

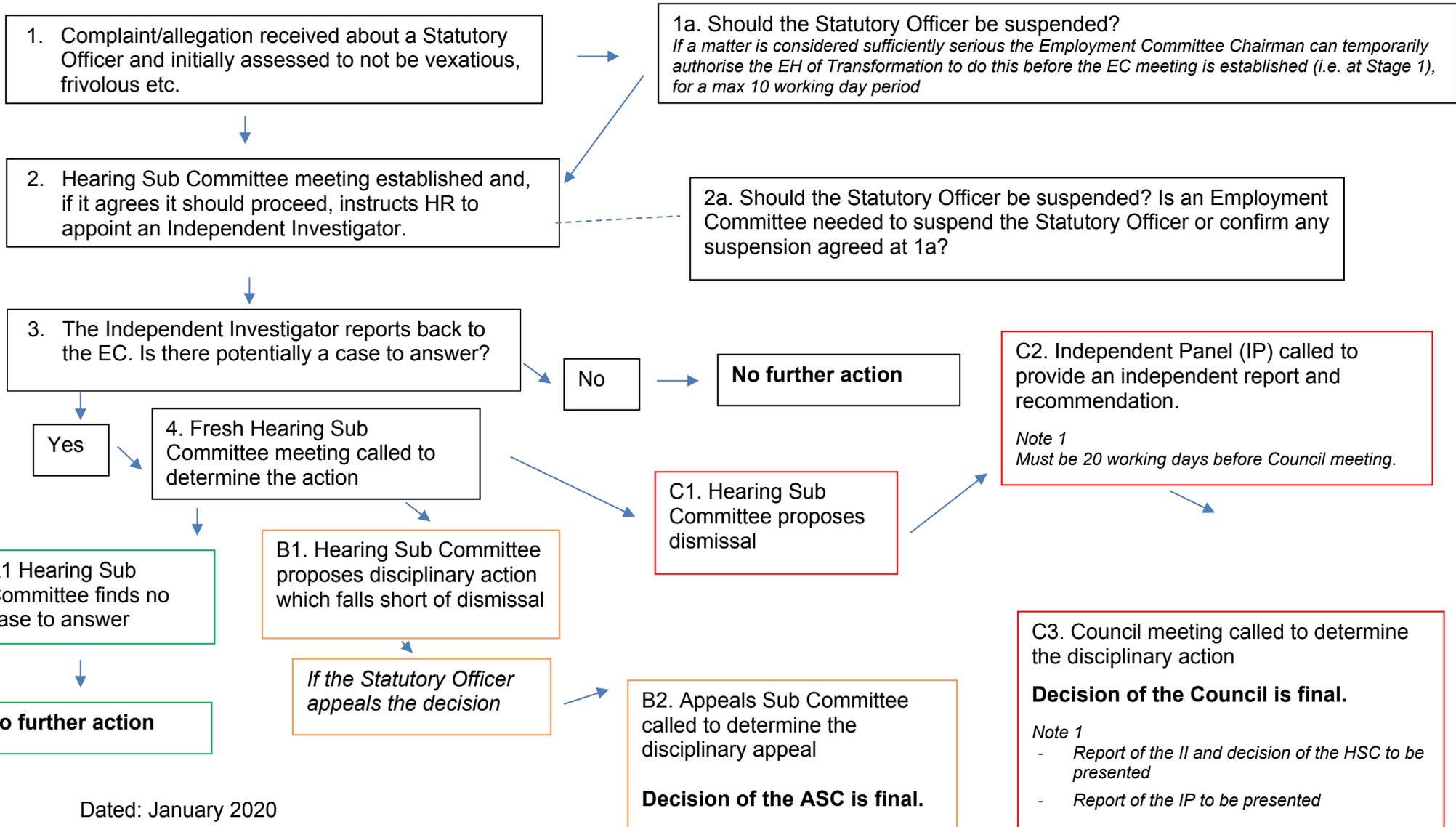
# **Surrey Heath Borough Council Human Resources**

## **Disciplinary Policy and Procedure for Statutory Officers and non-Statutory CMT Officers**



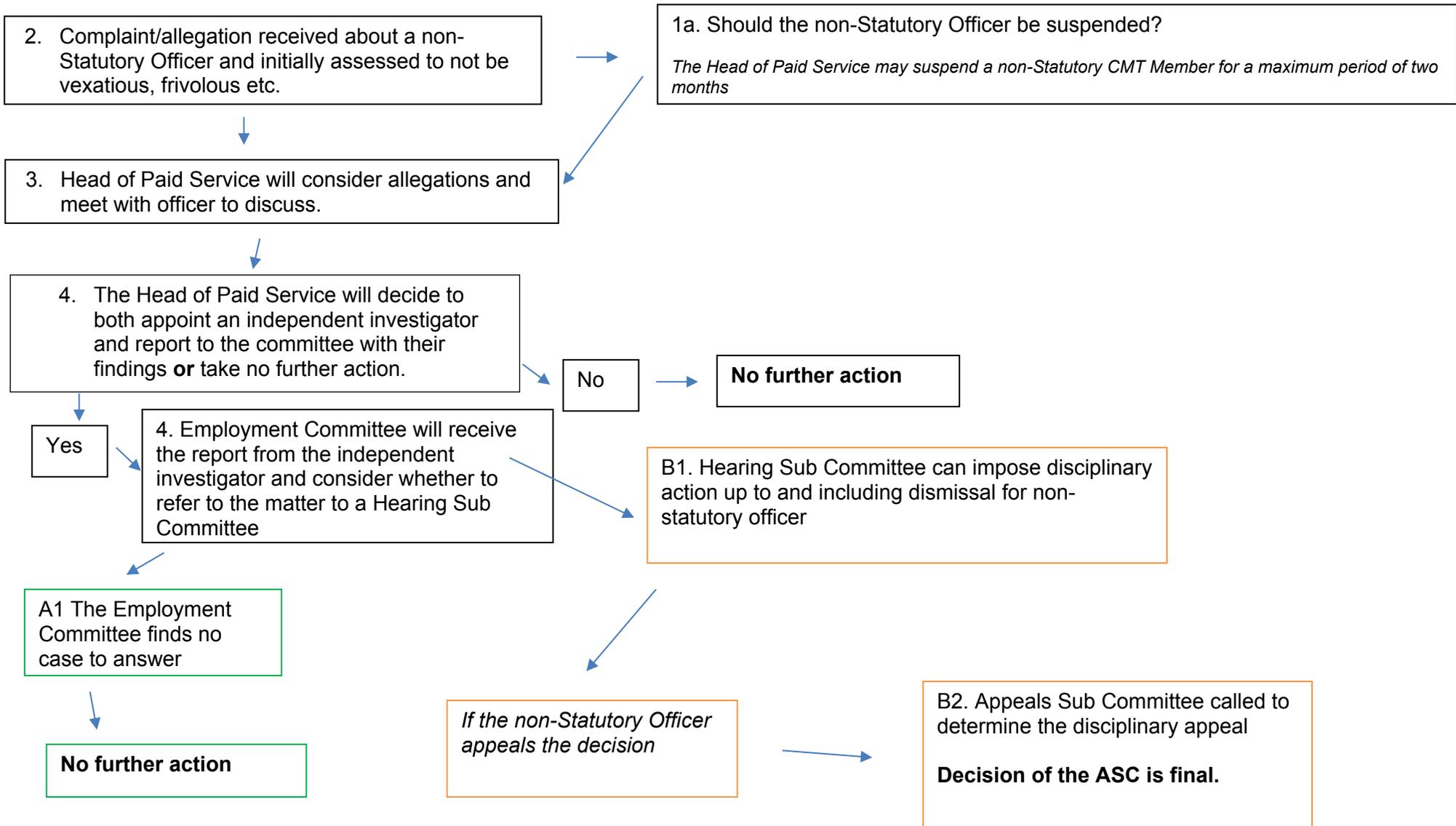
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## Procedure for disciplinary action against Statutory Officers



Dated: January 2020

## Procedure for disciplinary action against non-Statutory Officers



Dated: January 2020

# **Policy and Procedure for Disciplinary**

## **1 Introduction**

Surrey Heath Borough Council (the Council) recognises and acknowledges that the vast majority of its employees wish to, and consistently do conduct themselves by working in an acceptable and appropriate manner. It also recognises that there are occasions when an employee's conduct may be unacceptable, thereby requiring a fair and effective disciplinary policy to deal with the matter.

This policy and procedure has been written to provide a process for disciplinary matters that effect the Corporate Management Team (CMT) members in accordance with the roles that they undertake.

This policy and procedure reflects the requirements of the Local Authorities (Standing Orders) (England) Regulations 2011 and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. This policy and procedure is also in line with the ACAS Code of Practice.

## **2 Scope**

The policy and procedure applies to the Corporate Management Team (CMT) as follows:

Statutory Officers:

- Head of Paid Service
- Section 151
- Monitoring Officer

Non-Statutory Officers:

- Executive Heads
- Heads of Service

This policy and procedure should be read in conjunction with other relevant policies including, but not limited to:

- Grievance Policy and Procedure for Statutory Officers
- Capability Procedure
- Sickness Absence Policy

Dated: January 2020

- Dignity and Respect Policy
- Member and Officer Protocol
- Code of Conduct

### **3 Policy Statement**

- 3.1 The purpose of this policy and procedure is to provide guidance when dealing with disciplinary matters and aims to address and settle them in a timely considerate manner for all Officers and Members.
- 3.2 This policy and procedure also outlines the respective rights of the Statutory Officer's and the remaining members of CMT who are non-Statutory Executive Heads and Heads of Service throughout the process and explains each stage of the procedure.
- 3.3 The underlying philosophy is that the disciplinary procedure is designed, except in the case of proven gross misconduct, to offer all Statutory Officers and non-Statutory Officers the opportunity and encouragement to improve their behaviour and conduct.
- 3.4 Wherever possible, the Council will seek to resolve issues informally in the first instance after preliminary deliberation of the facts. In cases of misconduct it is recommended that action is taken at the earliest opportunity so that all the Officers have been provided with the opportunity to remedy the situation before further instances of misconduct occur and further, more serious disciplinary action needs to be taken.
- 3.5 It is recommended that advice is sought from the Human Resources Team and where appropriate the Monitoring Officer, before invoking this policy and procedure.

### **4 Equality Assessment Policy**

An Equality Impact Assessment has been carried out on this Policy and Procedure.

### **5 Definitions**

- 5.1 The Corporate Management Team (CMT) includes the Head of Paid Service (Chief Executive), Section 151 Officer, Monitoring Officer and

Dated: January 2020

Executive Heads and Heads of Service. Where reference is made in this policy and procedure to CMT Officers this refers to all.

- 5.2 The Head of Paid Service is also the Chief Executive and therefore a Statutory Officer. The Monitoring Officer considers allegations against the Head of Paid Service and will conduct an initial filtering to determine if the matter is clearly unfounded or trivial before referring the matter to the Employment Committee.
- 5.3 The Monitoring Officer is a Statutory Officer. The Head of Paid Service will consider allegations against the Monitoring officer and determine the process to follow.
- 5.4 The Section 151 Officer is a Statutory Officer. The Head of Paid Service will consider allegations against the Section 151 Officer and determine the process to follow.
- 5.5 The remaining members of CMT are non-Statutory Officers. The Head of Paid Service will consider allegations against these non-Statutory Officers and determine the process to follow.
- 5.6 The Investigating and Disciplinary Committee (IDC) at Surrey Heath Borough Council will be known as the **Employment Committee**. This is a politically balanced committee comprising of **nine** members, consisting of at least **two** members of the Executive. The Council will ensure that there are different members on each subcommittee, The Employment Committee will decide whether to progress a complaint and appoint an independent investigator, in consultation with the Executive Head of Transformation (where appropriate) and Human Resources.
- 5.7 The **Hearing Sub Committee** will comprise of **three** members of the Employment Committee and can hear matters concerning all CMT members.
- 5.8 **The Appeals Sub Committee** will comprise of **three** members of the Employment Committee. The **Appeals Sub Committee** will hear appeals against action short of dismissal, for a Statutory Officer, and decide either to confirm the action, impose no sanction or a lesser sanction. The Appeals Sub Committee will hear appeals against all action including dismissal for non-Statutory Officers in CMT. Appeals regarding dismissal for these non-Statutory Officers will not be heard by Full Council.

- 5.9 The **Independent Panel** will comprise of at least **two** independent persons appointed by the Council under section (28) of the Localism Act 2011. The Independent Panel will only be used if the Employment Committee, having received the report of the independent investigator and held a hearing, is minded to recommend dismissal of a Statutory Officer to Full Council.
- 5.10 An **Independent Consultant** will be appointed to act as the Independent Investigator. Information regarding Independent Consultants can be found with Human Resources.
- 5.11 Where reference is made to working with Officers and Managers: this will include: Members, Volunteers, Partners and other relevant people at this time.
- 5.12 Human Resources will advise all the committees and legal advice will be available too. Human Resources will also act as note takers in meetings.

## **6 Principle and Aims**

- 6.1 The purpose of this policy and procedure is to ensure that all members of CMT understand the Council's rules and procedures for dealing with disciplinary issues thereby promoting and supporting high standards of conduct and effective working relations.
- 6.2 Informal action will be considered, where appropriate, to resolve problems. No disciplinary action will be taken against any member of CMT until the appropriate stages of this policy and procedure have been followed.
- 6.3 In cases of gross misconduct the penalty will be dismissal without notice and payment in lieu of notice.
- 6.4 A Statutory Officer will have the right to appeal against disciplinary action. Where there is a recommendation to dismiss a Statutory Officer, the consideration of that recommendation by Full Council will fulfil the appeal function. The appeal hearing by the Full Council at the relevant meeting will take the form of a review of the case. The Statutory Officer will have the opportunity to make further representations to the Full Council at the relevant meeting. Please see the Appeal section of this policy and procedure for more information.
- 6.5 The non-Statutory Officers will have the right of appeal to the Appeals Sub Committee within the Employment Committee.

Dated: January 2020

6.6 This policy and procedure may be implemented at any stage of the formal disciplinary procedure if the Statutory Officer's alleged misconduct warrants this.

6.7 Matters of misconduct will be fairly, effectively and consistently addressed.

## **7 Informal discussions**

7.1 As a principle it is recognised that most problems involving work performance or behaviour are best resolved by informal discussions between an Officer and their manager and HR where appropriate. For clarification, the manager for the Head of Paid Service is the Leader of the Council. For the Section 151 Officer and the Monitoring Officer the manager will be the Head of Paid Service (Chief Executive). For the Non-Statutory Officers their line manager will be the Head of Paid Service too.

7.2 Where the Head of Paid Service is failing to meet the required standards of work performance and behaviour the Leader of the Council should counsel accordingly which should take the form of a one-to-one discussion where the issue (s) can be discussed. The Head of Paid Service should be made aware of the standards required, where these are not being attained and what support, including training they might expect to help achieve them. Problems relating to the work situation, and/or any personal problems raised by the Head of Paid Service should also be discussed. In the first instance please refer to the Capability Policy and Procedure. For further information regarding informal discussions, please contact the Human Resources Team.

7.3 Where the Section 151 Officer, Monitoring Officer or the remaining members of CMT are failing to meet the required standards of work performance and behaviour the Head of Paid Service should counsel accordingly which should take the form of a one-to-one discussion where the issue (s) can be discussed. These officers should be made aware of the standards required, where these are not being attained and what support, including training they might expect to help achieve them. Problems relating to the work situation, and/or any personal problems raised by these officers should also be discussed. In the first instance please refer to the Capability Policy and Procedure. For further information regarding informal discussions, please contact the Human Resources Team

- 7.4 In some cases a mediator can help to resolve disciplinary issues. Mediation can be used for:
- conflict between colleagues, Members or a manager;
  - to address a range of issues, including personality clashes, communication problems etc.;
  - to rebuild relationships after a formal dispute has been resolved.
- 7.5 Informal discussions or mediation sessions do not attract the right to be accompanied.
- 7.6 Where appropriate, informal action should be considered and the members of CMT should be advised that if the required improvement in work performance, conduct, or behaviour is not achieved then this disciplinary procedure is likely to be invoked.

## **8 Establishing the facts - Investigation**

### **8.1 For the Head of Paid Service**

Where there is a question of discipline raised in connection with the Head of Paid Service, the Monitoring Officer will refer the matter to the Employment Committee. The Employment Committee will consider the allegations and will meet with the Head of Paid Service to discuss.

8.1.1 The Employment Committee will then decide to either:

- a) appoint an Independent Investigator to investigate the allegations and report to the Committee with their findings and recommendations. The Employment Committee will also consider whether suspension is necessary for a maximum period of two months but may be extended (see 9.4.1) or;
- b) take no further action but consider whether training or another informal action is appropriate.

8.1.2 If the Committee decides to appoint an Independent Investigator a list of suitably qualified individuals is provided by the JNC Joint Secretaries and the Officer may choose from three names provided. If genuine conflicts of interest are raised, these will be considered by the Committee but if the Head of Paid Service does not agree within 14 days the Council should be free to appoint their choice from the list.

- 8.1.3 The Head of Paid Service will be given full details of the allegations against them prior to the appointment of the Independent Investigator and shall be informed of their appointment as soon as is reasonably practicable thereafter.
- 8.1.4 The Independent Investigator will conduct a thorough review of the allegations and the evidence and shall **normally** (where practicable) provide a report within 20 working days of the commencement of the investigation stating his/her opinion as to whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegations of misconduct on the part of the Head of Paid Service.

## **8.2 Monitoring Officer and Section 151 Officer**

Where a question of discipline is raised in connection with either the Monitoring Officer or the Section 151 Officer, the Head of Paid Service will consider the allegations and meet with the Officer to discuss.

- 8.2.1 The Head of Paid Service will then decide to either:
- a) appoint an Independent Investigator to investigate the allegations and report to the Committee with their findings and recommendations. The Head of Paid Service will also consider whether suspension is necessary for a maximum period of two months but may be extended or;
  - b) take no further action but consider whether training or another informal action is appropriate.
- 8.2.2 If the Head of Paid Service decides to appoint an Independent Investigator a list of suitably qualified individuals is provided by the Joint National Committee Joint Secretaries and the Officer may choose from three names provided. If genuine conflicts of interest are raised, these will be considered by the Committee but if either the Monitoring Officer or the Section 151 Officer does not agree within 14 days the Council should be free to appoint their choice from the list.
- 8.2.3 Either the Monitoring Officer and the Section 151 Officer will be given full details of the allegations against them prior to the appointment of the Independent Investigator and shall be informed of their appointment as soon as is reasonably practicable thereafter.
- 8.2.4 The Independent Investigator will conduct a thorough review of the allegations and the evidence and shall **normally** (where practicable) provide a report within 20 working days of the commencement of the investigation stating his/her opinion as to whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegations of

misconduct on the part of either the Monitoring Officer or the Section 151 Officer.

### 8.3 Non-Statutory CMT members

Where a question of discipline is raised in connection with any of the non-Statutory CMT members, the Head of Paid Service will consider the allegations and meet with the Officer to discuss.

8.3.1 The Head of Paid Service will then decide to either:

- a) appoint an Independent Investigator to investigate the allegations and report to the Committee with their findings and recommendations. The Head of Paid Service will also consider whether suspension is necessary for a maximum period of two months or may be extended beyond the two months or;
- b) take no further action but consider whether training or another informal action is appropriate.

8.3.2 If the Head of Paid Service decides to appoint an Independent Investigator a list of suitably qualified individuals is provided by the JNC<sup>1</sup> Joint Secretaries and the Officer may choose from three names provided. If genuine conflicts of interest are raised, these will be considered by the Committee but if any of the non-Statutory CMT members does not agree within 14 days the Council should be free to appoint their choice from the list.

8.3.3 The Head of Paid Service will be given full details of the allegations against them prior to the appointment of the Independent Investigator and shall be informed of their appointment as soon as is reasonably practicable thereafter.

8.3.4 The Independent Investigator will conduct a thorough review of the allegations and the evidence and shall **normally** (where practicable) provide a report within 20 working days of the commencement of the investigation stating his/her opinion as to whether (and, if so, the misconduct on the part of the Head of Paid Service.

8.4 All the CMT Officers have the right to be accompanied at all stages of the disciplinary procedures by a Staff or Trade Union Representative or appropriate colleague at any meeting or hearing who is not implicated or connected with the case. These Officers can also request a pause

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<sup>1</sup> Joint Negotiating Committee  
Dated: January 2020

during the investigation meeting. Notes will be taken by the Independent Investigator which will be shared with them after.

- 8.5 All CMT Officers will be notified as soon as possible that there will be an investigation which will be undertaken without delay and will be concluded as quickly as possible.
- 8.6 During the investigation, if deemed to be necessary, the Council reserves the right to examine relevant systems. It also reserves the right to search the CMT Officer's office/workstation.<sup>2</sup> In such circumstances, the CMT Officer will be advised accordingly and will have the opportunity to attend whilst their office/workstations are examined. If the CMT Officer is on suspension, they will have the opportunity to either attend or arrange for their appropriate representative to attend on their behalf.
- 8.7 Whilst every effort will be made to conclude any investigation quickly, in order for the investigation to be as thorough as possible, it will take as long as the investigating officer considers necessary. The Independent Investigator will conduct a thorough review of the allegations and the evidence and shall **normally** (where practicable) provide a report within **twenty** working days of the commencement of the investigation. As part of the investigation, interviews may be held with the CMT Officer under investigation and witnesses identified where appropriate.
- 8.8 Depending on the nature of the incident, the Council reserves the right to dispense with an investigatory interview with the CMT Officer and to proceed directly to a formal Disciplinary Hearing with the collation of evidence.

## **9 Suspension**

- 9.1 A CMT Officer may be suspended if it is believed that their attendance at work could be harmful to the Council, Council property, equipment or to others or disruptive at the Council. They may also be suspended if evidence could be tampered with or destroyed; if witnesses could be pressurised or in serious cases of alleged gross misconduct.
- 9.2 The Head of Paid Service may suspend a non-Statutory CMT member. A Statutory Officer may be suspended by the Chair of the Employment Committee. Suspension of a Statutory Officer and a non-Statutory

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<sup>2</sup> A senior officer at the Council will be responsible for this search  
Dated: January 2020

CMT member will be on full pay with contractual benefits and is not a disciplinary sanction.

- 9.3 If during the course of the investigation the Independent Investigator conducting the investigation forms the opinion that a serious breach of discipline may have occurred, the Statutory Officer who is the subject of the investigation may then be suspended by the Employment Committee if they have not been already. The Head of Paid Service can suspend a non-Statutory Officer.<sup>3</sup>
- 9.4 In the event that an immediate suspension is necessary due to the serious nature of any allegations, the Executive Head of Transformation may suspend the Statutory Officer on the written instruction of the Chair of the Employment Committee, who must indicate clear employment reasons. Any such suspension will be valid for a maximum of 10 working days, during which time the Employment Committee will meet to determine whether the suspension should be continued.
- 9.4.1 The suspension may be for a maximum period of **two** months only from the date the suspension takes effect. The Chair of the Employment Committee may direct that the suspension is terminated or extended beyond the two month period.

The suspension will be confirmed in writing by the Employment Committee or the Head of Paid service (as appropriate and having sought guidance from the Human Resources Team) within **five** working days and will state:-

- (a) the reason(s) for suspension;
- (b) the name of the Independent Investigator who will carry out an investigation and will remind the CMT Officer that if necessary a formal Disciplinary Hearing may take place at the earliest opportunity;
- (c) that the CMT Officer is advised to consult either their Staff or Trade Union Representative or appropriate colleague who is not implicated or connected with the case;
- (d) that the CMT Officer should not visit the Council premises without the permission from the Chair of the Employment Committee and should be available during normal working hours.

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<sup>3</sup> In the Head of Paid Service's absence it would be the Chair of the Employment Committee.  
Dated: January 2020

Contact will be maintained with the CMT Officer throughout the period of suspension and they will be kept informed of developments.

## **10 Formal Disciplinary Procedure**

10.1 The Employment Committee will receive the report by the Independent Investigator and consider whether to refer the matter to a Hearing Sub Committee, or whether no further action should be taken.

10.2 Where the Employment Committee considers that formal disciplinary action may be necessary then the following formal disciplinary procedure will apply:

### **10.2.1 Notice of a hearing by the Hearing Sub Committee**

Other than in exceptional circumstances, the CMT Officer will be given a minimum of **five** clear working days' notice in writing which will include the following:

- (a) the date, time and location of the Hearing;
- (b) written details of the nature of the CMT Officer's alleged misconduct;
- (c) any additional relevant information not less than **five** working days in advance of the Hearing;
- (d) a request that the Hearing Sub Committee be provided with copies of any evidence the CMT Officer wishes to rely on, to be received **two** working days in advance of the hearing;
- (e) the right to be accompanied by either a Staff or Trade Union Representative or appropriate colleague who is not implicated or connected with the case
- (f) a request to be advised of the identity of the individual accompanying the CMT Officer;
- (g) a request to be advised of the details of any witnesses the CMT Officer intends to call;
- (h) whether reasonable adjustments may be needed for the CMT Officer or their companion;

- (i) a statement that following the conclusion of the Hearing, disciplinary action may be taken against them, which could be up to and including summary dismissal.

### **10.3 Rearranging/Postponement of hearings**

In the event that a CMT Officer or their chosen representative/ companion is not available on the date or at the time proposed for the Hearing, the CMT Officer can propose an alternative date and/or time, provided that the proposal is reasonable and is within **five** working days of the original date.

### **10.4 CMT Officer's failure to attend a hearing**

If a CMT Officer fails to attend a Hearing, a new Hearing date will be arranged. Where a CMT Officer continues to be unavailable to attend a Hearing the Hearing Sub Committee may conclude that the decision will be made on the evidence available. The CMT Officer will be informed of this in writing.

Unless there are special circumstances mitigating against it, if the CMT Officer is unable to attend the rearranged Hearing, the rearranged Hearing may take place in the CMT Officer's absence. The CMT Officer's chosen representative/ companion may attend in such circumstances and will be allowed the opportunity to present the CMT Officer's case. The CMT Officer will also be allowed to make written submissions in such a situation.

## **11 Right to be accompanied**

- 11.1 As stated in the principles above, a CMT Officer will have the right to be accompanied by a Staff or Trade Union Representative or appropriate colleague at any formal Disciplinary/Appeal Hearing who is not implicated or connected with the case. Legal representation is not permitted.
- 11.2 A Trade Union Representative who is not an employed official must have been certified by their union as being competent to accompany a CMT Officer. CMT Officers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice CMT Officers should bear in mind the practicalities of the arrangements. For instance, a CMT Officer may choose to be accompanied by a

companion who is suitable, willing and available. Legal representation is not permitted.

11.3 At the Hearing the companion is allowed to address the Hearing in order to:

- put the CMT Officer's case;
- sum up the CMT Officer's case;
- respond on the CMT Officer's behalf to any view expressed at the Hearing;
- ask witnesses questions.

The companion can also confer with the CMT Officer during the Hearing. The companion does not have the right to answer questions on the CMT Officer's behalf, to address the Hearing if the CMT Officer does not wish it, or to prevent the Hearing Sub Committee from explaining the case.

## **12 The Disciplinary Hearing**

12.1 A Disciplinary Hearing will be conducted by a Hearing Sub Committee. The Hearing Sub Committee will appoint a Chair at the beginning of the meeting. The Hearing Sub Committee will be advised by a Human Resources Officer, who will also take notes of the meeting.

12.2 Both the Independent Investigator and the CMT Officer will be required to attend all of the Hearing.

12.3 The CMT Officer will be entitled to be given a full explanation of the case against them and be informed of the content of any statements provided by witnesses. The CMT Officer will be able to call their own witnesses. They will be permitted to set out their case and answer any allegations.

12.4 Where the Hearing Sub Committee intends to call relevant witnesses it will give the CMT Officer advance notice of this. The CMT Officer must also give advance notice if they intend to call relevant witnesses. Normally providing two working days' notice. The CMT Officer will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given the opportunity to raise points about any information provided by witnesses. If a witness wishes

to remain anonymous this may be possible in the early stages but anonymity cannot be guaranteed.

- 12.5 The Hearing Sub Committee may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The CMT Officer will be informed of the period of any adjournment. If further information is gathered, the CMT Officer will be allowed a reasonable period of time, together with either their Staff or Trade Union Representative or a colleague who is not implicated or connected with the case to consider the new information prior to the reconvening of the disciplinary proceedings.
- 12.6 At the end of the Hearing the Hearing Sub Committee will consider whether the allegations are substantiated and consider the appropriate outcomes. The Hearing Sub Committee can impose disciplinary action up to and including dismissal for non-Statutory Officers but only short of dismissal for Statutory Officers. Please refer to **Section 14**.

### **13. The Independent Panel (convened for a Statutory Officer)**

- 13.1 Where the Hearing Sub Committee recommends dismissal for Statutory Officer, an Independent Panel shall be convened by the Executive Head of Corporate no later than 15 working days after the Hearing to review the case and make recommendations to Full Council.
- 13.2 The Independent Panel will comprise of a minimum of two Independent Persons appointed by the Executive Head of Corporate in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. Appropriate training will be provided were necessary.
- 13.3 The Authority must appoint an Independent Panel at least twenty working days before the relevant meeting at which the Full Council will consider whether or not to approve any recommendation for the dismissal of a Statutory Officer.
- 13.4 The advice, views and recommendations of the Independent Panel will be reported to all Councillors and the Statutory Officer at least five clear working days before the date of the relevant meeting of the Full Council that will consider whether or not to approve the dismissal of the Statutory Officer.
- 13.5 If the Hearing Sub Committee's decision is to recommend dismissal the following procedures must be followed:

Dated: January 2020

The Executive Head of Transformation, acting in the capacity of “proper officer” in accordance with Regulations (The Local Authorities (Standing Orders) (England) 2001) will notify every member of the Executive of:

- A) the name of the person who the Sub Committee wishes to dismiss;
- B) any other particulars relevant to the dismissal which has been notified to the proper officer; and
- C) the period within which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Executive to the proper officer.

13.6 Notice of the dismissal of a Statutory Officer must not be given to the Council until either:

- A) the Leader of the Council has, within the period specified in the notice under sub-paragraph C of paragraph 13.5 notified the proper officer that neither they nor any other member of the Executive has any objection to the dismissal;
- B) the proper officer has notified the Employment Committee that no objection was received by them within that period from the Leader; or
- C) the Employment Committee is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

## **14 Decision**

14.1 After all the relevant stages have been followed, the Hearing Sub Committee Chair will inform the CMT Officer of any decision made and what disciplinary action, if any, is to be taken. The decision will be confirmed in writing.

14.2 All records will be treated as confidential and will be kept in accordance with the Data Protection Act 2018, Retention & Disposal Policy and General Data Protection Regulation.

The records will include:

- The nature of the disciplinary action
- What was decided and what actions taken

Dated: January 2020

- The reason for the actions
- Whether an appeal was lodged
- The outcome of the appeal
- Any subsequent developments

## **15 Formal Disciplinary Action**

### **15.1 Misconduct - definition**

Examples of misconduct include:

- Persistent bad time keeping;
- Unauthorised absence;
- Minor damage to the Council's property;
- Misuse or unauthorised use of Council's resources, vehicles, equipment etc.
- Minor failure to observe the council's policies and procedures;
- Abusive behaviour;
- Unreasonable refusal to follow management instruction;
- Poor attendance;
- Smoking in non-designated areas;
- Behaviour in the workplace that has a negative impact on the work of the service, colleagues or on the service delivery

### **15.2 Gross Misconduct - definition**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the CMT Officers, Members and the Council. In the event that the Council has established to its satisfaction, after all the appropriate stages have been followed, that a CMT Officer has committed an act of gross misconduct, the Council will be entitled to terminate summarily the CMT Officer's contract of employment without notice or pay in lieu of notice.

Matters that the Council views as amounting to gross misconduct include (**but are not limited to**):

- serious failure to undertake statutory responsibilities
- stealing from the Council, members of staff or the public and other acts of dishonesty or fraud including: falsification of a qualification that is a stated requirement of the CMT Officer's employment or results in financial gain to the CMT Officer; and falsification of records, reports, accounts, expense claims or self-certification

forms whether or not for personal gain; undertaking other paid employment whilst receiving sick pay or other benefits from the Council during a period of sickness or unauthorised absence unless agreed with Human Resources;

- sexual misconduct at work;
- physical violence, incivility, harassment or bullying of any kind including online bullying against any CMT Officer, contractor or customer whether or not on Council premises or during working hours;
- deliberate or negligent damage to or misuse of the Council's property;
- serious incapacity at work brought on by alcohol or being under the influence of illegal drugs and /or possession, custody or control of illegal drugs on the Council's premises;
- serious breach of the Council's rules, policies and procedures including serious misuse of computer, e-mail or internet facilities;
- breaking statutory regulations relating to the Council;
- gross negligence which causes unacceptable loss, damage or injury or puts the Council at risk;
- serious breach of health and safety rules
- unauthorised disclosure or transmission of confidential information, including information which may be of use to a competitor within a tendering situation or quotation procedure
- maliciously raising a grievance or making a malicious allegation;
- conviction of a criminal offence that is relevant to the CMT Officer's employment;
- breaches of Child Protection Legislations and associated policies;
- serious breach of trust and/or confidence;
- serious insubordination;
- conduct that brings the Council's name into disrepute; and
- unlawful discrimination or harassment of a fellow CMT Officer, contractor or customer on the grounds of sex, sexual orientation, gender reassignment, race, disability, age, marriage or civil partnership, maternity or pregnancy, religion or belief.

This list is **not** exhaustive and other acts of misconduct may come within the general definition of gross misconduct.

## **16 Formal Action Stages**

- 16.1 At any point the Hearing Sub Committee conducting the Hearing may decide that no sanction will be imposed. The CMT Officer will be notified in writing to this effect.

Dated: January 2020

16.2 In some cases the Hearing Sub Committee may not consider it appropriate to issue a formal warning but instead provide details of the expected level of future conduct.

16.3 Where the Hearing Sub Committee considers that formal disciplinary action may be necessary then the following disciplinary action may be taken: (There are 3 stages, subject to the principle that stages may be omitted should the nature of the allegation warrant such action. The CMT Officer will be notified in writing to this effect).

#### 16.4 **Stage 1- Preliminary Warning**

Where a minor offence or offences have been committed a documented **Stage 1 Preliminary Warning** may be given. The recorded warning will state that any further misconduct will render the CMT Officer liable to further disciplinary action. The CMT Officer will be informed that the warning will remain **'live' for 6 months**. During this period, the Council may rely on such a warning in the event of further misconduct on the part of the CMT Officer. This warning will follow a Hearing and will be confirmed in writing within **five** working days. The written confirmation will state:-

- (a) the nature of the offence;
- (b) the decision that a formal preliminary warning is being given and that it will be recorded on the CMT Officer's file;
- (c) the period of time that the warning will remain live on the CMT Officer's file;
- (d) an indication of the improvement required and the time span allowed for this to take place;
- (e) the likely outcome if no improvement takes place;
- (f) the CMT Officer's right of appeal against the decision and timescale for doing so.

#### 16.5 **Stage 2 - First written warning**

When a CMT Officer's conduct or omission is thought to warrant formal disciplinary action more stringent than a **Preliminary Warning**, a **First Written Warning** will be issued by the Chair of the Hearing Sub Committee conducting the Hearing. The CMT Officer will be informed that the warning will remain **'live' for 12 months**. This warning will

follow a Disciplinary Hearing and will be confirmed in writing within **five** working days. The written confirmation will state:-

- (a) the nature of the offence;
- (b) the decision that a first written warning is being given and that it will be recorded on the CMT Officer's file;
- (c) the period of time that the warning will remain live on the CMT Officer's file;
- (d) an indication of the improvement required and the time span allowed for this to take place;
- (e) the likely outcome if no improvement takes place;
- (f) the CMT Officer's right of appeal against the decision and timescale for doing so.

#### 16.6 **Stage 3 - Final Written Warning**

This stage in the procedure can be applied if the offence is sufficiently serious, or if there is further misconduct or a failure to improve performance during the currency of a prior warning, a final written warning may be given to the CMT Officer. It will warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal.

The CMT Officer will be informed that the warning will remain '**live**' for **12 months**. This warning will follow a Hearing and will be confirmed in writing within **five** working days. The written confirmation will state:-

- (a) the nature of the offence;
- (b) the decision that a final written warning is being given and that it will be recorded on the CMT Officer's file;
- (c) the period of time that the warning will remain live on the CMT Officer's file;
- (d) an indication of the improvement required and the time span allowed for this to take place;
- (e) the likely outcome if no improvement takes place;

- (f) the CMT Officer's right of appeal against the decision and timescale for doing so.

Where a final written warning is given to a CMT Officer above, the Council may also impose on the CMT Officer the following sanctions:

- disciplinary suspension without pay;
- disciplinary transfer;
- loss of seniority;
- loss of increment;
- demotion.

The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

## **17 Dismissal**

### **17.1 Statutory Officer**

Where a Statutory Officer has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given above, the Statutory Officer may be dismissed with notice or with pay in lieu of notice.

Where Full Council, on the advice, views and recommendations of the Independent Panel, establishes that a Statutory Officer has committed an act of gross misconduct, the Statutory Officer may be summarily dismissed.

The dismissal of a Statutory Officer will be confirmed in writing within **five** working days. The written confirmation will state:-

- (a) the reason(s) for the dismissal;
- (b) the period of notice, if any, and the arrangements for the completion of such notice.

### **17.2 Non-Statutory Officers**

Where a non-Statutory Officer has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given above, the non-

Statutory Officer may be dismissed with notice or with pay in lieu of notice.

Where the Hearing Sub Committee, establishes that a non-Statutory Officer has committed an act of gross misconduct, the non-Statutory Officer may be summarily dismissed.

The dismissal of a non-Statutory Officer will be confirmed in writing within **five** working days. The written confirmation will state:-

- (a) the reason(s) for the dismissal;
- (b) the period of notice, if any, and the arrangements for the completion of such notice.

## **18 CMT Officers Charged or Convicted of a Criminal Offence**

- 18.1 Criminal charges or convictions for offences of dishonesty, fraud or violence committed (including outside working hours) may result in disciplinary proceedings being taken against the CMT Officer, up to and including summary dismissal.
- 18.2 A charge or conviction for any other type of offence may result in disciplinary proceedings being taken against the CMT Officer where, in the opinion of the Council, the charge or conviction is such as to affect, or be likely to affect, the suitability of the CMT Officer for the position in which they are employed, or the business or reputation of the Council, or where the existence of the charge or conviction could, in the opinion of the Council, otherwise seriously undermine the trust and confidence that the Council has in the CMT Officer.

## **19 Appeals relating to dismissal of a CMT Officer**

### **19.1 Statutory Officer**

- 19.1.1 Where a Hearing Sub Committee has determined disciplinary action which falls short of dismissal, a Statutory Officer may appeal against the decision and sanction, with the exception of an informal action, to an Appeals Sub Committee. The Appeal will be sent to the Monitoring Officer, unless the appellant is the Monitoring Officer, in which case it

must be sent to the Executive Head of Transformation. Please refer to **Section 21.1** for further information.

19.1.2 Where there is a recommendation to dismiss a Statutory Officer, the consideration of that recommendation by Full Council will fulfil the appeal function. The appeal hearing by the Full Council at the relevant meeting will take the form of a review of the case. The Statutory Officer will have the opportunity to make further representations to the Full Council at the relevant meeting. The Council, before the taking of a vote on whether or not to approve dismissal, must take into account, in particular: any advice, views or recommendations of the Independent Panel;

- (a) The conclusions of any investigation into the proposed dismissal;
- (b) The conclusions and recommendations of the Hearing Sub Committee following the Hearing;
- and
- (c) Any representations from the statutory officer.

After taking into account the above matters at the relevant meeting, the Council may take any one of the following actions:

- (d) To approve the recommendation for dismissal or
- (e) To reject the recommendation for dismissal but impose sanctions, or
- (f) To reject the recommendation for dismissal and take no further action.
- (g) Whether training should be provided to the Statutory Officer

## **19.2 Non-Statutory Officer**

19.2.1 Where a Hearing Sub Committee has determined disciplinary action for a non-Statutory Officer may appeal against the decision and sanction, with the exception of an informal action, to an Appeals Sub Committee.

## **20 Appeals short of dismissal for Statutory Officers or matters relating to non-Statutory Officers**

- 20.1 Where a Hearing Sub Committee has determined disciplinary action which falls short of dismissal, all CMT Officers may appeal against the decision and sanction, with the exception of an informal action, to an Appeals Sub Committee. The Appeal will be sent to the Monitoring Officer, unless the appellant is the Monitoring Officer, in which case it must be sent to the Executive Head of Transformation. Please refer to **Section 19.3** for further information.
- 20.2 The Appeals Sub Committee will comprise of **3** members to be appointed by the Executive Head of Corporate and must include at least 1 member of the Executive. No members who sat on the original Hearing Sub Committee may be on the Appeals Sub Committee.
- 20.3 In the event that it is not possible to appoint **3** new members of the Employment Committee, substitute members of the Employment Committee may be appointed to the Appeals Sub Committee.
- 20.4 Appeals Sub Committee will also hear appeals made by CMT non-Statutory Officers and the process will be same as below.
- 20.5 An Appeal Hearing will concentrate on a review of the action taken and the procedure adopted; its purpose is not to re-hear the matter. However, the Appeals Sub Committee will consider new evidence that was not available at the time of the Disciplinary Hearing and both sides will have the opportunity to comment on such evidence during the Appeal Hearing process.
- 20.6 Appeal Hearings will normally take place within **thirty** days' of receipt of the CMT Officer's written notice of appeal. In exceptional circumstances the Appeal Hearing may take place after thirty days'.
- 20.7 The CMT Officer must write to the Monitoring Officer named in the disciplinary outcome of their intention to appeal. If the appellant is the Monitoring Officer then the appeal must be sent to the Executive Head of Transformation. This submission must be made within **ten** working days of receipt of the disciplinary outcome.
- 20.8 When lodging an appeal, a CMT Officer should state:
- the grounds of appeal; and

- whether they are appealing against the finding that they have committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

## **21 Notice of Appeal Hearing**

The CMT Officer will receive notice in writing and will include the following:

- (a) the date, time and location of the Hearing;
- (b) any additional relevant information not less than **five** working days in advance of the Hearing;
- (c) the Appeals Sub Committee must be provided with copies of any additional evidence the CMT Officer wishes to rely on, to be received **two** working days in advance of the hearing;
- (d) the right to be accompanied by either a Staff or Trade Union Representative or appropriate colleague who is not implicated or connected with the case.
- (e) a request to be advised of the identity of the individual accompanying the CMT Officer;
- (f) a request to be advised of the details of any witnesses the CMT Officer intends to call;
- (g) whether reasonable adjustments may be needed for the CMT Officer or their companion;
- (h) a statement that following the conclusion of the Hearing that the decision of the Appeals Sub Committee is final.

### **21.1 Rearranging/Postponing a Hearing**

In the event that a CMT Officer or their chosen companion is not available on the date or at the time proposed for the Hearing, the CMT Officer can propose an alternative date and/or time, provided that the proposal is reasonable and is within **five** working days of the original date. Only very exceptionally will the Appeals Sub Committee permit a postponement of greater than five days or a request for less than five.

The parties should ensure that they attend the meeting at the specified time. If they are unable to attend because of circumstances beyond their control, they must advise the Appeals Sub Committee. If either

party fails to attend without explanation, or if it appears that the CMT Officer has made insufficient attempts to attend, the Hearing may take place in their absence, using the evidence available.

## **21.2 The Appeal Hearing**

The Appeal Hearing will normally be conducted by the Appeals Sub Committee with a representative from Human Resources (the Panel).

All records will be treated as confidential and will be kept in accordance with the Data Protection Act 2018, Retention & Disposal Policy and General Data Protection Regulation.

## **21.3 Appeal Against First / Final Warning**

21.3.1 Any representations made by the CMT Officer or their companion and those of the Independent Investigator who conducted the investigation and Hearing Sub Committee will be considered carefully.

21.3.2 For non-Statutory CMT Officers, the Appeals Sub Committee must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether to uphold the disciplinary sanction.

## **21.4 Appeal Against Dismissal**

21.4.1 Where there is a recommendation to dismiss a Statutory Officer, the consideration of that recommendation by Full Council will fulfil the appeal function. Upon conclusion of Full Council the Employment Committee will provide to the Statutory Officer with written notification of the decision, within **ten** working days.

21.4.2 Where there is a recommendation to dismiss an a non-Statutory CMT Officer this will be decided by the Appeals Sub Committee. The Appeals Sub Committee will provide the non-Statutory CMT Officer with written notification of the decision within ten working days.

## **21.5. Increase to disciplinary outcome**

In the event where an appeal is lodged and a hearing takes place the Appeals Sub Committee can allow for the disciplinary outcome to change, for example an increase from a Stage 1 Preliminary Warning to a Stage 3 Final Written Warning. If new evidence arising during the

appeal indicates that the offence was more serious/less serious than originally judged, the appeal hearing will terminate and a new disciplinary process will begin. The Appeals Sub Committee's decision is final.

## **22 Grievances raised in relation to a disciplinary case**

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

## **23 Vexatious claims**

Proven false or vexatious information disclosed during the course of the investigation or during a Disciplinary or Appeal Hearing may be regarded as misconduct or gross misconduct.