

# HR & OD POLICIES

human resources and organisational development



## Chief Officials Disciplinary Procedure Guidelines for the Handling of Disciplinary Issues

# INDEX

INTRODUCTION	3
AIMS OF THE PROCEDURE	4
UNDER PERFORMANCE DUE TO WORK CAPABILITY	4
INFORMAL STAGES	4
FORMAL STAGES	4
SUSPENSION	5
SUSPENSION - CONFIRMATION OF THE DECISION	6
SUSPENSION – COMMUNICATION	6
EMPLOYEE ASSISTANCE PROGRAMME	6
SUSPENSION - CONDITIONS ATTACHED TO THE SUSPENSION	7
SUSPENSION - BREACH OF SUSPENSION	7
INVESTIGATION	8
INVESTIGATION - THE CHIEF OFFICER IS SIGNED OFF DUE TO STRESS OR OTHER ILLNESS	9
INVESTIGATION - POLICE INVOLVEMENT	9
INVESTIGATION - USE OF COMPUTERS AND INFORMATION STORED ON THEM	10
INVESTIGATION – TIMESCALES	11
THE DISCIPLINARY HEARING	11
FORMAL DISCIPLINARY SANCTIONS	12
SERIOUS ACTION, INCLUDING DISMISSAL	13
RIGHTS OF APPEAL	13
THE LIFE OF THE WARNING	13
ROLE OF HEAD OF SERVICE (HR & OD)*OR THEIR NOMINEE	14
CHIEF OFFICIALS DISCIPLINARY – RESPONSIBILITIES (TO BE COMPLETED BY HEAD OF SERVICE HR&OD)	15

## 1. INTRODUCTION

This document provides guidance on the handling of disciplinary issues in line with the principles of the Council's approved Disciplinary Policy & Procedure. A [flowchart](#) of the procedure is also available.

This procedure applies to Chief Officials which comprises the Directors, Heads of Service and Area Managers.

The Chief Executive will be responsible for all matters in relation to the disciplinary investigations of Chief Officials. If any formal disciplinary action is likely then it is recommended that the relevant Group Councillor Leaders are consulted and kept informed of the timescales and outcomes on a regular basis by the Chief Executive or his nominated representative.

Any media enquiries regarding any disciplinary investigation in relation to a Chief Official should be directed to the Corporate Communications team.

If there is a disciplinary investigation which relates to either the Head of Service (Legal and People) or the Head of Service (Legal and Governance) then their role in this procedure will be undertaken by another appropriate senior officer from Business Services as instructed by the Director of Business Services.

Any matter relating to disciplinary action in respect of a Chief Official which is heard by a committee shall be heard in private, after the statutory resolution to that effect has been passed.

The appropriate level of Chief Officials including the Chief Executive or external representatives will be appointed as appropriate to undertake the investigation and chair hearings or appeals as necessary. As agreed by the Director of Business Services or the Head of Service (Legal and People).

Chief Officials may be represented at various stages of the procedure. Any request for legal representation by a Chief Official at a disciplinary hearing will be passed to Legal and People for determination on a case by case basis.

How to Guides and Model Letters are available in the [Disciplinary Resource Pack](#).

## 2. AIMS OF THE PROCEDURE

The operation of the procedure in a satisfactory manner will depend upon the adoption of certain principles, which are in accordance with recognised good HR & Legal practice.

Except in the case of serious or gross misconduct, the principal purpose of disciplinary action should be to counsel the Chief Official and to provide appropriate assistance to enable improvement to occur.

This Procedure has been prepared to assist all parties involved to deal with disciplinary issues and should be read in conjunction with Aberdeenshire Council's Disciplinary Policy. This Disciplinary Procedure takes account of the ACAS Disciplinary and Grievance Procedures Code of Practice 1 2009 and the Joint National Conditions for Chief Officials.

## 3. UNDER PERFORMANCE DUE TO WORK CAPABILITY

A case of under-performance should be dealt with in a supportive and equitable manner. It should also be dealt with in accordance with any related procedures agreed by the Council such as the [Work Performance Ability Policy](#).

## 4. INFORMAL STAGES

### Advice, Guidance & Counselling

A commitment to establishing effective working relationships should be demonstrated. This commitment should be shown throughout the process of advice, support, and implementation of improvement. Wherever possible, problems should be resolved without recourse to the formal procedure.

At this stage notes should be kept that are detailed enough to give a good summary of the key points. It may also be useful to provide a written summary to the Chief Official outlining what was discussed and the actions agreed.

## 5. FORMAL STAGES

No disciplinary action will be taken until the matter has been fully investigated. The aim of the investigation is to establish whether there is a basis for considering disciplinary action. It is vital that confidentiality is maintained at all times and investigations should be carried out as discreetly and sensitively as possible.

## 6. SUSPENSION

The decision to suspend will be made by the Chief Executive or their nominee.

The Director of Business Services or the Head of Service (Legal and People) shall be consulted in all cases prior to taking the decision to suspend a Chief Official, or as soon as possible thereafter.

The decision to suspend must be based on the facts of the particular concern raised and the circumstances. Where the issue is potentially gross misconduct, the Chief Official should be suspended immediately. Considerations will include risks to any person, property or service; the Council's duty of care to all employees; the need for a full and free investigation or breach of trust.

The Chief Executive or the Director of the Service (as appropriate) must call an urgent meeting to advise the Chief Official of the suspension. The Chief Official does not have the right of representation at this stage as he/she is not being asked to respond to the allegations but is simply being advised of their suspension. The Director of Business Services (or their nominee) will also attend this meeting to provide a third-party witness to the meeting if this should ever be required.

At this meeting the following must be stated:

- The allegation against the Chief Official in general terms rather than in detail.
- The Chief Official must be informed that the suspension does not imply an assumption of guilt.
- That a full investigation will be carried out to determine whether action under the disciplinary procedure is required.
- That the Chief Official will have the right to be represented throughout the investigation and any subsequent processes and will have a full opportunity to respond to the allegation(s). If the Chief Official at this stage wishes to respond or to say anything which may clarify the concerns, then he/she should be given the opportunity to do so. However, it must be made clear that he/she is not required to respond, that there may be disciplinary action, and that anything said could have a bearing on such action.
- A copy of the disciplinary policy and procedure for Chief Officials should be passed to the Chief Official at the meeting.
- Explain that in view of the seriousness of the allegation and the need for an investigation (along with any other relevant reasons) the Chief Official is

suspended from duty on full pay until further notice and the conditions that are attached to the suspension.

- The Chief Official must collect any personal effects from his/her workplace and leave the building. Where possible he/she will be accompanied by a senior Officer – as nominated by the Director of Business Services or the Head of Service (HR&OD). He/she must return his/her ID badge, mobile phones/blackberries etc, and any keys for council premises, desks, cupboards, etc. before leaving.

## 7. SUSPENSION - CONFIRMATION OF THE DECISION

The decision to suspend and investigate the allegations must be communicated in writing. This letter must contain all the details referred to in the suspension meeting. This should be handed to the Chief Official at the suspension meeting or sent registered post the next day. The letter of suspension is signed by the Chief Executive – or another Service Director. [Model Letter Suspension](#).

## 8. SUSPENSION - COMMUNICATION

The serious nature of a decision to suspend is fully acknowledged and should only be taken to protect the Chief Official and the Council whilst matters are investigated. Under no circumstances should it be concluded that the action implies assumption of guilt. Any suspension will be reviewed within 28 days. [Model Letter Suspension Extension](#).

If the suspension is extended beyond the initial 28 day period it will be reviewed every 14 calendar days thereafter.

A senior officer who is not involved with the investigation will be nominated by the Director of the Service (or another Service Director) to maintain contact with the suspended Chief Official. The Chief Official would be asked to give their permission before this kind of support is put in place. It would be the supporting officer's responsibility to ensure that the Chief Official received any information not relating to the investigation which he/she would normally receive in relation to their employment with Aberdeenshire Council.

## 9. EMPLOYEE ASSISTANCE PROGRAMME

It is recognised that it can be stressful for an employee to be investigated under the Disciplinary Policy and Procedure. The details of the [Employee Assistance](#)

[Programme](#) should be provided to any Chief Official subject to the Disciplinary Procedure.

If a grievance is raised during a disciplinary process, the disciplinary process may be temporarily suspended to deal with the grievance. Where the issues are related it may be appropriate to deal with issues concurrently. The Head of Legal and People will advise as appropriate.

## 10. SUSPENSION - CONDITIONS ATTACHED TO THE SUSPENSION

The circumstances of the allegations must be taken into account in deciding what conditions are attached to any suspension. Normally, Chief Officials would be instructed not to attend their workplace during the suspension or to have any contact with colleagues or elected members. In some cases, this needs to be extended to any Council premises and any work contacts outside the Authority. The Chief Official must not ask another party to make contact with anyone involved in the investigation on their behalf (excluding their own representative). One or more named contacts at appropriate levels should be given for the Chief Official to contact when required.

Details of the allegation and investigation should not be disclosed to the media, other than agreed press statements by an official Council spokesperson, to ensure that the whole matter remains confidential with information on a need-to-know only basis. Any breach of this condition may result in further disciplinary action being taken.

The serious nature of a decision to suspend is fully acknowledged and should only be taken to protect the Chief Official and the Council whilst matters are investigated. Under no circumstances should it be concluded that the action is assumption of guilt.

## 11. SUSPENSION - BREACH OF SUSPENSION

Where it is alleged that a Chief Official has breached the terms of his/her suspension, this incident will be investigated separately. However, following a thorough investigation, should a disciplinary hearing be recommended for both the initial allegation which led to the suspension and the breach of that suspension, one hearing will be held. Both allegations will be heard at a single hearing.

There is no appeal against suspension from work.

## 12. INVESTIGATION

The Head of Service (Legal and People) will be responsible for the overseeing the process in any investigation involving a Chief Official with input from the Head of Service (Legal and Governance). (If either of those Heads of Service are involved in the disciplinary investigation then another senior officer will be appointed by the Director of Business Services).

Where an issue has been raised concerning the behaviour or performance of a Chief Official then the Director of Business Services or the Head of Service (Legal and People) and the Chief Executive shall determine who will be appointed as the Investigating Officer. In the case of a Head of Service or Area Manager then a Director from another Service may be appointed as the Investigating Officer. To ensure impartiality and adherence to timescales an Investigating Officer may be appointed externally to investigate any issue in relation to a Director.

A senior HR&OD representative appointed by the Director of Business Services or the Head of Service Legal and People will support and advise the Investigating Officer throughout the course of the investigation. Administrative support should also be provided to assist the Investigating Officer as appropriate.

The aim of the investigation is to establish the facts without delay. It is vital that confidentiality is maintained at all times and investigations should be carried out as discretely and sensitively as possible. The investigation should be an objective and non-judgmental enquiry into the facts of the case. The purpose of the investigation is not to build a case against the Chief Official but to search for evidence which supports or rebuts any allegations.

The Investigating Officer must notify the Chief Official involved verbally and in writing at an early stage that a complaint or concern has been lodged. The Investigating Officer must indicate the nature of the complaint, the process which will be followed and the right to be accompanied. [Model Letter Informing Employee of Investigation](#).

The Investigating Officer should interview all relevant parties (including the Chief Official).

[Model Letter Invite Witness to Investigation Meeting](#)

and

[Model Letter Invite Person who made Allegation to Investigation Meeting](#)

and

[Model Letter Invite Employee to Investigation Meeting](#).



The investigating officer will prepare signed and dated statements from all parties interviewed.

#### [Model Letter Witness Statement.](#)

Where the investigatory officer is required to inform a specialist officer (e.g. Child Protection Officer, Chief Internal Auditor, Information Security Officer) of the Council, the investigation procedure for that area should be instigated. That investigation should be concluded and reported back to the investigatory officer.

### 13. INVESTIGATION - THE CHIEF OFFICER IS SIGNED OFF DUE TO STRESS OR OTHER ILLNESS

If during the course of a disciplinary investigation the Chief Official concerned refuses to attend any meetings due to sickness absence then the following procedure should be undertaken:

- Refer the Chief Official to Occupational Health as soon as possible after he or she is signed off sick;
- State clearly in the referral that the Chief Official is currently being investigated under Aberdeenshire Council's Disciplinary Policy and Procedure for Chief Officials. The allegations against the Chief Official must not be disclosed in the referral;
- Request confirmation from Occupational Health as to whether the Chief Official is fit to attend an investigatory meeting;
- Where the Occupational Health Advisor states that the Chief Official is fit to attend an investigatory meeting the meeting should be arranged as soon as possible thereafter;
- Where the Occupational Health Advisor states that the Chief Official is not fit to attend an investigatory meeting, the advice given in the medical report should be followed.

### 14. INVESTIGATION - POLICE INVOLVEMENT

Where an incident requires Police involvement the Head of Service (Legal and People) will notify the Head of Service (Legal & Governance) prior to contacting the police. Where the police have brought an incident to the attention of management

this should be notified to the Director of Business Services or the Heads of Service (Legal & Governance) and (Legal and People) immediately.

Where the internal investigation does not interfere with any external investigations by the police or other outside bodies (e.g. The Health and Safety Executive), the Investigating Officer should not await the outcome of the external investigation before continuing with their own investigation under Aberdeenshire Council Disciplinary Policy and Procedure for Chief Officials.

Where the police have indicated that an internal investigation may jeopardise their investigation the Investigating Officer should await the outcome of the police investigation and/or court proceedings before continuing with their own investigation. The Chief Official will require to be notified in writing if the investigation is to be suspended.

In some circumstances a Chief Official may be under investigation by the police relating to acts which, if were proven, would render him/her unable to continue in his/her post (e.g. offences involving children or vulnerable adults). In such cases it is advised that the Investigating Officer does not proceed with any internal investigations until the outcome of any police investigation and/or court proceedings.

## 15. INVESTIGATION - USE OF COMPUTERS AND INFORMATION STORED ON THEM

If, during a disciplinary investigation, the Investigating Officer is required to access a Chief Official's work computer, e-mail, internet logs, or network files he/she must contact the Information Security Officer in Business Services before proceeding. It should be noted that the Information Security Officer may be contacted prior to an Investigating Officer being appointed if this is deemed appropriate.

When contacting the Information Security Officer the procedure outlined below should be followed:

- Contact the Head of Service (ICT);
- Do not provide the identity of the Chief Official concerned or any details of the allegation;
- If applicable, isolate the computer/mobile device in question, ensuring that any Chief Official(s) involved do not have a chance to modify anything which may be used as evidence e.g. make any changes to any documentation or sites which have been previously accessed. This includes stopping access by any other employees e.g. Personal Assistants.

## 16. INVESTIGATION - TIMESCALES

No disciplinary action will be taken until the matter has been fully investigated. Investigations into a disciplinary matter should be undertaken as quickly as possible - ideally within 28 calendar days. If there are difficulties with timescales the Chief Official and their representative should be advised and reasons for the delay provided, consistent with the principles of fairness and natural justice.

On conclusion of the investigation, the investigating officer will submit a brief written report of his/her findings along with all witness statements to the appropriate line manager.

Where on conclusion of an investigation it is decided that no further action is to be taken in terms of the disciplinary procedure no reference to the investigation should be placed on the Chief Official's personal file. [Model Letter No Further Action](#).

Where on conclusion of an investigation it is decided to proceed to a disciplinary hearing, the Chief Official should be provided with copies of the evidence that will be used during the disciplinary hearing, including signed and dated statements. The Chief Official should be informed in writing and any evidence should be submitted that will be used in his/her defence to the Chair of the hearing at least two calendar days prior to the date of the disciplinary hearing. [Model Letter Invite Employee to a Disciplinary Hearing](#).

## 17. THE DISCIPLINARY HEARING

If the investigation is going to proceed to a disciplinary hearing then the Head of Service (Legal and People) will be responsible for completing the Chief Officials Disciplinary – Responsibilities document which will ensure that it is clear at the outset who will undertake each hearing or appeal stage. (This will not imply that each stage will be undertaken).

At all stages of the procedure, the Chief Official should be given a fair hearing and have the opportunity to explain the reasons for his/ her alleged failure to meet the required standards, call and question witnesses, and to sum up his/her case. A warning should never be given without a hearing being held. A disciplinary hearing should take place normally no later than 14 calendar days following the conclusion of a disciplinary investigation.

The Council recognises that there may be very sensitive issues raised. Accordingly at all stages, information discussed will be held in the strictest confidence and the Council will deal with any malicious disclosure, by any party, under the Disciplinary Procedure.

An accurate note of any disciplinary hearing and sanction taken should be recorded. As with the investigatory meeting, it is vital to ensure that the officers attending are well prepared prior to the hearing taking place. Ensure that the Chief Official has adequate notice of the hearing (at least 7 calendar days) in order to prepare his/her case and to appoint a representative.

## 18. FORMAL DISCIPLINARY SANCTIONS

The formal stages of the procedure consist of a series of warnings described in this procedure.

In each case, the Chief Official should be made fully aware of the reasons for the warning and of the consequences of a repetition. In being advised of the disciplinary sanction which is being applied, the Chief Official should be advised also of the improvements which should be expected of them and the availability of appropriate support to allow them to achieve and maintain the improvement.

Written confirmation of the aforementioned warnings must be marked private and confidential and sent by recorded delivery post.

### Written Warning

A warning is given for minor breaches of discipline and/or misconduct, and should be issued orally and confirmed in writing within seven calendar days. The warning must also include reference to the fact that any further breach may render the Chief Official open to further disciplinary action, any appropriate support mechanisms, and notification of their right of appeal. A written warning will be live for 9 months. [Model Letter Written Warning](#).

### Final Written Warning

A final written warning is given for serious breaches of discipline, misconduct or a failure to improve conduct following receipt of an initial or written warning. The warning should be issued orally and confirmed in writing within seven calendar days. The Chief Official must also be informed that any further breach may result in dismissal, any appropriate support mechanisms, and notified of their right of appeal. A final written warning will be live for 12 months. [Model Letter Final Written Warning](#).

## 19. SERIOUS ACTION, INCLUDING DISMISSAL

Serious action as an alternative to dismissal means a final written warning including the imposition of a transfer and/or financial penalty. Serious action may be appropriate where formal action has failed to resolve the problem or in the case of misconduct where action beyond a final written warning is required.

The Protection of Vulnerable Groups (Scotland) Act 2007 requires Aberdeenshire Council to refer any Chief Official to the Scottish Ministers, if he/she harms a child or vulnerable adult or puts a child or vulnerable adult at risk of harm and are dismissed or moved away from access to children as a consequence.

## 20. RIGHTS OF APPEAL

An appeal against disciplinary action should be made by the Chief Official or, where appropriate, by the Chief Official's trade union representative in accordance with the procedure outlined in the confirmation of the warning.

An appeal should be lodged in writing within 14 calendar days of receipt of notification of the action. The Chief Official should detail in writing the reasons why they are lodging an appeal.

An appeal hearing shall normally be arranged within 28 calendar days of receipt of the notice of appeal.

Should any appeal against disciplinary action be successful and the action subsequently withdrawn, any written reference shall be expunged in the Chief Official's record and the Chief Official notified in writing.

## 21. THE LIFE OF THE WARNING

At the time that the disciplinary sanction is taken against a Chief Official, he/she should be advised as to when the warning will be expunged from his/her record i.e. when the life of the warning will end.

When the life of the warning comes to an end without further action being taken, the Chief Official should be advised that the warning is now expunged.

The Chief Executive or appropriate Director should advise the Head of Service (Legal and People) that the record can be expunged.

The Protection of Vulnerable Groups (Scotland) Act 2007 make it necessary to have some information remain on the Chief Official's file for a longer period than is

indicated by the life of the warning. Where child or adult protection is an issue the Social Work Service should be contacted to ensure that information is retained for the appropriate length of time.

[Link to new PVG Procedure](#)

Written Warning                      9 Months

Final Written Warning            12 Months

A copy of the letter to disregard the warning will be held on the Chief Official's file.

[Expired Warning Letter](#)

## 22. ROLE OF HEAD OF SERVICE (HR & OD)\*OR THEIR NOMINEE

The Head of Service HR&OD shall participate in any enquiries or interviews to the extent considered necessary.

They will also be responsible for meeting with the Investigating Officer on a regular basis to be updated particularly in relation to whether or not timescales are being adhered to. The Investigating Officer will be required to notify the Head of Service HR&OD of any difficulties that they may be facing e.g. cancellation of witness interviews, witnesses not wishing to take part etc. Information on timescales and any other relevant information will be conveyed by the Head of Service (Legal and People) to the Chief Executive (and if necessary the Group Councillor Leaders) on a regular basis throughout the course of the procedure.

## 23. CHIEF OFFICIALS DISCIPLINARY – RESPONSIBILITIES (TO BE COMPLETED BY HEAD OF SERVICE HR&OD)

STAGE	ACTION BY	WRITTEN RECORD	RIGHT OF REPRESENTATION*	RIGHT OF APPEAL	APPEAL HEARD BY
<b>INFORMAL STAGE:</b>					
Advice Guidance & Counselling	(Name)	None	None specified	No	(Name)
<b>FORMAL STAGES:</b>					
Written warning	(Name)	Letter specifying terms of warning and conditions to be sent recorded delivery within 7 calendar days.	Yes	Yes	(Name) Hearing to be arranged within 28 calendar days of receipt of notice of intention to appeal.
Final written warning	(Name)	Letter specifying terms of warning and conditions to be sent recorded delivery within 7 calendar days. Copy to appropriate trade union official.	Yes	Yes	(Name) Hearing to be arranged within 28 calendar days of receipt of notice of intention to appeal.

<b>SERIOUS ACTION:</b>					
Serious Action: e.g. - Dismissal - Demotion - Transfer	(Name)	Letter specifying action, terms and conditions to be sent recorded delivery within 7 calendar days. Copy to appropriate trade union official.	Yes	Yes	To Appeals Committee of Council by application to the Head of Service (Legal & Governance). Hearing to be arranged by the Head of Service (Legal & Governance).

\* Representation may be by a trade union representative or work colleague



# Disciplinary

## Index of Documents

### Policy

<b>Revision Date</b>	<b>Previous Revision Date</b>	<b>Summary of Changes</b>
01-03-2006	-	Creation of all Documents
18-04-2013	01-03-2006	Revision of Policy
01-05-2015	18-04-2013	Update
12-05-2016	01-05-2015	Amendment
02-09-2022	12-05-2022	Update