

# Disciplinary Procedure



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## **1.0 Introduction**

- 1.1 This procedure sets out how the Council will deal with disciplinary matters so as to ensure that all employees are treated fairly and with respect. This procedure seeks to ensure that where an employee's conduct or behaviour falls below the standards expected by the Council, they will be dealt with in a fair, prompt and consistent manner.
- 1.2 This procedure has been developed in accordance with, and taking account of, the ACAS Code of Practice on disciplinary and grievance procedures, the guide that accompanies it and the rules of natural justice. In the event that this procedure is not explicit on a particular point, reference should be made to the ACAS Code and Guide.
- 1.3 This procedure should be read in conjunction with the Council's Disciplinary Standards and its Code of Conduct for Employees.

### **1.4 Application**

With the exception of those employees referred to below, this procedure is applicable to all Chelmsford City Council employees.

The following employees are not covered by this procedure:

- The Chief Executive, Monitoring Officer, Chief Finance Officer (Section 151 Officer) and Directors of Service – such employees come within the scope of separate disciplinary procedures set out by their JNC and:
- Employees who are within their probationary period who will be covered by the Probation and Internal Support Policy. Where a misconduct issue arises in relation to an employee within their probationary period the Council will deal with the matter in a fair and reasonable manner. In particular, the Council will not terminate the contract of the employee concerned without first giving them the opportunity to state their case.
- Casual workers are not covered by this policy but if any issues were to arise, they would be dealt with in a fair manner in line with the ACAS code of practice.

## **1.5 Matters falling outside the scope of the Disciplinary Standards & Procedure**

### **1.5.1 Ill Health**

With the exception of situations such as those described in the Council's Managing Health and Attendance Policy, matters relating to sickness and capability on the grounds of genuine ill health will normally be dealt with by that policy.

### **1.5.2 Performance/Capability**

Matters relating to performance/capability will normally be dealt with under the Council's Capability Procedure. A distinction must be made between situations where an employee's inability to perform the duties for which they are employed is outside their control (i.e. an essential skill is beyond their ability) and those where an employee consciously/deliberately fails to perform to the required standard. The latter should be dealt with under this procedure.

### **1.5.2 Grievances**

Complaints relating to an employee's conditions of employment or working conditions will normally be dealt with under the Council's Grievance Procedure.

**Copies of all the procedures/policies referred to above can be obtained via the Intranet or Employee Self Service.**

## **2.0 Informal Resolution**

- 2.1 The Council recognises that it is often more appropriate for isolated cases of minor misconduct to be dealt with informally by the employee's line manager/supervisor without invoking the formal stage of the procedure.
- 2.2 The aim is to draw the misdemeanour or failing to the employee's attention and achieve improvement by making clear the standard of conduct/behaviour that will be expected in the future. The employee should also understand the consequences of failing to meet that standard in the future. Such discussions should take place in private, unless it is necessary for the manager/supervisor to take immediate action (e.g. for health & safety reasons).
- 2.3 A record of the conversation, and any agreed objectives/behaviour should be kept by the manager and the employee should also receive a copy. An improvement notice should be used for this purpose (Appendix 1) and a copy sent to the Senior HR Business Partner. The conduct in respect of which the notice was issued should be reviewed with

the employee no longer than 6 months from the date which it was issued. If the required standard has been achieved and maintained, the Senior HR Business Partner will confirm to the employee that this will be disregarded for disciplinary purposes. However, where the required standard has not been achieved and maintained, formal disciplinary action should be commenced.

### **3.0 Mediation**

- 3.1 In some circumstances, issues of conduct may more appropriately be addressed by way of mediation. This involves the appointment of a third party mediator from either within or outside the Council, who will discuss the issues with all of those involved and seek to facilitate a resolution. Mediation will be used only when all parties agree to it.
- 3.2 Mediation is voluntary and will only take place by agreement. If any party refuses to take part, it will have no bearing on any formal process. If the parties agree to proceed with the mediation the process will take the following form:
- 3.3 Preliminary mediation meetings will be held individually. The person(s) appointed as mediator will meet each party separately in order to gain an appreciation of the main issue (s) and each party's own perception of the issues.
- 3.4 Following the preliminary meetings a full mediation meeting will take place, at which there will be discussion between all parties, with a view to facilitating a mutually acceptable way forward. In the event that the mediator considers that common ground has been established, and there could be a positive outcome, the mediator will facilitate the parties to come to an agreement. Each party will be invited to confirm their consent to the agreement.
- 3.5 If the issue is resolved through this process, the mediator will assist the parties to draft a written agreement which they will sign.
- 3.6 If the issue remains unresolved following this process, a duly authorised manager (see below) will decide whether action should be taken under the formal stages of this Procedure.

## **4.0 Formal Disciplinary Procedure**

### **4.1. Fairness and Equality**

In dealing with disciplinary matters, the Council, employees and their representatives should act promptly, consistently, and reasonably, having regard to the circumstances of the particular case.

Those responsible for applying this Procedure should ensure consistency with the requirement of Equalities legislation so that no one is disadvantaged or subject to any detriment. This could involve making adjustments so as to ensure anyone who is subject to disciplinary action receives a fair hearing. This may include, but is not limited to, providing interpreting services, the provision of information/evidence in alternative formats or changing the venues for hearings.

### **4.2. Investigation/Establishing the Facts**

Where an employee's conduct is called into question an investigation must be carried out to establish the facts, following which a decision can be made as to whether a disciplinary hearing should be convened. The method and extent of the investigation will depend on such factors as the nature, complexity and seriousness of the alleged misconduct. The investigation may involve the taking of written statements from other employees and outside parties (where appropriate) and an investigatory meeting with the employee concerned.

### **4.3. The Investigating Officer**

The investigation will normally be conducted by the employee's immediate line manager but may be conducted by another Senior Officer of the Council appointed by either the employee's Director of Service or the Chief Executive. An officer from another Service shall not be appointed as Investigating Officer unless their Director of Service is agreeable. Where the conduct in question relates to Council property or funds, Audit will be notified and may take part in the investigation process.

In some cases having regard to the circumstances of the case, the investigation may be carried out by a third party.

Every effort will be made to complete the investigation in a timely manner and once the Investigation Officer has completed their investigation, they will submit a written report to the employee's Director of Service (or another Director of Service appointed by the Chief Executive) who will decide if there is a case to answer (see 5.1 below).

#### **4.4. Suspension**

It may be appropriate to suspend an employee who is suspected of having committed misconduct (gross or otherwise) in the following circumstances:

- To enable investigations to be made, or continued, in cases where the nature of the suspected misconduct renders it inappropriate or undesirable for the employee to continue working pending the conclusion of the investigations and any subsequent disciplinary hearing.
- To protect the employee concerned, by facilitating full investigation and enquiry.
- Where relationships in the workplace have broken down.
- Where there is a risk to the employee, other employees, the Council and/or their property.
- In cases where gross misconduct is suspected
- Exceptionally, where there are reasonable grounds for concern that evidence has, or may be, tampered with or witnesses pressurised.

This list is not exhaustive.

Suspension may take place before any investigation has been carried out but should not be regarded as a disciplinary sanction or treated as an assumption of guilt.

The decision to suspend should only be made after careful consideration and will be made by the Director of Service in conjunction with the HR Services Manager (or in their absence, or where they are otherwise unable to act, by the Chief Executive).

Suspension will normally be carried out by the Service Manager and will usually be at the employee's normal rate of pay. Please note that arrangements for Occupational Sick Pay and absence reporting continue to apply during any period of suspension. The suspension will be confirmed in writing to the employee as soon as practicable.

Wherever practicable a member of HR will be present at the suspension meeting.

Any suspension should be regularly reviewed by the Director of the Service or HR Services Manager (or the Chief Executive, where the suspension was ordered by them) who may, at their discretion, lift the suspension before the conclusion of the investigation, or the outcome of any investigation hearing.

## **5.0 Formal Disciplinary Action**

### **5.1 Convening a Disciplinary Hearing**

Where there is a case to answer the employee will be required to attend a disciplinary hearing as soon as is reasonably practicable following completion of the investigation. Not less than 14 calendar days in advance of the hearing the employee must be notified in writing of:

- The date, time and place of the hearing
- The person who will conduct the hearing (see below)
- The nature and details of the alleged misconduct together with the possible sanctions (having regard to the allegation and the individual's disciplinary record)
- Their right to be accompanied at the hearing by a fellow worker, trade union representative or an official employed by a trade union, who may speak and ask questions on their behalf. Save where the matter in question might affect the employee's ability to continue practising their chosen profession, the employee has no general right to legal representation at a disciplinary hearing.
- The employee's right to call witnesses.

Annexed to the written notification of a disciplinary hearing will be:

- A copy of the investigation report and any other documentation that will be referred to in a hearing including any witness statements.

**At least 7 calendar days before the hearing the employee must:**

- Confirm with HR whether they are able to attend on the date in question.
- Provide HR with the name of their representative (if any), the name (s) of any witnesses they intend to call and a copy of the statement/s or documents they intend to produce at the hearing.

#### **Conducting Officer**

Having regard to the nature of the allegation and the employee's disciplinary record:

- Where the potential outcome of the hearing is a First Warning (see 5.4.1 below), it will be conducted by the employee's Service Manager
- Where the potential outcome of the hearing is a Final Warning or a dismissal (see 5.4.2 below), it will be conducted by either the employee's Director of Service or their Service Manager (under delegation from their Director of Service) depending on the circumstances of the case.

**Note:** Employees are entitled to a fair hearing including the right to be listened to patiently and courteously. It is a basic principle of natural justice that the person conducting the disciplinary hearing should not be biased, nor give the appearance of being so, or of having already determined the outcome of the proceedings or been involved in the investigation process. Equally it is undesirable that the person conducting the hearing should also be a material witness to the complaint.

In this regard there may be some cases where:

- The circumstances are such that it would not be appropriate for the officers above to conduct the hearing; and/or
- They are unavailable to conduct the hearing, and/or
- The employee works in a Service area that is managed by a manager who is not designated a Director of Service, but nonetheless reports directly to the Chief Executive.

In any of these given circumstances the Chief Executive will appoint a suitably experienced and senior officer to conduct the disciplinary hearing. Exceptionally, the Chief Executive may conduct the hearing themselves or appoint an external party to conduct the hearing.

## **5.2        Adjournment of the Hearing/Failure to Attend**

Where an employee is unable to attend the date originally fixed for the hearing because their chosen companion cannot attend, efforts will be made to agree an alternative date, provided it is reasonable and within 5 days of the original date.

Any other requests for adjournment will be considered having regard to the reasons for the request and the circumstances of the case. Other than in exceptional circumstances, no more than one adjournment will be permitted.

Where an employee who has been given notice of a hearing in accordance with this Procedure fails, without good reason, to attend, the conducting officer may proceed with the hearing in their absence. Alternatively, the conducting officer may adjourn the proceedings and ask HR to notify the employee of a new date.

## **5.3        The Disciplinary Hearing**

The purpose of the hearing is to establish the facts of the case and to allow the employee concerned the opportunity to respond to, and explain, any evidence against them and

fully state their case. The hearing will be conducted in accordance with the following principles and rules:

- 5.3.1 A representative of HR will attend all hearings. Their role is to advise the officer conducting the hearing and to ensure that it is conducted in accordance with this procedure.
- 5.3.2 Comprehensive notes will be taken of the hearing and its outcome. Such notes will be taken by the HR representative or another suitable person who will attend the hearing for this purpose only.
- 5.3.3 At the commencement of the hearing the employee will be reminded of the allegation/complaint made against them together with the possible sanctions (having regard to the allegation and the employee's disciplinary record). The officer conducting the hearing will also check to ensure that all parties understand the procedure to be followed at the hearing. The investigation officer will then (unless the officer conducting the hearing directs otherwise) present the case against the employee and call any witnesses.

**Note:** *In straightforward cases where the allegation against the employee is adequately set out in the investigation report, the conducting officer may, if they think it appropriate, ask the employee whether they dispute any of the facts. Where there is no dispute as to the facts the conducting officer may dispense with the formal presentation and the calling of witnesses by the investigating officer, and proceed directly to the next stage, as set out below.*

- 5.3.4 The employee or their representative shall have the right to question any of the Council's witnesses.
- 5.3.5 The employee or their representative will then be given the opportunity to put forward their own case.
- 5.3.6 The investigating officer shall have the right to question the employee and any of the witnesses.
- 5.3.7 The conducting officer may at any time during the course of the proceedings, put their own questions to the employee, the investigating officer, or any other witness.
- 5.3.8 In the event that previously undisclosed information is produced, which is relevant to the case, an adjournment may take place to allow such information to be considered and verified, and/or for advice to be taken as appropriate.
- 5.3.9 Once the conducting officer is satisfied that all parties have presented their case in full, the hearing will be adjourned to enable the conducting officer to deliberate

before coming to a decision. The employee will then be informed of the decision as soon as is practicable (this may be orally or in writing depending on the circumstances).

- 5.3.10 The conducting officer will only impose a disciplinary sanction where the allegation is admitted, or where they are satisfied that there has been an appropriate investigation and hearing, as a result of which they have formed a reasonable belief, based on reasonable grounds, that the employee has committed the act in question.

#### **5.4 Sanctions for Misconduct (See App 1 of the Disciplinary Standards)**

Any disciplinary sanction imposed will take account of the known facts, penalties applied in similar cases, the employee's disciplinary record and general conduct, and any mitigating circumstances, and should be appropriate to the offence committed.

##### **5.4.1 First Warning**

A first warning will normally be appropriate in a case which involves a single isolated incident of misconduct which is considered relatively minor in nature.

##### **5.4.2 Final Warning**

A final warning will be issued to an employee in the following circumstances:

- Where there has been insufficient improvement or further misconduct following the issue of a first warning, or
- Where the misconduct involved is sufficiently serious. For example, this might occur where the employee's actions have had/are liable to have, a serious or harmful impact on the organisation or another individual or property.

##### **5.4.3 Written Confirmation**

The outcome of the hearing, particularly any warnings issued, will be confirmed in writing as soon as reasonably practicable. The written confirmation will set out the nature of the misconduct, the change of behaviour required (with timescales as necessary) and the consequences of any further misconduct. It will also detail the employee's right of appeal. A copy will be sent to the employee and a copy retained on the personal file.

- **A first warning will remain active for 1 year;**
- **A final warning will remain active for 2 years.**

After which time it will be disregarded for disciplinary purposes but will be retained on the employee's record. In exceptional circumstances, the 'life' of a warning

may be varied having regard to the circumstances of the case and employee. Any such variation should only take place in consultation with HR.

#### 5.4.4 Dismissal of Employee

Circumstances in which an employee will be dismissed for misconduct (as opposed to gross misconduct) could include where there has been multiple misconducts or insufficient improvement or further misconduct following the issue of a final warning. Dismissal will be with notice or payment in lieu of notice and will be confirmed in writing by the Hearing Officer.

### 5.5 **Sanctions for Gross Misconduct (See App 2 of the Disciplinary Standards)**

Any disciplinary sanction imposed will take account of the known facts, penalties applied in similar cases, the employee's disciplinary record and general conduct, and any mitigating circumstances, and should be appropriate to the offence committed.

#### 5.5.1 Dismissal

Gross Misconduct which is substantiated at a disciplinary hearing will usually result in summary dismissal of the employee concerned. Summary dismissal means dismissal without notice or payment in lieu thereof.

#### 5.5.2 Final Warning

In **exceptional** cases, the conducting officer may exercise their discretion and issue a final warning as an alternative to summary dismissal. Such discretion will only be exercised where significant mitigating factors warrant it.

#### 5.5.3 Written Confirmation

Any sanction imposed in respect of a finding of gross misconduct will be confirmed in writing.

### 5.6 **Alternative Sanctions**

Subject always to consultation with HR, other sanctions may be imposed as an alternative to dismissal such as redeployment, demotion or loss of pay and they may only be applied with the employee's agreement. Any sanction imposed as a result of a disciplinary hearing will be confirmed in writing to the employee.

## **6.0 The Right of Appeal**

### **6.1 Right of Appeal**

An employee has the right of appeal against any disciplinary sanction as follows:

- First Warning**

An appeal against a first warning will be heard by a Director of Service appointed by the HR Services Manager

- Final Warning**

Where issued by a Service Manager, an appeal against the decision to issue a final warning will be heard by a Director of Service appointed by the HR Services Manager.

Where issued by a Director of Service, an appeal against a decision to issue a final warning, will be heard by another Director of Service as delegated by the Chief Executive.

- Dismissal**

Appeal against the decision of a Service Manager (under delegation) to dismiss will be heard by a Director of Service nominated by the HR Services Manager.

Appeal against the decision of a Director of Service to dismiss will be heard by the Chief Executive or by another Director of Service as delegated by the Chief Executive.

### **6.2 Notification of Appeal**

**An employee who wishes to appeal must submit their appeal in writing to the Council's HR Services Manager within seven calendar days of the date of the letter confirming the outcome of the disciplinary hearing.** That notification must include sufficient detail about the basis/grounds on which the employee is appealing as to enable the Council to understand/respond to the case being presented for consideration. An employee who fails to submit their appeal within the required form within this time period will lose their right of appeal unless, in the opinion of the HR Services Manager, they are extenuating circumstances (e.g. due to illness or bereavement).

**Note:** Notification may be made on the printed 'Notification of Appeal Against Disciplinary Sanction' form which will be enclosed with any letter confirming a disciplinary sanction. The use of such form is not obligatory, its sole purpose being to assist all parties (see Appendix 2).

## **6.3 Convening an Appeal Hearing**

- 6.3.1 On receipt of notification of an intention to appeal, the HR Services Manager will identify the appropriate person to hear the appeal as outlined in 6.1 above and arrange for an appeal hearing to be convened at the earliest possible opportunity. At least 14 calendar days in advance, HR will notify the employee in writing of the date set for the earning of their appeal.
- 6.3.2 At least 7 calendar days before the date of the appeal hearing:
- HR will provide the employee with a copy of any documents (including witness statements etc) that may be referred to or relied on at the appeal hearing.
  - The employee shall likewise provide HR with a copy of any documents (including witness statements etc) that they intend to rely on at the appeal hearing.

## **6.4 The Appeal Hearing**

- 6.4.1 The procedure set out in Appendix 3 shall apply to appeal hearings, modified as necessary.

- 6.4.2 The appeal will proceed by way of a review of the disciplinary sanction.

*In straightforward cases where the case against the employee is adequately set out in the documentation the officer conducting the appeal hearing, may, if appropriate, ask the employee whether they dispute any of the facts. Where it becomes clear there is no such dispute, and the employee is simply appealing on the basis that the actual disciplinary penalty imposed is too severe, or inappropriate having regard to mitigating circumstances, the officer conducting the hearing may dispense with the formal presentation of the case and the calling of any witnesses. Instead, they may adopt a more informal approach and shall give the employee and the Council's representative the opportunity to make any such representations, before determining the matter.*

- 6.4.3 At the conclusion of the process the appeal will be determined successful or rejected.

- Where an appeal against the severity of the warning is successful, it may be reduced having regard to the grounds of the appeal, the circumstances of the case, and section 5.4 above.
- Where an employee successfully appeals against the sanction of dismissal, they will be reinstated immediately. Having regard to the grounds of the appeal and the circumstances of the case, a Final Written

Warning may be substituted as the appropriate sanction, and/or reinstatement may be to a different position by way of redeployment/demotion in agreement with the employee and will be backdated to the date of the dismissal. In addition, the employee shall be treated as having been at work during the period commencing with the date of dismissal to the date of the reinstatement and shall be entitled to any back pay on that basis.

- 6.4.4 The outcome of the appeal hearing will be confirmed in writing. Where the appeal is successful and the employee is effectively acquitted of the original misconduct, all correspondence relating to the disciplinary action will be removed from the employee's file.
- 6.4.5 There will only be one level of appeal, as set out above.

## **6.5 Adjournment of the Appeal Hearing/Failure to Attend**

Where an employee is unable to attend the date originally fixed for the appeal hearing because their chosen companion cannot attend, efforts will be made to agree an alternative date, provided it is reasonable and within 7 calendar days of the original date. Any other requests for adjournment will be considered having due regard to the reasons for the request and circumstances of the case. Other than in exceptional circumstances, not more than one adjournment will be permitted.

Where an employee who has been given notice of an appeal hearing in accordance with this procedure fails, without good reason, to attend, the conducting officer may at their discretion:

- Treat the employee's appeal as having been withdrawn OR
- Adjourn the appeal hearing to a new date to be subsequently arranged by HR.

# **7.0 The Chief Executive**

## **7.1 Intervention Powers**

The Chief Executive may, in any case where they consider it appropriate to do so, take one or more of the following actions:

- 7.1.1 Suspend any employee(s) suspected of misconduct or gross misconduct.

- 7.1.2 Appoint a suitably experienced and senior officer, or external party to be Investigating Officer (see 4.3 above)
- 7.1.3 Appoint a suitably experienced and senior officer to determine whether (having regard to the Investigating Officer's report) there is a case to answer.
- 7.1.4 Appoint a suitably experienced and senior officer to conduct the disciplinary hearing.
- 7.1.5 The Chief Executive may direct that an appeal against the issue of a first warning may be heard by them personally.

***Explanatory note to section 7***

*It is envisaged that the Chief Executive would exercise these powers in exceptional cases only, that is to say:*

- (a) *Disciplinary cases which are particularly sensitive or controversial e.g. where there is media interest.*
- (b) *Disciplinary cases where the circumstances are such that it is not possible or appropriate for the Director of Service to exercise their disciplinary roles e.g. where both the Director of Service are not available, and the employee wishes to appeal against the first warning.*

## Appendix One – Improvement Notice

### IMPROVEMENT NOTICE

| ISSUED TO    |  |
|--------------|--|
| Name         |  |
| Job Title    |  |
| Service Area |  |

| ISSUED BY    |  |
|--------------|--|
| Name         |  |
| Job Title    |  |
| Service Area |  |

| Reason for Improvement Notice:   |  |
|--|--|
| <p>This improvement notice has been issued for the following reason:<br/>(Tick the appropriate reason and give further details below).</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Not wearing an item of PPE.</li><li><input type="checkbox"/> Time keeping.</li><li><input type="checkbox"/> Not following a work instruction.</li><li><input type="checkbox"/> Unsafe working practice.</li><li><input type="checkbox"/> Failure to follow the correct absence reporting procedure.</li><li><input type="checkbox"/> Failure to report damage to a Council vehicle.</li><li><input type="checkbox"/> Failure to report damage to Council or third party property.</li><li><input type="checkbox"/> Repeated missed collection/s</li><li><input type="checkbox"/> Incorrect replacement of receptacles.</li><li><input type="checkbox"/> Inappropriate behaviour towards a member of public or Council employee.</li><li><input type="checkbox"/> Careless/reckless driving.</li><li><input type="checkbox"/> Not adhering to a risk assessment.</li><li><input type="checkbox"/> Smoking in a Council vehicle or on Council premises except in a designated area (this includes e-cigarettes).</li><li><input type="checkbox"/> Other.</li></ul> |  |

| Date & Time of Incident: |
|--------------------------|
|                          |

| Details of the Incident/Infraction: |
|-------------------------------------|
|                                     |

|  |
|--|
|  |
|--|

|                             |
|-----------------------------|
| <b>Instructions issued:</b> |
|                             |

|  |
|--|
| <b>Purpose of Improvement Notice:</b>  |
| The aim of this improvement notice is to communicate the standards required and encourage employees to meet these standards. This does not form part of the formal disciplinary procedure but will be kept on your personnel file and if further incidents arise may be taken into consideration should formal action be taken or in deciding whether formal action should be taken. If you have any concerns about this report, you should raise this with your manager or Human Resources as soon as possible. |

|   |
|---|
| <b>Duration of Improvement Notice:</b>                              |
| This improvement notice is valid for 6 months from the date issued. |

|  |  |
|--|--|
| <b>This Improvement Notice has been issued by:</b> |  |
| Name   |  |
| Signature  |  |
| Date   |  |

| <b>This Improvement Notice has been issued to:</b> |  |
|--|--|
| Name   |  |
| Signature  |  |
| Date   |  |

## Appendix Two – Appeal Proforma

### NOTIFICATION OF APPEAL AGAINST DISCIPLINARY SANCTION

#### **Important Note:**

You should only use this form if you wish to appeal against a sanction issued against you following a disciplinary hearing.

The completed form should either be hand delivered or sent by post to the HR Services Manager, Chelmsford City Council, Civic Centre, Duke Street, Chelmsford, Essex, CM1 1JE.

The form **MUST** reach the HR **within 7 calendar days of the date of the letter confirming the outcome of the disciplinary hearing.**

On receipt of the completed form HR will arrange an appeal hearing as appropriate and will notify you in writing of the date and time thereof, together with other details.

I, [insert full name] .....  
wish to appeal against the outcome of the disciplinary hearing conducted by:

..... [insert name of conducting officer]

on ..... 20.. [insert date of hearing].

#### **Reason(s) for appeal**

Please indicate which of the following grounds your appeal is based upon:

- The procedure – failure to follow procedure had a material effect on the decision.
- The decision – the facts/evidence did not support the conclusion reached.
- The sanction – too severe in all the circumstances.

My reason(s) for appealing are as follows:

*[Please provide details of whether you intend to contest any of the facts, and of the grounds on which you rely.]*

..... Continue over as necessary

I intend/do not intend\* to be represented at the Appeal hearing.

\* delete as applicable.

Name and address of representative [if applicable]:

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

Should further documentation/correspondence relating to this appeal be sent direct to your representative, or to you? **Representative/Me \***

\* delete as applicable.

I understand that if a hearing is convened to hear my appeal and, without good reason, I fail to attend that hearing, then my appeal may be treated as having been withdrawn.

Signed:.....

Dated: .....

## **Appendix Three – Procedure Appeal Hearings**

### **1. General**

- 1.1 A Senior HR Business Partner will attend the appeal hearing. The representative will be different to the one who attended the original hearing. Their role is to advise the officer conducting the appeal hearing and to ensure that it is conducted in accordance with this Procedure.
- 1.2 Contemporaneous (but not verbatim) notes will be taken of the appeal hearing and its outcome. Such notes will be taken by the Senior HR Business Partner or another suitable person who will attend the appeal hearing for this purpose only (e.g. a Director's PA).
- 1.3 At the commencement of the appeal hearing, the conducting officer will introduce themselves and the others present to the appellant and their representative (if any). They will then outline the procedure to be followed, as set out in the following paragraphs.

#### **Note: Witnesses**

Any person who is called as a witness should only be present at the appeal hearing whilst giving evidence or being questioned. Afterwards, they should withdraw.

### **2. Presentation of the Appellant's Case**

- 2.1 The appellant may be represented at the appeal hearing by a fellow worker, trade union representative or an official employed by a trade union, who may speak and/or ask questions on the appellant's behalf. Save where the matter in question might affect the employee's ability to continue practising their chosen profession, the appellant has no general right to legal representation at an appeal hearing, but this may be allowed at the discretion of the conducting officer.
- 2.2 The appellant, or their representative, will then have the opportunity to present their case to the conducting officer. They may refer the conducting officer to documentary evidence and may call witnesses.
- 2.3 In cases where a witness is called, the Council's representative may question them on any relevant aspect after they have given evidence.
- 2.4 The conducting officer may then put their own questions (if any) to the witness.

- 2.5 The witness may then be re-questioned by the appellant or their representative but only for the purpose of enabling the witness to clarify or explain any points which have arisen as a result of their answers to previous questions.
- 2.6 Where the appellant gives evidence, the Council's representative shall have the opportunity to ask them questions.
- 2.7 The conducting officer shall then have the opportunity to ask questions of the appellant.

### **3. Presentation of the Council's Case**

- 3.1 The Council's representative (who will normally be the officer who conducted the original hearing, but who may be a lawyer from Legal Services) will then present the case in the presence of the appellant and their representative. In doing so, the Council's representative may refer the conducting officer to documentary evidence (including written statements and may also call witnesses).
- 3.2 In cases where a witness is called, the appellant or their representative may question them on any relevant aspect after they have given evidence.

**Note:** At this stage, the appellant, or their representative, should, confine themselves to questions only – the opportunity to make statements and put the appellant's case comes later.

- 3.3 The conducting officer may then put their own questions (if any) to the witness.
- 3.4 The witness may then be re-questioned by the Council's representative – but only for the purpose of enabling the witness to clarify or explain any points which have arisen as a result of their answers to previous questions.

#### **4. Final Speeches**

- 4.1 The Council's representative shall have the opportunity to sum up the Council's case.
- 4.2 The appellant, or their representative, shall then have the opportunity to sum up their case.
- 4.3 The Council's representative and the appellant, and their representative, if any shall then withdraw.

#### **5. The Decision**

- 5.1 The conducting officer will then deliberate in private and come to a decision. During deliberations only the Senior HR Business Partner may be present. If the conducting officer comes to a view that they require further information or clarification from either party, then **both** parties will be recalled, even though it may be the case that only one is necessary to deal with the point in question.
- 5.2 The conducting officer may announce their decision to the Council's representative and the appellant personally. In such a case, the decision will be confirmed in writing as soon as is reasonably practicable. Alternatively, the conducting officer may communicate their decision to the appellant by letter within 3 working days of the appeal hearing. The mode of communication shall be entirely at the discretion of the conducting officer.

| Version Number | Creation Date | Changes Made  | Changes Made By: | Authorised And Checked? | Date of Changes |
|----------------|---------------|---|------------------|-------------------------|-----------------|
| 5.0            | Jun 23        | Re-written and format updated   | A Felton         | Y                       | Jun 23          |
| 4.0            | Oct 19        | 3.4 – Removed employee right to be accompanied to suspension meeting  | A Felton         | Y                       | Oct 19          |
| 3.9            | Nov 17        | Replaced two ticks with disability confident  | HR team          | Y                       | Nov 17          |
| 3.8            | Aug 16        | 2.3 – Improvement notice to be on file for 6 months.<br><br>4.1 Clarification of timescales<br><br>Appendix 3 – Procedure for hearing appeals amended | A Felton         | Unison consulted        | Aug 16          |
| 3.7            | Nov 15        | Updated re changes to HR structure.<br><br>Removed standard letters.  | HR Team          | Y                       | Nov 15          |
| 3.6            | Jan 15        | Removed extra appendix  | A Felton         | Y                       | Jan 15          |
| 3.5            | Sep 14        | Updated intranet links  | HR team          | Y                       | Sep 14          |

