



# Rutland County Council

## Appendix 10

# DISCIPLINARY POLICY AND PROCEDURE

Version and Policy Number	Version 1.02
Guardian	Human Resources
Date Produced	April 2013
Next Review Date	April 2016

Approved by DMT	24 July 2012
Approved by SMT	9 <sup>th</sup> October 2012
Approved by LJC	16 <sup>th</sup> May 2013
Approved by EAC	
Approved by Full Council	

## CONTENTS

	<b>Page No.</b>
<b>1 POLICY INTRODUCTION</b> .....	4
<b>2 SCOPE</b> .....	4
2.1 Probationary employees.....	4
2.2 Exclusions .....	4
2.3 Trades Union Officials .....	4
2.4 Role of Officers .....	5
<b>3 THE INFORMAL PROCEDURE</b> .....	5
3.1 Applying the Informal Procedure .....	5-6
3.2 Monitoring during the Informal Procedure.....	6
3.3 Recording the informal discussion .....	6
<b>4 to 4.14 PRINCIPLES THAT APPLY TO THE FORMAL PROCEDURE</b>	6-8
<b>5 to 5.15 THE FORMAL PROCEDURE</b> .....	8-11
<b>6 FORMAL RESOLUTIONS</b> .....	11
6.1 Case Dismissed .....	11
6.2 Verbal warning .....	11-12
6.3 Written warning .....	12
6.4 Final written warning .....	12-13
6.5 Action short of dismissal .....	13
6.6 Dismissal .....	13
6.7 Confirmation of the Resolution .....	14
6.8 Warnings .....	14
6.9 References.....	14
<b>7 to 7.8 APPEALS</b> .....	14-15
<b>8 to 8.2 CRIMINAL OFFENCES COMMITTED OUTSIDE THE COUNCIL'S EMPLOYMENT</b> .....	15-16
<b>9 to 9.2 DISCIPLINARY MATTERS RELATING TO SAFEGUARDING ISSUES</b> .....	16
<b>10 to 10.2 REVIEW</b> .....	16
 <b><u>APPENDICES</u></b>	
I The Commissioning Officer's Role .....	17-18
II The Investigating Officer's Role .....	19-20
III The Nominated Disciplining Officer's Role .....	21
IV The Line Manager's Role .....	22-23
V The Human Resources Role .....	24
VI The Trade Union Representative or Work Colleague's Role .....	25

VII	Examples of Gross Misconduct .....	26-27
VIII	Disciplinary Hearing Procedure .....	28-29
IX	The Appeals Process .....	30-31

## **RUTLAND COUNTY COUNCIL**

### **DISCIPLINARY POLICY AND PROCEDURE**

#### **1. POLICY INTRODUCTION**

This policy is designed to help and encourage all employees to achieve and maintain standards of conduct. Its purpose is to ensure fair treatment, in accordance with the Council's Equal Opportunities Policy, of employees who become liable to disciplinary action because of failure to meet the required standards of behaviour. Strict confidentiality should be maintained with discussions and information sharing being strictly limited. The Managers Guidance on dealing with Disciplinary issues, which can be accessed on the intranet HR Policies/Disciplinary, should be referred to in addition to this Policy.

#### **2. SCOPE**

This disciplinary policy and procedure applies to employees of Rutland County Council, including permanent, temporary and casual employees. Exclusions to this are referred to at 2.2.

##### **2.1 Probationary employees**

The Council's Policy on Potential non-confirmation of Probationary Period should be applied where an employee has completed a probationary period and dismissal arises from unsuitability for confirmation of appointment. Unsuitability may be, for example, any serious failure in performance and/or unacceptable conduct and behaviour.

##### **2.2 Exclusions**

The following are excluded from this disciplinary policy and procedure:

- The Chief Executive and holders of statutory posts for whom a separate procedure exists, in accordance with The Local Authorities [Standing Orders] [England] Regulations 2001. This is contained in the Joint Negotiating Committee [JNC] for Local Authority Chief Executives, National Salary Framework and Conditions of Service Handbook.
- Employees based in Schools and Colleges

##### **2.3 Trade Union Officials**

Normally no disciplinary action shall be taken against an accredited Trade Union Representative until the circumstances has been discussed with a Regional Official of the Trade Union Regional Office, after obtaining the employee's agreement.

## 2.4 Role of Officers

There are various roles involved in the process. These are the Commissioning Officer [CO], Investigating Officer [IO], Disciplining Officer [DO], Line Manager [LM], Human Resources Adviser for the directorate [HRA] and recognised Trade Union Representative or work colleague [employee of the Council] [the term Representative is used to mean whichever the employee chooses to accompany him/her], and the Contact Person (CP). These roles are described in Appendices I to VI.

## 3. THE INFORMAL PROCEDURE

Standards in the workplace are normally maintained on an informal basis. One-to-one meetings between the manager and employee and team meetings can provide opportunities to clarify the required standards. Cases of minor misconduct should be dealt with speedily and informally by the employee's manager. The aim is to discuss the issue with the employee, establish their version of events and where appropriate provide advice and guidance on expected improvements and how these might be achieved. This may include an informal warning. Taking informal action quickly provides an opportunity to avoid relatively minor difficulties becoming a major problem. The manager and employee can explore the difficulties together and agree a way forward to enable acceptable working standards to be achieved.

An informal warning may be issued in appropriate circumstances. Such a warning should always be verbal and not written and should not form part of a person's disciplinary record or be used in any future proceedings.

### 3.1 Applying the Informal Procedure

An informal meeting should be arranged to take place at a suitably discreet venue. There is no automatic right for an employee to be accompanied at an informal meeting. However, in exceptional circumstances the manager has the discretion to deviate from this upon the written request of the employee. The employee must clearly state their reasons for the request in order for it to be considered.

The manager should:

- Explain the reason for the meeting
- State that it is to discuss areas of concern
- Advise that it is an informal discussion that will not result in any disciplinary warning being issued and will not form part of the employee's disciplinary record.
- Clarify the reasons for concerns and provide any relevant evidence, dates/times etc.
- Listen to the employee's response
- Consider any explanation
- Make it clear whether and if so what improvements are expected

- Advise that a failure to improve will result in formal disciplinary proceedings
- Agree clear goals and timescales for improvement where appropriate
- Agree a date to review progress where appropriate

### 3.2 **Monitoring during the Informal Procedure**

Targets and regular reviews should be set, so that the manager can monitor the employee's progress and agree further action. At the review meeting, if the employee has achieved the agreed improvement, then no further action will be necessary unless there is a subsequent lapse in the required standards.

### 3.3 **Recording the Informal discussion**

The manager should make a record of the discussion, including the concerns raised, the employee's responses, targets set, reviews undertaken and the outcome. Informal warnings should not form part of an employee's disciplinary record. Records should be destroyed when it is determined that no further action is required.

Copies of any correspondence with the employee regarding the issues and remedies for improvement should also be kept by the manager as informal action will not involve disciplinary sanctions and there is no right of appeal.

## 4. **PRINCIPLES THAT APPLY TO THE FORMAL PROCEDURE**

- 4.1 There will be fair and consistent treatment of employees who become liable to disciplinary action and a commitment to resolving issues as soon as reasonably practicable.
- 4.2 Disciplinary decisions may include a requirement for counselling/training in certain cases. It is important that negligence and misconduct are distinguished from capability, as the latter should be dealt with under the Council's Capability Procedure.
- 4.3 The HRA for the Directorate must be consulted on all disciplinary matters and will be present at a Disciplinary Hearing to give advice on policy and procedure.
- 4.4 In most cases no disciplinary action will be taken against an employee until a full, formal investigation has been conducted. However, there may be exceptional circumstances where no investigation is necessary.
- 4.5 An employee and/or their Representative may respond to the allegations. The Representative can speak at the meeting and ask questions. However, the DO will require employees to answer questions directly rather than through a Representative unless exceptional circumstances exist and permission has been sought before the hearing.
- 4.6 Managers will need to ensure that an employee with a communication difficulty

is provided with the appropriate assistance. An employee may request appropriate assistance where necessary. Reasonable adjustments will be considered for any disabled employee at any stage of the policy.

- 4.7 All stages of the Disciplinary Procedure must be kept confidential. Any breach in confidentiality could result in the disciplinary procedure being used in respect of the breach of confidentiality.
- 4.8 In cases of alleged harassment, discrimination or bullying the Council's Grievance Policy and Procedure should be referred to in the first instance.
- 4.9 In the majority of cases disciplinary action will relate to behaviour at work. However, there may be occasions where it will relate to behaviour outside of work, this could, for example, impact on the Council's reputation. In such circumstances, it may have a direct bearing on the employee's suitability for employment. It is important to consider each case according to the circumstances.
- 4.10 An employee who has concerns of possible fraud or corrupt behaviour should report this to their line manager or a nominated individual under the Council's Raising Issues of Concern Policy. The nominated individuals are as follows:
- Chief Executive
  - Strategic Director for Resources [as Section 151 Officer]
  - Head of Financial Services - Resources [as Deputy Section 151 Officer]
  - Head of the Welland Internal Audit Consortium
- 4.11 There may be circumstances where the disciplinary procedure will be concluded regardless of whether the employee leaves the authority in the meantime. The Council may be under a duty to do this in relation to an employee who would have to be reported to the Disclosure and Barring Service [DBS] if the allegations were found to be proven, i.e. it could potentially cause significant risk to children/vulnerable adults if an employee is charged with a safeguarding disciplinary offence and the disciplinary is not concluded.
- 4.12 No employee will be dismissed for the first breach of discipline, except in the case of gross misconduct. Examples of gross misconduct are set out at Appendix VII
- 4.13 An employee has the right to appeal against any disciplinary penalty.
- 4.14 Grievances

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the Grievance.

Where a grievance triggers a disciplinary investigation the grievance process may be temporarily suspended in order to deal with the disciplinary matter.

In any circumstance where both the grievance and disciplinary procedures apply in relation to the same facts it may be appropriate to deal with both matters together. It will be for the Manager and/or Disciplining Officer to make a decision. Advice should initially be sought from the HRA for the Directorate. The employee will be entitled to make representations to the Manager and/or Disciplining Officer if s/he believes the matters are more appropriately dealt with separately however the ultimate decision rests with Rutland County Council.

## **5. THE FORMAL PROCEDURE**

### **5.1 Is Suspension Appropriate?**

In some instances it may be necessary for an employee to be suspended pending resolution of the investigation and/or process. This is likely only to be appropriate in exceptional circumstances. The CO will be required to authorise paid suspension following approval from a Chief Officer. In all such circumstances advice should be sought from the HRA and any period of suspension should be kept under review.

The following points should be noted:

- Suspension is not an assumption of guilt and is not considered a disciplinary sanction. It may be appropriate, for example, where relationships have broken down.
- Suspension may be appropriate in circumstances where it is considered there may be a risk of interference with evidence or witnesses pressurised before the meeting
- Suspension may be appropriate if an incident raises safeguarding concerns regarding children, young people or vulnerable adults.
- It may be appropriate where the allegations, if proved, would be likely to amount to gross misconduct.
- Suspension will be on normal pay. Normal pay includes all earnings that would be paid during a period of normal working, but excluding any payments not made on a regular basis.
- Suspension should be for as brief a period as necessary. In order to facilitate this, the investigation should be given high priority and the appointed IO released from their work duties as much as possible.
- In the event of a suspension the CO will appoint a CP who should keep in touch with the employee during the period of suspension and keep the employee informed of progress. It may not be appropriate for the manager of the employee to be the contact person if the manager is involved in the investigation or other aspects of the disciplinary process.



- The potential for temporary redeployment to other duties or another location should be considered and exhausted, prior to consideration of suspension. The employee will receive their normal pay whilst redeployed.

## 5.2 The following should be considered:

In some circumstances it may not be appropriate for an employee's LM to undertake or commission an investigation e.g. where they are themselves a witness. In such circumstances an alternative staff member of the same or higher grade as the employee's LM will be appointed. This should be discussed with the HRA before any decisions are made. Employees will be notified in writing of any decisions in this respect.

## 5.3 The Investigation Process

- 5.3.1 The LM or CO will appoint an IO following consultation with and assistance from the HRA. The IO will normally be at Principal Officer level or above and will have received training in conducting investigations. The Council reserves the right to appoint an external IO, where the circumstances may call for it. The cost of this will be funded by the Directorate within which the employee is employed. If the CO considers an external IO is appropriate they should discuss this with the Director of that Directorate, who will need to approve this. The role of the IO will be to take statements from the parties concerned and collate any documentary evidence. The IO's report should be limited to presenting findings of fact.
- 5.3.2 The terms of reference given to the IO by the CO should give a clear indication of the scope and limitations of what needs to be achieved and the timescales involved. The IO can then produce an Action Plan, incorporating a timetable for sending out invitations to interviews, interview times, assembling documents etc.
- 5.3.3 The employee's manager [or alternative manager – see 5.2] should advise the employee that the purpose of the investigation is to decide whether or not there is a case to answer. The employee will be given sufficient details of the alleged offence to be in a position to understand the nature of the complaint and to have sufficient time to consider a response.
- 5.3.4 Employees must co-operate fully and promptly in any investigation. This may include providing the names of any witnesses, disclosing relevant documents and attending interviews.
- 5.3.5 At every stage of the procedure the employee will be given the opportunity to state their case and ask questions.
- 5.3.6 At the Disciplinary Hearing the employee will have the right to be accompanied by a Representative.
- 5.3.7 Once an employee has been notified of an investigation, the employee must advise the IO of the name of the employee's Representative [if applicable] and

the names of any witnesses they wish to request to give statements [if applicable].

#### 5.3.8 On conclusion of the investigation:

- The IO will compile a report for the CO
- The CO will then make a decision, in consultation with the HRA, on whether or not a Disciplinary Hearing should be convened. If the decision is that there is no case to answer then the report should be destroyed.
- If the decision is **not to** convene a Hearing, the CO will write to the employee advising them of the decision and the reasons for it. The letter will also advise of any issues or recommendations, that may have been identified during the course of the investigation
- If the decision **is to** convene a Hearing, the CO will nominate an officer to act as the DO, who should be at Principal Officer level or above. Further details on the roles are given in the Appendices
- The DO **should not** be the LM or have the same manager as the employee against whom allegations have been made
- The DO **should be** from a different section or Directorate

#### 5.4 Preparation for a Disciplinary Hearing

- 5.4.1 The employee will be given at least 10 working days notice in writing as to where and when the Disciplinary Hearing will be held. However, any timescales laid down in this procedure may be adjusted by mutual agreement in exceptional circumstances. Documentary evidence will be provided to the person against whom allegations have been made to enable the preparation of a response to the allegations.
- 5.4.2 There may be exceptional cases in which it is considered that the names of witnesses should not be released due to, for example, a genuine fear of reprisal. The DO should seek advice from the HRA for their Directorate when making a decision on this or in response to considering a request from the witness. Where this happens the employee should be notified in advance of the Hearing.
- 5.4.3 If a Disciplinary Hearing is convened, the employee should submit a written request at least 5 working days before the Disciplinary Hearing, to the DO, of the names of any witnesses they wish to call to the Hearing. The DO will then confirm whether or not they agree to this request, taking into consideration any potential conflicts of interest. A conflict of interest could be for example, due to a personal connection or financial interest. If the witness request is agreed to, it will be the employee's responsibility to ensure that they inform the witness/es that they intend to call of the relevant details of the Hearing. Paid time off to

attend the Hearing will be granted to witnesses who are also employees of Rutland County Council.

- 5.4.4 An employee should take all reasonable steps to attend the Disciplinary Hearing. If an employee fails to attend the Disciplinary Hearing a decision will be made on whether to continue the Hearing in their absence. If an employee is off on long-term sickness absence, advice should be sought from the Human Resources Adviser for the Directorate, who will seek further medical advice if necessary. The purpose of the medical advice will be to determine what if any reasonable adjustment can be made to facilitate the employee's full participation in the process.

A recommended format for the Disciplinary Hearing to follow is shown at Appendix VIII.

## **6. FORMAL RESOLUTIONS**

There are six possible resolutions of the Disciplinary Hearing:

- Case dismissed
- Verbal Warning
- Written Warning
- Final Written Warning
- Action short of dismissal
- Dismissal

### **6.1 Case Dismissed**

Formally recorded

If a decision is made to dismiss the case, the DO will write to the employee confirming the reasons for reaching this decision. Advice on the letter should be obtained from the HRA. A record will not be kept on the personal file. If a case has been dismissed but it is considered that recommendations can be made for additional training, counselling, support or service improvements, the formal letter should also confirm this and any period within which this should be achieved.

### **6.2 Verbal Warning**

In cases of minor offences a formal verbal warning will be given to the employee.

The content of the warning will be recorded and a copy will be given to the employee and placed on the personal file.

After the active period of six months from the date of the verbal warning, the record will be removed from the personal file. It will be disregarded in deciding the outcome of future disciplinary proceedings. There may be exceptions to this, for example in connection with safeguarding

issues. Reference is made at section 9. to disciplinary matters relating to safeguarding issues.

### 6.3 Written Warning

Where, following the Disciplinary Hearing, it is decided either:

- the degree of misconduct is more serious than a “Verbal Warning” offence; or
- despite previous verbal warnings relating to a similar or the same issue, the employee’s conduct continues to be unsatisfactory

a formal written warning will be given and confirmed in writing.

**This warning letter will set out clearly:**

- i) the nature of the complaint;
- ii) the reasons for the warning;
- iii) reference to previous verbal and written warnings, if appropriate;
- iv) what improvement is needed – specifying any additional training that may be required and any period within which the improvement must be achieved; the letter will confirm the requirement for support from the manager to ensure that this is achieved;
- v) the consequences if improvement is not forthcoming;
- vi) the rights of appeal;
- vii) the written warning will be placed on the employee’s personal file. After the active period of twelve months from the date of the warning letter, the record will be removed from the personal file. It will be disregarded in deciding the outcome of future disciplinary proceedings. There may be exceptions to this, for example in connection with safeguarding issues. Reference is made at section 9. to disciplinary matters relating to safeguarding issues.

### 6.4 Final Written Warning

Where:

- the degree of misconduct is more serious than a “Written Warning” offence; or
- current written warning[s] have not been effective relating to conduct of a similar or the same issue, additional disciplinary action short of dismissal will be taken and a Final Written Warning will be issued to the employee.

**This warning letter will set out clearly:**

- i) the nature of the complaint;
- ii) the reasons for the warning;
- iii) reference to previous verbal and written warnings, if appropriate;

- iv) what improvement is needed – specifying any additional training that may be required and any period within which the improvement must be achieved; the letter will confirm the requirement for support from the manager to ensure that this is achieved;
- v) the consequences if improvement is not forthcoming;
- vi) the rights of appeal;
- vii) the written warning will be placed on the employee's personal file. After the active period of two years from the date of the warning letter, the record will be removed from the personal file. It will be disregarded in deciding the outcome of future disciplinary proceedings. There may be exceptions to this, for example in connection with safeguarding issues. Reference is made at section 9. to disciplinary matters relating to safeguarding issues.

## 6.5 Action Short of Dismissal

Action short of dismissal may be appropriate in cases where the employee has behaved in a manner justifying dismissal, but the DO conducting the Hearing considers that there are mitigating circumstances. It may be agreed with the employee, that in place of dismissal, additional sanctions will be made in addition to a final warning. The DO must obtain the advice of the HRA, in the first instance, on additional sanctions.

Where the sanction given is temporary, regular review meetings should be arranged to determine an employee's progress and also following any appropriate training and support measures that have been put in place. This will help to determine what improvements; increased understanding etc. has been achieved to assist in reaching a conclusion on when it is appropriate for the additional sanction to be lifted. The outcome of the review meetings should be confirmed in writing to the employee.

## 6.6 Dismissal

Where current disciplinary action has been ineffective, or in cases of gross misconduct or gross negligence, an employee may be dismissed.

According to the severity of the case, the DO will decide whether or not to give notice.

Summary dismissal is dismissal without notice and is only allowed for 'gross misconduct'. This is where a situation is serious enough for a dismissal to take place without warning [e.g. for violence].

The action taken will be confirmed in writing following the Hearing, and will include the reasons for the dismissal and rights of appeal.

EXAMPLES of where immediate dismissal without notice may be appropriate are set out at Appendix VII. It is stressed that the list is neither exclusive nor exhaustive.

## 6.7 Confirmation of the resolution

During the adjournment of the Hearing the DO will give full consideration to the evidence presented in order to reach a decision. It may not, in all cases, be possible or appropriate for the decision to be made on the same day. Written confirmation of the resolution will normally be given within 5 working days of the Hearing. However, this may not always be possible. In cases where it is not possible the employee will be informed of when to expect a decision.

## 6.8 Warnings

Warnings will be disregarded after the specified period of satisfactory service provided that there is no abuse of the Disciplinary Procedure [see section 10]. Unspent formal warnings will be referred to in any employment reference until such a time that the warning is deemed to be spent.

## 6.9 References

In cases where an employee leaves the Council prior to the conclusion of an investigation or prior to a Disciplinary Hearing, the reference **will** include the fact that the employee was due to attend a Disciplinary Hearing but left prior to the conclusion, if this information is requested. Live sanctions will be included on a reference for a future employer.

# 7. **APPEALS**

7.1 There is a right of appeal against disciplinary action.

7.2 Any appeal must be lodged within 10 working days following the date on the letter confirming the disciplinary penalty, giving the grounds of the appeal. The person, to whom an appeal should be lodged, depends on the disciplinary penalty given. The Table at 7.6 identifies who the appeal should be lodged with.

7.3 The appeal will be heard giving 10 working days notice of the Appeal Hearing. The aim will be to hold an Appeal Hearing within 21 days of the appeal being lodged. However, it may take longer to arrange depending on the availability of Officers, Members and other attendees.

7.4 The employee has the right to be accompanied by a Representative if he or she so wishes and may request witnesses.

7.5 An appeal will be heard by a higher authority than that taking the disciplinary action and/or by parties with no prior involvement in the case to be appealed.

7.6 Subject to 7.5, the higher authority shall be as follows:-

<b>DISCIPLINARY ACTION</b>	<b>APPEAL TO</b>
Verbal Warning	Assistant Director or nominated deputy/Head of Service
Written Warning	Assistant Director or nominated deputy/Head of Service
Final Written Warning	Assistant Director or nominated deputy/Head of Service
Action short of dismissal	Chief Executive or nominated Director
Dismissal	Addressed to the Democratic Services Manager for the Employment and Appeals Committee [acting by a panel appointed from its membership]

7.7 During the adjournment of the Appeal, full consideration will be given to the evidence presented in order to reach a decision. It may not, in all cases, be possible or appropriate for the decision to be made on the same day. Written confirmation of the resolution will normally be given within 5 working days of the Appeal. However, this may not always be possible. In cases where it is not possible the employee will be informed of when to expect a decision.

7.8 A decision on internal appeal may, on the evidence provided or after seeking further advice or information:-

- Dismiss the appeal and confirm the decision already taken
- Reduce the penalty to a lesser penalty
- Uphold the appeal

If a decision to dismiss is withdrawn, then the action will be to:-

- Reinstate the employee with continuous service and award an amount to ensure that no pay has been lost, for the period lost through dismissal, or other disciplinary sanctions may apply

A recommended format for the Appeal Hearing to follow is shown at Appendix IX.

## **8. CRIMINAL OFFENCES COMMITTED OUTSIDE THE COUNCIL'S EMPLOYMENT**

8.1 An employee shall not be dismissed or otherwise disciplined solely because he or she has been charged with or convicted of a criminal offence.

8.2 Disciplinary action may be taken, however, where the Council decides that the nature of the alleged offence committed affects the interest of the Council

and/or the employee's continued performance of his or her contract of employment and/or working relationships.

## **9. DISCIPLINARY MATTERS RELATING TO SAFEGUARDING ISSUES**

9.1 Managers must ensure that they are aware of the relevant safeguarding policies and regulations where the matter relates to any safeguarding issue with regard to vulnerable groups. It may be necessary to refer to the Disclosure and Barring Service [DBS] for consideration of inclusion of the employee on the list of barred persons. The Safeguarding Vulnerable Groups Act 2006 sets out the terms under which an employer or regulated service provider must refer an individual to the DBS. Information must be referred to the DBS when an employee has been dismissed or an employee resigns because they harmed, or may have harmed a child or vulnerable adult. Information should also be referred to the DBS where:

- An individual who is working closely with vulnerable groups may harm or has harmed a child or vulnerable adult
- An individual who might in the future work closely with vulnerable groups has harmed or may harm a child or vulnerable adult; or
- It is thought that the DBS may consider it appropriate to bar the individual

Further details are available on the DBS website.

9.2 If an employee is subject to registration or regulation by a professional body or regulator, e.g. by the General Social Care Council or OFSTED it may be appropriate to make a referral to that body. The Director for the Directorate concerned will decide whether or not to refer a matter to the relevant professional body. There is a statutory duty to report to the relevant body in specific cases.

## **10. REVIEW**

10.1 This procedure may be reviewed from time to time subject to the appropriate consultation and with a view to seeking agreement of the Local Joint Council.

10.2 In every case the need to satisfy the test of reasonableness in all circumstances shall be exercised. So far as possible, account shall be taken of the employee's record and any other relevant factors



## THE COMMISSIONING OFFICER [CO] ROLE

In some circumstances it may not be appropriate for an employee's LM to undertake or commission an investigation e.g. where they are themselves a witness. In such circumstances an alternative staff member of the same or higher grade as the employee's LM will be appointed. This should be discussed with the HRA before any decisions are made. Employees will be notified in writing of any decisions in this respect.

### Responsibilities include:

1. Consulting the HRA on all disciplinary matters and prior to instigating the formal procedure.
2. Deciding on whether or not temporary redeployment or suspension is appropriate.
3. Deciding on and appointing an IO. The IO should be released from the duties of their post as much as possible in order to expedite the investigation and their manager should be supportive in this.
4. Providing the IO with the terms of reference to give a clear indication of the scope and limitations of what needs to be achieved and the timescales involved.
5. Deciding on who will act as the Contact Person (CP) for an employee under investigation, to keep them informed of how the investigation is progressing. This is particularly important if an employee has been suspended. It may not be appropriate for this person to be the manager, as it may be that they are involved in the investigation or other aspects of the disciplinary process.
6. Deciding on whether or not to convene a Disciplinary Hearing, having carefully considered the IO's report and being satisfied that there is sufficient information on which to proceed. As a good practice guide it is recommended that a decision should be made within 10 working days following receipt of the Investigator's report.
7. If the CO considers that, on the balance of probabilities, there is a case for the employee to answer; the formal disciplinary procedure will be instigated. The CO will write to the individual against whom the allegation has been made. Advice on the letter must be sought from the HRA. The letter will include the following:
  - The allegations to be heard and any accompanying documentation or information which will be relied upon in this respect;
  - The date, time and venue of the Hearing.

- The names of the nominated DO, HRA and confirmation that the IO will be in attendance.
  - The right to be accompanied by a Representative.
  - The witnesses to be called by management to the Disciplinary Hearing.
8. The CO will arrange for the management witnesses to attend the Disciplinary Hearing, ensuring that they know the date, time and venue for the Hearing. The IO will normally attend the Disciplinary Hearing to present their report. Advice on the content of the letter to witnesses must be sought from the HRA. It will be the employee's responsibility to ensure that they inform the witness/es that it has been agreed that they can call, of the relevant details of the Hearing.
  9. If the CO considers that there is no case for the employee to answer, then the CO will write to the employee, advising them that no formal disciplinary action will be taken. Advice on the content of the letter must be sought from the HRA.

**THE INVESTIGATING OFFICER [IO] ROLE IN A DISCIPLINARY INVESTIGATION**

Timescales laid down in the Policy should be followed by the IO in order to assist in speedy treatment. The IO will normally be at Principal Officer level or above. However, the Council reserves the right to appoint an external IO, where the circumstances may call for it, for example, where specialist expertise may be required that is not available from within the Council or in exceptional circumstances where an internal IO would not be appropriate.

There is a document on 'Investigating Officers Guidance Information' which must be referred to by an IO. This document is available on the intranet under HR Policies.

**Responsibilities are:**

1. The HRA will assist the CO in the drafting of a letter advising the employee of the allegations, investigation, the IO appointed to conduct the investigation, policy and procedure. The letter must also inform the employee that they may be accompanied by a Representative and that it is an investigatory interview and not a disciplinary interview. The letter will advise the employee that the IO will contact them to arrange a date for the interview.
2. The employee suspected of the alleged misconduct must be interviewed as part of the investigation and be given the opportunity to respond to the allegation. The HRA can provide the IO with a template letter to use when arranging interviews.
3. As a guide, it is recommended that a minimum of 5 working days notice in writing is given of the investigatory interview. This is in order to allow time for the employee [or witnesses] to consider the allegations and also to arrange to be accompanied by a Representative, should they wish.
4. Any witnesses must also be interviewed. Witnesses must be given notice in writing of the investigatory interview [date, time, venue etc.].
5. All interviews must be conducted on an individual basis, i.e. the employee against whom allegations have been made should not be present when a witness is interviewed and vice versa.
6. Interviews must be conducted in a private office so that strict confidentiality can be maintained. The IO must arrange for an officer to attend with them in order to take notes of the meetings. This will enable the IO to concentrate on the interview and assist in the provision of an accurate record.

7. Following the investigatory interviews for both the employee suspected of the alleged misconduct and the witnesses, statements should be typed up from the IO's notes of the interviews.
8. The employee under investigation should be sent two copies of the typed statement from the notes of their interview and requested to sign and date the statement. One copy is for the employee to retain and they will be required to forward the other copy back to the IO. This will comprise part of the report for the CO.
9. Any witnesses should be sent two copies of the statement typed up from the notes of their interview and requested to sign and date the statement. One copy is for the witness to retain and they will be required to forward the other copy back to the IO. This will comprise part of the report for the CO.
10. Witnesses should be made aware that it is normal practice to provide copies of all witness statements to the employee against whom allegations of misconduct have been made and to the complainant if there is to be a Disciplinary Hearing. However, there may occasionally be exceptions to this if the witness has a genuine fear of potential reprisals and believes that this could put them at risk. The witness may want their statement to remain anonymous. The DO will be required to make a decision following consultation with the HRA.
11. If the employee against whom the allegations have been made or any witnesses do not agree with the content of their typed up statement, the IO should seek to clarify their understanding/interpretation. The final report will make reference to areas of the statement that were not agreed.
12. The report should also include any other evidence gathered or evidence that could substantiate comments made in employee or witness statements e.g. letters, memos, e-mails, reports, records etc. The IO should do this within 6 weeks from the date on which they were appointed as the IO. If this is not achievable, the IO must advise the CO and HRA, giving reasons for the delay and a proposed timescale for completion.
13. The IO's report will be limited to presenting findings of fact and contain:
  - Any actions/behaviours/incidents etc. relevant to the allegations which it is considered could be viewed as concerning and a possible policy/procedural breach or any potential mitigation. However, it cannot state in the definitive that there has been a breach. It is not for the IO to determine whether or not there has been a breach.
14. The Report should be forwarded to the CO and a copy sent to the HRA. Having carefully read and considered the Investigator's Report, the CO will be responsible for determining whether or not to proceed with the formal disciplinary procedure. If a Disciplinary Hearing is arranged the IO will normally attend.

**THE NOMINATED DISCIPLINING OFFICER [DO] ROLE**

The nominated DO should be at Principal Officer level or above. They should not be the line manager or have the same manager as the Employee/s against which allegations have been made. They should be from a different section or Directorate.

**Responsibilities include:**

1. Consult the HRA on all disciplinary matters.
2. The HR Adviser will normally take minutes at the Disciplinary Hearing unless it is likely to last for more than 4 hours, in which case the DO will appoint a Minute Taker.
3. At the Disciplinary Hearing hear the case and call witnesses and ask questions. Adjourn in order to make a decision. Reconvene to sum up and deliver the decision and explain the reasons.
4. Ensure fair, consistent and speedy treatment of employees who become liable to disciplinary action. Giving employees the opportunity to state their case, call witnesses where appropriate and ask questions. Allow an employee to be accompanied by a Representative.
5. Give the employee a written explanation for any disciplinary action taken clarifying what improvement is expected and associated timescales, following advice from the HRA. The employee's manager should also receive a copy of the letter so that they are fully aware and able to monitor the situation accordingly.
6. Follow timescales laid down in the Policy to assist in speedy treatment.
7. Make a decision if an employee raises a grievance during any stage of the disciplinary process [see 4.14].
8. Present the case at an appeal.

**THE LINE MANAGER [LM] ROLE**

1. Consult the HRA on all disciplinary matters and prior to instigating the formal procedure.
2. Ensure that employees are made aware of the standards expected of them.
3. Minor faults should be dealt with speedily and informally by the employee's LM. A quiet word may be all that is required to improve an employee's conduct or behaviour. Problems should be dealt with quickly and confidentially.
4. Establish the facts in order to decide on objective, reasonable action in the circumstances. The LM should also discuss the issues with their manager to assist in reaching a decision. The employee needs to be able to understand what it is alleged that they have done wrong and the reasons why it is unacceptable.
5. Informal – the LM may give an informal reprimand (see the informal process Section 3.) Informal action should not involve disciplinary sanctions. There is no right of appeal against an informal reprimand.
6. In cases of suspension, the LM accompanied by the HRA, should escort an employee from the Council building.
7. Where formal action is required, the LM should arrange to meet the employee concerned to provide a brief verbal explanation and hand the formal letter from the CO to their employee, advising of an investigation etc.
8. The LM must permit the employee against whom allegations have been made a reasonable amount of paid time off during working hours, for private discussions with their representative. This includes time off for the hearing itself, if applicable.
9. The LM should also allow an employee a reasonable amount of paid time off to familiarise him or herself with the case and confer with their representative in their support. This includes time both before and after the hearing.
10. The LM must permit an employee a reasonable amount of paid time off work during working hours, to act in support of another employee or appear as a witness for that employee. This also applies to time off for the hearing itself.
11. The employee, against whom allegations have been made, may need access to data, other relevant information and contact with colleagues to assist them in preparing their case; advice must be sought from Human Resources on this and before contact with colleagues is made.
12. Privacy and confidentiality must be managed appropriately to minimise any risk to the organisation and the dignity of the employee.

13. An employee who is asked to provide a witness statement should be allowed a reasonable amount of paid time off to facilitate this and to attend the Hearing if their presence is required.
14. As this will be a difficult time for the employee against whom allegations have been made, the LM is advised to reiterate that the Council has a free, confidential counselling service should the employee feel that this may be of benefit to them. Further details can be obtained from Human Resources.
15. Attendance at meetings/Disciplinary Hearing, as appropriate.
16. The LM will need to ensure that an employee with a communication difficulty is provided with the appropriate assistance.
17. Depending on the decision made and the resolution, monitor and carry out regular reviews on the employee.

**HUMAN RESOURCES**

**THE HUMAN RESOURCES [HR] ROLE**

The Human Resources Team provide advice, guidance and support on the Council's Disciplinary Policy and Procedure. This includes:

- Advice on all disciplinary matters prior to any formal procedure being instigated.
- Assistance in drafting appropriate letters.
- Attendance at any Disciplinary Hearings to provide advice, guidance and ask questions, as appropriate.
- Ensuring that files are kept up to date and warnings cancelled and disregarded on expiry, as appropriate.



**THE TRADE UNION Representative OR  
WORK COLLEAGUE'S [Representative] ROLE**

If an employee is a member of a trade union or wishes to be supported by a work colleague [employee of the Council], they may request the following from their Representative:

- Provision of support and advice
- Attendance at meetings/Hearings.

If the employee wishes, the Representative can:

- Put the employee's case
- Sum up the employee's case
- Respond on the employee's behalf to any view expressed at the Hearing
- Confer with the employee during the Hearing
- Ask witnesses questions.

However, they cannot answer questions on the employee's behalf or address the Hearing if the employee does not wish it. They may not prevent the management from explaining their case.

## **EXAMPLES OF GROSS MISCONDUCT**

Rutland County Council intends that the following examples of gross misconduct will call for the consideration of immediate dismissal without notice. Please note that the list is neither exclusive nor exhaustive. Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms:

- Gross negligence
- Significant breach of safeguarding of children, young people or vulnerable adults
- Significant breach of the Council's Equal Opportunities Policy and acts of unlawful discrimination and harassment on the grounds of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, sexual orientation, pregnancy and maternity.
- Harassment, Discrimination and Bullying on any other grounds
- Significant breach of the Council's Health and Safety Policy
- Significant breach of the Council's Code of Conduct, e.g. Bribery, fraud, corruption, accepting gifts or services [other than token] from outside bodies/individuals
- Deliberate falsification of claims or records
- Malicious damage to property and/or equipment
- Serious insubordination
- Physical assault or violence, or threatening violence whilst on duty
- Theft of property from the Council, its tenants and from fellow employees
- Serious incapability through alcohol or illegal drugs
- Breach of Computer Misuse Act e.g. unauthorised use of computer hardware or software facilities, loading or use of unauthorised and/or pirated software
- Breach of the Rutland County Council IT email and Internet Policy
- Negligent breach of the Data Protection Act 1998 and any other disclosure of confidential information
- Bringing the organisation into serious disrepute

- Serious breach of confidence
- Making serious unfounded allegations against a fellow employee

## **DISCIPLINARY HEARING PROCEDURE**

The purpose of this procedure is to ensure that a Disciplinary Hearing is conducted in a fair and equitable way. The order of events may be altered with the agreement of the parties and the Panel if the circumstances of the case make it desirable.

### **Management's Case**

1. Management's Representative, normally the IO, will present their report and may call witnesses.
2. The employee [or their Representative] may ask questions of the Management's Representative and any witnesses.
3. The DO and HRA present may ask questions of Management and any witnesses.

### **The Employee's Case**

4. The employee [or Representative] will put their case and may call witnesses.
5. The Management's Representative may ask questions of the employee [or Representative] and any witnesses.
6. The members of the Disciplinary Panel may ask questions of the employee [or Representative] and any witnesses.

### **General**

1. Final questions of any party by the Disciplinary Panel on issues which may have emerged during the Hearing.

### **Summing up**

8. Both parties to sum up if they wish. The Management Representative will sum up first.

### **Adjournment**

9. Both parties, including any witnesses, to withdraw to enable the Disciplining Officer to consider and come to a decision in private seeking advice from the HRA as appropriate.
10. If it is necessary to recall either party to clarify certain points, both parties are to return.

11. During the adjournment of the Hearing the DO will give full consideration to the evidence presented in order to reach a decision. It may not, in all cases, be possible or appropriate for the decision to be made on the same day. Written confirmation of the resolution will normally be given within 5 working days of the Hearing. However, this may not always be possible. In cases where this is not possible the employee will be informed when to expect a decision

The IO should be advised of the outcome of the Hearing only after the employee has been notified of the outcome of their Hearing. Witnesses are not advised of the outcome of the Hearing.

**APPEAL HEARING PROCEDURE**

The purpose of this procedure is to ensure that an Appeal Hearing is conducted in a fair and equitable way. The order of events may be altered with the agreement of the parties and the Panel if the circumstances of the case make it desirable.

**Management's Case**

1. Management's representative, normally the Disciplining Officer from the original Hearing, will put the case and may call witnesses.
2. The appellant [or their Representative] may ask questions of the Management's Representative and any witnesses.
3. The members of the Appeal Panel may ask questions of Management and any witnesses.

**The Appellant's Case**

4. The appellant [or Representative] will put their case and may call witnesses.
5. The Management's representative may ask questions of the appellant [or Representative] and any witnesses.
6. The members of the Appeal Panel may ask questions of the appellant [or Representative] and any witnesses.

**General**

1. Final questions of any party by the Appeal Panel on issues which may have emerged during the Hearing.

**Summing up**

8. Both parties to sum up if they wish. The Management Representative will sum up first.

**Adjournment**

9. Both parties, including any witnesses, to withdraw to enable the Appeals Panel to consider and come to a decision in private, seeking advice from the HRA as appropriate..
10. If it is necessary to recall either party to clarify certain points, both parties are to return.
11. During the adjournment of the Hearing the Appeal Panel will give full consideration to the evidence presented in order to reach a decision. The decision will be announced to both the manager and appellant at the same time and confirmed in

writing. It may not, in all cases, be possible or appropriate for the decision to be made on the same day. Written confirmation of the resolution will normally be given within 5 working days of the Hearing. However, this may not always be possible. In cases where this is not possible the employee will be informed when to expect a decision.

**Please note:**

The Employment and Appeals Committee hear, consider and determine appeals against dismissal, grading and grievances by employees. Appeals against dismissal should be addressed to the Democratic Services Manager for the Employment and Appeals Committee as referred to in the table at 7.6. The Employment and Appeals Committee appeal process will be applicable in these circumstances.

**A large print version of this document is available on request**



**Rutland**  
County Council

Rutland County Council  
Catmose, Oakham, Rutland LE15 6HP

01572 722 577  
[enquiries@rutland.gov.uk](mailto:enquiries@rutland.gov.uk)  
[www.rutland.gov.uk](http://www.rutland.gov.uk)