

# **MANAGERS GUIDANCE TO DEALING WITH DISCIPLINARY MATTERS**

**May 2017**

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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 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) were proven. 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

## ***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) were proven. 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 Felicity Davies, HR Service Centre & Advisory Manager, Shire Hall, Market Square, Warwick, CV34 4RL.

Yours sincerely

***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) were proven. 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 Felicity Davies, HR Service Centre & Advisory Manager, 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

## 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 XX. 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.

[Intranet](#) > [Helping You Work](#) > [HR](#) > [About the HR Service](#) > [HR Advisory Service](#)

## **Disciplinary Procedure**

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

## **ACAS Guidance**

[www.acas.org.uk](http://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)