

# Taunton Deane Borough Council

**Executive – 14 March 2012**

## **Proposal for a Taunton Deane Borough Council Appeal Policy and Procedure**

### **Report of the Southwest One HR Development Team**

(This report is the responsibility of Executive Councillor Stock-Williams)

#### **1. Executive Summary**

This report brings forward a proposal to implement a single Appeal Policy to cover all HR policies and procedures.
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#### **2. Background**

2.1 Taunton Deane Borough Council does not currently have one overall appeal policy and procedure. Where appeals are required by employment law under the Employment Rights Act 2008, they are mentioned separately under the relevant policy.

2.2 An employee has the legal right to appeal in the following circumstances:

- Disciplinary or capability warnings
- Dismissal for misconduct or capability
- If a request for flexible working or time off for training has been refused
- A grievance decision

2.3 The following TDBC policies include an appeal process:

- Absence Management Policy
- Capability Procedure
- Disciplinary Procedure
- Grievance Procedure
- Harassment and Bullying Policy
- Job Evaluation
- Term-time working

2.4 Some research was undertaken to ascertain the status of Member appeals at other local authorities in Somerset, the results are as follows:

Mendip District Council	Member appeal against dismissal, the appeal is a one stage appeal.
Sedgemoor District Council	Member appeal against any dismissal, the appeal is a one stage

	appeal.
South Somerset District Council	Member appeal against dismissal for gross misconduct or capability. The panel is consisted of 2 members of the Management Board/Chief Executive and 2 Elected Members.
Somerset County Council	Member appeal against dismissal for disciplinary, capability or sickness and final stage grievance.
West Somerset District Council	No Member appeals – first stage appeals to alternative Group Manager and appeals for dismissal to Chief Executive.

4 out of 5 of the other local authorities in Somerset have a Member appeal for dismissals only.

### **3. Summary of new policy**

3.1 The policy would cover appeals relating to the following actions:

- Disciplinary warnings
- Capability warnings
- Dismissal for misconduct
- Dismissal for capability (performance or health)
- Decision to redeploy under the capability policy
- Flexible working requests under the agreed TDBC policy
- Right to request time off for training
- Request for a flexible retirement
- Selection for redundancy or decision not to appoint resulting in redundancy
- Outcome of a grievance
- Outcome of a Harassment and Bullying claim

3.2 The policy makes it clear what decisions can be appealed and whether they are heard by a Standard Appeal panel or a Member Appeal panel. The policy sets out a procedure to be followed and on what basis an employee can appeal, what happens at the appeal hearing and who can be on the appeal panel.

### **4.0 Changes to existing policies**

4.1 The introduction of this policy would mean a change to the disciplinary procedure, which is attached in Appendix B with the relevant text highlighted. The change would be the removal of a two stage appeal procedure for any level of warning, (the first appeal heard by a Strategic Director and the second appeal heard by a Member sub-committee) to a one stage appeal. This is in accordance with ACAS guidelines that state a right of appeal must be given but only needs to

be heard once. The new policy states that the panel will consist of a member of CMT for any actions short of dismissal and a panel of one member of CMT and two trained Members for dismissal under the disciplinary procedure or a final stage grievance.

- 4.2 There is no fundamental change to any of the other policies, just a removal of references to appeal and a sentence to say refer to the Appeal Policy and Procedure.

The affected policies are:  
Absence Management Policy  
Capability Policy  
Disciplinary Policy  
Flexible Retirement Policy  
Grievance Procedure  
Harassment and Bullying Policy  
Redundancy policy  
Term-time Working Policy

Agreement of the new Appeal policy would also assume changes to these policies listed.

## **5.0 Benefits of the proposed policy**

- 5.1 The current situation at TDBC with appeals is piecemeal with each policy having a different appeal procedure. A single Appeal policy and procedure that covers all situations in which an employee can appeal would ensure consistency of approach.

## **6.0 Consultation**

- 6.1 Consultation has taken place with CMT, UNISON and Councillor Stock-Williams.

## **7.0 UNISON Comments**

- 7.1 Having read the latest version of the Appeal policy, I can confirm that UNISON is happy with this as it retains the Member stage in cases where a person's job may be at risk (other than on grounds of capability) and appears to conform to ACAS guidelines.

## **8.0 Financial implications**

- 8.1 There are no known financial implications of the introduction of this policy.

## **9.0 Risk Management**

- 9.1 Bringing all appeals in relation to HR procedures under one policy means there is greater consistency in dealing with employee appeals. This can help TDBC's defence in tribunal claims.

## **10.0 Equalities issues**

- 10.1 The policy will apply consistently to all employees.
- 10.2 Employees with disabilities will be asked what reasonable adjustments are required for the appeal process and will be put in place wherever possible.

## **11.0 Recommendations**

- 11.1 It is recommended that Committee approve the attached policy for implementation.

## **12.0 Appendices**

Appendix A – Appeal Policy and Procedure

Appendix B – Disciplinary Procedure

Appendix C – Equality Impact Assessment

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## Appendix A

<b>Version number</b>	DRAFT
<b>Date of last review</b>	
<b>Summary of changes</b>	New policy
<b>Equality Impact Considered</b>	Yes
<b>Effective commencement date</b>	

### Appeals Policy and Procedure

#### 1.0 Introduction

1.1 The Appeals Policy and Procedure is in accordance with the Employment Act 2008 and the Employment Rights Act 1996. The procedure is based on the principles of natural justice and is in accordance with the ACAS Code of Practice on disciplinary and grievance procedures.

#### 2.0 Scope of Policy

2.1 The policy applies to all Taunton Deane Borough Council employees on NJC terms and conditions.

2.2 This policy does not apply to employees on JNC Chief Executive or Chief Officer terms and conditions. The Statutory Posts of Head of Paid Service, Section 151 and Monitoring Officer are covered by the Local Authorities (Standing Orders) (England) Regulations 2001/3384 for performance, disciplinary or dismissal (other than for redundancy, ill-health or non-renewal of a fixed term contract.)

#### 2.3 Types of Appeal Covered by this Procedure

##### 2.3.1 Standard Appeal

Standard appeals deal with appeals relating to:

- Disciplinary warnings
- Capability warnings
- Dismissal for capability (performance or health)
- Decision to redeploy under the capability policy
- Flexible working requests under the agreed TDBC policy
- Right to request time off for training
- Request for a flexible retirement
- Selection for redundancy or decision not to appoint resulting in redundancy
- Outcome of a Harassment and Bullying claim

##### 2.3.2 Member Appeal

Member appeals deal with appeals relating to:

- Final stage of a grievance
- Dismissals for gross misconduct
- Dismissals following an accumulation of disciplinary warnings for misconduct

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2.3.3 The policy does not cover appeals in relation to the following issues as they have their own procedure:

- Job evaluation – refer to Job Evaluation Procedure
- Ill Health Retirement
- Car parking under TDBC's Travel Plan

### 3.0 Procedure

3.1 To appeal against a decision outlined in point 2.3.1 or 2.3.2 the employee must outline the grounds of their appeal in writing to the Retained HR Manager within 10 working days of the date that the decision was given.

3.2 The letter outlining the grounds for the appeal should also include details to support the reason or reasons for appeal and should be based on one of the following reasons:

- The procedure applied was unfair
- The outcome was too severe
- The employee is dissatisfied with the outcome of a grievance or harassment and bullying claim
- The employee feels that their grievance or harassment and bullying complaint has not been taken sufficiently seriously
- New evidence has come to light

### 4.0 The Appeal Hearing

4.1 The appeal will normally be heard within 20 working days of the appeal being lodged. The employee should be kept informed if this is not possible and advised of a likely date for the hearing.

4.2 The employee should receive written notification of the time, date and location of the appeal hearing, 5 working days before the date of the appeal.

4.3 Employees have the right to be accompanied at the appeal hearing by a Trade Union Representative or a work colleague only.

4.4 The employee's chosen companion has the right to address the hearing to present the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The companion may also confer with the employee during the hearing. However, the companion does not have a right to answer questions on behalf of the employee, or to address the hearing where the employee indicates that he/she does not wish this.

4.5 The appeal hearing will be a review of the original decision or a re-hearing depending on the grounds of the appeal. The appeal panel will decide whether a re-hearing is appropriate and make this clear in the

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appeal hearing invite letter. For example if the grounds for appeal are that the procedure was flawed a re-hearing of the original evidence would be appropriate.

- 4.6 An appeal pack should be prepared and sent to all parties, 5 working days in advance of the hearing, the pack should contain:
- An agenda for the appeal hearing
  - The appeal letter from the employee setting out the grounds for the appeal
  - The letter outlining the original decision
  - Notes from the original hearing/meeting
  - Investigation report (if applicable), including supporting documents
  - A statement from the employee outlining the reasons for the appeal, including the desired outcome
  - Any new evidence if appropriate.
  - A statement from management outlining how the decision was made and why
  - Any other relevant documentation

### 4.7 The Appeal Panel

#### 4.7.1 Standard Appeals

For appeals outlined in 2.3.1, the appeal panel will consist of a Senior Manager at Theme Manager level or above. If possible the manager hearing the appeal should be more senior to or from a different Theme to the manager who made the original decision. The panel will be advised by a representative from the Southwest One HR Service. All panel members will be independent with no previous involvement in the case.

#### 4.7.2 Member Appeals

For appeals outlined in 2.3.2 the appeal panel will consists of one Senior Manager at Theme Manager level or above and two elected Members. The panel will be advised by a representative from the Southwest One HR Service. All panel members will be independent with no previous involvement in the case.

#### 4.7.2 Order of Proceedings

4.7.2 Order of events for appeals against all decisions with the exception of the outcome of grievances or the outcome of a harassment and bullying complaint:

- i. Chairperson to open hearing, introduce those present, explain the purpose of the hearing, how it will be conducted and the potential outcomes.
- ii. Presentation of the management case, calling any witnesses as appropriate

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- iii. Questions to the management representative and witnesses from the employee and panel
- iv. Employee to present grounds for appeal, calling any witnesses as appropriate
- v. Questions for employee and witnesses from management representative and panel
- vi. Chairperson to invite the management representative then the employee to summarise their cases
- vii. Adjournment to allow the panel to consider their decision
- viii. Meeting to re-convene and Chairperson to present decision

### 4.7.3 Order of events for appeals against grievance decisions and the outcome of harassment and bullying complaint:

- i. Chairperson to open hearing, introduce those present, explain the purpose of the hearing, how it will be conducted and the potential outcomes.
- ii. Employee to present grounds for appeal, calling any witnesses as appropriate.
- iii. Questions for employee and witnesses from the management representative and panel
- iv. Presentation of management case, calling any witnesses as appropriate
- v. Questions to management and witnesses from employee and panel
- vi. Chairperson to invite the employee then the management representative to summarise their cases.
- vii. Adjournment to allow the panel to consider their decision
- viii. Meeting to re-convene and Chairperson to present decision

## 5.0 Outcomes

- 5.1 The panel can decide to uphold or overturn the original decision or request that there is a full re-hearing.
- 5.2 In the case of a disciplinary or capability warning, penalties imposed will be reviewed, the panel may agree with the level of the original warning or they may impose a lesser warning or remove the warning entirely. The level of warning cannot be increased.
- 5.3 If the decision to dismiss is upheld the effective date of termination will be the date of the original dismissal and not the date of the appeal hearing.
- 5.4 If as a result of an appeal any dismissal is reversed any loss of earnings as well as regular/contractual overtime, or additional regular payments will be reimbursed and continuity of employment will be restored.



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- 5.5 The outcome of the appeal should be confirmed in writing within 10 working days of the appeal hearing.
- 5.6 The appeal hearing will normally be recorded and a copy of the recording given to the appellant. If the appeal hearing is not recorded a summary of the discussions at the appeal hearing will be provided.
- 5.7 The decision of the appeal panel is final.

Links to:

Absence Management Policy and Procedure  
Capability Procedure  
Disciplinary Policy  
Flexible retirement Policy  
Flexible working Policy  
Grievance Procedure  
Harassment and Bullying Policy  
Redundancy Policy

<u>Policy Author</u>	<u>LH</u>
<u>Next planned review date</u>	<u>2013/2014</u>

### 7. DISCIPLINARY CODE

#### 1.0 INTRODUCTION

- 1.1 This procedure applies to all employees of Taunton Deane Borough Council other than the Chief Executive and Strategic Directors (whose national terms and conditions of employment contain provisions for discipline) and employees who have not completed their probationary period.
- 1.2 The procedure takes effect from 6<sup>th</sup> April 2009 and supersedes all previous disciplinary procedures and practices.

#### 2.0 PURPOSE

- 2.1 This procedure is designed to help and encourage all members of staff to achieve and maintain acceptable standards of conduct, attendance and job performance. The aim is to ensure consistent, fair and non-discriminatory treatment for all.
- 2.2 Most cases of misconduct or poor performance will be best dealt with informally rather than through the use of the disciplinary procedure. Problems should be discussed by the manager and employee with the objective of encouraging and helping the employee to improve. It is important that the employee knows what needs to be done, how performance or conduct will be reviewed and over what period. The employee should also be made aware of what will happen if they do not reach acceptable standards.
- 2.3 Managers may give informal oral reprimands for the purpose of improving matters when employees commit minor infringements of the established standards of conduct and performance. Such reprimands should be given in private. Managers should keep a diary note when such a reprimand is made.
- 2.4 The formal disciplinary procedures should only be used where informal approaches have been unsuccessful or where the allegations made are of

a more serious nature.

### 3.0 **PRINCIPLES**

3.1 The disciplinary procedure is underpinned by the concepts of natural justice:

- the right to a fair and impartial hearing;
- the right to be informed of the allegations made;
- the right to a thorough and careful investigation;
- the right to prepare and state a case;
- the right to be accompanied;
- the right to appeal.

3.2 The Borough Council will take all reasonable measures to ensure that its rules and regulations are communicated to all appropriate employees. It is the responsibility of individual employees to ensure that they are aware of and understand these rules and regulations and whichever National and Local Conditions of Service govern their appointment.

3.3 Whilst discipline is ultimately the responsibility of the Chief Executive and Directors, in practice day to day responsibility for discipline rests with Service Managers.

3.4 No formal disciplinary sanction will be issued until the circumstances of the case have been fully investigated and a disciplinary hearing held.

3.5 No steps in this procedure will be taken until Human Resources have been consulted.

3.6 At every stage in the procedure the employee will be advised of the nature of the allegations made against him/her and will be given the opportunity to state his/her case before any decision is made.

3.7 During any formal disciplinary interview/hearing the employee will have the right to be accompanied by a trade union representative or other work colleague if they wish. A trade union representative will be certified by

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- their trade union as having experience of, or as having received training in, acting as an employee's companion at disciplinary hearings. The trade union representative or work colleague will be given reasonable paid time off to fulfil this responsibility.
- 3.8 Where a chosen companion is not available to attend on the date proposed for an interview or hearing the employee can offer an alternative time and date so long as it is reasonable and is within ten working days of the date originally proposed. The location and timing of any alternative should be convenient to both employer and employee. The employer may determine that someone else can act in the place of the manager in these circumstances. If a companion is unavailable on the date proposed for the hearing and remains unavailable during the following ten working days the employee must make alternative arrangements.
  - 3.9 If an employee fails to attend a disciplinary interview/hearing without good cause then a decision may be taken in his/her absence.
  - 3.10 No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
  - 3.11 An employee will have the right to appeal against any disciplinary penalty imposed. [Refer to the Appeals Policy and Procedure.](#)
  - 3.12 The procedure may be implemented at any level if the employee's alleged misconduct warrants such action.
  - 3.13 Repeated acts of proven misconduct, whether of a similar or dissimilar nature, may result in the cumulative application of this procedure.
  - 3.14 No disciplinary action will be taken against a union officer until the circumstances of the case have been discussed with a full-time official of the union concerned.
  - 3.15 This procedure may also be used in circumstances where an employee's conduct outside of work time and/or not on Council premises is such that

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the Council is potentially brought into disrepute or the employee's suitability for continued employment is brought into serious question.

### 4.0 **EQUAL OPPORTUNITIES**

4.1 All employees should be fully aware of the Council's commitment to equal opportunities and that the following acts are both unlawful and would constitute misconduct liable to formal disciplinary action, which in some cases may include summary dismissal:

- 1 unlawfully discriminating on the grounds of sex, marital status, racial origin, disability, sexual orientation or religious or political beliefs against other employees or job applicants in the areas of employment, training, transfer or promotional opportunities;
- 2 inducing or attempting to induce employees or managers to practice unlawful discrimination;
- 3 verbal or physical, sexual or racial harassment;
- 4 victimising or bullying individuals who have made allegations or complaints of sexual or racial discrimination or harassment or provided information about such discrimination or harassment.

### 5.0 **THE DISCIPLINARY PROCEDURE**

Minor issues will be dealt with informally but where the matter is more serious the following procedure will be used.

#### 5.1 **INVESTIGATIONS**

5.1.1 The allegations will be discussed between the Service Manager, or other senior manager delegated such responsibility, and the employee. In most cases this discussion will be sufficient to resolve the issues without further use of the disciplinary procedure.

5.1.2 Where the allegations are of a nature where dismissal could result or where a criminal offence is suspected, a Human Resources Officer will be present other than in exceptional circumstances. Where fraud or financial

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irregularities are alleged Internal Audit must be consulted prior to discussion with the employee.

- 5.1.3 If the issues are unable to be resolved informally or are of a more serious nature, the allegations will be fully investigated in order to ascertain, as far as is reasonably practicable, all the relevant facts. The Service Manager will decide who is to conduct the investigation, in consultation, if appropriate, with their manager and/or the Chief Human Resources Officer. Where practicable, different employees will carry out the investigation and subsequent disciplinary hearing.
- 5.1.4 Where the allegations made appear to suggest gross misconduct the employee may be suspended on full pay pending the result of an investigation into the matter. Suspension may also be required where an incident has occurred which makes it inappropriate for an employee or employees to remain at work during the course of an investigation and/or disciplinary hearing. Suspension should not be seen as a disciplinary step but an opportunity to allow an investigation to establish the facts. It is not prejudicial to any subsequent hearing. Any suspension will be regularly reviewed and lifted immediately if it is determined that it is no longer appropriate. An employee may be suspended by the Chief Executive, a Director, the Head of Commercial Services, a Service Manager, or in their absence the most senior manager in the work area. A Human Resources Officer will normally be present.
- 5.1.5 The investigating officer(s) may wish to interview the employee. In such circumstances the employee will be informed that the purpose of the interview is to find out what happened and why. The employee will be informed in advance of the interview that they may be accompanied at this stage by a union representative or a work colleague of their choice.
- 5.1.6 In conducting an investigation the interviewing officer should ensure that he/she has spoken to all relevant witnesses and, where necessary, has obtained signed statements. Any witnesses will be informed that they may be called to attend any subsequent disciplinary interview/hearing.

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5.1.7 Once the investigation is complete the investigating officer, after consultation with Human Resources, will make recommendations to the manager. The recommendation may be that there is no case to answer and therefore no need to convene a hearing. In this instance the manager will inform the employee as soon as possible.

5.1.8 Where a hearing is considered necessary the employee will be informed of this in writing at least five working days in advance of the meeting by Human Resources. At this time the employee will be informed of:

- the proposed date, time and location of the meeting;
- the officers comprising the Disciplinary Panel;
- the allegations made;
- their right to be accompanied;
- the results of the investigation;
- the list of witnesses in attendance and copies of all witness statements;
- the possibility of summary dismissal as the normal outcome where gross misconduct is found.

5.1.9 The employee will submit their list of witnesses and copies of all witness statements to Human Resources at least three working days before the hearing.

5.1.10 Any late statements or submissions must be made available to both parties and sufficient time given for their consideration.

### 5.2 **AT THE DISCIPLINARY HEARING**

5.2.1 A disciplinary hearing will normally begin with the introduction of those present. The Disciplinary Panel will normally comprise, the senior manager hearing the matter, and a Human Resources officer to advise them. Others present will typically include the investigating officer(s), the employee and their companion. Where there are complex or lengthy

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- hearings a separate note taker may be used and may remain with the panel during their deliberations to enable the panel to check the content of the discussions at the hearing. Where appropriate and agreed a disciplinary hearing may be tape recorded.
- 5.2.2 The investigating officer(s) will not be part of the Disciplinary Panel.
- 5.2.3 Witnesses may be present for all or part of the hearing at the senior manager's discretion, dependent upon the nature of the case and the evidence to be given.
- 5.2.4 The employee will be reminded of their right to be accompanied if they have not exercised that right.
- 5.2.5 The employee will be reminded of the allegations made.
- 5.2.6 The investigating officer(s) will present the results of the investigation, calling any relevant witnesses. In some cases where the written statements of witnesses are accepted, in advance, as fact the witnesses need not be present.
- 5.2.7 The employee, their companion and the Disciplinary Panel will be given the opportunity to ask questions of the investigating officer(s) and any witnesses called.
- 5.2.8 The employee will be given the opportunity to state his/her case, calling any relevant witnesses. The employee's companion has a right to address the hearing.
- 5.2.9 The employee may be asked questions by the investigating officer(s) and the Disciplinary Panel. The employee's companion has no legal right to answer questions on the employee's behalf.
- 5.2.10 The hearing may be adjourned at any time to



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- 1 enable the employee and his/her companion or the investigating officer(s) to confer in private or for new evidence to be properly considered;
- 2 enable the disciplinary panel to consider the evidence presented.

5.2.11 The investigating officer(s), followed by the employee or their companion, will be given the opportunity to sum up their case. No new evidence is permitted to be introduced at this stage.

5.2.12 The disciplinary hearing will be adjourned whilst the evidence is considered by the Panel.

### 5.3 **AFTER THE DISCIPLINARY HEARING**

5.3.1 The disciplinary hearing will be reconvened once the evidence has been fully considered by the Disciplinary Panel. The Panel will give its conclusions, which will only be based on the evidence presented. Any disciplinary penalty will take into account the employees' current disciplinary record. The Disciplinary Panel's options may include:

- no disciplinary action required;
- further investigation required;
- informal reprimand;
- formal disciplinary action.

5.3.2 The Disciplinary Panel's conclusions will be confirmed in writing to the employee within five working days.

5.3.3 The Disciplinary Panel will subsequently review the circumstances of the case to identify and action any lessons to be learned.

### 6.0 **DISCIPLINARY ACTION**

6.1 Formal disciplinary action will only be taken where, after careful and thorough investigation and consideration, on the balance of probabilities the employee did commit the alleged misconduct.

6.2 When deciding whether a disciplinary penalty is appropriate the Disciplinary Panel will consider the reasonableness of any proposed penalty and may take into account precedent, the employee's general record, position, length of service and any other special or mitigating circumstances which might make it appropriate to adjust the level of the penalty.

6.3 The range of available penalties is as follows:

#### 6.3.1 **Oral Warning**

Where it is considered that the employee is at fault but that the misconduct is of a minor nature, an **oral warning** will be given. He/she will be advised of the reason for the warning; any necessary remedial action; the timescale allowed for improvement and that it is the first stage of the disciplinary procedure. A brief note of the oral warning will be issued which will also give advice on the right to appeal. A copy will be placed on the personal file held by Human Resources. This warning will cease to have any cumulative effect after six months or any other lesser period, which may be considered appropriate by the Disciplinary Panel.

#### 6.3.2 **Written Warning**

If the misconduct is serious, or a further offence occurs, a **written warning** will be issued. This will give details of the complaint, the improvement required and the timescale allowed for improvement. It will state that further disciplinary action will be considered if there is no satisfactory improvement and will give advice on the right to appeal. A

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copy of the written warning will be placed on the personal file held by Human Resources. This will cease to have any cumulative effect after 12 months or any other lesser period, which may be considered appropriate by the Disciplinary Panel.

### 6.3.3 Final Written Warning

If the misconduct is sufficiently serious, or if there is a failure to improve and conduct or performance is still unsatisfactory following a previous written warning, a final **written warning** will be issued. This will give details of the complaint, the improvement required and the timescale allowed for improvement; warn that dismissal will result if there is no satisfactory improvement or further misconduct and will advise on the right to appeal. A copy of the final written warning will be placed on the personal file held by Human Resources. This will normally cease to have any effect after two years, although the Disciplinary Panel may specify an alternative period in exceptional circumstances.

### 6.3.4 Accumulation of Warnings

Each of the warnings above may have a cumulative effect. This means that if a warning is still in effect, any further warning for misconduct or poor performance of a similar or greater level of seriousness may be at a higher level. In practice, therefore, an oral warning may be followed by either a further oral warning or a written warning. This in turn may be followed by a further written warning or a final written warning.

### 6.3.5 Dismissal

No dismissal will take place without consulting the Retained Human Resources Manager or his/her nominated deputy.

If conduct or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, dismissal with notice will result. The

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employee will be given written reasons for dismissal, the date on which employment will terminate and advice on the right to appeal.

### 6.3.6 Gross Misconduct

This is conduct or performance of such seriousness as to warrant summary dismissal without notice. The employee may be suspended on full pay whilst an investigation of the alleged offence takes place.

It is impossible to provide an exhaustive list of such offences but the following would normally be considered gross misconduct:-

- theft or fraud;
- falsification of records or irregular practice in respect of cash, records, returns, subsistence, mileage or other claims, time sheets or flexi time records;
- assault or abusive behaviour;
- a serious act of insubordination;
- deliberate damage to Council or a work colleague's property;
- serious incapability through use of alcohol or illegal substances;
- serious negligence or conduct which causes unacceptable risk, loss, damage or injury or which may damage the public reputation of the Council;
- obscene or indecent behaviour or sexual misconduct/harassment at work;
- bullying;
- failure to carry out a reasonable instruction;
- inappropriate use of e-mail, the Internet or other communication systems;
- unauthorised disclosure of confidential or sensitive information.

### 6.3.7 Overlapping grievance and disciplinary cases

Where an employee raises a grievance during a disciplinary process the

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disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and the disciplinary cases are related it may be appropriate to deal with both issues concurrently.

### 6.3.8 Disciplinary Action against Trade Union Representatives

Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. However no disciplinary action should be taken until the circumstances of the case have been discussed with a union official, after obtaining the employee's agreement.

## 7.0 EXTERNAL INVESTIGATIONS

7.1 Where an investigation by an outside body such as the police or a coroner's court is likely to coincide with an internal investigation, the manager should consider with Human Resources whether the circumstances are such that it would be appropriate to wait for the outcomes of the external investigations before proceeding with any internal hearing.

## 8.0 APPEALS

8.1 Refer to the Appeals Policy and Procedure.

An employee who wishes to appeal against any disciplinary penalty must inform the Retained Human Resources Manager, in writing, stating the grounds for the appeal, within ten working days of the receipt of written notification of either the penalty or the result of a first stage appeal. Grounds for appeal will normally include:

- 1) penalty given considered too serious;
- 2) bias by the original disciplinary panel;
- 3) evidence inadequately or insufficiently considered;

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4 substantial new and relevant evidence has become available.

8.2 A first stage appeal will normally be heard by an appropriate Director who has not previously been formally involved in the case, advised by a Human Resources Officer.

8.3 Disciplinary and appeal decisions made by Directors or the Head of Services may be appealed again to a Disputes and Appeals Sub Committee comprising three Councillors drawn from the Staffing Panel.

8.4 An Appeals Panel will normally undertake a full rehearing of the evidence. Following the review of appropriate evidence the original disciplinary penalty imposed will be reviewed. An Appeals Panel may not increase the original penalty imposed.

8.5 A decision by Disputes and Appeals Sub Committee is final.

8.6 The results of any appeal hearing will be confirmed in writing to the employee within 5 working days of the appeal hearing.