

SUPPLEMENTARY PACK 1

Employment
Committee

Ann Good

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8 November 2016

To All Members of the Employment
Committee,
Internal and External Circulation and
Press (for open papers only).

Dear Councillor,

Re: Employment Committee Agenda - Tuesday, 15th November, 2016

Further to the compilation of the above Employment Committee Agenda, please find enclosed the following reports which were detailed to follow on your Agenda:

Agenda Item 6. Appeal against Dismissal: (Pages 1 - 130)

Please accept my apologies for any inconvenience caused.

Yours sincerely,



Senior Democratic Services Officer

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EAST LINDSEY DISTRICT COUNCIL REPORT

COMMITTEE: EMPLOYMENT COMMITTEE
DATE: 15TH NOVEMBER 2016
SUBJECT: APPEAL AGAINST DISMISAL
PORTFOLIO HOLDER COUNCILLOR GRAHAM MARSH
Ward(s) affected: N/A

Brief description of report content and the decision being asked for:

Summary:

This report considers an Appeal against dismissal from an employee who was dismissed with effect from 9th September 2016.

Recommendations:

That Members either uphold or dismiss the Appeal

This report has been prepared by:

Rachel Robinson, HR Manager (Manby), CPBS.
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This report was prepared after consultation with:

Victoria Burgess, Strategic Development Manager

This report is number 1 in a series of 1.

This report has been signed off by:

Claire Burton, HR Manager (Spalding), CPBS.
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The following policies form a context to this report:

Disciplinary Procedure

This report is not a key decision included in the Forward Plan.

LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW

(papers relied on to write the report but which are not published and do not contain exempt information)

1. None

OTHER HELPFUL PAPERS

(papers which the report author considers might be helpful – this might include published material)

1. None

Local Government (Access to Information Act) 1985

**Is the report Exempt – No
Appendices are Exempt as marked**

If Yes (a) Not for publication by virtue of paragraph 1 and 2 of Part I of Schedule 12A of the Local Government Act 1972
(b) Give the reasons why the exemption outweighs the public interest in disclosing the information.

If No please delete all text following the initial declaration (in bold)

**Please contact the person who has written this report or
Victoria Burgess
Tel. No. 01507 613214
e-mail: Claire Burton if you want more information about this report
or the background papers.**

1.0. INTRODUCTION

- 1.1. The Council Disciplinary Procedure allows for an employee to appeal against their dismissal, to the Employment Committee, if they believe their dismissal was unfair or unjust.

2.0. BACKGROUND

- 2.1. An employee was summarily dismissed (dismissal without notice) on 9th September 2016. The employee has not produced any further evidence to consider. Her appeal letter dated 23rd September 2016 appeals against the dismissal on the following grounds:
 - I feel the decision was very unfair and I would like to formally appeal against this

3.0. SUBJECT INFORMATION AND ISSUES/FACTS AND FIGURES

3.1. A number of documents are attached to this report as follows:

Appendix	Document	Page
Appendix 1	The procedure to be followed by the Committee to deal with the Appeal	Pack 1 Page 7
Appendix 2	A copy of the Council's Disciplinary Procedure	Pack 1 Pages 9 - 30
Appendix 3	The bundle of information considered at the disciplinary hearing on 7 th September 2016	Pack 1 - Pages 31 – 130 Pack 2 - Pages 1 – 74 Pack 3 - Pages 1 - 56
Appendix 4	Minutes of the Disciplinary Hearing held on 7 th September 2016	Pack 4 Pages 1 - 34
Appendix 5	Correspondence following the dismissal	Pack 4 Pages 35 - 40

3.2 The Committee should follow the procedure at Appendix 1 and, based upon the balance of probabilities, decide to either uphold the appeal and reinstate the employee with a lesser sanction, or to dismiss the Appeal. Members should note that if the Appeal is dismissed the employee could seek redress through an application to an Employment Tribunal. HR support from Compass Point Business Services (CPBS) will be provided to the Committee during the course of the Appeal Hearing.

3.3 A copy of the Appendices listed above has been given to the dismissed employee along with a copy of this report. The employee is entitled to be accompanied at the meeting by a representative of her choice.

4.0. SUPPLEMENTARY FACTS

4.1. N/A

5.0. COUNCILLOR COMMENTS – If no comments are received from one or more of the Ward Members consulted state which Councillor(s) did not respond

5.1. N/A

6.0. DISCUSSION / CONSIDERATION – ISSUES / CONCLUSION – including reasons for recommendation(s)

6.1. N/A

7.0. OTHER OPTIONS FOR CONSIDERATION (drawn from previous sections)

7.1. N/A

8.0. PERFORMANCE MONITORING

Subject	Deadline	Responsible Officer
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8.1. N/A

9.0. RISK ASSESSMENT

9.1. Reputation risk if the employee submits an application to an ET and succeeds.

10.0. FINANCIAL CONSIDERATIONS/IMPLICATIONS

10.1. None from the report with potential financial liability if the appeal is dismissed and the employee claims unfair dismissal and is successful.

11.0. LEGAL CONSIDERATIONS/IMPLICATIONS

11.1. Employee has statutory employment rights and she can exercise these rights if she considers the decision made by the Committee is unfair.

12.0. INCLUDE IF APPROPRIATE AND ONLY BRIEF EXPLANATION OF ISSUE

12.1. **Environmental issues** – N/A

12.2. **Human Resources** – Employee has the right to submit an application to an ET

12.3. **Section 17** – N/A

12.4. **FOI/Human Rights/Data Protection** – N/A

12.5. **Equality and Diversity** – N/A

13.0. RECOMMENDATIONS

13.1. That members either uphold or dismiss the appeal

REASON: Forms part of the Council's disciplinary procedure

14.0. HOW DO THE ACTIONS/RECOMMENDATIONS CONTAINED IN THIS REPORT DELIVER OUR COMMUNITY AND CORPORATE STRATEGIES?

14.1. N/A

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APPENDIX 1

EMPLOYMENT COMMITTEE

PROCEDURE FOR APPEAL AGAINST DISMISSAL

1. The dismissed employee presents his/her case along with any witnesses.
2. The Dismissing Officer, can question the dismissed employee, or any witness.
3. Members of the Employment Committee can question the dismissed employee, or the witnesses.
4. The Dismissing Officer presents the case to explain the reasons why the dismissal took place. He/She can also produce any witnesses.
5. The dismissed employee can question the Dismissing Officer and/or the witnesses.
6. Members of the Employment Committee can question the Dismissing Officer/Witnesses.
7. The Dismissing Officer will have the opportunity to summarise his/her reasons for the dismissal.
8. The dismissed employee will have the opportunity to summarise his/her case.
9. Both parties will leave the Committee Meeting and the Committee will make its decision.
10. The decision will be conveyed in writing to the Dismissed Officer to confirm the Committee's decision.

Note:

The dismissed employee has the right to be represented at the meeting and that representatives can make the case on behalf of the dismissed employee.

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Disciplinary Procedure



This policy advises on the process of investigating and conducting a disciplinary hearing and the appeal process. It defines the procedure to follow in relation to conducting the hearing and the roles and responsibilities associated with the disciplinary process. The policy adheres to statutory UK legislation and ACAS best practice. The Council ensures it is a fair, equitable and transparent policy with the needs of employees at heart. The Council ensures compliance with equality & diversity making sure consideration is given to the needs of its employees, balancing these with the needs of the business.



DISCIPLINARY PROCEDURE

This procedure has been developed to ensure adherence to the following legislation:

- The Employment Rights Act 1996
- The Employment Relations Act 1999
- The Employment Act 2008

This document sets out the formal Disciplinary Procedures as agreed between East Lindsey District Council, UNISON and GMB and applies to all employees of East Lindsey District Council. The purpose of this procedure is to provide a clear and transparent process to deal fairly and equitably with any shortfalls in conduct or behaviour.

Disciplinary action will only be considered if the procedures contained in this document have been followed. The procedure deals with formal disciplinary and informal action. Any types of informal action, as part of the day to day management exercised by Team Leaders, such as informal discussions relating to minor conduct issues, are not subject to the formal procedures contained in this document.

Supporting Documents

This Procedure should be read in conjunction with the Council's People Strategy, HR Policies and Procedures listed below. These will be applied fairly irrespective of the race, colour, creed, nationality, age, social background, ethnic or national origin, gender, sexual orientation, disability, marital status/civil partnership, maternity/pregnancy or trade union membership of the employee concerned, and include:

- Employee Code of Conduct
- Grievance Policy
- Dignity at Work Policy
- Performance Improvement Procedure Sickness Absence Policy

Scope of the Procedure

The Procedure applies to all employees who report to the Council, excluding the Chief Executive, Section 151 Officer and Monitoring Officer. These are statutory roles and separate procedures apply. These are set out in the Council's Constitution

When to Apply the Procedure

The purpose of the procedure is to ensure when standards of conduct or behaviour fall below the required level, they are addressed in a fair and

consistent manner. The procedure is a way of encouraging improvement, but may also involve sanctions where appropriate.

Examples of issues, which will be dealt with as disciplinary matters include:

- Unauthorised absence
- Abuse of sickness leave
- Failure to follow ELDC's policies or procedures
- Non-compliance of a reasonable instruction
- Misuse of email or internet
- Breach of the Code of Conduct

Some issues are considered so serious that they constitute gross misconduct for which employees will be liable to summary dismissal without notice or payment in lieu of notice. Gross misconduct is misconduct of a serious and fundamental nature that it breaches the contractual relationship between employee and organisation. Examples of gross misconduct include:

- Theft, fraud or deliberate falsification of records
- Unlawful discrimination or harassment
- Physical violence, actual or threatened, against or in the vicinity of another person
- Incapability whilst on duty brought on by alcohol or illegal/non-prescribed drugs
- IT crimes
- Serious breach of trust and confidence
- Serious breach of Health and Safety practices
- Bringing the organisation into serious disrepute
- Serious insubordination
- Serious misuse of council name or property

These lists are not exclusive or exhaustive.

Considerations When Applying this Procedure

Sickness

Absence through disability will not normally be considered a disciplinary issue. Such problems shall be considered compassionately by the Council subject to, if appropriate, Equality Act 2010. Continuous short-term absences may be dealt with through the disciplinary procedure, subject to the correct procedures being followed under the Sickness and Absence Management Policy. In the case of work performance when the employee lacks the appropriate level of skill to perform their job to the required standard, this will be treated as a capability issue and dealt with under the Performance Improvement Policy.

Poor Performance

In cases of unsatisfactory job performance Team Leaders should refer to the Performance Improvement Policy, unless the underperformance is a purposeful neglect of duties, which is a disciplinary issue.

Criminal Action

Disciplinary procedures will not automatically be applied if an employee is subject to criminal charges or convictions. The Council will investigate the facts as far as possible and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure.

Union Roles

Disciplinary procedures will not be instigated against a trade union steward/representative until the circumstances have been discussed with the full time official: with the exception of suspending the employee in the case of suspected gross misconduct.

Team Leader Roles

Team Leaders who are considering instigating the formal Disciplinary Procedure should consult with an HR Business partner before proceeding with this process. Team Leaders who disregard these procedures or attempt to shortcut them may find themselves subject to disciplinary investigations.

Informal Action

In the event of an apparent minor breach of rules or appropriate standards of behaviour or conduct, informal action may be a more appropriate method of bringing about change. Issues that may be dealt with informally include:

- Poor timekeeping
- Minor conduct issues

In such cases the immediate line manager will arrange an informal meeting with the employee concerned. The line manager will present the alleged facts of the situation to the employee and express his/her concerns. The employee must be given a full opportunity to respond and explain the reason for his/her conduct or behaviour.

At the conclusion of the meeting, the Team Leader should make a brief note with both parties agreeing and signing the content as a true record. This will ensure both parties are clear about the issues, future expectations, any agreed action plan and the possible implications should these not be met. This note should then be passed to HR to be retained on the employee's personal file.

The Team Leader must make it clear to the employee that any actions at this stage are of an informal nature, and that they in no way constitute any kind of formal procedure or warning. However a repeat of the issue may trigger formal action in the future.

Formal Discipline

The Council has produced a Code of Conduct and other documents setting out rules, regulations and expected conduct. A full list is located on the intranet (via the HR A to Z) and also may be obtained from the HR department, (CPBS).

An HR policies and procedures folder is available at all sites where employees do not have IT access. Such documents are the primary means by which the Council informs its employees how it expects them to conduct themselves when carrying out their duties.

Any employee conducting themselves in breach of the Council's Code of Conduct or agreed policies and procedures may be subject to formal disciplinary action. Persistent, minor breaches or serious breaches will be subject to formal disciplinary action. A full investigation will be undertaken before any disciplinary action is implemented.

Responsibility for Formal Disciplinary Matters

Each Team Leader is responsible for discipline within their service.

Formal responsibility for chairing a disciplinary hearing may be delegated by the Team Leader to another Team Leader within the organisation; for example, where the Team Leader has been involved in the disciplinary investigation. Delegations below Team Leader can be made but only in exceptional circumstances and advice from HR should be sought before this is agreed.

Any formal sanctions awarded at a disciplinary hearing will be confirmed in writing by the Chair of the hearing up to 5 working days after the hearing.

Procedure for Investigating Formal Disciplinary Issues

The Team Leader will contact HR regarding any incident that will require a disciplinary investigation. An appropriate trained investigating officer will be appointed to carry out the disciplinary investigation. The officer appointed must not have been involved in the matter being investigated. Once the officer is assigned they must make conducting the investigation a priority to ensure that it is completed in a timely manner.

The investigation of any potential disciplinary matter is extremely important and confidential. It is critical that the proper steps are taken.

- a) The employee must be informed of the investigation, in writing by the Team Leader. The letter must make it clear what the specific allegation is and why it constitutes misconduct. The employee must be informed of the nature of the allegation and if they will be contacted by the investigating officer to take a statement regarding the allegation. Such an initial enquiry does not constitute any form of disciplinary action.
- b) The investigating officer will follow the conducting investigation guidelines (**Appendix 1**). This guidance also provides employees with information on what they should expect if they should be investigated.
- c) The investigating officer will contact the employee implicated and arrange a meeting in order to take a statement regarding the events to be included in the investigation report. Whilst there is no Statutory right to be accompanied by a Trade Union representative or colleague to an investigation meeting the organisation allows the employee to be accompanied during the investigation meeting if they wish.
- d) The investigation should normally be completed within 28 days from the date of the first contact with the employee. In exceptional or complex situations the investigation may take longer to complete. If the investigation needs to be extended beyond 28 days the employee will be informed in writing detailing the reason for the extension. Investigations into potential gross misconduct should take a shorter period of time.
- e) At the conclusion of the enquiry the investigating officer will present the Team Leader with an investigation report detailing the findings of the investigation and recommending appropriate action. The options available are:
 - The allegation is dismissed (in this case any records of the investigation will be destroyed and will not be retained on the employees personal file)
 - The matter be subject to informal discussions outside the remit of this procedure
 - A formal disciplinary hearing is convened

Suspension

The Team Leader shall inform the employee if they are to be temporarily suspended for a specified period on full pay and explain why this is considered necessary. It may be necessary to enable accurate and necessary information to be gathered, when working relationships have broken down, or there is a risk to employees or the organisation. Where a suspension from certain duties is necessary, the employees pay will not be affected.

Temporary suspension shall usually take place for allegations of gross misconduct or where there is risk to people or property to avoid the employee or the Council's position being compromised. However, such temporary suspension does not in any way constitute disciplinary action, penalty or sanction, nor does it prejudice the employee's case.

Suspension is a neutral act and does not presume guilt or serve as a disciplinary sanction. If an employee is suspended from work or duties, they will have the suspension verbally confirmed by a Team Leader or Strategic Development Manager and this will be confirmed in writing within 5 working days. Any suspension will be reviewed to ensure it does not become unnecessarily protracted and the Team Leader will keep the employee updated as to the progress of the investigation if it is taking longer than initially expected. If it is necessary to continue the suspension period for more than 28 days, the employee will be informed of this in writing with an explanation as to why the extension of suspension has been necessary.

Investigation Outcome

The employee will be notified in writing of the outcome of any investigation by their Team Leader. If it is decided that the allegation(s) is substantiated and a disciplinary hearing is required, the employee will receive written notification of the date of the hearing together with those attending, the right to be accompanied, full details of the allegations made and copies of all documentation gathered by the Investigating Officer. Witness statements will only be anonymous where the witness' safety may be threatened if their identity is revealed.

The employee has a right to be accompanied at the hearing by their trade union representative or work colleague. Solicitors will not be permitted as a companion except in exceptional circumstances and at the discretion of the Chair of the hearing. If the chosen representative is not available, the employee can propose an alternative date and that date must be within 10 working days of the date of the proposed hearing date. Any decision to re-arrange the hearing date is made by the Chair of the hearing. The role of the companion in the hearing is to:

- Put the employee's case forward
- Respond on the employee's behalf to any view expressed at the hearing.
- Confer with the employee

They are not permitted to:

- Answer questions on the employees behalf
- Address the hearing if the employee does not wish them to do so
- Prevent the employer from explaining their case

The Team Leader shall arrange a hearing date convenient to them and the employee taking into account the availability of the employee's chosen representative and any key witnesses. The employee will be notified in

writing of the date, time and venue of the hearing. The letter should also include:

- Details of the allegation
- Who will chair the disciplinary hearing
- Inform the employee of their right to be accompanied and to present any additional information up to 2 days prior to the date of the hearing. Any information presented after the stipulated 2 days can be accepted for consideration at the discretion of the Chair.
- Include the investigation report and any appendices
- Indicate what the potential outcome of the disciplinary hearing will be (if applicable, the letter must indicate if dismissal is a potential outcome).

The employee will be notified in writing of when the disciplinary hearing will take place. Any correspondence will be drafted by an HR Business Partner before being sent out to the employee. The employee should be given a minimum of **5 working days' notice** of any hearing.

The Team Leader may either cancel the disciplinary hearing, or postpone it to a later date, if after receiving a further submission from the employee prior to the hearing, it is clear a disciplinary hearing is inappropriate or further investigations are required. In these circumstances the position will be clarified, in writing, to the employee.

If a grievance is raised during the disciplinary process it may be appropriate to suspend the disciplinary process until the grievance has been resolved. If the grievance raised is linked to the disciplinary hearing both processes may run concurrently.

If an employee is absent from work due to sickness when they are first informed of the allegations against them or during the investigation, the disciplinary investigation will continue, as far as possible, in the absence of the employee.

If the employee is unable to attend a disciplinary hearing because of illness that is attributed to the disciplinary process ie. Stress related, it may be in the employee's best interest to proceed with and conclude the disciplinary process. In these cases the Council may request to write to an employee's GP to receive advice as to whether an employee is fit to attend a disciplinary hearing.

If an employee wishes not to attend the disciplinary hearing they can send a representative in their place, or submit a written statement for the Chair's consideration. It is strongly recommended that employees opt to attend the disciplinary hearing to allow them to state their case, answer any questions that the Chair may have and to offer any mitigating circumstances that may be present.

If an employee repeatedly fails to attend a disciplinary hearing a decision may be made to hold the meeting in the employee's absence. In this

instance the Chair will take into consideration all of the evidence available at the time.

The Chair should make any reasonable adjustments, if requested, by an employee who has a disability. Advice should be sought from an HR Business Partner if a request is made.

Hearing Procedure/ Conduct

The Team Leader will Chair the hearing. An HR Business Partner, (CPBS) will accompany the Chair to the hearing and operate in an advisory role. The procedure to be adopted is as follows:

- Introduction by the Chair to explain the procedure
- If the employee is not represented to remind the employee of that right.
- If the employee wishes to be represented the Chair can consider adjourning the hearing
- The investigating officer presents the allegation(s) and the facts gathered and produce witnesses if appropriate
- The Chair and Advisor can ask questions or seek clarification of the investigating officer and any witnesses.
- The employee and/or representative can ask questions, or seek clarification, of the investigating officer and any witnesses
- The employee and/or representative presents their case in defence (or to accept the allegation), introduces any witnesses and provides any mitigating circumstances
- The Chair and Advisor can ask questions or seek clarification of the employee and any witnesses. The purpose of this is to establish the facts and gain information from the employee
- The investigating officer can ask questions, or seek clarification, from the employee or representative and any witnesses
- If new information is introduced, by either party, an adjournment can be requested for the information to be considered. The party requesting the adjournment should indicate the timescale required for the adjournment. Adjournments will be granted at the sole discretion of the Chair. New information should only be presented on the day of the hearing in exceptional circumstances.
- Once all parties have had the opportunity to ask questions and present their case, the Chair will adjourn the meeting and the employee, their representative and the investigating officer will leave the meeting. The Chair will reach a decision, based on the information available and on the balance of probabilities. Any sanction imposed will also take into account any previous disciplinary warnings on file, the sanction imposed on similar cases within the organisation and any mitigating factors presented.
- All parties are recalled and informed of the decision made, the reason for the decision and the right of appeal.
- The decision will be conveyed in writing to the employee within 5 working days.

The meeting should be conducted in a formal and polite manner by all parties concerned. Any arguments or personal remarks should be avoided and any abusive or aggressive language or behaviour on the part of any parties will not be tolerated. If an employee becomes upset or distressed during the process the Chair may offer a short adjournment.

Disciplinary Sanctions

No formal disciplinary sanction will be made without a disciplinary hearing.

Depending on the seriousness of the allegation, there are different levels of formal disciplinary sanctions, which may be taken:

a) No Sanction

Where the Chair feels that there is no evidence of any misconduct, or the employee has offered enough mitigation to render any kind of disciplinary sanction inappropriate or unnecessary

b) Improvement Note

This may be issued instead of, or alongside a formal disciplinary warning. This should be issued when an employee's misconduct has not been severe enough to warrant a formal warning, but there are performance issues that need to be tackled.

The employee will have the improvement note confirmed in writing and it will include:

- Details of the conduct/performance problem
- What improvement is required
- Timescales for improvement which the Chair will decide (maximum of 6 months)
- A review date
- Any additional support that will be provided by the organisation

A meeting will be convened at the end of the improvement note period to assess the employee's conduct/performance and establish if it has improved the required amount. Any failure to improve performance in accordance with the Improvement note, may lead to further disciplinary action.

c) Written Warning

A Written Warning will be issued either where the conduct of the employee is found to be significantly below acceptable standards and an improvement note has not resulted in sufficient improvement or where the offence justifies a warning at this level.

A Written Warning will be recorded on an employee's personal file and will normally be disregarded for disciplinary purposes after 12 months. In circumstance where the misconduct has been particularly serious the

Chair may decide to review the sanction after the 12 month period, with the scope to extend the period of warning for up to a further 12 months. An employee will be notified in the hearing if the sanction is for a fixed period of time, or to be reviewed. After the time period stipulated the warning will be considered expired.

The employee will also be notified in writing that any further misconduct will lead to further disciplinary action.

d) Final Written Warning

A Final Written Warning will be issued where the conduct of the employee either continues to be significantly below acceptable standards, and previous warning(s) have not resulted in sufficient improvement, or where the offence is so serious that a first and final warning is appropriate, or where dismissal was a clear possibility, but significant mitigating circumstances were accepted.

A Final Written Warning will be recorded on an employee's personal file and will normally be disregarded for disciplinary purposes after 12 months. In circumstance where the misconduct has been particularly serious the Chair may decide to review the sanction after the 12 month period, with the scope to extend the period of warning for up to a further 12 months. An employee will be notified in the hearing if the sanction is for a fixed period of time, or to be reviewed. After the time period stipulated the warning will be considered expired. The employee will also be notified in writing that any further misconduct will lead to further disciplinary action.

e) Action Short of Dismissal

Where appropriate, the Chair may consider alternatives to dismissal. Such sanctions may include:

- Transfer to a role in a different area of the Council
- Transfer to a role with different responsibilities
- Demotion

f) Dismissal with Notice

Where the conduct of the employee continues to be significantly below acceptable standards and all previous warnings, support, advice and guidance have not resulted in sufficient improvement, dismissal after due notice will normally result.

Note: An employee will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct, when the outcome will normally be dismissal without notice or payment in lieu of notice. (See Summary Dismissal below.)

g) Summary Dismissal

This is dismissal without notice or pay in lieu of notice, as a result of gross misconduct. It will only be applied where the employee's conduct strikes at the heart of the employment contract, and the Council is therefore justified in no longer tolerating the employee's presence at work.

The Right to Appeal

Any employee receiving a warning as part of the disciplinary procedure may appeal against the sanction. The Appeal will be to the member of the Senior Management Team stipulated in the written confirmation of the disciplinary outcome, except in the case of dismissal where the appeal will be to the Council's Employment Panel

Any appeal must be made in writing **within 5 working days of receiving the letter** confirming the outcome of the disciplinary hearing (or 10 days in the case of dismissal). The letter must state the reasons for appeal, e.g. unfairness of judgement by the officer, severity of sanction, or disregard of key information.

The employee will be contacted notifying them of a date of appeal no later than **28 working days** from the date that the appeal is submitted. The hearing will consider the grounds of the appeal and may decide to withdraw or vary the disciplinary sanction awarded.

The employee may produce supporting documents to be considered as part of the appeal up to **2 days** before the date of the appeal hearing.

Any internal appeal against dismissal does not affect an employee's statutory right to make an application to an Employment Tribunal.

The Appeal Hearing

The appeal hearing will follow the hearing protocol contained in this disciplinary procedure except in the case of the Employment Panel. The appeal panel will consist of the Chair (Strategic Development Manager or above), and an HR Business Partner (CPBS). The Chair of the original disciplinary will present their findings from the original hearing. The employee has the right to be accompanied at the appeal hearing by their trade union representative or a work colleague. In cases where there are Safeguarding or Legal Implications a solicitor may be present as a companion to the hearing. This will be at the discretion of the Chair

The outcome of the appeal hearing will be verbally confirmed in the hearing and confirmed in writing **within 5 working days** of the hearing together with the fact that there is no further means of appeal.

The outcome of the appeal may be that:

- The decision in the original disciplinary hearing is upheld and the sanction issued remains in place

- The decision in the original hearing is dismissed and the sanction issued is removed
- The original sanction is altered, and the sanction is reduced but not removed
- The original sanction is altered and the sanction is increased.

The decision made at the appeal hearing will be final.

Amendment to Procedure

These procedures will be reviewed every two years to ensure their relevance to current legislation and practices within the Council.

Glossary of Terms

The Council	East Lindsey District Council
CPBS	Compass Point Business Services (East Coast) Ltd.
Statutory	As stipulated by law

Summary of Entitlements

Entitlement	All employees are entitled to have any misconduct to be dealt with under the Disciplinary Procedure if any formal action is to be taken. Any employee attending a disciplinary or appeal hearing are entitled to be accompanied by a Trade Union representative or work colleague
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Policy Authorisation

Policy Author	HR (Compass Point Business Services)
Date Created	23 October 2007
Date Amended	4 August 2015
Review Date	August 2017
Policy Sign-off	ELDC JCC (Unions & Management)
Signed by: (Name/date)	

Appendix A



Conducting Investigations - Guidance

Introduction

Trained individuals may be asked to conduct investigations during their employment with the Council. Whenever a Team Leader becomes aware that there may have been misconduct on the part of a particular employee, it is necessary for a full investigation to be conducted into the matter. If there is any suggestion or allegation that there may have been some fraudulent activity either prior to or during the investigation, it is important that Managers refer to the Council's Counter Fraud Policy and seek advice from the Internal Audit Manager or Section 151 Officer/Deputy Chief Executive prior to commencing or continuing with any investigation.

The purpose of an investigation is to look into the background and surrounding circumstances to gather all the relevant facts relating to the alleged misconduct. When conducting an investigation it is important that completion of the investigation is a priority so the matter can be concluded as quickly as possible.

The Team Leader of the employee, with HR's guidance, should appoint an investigating officer which is usually the line manager of the employee. If they have been involved in the incident being investigated the Team Leader will assign another person as investigating officer. It is advised that the next tier of management is also made aware that an investigation is taking place.

How much investigation is required?

- The investigating officer must clarify with the Team Leader, what is expected, the timescales that are in place and ensure that they understand what the allegations are.
- The degree of investigation must be reasonable and proportionate to the alleged misconduct.
- Too much detail in the case of a minor offence can be unnecessary and may delay the process without reason.
- Too little detail may result in it being unclear what the allegation is; which in turn may result in an inappropriate disciplinary sanction or further investigations being necessary

- In the case of more serious offences, dismissal may be an outcome of a disciplinary meeting. The information feeding that decision will, in a large part, come from the investigation conducted before the disciplinary. It is therefore vital that a thorough and robust investigation is conducted to ensure that all available facts are presented in the hearing.

Key Points to remember when conducting investigations:

- The investigating officer must strike a balance between the need to gather information and the employee's right to be treated fairly and reasonably.
- The investigation should be concluded and an investigation report submitted wherever possible to the appropriate Team Leader within 28 days of the employee being formally notified the investigation is taking place. Ideally the sooner the investigation is completed the better.
- The investigation must have no bias, and not be a search for evidence against the employee. It is an investigation of the facts and could therefore include evidence that may point towards innocence.
- Remember an investigation is NOT a disciplinary hearing. Essentially the purpose of an investigation is to establish what happened, while the purpose of a disciplinary hearing is to decide what to do about it.

What type of evidence should be collected?

- Taking statements and asking questions of any employees (or others) that have relevant information.
- Gathering any physical evidence (rotas, documents, emails, minutes of meetings etc)
- Visiting the scene of the incident (where applicable), and assess the physical environment to check against witness statements
- Interviewing the employee accused of misconduct.
- Records of any live disciplinary warnings on file for the employee

Witnesses

The officer conducting the investigation should clarify that witness statements will be disclosed to others including the person being investigated. Written statements from those employees who have relevant information about their colleague's alleged misconduct should be signed and dated.

Once received the investigating officer may decide to meet with the employee to ask any questions or seek clarification of the statement/s submitted. Witnesses should be:

- Met individually in an appropriate place with some privacy.
- Told that any discussions or information they are in receipt of relating to the investigation, must be kept confidential and not discussed with third parties
- They may be accompanied (there is no statutory right to this) however the organisation encourages it.

- Be notified that the purpose of the meeting is to establish the facts of an event

When interviewing a witness the investigating officer should take care to separate facts from assumptions or opinions; and should consider if the witnesses version of events is likely to be accurate and reliable. The investigating officer should not be afraid to ask if the witness is certain about what they claim to have seen or heard.

Statements provided by witnesses are treated as confidential. On occasion employees may wish their identity to be withheld. On these occasions, names can be omitted from witness statements where there is a justified fear of reprisal and steps can be taken to protect witness identity. No guarantee of complete anonymity should be given and this should only be in exceptional circumstances. Assurance should be given to any employee interviewed that reprisals from other employees relating to the investigation towards the individual will be addressed under the Council's Bullying and Harassment Policy.

Interviewing the employee accused

The investigating officer should meet with, and interview the employee accused of misconduct. To ensure this is done effectively and fairly the investigating officer should:

- Prepare a list of relevant questions in advance
- Stick to facts and avoid making assumptions
- Point out and question any discrepancies
- Not be afraid to challenge what the employee is saying
- Be careful not to express disapproval or pass judgement on the employee
- Make sure that the whole story is uncovered

Notes should be taken of the interview and be signed and dated by the employee, to be submitted alongside a personal statement if applicable.

The evidence collated during the investigation should not be released to the employee being investigated during the investigation period. If the recommendation following the investigation is to hold a disciplinary hearing, the employee will receive all evidence considered in reaching the decision to hold a formal hearing.

Investigation Report

Once the investigation has been completed and the evidence collated, the investigating officer must write an investigation report to submit to the manager who instigated the investigation. This report should summarise the events and facts taking into account all evidence collated. It should include:

- The details of the allegations against the employee and why they came about

- What evidence was collated, how and why.
- A summary of what the evidence revealed and whether there is a case to answer

The conclusion of the report include any recommendations as to measures that should be put in place as a result of the investigation eg. Health and Safety measures.

Be aware that evidence collated, including the investigation report, will be provided to the employee if the decision is made to hold a disciplinary hearing.

If an investigating officer encounters any problems or has any questions whilst conducting their investigation they should contact a member of the HR team.

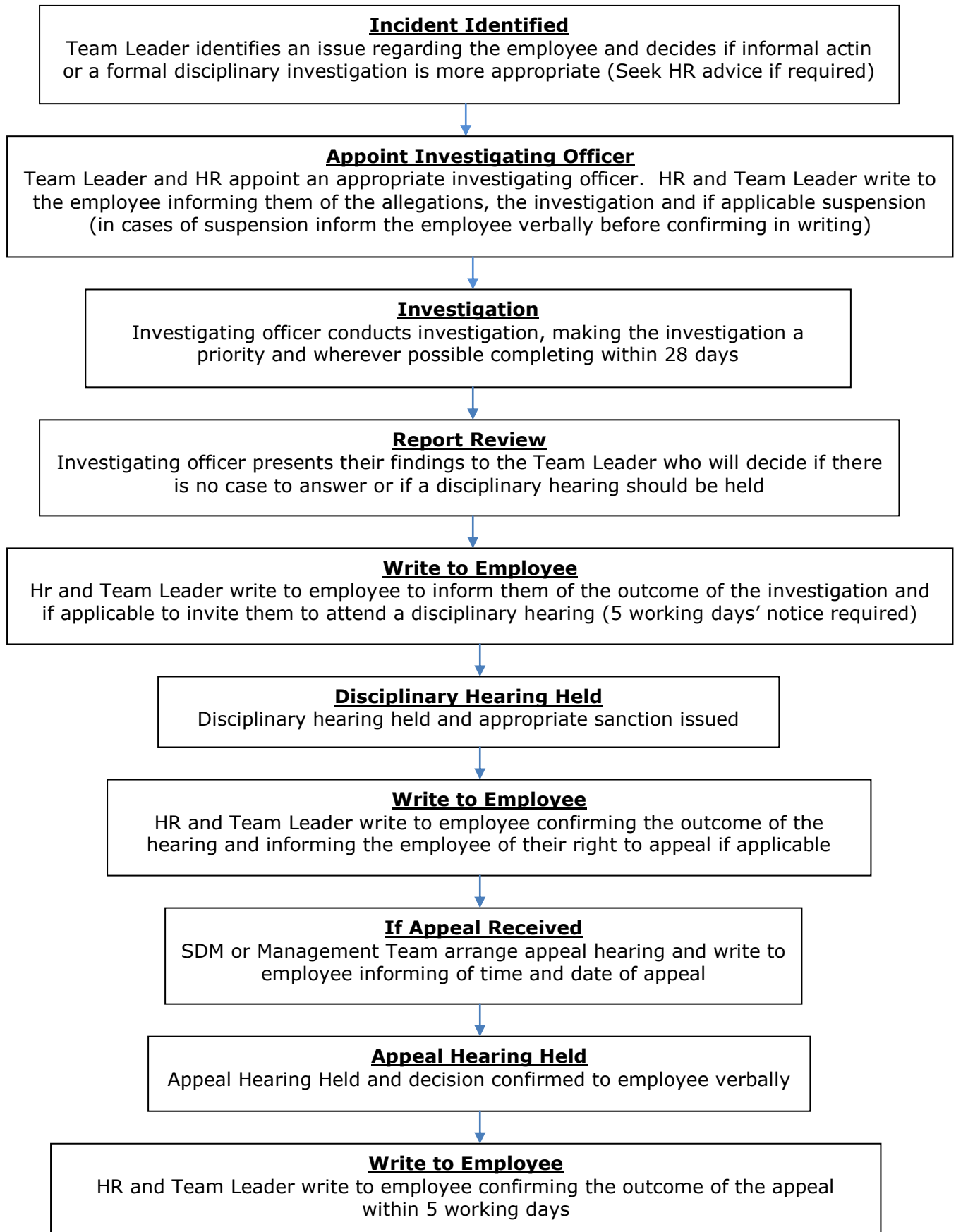
Appendix 2

Template Investigation Report

- Introduction** *Name of and job title of employee*
- Allegation or Issue*
- Background** *Identify what the issue is and how it came to light, what actions have been taken so far*
Provide details of employee being investigated eg. Length of service
Mention if they are currently suspended or if they have been removed from any duties
- Investigation** *Define what allegations needed investigating and why*
Give a description of methods used and evidence gathered
Give a timetable of events (including any delays that the investigation encountered
Define what evidence was collated and why
- Findings** *Address each allegation in turn. Confirm the facts established through the investigation and the sequence of events. Refer to the evidence presented as appendices and include excerpts of relevant sections of eg policies or statements to demonstrate findings. Also include and consider any mitigating factors.*
It is important to analyse all of the evidence and draw out the facts of the situation
If there the evidence is inconclusive and there is no way to be certain as to the facts, this should be stated in the report
- Conclusion** *Here explain what the interpretation of events was based on the evidence that has been collated. This conclusion does not have to be conclusively proven, but if the facts indicate that on the balance of probability a certain sequence of events occurred this is sufficient for an investigating officer to recommend disciplinary action*
Identify the strengths and weaknesses of the evidence and the conclusions drawn as a result.

Include any evidence considered as appendices with the report

Appendix 3



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