

## APPENDIX 2

### Disciplinary procedure

#### Introduction

"Disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of individuals."

(The Labour Relations Agency - Code of Practice on disciplinary and grievance procedures.)

This disciplinary procedure and associated management guidelines, comply with the Labour Relations Agency Code of Practice on disciplinary and grievance procedures, and accords with best practice.

#### General principles

##### 1.0 Objectives

- 1.1 The council has the right, recognised by the trades unions to expect employees to carry out their duties to the best of their capabilities, to abide by the terms and conditions of their contract of employment and by the rules and regulations established by the council.
- 1.2 It is recognised that day to day issues relating to conduct and behaviour will be resolved by management and employees through the normal means of communication. However, where normal communications fail to resolve matters, and where the disciplinary procedure is deemed applicable, any resultant disciplinary action will seek to be corrective in nature, be justifiable and be aimed at achieving acceptable standards of efficiency, performance and behaviour.
- 1.3 The basic objectives of the disciplinary procedure are as follows:
- 1) to identify the authority of management, at various levels, to initiate disciplinary action
  - 2) to identify the process to be followed by management when instituting disciplinary action
  - 3) to ensure that any discipline applied is necessary and that employees are not subject to arbitrary or unjustified action
  - 4) to ensure the application of natural justice to disciplinary matters
  - 5) to provide for the fair, consistent and objective application of the disciplinary procedure
  - 6) to allow for the provision of adequate information to employees concerning the application of the disciplinary process

It is accepted that management and trade unions will work towards these objectives being met.

##### 2.0 Application

- 2.1 This procedure applies to all employees of the council including employees on fixed term contracts.
- 2.2 It does not apply to seasonal or casual workers.

**2.3** The procedure to be adopted for seasonal or casual workers is outlined Appendix (1).

Note: It should be noted that these procedures are only applicable to issues relating to 'conduct' and that matters of 'competence' are dealt with under separate council arrangements.

### **3.0 Misconduct**

**3.1** The council has no formal list of rules but the expected conduct of employees is embodied in a number of documents including the various schemes of conditions of service, the Council's Standing Orders and Code of Conduct and the Council's Human Resources policies and procedures.

**3.2** The council recognises three types of indiscipline (a) minor misconduct, (b) serious misconduct and (c) gross misconduct. Some examples of these are listed at Appendix (2). It should, however, be noted that different types of misconduct will warrant different levels of disciplinary action. In instituting disciplinary action careful consideration will be given to the circumstances of each case e.g. a serious disciplinary offence will result in the verbal warning stage being dispensed with and a Stage 2 (written warning) hearing being instigated. In each case the appropriate stage of the disciplinary procedure will be initiated.

**3.3** All warnings will be regarded as lapsed at the conclusion of the period to which they relate except where the warning indicates that a future incident of similar misconduct will be viewed in itself as an offence constituting gross misconduct. At each stage of the disciplinary procedure an employee's service record may be taken into account in determining an appropriate penalty once charges of misconduct against an employee have been substantiated. In such circumstances an employee's service history will only be used for the purposes of penalty determination, not as an indication or inference of guilt/culpability.

**3.4** In all cases where misconduct arises, an innocent explanation will be sought by the line manager involved. Where an innocent and satisfactory response is not forthcoming the following procedure will be applied.

### **The procedure**

#### **4.0 Stage one - Minor misconduct resulting in a verbal recorded warning**

**4.1** In the case of minor infringements of expected standards of work or conduct the circumstances will be investigated by the line manager/supervisor in consultation with the departmental Business Support Officer/Manager.

**4.2** If there is a disciplinary charge to be answered the allegation will be put to the employee, in writing, and a hearing will be arranged. The employee will be given 5 working days notice prior to the date of the hearing. This letter will also detail the right to representation by a trade union representative or a colleague.

**4.3** The matter will be heard by an appropriate officer not involved in the investigation and of a grade not less than the investigating officer.

**4.4** Business support staff will provide secretarial and support services to the hearing.

- 4.5** Action taken as a result of this hearing will be recorded on a disciplinary record sheet which will be forwarded to the Business Support Officer/Manager for retention on the employee's departmental personnel file.
- 4.6** The disciplinary record sheet will be forwarded to the Human Resources Section.
- 4.7** This verbal warning will lapse after six months' satisfactory service from the date of issue of the warning.
- 4.8** The correspondence relating to the outcome of the hearing will indicate as appropriate:-
- 1) The decision of the disciplinary authority
  - 2) That this warning is the first stage of the disciplinary procedure
  - 3) The rights of appeal against this action
  - 4) To whom an appeal may be made
  - 5) The time limit within which an appeal may be lodged
  - 6) The action that may be taken by management in the event of a subsequent infringement of discipline.
- 5.0 Stage two - Further misconduct or serious misconduct resulting in a written warning**
- 5.1** If there is a subsequent minor infringement, within the six months period of a verbal warning applying or a serious infringement of discipline, the circumstances will be investigated by the line manager/supervisor in consultation with the departmental Business Support Officer/Manager.
- 5.2** If there is a disciplinary charge to be answered the allegation will be put to the employee, in writing, and a hearing will be arranged. The employee will be given 5 working days notice prior to the date of the hearing. This letter will detail the right to representation by a trade union representative or a colleague.
- 5.3** The matter will be heard by an officer not involved in the investigation. The officer hearing the case where reasonably practicable, will not have been involved in previous action against the accused and will be of a grade not less than the investigating officer.
- 5.4** Business support staff will provide secretarial and support services to the hearing.
- 5.5** Action taken as a result of this hearing will be recorded on a disciplinary record sheet which will be forwarded, together with all papers and correspondence relating to the case, to the Business Support Officer/Manager for retention on the employee's departmental personnel file.
- 5.6** The disciplinary record sheet will be forwarded to the Human Resources Section.
- 5.7** This written warning will lapse after twelve months satisfactory service from the date of issue of the warning.
- 5.8** The employee will be informed in writing of the outcome of the hearing. The letter will indicate as appropriate:-
- 1) The decision of the disciplining authority
  - 2) That this warning is the second stage of the disciplinary procedure

- 3) The rights of appeal against this action
- 4) To whom an appeal may be made
- 5) The time limit within which an appeal may be lodged
- 6) The action that may be taken by management in the event of a subsequent infringement.

**6.0 Stage three - Further misconduct or gross misconduct - final written warning (lasting up to a maximum of two years), demotion, disciplinary suspension (without pay - up to a maximum of two weeks), dismissal.**

**6.1** In the event of an allegation of subsequent misconduct, within the period of a final written warning applying or misconduct which may be considered gross misconduct, the circumstances will be investigated by two appropriate officers - usually the employee's line manager and a nominated Senior Business Support representative - under Stage Three of the Disciplinary Procedure.

**6.2** The investigation of the case will be undertaken by an investigatory team appointed by the Head of Service/Director concerned. (This investigatory team will normally comprise a manager and the departmental Business Support Officer/Manager.)

**6.3** If following investigation there is a disciplinary charge to be answered, the allegation will be put to the employee in writing and a hearing will be arranged. The employee will be given 10 working days notice prior to the date of the hearing. This letter will detail the right to representation by a trade union representative or a colleague. The matter will be heard by a disciplinary panel convened for the purpose - as follows:  
(a) In the event of the charge being against an officer below head of service level the disciplinary panel will be constituted by (i) the director or chief officer of the department concerned, or nominated head of service or senior officer, of at least principal officer grade; and (ii) a senior representative of Human Resources. Panel members will be senior in grade to the grade of the officer against whom the charge is made. The department concerned will nominate a secretary to the disciplinary panel.

(b) Action against a chief officer or head of service will be dealt with by a disciplinary panel constituted from an ad-hoc panel of members, representative of the political parties within the Council with the appeal being to the City Council. Appendix (3) to these procedures sets out an agreement produced by the Joint Negotiating Committee for Clerks/Chief Executives, on discipline, capability and redundancy. This agreement provides an agreed mechanism for Members should it be necessary to take action against a Chief Officer or Head of Service.

**6.4** The Head of Human Resources will act as secretary to the members' disciplinary panel.

**6.5** The decisions of the 'officers' disciplinary panel, including dismissal decisions, will be unanimous decisions.

**6.6** Records of all Stage 3 action will be retained departmentally and centrally, in Human Resources Section. The departmental record will be retained on the employee's departmental personnel file.

**6.7** In the event of a final written warning being issued it will lapse after the prescribed period (up to a maximum of two years).

**6.8** The employee will be informed in writing of the outcome of the hearing and the letter will indicate as appropriate;

- 1) The decision of the disciplinary authority
- 2) That this is the third stage of the disciplinary procedure
- 3) The nature of the infringement
- 4) The disciplinary action being taken
- 5) If disciplinary action short of dismissal is taken the period during which the warning will remain effective and that, in the event of a further infringement being found against the employee that action may be taken to apply dismissal.
- 6) The employee's right of appeal against this action.
- 7) The time limit within which an appeal may be lodged.
- 8) If no action is to be taken.

## **7.0 Role of Head of Service**

**7.1** On completion of the disciplinary investigation the investigating officer(s) will present a report of their findings and recommendations to the Departmental Business Support Manager or nominee before a disciplinary hearing is arranged.

**7.2** Following a review of a Stage 3 disciplinary report by the Business Support Manager/ nominee it will be forwarded to the Head of Service who will recommend an appropriate person/ panel to hear the disciplinary case.

**7.3** The disciplinary hearing will be set up by the relevant departmental or service business support section who will be responsible for ensuring all of the relevant information which the investigating officer(s) have relied upon is sent to the employee, along with a copy for their trade union representative, no less than five working days prior to the hearing. A copy of the information will also be sent to the appropriate hearing officers in accordance with the agreed panel structure.

## **8.0 Time-frames**

**8.1** Management will endeavour to conduct all interviews thoroughly and promptly.

**8.2** In support of this, employees are expected fully co-operate in the investigatory process. Corporate Human Resources will work closely with departments to advise and support management in conducting thorough and timely disciplinary investigations.

## **9.0 Right of representation**

**9.1** Council employees in line with the principles of this procedure have the right to be represented at each stage of the disciplinary procedure.

**9.2** An employee who is a member of a trade union recognised by the council for negotiating purposes may be accompanied by a trade union representative. An employee who does not belong to a trade union/ so recognised may be accompanied by a work colleague.

**9.3** Representation under this procedure is restricted to a trade union representative or work colleague, representation by other persons eg family member, legal representative etc is expressly prohibited.

**9.4** Employees will be advised of their rights of representation, by management at the initiation of any action related to the implementation of the disciplinary procedure.

## **10.0 Disclosure of information**

**10.1** It is accepted that if the council chooses to instigate disciplinary action against an employee, the onus is on the council to show just cause and to provide full details of the allegations along with copies of investigatory notes and any other relevant or supporting documentation.

**10.2** It is recognised by the council and the trades unions that the disciplinary process is best served by the mutual disclosure of documentation to be relied upon by each side at a hearing.

**10.3** To this end the documentation to be relied upon at a hearing will be exchanged by each side on an agreed date which will normally be no later than 5 working days prior to the date of the hearing.

## **11.0 Release of information to an employee during an ongoing investigation**

**11.1** As a general rule and in the interests of ensuring a fair and impartial investigation can be completed no information relating to the investigation [other than the minutes of the employee's own investigatory interview(s)] will be released to the employee until the investigating officers have completed the entire investigation and finalised their report.

**11.2** The council recognises an individual's rights to request personal data in accordance with the Data Protection Act, however where release of information during the course of an investigation is likely to prejudice that investigation management will not release this to the employee until the investigation is complete. This does not impact on the employee's entitlement to receive the minutes of his/her own investigatory interviews.

## **12.0 Release of minutes**

**12.1** Where they are requested, minutes of the investigatory meeting/disciplinary hearing will be released to the employee who was the interviewee at that meeting/ to the employee who was the subject of that hearing, where possible, within 10 days of the meeting/ hearing.

**12.2** The employee may submit comments on the minutes, in writing, to the investigating officers/hearing officer within 5 working days of receipt. These comments will be retained with the minutes.

## **13.0 Disciplinary action against trade union representatives**

**13.1** Normal standards apply to the conduct of trade union representatives who are employed by the council. Where disciplinary action is considered in respect of a trade union representative, the matter will be discussed – with the employee's consent – with an appropriate full-time trade union official. In exceptional circumstances an accredited representative may be suspended as a precautionary measure if the

circumstances of the case make it unavoidable. In this instance the full time official will be advised at the earliest possible opportunity.

#### **14.0 Disciplinary records**

**14.1** Adequate records of disciplinary investigations, proceedings and actions will be kept by the Council as follows:

- 1) Full working papers, notes from hearings and copies of all related correspondence and warnings relating to substantiated misconduct and any subsequent appeals processes, will be retained by the department.
- 2) Full working papers, notes from hearings and copies of all related correspondence and warnings relating to substantiated misconduct at Stage 3 of the disciplinary procedure, and any subsequent appeals processes will be retained by Corporate HR.
- 3) Limited information in relation to all disciplinary investigations will be retained on a confidential, electronic case management database.
- 4) Although warnings will be regarded as lapsed at the conclusion of the period to which they relate, they will be held on file for the purpose of using previous records when considering what penalty should be imposed for a disciplinary offence. An employee's service record may be taken into account, only in determining an appropriate penalty once charges of misconduct against an employee have been substantiated, not as an indication or inference of guilt.
- 5) Records relating to unproven disciplinary charges will not be retained on an employee's personnel file. The report of findings prepared by the investigating officers will, however, be retained by the Departmental Senior Business Support representative with HR responsibility.

#### **14.0 Disciplinary action**

**14.1** In the event of allegations being substantiated one or more of the following courses of action may be imposed:

- 1) Verbal warning (which will be valid for 6 months)
- 2) Written warning (which will be valid for up to 1 year)
- 3) Final written warning (which will be valid for up to a maximum of 2 years depending on the nature of the infringement and any mitigating circumstances)
- 4) Transfer to another location
- 5) Downgrading to a post which attracts a lower level of remuneration (with eligibility for consideration for promotion to be withheld for 1 year)
- 6) Demotion to a lower graded post (with eligibility for consideration for promotion to be withheld for 1 year)
- 7) Withholding of an increment (To be withheld for up to 1 year)
- 8) Withdrawal of eligibility for promotion (To be withdrawn for a minimum of 6 months and maximum 1 year)
- 9) Suspension without pay not exceeding two weeks
- 10) Termination of the contract of employment with notice
- 11) Termination of the contract of employment without notice

Note: This list is neither exclusive nor exhaustive and the council reserves the right to take whatever disciplinary action is deemed appropriate according to the full facts of a case.

Note: Points three to ten may only be implemented following a disciplinary hearing convened under paragraph 6.0, Stage Three.

## **15.0 Equality of opportunity**

- 15.1** Issues of a disciplinary nature relating to Belfast City Council's equal opportunity policies will be dealt with under the terms of this procedure.
- 15.2** Appendix (2) of these procedures identifies breaches of equal opportunities policies as at least serious misconduct and "harassment of a sectarian, sexual, or other discriminatory nature and acts of discrimination in contravention of the council's equal opportunities polices" as an example of an offence of gross misconduct.

## **16.0 Suspension and other Precautionary Measures**

- 16.1** Management may need to consider whether there is a need to take precautionary measures while an investigation is conducted. For example, consideration may be given to placing that individual in an alternative location, or on restricted duties, at any stage during their investigation. Any decision in this regard will be taken within the relevant Service in liaison with the departmental Business Support Manager.
- 16.2** Management may need to consider whether there is a need to place those involved on paid precautionary suspension in the event of a potential charge of gross misconduct, while an investigation is conducted. Consideration may be given to placing that individual on paid precautionary suspension at any stage during their investigation. Any decision in this regard will be taken within the relevant Service in liaison with the departmental Business Support Manager.
- 16.3** Such re-location or suspension, which will be with full pay, will be confirmed in writing. The letter confirming suspension will detail the nature of the charge under investigation and the reason for suspension.
- 16.4** Where it appears that there is potential for an allegation to amount to a case of gross misconduct, the departmental Business Support Manager will liaise with the Principal HR Advisor (Employee Relations), before any decision is taken by the Service in respect of precautionary measures.
- 16.5** Normally suspension during a disciplinary investigation should not last for a period of more than 4 working weeks without the employee concerned and their representative being advised of the reasons.
- 16.6** The investigating officers will consult regularly with the Business Support Manager, in conjunction with corporate human resources to assess the requirement for continued suspension, and the employee will be contacted no more than 4 weeks after the initial suspension date and no later than every subsequent 4 weeks thereafter advising them if the suspension is continuing and detailing the reasons for this.
- 16.7** Suspension in these circumstances does not imply any decision about the outcome of the case and should not be interpreted as an indication of guilt.



**16.8** Where initial enquiries indicate that a criminal offence may have been committed, management should notify Corporate Human Resources and Legal Services as soon as possible.

**16.9** Where a trade union representative has indicated an interest in such a case, the representative concerned will be provided with all relevant information concerning the suspension.

### **17.0 Suspension as a means of discipline**

**17.1** If a period of suspension is chosen as the outcome of a stage 3 hearing the panel shall have the discretion as to whether all or part of wages or salary are to be withheld. In such circumstances the period of disciplinary action shall not exceed 2 weeks.

### **18.0 Appeals**

#### **18.1 Appeals against disciplinary action taken by line managers**

An employee who wishes to appeal must do so within 5 working days of the warning being issued. The appeal must be made in writing to the Business Support Officer/Manager who will advise the line manager that the appeal has been lodged. The appeal will be heard by an independent officer senior in grade to the line manager who instituted the disciplinary action, and who has not been directly involved in the institution of the disciplinary process. The officer hearing the appeal will consult with the officer with departmental responsibility for human resource issues prior to hearing the appeal.

The appellant will be notified of the outcome of the appeal in writing within 5 working days of the appeal being heard.

#### **18.2 Appeals against Stage 3 disciplinary panel decisions - other than dismissal**

Where the employee wishes to appeal against a disciplinary panel decision which is other than dismissal there will be a right of appeal to an independent Internal Appeals Board (IAB) comprised of a Senior Representative of Human Resources and an Independent Chief Officer.

Such appeals are to be made, in writing, to the Head of Human Resources within 10 working days of the date of issue of the disciplinary decision.

The appellant will be notified of the outcome of the appeal in writing within 5 working days, of the appeal being heard.

#### **18.3 Appeals against Stage 3 disciplinary panel decisions - dismissal**

Where the employee wishes to appeal against a dismissal there will be the right of appeal to a Joint Appeals Board (JAB) for which a constitution has been agreed between trade unions and management. Such appeals should be made in writing to the Head of Human Resources within 10 working days of the date of issue of the disciplinary decision. (See Appendix (4) for Constitution of Joint Appeals Board).

### **19.0 Training**

**19.1** All managers and supervisors, who will be required to implement the disciplinary procedure, will be fully trained in the principles and practice of disciplinary action.

A model of the disciplinary procedure, in 'flow-chart' format is set out at appendix (5).

## **Appendix 1**

### **Disciplinary procedures - non-permanent employees/workers**

Non-permanent employees/workers (seasonal; casual employees but not employees of fixed-term contracts\*) considered to have committed an act of indiscipline or of failing to undertake their duties in a satisfactory manner will be dealt with in accordance with the principles of 'best-practice' set out in the City Council's disciplinary procedures.

However, it is likely, taking into account operational constraints that action for such non-permanent employees will take the form of either a stage 1 or 2 warning for minor offences (administered by the appropriate line manager) or a decision from the head of service for dismissal in respect of proven serious/gross offences.

Non-permanent employees will be treated in accordance with the principles inherent in the Disciplinary Procedures for Permanent Employees.

1. Disciplinary matters will be the subject of preliminary investigation and report by the line manager responsible. (A line manager may also administer appropriate disciplinary action for minor offences - guidance should firstly, however, be sought from the departmental officer responsible for human resources matters.)
2. More serious/gross offences will be investigated by an officer of at least the same grade as the line manager who reported the matter. The results of this investigation will be forwarded to the head of service concerned (or nominee).
3. Such investigation will include a 'face to face' meeting with the employee under investigation to enable them to answer the charges put.
4. Decisions to dismiss will be taken by the head of service concerned, after consultation with the departmental officer responsible for human resource issues.
5. Letters of dismissal will specify the reason for dismissal and afford a right of appeal to the director of the department concerned or nominee. Notice of appeal must be given, to the director, in writing, within 5 working days of the decision being issued.
6. Throughout the process the right of representation by a trade union representative or colleague will be offered.
7. To ensure consistency of action, the Human Resources Section will be kept informed of the disciplinary action taken. A decision to dismiss will however be discussed with Human Resources before it is implemented.

\*NB Employees on fixed-term contracts will be treated as permanent employees in respect of disciplinary matters and afforded full rights of permanent employees under the procedures.

## **Appendix 2**

### **1. Examples of minor misconduct**

Disobedience of orders, including failure to observe the operational regulations of the employing department

- Minor insubordination
- Absence without leave from duty
- Neglect of duty

### **2. Examples of serious misconduct**

Serious misconduct in relation to official documents

- Breach of the Council's equal opportunities policies
- Improper disclosure of information of a serious nature
- Abuse of managerial authority
- Abuse of official authority
- Conduct at work likely to offend decency
- Neglectful damage to Council property
- Being under the influence of drink or drugs at work (other than those which have been medically prescribed).

The above lists, contained in (1) and (2) above, are neither exclusive nor exhaustive, and disciplinary action may be taken with regard to other offences if the circumstances warrant it. The above examples may, in certain circumstances, or for certain categories of employees, be construed as serious or gross misconduct.

### **3. Examples of gross misconduct**

Gross Misconduct is misconduct of such a nature that the Council is justified in no longer tolerating the continued employment of the employee.

Examples of offences of gross misconduct which, if committed by an employee of the Council, may lead to dismissal include:

- unauthorised removal of the Council's property
- harassment or victimisation of a sectarian, sexual or other discriminatory nature.
- acts of discrimination in contravention of the Council's equal opportunities policy.
- failure to comply with a reasonable instruction
- stealing from the Council, its members, members of staff or the public and other offences of dishonesty
- corrupt practices
- fighting, physical assault or dangerous horseplay
- falsification of claims for payment e.g. subsistence and expenses; sick pay, hours worked, overtime, bonus etc
- falsification of qualifications which are a stated requirement of employment or which result in financial gain
- malicious damage to the authority's property
- corrupt practices or actions in conflict of interest with the Council
- breaches of safety regulations which may endanger other people, including deliberate damage to, neglect of, or misappropriation of safety equipment
- misconduct in relation to official documents and improper disclosure of confidential information
- obscene behaviour

This list is neither exclusive nor exhaustive and in addition there may be other offences of a similar gravity which would constitute gross misconduct.

## **Appendix 3**

### **Agreement on discipline, capability and redundancy, 1996**

Joint Negotiating Committee for Clerks/Chief Executives to Local Authorities in Northern Ireland

This agreement was formally concluded by the Joint Negotiating Committee for Clerks/Chief Executives to Local Authorities (hereinafter referred to as the "JNC") on the Seventeenth day of December one thousand nine hundred and ninety-six.

#### **Application**

1. The procedures set out in this Agreement are for use in cases relating to discipline, capability and redundancy. The Joint Secretaries of the JNC should be notified as soon as it is proposed to use any of these procedures and both parties are also recommended to contact the appropriate Side Secretary as soon as possible to ascertain whether more detailed assistance might be desirable.
2. The Joint Secretaries are available at any stage in the procedures to act in an impartial conciliation role if required to do so by either party (although conciliation is more likely to be of assistance before matters have progressed too far).

#### **Discipline**

Note: Authorities are recommended to have full regard to the provisions of Code of Practice 2 (Disciplinary Practice and Procedures in Employment) issued by the Labour Relations Agency.

3. Where a question of discipline is raised in connection with a chief executive, it should normally be for a group of not fewer than three elected members appointed by the Chairman of the Council to carry out a preliminary and careful investigation. As part of this investigation the elected members concerned should take into account any explanations given by the chief executive. During the investigation the chief executive has the right to be represented by his trade union representative or some other person of his choice, not being a barrister or solicitor appearing in a professional capacity. If, following this preliminary investigation, the elected members are satisfied that the matter requires further consideration, an Investigating Committee should fully investigate the matter. The Investigation Committee should be the committee of the Council which normally deals with personnel matters. The membership of the Investigating Committee must have political balance. It should not include any member with a direct personal involvement in the complaint or any of the members who carried out the preliminary investigation. At this stage no record of the investigation should be entered on the chief executive's personal file.
4. If at any stage it is felt appropriate, the chief executive may (subject to whatever consultation or approval may be required under the authority's standing orders) be suspended from duty on full pay pending further investigation. Written notice stating reasons for any such suspension shall be given. The suspension may be for a maximum of two months only and shall be subject to any direction of the Independent Person, appointed under paragraph 6, who may direct the authority to terminate the suspension, to continue it, or to vary its terms.
5. The decision to have a full investigation should be communicated in writing to:

- the chief executive and at his request to any trade union of which he is a member; and
  - the Joint Secretaries of the Joint Negotiating Committee.
6. At this stage it will be necessary for the authority and the chief executive to agree to the appointment of an Independent Person. If the parties cannot agree on an Independent Person, the Independent Person shall be appointed by the Chairman of the Local Government Staff Commission.
  7. The chief executive shall be given not less than ten working days' notice of the meeting of the Investigation Committee and should at the same time be given full details of the complaints made against him. Within this time the chief executive has the right to request:
    - that he be given further details of the complaints made against him; and
    - a postponement of the meeting for a period to be agreed between the parties or, in default of agreement, for a period not exceeding 14 days.
  8. The chief executive shall be informed of his right (a) to challenge the case against him and to present his case to the Investigating Committee; (b) to be represented at the meeting by his trade union representative or some other person of his choice, not being a barrister or solicitor appearing in a professional capacity; (c) to call any witnesses whom he considers appropriate; and (d) to demand the production of any documents which he considers relevant.
  9. At the hearing, after any statement in evidence (including witnesses) in support of the complaint, the chief executive may give evidence, call witnesses and produce documents. The person making any statement on behalf of the employing authority, the chief executive (or his representative) and each witness may be questioned on his statement or evidence by the other party and by members of the Investigating Committee. The person presenting the complaint and finally the chief executive or his representative shall then have the right to sum up at the end of the hearing and in no case should the Committee hear one party without the other being present.

#### **Role of the independent person**

It shall be the duty of the independent person appointed in accordance with paragraph 6 above to prepare a report. At his discretion, the report may be prepared either before the Investigating Committee hear the evidence, or after the Committee have heard, in the presence of the Independent Person, the evidence and summing up of both sides relating to the proposed disciplinary action, but before they reach any conclusions. The JNC recommend that the Independent Person prepares the report after the Investigating Committee have met and heard the case of both sides, unless an interim report is requested before the committee meets.

Note: The authority shall pay the remuneration of the Independent Person together with any costs incurred by him in connection with the discharge of his functions under this Agreement.

10. The Independent Person shall, at his discretion, have power at any stage in the proceedings at which he considers appropriate:
  - a. to direct that no further steps (whether by the authority or any committee, sub-committee or officer of theirs) should be taken in respect of the disciplinary action proposed or contemplated;
  - b. to direct that any suspension shall end, and the chief executive shall be reinstated;

- c. to direct that no steps towards disciplinary action or further disciplinary action against the chief executive, other than steps taken in the presence or with the agreement of the Independent Person are to be taken, before a report is made in accordance with paragraph 12 below;
- d. to inspect any relevant documents in the possession, or under the control, of the authority, and any other documents which any person is prepared to show to him;
- e. to require any employee of the authority to answer questions concerning the conduct of the chief executive providing that if any such employee has not been called to give evidence the person presenting the complaint on behalf of the authority and the chief executive (or his representative)
- f. may question the employee (in an appropriate forum) on the answers given to the Independent Person.

The report of the Independent Person shall

- a. state his opinion as to whether (and if so the extent to which) the evidence he has obtained supports any allegations of misconduct against the chief executive; and
- b. recommend the disciplinary action or range of actions which appear to him to be appropriate for the authority to take against the chief executive.

The Independent Person shall at the same time send a copy of his report to the chief executive.

#### **Recommendations of the investigating committee.**

The Investigating Committee should recommend a course of action to the full Council or other committee having the power of final decision, and the Chief Executive should be informed of their recommendations within ten working days and at least four weeks prior to the meeting of the Council (or committee).

The Investigating Committee may, subject to paragraph 15, recommend, according to the severity of the case, any of the following forms of action:

- o recorded oral warning
- o written warning
- o suspension on half pay or no pay for a specified period
- o relegation (e.g. a reduction in salary) for a specified period
- o an invitation to resign or accept retirement
- o dismissal with notice.

No disciplinary action may be recommended other than in accordance with a recommendation in the report of the Independent Person.

The chief executive shall have the opportunity to appeal against the recommendation by presenting a written submission when the matter is considered by the council or appropriate committee. He or his representative shall have the right to attend this meeting and speak to the written submission. Members who sat on the Investigating Committee may attend and clarify points of information as necessary, but should not participate during the final consideration in the meeting of the council or appropriate committee.

The council or appropriate committee should consider the recommendation of the Investigating Committee in the light of the written and oral submissions made and reach a final decision. The council or committee may not impose a penalty other than in accordance with the recommendations in the Independent Person's report (see paragraph 12(b) above); and arrangements should be made to ensure that the Independent Person is in attendance

or readily accessible in case any matter requires further explanation or clarification. The employing authority should bear in mind throughout all stages of the procedure the desirability of treating the matter as confidential until a final decision has been reached.

### **Gross misconduct**

When a case appears to be one of gross misconduct, normally the chief executive should (subject to whatever consultation or approval may be required under the authority's standing orders) be suspended from duty on full pay pending further investigation. The suspension will initially be limited to a period of two months. An Independent Person must be appointed, and will have the same powers and responsibilities as set out in paragraphs 3 - 17. An investigation should be conducted by an Investigating Committee (formed in accordance with paragraph 3 above) as speedily as possible, and as part of this investigation the chief executive must be given the opportunity to submit his explanations (if he so wishes). For gross misconduct a chief executive can be dismissed without notice, if such a course of action is in accordance with the recommendations in the report of the Independent Person.

### **Capability**

Note: The procedure for capability may need adaptation where medical fitness is in question. Authorities should bear in mind the advantage of a third medical opinion where their own medical adviser and that of the chief executive are not in agreement. In the case of permanent ill health an Independent Person need not be appointed.

Paragraph 3 of the disciplinary procedure (providing for a preliminary investigation) shall apply also to any question or complaint as to the capability of the chief executive to fulfil the duties and responsibilities of the post, including any alleged failure by the chief executive to establish and maintain a satisfactory working relationship with the Council.

If the elected members making the preliminary investigation conclude that there is a question of substance as to the chief executive's capability, they should advise the chief executive informally of the nature of that question, of the ways in which the performance should improve and (unless there has been a previous warning or there is evidence of serious incapability which is not likely to be remedied within a reasonable time) a period of time after which the matter will be reviewed. This period should be sufficient to allow the chief executive a reasonable opportunity to show either an improved performance or that the conclusion of the preliminary investigation was mistaken. At this stage no record of the investigation should be entered on the officer's personal file.

If, after paragraph 20 above has been complied with, there remains a substantial question as to the chief executive's capability, the question shall be referred to an investigating Committee and the disciplinary procedure (including the provisions for appeal) as outlined in paragraphs 3 to 17 above shall apply except as varied below. An Independent Person will also need to be appointed in accordance with paragraph 6 above, except in the case of permanent ill health (see above note).

If, as a result of the investigation by the Investigating Committee, it is concluded that the chief executive is not carrying out his duties and responsibilities to the level of capability that the employing authority genuinely believes is required, it should be considered whether an alteration in duties and responsibilities may be appropriate. If this is not regarded as appropriate, the Investigating Committee should consider the possibility of either a recorded oral warning or a written warning with the provision of a reasonable amount of time for the chief executive to meet the requirements of his post or (if there has been a previous written warning or the Investigating Committee judge the incapability to be fundamentally



irremediable) dismissal with notice. A satisfactory outcome may alternatively be achieved by the chief executive undertaking actively to seek other employment, resigning or accepting retirement.

It will be necessary in cases of capability for an Independent Person to be appointed as above. Any disciplinary action taken against the chief executive must be in accordance with a recommendation in the report of the Independent Person.

### **Redundancy**

Note: An independent person need not be appointed in cases of redundancy.

Employing authorities should consult with the chief executive at the earliest possible stage when there is a suggestion that the chief executive's post might be abolished or proposed for abolition. If, following a proper investigation, a proposal to abolish the post of chief executive has been put forward by an employing authority, or an appropriate committee or sub-committee so that there is a possibility of the redundancy of the postholder, then the Procedure for Handling Redundancies, as set out in Article 49 of the Industrial Relations (Northern Ireland) Order 1976, should be followed. The information required to be disclosed under that Order should be communicated in writing to:

- The chief executive and a representative of an independent trade union recognised by the employers for collective bargaining purposes for the chief executive; and
- The Joint Secretaries of the Joint Negotiating Committee.

Receipt of this information by the chief executive should commence the consultation period which shall be at least 28 days (four weeks) duration. During the course of these consultations the possibility of suitable alternative employment should be considered. In the light of these consultations the employing authority should first consider the proposals and any representations made by or on behalf of the chief executive and only then take whatever decision it considers appropriate. The employing authority should bear in mind throughout this procedure the desirability of treating the matter as confidential until a final decision has been reached.

The authority should also bear in mind the application of the provisions of Regulation E2 of the Local Government (Superannuation) Regulations (Northern Ireland) 1992 which permits early payment of superannuation benefits to officers made redundant at age 50 or over. The possibilities of providing an alternative post or of extending the period of notice to assist the chief executive in finding other employment should also be considered.

**Note:** In this Agreement the masculine gender shall import the feminine where the circumstances so require.

Signed the day and year first herein written by  
RAYMOND MCKAY, Employers' Side Secretary and JOHN KEANIE, Staff Side Secretary

## **Appendix 4**

### **Joint Appeals Board**

#### **1. Composition**

The Joint Appeals Board shall consist of one Director or Head of Service of a department other than that in which the disciplinary action has arisen; a full-time paid union official from a union other than that of which the appellant is a member; and one member from an independent panel whose members are jointly agreed by management and unions.

#### **2. Chairperson**

The independent member shall act as chairperson.

#### **3. Secretary**

The Head of Human Resources or nominated senior officer shall act as secretary.

#### **4. Specialist Advisors**

At the discretion of the chairperson one or more specialist adviser/s chosen for professional expertise or specialist knowledge may be invited to sit as ex-officio members of the board. Such specialist adviser/s shall have no input to the decision on the appeal other than the provision of specialist advice.

#### **5. Notice of appeal**

When an appeal to the board is being lodged, the appellant shall within ten working days of the disciplinary action giving rise to the appeal submit in writing to the Head of Human Resources notice of his/her intention to appeal, outlining the grounds on which the appeal is based.

#### **6. Hearing of the appeal**

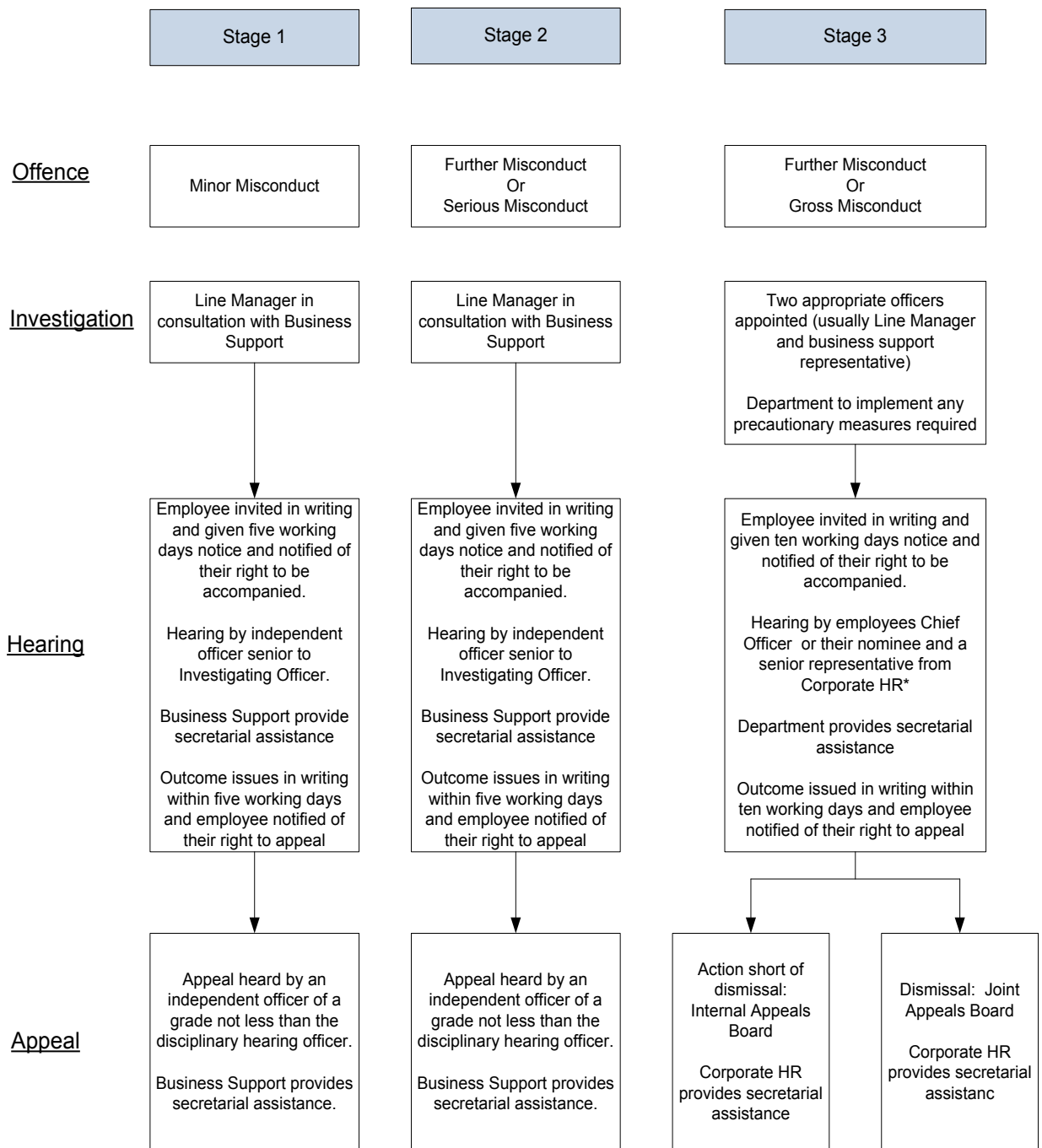
The Head of Human Resources shall notify all parties and convene the board to hear the appeal within 4 weeks of receipt of the letter of appeal, unless altered by mutual agreement.

- a. During the hearing the secretary and specialist advisers shall only give advice if required to do so by the chairman.
- b. At the appeal hearing members of management who were directly associated with the disciplinary action shall present to the board the case for such action and shall at the time call any witnesses they consider relevant.
- c. The appellant and his/her representative (if any) shall be entitled to be present throughout the presentation of the case.
- d. When the management case has been completed the appellant or his representative shall present the appeal and may call any necessary witnesses. (Witnesses shall not be present other than when actually giving evidence. After a witness has given his evidence, he/she may, with the approval of the chairperson, be subject to cross-examination by the opposing representative.)
- e. Following the hearing the board shall require the withdrawal of both parties to the case and shall then consider a decision. It shall be function of the chairperson to seek to obtain a majority decision. The board may, if they consider it appropriate, substitute a lesser penalty.

#### **7. Notification of decision**

The Secretary shall notify in writing to management and the appellant the decision of the Appeals Board within 5 days, and shall be responsible for ensuring that the board's decision is implemented within the organisation without delay.

## Appendix 5



\*See Appendix 3 for  
arrangements for disciplinary  
process for Chief Officers