

## Section 13

### Employment Procedure Rules

#### Recruitment and Appointment of Relatives of Elected Members or Employees

A candidate for any appointment under the Council who knows that he/she is related to any Member or Employee of the Council shall disclose that relationship on the Application Form. The Chief Executive will consult with the relevant Director to ensure that the Council's policy on Employees who are related to each other is followed. A candidate who fails to disclose such a relationship shall be disqualified for the appointment and if appointed shall be liable to disciplinary proceedings.

For the purpose of this Standing Order, persons shall be deemed to be related if they are husband and wife or if they, or their spouse, is the son/daughter, father/mother, grandson/granddaughter, grandfather/grandmother, brother/sister, nephew/niece or aunt/uncle of the other.

#### Employees Who are Related to Each Other

The Council recognises that difficult and awkward situations can arise when close relatives are employed by the Council, particularly where one has the responsibility of supervising the work of the other or where members of the same family work together.

It has been agreed therefore:

- (i) That as a general rule a relative should not supervise or audit the work of another, or be employed in the same office or section;
- (ii) Those responsible for appointment should ensure that this situation does not arise either by appointment or promotion;
- (iii) That where the position referred in (1) does arise, for instance on marriage, the Director concerned shall report the matter to the Chief Executive, who, in consultation with the employees concerned and the Secretary to the Employee Side and Directors in whose sections there is a suitable vacancy or where such a vacancy is likely to occur, will endeavour to find suitable alternative employment in the service of the Council for one of the related parties. It should be recognised that such alternative employment is to be without loss of pay. In case of difficulty in finding a suitable alternative placement within a reasonable time, the Chief Executive shall report the matter to the Corporate Management Team and seek their assistance and shall keep the Employee Side Secretary informed on the progress of each case.

**Note:** In a 'common law' situation, the two individuals shall be deemed to be 'close relatives'.



- (iv) For the purpose of these provisions, persons shall be deemed to be related if they are husband and wife or if they or their spouse is the son/daughter, father/mother, grandson/granddaughter, grandfather/grandmother, brother/sister, nephew/niece or aunt/uncle of the other.

### **Applicants Seeking Support for Appointment**

- (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment within the Council.
- (ii) No Councillor will seek support for any person for any appointment with the Council.

### **Appointment or Dismissal of the Head of Paid Service**

The authority must approve the appointment or dismissal of the Head of Paid Service. The full Council could carry out the appointment or dismissal or delegate the process to a Committee, Sub-Committee or Officer.

If the Council chooses to delegate the appointment or dismissal process to a Committee, Sub-Committee or Officer, the full Council must approve the appointment before an offer of appointment is made, or in the case of dismissal, before notice of dismissal is issued.

The requirement for the Council to 'approve' the appointment of the Head of Paid Service does not preclude the Appointments and Appeals Committee from interviewing candidates and making a recommendation on an appointment to the Council. **However, the Appointments and Appeals Committee must include at least one member of the Cabinet.**

There are further provisions which apply to the appointment or dismissal of the Head of Paid Service which apply to all Chief Officers as set out below. Pending the amendment of the JNC chief officer dismissal terms and conditions, the dismissal procedure for Statutory Officers should be as set out in National Salary Framework and Conditions of Service Handbook agreed by the Joint Negotiating Committee (JNC ) for Local Authority Chief Executives (October 2016).

Full Council must approve the dismissal of Statutory Officers before notice of the dismissal is issued.

### **Appointment and Dismissal of Chief Officers**

This function is the responsibility of the Council but can be delegated to a Committee, Sub-Committee or Officer e.g. the Appointments and Appeals Committee.



## **Opportunity for Members of the Cabinet to Raise Objections**

In respect of a proposal for the appointment or dismissal of the Head of Paid Service, or a Chief Officer, the 'Proper Officer' must:

- (i) Notify every member of the Cabinet of the proposals.
- (ii) Give them a specified period within which the elected leader may advise the Proper Officer of any objection on the part of the Cabinet to the proposed appointment or dismissal.

The offer of appointment (or notice of dismissal) can only be made if:

- (i) The Leader has informed the Proper Officer that neither he/she nor the Members of the Cabinet have any objection to the offer of appointment (or the issuing of notice of dismissal), or
- (ii) If there has been an objection from the Leader or a Member of the Cabinet, when the appointer (or dismissor) is satisfied that the objection is not material or is not well-founded.

The Cabinet's right of objection is merely to make representations, and have these taken into account by the appointer (or dismissor). It is not a right of veto over a decision to appoint or dismiss.

- (iii) In the case of the three Statutory Officers, if the decision relates to a dismissal, the notice of dismissal cannot be served until a report has been approved by Full Council.

## **Recruitment Procedures**

The method and procedure relating to the appointment of Directors is as follows: -

- (i) The preparation of shortlist be undertaken by members of the Corporate Management Team and the Chief Executive in conjunction with the Chairman of the Appointment and Appeals Committee and the Leader of the Council.
- (ii) The preliminary interviews of short-listed candidates and selection of those for final interview be undertaken by the Chief Executive.
- (iii) The final interviews are undertaken by the Appointment and Appeals Committee as constituted by Council or its equivalent.

## **Appointment and Dismissal of Employees below the Level of Chief Officer**

### **Elected Member Involvement**

Elected Members are not allowed to be involved in the appointment, discipline or



dismissal of employees below the level of Chief Officer. This should be the responsibility of the Director, or by an Officer nominated by him/her. However, elected Members may be involved in the authority's appeals process and may be called as a witness or to give evidence if appropriate during an inquiry or investigation of misconduct.

## **1. Recruitment Procedures**

- (i) When a vacancy arises, the Division should review the need to fill the post and establish whether it will be open for job share. If job share is not possible an exemption form must be completed detailing reasons.
- (ii) Human Resources should confirm with the relevant manager that the Recruitment Policy will be followed and if necessary forward a copy.
- (iii) The Division will determine the recruitment sources in consultation with Human Resources i.e. external and internal, or internal only in cases where promotion is likely.
- (iv) The Division will draft an advertisement following the outline provided and forward it to Human Resources with any revisions to the Job Description specifically detailing requirements in relation to Experience, Education, Special Qualifications and Training. Human Resources will check the details and arrange for internal and external circulation and placement in the relevant media.
- (v) All application forms should be returned to the Human Resources Division, where recruitment monitoring forms will be detached immediately upon receipt. For each position a summary of age/sex/race/disability of applicants will be made for the post.
- (vi) Human Resources will copy applications and forward copies to the relevant Line Manager, who will draw up a shortlist and notify Human Resources. Human Resources will check through the applicants ensuring that everyone has been given fair consideration, highlighting any additions on the list or anyone who should not be included.
- (vii) Interviews for positions at Band H and above should always be conducted with a representative of the Human Resources Division present, and procedure (3) below followed.
- (viii) Interviews for positions up to Band G should be conducted by the Division and procedure (ii) below followed. Where Officers have not attended the Council's Recruitment and Selection Training Course, or if the Division would prefer a representative from the Human Resources Division to be present, a request should be made to this effect.



## 2. Posts Band H and Above

- (i) Human Resources will contact the shortlisted candidates by telephone and letter according to timescale and request references. Human Resources will invite the candidate for interview and, send details of times to relevant managers and divisional receptions (as per current arrangements).
- (ii) The Division will draw up an interview assessment form and will establish weightings, forwarding a copy to Human Resources prior the interview.
- (iii) A Human Resources representative will attend the interview with at least one, but ideally two, managers from the relevant Division, at least one of whom, but preferably both, should have attended the Council's Recruitment and Selection Training Course.
- (iv) Interview assessment forms will be completed and collated by Human Resources, who will retain them as a record for 6 months.
- (x) Human Resources will draw up the contract for the successful candidate and will send letters to and telephone unsuccessful candidates.

## 3. Interviews up to Band G

- (i) The Divisional Manager will call shortlisted candidates for interview by telephone and/or letter and the nominated Officer will approach referees. The Division will draw up an interview assessment form and establish weightings.
- (ii) The Division will send a list of candidates to Human Resources for information purposes.
- (iii) Human Resources will send details of Conditions of Service for the post.
- (iv) At least two representatives of the Division, both of whom should have attended the Council's Recruitment and Selection Course, should conduct the interview.
- (v) Completed interview assessment forms and a confirmation statement that procedure has been followed, should be returned to the Human Resources Division together with a completed New Starter Form.
- (vi) Human Resources, in consultation with relevant the Division draws up a Contract of Employment.



- (vii) The Division notifies unsuccessful candidates by telephone (if appropriate) and letter of the outcome.

#### **4. Grievance Procedure Applicable to Employees**

- (i) This scheme has been formulated by the Senior Consultation Group representing the Council and its employees to provide an agreed procedure to enable employees individually as of right to seek redress for grievance relating to their employment.
- (ii) The Council and representatives of the employees accept this scheme as binding in honour upon them and will use their best endeavours to ensure that its spirit and intention shall be honoured at all times but expressly agree that the scheme is not intended to constitute a legally enforceable agreement.
- (iii) The scheme shall apply to employees of the Council whether occupying a permanent post or otherwise in full-time or part-time service.
- (iv) An employee shall, if he/she has an individual grievance relating to his/her employment, have a right to express it and to seek redress through the following procedures:
- (v) This scheme shall not apply :
  - (a) To any matter concerning the terms of a collective agreement which an employee ought properly to take up directly through the appropriate Employees' Side Secretary of the Senior Consultation Group.
  - (b) Disciplinary matters.
  - (c) To employees who are dismissed during or at the end of their probationary period.
  - (d) Income tax and housing benefit matters.
  - (e) The rules of the Superannuation Scheme.
  - (f) Any other matter for which separate appeals machinery exists.

#### **5. Stage One – Informal Resolution**

- (i) An employee with a grievance should initially seek an informal resolution via a discussion personally through his representative or shop steward, with their immediate supervisor/manager.
- (ii) The supervisor shall reply orally to the grievance as soon as possible but in any event within five working days.



## 6. Stage Two – Formal

- (iii) If the employee is dissatisfied with the outcome of stage one and wishes to pursue the matter they may do so personally or through a representative or shop steward, by writing to the Director of the division briefly setting out the grounds for the grievance and requesting, if so desired, a meeting with the Director to discuss the grievance. If no grounds for appeal or written communication is received from the employee concerning the grievance within 3 months, the file will be closed.
- (iv) If such a meeting is requested, the Director concerned shall arrange to meet the employee concerned and/or his/her trade union or other representative to discuss the grievance within seven working days. The Director shall notify the employee concerned and/or their trade union or other representative of their decision within seven working days of the meeting or of receipt of the complaint if no meeting is requested.
- (x) Time away from work in order to discuss a grievance with their trade union or other internal representative will be granted, in accordance with service requirements and with approval from the manager normally responsible for granting leave of absence.

## 7. Stage Three – Chief Executive

- (i) If the employee continues to be aggrieved in respect of their original complaint, they may pursue the matter further personally or through their trade union or other representative by writing to the Chief Executive. They should briefly re-state the grounds of their grievance and the steps that have been taken so far to seek settlement.
- (ii) The Chief Executive will invite the employee to attend a hearing to discuss the grievance. If appropriate the employees must be informed of their statutory right to be accompanied by a trade union official or fellow employee.
- (iii) The Chief Executive will respond to the grievance within five working days of the stage three meeting.

## 8. Stage Four

- (i) Should the grievance remain unresolved following stage three, the Chief Executive can decide whether or not to refer the matter to an Appeals Panel of three JNC (Joint Negotiating Committee for Chief Officers of Local Authorities) Chief Officers. The Panel's decision will be final.
- (ii) The parties to the scheme (management/employee/trade union/) may on occasions and by mutual agreement modify the time limits referred to in



the foregoing procedure.

- (iii) The employee's representatives shall be entitled to raise through the Senior Consultation Group any matter of principle arising from grievances considered under this scheme, but shall not be entitled to raise individual cases.
- (iv) Nothing in this scheme shall affect any entitlement which an employee may have under his/her conditions of service enabling him/her to pursue a grievance as a dispute through the appropriate negotiating machinery.

## 9. Records

- (i) Records must be kept by the appropriate manager at all stages of the formal grievance which should detail the following:
  - (a) Outline of grievance.
  - (b) Copy of the written grievance.
  - (c) Details of grievance e.g. whom against, reasons, dates etc.
  - (d) Attendees at hearing(s), date, time, venue.
  - (e) Outcome of hearing(s)/resolutions, action taken and reasons for action taken.
  - (f) Whether there was an appeal and if so the outcome.
  - (g) Subsequent development and by whom.
- ii. All parties involved within the grievance proceedings should have the opportunity to check the accuracy of these records, sign and date them.
- iii. Records, minutes and relevant forms must be retained by Human Resources and stored in a confidential file in accordance with the Data Protection Act 1998, which give individuals the right to request and have access to certain personal data.
- iv. Copies of meeting records should be given to the employee including any formal minutes that may have been taken.

## 10. Exemptions and Deemed Compliance

The Employment Act 2002 (Dispute Resolution) Regulations 2004 contain detailed provisions about the application of the Statutory Dispute Resolution Procedures. A summary of the provisions of the 2004 Regulations are detailed which describe:

- (i) Certain situations in which the statutory procedures will not apply at all; and
- (ii) Other situations in which a party who has not completed the applicable procedure will nevertheless be treated as though they had done so.



Where a statutory procedure applies and one of the conditions for extending time limits contained in the 2004 Regulations has been met, then the normal time limit for presenting an employment tribunal claim will be extended by three months. The guidance notes accompanying tribunal application forms describe those conditions. However in cases where the procedures do not apply at all, there can be no such extension.

### **Situations in which the Statutory Procedures do not Apply**

The Disciplinary Procedures do NOT apply where:

- (i) Factors beyond the control of either party make it impracticable to carry out or complete the procedure for the foreseeable future, or
- (ii) The employee is dismissed in circumstances covered by the modified dismissal procedure and presents a tribunal complaint before the employer has taken step 1, or
- (iii) All of the employees of the same description or category are dismissed and offered re-engagement either before or upon termination of their contract; or
- (iv) The dismissal is one of a group of redundancies covered by the duty of collective consultation of worker representatives under the Trade Union and Labour Relations (consolidation) Act 1992, or
- (v) The employee is dismissed while taking part in unofficial industrial action, or other industrial action which is not “protected action” under the 1992 Act, unless the employment tribunal has jurisdiction to hear a claim of unfair dismissal, or
- (vi) The employee is unfairly dismissed for taking part in industrial action which is “protected action” under the 1992 Act, or
- (vii) The employer’s business suddenly and unexpectedly ceases to function and it becomes impractical to employ any employees, or
- (viii) The employee cannot continue in the particular position without contravening a statutory requirement, or
- (ix) The employee is one to whom a dismissal procedure agreement designated under section 110 of the Employment Relations Act 1996 applies.

The Grievance Procedures do NOT apply where:

- (i) The employee is no longer employed, and it is no longer practicable for the employee to take step 1 of the procedure, or



- (ii) The employee wishes to complain about an actual or threatened dismissal, or
- (iii) The employee raises a concern as a “protected disclosure” in compliance with the public interest disclosure provisions of the 1996 Act.
- (iv) The employee wishes to complain about (actual or threatened) action short of dismissal to which the standard disciplinary procedures applies, unless the grievance is that this involves unlawful discrimination (including under the Equal Pay Act) or is not genuinely on grounds of capability or conduct.

In addition, neither party need comply with an applicable statutory procedure where to do so would be contrary to the interests of national security.

## **Disciplinary Policy**

### **1. Policy**

- 1.1 Wyre Forest District Authority aims to ensure that there will be a fair and consistent approach to the enforcement of standards of conduct throughout the Authority.
- 1.2 This Policy and Procedure is designed to help and encourage all employees to achieve and maintain standards of conduct and attendance.
- 1.3 The Authority’s Conditions of Service, Personnel Handbook and associated documentation (with the exception of the Chief Executive and Directors) apply to all employees.

### **2. Employees Covered by the Policy**

- 2.1 The Policy will apply to all employees including probationary, temporary, casual and seasonal employees.
- 2.2 Employees who are on fixed term or short term contracts will not have their contracts extended solely for the purpose of completing disciplinary proceedings. However, the 3 step procedure (detailed in Section 8) should still be followed.

### **3. Employees Not Covered by the Policy**

- 3.1 Chief Executive and Directors. Please refer to:
  - (i) The Joint Negotiating Committee for Chief Executives of Local Authorities
  - (ii) The Joint Negotiating Committee for Chief Officers of Local Authorities



- 3.2 Trainees not formally employees of the Authority but working in the Authority's service under a special programme are exempt from the Policy but are expected to act to the same Code of Conduct.

#### **4. Responsibility for Discipline**

- 4.1 The Chief Executive and Directors are responsible for discipline within their respective Divisions. They may delegate authority for the imposition of penalties short of dismissal, e.g. written warnings, to an authorised representative and in such circumstances the Chief Executive, or Director, will ensure they are not directly involved in the disciplinary process up to and including the imposition of penalty short of dismissal. The Chief Executive shall have responsibility to act in place of a Director in circumstances where a Director is not able to operate the Policy.

#### **5. Authority to Undertake Investigation / Initiate Proceedings and Issue Penalties (With the Exception of Dismissal)**

- 5.1 Employees who formally supervise/manage a specific employee or group of employees may be given the authority by their respective Director, or Chief Executive, to initiate proceedings under the policy in respect of that employee or group of employees. The stage at which line managers can initiate proceedings will be determined by the Director.
- 5.2 Where the management structure allows, line managers who carry out the investigatory interview should not be involved in the final decision making process.
- 5.3 In disciplinary cases where the outcome could potentially result in dismissal, a Human Resource representative **must** be present at the formal disciplinary hearing. In all other cases, where the Formal Procedure is initiated, Divisions can request a Human Resources representative to be present if they wish.
- 5.4 Those responsible for using and operating the disciplinary rules and procedures should be trained for the task ideally on a joint basis with the Trade Unions so that all concerned have the same understanding.

#### **6. Principles**

- 6.1 No disciplinary action will be taken against an employee until the case has been fully investigated and an investigative interview has taken place.
- 6.2 The Authority is committed to ensuring that all potential infringements of disciplinary rules are dealt with without undue delay.
- 6.3 At every stage in the procedure, the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state



his or her case before any decision is made. He/she must also be provided with all relevant evidence. At any stage throughout the investigation, the employee shall have the right to call witnesses on their behalf. If the case progresses to a Disciplinary Hearing, the employee must be given a copy of the interview/case notes and witness statements from investigatory interviews. Employees will be required to sign acceptance, or provide comments if they disagree with any part of the notes, within 3 working days. Failure to either sign acceptance or provide details of disagreement within the 3 working day period will be deemed as acceptance. At the Hearing and/or Appeal stage witnesses should only be called that have been identified and interviewed as part of the investigation (other than in exceptional circumstances).

- 6.4 At all stages during the investigation, disciplinary hearing or appeal, the employee will have the right to be accompanied by either, a trade union official or a fellow employee.
- 6.5 The employee can request a postponement of the hearing if the companion is not available. The delay should be no longer than a week from the date of the original hearing.
- 6.6 It is normally the direct line manager who will conduct the disciplinary hearing unless there are exceptional circumstances.
- 6.7 Notes of investigatory and disciplinary hearing meetings and any disciplinary penalties imposed must be either hand delivered to the employee concerned and a signature obtained to confirm receipt or sent by recorded delivery. A note must be made of the date and time of delivery.
- 6.8 In reaching decisions on appropriate disciplinary penalties, management will take into account any mitigating circumstances in liaison with Human Resources to ensure corporacy and fairness.
- 6.9 The employee shall be informed in writing of any disciplinary penalties imposed, together with the reasons for the imposition and informed also of how to exercise the right of appeal.
- 6.10 If the proceedings are terminated without a penalty being imposed, all written references relating to the proceedings shall be expunged from the employee's personal file and the employee shall be so notified.
- 6.11 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be summary dismissal, i.e. dismissal without notice or pay in lieu of notice.
- 6.12 The procedure may be implemented at any stage (e.g. final written warning without the employee having received a written warning) if the employee's alleged misconduct warrants such action.



- 6.13 Disciplinary action will be taken against a union representative only after the full circumstances of the case have been discussed with a full time official of the appropriate trade union.
- 6.14 No observers will be allowed to attend any stage of the disciplinary process except for training purposes.
- 6.15 Disciplinary hearing meetings will take place during normal office hours.
- 6.16 The investigatory stage of the process may entail carrying out interviews with the employee concerned and third parties such as witnesses, colleagues and managers as well as analysing written records and information.
- 6.17 If the recommendation is to proceed to the formal procedure, the investigation report will be made available to all the parties concerned.
- 6.18 Where an employee is called to attend an investigatory interview, it should be made clear that it is not a disciplinary hearing.

**Note** : It should be noted that as part of the Financial Services Internal Audit Review process it may prove necessary to carry out reviews of procedures including fact finding interviews without invoking the disciplinary policy.

## Disciplinary Procedures

### 7. Informal Procedure

- 7.1 If an employee is involved in a breach of discipline, a file note may be recorded on the employee's personal file but disregarded after 6 months.

### 8. Formal (3 Step) Procedure

#### 8.1 Step One

Notify the employee of a disciplinary allegation. Invite employee to an investigatory interview (at which the employee has a right to be accompanied).

- 8.2 The employee should be given not less than three working days notice of the time, date and place of the **investigatory** interview and that the employee has the right to be accompanied.
- 8.3 The employee must ensure the originator of the letter is notified before 4.30pm on the working day prior to the **investigatory interview** that he/she will attend or be represented.

Where notification is not received by that time, it will be assumed that the employee does not intend to be present or represented.



- 8.4 If for reasons acceptable to the line manager concerned, the employee cannot attend, a suitable alternative arrangement can be made. The delay should be no longer than a week from the date of the original hearing.
- 8.5 At the completion of the investigation (which may involve interviewing others), if it is established that there is a case to answer, the investigating officer should refer the matter to a more senior officer to conduct a formal disciplinary hearing.

### 8.6 **Step Two**

Hold a Disciplinary Hearing to discuss the matter.

A meeting will be held to discuss the allegations. The employee will have the right to be accompanied by either a Trade Union Representative or a fellow employee.

The employee should be given not less than three working days notice of the time, date and place of the Hearing and that the employee has the right to be accompanied.

The employee must ensure the originator of the letter is notified before 4.30 pm on the working day prior to the Hearing that he/she will attend or be represented.

Where notification is not received by that time it will be assumed that the employee does not intend to be present or represented.

If for reasons acceptable to the line manager concerned, the employee cannot attend, a suitable alternative arrangement can be made. The delay should be no longer than a week from the date of the original hearing.

- 8.7 Following the hearing or the employee's failure to attend or to notify his/her intention of being present, the Manager will have up to seven working days to decide on the action which he/she considers appropriate to the circumstances of the case and to inform the employee in writing of the decision. At this stage of the process advice should be sought from the Human Resources Division and Legal Section. The correspondence should include who attended and the decision taken. **It must also include a right of appeal.**

### 8.8 **Step Three**

Hold an appeal meeting if requested.

If the employee wishes to appeal, the appeals procedure should be followed (see 14 - Appeals). An Appeals Panel will be convened at which the employee has the right to be accompanied and the employee will be advised of the final decision, in writing.



## 9. Minor Offence - Verbal Warning

- 9.1 In the case of minor offences, the employee should be given a verbal warning. The employee should be told that a note will be kept of the warning but disregarded after a specified period of 6 months, subject to satisfactory conduct and performance. Any agreed actions outlining improvement should be recorded for future reference, giving a copy to the employee.

*Guidance note: It can be unfair to keep details of warnings on an employee's file indefinitely. Unless a warning is for a very serious matter, it should be disregarded as above.*

## 10. Written Warning

- 10.1 If there is no improvement in standards or if the offence is more serious a first formal written warning may be given to the employee. This will give details of the complaint, the improvement required and the time-scale. It will warn the employee that, if there is no satisfactory improvement, further disciplinary action may be taken and will advise of the right of appeal. A copy, including any agreed actions, should be kept on file but disregarded after a specified period of 15 months, subject to satisfactory conduct.

*Guidance note: The decision should be made following the hearing and confirmed in writing accordingly.*

## 11. Final Written Warning

- 11.1 If there is a failure to improve after a written warning, or if conduct is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warnings), a final written warning will normally be given by the relevant manager (see Guidance notes below). This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be placed on an employee's file but will be disregarded for disciplinary purposes after 24 months (in exceptional cases the period may be longer), subject to satisfactory conduct.

*Guidance notes: At this stage of the process advice should be sought from the Human Resources Division and Legal Section. The warning should state clearly that dismissal will result from a failure to comply.*

## 12. Dismissal with notice

- 12.1 If conduct is still unsatisfactory and the employee fails to reach the prescribed standards, dismissal will normally result. Only the Chief Executive or Director can take a decision to dismiss and they must have been the officer who conducted the disciplinary hearing. Following the Hearing, the decision to



dismiss must then be communicated in writing to the employee. Such written communication to include: reasons for dismissal, the date on which the employment will terminate (in accordance with notice entitlement) and notification of the right of appeal. In disciplinary cases where the outcome could potentially result in dismissal a Human Resource representative must be present at the formal disciplinary hearing.

### **13. Gross Misconduct**

13.1 In cases of suspected gross misconduct the Three Step Procedure must still be followed as detailed in Section 8.

13.2 If an employee is accused of gross misconduct, the Authority may suspend the employee from work on full pay, normally for no more than five working days, while it investigates the alleged offence. The decision to suspend may be made by the employee's immediate Line Manager in conjunction with advice from the Human Resources Division. Suspension is appropriate when the continued presence of the employee in the workplace could jeopardise the investigation. The Authority will explain its reasons in writing to the employee. During any period of suspension, the employee should not attend their place of work other than for the purpose of attending disciplinary proceedings, including investigatory interviews. Nor should the employee contact any other employees, suppliers or customers of the Authority, except their elected representative, without the Authority's consent. To protect the Authority and employees, line managers should ensure all keys, swipe cards, ID cards, mobile phones etc. are handed in and a record kept.

13.3 The following are examples of gross misconduct:

- (i) Theft, fraud, bribery (giving and receiving).
- (ii) Unauthorised entry to computer records or deliberate falsification of records.
- (iii) A serious breach of the Authority's rules on e-mail and Internet usage.
- (iv) Fighting or assault.
- (v) Deliberate or reckless damage to Authority property.
- (vi) Inability to perform your duties through being under the influence of alcohol or drugs.
- (vii) A serious breach of the Authority's safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the Authority, its employees or customers.
- (viii) Conviction of a criminal offence which makes you unsuitable or unable



to carry out your duties.

- (ix) A serious act of insubordination such as deliberate refusal to carry out proper instructions.
- (x) Acts of bullying, harassment or discrimination.
- (xi) A serious breach of trust or confidentiality.

This list is not intended to be an exhaustive one and only gives an indication of the types of offences that may be considered to be gross misconduct.

*Guidance Note: At all stages of the procedure, the right to appeal should be confirmed as part of the warning or dismissal letter.*

## 14. Appeals

- 14.1 If an employee wishes to appeal against a disciplinary decision short of dismissal e.g. written warning, they must do so through their immediate line manager within seven working days of the receipt of the disciplinary letter. The appeal should be made in writing, stating the ground(s) on which the disciplinary penalty should be reviewed. Appeals should be dealt with speedily, particularly those involving suspension or dismissal.
- 14.2 **Where an employee is dismissed, they have three months from their last day of employment to appeal against that decision.**
- 14.3 Wherever possible, the appeal should be heard by someone senior in authority to the person who took the disciplinary decision, and, if possible, who was not involved in the original investigatory, disciplinary hearing or decision.
- 14.4 An employee has the right to representation and may be accompanied at the appeal hearing by a trade union official or fellow employee.
- 14.5 The appeals hearing will be held within fourteen working days of receipt of the appellant's letter, otherwise, any extension to this timescale will be with the agreement of both parties. In the case of dismissal the appeal will be heard by Members and the timescale will be dictated by the availability of those involved.
- 14.6 The decision of the Appointments and Appeals Committee shall be final.

## 15. Keeping Records

- 15.1 Records should be treated as confidential and be kept in accordance with the Data Protection Act 1998. This Act gives individuals the right to request and



have access to certain data.

## **16. Appendices**

Appendix A - Flowchart of the Capability/Disciplinary Procedure.

Appendix B - Checklist for Handling a Disciplinary Matter.

Appendix C - Guidance for Taking Notes during a Disciplinary Process.

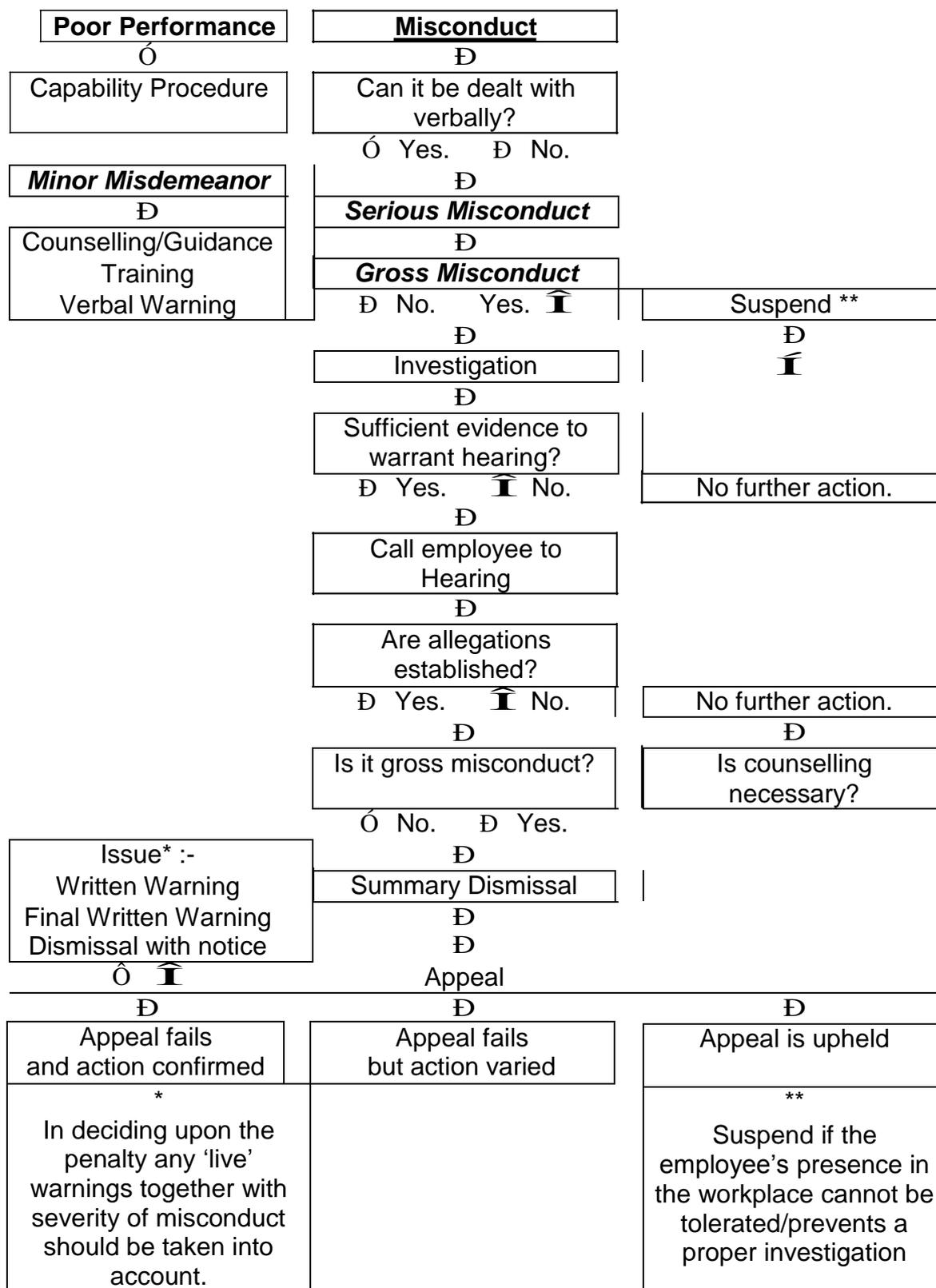
### **Reference documents:**

- (i) Grievance Policy & Procedure
- (ii) Capability Policy & Procedure
- (iii) Employee's Code of Conduct
- (iv) Strategy for Dealing with Theft, Fraud & Corruption
- (v) Information & Communication Technology Policy



## Appendix A

### Flowchart of the Capability/Disciplinary Procedure



## Appendix B

### Checklist for Handling a Disciplinary Matter

This checklist sets out the key steps which managers should consider when handling disciplinary matters.

1. **Gather all the relevant facts:**  
Promptly, before memories fade.  
Take statements, collect documents.  
In serious cases consider suspension with pay for a short period while an investigation is conducted.
2. **Be clear about the complaint:**  
Is action necessary at this stage?
3. **If so, decide whether the action might be:**  
Advice and counselling.  
Capability.  
Formal disciplinary action, following the authority's procedures.
4. **If formal action is appropriate refer the matter to a senior officer to arrange a disciplinary hearing:**  
Ensure the employee is aware of the nature of the complaint.  
Inform the employee where and when the hearing will take place and of their right to be accompanied.
5. **Start by introducing:**  
Those present and the purpose of the hearing.  
The nature of the complaint.  
The supporting evidence.
6. **Allow the employee to state his/her case (the accompanying person may also put questions and confer privately with the individual but not answer on their behalf):**  
Consider and question any explanations put forward.
7. **If any new facts emerge : Decide whether further investigation is necessary:**  
If so, adjourn the hearing and reconvene when the investigation is complete.
8. **Call an adjournment before making a decision:**  
Come to a clear view about the facts.  
If facts are disputed, decide on the balance of probability which are true.
9. **Before deciding any disciplinary penalty consider:**  
The seriousness of the offence and whether the procedure gives guidance.  
The penalty imposed in similar cases in the past.  
The individual's disciplinary record and general service.



Any mitigating circumstances.

Whether the proposed penalty is reasonable in all the circumstances.

**10. Record the action taken:**

Confirm the disciplinary action to the employee in writing.

In the case of a warning, explain what improvement is expected, how long the warning will last and what the consequences of failure to improve may be. Explain the right of appeal and how it operates.

Keep a comprehensive record of the action taken for future reference.

Please also refer to 5.3 and 6.3 detailed earlier within these Procedures.

**11. Monitor the individual's performance:**

Disciplinary action should be followed up with the object of encouraging Improvement.

Monitor progress regularly and discuss it with the employee.

Guidance Notes: Halt the proceedings at any point where it is apparent that the use of the disciplinary procedure is inappropriate and counselling or the capability policy and procedure should be used or there is no case to answer.



## Appendix C

### Guidance on Taking Notes during the Disciplinary Process

1. Notes *must* be taken at *every* disciplinary interview as a permanent record of:
  - (i) Exactly what was said and decided, and
  - (ii) Evidence of the events at the interview (and their order) for later reference.
2. Such notes must be as accurate and comprehensive as possible – using verbatim quotes wherever possible.
3. A copy will be given to the employee who will have the opportunity to challenge anything he or she feels is inaccurate.
4. Before the proceedings start, the note-taker should remind the Chairperson to advise everyone that a record is being made and it would be helpful not to speak too fast and to speak clearly, and that they may be interrupted and asked to repeat comments should the note-taker not have obtained an accurate record.

A note-taker should have a supply of lined paper, two or three pens and an accurate watch.

6. The record made by a note-taker must not be biased or slanted so that it shows either party in a 'good (or bad) light' or in some way justifies actions and sanctions. It needs to be a plain statement of what was said and done.
7. Nothing other than events occurring and statements made should be included unless both parties agree that this should be the case for a particular reason, which should be stated in the record.
8. The notes should record all who were present, the date, times of starting, and of ending, and all entrances and exits of everyone attending at any time during the interview. The times of such entrances and exists should also be recorded.
9. A note-taker should ask for name and position of all visitors to the interview if these are not asked for by the Chairperson, or the persons are not known to the note-taker.
10. Wherever possible the exact language used by every speaker should be recorded in the notes – even if such language is foul. If preferred swear words may be abbreviated to their initial letter plus asterisks, provided it is clear what word(s) were used.
11. Plain English Language, should be used wherever possible.
12. If the proceedings are moving too quickly for the note-taker to keep up, they



should interrupt and ask for a pause so that they can ensure the accuracy of their proposed record. If possible, it is preferable not to interrupt a person's comments but to wait until they finish before asking for a repeat of what was said.

13. If the note-taker has concern that their record may not be accurate they should ask the Chairperson for permission to read the record back to check, and to make corrections if necessary.
14. Pages of notes should be consecutively numbered and initialled by the note taker.
15. Notes should be made in ink or biro rather than pencil.
16. A typed version will be made of the original notes and copies of this version will be made available to the parties. The typed version should be an exact transcript of the handwritten notes even if it discloses broken sentences and even broken words.
17. Note-takers need to prepare verbatim notes and should not be too concerned if there are gaps where the record was incomplete and/or language was unclear or imprecise.

*Guidance Notes: In conversation people do not always finish sentences, and/or interrupt themselves and this reality should be reflected in the record.*

18. The typed transcript should be made available as soon as possible after the interview.
19. The original notes should be kept securely.
20. A copy of the typed record (with a photocopy of the original) should be given to the employee with a request that if they have any objections to the record they should make these known within a stated period of time (e.g. three working days from receipt).

Please also refer to 5.3 and 6.3 detailed earlier within these Procedures.

21. Any requests for alterations should be carefully preserved having been referred to the Chairman for decision. If the record is to be altered then a fresh version of the notes incorporating the required alterations will be prepared and both sides' acceptance gained under the procedure set out above.

Please also refer to 5.3 and 6.3 detailed earlier within these Procedures.

22. Subject to adherence of the above guidelines the notes as agreed will be accepted as the official version of the events.

