

MANAGERS GUIDANCE TO DEALING WITH DISCIPLINARY MATTERS

February 2022

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INTRODUCTION

It is the expectation that in your role as a manager there will be on occasions a need to deal with the conduct of one of your own team member's or another employee of the Council.

This guidance has been compiled to support you step by step through the process. For ease of use the responsibilities have been individually sectioned so that you can understand the requirements expected of you within your designated role.

Section 1 Role of a Commissioning Manager

Section 2 Role of an Investigating Officer

Section 3 Role of a Hearing Manager

At 'a glance' flowcharts are provided accompanied by template letters and guidance scripts to assist you with the process.

Please note that the template letters and scripts are for guidance purposes only and will therefore require adapting to the individual circumstance of the case that is being presented.

Should you have any queries on the content of the guidance, have further queries or wish to simply take advice on how best to proceed with the case please contact the HR Advisory Service for assistance.

Please note this guidance should be read in conjunction with the Warwickshire County Council Disciplinary Procedure to ensure a "reasonable" investigation is conducted.

SECTION ONE

THE ROLE OF A COMMISSIONING MANAGER

1.1. Purpose of the Role

The Commissioning Manager is responsible for *commissioning* an Investigating Officer to undertake the investigation process. They can also hear the case should it proceed to a disciplinary hearing or alternately they can commission a Hearing Manager. Therefore the Commissioning Manager can have a dual role as Commissioning Manager and Hearing Manager.

1.2. Responsibilities

- On notification of the allegation identify whether the Risk and Assurance (formerly known as Internal Audit and Risk Management) needs to be informed. Consider any advice provided by Risk and Assurance prior to commissioning the investigation;
- Undertake or arrange to undertake, any initial fact finding preliminary interviews with the employee to establish whether a formal investigation is required;
- Notify the employee of the allegations to be investigated and the next steps of the process i.e. formal investigation;
- Place the employee on alternative duties or suspend if deemed necessary or arrange for this to be done by for example the line manager;
- Continue to review the appropriateness of the suspension during the period of investigation;
- Where the employee has been suspended, commission an appropriate person to maintain regular welfare contact who is not undertaking the role of Investigating Officer;
- Commission an Investigating Officer to undertake the formal investigation process;
- Prepare the Terms of Reference for the Investigating Officer;
- Should the Investigating Officer identify any new information during the investigation, revisit the Terms of Reference and amend where necessary;
- On receipt of the report from the Investigating Officer ensure that it complies with the Terms of Reference;
- On receipt of the investigation report findings determine the appropriate action to be taken;
- Inform the employee concerned of the outcome of the investigation and any subsequent action;
- If the decision is to deal with the matter informally rather than formally, speak to the employee about what they need to do to improve and in what timescale,

or arrange for this to be done by, for example, the line manager. A note of the informal outcome should be recorded on HR-ER.

- If the decision is not to proceed to a disciplinary hearing communicate the outcome to the employee concerned and place a copy of the written correspondence on the employees HR-ER file.
- Hear the case at a disciplinary hearing or alternatively commission a Hearing Manager;
- If also designated Hearing Manager please see Section Three for further responsibilities.
- Refer employees to their professional registered bodies e.g. Social Work England (SWE) and also if they have harmed or pose a risk of harm to children and/or vulnerable adults to the Disclosure and Barring Service (DBS).

1.3. Suspension / Temporary Reassignment to Alternative Duties

There can on occasions be situations where the alleged misconduct is of such serious concern that it raises the question to whether the employee's continued presence constitutes a risk to other staff or customers and therefore whether they can remain in their current working environment while a formal investigation is undertaken. Suspension may also be necessary where their continued presence could prevent a full and proper investigation. Placing the employee concerned on suspension should be treated as the absolute last resort with temporary reassignment to alternative duties considered in the first instance. Risks should be immediately assessed of the duties that can be undertaken and the information and equipment that they can access. If it is not possible to eliminate the risk or identify any alternative duties then the employee should be suspended with immediate effect to enable the investigation to be fully and fairly conducted.

In cases where the allegations are related to child or vulnerable adult protection advice should be sought on the appropriateness of the alternative duties and the employee remaining in the workplace while the investigation is undertaken.

In the first instance for all cases where suspension or placing employees on alternative duties may need to be considered, seek advice from the HR Advisory Service.

1.4. Communicating the Suspension / Temporary Reassignment to the employee

- Explain the allegations to the employee;
- If applicable explain the rationale for the employee being placed on alternative duties, where they will be located and who they are required to report to during the temporary reassignment;

- If suspending the employee they should be informed that they will continue to receive full salary payment during this period;
- Conditions for receiving full salary payment are that the employee complies with the conditions of the suspension and that they remain available and fully participate in the investigation process;
- The employee should receive the conditions of suspension / temporary reassignment in writing. Any breach of the conditions will be viewed as a failure to comply with a management instruction and could result in additional disciplinary procedures being instigated;
- The employee should be advised of who will be the assigned person to maintain regular welfare contact;
- If known at this stage the employee will be advised of the assigned Investigating Officer;
- All items belonging to the Council should be immediately returned to enable them to be held for the duration of the suspension;
- The employee should be advised of what they could expect to be the possible outcomes from the investigation and that they will be kept informed of the progress of the investigation;
- The employee should be assisted to leave their current working environment with the maximum discretion allowing dignity to be maintained;
- Confidentiality should be maintained with workplace colleagues and teams being advised on a need to know basis that the employee concerned will not be in work. For instance, they should not be advised of the circumstances for the absence or provided with any details of the allegations unless called to give evidence at a witness interview.

1.5. Suspension Script

A serious matter / issue has been brought to my attention which I need to raise with you. It has been alleged that you have *outline allegation*. This is a very serious allegation which will now require a full formal investigation in accordance with the Warwickshire County Council Disciplinary Procedure.

In light of the allegation I am suspending you from employment with immediate effect to allow the investigation to be undertaken. This is a precautionary measure and your suspension is without prejudice to enable the formal investigation to take place. Your suspension should not be seen as any indication that the allegations made are true and whilst it is part of the disciplinary process it does not constitute disciplinary action.

During your suspension you will continue to receive full pay, on condition of you complying with the conditions of your suspension. Please be advised that the conditions of your suspension are deemed to be a reasonable management instruction.

The allegation/s against you is/are very serious and, dependent on the facts established, could constitute gross misconduct and result in your dismissal from the Council's employment.

You will be provided during the course of the investigation with the opportunity to respond to the allegations. At any formal interview you will have the right to be accompanied by a fellow worker or trade union representative. You will be kept informed on the progress of the investigation which will be completed as soon as possible.

Name of investigating manager has been commissioned to carry out the formal investigation.

Alternatively

I will be commissioning an Investigating Officer who will be in contact with you shortly.

During your suspension you will be assigned a person independent to the investigation/ **PROVIDE NAME IF IDENTIFIED** who will regularly make contact to support you with your health and wellbeing and discuss any other matters of concern that you may have while this process is being undertaken.

During your suspension you should not contact any colleagues for work related purposes, other than a fellow worker that is going to accompany you at any formal meetings, or enter your work premises. Any work related to or with Warwickshire County Council should not be undertaken. By contact I also mean contact via Facebook, twitter or any other forum. It is not in your interests to discuss the matter with others as this could prejudice the investigation. If you wish to contact the Council

about anything, please do that through the assigned person of contact or me as the Commissioning Manager.

You are required to return your work equipment, security badge and any items belonging to the Council which will be held for the period of the suspension.

If you are a union member I would advise you to contact them as soon as possible to ensure that you obtain some support and advice.

I have a staff care leaflet for your information and you may contact them for counselling support in confidence at any time.

I have a letter/I will send you a letter confirming the detail of your suspension which I have just outlined to you. I also have/will attach/ed a copy of the Disciplinary Procedure for your reference.

Do you have any questions or is there anything that I have outlined that you would like further clarification on at this stage?

1.6. Terms of Reference

Strictly Private and Confidential

Disciplinary Investigation Terms of Reference

Manager commissioning the investigation:

HR Advisor supporting Commissioning Manager:

Investigating Officer:

Assigned Contact (if applicable):

HR Advisor supporting Investigating Officer if different from above:

Allegation (s):

Context:

Scope of investigation:

An investigation is required, in line with WCC Disciplinary Procedure to establish the facts concerning.....

Witnesses/Interviewees:

Interviews should include, but may not be limited to.....

Relevant reference documents

Relevant documents include, but should not be restricted to

Timescales:

It is anticipated that the investigation should take no longer than....

Investigating Officer's role:

1. *Discharge the investigation in line with the terms of reference*
2. *Invite the parties involved to attend an investigatory interview*
3. *Interview the parties involved and obtain statements*
4. *Interview other relevant parties/witnesses*
5. *Examine any background information*
6. *Obtain all relevant evidence*
7. *Produce a factual report for my consideration*
8. *Recommend whether the facts support the allegation or not*
9. *Present the report and supporting information/evidence at any subsequent disciplinary hearing as required.*

Report:

A report is requested outlining the facts of the case relating to the allegations given above for my consideration.

1.7. Police Investigations

If an allegation is brought to your attention that may require police assistance or already has involvement of the police, please contact the HR Advisory Service to seek immediate advice prior to taking any further action.

1.8. Bundle Guidance

On the decision that there is a case to answer at a disciplinary hearing the Investigating Officer's report with any additional documentation and records will need to be collated into a bundle. The bundle will need to be circulated to those who are required to attend the hearing excluding any witnesses who only have a copy of their personal statement taken at the interview.

The bundle should include:

- ✓ Contents Page
- ✓ Investigation Report
- ✓ All supporting documentation which has assisted the investigation – these will form the appendices
- ✓ Ensure all pages are clearly numbered including the appendices

1.9. Template example letters for use by the Commissioning Manager in order of sequence

- Notification of Suspension
- Notification of temporary reassignment to alternative duties
- Notification of review of suspension
- Notification of disciplinary investigation
- Further allegations arising prior to investigation interview
- Further allegations arising from investigation interview
- Outcome of investigation – action or no action
- Invite to disciplinary hearing
- Rescheduled disciplinary hearing date notification

Notification of Suspension Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Suspension from duty

Further to our meeting on (Date) regarding the above, I am writing to confirm that you are/were suspended from duty, on full pay, with immediate effect whilst the following allegation(s) into your conduct are investigated:

-
-
-

The Council reserve the right to change or add to these allegations as appropriate in light of the investigation.

The **allegation/s** against you **is/are** very serious and dependent on the facts established could constitute gross misconduct and result in your dismissal from Warwickshire County Council employment.

An Investigating Officer will be appointed shortly and confirmed to you in writing. As part of the investigation you will be interviewed and will be invited to offer an explanation or comment on the allegations made against you. Your suspension should not be seen as any indication that the allegations made are true and whilst it is part of the disciplinary process it does not constitute disciplinary action.

During your suspension **INSERT NAME OF CONTACT** will maintain regular contact with you to provide any support needs or concerns that you may have. Please be advised that **INSERT CONTACT NAME** is independent to the process and is assigned to support you with your health and welfare during this time.

For any meetings that are part of the investigation and for any subsequent disciplinary hearing that may be arranged you are responsible and expected to make yourself available to attend.

You have the right to be accompanied by a trade union representative or fellow worker at any formal stage of these proceedings. The investigation will be completed as soon as possible and you will be kept informed of its progress.

During your suspension, you should not contact colleagues for work related purposes and are not required to attend work. However, should you wish to visit your place of work or any other County Council establishment, or contact colleagues on any work related matters, you should do so only by prior permission and arrangement with myself. Failure to seek prior permission may be treated as serious misconduct and a breach of your suspension terms.

All items belonging to the Council should be immediately returned to enable them to be held for the duration of the suspension.

Arrangements will be made for your pay slip to be sent to your home address during the period of suspension. However if this is not convenient, please inform me at the earliest opportunity. Should you fall ill during your suspension, you should comply with the sickness absence reporting procedures in full. Approval should continue to be sought for annual leave in accordance with procedures. Full pay during your suspension is conditional upon complying with the terms of the suspension.

I appreciate that suspension from work can cause concern and that you may want to share your feelings and concerns with someone. You can approach the Staff Care service for confidential support; a copy of their leaflet is enclosed. Please contact the service direct if you wish to take up this offer of support. You can also make your own independent arrangements for support during the investigation by contacting your Union.

I would like to remind you that you are not to discuss any aspect of the investigation with anyone other than myself, the Investigating Officer, staff care or your representative.

The above is in accordance with the County Council's Disciplinary Procedure, a copy of which is enclosed. May I remind you that being suspended from duty is not a disciplinary sanction and is without prejudice.

If you require any advice or clarification on any of the above, please do not hesitate to contact me.

Yours sincerely

Manager commissioning the investigation
Job Title

Enc: Disciplinary Procedure
Staff Care Leaflet

Notification of Temporary Reassignment to Alternative Duties - Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Notification of temporary reassignment to alternative duties

Further to our meeting on (Date) regarding the above, I am writing to confirm that you are/were temporarily reassigned to alternative duties with immediate effect until further notice.

You are to be reassigned to (Insert job) and will report to (insert reporting manager's name). During your reassignment you will be on full pay.

All leave requests and sickness reporting should be done through the above named manager for the period of your reassignment.

Your temporary reassignment is whilst the following allegation(s) into your conduct are investigated:

-
-
-

The Council reserve the right to change or add to these allegations as appropriate in light of the investigation.

The allegation/s against you is/are very serious and dependent on the facts established could constitute gross misconduct and result in your dismissal from Warwickshire County Council employment.

An Investigating Officer will be appointed shortly and confirmed to you in writing. As part of the investigation you will be interviewed and will be invited to offer an explanation or comment on the allegations made against you. Your temporary

reassignment should not be seen as any indication that the allegations made are true and whilst it is part of the disciplinary process it does not constitute disciplinary action. For any meetings that are part of the investigation and for any subsequent disciplinary hearing that may be arranged you are responsible, and expected to make yourself available to attend.

You have the right to be accompanied by a trade union representative or fellow worker at any formal stage of these proceedings. The investigation will be completed as soon as possible and you will be kept informed of its progress.

I would like to remind you that you are not to discuss any aspect of the investigation with anyone other than myself, the Investigating Officer, staff care or your representative.

The above is in accordance with the County Council's Disciplinary Procedure, a copy of which is enclosed. May I remind you that being on temporary reassignment of duties is not a disciplinary sanction and is without prejudice.

If you require any advice or clarification on any of the above, please do not hesitate to contact me.

Yours sincerely

Commissioning Manager
Job Title

Enc: Disciplinary Procedure
Staff Care Leaflet

Notification of Review of Suspension -Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Review of Suspension

I am writing to confirm that in accordance with the Council's Disciplinary Procedure a review of your on-going suspension has been undertaken.

Given that the investigation is still on-going and that the allegations at this point of the investigation still constitute gross misconduct it is necessary for the continuation of your suspension.

The suspension will continue to be monitored and if at any stage of the investigation it is felt that the allegations are of a lesser offence than gross misconduct the suspension will be lifted.

You will be notified in due course of the next stage of the procedure.

In the meantime, should you have any queries about the process or the contents of this letter please contact me.

Yours sincerely

Commissioning Manager

Job Title

Notification of Disciplinary Investigation – Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Disciplinary Investigation

Further to the discussion you had with (name) regarding the above, I am writing to confirm that an investigation into the misconduct for the following allegation(s) will be undertaken by (Investigating Officer name and Job Title)

Allegations for investigation:

-
-

I reserve the right to change these allegations as appropriate in the light of the investigation. Should any additional allegation(s) come to light during the course of the investigation I will advise you in writing that this/these allegation(s) will also be investigated. Any information which is gained during the investigation process may be presented at any subsequent disciplinary hearing.

During the course of the investigation, you will be interviewed and will be invited to offer explanation or comment on the allegation(s) made. You have the right to be accompanied by a trade union representative or fellow worker at any stage of the proceedings. The investigation will be completed as soon as possible and you will be kept informed of its progress.

I would like to remind you that you are not to discuss any aspect of the investigation with anyone other than myself, the Investigating Officer, staff care and your representative. You will be informed in writing of the outcome of the investigation. The above is in accordance with Warwickshire County Council's Disciplinary Procedure, a copy of which is enclosed.

*(For cases of suspension please include a contact)

*INSERT NAME OF CONTACT has been assigned to maintain regular contact with you to provide any support needs or concerns that you may have. Please be advised that INSERT CONTACT NAME is independent to the process and is assigned to support you with your health and welfare during this time.

I appreciate that an investigation can cause concern and that you may want to share feelings and concerns with someone. You can approach the Staff Care service in confidence for support; a copy of their leaflet is enclosed. Please contact the service direct if you wish to take up this offer of support. You can also make your own independent arrangements for support during the investigation by contacting your Union.

If you require any advice or clarification on any of the above, please do not hesitate to contact me.

Yours sincerely

Commissioning Manager
Job Title

Enc: Disciplinary Procedure
Staff Care Leaflet

Further Allegation Arising Prior to Investigation Interview - Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Disciplinary Investigation – Further allegation(s) arising

I refer to my letter dated (date of notification of investigation) and write further to advise you that the following additional allegation(s) has/have come to light during the course of the initial investigation which we will need to discuss with you:

-
-

The allegation(s) is/are now formally added to those included in the above mentioned letter.

An investigation into the above additional allegation will be added to your interview which has been scheduled for (date) (time) (location) as per my previous letter dated (insert date of invite letter). I would like to remind you that you are entitled to be accompanied by a fellow worker or trade union representative to this interview. Any information gained during the investigation may be presented at any subsequent disciplinary hearing.

If you require any further clarification on the above please do not hesitate to contact me.

Yours sincerely

Commissioning Manager
Job Title

Further Allegation Arising from Investigation Interview – Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Further allegation arising from Investigating Interview

I write in reference to the investigating interview which took place on (date) with (Investigating Officer name). During the course of the interview, you referred to a matter which has resulted in the following allegation being raised against you:

-
-
-

In my letter of (insert date) I reserved the right to change the allegations in the light of the investigation. I am therefore writing to confirm the additional allegation/s requires further investigation and will be included in the matters subject to the investigation process.

The above is in accordance with the County Council's Disciplinary Procedure, a copy of which was provided to you in earlier correspondence.

Yours sincerely

Commissioning Manager
Job Title

Outcome of Investigation - Action or No Action - Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Outcome of Investigation

I am writing to inform you that the recent investigation into the allegations of (insert allegations investigated) has now been completed.

I can confirm the outcome is that your explanation has been accepted and/or there is no evidence to support the allegation(s) made and there will be no further action. I would like to thank you for your co-operation during the investigation.

Your suspension is now lifted and you should return to work in consultation with your line manager who will be in contact with you shortly.

Or

I am writing to inform you that the recent investigation into the allegations of (insert allegations investigated) has now been completed.

I can confirm that in light of the investigation findings there is evidence to support taking informal action (state details).

Include any improvements that need to be made as identified from the investigation.

I need to make you aware that if any such allegation(s) should arise again, formal action will be considered and reference can be made to this outcome.

Or

I am writing to inform you that the recent investigation into the allegations of (insert allegations investigated) has now been completed.

I can confirm that the outcome of the investigation is that there is a case to answer. The decision therefore, is that the matter will be put before a disciplinary hearing in accordance with the County Council's Disciplinary Procedure and this letter is to serve you with formal notification. The specific allegation(s) which will be considered at the hearing is/are:

-
-
-

You have the right to be accompanied by a trade union representative or fellow worker at the hearing. Confirmation of arrangements for the hearing will be sent to you in due course.

Your suspension will remain in place until further notice.

(You need to be aware that the allegation/s against you does/do constitute potential gross misconduct and therefore, depending on the facts established at the hearing the outcome could be dismissal from Warwickshire County Council employment).

(You need to be aware that the allegation/s against you does/do constitute potential misconduct and therefore depending on the facts established at the hearing, the outcome could be no action, action outside the formal disciplinary procedure (for example training), a written warning or a final written warning).

(DELETE AS APPLICABLE)

The above is in accordance with the County Council's Disciplinary Procedure, a copy of which was provided to you in earlier correspondence.

Should you have any queries in relation to the above please do not hesitate to contact me.

Yours sincerely

Commissioning Manager
Job Title

Invite to Disciplinary Hearing - Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Invite to Disciplinary Hearing

I am writing to advise you that a disciplinary hearing has been arranged for your attendance at (venue) on (date) at (time). On arrival please report to (insert details).

The hearing will be conducted in accordance with the County Council's Disciplinary Procedure, a copy of which is enclosed, and is to consider the following allegation(s):

-
-

I will be the Hearing Manager (if not the Commissioning Manager insert Hearing Managers name), accompanied by (HR Advisor). (Investigating Officer) will present the management case accompanied by (insert name if applicable).

The supporting documentation that will be presented at the hearing is enclosed with this letter.

If you wish to call or request any witnesses to support your case, please let me know the name and job role of the individual by (date) in order that the necessary arrangements can be made. Similarly, I would also ask that you forward any documentation you wish to submit to the hearing by this date.

You have the right to be accompanied at the hearing by a trade union representative or fellow worker. I would ask that you confirm to me your attendance and who will be accompanying you by (date). If your companion is not available to attend, an alternative date can be provided as long as the alternative time proposed is both reasonable and not more than 5 working days after the date originally scheduled. Please can you also confirm if you or your representative require any specific arrangements or accommodation requirements to enable the hearing to take place.

Should you fail to attend, the hearing may proceed in your absence.

(You need to be aware that the allegation/s against you does/do constitute potential gross misconduct and therefore, depending on the facts established at the hearing the outcome could be dismissal from Warwickshire County Council employment).

(You need to be aware that the allegation/s against you does/do constitute potential misconduct and therefore depending on the facts established at the hearing, the outcome could be no action, action outside the formal disciplinary procedure (for example training), a written warning or a final written warning).

(DELETE AS APPLICABLE)

Should you have any queries do not hesitate to contact me.

Yours sincerely

Commissioning Manager
Job Title

Enc. Disciplinary supporting documentation bundle

Rescheduled Disciplinary Hearing Notification – Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Rescheduled Disciplinary Hearing Notification

I write to inform you that following receipt of your notification that your representative was unable to attend the scheduled disciplinary hearing on xx a further date has been scheduled for (Insert date). The hearing will be held at (insert venue) at (insert time).

As the hearing has been rescheduled at your request I must advise that if you fail to attend on this occasion the Hearing Manager will proceed to hear the case in your absence.

If you are unable to attend personally you are invited to submit your case in writing in advance, and if you wish to do so, please let me have your submission by <insert date>.

Should you have any queries please do not hesitate to contact me.

Yours sincerely

Commissioning Manager
Job Title

SECTION TWO

THE ROLE OF AN INVESTIGATING OFFICER

2.1. Purpose of the Role

The Investigating Officer is commissioned by the Commissioning Manager to ascertain the facts relating to a situation by undertaking an investigation in a fair and thorough manner. The Investigating Officer should take a balanced and fair view during the investigation so that the facts of the case can be established.

2.2. Responsibilities

- Undertake an investigation in accordance with the Terms of Reference provided by the Commissioning Manager;
- Collate any relevant documentation, records and supporting evidence to assist with establishing the facts to the allegations;
- Identify any relevant witnesses;
- Make interview arrangements
- Liaise with Commissioning Manager to arrange a note taker when required to make written notes of the discussion;
- Prepare questions in readiness for any interview;
- Interview all witnesses concerned;
- Ensure the witness is briefed to the purpose of the interview, what will happen with the information disclosed and what to expect in the future process;
- Following the interview provide the witness with a copy of the notes taken;
- Invite employee to the formal investigation interview providing sufficient notice to enable them to arrange to be accompanied by a representative who will be from the trade union or a fellow worker;
- Following the interview provide the employee with a copy of the notes taken;
- If during the investigation additional information comes to light discuss this with the Commissioning Manager to enable any relevant amendments to be made to the Terms of Reference;
- At any stage of the investigation should additional information need to be ascertained invite witnesses / the employee concerned to a further interview;
- On completion of the investigation interviews collate all evidence and produce a report on the factual information obtained;
- Provide the Commissioning Manager with the report to enable them to make a decision on how to proceed;
- Should it be decided by the Commissioning Manager that a disciplinary hearing needs to be held then the investigation findings will need to be presented verbally from the original report by the Investigating Officer at the hearing;

- The Investigating Officer will need to be prepared to respond to questions and be constructively challenged by the Hearing Manager and employee / their representative at the disciplinary hearing.

2.3. Interviewing External Witnesses

External witnesses can be called upon during an investigation. However, the witness is under no obligation to attend any interview or provide any statements to aid the investigation should they not wish to do so. They cannot be instructed or forced to participate.

2.4. Script for interviewing Witnesses

Introductions made to all those present.

Thank you for attending the interview today.

As shared with you in my invite letter I have been commissioned to investigate an allegation that has been raised against **(INSERT NAME OF EMPLOYEE)**. I understand that you may be able to assist with providing information on the alleged incident / event which could support the investigation.

Please be advised that you are being asked to attend this interview as a witness and no allegations have been made against you. However, I do need to advise that notes will be taken of our discussion of which you will be provided with a copy. From the investigation I will be producing a report of which the information you provide in this interview will be used to assist with formulating the evidence. A copy of the notes will be added to the appendices. Should it be found necessary to progress this investigation to a disciplinary hearing then the member of staff concerned will be provided with a copy of the report inclusive of any notes. You may be asked to attend the disciplinary hearing either on behalf of the Council or as requested by the employee concerned where questions may be put to you on the statements that you will provide today. Should your attendance be requested full support and guidance will be provided to you in advance on what you should expect to happen on the day of the hearing.

I ask that you are open and honest when responding to the questions and provide a factual account on the incident / event concerned. Should you wish to adjourn at any point for a break please let me know. If you do not understand what I am asking or would like me to repeat or rephrase the question please ask me to do so.

I must advise that this matter is confidential and should not be discussed with anyone outside of this room.

Do you have any questions prior to us proceeding to the interview?

2.5. Investigation Report Template

CONFIDENTIAL

INVESTIGATION REPORT

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Appendices should be:

- Clearly labelled
- Contain only relevant information to the investigation
- Include any documents reviewed as part of the investigation

DISCIPLINARY INVESTIGATION REPORT

Employee Details:

Name:

Post:

Hours:

Date of Commencement in Post:

Date of Employment with WCC:

Business Unit:

Service:

Team:

Manager:

Investigating Officer:

Commissioning Manager:

SAMPLE LAYOUT OF A REPORT STRUCTURE

Paragraph Numbers	Contents	Appendix (where supporting evidence can be located)
1. 1.1. 1.2. 1.3.	Introduction and Background Why the investigation was deemed necessary The terms of reference of the investigation, including allegations. Set out what the actual allegations are, who has made them and in what form they were	A

	<p>made. You may refer to a letter of complaint or any other documentation in which the allegations were made.</p> <p>Any relevant factors regarding the organisation or individuals that may help the reader</p>			
2.	Methodology			
2.1.	<p>The investigator should detail how they went about finding information, perhaps listing all interviewees and job titles, together with a brief rationale as to why they were interviewed. Did the investigator review documentation, or watch tapes, viewed photos- these should all be detailed.</p>			
3.	Chronology of Events			
3.1.	<p>Set out events briefly, in chronological order, dates and details of the main events including alleged events.</p> <table><tr><td>Date</td><td>Event</td></tr></table>	Date	Event	
Date	Event			
4.	Findings			
4.1.	<p>You should describe what you have found, how the evidence was evaluated and contributing factors. If there are many points to the allegations you may want to list each one followed by findings and conclusions as you go through the report. Consistencies and inconsistencies should be outlined and explanations given if known. You should also detail why a particular version of events was preferred, where conflicting views were given. Where findings present a risk such as litigation, reputation, financial, H&S, these should be detailed.</p> <p>Findings can be arranged into the following categories:</p> <p>Uncontested Facts: where the facts are not in dispute and can simply be reported as factual.</p> <p>Contested Facts: where the facts are contested or contradictory the Investigating Officer should determine what on balance of probabilities in their view took place.</p> <p>Unsubstantiated Claims: where an Investigating Officer is unable to substantiate an allegation they should consider if further investigation is reasonable or report they are unable to draw a conclusion.</p>			

5.	Conclusions	
5.1.	Refer back to the terms of reference of the investigation. You should then state whether the investigation has been conclusive and what the conclusions are in terms of whether the facts support the allegation/s. If a procedure or process was not followed, or an individual behaved inappropriately then this should be outlined	
6.	Recommendations	
6.1.	As it is the role of a Commissioning Manager to decide how they wish to proceed with dealing with the case following receipt of the investigation report it is preferable that a recommendation is not provided by the Investigating Officer as part of the report. However, should the Investigating Officer feel it is imperative to do so then it should be kept to the simplification of whether the facts and evidence from the investigation has identified a potential case to answer.	

2.6. Allocation of time

It is important to ensure that sufficient time is allocated for the draft investigation report to be reviewed by the allocated HR Advisor and for necessary amendments to be made following the advice received.

2.7. Template example letters for the responsibility of issue by the Investigating Officer in order of sequence

- Invite to investigation interview
- Witness invite to investigation interview
- Witness invite to a hearing

Invite to Investigation Interview Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Invite to Investigation Interview

I write further to previous correspondence informing you a disciplinary investigation is to be carried out, under Warwickshire County Council's Disciplinary Procedure. You are invited to attend an investigation interview to discuss the following allegation(s) made against you:

-
-

Arrangements have been made for an interview to take place at (time) on (date) at (location). I will be accompanied by (HR Advisor and/or note taker if applicable). You are entitled to be accompanied by a fellow worker or trade union representative. Please contact me directly by (date) to confirm your attendance and who you will be accompanied by, and if you require any reasonable adjustments to enable the interview to take place.

You should note that it is a requirement and in your interest to attend the investigation interview and co-operate with proceedings. If you are unable to attend the interview you must inform me of the reason at the earliest opportunity and beforehand.

Please do not hesitate to contact me should you have any queries.

Yours sincerely

Investigating Officer
Job Title

Enc: Disciplinary Procedure

Witness Invite to Investigation Interview Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Invite to Investigation Interview – Witness

I am writing in relation to a disciplinary investigation I am conducting for which you may be able to assist in providing supporting information.

My role as Investigating Officer is to gather factual information about allegations as part of the investigation under Warwickshire County Council's Disciplinary Procedure. Your co-operation in this matter will assist my enquiries and will inform my investigation.

Arrangements have been made for an interview to take place at (time) on (date) at (location). Please contact me directly by (date) to confirm your attendance. I will be accompanied by (HR Advisor and/or note taker if applicable). If you are unable to attend this interview please contact me as soon as possible explaining the reason and if necessary to re-arrange to a mutually convenient date.

Please be aware that you are being asked to attend the interview as a witness and no allegations have been made against you.

The investigation is confidential and should not be discussed with anyone unless in connection with the procedure such as myself. I appreciate that an investigation can cause concern and that you may want to share feelings and concerns with someone. You are entitled to approach the Staff Care service for support; a copy of their leaflet is enclosed. Please contact the service direct if you wish to take up this offer of support. You can also make your own independent arrangements for support by contacting your union.

If you require any further information, or should you have any queries, please do not hesitate to contact me.

Yours sincerely

Investigating Officer
Job Title

Enc: Staff Care Leaflet

Witness Invite to a Hearing – Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Invite to Disciplinary Hearing – Attendance as a Witness

I write to inform you that on behalf of Warwickshire County Council you are required to attend a disciplinary hearing as a witness. The hearing has been scheduled for (date) at (time) at (location). Upon arrival, please report to (insert details). Please can you confirm your attendance by no later than (insert date).

During the course of the hearing you will be called to provide the information you provided as part of the investigation. You may be asked questions by either myself, the Hearing Manager or/and the employee that is the subject of the hearing or their representative. You will already have been provided with a copy of your statement taken at your interview during the course of the investigation. However a further copy will be made available to you on the day to refer to. A copy of your statement will also have been provided to all those present ahead of the hearing.

A guide for witnesses is enclosed for your information. I would also like to remind you that you can contact Staff Care at any time for support. Please contact the service directly if you wish to take up this offer.

In the meantime should you have any queries please do not hesitate to contact me

Yours sincerely

Investigating Officer

Job Title

Enc: Witness Guide to Disciplinary Hearings
Staff Care Leaflet

2.8. Supporting guide for Witnesses attending a disciplinary hearing

A guide for witnesses

You have been called as a witness on behalf of (WCC/ANO) to a disciplinary hearing and the following is a guide which aims to outline what you can expect when you attend on the day. However, if you have any queries please do not hesitate to contact (name and email/phone details).

The venue

Date:

Time:

Location:

A map showing the location of the site, nearby car parks and giving general directions is attached.

Most people find XXX to be the nearest car park and is located about X minutes walk away. Please ensure that you have change with you in order to pay for the parking and retain any receipt in order to claim reimbursement.

When you arrive please report initially to XXX and ask for XXX who will take you to a room where you can wait which is separate from the room that the hearing is being held in. You will be made aware of the facilities such as toilet, drinks etc.

You might find it helpful to bring something quiet to do to help pass the time.

You should be aware that at some time during the course of the day you will meet the member of staff against whom allegations have been made. You will see them at the hearing, but you may also meet informally before the hearing, for instance in the car park, at reception etc. Whilst we do our best to manage the events of the hearing and this includes arrival times, waiting rooms etc we do not have full control over the movements of all parties involved.

The process

The hearing is not formal like a court hearing but there is a procedure to follow.

The hearing will be heard by (name) supported by (name/s and role/s).

In the room you will also see (name/s and role/s).

You have been called as a witness by (name the party). You will be called as a witness into the hearing when your statement /evidence is required. It is not possible to give

you a time when you will be called but as far as possible you will be informed of any significant delays.

You will be asked to sit down and (Hearing Manager) will introduce you to everyone that is in the room. Normally your statement will have been read already so it is unlikely that you will be asked to read your statement out but you must be prepared to do so if asked.

A copy of your statement is provided to you at the hearing. It is fine if you want to bring a copy of your statement with you to the hearing to refresh your memory before you go in to give evidence as it might be some time since you were interviewed as part of the investigation.

Whoever has called you as a witness may ask you questions.

You can also be asked questions by the other party and also by the Hearing Manager/panel if they wish to do so.

Advice on questioning

Listen carefully to the question asked.

If you do not hear the question properly or do not understand part of the question then ask for clarification. There is no need to guess what the question is.

Always try to take a couple of seconds to think and then speak clearly.

If you cannot remember something, then say so. Do not guess. If you think there is something in the statement that you made then say so and you will be helped to find it. This is not a memory test.

Be straight in your answer and do not be evasive. If you agree say so. Likewise if you do not agree you can say.

At all times be courteous and at no time should you lose your temper. You can make your point clearly and you should not be shy. It is always a good idea to watch the Hearing Manager/Panel and to pay particular attention to what s/he is saying. You may be asked to wait whilst something is being written down.

Timing

The hearing is planned as far as possible. Normally a hearing will take most of a morning or an afternoon but it is not possible to say exactly how long.

Depending on what happens on the day it is even possible that the hearing will either not go ahead, or be adjourned/postponed to another day. You will be kept informed as far as practicably possible.

SECTION THREE

THE ROLE OF A HEARING MANAGER

3.1. Purpose of the Role

The Hearing Manager has overall responsibility for the running order of the disciplinary hearing and determining the most appropriate outcome from the evidence provided to the hearing. On determining the outcome the Hearing Manager must be prepared to support their rationale for the decision at any appeal hearing. In the case of dismissal this will be to elected Members

3.2. Responsibilities

- Hear the case at any disciplinary hearing;
- Inform the employee of the decided outcome with the rationale and ensure this is confirmed in writing;
- Decide how to proceed should the employee concerned wish to resign from their employment prior to attending a disciplinary hearing. The decision on whether to proceed with a hearing is the responsibility of the Hearing Manager in conjunction with the Commissioning Manager (if different). When determining the decision, the risks need to be assessed. If the resignation is not accepted with immediate effect the employee may still resign with notice and the hearing may proceed during the notice period. The Hearing Manager may wish to seek advice from the HR Advisory Service.
- Place a copy of the written outcome on the employees HR-ER file;
- Should the employee appeal prepare a presentation on how the decision was reached in readiness for the appeal hearing;
- Present the rationale for the decision to the appeal panel, responding to questions asked by the panel and the employee/their representative.

3.3 RUNNING ORDER OF THE DISCIPLINARY HEARING

Present at the Hearing

Hearing the case: HEARING MANAGERS NAME TO BE INSERTED

Management case: INVESTIGATING OFFICERS NAME TO BE INSERTED

Employee case: NAME OF EMPLOYEE WHO ALLEGATIONS HAVE BEEN RAISED AGAINST

Running Order

1. Introductions. The Hearing Manager shall ensure that all parties are aware of and understand the procedures to be followed.
2. Investigating Officer will present the management case.
3. Employee or representative may question Investigating Officer.
4. The Hearing Manager may question Investigating Officer.
5. Employee or representative will present the employee case.
6. Investigating Officer may question Employee.
7. The Hearing Manager may question Employee.
8. Summary from Investigating Officer.
9. Summary from Employee or representative.
10. Both parties shall withdraw while the Hearing Manager deliberates his/her decision, seeking HR advise as required.
11. When the Hearing Manager's decision is reached, both parties shall be recalled and informed of the decision and the rationale to how the decision was reached.

If it is not possible to make a decision on the day then the hearing may be adjourned and the outcome given either at a reconvened hearing or in writing.

N.B. Add into the running order any witnesses to be called by either party and that they can be questioned by those present.

3.4. Burchell 3 Step Test

When considering whether to dismiss an employee it is helpful to consider the 'Burchell 3 Step Test'.

British Home Stores Ltd v Burchell [1978] IRLR 379 is one of the most well known and often cited employment law cases. It sets out the test by which Employment Tribunals can decide whether employers have acted reasonably in dismissing employees for misconduct and capability issues.

In terms of misconduct, the Burchell case can be reduced down to a three step test:

1. Did the employer genuinely believe the employee was guilty of the alleged misconduct?
2. Did the employer have genuine grounds to suspect that employee was guilty of misconduct?
3. Did the employer carry out a reasonable investigation before making a final decision about the employees' guilt?

Employment Tribunals do not concern themselves with decisions about whether an employee was in fact guilty but whether it was reasonable of the employer to decide that they were and then dismiss them. In other words, did the employer come to a reasonable decision after a reasonable investigation?

For more information on making a reasonable decision to dismiss please contact the HR Advisory support service.

3.5. Template example letters for the responsibility of issue by the Hearing Manager

- Outcome of Disciplinary Hearing – No Formal Action or Sanction
- Outcome of Disciplinary Hearing –Sanction
- Outcome of Disciplinary Hearing –Dismissal with notice
- Outcome of Disciplinary Hearing – Dismissal without notice

Outcome of Disciplinary Hearing – No Formal Action or Sanction – Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Outcome of Disciplinary Hearing – No formal action or sanction

I am writing to confirm the outcome of the formal disciplinary hearing held at (location) on (date). The Hearing took place in line with Warwickshire County Council's Disciplinary Procedure. I chaired the hearing, accompanied by (name). You were accompanied by/ you chose not to be accompanied by anyone. You chose not to attend.

The hearing was called to consider the following allegation(s):

-

After consideration of the evidence presented to me, my findings are as follows:

-

I am therefore writing to confirm that my decision is that there is no case to answer/no further formal action or sanction will be taken/given in this particular case.

Include any improvements that need to be made as identified from the investigation and hearing.

I need to make you aware that if any such allegation(s) should arise again, formal action will be considered and reference can be made to this outcome.

If you have any queries or concerns regarding the content of this letter please do not hesitate to contact me.

Yours sincerely

Hearing Manager
Job Title

Outcome of Disciplinary Hearing – Sanction – Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Outcome of Disciplinary Hearing – (INSERT SANCTION)

I am writing to confirm the outcome of the formal disciplinary hearing held at (location) on (date). The Hearing took place in line with Warwickshire County Council's Disciplinary Procedure. I chaired the hearing, accompanied by (name). You were accompanied by/ you chose not to be accompanied by anyone. You chose not to attend.

The hearing was called to consider the following allegation(s):

-
-

After consideration of the evidence presented to me, I have decided that the allegation(s) is/are upheld. My findings are as follows:

-

I communicated my decision to you on conclusion of the hearing and this is my written confirmation that you will receive a (insert sanction). The warning will remain on file and will normally be disregarded for disciplinary purposes after (insert time) subject to continued satisfactory conduct. Should you commit another act of misconduct formal action will be considered and you may receive a final written warning or may be dismissed with or without notice.

Your current suspension has now ended and you are required to return to work on (insert date). (Complete details of who will make contact to facilitate return)

You have the right to appeal against this decision to (INSERT NAME – To be sent to the next level of manager from the Hearing Manager) providing your grounds for appeal in writing within 14 days of receiving this letter. If you have any queries regarding the content of this letter please do not hesitate to contact me.

Yours sincerely

Hearing Manager

Job Title

Outcome of Disciplinary Hearing – Dismissal with notice – Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Outcome of Disciplinary Hearing – Dismissal with Notice

I am writing to confirm the outcome of the formal disciplinary hearing held at (location) on (date). The Hearing took place in line with Warwickshire County Council's Disciplinary Procedure. I chaired the hearing, accompanied by (name). You were accompanied by/ you chose not to be accompanied by anyone/ You chose not to attend.

The hearing was called to consider the following allegation(s):

-
-

After consideration of the evidence presented to me, I have decided that the allegation(s) is/are upheld. My findings are as follows:

-

I communicated my decision to you on conclusion of the hearing and this is my written confirmation that you will be dismissed. You are entitled to (insert number) weeks paid notice therefore your employment with Warwickshire County Council will be terminated on (insert date). Please return all Warwickshire County Council equipment including your ID badge and Car parking pass to me by (insert date).

You have the right to appeal against your dismissal to Elected Members by writing within 14 days of receiving this letter to Allison Lehky, Service Manager (HR Enabling), Shire Hall, Market Square, Warwick, CV34 4RL.

Yours sincerely

Hearing Manager

Job Title

Outcome of Disciplinary Hearing – Dismissal without notice – Example Letter

Private and Confidential

(Name)

(Address)

(Date)

Dear (Name)

Outcome of Disciplinary Hearing – Dismissal without Notice

I am writing to confirm the outcome of the formal disciplinary hearing held at (location) on (date). The Hearing took place in line with Warwickshire County Council's Disciplinary Procedure. I chaired the hearing, accompanied by (name). You were accompanied by/ you chose not to be accompanied by anyone/ You chose not to attend.

The hearing was called to consider the following allegation(s):

-
-

After consideration of the evidence presented to me, I have decided that the allegation(s) is/are upheld. My findings are as follows:

-

I communicated my decision to you on conclusion of the hearing and this is my written confirmation of your summary dismissal and your employment with Warwickshire County Council was terminated on (insert date of hearing). Please return all Warwickshire County Council equipment including your ID badge and Car parking pass to me by (insert date).

You have the right to appeal against your dismissal to Elected Members by writing within 14 days of receiving this letter to Allison Lecky, Service Manager (HR Enabling), Shire Hall, Market Square, Warwick, CV34 4RL.

If you have any queries regarding the content of this letter please do not hesitate to contact me.

Yours sincerely

Hearing Manager

Job Title

SECTION FOUR

Supporting Information

Invite to Appeal Hearing – Example Letter for Manager hearing appeal

Private and Confidential

(Name)
(Address)

(Date)

Dear (Name)

Invite to Appeal Hearing

You have appealed against the outcome of the disciplinary hearing and the sanction given which was (insert sanction) confirmed to you in writing on (Date).

Your appeal will be heard by (Name, Position) accompanied by (Name, Position) at (time) on (date) at (location).

You are entitled to be accompanied at the appeal hearing by a trade union representative or fellow worker. Please can you confirm your attendance and submit any documentary evidence you may intend to reply on accompanied by the name of your representative and any witnesses you wish to call before (Date).

Please note that the decision at the appeal hearing will be final and there is no further right of appeal.

If you require any further information please contact (name) on (work contact number) or via e-mail at (work e-mail address)

Yours sincerely

Insert name (the next level of management to Hearing Manager)
Job Title

Outcome of Appeal – Example Letter

Private and Confidential

(Name)
(Address)

(Date)

Dear (Name)

Outcome of Disciplinary Appeal hearing

I am writing to confirm the outcome of the appeal hearing considered by myself, supported by (insert Name) from HR on (Date) at (Location).

The hearing was called to consider your appeal on the following grounds;

•
Your (Case) was presented by yourself/ (Name, your representative and you also called (Names) as witness/es. The management case was presented by INSERT NAME. I and both parties had the opportunity to question both sides and the witness/es.

Having heard the evidence presented and considered all the information in the appeal paperwork I reached the following conclusions for each of the grounds of appeal;

•
My decision is that your appeal has/has not been successful and that the disciplinary sanction is revoked/remains in place/has been changed to (insert decided outcome sanction).

Please note that the decision of the appeal hearing is final and that there is no further right of appeal.

Yours sincerely

Appeal Hearing Manager
Job Title

Sources of Information

HR Advisory Service Team

The HR Advisory Service is available to provide advice on matters of the law and procedure attending any subsequent interviews and hearings where necessary.

Disciplinary Procedure

<http://www.warwickshire.gov.uk/conduct>

ACAS Guidance

www.acas.org.uk

ACAS Code of Practice on Disciplinary and Grievance Procedures (Statutory)

ACAS Conducting Workplace Investigations (Non statutory guide)

ACAS Discipline and Grievance at work (Non statutory guide to good practice)