

<b>APPOINTMENTS BOARD</b> <b>19<sup>TH</sup> June, 2008</b>	<b>AGENDA ITEM</b>
<b>REVISED DISCIPLINARY PROCEDURE</b>	
<p><b>PURPOSE OF REPORT</b></p> <p>This report proposes a new disciplinary procedure for council employees taking into account the recommendations of the District Auditor in his public interest report and also emerging legislation and good practice.</p>	
<p><b>RECOMMENDATIONS</b></p> <p>That the proposed disciplinary procedure attached as appendix B to this report be approved with an implementation date of 1 July 2008.</p> <p><b>Signed</b>.....</p> <p><b>Head of Human Resources &amp; Development : Paul Smith</b></p>	
<p><b>CURRENT POSITION/SUMMARY</b></p> <p>Following the publication of the District Auditors report into Employment Tribunal matters in September 2007, an action plan was produced by the council which included the following improvement actions in relation to the disciplinary procedure:</p> <p>“Disciplinary procedure to be reviewed to include a new section “When to use an external investigator” and “How to procure an external investigator”; Include a section detailing secondment arrangements”</p> <p>Human Resources &amp; Development took the opportunity to undertake a more fundamental review of the procedure which had not been reviewed since 2001.</p> <p>The procedure has been discussed with CMT, Audit Services and Legal Services. Meetings with full time officers of TGWU, UNISON and GMB were held on 11.01.2008 and 13.02.2008. There have also been meetings with the Disabled Employees Network, Black Employees Network, Lesbian, Gay Bisexual and Transsexual Workers Group and Women Employees Network to discuss the draft procedure. Following these constructive working groups, the procedure attached at appendix B was produced.</p> <p>A copy of the current disciplinary procedure is attached as appendix A</p>	



## **CITIZEN IMPACT**

A clear and well managed disciplinary procedure will ensure that citizens have faith in the council staff working on their behalf.

## **RESOURCE & LEGAL IMPLICATIONS**

There are no direct financial costs to the disciplinary procedure. However, failure to follow the procedure could lead to successful claims at Employment Tribunal which carry significant direct and indirect financial costs. The procedure complies with the ACAS Code of Practice on Discipline at Work and also will ensure that by following the procedure the council will have a strong defence at Employment Tribunal.

## **PERFORMANCE & RISK MANAGEMENT IMPLICATIONS**

The key risks in this procedure are related to the procedure not being followed. Revised case management processes that will be implemented in HRD will mitigate against this. There is no statutory performance indicator on disciplinary issues, but to ensure a fair process, disciplinary issues should be dealt with fairly and quickly. The Cabinet and CMT are also given monthly briefings on key cases.

## **EQUALITY IMPLICATIONS**

The procedure aims to ensure consistent and equitable treatment of all employees. Specific provisions have been made regarding the DDA. Employee support groups have been consulted in the drafting of this procedure.

## **CONSULTATION**

The following groups have been consulted in the preparation of this new procedure:

- Trades Unions
- CMT
- Legal Services
- Internal Audit
- Disabled Employees Network
- Black Employees Network
- Lesbian Gay Bisexual & Transsexual Employees Group

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## **Detailed Information**

Following on from the consultation detailed above a revised disciplinary procedure has been produced and is attached as Appendix B to this report.

The procedure includes the following key changes:

### **Levels of Sanction**

Currently the levels of sanction in the disciplinary procedure are as follows:

- Verbal warning
- First written warning
- Final written warning
- Dismissal

The revised procedure contains the following sanctions (contained in section 6.2.1 of the revised procedure):

- First Written Warning
- Second Written Warning
- Final Written Warning
- Dismissal

This enables greater clarity of disciplinary sanction and ensures that low level forms of action are appropriately recorded and managed.

### **Disability Discrimination Act**

Section 2.17 of the procedure makes specific reference to the provisions of the Disability Discrimination Act. This was not previously covered in the procedure. Reference is also made extensively to managing a case if an employee is absent through sickness during the investigation or prior to a hearing.

### **Involvement of Internal Audit**

Section 3.2 of the procedure contains details of when internal audit should be involved. This clarifies the role of internal audit in the case of breaches of financial and contract procedures, anti fraud/corruption policies, e mail & internet policy, complaints under the whistle blowing policy and payroll irregularities. This again is new to this procedure.

### **Suspension and Transfers pending investigation**

Section 4 & Appendices II and III of the procedure cover in detail the provisions relating to suspension and transfers during an investigation. In particular there are clear procedures set out for managing the transfer process to ensure that the employee has a clearly defined role, management and support during this time. This meets the requirements of the District Auditors report.

### **Use Of External Investigators**

The District Auditor specifically made recommendations that the Council clarify the use of external investigators. Appendix IV of the procedure now covers this in detail and places a



requirement on the senior manager to consult the Head of Internal Audit before authorising the appointment of an external investigator.

## **Support & Training**

In addition to the procedure there will also be a toolkit for managers to use. This will include a specific toolkit on carrying out investigations.

In February 2008, approximately 160 managers attended a briefing by John Anslow regarding the law relating to disciplinary procedures. John Anslow is one of the foremost experts on employment law and practice in the local government sector. It is likely this briefing will be rolled out wider including to Elected Members.

Training will continue for managers whose posts contain the power to dismiss and as part of the revised approach to management development, there will be other specific training for managers who have not received training on managing discipline. This will be mandatory.



## **Appendix A**

### **Disciplinary Procedure**

#### **1. The purpose of this procedure**

1.1 This procedure is designed to help all employees achieve and maintain satisfactory standards of behaviour and comply with the Council's rules. Its aim is to ensure consistent and fair treatment for everyone. It is not intended to apply to issues of poor work performance, which are handled under a separate procedure.

1.2 The procedure applies to all employees with the exception of

- school based employees
- Chief Executive & Directors on JNC for Chief Executives and for Chief Officers of Local Authorities

#### **2. The principles of this procedure**

2.1 This procedure is primarily concerned with improving discipline, not with applying disciplinary penalties. It aims for an outcome which is fair and constructive in pursuit of the Council's delivery of services to the community.

2.2 Within this procedure, the term 'supervisor' is used to mean the person designated by the General/Service Manager as the line manager of the employee for disciplinary purposes. A senior officer is defined as the line of management below General/ Service Manager

2.3 Supervisors are responsible for specifying the Council's standards of behaviour, enforcing rules and ensuring that breaches of these are tackled promptly. Where a potential disciplinary issue comes to light, the supervisor will act in accordance with this procedure immediately. Supervisors are responsible for clarifying standards of behaviour and dealing with minor shortcomings informally, including giving informal warnings. This does not constitute action under this procedure.

2.4 The whole process must be given a high priority by the supervisor and the employee concerned. A decision to take or not to take disciplinary action must be made with the minimum delay and communicated to those involved.

2.5 No disciplinary action will be taken without a prompt and thorough investigation into the circumstances (this will normally be undertaken by the employee's supervisor) and a hearing for which 7 calendar days (minimum) notice will be provided, which will be held by the manager designated for the level of disciplinary action under consideration. (see 2.2 for definitions) These are:

- Verbal Warning Supervisor/Line Manager
- Written Warning Supervisor/Line Manager



Final Warning Senior Officer  
Dismissal \* General/Service Manager

2.6 Investigations will be completed as far as possible within 4 weeks.

2.7 All proceedings, witness statements and records will be confidential. Records of Hearings given will be kept on personnel files as part of the history of that employee. Warnings will be disregarded for totting up purposes after the time specific in them.

2.8 Employees have the right of representation at any stage in this Procedure

2.9 This procedure will not be commenced in relation to a trade union official until the circumstances of the case have been discussed with a senior representative or paid official of the trade union.

2.10 Hearings will be conducted in accordance with guidance attached to this procedure (Appendix 1)

\* All dismissing Managers will have received appropriate training

## **2. The procedure**

3.1 At every stage of the procedure, the supervisor or manager who is to decide whether disciplinary action is justified will ensure that the employee is:

- given information about the complaint against them
- given the opportunity to prepare and state their case
- notified of their right to bring a representative to the hearing called to decide on the appropriate action to be taken.

3.2 After investigation and/or a formal hearing, the supervisor/manager may decide that disciplinary action is not warranted and will inform the employee of that decision. However, where disciplinary action is taken:

- i) no employee will be dismissed for a first breach of discipline, except in cases of gross misconduct;
- ii) the employee has the right of appeal against any disciplinary action under this procedure.

Where the matter requires disciplinary action, the following stages will be used.

## **4. Stages**

### **4.1 First warnings**

#### **4.1.1 verbal warning**

If conduct does not meet acceptable standards, the employee will normally be given an oral warning. This will be given by the supervisor. The employee will be told the reason for the warning, that it is the first stage of the disciplinary procedure and that there is the right of appeal. A



brief note will be kept on the personnel file of the fact that the warning has been given, the reason for it and any specific improvements required. Subject to continued satisfactory conduct, the warning will be disregarded for further disciplinary purposes after 6 months.

#### 4.1.2 written warning

If the offence is a serious one, or if a further offence occurs within the currency of an oral warning, a written warning will be given by the supervisor. This will give details of the complaint, the improvement required and the period over which it must take place. It will warn that action under the following stage of the procedure will be considered if the improvements required are not met, and state the employees of the right of appeal. A copy of the warning will be kept on the personnel file. Subject to continued satisfactory conduct, the warning will be disregarded for disciplinary purposes after one year.

#### 4.2 Final warning

If there is still a failure to improve following previous disciplinary action OR the misconduct is sufficiently serious to warrant only one written warning, but insufficient to justify summary dismissal, a final warning will be given in writing to the employee by a senior officer designated by the General/Service Manager. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will state the right of appeal. A copy of the warning will be kept on the Personal file. Subject to continued satisfactory conduct it will be disregarded for disciplinary purposes after two years.

#### 4.3 Dismissal

4.3.1 If conduct is still unsatisfactory, OR the employee is judged to have committed gross misconduct, dismissal by a designated Dismissing Officer will normally result. The employee will be provided as soon as reasonably possible with written notice of dismissal, the date on which the contract is to end, the reason for dismissal and the right of appeal.

4.3.2 The procedure can be commenced at any stage, depending on the nature of the alleged misconduct. Supervisors/designated senior officers can adjourn proceedings over which they are presiding and refer the matter to a more senior level if it becomes apparent to them that this is needed.

### **5. Gross misconduct**

5.1 Gross misconduct is generally seen as misconduct serious enough to destroy the employment contract between the employer and the employee and make any further working relationship and trust impossible. Examples of the sort of conduct that the Council regards as gross misconduct, rendering the employee liable to dismissal without notice, are:

- dishonesty, including theft and deliberate falsification of records



- serious breaches of safety regulations
- being under the influence of drink/drugs or chemical substances at work
- wilful disobedience to orders/instructions
- gross insubordination
- abuse of authority

## **6. Suspension**

6.1 The employee can be suspended for a short period on the authority of the General/Service Manager for instance where there is an allegation of gross misconduct or where the employee's presence at the workplace may interfere with the impartiality of the investigation. Suspension will be on full pay. It must be clearly stated to the employee that this does not constitute a disciplinary penalty. The appropriateness of the continued suspension should be reviewed frequently with the assigned personnel officer.

## **7. Appeals**

7.1 At an appeal hearing, the disciplinary action taken will be reviewed. The outcome will be to confirm it, substitute a lesser penalty, or cancel it. The decision is final.

7.2 An employee who wishes to appeal against formal disciplinary action must inform the designated officer in writing within 7 working days of being given the notification of the disciplinary action. The written notice of appeal must state the grounds for the appeal. The designated officer is:

- for an appeal against first warnings (verbal/written) the manager of the supervisor who gave the warning;
- for an appeal against a final warning: the General/Service Manager or their designated representative. If the warning was issued by the General/Service Manager, another General/Service Manager will be designated by the Chief Executive to hear the appeal;
- for an appeal against dismissal: the Head of Personnel & Development, who will convene an appeals panel of the Personnel Committee.

7.3 The designated officer will call a hearing to determine the appeal at least 7 days notice will be given for appeal hearings. Appeals against warnings will normally be heard within three weeks of the appeal being lodged. Appeals against dismissal will normally be heard within one month of being lodged.

7.4 The employee is allowed to bring a representative to the appeal hearing. The letter notifying them of the hearing date must state this.



## Appendix 1

### CONDUCTING A DISCIPLINARY HEARING

#### 1. PREPARATION

- Arrange date, time and place for the hearing including separate waiting rooms if possible
- Where appropriate arrange for a notetaker to be present
- Consult your designated Personnel Officer for guidance on appropriate hearing advisors.
- Make sure that all documentation has been distributed at least 7 days in advance of the hearing.

#### 2. HEARING

- Introduce those present and explain their “role” at the hearing
- Proceed with the employers case and calling of appropriate witnesses allowing for questioning of each witness after presentation of evidence. Witnesses are invited to substantiate their evidence and may not remain in the hearing throughout.
- Employees may question the person bringing the employers case.
- Invite the presentation of the employees case, as above
- Adjournment can be called by either side at the discretion of the Hearing Chairperson and or hearing advisors be given opportunity to ask questions of either side.
- After general questioning and discussion each side be invited to summarise the main points.
- The hearing would normally then stand adjourned, with both sides leaving the room together, pending a decision by the Hearing Chairperson.
- The employee will be advised of the decision of the Hearing and what action (if any) is being taken. Confirmation of the decision will be given in writing, including appeal rights in the case of warnings.
- When writing to an employee to detail the sanction, they must be notified of the right of appeal. This should include a statement similar to “I do/do not wish to appeal against this decision . . . and the grounds of my appeal are detailed below . . . “

#### 3. APPEAL HEARING

- Appeal Hearings will either confirm, substitute a lesser penalty or cancel the disciplinary action taken. The appeal decision is final.
- An appeal hearing against **any** sanction will be conducted in accordance with the ‘model Procedure to be adopted for Internal Hearings of an Appeal Against a Disciplinary warning or dismissal’ – updated January 2002.
- Please note that the purpose of an appeal hearing is to examine in detail the grounds of individual appeals. It is not to conduct a re-run of the original disciplinary hearing.



## **Appendix B**

# **WALSALL COUNCIL DISCIPLINARY PROCEDURE**

## **1.0 INTRODUCTION**

- 1.1 This procedure is designed to help all employees achieve and maintain satisfactory standards of behaviour and comply with the Council's rules policies and procedures and Code of Conduct for employees. Its' aim is to ensure consistent and fair treatment for everyone. It is not intended to apply to issues of poor work performance, which are dealt with under a separate procedure.
- 1.2 The procedure applies to all employees with the exception of directly employed school based employees, Chief Executive and Directors on JNC conditions for Chief Executives and for Chief Officers of Local Authorities; contractors, external consultants and agency staff (with the exception of those agency staff that have had continuous engagement with the council for 12 months).
- 1.3 Walsall Council and the Trades Unions attach great importance to the establishment and continuance of good working relationships at all levels within the Authority. It is recognised that discipline is necessary for efficient and effective operation of the organisation and for health and safety at work of all employees.
- 1.4 This procedure is based on the standards set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures and the Minimum Statutory Dismissal and Disciplinary Procedures, contained in the Employment Act 2002 and the Employment Act (Dispute Resolution) Regulations 2004.

## **2.0 GUIDING PRINCIPLES**

- 2.1 To ensure disciplinary issues are dealt with fairly and effectively and with clear outcomes at all stages. This procedure is primarily concerned with improving discipline, not with applying disciplinary sanctions. It aims for an outcome which is fair and constructive in pursuit of the Council's delivery of services to the community.
- 2.2 All managers who have a responsibility for applying this procedure will do so in a fair and equitable way. Managers will seek guidance and support from a Personnel Officer in applying this procedure. Managers will not discriminate in the application of this policy and procedure in respect of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, social and employment status, gender reassignment, political affiliation or Trade Union membership.
- 2.3 Managers are responsible for clarifying standards of behaviour, particularly during induction and/or probation. Supervisor/Managers are responsible for dealing with minor shortcomings informally. Further information is in the managers toolkit (available on the HRD intranet) and such action does not constitute action under this procedure.
- 2.4 Before taking formal disciplinary action for minor misconduct, all managers will make every effort to resolve the matter by informal discussions where appropriate.



Where this fails to bring about the desired improvement the formal disciplinary procedure will be implemented, unless it is a case of potential gross misconduct.

- 2.5 At every stage of the formal procedure, an employee will be advised of the nature and circumstances of the complaint against him/her in writing and will be advised of the potential consequences. They will be given the opportunity to state their case before any decision is made.
- 2.6 All parties are required to make themselves available for meetings in any disciplinary process. This is to ensure that investigations, hearings and appeals progress as quickly as is reasonably possible for the benefit of the organisation and the employee.
- 2.7 At all formal stages of the Disciplinary Procedure, an employee will have the right to be accompanied by an accredited Trade Union representative or work colleague of their choice not otherwise involved in the investigation.
- 2.8 A Disciplinary sanction can only be considered after the employee and/or representative has been given the opportunity to state their case at a Disciplinary Hearing and the disciplinary hearing officer has come to a conclusion based on a reasonable and genuine belief that the allegation is substantiated.
- 2.9 Disciplinary matters will normally be pursued sequentially through the stages of the procedure, but the procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 2.10 Dismissals will not occur for a first breach of discipline except in the case of gross misconduct, when the sanction could be dismissal without notice and without pay in lieu of notice.
- 2.11 All Hearing Officers (normally Head of Service or above) will have received appropriate training to chair Disciplinary hearings where dismissal may be within the range of reasonable responses. In other cases, the authority to take disciplinary action against an employee rests with the immediate line manager. If the case involves specialist professional issues then WMBC has discretion to call in an external adviser.
- 2.12 No disciplinary action will be taken against a Trade Union Representative without prior notification with the appropriate Branch Secretary and/or District Officer.
- 2.13 If an employee or their representative is unable to attend a disciplinary or appeal hearing with a reason acceptable to the hearing officer, it will be re-arranged once. If the employee or their representative is unable to attend the re-arranged hearing, it can go ahead in their absence. It is for the hearing officer to decide with technical advice whether to allow more than one postponement.
- 2.14 Employees have the right of appeal against any formal disciplinary sanction taken under this procedure.
- 2.15 Records will be treated as confidential and kept in accordance with the Data Protection Act 1998 and the Councils document retention policy. The exception to this will be where there is a requirement to report to external agencies. Appendix VI



lists the current external agencies. Copies of all formal correspondence under the formal stages of the disciplinary process must be copied to personal files.

- 2.16 Formal sanctions are live for the relevant period of time in accordance with the procedure. On expiry of the sanction employees may request that it is removed from their file. However, the Council reserves the right to retain spent sanctions on personal files for specific reasons, eg, child protection and/or other legislative and statutory requirements.
- 2.17 Reasonable adjustments will be considered for staff who are disabled under the definition within the Disability Discrimination Act
- 2.18 Separate procedures exist for dealing with sickness absence, but unauthorised absence will be dealt with under this procedure.

### **3.0 CONDUCT THAT MAY WARRANT DISCIPLINARY ACTION**

- 3.1 It is impossible to provide a comprehensive and exhaustive list of all the issues that might give rise to a disciplinary investigation and formal disciplinary action but some of the more common are attached at Appendix 1.

#### **3.2 When to Involve Internal Audit**

- 3.2.1 There are a number of rules, policies and procedures where there is a requirement to report matters of irregularity to internal audit who will advise on investigation arrangements. Without exception Internal Audit must be notified immediately on issues relating to :

- Financial and contract rules/procedures
- Anti fraud/corruption policy & strategy
- E mail/internet usage policy
- Malicious complaints under the Whistle blowing Policy
- Payroll Irregularities

It would also be appropriate to involve audit with a view to commissioning an internal audit investigation in cases of alleged misconduct (or alleged gross misconduct) including:

- Fraudulent use of ATAR or Flexitime
- Financial irregularities/misappropriation of funds
- Fraud and corruption
- Inappropriate use of Council property or equipment
- Cases of dual employment that contravene Council rules
- Working privately whilst absent on sick leave
- Fraudently claiming of benefits whilst in work
- Falsification of mileage claims
- Financial irregularities/misappropriation of funds

This list is not exhaustive. If in doubt about whether or not to involve audit, Managers are requested to contact the Head of Internal Audit or a Personnel Officer.



## **4.0 SUSPENSION AND ALTERNATIVE ACTION**

### **4.1 Alternatives to suspension**

- 4.1.1 In each case where suspension is a likelihood other options must also be considered. This may only be appropriate where the allegations are such that they do not prejudice the investigation and will not put the employee or other employees or the Council at any potential risk.
- 4.1.2 If appropriate, a temporary move to another team or service may be considered as an alternative to suspension whilst an investigation is completed. Any temporary move will be paid at no financial detriment to the employee. Refer to Appendix III for further guidance on how to manage temporary move arrangements.
- 4.1.3 An employee who has been temporarily moved as an alternative to suspension may be suspended at any time during the temporary move if it is later deemed appropriate to do so
- 4.2 Where an allegation of gross misconduct is made, consideration will be given to the suspension of an employee. If an employee is suspended they will receive full pay. Suspension is when an employee is instructed to refrain from work. An employee is entitled to be represented by a trade union officer or work colleague when being suspended.

The decision to suspend or take alternative action must be authorised by the appropriate Executive Director/Assistant Director/Head of Service. The Executive Director/Assistant Director/Head of Service must consult a Personnel Officer prior to the suspension or alternative action taking place.

Prior to making a decision, alternatives to suspension must be considered.

### **4.3 Suspension**

- 4.3.1 If there are no appropriate alternatives to suspension the Code of Practice on Suspension must be followed. See Appendix II
- 4.3.2 In cases other than those of alleged gross misconduct, suspension would not normally occur. However, it might be appropriate to give consideration to suspension in the following circumstances:
  - It would be dangerous or impractical to continue to allow the employee to remain at work.
  - Relationships have broken down between employees to the extent that the situation is untenable or has a substantial adverse effect on the delivery of the service.
  - There are risks to the Council's property.
  - There is a danger that the employee's continuing presence at work would jeopardise the investigation into the alleged misconduct. For example by evidence tampering or destruction



- 4.3.3 In all cases, the employee must be informed in writing of the nature of the allegations made against them. If further allegations arise during the investigation the employee must be advised.
- 4.3.4 It should be noted that suspension from duty, for the purpose of conducting a disciplinary investigation, is not considered to be a disciplinary sanction. It is a neutral act and is without prejudice

## **5.0 DISCIPLINARY INVESTIGATIONS**

(please also refer to the managers toolkit available on the HRD intranet site)

- 5.0.1 At all stages of the investigation advice should be sought from a Personnel Officer.
- 5.0.2 Prior to invoking the formal disciplinary procedure an investigation will be conducted to determine whether it is appropriate to pursue disciplinary action. The appropriate Executive Director/Assistant Director/Head of Service or his /her nominee and where appropriate in consultation with the Head of Internal Audit will be responsible for the appointment of an Investigating Officer who, depending on the nature of the inquiry will be assisted by Internal Audit.

For further guidance on the selection and appointment of an Investigating Officer please see Appendix IV.

### **5.1 The Investigation**

- 5.1.1 The key purpose of the investigatory process is to ascertain the facts. The Investigating Officer(s) may do this either through interviewing witnesses, by the scrutiny of files/records/documents etc. or a combination of both. Detailed, dated records must be kept of any interviews held. Witnesses interviewed should be asked to sign any statements/interview notes and be made aware that they could be used at a subsequent hearing as evidence and in which case they as witnesses may be required to attend the hearing.
- 5.1.2 If at any stage during the investigatory process the Investigating Officer(s) suspect criminality they should immediately contact the Head of Internal Audit to arrange for Police involvement. For example, in cases involving the possession of illegal drugs, theft, abuse or fraud.
- 5.1.3 During the process of the investigation it will be necessary to interview the employee(s) against whom the allegations are made. This should be done as soon as is reasonably practicable. The employee must be informed in writing of the allegations against them and be advised of the right to be accompanied by a Trade Union representative or work colleague at any interview.
- 5.1.4 The Investigating Officer should advise the employee under investigation that they have concluded their investigation and passed this to the Director/ Head of Service or their nominee for a decision regarding a disciplinary hearing.
- 5.1.5 Having established the facts, the Investigating Officer(s) will report the findings of the investigation to the Director/Head of Service or their nominee. Based on this report the Director/Head of Service will decide whether or not the case should be



heard at a disciplinary hearing and nominate someone to chair and organise the hearing. This decision should be made within 1 week (5 working days) of their receipt of the Investigating Officers report and notification of their decision to the employee during the following week. If this is not possible for example due to sickness or annual leave then the employee must be advised of the date the decision will be made.

- 5.1.6 If it is determined that a disciplinary hearing is **not** necessary then the employee and their representative, if appropriate must be notified in writing of this decision by the individual referred to in 5.1.5 above.
- 5.1.7 If it is determined that a disciplinary hearing be held, the officer referred to in 5.1.5 above must advise the employee of their decision and the allegations that should be considered at a disciplinary hearing. They will also advise that a Statement of Case will be prepared and sent to them separately along with the date for the hearing.

The Investigating Officer(s) then must produce a written statement of case establishing that there is substance to the allegation and include the full details of the case, witness statements internal audit investigation and other evidence which will be copied to the employee and their representative prior to a disciplinary hearing.

- 5.1.8 The disciplinary hearing officer will be an appropriately senior manager who has had no previous involvement in the case.

## 5.2 The Disciplinary Hearing

- 5.2.1 The Hearing Officer will make arrangements for the hearing including identifying a minute taker. If the employee has an identified representative they will consult with them when setting the hearing date
- 5.2.2 In preparing for a disciplinary hearing the Investigating Officer must ensure that copies of the completed statement of case and appendices is with Hearing Officer in good and reasonable time to allow for the case to be sent to the employee **no later than 21 calendar days before the hearing**. The Investigating Officer must also inform the Hearing Officer of any witnesses they wish to call to the hearing at this stage. The Hearing Officer will arrange for the witnesses to be notified of their attendance at the hearing.
- 5.2.3 The employee must ensure that any papers they wish to refer to at the hearing be submitted to the Hearing Officer no later than 7 calendar days before the hearing. The employee must inform the Hearing Officer of any witnesses they wish to call to the hearing at this stage. There is an expectation that under normal circumstances that if the employee does not adhere to this timetable the hearing will still go ahead.
- 5.2.4 Both parties must respect the need for confidentiality, at all times in relation to any information exchanged. (insert link to toolkit for explanation of confidentiality)

A Protocol for Disciplinary Hearings can be found at Appendix V.



## **6.0 DISCIPLINARY ACTION**

### **6.1 Informal Action**

- 6.1.1 Cases of minor misconduct are usually best dealt with informally although there may be situations in which a more formal approach is required. This would be relevant if informal action already taken has not been effective.
- 6.1.2 An informal discussion should take place between the Supervisor/Line Manager and the employee concerned. The objective of this is to assist the employee to resolve a problem that is having a detrimental effect on their conduct. There is no right to representation at any informal meeting.
- 6.1.3 A written record of the meeting should be made, including details of any agreed action, training, counselling or other support to be made available to the employee. A copy should be given to the employee and it will be confirmed in writing that their conduct will be monitored and reviewed over an agreed period.
- 6.1.4 If informal action does not bring about an improvement, or the misconduct is considered to be too serious to be dealt with informally then more formal action can be taken.

### **6.2 Formal Action**

- 6.2.1 If an allegation(s) is upheld following a disciplinary hearing, the Hearing Officer can issue one of the following sanctions,

- First written warning (6 months)
- Second Written Warning (12 months)
- Final Written Warning (24 months)
- Dismissal

Before making a decision, the Hearing Officer should take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar cases, the explanations given by the employee and whether the disciplinary action is reasonable in all the circumstances. (please refer to the managers toolkit for guidance on the decision making process at disciplinary hearings)

### **6.3 First Written Warning**

- 6.3.1 If conduct is unsatisfactory, the employee may be given a first written warning. Such warnings will be recorded, but disregarded for disciplinary purposes after 6 months of satisfactory conduct. The employee may be informed that a second written warning may be considered if there is no sustained satisfactory improvement or change during the length of the sanction.
- 6.3.2 If the Hearing Officer deems the offence to be sufficiently serious consideration may be given to the sanction of a higher level warning for a first offence.



#### 6.4 Second Written Warning

- 6.4.1 If conduct remains unsatisfactory, the employee may be given a second written warning. Such warnings will be recorded, but disregarded for disciplinary purposes after 12 months of satisfactory conduct. The employee may be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change during the length of the sanction.
- 6.4.2 If the Hearing Officer deems the offence to be sufficiently serious consideration may be given to the sanction of a higher level warning for a first offence

#### 6.5 Final Written Warning

- 6.5.1 If the offence is serious or if the employee has committed further acts of misconduct whilst a sanction for a second warning is still live, then, following a further hearing consideration will be given to the issue of a final written warning. This will remain live for 24 months, after which it will be disregarded for disciplinary purposes.

#### 6.6 Action short of dismissal

- 6.6.1 Where dismissal would normally be considered but there are exceptional circumstances, action short of dismissal may be considered. The following sanctions may be awarded in conjunction with a final written warning:
- Transfer to REASONABLE alternative work
  - Transfer from night work to day work with loss of enhancements
  - Repayment in cases of theft of time and/or money

#### 6.7 Dismissal

- 6.7.1 If conduct continues to be deemed unsatisfactory or the employee is deemed to have committed an act of gross misconduct, dismissal could result without notice.

### **7.0 APPEALS**

- 7.1 An employee has the right of appeal against any formal disciplinary sanction issued. An appeal against a sanction must be made in writing. It must clearly state the grounds upon which the appeal is made and be received by the Council within 7 working days of receipt of the letter confirming the disciplinary sanction.
- 7.2 The Officer to whom the appeal must be made will be clearly specified in the letter providing confirmation of the disciplinary sanction. Appeals are normally to the next level of manager assuming they have not previously been involved in the case. Appeals against dismissal will be heard by Elected Members.
- 7.3 Appeals against dismissal must be made to the Head of Human Resources and Development who will make arrangements for an appeal panel to be convened.



## **APPENDIX I**

### **ACTS OF MISCONDUCT**

**The following list is not intended to be comprehensive and serves to provide examples of misconduct for which disciplinary action may be warranted.**

- Lateness
- Being in a flexitime debit
- Failure to follow procedures (reporting sickness for example)
- Insubordination
- Failure to follow a reasonable management request
- Dishonesty
- Unacceptable behaviour towards colleagues, members of the public, stakeholders or councillors.
- Inappropriate use of Council resources including e-resources
- Breach of the employee code of conduct

### **ACTS OF GROSS MISCONDUCT**

**The following list is not intended to be comprehensive and merely serves to provide examples of gross misconduct which could lead to dismissal. These are examples which could, dependant on the seriousness of the offences, result in summary dismissal.**

- Theft or incitement to steal
- Fraud and/or corruption
- Physical violence, bullying or harassment
- Unlawful discrimination, bullying or harassment on the grounds of gender, race, disability, age, sexual orientation, religion or belief
- Abuse of vulnerable clients in the care of the Council
- Serious damage to property
- Accessing internet sites containing pornographic, offensive or obscene material and/or abuse of e-mail or other communication systems used and/or owned by the Council
- Serious insubordination
- Serious incapability at work brought on by intake of substances which may include (but are not limited to) alcohol or illegal drugs
- A serious breach of health and safety rules
- Breach of the Code of Conduct for Employees such as
  - Accepting profits or bribes for personal gain
  - Allowing one's private interests or duty to conflict with the interests of the Council
- Dual working without express permission



## **APPENDIX II**

### **CODE OF PRACTICE ON SUSPENSION**

Where it is deemed necessary for an employee to be suspended from duty, the following Code of Practice shall apply:

- The employee shall be called to a meeting with the Executive Director/ Assistant Director/Head of Service or their representative and a Personnel Officer. The Executive Director/ Assistant Director/Head of Service or their representative will make a decision regarding suspension.
- The employee will only be notified that a serious allegation needs to be discussed and will not be provided with details before the meeting so as not to compromise any necessary investigation.
- The employee will be informed of the right to be accompanied by a Trade Union representative or a work colleague of their choice. It will not always be possible to give advance notice of this meeting so as much reasonable time to arrange this will be given as possible.
- If representation cannot be arranged the meeting can still go ahead. If the employee refuses to attend the meeting without representation then a decision whether or not to suspend will be made based on the information available.
- At this meeting the employee will be presented with the allegations and asked to make an initial response. The decision to suspend should only be made once the employee has had the opportunity to respond.
- The employee will be informed of the reason for suspension from duty and asked return their ID card, keys and any other equipment or property belonging to the Council.
- Allowed to return to their desk to collect personal belongings and escorted from the premises
- A letter, confirming the suspension and the reason(s) for the suspension will be sent to the employee within 2 working days from the date of the suspension meeting. A copy of the letter must be sent to the Personnel Officer and Trade Union representative, if appropriate.
- The employee will be instructed not to return to the work premises and will be requested not to have contact with any Council employee other than their representative, the investigating officer or designated officer with regards to the details of the case. Failure to follow this instruction may be treated as a disciplinary offence.
- The employee will receive normal pay whilst suspended from duty, including contractual allowances and bonuses.



- During the suspension an employee must be available to attend investigatory meetings/interviews when requested.
  - Requests for annual leave during suspension can be made by the employee and must be authorised in advance in accordance with the policy
  - If an employee is or becomes absent due to sickness during suspension, their status as a suspended employee remains.
  - Copies of sick notes should still be submitted to ESS for recording and payment of statutory sick pay, A covering note should be included to advise ESS and Payroll to pay normal pay not occupational sick pay.
  - The sickness absence still must be recorded and managed in accordance with the Council's sickness absence procedure.
- Suspension from duty does not constitute disciplinary action and does not involve any prejudgment.
- Contact by a nominated officer (normally the investigating officer) with the employee during the period of suspension should be formal and should be made within 2 weeks from the date of suspension and at regular intervals thereafter. A written record of any contact with the suspended employee must be kept by the nominated officer.
- Every effort must be made to conclude a disciplinary investigation as is reasonably practical.
- The purpose of formal contact during a suspension is to:
  - consider and offer support where appropriate
  - arrange investigatory meetings
  - keep the employee informed of the progress of the investigation and of its likely time of conclusion
  - inform the employee of the consequences of the potential conclusions of the investigation and to inform them of any potential subsequent action
- If formal disciplinary proceedings are warranted, it should be noted that the Senior Manager who suspended the employee **is** precluded from sitting on a subsequent Disciplinary Panel. The Investigating Officer(s) must not sit on a subsequent Disciplinary Panel.
- Employees should be advised of who they can contact during their suspension regarding the proceedings and should be offered support via the Employee Assistance Programme.
- The decision to suspend should be formally reviewed at least every 4 weeks by the Investigating Officer. If, however, it becomes apparent that a suspension should be lifted this should be done immediately and you should not wait until the next scheduled suspension review. Please refer to the managers toolkit on the HRD intranet for the suspension review process.



## **APPENDIX III**

### **MANAGING TEMPORARY MOVES DURING THE DISCIPLINARY PROCESS**

If it is deemed appropriate to move an employee into an alternative post during an investigation process this must be carefully and properly managed in accordance with these guidelines.

It may be appropriate to temporarily move an employee as an alternative to suspension or in cases where;

- It is necessary to relocate a key witness
- To avoid prejudicing the investigation
- To safeguard against potential employee relations difficulties.

Wherever this is to be considered your Personnel Officer must be contacted for advice.

Once a decision has been made to move an employee, the following information should be recorded in writing:

- Details of duties to be performed (provide a copy of the job description to the employee)
- The skills required to do the job (provide a copy of an employee specification to the employee)
- Line management arrangements. Be clear about responsibilities regarding supervision, booking of annual leave etc.
- Timescales – when the move will start and when it is likely to end
- Regular reviews at least every two weeks. The line manager of the moved employee should undertake these reviews.
- The employees work base

Any temporary move must be appropriate in terms of the substantive grade of the post holder and their knowledge, skills and abilities.

The employee temporarily moved should suffer no financial detriment as a result of the temporary move.



## **APPENDIX IV**

### **SELECTING AN INVESTIGATOR**

When selecting an Investigator consideration must be given to the following;

- The time it will take to conduct the investigation. It is crucial that any investigation is given a high priority. It may be necessary to give consideration to the investigators work load to see if any of it can be reprioritised or shared amongst colleagues.
- The skills of the investigator. A less experienced investigator may need more time and/or support in conducting and concluding an investigation.
- Impartiality. Give consideration to this at the outset. If in any doubt, give consideration to the appointment of an alternative investigator.
- Administrative support. It is important that the identified investigator has adequate administrative support to help to ensure that the investigation is carried out in a timely and efficient manner.
- It may be necessary to second a manager into the position of investigator. This could be on a part or full time basis and will be determined by a Head of Service or equivalent

#### **Management of and support for the Investigating Officer**

It is the responsibility of the line manager of the investigating officer to manage the process outlined below.

- Identify the proportion of time that is likely to be taken up by the investigation and any support required.
- Identify and agree which substantive duties must remain the responsibility of the investigating manager.
- Agree timescales in which to review the arrangement.
- Agree arrangements for backfilling of duties not to be carried out by the investigating manager for the duration of the investigation
- Make arrangements for the payment of an honoraria if appropriate.

### **WHEN TO USE AN EXTERNAL INVESTIGATOR**

In some exceptional circumstances it may be appropriate to engage the services of an external investigator in the following situations:

It may not be possible for an internal investigator to be identified in a number of circumstances. This may be due to the capacity of individuals due to a high workload. Alternatively, it may be necessary to appoint an investigator of a particular level of seniority. If no such officer is available it may be necessary to consider the appointment of an external investigator.

The Executive Director/Assistant Director/Head of Service or their equivalent must in consultation with internal audit give written authority with an explanation for an external investigator to be appointed.

#### **How to Procure an External Investigator**



If this option is to be considered you must consult with a Personnel Officer and the Head of Internal Audit

Procuring the services of an external investigator must be sought in compliance with Financial and Contract Rules



## **APPENDIX V**

### **PROTOCOL FOR DISCIPLINARY HEARINGS**

The procedure below is to be followed at a disciplinary hearing, held in accordance with the Disciplinary Procedure for staff employed by Walsall Council, with the exception of teaching and support staff employed by schools, and Chief Officers.

1. The Hearing Officer will arrange a suitable date and time for the hearing.
2. At the hearing the management side will present the case against the employee. Witnesses may be called and evidence presented. Witnesses should be called into the hearing at the point that they are required to give their evidence. When they have done so and have answered questions they will be asked to leave the hearing. Witnesses, whether management or employee side witnesses, should not then discuss the events of the hearing with remaining witnesses
3. The employee or their representative may ask questions about the evidence presented by the management side and any of any witnesses called.
4. The employee or their representative will present their case. Witnesses may be called and evidence presented.
5. The management side may ask questions about the evidence presented by the employee and their representative and any witnesses called.
6. The Hearing Officer and Technical Adviser may ask questions of either party, their representatives or any witnesses called.
7. The management side, the employee or their representative have the opportunity to sum up their case.
8. Following summing up, both parties together with their representatives will withdraw while the Hearing Officer considers the facts.
9. The Hearing Officer will recall both parties and deliver the outcome of the hearing and the reasons for the decision. This will be confirmed in writing within 5 working days.

### **Notes**

- a) If during the hearing further points/evidence emerge which require investigation; the Hearing Officer may call for an adjournment to allow the new facts to be investigated, after which the hearing can be reconvened.
- b) If further deliberation is required it may not always be possible to reach a decision on the day of the hearing. A decision must be reached within 5 days of the date of the hearing.
- c) Both sides can ask the Hearing Officer for adjournments, in order to have a break from the proceedings.



## **Appendix VI**

### **External Agencies and Disciplinary sanction reporting**

**The Council will keep records in accordance with the Data Protection Act 1998 and the Council's document retention policies. The exception to this will be where there is a requirement to report to external agencies. These are:**

- Professional Organisations where membership is required to practice e.g. Law Society, General Social Care Council
- Organisations related to the safeguarding of Adults or Children e.g. Independent Safeguarding Authority (ISA)
- Police (if potential criminal offence)
- DVLC (if driving related offence)
- Staff will be advised of information to be sent to external agencies