

# **CONDUCT PROCEDURE**

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## **A Procedure for Dealing with Conduct Issues**

### **1. Purpose**

- 1.1. It is the policy of Dacorum Borough Council (DBC) to promote positive and constructive working relations amongst its workforce. This procedure exists to help and encourage employees to achieve and maintain expected standards of conduct and to provide a fair and effective method of dealing with alleged breaches of these standards. Examples of breaches of these standards are given in Appendix 1.
- 1.2. It is the Manager's responsibility to ensure this procedure and any service specific standards of conduct are understood and effectively, fairly and consistently applied.
- 1.3. The procedure for dealing with conduct issues applies to all employees unless otherwise stated. This includes permanent, temporary and probationary employees.
- 1.4. Each step and action of the procedure must be taken without unreasonable delay. Disciplinary action may only be taken after an investigation, conducted in accordance with the procedure outlined below. The procedure conforms to ACAS guidelines and employment law.
- 1.5. To assist managers through this procedure there is a Conduct Flow Chart available. Appendix 4.

### **Procedure**

#### **2. Informal Stage - dealing with alleged misconduct**

- 2.1. Depending on the degree and type of the alleged misconduct, it may be appropriate for it to be dealt with informally by the manager. The employee has no statutory right to be accompanied at such a meeting but the manager may agree to a request to be accompanied provided that it does not lead to what is considered to be an unreasonable delay. If the delay is unreasonable, the meeting will go ahead with the employee unaccompanied.
- 2.2. If it becomes clear during such a meeting that formal action may be necessary, the meeting must be terminated and a formal investigation undertaken. From this point the employee has the right to be accompanied by a work colleague or trade union representative.
- 2.3. The manager must take notes at an informal meeting, a summary must be given to the employee and a copy placed on the personal file with a review date. It must be made clear to the employee what aspect of their conduct they need to change, what standards are required of them and what will happen if they fail to meet the standard required. The employee will have the opportunity of recording their point of view alongside the manager's. This will also be placed on the personal file.
- 2.4. When the manager is satisfied that the employee's conduct is acceptable, the notes in the personal file should state 'expired'.

### **3. Formal Stage - dealing with alleged misconduct and gross misconduct.**

3.1. For allegations related to the inappropriate accessing/viewing/storing of images or data, see Appendix 2.

3.2. Once an alleged act of misconduct has come to the manager's attention they will ascertain who is to act as Adjudicator. (Investigating Officers Role Appendix 3.) In cases of gross misconduct (or where previous warnings may lead to dismissal if the allegation is proven), the adjudicator will be at least a Group Manager

3.3. The Adjudicator will:

- appoint a person to investigate the allegation ("the Investigator").
- reach a decision on whether the allegation appears to be misconduct or gross misconduct. This decision may be postponed at the Adjudicator's discretion while further enquiries are made as speedily as possible.
- make a reasonable attempt to contact the appropriate regional trade union official to discuss an allegation made against a recognised trade union representative before taking further action.

**3.4. If the allegation appears to be a matter of gross misconduct the Adjudicator will:**

- Consider whether the matter may need to be referred to the police either before or after an investigation. This applies particularly to allegations such as corruption, systematic or large scale theft and manipulations of records for an individual's personal gain. In such cases the Adjudicator must report the allegation to Corporate Anti Fraud before any investigation commences or the matter is reported to the police. If an investigation on such allegations is to go ahead, Corporate Anti-Fraud Service must take the lead. The employee will be notified of these allegations as soon as possible. If it is to be reported to the police the Conduct Procedure may be suspended (Details on Suspension see Appendix 4)
- decide whether to postpone a decision to suspend an employee until Corporate Anti-Fraud has interviewed the employee/and or others.
- consider suspension in all cases where gross misconduct is alleged, or where on reasonable grounds, management considers it would be prejudicial to the proper conduct of the investigation for the employee to remain at work and/or it is not in the best interest of the service for the employee to continue working. In cases of suspension the Group Manager will need to seek authority to do so through the Corporate Director.
- arrange for the allegations to be investigated immediately;
- notify the appropriate regional official without delay if a recognised trade union representative is the subject of suspension and/or investigation.
- meet and inform the employee of the general nature of the allegation and give the opportunity to respond. Inform the employee of the identity of the investigator if known. The employee may be accompanied by a work

colleague or Union representative and it is recommended that the Adjudicator allow the employee to make such arrangements or makes them on their behalf if requested. However, the meeting may not be unreasonably delayed to allow the employee to be accompanied.

- confirm the meeting in writing including the general nature of the suspension if applicable and enclose the Conduct Procedure.
- consider redeployment as an alternative to suspension.

### **3.5. Criminal charges or convictions outside employment**

A criminal charge or conviction outside of employment is not necessarily grounds for action under this Procedure. Where a manager becomes aware of a charge or conviction they must contact Human Resources (HR) before taking any action.

### **3.6. If the allegation appears to be one of misconduct the Adjudicator will:**

meet and inform the employee of the general nature of the allegation and give the opportunity to respond. Inform the employee of the identity of the investigator if known. The employee may be accompanied by a work colleague or trade union representative and it is recommended that the Adjudicator allow the employee to make such arrangements or makes them on their behalf if requested. However, the meeting may not be unreasonably delayed to allow the employee to be accompanied.

3.7. At the meeting the employee can accept that the allegation(s) are true/accurate and agree that the case should not proceed to a full investigation and/or formal conduct Hearing. The manager will explain what the sanction will be, and, if this is accepted by the employee, an outcome letter will be placed on their personal file, which will include timescales and no right of appeal. It is recommended that where appropriate the trade union is involved in this process.

3.8. If the employee refutes the allegation, the investigation will proceed. The manager should confirm the meeting in writing including the general nature of the allegation and enclose the Conduct Procedure.

Should the employee or employee's recognised trade union representative have concerns on the choice of either the Adjudicator or the Investigator they must make their concerns known to HR at this stage.

## **4. Investigations**

4.1. The Investigator is impartial and will: (Investigating Officers role Appendix 3.)

- investigate the allegation sufficiently to reach a balanced view.
- interview the employee.
- ensure that the employee is informed of their right to be accompanied by a trade union representative or a work colleague. (The employee may not be accompanied by a colleague whose presence would cause prejudice to the investigation. The final decision on this matter rests with the Adjudicator).
- interview others as necessary.
- take notes of the interviews. Wherever possible the notes should be signed and dated by the interviewees as an accurate record.

- once the investigation has been carried out, report and recommend to the Adjudicator whether the allegation should proceed to a Conduct Hearing.
- 4.2. The employee against whom the allegation has been made must take all reasonable steps to attend an investigative interview. If the employee fails to do so, the Adjudicator may add this action to the misconduct already being investigated. If the employee is suspended and fails to attend without good reason, their pay may be stopped until they attend a rescheduled interview.
  - 4.3. Where the investigation concerns a matter that could be later referred to the police, employees may be questioned by officers of Corporate Anti Fraud authorised to conduct interviews in accordance with the Police and Criminal Evidence Act (PACE). Where this is the case employees may be accompanied by a solicitor as an alternative to a trade union representative or work colleague.
  - 4.4. Any potential witnesses must not be approached by anyone other than the Investigator. The employee or their representative will advise the Investigator of details of anyone they consider as a witness or who may be able to assist in the investigation. The Adjudicator makes the final decision who is interviewed in order to conduct a full and fair investigation.

## **5. Decision to Proceed To a Conduct Hearing**

The Adjudicator will consider the Investigator's recommendations and will come to one of the following conclusions:

- the allegation will not proceed to a Hearing;
- the allegation will proceed to a Hearing;
- the allegation will be referred back to the Investigator for further investigation;
- the allegation will be referred to the police by Internal Audit/Corporate Anti-Fraud
- informal action will be taken.

- 5.1. The Adjudicator will notify their decision in writing to the employee and if appropriate to the employee's trade union representative.

### **5.2. Notifying the decision to proceed to a Conduct Hearing**

The Adjudicator will notify the employee in writing of the Conduct Hearing giving at least 5 full working day's notice. The letter must be hand-delivered or sent recorded delivery. The notification will include the following details:

- date, time and location of Hearing;
- details of the allegation including the date(s) of the incident and whether it constitutes potential misconduct or potential gross misconduct;
- the names of those who may be called as witnesses;
- the right to be accompanied or represented by a trade union representative or work colleague;
- the opportunity to present written evidence, notify the Adjudicator of witnesses and request an alternative date, stating the reason for the request. This must be provided at least 2 full working days prior to the hearing. The Adjudicator will make the decision whether or not to comply with a request to delay the Hearing and may decide to hear it in the employee's absence if it is not considered that a valid reason has been given. In cases where the employee

is not present at the Hearing, it is essential that detailed notes are recorded and copies sent to the employee.

5.3. The letter must signpost the employee to a copy of the Conduct Hearing and Appeal Procedure, and include copies of witness statements and supporting documentation.

**Note:** In the case of allegations against a Corporate Director, the Adjudicator will be the Chief Executive. In the case of allegations against the Chief Executive, Council Members will act as Adjudicators

## **6. Conduct Hearing**

The Adjudicator is responsible for ensuring the Conduct Hearing allows the Investigator and the employee or their trade union representative to present their cases adequately. The Hearing must also provide the Adjudicator with sufficient information to reach a decision based on the balance of probabilities.

6.1. At all Conduct Hearings there will be:

- An Adjudicator
- HR support for the Adjudicator
- The Investigator(s)
- The Employee(s)
- The employee's trade union representative or work colleague (if requested by the employee)
- Witnesses as required.

## **7. Procedure at the Hearing**

The Procedure during the Conduct Hearing will be as follows:

7.1. The Adjudicator will chair the Hearing throughout. They will introduce those involved, explain the process, check all parties have all documentation and advise who will take written notes of the main points of the Hearing. These notes could be required at an employment tribunal at a later date. In cases of gross misconduct the adjudicator should consider appointing a minute taker.

7.2. The Investigator describes the allegations, and presents the evidence.

7.3. The Investigator may call witnesses.

7.4. Each witness in turn:

- gives evidence in response to questions from the Investigator;
- may be questioned by the employee or their representative;
- may be questioned by the Adjudicator and HR representative;
- may be re-questioned by any of the above.

- 7.5. The employee or their representative may ask questions of the Investigator.
- 7.6. The Adjudicator and HR representative may ask questions of the Investigator.
- 7.7. The employee or their representative summarises the employee's response to the allegations and the evidence and identifies the issues.
- 7.8. The employee or their representative present the evidence and may call witnesses.

Each witness in turn:

- Gives evidence in response to questions from the employee or their representative;
  - May be questioned by the Investigator;
  - May be questioned by the Adjudicator and HR representative;
  - May be re-questioned by any of the above.
- 7.9. The Investigator may ask questions of the employee.
  - 7.10. The Adjudicator and HR representative may ask questions of the employee.
  - 7.11. Then without presenting any new evidence the:
    - Investigator sums up the allegations and evidence presented.
    - Employee or their representative sums up their response to the allegations and evidence presented.
    - Witnesses will only be present when giving their evidence.
    - All parties except the Adjudicator and the HR representative withdraw.
    - The Adjudicator, assisted by the HR representative, reaches a decision based on the evidence available at the Hearing. Personal details e.g. length of service, current warnings under the Capability and Conduct Procedures will be taken into consideration in deciding what action to take.
    - The Adjudicator may re-call witnesses, the employee and their representative and the Investigator to ask further questions. In these circumstances both the employee and their representative and the Investigator must be recalled.

## **8. Outcomes Under This Procedure**

The Adjudicator may decide to:

- Take no action.
- Issue no formal warning but give instructions to the manager and/or employee, which will be recorded and placed on the employees' personal file for a period to be specified by the Adjudicator. A copy will be given to the employee.
- Issue a written warning, which will be placed on the employee's personal file for a period of 12 months. A copy will be given to the employee.

- Issue a Final Written Warning, which will be placed on the employee's personal file for a period of 24 months. A copy will be given to the employee.
- Warning letters in the employee's personal file should be removed when the sanction period ends.
- Dismiss the employee, in which case the dismissal must be confirmed in writing within 5 working days. In cases of gross misconduct the dismissal will be without notice. In cases of misconduct payment will be made in lieu of notice. No employee will be dismissed for the first breach of conduct except in cases of gross misconduct.
- If you dismiss a member of staff or a volunteer who works with children or vulnerable adults, you must refer this information to the Independent Safeguarding Authority. Details can be obtained from HR.
- All letters confirming the Adjudicator's decision will restate the allegation(s), the Adjudicator's decision in respect of each allegation and, if appropriate give further instructions on the improvement required and the timeframe involved. If no formal action is taken, the records concerning the allegation will be destroyed as soon as reasonably practicable. The letter should be hand-delivered or sent recorded delivery to the employee's home address.
- If, during the life of a written warning for either Conduct or Capability it becomes necessary to consider further action under this Procedure, the previous warning will be taken into account.

## 9. The Right of Appeal

An employee may appeal against a Written, Final Written Warning or Dismissal by writing to HR within 10 working days of the date of the Hearing. The letter **must state the specific reasons** for the appeal and relate these to one or more of the following areas:

- that they think a finding or penalty is unfair;
- that new evidence has come to light; or
- that they think there has been breaches in the Conduct Procedure.

Management reserve the right to ask for further clarification if the information is not clear.



- 9.1. At the appeal Hearing only the reasons given under one or more of the 3 specific areas stated in the employee's letter of appeal will be considered.
- 9.2. HR will acknowledge the employee's letter of appeal within 5 working days.
- 9.3. All cases of appeal for permanent employees, other than for dismissal, will normally be dealt with by a new Adjudicator at a more senior managerial level, not previously involved with the case. In cases of dismissal the appeal will be dealt with by the Employment Appeals Committee.
- 9.4. All cases of appeal for temporary employees and those on probation, including dismissal, will be dealt with by a new Adjudicator at a more senior managerial level, not previously involved with the case.

This will be the final stage of the process.

## **Examples of Misconduct and Gross Misconduct**

1. The public is entitled to expect conduct of the highest standard from a local government employee. This appendix sets out examples of actions that constitute misconduct or gross misconduct. The list is neither exclusive nor exhaustive. The circumstances of an actual breach of the conduct standards may mean that an action, which would normally be considered misconduct, becomes gross misconduct and vice versa.

### **1.1. Gross Misconduct**

Gross misconduct is defined as behaviour, which, in the Council's view warrants dismissal without notice regardless of whether or not there have been previous warnings. Such behaviour may occur within or outside normal working hours.

Examples are:

- theft or dishonesty at work.
- wilful damage to Council property.
- any act or omission calculated to defraud the Council, for example falsification of bonus sheets, overtime claim forms, timesheets, flexitime sheets, subsistence and expense claims, qualifications, medical questionnaires, housing benefit claims.
- fighting or physical assault at work/or menacing behaviour towards colleagues, clients or members of the public.
- intimidation of another employee, a member of the public or a Councillor, including racial, sexual or any other type of harassment.
- any criminal activities during or outside of working hours that have a direct bearing on the Council's confidence in the employee to perform their duties properly.
- sexual misconduct at work.
- use of the Council's information and computer technology to communicate, access, produce or store material of a sexual nature that is likely to cause offence.
- incapacity on duty due to the effects of alcohol or non-prescribed drugs.
- unauthorised use of a Council vehicle and/or property.
- driving a Council vehicle whilst under the influence of alcohol/drugs or whilst otherwise unfit to do so.
- unauthorised disclosure of confidential information.
- any wilful act or omission endangering the health and safety of others, or which would cause damage to property or equipment.
- serious act of insubordination.

- corruption – unauthorised acceptance of money, goods, favours or excessive hospitality in respect of services rendered.
- improper use of position for personal gain.
- intentional unlawful discrimination against any employee, a member of the public or Councillor.
- using a mobile phone whilst driving, contrary to driving laws.

## **1.2 Misconduct**

Examples are:

- failure to adhere to working hours.
- unauthorised absence from duty.
- insubordination, refusal or failure to obey a reasonable instruction.
- criminal activities other than those classed as gross misconduct.
- disregard of safety practices, procedures and rules.
- unauthorised presence on Council property.
- unauthorised use of Council equipment.
- unauthorised destruction, alteration, addition to or erasure of official documents.
- being an accessory to a disciplinary offence by another employee.
- abusive behaviour towards another employee or member of the public.
- undertaking activities detrimental to recovery whilst on sick leave.
- failure to comply with the Council's sickness notification procedures.
- misuse of the Council's Information Technology hardware and software (this could constitute gross misconduct, dependent on the severity).
- introducing a computer virus into any Council system (this could constitute gross misconduct, dependent on the severity).
- failure to follow Council procedures.
- accepting gifts or hospitality from contractors, clients or members of the public without authorisation.
- engaging in paid work outside DBC without the approval of the manager.

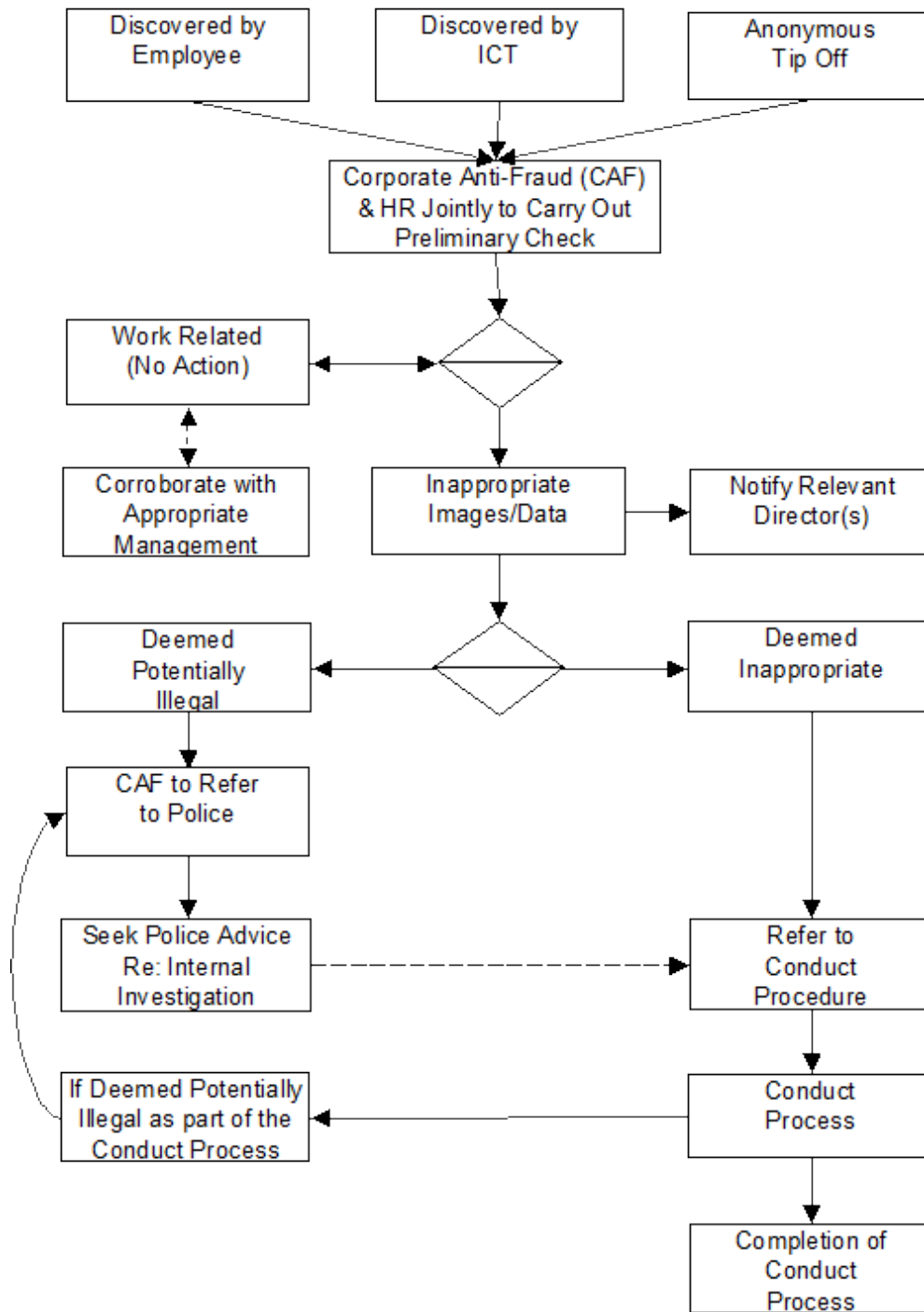
- smoking in public areas where it is not permitted
- failure to achieve the competencies within Council's High Performance Environment.

**Conduct guidelines for employees accessing or storing inappropriate images or data**

1. Where it is alleged or suspected that an employee has accessed or stored inappropriate images or data (inappropriate means not work related), a senior officer from both Corporate Anti-Fraud (CAF) & Human Resources will jointly carry out a preliminary check to substantiate the allegation or suspicion.
2. Details of the images or data will be recorded in the form of a statement signed by both officers, but copies of the images or data will not be taken.
3. Where appropriate, ICT Services will assist with the technical aspects of the preliminary check, but will not view the images or data in question.
4. If the images or data are found to be work related, then no further action will be taken. If it is unclear whether the images or data are work related, then it may be necessary for the two officers to approach the employee's line manager for clarification.
5. Where it is determined that the images or data are work related, the preliminary check documentation will be immediately destroyed to ensure confidentiality.
6. If the images or data are not work related then they will be deemed as inappropriate and the two officers will notify the relevant Director. The Director will not see or be given a copy of the images or data.
7. If the images are deemed potentially illegal, then the officer from the CAF team will refer the case to the appropriate section within the police force and seek advice from them whether the Council can consider taking action under the Council's Conduct Procedure.
8. For the purpose of these guidelines, illegal images are those depicting nudity or erotic posing or sexual activity involving children or young people. Adult pornography could also be illegal, but the police do not want to be informed unless the employee is suspected of distributing the material, usually for reward.
9. All inappropriate images and data, other than those deemed potentially illegal, will be considered in accordance with the Council's Conduct Procedure.
10. If as part of the Conduct investigation the investigators consider the images as potentially illegal, the member of the CAF team will refer the case to the police (as above). Until the investigators receive clearance from the police, no further action should be taken under the Conduct Procedure.
11. For reference purposes a process map is attached to the end of this guidance.

12. Process Map

Accessing, Storing or Viewing Inappropriate Images or Data



### **The Role of the Investigating Officer – Conduct**

1. These guidelines have been designed to help individuals who have been appointed as an Investigating Officer under the Council's Conduct Procedure.
2. The Adjudicator will appoint an Investigator, along with Human Resources support.
3. The Adjudicator will inform the Investigator of the allegation(s) and what category the allegation falls under, which will either be gross misconduct or misconduct.
4. The Investigator will send a letter to the 'accused' employee, inviting them to an interview. The letter will state the date, time, location, allegation and right to be accompanied by either a trade union representative or a work colleague. The meeting can proceed as soon as possible as no notice is required. Although, employees should be given a reasonable amount of notice so that they can make arrangements for representation.
5. The Investigator will interview the employee(s) and appropriate witnesses in order to reach a balanced view. All employees should be informed that they may be required to attend a Conduct Hearing where they may be asked additional questions.
6. Detailed notes should be taken at interviews, which the interviewees must sign to confirm that they are an accurate account of the meeting. It should be expressed that these notes will not be verbatim, but a factual account of the interview.
7. In some situations, the Investigator may wish to re-interview employees, for clarification or if further information has come to light.
8. Once the investigation is completed, the Investigator will report their findings to the adjudicator who will then decide as to whether the allegation should proceed to a Conduct Hearing. The adjudicator may decide at this point that further investigation is needed or that there is no case to answer.
9. If the Adjudicator decides to proceed to a Conduct Hearing, the Investigator will need to provide all the relevant statements/evidence to the Adjudicator, so that the documentation can be attached to the 'Formal Conduct Hearing Letter'. This letter will provide a minimum of 5 working days notice.
10. The Investigator and HR will be responsible for presenting the evidence at the Hearing, so that the Adjudicator can reach a balanced decision.
11. These guideline should be read in conjunction with the Council's Conduct Procedure.

## **Suspension**

1. In some cases where there are allegations of Gross Misconduct it may be appropriate to suspend the employee while investigations are conducted. Below explains what will be expected of the employee while on suspension and what the employee can expect from the council.
2. Suspension is a neutral act without prejudice, which presumes neither guilt nor innocence.
3. Employees can be suspended at any point during the Conduct Procedure if it is deemed a reasonable response by the Adjudicator. This will then be confirmed to the employee in writing.
4. Whilst suspended on full pay the employee will be required to make themselves available to provide evidence, attend meetings or a Conduct Hearing during your normal working hours as required in the course of the proceedings. If the employee is unavailable during their normal working hours and is unable to provide an acceptable reason for this, then their suspension pay will be stopped.
5. The suspension will be reviewed regularly and if it is found that it is possible to lift the suspension the employee will be directly informed and confirmed what their return to work date will be.
6. The council at the time of an employee's suspension may request them to cease speaking to fellow employees and clients/customers of the business while on suspension. If employees require to do so they must receive prior permission from the case Adjudicator.