

HUMAN RESOURCES
POLICY STATEMENT

DISCIPLINARY PROCEDURE

1. The Council's Aim

- 1.1 Our aim is to enhance the Council's reputation as a good employer, whilst ensuring that all employees meet high standards of conduct.
- 1.2 We will achieve this by:
 - 1) Specifying, promoting, and monitoring high standards of conduct and competence for employees and managers.
 - 2) Enabling managers to remedy promptly and effectively any serious problems of misconduct (including gross misconduct).
 - 3) Keeping the employee informed of the action they face if they fail to meet the Council's standards of conduct.
 - 4) Dealing with disciplinary matters fairly and within the principles of natural justice.
 - 5) Complying with legal requirements.

2. Introduction

- 2.1 This policy provides a framework for managers to work with employees in order to achieve and maintain acceptable standards of conduct.
- 2.2 In most cases, managers and employees will work together to resolve minor conduct issues through co-operation and support without needing to use any formal procedure.

3. Key Principles

- 3.1 Managers and Employees are expected to be familiar with the standards of conduct that apply in the workplace and to have received appropriate training.
- 3.2 Managers will informally address minor misconduct before using the formal procedure.
- 3.3 Managers will ensure all staff are treated fairly and consistently and that their decisions/actions are non discriminatory.
- 3.4 There maybe circumstances where an individual's conduct outside of work may lead to formal disciplinary action (i.e. bringing the Council into disrepute).
- 3.5 Harlow Council will not dismiss employees who breach standards of conduct for the first time, except in cases of gross misconduct.
- 3.6 Managers considering disciplinary action against recognised trade union representatives must discuss their concerns with the Council's HR Manager before taking any formal action as there is a legal requirement for the authority to notify the individual's full time officer before any action is taken. This includes former trade union officials up to six months after they left office.
- 3.7 Managers will notify employees in advance (and within set timeframes) of any formal meetings and their right to be accompanied by a trade union representative or a workplace colleague.

3.8 Harlow Council is committed to ensuring that all:

- Investigations are dealt with promptly.
- Managers will only apply those disciplinary sanctions set out in this procedure.
- All decisions and sanctions imposed are confirmed in writing.
- All employees are notified in writing of their right of appeal against any formal disciplinary decision.

4. Who is covered by this Policy?

4.1 This policy applies to all employees except:

- Staff who are subject to a probationary period.
- The Chief Executive for whom legislative procedures already exist.
- Chief Operating Officer (whose disciplinary procedure is contained in the JNC conditions of service).
- Monitoring and Statutory Officers for whom legislative procedures already exist.

4.2 A separate Capability Procedure exists to deal with cases where staff are identified as not possessing the right skills, knowledge, ability, or aptitude to successfully perform their job.

5. Initial Fact Finding

5.1 Prior to taking any formal disciplinary action, a manager should meet with the employee and potential witnesses to undertake an initial fact finding exercise to establish whether the issues are:

- Minor and can be dealt with through informal action.

OR

- Serious and require further investigation through the formal disciplinary procedure.

5.2 The manager should also seek advice from HR to ensure they have the appropriate support and advice during this initial fact finding investigation.

Informal Action

5.3 If the line manager concludes the issues are minor they should:

- Meet with the employee to set out their concerns and the employee's shortcomings.
- Explain the standards required.
- Agree clear targets for improvement.
- Consider any appropriate training and/or support.
- Summarise the discussions and decisions taken in writing.

Where appropriate, keeping a brief note on the employee's file of the incident and counselling meeting. A copy of this should be given to the employee, with a copy placed on his/her personnel file for 6 months after which time it will be disregarded, provided there has been no further offence within the 6 month time period.

Use the Informal Action Letter Template

- 5.4 If a line manager concludes that their concerns are serious and warrant further investigation they should contact:

(i) Their line manager/Head of Service to seek their agreement to instigate formal disciplinary action.

AND

(ii) The Council's HR manager (or their representative) to ensure appropriate HR advice is available.

6. Formal Process

Pre Investigation

- 6.1 Once a decision has been taken to instigate formal disciplinary action, a Commissioning Officer needs to be appointed. This manager will have delegated authority to determine whether disciplinary action is appropriate and appoint an Investigating Officer.

The Commissioning Officer also has authority to determine whether:

(i) The individual should be suspended.

AND

(ii) A disciplinary hearing should be held once the investigation has been completed.

- 6.2 The Commissioning Officer is usually the manager's Line Manager/Head of Service.

Investigations covering Financial Irregularities

- 6.3 Where an allegation of financial irregularities is made against an employee the Audit Manager should be notified immediately.

Investigations that could lead to Criminal Charges

- 6.4 Where an allegation of a criminal nature is made against an employee, advice should be immediately sought from the HR Manager (or their representative).

Disciplinary Suspensions

- 6.5. In a small number of cases an individual's actions may be so serious as to constitute gross misconduct and warrants suspension on full pay. This usually occurs when:

(i) The allegation is Gross Misconduct.

(ii) The employee's presence at work may hinder the investigation.

OR

(iii) It is considered to be in the interest of the employee's health, safety, or wellbeing.

- 6.6 In cases where the Commissioning Officer believes suspension is appropriate they should discuss their concerns with the Council's HR Manager (or their representative).

They will also consider other options short of suspension (e.g. transfer). Heads of Service are responsible for authorising suspensions.

- 6.7 All suspensions should be kept as short as possible and be regularly reviewed (usually fortnightly).

7. Undertaking the Investigation

- 7.1 Once the Commissioning Manager is satisfied that disciplinary action is warranted they will, in consultation with the HR Manager (or their representative), appoint an appropriate manager to investigate the case.

This person will be known as the Investigating Officer and will be responsible for:

- (i) Carrying out a thorough investigation into the allegations.
- (ii) Preparing a written report setting out their findings.

AND

- (iii) Presenting management's case at any subsequent formal disciplinary hearing.

- 7.2 This investigation should be completed as quickly as possible and include signed statements from all individuals interviewed.

- 7.3 Before commencing the investigation, the employee should be notified in writing of:

- (i) The purpose of any interview and the allegations against them.
- (ii) When and where they will be interviewed.
- (iii) Their rights to be accompanied by a trade union representative or work colleague.
- (iv) Where they can get a copy of the Council's disciplinary procedure.

- 7.4 The Investigating Officer must also keep a detailed record of the investigation and produce a written report with recommendations. This will include whether the case should be:

- (i) Referred to a formal hearing on all or some of the allegations.
- (ii) Dealt with informally.
- (iii) Dismissed and no further action taken.

- 7.5 The Commissioning Officer will then decide, based on this report, whether a disciplinary hearing should be convened.

- 7.6 Should a decision be taken to proceed to a formal disciplinary hearing then the Commissioning Officer in consultation with the HR Manager (or their representative) will appoint a manager to act as the Hearing Officer, who may also be the Commissioning Officer.

8. The Formal Hearing

- 8.1 Once a decision has been taken by the Commissioning Officer to proceed to a formal hearing, HR will write to the employee. They must ensure the employee knows:
- (i) The date, time, and location of the hearing.
 - (ii) The allegations against them - including any changes made as part of the investigation.
 - (iii) Their right to be accompanied by a trade union official or workplace colleague.
 - (iv) Their right to submit evidence, documents and call witnesses relevant to the case.
- 8.2 The employee is entitled to reasonable notice of any disciplinary hearing normally at least 7 calendar days.

Exchange of Papers

- 8.3 Human Resources will ensure the Investigating Officer's report is sent to the Hearing Officer and employee at least 7 calendar days before the hearing date.
- 8.4 The employee may submit papers in support of their case up to 2 clear working days before the date of the hearing.

Hearing Procedure

- 8.5 The procedures to be adopted during the Disciplinary Hearing are set out in Appendix 1.

Reaching a Decision

- 8.6 At the end of the hearing the Panel will adjourn to reach a decision. The Hearing Officer, advised by HR, will consider and evaluate the evidence presented and judge the case on the balance of probability. Any decision must be based solely on the evidence provided at the hearing.
- 8.7 The Hearing Officer will then decide on one of the following options i.e. to:
- (i) Conclude the case is not proven and/or no further action is necessary or refer the case back to the line manager (section 5.3).
 - (ii) Issue a formal written warning.
 - (iii) Issue a final written warning.
 - (vi) Recommend a transfer and/or demotion, if a suitable vacancy exists (see paragraph 9.2).
 - (v) Impose a financial penalty (e.g. suspension of pay for five days). Any deduction for pay must be with the Employee's consent.
 - (vi) Dismiss the employee.

- 8.8 This decision should be conveyed to the employee in person, where possible, and confirmed in writing within 3 working days. The letter should also set out the individual's right of appeal.

9. Officers Authorised to take Disciplinary Action

Disciplinary Panels/Sanctions

- 9.1 The following officers are authorised to apply formal disciplinary sanctions:

Warnings	Authority	Normal Duration
Recorded Verbal Warning	Immediate Line Manager	9 Months
Written Warning	Immediate Line Manager	18 Months
Final Warning	Head of Service /Nominated Manager	2 Years
Dismissal	Head of Service	N/A

- 9.2 Where the Hearing Officer has concluded that there are sufficient grounds to warrant a dismissal, they should first consider whether other sanctions allowed under this procedure are more appropriate. These sanctions are:

1. **Transfer to another suitable job** - where the offence means that the employee cannot continue in their original job or place of work. This may be accompanied with a warning, usually final.
2. **Demotion** - as an alternative to dismissal. This may also be accompanied with a formal warning, usually final.
3. **Demotion and transfer** - where the offence means that the employee cannot continue in their original job and/or a post on a lower grade is seen as an alternative to dismissal.

Again this may be accompanied by a formal warning, usually final.

- 9.3 The Hearing Officer is not obliged to utilise any of these sanctions, they just have to be able to demonstrate at any subsequent Employment Tribunal that these options were given consideration.

- 9.4 Where no suitable vacancy exists then dismissal will apply.

Disciplinary Appeals

- 9.5 Heads of Service will have delegated authority to Chair Formal Disciplinary Appeals Panels, except for dismissals where an independent Head of Service or member of CMT will perform this role.

9.6 Spent Warnings

The disciplinary policy is clear that after the appropriate periods warnings are disregarded in the event of further disciplinary action. In the event that the line manager requests a staff file, expired warnings are removed. Therefore the only time these spent warnings are viewed is because of a request for the employee to view their file, as required by Internal Audit, as directed by Court etc and as required by law. One such occasion is in the event of a TUPE transfer, there is a requirement to disclose disciplinary (and other matters) in the 2 years prior to the transfer date.

There may be occasions when spent warnings are considered as part of further disciplinary action, this would be considered on a case by case basis, and then with the appropriate legal and HR advice. In this event the inclusion of a spent warning would be declared as part of disciplinary papers and would be open to challenge by the individual or companion.

10. The Right of Appeal

- 10.1 Employees have the right to appeal against any formal disciplinary action.
- 10.2 Where an employee wishes to appeal they should write to the Council's HR Manager (within 14 Calendar days of the date of their disciplinary letter) citing clear and specific grounds as to why they wish to challenge the Disciplinary Panel's decision. They should also include the names of any witnesses they intend to call.
- 10.3 Extensions to this deadline will only be allowed in exceptional circumstances.
- 10.4 Appellants are not allowed to submit any new evidence at the appeal stage, unless there are exceptional circumstances. Where there is genuine new information the original Hearing Officer should have the opportunity to hear the evidence and review their decision before any Appeals Hearing is conducted.

Exchange of Papers

- 10.5 Once a date has been set for an Appeals Hearing, the Council's HR Manager will advise/write to the Appellant:
 - (i) Confirming the date, time, and location of the hearing.
 - (ii) Reminding them of their right to be accompanied by a trade union official or workplace colleague.

Appellants should also note that:

- (iii) The appeal is not a re-hearing.
 - (iv) The appeal will only consider procedural issues and the specific grounds/areas of dispute set out in their appeal.
 - (v) No new evidence can be presented to the panel, except in exceptional circumstances.
- 10.6 The Appellant may send any reports or additional papers to support their appeal to the Council's HR Manager up to 7 calendar days before the formal Appeals Hearing. If not, their original appeals letter will be sent to the Appeals Panel.
- 10.7 Human Resources will ensure a copy of the Hearing Officer Management report will be sent to the Panel and the Appellant at least 7 calendar days before the formal Appeals Hearing.

Appeals Procedure

- 10.8 The procedure to be adopted during the Appeal Disciplinary Hearing is set out in Appendix 2.

Reaching a Decision

- 10.9 At the end of the hearing the Panel will adjourn to reach a decision. The Appeals Officer, advised by HR, will consider and evaluate the evidence presented and reach one of the following decisions to:
- (i) Uphold the decision of the original panel.
 - (ii) Reduce the sanction imposed by the original panel.
 - (iii) Increase the sanction imposed by the original panel (only in exceptional circumstances) and in consultation with the HR Manager and where new evidence is submitted (paragraph 10.4).
 - (iv) Overturn the original disciplinary decision (either fully or partially).
- 10.10 This decision should be conveyed to the employee in person, where possible, and confirmed in writing within 7 calendar days. The letter should confirm the decision of the Appeals Panel is final.

11. Role of Trade Union/Workplace Colleague

- 11.1 At all formal stages within this procedure, the employee will have the right to be accompanied by a trade union representative or a Harlow District Council workplace colleague.

Please note that employees involved in the specific case (e.g. as a possible witness) cannot act as a companion due to a possible conflict of interest.

Once nominated, an employee's representative will be copied into all correspondence (i.e. where the employee gives permission in writing).

Unless specifically agreed by the Investigating/Hearing Officer, the employee will be required to speak personally and answer direct questions. The representative has the right to address the hearing, and to confer with the employee at any stage. This may involve adjourning the hearing for short brief periods.

Where the employee's representative is not able to attend a scheduled meeting or Hearing for justifiable reasons, the employee may propose an alternative date and time, normally within 7 calendar days of the original hearing.

12. Timescales

- 12.1 Where the prescribed periods set out in this procedure include Bank Holidays or periods where key managers are unavailable (e.g. annual leave/sickness/training/key meetings/external visits) they will be extended appropriately.

13. Managerial Roles

- 13.1 There are three managerial roles in the formal disciplinary procedure:
- **The Commissioning Officer:** who determines whether a disciplinary investigation should be undertaken and if so, appoints an Investigation Officer. They also determine whether the employee should be suspended or transferred and whether a

disciplinary hearing should be held once an investigation has been completed; the Commissioning Officer is usually the Manager's Line Manager or a peer.

- **The Investigating Officer:** who carries out a thorough investigation of the allegations, presenting their findings in a report and at the disciplinary hearing. They are usually the employee's line manager or a peer.
- **The Hearing Officer:** who hears the evidence at a disciplinary hearing and is authorised to make a decision on any disciplinary action required. They are appointed by the Commissioning Officer and will usually be at Head of Service level or above where dismissal is a possible outcome.

Standards of Conduct and Disciplinary Rules

The Council expects all of its employees to recognise their obligations to the Council, the public (including children in their charge) and other employees and to conduct themselves in a proper manner at all times.

Disciplinary rules exist for all employees. The Council's general rules of conduct are listed below. They cover misconduct and gross misconduct but are neither exhaustive nor exclusive:

MISCONDUCT

- Regular lateness from work;
- Failure in following employment rules, eg reporting absence in prescribed timescales;
- Refusal to obey a reasonable instruction of your supervisor/manager;
- Negligence at work leading to loss, damage or wastage of Council or public property;
- Willfully inadequate work performance (Poor performance or lack of capability will normally be the subject of the Capability process);
- Abusive or threatening behaviour towards member of the public including children, clients, management, fellow employees and elected Council representatives (dependant on the seriousness of the behaviour);
- Breaches of the Council's Health and Safety policies and practices;
- Breaches of the Council's Standing Orders and Financial Regulations;
- Misuse of the Council's facilities including computer facilities (eg e-mail and the internet) - the decision as to whether it constitutes misconduct or gross misconduct will depend on the seriousness of the misuse;
- Undertaking private activities during working hours without appropriate or prior permission; and
- Preventing an employee from pursuing any legitimate concerns under Council policy or procedures eg whistle-blowing.

GROSS MISCONDUCT

Gross misconduct is misconduct which is serious enough to destroy the contract between the Council and the employee, and to make any further relationship of trust impossible.

If confirmed through the disciplinary process, allegations of gross misconduct may lead to summary dismissal, ie where there is no entitlement to statutory notice.

The number of allegations under consideration is not a factor in determining whether they are issues of gross misconduct rather the nature of each.

The following are examples of gross misconduct (but are neither exhaustive nor exclusive):

- Sexual misconduct at work including the transmission, downloading or storage of sexually explicit material via the Internet or e-mail;
- Unauthorised removal and use of Council property and facilities eg misuse of e-mail and internet (whether it is misconduct will depend on the degree of misuse);
- Serious breaches of the Council's Financial Regulations and Standing Orders;
- Fraud;
- Stealing from the Council, its employees or clients;
- Fighting or acts of violence at the workplace, serious threatening or abusive behaviour towards members of the public, clients, fellow employees, elected Council representatives;
- Criminal offences outside work which affect the individual's employment suitability;
- Serious discrimination/harassment on the grounds of sex, race, creed, religion, nationality, age, sexual orientation or disability;
- Harassment on any other grounds not shown above
- Bullying;
- Unauthorised disclosure of confidential information;
- Being incapable of adequately performing duties as a result of the abuse of alcohol or illegal drugs;
- Falsification of documents/records likely to be of financial benefit to the employee or other persons eg time sheet, expense claims, qualifications, flexi sheets;
- Being an accessory to an act of gross misconduct;
- Bribery and corruption;
- Fraudulent claims for benefits;

- Knowingly providing false evidence in relation to a disciplinary matter;
- Undermining trust and confidence;
- Serious breaches of the Council's Health and Safety policies and practices;
- Deliberate damage to property including the destruction or removal of electronic data;
- Serious insubordination and/or refusing to carry out a reasonable instruction of your manager;
- Misuse of the Council's property or name;
- Bringing the Council into serious disrepute (which could include activities outside working hours);
- Serious negligence which causes or might cause unacceptable loss, damage or injury;
- Serious breach of confidence (subject to Whistleblowing provisions);
- Working when allegedly absent from work due to sickness or special leave; and
- Gross negligence or serious breach of duty of care.

To maintain and promote some consistency of application, advice must be sought from HR in determining allegations of gross misconduct.

Policy Author:	Nigel Delbarre, HR Manager
Approved & Authorised:	CMT
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Revision History

Date of this revision: November 2011

Date of next planned revision: November 2012

Revision date	Summary of Changes	Changes marked

Appendices:

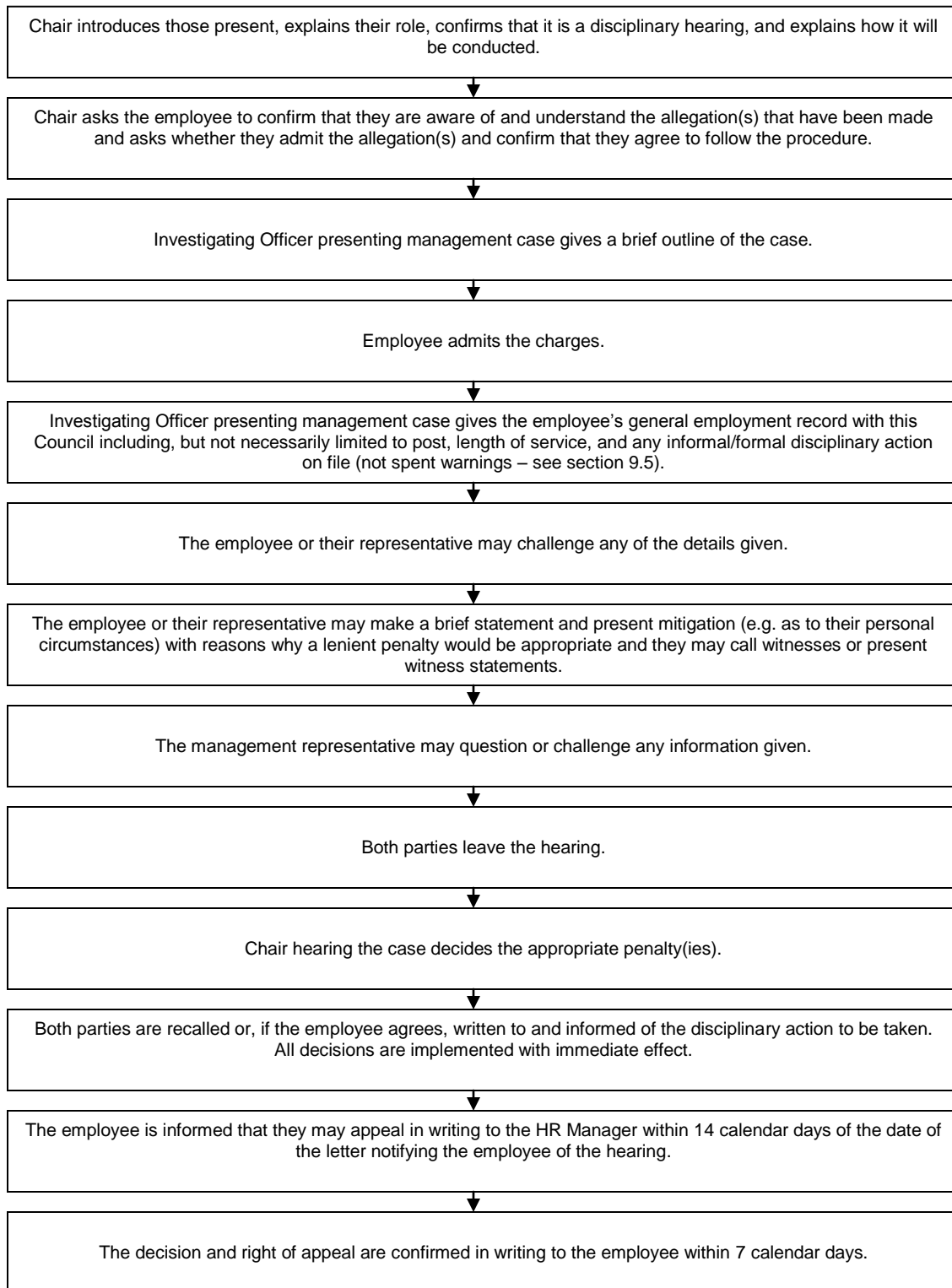
Page 12 - Appendix 1 - Procedure for Conducting Formal Hearings (Admitted)

Page 13 - Appendix 1 (Continued) - Procedure for Conducting Formal Hearings (Not Admitted)

Page 14 - Appendix 2 - Procedure for Conducting Appeal Hearings

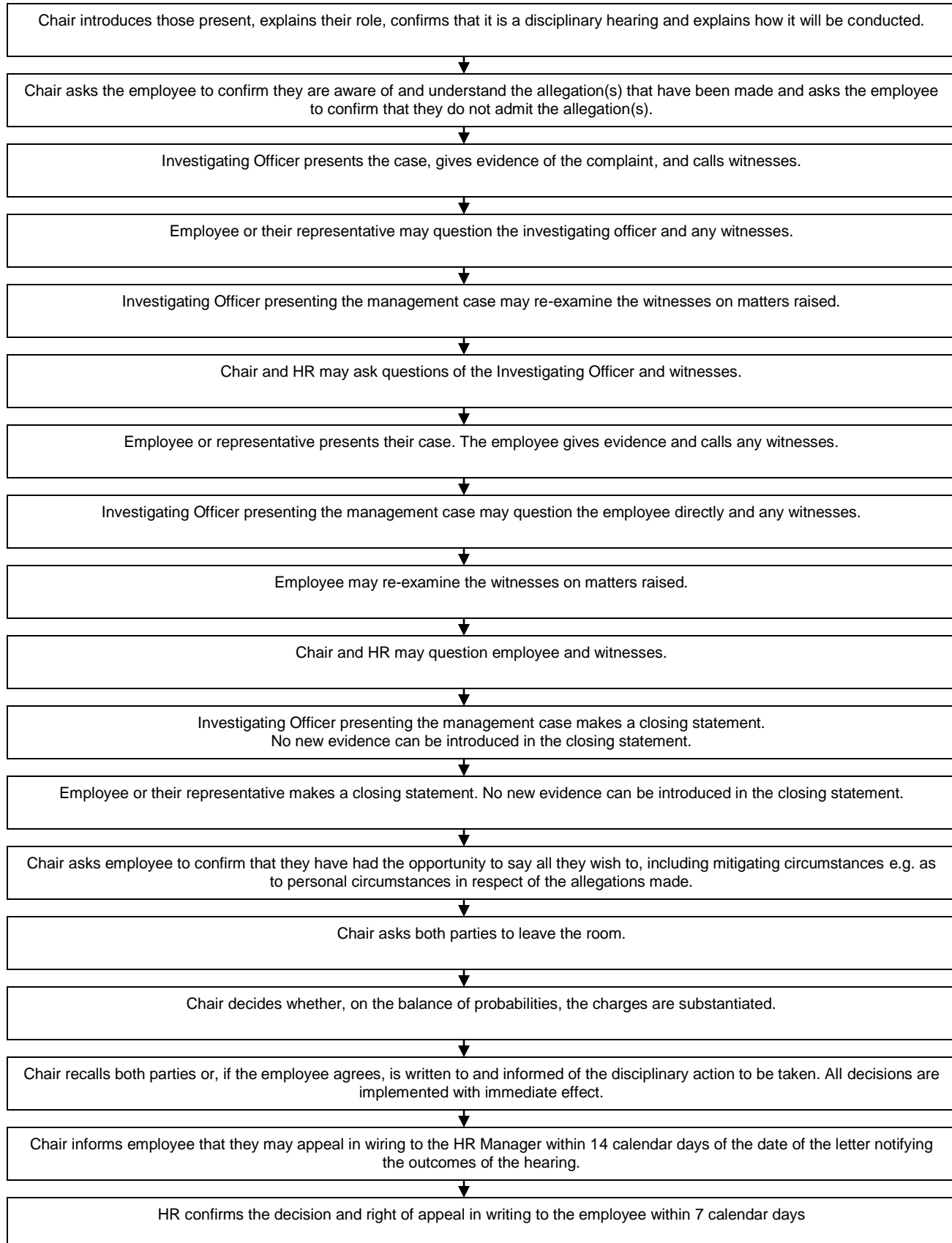
Appendix 1 - Procedure for Conducting Formal Hearings (Admitted)

This procedure will not be used for allegations of gross misconduct.



Appendix 1 Continued - Procedure for Conducting Formal Hearings (Not Admitted)

This procedure will be used for allegations of gross misconduct.



Appendix 2 - Procedure for Conducting Appeal Hearings

