

# Disciplinary policy

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## **SECTION 1: GENERAL GUIDING PRINCIPLES**

### **POLICY STATEMENT**

The council expects the highest standards of integrity, conduct and behaviour of its employees. It is the responsibility of managers to make sure that employees are aware of the standards required, including local standards. It is the responsibility of all employees to familiarise themselves with the appropriate policies and codes in order to demonstrate compliance with the standards.

This Disciplinary Policy has been drawn up in accordance with the Employment Act 2008, Trade Union and Labour Relations (Consolidation) Act 1992, CIPD guidelines, ACAS guidelines including the current ACAS Code of Practice on Disciplinary and Grievance and Disciplinary and Grievances at work: The ACAS guide. It also has regard to the requirements of natural justice.

The purpose of the Disciplinary Policy is to:

- Help and encourage all Chesterfield Borough Council (CBC) employees to achieve and maintain the highest possible standards of performance and conduct, and
- Promote the prompt, equitable and consistent treatment of staff where breaches of discipline are alleged.

### **SCOPE**

This policy will apply to all CBC employees subject to the following exemptions as separate arrangements exist for these individuals:

- Employees still subject to a probationary period;
- Volunteers.

In addition the Chief Executive, Executive Directors, Monitoring Officer, Director of Finance and Resources are exempt from this policy. The provisions contained within the Local Authorities (Standing Orders) Regulations 2015 will apply with regard to disciplinary action in respect of the 'protected officers' to whom the regulations apply.

If an employee is not meeting the council's expectations for the quality or quantity of their work, the problem is poor performance and the capability policy should be applied to set expectations, provide feedback and improve the performance of the individual in line with the expectations of the council. Whereas the disciplinary policy is used when a behavioural incident or inappropriate conduct has occurred and takes the form of a breach of any of the council's employment policies, procedures or guidelines.

Reference to the Corporate Management Team (CMT) includes the Chief Executive, 2 Executive Directors, the Director of Finance and Resources, the Policy and Communications Manager, Health and Wellbeing Manager, Commercial Services

Manager, Economic Growth Manager, Customers, Commissioning and Change Manager and the Housing Manager.

## **PRINCIPLES**

Employees are expected to conduct themselves in accordance with the policies, procedures, principles and values of CBC.

The disciplinary procedures, including informal action, should not be seen merely as a means of imposing sanctions on staff, but also as a means by which improvements in the employee's performance and conduct are encouraged.

The procedure may be implemented at any stage depending upon the seriousness of the employee's alleged misconduct.

The time limits referred to in the policy may be varied by agreement of both parties e.g. employee or management.

In respect of any action taken against an employee under level 1 of the Disciplinary Procedure, the Disciplining Officer will normally be the employee's line manager. Levels 2 & 3 of the Disciplinary procedure will be conducted by a member of CMT. Under level 4 only those nominated Officers with authority to dismiss under the CBC's Delegated Authority Protocol can take the decision to dismiss; this is currently limited to members of CMT.

CMT will delegate authority to named managers to implement the disciplinary process and identify those managers with the authority to suspend and extend disciplinary process target time scales.

The Head of HR (or nominated representative) should be in attendance in an advisory capacity for at least levels 2,3 & 4 of the Disciplinary Procedure. Dismissal may only take place after consultation with the Head of HR or nominated representative.

Disciplinary action against a Trade Union representative (including launching an investigation), should not commence until the circumstances of the case have been discussed with the Head of HR or nominated representative and a full time official.

No formal disciplinary action should be taken against an employee until the case has been fully investigated. The employee will be advised of the nature of the complaint/ allegation against them and will be given the opportunity to state their case before any decision is made.

Where the allegations relate to drugs and/or alcohol misuse the council's Drug and alcohol misuse policy should be used to support the employee with dependency issues and provide a safe and healthy environment for all staff and service users.

An employee will have the right to appeal against any disciplinary sanction imposed unless the level 2 first written warning has been agreed without a panel.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the sanction could be dismissal without notice or payment in lieu of notice. Appendix 1 sets out examples of behaviour and conduct that would constitute misconduct and gross misconduct.

All employees of CBC are required to co-operate and participate fully with all stages of the disciplinary procedure and their attendance should be facilitated in internal processes, however, failure to comply may lead to disciplinary action in itself.

Staff who are suspended and/or under investigation will be allowed to apply for progression (including optional training) but any offer to an employee will be conditional on no disciplinary sanction being issued as a result of the suspension /investigation.

Staff who have a current disciplinary sanction will not be allowed to apply for or be considered for progression (including optional training) until any sanction(s) is/are spent. Any increments which may be due will also be withheld for the duration of a sanction. If staff who have already applied or been approved for progression (including training) then receive a disciplinary sanction, they will be removed from the course or its application process.

CBC has a responsibility for the protection of Vulnerable Adults and Children within its services. Allegations against employees which involve Adult Protection/ Child Protection issues may mean that the requirements of Adult Protection/ Child Protection procedures take precedence over CBC disciplinary procedures.

CBC has a statutory duty to consider a referral of an employee for inclusion in the Disclosure and Barring Service's children and adults barred lists, who are subject to suspension and/or disciplinary action for a related offence.

CCTV will be used as evidence during a disciplinary investigation or hearing if it is available.

## **SECTION 2: PROCEDURE**

### **POLICE ENQUIRIES OR CRIMINAL PROCEEDINGS**

Employees must notify their line manager if they are cautioned, charged with or convicted of a criminal offence. Police enquiries, criminal proceedings or convictions relating to a criminal offence should not necessarily be regarded as constituting either a reason for disciplinary action or a reason for not pursuing internal disciplinary action. Where a matter is being considered in parallel with Police investigations, the decision of the Police to proceed or not will not necessarily have any bearing on:

- Any internal investigation, and/ or
- The decision of any manager to impose a disciplinary penalty.

In deciding whether a matter should lead to disciplinary action, the main considerations are whether the alleged offence:

- Is one that breaches the mutual trust that must exist between employee and employer or between colleagues;
- Makes the individual unsuitable for the type of work they do;
- Breaches CBC's policies, procedures and codes of conduct;
- Is likely to be prejudicial to the services provided by CBC;
- Represents a risk to public safety.

## **EQUALITY AND HUMAN RIGHTS**

CBC recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the nine protected characteristics.

CBC is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. CBC believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

CBC is also aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote human rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

## **CONFIDENTIALITY**

Disciplinary matters are considered confidential. Only those persons who need to should be given access to relevant information and in turn should treat that information as confidential. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. All those involved should be informed that any breach of confidentiality (including informal discussions with colleagues) may prejudice an investigation and may also in itself constitute a disciplinary offence.

Where there may be fear of reprisal against witnesses the Case investigator may need to consider anonymising witness statements however this will only be in exceptional circumstances with the agreement of HR.

## **RIGHT OF REPRESENTATION**

At all stages in the formal procedure, including formal disciplinary investigation interviews, the employee will have the statutory right to be accompanied by a Trade Union Representative or a work colleague. The employee is responsible for arranging the attendance of their representative.

A line manager is not allowed to represent staff at any stage of a disciplinary process as they may have a subsequent role in overseeing any disciplinary sanction or recommendations.

The individual accompanying the employee, who should not be directly known to be involved in the allegations and not acting in a legal capacity, is permitted to address any disciplinary meeting or subsequent hearing on behalf of the employee but is not permitted to answer questions on behalf of the employee (unless this has been agreed with the panel prior to the hearing).

## **RAISING A GRIEVANCE**

During the disciplinary process the employee under investigation may raise a grievance that is related to the case. If this happens the grievance will be dealt with at the hearing stage of the disciplinary process and an extension of 1 week's notice for the hearing stage will be granted unless the grievance relates to bullying or harassment from a person connected to the disciplinary matter in which case the disciplinary will be suspended until the grievance is concluded.

## **MINOR MISCONDUCT – INFORMAL RESOLUTION**

Cases of minor misconduct, such as poor timekeeping can be addressed effectively and swiftly by the employee's immediate line manager having a structured discussion with the employee regarding the standards required and the required improvement in their conduct and or behaviour.

The Line Manager should arrange a meeting with the employee in order to:

- a. Identify specifically where the expected standards of conduct are not being met.
- b. Explore with the employee concerned any reasons that may exist for these standards not being met (including ill health).
- c. Encourage, facilitate and support the employee to improve their standard of conduct.
- d. Consider whether any training, mentoring or other support may be required and how this could be provided.
- e. If appropriate invoke the capability policy.
- f. Discuss and confirm with the employee the time period in which the required improvement in conduct should be achieved and establish appropriate mentoring and monitoring arrangements.
- g. Explain to the employee that failure to meet the required standards of conduct may leave no alternative than for the matter to be progressed formally in line with the Disciplinary policy.

The outcome of the meeting will be confirmed to the employee in writing detailing the behavioural standards and conduct required of them, and outlining the potential outcome of not meeting these standards (i.e. formal disciplinary action).

Records must be made of the initial and subsequent review meetings. The letter should have a validity period of up to 6 months and be disregarded after this timeframe. Copies of all communication to employees should be sent to HR.

## **FORMAL DISCIPLINARY PROCEDURE**

The formal disciplinary procedure will apply where:

- The employee does not improve their conduct/behaviour to a satisfactory standard following meetings held to discuss issues of minor misconduct, and/or
- An allegation of misconduct is considered to have occurred and to be of a serious nature requiring an investigation to be undertaken to determine the full facts.

## **ALLEGATIONS WHICH REQUIRE AN INVESTIGATION**

The line manager should initially inform the Head of HR or nominated representative of the allegation in order to determine that there is sufficient substance/ evidence to the allegation to require a formal investigation.

The relevant member of CMT should be informed of the investigation and should agree in conjunction with the Head of HR or nominated representative whether suspension, or an alternative to suspension, is necessary. See the section below for more information on when suspension is appropriate.

The member of CMT in conjunction with the Head of HR (or nominated representative) should identify a Case investigator who will be independent with no prior knowledge of the incident/allegation. The person appointed should be of an appropriate level and experience to be able to investigate the case. In all cases it is important to ensure the Case investigator will be able to complete the investigation within a reasonable timescale.

The Case investigator should be briefed on the allegations and the employee should be sent the allegations in writing along with a copy of the Disciplinary Policy.

## **SUSPENSION AND ALTERNATIVES TO SUSPENSION**

In some cases it will not be appropriate for an employee to remain at work whilst an investigation is being undertaken. It may be possible, as an alternative to suspension, to transfer the employee concerned to a different work area temporarily either to undertake a similar or different role.

Suspension from duty or temporary transfer is a non-punitive act and does not imply guilt. It should be emphasised that suspension from duty is a neutral act and does not constitute disciplinary action.

Suspension from duty or temporary transfer should be agreed by the member of CMT and the Head of HR or nominated representative. The employee will be informed verbally of any period of suspension or temporary transfer and will have the opportunity to be accompanied by a trade union representative or work colleague. If no appropriate representative is available the meeting can be delayed for 1 working day to identify a representative. If a representative is not able to be identified a work colleague or member of the HR team can accompany the employee.

A member of staff may be suspended from work when:

- It is considered that that their continued presence at work could cause difficulty to self or others or impede the investigating process, and/or
- It is considered that their continued presence could put the public or organisation's interest at risk, and/or
- They are suspected, prima facie, of committing an act of Gross Misconduct which could result in their dismissal from employment.

The suspension from duty or temporary transfer must be confirmed in writing to the employee as soon as reasonably practical. The letter will include an outline of the allegations made against the employee, arrangements to investigate these and confirmation that suspension will be on full pay for standard contracted hours.

Periods of suspension must be as short as possible, recorded and reviewed at least every 2 weeks and should not normally exceed 30 working days (this timescale may be longer depending on the complexity of the investigation). The employee must ensure they are contactable; this includes providing an appropriate telephone number and correspondence address. The employee must make themselves available for meetings in connection with the investigation and for any disciplinary hearing that may be arranged.

The employee must not carry out any work for CBC in their role while on suspension, nor must they wear CBC uniform, enter CBC premises (unless attending due for personal reasons) or act on behalf of CBC without express permission of the line manager. The employee must advise the suspending officer if they have alternative employment either within or outside CBC to enable a decision to be made if the decision affects their additional employment.

The employee must not contact employees of the council, notwithstanding contact required with the investigation team and their representative. Whilst employees are suspended from duty the line manager will hold all the individuals keys, identity cards etc. for any CBC premises.

If the employee wishes to take annual leave or falls sick during the period of suspension they must follow normal reporting procedures, however they should contact the Case investigator in the first instance instead of their line manager.

Any breach by the employee of the suspension terms may result in disciplinary action.

Suspended staff should return to work in their main post only once the line manager has approval from the member of CMT. If the employee's suspension is lifted this must be confirmed in writing.

## **DISCIPLINARY INVESTIGATION**

The investigation of the alleged incident will be thorough, impartial and objective and conducted in a sensitive and non-confrontational manner with respect for the rights

of all those involved. It is essential that any investigation is carried out fairly and promptly before recollections fade and be concluded as quickly as possible.

The role of the Case investigator is one of a fact finder, involving the interviewing of individuals, the collecting, recording and analysing of relevant information/ evidence in support of the facts to obtain the employee's response to the allegations including any mitigating circumstances leading to the submission of an investigation report. Based on the findings, the Case investigator will make a decision on whether there is a case to answer.

The Case investigator will be responsible for maintaining contact with, and updating an employee on the status of an investigation, especially during any period of redeployment or suspension. Contact made should recognise the welfare of the employee with reminders of the services of Occupational Health and Counselling.

The investigation process should ideally be completed as swiftly as possible to prevent additional stress and anxiety to those involved. However, in exceptional circumstances (for example due to illness or the involvement of the Police) the original timeframe may be extended. The employee against whom the allegations have been made will be informed of this by the investigating officer and of the reasons for the delay in the completion of the investigation.

Any CBC employee required to make a witness statement as part of the investigation process will take all reasonable steps to make themselves available for meetings and any subsequent disciplinary hearing should they be required.

Where a statement is obtained, witnesses:

- Will be asked to sign and date the statement as a true record;
- Will have the opportunity to record any additional comments, if they so wish;
- May be invited at a later stage to provide an additional statement;
- May be invited to attend the disciplinary hearing.

The outcome of the investigation should be documented in the form of an Investigation Report with a comprehensive pack of supporting evidence. The Case investigator will decide on whether the case should be further considered at a disciplinary hearing. The member of staff will be informed of this decision at the earliest opportunity.

## **INTERVIEW WITH THE EMPLOYEE**

The employee will receive written notification from the investigation officer requesting that they attend an investigatory interview. This written notice will confirm the nature of the investigation and set out their right to be accompanied by a Trade Union Representative or a work colleague.

The purpose of this interview will be for the employee to explain their version of events and to answer questions. It may be necessary to interview the employee on more than one occasion. Notes of the interview will be taken, typed and two copies sent to the employee for them to agree or make any changes and sign the notes.

One copy should be returned to the Case investigator and one copy retained by the employee.

### **INTERVIEW WITH THE PUBLIC**

If at all possible, both parties should avoid involving the public as witnesses. However, each case should be considered on its own merits depending on the seriousness of the situation.

### **CASE TO ANSWER**

When the Case investigator has completed their investigation they will write a formal report and recommend whether there is a case to answer taking into account whether the allegations have been evidenced sufficiently and the test of reasonableness. Appendix 2 provides further guidance on the test of reasonableness.

A decision will then be made as to what action is most appropriate given the evidence collated. The actions open to the Case investigator are as follows:

- No case to answer
- Minor misconduct - Informal resolution
- Disciplinary Hearing

At any stage if there is no case to answer, the Case investigator should advise the employee in writing of the outcome without delay. Any written reference to the disciplinary procedure will be expunged from the employee's personal file.

There may be recommendations that need to be shared in order to improve the employee's conduct or behaviour, and could include, but are not limited to:

- Improving working practices by invoking the capability policy;
- Amending local agreements/ arrangements;
- Beneficial learning and development opportunities.

The line manager of the employee will be informed of the outcome and any recommendations.

### **DISCIPLINARY SANCTION (Level 2 first written warning without a panel)**

In some cases during an investigation it becomes clear that the alleged misconduct is proven due to the admission of the employee being investigated or overwhelming evidence in support of the allegation(s). In these cases, following submission of the investigation report, if the alleged misconduct is not deemed to constitute gross misconduct then the employee can agree to the matter being resolved and a Level 2 first written warning applied without the need to convene a disciplinary hearing.

The relevant member of CMT and the HR representative should satisfy themselves that the investigation has followed the test of reasonableness and where there is no admission that, on the balance of probabilities, it is likely that the alleged conduct or behaviour has taken place.

The relevant member of CMT and the HR representative should discuss the option of a disciplinary sanction without a panel with the employee, or their representative, and agree to apply the sanction or if the employee, or their representative, does not agree with this approach they can request a formal hearing to be arranged.

The disciplinary sanction should be confirmed in writing by the CMT member. On this basis there would not be the right to an appeal as the outcome has been agreed with both parties.

## **DISCIPLINARY HEARING**

Following an investigation where the Case investigator has determined that there is a case of potential misconduct to answer they will inform the employee in writing that a disciplinary hearing will be convened.

The hearing should take place as soon as possible following completion of the investigation. The employee will receive 5 working days' notice of the hearing and will be informed in writing by the chair of the Disciplinary panel of:

- The date, time and venue for the hearing;
- The purpose of the hearing and the nature of the allegation/s and any alleged breaches in practice, policy or procedure, where appropriate;
- The right to be accompanied by a Trade Union Representative or work colleague;
- Their right to present evidence and call witnesses during the hearing;
- The names and job titles of the panel members;
- A list of witnesses to be called by the management side;
- Copies of the investigation report, all statements and other documents to be used by the management side;
- Copy of the council's Disciplinary Policy.
- Copies of any other policies or procedures that will be referred to in proceedings.

The employee should submit any statements, information and names and details of witnesses at least 2 working days prior to the hearing to the chair of the hearing. Both parties may choose whether or not they wish to call witnesses. It is the responsibility of parties to arrange for the attendance of their respective witnesses.

The purpose of the hearing will be to consider the facts relating to the allegation(s) investigated and where upheld, the most appropriate actions to raise the employee's standard of conduct.

The original date of the hearing may be postponed to another reasonable date and time within 5 days of the original date.

The format and process for the disciplinary hearing is attached as Appendix 3.

## POTENTIAL OUTCOMES OF A DISCIPLINARY HEARING

When deciding whether a disciplinary sanction is appropriate and what form it should take the Chair of the panel must bear in mind the need to act reasonably in all the circumstances. Appendix 2 provides further guidance on the test of reasonableness.

Where there is no case to answer the employee should be advised and all reference to the disciplinary matters should be removed from their personal files.

Where a case of misconduct is established, full consideration will be given to the most appropriate action for securing an improvement in the employee's standard of conduct and prevent similar incidents occurring in the future. In such instances consideration will be given to whether the employee poses any future risks to the public, colleagues or others. Consideration will also be given to whether the employee concerned has acknowledged accountability for their actions and displays a willingness to improve.

Action to address incidents of misconduct will always focus on achieving improved conduct and may involve the issuing of a disciplinary sanction and/or other action such as transfer of base or post, temporary periods of additional supervision and/or other remedial actions appropriate for securing an improvement in the employee's standard of conduct.

Factors which may be relevant to consider include:

- The extent to which the council's standards of conduct and behaviour and/or policies and procedures have been breached;
- The employee's defence or mitigation which may include the employee's personal circumstances;
- The employee's previous work record and length of service;
- Whether the employee was aware of the required standards ie. those relevant to the employee's area of work;
- Any live disciplinary warnings.

There are 4 levels of disciplinary sanctions including minor misconduct that may be given, depending on the severity of the case:

- 1 – Minor misconduct – Informal resolution
- 2 - First written warning (with a panel or without a panel)
- 3 - Final Written warning
- 4 - Dismissal with or without notice

Appendix 1 sets out examples of behaviour and conduct that would constitute misconduct and gross misconduct. With the exception of gross misconduct the panel should not consider dismissal for a first breach of discipline.

In all instances of misconduct the Chair of the panel should consider the appropriateness of alternative action to dismissal alongside a Level 3 Final written Warning, such as redeployment, downgrading (not subject to pay protection) as part of an agreed rehabilitation programme. Redeployment is subject to suitable posts

being available and if after further investigation this is not available the panel need to consider if redeployment is still appropriate and allow the employee to return to their old role or whether the employee should be dismissed.

The outcome of the hearing will normally be confirmed verbally on the day of the hearing, however where further consideration or advice is required the decision will be confirmed following an adjournment of no longer than five days.

## **LEVELS OF DISCIPLINARY SANCTION**

### **Level 1 Minor misconduct – Informal resolution**

Cases of minor misconduct, such as poor timekeeping can be addressed effectively and swiftly by the employee's immediate line manager having a structured discussion with the employee regarding the standards required and the required improvement in their conduct and or behaviour.

### **Level 2 First Written Warning (with a panel or without a panel)**

In the case of more serious offences, or further minor offences committed while the employee's behaviour/ conduct was classed as minor misconduct a first written warning may be appropriate.

The reasons for the sanction should be stated together with the improvement required. The employee will be told that if the improvement is not achieved within the required period further disciplinary action may be taken. The sanction will become live from the date of the outcome being given verbally.

Any annual increment that is due during the duration of the warning will be withheld.

A first written warning would be considered spent after 12 months from the date it is applied to the employee.

### **Level 3 Final Written Warning**

In the case of offences considered sufficiently serious or in the case of a further offence being committed within the live period of a Level 2 First written warning the employee should be given a Level 3 Final written warning.

Any annual increment that is due during the duration of the warning will be withheld.

A final written warning would be considered spent after a period of between 12 - 24 months from the date it is applied to the employee depending on the severity of the misconduct and as an alternative to dismissal.

### **Level 4 Dismissal with notice or without notice (Summary Dismissal)**

Where a further offence is committed or conduct/ behaviour is still unsatisfactory within the live period of a Level 3 Final Written Warning the employee should be dismissed with the paid notice due under their contract of employment.

Summary dismissal is appropriate only where there has been a serious breach of the employment contract through gross misconduct deemed serious enough to break the fundamental bond of trust and confidence between CBC and the employee. Dismissal is immediate and without notice.

## **CONFIRMATION OF THE OUTCOME**

The verbal confirmation of the decision given on the day of the hearing should be confirmed in writing to the employee within 3 working days of the hearing by the Chair of the Disciplinary panel.

The letter should contain all or some of the following information, depending on the outcome of the hearing:

- Details of areas of concern;
- The findings of the panel;
- Any mitigating circumstances stated by the employee;
- What level of Disciplinary Sanction is being issued;
- Length of time the sanction will be live;
- Details of any improvements required;
- That further misconduct will lead to a further sanction (where appropriate).
- Any supervision, monitoring or assessment arrangements;
- Consequences of failing to meet the required standard;
  - Arrangement for returning to work following suspension/ redeployment (if appropriate);
- The date on which the employment contract will terminate including any period of notice (where appropriate)
- The right of appeal, within 10 working days and to whom it should be made.

The outcome letter will form the record of the meeting and will therefore be sufficiently detailed to remove the need for a separate set of notes to be provided.

Where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse soon thereafter or where a pattern emerges and there is evidence of abuse of the system, the employee's previous disciplinary record may be taken into account in determining action.

In exceptional circumstances where the misconduct is so serious e.g. being drunk at work, violence— verging on gross misconduct- that it cannot be realistically disregarded for future disciplinary purposes, it should be made very clear at the disciplinary hearing that the final written warning will remain on file without being expunged and that any recurrence of misconduct will lead to dismissal.

## **REFUSAL TO ATTEND A DISCIPLINARY HEARING**

Employees who are unwilling, without sufficient reason, to attend a disciplinary hearing will be notified in writing that it is in their interests to attend the hearing and be provided with one further opportunity to attend. On the second occasion of failing

to attend, without sufficient reason, the case will be heard using all of the information and evidence available at the time and a decision made in the employee's absence.

## **EMPLOYEES ON SICK LEAVE**

If an employee is on sick leave when facing a disciplinary hearing or when called as a witness this should not automatically cause a delay in dealing with the matter. In such cases full consideration must be given to the nature of the illness or injury and a referral to Occupational Health may be required.

In such cases the Case investigator will determine in conjunction with the Head of HR or nominated representative whether it is reasonable to proceed with the disciplinary hearing, in the circumstances. Where ever possible it is recommended that disciplinary action is taken as soon as possible.

In all circumstances the Case investigator should liaise with the employee and/or their nominated representative so that their views on the way forward have been taken into account and the employee is aware of the implications of the approach.

## **RESIGNATION PRIOR TO A DISCIPLINARY HEARING**

Where an employee resigns from their employment during an investigation or prior to a disciplinary hearing regarding their misconduct, in the best interests of the public, CBC may not accept the resignation until the procedure is fully complete.

## **APPEAL PROCESS**

Appeals should be registered in writing to the manager identified within 10 working days of written notification of the outcome of the disciplinary hearing. The letter of appeal should provide clear and specific reasons for the appeal. Grounds for appeal should relate to one or more of the following:

- New evidence coming to light - full details must be provided;
- The level of the penalty imposed;
- Procedural irregularities during the investigation or hearing which had a material effect on the outcome of the case;
- Facts of the case which had a material effect on the outcome of the case.

The appeal hearing will be held normally within 10 working days of receipt of the appeal being received. Where a delay beyond this time is expected, the employee will be advised of the reasons for this. The format and process for the appeal hearing is attached as Appendix 4.

The role of the appeal panel is to ensure that the CBC policies and procedures have been followed and that any decisions made within the disciplinary hearing can be supported as reflecting fair, equitable and reasonable employment practice in all circumstances. An appeal must never be used as an opportunity to punish the employee for appealing the original decision, and it should not result in any increase in penalty as this may deter individuals from appealing.

Where an employee appeals against a sanction other than dismissal a member of CMT will hear the appeal. Where an employee appeals against a decision to dismiss the appeal will be heard by the Appeals and Regulatory Committee.

In all cases the appeal panel must establish and ensure that the decision of the disciplinary hearing was 'within a range of reasonable responses'. (See Appendix 2)

The decision of the appeal panel will normally be confirmed on the day of the completion of the appeal hearing, however in exceptional circumstances this decision will normally be confirmed no later than 7 working days after the appeal has been heard. The decision of the appeal panel is final.

Where the decision of the Appeal Panel is to re-instate the employee following dismissal, the panel has the authority to extend the duration of a lesser penalty.

The Head of HR (or nominated representative) will be on the appeals panel in a professional advisory capacity.

## **SECTION 3: APPENDICES**

### **APPENDIX 1**

#### **Standards of Conduct and Behaviour**

##### **General**

The council expects the highest standards of integrity, conduct and behaviour of its employees. The list of disciplinary rules in both categories are neither exclusive nor exhaustive and are provided purely as example of behaviour and conduct that would constitute misconduct or gross misconduct, consequently there may be other offences not listed, which because of their seriousness would constitute misconduct or gross misconduct.

It is the responsibility of managers to make sure that employees are aware of the standards required, including local standards. It is the responsibility of all employees to familiarise themselves with the appropriate policies and codes in order to demonstrate compliance with the standards.

##### **Misconduct which may lead to a level of Disciplinary Sanction**

The great majority of breaches of disciplinary rules will not be sufficiently serious to warrant dismissal without previous warning. Sanctions will only be applied where Informal Resolution is inappropriate. Examples of offences that will not normally result in dismissal without previous warning include:

- a) Refusal to co-operate and comply with the reasonable and legitimate instructions of line managers.
- b) Negligent or inadequate performance of duties.
- c) Poor timekeeping including unauthorised absence from work, lateness or leaving work without permission.
- d) Failure to notify sickness and other absences.
- e) Absenteeism.
- f) Abuse of the sick pay scheme.
- g) Misconduct in relationships with other employees, clients or members of the public.
- h) Damage to council property.
- i) Misuse of social media, such as Facebook and Twitter, including making defamatory comments related to the council, general public or other employees.
- j) Swearing, abuse or other offensive and inappropriate behaviour towards other employees, clients or members of the public.

- k) Breach of safety rules, including failure to wear personal protective clothing/equipment.
- l) Unauthorised use of council property and facilities.
- m) Breaches of the council's policies.
- n) Conduct which may have an adverse effect on the council's reputation.

Serious examples of any of the above can amount to gross misconduct. If there is any doubt as to the interpretation of these rules, reference should be made to the Human Resources Section for further clarification.

### **Gross misconduct**

Gross misconduct is defined as misconduct of such a serious nature that if proven, would normally result in summary dismissal from the council's employment.

Examples of gross misconduct include:

- a) Acts of discrimination, harassment, bullying, intimidation or verbal abuse against employees, clients or members of the public or serious failure to operate or comply with the council's *Equal Opportunities Policy* and codes of practice. Acts of discrimination and harassment include the downloading, production, distribution, display or communication of material that may give rise to offence on any of these grounds.  
  
("Material" will be taken to include posters, magazines and other publications, cartoons, cards, advertisements, calendars, photographs, e-mails or any computer generated images etc.)
- b) Unauthorised removal, possession or theft of cash or property belonging to the council, a fellow employee or member of the public.
- c) Acts of violence including the physical assault of a fellow employee, client or member of the public.
- d) Falsification of qualifications or information which are a statutory or essential requirement of employment or which result in additional remuneration.
- e) Sexual misconduct at work.
- f) Malicious damage to council property.
- g) Deliberate falsification of attendance timesheets, bonus sheets, the flexitime clocking-in system, car mileage, overtime, subsistence and expenses claims.
- h) Unauthorised disclosure of confidential information to the media, public sources or other unauthorised recipients (for example, where a disclosure has been made outside of the Council's *Confidential Reporting Policy*).

- i) Serious breaches of safety rules, any deliberate act or omission which endangers the health and safety of themselves, other employees or members of the public, or deliberate damage to or misappropriation of safety equipment.
- j) Abuse of authority in order to gain financial or other corrupt advantage for themselves or some other person.
- k) Conviction of a criminal offence unconnected with the council but which makes an employee unsuitable for their ongoing employment e.g. a cashier convicted of theft, a driver convicted of driving under the influence of drink or drugs.
- l) Serious acts of insubordination.
- l) Being under the influence of drink or other intoxicants sufficient to affect work performance.
- m) Failure to fulfil contractual obligations or dereliction of duty.
- n) Serious negligence that results in unacceptable loss, damage or injury.
- o) Holding unauthorised paid employment during paid council time.
- p) Failure to comply with relevant statutory requirements including professional codes of conduct.
- q) Serious abuse of the Internet or E-mail system.
- r) Any act which may bring CBC into serious disrepute.
- s) Serious breach of confidentiality or the Data Protection Act 1998.

It is not an exhaustive list and other inappropriate behaviour of equal severity could also lead to summary dismissal.

Action can be taken by the council on any of the above items whether the person was on duty or not and whether they were on council premises or not if the act complained of has an effect on CBC and confidence which CBC must have in all its employees.

## APPENDIX 2

### The test of reasonableness

The leading case of *British Home Stores Ltd v Burchell [1980]* provides some useful guidelines for use in misconduct cases by establishing a three part test:

- the employer must establish a genuine belief that the employee has committed the act of misconduct in question;
- the belief must be based on reasonable grounds;
- the employer must have carried out a full and thorough investigation into the circumstances including those which may exculpate the employee.

You don't necessarily have to devote a huge amount of resource to investigate every possible angle. The correct legal standard is the balance of probabilities, so using the Burchell Test, is it more likely than not?

This threefold test requires you to have:

- a reasonable belief in the employee's "guilt"
- reasonable grounds for holding that belief, and
- investigated as much as was reasonable in all the circumstances of the case.

In reviewing the facts, an Employment Tribunal will decide whether the employer's actions were reasonable and fell within the band of reasonable responses for the employer to take. It is not the role of the tribunal to substitute their own views as to what should have been done in the circumstances.

## **APPENDIX 3**

### **Disciplinary Hearing format and process**

- I. The Case investigator presents the facts of the investigation including calling any witnesses.
- II. The employee and/or their representative shall have the opportunity to ask questions of the Case investigator and any witnesses.
- III. The members of the panel shall have an opportunity to ask questions of the Case investigator and witnesses.
- IV. The employee and/or their representative will put their case, including any mitigating circumstances that the employee wishes to draw to the panel's attention and they may also call witnesses.
- V. The Case investigator will have the opportunity to ask questions of the employee and any witnesses to clarify any points relevant to the investigation.
- VI. The members of the panel shall have the opportunity to ask questions of the employee and any witnesses.
- VII. The Case investigator will have the opportunity to sum up the case.
- VIII. The employee and/or their representative shall have the opportunity to sum up their case.
- IX. The Case investigator, the employee and their representative will withdraw from the hearing.
- X. The panel shall deliberate in private with the option of recalling both parties to clarify areas of uncertainty. If recall is necessary, the Case investigator, employee and their representative shall return, notwithstanding that only one may be questioned.
- XI. After careful deliberation, the panel will recall both parties to deliver a decision on appropriate action. If it is not possible to do this due to the need to review the case in more detail, the panel may defer a decision to a later date at which all parties will reconvene. No unreasonable delay should occur before reconvening the hearing, nor should the case be discussed with outside parties (unless further advice is required from the Head of Legal Services or the Head of HR).
- XII. The decision of the panel will be confirmed in writing within 3 working days of the hearing.

## **APPENDIX 4**

### **Appeal Hearing format and process**

- I. The employee or their representative shall put their case in the presence of the members of the original panel and may call witnesses.
- II. The members of the original panel will have the opportunity to ask questions of the employee, their representative and the witnesses.
- III. The members of the Appeal Panel shall have the opportunity to ask questions of the employee, their representatives and the witnesses.
- IV. The members of the original panel will respond to the employees' grounds of appeal in the presence of the employee and their representative and may call witnesses.
- V. The employee or their representative shall have the opportunity to ask questions of the members of the original panel and the witnesses.
- VI. The members of the Appeal Panel shall have the opportunity to ask questions of the members of the original panel and the witnesses.
- VII. The employee or their representative shall have the opportunity to sum up their case.
- VIII. The members of the original panel will have the opportunity to sum up their case.
- IX. The employee, their representative and members of the original panel will withdraw.
- X. The appeals panel shall deliberate in private with the option of recalling both parties to clarify areas of uncertainty. If recall is necessary, the employee, their representative and members of the original panel shall return, notwithstanding that only one may be questioned.
- XI. After careful deliberation, the panel will recall both parties to deliver a decision on appropriate action. If it is not possible to do this due to the need to review the case in more detail, the panel may defer a decision to a later date at which all parties will reconvene. No unreasonable delay should occur before reconvening the hearing, nor should the case be discussed with outside parties (unless further advice is required from the Head of Legal Services or the Head of HR).
- XII. The decision of the appeals panel will be final and will be confirmed in writing within 7 working days of the hearing. There are no further internal appeals or action.