- Chairperson considers decision with advice from HR adviser;
- Management Representative, employee and companion are asked to return and are advised by the Chairperson of their decision together with a brief explanation of future action to be taken;
- If disciplinary action is taken employee is advised of their right of appeal;
- Decision is confirmed in writing within 5 working days.

The Chairperson may decide it appropriate to provide the employee with their decision in writing only rather than reconvene the hearing for this purpose.

2.20.3 Decision Making Process

In reaching their decision at the end of a disciplinary hearing the Chairperson should review all the facts of the case. If the facts are disputed, a decision needs to be made as to which version is believed to be more likely to be true on the balance of probabilities. The chairperson should consider all the circumstances. There may be conflict between the evidence such as in the recollection of events. In these cases the chairperson may have to decide if they favour one version of events over the other. An assessment of the reliability and credibility of the evidence is a crucial part of the decision making process.

It may be that there is insufficient evidence to take disciplinary action, or it is concluded that on balance, such action is not appropriate. In such cases there may still be a recommendation that informal management action is taken to address issues raised during the hearing, e.g. for the employee's line manager to remind them of standards expected within the workplace.

If the allegations against the employee are considered to have been proven, consideration should be given to the following points before deciding on the appropriate disciplinary action.

- The seriousness of the incident
- The disciplinary action applied in similar cases
- Any mitigating circumstances
- That disciplinary action should be reasonable in all of the circumstances

Only when a decision has been made taking account of the above should the employee's current disciplinary record be considered in order to determine the appropriate level of warning to be given.

The HR adviser will be able to provide advice on the case, on precedent set in previous similar circumstances and on details of any relevant legal issues.

A note of the duration of the decision making process should be made.

If the Chairperson is unable to make a decision at the time of the hearing they have the following options: -

- Postpone the decision until further advice on the issues raised has been sought.
- Where further investigation is necessary the hearing may be adjourned for a period acceptable to both the Management Representative and the employee/their

representative but normally no longer than 20 working days, other than in exceptional circumstances. If necessary, the hearing may then be reconvened, to hear further evidence.

In exercising either of these options the Chairperson should consider all the circumstances including the nature and importance of the information to be investigated, why the information has not previously come to light, and the views of the parties. The need to establish the relevant facts should then be balanced with the consequential delay involved in the further investigation having regard to the overall fairness of the process.

In any of these circumstances, the employee should be advised of how the Chairperson intends to progress the case and whether they intend to reconvene the hearing or notify the employee of their decision, in writing, within the appropriate timescale.

2.20.4 Disciplinary Outcomes

If the Chairperson concludes that disciplinary action is necessary, a decision must be taken as to what level and type of disciplinary sanction is appropriate.

Disciplinary sanctions fall into the categories of either misconduct or gross misconduct as summarised below.

The action taken will depend on the degree of seriousness of the misconduct and the employee's current disciplinary record, whilst also taking account of precedent, and any other relevant factors. The sanctions available may be combined if considered necessary and appropriate to the circumstances of the situation. The range of sanctions is:

- Oral Warning
- Written Warning
- Final Written Warning
- Suspension without pay
- Disciplinary redeployment
- Loss of increment
- Dismissal

Misconduct

These are types of misconduct, which will normally result in disciplinary action short of dismissal being taken in the first instance. Where the employee has no current disciplinary warning on file the disciplinary action may take the form of an oral warning or a written warning.

As disciplinary warnings are cumulative, if the employee has a current warning on file, action taken in respect of further instances of misconduct could have the effect of leading to a final written warning being issued or to the employee being dismissed.

The following list is neither exclusive nor exhaustive but is indicative of the types of behaviour which will generally result in action short of dismissal being taken.

- Careless damage to Council Property
- Careless damage to property not belonging to the Council whilst engaged or purporting to be engaged on Council business
- Unauthorised absence from work

- Carelessness or negligence in carrying out the duties and responsibilities of the post
- Refusal to obey reasonable instructions or otherwise fulfil the contractual obligations of the post
- Abusive or threatening behaviour to any person whilst engaged or purporting to be engaged on Council business
- Less serious discriminatory acts or omissions contrary to, or inconsistent with, the principle of equality
- Less serious breach of safety rules
- Persistent bad timekeeping
- Persistent and unrelated short-term sickness absence
- Unauthorised disclosure of personal information in breach of Council policy and data protection legislation
- Breach of Falkirk Council's Smoking Policy
- Use of mobile phone while driving / requiring an employee to use a mobile phone while driving.

Gross Misconduct

In accordance with the Disciplinary Policy an employee should normally be given a final written warning regarding their conduct before dismissal is contemplated. There may be cases of gross misconduct where, because of the circumstances, dismissal is not considered appropriate. In these cases, alternative sanctions can be considered as at noted below. However, it should be noted that there may be cases of gross misconduct so serious that dismissal without notice is appropriate.

The following list is neither exclusive nor exhaustive but is indicative of the types of behaviour, which may be found to be gross misconduct and as such may result in dismissal.

- Serious breach of Standing Orders or Code of Conduct
- Failure to adhere to guidance on use of internet/e-mail
- Theft of Council Property or attempted theft
- Theft of Property not belonging to the Council whilst engaged or purporting to be engaged on Council business.
- Wilful damage or misuse of Council property or resources
- Wilful damage to or misuse of property or resources not belonging to the Council whilst engaged or purporting to be engaged on Council business.
- Physical or indecent assault on any person whilst engaged or purporting to be engaged on Council business.
- Grossly indecent, abusive or threatening behaviour to any person whilst engaged or purporting to be engaged on Council business.
- Fighting at work
- Wilful breach of specified safety rules
- Dishonest or fraudulent acts
- Wilful provision of false or misleading information or wilful non-disclosure of information, either during the recruitment process or in subsequent employment which materially affects the contract of employment.
- Wilful breach of confidentiality or abuse of authority vested in the post.
- Wilful non-disclosure of an interest, whether direct or indirect, in a contractual agreement between an agency and the Council.

- Criminal conviction/civil liability or other unacceptable conduct which renders the employee unsuitable for the duties and responsibilities of the post, whether or not the conduct occurred whilst on duty.
- Gross carelessness or negligence in carrying out the duties and responsibilities of the post.
- Serious discriminatory acts or omissions contrary to or inconsistent with equality or opportunity.
- Breach of Falkirk Council’s Drug & Alcohol Policy.
- Unauthorised use of Council property or property not belonging to the Council whilst engaged or purporting to be engaged on Council business.
- Breach of the Scottish Social Services Council Code of Conduct for Social Services Employees/ GTC/ PVG requirement
- Breach of Software Security and Licensing Policy

Length of warnings

Warnings will remain current as follows: -

Oral Warning	6 months
Written Warning	12 months
Final Written Warning	18 months

The date of issue of the warning will be the date of the hearing. Any new warning will run concurrently with an existing warning. Warnings will normally cease to be ‘live’ following the specified period of satisfactory conduct, and will therefore be disregarded for future disciplinary purposes. It may however be appropriate in certain circumstances to have regard to all past disciplinary action against the employee where their conduct is satisfactory during the period of the warning, but lapses shortly thereafter, for example within a maximum period of 8 weeks. If a pattern of misconduct is evident, the employee’s disciplinary record can be taken into account when deciding on the level of warning given.

Where the disciplinary sanction relates to a child/ adult protection issue it will remain on the employee’s personal file for the length of the warning, i.e. 6, 12 or 18 months, and will then be removed to be held in a disciplinary reference file thereafter. This sanction may be referred to as appropriate should a further similar disciplinary issue arise. A similar approach may be taken in exceptional circumstances when considering other allegations of equivalent seriousness.

Additional Sanctions

The following sanctions can only be issued in combination with a Final Written Warning and may be considered as an alternative to dismissal if appropriate in the circumstances:

- Suspension without pay
- Disciplinary redeployment
- Loss of increment

Suspension without pay

Suspension without pay should be for a reasonable period of time taking account of the circumstances of the case and the impact on the employee.

Disciplinary redeployment

This alternative sanction is dependent both on the acceptance of the employee and the success of the redeployment. If the redeployment is unsuccessful either because a suitable position cannot be identified or if a redeployment does not work (for whatever reason) then the disciplinary hearing would be reconvened to consider the position and a dismissal may result.

Loss of increment

Where an employee is due an increment this may be withheld until the next again date an increment would normally be applied.

Dismissal

Generally employees should be advised that they are dismissed in person on the day of the disciplinary hearing, in which case the date of dismissal will be the hearing date. In exceptional cases it may be necessary to notify the employee of the dismissal in the outcome letter in which case the dismissal will be effective from the date the letter is issued. If the date of dismissal is questioned at any point advice should be sought from Human Resources.

An employee who is dismissed due to an accumulation of previous warnings will be entitled to payment in lieu of notice and payment in lieu of outstanding annual leave.

An employee who is dismissed due to gross misconduct will normally lose their entitlement to pay in lieu of notice (although Services have the discretion to make this payment in exceptional circumstances) but will be entitled to payment for any annual leave outstanding at the dismissal date in accordance with the employee's conditions of service.

If the employee is a member of the Local Government Pension Scheme, there are provisions that allow the employer to recover monies from the individual's pension rights, and, in certain circumstances, to order forfeiture of pension rights. Advice on this matter should be sought from the Pensions Section if required and any such action recorded in the hearing outcome letter.

The Chairperson of the hearing is responsible for ensuring that a 'Termination of Employment' form is completed on line as soon as possible once the decision to dismiss has been made. Payroll should be advised verbally in advance of the form being sent to them in order to prevent any overpayment being made.

Notification of Disciplinary Outcome

The Chairperson is responsible for writing to the employee confirming the outcome within 5 working days of the hearing. The letter should be sent, on a private and confidential basis, both recorded delivery and first class post in order to ensure receipt.

The letter should cover the following areas:

- The date of the hearing/that it was in line with Falkirk Council's Disciplinary Policy/ who was present.
- The precise allegations against the employee for which they are being disciplined and whether they accepted or rejected the allegations.
- The summary of the case for and against the employee.
- The Chairperson's findings.

- The exact level of the warning, i.e. oral, first, or final, and how long it will remain on the employees record before it is disregarded. Any additional sanctions implemented.
- Any previous warnings which are currently “live” on the employee’s record that have been used in reaching this decision.
- What conduct or performance improvement is expected and the timescale within which this will be expected/ any other special requirements place on the employee.
- What future disciplinary steps may be taken if further disciplinary action is necessary during the period of the warning.
- In cases of dismissal – the date of dismissal, whether notice is payable/ the number of days/hours (if any) outstanding annual leave is to be paid, or excess taken to be reclaimed.
- The employee’s right to appeal/ to whom/ the timescales within which the appeal should be.

Copies of the letter should be sent to all of those present at the hearing, except for witnesses.

2.21 APPEALS AGAINST DISCIPLINARY ACTION

2.21.1 Notification of Appeal/ Who Hears the Appeal

Every employee has the right to appeal against disciplinary action taken against them and will be advised of this right at the end of the disciplinary hearing and in the letter summarising the outcome of the hearing. They will also be advised to whom the appeal should be addressed.

An appeal should be lodged by completion of a Notification of Appeal form (available from Human Resources) within 10 working days of receipt of the outcome letter (Appendix 6). On this form the employee should advise of the grounds for the appeal. If there is any dispute about whether or not an appeal has been received within the required timescales, guidance should be sought from Human Resources.

Appeals against oral and first written warnings should be addressed to the Director or Head of Service or equivalent and will be heard by a manager or Chief Officer.

Appeals against dismissals, final written warnings and alternative sanctions should be addressed to the Chief Governance Officer and will be heard by the Appeals Committee of the Council.

The Appeals Committee of the Council will hear appeals regarding all disciplinary decisions taken in respect of a Director or Head of Service.

Appeals which are received outwith the timescale will not be heard unless there are highly exceptional circumstances justifying the delay.

There may be cases arising from the same or similar incidents may be considered at a conjoined appeal hearing is appropriate. In such cases the letter inviting each employee to the hearing must make the intention to conduct the hearing in this way clear and ask the employee to state any objections they have to these arrangements. The exact process to be followed in such situations will depend on the circumstances of the case, however in

general all parties may attend the same hearing with their companions but all would be given the opportunity to present mitigation in private.

The Chairperson of the disciplinary hearing will normally present management's case at the appeal hearing and will be given a copy of the employee's Notification of Appeal form in order that they can prepare their response.

The appeal hearing will normally be held within 20 working days of receipt of the appeal against oral and written warnings and within 30 working days for an appeal against dismissal, final written warnings and additional sanctions. The appeal will normally be a review of the disciplinary hearing and its outcome rather than a re-hearing.

An adviser from Human Resources will attend all appeal hearings. In complex cases, the Chairperson may make a specific request for a legal representative to attend the hearing to provide advice and support where necessary. In addition, a Legal Adviser will provide guidance to the Appeals Committee.

In the case of appeals against dismissal, final written warnings and alternative sanctions, both the Chairperson of the original hearing and the employee will be asked to provide a summary of their cases in advance of the Appeal Committee in accordance with normal committee timescales in order that they can be forwarded to the Committee prior to the hearing.

2.21.2 Arranging an Appeal Hearing

Detailed guidance on the hearing arrangements and process is attached at Appendix 7 and template letters are available from Human Resources.

The Appeal Chairperson is responsible for making arrangements for the hearing, including distributing papers and arranging for the management representative (Chairperson of the disciplinary hearing) and HR adviser to attend. Administration Services will assume these responsibilities for appeals heard by the Appeals Committee of the Council.

With regard to circulating papers, as appropriate the Chairperson must ensure papers are distributed as follows:

- HR adviser and the Management Representative receive the employee's appeal submission and any supporting papers at least 3 days in advance of the hearing;
- HR adviser receives a copy of the outcome letter from the disciplinary hearing; and,
- Employee and HR adviser receive any papers submitted on behalf of management's case at least 3 days in advance of the hearing.

The employee must be given at least five working days' notice of the hearing.

The employee is responsible for arranging a companion of their choice.

Should either the management representative or employee or their representative, wish to call relevant witnesses at the hearing it is their responsibility to make arrangements with the witnesses but they must advise the Chairperson at least 3 working days in advance of their intention in this regard.

2.21.3 Appeal Hearing Process

The Chairperson is responsible for ensuring that the hearing is conducted fairly and in accordance with the Disciplinary Policy. Appendix 7 and Flowchart C should be followed in this regard.

Adjournments can be requested by anyone in the room, but the Chairperson is responsible for deciding whether the request is appropriate. The start and finish times of any adjournment should be recorded. In exceptional cases the Chairperson can decide to postpone a hearing. Such a decision should be confirmed in writing, giving the reasons for the postponement and when the hearing will be reconvened. Where necessary the hearing may be adjourned to allow the Chairperson to seek legal advice on specific points/ issues raised.

If there are any questions about either the procedures being adopted or about the allegations to be considered, these should be handled at the start of the hearing. If there is any continuing disagreement, the Chairperson should make their decision as to how to proceed, in consultation with their adviser as necessary. Those present should then be advised what has been decided, why and the decision recorded.

Any witnesses attending the hearing will be called on an individual basis by the person whose case they are supporting and will remain in the room only for as long as they are presenting their evidence/ answering questions.

If any new facts emerge during the hearing, the Chairperson has the option to postpone the hearing to allow for further investigation. The hearing should be reconvened at a mutually agreed date. This option should only be taken when it is in the interests of promoting fairness.

- Employee (or companion) presents their case, including witness information (if applicable); Management Representative may ask questions; Chairperson/Committee and/or HR adviser may ask questions.
- Management Representative presents their case including witness information (if applicable); employee (or companion) may ask questions; Chairperson/Committee and/or HR adviser may ask questions.
- Management Representative provides a summary of disciplinary case.
- Employee (or companion) presents a summary of their case.
- Chairperson summarises their understanding of cases heard, asks employee/ their companion if they consider they have had a fair hearing and deals with any points which arise.
- Management Representative, employee and companion are asked to leave room.
- Chairperson considers decision with advice from HR adviser.
- Management Representative, employee and companion are asked to return and are advised by the Chairperson of their decision together with a brief explanation of future action to be taken.
- Where applicable employee advised there is no further right of appeal in accordance with Disciplinary policy.
- Decision is confirmed in writing within 5 days.

The Chairperson may consider it appropriate to provide the employee with their decision in writing only rather than reconvene the hearing for this purpose.

2.21.4 Decision Making Process

In reaching their decision the Chairperson/Appeal Committee should review all the facts of the appeal and consider these in consultation with their HR adviser.

The decision will be one of the following:

- Uphold the employee's appeal
- Uphold the employee's appeal in part
- Not to uphold the employee's appeal

Once this decision has been reached consideration needs to be given to whether this impacts on the disciplinary sanction given at the disciplinary hearing. The Chairperson/Appeal Committee may conclude for example that although disciplinary action is justified the level of action taken is too harsh, in which case they could take the decision to substitute a lower warning. For example, they could overturn a decision to dismiss and substitute this with a final written warning.

Where a dismissal is overturned, the Management Representative at the Appeal Hearing is responsible for ensuring that appropriate arrangements are put in place to implement this decision and for resolving any matters arising in respect of payments to be made or to be reclaimed as a consequence. Human Resources can advise on this matter as appropriate.

2.21.5 Notification of Appeal Outcome

It is the responsibility of the Chairperson of the Appeal to write to the employee within 5 working days of the hearing confirming the decision made. Legal Services will assume this responsibility for appeals heard at Committee level and will prepare the letter in conjunction with the Committee Convener and the Human Resources Adviser to the Committee.

The letter should be sent both recorded delivery and by first class post in order to ensure receipt.

The letter should cover the following areas: -

- The date of the appeals hearing and the fact that it was in line with the agreed procedures.
- The reason the appeal was raised by the employee.
- Who was present and their role
- The decision of the Chairperson/ Committee concerning upholding or not upholding the appeal.
- What action will be taken as a result of this decision, e.g. remove a warning from the employee's record, substitute an alternative warning, confirmation of the warning on the employee's file and for what period.
- Where applicable, note there is no further right of appeal in accordance with the Disciplinary Policy.

Copies of the letter should be sent to the Management Representative and the HR adviser present. Where a disciplinary sanction remains in place a copy of the letter will be placed on the employee's file for the duration of the sanction. Where no disciplinary sanction is

in place all information relevant to the disciplinary matter will be removed from the employee's personal file, unless the matter is relevant to Child Protection matters as noted in Section 2.20.4.

3.0 MONITORING & REVIEW

The Head of Human Resources will review this policy as per the agreed Human Resources Policy Review timetable in conjunction with Service Directors and Trade Unions taking into consideration legislative amendments and best practice advice.

This Policy has been Equality Impact Assessed and no adverse impact has been identified.

Falkirk Council: Suspension Risk Assessment Toolkit

SUSPENSION GUIDANCE

Background

Services are at times frustrated at the suggestion that an employee should be suspended from their normal work environment prior to investigation. Whilst this clearly reduces all risk and protects all parties concerned, on occasions it can have an alienating effect on employees. In addition, it has a significant financial burden on the employing service.

There is no question that suspension is appropriate in serious child protection/ vulnerable adult issues, however Services consider some suspensions are not in all cases justified. Instead a preference has been expressed for professional judgement to be used in each case to determine the appropriate approach in order to minimise the impact on the employee and any associated financial implications.

Any suspension is a neutral act of no detriment and does not imply any guilt or blame and may arise in cases of Gross Misconduct. It is recognised that each situation should be managed on an individual basis, however this guidance seeks to provide additional information on issues that should be taken into account.

The ACAS code of practice on dealing with Disciplinary matters states that suspension may be necessary, for example:

- where relationships have broken down;
- in cases of gross misconduct;
- where there is a risk to an employee or company property, or responsibilities to other parties; or
- in exceptional cases, where there are reasonable grounds to suspect that evidence has been tampered with

Dealing with Allegations of Gross Misconduct

Once advised of a potential gross misconduct situation, the relevant Manager/Headteacher in consultation with the Head of Service and Human Resources, must determine whether suspension is appropriate in the circumstances.

Suspension should not be automatically applied, it must be viewed as a risk management strategy. It does not inevitably follow that an employee should be suspended simply because there are reasonable grounds for an investigation: there are other options open to an employer, including transfer of the employee. When determining whether it is appropriate for an employee to be suspended, the following should be considered:

- compromising the position of the Council, client or employee;
- the emotional, physical wellbeing of any employee or client;
- prejudicing the disciplinary investigation, ie if the employee could tamper with records.

The Manager/Headteacher must determine whether there is sufficient substance to the allegation to justify a period of suspension. Even where these questions have a positive response, suspension should be the last resort and alternative work locations or duties should firstly be considered.

The concept of gross misconduct is that the act has fundamentally breached the “root of the contract” (ie it would be impossible for the employer/employee relationship to continue) and this could therefore result in dismissal. Consequently, to allow the employee to continue working normally may signify that the organisation does not view the alleged contractual breach to be that significant. An employment tribunal may have difficulty accepting that the employee’s behaviour amounted to gross misconduct if the employer has failed to put in place any measure to avoid the alleged breach re-occurring (ie suspension).

In all cases where gross misconduct is alleged the line manager has a responsibility to ensure a similar act does not reoccur whilst the matter/incident is being investigated. During this period, appropriate control measures must be put in place. If following an assessment of the situation it is considered that there are no sufficient measures to avoid a possible repeat the employee must be suspended. Whilst professional judgement can be considered in these circumstances, this should in no way compromise the safety of vulnerable individuals or increase liability for the Council.

Risk Assessment

Any judgement taken, requires a formal risk assessment process to be undertaken, although this in itself may not provide a conclusive answer. Where professional judgement is being taken into account this will bring an element of subjectivity into the assessment. It should be noted that a long serving employee does not in itself prove innocence. Although it is recognised that some personal knowledge may be useful in coming to any decision as to the appropriateness of suspension, this should however not be the deciding factor as it is considered more robust to make any decisions on the basis of evidence available and this additional information should not be used to prejudice any decision. There are in fact cases where suspension has not been imposed, where it possibly should have and vice versa, however this is only clear following an investigation or police enquiry.

Any risk assessment would require to be undertaken by the relevant manager, rather than HR. This would be considered more appropriate, as the manager is closer to the working environment and may have knowledge of the employee and or pupils/clients involved. As the direct line manager may be directly involved in dealing with the situation, it may be more appropriate for a senior independent manager to undertake the risk assessment.

In most circumstances, suspension can more than often be for a considerably long period and therefore can have a serious long term impact on the individual employees and service provision. Although a decision is taken to suspend at the time of an incident, employees often return to their post when allegations cannot be substantiated. The length of the suspension can also be linked to the conclusion of the investigation or judicial process. The investigation and/or hearing can however proceed before the police conclude their investigation and before it proceeds to court, however the current approach taken generally waits for the full judicial process to conclude before commencing the internal investigation. It may be worth noting that other local Authorities manage these situations differently, with some councils proceeding at a much earlier stage. This may be an area worth considering which may indirectly reduce the length of suspensions and ultimately the impact on employees and Services.

PRACTICAL GUIDANCE

The employer should advise the employee of the reason for the suspension. Where possible, the employer should advise the employee of how long the suspension is expected to last, and update him or her as to the progress of the investigation. The employer should advise the employee if the investigation is delayed, and inform him or her of the reason for the delay, and what steps it is taking to ensure that it is completed as soon as possible. The employer should make clear to the employee that the suspension is not disciplinary action in itself, and that disciplinary action will not necessarily follow. The suspension should be lifted immediately if the circumstances of the case no longer justify it. It may be that the employee feels aggrieved by the period of suspension, therefore it is advisable for the employer to have a return-to-work meeting to enable the employee to discuss any concerns that he or she may have and allow the employer to address these concerns. The employer should assure the employee that the period of suspension has not affected his or her position, or continued employment, and that he or she will not suffer any future detriment as a result of the suspension.

It may be appropriate for it to keep the employee suspended until the disciplinary procedure is complete if the circumstances still justify it.

Falkirk Council: Suspension Risk Assessment Toolkit

Employee Details			
Employee Name		Employee ID	
Job Title		Work Location	
Allegation			
Description & date allegation raised			
Risk Assessment			
Is the matter considered Gross Misconduct	Yes/No		
Initial facts available			
Physical Evidence			
Source of evidence			
Corroboration/ Witnesses			
Professional views/opinions/history			
Response from Employee			
Police / SK Involvement			
Any other information			
How can the effect be minimised			
Nature of work	Does continuing in work: compromise the position of the Council, client or employee; affect the emotional, physical wellbeing of any employee or client; prejudice the disciplinary investigation, i.e. if the employee could tamper with records.		
Decision			
Suspension Considered appropriate	Yes/No – reason	Temp Redeployment considered appropriate	Yes/no – reason
Additional comments			

Review			
Line Manager		Liaison Officer	
Investigating Officer		HR Adviser	
Follow Up Notes			
Date			
Date			
Date			
Date			
Date			
Date			
Date			
Date			
Date			
Date			
Date			
Date			
Outcome			
Details of outcome including any disciplinary actions taken, support mechanism required and key dates:-			

GUIDELINE ON INVESTIGATION PROCESS

Preparation for an Investigation

When you have been asked to undertake a Disciplinary Investigation you should contact Human Resources to discuss the support you require in this regard.

Template letters are available from Human Resources.

Preparation is a key aspect of any investigation. By asking some of the following questions you should be able to establish a basis for gathering the facts:

- Who is involved?
- Where did it happen?
- When did it take place/is there a key time?
- What happened/is happening?
- How does this create a problem?

This information should help clarify the facts as well as the issues i.e. the rule or standard involved. It should also highlight any additional information you should be aware of at this point and enable a list of witnesses to be prepared, and the order in which they should be interviewed to be determined.

It is important to find out all the relevant facts promptly before memory fades and, where possible, to avoid the incident being discussed between witnesses. Subjective views on the incident are unlikely to be relevant. Be clear on the precise nature of the complaint.

The incident may involve another Service of the Council. In these circumstances all Services should provide as much assistance as possible to clarify any details connected to the incident.

At this stage you should begin to complete the Disciplinary Summary Sheet & Checklist, this will ensure that you have noted all of the information relevant to the alleged incident, and will form the basis of the investigation report, once the investigation is complete.

Once it has been decided who is going to be interviewed, a list of questions should be prepared. It is also important for a structure to be determined for the interview to help focus on the issue, and to ensure all the key areas are covered.

It is important to ensure that appropriate accommodation is available for investigation interviews and sufficient time allocated for each investigation meeting.

All those interviewed are entitled to 5 working days notice of their meeting and to be represented at the meeting. A meeting can be held earlier if the employee agrees and is able to access the companion they wish to attend with them.

The employee whom the allegations are against must be advised of the nature of the allegation in the letter inviting them to the investigation meeting, that this is a disciplinary matter and whether

the allegation may be considered to be misconduct or gross misconduct. They must also be advised of their right to be accompanied to the meeting.

If the employee is a trade union official the matter should be discussed with Human Resources and with the employee's consent a full-time representative of the union must be advised before the employee is interviewed.

Guidance on the interviewing of pupil witnesses/ children under 16 years of age and vulnerable adults is given at 4.

The Investigation Meeting

A checklist of items to be covered at investigation meetings is attached at Appendix 3.

Representation

If the employee arrives at the meeting without a companion, you must firstly confirm that they are aware of their right to be accompanied. If the employee advises that they are not, ask if they want to be accompanied. If the employee advises that they do not want to be accompanied, record the fact and proceed with the meeting.

Should the employee confirm that they do want to be accompanied, agree to adjourn the meeting in order that a companion can be arranged. Should the employee turn up at the meeting having not been able to arrange representation in time, again an adjournment should be agreed in order that the employee can organise suitable representation. Should the employee be unable to arrange for the representative of their choice to be available within acceptable timescales, it is reasonable to suggest that arrangements are made for a substitute in accordance with section 2.3 of the Disciplinary Policy.

Opening the meeting

The meeting opens with the Investigating Officer making introductions and explaining the purpose of the meeting and the format it will take.

The employee should be advised at the outset that a note will be taken of the meeting. The purpose of the note is to confirm a record of the meeting and to ensure that the facts have been recorded accurately. Interview start and finish times and also the times of any breaks should be recorded.

Witnesses must be advised that should the matter proceed to a disciplinary hearing the employee whom the allegations are against may be provided with a copy of the note of their meeting. They should also be advised that they may be asked to attend the hearing as a witness.

The employee under investigation must be reminded of the allegations made against them in sufficient detail for them to be able to explain their version of events.

Questioning

Ask for an outline of the details of the incident(s) including when and where it happened, who was involved and any other relevant details, then, if these have not been addressed already, ask your prepared questions.

Open questions should be used to probe areas, and leading questions (questions which suggest their own answer) must be avoided at all times.

Anything the employee wants to ask or add should be included in the notes of the meeting.

You may encounter a number of reactions, from passivity to distress to anger, but you should maintain a professional, non-judgmental approach. You may also find that the employee rejects or denies the allegations. Your role is to gather as much information as you can to inform the investigation report.

If necessary the meeting can be adjourned if the employee wants to discuss matters with their representative or feels the need to have a break, or if you wish to seek guidance from the Human Resources Adviser.

Closing the Meeting

At the conclusion of the meeting, the employee whom the allegations are against should be advised of the process to be followed thereafter and the anticipated timescale for the investigation. You should advise that it might be necessary to organise a further interview should additional information come to light during the rest of the investigation.

Once interviewed all those concerned should be thanked for attending and assisting in the investigation and asked not to discuss the matter with any other colleagues.

The employee should be issued the Disciplinary Equal Opportunities Monitoring Form either at the investigation meeting or with the investigation notes, and asked to return this to Human Resources. See Appendix 6. They should also be asked to complete Part 1 of the Disciplinary Summary Sheet at the investigation meeting.

In some circumstances, as a consequence of the information you have gained about a witness's involvement in, or knowledge of, the incident, it may be necessary to begin disciplinary proceedings in relation to that witness. Your Human Resources Adviser will ensure that you will deal with such circumstances appropriately.

INVESTIGATION INTERVIEW FORMAT

INTRODUCTION
<ul style="list-style-type: none"> ▪ Introductions ▪ Right to representation and, where appropriate, confirm that employee has waived right to written notice of this meeting. ▪ Outline allegations and possible consequences e.g. misconduct or gross misconduct ▪ Explain that you will conduct investigation, speaking to relevant witnesses and then submit report with recommendations as to whether there is a disciplinary case to answer. ▪ Confirm that a note of the meeting will be forwarded for approval/ amendment ▪ <u>For witnesses</u> – advise that the meeting note may be shared with other relevant individuals if matter progresses to a disciplinary hearing and indicate that they may be called as a witness at any disciplinary hearing. ▪ Explain that a recess can be called at any time during the course of this meeting
QUESTIONS (to be prepared in advance)
Empty space for questions
CLOSE
<ul style="list-style-type: none"> ▪ Confidentiality ▪ What happens next? – need to interview other witnesses, prepare report etc.

DISCIPLINARY INVESTIGATION

GATHERING INFORMATION FROM CHILDREN/PUPIL WITNESSES (UNDER 16 YEARS) & VULNERABLE ADULTS

Written Accounts

As soon as a manager becomes aware of an allegation/incident where there are witnesses who are under 16 years of age, if appropriate, given their age and abilities and the nature of the allegation made, the children should be asked to provide individual written accounts of what happened. Where appropriate, dependent on individual ability, a similar approach should be taken when an allegation concerns vulnerable adults.

These accounts can then be considered at the planning meeting and as part of any subsequent disciplinary investigation as appropriate.

The following guidance should be followed in these circumstances:

- Witnesses should be supervised when writing their statements by a senior member of staff who is not involved in the allegation in any way. This member of staff will normally then be excluded from undertaking the role of Investigating Officer or Chair of any disciplinary/appeal hearing resulting from the investigation.
- Witnesses should be asked to prepare the statements as soon as possible following the allegations being made.
- Witnesses should be asked to make statements at the same time but separated while doing so, eg, at separate desks in the same room. They should not be allowed to discuss what happened with each other or anyone else before writing their statement.
- Every effort should be taken to ensure that the account given is the personal recollection of each witness.
- Statements should be written in a private room, free from any external influence.
- Care must be taken not to suggest the member of staff's own views on the issue and witnesses only asked to describe what they saw/ heard in relation to the event under consideration – if anything.

The following pro forma should be completed by the member of staff supervising the provision of statements in order to record the circumstance under which the statements were given and the questions asked. This will be shared with the employee and their representative and included in the investigation report.

Record of Written Accounts Taken from Child/ Pupil Witnesses/Vulnerable Adults

Date: Start Time:/Finish Time.....

Venue:

Details of Witnesses (eg, name, age, class):

Witness 1.....

Witness 2.....

Witness 3.....

Witness 4.....

Witness 5.....

(continue on a separate sheet if required)

Question(s) asked:

.....
.....
.....
.....
.....

Supplementary questions asked/ clarification given:

.....
.....
.....
.....
.....

Any additional information/questions from witnesses/observations:

.....
.....
.....
.....

Supervising Member of Staff

Name: Designation.....

Signature:.....

Witness Interviews

Disciplinary investigation meetings with children or vulnerable adults will normally only be undertaken where no written account can be given due to either the witnesses' age or abilities, where the necessary information cannot be obtained from elsewhere, eg, from another witness or supporting evidence, or where clarification is required on the information provided.

In such circumstances, in the case of children, permission must be sought from the child's parent or guardian in advance of the meeting. In addition, children who are aged under 12 years' must be accompanied by a parent or guardian to the investigation meeting. Children aged 12 years and over will be asked to decide whether they wish to be accompanied by a parent or guardian or by another appropriate adult of their choice. A similar approach may be taken as appropriate in respect of vulnerable adults based on an assessment of individual needs.

A note of the meeting should be made in the same way as for other investigation meetings as noted in section 2.19.2. This note should clearly record:

- The start and finish time of the meeting;
- Those present;
- The questions asked and the responses given by the witness, including non-verbal responses (eg shake of the head).

The Investigating Officer must be careful not to ask leading questions and to give the witness the opportunity to explain in their own words what happened/ did not happen. The final note of the meeting should be issued to the witness or the accompanying parent/ guardian for checking and signing as appropriate in the circumstances.

DISCIPLINARY EQUAL OPPORTUNITIES MONITORING FORM (PRIVATE & CONFIDENTIAL) (This form should be completed by the employee and returned to Human Resources, Room 325, Municipal Buildings, Falkirk) Falkirk Council is committed to equality of opportunity for all – and to taking action to avoid discrimination. To support this commitment, the information noted below is monitored. Please therefore complete the following sections.	
PERSONAL DETAILS	
Name	Job Title
Service	Location
Home Address	
<p>WHAT IS YOUR ETHNIC GROUP? CHOOSE FROM SECTION A TO F</p> <p>A. White</p> <input type="checkbox"/> Scottish <input type="checkbox"/> Other British <input type="checkbox"/> Irish <input type="checkbox"/> Gypsy/Traveller <input type="checkbox"/> Eastern European (eg Polish) <input type="checkbox"/> Other (please specify)..... <p>B. Mixed or Multiple Ethnic Group</p> <input type="checkbox"/> Any mixed or multiple ethnic group <p>C. Asian, Asian Scottish, or Other Asian British</p> <input type="checkbox"/> Pakistani, Pakistani Scottish or Pakistani British <input type="checkbox"/> Indian, Indian Scottish or Indian British <input type="checkbox"/> Bangladeshi, Bangladeshi Scottish, or Bangladeshi British <input type="checkbox"/> Chinese, Chinese Scottish or Chinese British <input type="checkbox"/> Other (please specify)..... <p>D. African</p> <input type="checkbox"/> African, African Scottish or African British <input type="checkbox"/> Other (please specify)..... <p>E. Caribbean or Black</p> <input type="checkbox"/> Caribbean, Caribbean Scottish or Caribbean British <input type="checkbox"/> Black, Black Scottish or Black British <input type="checkbox"/> Other (please specify)..... <p>F. Other Ethnic Group</p> <input type="checkbox"/> Arab, Arab Scottish or Arab British <input type="checkbox"/> Other (please specify).....	<p>WHAT IS YOUR RELIGION/ BELIEF?</p> <input type="checkbox"/> Buddhist <input type="checkbox"/> Church of Scotland <input type="checkbox"/> Hindu <input type="checkbox"/> Humanist <input type="checkbox"/> Jewish <input type="checkbox"/> Muslim <input type="checkbox"/> None <input type="checkbox"/> Other Christian <input type="checkbox"/> Sikh <input type="checkbox"/> Pagan <input type="checkbox"/> Roman Catholic <p>DO YOU CONSIDER YOURSELF TO HAVE A DISABILITY?</p> <input type="checkbox"/> Yes <input type="checkbox"/> No <p>WHAT IS YOUR SEXUAL ORIENTATION?</p> <input type="checkbox"/> Bisexual <input type="checkbox"/> Gay <input type="checkbox"/> Heterosexual/ Straight <input type="checkbox"/> Lesbian <p>HAVE YOU EVER IDENTIFIED AS A TRANSGENDER OR TRANS PERSON?</p> <input type="checkbox"/> Yes <input type="checkbox"/> No <p>EMPLOYEE SIGNATURE:.....</p>

Oral Warning	<input type="checkbox"/>	Loss of Increment	<input type="checkbox"/>
Written Warning	<input type="checkbox"/>	Dismissal with Notice	<input type="checkbox"/>
Final Warning	<input type="checkbox"/>	Dismissal without Notice	<input type="checkbox"/>
Comments:			

NOTES

- **If no disciplinary action is taken, advise the employee accordingly.**
- **If disciplinary action is taken, issue the employee with the appropriate standard letter via Recorded Delivery and first class post.**
- **If disciplinary action is taken, consider whether the Professional Body need to be advised or Scottish Ministers in respect of Protection of Vulnerable Groups Act.**
- **A copy of this completed form, together with a copy of the letter to the employee and any other relevant papers must be sent to Human Resources.**
- **When completed this form should be stored in the employee’s personnel file together with relevant papers for the period of any disciplinary warning or, if no action is taken, this information should be confidentially destroyed.**

DATE EMPLOYEE ADVISED OF HEARING OUTCOME IN WRITING

Date: Registered Post Reference:

PROFESSIONAL BODY ADVISED IN WRITING

Is there a requirement to advise the appropriate Professional Body?
Yes **No**

Date notification sent:

DISCIPLINARY INVESTIGATION REPORT

Part 3 (this to be completed by the Investigating Officer and must be accompanied by Parts 1 & 2 - Disciplinary Summary and Checklist)

BACKGROUND INFORMATION

A brief summary of the circumstances surrounding the disciplinary matter e.g. who it was reported to, what happened, where did it happen, who was involved and outline of the investigation process.

DETAILS OF THE ALLEGATION

What standard is alleged to have been breached, why is it considered to be a disciplinary matter? Could this be considered as misconduct or gross misconduct in accordance with the Disciplinary Policy?

CHRONOLOGY OF EVENTS

When did the incident and any other relevant events occur? Dates of meeting with employees/witnesses. List appendices e.g. timesheets, absence records and copies of investigation statements, which are attached.

SUPPORTING EVIDENCE

Consideration of evidence collected during the investigation, quoting and analysing relevant sections of appendices as appropriate, explaining how you have reached the conclusion and recommendations noted below.

MITIGATING CIRCUMSTANCES

Any information which the employee or a witness may have provided, in mitigation for or against the allegation. Also note any evidence which counters this mitigation.

CONCLUSIONS/RECOMMENDATIONS

Summary of the conclusions reached on the investigation and recommendations made. For example, formal disciplinary hearing for either, misconduct or gross misconduct, no further action or informal action.

GUIDELINE ON DISCIPLINARY HEARING PROCESS

Preparation for a Hearing

Template letters are available from Human Resources

The employee concerned should be given at least five working days notice in writing of the hearing and the venue, and will also be informed in the same letter of:-

- the fact it will be a formal disciplinary hearing;
- the nature of the allegation(s) with sufficient details, including the provision of statements by witnesses and any other relevant background information;
- the potential outcomes i.e. whether it is considered misconduct or gross misconduct, whether dismissal is a possibility;
- that witnesses may be present to give evidence at the hearing in support of the allegations;
- the composition of the hearing panel and who will present Management's case;
- the right to call witnesses or submit statements or other documentation in response to the allegations subject to the names of any such witnesses and/or any written submissions being provided at least 3 working days in advance to the chairperson of the hearing; and
- their right to be accompanied at the hearing by a companion of their choice.

It is the responsibility of the Chairperson to ensure that papers to be referred to in support of Management's case are provided to the employee and hearing HR adviser at least 3 working days in advance of the hearing and to distribute any papers submitted by the employee to the Management Representative and hearing HR adviser in advance of the hearing.

It is recommended that the hearing is arranged as soon as possible after the conclusion of the investigation, and the employee should be advised in writing within two weeks of receipt of the investigation report of the hearing arrangements. If key parties are unavailable on the arranged date, timescales can be revised with the agreement of both management and employee.

The Chairperson of the hearing is responsible for writing to the employee. The Management Representative and the employee who has allegation(s) made against them are responsible for contacting any witnesses they may wish to call during the hearing.

In advance of the date of the hearing, make sure that a room is available which is large enough to accommodate everyone in comfort and without interruption, make sure any phones are diverted. Separate rooms should also be designated for the employee, the Management Representative and any witnesses. These should be available both before and during the hearing in case of any adjournment.

The Chairperson is also responsible for organising an adviser from Human Resources to be in attendance. In complex cases, the Chairperson may make a specific request for a legal representative to attend the hearing to provide advice and support where necessary.

Convening a Disciplinary Hearing

Remember you are chairing the hearing. You are responsible for making sure that everyone behaves correctly, that everybody sticks to the point of the hearing and that everyone is given adequate opportunity to explain and offer comment as needed.

Hearing Procedure

Both the employee (and their companion) and the Management Representative should be invited into the room at the same time.

Welcome everyone. Introduce yourself and others, explaining everyone's role - particularly with reference to the HR adviser.

If the employee is not accompanied, ensure they are aware of the right in this regard they wish to be accompanied before the hearing begins. If they choose not to be accompanied this should be recorded and proceed with the hearing.

If the employee advises that they want to be accompanied, the hearing should be adjourned and the employee advised that the hearing may be rescheduled to another time which falls within five working days of the original date in order to allow the companion to attend.

If the employee is accompanied, check who will be presenting their case – ie the employee or their companion.

Once the hearing proceeds, the format should be clearly explained along with the allegations against the employee and their representative. Make a note of the time that the meeting starts.

If there are any questions about either the procedures being adopted or about the allegations to be considered, deal with them at the start of the hearing. If there is any continuing disagreement, tell those present what you have decided to do and why you have reached a particular decision. It is important to be clear and unambiguous and to record your decision.

In exceptional circumstances, it may be necessary to allow a postponement for a particular issue to be considered. If this happens, again make clear what you are doing, why you consider your actions are necessary and what further action is going to be taken.

Once any issues are addressed the hearing can proceed as follows:

Check whether the employee accepts the allegation(s).

If the employee accepts the allegation(s) in full the following process will be followed:

- Ask the Management Representative to provide an outline of the case for your information;
- Ask the employee for any explanation and/or details of any mitigating circumstances;
- Ask all parties (except HR adviser) to leave the room to allow you to consider whether you can come to a decision on what further action, if any, is required;

- Reconvene the hearing and advise the employee of your decision/ or advise you will notify of your decision in writing rather than reconvene for this purpose.
- Confirm your decision in writing within 5 working days.

You may find that the employee accepts the allegation(s) but provides mitigating circumstances relating to an alcohol or drugs problem. In such circumstances the requirements of Falkirk Council's Drug & Alcohol Policy should be considered, but a decision on the disciplinary case being heard may still be reached.

If the employee does not accept the allegation(s) in full the following process will be followed:

Management Representative presents their case

There may be witnesses called to provide information.

Witnesses will only be called into the hearing one at a time and will be asked to leave once they have given evidence. Each witness should be given the time needed to explain their part in the incident(s) and to answer any questions asked by the Management Representative.

The employee or their companion will then be given the opportunity to ask questions.

Don't allow long rambling statements to be made before the question is asked. Don't allow both the employee and the representative to ask questions – it should normally be one or other. You must, however, ensure fairness and consistency throughout the hearing.

Once the employee has finished asking questions, you are entitled to ask questions. Remember you are going to make the final decision, so make sure you are clear about what is being said. Your decision is going to be based solely upon what is said during the course of the hearing and upon any written evidence provided.

Once a witness has finished giving information, thank them for their help and remind them that the content of the hearing should not be discussed with any other witnesses. If you are concerned about the possibility of collusion make sure each witness leaves the general area of the hearing.

On some occasions, it may be necessary to ask a witness to remain available, in case there is a need to recall them.

This process is repeated until all witnesses are heard. The Presenting Officer should be asked if they wish to present any further facts on the case.

Employee/their companion presents their case

Once the Management Representative has fully explained their case, it is the turn of the employee their companion to present their case. The format is exactly the same as that for the Management Representative.

Summary Statements

Once everyone has been given an adequate opportunity to explain their version of events, the hearing is concluded by asking first the Management Representative and then the employee/ their companion to offer a brief summary of their respective cases. There should be no new evidence at this stage.

Conclusion

Provide a summary of the allegations and the main points of the cases presented.

Ask the employee if they believe they have been given a fair and reasonable opportunity to present their case and respond to the allegations. If the response is “no” then you have to ask for a further explanation and take the stated concern into account when considering your decision. If the procedures have been followed this is unlikely to happen. If it does, deal with the point if possible, there is normally no opportunity to rehear the case or allow new/further information to be stated unless in exceptional cases. The position should be noted in case further action is necessary at a later stage.

The hearing is then adjourned to allow you as the Chairperson to come to your decision. Remember to make a note of the time the adjournment starts. Where necessary the hearing may also be adjourned to allow the Chairperson to seek legal advice on specific points/ issues raised. It may be appropriate for you to advise you will notify of your decision in writing rather than reconvene for this purpose.

Reconvening the Hearing

Clearly advise the employee of your decision and any disciplinary action you will be taking.

Advise the employee of the reasons why you have come to your decision and, where appropriate, what changes in behaviour are expected of them.

Where you have given the employee a warning, explain to them how long this will remain on their record. Advise them of the way in which any further disciplinary action may affect them.

Ensure that the employee is aware of their right to appeal against your decision and that this must be done within 10 working days of receiving the written confirmation of your decision. You should also advise who the appeal should be made to.

As a final point thank everyone for their attendance.

DISCIPLINARY PROCEDURES

NOTIFICATION OF APPEAL

N.B if completing by hand please do so clearly and in black ink.

If you require any assistance in completing this form, please contact Human Resources.

PERSONAL DETAILS

Name	Designation
Service	Location
Home Address	
Contact Telephone No	

TRADE UNION DETAILS

Name of Trade Union		Trade Union or other representative	
Contact Number for Trade Union or other representative		Will representative represent you at appeal?	YES / NO
Who should be contacted to organise availability?			

NB. You are advised to contact your Trade Union before submitting this form

Disciplinary Action Taken (Tick Appropriate Box)

Dismissal	Suspension Without Pay		Loss of Increment	Disc. Redpl.	Final Warning	Written Warning	Oral Warning
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Grounds of Appeal

I wish to appeal against

(a) The decision to discipline me	<input type="checkbox"/>
(b) The level of disciplinary action taken against me	<input type="checkbox"/>

Tick appropriate box

Please state fully the grounds of the appeal, using either Page 2 or Pages 3 & 4 of this form.

Signature _____ Date _____

Grounds of Appeal (Optional Guide)

You may state your grounds of appeal, in your own words, on page 2 of this form, alternatively if you wish, you can use the following list of questions as a guide and make the appropriate responses.

1. Do you admit or deny the offence for which disciplinary action was taken against you, as was explained at the disciplinary hearing?

2. If you admit the offence, but wish to submit an explanation of your conduct, or provide a statement in mitigation, please do so below.

3. If you deny the offence, please give your version of the incident.

4. If you wish to submit additional evidence not considered at the disciplinary interview, please do so together with clarification of why it was not previously raised.

Grounds of Appeal

5. If you dispute the Management's reasons for disciplinary action please state what in your opinion was the reason for the action taken against you.

6. If you consider the form of disciplinary action against you excessive, please give reasons.

7. Any other comments?

Appeal Against:-

Oral/Written/

When completed send to:-
Head of Service
(or other officer as indicated in your letter)

Final Written Warnings/ Additional Sanctions/
Dismissal

When completed send to:
Chief Governance Officer
Chief Executive's Office
Municipal Buildings
Falkirk, FK1 5RS.

For official use only

COMMITTEE SERVICES

Date Received:

Date letter issued
following disciplinary
hearing:

Manager & HR
Advised:

In accordance with the Data Protection Act 1998, you are advised that this information will be retained on file and used for Human Resources purposes, including legislative obligations to monitor in terms of ethnicity, gender, age and disability.

GUIDELINE ON DISCIPLINARY APPEAL HEARING PROCESS

Preparation for an Appeal Hearing

The employee who has raised the appeal and the Management Representative (Chairperson of the original hearing) should be:

- Advised of the arrangements at least 5 days in advance of the hearing.
- Informed who is conducting the hearing and that a HR adviser will be present.
- Asked to provide the names of any witnesses they may wish to attend.

The Management Representative should also be provided with a copy of the employee's letter of appeal.

The employee should also be advised of their right to be accompanied at the hearing.

The Appeal Chairperson must be advised of any witnesses the Management Representative or the employee would wish to be present at the hearing, as early as possible and in any event 3 days prior to the hearing. The Appeal Chairperson will notify the parties of any witnesses who are due to be called.

It is the responsibility of the Appeal Chairperson to make all necessary arrangements, including ensuring that appropriate accommodation is available and that an HR adviser has been asked to attend. In complex cases, the Chairperson may make a specific request for a legal representative to attend the hearing to provide advice and support where necessary.

Convening an Appeal Hearing

Remember you are chairing the hearing. You are responsible for making sure that everyone behaves appropriately, that everybody sticks to the point of the hearing and is given adequate opportunity to explain and offer comment as required.

Hearing Procedure

Both the employee (and their companion) and the Management Representative should be invited into the room at the same time.

Welcome everyone and introduce yourself and others, explaining everyone's role.

If the employee is not accompanied, ensure they are aware of their right in this regard and ask if they wish to be accompanied before the appeal hearing begins. If they choose not to be accompanied, this should be recorded and proceed with the hearing.

If the employee advises that they want to be accompanied, the hearing should be adjourned and the employee advised that the hearing may be rescheduled to another time which falls within five working days of the original date in order to allow the companion to attend.

If the employee is accompanied, check who will be presenting their case – i.e. the employee or their companion.

Clearly explain the format of the hearing. If there are any questions about the procedures being adopted deal with them at the start of the hearing. If there is any continuing disagreement advise those present of your decision and why it has been reached. It is important to be clear and unambiguous and to record your decision. If it is then appropriate proceed with the actual hearing.

In exceptional circumstances, it may be necessary to allow a postponement or to refer the appeal hearing for a decision by someone else. If this happens, again make clear what you are doing, why you consider your actions are needed and what further action is going to be taken.

Ideally, there should be no new facts at the appeal, but it may be necessary to consider these in the interests of fairness. You should ask whether these facts were available to the original hearing and if so, why they were not brought to the attention of the Chairperson.

Employee presents their case

The employee presents their grounds for appeal and may present witnesses in support of their case.

Witnesses will only be called into the hearing one at a time and will be asked to leave once they have given evidence. In some instances it may not be necessary for all or any of the witnesses to be called. Each person should be given the time needed to explain their part in the incident(s) and to answer any questions asked by the Management Representative).

Don't allow long rambling statements to be made before the question is asked

Once the Management Representative has finished asking questions, you are entitled to ask questions. Remember you are going to make the final decision, so make sure you are clear about what is being said. Your decision is going to be based solely upon what is said during the course of the hearing and upon any written evidence provided.

Once a witness has finished giving information, thank them for their help and remind them that the matters of the hearing should not be discussed with any other witnesses. If you are concerned about the possibility of collusion make sure each witness leaves the general area of the hearing – except where you consider it may be necessary for a witness to be called at a later point.

This process is repeated until all witnesses are heard. The employee (or companion) should be asked if they wish to present any further facts on the case.

Management Representative presents their case

Once the reason for the appeal has been fully explained by the employee (or companion), it is the turn of the Management Representative to present their case. The format is exactly the same as that for the employee's case.

Summary Statements

Once everyone has been given an adequate opportunity to explain their version of events, the appeals hearing is concluded by asking first the Management Representative and then the employee/ their companion to offer a brief summary of their respective cases. There should be no new evidence at this stage.

Conclusion

Provide a summary of the reason for the appeal and the main points of the cases presented.

Ask the employee if they believe they have been given a fair and reasonable opportunity to present their case. If the response is “no” then ask for a further explanation and take the stated concern into account when considering your decision. If the procedures have been followed this is highly unlikely to happen. If it does, deal with the point, but do not rehear the case or allow new/further information to be stated. Just note the position in case further action is necessary at a later stage.

The hearing is then adjourned to allow you as the Appeal Chairperson or the Committee to come to a decision on the appeal. Remember to make a note of the time the adjournment starts. Where necessary the hearing may also be adjourned to allow the Chairperson to seek legal advice on specific points/ issues raised.

You may consider it appropriate to advise the employee of your decision in writing rather than reconvening for this purpose.

Reconvening the Hearing

Clearly advise the employee of your decision, ie, whether the appeal is upheld/ not upheld/ upheld in part.

Advise the employee of the reasons why you have come to your decision and if you have not upheld their appeal or have substituted a lower warning advise how long the disciplinary warning will remain on their record.

Ensure that the employee is aware they have no further right of appeal in accordance with the Disciplinary Policy.

Note that your decision will be confirmed in writing within 5 working days of the hearing.

As a final point thank everyone for their attendance.

APPROVED CHANGES TO DISCIPLINARY POLICY - AUGUST 2019

REPLACING SECTION 2.5 – 2.6.1

2.5 WHERE A POTENTIAL DISCIPLINARY MATTER ARISES

Where a potential disciplinary matter arises, the manager who becomes aware of the issue should consider what steps are appropriate to progress the matter as outlined below. Care should be taken to ensure that a consistent approach is taken and Human Resources can provide advice on precedent in this regard.

2.5.1 Is there a disciplinary matter?

If it is not clear whether the issue is of a disciplinary nature, the manager may consider it appropriate to meet with the employee concerned on an informal basis to seek clarification on the matter. If the employee's response leads the manager to conclude that no disciplinary investigation is required no further formal action should be taken.

2.5.2 Informal Resolution

Issues relating to minor misconduct may be dealt with, at the early stages, through informal mechanisms with a view to seeking improvement in the employee's conduct. In such circumstances, the manager should meet with the employee concerned to :

- Explain where improvement is required ;
- Ensure that the employee understands what needs to be done to improve;
- Outline how their performance or conduct will be reviewed, and over what period.

This should be confirmed in writing. This letter will not constitute any form of disciplinary warning, but the employee should be made aware that if any further issues of a similar nature arise the letter may be used as evidence in any subsequent disciplinary investigation.

2.5.3 Repeated misconduct

If the issue of concern is a repeat of an action/ actions which led to a previous informal or formal action involving the same employee then the issue should be investigated on a formal basis.

2.5.4 Is the issue a capability matter?

Consideration should be given to whether the matter is a performance issue ('can't do') or a conduct matter ('won't do'/ is negligent in undertaking their duties). Where it is identified that the matter is a performance issue then this should be dealt with in line with the Council's Capability Policy.

2.5.5 Formal Investigation

There will be instances where the issue of concern is clearly potential gross misconduct for example, dishonest or fraudulent actions, assault or a serious breach of professional stances. In such instances, a formal investigation will be required.

Similarly, the employee's response during an initial informal meeting may raise concerns and lead the manager to consider that the matter requires to be formally investigated. In such instances, the meeting should be stopped and the employee advised that the matter will be investigated in accordance with the Council's Disciplinary Policy. Someone else will be required to undertake the role of investigating officer.

REPLACING PARA 2 OF SECTION 2.19.1

The investigation should commence as soon as possible in order that information can be obtained before memories fade and in order to minimise anxieties for those concerned. The investigation should be carried out as quickly as circumstances permit. If there is a delay in progressing the investigation, the employee should be advised in writing of the reason for the delay.

REPLACING PARA 4 OF SECTION 2.19.3.

The final report should be forwarded on a private & confidential basis to the manager who commissioned the investigation. Reports recommending gross misconduct hearings should be considered by a Service Manager or Chief Officer, whereas reports recommending misconduct may be considered at management level depending on the role of the employee under investigation.

REPLACING PARAS 2 & 3 OF SECTION 2.20.1

Where an allegation is considered as potentially amounting to gross misconduct the hearing must be chaired by a Service manager or Chief Officer and the employee advised in the letter inviting them to the hearing that the meeting could lead to their dismissal. Gross misconduct hearings for teachers must be chaired by either the Director of Childrens Services or a Chief Officer.

Hearings to consider allegations of misconduct may be considered at management level depending on the role of the employee under investigation. However if an employee has a live disciplinary warning on their file and a further misconduct allegation has the potential to lead to their dismissal the hearing must be convened by a Service Manager or Chief Officer and the employee advised that the hearing could lead to their dismissal in the letter inviting them to the hearing. Such hearings for teachers must be chaired either by the Director of Childrens Services or a Chief Officer.