

### **DOCUMENT INFORMATION**

Origination/author:	Judith Coslett, Head of Human Resources
This document replaces:	Local Disciplinary and Dismissal Procedure 05
Date/detail of consultation:	Staff Forum and Unison November 07 Equality consultation groups June 09
Date of Council approval:	8 October 2009
Last reviewed:	May 2017
Next review date:	May 2019

## **Disciplinary Policy**

Where an employee needs help reading or understanding or engaging in the process below, because English is not their first language or they have learning difficulties or a disability which affects their ability in this area, Human Resources will arrange for someone to assist them. This will apply to the whole process and the support will include reading and explaining letters or documentation. To access this support the employee must ask Human Resources as otherwise they may not be aware of the need.

The following policy applies to all staff other than the exceptions detailed in paragraph 24.

### **General principles**

1. Employers are legally required to have disciplinary procedures. It is the employer's responsibility to set and maintain standards of behaviour and performance within the organisation, and to put in place disciplinary rules and procedures. They are key to good employment relations and ensure that individuals are treated fairly and consistently. Therefore the Council has developed and adopted this policy and separate disciplinary and dismissal procedures which managers must follow.
2. We (the Council) will work to core principles of reasonable behaviour throughout the process, which is primarily designed to help and encourage employees to improve, rather than simply be a way to impose a punishment.
3. The Disciplinary Procedure should not be used to deal with cases of poor performance which are due to a lack of capability rather than deliberate failure to carry out the role properly. In such cases the Capability Procedure will apply.
4. The Disciplinary Procedure will take full account of the ACAS Code of Practice (2015) on disciplinary procedures, and the requirements of the Employment Act 2008.
5. Disciplinary meetings should not be chaired by a person who has been previously involved in the matter, or who for any reason is not sufficiently impartial, or who could have an interest in the outcome of the meeting.
6. The Disciplinary Policy and Disciplinary Procedure are contractual documents which will be reviewed and amended on a regular basis to ensure alignment with current legislation.

## Support prior to disciplinary

7. The formal Disciplinary Procedure should not replace normal day-to-day supervisory practices and should not be used until these practices have been exhausted. Managers should deal with cases of minor misconduct or unsatisfactory performance informally, in the first instance, and as soon as they arise, and give a verbal warning and guidance on what improvement is expected. Human Resources can advise on any training or other support which might be appropriate.
8. Managers will record informal warnings, indicating the nature of the problem, timescale for improvement and any support arranged to assist this, and a review date. The manager should keep the record for 3 to 6 months depending on the specific circumstances of the verbal warning and, although it will not be held on the employee's electronic file (staff site), it can be used to support a move to the formal procedure if no improvement is achieved within the agreed timescales.
9. Where informal action does not bring about any improvement, or where the misconduct or performance issue is deemed to be too serious, managers should take formal action. Potential disciplinary matters must be investigated fully and promptly before a decision is made to proceed with formal action. An investigatory meeting is not, and should not become, a disciplinary meeting, and this should be made clear to the employee involved. There is no statutory right to a companion at this stage.

## Suspension

10. When an employee stands accused and/or suspected of gross misconduct and their continued presence in the workplace might put at risk the safety of colleagues or the security of Council property or compromise an effective investigation, they can be suspended whilst an investigation takes place. Any suspension should be on full pay and with the prior approval of Human Resources. In situations where it is not possible to obtain prior approval from Human Resources, for example on shifts outside office hours, and it is necessary to suspend an employee immediately, the decision to suspend should be taken by the most senior manager available, and Human Resources informed as soon as possible afterwards.

We recognise that a suspended employee may need supervised access to their work area during their period of suspension and will accommodate all reasonable requests for access.

## Gross misconduct

11. Whilst there is no exhaustive definition of gross misconduct, for the purpose of the Disciplinary Procedure this constitutes an act that results in a serious breach of contractual terms and is of such a nature that the Council is justified in no longer tolerating the employee's continued presence at work. Some examples of acts deemed to be gross misconduct include:
  - theft, fraud or bribery
  - violence
  - deliberate damage to property
  - deliberately accessing internet sites containing pornography or offensive material
  - serious insubordination

- unlawful discrimination or harassment or bullying
- incapability at work through alcohol or illegal drug use
- serious breach of health and safety rules
- unauthorised absence (following a verbal warning for prior unauthorised absence)
- serious breach of confidence (such as the release of confidential material) or trust
- bringing the Council into disrepute
- serious negligence leading to loss, damage or injury
- serious breaches of our equality and diversity policies.

## Misconduct outside employment

12. An employee should not be dismissed or otherwise disciplined solely because they have been arrested, charged with or convicted of a criminal offence. Consideration must be given as to whether the offence is one that puts into question the employee's continued suitability for the role in which they are employed. For example if an employee who needs to drive to fulfil their job role loses their driving licence as a result of a driving conviction, it may be possible to make alternative arrangements or it may prove necessary to dismiss on the grounds that they can no longer fulfil the role. If a criminal conviction leads to a custodial sentence, the employment contract may be ended by frustration of contract (both parties are willing to fulfil the contract but it is not possible due to a situation beyond their control) or breach of contract as it will not be possible for the employee to attend for work.
13. It is the responsibility of the employee to inform their manager and report all offences of which they have been charged and/or convicted. Employees should seek advice from Human Resources if unsure about the relevance of offences committed. Where disciplinary action is thought to be necessary, the matter must first be fully investigated and the formal procedure instigated. If it later comes to light that an employee has failed to declare a criminal charge or conviction, this may lead to disciplinary action.

## Documentation

14. Human Resources will provide the employee with a copy of the Disciplinary Policy and Procedure when they are sent a letter inviting them to a disciplinary hearing.
15. During the disciplinary process written records must be kept. They should be treated as confidential and be kept no longer than necessary under the provisions of the Data Protection Act 1998, which also gives individuals the right to request and access certain personal data.
16. The manager who carries out the investigation must make a record of their investigation and findings and provide Human Resources with a copy to be kept on file.
17. The Human Resources representative attending the disciplinary hearing will take notes to form a record of the main points discussed.
18. The employee must be given copies of any written evidence that will be presented at least five working days prior to their disciplinary hearing to enable them to prepare their own statement.
19. Human Resources will send the employee a letter confirming the outcome of their disciplinary hearing within five working days.

## **Companions**

20. Employees have a statutory right to be accompanied by a trade union representative or colleague during formal disciplinary meetings. Whilst there is no right to representation at the informal stage, managers may agree to an employee being accompanied at their discretion. The Council reserves the right to refuse to allow the employee to be accompanied by a person who is deemed by Human Resources to be unsuitable, for example where we have concerns regarding the behaviour or conduct of a companion, or feels that the choice of representative presents a conflict of interest. Anyone accompanying an employee to a hearing is expected to behave in an appropriate manner for a formal hearing.
21. The role of the companion is to support the employee. They may make the case for the employee, speak on the employee's behalf and advise the employee but they may not answer a question that has been directly addressed to the employee. Employees must personally respond to any questions asked of them.
22. If the chosen companion is unavailable on the given date, the employee can offer an alternative date and time so long as it is reasonable and falls within five working days after the day proposed by the Council. If the chosen companion is not available for an alternative date within five working days, on which the other relevant people are also available (Hearing Manager, Human Resources, witnesses, etc), the employee may choose another companion or will have to attend without one.

## **Special arrangements for certain employees**

23. The disciplinary procedures will apply to all Council employees, including probationers and employees on fixed-term contracts, with the exception of the Managing Director, Directors, Monitoring Officer or the Chief Finance Officer for whom separate procedures will apply.
24. No disciplinary action will be taken against an elected trade union steward in cases of alleged serious breach of discipline or gross misconduct until the circumstances of the case have been discussed with a full-time or other appropriate official of the employee's trade union. In such situations only a verbal warning may be given prior to trade union involvement. Where it is necessary to suspend the employee, they will be removed from their duties pending agreement from the trade union for a suspension.
25. In cases where the Head of Human Resources is implicated in a disciplinary case, external Human Resources support will be sought from another council.

## **Grievances raised during the disciplinary process**

26. An employee may raise a grievance during disciplinary procedures against them if they believe that either the action amounts to unlawful discrimination or that it has not been taken on grounds of their conduct (for instance, if they believe it is as a result of a personality clash with their line manager).
27. If the grievance is raised at any point before the appeal stage, the grievance will be heard as part of the disciplinary procedure.

28. If the grievance is raised during or after the appeal, the full Grievance Procedure must be applied.

## **Sickness during the disciplinary process**

29. If an employee falls sick and cannot attend a disciplinary meeting then a further date should be arranged. If the employee fails to attend the rearranged meeting without good reason, a decision can be taken in their absence. Flexibility and reasonable judgement should be exercised when an employee is genuinely not well enough to attend a rearranged meeting.

## **Outcomes of disciplinary**

30. Managers hearing a disciplinary matter should carefully consider the appropriate outcome, which could be:

Disciplinary action is not appropriate and management guidance is recommended:

- no action required
- coaching/training
- verbal warning.

A disciplinary penalty is applied:

- first written warning
- final written warning
- dismissal
- other appropriate sanctions.

## **Other sanctions**

31. Where the employee's conduct is deemed to be extremely serious but where there are mitigating circumstances, the outcome of a hearing may be to impose sanctions as an alternative to dismissal. These may include actions such as:

- redeployment
- removal of management responsibilities
- loss of seniority
- demotion
- removal of access to flexi-time
- removal of an element of the pay and reward package.

This list is not exhaustive and serves as an indicator of the type of sanctions which might be imposed. The Hearing Manager should carefully consider the impact of sanctions on the organisation and on other employees and check with the relevant managers before making any final decisions. Sanctions will be confirmed in writing by a Human Resources representative within five working days of the hearing and will confirm the same information as a written warning.

Dismissal should be regarded as a last resort and only used when the employer is justified in no longer tolerating the employee's continued presence at work.

32. In reaching their conclusions, managers should take into account any previous disciplinary action which is still current. Previous disciplinary action that is out of time should be discounted, except where it serves to confirm an ongoing and persistent disciplinary matter.

33. The level of proof required in employment law is the balance of probability, it is not necessary to have proof beyond all reasonable doubt, as in criminal law. The manager hearing the disciplinary should consider what is more likely to have happened, who is more likely to be telling the truth, and make a reasonable judgement based on these factors.

### **Right of appeal**

34. Employees will have the right to appeal against any disciplinary penalties imposed. Their appeal will be heard by a senior manager who has not been involved in the case, supported by Human Resources.

35. In cases where there is no more senior manager to consider an appeal, for example if the disciplinary decision were taken by the Managing Director, appeals will be determined by a committee of the Council appointed for this purpose.

36. In exceptional circumstances the Managing Director may feel he is not in a position to hear an appeal and appeals in these cases will be determined by a committee of the Council appointed for this purpose.

37. The manager hearing the appeal may not increase the sanctions or actions from that given at the original hearing, only uphold the original decision or uphold the appeal and reduce or remove the sanctions.

### **Monitoring the application of the Disciplinary Policy**

38. The Council has conducted a full Equality Impact Assessment on this policy and is satisfied that its application should not result in a differential and negative impact on any groups of employees identified under the nine protected characteristics: age, disability, gender reassignment, race, religion or belief, sexual orientation, marriage and civil partnership, pregnancy and maternity.

39. The Council will carry out equality monitoring of the employees who are subject to the disciplinary procedure in order to be aware if a disproportionate number of employees from any individual equality strand are subject to disciplinary action. Should that be the case, it will consider the reasons why and, if necessary, amend this policy to ensure that any inequalities in the policy which are subsequently identified are removed.

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## **Disciplinary Procedure**

Where an employee needs help reading or understanding or engaging in the process below, because English is not their first language or they have learning difficulties or a disability which affects their ability in this area, Human Resources will arrange for someone to assist them. This will apply to the whole process and the support will include reading and explaining letters or documentation. To access this support the employee must ask Human Resources as otherwise they may not be aware of the need.

### **Employees covered by this procedure**

The procedure applies to all Council employees (including probationers and employees on fixed-term contracts) with the exception of those posts identified within the Disciplinary Policy as having special arrangements for dealing with disciplinary matters.

The Disciplinary Procedure should not be used when:

- an employee takes action that clearly indicates that they have terminated their own contract of employment with us
- an employee's performance is deemed to be inadequate due to a lack of capability. A separate capability procedure will be followed in such cases.

### **Disciplinary procedure**

Disciplinary action is usually invoked following instances of unacceptable conduct and where earlier informal action, if appropriate, has not proved sufficient. Examples of such situations include misuse of Council facilities, poor timekeeping, unauthorised absence, deliberate failure to follow instructions, poor performance for reasons other than capability.

### **Stage 1 investigation and preparation for the hearing**

The manager will contact Human Resources and provide details of the potential disciplinary matter. The Human Resources Partner will decide with the relevant Director (this may be delegated to a Head of Service) whether an investigation is appropriate and will decide who the Hearing Manager and the investigating manager will be. Human Resources will advise on whether the alleged misconduct should be regarded as potential gross misconduct and whether a period of suspension is necessary to facilitate an effective investigation. Human Resources will also advise the manager on how to conduct an appropriate investigation with reference to the investigations procedure.

[Guidance on Conducting Workplace Investigations](#)

The investigating manager will provide Human Resources with the results of their investigation which will then be passed to the hearing manager to decide on whether

disciplinary proceedings are appropriate. If they are, Human Resources will write to the employee inviting them to a disciplinary hearing, giving at least 5 working days' notice. The letter will contain details of:

- the allegations against them and why these are thought to warrant disciplinary action
- whether a possible outcome of the hearing is dismissal
- the date, time and place of the hearing
- the employee's right to be accompanied at the hearing by a trade union representative or colleague (please see notes on companions in the Disciplinary Policy).
- any evidence that is available (copies of any documents and/or witness statements that will be produced at the hearing will be copied to the employee)

## **Stage 2 the disciplinary hearing**

A manager designated by the relevant Director, or a Director, will chair the hearing and a Human Resources representative will also be present. The employee must be allowed to answer the allegation, present evidence, and ask questions about any part of the process or the information provided.

If the Hearing Manager considers that further investigations and discussions are required before reaching a decision, the hearing may be adjourned for a specified period. If this is not the case, the hearing will be adjourned for the hearing manager to consider the evidence and reach a decision.

At the conclusion of the hearing the Hearing Manager should inform the employee of the outcome verbally, in the presence of their companion if they have one, and tell them of the right to appeal. A Human Resources representative must confirm this decision in writing within five working days, with details of how to appeal. If the employee was not accompanied at the hearing, the letter will advise them to consult a trade union representative, if they are a union member, or colleague. In some cases it may be necessary for the hearing manager to adjourn to consider the evidence and in this situation the employee will be advised of the reconvened date of the meeting within five days of the adjournment.

## **Stage 3 following the hearing**

### **Possible outcomes of disciplinary action**

A Human Resources representative will confirm warnings in writing within five working days of a disciplinary hearing. Warnings will normally be valid for 6-12 months. A copy of this letter will be kept on the employee's electronic file (staff site) until the warning has expired. If the offence has been sufficiently serious to warrant the warning remaining on record for longer than the normal 6-12 months the chairman can set a longer period. This must be indicated to the employee both at the interview and in writing. If there are no further offences within the specified period, Human Resources will remove the warning from the staff site and it will be disregarded for future disciplinary purposes unless it serves to confirm an ongoing and persistent disciplinary matter.

### **Written warning**

This will set out:

- the nature of the problem
- what improvement is required
- the timescale for achieving improvement with a review date
- what support has been agreed to assist the employee
- that the warning will be recorded in the employee's file, and for how long
- the likely outcome if no improvement takes place
- the employee's right of appeal against the decision.

### **Final written warning**

It is normally good practice to give an employee a chance to improve before imposing a final written warning. Only in cases where the employee's misconduct is having, or is likely to have, a serious harmful impact on the organisation should disciplinary action lead directly to this stage.

If there is failure to improve in the timescale provided in a first written warning, or if the offence is serious enough, the employee should be issued with a final written warning. This warning will be confirmed in writing by Human Resources and will contain the same information as set out above in respect of a written warning.

### **Dismissal**

If the employee's conduct or performance still fails to improve after a final written warning, or where the misconduct or performance issue is deemed to be extremely serious (see gross misconduct) they may be dismissed after a hearing.

A dismissal hearing must be conducted by a Director (or a senior manager designated by the relevant Director) and must at all times be arranged by a Human Resources representative. A decision to dismiss will be confirmed in writing, within two working days, by a Human Resources representative, and will state:

- the reason(s) for the dismissal
- the employee's right of appeal against the decision and that any local appeal should be submitted within ten working days
- the period of notice and the arrangement for the completion of such notice
- in cases of gross misconduct, that it is a summary dismissal with no entitlement to a notice period
- that the employee is advised to consult their trade union representative or colleague if not a union member.

### **Other sanctions**

Where the employee's conduct is deemed to be extremely serious but where there are mitigating circumstances, the outcome of the hearing may be to impose sanctions as an alternative to dismissal. These may include actions such as:

- redeployment
- removal of management responsibilities
- loss of seniority
- demotion
- removal of access to flexi-time
- removal of an element of the pay and reward package.

This list is not exhaustive and serves as an indicator of the type of sanctions which might be imposed. The hearing manager should carefully consider the impact of sanctions on the organisation and on other employees and check with the relevant managers before making any final decisions. Sanctions will be confirmed in writing by a Human Resources representative within five working days of the hearing and will confirm the same information as set out above in respect of a written warning.

## **Stage 4 appeal against the disciplinary decision**

There is no right of appeal against a verbal warning as a verbal warning is not part of the disciplinary process, but is informal action taken by a manager in order to try and avoid the need for disciplinary by addressing any conduct or performance issues at an early stage. There is also no right of appeal against a decision that the employee should undertake training or coaching to improve their behaviour as this is not part of the disciplinary procedure but general management. There are different processes for appealing against a written warning and for appealing against dismissal. These are set out below.

The manager hearing the appeal may not increase the sanctions or actions from that given at the original hearing, only uphold the original decision or uphold the appeal and reduce or remove the sanctions.

### **Appeals against written warnings and other sanctions**

The employee wishing to appeal should write to the relevant Director (who must not have been involved in the case so far in order to be genuinely independent) within ten working days of receiving written confirmation of a warning, setting out the grounds of their appeal. The letter should clearly set out the grounds of appeal and the desired outcome. Only the specific grounds raised will be considered during the appeal – it is not intended to be a complete re-hearing of the case. A copy of the appeal letter should be retained by the employee or their companion.

1. Within seven working days of the appeal being received, where circumstances allow, a senior manager who has not been involved in the case will hold a meeting with the employee at which the employee will explain why they think the disciplinary penalty imposed was too severe. The employee has the right to be accompanied at the meeting by a trade union representative or colleague. A Human Resources representative should also be present. Where it is not possible to hold the meeting within seven working days, the senior manager may pass the appeal to another senior manager to hear, or hold a meeting later, but as soon as possible. Human Resources will write to the employee advising them of this arrangement.
2. Having listened to the appeal and carefully considered the views presented by the employee, the senior manager may allow or reject it and should give the decision either at the meeting or within three working days in writing, where circumstances allow. If the senior manager feels further investigation is necessary in order to make a decision, a longer timeframe may be agreed between the senior manager and the employee.
3. If the appeal is upheld, Human Resources will remove the warning from the employee's electronic file (staff site) or where a final written warning is replaced with a lesser warning, the file records will be changed to reflect this.
4. There is no further right of appeal if the employee disagrees with the decision.

## **Appeal against dismissal**

The procedure is the same as outlined above except that:

- appeals against dismissal should be made to the Head of Human Resources within ten days of receiving a dismissal letter
- appeals will be heard by a Director or the Managing Director, supported by a Human Resources representative.

In exceptional circumstances the Managing Director may feel that neither he nor a Director is in a position to hear an appeal and appeals in these cases will be determined by a committee of the Council appointed for this purpose.

## **Special circumstances**

### **Gross misconduct**

Because of the potential for dismissal in these cases, an investigation into potential gross misconduct must be referred to a Director for their decision as to whether a disciplinary hearing is appropriate and whether it should be for gross misconduct or a lesser charge. A gross misconduct hearing must be conducted by a Director (or a senior manager designated by the Director) and must at all times be arranged by a Human Resources representative in accordance with the dismissals procedure. If, as a result of the hearing, the allegation of gross misconduct is upheld, the employee will be summarily dismissed. Notice will not be given or paid and the last day of service will be the date that the decision to dismiss was reached.

### **Dismissal during the probationary period**

It is expected that the formal system of probation review meetings should serve to highlight and discuss any conduct or performance issues, offer any support and training that is needed, and provide the employee with an opportunity to improve within agreed timescales.

If, however, the employee's conduct fails to improve within the agreed timescales, or where the misconduct is deemed to be too serious, they may be dismissed after a hearing.

### **Suspension**

Where an employee is suspected of gross misconduct and their continued presence in the workplace might put at risk the safety of colleagues or the security of Council property or responsibilities to other parties, or compromise an effective investigation, or where relationships of trust have broken down, careful consideration will be given to a brief period of suspension on full pay to allow an investigation to be conducted. A period of suspension should be kept as short as possible and can be lifted during the investigation if appropriate.

Human Resources should be consulted before any such action is taken. However, if the need to suspend arises at a time when Human Resources support is not available, the

decision to suspend should be made by the most senior manager available. In all cases Human Resources should be notified as soon as possible.

The most senior manager available should approach the employee and inform them that they are being suspended. This will normally be a Head of Service. The senior manager should clearly state that:

- the employee is being suspended
- the reason for the suspension
- the suspension is on full pay
- the employee should not come to the workplace until invited to do so for an investigatory meeting
- the employee should not contact colleagues as this could be interpreted as an attempt to influence witnesses. If there is a need to contact anyone the employee should speak to Human Resources for guidance
- the employee should not access work computer systems if they are able to do this from home.

The manager should take from the employee their identity card which gives access to the building and any work mobile phone or other communication device and should escort the employee from the premises so there is no unsupervised contact with colleagues. The manager should inform the ICT Manager so that any home access to the Council's computer systems can be blocked and Human Resources who will confirm the suspension in writing within two working days stating:

- the reason(s) for the suspension
- that the suspension is on full pay
- what further action is contemplated
- that the employee is advised to consult their trade union representative or colleague if not a union member.

During periods of suspension, supervised access to the workplace may be arranged to enable the suspended employee to access emails and papers to prepare their defence.

## **Grievances raised during the disciplinary process**

An employee may raise a grievance during disciplinary procedures if they believe that either the action amounts to unlawful discrimination or that it has not been taken on grounds of their conduct (for instance, if they believe it is as a result of a personality clash with their line manager). Grievances raised during the disciplinary process will be considered by Human Resources and a decision taken on whether these grounds are established.

If the grievance is raised at any point before the appeal stage, the grievance may be heard as part of the disciplinary or the disciplinary may be adjourned and the grievance addressed first.

If the grievance is raised during or after the appeal, the full Grievance Procedure must be followed.

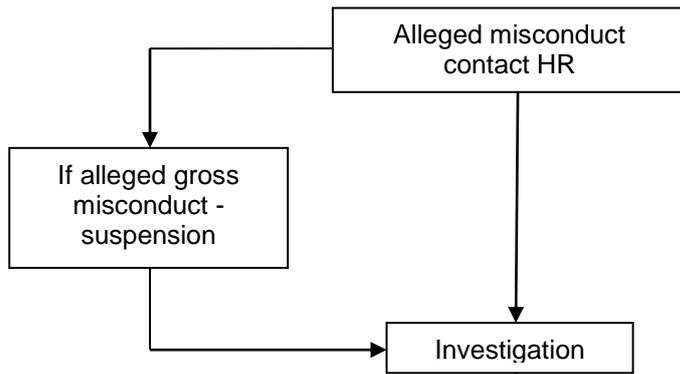
## **Sickness during the disciplinary process**

If an employee falls sick and cannot attend a disciplinary meeting then a further date should be arranged. If the employee fails to attend the rearranged meeting without good reason, a decision can be taken in his/her absence. Flexibility and reasonable judgement

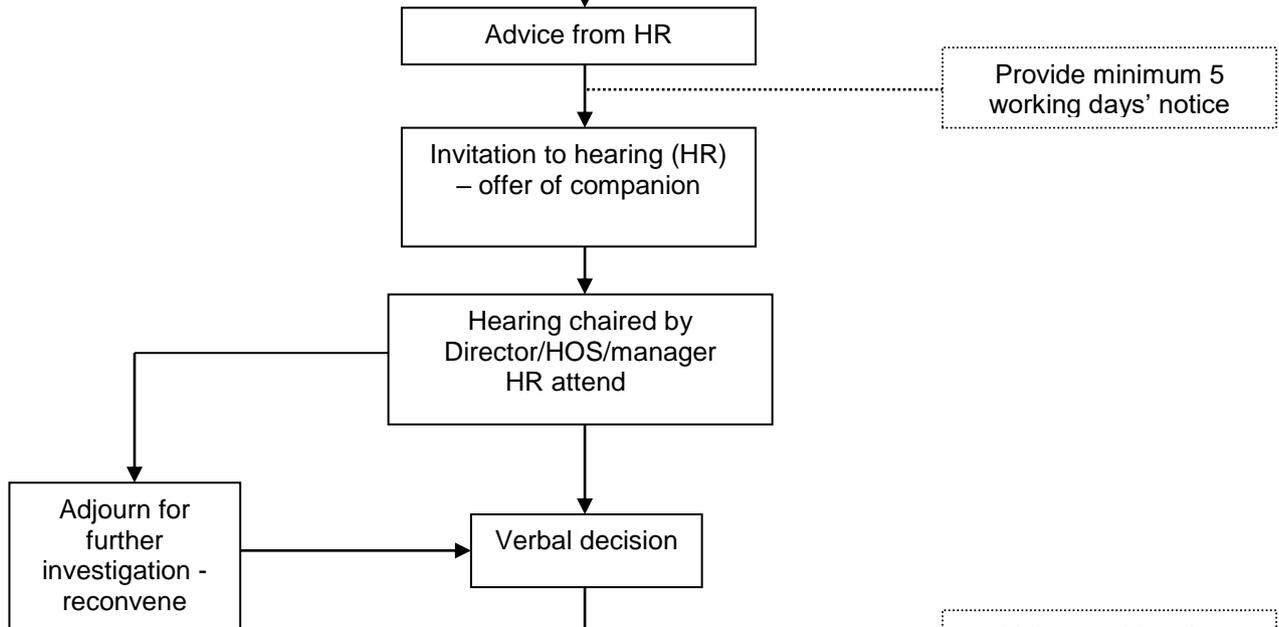
should be exercised when an employee is genuinely not well enough to attend a rearranged meeting.

## Local Disciplinary and Dismissal Procedure

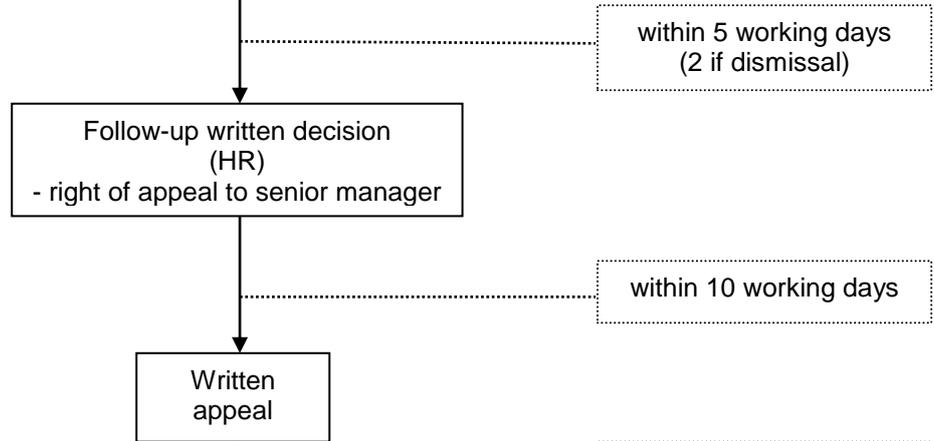
**Stage 1**



**Stage 2**



**Stage 3**



**Stage 4**

