PRIVATE & CONFIDENTIAL

DECLARATIONS OF INDEPENDENCE – NOMINATED OFFICER

Nominated Officer Declaration of Independence

I [NAME], [JOB TITLE], confirm that I will act independently and impartially in my role as Nominated Officer in respect of [INSERT DETAILS OF THE CASE AND PROCESS].

I have carefully considered whether there could be any actual or perceived conflicts of interest between my role as Nominated Officer and my personal or other interests.

I confirm that I do not have a personal relationship with [INSERT NAME OF EMPLOYEE WHO IS THE SUBJECT OF THE ALLEGATIONS] or the individual(s) who have made the allegation(s) and/or complaint(s) in this case. I confirm that I am not aware of any other conflict(s) that exist between my role as Nominated Officer and my personal or other interests.

I have appointed [INSERT NAME], [JOB TITLE] as Investigating Officer in this case. I have carefully considered whether there could be any actual or perceived conflicts of interest between their role as Investigating Officer and their personal or other interests. I confirm that I am not aware of any such conflicts.

I undertake to notify [INSERT NAME OF RELEVANT SENIOR MANAGER] as soon as is reasonably practicable if I become aware of any potential or actual conflicts whilst this process is ongoing.

I confirm that, to the best of my knowledge, the information contained in this declaration is accurate.

Signature:	
Print Name:	
Date:	

Disciplinary Code

Introduction

This Code sets out the standards of conduct expected of all employees and provides a framework within which mangers can work with employees to maintain those standards and encourage improvements.

You should read the Disciplinary Code in conjunction with the Disciplinary Policy and the Employee Code of Conduct.

Contents

1. Standards of conduct 2

2. Misconduct 2

3. Gross misconduct 4

1. Standards of conduct

All Council employees are required to adhere to and maintain the professional and reasonable standards of conduct expected of them at work.

The standards of conduct we require from our employees are set out in the Employee Code of Conduct.

All employees must also make sure they read, understand and observe all the relevant rules, regulations and procedures that apply to them. These can be found in:

- your Statement of Particulars
- the Scheme of Conditions of Service as adopted by the Council relating to specific employee groups
- Council employment policies
- locally agreed standards of behaviour and other procedures specific to your service area which are available from your line manager
- regulatory and professional bodies codes of conduct that apply to specific posts/professions.

If you're in any doubt as to your responsibilities or the standards of conduct expected, you should speak to your line manager.

The Disciplinary Code details the types of behaviours and conduct that are considered unacceptable and the different levels of disciplinary action that may be taken if your conduct or behaviour falls short of the required standards.

It is the Council's policy to ensure that all disciplinary matters will be dealt with fairly and consistently in accordance with the Disciplinary Policy.

This Disciplinary Code does not form part of your contract of employment and the Council may amend these from time to time.

2. Misconduct

Misconduct is behaviour that is unacceptable at work. It can also include unacceptable behaviour outside of work if it impacts on your contract of employment.

The following list gives examples of the types of behaviour and misconduct that could result in disciplinary action short of dismissal being taken. The list is intended as a guide and is not exhaustive:

Examples of misconduct

Behaviour	✓ Not obeying a reasonable instruction. ✓ Minor breaches of contract such as failing to follow employee policies. ✓ Inappropriate language or gestures. ✓ Smoking in non-smoking areas. ✓ Using language or behaviour which is offensive, abusive or threatening to colleagues, service users or members of the public (this may also constitute gross misconduct depending on the specific circumstances). ✓ Careless damage to council property or to property not belonging to the Council whilst engaged on Council business. ✓ Unauthorised use of council property or property not belonging to the Council whilst engaged on Council business. ✓ Carelessness or negligence in carrying out the duties and responsibilities of the post. ✓ Failure to comply with any reasonable instructions or measures that we implement in response to an emergency or other critical situation. ✓ Being unfit for work because of the misuse of alcohol, drugs or other substances. (This may also constitute gross misconduct depending on the specific circumstances).
Council governance and regulation	✓ Minor breaches of health and safety procedures. ✓ Failure to declare a small gift and/or hospitality. ✓ Minor breaches of confidentiality.
Regulatory bodies	✓ Failure to comply with regulatory bodies standards and codes of practice.
Attendance	✓ Unauthorised absence from work. ✓ Persistent lateness. ✓ Poor timekeeping. ✓ Time wasting. ✓ Failing to comply with flexible working arrangements. ✓ Failure on reasonable notice to attend the workplace or other reasonably accessible location for meetings, training courses or other events when you would otherwise be working from home. ✓ Failing to comply with absence reporting procedures. ✓ Failing to comply with sickness certification rules.
Equalities issues	✓ Minor breaches of equality legislation or the Council's Equality and Diversity Policy or associated policies and procedures.

Computer or technology related issues	✓ Unreasonable or excessive personal use of ICT equipment. ✓ Misuse of the Council's e-mail, or systems. ✓ Minor breaches of social media both in and out of work.
Data protection	✓ Minor breaches of data protection.

3. Gross misconduct

Gross misconduct is behaviour and/or conduct that is so serious that your employment with the Council will normally be ended without notice or pay in lieu of notice (summary dismissal). Gross misconduct can occur out with the workplace.

The following list gives examples of the types of behaviour and misconduct that are normally considered gross misconduct, and which would normally result in dismissal. The list is intended as a guide and is not exhaustive.

Examples of gross misconduct

Attendance	✓ Significant and prolonged unauthorised absence from work. ✓ Significant breaches of flexible working arrangements. ✓ Failing to work your contractual hours while working from home or as part of a hybrid working arrangement or giving false or misleading information relating to your hours of work and activities while working from home.
Theft and fraud	✓ Theft of any kind from the council or its employees, service users or any member of the public. ✓ Fraud, forgery or other dishonesty including but not limited to: • Falsifying any document, record, claim or account. • Providing false information in support of an application for employment or promotion. • Fraudulent claims for payment of any kind. • Asking for or accepting bribes. • Accepting unauthorised gifts and/or hospitality. • Falsely claiming money or benefits from any local authority or Government office.
Behaviour	✓ Repeated or serious failure to obey instructions. ✓ A serious or deliberate breach of contract. ✓ Assault.

	✓ Physical or threatened violence or serious verbal abuse, bullying or other mistreatment of employees, service users or members of the public ✓ Actual or threatened violence, or behaviour which provokes violence, and bullying. ✓ Indecent behaviour. ✓ Violent or dangerous behaviour, including fighting at work. ✓ Serious negligence in work performance. ✓ Serious negligence in safeguarding council property. ✓ Using council vehicles without authority. ✓ Repeatedly or seriously failing to comply with any reasonable instructions or measures that we implement in response to an emergency or other critical situation. ✓ Giving false information as to qualifications or entitlement to work (including immigration status) in order to gain employment, promotion or other benefits. ✓ Engaging in unauthorised employment, paid or unpaid during working hours or during periods of sick leave. ✓ Deliberately damaging or misusing council property or property not belonging to the Council. ✓ Behaviour which brings, or has the potential to bring, the reputation of the council into disrepute, either carried out at work, out with work or using social media. ✓ Being unfit for work because of the misuse of alcohol, drugs or other substances. ✓ Making untrue allegations in bad faith against a colleague.
Council governance and regulations	✓ A significant failure to comply with the Employee Code of Conduct, the Council's financial regulations, or service specific procedures. ✓ Serious and/or deliberate breaches of health and safety regulations or requirements, including neglecting safety equipment or deliberately damaging safety equipment. ✓ Working in an unsafe manner or in any way which may put others in danger. ✓ Breaching confidentiality that seriously prejudices the interests of the Council, service users, employees or member of the public. ✓ Breaching confidentiality as part of the Managing Relationships in the Workplace process. ✓ Deliberate non-disclosure of a conflict of interest, either direct or indirect, as described in the Employee Code of Conduct. ✓ Failure to disclose details of any potential conflict of interest within a relationship, in accordance with the Managing Relationships at Work Guidance. ✓ Significant breach of the council's ICT Acceptable Use Policy. ✓ Knowingly making a malicious or vexatious disclosure under the Whistleblowing Policy. ✓ Knowingly lodging a malicious or vexatious grievance under the Grievance Procedure. ✓ Victimising a colleague who has raised concerns under Council policy. ✓ Knowingly taking parental, shared parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child. ✓ Any other unacceptable conduct or behaviour that would make continued employment with the council impossible, regardless of whether the conduct or behaviour occurred at work.

	✓ Gross carelessness or negligence in carrying out the duties and responsibilities of the post. ✓ Abuse of authority vested in a post. ✓ Deliberately providing misleading information as part of operational or Council decision making processes.
Regulatory bodies	✓ A breach of statutory rules. ✓ Failure to meet and maintain registration requirements or standards set by external regulatory bodies which apply to specific posts. ✓ Significant breaches of or a failure to comply with the standards and codes of practice set by regulatory bodies.
Equalities issues	✓ Discrimination, harassment or victimisation ✓ Unlawful discrimination related to one or more protected characteristics including but not limited to race, age, disability, sexual orientation or gender reassignment. ✓ Sexism (including sexist language and/or behaviour), misogyny or sexual harassment ✓ Unfair treatment in the workplace e.g., harassment, bullying or victimisation of any employee, service user or member of the public. ✓ Inciting bullying, harassment or victimisation and/or condoning this behaviour. ✓ Any serious breach of equality legislation. ✓ A serious or repeated breach of the Council's Equality and Diversity Policy.
Computer or technology related issues	✓ Serious misuse of, or deliberate damage to, any council computer hardware or software. ✓ Deliberately accessing internet sites containing pornographic, offensive or obscene material. ✓ Any deliberate attempt to breach data protection or computer security rules e.g., misusing passwords. ✓ Misuse of council information systems which hold employee, customer, service user or pupil information. ✓ Accessing, storing or circulating offensive material via e-mail, the intranet or internet. ✓ Offensive behaviour using social media. ✓ Deliberately breaching a licence or software copyright.
Data protection	✓ A serious breach of data protection.
Criminal convictions & proceedings	✓ Non-disclosure of any arrest, criminal charge, criminal proceedings or criminal conviction obtained whilst in employment of the council. ✓ Ongoing proceedings or a conviction for a criminal offence that may affect the Council's reputation or relationship with employees, service users or the public. ✓ Ongoing proceeding or a conviction for any criminal or road traffic offence, which makes an employee unsuitable for continued employment. ✓ Not disclosing an unspent criminal conviction.

Disciplinary Policy

The Council (we) strive to maintain effective working relationships with and between colleagues. We have a responsibility to maintain acceptable standards of behaviour at work and are committed to supporting and encouraging colleagues to achieve these standards.

Where behaviours fall below what is considered acceptable, the Disciplinary Policy provides a framework to ensure standards of behaviour are applied in a fair, consistent and sympathetic manner.

It is recognised that, in most cases, potential issues of misconduct will be dealt with through the normal day to day discourse between colleagues and their manager. The Disciplinary Policy should only be used when management advice and guidance has failed to produce the required improvement or when the matter is serious enough to require formal action.

Author

Employee Relations & Policy, Human Resources, Corporate Services.

Scope

This policy applies to all Council colleagues, except Teachers and Chief Officers

Purpose

The purpose of this policy is to provide direction and support to colleagues with poor conduct, and where appropriate, take disciplinary action against such colleagues in a firm, fair and consistent manner to ensure there is a change in behaviour.

Review

The policy will be reviewed as and when a change to the existing policy deems this necessary, primarily as a result of: changes to legislation or statute; agreement of new national terms and conditions of service or Government Policy; organisational change; or resulting from changes agreed through Trade Union Consultation.

1. Policy Aims 2

2. Roles and Responsibilities 2

3. Expectations of Conduct 2

4. Informal Resolution 3

5. Formal Stages 4

6. Appeals 5

1. Policy Aims

The aim of this policy is to ensure there is a fair, effective and consistent method in place to deal with concerns surrounding conduct and to encourage improvement where conduct is believed to have fallen below acceptable standards, either through the implementation of the informal or formal stages of the process.

This policy is designed to:

- support colleagues in meeting the Council's standards of conduct;
- provide a framework for establishing whether misconduct has occurred; and
- support managers in managing misconduct issues.

This Disciplinary Policy and User Guide must be followed when a potential misconduct issue has been identified and not resolved through normal day to day supervision arrangements, or where more serious allegations arise. No disciplinary outcome will be decided until the appropriate steps outlined in this policy have been followed and the facts have been established.

This policy relates to matters of conduct and behaviour. Where concerns exist around performance, these should be managed through the Performance Management Policy instead, however, please seek advice from the HR Case Management team for advice, if you are unsure.

2. Roles and Responsibilities

Managers and colleagues must give high priority to both informal and formal aspects set out in the policy to ensure that they are completed as quickly as possible.

All employees are responsible for:

- meeting and maintaining the required standards of conduct; and
- meeting and maintaining any externally set occupational registration requirements and/or professional standards of conduct.

All managers are responsible for:

- making sure that they and their team members are aware of the Council's required standards of conduct;
- making sure that they and their team members are aware of any externally set occupational requirements and/or professional standards;
- enforcing these and taking action to improve conduct where necessary; and
- handling any disciplinary issue sensitively, fairly and within a reasonable timescale.

3. Expectations of Conduct

The standards of conduct we are all expected to follow are set out in the Employee Code of Conduct. We are expected to maintain these professional and reasonable standards of conduct at work.

The standards of conduct required from all colleagues are set out in a range of policies including (but not limited to) the:

- Employee Code of Conduct
- Anti-bribery Policy
- Policy on Fraud Prevention
- ICT Acceptable Use Policy

These policies are available on the Orb along with supporting guidance. Colleagues who don't have access to the Orb can access them on the external website, or request copies from their manager, askHR, or their trade union representative if they are a member.

Occupations which are governed by rules and professional standards of conduct set by external regulatory bodies must also be adhered to. Failure to meet and maintain these may result in disciplinary action being taken, up to and including dismissal.

The Council has a statutory duty to notify some external registration bodies and professional when misconduct has taken place or when disciplinary action has been taken. These external bodies include:

- The Scottish Social Services Council
- The Care Inspectorate
- Police Scotland
- Disclosure Scotland

If you think you need to contact a regulatory body surrounding disciplinary action that's been taken, you should contact askHR. You can find out more about this on the Orb.

Misconduct

Misconduct is behaviour that is considered unacceptable at work. It can also include unacceptable behaviours outside work if it impacts on your contract of employment.

Gross misconduct

Gross misconduct is behaviour and/or conduct that is so serious that your employment with us will normally be brought to an end without notice or pay in lieu of notice (summary dismissal). Gross misconduct can also occur outwith the workplace.

There are more details surrounding misconduct and gross misconduct in the Disciplinary Code, including examples of each.

4. Informal Resolution

Managers should always consider whether it is possible to resolve minor conduct issues informally. This is most likely to be possible and appropriate where the alleged misconduct is not of a serious nature.

In many circumstances, a confidential conversation between the colleague and the line manager is all that's necessary to resolve an issue. On other occasions, it may be appropriate to hold a series of conversations, which could form part of regular one-to-one meetings, to ensure the necessary support and review is in place.

The purpose of these discussions is to ensure that the colleague understands the nature of the concerns, to provide them with the opportunity to respond and, where appropriate, to explain the improvement expected of them. A record should be retained of these discussions to support the process and ensure

clarity. The retention period will vary depending on the relevant timescales for improvement but should not exceed 3 months.

As informal resolution is not formal disciplinary action, the team member does not have the right to be accompanied by a work colleague or trade union representative although requests would be considered in some circumstances, and where it is agreed that their attendance would be beneficial to informal resolution.

Further information on achieving informal resolution can be found in the User Guide.

5. Formal Stages

Where more serious or repeated misconduct occurs, this should be dealt with using the formal stages of the policy. At this stage, a Nominated Officer (senior manager with the authority to dismiss for more serious conduct) will be appointed to manage the formal stages and chair any disciplinary proceedings.

A potential conflict of interest might arise from relationships and or allegiances, which may influence one's judgments or actions. The Declaration of Independence form should be completed by the Nominated Officer and the Investigating Officer prior to the commencement of formal process. Further details can be found in the User Guide.

Establishing the facts

The Nominated Officer will appoint an Investigating Officer to gather facts about the alleged misconduct, which will include interviewing the colleague and any relevant witnesses.

The investigation should be completed without unnecessary delay and the findings will be reported back to the Nominated Officer. It is then the role of the Nominated Officer to decide whether there is a case to answer at disciplinary hearing

An indicative timescale for completion of the investigation will be provided and clearly explained to the colleague at the outset. This will be provided with the understanding that timescales may need to change (typically extended) where, for example, new information comes to light that requires further investigation or where there are unavoidable delays. It's the responsibility of the Nominated Officer to ensure the colleague is kept informed of progress and of any delays.

It is the Nominated Officer's role to appoint an appropriate Investigating Officer for the case, considering any expertise required and any potential conflicts of interest. The Investigating Officer and Nominated Officer cannot be the same person.

Colleagues may be accompanied at investigation interviews by an accredited trade union representative/official or work colleague.

Formal hearing

If the Nominated Officer decides that there is a disciplinary case to answer, then the colleague who the allegations are being made about will be notified in writing giving at least 7 days' notice and asked to attend a disciplinary hearing.

The notification should contain details of the alleged misconduct, the Investigating Officer's report, witness statements and any other relevant evidence gathered at the investigation stage, so that the colleague and their representative can prepare fully for the disciplinary hearing. The notification should also include the possible consequences to the allegations being upheld following the disciplinary hearing.

If the alleged misconduct is upheld, the Nominated Officer can issue one of a number of possible sanctions, which are:

- written warning;
- final written warning;
- punitive action short of dismissal (such as final written warning and demotion); or
- summary dismissal.

Where serious or gross misconduct is alleged, a Nominated Officer will consider temporarily redeploying the colleague or, where this is not appropriate, suspending the colleague on full pay as a precautionary measure. Where a Nominated Officer has not yet been appointed or is not available, a Head of Service can decide to suspend until the Nominated Officer has conducted an initial review of the case. Where a period of precautionary suspension with pay is considered necessary, this should be as brief as possible, kept under review and it should be made clear that precautionary suspension is not considered disciplinary action.

At formal stages of the process, colleagues have the right to be represented by:

- an accredited trade union representative;
- another Council colleague; or
- an official employed by a trade union.

If a colleague prefers to be accompanied by another Council colleague, they will be allowed reasonable time off with pay to act as the companion. Separate arrangements apply if their representation is a trade union official.

Further information on how the formal stages should be managed can be found in the User Guide.

6. Appeals

Where an employee feels that disciplinary action taken against them is unfair, they can appeal against the decision. The appeals process differs slightly, depending on the level of the action taken.

Appeal against Written Warning or Final Written Warning

Appeals should be made in writing to the relevant manager or another manager one level above the manager who issued the original warning, indicating the grounds of appeal within 14 calendar days of receiving the outcome of the disciplinary hearing.

The appeal hearing should be arranged without reasonable delay, normally within 4 weeks of receipt of the appeal submission or as soon as reasonably possible if that timescale cannot be met.

Appeals against dismissal and action short of dismissal

Where an employee wishes wants to appeal against dismissal or action short of dismissal, they must do so in writing, using the Notification of Appeal form. This should be sent along with any documents relevant to the appeal within 14 calendar days of receiving the outcome of the disciplinary hearing.

Arrangements will be made for the appeal to heard within a month or as soon as reasonably possible if that timescale cannot be met. Committee Services will issue the agenda and papers for the meeting of the Personnel Appeals Committee no less than 5 calendar days in advance of the appeal hearing.

Further information on the appeals process and where to submit appeals to can be found in the User Guide.

Disciplinary User Guide

Introduction

This user guide is designed to support colleagues when using the Disciplinary Policy. It provides practical guidance and support in applying the policy and accompanying processes.

All templates are available on the Orb under Human Resources > Conduct and behaviour > Disciplinary.

Contents

Disciplinary User Guide 1
1. Support and Guidance 2
2. Informal Resolution 3
3. Formal Stages Roles and Responsibilities 4
4. Suspension or Alternative Duties 7
5. Investigation 10
6. Arranging a Disciplinary Hearing 13
7. Conducting a Disciplinary Hearing 15
8. Reaching a Decision 17
9. Appeals 21

1. Support and Guidance

If you're a manager and need advice at any stage of the formal or informal disciplinary process, and don't already have an HR Case Consultant assigned to the case, you should contact askHR in the first instance.

Managers, including Nominated Officers and Investigating Officers, must have completed the disciplinary e-Learning module on Mylearning Hub before they take on any role in a disciplinary case.

Any colleague seeking advice on or experiencing difficulties with the disciplinary process for any reason should raise this with their line manager or another appropriate manager so that they can be provided with the appropriate support needed.

General Principles

✓ The disciplinary process must be applied in accordance with the Council's Diversity and Equality policies.
✓ At each stage of the process, colleagues will be advised of the nature and basis of the concerns surrounding their conduct. They'll also be given the opportunity to respond to concerns before any formal or informal action is taken.
✓ All stages of the formal process should be completed within the indicative timescales set by the Nominated Officer. It's the responsibility of the Nominated Officer to make sure that the colleague is kept informed of progress and of any unavoidable delays.
✓ Any information and correspondence relating to an allegation of misconduct is confidential and shouldn't be shared with anyone other than those who need it to carry out their role in the disciplinary process. The only exception to this is where the Council is required to comply with statutory duties to notify external registration bodies of incidents concerning misconduct and/or disciplinary action taken.
✓ The process includes an informal stage, intended to deal with and resolve minor concerns: and a formal stage, intended to deal with more serious or repeated breaches of the council's rules and standards of conduct.
✓ Managers should always consider whether it's possible to resolve minor conduct issues informally. Informal resolution is never considered disciplinary action and won't appear on the colleague's disciplinary record.
✓ The process could be implemented at any stage, depending on the nature of the alleged misconduct.
✓ A prompt and thorough investigation should be carried out into any allegations before a decision to proceed with disciplinary action is taken.
✓ The Investigating Officer and Nominated Officer cannot be the same person.
✓ Colleagues are entitled to be represented at a formal disciplinary hearing. The chosen companion can be an accredited trade union representative/official or a work colleague (who must not be involved in the same disciplinary process).
✓ Colleagues have the right of appeal against any formal disciplinary action only.

2. Informal Resolution

Managers should always consider whether it's possible to resolve minor conduct issues informally. This is most likely to be possible and appropriate where the concerns aren't of a serious nature.

Informal Meeting - Manager guidance and responsibilities

Preparing for the meeting	✓ Meetings must be a private one-to-one discussion between the colleague and their manager. ✓ As informal resolution isn't formal disciplinary action, there's no right for the colleague to be accompanied by a work colleague or trade union representative. Requests may be considered in some circumstances, where it's agreed that accompaniment would be beneficial to informal resolution.
During the meeting	✓ Highlight examples of the conduct causing concern taking into consideration any personal circumstances or changes to work arrangements and explore whether the concerns are founded. ✓ Allow the colleague the opportunity to respond to the concerns and provide their view of what's happened. ✓ If you establish that there's a minor conduct issue, remember to consider any possible underlying causes, such as personal circumstances or changes to work arrangements/work volume. ✓ Explore and identify ways for the colleague to improve, including the provision of additional support and/or training if required. ✓ If, during an informal meeting, it becomes apparent that the issue is more serious, the meeting should be adjourned, and the formal process followed instead.
Informal meeting outcomes	✓ You must confirm the informal meeting outcome in writing, and include: • the reason for the meeting; • the main points of discussion; • details of any improvements required, and actions agreed; • timescales for improvement. These will vary with each case but should not exceed 3 months; • review arrangements; and • that failure to improve could lead to formal disciplinary action. ✓ There's a template letter available for managers to use when confirming an informal meeting outcome. The manager should keep a copy of the letter in the colleague's personal file.

Failure to achieve informal resolution

If it's not possible to reach a satisfactory level of resolution informally, the manager should consider whether it's more appropriate to follow the formal process instead.

Repeated misconduct/patterns of behaviour

If informal resolution has been put in place and the colleague repeats the misconduct (or more serious misconduct occurs) during the active review period, the formal process would typically be followed. Likewise,

there may be a pattern that develops where conduct is satisfactory through the active period, but similar misconduct reoccurs very soon thereafter.

In such cases, confirmation that the formal process is being followed because of repeated misconduct must be included in the letter to the colleague.

3. Formal Stages Roles and Responsibilities

Managers and colleagues must give high priority to both informal and formal aspects set out in the policy to ensure that they are completed as quickly as possible.

A potential conflict of interest might arise from personal relationships you have with those involved in a disciplinary case and may influence your judgment or actions. To ensure a transparent and fair process, the Declaration of Independence form should be completed by the Nominated Officer and the Investigating Officer prior to the commencement of the formal process. Please ensure that you declare all interests that you currently have even if you don't think there is a conflict.

If a conflict of interest is identified a new Nominated Officer and/or Investigating Officer will need to be appointed.

You will be supported by the HR Case Management Team.

Nominated Officer Responsibilities

- ✓ Complete the Declaration of Independence form.
- ✓ Ensure confidentiality is maintained throughout the disciplinary process.
- ✓ Consider whether it's necessary to move the colleague to alternative work or to instruct precautionary suspension. Refer to the guidance on suspension in Section 4.
- ✓ Write to the colleague with the details of the allegations which should be framed to be specific and appropriate. The HR Case Management Team will be able to advise on this.
- ✓ Notify regulatory bodies and registration authorities (you can download advice on how to do this and the process to follow on the Orb).
- ✓ Understand if the colleague holds multiple posts for the Council and consider if the nature of the allegations means decisions made in this disciplinary process will apply to all posts (such as suspension or any potential outcome)
- ✓ Appoint an Investigating Officer to gather facts about the alleged misconduct. Ensure that the IO appointed has the appropriate expertise for the case and consider any potential or perceived conflicts of interest.
- ✓ Set the terms of reference and timescales for completion of the investigation (normally no longer than 6 weeks). This should be clearly explained in the notification of investigation letter.
- ✓ Ensure that the timescales set are adhered to. Where there are unavoidable delays, ensure that these are communicated to the colleague. In all cases, you need to ensure that you and/or the Investigating Officer are keeping the colleague updated on anticipated timescales.
- ✓ Consider the impact on the colleague during and after the disciplinary process. Liaise with the Investigating Officer and/or Line Manager to ensure that they are supported appropriately. If appropriate, consider a referral to occupational health.
- ✓ Consider the impact on all witnesses, in particular, the colleague(s) who may have made the allegations and ensure appropriate support is offered such as Employee Assistance Programme (EAP), and that communication is maintained throughout the period of the investigation whilst maintaining confidentiality.

- ✓ Ensure a dedicated contact, in most cases this will be the line manager, is in place to undertake regular welfare checks with the colleague subject to the disciplinary but also those who are witnesses to the misconduct. Where it is not appropriate for the line manager to undertake this role, ensure you appoint another named contact for the colleagues.
- ✓ Review the investigation report once completed and determine whether the case should proceed to a disciplinary hearing.
- ✓ Consider all the evidence presented at any disciplinary hearing and decide whether disciplinary action is warranted.
- ✓ Participate in any appeals process.

Investigating Officer Responsibilities

- ✓ Complete the Declaration of Independence form.
- ✓ Ensure confidentiality is maintained throughout the disciplinary process.
- ✓ Investigate the allegations and establish facts.
- ✓ Highlight any welfare concerns to the Nominated Officer
- ✓ Consider what resources are necessary to enable the investigation to be completed in a reasonable timeframe.
- ✓ Aim to complete any witness interviews as quickly as possible so that details are remembered.
- ✓ Establish the weight of evidence.
- ✓ Produce an Investigating Officer's Report with your findings. Remember that your role is not to decide whether disciplinary action is warranted.
- ✓ Present your report to any subsequent disciplinary hearing.
- ✓ Answer questions at any disciplinary or appeal hearing, as required.

Line Manager Responsibilities

- ✓ Ensure confidentiality is maintained throughout the disciplinary process.
- ✓ Consider any complaint or allegations made in the first instance.
- ✓ Ensure that the colleague has access to any information they need about the process, and any information that they require to support their case. Make sure they are supported throughout any investigation such as time off to attend interviews.
- ✓ Where appropriate, undertake the role of the Nominated Officer or Investigating Officer
- ✓ Conduct yourself in a reasonable manner during the course of the disciplinary process.
- ✓ Never take any action that could be seen as adversely influencing the investigation or interfering with the disciplinary process.
- ✓ Occasionally there may be exceptional circumstances which will mean you are not the most appropriate person to provide welfare support to colleagues during an investigation. If this is the case, please ensure the Nominated Officer is aware so they can ensure an alternative line manager is in place to provide the support.

- ✓ Where there are no exceptional circumstances which require an alternative manager, follow the welfare support responsibilities listed below to make sure that all colleagues are supported throughout any investigation.

Welfare Support Contact Responsibilities

This role **will also be undertaken by the line manager** to ensure all colleagues are supported throughout and following a disciplinary investigation, however we appreciate there may be occasions where this is not appropriate or possible, therefore colleagues will be provided with another line manager who will be responsible for maintaining contact during this time.

- ✓ Make sure that all colleagues are supported throughout any investigation. This includes those who have had allegations raised against them but also those cited as witnesses or those who raised the initial allegations.
- ✓ Remember to meet with everyone regularly (weekly where possible) to check in on their wellbeing and to ensure they have the appropriate support or risk assessments in place and provide them time to prepare for any interviews or meetings.
- ✓ Signpost colleagues to the appropriate support services available including those found on the Orb.
- ✓ Where colleagues are placed on alternative duties or precautionary suspension, you must set up weekly meetings or contact with them to undertake wellbeing checks and where appropriate signpost them to the relevant support services as well as ensuring that they are kept up to date on team news and all periods of leave (annual, sick absence and special leave) are approved and recorded correctly during this period.
- ✓ Where colleagues are on precautionary suspensions, ensure they take their statutory leave each year, which is 28 days including public holidays. Colleagues on suspension should be actively encouraged to continue to take their annual leave during this period and should request it in accordance with normal procedures. Regular reminders should be issued where annual leave has not been requested, and it may result in the colleague not taking their statutory entitlement. Managers should ensure that colleagues are aware that if their annual leave isn't used before the end of the holiday year to which it relates, normal Council wide carry forward arrangements will apply.
- ✓ While the nature of the disciplinary is confidential, you can still speak with the colleague to find out what stage they are at, how they are feeling, check they feel supported and where appropriate encourage them to speak with the Nominated Officer if they have specific concerns.
- ✓ Never take any action or make any comments that could be seen as adversely influencing the investigation or interfering with the disciplinary process.
- ✓ Bear in mind that where allegations of misconduct have been made against colleagues, they are already likely to be feeling upset and it is important to respond appropriately in order that the situation does not escalate. Conduct yourself in line with Our Behaviours, during the disciplinary process.
- ✓ Where you have concerns about a colleague's mental or physical wellbeing, make sure to familiarise yourself with the support services available and signpost colleagues where appropriate.

Employee Responsibilities	
Colleagues who are facing allegations	✓ Meet with the Investigating Officer and answer any questions truthfully. ✓ Where on a precautionary suspension, continue to use your annual leave entitlement as normal during this period. Council wide carry-forward arrangements will apply. Any balance in excess of ordinary Council carry-forward arrangements will be lost, as will the right to holiday pay in respect of these hours. ✓ Attend a disciplinary hearing, if required. ✓ Organise representation. ✓ Conduct themselves in a reasonable manner. ✓ Maintain confidentiality throughout the process. ✓ Maintain regular contact with your line manager throughout the process to ensure you have access to the appropriate wellbeing and support services.
Colleagues who are called as witnesses	✓ Meet with the Investigating Officer and answer any questions truthfully. ✓ Attend a disciplinary hearing as a witness, if required. ✓ Conduct themselves in a reasonable manner. ✓ Maintain confidentiality throughout the process.
Right to be accompanied	✓ Colleagues may be accompanied at investigation interviews (by the companions detailed below only). The companion can be: • An accredited trade union representative/official; or • A work colleague. ✓ The companion cannot be involved in the same disciplinary proceedings. ✓ The companion may ask questions for clarification purposes and confer with the colleague but can't present the case on their behalf.

4. Suspension or Alternative Duties

Precautionary suspension

If it's considered that the colleague's presence could mean the alleged misconduct continues or that it might interfere with the investigation process, it might be appropriate to consider a precautionary suspension. This is on full pay, which is the colleague's normal salary or wage, including all regular contractual payments and entitlements.

Suspension can be a breach of contract if unnecessarily imposed, and therefore alternatives to suspension must be properly considered, including temporary redeployment to alternative duties/location. The decision to suspend can only be taken by the Nominated Officer and only where serious or gross misconduct is alleged. Where a Nominated Officer has not yet been appointed or is not available, a Head of Service can decide to suspend until the Nominated Officer has conducted an initial review of the case.

If you're considering precautionary suspension, you must always contact AskHR before you make this decision. AskHR will refer you to the HR Case Management Team to discuss the circumstances.

A copy of **all** letters issued **must** be copied to your HR Case Consultant to be attached to the colleague's file.

Suspension – Nominated Officer Guidance

Considering Suspension

- ✓ Precautionary suspension must only be considered in cases of gross misconduct, and/or where it's believed that:
    - Allowing the colleague to remain in post will adversely influence or interfere with the investigation;
    - It will put any service user or member of staff at risk;
    - Moving the colleague to another location isn't an option; or
    - There are conditions/restrictions in place that do not allow the colleague to remain in the workplace.
- ✓ The Nominated Officer, in discussion with the HR Case Management Team, is responsible in deciding whether precautionary suspension is appropriate.
- ✓ The decision to suspend could be taken as soon as serious or gross misconduct is alleged. This could be from the outset or during the investigation process if facts emerge that make a precautionary suspension appropriate.
- ✓ Where a Nominated Officer has not yet been appointed or is not available, a Head of Service can take the decision to suspend until the Nominated Officer has conducted a review of the circumstances.
- ✓ When considering whether suspension is appropriate, you must consider the following, which will assist in your discussion with HR:
    - Would the colleague remaining at work hinder the investigation by tampering with evidence or intimidating possible witnesses;
    - Would the colleague remaining at work be a risk to the council;
    - If the colleague was to remain at work, are they likely to repeat the misconduct;
    - If the colleague remained at work, are they likely to cause concern to employees and/or service users;
    - Is there potential for the matter to attract press coverage, political interest or fraudulent/reputational damage to the council; and
    - If the misconduct is a criminal offence, has the matter been reported to the Police.
- ✓ Precautionary suspension pending an investigation is not and should not be seen as a disciplinary sanction. In all cases precautionary suspension will be on full pay.
- ✓ When suspension is being considered, please complete a suspension assessment and send the completed form onto the HR Case Management Team.
- ✓ Before any final decision is taken by the Nominated Officer, the suspension assessment is shared with the Service Director – HR and the Head of HR for scrutiny and oversight, but the Nominated Officer makes the final decision.
- ✓ Temporary redeployment should always be considered as an alternative to suspension. This can include moving a colleague to suitable alternative duties and/or a different work location. If this is possible, it should be confirmed in writing – there's a template letter available on the Orb.

Notification of Suspension	✓ The colleague must be notified in person that they are being suspended as a precautionary measure. ✓ When considering where to inform the colleague, please ensure the location is private and confidential. Following the meeting, ensure the colleague is treated respectfully when leaving the workplace. ✓ Nominated Officers must ensure they clearly explain the reasons for suspension to the colleague at this meeting, this should be based on the suspension checklist assessment ✓ If the colleague is unable to attend the meeting e.g., because they are on sickness absence or they have been detained by the police, then the Nominated Officer will confirm the precautionary suspension in writing. ✓ The colleague must receive written confirmation of the suspension within 3 working days of being told in person. There's a template letter available on the Orb. ✓ The letter must clearly state that a precautionary suspension does not constitute a disciplinary penalty. The Nominated Officer must send a copy of the signed letter to HR.
During suspension	✓ During the precautionary suspension the colleague will continue to receive full contractual pay including any working time payments and contractual overtime. Overtime normally worked as part of standby/call out arrangements **will not** be paid. ✓ If a colleague falls ill while suspended, they must fully comply with the sickness absence reporting procedures and this should be recorded on myPeople as sickness absence. Precautionary suspension should be lifted for the period of sickness absence and a letter issued advising the colleague of this action – There's a template letter available on the Orb. ✓ The colleague should request annual leave during suspension in accordance with normal procedures. ✓ Consider the impact on the colleague while during suspension. Ensure that they are supported appropriately during the process. ✓ Consider the impact on any witnesses, in particular any colleague(s) who raised the allegation(s). ✓ The Nominated Officer must ensure that either they or a nominated manager keep in touch with the colleague while they are suspended on a weekly basis to check on their welfare and wellbeing as detailed above. Where there are unavoidable delays, the Nominated Officer must ensure that these are communicated to the colleague. ✓ You have to consider what needs to be said to the rest of the team. The confidentiality of the disciplinary process limits what can be said.
Reviewing suspension	✓ The Nominated Officer must review the suspension at the end of the first month and every month thereafter. The colleague must be informed in writing that a review has taken place. There's a template letter available on the Orb. ✓ If, during the investigation, it becomes apparent that there's no longer a need for the colleague to be suspended, then the precautionary suspension should be reversed and a letter confirming this must be sent by the Nominated Officer. There's a template letter available on the Orb.

5. Investigation

In the formal stages of process, the Nominated Officer is responsible for appointing a suitable Investigating Officer and setting the terms of reference for the investigation. There's template available on the Orb that the Nominated Officer should send to the Investigating Officer, appointing them to that role.

If the disciplinary case concerns a colleague who is a trade union representative, a senior representative or full time official, you must seek the colleague's permission to discuss the case with the relevant official at the trade union branch in advance of any formal disciplinary process commencing. Before taking any action, you must discuss this with your HR Case Consultant, who will contact and liaise with the relevant trade union branch. Where there is suspected gross misconduct, precautionary suspension can still be applied where judged appropriate, pending discussion with the relevant trade union.

Investigation Guidance

Appoint an Investigating Officer	✓ The Nominated Officer will appoint an Investigation Officer to gather facts about the alleged misconduct. ✓ When appointing the Investigating Officer, the Nominated Officer should consider whether any knowledge or expertise would be useful. They must also consider whether there are any potential conflicts of interest that should be avoided. ✓ The Nominated Officer must confirm the Investigating Officer's appointment in writing using the template on the Orb. ✓ The Nominated Officer needs to discuss the details of the allegations with the Investigating Officer. These are likely to include: • Details of any witnesses to the allegations; • The requirement to interview other staff/service users/members of the public, as appropriate; • The requirement to gather other relevant evidence; and • Timescales for completion of the investigation.
Communicate with the colleague	✓ The Nominated Officer must write to the colleague who is the subject of investigation and advise them that there will be a formal investigation as part of the disciplinary process. ✓ The Nominated Officer must ensure the colleague is aware of: • the allegations that have been made. These should be specific about the alleged misconduct; • that an investigation will be carried out and who will do this; • their right to representation; • if they've been suspended on a precautionary basis, or any alternative action being taken, e.g. moving workplace. • what will happen next; • indicative timescales for completion. ✓ The Investigating Officer will then write to the colleague instructing them to attend an investigatory meeting.

	✓ Template letters are available on the Orb.
Timescales	✓ The investigation must be completed within the indicative timescales set by the Nominated Officer. If there are unavoidable delays, ensure that these are communicated to the colleague. In all cases, the Nominated Officer needs to ensure that the colleague is kept updated on anticipated timescales. ✓ In some cases, the Investigation Officer may only be required to hold an investigatory meeting with the colleague to enable them to respond to the allegations. ✓ In other cases, witnesses may need to be interviewed and additional evidence gathered. The Investigating Officer must advise any witnesses that they may be required to appear at any subsequent disciplinary hearing and that their statement will be presented.
Investigation Meetings	✓ The Investigating Officer should decide who to interview and in which order and interview witnesses, services users and members of the public as appropriate. Specific rules apply for interviewing children. ✓ The Investigating Officer must ensure notification of any meeting is sent in writing, giving at least 7 days' notice. Colleagues under investigation should be notified of their right to be accompanied at the investigation meeting by either an accredited trade union representative/official or a work colleague. Template letters are available on the Orb. It is encouraged that all interviews are held in person however where this is not possible, alternative virtual arrangements can be put in place. ✓ When taking witness statements, the Investigating Officer should consider the following: • The date, time and place of observations and incidents; • The witness's opportunity and ability to observe the incident clearly and accurately; • Relevant circumstantial evidence such as procedures or work practices; and • Corroboration with other witnesses. ✓ The Investigating Officer must ensure that all statements are signed or agreed via email, and that the person giving the statement has had enough time to review for corrections before being included in the Investigating Officer's Report (IOR). ✓ There's a template you should use when taking witness statements, you can download this from the Orb. ✓ Any issues relating to personal circumstances, changes to work arrangements and/or work volume of the colleague being investigated should be explored as part of the investigation process. ✓ If the colleague raises any health issues as contributing to the alleged misconduct the Investigating Officer must seek medical advice from Occupational Health prior to finalising the IOR. They should contact the line manager who will arrange the referral. ✓ The meeting can be adjourned if required at any point, e.g. so that the Investigating Officer can seek advice from HR, or to allow the colleague to discuss matters with any companion present. ✓ At the conclusion of the meeting, the colleague under investigation should be advised what will happen next, and the anticipated timescale for the completion of the investigation. They should be advised that a further investigation meeting may be arranged if required. ✓ Any welfare concerns the IO identifies during interviews should be raised with the Nominated Officer. ✓ If the Investigating Officer needs to interview any witnesses, they must write to them advising them of the process. There's a template letter available on the Orb.

	✓ Witnesses must be advised that their statements will be provided to the colleague who the allegations are against if the case progresses to a disciplinary hearing, and that they could be called as witnesses to any hearing. Relevant support should be offered to witnesses. ✓ If witnesses do not wish to be identified or unwilling to give evidence in person or submit a written statement, you should be supportive and encourage their participation in any way which is appropriate. ✓ If any additional allegation(s) come to light during the course of the investigation the investigating officer should share this information with the nominated officer. The nominated officer will then decide if there is to be further allegations issued and advise the colleague in writing. These allegation(s) will also be investigated. ✓ In some circumstances, due to information uncovered during the investigation, it may be necessary to begin a disciplinary investigation in relation to the conduct of a witness. HR will advise on how to proceed in such circumstances.
Investigating meeting notes	✓ It's essential that accurate and detailed notes are kept of all investigation meetings. The notes should record: • who was present; • the start and finish times of the meeting; • any adjournments; • the allegation(s) put to the colleague; and • the discussion held. ✓ A note of the meeting must be issued to the colleague to sign as an accurate record of the investigation interview. The colleague then has the opportunity to ask for factual amendments to be made. ✓ The Investigating Officer has the right to refuse to make any amendments that they consider don't accurately reflect what was said during the investigation meeting. ✓ Where the colleague's amendments are not accepted by the Investigating Officer as accurate, this must be stated, and the colleague's amendments will be included as an appendix to the note of the meeting.
Investigating Officer's Report	✓ All Investigating Officers must produce their report using the Investigating Officer's Report (IOR) template. ✓ The Investigating Officer must explore both whether the alleged misconduct occurred and the reasons why, establish the facts of the case, and draw conclusions on whether any allegations have been substantiated. ✓ The Investigating Officer must not determine whether disciplinary action is required or make any recommendations on any level of sanction that may be appropriate. The Investigating Officer should not include any personal opinions in the report. ✓ The IOR, along with any other relevant statements and documentary evidence must be provided to the Nominated Officer for them to determine whether a disciplinary hearing is required.
Requesting CCTV	✓ The Nominated Officer should contact the relevant CCTV office to request a copy of the footage and will normally be asked to complete a CCTV request form. ✓ The Nominated Officer should provide as much information as possible about the footage they are requesting, so it can be located with ease. Information should include: • Date; • Time;

- Location; and
- Description of incident.

✓ The Nominated Officer is responsible for ensuring that the CCTV footage is held securely.

✓ The Nominated Officer can only allow the following individuals access to the footage:

- Investigating Officer;
- Colleague under investigation;
- Colleague's representative (e.g. union rep);
- HR Case Consultant.

✓ No other individuals will be allowed access to view the footage, if a request is made from any individual to view or access the footage, the HR Case Consultant should be contacted for advice.

✓ The Nominated Officer is responsible for tracking who has viewed the CCTV footage, and they should complete the CCTV tracker form and keep this with the CCTV footage. This document may be required as part of any subsequent disciplinary hearing and may be provided as evidence. This is available on the Orb.

Conducting an investigative interview with a child witness

In Scotland, a person of twelve years or more is presumed to be of sufficient age and maturity to give consent to being interviewed. For children aged eleven or under the parent/carer will be required to give consent.

Plan the meeting	✓ Are there any special needs of the child or complicating factors? ✓ Equipment available/location to be agreed with the child and other attendees? ✓ Agree who will lead the interview. ✓ Agree how the interview will be recorded and the roles and responsibilities of all in attendance. ✓ Is a support person required? If required, brief the support person prior to the interview. The support person should not be a witness or someone who has a personal interest in the case.
Consent	✓ A letter will be issued by the Investigating Officer, and this asks for consent from the parent/guardian, and they would receive a confirmation from the parent/guardian as to whether they give permission. Sometimes parents/guardians attend but often it is a trusted member of staff to the pupil.
Preparing the interview room	✓ Unplug telephones and switch off mobiles to ensure no interruptions. ✓ Ensure seating and equipment are made available and laid out in a 'child-friendly' way. ✓ Check the child's understanding and allow them to ask questions.
Introductions	✓ Introduce yourself, give your name, job, and role in child appropriate language (don't mention words such as "risk" and "child protection"). ✓ The child's preferred name or mode of address should be established. ✓ Allow the child to settle and have a brief "icebreaker" chat about things like TV. Avoid using school as an "icebreaker".

	✓ Simply and clearly tell the child and their parent/carer the purpose of the interview, that an interview will commence and how it will be recorded. ✓ Avoid mentioning the allegation/s and avoid introducing any stereotypes about the alleged person behind the incident.
Interview principles	✓ Let the child do most of the talking. ✓ As the interviewer you weren't present at the incident, so you need the child's help to understand what happened. ✓ It is ok for the child to say, "I don't know/remember or understand" and to correct the interviewer when they get something wrong ✓ The child should try not guess or make up any answers and they should always tell the truth (i.e., what they know from having seen with their own eyes, heard with their own ears, etc.) ✓ If questions must be repeated this does not mean the child's first answer was wrong or thought to be a lie.
Tips for the interviewer	✓ The interview should go at the child's pace. ✓ Be patient of pauses and don't interrupt the child. ✓ Be aware of signs of tiredness or loss of concentration and allow for breaks. ✓ Let the child know how long the interview might take. ✓ Be open minded. ✓ Ask them to tell you everything they remember from beginning to end. ✓ Avoid specific questions. ✓ Encourage a free account from the child e.g. "That sounds interesting, tell me more".
Raising the topic of concern	✓ Raise the topic without suggestive prompting e.g. "Do you know why we are here today? Tell me about that?". If this is not successful, proceed slowly onto more specific prompts. ✓ Avoid suggesting any wrongdoing, do not use words like "hurt" and "bad".
Narrative to use	✓ Free narrative is best, i.e., the child's own uninterrupted account of what has taken place. ✓ Encourage spontaneous explanation from the child, use gentle probing, e.g., "Tell me about that", "then what?" ✓ Use open-ended questions to follow on from when the child has finished speaking, e.g., "then what happened?" ✓ Keep the conversation flowing, e.g., "uh huh". ✓ Reassure the child if required "It's alright. Take your time. I'm listening"
Questioning	✓ Refer to things that the child has mentioned previously. ✓ Determine whether the incident was a one off or repeated. ✓ Cover the sequence of topics/questions in the same order as the child has raised them. ✓ Try not to use direct/specific types of questions where possible. ✓ Clarify any vagueness, irregularities, or unfamiliar terms/names used by the child, in a way that does not imply suspicion or that you do not believe them. ✓ Don't indicate satisfaction or dissatisfaction with the information the child is giving.

	✓ Remain neutral in response.
Closure	✓ Summarise all the main evidence using the child's language as much as you can. ✓ Explain what will happen next and ask the child if they have any questions. ✓ Provide contact names/telephone number. ✓ Both the pupil and the adult in attendance must sign the witness interview statement.

6. Arranging a Disciplinary Hearing

If it's decided that there is no evidence to support a disciplinary hearing, the Nominated Officer will write to the colleagues confirming this and concluding the case.

However, if it's decided that there is a disciplinary case to answer, the Nominated Officer will arrange a disciplinary hearing.

The Nominated Officer must have the delegated authority to issue a disciplinary sanction appropriate to the alleged misconduct. The colleague will be given at least seven calendar day's written notice of the date, time, and location of the hearing.

If, because of the complex nature of the case, the colleague or their representative requires additional time to prepare for the hearing, this must be considered in context by the Nominated Officer. A request for additional time should not be unreasonable declined.

Disciplinary hearing notification and witnesses

The disciplinary hearing notification letter	✓ This should include • the allegations/misconduct/complaint(s) to be considered, together with the relevant supporting documents. • A copy of the Investigating Officer's Report and copies of all written statements and relevant evidence that will be presented at the hearing. • Details of any witnesses that the Nominated Officer intends to call. • Advise that the colleague has a reasonable opportunity to call witnesses or submit statements and other documentation. They should provide the Nominated Officer with names of any witnesses and/or any written submissions at least 24 hours in advance of the hearing. • It is the colleague's responsibility to request the attendance of any witnesses they wish to call at the hearing. • The right to be accompanied at the hearing by an accredited trade union representative/official or work colleague (who must not be involved in the same disciplinary proceedings). • Whether dismissal is a possible outcome. ✓ Disciplinary hearings should be held in person however where this is not possible, alternative virtual arrangements can be put in place.

	✓ A template letter is available on the Orb.
Witnesses	✓ Both the Nominated Officer and colleague will have the opportunity to call witnesses to attend the hearing, if this is required. ✓ As an alternative, colleagues may submit additional written statements given and signed by individuals who are not available to attend a hearing. Any written submissions should be received at least 24 hours in advance of the hearing. ✓ It's recognised that acting as a witness can be stressful and disruptive, therefore, witness statements that are straightforward and factual in nature would not normally not require the witness to attend in person. ✓ If the witness evidence is more complex or conflicts with other evidence, the witness will normally be invited to attend in person so that their statement can be fully explored. If a witness is concerned about attending for any reason, their reasons would be considered by the Nominated Officer on a case by case basis. ✓ In certain circumstances, witnesses may be accompanied by an accredited trade union representative/official or work colleague (who must not be involved in the same disciplinary proceedings) to a disciplinary hearing for supportive purposes only.

7. Conducting a Disciplinary Hearing

Representatives

Colleagues are entitled to be represented at a formal disciplinary hearing by an accredited trade union representative, a work colleague (who must not be involved in the same disciplinary proceedings), or an official employed by a trade union. No other representation will be permitted.

The colleague should tell the Nominated Officer who their representative is as early as possible, but no later than 24 hours in advance of the hearing, unless exceptional circumstances apply.

Role of the representative

What they can do	✓ Address the hearing. ✓ Respond on behalf of the colleague to any views expressed at the hearing. ✓ Confer with the colleague during the hearing. ✓ Sum up the colleague's case.
What they can't do	✓ Answer questions on behalf of the colleague. ✓ Address the hearing if the colleague does not wish it. ✓ Prevent the colleague from presenting their case.

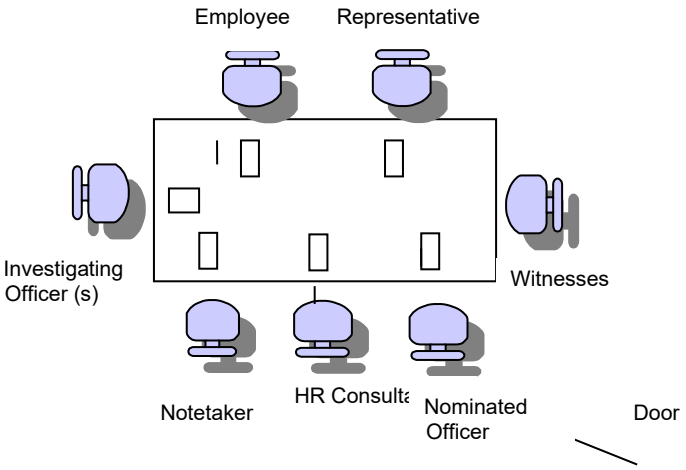
How to chair a disciplinary hearing – Nominated Officer guidance

Role and Responsibilities

- ✓ The Nominated Officer is responsible for chairing the disciplinary hearing.
- ✓ The Nominated Officer could issue written warnings, final written warnings or take punitive disciplinary action including dismissal. Only Nominated Officers with the appropriate delegated authority can take punitive action including dismissal.
- ✓ If you are unsure about your level of delegated authority, check with your line manager or contact your HR Case Consultant for clarification.
- ✓ The Nominated Officer must be supported by an HR Case Consultant.

Preparing for the hearing

- ✓ The Nominated Officer should re-familiarise themselves with the Investigating Officer's Report and statements prior to the hearing.
- ✓ A pre-meet with your HR Case Consultant is recommended.
- ✓ Take a note of any questions you intend to ask at the hearing.
- ✓ Remember that this process should be viewed as a means of encouraging any improvement in an individual's conduct or performance and not merely as a method of applying sanctions.
- ✓ Arrange a notetaker.
- ✓ Also arrange a separate room(s) where necessary for witnesses – bearing in mind you might need to keep witnesses apart.
- ✓ The hearing should take place in a private meeting room and appropriately arranged, example below:



The disciplinary hearing

- ✓ The hearing should start punctually.
- ✓ Introduce all present and ensure everyone understands why they are present.
- ✓ Confirm the allegations being considered at the hearing.
- ✓ Check that everyone has all relevant documentation.
- ✓ Confirm that the hearing will be conducted in accordance with the Disciplinary Policy.
- ✓ Confirm the format of the hearing and identify, if applicable, when there will be any planned breaks.
- ✓ Advise that either party may request an adjournment at any time.

	✓ Ask if there are any questions before proceeding to the hearing itself. ✓ A note of the hearing should be taken which should include: • The time and date the meeting took place. • The key matters that were discussed. • The key responses put forward by the colleague or their representative. • Any relevant mitigating factors put forward by the colleague. • Whether or not there was a formal outcome (e.g. a written warning). • Any required improvement in conduct and the timescales for improvement. • Any other special requirements.
Format of the hearing	✓ The Investigating Officer presents the case, including the calling of any witnesses. ✓ The Nominated Officer and HR Case Consultant have the opportunity to ask the Investigating Officer questions at the end of the presentation. ✓ Colleague and/or Representative have the opportunity to ask the Investigating Officer questions. ✓ Questions, in the same order as above can then be asked of any witnesses. ✓ Witnesses will be advised when they can leave. ✓ Colleague or representative present their case and call any witnesses. ✓ New information that was not covered in the circulated documentation cannot be introduced at this point. ✓ Nominated Officer and HR Case Consultant have the opportunity to ask questions of the colleague. ✓ Investigating Officer sums up. ✓ Colleague/Representative sums up. ✓ If new facts or allegations emerge, points are raised, or omissions in the investigatory process become apparent which may have an impact on the outcome, the hearing must be adjourned and re-convened after the Investigating Officer has completed any additional investigation required. ✓ Adjourn to consider whether a decision can be made. ✓ Investigating Officer leaves at this point and is not required further. ✓ Colleague/representative are advised how the decision will be communicated and that it will be made within seven calendar days of the hearing. ✓ Inform the colleague that they have the right to appeal and that the decision will be confirmed in writing within 7 calendar days. ✓ Any extension to timescales must be mutually agreed.
The outcome letter	✓ The Nominated Officer must issue the disciplinary hearing outcome letter within 7 calendar days of the hearing, which details: • Whether or not the allegations have been upheld (in whole or in part); • Level of any warning issued; • Reason(s) for the warning; • Effective date; • Improvement or future action required; • Duration of the warning;

- Likely consequence of further misconduct; and
- The right of appeal indicating the date by which notice of appeal should be received.

✓ Your HR Case Consultant will be able to assist you in the preparation of the outcome letter. There's a template letter on the Orb.

✓ The outcome letter should be hand delivered or sent recorded delivery.

✓ A copy of the outcome letter should be given to the colleague's representative and your HR Case Consultant.

✓ In cases of dismissal, your HR Case Consultant will advise you to ensure that the dismissal is processed correctly and without delay.

8. Reaching a Decision

A decision will not be made on the day of the hearing, unless the case is very straightforward. The Nominated Officer must have time to properly consider all the facts, evidence, witness statements and any other information presented at the hearing. In some circumstances, it may be appropriate to advise the person following an adjournment of the hearing.

Guidance

Disciplinary action not justified	✓ If the Nominated Officer reviews the IOR and decides that disciplinary action isn't justified, then the colleague will be informed that no action is being taken and that the disciplinary process has ended. There's a template letter to advise that no action will be taken available on the Orb. ✓ A note of the hearing must also be enclosed with the written confirmation to the colleague. ✓ The Nominated Officer can also recommend informal resolution if there are any issues identified in the IOR about conduct and behaviour that don't warrant formal disciplinary action. There's a template letter to advise that the matter will be dealt with informally on the Orb.
Disciplinary action justified	✓ If the Nominated Officer decides that disciplinary action is justified, then the colleague will be informed of the decision within 7 calendar days of the hearing. ✓ A note of the hearing must also be enclosed with the written confirmation to the colleague. ✓ The letter must include the disciplinary warning and/or sanctions applicable, as well as the right to appeal. There's a template letter available on the Orb.
Dismissal or punitive disciplinary action	✓ If the Nominated Officer considers dismissal or punitive disciplinary action short of dismissal is appropriate, they must consider the following prior to arriving at a final decision: • The colleague's length of service; • Previous disciplinary record; • Supervision records; • Performance reviews;

	• 1:1's; and • Any other relevant information. ✓ There are template letters for dismissal and for punitive action short of dismissal available on the Orb. ✓ Where the employee holds multiple posts within the Council, depending on the nature of the allegations, it may be appropriate to consider dismissal from all roles, therefore terminating the employment relationship. ✓ Significant outcomes should be delivered in person, unless exceptional, justifiable circumstances prevent this. ✓ Where appropriate, welfare support should be in place to support colleagues through the delivery of outcome decision meetings.
Correspondence	✓ All written confirmation of the outcome of the hearing must be copied to the HR Case Consultant in attendance at the meeting.

Warnings and Sanctions

Written Warning	✓ Issued when the misconduct does not meet the required standards.
Final Written Warning	✓ Issued where a colleague's misconduct is more serious, or where there has been no satisfactory improvement in conduct following previous disciplinary action.
Dismissal or other sanctions short of dismissal	✓ Dismissal or other sanctions short of dismissal can be taken where: • Following a final written warning a further act or omission warrants disciplinary action; or • Misconduct, or a series of misconduct issues, are established and are serious enough to justify disciplinary action without prior warning(s). ✓ The misconduct issues must be for similar acts, for example falsifying timesheets. ✓ Dismissal refers to: • Dismissal with due notice; or • Summary dismissal – dismissal without notice. This should only be in cases of gross misconduct.
Other sanctions short of dismissal	✓ Where a colleague is issued with a final written warning along with one of the following: • Suspension without pay for an appropriate period of time; and/or • Demotion and/or transfer to another job, place of work or service area.

Time limits for warnings

Disciplinary warnings cease to be live once the specified period of satisfactory conduct has expired and will be disregarded for future disciplinary action as follows:

- written warning – 9 months;
- final written warning – 12 months;
- final written warning and another sanction short of dismissal – 18 months.

Disciplinary warnings are cumulative. If the colleague has a current live warning any further disciplinary action taken could have the effect of leading to a higher-level warning being issued, or to the colleague being dismissed.

If the sanction short of dismissal - demotion and/or transfer to another job, place of work or service area is issued however there is no alternative suitable vacant post available or the colleague refuses the alternative post, the colleague will then be dismissed.

A colleague may be dismissed without previous warning where it's deemed that gross misconduct has occurred. Gross misconduct is behaviour of such a nature that the Council is unable to tolerate the continued employment of the individual concerned.

All documentation will be removed from the colleague's personal file and securely destroyed in line with the Council's data retention schedule.

Concluding case

The disciplinary outcome and details must remain confidential. However, where appropriate, it may be beneficial to inform colleagues who have been involved in the process – either through raising the original allegations or those who acted as witnesses – that the case has been concluded. Whilst it is understood that there may be a personal interest in understanding what occurred and any outcome and recommendations, it will not always be possible to provide people with this information however they should be assured that the Council have taken the matter seriously and undertaken a thorough and proper investigation into the allegations.

9. Appeals

Where a colleague feels that disciplinary action taken is unfair, they can appeal against the decision within 14 calendar days of receiving the decision in writing.

Appeals against written warning or final written warning

Timescale to appeal	✓ Appeals against a written warning or final written warning should be submitted to the relevant manager or to another manager one level above the manager who made the decision as indicated in the outcome letter. ✓ If the warning was issued by a service director, then the appeal will be heard by another service director or equivalent. ✓ The appeal must be submitted in writing using the notification of appeal form, detailing the grounds for appeal, and be submitted within 14 calendar days of the colleague receiving written confirmation of the warning. ✓ Any documents relevant to appeal should be sent with the notification of appeal form. ✓ The manager hearing the appeal will acknowledge receipt of the appeal and notify the appropriate Nominated Officer by sending them the appellant's appeal papers and appeal response form. ✓ The Nominated Officer's written response to the appeal must be sent to the manager hearing the appeal within 14 calendar days of receiving the appellant's case for appeal, using the Appeal Response Form. ✓ Any documents relevant to the appeal response should be sent with the Appeal Response Form.

Appeal hearing	✓ The appeal hearing must be arranged without unreasonable delay, normally within 4 weeks of receipt of the appeal submission or as soon as reasonably possible if that timescale cannot be met. ✓ The colleague will be given at least a week's notice, in writing, of the date of the appeal hearing and will be informed of their right to be accompanied. ✓ The invite letter must include any papers relevant to the appeal including the appeal response form. ✓ Timescales can be varied by mutual agreement. ✓ There is a template letter for appeal hearings available on the Orb. ✓ The manager hearing the appeal may be supported by an HR Case Consultant.
Witnesses	✓ Only witnesses who attended the previous stage(s) of the disciplinary process may be called to an appeal hearing.
New evidence	✓ If there is new evidence or the appellant has identified a witness who has not previously been involved in the process, and this is material to the case, then the case may be sent back to the previous stage to be reheard. ✓ If the decision is made to send the case back to the previous stage to be reheard, then this should be done as quickly as possible.
Reaching a decision	✓ The manager hearing the appeal can confirm, amend or withdraw disciplinary action. ✓ They cannot impose a higher disciplinary sanction than the one issued after the hearing. ✓ The decision will be confirmed in writing within 10 calendar days. ✓ There is no further right of appeal. ✓ There is a template letter to use when advising colleagues of the outcome of the appeal available on the Orb.

Appeals against dismissal and sanctions short of dismissal

Timescale to appeal	✓ Appeals should be submitted to the Service Director – Legal and Assurance by emailing personnel.appeals@edinburgh.gov.uk within 14 calendar days of receiving confirmation of the dismissal or sanctions short of dismissal. ✓ Any documents relevant to appeal should be sent with the notification of appeal form. ✓ Committee Services will acknowledge receipt of the appeal and notify the appropriate Nominated Officer by sending them the appellant's appeal papers. ✓ The Nominated Officer's written response to the appeal must be sent to Committee Services within 14 calendar days of receiving the appellant's case for appeal, using the Appeal Response Form.
Appeal documents	✓ Any documents relevant to the appeal response should be sent with the Appeal Response Form. The Nominated Officer should also provide the name of any witness they wish to attend the hearing.
Appeal hearing	✓ Committee Services will make arrangements for an appeal to be heard within a month of receiving the Notification of Appeal Form, or as soon as possible if that timescale cannot be met.

	✓ Committee Services will issue the agenda and papers for the meeting of the Personnel Appeals Committee not less than five calendar days in advance of the appeal hearing. ✓ Timescales can be varied by mutual agreement. ✓ The Nominated Officer will normally be supported at the hearing by an HR Case Consultant.
Witnesses	✓ Only witnesses who attended the previous stage(s) of the disciplinary process may be called to an appeal hearing.
New evidence	✓ If there is new evidence or the appellant has identified a witness who has not previously been involved in the process, and this is material to the case, then the case may be sent back to the previous stage to be reheard.
Reaching a decision	✓ Committee Services will write to both parties to advise them of the Personnel Appeals Committee decision, and the reason(s) for their decision, within ten calendar days of the date of the hearing. There will be no further internal right of appeal.

Version control

Version	Date	Author	Comment
1.0	04/11/2025	ER & Policy Team	Updated suspension section following TU feedback
2.0	11/06/2026	ER & Policy Team	Updated WW & FWW appeals section following case team feedback.
3.0	11/06/2026	ER & Policy Team	Suspension assessment oversight updated