

DISCIPLINARY PROCEDURES FOR MISCONDUCT

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Contents

SECTION 1: GENERAL.....	4
1 SCOPE OF THE PROCEDURES.....	4
2 EQUAL OPPORTUNITIES	4
3 EMPLOYER / EMPLOYEE RESPONSIBILITIES	4
4 PURPOSE OF THE PROCEDURES	5
5 PRINCIPLES	5
6 RESPONSIBILITY FOR THE PROCEDURES	6
7 ASSOCIATED POLICIES AND PROCEDURES	6
SECTION 2: THE 3 STAGES OF MANAGING MISCONDUCT.....	8
Stage 1 – Day to day line management.....	8
8 MANAGING MINOR MISCONDUCT	8
Stage 3 – Formal disciplinary hearings.....	9
9 PURPOSE OF FACT FINDING AND INVESTIGATIONS	9
10 SUMMARY PROCEEDINGS.....	10
11 PRINCIPLES OF FACT FINDING AND INVESTIGATIONS	10
12 RECORD KEEPING AND CONFIDENTIALITY	10
13 ROLE OF THE LINE MANAGER IN INVESTIGATIONS.....	11
14 CARRYING OUT FACT FINDING AND INVESTIGATIONS	11
15 INVESTIGATION TIMESCALES	13
16 PROFESSIONAL MISCONDUCT.....	13
17 POLICE ENQUIRIES, CRIMINAL CHARGES OR OFFENCES	13
18 GRIEVANCE CASES.....	14
19 SPECIAL PAID LEAVE	14
20 MISCONDUCT.....	15
21 GROSS MISCONDUCT	16
22 LEVELS OF DISCIPLINARY ACTION	16
23 ARRANGING A DISCIPLINARY HEARING	17
24 EMPLOYEE REPRESENTATION	18
25 INABILITY TO ATTEND THE DISCIPLINARY HEARING.....	18
26 HOLDING THE DISCIPLINARY HEARING.....	19
a. Overview.....	19
b. Participants in the hearing	19
c. Introducing the hearing.....	19
d. Presenting the management complaint.....	19

e. Presenting the employee's response	20
f. Final questions and clarification.....	20
g. Summing up.....	20
h. Adjournments.....	21
i. Outcome of the disciplinary hearing.....	21
j. Follow-up action.....	22
27 MEDIATION.....	23
28 DISMISSAL	23
29 FAIR DISMISSAL.....	24
30 DISMISSAL PROCEDURE.....	24
31 PERIODS OF NOTICE.....	24
32 ALTERNATIVES TO DISMISSAL (ACTION SHORT OF DISMISSAL).....	25
SECTION 6: APPEALS	25
33 RIGHT TO APPEAL	25
34 THE APPEALS PANEL	25
35 ARRANGING AN APPEAL HEARING	26
36 HEARING THE APPEAL.....	26
37 COUNCIL STAFFING APPEALS COMMITTEE	26
38 DECISIONS OF APPEALS PANEL AND COUNCIL STAFFING APPEALS COMMITTEE.....	27
APPENDIX 1 – FLOWCHARTS FOR MANAGING MISCONDUCT	28
APPENDIX 2 – MANAGERS AUTHORISED TO TAKE DISCIPLINARY ACTION AND APPEALS.....	33
APPENDIX 3 – GUIDELINES ON REQUIREMENTS TO NOTIFY REGISTERED BODIES	34
APPENDIX 4 – EXAMPLES OF MISCONDUCT AND GROSS MISCONDUCT.....	39
APPENDIX 5 – FORM FOR EMPLOYEE'S APPEAL AGAINST DISCIPLINARY ACTION 42	
APPENDIX 6 – HOLDING AN APPEAL HEARING.....	45
APPENDIX 7 – FORMAT FOR PREPARING PAPERS FOR THE COUNCIL STAFFING APPEALS COMMITTEE	48

SECTION 1: GENERAL

1 SCOPE OF THE PROCEDURES

1.1 These disciplinary procedures apply to all employees of Scottish Borders Council (including those on SNCT conditions) with the exception of the Chief Executive.

1.2 The procedures exclude Agency staff, freelance or self-employed people and anyone else who is not directly employed by the Council under a contract of employment.

2 EQUAL OPPORTUNITIES

2.1 Disciplinary hearings are held and disciplinary action taken in a fair and consistent manner, recognising that each case is treated on its merits, taking into account individual circumstances. Due regard is given to an employee's current disciplinary record, work record, length of service, their personal and any domestic circumstances etc which may explain an employee's behaviour.

2.2

All employees are entitled to be treated fairly. Managers must not harass, victimise or discriminate directly or indirectly on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation or trade union membership and activity.

2.3 If any employee has difficulty understanding or complying with the arrangements for disciplinary hearings, they should contact their line manager, a member of HR Case Management Team or a trade union representative at the earliest opportunity for appropriate support.

3 EMPLOYER / EMPLOYEE RESPONSIBILITIES

3.1 Scottish Borders Council recognises that the effective delivery of services is dependent on acceptable standards of conduct from all its employees. The Council acknowledges its responsibilities as an employer to determine appropriate standards of conduct and to make employees aware of these standards through its managers.

3.2 Employees also have a responsibility to familiarise themselves with the rules and procedures relating to their employment and to maintain acceptable standards of conduct.

3.3 The main sources of reference regarding conduct are listed below, as updated and re-named from time to time. The list is neither exhaustive nor exclusive:

- Terms and conditions of employment
- Induction process
- Departmental/service instructions, standards and procedures
- HR Policies and Procedures
- Health and Safety Policies and Procedures
- Child Protection Procedures
- Adult Protection Procedures

- Professional Codes of Conduct (e.g. General Teaching Council for Scotland Code of Practice on Teacher Competence and Code of Professionalism and Conduct, the Scottish Social Services Council Code of Practice for Social Service Workers)
- Financial Regulations
- Scheme of Delegation
- E-mail, Internet and Telephony Acceptable Use Policy Code of Practice on Data Protection

4 PURPOSE OF THE PROCEDURES

- 4.1** Many cases of minor misconduct are best handled informally or in counselling meetings and should not progress to a disciplinary hearing. Formal disciplinary hearings can be both time-consuming and unsettling for managers and employees and so should only be used when normal good practice management does not achieve the required improvement or change in conduct.
- 4.2** These procedures are intended to enable managers to deal with issues of misconduct in a structured and consistent way by:
- resolving cases of minor misconduct without recourse to disciplinary action
 - taking measures which could lead to formal disciplinary action if an employee's misconduct gives rise to more serious concern or does not improve sufficiently within a reasonable period

5 PRINCIPLES

- Minor issues of misconduct will normally be handled as part of positive day to day line management, without recourse to disciplinary action.
- If disciplinary action is considered necessary, it will be used to correct conduct rather than to punish employees.
- All employees must be treated fairly and with dignity. The Council will not tolerate discrimination under equal opportunities legislation.
- Disciplinary hearings will only be held after fact-finding or an investigation has taken place.
- In all cases where an allegation of misconduct relates to conduct involving a child (someone under the age of 16) the line manager/ commissioning manager will refer the matter to the Child Protection Unit. A referral is made by contacting the Children and Families Duty Team by telephone (01896 662787 or skype: "Children and Families Duty Team") or out of hours the Emergency Duty Social Work Team (01896 752111) and then following up by completing the Confirmation of Child Protection Referral Form.
The full Child Protection Procedures can be found [here](#)
- In all cases where an allegation of misconduct involves an adult at risk (a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed) the line manager/ commissioning manager will refer the matter to Adult Protection (tel: 0300 100 1800 - Customer Advice & Support Services- or out of office hours on 01896 752111).
- In the case of a young person (someone aged 16-17) a referral will be made to both the Child and Adult Protection Units if appropriate.
- In the case of employees registered with the Scottish Social Services Council (SSSC) a referral must be made immediately if the employee is charged with or convicted of a criminal offence or the allegations raise serious concerns about the employee's fitness to practice. (see Appendix 6). In the case of SNCT staff a referral should be made immediately to the

General Teaching Council for Scotland where the allegations involve conduct fundamentally incompatible with being a teacher (e.g. sexual abuse, violence, child protection concerns.)

- Attending a disciplinary hearing does not mean that disciplinary action will automatically be taken.
- Disciplinary hearing letters will clearly define if dismissal is a possible outcome of the hearing
- At any formal investigatory meeting, disciplinary hearing or appeal, employees have the right to be accompanied.
- Disciplinary action must be fair, reasonable and justifiable.
- Before taking any form of disciplinary action, managers will take account of any mitigating circumstances. Each disciplinary case will be treated on its own merits, taking into account individual circumstances.
- Employees have the right to appeal against any disciplinary action taken.
- Details of the disciplinary case will remain confidential to those involved and individuals must not discuss the case outwith the formal process, except with their representative.
- Employees will not be dismissed for a first breach of discipline, except in the case of gross misconduct.

6 RESPONSIBILITY FOR THE PROCEDURES

- 6.1** The Chief Executive and each Director is responsible for applying these disciplinary procedures within their Department and for ensuring that line managers:
- are fully competent to manage minor misconduct through positive day to day line management without unnecessary recourse to formal disciplinary action
 - understand which level of discipline they are authorised to give
 - have the skills and understanding necessary to manage formal disciplinary cases effectively. This includes having completed the Disciplinary Procedure e-learning on [SBlearn](#)
- 6.2** There may be occasions when it is appropriate for investigations and/or disciplinary hearings to be conducted by Officers from another Department and these employees must also be competent in the process.
- 6.3** These disciplinary procedures represent a process that can lead to dismissal and is subject to sometimes complex employment law. The procedures therefore need to be followed carefully and diligently by managers, as the responsibility for carrying out disciplinary action rests solely with the authorised managers. Specialist advice and coaching is available from the Council's HR Case Management Team at each stage. Dismissal cannot take place without the involvement of HR.
- 6.4** The Director People, Performance & Change has delegated authority from the Council to make minor changes to these procedures in agreement with the relevant trade unions.
- 6.5** The terms of these procedures will be reviewed at least every two years or at the request of either Scottish Borders Council or the trade unions.

7 ASSOCIATED POLICIES AND PROCEDURES

7.1 This policy is associated to the following key policies/guidelines and where applicable should be cross referenced to gain further detail:

- Managing Work Performance
- [Equality Diversity & Human Rights Policy](#)
- [Retention and Redeployment Policy](#)
- [Substance Misuse Policy](#)

The HR Case Management Team should be contacted for further advice:
askhr@scotborders.gov.uk or telephone 01835 825015

SECTION 2: THE 3 STAGES OF MANAGING MISCONDUCT

There are 3 stages in the management of conduct. These are summarised in the flowchart at [Appendix 1](#).

Line Managers should consider whether a [Referral to Child/Adult Protection](#) is needed. A referral does not prevent a disciplinary investigation proceeding. The two processes can run in tandem.

Stage 1 – Day to day line management

Often all that is needed to correct misconduct is for a manager to draw the matter to the attention of the employee, explain why it is unacceptable clarify the standards required and offer support to achieve them. The manager should keep in the employee file a record of the meeting, in case it is needed for future reference, for example if conduct does not improve. The employee files must be securely stored. The record will be kept for a period of 6 months from the date of the meeting or the end of the monitoring period, whichever is the later.

This is not disciplinary action but it is an important first stage in managing conduct positively.

8 MANAGING MINOR MISCONDUCT

The Council supports a proactive, positive style of line management. Minor issues of misconduct should be dealt with by the appropriate manager through counselling and/or training, with an emphasis on improving standards and learning from mistakes, rather than apportioning blame.

- 8.1 Line managers are expected to meet both informally and formally with their employees on an on-going basis. Line managers should take the opportunity to re-affirm standards and expectations, and give employees feedback on how they are getting on. Employees should feel comfortable asking questions, raising work issues and discussing anything that impacts on them.
- 8.2 Any minor issues of misconduct need to be dealt with promptly by the line manager through face to face discussion. An informal approach is often all that is needed to correct unacceptable behaviours.
- 8.3 Where the informal approach does not succeed and conduct is still unacceptable, counselling and review meetings need to be held. In these meetings the line manager should explore the reasons for the misconduct, and offer guidance, counselling and/or training as appropriate. This can also involve the setting of targets and timescales for improvement.
- 8.4 These meetings should be recorded and a copy kept by both parties, so that expectations and commitments are clearly understood. It may be necessary at this stage for the line manager to caution the member of staff that disciplinary action may become necessary if there is insufficient improvement or change in behaviour.
- 8.5 These meetings are not disciplinary hearings and will not result in a disciplinary warning. As such, they are normally held on a one to one basis and the employee does not have the right

to bring an employee representative or to appeal. However, in the event that the line manager is accompanied the employee is also entitled to bring an accredited trade union representative/ workplace colleague.

- 8.6** If the counselling and review meetings lead to the required improvement, the manager should give positive feedback to the employee and encourage them to keep up these standards. Support and monitoring should continue as appropriate.
- 8.7** If the counselling and review meetings do not result in acceptable standards of conduct, the line manager should consider progressing to the formal process: an investigation and potentially a formal disciplinary hearing. The line manager is required to contact the HR Case Management Team before making arrangements for a disciplinary hearing.

Stage 2: Fact Finding and Investigations

For some matters of misconduct, facts or evidence can be readily established by, for example, reviewing employee records (such as absence, timekeeping etc) or through discussion with the employee and only a brief fact find or investigation will be required.

For more serious/complex incidents, a more detailed investigation may be required following a fact find which can involve witnesses. The purpose of this investigation is to establish initially whether there is a case for the employee to answer at a disciplinary hearing.

When making the decision to instruct an investigation, the line manager/ commissioning manager must again consider whether the conduct investigated involves children, young people or adults at risk. In that case a [Referral to Child/Adult Protection](#) might be needed.

If it is apparent that the issue is minor and readily corrected through discussion between the manager and their employee, Stage 1 should be followed. If, however, the investigation indicates that the issue is more serious, Stage 3 below should be followed.

Stage 3 – Formal disciplinary hearings

If the misconduct is sufficiently serious, or if day to day line management has not resulted in satisfactory conduct, a disciplinary hearing is normally held. This can result in a formal warning being issued to the employee which remains live on their personal file for a specified period of time or in dismissal.

Employees have the right to appeal against a disciplinary warning or dismissal if they believe the warning is wrong or unjust.

The disciplinary hearing is formal. If the misconduct continues, further disciplinary hearings can be held which may lead to dismissal in due course.
For cases of gross misconduct, employees may be dismissed at their first hearing.

9 PURPOSE OF FACT FINDING AND INVESTIGATIONS

- 9.1** The purpose of fact finding and investigations is to establish sufficient basic facts to enable a management decision to be made on whether:

- the matter relates to conduct (ie behaviour) or a different issue. (Please refer to the relevant policy if the matter does not concern misconduct)
- to dismiss the case
- refer the matter back for counselling
- to hold a disciplinary hearing

10 SUMMARY PROCEEDINGS

In suitable cases, when there is no factual dispute, a disciplinary hearing can be arranged without a full investigation having been undertaken.

Cases are suitable when:

- Dismissal is not a potential outcome of the disciplinary hearing.
- A fact finding exercise has been undertaken and there is no dispute on the facts.
- The employee has been interviewed during the fact finding process and does not disagree with any of the circumstances put to them.
- The employee has signed the fact finding document confirming it is a true reflection of their meeting, that none of the relevant facts are in dispute and that they agree to proceed to a disciplinary hearing without a full investigation ("summary proceedings").
- The employee has been made aware of their right to consult with a representative prior to signing the fact finding statement.

The employee may withdraw their consent to using summary proceedings at any time prior to the commencement of the disciplinary hearing.

Advice can be obtained from the HR Case Management Team

11 PRINCIPLES OF FACT FINDING AND INVESTIGATIONS

- Be trained in the process
- Be efficient and make the investigation a priority
- Stay open-minded and objective
- Do not let personal feelings – yours or other people's – get in the way
- Treat the employee with respect at all times
- Keep it short – only collect sufficient relevant information to establish how to proceed
- Be discreet– retain confidentiality ([see para 12](#)) and comply with the Data Protection Act
- Keep written records of relevant meetings, discussions, emails etc

12 RECORD KEEPING AND CONFIDENTIALITY

- 12.1** All records and papers concerning the investigation and any disciplinary hearing or appeal must remain confidential.
- 12.2** Confidentiality must also be maintained in verbal discussions so that only those who need to be involved, are involved. Apart from maintaining respect for the individual employee, confidentiality protects the integrity of the process so that, as far as possible, objectivity can be achieved at every stage.
- 12.3** In addition, some information gathered from or about individuals as part of the investigation might be confidential to those concerned (eg medical details or client information). In these

cases, care should be taken to refer to these people in an anonymised way eg Client A, Client B etc. If in doubt, seek further advice from the HR Case Management Team.

13 ROLE OF THE LINE MANAGER IN INVESTIGATIONS

- 13.1** If the matter requires an investigation, the line manager should inform the employee of the complaint and advise them that there will be an investigation and the expected timescales.

To instruct an investigation managers must be trained in disciplinary matters having at least completed the Disciplinary Procedure e-learning on [SBlearn](#).

If the line manager has not completed this training they must ask another manager who has completed the training to commission the investigation.

When making the decision to instruct an investigation, the line manager/ commissioning manager must again consider whether a [Child/Adult Protection referral](#) is needed.

13.2 The Commissioning Manager will be responsible for organising the investigation, appointing the Investigating Officers and will Chair any disciplinary hearing. See [Appendix 2](#) for a list of managers authorised to take disciplinary hearings.

The commissioning manager must confirm the appointment to the investigating officer(s) in writing, stating that the investigation is to be conducted under the Disciplinary Procedures for Misconduct and including a completed Investigation Brief and a copy of this procedure. All investigating officers must be trained in disciplinary matters having at least completed the Disciplinary Procedure e-learning on [SBlearn](#).

- 13.3** At all times, the commissioning manager needs to demonstrate fairness. Their decision on the most appropriate follow-up action must be both reasonable and justifiable. As such there may be circumstances in which alternatives are preferable, for example:
- the line manager could carry out the investigation but refer the potential disciplinary hearing to a colleague or their senior manager
 - their senior manager could commission a different investigating officer and chair any disciplinary hearing (ie no line manager involvement)
 - their senior manager could refer the case to another Officer who undertakes (or commissions) the investigation and chairs any hearing
- 13.4** In any case if, without pre-judging the case, the misconduct appears to have the potential to result in disciplinary action which is beyond the authority of the line manager, they should refer the matter to their senior manager.

14 CARRYING OUT FACT FINDING AND INVESTIGATIONS

- 14.1** The extent of any fact-finding exercise or investigation is determined by the apparent seriousness and complexity of the matter. In all cases, the investigation should be completed promptly. More detailed guidance on investigating complex cases is available on the intranet or from the HR Case Management Team.
- 14.2** For a range of minor day to day matters, only an informal fact-finding exercise is needed. Example:

The line manager thinks that an employee is not letting them know when they are taking odd days of sick leave. The fact-finding exercise may involve checking whether the employee is reporting to someone else (eg a secretary or a colleague) and checking the attendance records. If the employee is new, the most appropriate action may be a counselling meeting, where the manager checks the employee's understanding of the procedures for reporting in sick, and the correct procedures are clarified.

- 14.3** Where the minor misconduct continues (despite the counselling meeting above) or a more serious incident occurs (including gross misconduct), the investigation is likely to be more extensive. Examples:
1. *The line manager has monitored conduct over a 6 month period and met with the employee about their lateness. The line manager gathers and reviews records of the employee's timekeeping and reasons for lateness to date before deciding whether to progress to a disciplinary hearing.*
 2. *There have been complaints that an employee has been swearing and shouting at colleagues. The investigation is likely to include interviewing and recording meetings with the employee, the affected colleagues and witnesses. As soon as it is clear that a disciplinary hearing is justified, arrangements can be put in place. In some instances, consideration may be given to sending the employee home on full pay (ie [special paid leave](#)) while the investigation takes place.*
- 14.4** If the commissioning manager decides to use an investigating officer, they must provide a clear remit before the investigation starts. If the allegations are unclear at the start, the investigation has the potential to become unfocused and lengthy.
- 14.5** The commissioning manager will write to the investigating officer, confirming their appointment and that the investigation is to be conducted under the Disciplinary Procedures for Misconduct. Details of the allegation and other relevant factors will be provided in a completed Investigation Brief (Appendix 4).
- 14.6** The investigating officer must be suitably trained having at least completed the Disciplinary Procedure e-learning on [SBlearn](#) and have the skills required to conduct the investigation. The investigating officer will normally be a Council officer but an external investigator may be appointed where the commissioning manager, in discussion with the HR Case Management Team, considers this to be appropriate.
- 14.7** The investigating officer should only compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary they should limit themselves to collecting relevant information and in no way attempt to draw conclusions about potential disciplinary action or otherwise stray into the business of the disciplinary hearing.
- 14.8** Investigations may need to include interviews with the key people involved and the gathering of written statements and other material. See [Sharepoint](#) for templates to support an investigation.
- 14.9** The line manager/ commissioning manager will review the information gathered in the investigation and decide on the appropriate action to take, taking advice from the HR Case Management Team. This can include one or more of the following options:
- to dismiss the case (no record of the investigation will be kept on the employees file and the report will be destroyed)
 - to deal with the matter through counselling and review

- to progress to a formal disciplinary hearing
- the line manager/ commissioning manager must also again consider whether the circumstances require a [Referral to Child/Adult Protection](#)

14.10 Some incidents may need to be investigated by those who have legal, regulatory or policy responsibilities and have particular obligations to meet, for example Internal Audit or Social Work. In these cases the appropriate investigative processes and requirements may have to take precedence.

15 INVESTIGATION TIMESCALES

15.1 Investigations should be given priority over other work as far as possible, as undue delays can be detrimental to both the employee and the workplace. Investigations should start promptly and be completed as soon as possible.

15.2 There may be occasions when an investigation is delayed due to the intervention of an external agency, such as the Police or the Social Work Department. Advice should be sought in such circumstances from the HR Case Management Team.

16 PROFESSIONAL MISCONDUCT

16.1 Where a line manager has concerns about an employee's professional conduct, their integrity, or suitability for a position of trust in relation to children, young people or protected adults, the manager must notify the HR Case Management Team and consider notifying the appropriate 3rd party organisation. Guidance is provided at [Appendix 3](#).

16.2 Where a line manager has concerns that an employee's conduct is in breach of their profession's code of conduct or incompatible with their professional responsibilities, the manager must notify the HR Case Management Team and consider the appropriate 3rd party organisation (e.g. CIPFA, RICS, CIPD, Law Society of Scotland or other regulatory body).

16.3 Where the line manager has concerns that an employee's conduct may constitute a criminal offence, they should discuss the matter with their Director and the HR Case Management Team and if appropriate report the matter to the Police.

17 POLICE ENQUIRIES, CRIMINAL CHARGES OR OFFENCES

17.1 The Council can carry out an internal investigation (or disciplinary hearing) into a matter which is the subject of a police investigation or which awaits the outcome of a court case. The fact that a police investigation is taking place does not usually mean the postponement of a management investigation and/or subsequent hearing.

17.2 No action should be taken, however, which might prejudice or undermine a police enquiry. If there is any suggestion that either the management investigation or the disciplinary hearing should be postponed, this must be discussed with the HR Case Management Team in order that appropriate correspondence can be set up with the Police or Procurator Fiscal to enable an audit trail to be established.

17.3 If an employee is charged with, or convicted of, a criminal offence which is not related to their employment, this is not in itself reason for disciplinary action. However, after investigation, a

formal hearing may be warranted where consideration is given to the seriousness and impact of the offence or allegation in relation to the employee's job and/or contract of employment

18 GRIEVANCE CASES

- 18.1** If the employee raises a formal grievance during the investigation which is related to the case, consideration should be given to either:
- suspending these procedures until the grievance procedure has been completed
 - considering the grievance during the disciplinary process
 - continuing the disciplinary process but with, for example, a different disciplining manager
- 18.2** This decision should be taken by the HR Case Management Team, who may consider other variations which enable the issues to be progressed fairly and reasonably.
- 18.3** If an employee raises a grievance which is not considered wholly genuine or may be vexatious (eg perhaps for the purpose of delaying the progress of these procedures), this may be regarded as misconduct and subject to disciplinary action. See the [Grievance Policy and Procedures](#).

19 SPECIAL PAID LEAVE

- 19.1** In some cases of misconduct (for example potential gross misconduct), a period of special paid leave may be necessary. It can only be given by an authorised manager following approval from the Director People, Performance & Change See [Appendix 2](#) for authorised managers and [SharePoint](#) for a sample letter. This period of special paid leave (or 'suspension') takes place when it is important that the employee is not in the workplace, usually as a matter of urgency.
- 19.2** Special paid leave does not form part of the disciplinary process; it is not disciplinary action and does not imply any pre-judgement of the case. The employee continues to be paid their normal pay during this period.
- 19.3** The reasons special paid leave includes instances where the employee:
- could adversely influence or interfere with the investigation
 - is considered disruptive, a threat to other employees or to the organisation
 - is apparently unfit for work and so a danger to their self and/or others (in which case an occupational health assessment should also be arranged to obtain advice about the individual's health at work)
 - is reasonably believed to be incapable of carrying out their duties because they are under the influence of a substance such as alcohol or drugs
 - is accused of bullying, harassment or victimisation
- 19.4** The line manager, or other appropriate manager, will speak directly to the employee and then write within **5 working days** to confirm:
- the reasons for the special paid leave
 - its start date and its anticipated end date
 - Any Council equipment or information which requires to be returned for the period of special paid leave.

- the name of a 'support person' who the employee can contact for support during the period off work. The support person can be a Council Officer chosen by the employee, provided that they have no connection with or involvement with the investigation and they agree to act as a support person. A support person's role is to keep in contact with the employee and to monitor their welfare in case additional support is required. The support person can also provide responses to questions on issues such as process but they should not discuss the case with the individual.

- 19.5** If the employee is a trade union representative, a discussion will take place with an official employed by the trade union, after obtaining the employee's agreement as to who the matter will be reported to within the union. If the employee gives their agreement, that discussion will take place before any action is taken in respect of the employee.
- 19.6** An employee on special paid leave may remove any personal belongings from the workplace if they wish to do so. In that event they should contact their line manager who will facilitate this.
- 19.7** Periods of special paid leave will be kept under regular review by the manager
- 19.8** It is recognised that an extended period of special paid leave can be detrimental and, as such, care must be taken to keep the period of absence from work as short as possible. The manager can end the period at any time, once the reason for the special paid leave no longer applies.
- 19.9** As an alternative to special paid leave, consideration may be given to temporary redeployment to a different role or location if appropriate.
- 19.10** The employee or any witnesses should not discuss the case with anyone else in the workplace other than the 'support person', line manager, their trade union representative, a workplace colleague acting on their behalf or HR Case Management Team during this period.
- 19.11** The manager should maintain contact with the employee whilst on special paid leave. Payslips and other information that would normally be issued whilst in the workplace will be forwarded to the employee at their home, or to them at their alternative workplace. The employee should not feel isolated from the workplace during this period.
- 19.12** If an employee is registered with the Scottish Social Services Council (SSSC) a referral must be made immediately if they are placed on special paid leave.

Stage 3: Formal Disciplinary Hearings

20 MISCONDUCT

- 20.1** Employees cannot be dismissed for a first breach of discipline, except in the case of gross misconduct. Examples of misconduct are at [Appendix 4](#)
- 20.2** Where the misconduct is of a minor nature, employees normally participate in counselling and review meetings before being called to a disciplinary hearing. Managers must ensure that the basic facts are established, an appropriate level of investigation is carried out and that advice is obtained from the HR Case Management Team before deciding to progress to a disciplinary hearing.

When looking at how to progress, where the conduct involves a child, young person or adult at risk, the commissioning manager will [Referral to Child/Adult Protection](#)

- 20.3** Having received one disciplinary warning, any further incidents of misconduct during the period that the warning is 'live', may result in a higher level of disciplinary action being taken at the next disciplinary hearing.

21 GROSS MISCONDUCT

- 21.1** 'Gross misconduct' is behaviour that, in the view of the Council, seriously undermines the contract between the Council and the employee (see examples of gross misconduct at Appendix 8).
- 21.2** In such circumstances a disciplinary warning is not normally appropriate because it is no longer reasonable to allow the employee to continue to work. The normal outcome is dismissal without notice (ie 'summary dismissal') unless 'action short of dismissal' is considered to be a feasible alternative by the Council.

22 LEVELS OF DISCIPLINARY ACTION

- 22.1** Disciplinary action is intended to be corrective rather than a punishment. It can start at any level, depending on the following:
- the nature and seriousness of the misconduct
 - the employee's overall employment record including any current disciplinary warnings
 - any mitigating circumstances
 - what is reasonable and justifiable in the circumstances.
- 22.2** There are four levels of disciplinary action which can be taken:

Verbal Warning (6 months)	This is the first stage of disciplinary action and is used for less serious disciplinary offences. This level of warning remains live on an employee's personal file for 6 months. If conduct does not meet the required standards within this period, a further disciplinary hearing may result in a final warning.
Written Warning (12 months)	This is the second stage of disciplinary action. This level of warning remains live on an employee's personal file for 12 months. This warning can be given after a verbal warning when there is insufficient improvement in conduct during the period in which the verbal warning is in force. If the employee's conduct does not meet the required standards within the live period, the next disciplinary hearing can result in dismissal. The disciplinary process can also start at the Written warning level. This can happen when one or more incidents take place which are sufficiently serious to require starting at a higher level of warning than the verbal warning. Further misconduct within 12 months can result in a Final Written Warning.
Final Written Warning (18 months)	This is the third stage of disciplinary action. This level of warning remains live on an employee's personal file for 18 months This warning can be given after a verbal or written warning when there is insufficient improvement in conduct during the period in which the prior

	<p>warning is in force. If the employee's conduct does not meet the required standards within the live period, the next disciplinary hearing can result in dismissal.</p> <p>The disciplinary process can also start at the Final warning level. This can happen when one or more incidents take place which are sufficiently serious to require starting at a higher level of warning than the verbal or written warning. Further misconduct within 18 months can result in the employee's dismissal.</p>
Dismissal	<p>Dismissal for misconduct is normally preceded by a lower level of warning. However, in the case of gross misconduct, dismissal may be regarded as the appropriate course of action without any prior warnings. This is called 'summary dismissal'. There is no notice given for a summary dismissal.</p>

23 ARRANGING A DISCIPLINARY HEARING

- 23.1** The disciplining manager must contact the HR Case Management Team **before** any disciplinary hearing is arranged for advice on the case. This is to ensure that:
- all appropriate steps have been taken
 - sufficient investigation has taken place to establish whether to proceed to a disciplinary hearing
 - advice is given on the fair application of the disciplinary procedures
- 23.2** Only managers who are authorised to discipline staff can take forward a disciplinary case. If it is considered that disciplinary action may need to be taken at a level higher than the authority of the line manager, a more senior manager must chair the disciplinary hearing.
- 23.3** The person who chairs the disciplinary hearing ("the Chair") is responsible for ensuring that all appropriate arrangements are made for the hearing and that all the necessary people are able to attend, including any management witnesses and advisors.
- 23.4** The Chair should be accompanied by a member of the HR Case Management Team who provides professional advice. Where appropriate a legal advisor may be required. The hearing should be, noted, so a note taker may also be present.
- 23.5** The Chair will give the employee at least **2 weeks'** notice in writing of the hearing (see [SharePoint](#)) The letter shall include:
- the complaint against the employee
 - the date, time and venue of the hearing
 - the employee's right to be accompanied
 - the employee's right to call witnesses and the timescales for submitting a written response to the case together with any supporting documentary evidence
 - the procedure that will be followed during the hearing
 - the fact that disciplinary action (or dismissal) may result from the hearing
- 23.6** A copy of any management report or investigation report will be sent to the employee in advance of the hearing and, wherever possible, with their letter.

23.7 The employee is required to submit any written evidence that they intend to refer to at the hearing and advise the Chair of the hearing of the names of any witnesses they would like to call, at least **4 days** prior to the hearing.

23.8 Where a disciplinary hearing is to be convened for a trade union representative, after obtaining the employee's agreement, the case will be discussed with a senior trade union representative or full-time official prior to the hearing as to who the matter will be reported to within the union.

24 EMPLOYEE REPRESENTATION

24.1 Employees have a statutory right to be accompanied to formal disciplinary hearings and appeals by someone who is either:

- a workplace colleague
- an accredited trade union representative who is trained or experienced in being a representative in disciplinary hearings (as certified by the trade union)
- an official employed by a trade union
- Solicitors will not be accepted as representatives, except in certain hearings that may lead to dismissal where they may be allowed as companions at the discretion of the Council. This will apply mainly when a decision to dismiss will potentially have a wider effect on the employee than the loss of their employment with the Council, for example where it will lead to a referral to the General Teaching Council or Scottish Social Services Council.

No one else is permitted.

The accredited trade union representative/ workplace colleague can address the meeting or hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. They do not, however, have the right to answer questions on the employee's behalf.

24.2 If the employee wishes to be accompanied, they need to make a request to the Chair, giving the name of the person proposed. All reasonable requests will be approved. Exceptions can include a colleague whose attendance might create a conflict of interest.

24.3 No one is obliged to agree to a request by the employee to accompany them. If they do agree, they will be given reasonable time off to familiarise themselves with the case. Further advice is available from the HR Case Management Team on the role and responsibilities of the accompanying person.

25 INABILITY TO ATTEND THE DISCIPLINARY HEARING

25.1 If the accredited trade union representative/ workplace colleague cannot attend the hearing, in principle it can be re-scheduled once within **2 weeks**.

25.2 If an employee is unable to attend the hearing, they must contact the Chair of the hearing at the earliest opportunity to explain the reason. If the Chair, in consultation with the HR Case Management Team as appropriate, considers the reason to be valid and sufficient, the hearing will be postponed. The hearing should be rearranged as soon as possible taking into account the circumstances for the delay.

25.3 It is recognised that employees and witnesses may feel stress at the prospect of attending a disciplinary hearing. However, hearings will not normally be postponed for longer than **2**

weeks as a result of any stress related sick leave. Employees should consider using the Occupational Health counselling service or Aviva DigiCare+ Workplace app

- 25.4** If the employee cannot (or does not) attend a re-scheduled hearing, consideration may be given to convening a hearing in their absence. The employee will be notified of this and given the opportunity to send their accredited trade union representative/ workplace colleague to attend on their behalf and/or submitting a written statement.

26 HOLDING THE DISCIPLINARY HEARING

a. Overview

- 26.1** Attending a disciplinary hearing does not mean that disciplinary action will automatically be taken. It is an opportunity to clarify the issues. The line manager/ commissioning manager will Chair the hearing and can ask questions and clarify issues at any stage throughout the hearing.
- 26.2** The employee will be asked to respond to the complaint against them and the Chair will reach a decision, based on the balance of evidence (verbal and/or documentary) on whether disciplinary action is necessary and, if so, which level of disciplinary action should be given. Should the Chair need more evidence or advice, the hearing can be adjourned for it to be provided.

b. Participants in the hearing

- 26.3** In cases of, for example, deteriorating conduct where one to one meetings have been recorded, investigating officers and witnesses may not be necessary.
- 26.4** Hearings normally consist of the employee (with an accredited trade union representative/ workplace colleague if preferred) and the authorised disciplinary manager (with a colleague or advisor, if preferred).
- 26.5** In more serious cases (for example, involving specific incidents of misconduct), the manager may call an investigating officer and witnesses to the hearing to present the case and evidence and help clarify the facts of the case.
- 26.6** Employees who are accompanied need to decide beforehand what their respective roles will be during the hearing. The role of the accompanying person is covered briefly in [para 24.1](#).

c. Introducing the hearing

- 26.7** The Chair will make the necessary introductions. The approach should be formal and polite, with a view to establishing the facts.
- 26.8** The Chair will explain that the purpose of the hearing is for them to consider whether disciplinary action needs to be taken in accordance with the Council's disciplinary procedure. The procedure for the hearing will also be outlined, with the employee asked to confirm they understand the procedure.

d. Presenting the management complaint

- 26.9** The Chair will state clearly the complaint or allegation and ask the employee to respond.

- 26.10** The Chair will then call upon the investigating officer (if used) to present their case and any witnesses, as appropriate. This can include discussing the contents of any records, documents or witness statements
- 26.11** Occasionally, (for example, in some cases of bullying and harassment) the anonymity of witnesses may need to be maintained. In such cases, witness statements can be anonymised and/or the individuals may not be required to attend a hearing where they could be questioned by the employee. The investigating officer shall explain the reasons for anonymity being maintained at the start of the hearing. The employee (and/or workplace colleague/ accredited trade union representative) shall have the opportunity to challenge the need for anonymity. The Chair shall make a decision on this. If the Chair decides to maintain the anonymity of witnesses, they must consider whether a fair hearing requires that the employee (and/or workplace colleague/ accredited trade union representative) be given an opportunity to put questions to the witnesses by other means, for example by the employee and/or workplace colleague/ accredited trade union representative) submitting written questions to be answered by the witnesses.
- 26.12** The employee (and/or accredited trade union representative/ workplace colleague) will be given the opportunity to ask questions including questions to any investigating officer or witnesses.
- 26.13** The Chair (and colleague/advisor) will have a further opportunity to question any investigating officer or witnesses on issues raised during the employee's questions.

e. Presenting the employee's response

- 26.14** The employee (and/or accredited trade union representative/ workplace colleague) will be given the opportunity to state their response to the complaint or allegation and present evidence. This may include calling witnesses if appropriate and discussing any witness statements and the contents of any other documents.
- 26.15** The Chair (and colleague/advisor) will be given an opportunity to ask questions including questions to any witnesses.
- 26.16** The employee (and/or accredited trade union representative/ workplace colleague) will be given a further opportunity to question any witnesses on issues raised during the management's questions.

f. Final questions and clarification

- 26.17** The Chair (and colleague/advisor) may use this stage to clarify any issues and to check that what has been said is understood.
- 26.18** If not already indicated, the employee should be asked whether there are any special circumstances which have not been covered but which may need to be taken into account.

g. Summing up

- 26.19** The investigating officer will sum-up the case, without introducing any new material.
- 26.20** The employee (and/or accredited trade union representative/ workplace colleague) will sum-up their response, without introducing any new material.

h. Adjournments

- 26.21** The employee (and/or accredited trade union representative/ workplace colleague) can request an adjournment during the hearing which, if considered reasonable by the Chair, will normally be allowed.
- 26.22** At the end of the hearing, the Chair will adjourn to allow full consideration of all the matters raised, before a decision is taken as to whether or not disciplinary action is warranted and if so to what level.
- 26.23** Occasionally, the Chair may require further fact finding or investigation and, in these or similar circumstances, the disciplinary hearing may need to be reconvened at a later date to enable further information to be provided and a decision to be made. Any additional written information will be copied to all parties. The hearing will be reconvened as soon as possible.

i. Outcome of the disciplinary hearing

- 26.24** The Chair is accountable for the decision, as the disciplining manager. In reaching a decision, the Chair will take into account:
- advice from any advisors
 - the employee's disciplinary record
 - the employee's general conduct record
 - action taken in similar cases in the Council
 - the employee's response to the case (including any mitigating circumstances)
 - whether it is reasonable to discipline in this case and the appropriate level of discipline
- 26.25** The Chair's decision will normally be one of the following:
- case dismissed and any allegations withdrawn
 - upheld in part and appropriate action taken
 - disciplinary warning
 - dismissal ([see paras 28 – 32](#))
- 26.26**
- A letter (see [Sharepoint](#)) will be sent to the employee to confirm any disciplinary action taken and must be copied to the HR Case Management Team for retention on the personal file. If disciplinary action is taken, it must include the following information:
- the offence and why it is unacceptable
 - the level of disciplinary action taken and how long it remains live
 - the required changes in behaviour and how they will be monitored
 - details of any supportive action that the Council will take
 - the fact that failure to improve or a recurrence of the unacceptable behaviour within the specified timescales can lead to further disciplinary action (including dismissal where appropriate)
 - the right of appeal and a named manager to whom the appeal should be sent
- 26.27** The Chair will normally advise the employee orally of the result of the hearing immediately after the adjournment, indicating any disciplinary action to be taken, the consequences of further misconduct and any conditions which may apply. This will be followed up in writing, within **10 working days except in exceptional circumstances**

26.28 In some cases, it might not be possible to give an oral decision immediately after the adjournment. In this event, the decision is given in writing, again within **10 working days** of the hearing **except in exceptional circumstances**. However, if further information is needed before a decision can be reached, the Chair will notify the decision as soon as possible.

26.29 Where misconduct is established but the line manager/ commissioning manager decides that no disciplinary action should be taken, a record of the concerns should be kept by the line manager and the situation monitored. The employee will be advised of this in writing and cautioned of the consequences if their conduct does not improve to a satisfactory level.

j. Follow-up action

26.30 The outcome of the hearing may require the commissioning manager to notify the relevant professional body and/ or Disclosure Scotland. [Appendix 3](#) gives guidance on the requirements to notify certain registered bodies. The manager should be aware that other roles will be governed by different professional bodies and referrals should be made as required by that body.

26.31 Disclosure Scotland **must** be notified by the commissioning manager if the employee was employed in regulated work and has:

- Harmed a child or protected adult or placed a child or protected adult at risk of harm and been dismissed as a consequence.
- For these purposes a child is anyone under 18.
- A protected adult is anyone over 16 in receipt of a care or support service.
- Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual resigned, retired or was made redundant before SBC could take action to dismiss them.
- Harmed a child or protected adult or placed a child or protected adult at risk of harm and as a consequence was transferred to a position within SBC which is not a position involving work with children or protected adults.
- Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual was on a fixed term contract which was about to expire or had expired before the organisation could consider dismissal proceedings.

26.32 The PVG Scheme does not apply to all jobs and volunteering. It only applies to 'regulated work'. There are 2 types of regulated work – work with children and work with protected adults. Regulated work is usually jobs including:

- caring responsibilities
- teaching or supervising children and/or protected adults
- providing personal services to children and/or protected adults
- working directly with children and/or protected adults

There are many kinds of roles, both paid or unpaid. Some examples are:

- child-minder
- girl guide leader
- teacher

It can also apply to certain positions of trust within organisations, even where the role does not involve any direct contact with children or protected adults. Examples of this include:

- membership of certain council committees
- trustees of charities focused on children
- trustees of charities focused on protected adults

It is a criminal offence to fail to comply with the duty to make a referral to Disclosure Scotland.

SSSC **must** be notified by the manager if a Social Care Worker is dismissed for misconduct or resigns when, but for the resignation, dismissal would have been considered.

SSSC must also be notified when a referral is made to Disclosure Scotland.

GTCS **must** be notified by the manager if a teacher is dismissed for misconduct or incompetence or resigns or otherwise stops working for SBC in circumstances where dismissal for misconduct or incompetence would have been considered.

It is good practice to make a referral to GTCS if a referral is made to Disclosure Scotland.

26.33 The line manager must continue to review the employee to check whether the required improvements or change in behaviour take place. There may also be a requirement for the line manager to provide additional coaching or training.

26.34 If the required changes do not take place or a further offence is committed while the warning is still live, a further disciplinary hearing is likely to result in the next level of disciplinary action being taken.

27 MEDIATION

27.1 The conciliation service, Acas, encourages the use of mediation in certain circumstances, particularly where working relationships might have been damaged during disciplinary action and some support might be needed to re-establish relations between colleagues or between line managers and employees. Managers should refer to the HR Case Management Team for advice on mediation services which may be provided internally or externally sourced.

28 DISMISSAL

28.1 The Council is committed to considering any measures short of dismissal in order to achieve the necessary change in behaviour. The Council recognises, however, that in some cases dismissal is the correct option. This may be as a consequence of progressing from lower levels of disciplinary action or as a result of fundamentally unacceptable incidents or actions by the employee.

28.2 The authority to dismiss, or take 'action short of dismissal' as a form of disciplinary action can be delegated no lower than a manager reporting directly to a Director level post. Advice must be taken from the HR Case Management Team when managers are considering dismissal.

28.3 In some cases, **summary dismissal** is necessary. This occurs in cases of gross misconduct where the seriousness of the case is such that the member of staff can be dismissed without

notice or pay in lieu of notice. An investigation is always carried out before a decision to dismiss is reached.

29 FAIR DISMISSAL

29.1 In law, there are only a limited number of fair reasons for dismissal:

- conduct (eg behaviour)
- capability (eg skills, aptitudes, or health)
- redundancy
- a statutory duty or restriction which prevents the employment being continued (eg where a driver loses their driving licence and is banned from driving)
- some other substantial reason

29.2 In demonstrating whether a dismissal has been fair, an employer must also show that:

- there was a valid reason for the dismissal
- they acted reasonably in regarding that reason as being sufficient to warrant dismissal

30 DISMISSAL PROCEDURE

30.1 An investigation will be carried out before a hearing can be convened before a dismissal can take place.

30.2 A disciplinary hearing will be arranged. In this case the hearing will be chaired by a manager with the authority to dismiss.

30.3 In the letter inviting the employee to attend, they will be advised that the hearing could lead to disciplinary action which may include dismissal. This does not imply a pre-judgement but does alert the employee to the seriousness of the matter. Employees should be encouraged to be accompanied at this hearing ([see para 24](#)).

30.4 After the hearing, confirmation of the decision to dismiss will be given in writing (see [SharePoint](#)), including:

- the reason for the dismissal
- the date on which employment ends
- the right to appeal ([see Section 6](#))

31 PERIODS OF NOTICE

31.1 Where employees have progressed through the disciplinary warnings to dismissal as a result of, for example, failure to improve or change behaviour, they will receive either their contractual period of notice or pay in lieu of notice, as determined by the Council.

31.2 In cases of gross misconduct, however, which result in summary dismissal, the employee's contract of employment will end on the date of dismissal. They are not entitled to a period of notice and will not be paid in lieu of notice. They will be paid their salary up to the date of dismissal and payment for any leave accrued but not taken as at the date of dismissal.

32 ALTERNATIVES TO DISMISSAL (ACTION SHORT OF DISMISSAL)

- 32.1** In exceptional circumstances, as an alternative to dismissal, and in conjunction with a final written warning, one or more of the following may be proposed:
- demotion
 - transfer to another post
 - transfer to another location
- 32.2** Where an employee agrees to the alternative to dismissal, they still have the right to appeal.
- 32.3** Where an employee does not agree to the alternative to dismissal, there is no alternative but to dismiss. The employee has the right to appeal against dismissal.

SECTION 6: APPEALS

33 RIGHT TO APPEAL

- 33.1** Employees have the right to appeal against any disciplinary action, including dismissal, if they believe that the decision was wrong or unjust. See [SharePoint](#) or [Appendix 5](#) for a template employee appeal form. Managers will continue to treat employees fairly and with respect throughout the process.
- 33.2** The purpose of the appeal hearing is for the employee to present their case for objective review. Depending on the grounds for the appeal, the Chair of the Appeals panel will decide (in consultation with the HR Case Management Team) whether there should be a review of the level of disciplinary action taken or, alternatively, a re-hearing of the case if, for example, new evidence is identified which could not have been foreseen at an earlier stage.
- 33.3** The appeal may be submitted by either the employee or by their accredited trade union representative. Any appeal must be in writing and received by the named manager within **2 weeks** of the date of the letter confirming the disciplinary action. The employee's letter must include full details of why they do not agree with the disciplinary decision, together with any evidence to support the case.
- 33.4** If the appeals procedure is not complied with, the employee will lose the right to appeal unless there are exceptional circumstances. Whether such circumstances exist is a decision taken by the Chair of the appeal in consultation with the HR Case Management Team.

34 THE APPEALS PANEL

- 34.1** The appeal will normally be chaired by the manager of the person who chaired the disciplinary hearing. If the disciplinary hearing was held by someone outwith the employee's management line, the appeal will normally be chaired by a senior manager in the employee's management line. If in doubt, advice should be sought from the HR Case Management Team. Appeals against dismissal will be heard by the Staffing Appeals Committee.
- 34.2** The appeal is heard by at least 2 panel members (including the Chair) who will have received training in employment law and the conduct of appeal hearings. The aim is for the appeal hearing to be objective so, wherever possible, appeals are heard by managers who have not previously been involved in the case.

34.3 The appeals panel can reduce the level of disciplinary action.

35 ARRANGING AN APPEAL HEARING

35.1 The Chair of the appeal hearing will arrange to hear the appeal as soon as possible, and other than in exceptional circumstances within **4 weeks** of receiving the employee's written request for appeal.

35.2 The Chair will normally give the employee at least **2 weeks'** notice in writing of the hearing, giving details of:

- the date, time and venue of the hearing
- the employee's right to be accompanied by an accredited trade union representative/ workplace colleague
- the employee's right to call witnesses and the timescales for submitting a written case together with any supporting documentary evidence
- the procedure that will be followed during the hearing

35.3 The Chair of the disciplinary hearing is responsible for the management case at the appeal hearing. They and the employee will each be requested to submit a written statement of their case, including any papers to which they wish to refer, to the Chair of the appeal hearing. These must be received at least 10 working days before the date of the appeal hearing. The Chair of the appeal hearing arranges for each submission to be copied to the other party. If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 working days before the date of the appeal.

36 HEARING THE APPEAL

36.1 The appeals procedure follows similar steps to the disciplinary hearing except that, in an appeals hearing, the employee presents their case before the disciplining manager presents their response. See [Appendix 6](#) for more details.

37 COUNCIL STAFFING APPEALS COMMITTEE

37.1 If a Director was involved in the disciplinary hearing or the disciplinary hearing resulted in a dismissal the appeal will be heard by Elected Members rather than Officers. The request for an appeal hearing must be sent to the Director People, Performance & Change who will arrange with the Clerk to the Council for it to be heard by the appropriate Council Appeals Committee at the earliest opportunity.

37.2 The Council Staffing Appeals Committee will comprise 3 Elected Members who have received training in employment law and the conduct of hearings. The employee will be given a minimum of **2 weeks'** notice of the hearing.

37.3 The Clerk to the Council will notify the employee of the Appeals Committee procedure and advise them of the right to be accompanied.

37.4 The management representative and the employee (or accredited trade union representative/ workplace colleague) will each be asked to submit a written statement of their case, including any papers to which they wish to refer, to the Clerk to the Council to be

received at least 10 working days before the date of the appeal hearing. If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 working days before the date of the appeal.

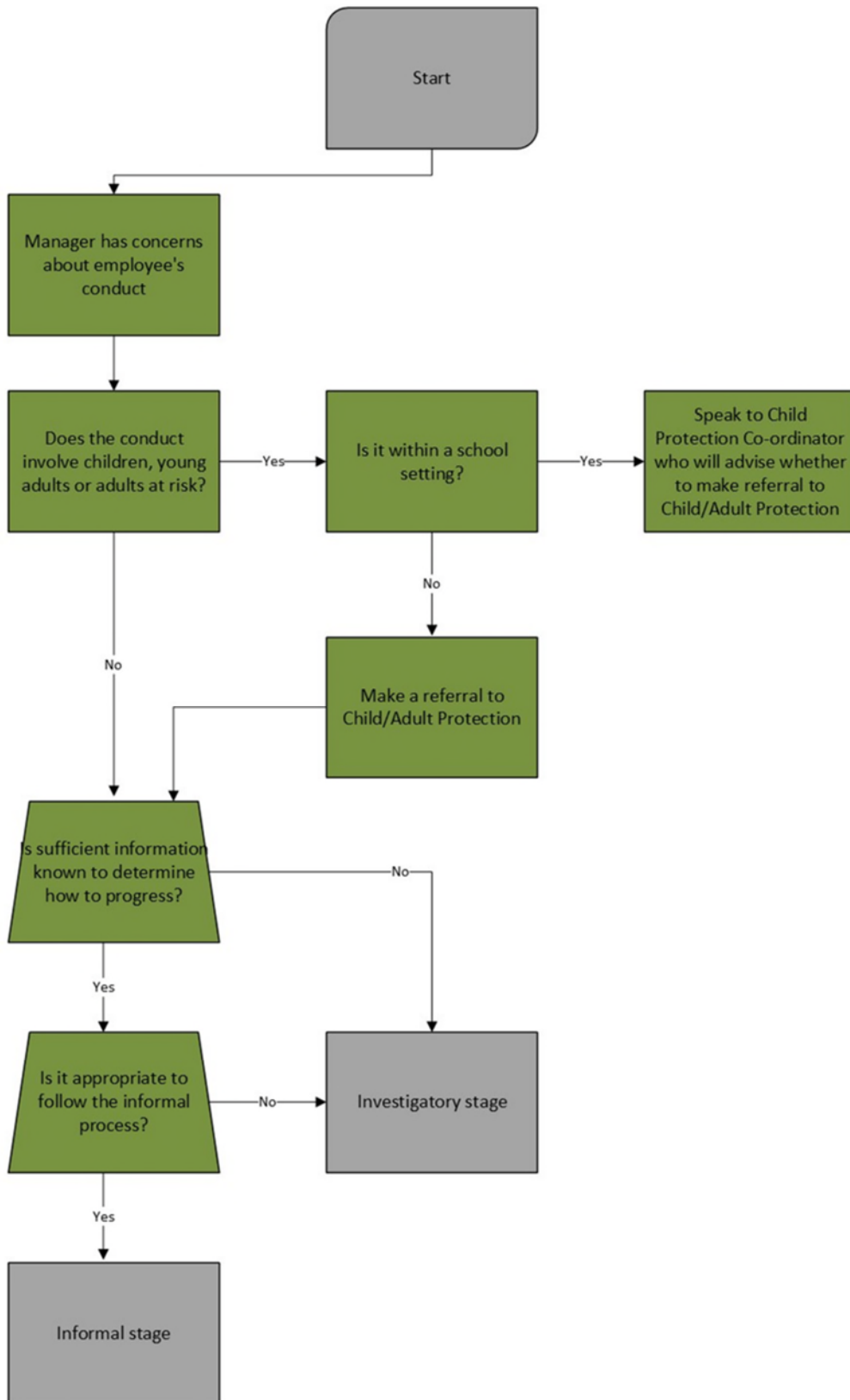
- 37.5** The Clerk to the Council will arrange for the papers, including the statements of case to be sent to the management representative and the employee, as well as to the Committee Members and any advisors at least one week before the appeal hearing.
- 37.6** [Appendix 7](#) gives guidance to managers and employees on preparing papers for the Appeals Committee.
- 37.7** The Appeals Committee can reduce the level of disciplinary action but cannot increase it.

38 DECISIONS OF APPEALS PANEL AND COUNCIL STAFFING APPEALS COMMITTEE

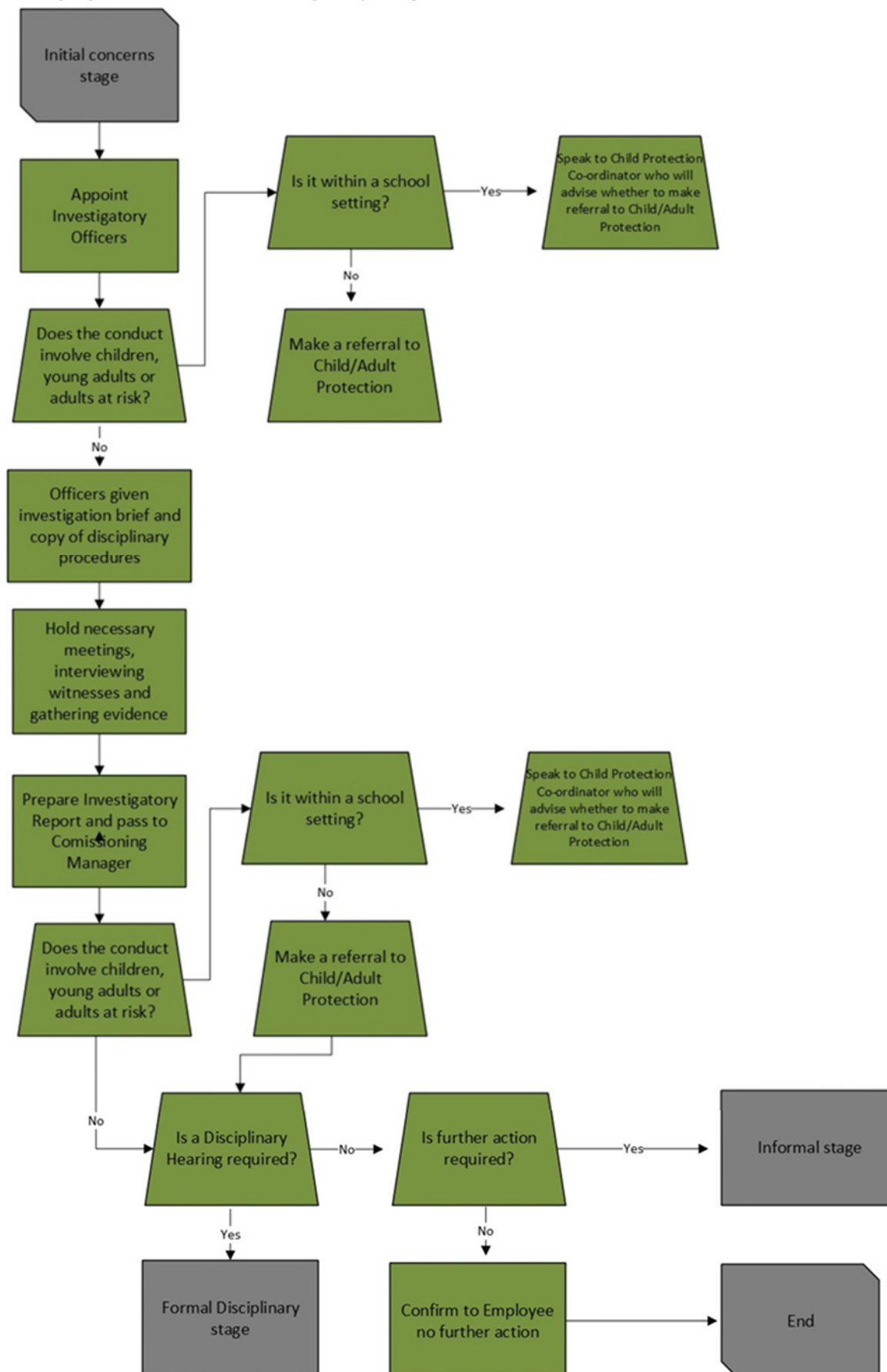
- 38.1** The decision is normally one of the following:
- the appeal is upheld and the case dismissed, with the record of disciplinary action removed from the employee's personal file
 - the level of disciplinary action is reduced (or referred to the Director People, Performance & Change for a re-hearing)
 - the appeal is upheld in part and the disciplinary action may remain the same, be reduced or dismissed
 - the appeal is dismissed and the disciplinary action upheld
 - exceptionally, the Panel/ Committee may request further information from the employee and/or the disciplining manager before reaching a decision.
- 38.2** The decision of the Panel/ Committee is final and will be confirmed to the employee within **2 weeks** of the hearing other than in exceptional circumstances when the decision will be confirmed as soon as possible. There is no further level of appeal under the disciplinary policy and procedures.

APPENDIX 1 – FLOWCHARTS FOR MANAGING MISCONDUCT

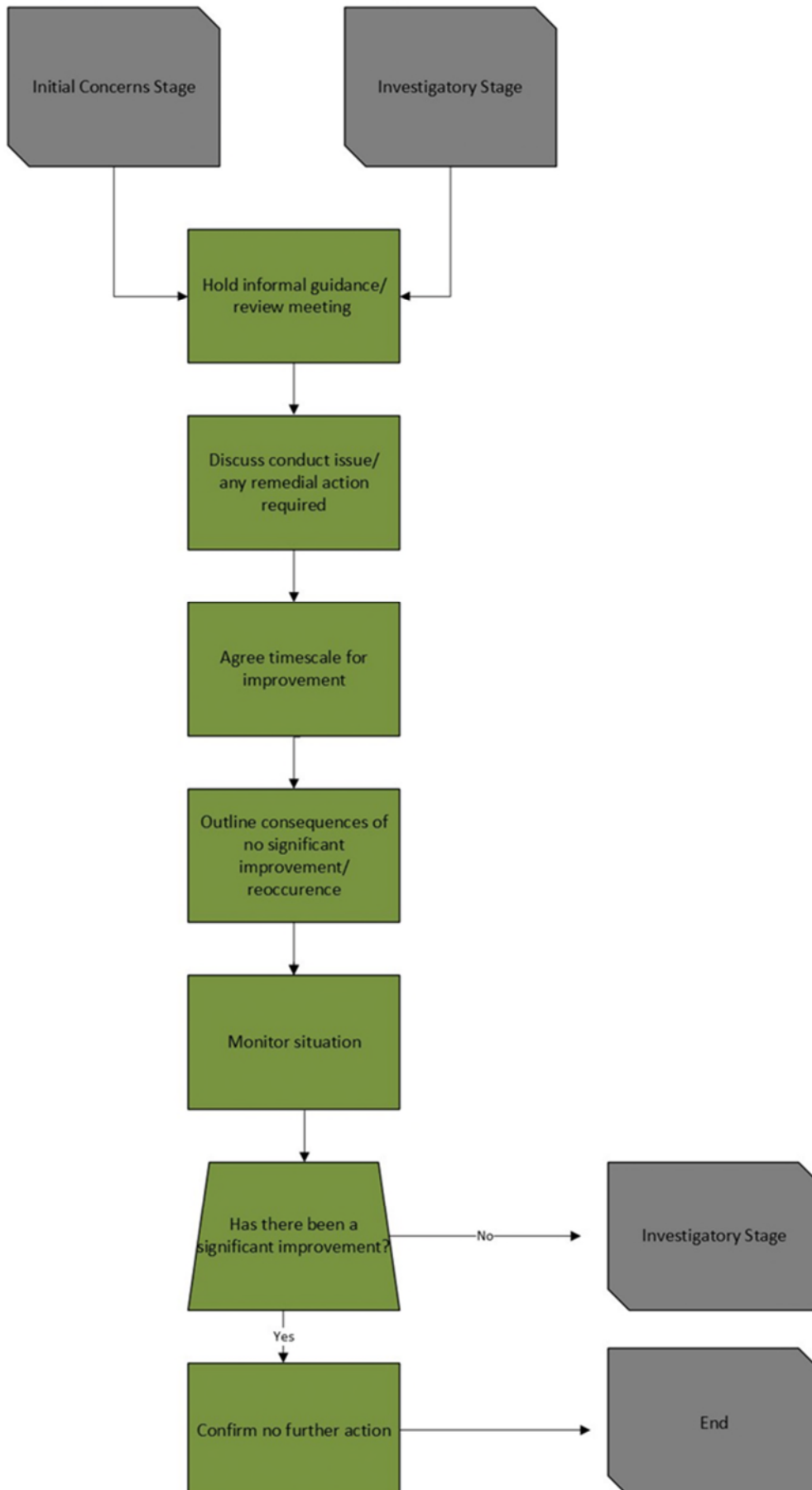
Managing misconduct – initial concerns stage



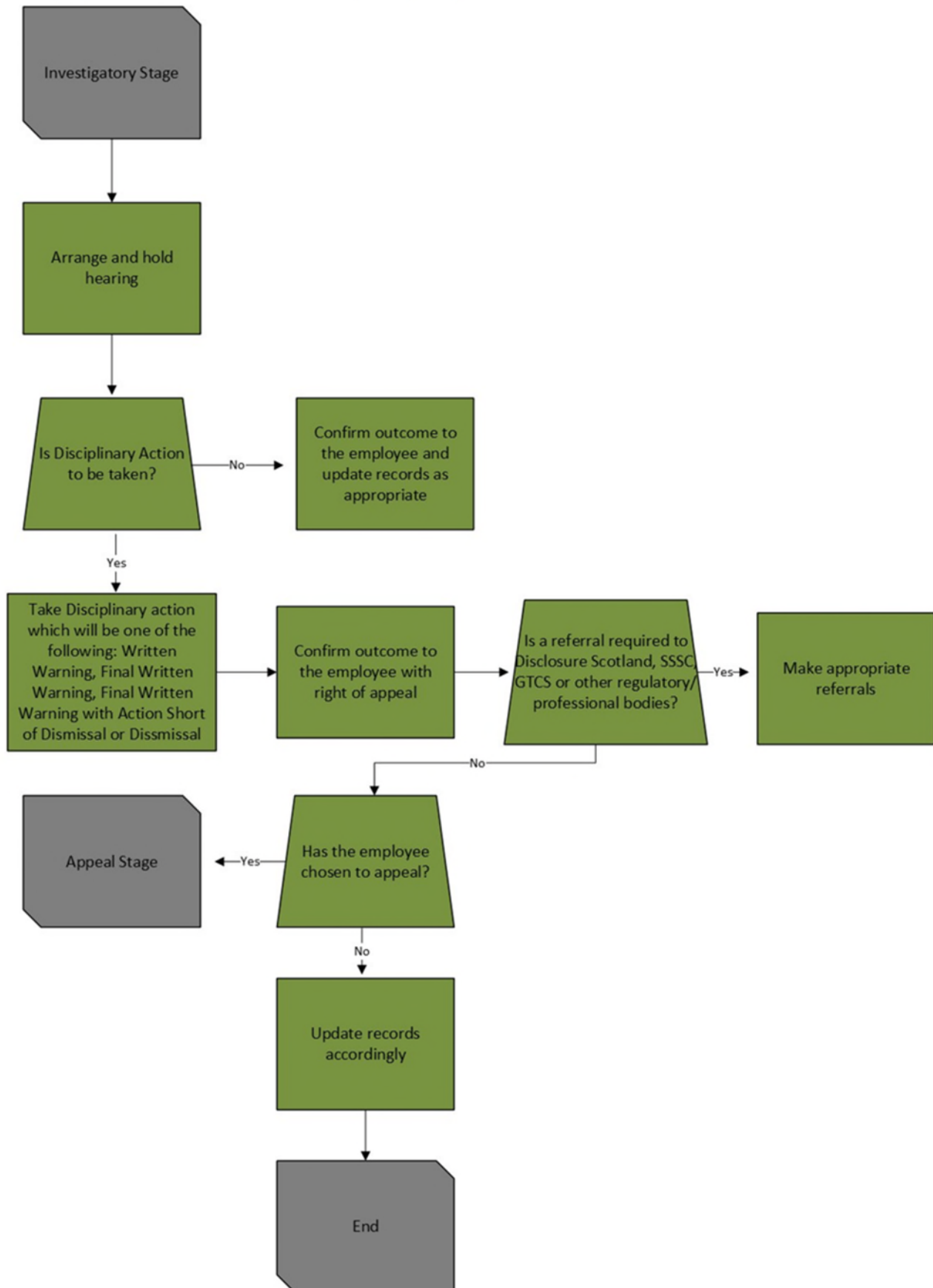
Managing misconduct – Investigatory stage



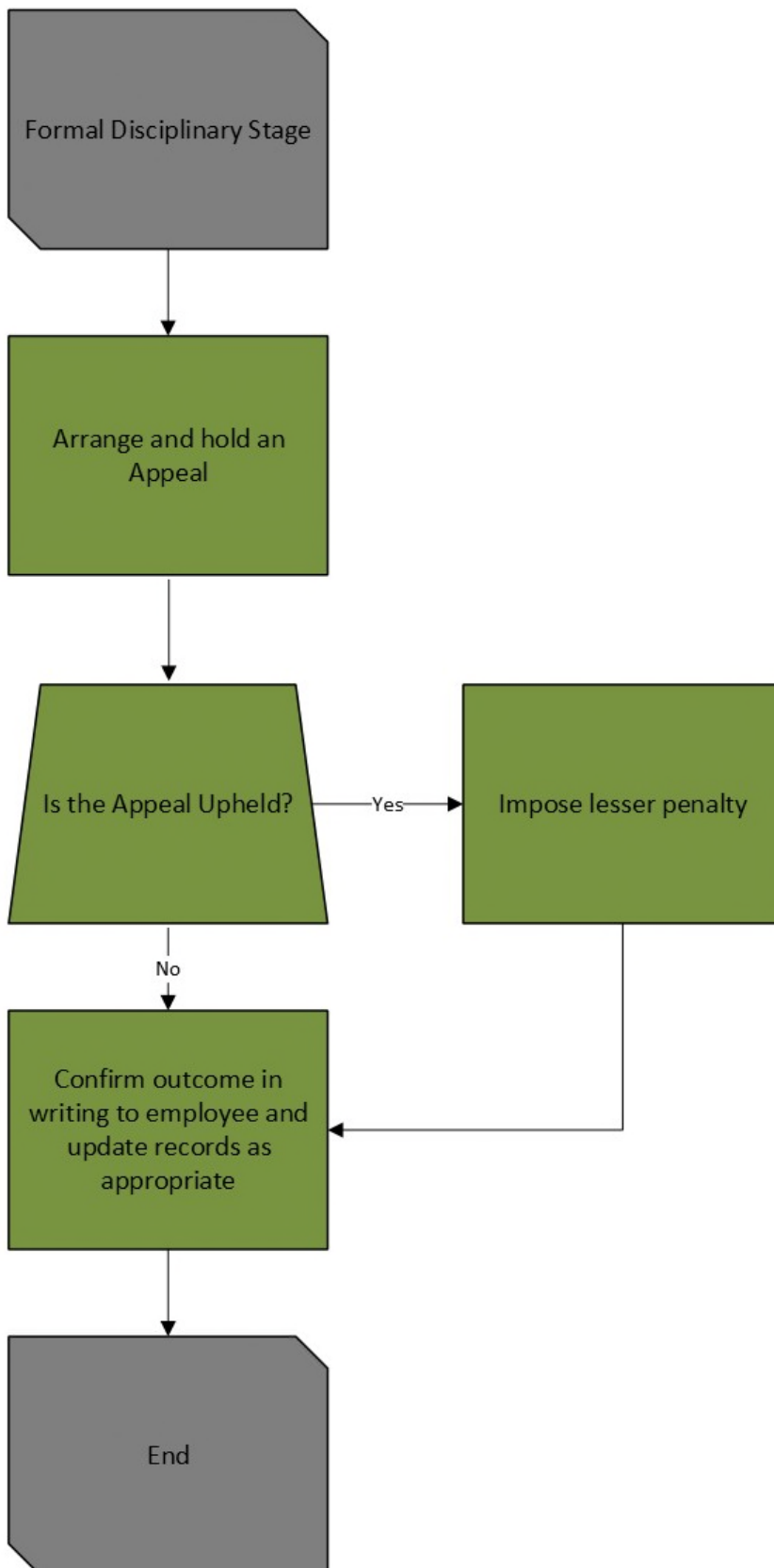
Managing misconduct – Informal stage



Managing misconduct – Formal Disciplinary stage



Managing misconduct – Appeal stage



APPENDIX 2 – MANAGERS AUTHORISED TO TAKE DISCIPLINARY ACTION AND APPEALS

The tables below give guidance on the level of managers who are normally authorised to issue periods of special paid leave, give disciplinary warnings, dismiss and to hear appeals. Directors will confirm the appropriate levels for their Department.

1. SBC staff excluding SNCT staff

Action	Normally taken by	Appeal normally heard by
Period of special paid leave	Line manager or more senior manager, with the agreement of the Director People, Performance & Change	No right to appeal
Day to day management of conduct	Line manager or supervisor	No right to appeal
Verbal Warning	Line Manager	Senior manager to whom line manager reports
Written Warning	Line manager	
Final Written Warning	Line manager or more senior manager	
Action short of dismissal	Senior manager, Chief Officer or Director	Manager to whom the senior manager, or Chief Officer reports. Where Director has been involved, Council Staffing Appeals Committee.
Dismissal	Senior manager, Chief Officer or Director	Council Staffing Appeals Committee.

2. SNCT Staff

Action	Normally taken by	Appeal normally heard by
Period of special paid leave	Headteacher (or Depute in their absence) or more senior manager, with the agreement of the Director People, Performance & Change	No right to appeal
Day to day management of conduct	Principal Teacher, Depute Headteacher or Headteacher	No right to appeal
Verbal Warning	Head Teacher	Senior manager to whom line manager reports eg Quality Improvement Officer, Chief Education Officer or—Director Education & Lifelong Learning Where the Director has been involved, Staffing Appeals Committee.
Written Warning	Head Teacher	
Final Written Warning	Head Teacher, Quality Improvement Officer, Chief Education Officer or Director Education & Lifelong Learning	
Action short of dismissal	Chief Education Officer or Director Education & Lifelong Learning	Director Education & Lifelong Learning. Where Director has been involved, Council Staffing Appeals Committee.
Dismissal	Chief Education Officer or—Director Education & Lifelong Learning	Council Staffing Appeals Committee.

APPENDIX 3 – GUIDELINES ON REQUIREMENTS TO NOTIFY REGISTERED BODIES**CONTENTS:**

1. Guidelines on requirements to notify registered bodies
2. Scottish Social Services Council
3. General Teaching Council
4. Care Inspectorate
5. Disclosure Scotland
6. Protection of Vulnerable Groups (Scotland) Act 2007

1. GUIDELINES ON REQUIREMENTS TO NOTIFY REGISTERED BODIES

1. Scope of guidelines

These guidelines provide a framework within which line managers should work when dealing with employees who work with children and vulnerable adults. These employees may be registered with certain professional bodies eg Scottish Social Services Council, General Teaching Council, or hold posts which are subject to a Disclosure check or PVG registration with Disclosure Scotland or are involved in service provision which is regulated by the Care Inspectorate. These guidelines are intended to provide general advice in these areas - more detailed advice and support can be provided by the HR Case Management Team.

For other professions, for example law, finance and human resource management, the guidelines laid down by the relevant professional institutes and/or governing bodies must be followed in all cases of potential professional misconduct of whatever nature, together with the Council's disciplinary procedures as appropriate. Advice and support can be provided by the HR Case Management Team.

An integral part of an employee's profession is maintaining the standard of conduct expected of them. Their relationships with colleagues, clients, pupils, and the general public must be professional, appropriate and justifiable otherwise their suitability to remain in their profession may be brought into question.

Where a line manager has concerns in respect of an employee's conduct, their integrity or their suitability for a position of trust in relation to children, young people or vulnerable people, they must give consideration to whether they need to notify the appropriate organisation. In addition, where employees' conduct or performance give rise to serious concerns line managers will also consider whether disciplinary action is appropriate, in line with the relevant Scottish Borders Council policies, procedures and guidelines.

Please refer to the following guidance in respect of the Scottish Social Services Council and the General Teaching Council.

2. Scottish Social Services Council (SSSC)

The SSSC Codes of Practice have been developed to raise standards in social services and describe the standards of conduct and practice required of employers and social service workers. Registration is required for those working in social services and this register is a public record that those registered have met the requirements for entry onto the register and have agreed to abide by the standards set out in the Code of Practice for Social Service Workers. In Scottish Borders Council all employees within Social Work and SB Cares, whether registered with SSSC or not, are required to sign up to and meet this Code of Practice. Some employees in other departments, for example nursery nurses, also require to register with SSSC.

The Regulation of Care (Scotland) Act 2001 states that Scottish Borders Council must notify the SSSC immediately when:

- ❖ A social service worker is dismissed on grounds of misconduct; or
- ❖ The social service worker resigned or abandoned their position where, but for the resignation or abandonment:
 - The worker would have been dismissed on the grounds of misconduct; or
 - Dismissal on such grounds would have been considered by SBC.

In the above circumstance, Line Managers must notify SSSC of the dismissal, resignation or abandonment; and in doing so provide the SSSC with an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

A referral should also be made immediately by the Line Manager if Scottish Borders Council has taken the decision to suspend or redeploy a social service worker pending the outcome of an investigation into the conduct of that worker under this Disciplinary Procedure. The SSSC will make a separate decision about whether immediate action is required to remove a worker's name from the Register pending further inquiries.

Additionally, Line Managers on behalf of Scottish Borders Council are required to inform the SSSC about any misconduct by registered social service workers that might call into question their registration and must inform the social service worker that a report has been made to the SSSC.

An Employers' Referral form is available at this link:

<https://www.sssc.uk.com/knowledgebase/article/KA-02100/en-us>

This can be used for providing information about a registered worker or a non-registered worker who may apply for registration in the future.

3. General Teaching Council Scotland (GTCS)

The General Teaching Council for Scotland is the professional regulatory body for teachers in Scotland. They maintain and enhance professional standards for Scottish teachers and support new teachers through the standard for Full Registration. Their primary role is to ensure the fitness of individual teachers to be members of the teaching profession. Registration with GTCS is in effect a licence which means that a currently registered teacher is in a position to take up employment in local authority schools in Scotland.

The Public Services Reform (General Teaching Council for Scotland) Order 2011 states that the GTCS must be notified by an employer of the following:

- ❖ If a registered teacher who is dismissed for misconduct;
- ❖ If a registered teacher who is dismissed for incompetence;
- ❖ If a registered teacher resigns or abandons their position in circumstances where, but for their abandonment or resignation they would either have been dismissed for misconduct, or dismissal for misconduct would have been considered by the Council;
- ❖ If a registered teacher resigns, or abandons their position, in circumstances where, but for their abandonment or resignation they would either have been dismissed for incompetence, or dismissal for incompetence would have been considered by the Council.

When notifying the GTCS the Line Manager on behalf of the Council must provide an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

Further information and a link to the Employers' Referral Form is available at the following link:

<https://www.gtcs.org.uk/regulation/referral.aspx>

4. Care Inspectorate

The Care Commission was established in 2002 as the independent regulator set up under the Regulation of Care (Scotland) Act 2001 to regulate Care in Scotland. Social Care and Social Work Improvement Scotland (SCSWIS), subsequently renamed the Care Inspectorate, replaced the Care Commission through the Public Services Reform (Scotland) Act 2010. The Care Inspectorate

register and inspect Scottish Borders Council services against a set of National Care Standards. The standards outline the quality of service that care service users have the right to expect from Scottish Borders Council.

Any allegation of misconduct against any persons employed in the care service must be reported by the Service Manager to the care service without delay.

Additionally, where one of our external providers or one of our own managers is deemed unfit, it must be reported to the Care Inspectorate immediately. Being declared 'unfit' will be based on health, competence or where an offence has been committed and will be determined by an appropriate person within Scottish Borders Council.

It is the responsibility of the Service Manager to report appropriate details to the Care Inspectorate. Please refer to their website <https://www.careinspectorate.com> for further information.

5. Disclosure Scotland

Disclosure Scotland was developed under the guidance of the Scottish Executive and introduced a system of disclosing criminal history information to individuals and organisations for specific types of employment and other purposes. Scottish Borders Council should report to Disclosure Scotland any reasonable suspicion that an offence has been committed.

There are, however, some occupations which are defined as “notifiable occupations” where Disclosure Scotland have an obligation to notify Scottish Borders Council if someone employed by the Council in these occupations is convicted. Any notification will come to HR who will inform the line manager immediately.

Scottish Borders Council has robust recruitment procedures in place which incorporate Disclosure checks for posts which require them. Further information on either Disclosure or SBC's Recruitment Policy & Procedure can be found on the Council's Intranet page under HR Policies and Procedures. Please also refer to the Disclosure Scotland website <https://www.mygov.scot/organisations/disclosure-scotland> for further information.

6. Protection of Vulnerable Groups (Scotland) Act 2007

This act applies to Scottish Borders Council as it employs people to work with children and protected adults both paid or unpaid. The Act provides for Scottish Ministers to keep lists of individuals who are disqualified from working with children or protected adults. The Act expands on the measures previously contained in the Protection of Children (Scotland) Act 2003 and plugs a gap in previous safeguards which allowed unsuitable people to move from one childcare post to another without detection if they had not been convicted of an offence. All people working with children or protected adults are obliged to be registered under the appropriate Protecting Vulnerable Groups (PVG) Scheme. A check on somebody's status under the relevant scheme can be made by application to Disclosure Scotland.

People can be referred to the Scottish Ministers for possible inclusion on the list by regulatory bodies such as the General Teaching Council Scotland (GTCS) or the Scottish Social Services Council (SSSC), by the courts or by organisations such as Scottish Borders Council.

We have a duty to refer an individual to the Scottish Ministers for consideration for inclusion on the appropriate list who is or has been working with children or protected adults if the individual has (whether or not in the course of their work):

- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and been dismissed as a consequence;

- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual resigned, retired or was made redundant before SBC could take action to dismiss them;
- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and as a consequence was transferred to a position within SBC which is not a position involving work with children or protected adults;
- ❖ Harmed a child or protected adult or placed a child or protected adult at risk of harm and SBC would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual was on a fixed term contract which was about to expire or had expired before the organisation could consider dismissal proceedings.

It is a criminal offence for an organisation to fail to comply with the duty to make referrals to the Scottish Ministers.

Scottish Borders Council also has a duty to refer an individual if information which was not available to SBC at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available. A referral will be required where SBC has formed the opinion that, if the information had been available at the time SBC would have dismissed the individual or would have considered dismissing the individual on the grounds that the individual had (whether or not in the course of the individual's work) harmed a child or vulnerable adult or placed a child or vulnerable adult at risk of harm.

Line managers wishing to make such a referral to the Scottish Ministers should refer to the HR Case Management Team for guidance on individual cases.

Referrals to the Scottish Ministers should be made in addition to notifying the police and any relevant professional bodies as appropriate.

A referral form is available directly from Disclosure Scotland, available on the internet on

<https://www.mygov.scot/pvg-employer-referral/>

APPENDIX 4 – EXAMPLES OF MISCONDUCT AND GROSS MISCONDUCT

MISCONDUCT

The following list, which is neither exhaustive nor exclusive, gives an indication of the types of misconduct which can result in a disciplinary warning:

- Damage to Council property or to property not belonging to the Council.
- Unauthorised use or misuse of Council property and/or facilities, or of those not belonging to the Council.
- Poor timekeeping or unauthorised absence from work.
- Carelessness or negligence which creates risk or damage.
- Failure to follow reasonable instructions or procedures, or otherwise fulfil contractual obligations.
- Abusive or threatening behaviour toward any person (Please note that this may also constitute gross misconduct, particularly if the person is a child aged under 16, young person aged 16-17 or adult at risk –a person over 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed– please see below under “Gross Misconduct”).
- Minor abuse of authority, including acts and omissions.
- Less serious breach of relevant Codes of Practice, Regulations, Policies and Procedures, eg Code of Conduct for Scottish Borders Council Employees, Financial Regulations and Policy and Guidelines on the use of e-mail and the Internet.
- Less serious discriminatory acts or omissions which breach, or are inconsistent with, the Council's. Equality, Diversity and Human Rights Policy.
- Less serious breaches of Health and Safety rules.
- Unauthorised disclosure of personal information or disclosure of a password to electronically held data.
- Attempts, whether successful or not, to access information without authorisation.
- Making malicious, frivolous or vexatious allegations

GROSS MISCONDUCT

The following list, which is neither exhaustive nor exclusive, provides examples of acts regarded as gross misconduct, which can result in summary dismissal without notice or pay in lieu of notice.

- Theft of Council property, or of property not belonging to the Council whilst engaged, or claiming to be engaged, on Council business.
- Serious damage to, or misuse of, Council property or resources or of property or resources not belonging to the Council, whilst engaged or purporting to be engaged on Council business.
- Physical or indecent assault.

- Indecent, abusive or threatening behaviour.
- Dishonest or fraudulent acts e.g. deliberate falsification of time sheets or other attendance records, work records, expenses claims or other records, whether computerised or manual, relating to the financial transactions of the Council.
- Provision of false or misleading information, or non-disclosure of information, either during the recruitment process or in subsequent employment.
- Serious breach of contract.
- Serious breach of confidentiality.
- Serious abuse of authority, including acts and omissions.
- Serious breach of trust and/or confidence caused by the actions of the employee.
- Serious breach of security systems (including premises, data etc)
- Significant non-disclosure of an interest, whether direct or indirect, in a contractual arrangement between an agency or other concern and the Council.
- Criminal conviction / civil liability or other unacceptable conduct which renders the employee unsuitable to carry out the duties and responsibilities of the post, whether or not the conduct occurred on duty.
- Serious breach of relevant Codes of Practice, Regulations, Policies and Procedures, eg Code of Conduct for Scottish Borders Council Employees, Financial Regulations and Policy and Guidelines on the use of e-mail and the Internet.
- Serious breach of Child or Adult Protection procedures.
- Abusive or threatening behaviour toward a child, young person or adult at risk.
("Child" is a person under 16, "young person" is a person aged 16-17," adult at risk" is a person aged 16 who is unable to safeguard their own interests, is at risk of harm and is more vulnerable to being harmed)
- harming a child, young person or adult at risk

"Harm" includes physical harm (eg inappropriate physical restraint or assault), psychological harm (eg emotional abuse), theft (eg embezzlement)
- placing a child, young person or adult at risk at risk of harm

"Risk of harm" includes attempting to harm (even if unsuccessful), trying to make someone else cause harm, encouraging someone to self-harm, reckless behaviour or incompetence that may cause someone to be harmed as a result, even if that was not the intention.
- inappropriate behaviour involving pornography
- inappropriate behaviour of a sexual nature involving a child, young person or adult at risk
- giving inappropriate medical treatment to a child, young person or adult at risk

- Gross carelessness or negligence.
- Serious breach of Health and Safety rules.
- Serious discriminatory acts or omissions contrary to, or inconsistent with, the Council's Equality, Diversity and Human Rights Policy including:
 - the selection or non-selection of any person for a post within the Council
 - the provision or non-provision of any rights or benefits to any person employed by or having contact with the Council
 - other forms of less favourable treatment, such as any form of harassment, victimisation or intimidation.
- Difficulty in carrying out the duties of the post due to the influence of alcohol or misuse of drugs.
- Drinking alcohol or taking illegal drugs during working hours or whilst on standby.
- Serious insubordination
- Bringing the Council into disrepute

APPENDIX 5 – FORM FOR EMPLOYEE’S APPEAL AGAINST DISCIPLINARY ACTION

CONFIDENTIAL

APPEAL AGAINST DISCIPLINARY ACTION

You have the right to appeal against any disciplinary action, including dismissal, if you believe that the decision was wrong or unjust. This form must be received by the manager named in your disciplinary letter within **2 weeks** of the date of that letter.

Please read the appeals procedure in the Disciplinary Procedures for Misconduct before completing this form. If you need help, contact your accredited trade union representative, your line manager or the HR Case Management Team

Section 1: Your details

Name:

Job title:

Department / Section:

Date you started work: a) at SBC: b) in this job:

Level of disciplinary action received (please tick box):

1 st warning	<input type="checkbox"/>
Final warning	<input type="checkbox"/>
Dismissal	<input type="checkbox"/>

Did this disciplinary action follow on from previous disciplinary action? Yes ☐ No ☐

Name of the Chair of your disciplinary hearing:

Date of your disciplinary hearing:

Section 2: Your reasons for the appeal

a) What reason was given for your disciplinary action? *(See your disciplinary letter or attach a copy of the letter to this application)*

b) Please state why you believe the disciplinary action was wrong or unjust:

c) What evidence do you have to support your case? *(Attach any documents and list them here)*

Section 3: Arrangements for an appeal

Who would you like to accompany you to an appeal hearing?

- No one ☐ *Go to 'Section 4: Declaration' below*
- Name:
 - a) Are they:
 - An accredited trade union representative who is trained or experienced in being a representative in disciplinary hearings (as certified by the trade union) or
 - an official employed by a trade union or ☐
 - a workplace colleague ☐
 - a solicitor (for certain appeals against dismissal, subject to the approval of the council) ☐
 - b) Please state when you or your accredited trade union representative/ accompanying person will **not** be available over the next 4 weeks:

Section 4: Declaration

I have read and understood the Disciplinary Policy and Procedures for Misconduct and I believe that my appeal meets the criteria for a hearing. I believe that all the information provided by me is accurate and true.

Name:

Signature:

Date:

APPENDIX 6 – HOLDING AN APPEAL HEARING

HOLDING AN APPEAL HEARING

Introducing the hearing

1. The Chair will make the necessary introductions and clarify the role of each person present. The approach should be formal and polite, with a view to establishing the facts.
2. The Chair will explain that the purpose of the hearing is for the panel to consider the appeal against disciplinary action, in accordance with the Council's disciplinary procedure. The procedure for the hearing will also be outlined, with the employee asked to confirm they understand the procedure.

Presenting the employee's case

3. The employee (and/or workplace colleague/ accredited trade union representative) will be given the opportunity to state their case and present evidence. This may include calling witnesses if appropriate and discussing any witness statements and the contents of any other documents.

Questions on the employee's case

4. The management representative (and any advisors) will be given an opportunity to ask questions to clarify the employee's case, including questions to any witnesses.
5. The employee (and/or workplace colleague/ accredited trade union representative) will be given a further opportunity to question any witnesses on issues raised during the panel's questions.
6. The appeals panel (and any advisors) will have a further opportunity to question any witnesses on issues raised during the employee's questions.

Presenting the management case

7. The manager will state clearly the complaint or allegation. They will outline the case briefly by going through the evidence which has been gathered. This may include calling witnesses if appropriate, discussing any witness statements and the contents of any other records and documents.
8. Occasionally, in exceptional circumstances, (for example, in some cases of bullying and harassment), the anonymity of witnesses may need to be maintained. In such cases, witness statements can be anonymised and/or the individuals may not be required to attend a hearing where they could be questioned by the employee. The manager shall explain the reasons for anonymity being maintained at the start of the hearing. The employee (and/or workplace colleague/ accredited trade union representative) shall have the opportunity to challenge the need for anonymity. The appeals panel shall make a decision on this. If the appeals panel decides to maintain the anonymity of witnesses, they must consider whether a fair hearing requires that the employee (and/or workplace colleague/ accredited trade union representative) be given an opportunity to put questions to the witnesses by other means, for example by the employee and/or workplace colleague/ accredited trade union representative submitting written questions to be answered by the witnesses.

Questions on the management case

9. The employee (and/or workplace colleague/ accredited trade union representative) will be given the opportunity to ask questions to clarify the management case, including questions to any witnesses.
10. The management representative will be given a further opportunity to question any witnesses on issues raised during the panel's questions.
11. The appeals panel (and any advisors) will have a further opportunity to question any witnesses on issues raised during the employee's questions.

Final questions and clarification

12. The appeals panel (and any officers/advisors) may use this stage to clarify any issues and to check that what has been said is understood. Where either party is asked to clarify any point, the other party will normally have the opportunity to comment.

Summing up

13. The manager will sum up the case, without introducing any new material.
14. The employee (and/or workplace colleague/ accredited trade union representative) will sum up their response, without introducing any new material.

Adjournments

15. Either party can request an adjournment during the hearing which, if considered reasonable by the Chair, will normally be allowed.
16. At the end of the hearing, the Chair will adjourn to allow full consideration of all the matters raised, before a decision is taken on whether or not to support the appeal.
17. The appeals panel, together with any advisers, will deliberate in private, only recalling the manager(s) or the employee to clarify points of uncertainty on the evidence already given. If a recall is necessary, both parties will be asked to return.
18. In some cases, the appeals panel may require further information and, in this or similar circumstances, the appeal hearing may need to be reconvened at a later date to enable further information to be provided and a decision to be made. Any additional written information will be copied to all parties. The hearing must be reconvened as soon as possible.

Outcome of the hearing

19. The appeal panel's decision is normally one of the following:
 - the appeal is upheld and the case dismissed, with the record of disciplinary action removed from the employee's personal file
 - the appeal is partially upheld and the level of disciplinary action is reduced
 - the appeal is dismissed and the disciplinary action upheld
 - exceptionally, the Chair may request further information from the employee and/or the previous decision maker before reaching a decision.

- exceptionally, the panel may refer the matter back to be reheard, either by the original decision maker or another manager.

20. The decision of the Appeals Panel is final and will be confirmed in writing to the employee within **2 weeks** of the hearing, other than in exceptional circumstances when the decision will be confirmed as soon as possible. There is no further level of appeal under the disciplinary policy and procedures.

APPENDIX 7 – FORMAT FOR PREPARING PAPERS FOR THE COUNCIL STAFFING APPEALS COMMITTEE

In the event of dismissal, an employee may appeal to a Council Staffing Appeals Committee, for the appeal to be heard by elected members. An appeal to this Appeals Committee may also take place where a Director takes some other form of disciplinary action which the employee does not accept.

The receipt of the Committee papers will be the first sight or knowledge the members have of a particular case. This is to ensure the members' objectivity in hearing the appeal. It would be especially useful therefore for both the manager and the employee to ensure that their papers:

- are arranged in logical order
- have each page numbered
- include a content index
- have pages cross referenced where necessary.

The manager and the employee will each be asked to submit a written statement of their case, including any papers to which they wish to refer, to the Clerk to the Council to be received at least 10 working days before the date of the appeal hearing.

The Clerk to the Council will arrange for the papers, including the statements of case to be sent to the manager and the employee, as well as to the Committee members and any advisors.

At the appeal hearing there is a running order of events (see [Appendix 5](#) 'Holding an appeal hearing'). The statement of case by the employee follows the introduction by the Chair. The employee may be accompanied ([see para 24](#)) and the manager may be supported by an HR or Legal adviser.

Each party must decide whether to call witnesses or whether they wish to rely on their formal submissions. Witnesses may be useful if it is considered there is likely to be any contentious issues and a first hand account would carry more weight.

If the employee is calling witnesses it is their responsibility to arrange their attendance and names must be submitted to the Clerk to the Council 10 days before the date of the appeal.

Irrespective of the formal submissions, it would be normal for the parties to begin with a verbal summary. This would normally be an abbreviated version of the statement of case, which can be referred to as need be. It would be helpful if a copy of the script for the verbal summary (if available) could be given to the Council Staffing Appeals Committee on the day.

[SharePoint](#) provides a template, as guidance, for managers and employees to use when preparing papers for the Council Staffing Appeals Committee. Whilst it is important for sufficient information and papers to be provided to enable the Committee to reach a decision, both parties should be selective about what they submit, because an excessive quantity of papers can sometimes reduce rather than increase clarity.