

# Disciplinary Policy & Procedure (Local Government Employees)

Version 3.6

Focus. Passion. Inspiration.



North Ayrshire Council  
Comhairle Siorrachd Àir a Tuath

## Disciplinary Policy and Procedure

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## Version Control

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2	13 <sup>th</sup> July 2015	2015 Review
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## Disciplinary Policy and Procedure

# 1. Disciplinary Policy

## 1.1 Purpose and Scope

- 1.1.1 The policy and procedures apply to all 'employees' (as defined by the Employment Rights Act 1996) within the Council, with the exception of the Chief Executive and Teachers, to whom separate procedures apply.
- 1.1.2 The purpose and scope of the policy and procedures are:
- To help and encourage all employees (as defined below) of North Ayrshire Council to achieve and maintain acceptable levels of conduct
  - To clarify and communicate the standards of conduct expected of employees and the consequences of misconduct, as part of the contract of employment
  - To establish the framework for the management of conduct and discipline within North Ayrshire Council
  - To set out the actions to be taken if an employee is alleged to have committed misconduct and set out the procedure for exercising a right of appeal against Formal Disciplinary action
  - To comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures in keeping with recognised best practice
  - Inability to attend work through sickness absence, or inability to carry out duties due to lack of competence, are not dealt with under this procedure but will be dealt with under separate and distinct Wellbeing@Work (Supporting Attendance) or Dealing with Incapability (Work Performance) procedures

## 1.2 Principles

- 1.2.1 To support the principles of fairness and equity, provide a sound basis for the maintenance of discipline for all employees of the Council and to provide a clear understanding between management and employees of the need for discipline.
- 1.2.2 Disciplinary issues will be dealt with as quickly as possible, consistent with a thorough investigation of the incident(s) and diligent application of the procedures.
- 1.2.3 Issues will be dealt with at the lowest possible level consistent with the seriousness of the alleged misconduct. However, the procedures may be implemented at any stage if the employee's alleged misconduct justifies it.
- 1.2.4 Managers (depending on the degree of seriousness of misconduct) should always consider dealing with issues at least in the early stages through the use of the Informal (Conduct Improvement) Procedure (see Section 2 below), especially for minor misconduct, using informal advice, guidance, and counselling. Problems should be fully discussed, and advice provided to encourage and help employees to improve their conduct.

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- 1.2.5 The employee concerned must be made aware of their alleged shortcomings as soon as possible and given the opportunity to state their case before action is considered under either the Informal (Conduct Improvement) or Formal procedures.
- 1.2.6 Employees will have the right of appeal against any action taken under the formal procedures.

### 1.3 Roles and Responsibilities

- 1.3.1 Employees themselves have a responsibility to achieve and maintain acceptable levels of conduct.
- 1.3.2 There are expected standards, requirements and rules which apply to all employees and the implementation and communication of these rules is a management responsibility.
- 1.3.3 Executive Directors/Heads of Service will be responsible for ensuring that the rules and accepted standards of conduct are made known to all employees.
- 1.3.4 The Council has delegated to Executive Directors/Heads of Service responsibility for ensuring the maintenance of disciplinary standards. It is recognised however that it is appropriate for Executive Directors/ Heads of Service to nominate officers under their control to manage the Disciplinary Policy and Procedures.
- 1.3.5 It will be for Executive Directors/Heads of Service to determine the Responsible Manager and the limit of their authority.
- 1.3.6 In doing so, account may be taken of special requirements for shift employees and employees based in locations where appropriate senior officers may not always be available or in attendance.
- 1.3.7 Executive Directors/Heads of Service and their Responsible Manager, as appropriate, are responsible for the investigation of incidents. They must also ensure that appropriate records of investigations, disciplinary hearings and appeals are kept.
- 1.3.8 Disciplinary Officers are responsible for the conduct of disciplinary hearings. They must also ensure that appropriate records of disciplinary hearings are kept.
- 1.3.9 Investigating Officers are responsible for the investigation of incidents, preparation and submission of reports and presentation of findings at the disciplinary hearings. They must also ensure that appropriate records of investigations are kept.
- 1.3.10 The Solicitor to the Council in consultation with the Head of Service with responsibility for HR (or designate) may appoint a legal adviser were considered appropriate and both are responsible for the conduct of Employment Tribunal cases.

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## 1.4 Disciplinary Rules - Minor Misconduct, more serious Misconduct and Gross Misconduct

1.4.1 The sections in this clause give examples of minor misconduct, misconduct and gross misconduct which might result in action, up to and including dismissal, being taken under this Policy and Procedure (please also see North Ayrshire Council's Employee Code of Conduct document, which sets out acceptable standards of conduct for employees, breach of which may be considered as misconduct or gross misconduct as outlined below). The rules are organised into three groupings, Minor Misconduct, Misconduct and Gross Misconduct.

1.4.2 **Minor Misconduct** would normally be dealt with, in the first instance, under the Informal (Conduct Improvement) Process (see Section 2 below), but a persistent or serious breach and/or failure to comply with required improvements identified within acceptable timescales may lead to formal investigation and action under Formal Procedures (see Section 3 below). Examples of minor misconduct could include:

- Lateness or unacceptable timekeeping
- Inappropriate dress for work
- Use of language or other actions which may cause minor offence
- Attending to personal business during work time (including personal phone calls, emails or on-line activity)

This list is not exhaustive, and other unsatisfactory actions or omissions may be regarded as minor misconduct.

1.4.3 More serious misconduct could lead to action being taken, dependent on the nature and seriousness of the misconduct, either through Informal (Conduct Improvement) Process (see Section 2 below) or formal disciplinary procedures (see Section 3 below). Examples of more serious misconduct could include:

- persistent poor timekeeping or other persistent minor misconduct (see 1.4.2 above)
- more serious instances of 'minor' misconduct
- unauthorised absence
- negligent work performance
- actions which discredit the reputation of the Council or other minor breach of the Employee Code of Conduct

This list is not exhaustive, and other unsatisfactory conduct may be regarded as more serious misconduct.

1.4.4 **Gross Misconduct** would include conduct which is considered to be more serious and as such would be considered as a breach of the employee's contractual terms. The sanction applied, therefore, could include dismissal

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with or without notice, even for a first offence. Examples of such conduct could include:

- Theft of Council property, money, or theft of property or money of a fellow employee, a client of person to whom the Council has a duty of care
- misbehaviour at work such as fighting, drunkenness, or insulting behaviour
- Assault on a fellow employee (whether or not during working hours) or assault on a member of the public while acting or purporting to act on behalf of the Council
- Fraudulent or dishonest behaviour
- Deliberate damage to the Council's equipment or property
- Serious negligence which causes unacceptable loss, damage or injury
- Serious breach of the Council's policies and procedures on equal opportunities, harassment, bullying or aggression at work
- Submitting false information in order to obtain an appointment or a promotion with the Council
- Serious incapability through alcohol or being under the influence of illegal drugs/legal highs or the sale or distribution of illegal drugs/legal highs when at work
- Unauthorised release of information or material to a third party amounting to a serious breach of confidence
- Serious misuse of the Council's name or property (including computers and the internet) or the property of a third party while acting or purporting to act on behalf of the Council
- Misuse of social or other media to malign the Council, its Elected Members, employees or service users or otherwise bring the Council into disrepute
- Breach of the Bribery Act 2010
- Serious breach of the Employee Code of Conduct

This list is not exhaustive, and other serious misconduct may be regarded as gross misconduct.

### 1.5 Special Circumstances

- 1.5.1 Disciplinary investigation (other than action under the Informal Procedure) will not be undertaken involving an employee who is an official of a recognised Trades Union until there has been a discussion of the case with a full-time officer of the Union. In cases of immediate suspension, the full-time officer will be advised by the local manager at the time or as soon as possible thereafter of the suspension and the circumstances leading to the suspension. Contact details for Trade Union officials are available from the HR Team.

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- 1.5.2 The Council has established (a) Financial Regulations, (b) Codes of Financial Practice and (c) Standing Orders relating to Contracts. Where it is alleged that an employee has breached these regulations, the Council will investigate and where appropriate, instigate disciplinary action.
- 1.5.3 Investigations into incidents of suspected or known misappropriation or embezzlement of Council property, such as monies, materials, or equipment, should be dealt with in the first instance in accordance with the Defalcation Procedures. The nature and extent of the breach of regulations will determine whether or not the disciplinary procedures will be implemented.
- 1.5.4 In all cases where an employee is involved in criminal proceedings, Services must consult with the Head of Service with responsibility for HR (or designate) in advance of initiating any proceedings. In cases involving the police, the disciplinary investigation and criminal investigation will be handled separately, and police will not be present at any Council disciplinary interview or Hearing. Please refer to the HR Guide: Dealing with Suspension and Criminal Offences for further information on the procedure for dealing with alleged criminal offences.
- 1.5.5 The Public Interest Disclosure Act 1998 covers employees who report specified categories of serious wrongdoing or malpractice, using the procedure laid down by their organisation. The Council's Whistleblowing - Public Interest Disclosure Procedures clearly set out the process to be followed by employees wishing to report serious wrongdoing or malpractice. Consequently, Council employees who, through the Council Procedure report such matters in good faith and genuinely believe that serious wrongdoing or malpractice has occurred, will be protected from dismissal, or detriment short of dismissal.
- 1.5.6 Where an employee involved in a disciplinary investigation also raises a grievance or Dignity and Respect at Work complaint, this will not necessarily interrupt the disciplinary investigation. Normally the grievance and disciplinary investigations will run in parallel, where possible kept separate through appointing a different Officer to investigate the complaint.

## 2. Conduct Improvement Process (Informal)

### 2.1 Purpose

- 2.1.1 The Conduct Improvement Process is designed to allow counselling of an employee and is separate from the Formal Procedure. This process has been introduced as a positive step in preventing issues 'going formal', through role clarification, advising, coaching, restatement of expected standards of conduct and standard setting, and the outcome(s) should be noted on an Improvement Note and filed in the employee's personal file. It is good practice for the manager/supervisor to keep their own copy of an Improvement Note for future reference purposes and to tell the employee of this.

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- 2.1.2 Particularly for minor misconduct (see clause 1.4.2 above), Managers are expected and encouraged to use the Conduct Improvement process in the first instance in an attempt to offer a final opportunity to the employee to improve conduct without recourse to formal procedures.
- 2.1.3 The Conduct Improvement process may be used in two possible situations as noted below:
- Firstly, there may be circumstances where there is a minor breach of rules or unsatisfactory conduct of an employee that, if it continued, could lead to more serious misconduct requiring action under the Formal Process. In such circumstances, there will be a genuine management belief that the employee's behaviour/actions can be best resolved without recourse to the Disciplinary Procedure and within a less formal environment - a Conduct Improvement Meeting being more conducive to preventing a further repetition of the employee's action(s). This action does not require pre-investigation, but action under this procedure will be supported by the necessary relevant information.
  - Secondly, where there is a need to take action as a direct consequence of a formal investigation, but it is felt more appropriate to deal with the issue using the less formal Conduct Improvement process, and the matter is 'referred back'.

## 2.2 Conduct Improvement Meeting

- 2.2.1 Under the Conduct Improvement process, the manager/supervisor will arrange a meeting with the employee. At the meeting, they should advise the employee that they are being seen under the Conduct Improvement process and make him/her aware of and discuss with the employee the conduct which needs to be improved. Following discussion, if it is decided that there is no improvement required, the employee will be so advised.
- 2.2.2 If as a result of the discussion at the meeting, it is clear that an improvement in the employee's conduct is required, the employee will be made fully aware of this and, where appropriate, the timescales over which such improvement will be reached and thereafter maintained.

## 2.3 Recording the Meeting

- 2.3.1 The outcomes of the Conduct Improvement Meeting, including the unsatisfactory conduct discussed and advice on necessary improvement given, should all be documented in the Improvement Note. The employee will also be made aware that if there is no improvement in their conduct, then the next stage will be instigated, and the employee dealt with under the Formal Procedure.
- 2.3.2 Progress towards the expected improvement in conduct will be jointly reviewed and confirmed in writing to the employee by the manager/supervisor.

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### 2.4 Accompaniment / Representation

- 2.4.1 To emphasise the less formal nature of the Conduct Improvement Meeting, accompaniment of the employee is not normally required.
- 2.4.2 However, in circumstances where the employee requests accompaniment (see clause 3.6.2 below outlining who can perform this role) to allay concerns, this will not be unreasonably refused.

### 2.5 Progress to Formal Process

- 2.5.1 Where the incident or conduct is of a more serious nature, the matter may be referred directly to the Formal Process as noted in Section 3 below. The employee will not require to have been through the Conduct Improvement process as a pre-requirement of action under the Formal Process.
- 2.5.2 Similarly, if during the discussion at a Conduct Improvement Meeting, it becomes obvious that the matter is more serious and should be dealt with under the Formal Process, the meeting will end and the employee advised that the matter will be dealt with under the Formal Process – see Section 3 below.
- 2.5.3 Please note: it is not envisaged that the Conduct Improvement process will be used where an employee already has a 'live' disciplinary sanction on their file, except perhaps in exceptional circumstances. Please contact the HR Team for advice in these circumstances.

## 3. Formal Process

### 3.1 Application

- 3.1.1 Where it is decided by the Responsible Manager (see definition in clause 1.3.6 above) that the alleged misconduct requires formal investigation and consideration of action beyond what is provided by the Conduct Improvement Process (see Section 2 above), the Formal Process outlined below will be applied (see Appendix for Flowchart).
- 3.1.2 The Responsible Manager will ensure that the employee is advised of the alleged misconduct, told of the requirement to attend meetings as part of the investigation and if necessary, a Formal Disciplinary Hearing conducted by the Disciplinary Officer. No other matters will be discussed or considered.
- 3.1.3 The nature of the alleged misconduct and its formal investigation must also be confirmed in writing to the employee.

### 3.2 Suspension

- 3.2.1 Immediate suspension from duty will only occur in **exceptional** circumstances where management considers the alleged misconduct to be inconsistent with the employee's continued attendance at work or to allow a proper investigation of the incident/situation to take place. As a precautionary measure, Responsible Managers (who are determined by Executive Directors/Heads of Service) will have the necessary delegated power to

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suspend an employee in these circumstances, however, advice and guidance should be sought from HR prior to doing so. There is no appeal against an immediate suspension.

3.2.2 For example, suspension, pending the outcome of the investigation might be necessary:

- where working relationships have severely broken down
- in cases where serious misconduct has been alleged, and which may result in summary dismissal, for example where the employee is suspected of theft or bribery
- where there are grounds to believe that the employee might deliberately cause damage, to the employer's computer network for example, if he or she remained in the workplace
- where the employee's continued presence at work might prejudice the investigation in some way, for example where there is a risk that he or she might intimidate witnesses
- where the employee has acted in a violent manner or has threatened violence
- where the matter under review is of a highly sensitive nature
- where the employee is a risk in a post subject to a PVG or enhanced disclosure
- where the employee is unable to continue to practice in occupations requiring registration or professional membership due to their registration or membership lapsing or being withdrawn

Notwithstanding the above, suspension should not be automatic, and consideration should be given to other measures in the first instance, for example:

- moving employee to a different area of the workplace
- allowing the employee to work from home
- changing the employee's working hours
- placing the employee on restricted duties
- placing employee under supervision
- transferring the employee to a different role within the organisation (the role should be of a similar status to their normal role, and with the same terms and conditions of employment).

3.2.3 An employee suspended from work during an investigation or Disciplinary Hearing will receive full basic contractual pay and maintenance of conditions in accordance with their contract of employment.

3.2.4 The Responsible Manager or other appropriate Officer must inform the employee verbally (with a witness present where possible) that they are suspended on full pay and stating the reason for the suspension (Letter 1) should confirm the precautionary suspension from duty).

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- 3.2.5 However it must be made clear to the employee that they must:
- be available for recall to work at any time during their normal working hours
  - seek the approval of their supervisor in the normal manner if they wish to take leave during the period of suspension
  - report illness to their supervisor in the normal manner, supported by medical certificates where necessary if they fall ill during the period of suspension (so that normal sick leave/pay rules apply)
  - attend for meetings and hearings as part of the disciplinary investigation
- 3.2.6 Failure to comply with the above requirements may be regarded as unauthorised absence.
- 3.2.7 Suspension on full pay should be for as short a period as possible. Investigations should be carried out promptly and the length of suspension kept to a minimum.
- 3.2.8 Notwithstanding this, an employee's suspension will be reviewed within fourteen days, commencing with the working day after the employee was suspended, and subject to review each 14 days thereafter. This is to ensure that an employee is not suspended and 'forgotten about'. There is no limit on the renewals of the suspension but on each occasion, managers must speak to the employee, making it clear the suspension is being renewed and confirm the position and further length of suspension in writing (Letter 1a). The employee should also be made aware of the progress of the investigation.
- 3.2.9 Please refer to the HR Guide: Dealing with Suspension and Criminal Offences for further information on the procedure for dealing with suspensions.

### 3.3 Investigation

- 3.3.1 Prior to any disciplinary action under the Formal Process noted below, the Responsible Manager will arrange for the allegation(s) to be investigated thoroughly and promptly. They will appoint an officer - referred to as the "Investigating Officer"- to establish the facts and circumstances of the alleged misconduct. The Responsible Manager should meet with the Investigating Officer to plan the investigation, using the Planning Meeting Template. The nature of the alleged misconduct will determine who requires to be involved, the depth of and the time required for the investigation.
- 3.3.2 The Investigating Officer's role (see Guidance), separate from the Responsible Manager's role, is confined to fact-finding, normally through interviewing the employee and any witnesses to the incident(s) and collecting and referring to relevant documentation. Investigating Officers should not seek to decide whether further action is necessary – this is solely the role of the Responsible Manager.

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- 3.3.3 The Investigating Officer must ensure that any interviews held as part of the investigation are confined to fact-finding and **must not** develop into what could be considered a Disciplinary Hearing.
- 3.3.4 Where appropriate, written statements can be made by relevant witnesses and where this happens, the Investigating Officer should ensure that witnesses print their name and designation on the statement, sign it and date it as soon as possible.
- 3.3.5 Should an employee whose actions are being investigated refuse to co-operate (for example by refusing to attend an investigatory meeting), at this stage, they should be advised that this will be reported to the Responsible Manager who will decide as to what further action will be necessary, based on the information available.
- 3.3.6 If an employee who is part of an investigation is absent through sickness, the Investigating Officer should consider the nature and anticipated length of the absence. If the absence will materially delay the investigation, then they must discuss the matter with the Responsible Manager and, if necessary, with the HR Team to consider whether the matter may be progressed or held in abeyance pending the employee's return to work.
- 3.3.7 If prior to or during the course of the investigation the Investigating Officer becomes aware that the employee's actions may involve police enquiries, result in criminal charges or be the subject of a court case, the information will be reported to the Responsible Manager. The Responsible Manager will report this to the Head of Service with responsibility for HR (or designate).
- 3.3.8 Discussion with the Head of Service with responsibility for HR (or designate) will decide on the action to be taken and may result in the Council investigation being temporarily suspended in the light of police enquiries. Where it is agreed that the investigation will continue, the Investigating Officer will proceed with and complete the investigation.
- 3.3.9 The Investigating Officer will report back in writing (see Template) to the Responsible Manager on the findings of the investigation and this date will be recorded formally as the completion date of the investigation. The Responsible Manager will decide on the action to be taken based on the report of the Investigating Officer.
- 3.3.10 Having considered all of these points, the Responsible Manager must decide the most appropriate course of action to be followed with regard to whether or not a Disciplinary Hearing should be established. There are 3 possibilities, namely:
- That there is no case or justification for any Informal or Formal Disciplinary action as a result of the investigation. In this situation, the Responsible Manager should meet the employee as early as possible and advise him/her accordingly and confirm this in writing to the employee. The supporting paperwork should then be destroyed.
  - That there has been misconduct, but it should be dealt with under the Informal (Conduct Improvement) Process. The Responsible Manager should then arrange an Informal interview where they advise the

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employee of the result of the investigation and that they will be seen under the Informal Procedure when there will be no penalty. The employee can then agree to that interview being held immediately or to be seen as soon as possible. A record of the discussion, including details of the unsatisfactory conduct, improvement(s) required and timescales for review, should be retained on file until the necessary improvement has been achieved.

- That there has been misconduct and it should be dealt with under the Formal Process. The Responsible Manager should proceed according to the Disciplinary Procedure to arrange a Formal Disciplinary Hearing.

3.3.11 As described above, on completion of the investigation, a report should be completed by the Investigating Officer and submitted to the Responsible Manager, using the Report Template, with the date of completion noted. This is the date from which the 7- and 14-day period will start for notification of a Disciplinary Hearing.

3.3.12 If necessary, the Responsible Manager may wish to arrange for certain aspects of the facts to be further investigated by the Investigating Officer before deciding the appropriate course of action.

3.3.13 The Responsible Manager should examine the Investigating Officer's report, and, where applicable, the results of any further investigations of the facts, giving careful consideration to the circumstances surrounding the incident, the nature and seriousness of the incident and the previous work record of the person concerned.

## 3.4 Arranging the Hearing

3.4.1 The Responsible Manager may decide to conduct the Hearing themselves or appoint another Officer to do so. The officer who deals with disciplinary action under the Formal Process will be known as the "Disciplinary Officer."

3.4.2 The letter inviting the employee to the Hearing (Letter 3) will be sent where reasonably practicable, within 7 days of the date recorded for the handover of the report. It is essential that timescales for issuing the letter and the date of the Hearing are adhered to. It is recommended that the Responsible Manager contacts or meets the employee, where practicable, to advise that the matter is proceeding to Hearing.

3.4.3 The written notification will include the time, date, and venue on which the Formal Hearing will be heard, the right to accompaniment and the right to call witnesses. A copy of the Investigation Report should normally be enclosed at this time.

3.4.4 The Formal Hearing will take place within 14 days where reasonably practicable, following the official completion date of the investigation (see section 3.3 above) and subject to the rights of the employee to be represented as noted in section 3.6 below.

3.4.5 Where the employee is unable to attend for any reason, including sickness absence, an alternative hearing date will be offered. Where the employee is

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unable to attend on the alternative hearing date, they should be advised that the hearing may proceed, and a decision may be taken in their absence.

### 3.5 Conducting the Hearing

- 3.5.1 The Formal Hearing will be conducted by the Disciplinary Officer, using the Hearing Template. They must ensure that they are well prepared and have all the necessary facts and information. They should review the completed Investigation Report and any supplementary information such as witness statements. It is essential that the Disciplinary Officer keeps an open mind and does not pre-judge the issue. The Disciplinary Officer will decide to either award a penalty or not.
- 3.5.2 At the beginning of the Hearing, the Disciplinary Officer will outline the allegations and advise how the hearing will be conducted. The hearing will begin with the Investigating Officer summarising the findings of their investigation. Following this, any witnesses may attend as appropriate. The employee must be allowed to respond to the allegations and be given the opportunity to explain any acts or omissions of which they are accused, calling witnesses as appropriate. Witnesses called may be questioned by either party.
- 3.5.3 Whilst they cannot be compelled to attend, if required, witnesses should normally be available for attendance and questioning at Hearings, unless there are significant concerns regarding their attendance which cannot be mitigated.
- 3.5.4 If, during the Hearing, either the factual basis of the allegations is contested or further investigation is required, the Disciplinary Officer may, at their discretion, suspend or adjourn the Hearing to enable the points raised to be investigated. If more time is needed to consider the matter, or if further investigations are necessary, the Hearing should be adjourned and resumed as soon as is reasonably possible.
- 3.5.5 Should the employee or any witnesses become upset or distressed, the Disciplinary Officer may call a brief adjournment. (It should be noted that conduct at a Hearing may also constitute a disciplinary issue, and should the employee become violent or abusive a precautionary suspension may be applied).
- 3.5.6 At the conclusion of the hearing, the Disciplinary Officer should come to a clear view of the facts, bearing in mind all the available information, before any decision is taken about disciplinary action.

### 3.6 Accompaniment / Representation

- 3.6.1 The employee who is the subject of the investigation may represent him/herself or choose to be accompanied or represented at an Investigation interview and/or Hearing within the Formal Procedures. The statutory right to be accompanied at a Formal Disciplinary Hearing applies where an employee is required or invited to attend a Formal Disciplinary Hearing and reasonably requests to be accompanied. Representation or accompaniment within the Conduct Improvement Process (see Section 2 above) is not normally allowed.

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- 3.6.2 If a representative is chosen, the representative can only be one of the following:
- another North Ayrshire Council employee not involved in the investigation; or
  - a full-time trade union officer or a lay trade union representative (but not necessarily of a union recognised by the Council) with experience of or has received training in acting as a worker's companion at a disciplinary Hearing.
- 3.6.3 Note: Where the employee is under 18 years of age, they may also be accompanied by one or both parents. In all other circumstances (apart from the aforementioned), family members are excluded as representatives. Solicitors and external legal representatives are also excluded.
- 3.6.4 The employee will provide to the Responsible Manager, verbal, or written confirmation beforehand whether they will/will not be represented. If represented, the employee will wherever possible, also provide the name of that representative beforehand. Where the representative is a fellow employee, the employee being interviewed should consider any possible conflicts of interest that may arise through their choice of representative. The Responsible Manager, however, can object to the chosen representative if a conflict of interest arises or where the presence of a particular representative may prejudice the interview.
- 3.6.5 An employee is not obliged to be represented and no pressure should be brought to bear on an employee (by management or union) if they do not want to be represented. Nevertheless, it is strongly advised that at an interview where the employee is not represented, it is confirmed with the employee that they do not wish to be represented and this is confirmed in follow up correspondence/notes of the meeting.
- 3.6.6 The representative should be allowed to take as full a part in the Hearing as possible, including addressing the Hearing and asking questions on the employee's behalf. However, the representative does not have the right to answer questions on behalf of the employee, who should normally respond directly to questions asked of him/her.
- 3.6.7 Reasonable time off with pay will be given to allow the employee, the fellow employee, or representative both to prepare before the Interview or Hearing and for the actual Interview or Hearing.
- 3.6.8 Where the representative cannot attend on the date proposed by management, the Hearing will normally be re-arranged within five working days beginning with the working day after the day proposed by the Disciplinary Officer.

## 3.7 Recording the Hearing

- 3.7.1 Records of all formal disciplinary proceedings will be retained at Service level and be the responsibility of Responsible Managers to designate an officer who will maintain such records.

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- 3.7.2 The record of formal disciplinary hearings and their outcome will be contained within the Council's computerised HR Information system, and it will be the responsibility of the designated officer to ensure the database is updated. Each Executive Director/Head of Service through the Designated Officer will ensure that records are updated and have access to their own employees' records.
- 3.7.3 A record of the Hearing must be made but the use of audio or visual recording devices, including mobile phones, during the Hearing is not permitted.
- 3.7.4 The Disciplinary Officer should ensure that notes are taken throughout the Hearing. Although not necessarily verbatim, these notes should take the form of relevant points made and by whom, questions asked and responses given, using the Meeting Template. In the event that anyone joins/leaves the Hearing this should be noted, including the time. In addition, any adjournments should be noted, including the start and finish time of the adjournment.
- 3.7.5 The Disciplinary Officer's reasons for coming to the decision, e.g. a summary of the key points and an explanation of the reasoning should also be recorded as part of the proceedings.
- 3.7.6 The notes of the Hearing should be formally typed up and be an accurate record of the proceedings. Should the case subsequently go to appeal or Employment Tribunal these notes would form part of the official record and be submitted to the Appeal/Tribunal.
- 3.7.7 The typed record of the Hearing should be filed in the employee's personal file.

## **3.8 Alcohol, Drug / Solvent Misuse and Gambling Addiction issues**

- 3.8.1 Where, as a result of or during a Formal Disciplinary Hearing, an employee alleges or admits to an alcohol, drug, or gambling dependency problem that is material to the misconduct involved, the Disciplinary Officer should continue the Hearing until all the evidence has been heard. They should then adjourn the Hearing to consider the appropriate action without taking into account the alleged addiction.
- 3.8.2 Upon reconvening, should disciplinary action be appropriate, the Disciplinary Officer should inform the employee of their decision but confirm that the action is suspended, pending the outcome of the employee's referral to the appropriate agency. Letter 5 should then be issued (see section 3.9 below) inserting the Clause which relates to addiction related problems).
- 3.8.3 The Disciplinary Officer should then complete a Referral Request Form (Form 3) and forward it to the relevant Head of Service.
- 3.8.4 On receipt of the outcome of the referral, the Disciplinary Officer should reconvene the adjourned Hearing. Where the report confirms that the employee does not have an addiction to alcohol etc., the original disciplinary action should be reviewed by the Disciplinary Officer and either confirmed or a revised penalty applied from the date the original decision was made. This should be confirmed in writing to the employee.

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- 3.8.5 Where there is an addiction problem confirmed and a recovery programme recommended, this must be accepted and then adhered to by the employee. If the employee either fails to accept the programme set down by the agency, departs from the programme, or fails to complete the programme, it will result in the disciplinary action being imposed from the date of the original decision. This should be confirmed in writing to the employee.
- 3.8.6 If the employee successfully completes the treatment, the Disciplinary Officer will advise the employee that no action will be taken and the penalty which would have been imposed will be suspended.
- 3.8.7 However, the employee will also be advised that any further misconduct will be dealt with strictly on the facts and no further referrals will normally be available.

### 3.9 Action that can be taken following a Formal Hearing

- 3.9.1 At the Formal Hearing the Disciplinary Officer will consider all the facts and relevant points, call an adjournment to consider what action to take and then reconvene to advise the employee of their findings. The employee will be advised whether or not any penalty has been awarded and where a penalty is awarded, the details and terms of that penalty. The employee will also be advised of the action that will result if they repeat the misconduct, fails to improve etc.
- 3.9.2 They should take into account:
- The employee's current disciplinary record - remembering that disciplinary action ceases to be "live" after the specified period and should not normally be considered thereafter (please contact an HR Adviser for guidance on these exceptions)
  - The employee's awareness of the standards of conduct and behaviour required
  - The employee's position, general performance and conduct
  - Mitigating circumstances e.g. health or domestic problems that might have influenced the employee's conduct or behaviour
  - Consistency with the disciplinary action taken in similar cases within the Council
  - Is the proposed action within "the band of reasonable responses" taking into account all of the above factors?
- 3.9.3 "Reasonableness" is showing judgement and having good cause for decisions reached. It is about a well thought through and balanced approach to coming to a reasonable belief about what happened and deciding what action, if any, is required.
- 3.9.4 The Disciplinary Officer will then advise the employee of their decision. Where that decision involves the award of a permitted penalty, the employee should

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also be advised of the penalty and that this decision and/or the penalty awarded can be appealed against.

- 3.9.5 Thereafter, the Disciplinary Officer must ensure they confirm in writing to the employee within seven days commencing with the day following the Hearing; (i) the result of the Hearing and, where appropriate; (ii) the penalty awarded; and, (iii) the reasons for the penalty (Letter 5).
- 3.9.6 The decision of the Disciplinary Officer will also advise the action that may or will be taken if a further breach occurs, the period of time which the penalty applies etc. A copy of the letter will be retained in the employee's personal file.
- 3.9.7 Where a penalty is awarded, the employee's right of appeal and to whom the appeal is sent will also be advised to the employee and will be clearly stated in the letter sent.
- 3.9.8 Finally, the Disciplinary Officer should take the following administrative actions:
- Complete the 'Summary of Disciplinary Action' form (Form 1), send this to HR for filing in the employee's personal file, and retain a copy within the Service.
- 3.9.9 It is the responsibility of the Service to ensure that they action (or advise HR to take action) to (a) remove from an employee's personal file letters confirming disciplinary action which become time expired; and, (b) update the entries in each of the 'Summary of Disciplinary Action' form by crossing it through and writing "TIME LIMIT EXPIRED" in the 'Action Taken' box (see Form 1).
- 3.9.10 The Designated Officer will ensure that the penalty awarded is recorded on the corporate HR System.
- 3.9.11 The permitted penalties that can be awarded are given in section 3.10 below. The penalties which will have an immediate effect are also given in sections 3.10.2 – 3.10.4 below.
- 3.9.12 It is the responsibility of the Service and Responsible Manager to ensure that the misconduct of certain employees, and any action taken, is reported to external agencies in accordance with their reporting requirements. For example:
- Social Services Workers – the Code of Practice for Employers of Social Service Workers and the Regulation of Care (Scotland) Act 2001 set out the requirements to refer registered and unregistered social service workers to the Scottish Social Services Council (SSSC).
  - Registered Care Service Workers – there is a requirement to notify the Care Inspectorate of certain events including allegations of misconduct and abuse in relation to a person using a service.
  - Regulated Work with Children and Vulnerable Adults – The Protection of Vulnerable Groups (Scotland) Act 2007 places a legal requirement on employers to refer workers to Disclosure Scotland when certain criteria are met.

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3.9.13 The employee must be advised in writing of this reporting requirement.

3.9.14 In such cases, the Executive Director, Head of Service, or Responsible Manager must report the matter to the relevant external agency.

### 3.10 Permitted Penalties within the Formal Procedure

3.10.1 There are three levels of penalties that can be awarded, and these are not necessarily imposed sequentially. There may be occasions when, depending on the seriousness of the offence, it will be appropriate to enter the procedure at any point as noted below.

3.10.2 There may also be occasions where an employee's conduct is satisfactory throughout the period of warning, with their conduct only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record will be taken into consideration in deciding how long any current warnings will last.

#### 3.10.3 First Warning

- The First Warning will be either an oral warning or a written warning depending on the seriousness of the offence. Minor misconduct (see section 1.4) may result in an oral warning and more serious offences may result in a written warning.
- An oral warning will be retained on the employee's personal file for a period of 6 months, and a written warning for a period of 9 months. A warning will be disregarded after either a 6- or 9-month period, as appropriate.
- Evidence of such disciplinary action can be used during the period it is retained in the employee's personal record in the case of subsequent disciplinary action.

#### 3.10.4 Final Written Warning

- The warning to the employee must specify that any further misconduct may lead to dismissal.
- The warning will be retained on the employee's file for a period of 12 months, after which the warning will normally be disregarded.
- Where the misconduct is of such a serious nature that it cannot be disregarded for future disciplinary purposes, the warning may be retained indefinitely, and this will be made clear to the employee. However, this warning will be subject to review by the Disciplinary Officer.
- Evidence of such disciplinary action can be used during the period it is retained in the employee's personal record in the case of subsequent disciplinary action.

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## 3.10.5 Dismissal or Action Short of Dismissal

3.10.5.1 **Dismissal with notice**

- (i) Dismissal with notice will apply unless the employee is dismissed due to gross misconduct (see below). When an employee is dismissed for other than gross misconduct, the employee will be entitled to a period of notice in accordance with their employment contract. The circumstances of the dismissal may make it appropriate for the employee to work the period of notice.
- (ii) Where it is **not** considered appropriate for the employee to remain at work during the period of notice, the employee must be paid in lieu of notice. In such cases, advice should be sought as appropriate from the HR Team.

Where a payment in lieu of notice is due to the employee, HR Employment Services - Payroll must be informed that this payment should be withheld until after 14 days during which the employee may appeal. Where an employee submits an appeal, pay in lieu of notice will be withheld pending the outcome of the appeal.

- (iii) In cases of dismissal with notice due to misconduct, annual leave entitlement will be based on the employee's full leave entitlement that has been accrued but not taken up to the point of dismissal.

3.10.5.2 **Dismissal without notice**

- (i) Dismissal without notice will apply to an employee whose misconduct is so serious that it is considered as a breach of the employee's contractual terms i.e. gross misconduct, (see section 1.4.4 above for examples of gross misconduct).
- (ii) Where an employee is dismissed without notice due to gross misconduct, they will be credited with the appropriate holiday entitlement that has been accrued but not taken for the period up to the date of dismissal (the Working Time Regulations of 1998 give statutory entitlement to 5.6 weeks leave in any leave year inclusive of public and floating holidays). Where the employee has an annual leave entitlement that is greater than the statutory leave entitlement, then these additional days are lost to the employee. No payment will be made in lieu of notice.

3.10.5.3 **Suspension without pay**

- (i) The maximum period of suspension will normally be 2 weeks but, in exceptional circumstances, a period in excess of 2 weeks may be imposed.
- (ii) Where this penalty is imposed on an employee who was suspended immediately from duty, the period of suspension imposed will be effective from the date of the Formal Hearing.
- (iii) The penalty of suspension without pay is normally intended as an alternative to dismissal either with or without notice. However, suspension without pay may be awarded as action short of dismissal

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irrespective of previous disciplinary record. Suspension in such circumstances should only be contemplated in cases where the other permitted penalties within the Formal Procedure do not adequately reflect the seriousness of the misconduct involved. In all such situations, the employee will be advised that further misconduct will normally result in dismissal.

- (iv) In all circumstances where suspension without pay is awarded, the record will be retained in the employee's personal file for a minimum period of 12 months, the total period to be decided by the Disciplinary Officer and this will be made clear to the employee.

### 3.10.5.4 **Transfer to another post at the same or a lower grade**

- (i) A transfer will be on terms and conditions to be determined by the Disciplinary Officer imposing the penalty.

Where this is being considered as a potential sanction, it must be referred to the Head of Service (People & ICT) for review. For clarity, transfer to another post will be a standalone sanction and will not also be accompanied by a final written warning.

3.10.6 Where a penalty is awarded as referred to in sections 3.10.2 – 3.10.4 above, the employee will be notified in writing of the penalty within seven days commencing with the day following the Hearing.

3.10.7 Where the penalty of transfer to another post at a lower grade has been imposed, such a penalty will not necessarily have immediate effect. However, the employee will be notified of the penalty within seven days commencing with the day following the Hearing, stating the reasons for its imposition and the arrangements that will apply in any interim period. At the same time, the employee will be notified of the right of appeal and to whom such an appeal should be made (see section 4 below).

3.10.8 Where it is considered inappropriate for the employee to return to their existing post prior to the transfer, consideration will be given to suspension with full pay until a suitable position is identified and notified to the employee. Identification of a suitable position will be made within 14 days following the date of the Hearing.

3.10.9 The vacant post created by dismissal/demotion may only be filled on a temporary basis where an appeal is pending and until the outcome of any appeal is decided.

## 4. Appeals Process

### 4.1 Application

4.1.1 There is a right of appeal against formal disciplinary action as set out below and there will be one level of appeal within North Ayrshire Council.

4.1.2 There is no right of appeal against action taken under the informal (Conduct Improvement) process (see Section 2 above).

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### 4.2 Grounds of Appeal

- 4.2.1 An appeal can be made against (i) the decision to award a disciplinary penalty; (ii) the severity of the penalty imposed at a Formal Disciplinary Hearing if the employee disputes the facts of the case as presented or feels the penalty awarded is unreasonable.
- 4.2.2 The appeal stating the grounds on which it is made has to be made in writing by the appellant or, on behalf of the appellant, by their representative. Appeals against First or Final Written Warnings should be submitted to the officer awarding the penalty. Appeals against dismissal or other sanction should be submitted to the Head of Service with responsibility for HR. Appeals must be received within fourteen days commencing with the day following the date on which the letter is sent by management notifying the appellant of the result of the Formal Disciplinary Hearing. The 'Notification of Appeal' form (Form 2) should be used.

### 4.3 Hearing the Appeal

- 4.3.1 An officer who is a Responsible Manager/Disciplinary Officer cannot subsequently hear an appeal against a penalty awarded.
- 4.3.2 The appeal will be heard by a Management official who is senior to the Disciplinary Officer issuing the penalty except for appeals against dismissal (with or without notice), or action short of dismissal will be heard by the Appeals Committee of North Ayrshire Council (see section 4.2.2 below).
- 4.3.3 The level of authority to hear appeals will be dependent upon the penalty. Details of management officials who are authorised to hold disciplinary hearings/issue penalties and those who will hear appeals are detailed in see section 4.3.1 below.
- 4.3.4 In the case of Heads of Service, any appeal against a disciplinary action will be considered by the Chief Executive or nominee; except for dismissal and suspension or transfer to a post at a lower grade when the appeal will be considered by the Appeals Committee of North Ayrshire Council.
- 4.3.5 In the case of Executive Directors, any appeal will be heard by the Appeals Committee of North Ayrshire Council and the procedure to be followed will be that of the Appeals Committee of North Ayrshire Council.
- 4.3.6 The appellant will be given at least 7 days' notice in writing of the time and place of the appeal hearing using letter 6, unless otherwise mutually agreed.

### 4.4 Purpose/Conduct

- 4.4.1 The appeal is not a re-hearing of the evidence. Its purpose is to examine the fairness of the process followed and reasonableness of the outcome reached, and penalty applied.
- 4.4.2 There may be rare instances where new evidence comes to light and may be presented at the Appeal Hearing. Consideration should be given as to the reasons why the evidence was not presented during the initial

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investigation/disciplinary hearing. Providing the evidence is relevant it should be taken into account in deciding the outcome of the Appeal.

- 4.4.3 At the appeal, the Appeals Committee of North Ayrshire Council or the Management official as appropriate will have the authority to revoke, confirm or vary the decision and/or penalty previously imposed.
- 4.4.4. The necessary time off with pay will be granted to witnesses at an Appeal Hearing but it is the responsibility of the appellant and the representative to call and to arrange for the attendance of any witnesses for the appeal that they require. Witnesses who are Council employees should ensure that they have received authorisation to leave their place of work from their supervisor.

### 4.5 Decision/Follow-up Action

- 4.5.1 The decision of the Appeal Hearing is final, and there is no further right of appeal under internal procedures.
- 4.5.2 The result of the appeal will be notified in writing to the appellant and their representative within fourteen days commencing with the day following the appeal. This notification will be provided by or on behalf of the Chairman of the Committee in respect of the Appeals Committee of North Ayrshire Council hearings or by the Management Officer for all other appeals, using Letter 7.
- 4.5.3 The Designated Officer must ensure that all necessary recording and documentation is completed, including updating the corporate HR System with the outcome of the Appeals process.

### 4.6 Levels of Authority for Applying Formal Disciplinary Penalties and Hearing Appeals

- 4.6.1 Levels of authority are written to ensure that where the misconduct becomes more serious, a more senior manager is nominated as the Disciplinary Officer.
- 4.6.2 The table below sets out the levels of authority for Formal Disciplinary action and Appeals against such action.

<b>Penalty</b>	<b>Disciplinary Officer</b>	<b>Appeal Hearing Officer or Appeals Committee</b>
First Warning (Oral or Written)	Appropriate Supervisor/Manager	Senior Manager or other designated Manager/Head of Service
Final Written Warning	Senior Manager/Head of Service or Responsible Manager	Head of Service/Executive Director
Dismissal or Action Short of Dismissal (Suspension without pay; Transfer to another post)	Head of Service/ Executive Director or designated Manager	Appeals Committee of North Ayrshire Council

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### **5. Guidance, Support and Training**

- 5.1 Guidance, support, and training for those involved in disciplinary procedures is provided by the HR Team. For further guidance on any aspects of this document, please contact the HR Team Helpline on 01294 324669.
- 5.2 In particular, the following documents and Templates are available on Connects:
- Guidance for Investigating Officers
  - Guidance for Witnesses
  - Guidance for Employees involved in Disciplinary Proceedings
  - Planning Meeting Template
  - Template for Investigating Officer Report
  - Template for Disciplinary Hearing