

# **Disciplinary Policy and Procedure**



**April 2018**

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# 1 Introduction

## 1.1 What is the policy about?

Coxhoe Parish Council (the Council) expects the highest standards from all employees. A disciplinary matter arises when an employee breaches Council rules or fails to meet the required standards with regard to conduct, behaviour or performance.

## 1.2 Misconduct

Misconduct is behaviour that is inappropriate or unacceptable. The following are examples of misconduct:

- unauthorised absence;
- poor time keeping;
- smoking in areas designated as non-smoking;
- insubordination or using abusive language;
- misuse of council facilities including computer facilities (e.g. e-mail and internet);
- refusal or failure to carry out a reasonable lawful management instruction;
- unacceptable behaviour or attitude;
- leaving the workplace without permission or due cause;
- non-compliance with Council policies and procedures and the Code of Conduct

This list is neither exclusive nor exhaustive and each case will be determined on the individual facts. Except in cases of gross misconduct, no employee will be dismissed for a first breach of discipline.

## 1.3 Gross misconduct

Gross misconduct is misconduct that is so serious that the Council can no longer tolerate the employee's continued presence at work. It may justify dismissal without notice, known as summary dismissal. In this circumstance, termination of the contract is immediate.

The following are examples of conduct which may constitute gross misconduct:

- theft or fraud;
- deliberate falsification of documents;
- physical violence or bullying;
- deliberate and serious damage to Council and other property;
- unlawful discrimination, harassment or victimisation;
- serious misuse of the Council, or an associated organisation, property or name;
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination;
- serious incapability at work through drugs, substances or alcohol;
- bringing the Council, or an associated organisation, into serious disrepute;
- gross negligence which causes, or might cause, unacceptable loss, damage or injury;

- a serious breach of health and safety rules;
- criminal or other serious misconduct outside the workplace which affects the employee's suitability for the post;
- knowingly providing false information on any matter relating to the employee's employment;
- a serious data breach or information security breach;
- allegations against another person that are malicious or made for personal gain; and
- criminal or serious misconduct involving children or vulnerable adults.

This list is neither exclusive nor exhaustive and each case will be determined on the individual facts.

## 2 Conduct

### 2.1 Informal stage

On becoming aware of an employee's alleged misconduct the manager will make initial enquiries about the incident or situation to determine the appropriate course of action. As a minimum, this will normally involve a discussion with the employee to provide them with an opportunity to respond and explain any factors affecting their behaviour or conduct.

Based on the information gathered as part of the initial investigation, the manager will make a decision regarding the appropriate course of action, as described below:

#### **No case to answer**

It may become evident that there is no problem or the employee has provided a perfectly reasonable explanation to the concerns. If this is the case, the manager will ensure that it is made clear to the employee that no further action will be taken.

#### **Informal discussion**

Minor cases of misconduct are usually best dealt with informally. Where the initial enquiries have established that the matter is not serious enough to warrant proceeding to a formal investigation but concerns remain about the employee's behaviour, the manager may feel it is sufficient to discuss the matter with the employee. During this discussion the manager should ensure that the member of staff understands the concerns and ensure that they are fully aware of the standards expected of them. A note of the discussion should be taken, including details of any improvement required, which will remain on the employee's file. A copy of the notes should be provided to the employee and they may choose to attach their comment to the document.

An informal discussion is not a formal disciplinary sanction and therefore the employee has no right of appeal.

#### **Letter of management advice**

Where the initial enquires have established that the matter is not serious enough to warrant proceeding to a formal investigation but the manager feels that it is appropriate for the issue to be recorded in writing, they may decide to issue a letter of management advice.

Following the meeting with the employee, the manager should advise them, in writing, of how their conduct has fallen short of the Council's standards and expectations, the change or improvement

that is expected of them and that a failure to achieve the standards in the future may result in disciplinary action being taken. The manager must include a review period for the letter, usually of no more than 12 months. The letter will remain on the employee's personnel file and may be referred to if any further disciplinary incidents occur. It is possible to extend the review period if the manager concludes that the required improvement has not been made. Where a letter of management advice is issued in relation to 'safeguarding' issues, it is necessary and appropriate for this document to remain 'live' and not subject to any particular time limit.

A letter of management advice is not a formal disciplinary warning and, therefore, the employee has no right of appeal.

### **Further investigation**

If the initial enquiries show that there are serious concerns about the employee's conduct, it may be necessary to carry out a formal investigation into the alleged misconduct.

## **2.2 Formal stage**

Where it has been determined that a more detailed investigation is required, the Parish Clerk will ascertain the facts regarding all relevant issues as fairly and promptly as possible. The Parish Clerk will investigate the alleged misconduct, produce a report and make recommendations as to whether a disciplinary hearing is required.

### **2.2.1 Financial irregularities**

If the alleged misconduct is of a financial nature or the circumstances indicate that an investigation by the Parish Clerk is required (or in the case of the Parish Clerk, by the HR subcommittee) e.g. misuse of the internet, then this will be put in place immediately and resources and equipment will be secured and where appropriate made available to the Police (i.e. in cases relating to pornography/offensive or obscene materials).

### **2.2.2 Safeguarding and professional bodies**

Alleged misconduct related to the protection and safeguarding of children or vulnerable adults will be reported immediately to the Parish Clerk before progressing with the disciplinary process.

Where the allegations involve safeguarding concerns, the Disclosure and Barring Service (DBS) will be informed of the outcome of the disciplinary hearing.

In some cases, the Council is required to notify, and possibly provide evidence or information to, the appropriate professional body of investigations, warnings, dismissals or restrictions placed on practice. Depending on the seriousness of the offence, the Parish Clerk may be obliged to inform the professional body at any stage of the formal procedure.

### **2.2.3 Criminal charges or convictions**

If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody. Consideration will

be given to the criminal conviction and the likely effect upon the employee's ability to carry out his or her duties.

If an employee is subject to a criminal investigation, this will be dealt with separately to any internal disciplinary investigation. The Police should not be asked to conduct any investigation on behalf of the Council.

The Parish Clerk will liaise with the Police to determine whether the disciplinary investigation can proceed in parallel with the criminal investigation. The timescale for the internal investigation will have to be reviewed and the employee will be kept informed of the position by the Parish Clerk.

### **2.2.4 Resignation during disciplinary investigation**

Where an employee submits their resignation before the disciplinary process has been concluded, the manager may continue the disciplinary process so far as reasonably practicable during the employees notice period.

Where the allegations(s) are of a safeguarding nature, the case must progress to a disciplinary hearing, even if the employee's notice period has ended and the hearing is conducted in their absence. Any sanction issued would be given "if the person had continued to be employed" and reported to the appropriate professional body.

### **2.2.5 Grievance during disciplinary process**

Where an employee raises a grievance during the disciplinary process advice should be sought from the HR Advice and Support Team at Durham County Council. It may be appropriate to deal with the issues concurrently, however, in certain circumstances the disciplinary process may need to be suspended in order to deal with the grievance.

## **2.3 Suspension**

Suspension should only be considered as a last resort and every effort should be made to keep an employee at work where possible. Suspension will only be appropriate where keeping the employee at work poses a risk to the employee, other staff or service users, or their presence at work will impede the investigation.

The following alternatives to suspension should be considered:

- transferring the employee to alternative Council premises, team or department;
- restricting the duties they can carry out whilst the investigation takes place and
- limiting access to resources, such as ICT.

The decision as to whether to suspend is entirely separate from the assessment of conduct. The fact that an employee has not been suspended from work does not prevent their behaviour from being classed as gross misconduct.

Suspension is not a disciplinary sanction and is without prejudice on full pay. It is essential that the period of suspension is kept as brief as possible.

### 2.3.1 Informing the employee of suspension

The employee should be verbally advised by the appropriate manager of the suspension and the reasons relating to the decision. The employee should be advised that the suspension is without prejudice and that they will receive full pay during the course of the suspension.

The suspension must be confirmed in writing, making the allegations clear, and should be sent out to the employee within 2 working days of the decision to suspend, together with a copy of the disciplinary policy.

During the suspension the employee should remain away from their place of work but must remain available for work during their normal working hours and attend any investigation meetings as appropriate.

It is recognised that the employee needs to communicate with those conducting the investigation and may also need to discuss their circumstances with parties who are assisting them within the process, for example, the person accompanying them to meetings. A suspended employee is not prevented from having any contact with colleagues, however, they should not discuss any aspect of the case with other council employees or other parties connected with the investigation or with any other inappropriate parties.

If an employee does not comply with the terms of their suspension, the Council may revoke their entitlement to receive full pay during the period of suspension.

### 2.3.2 Communication during suspension

The employee should be provided with a Contact Officer as their first point of contact for any issues regarding work and the investigation.

The role of the Contact Officer is to keep the employee up to date, as appropriate, with the progress and likely timescale of the investigation, however, detailed information relating to the investigation should not be shared with the employee.

### 2.3.3 Reviewing suspension

It is important that the need to suspend is reviewed and documented, regularly throughout the investigation, as new information may emerge during the course of the investigation which changes the necessity for the suspension. Similarly, it may be that the need to suspend is not obvious initially but during the course of the investigation, suspension may be required.

In all cases, the period of suspension should not be for any longer than necessary and every effort should be made to ensure that it is as brief as possible.



### 2.3.4 Sickness and annual leave during suspension

An employee who is suspended must be available for work during their normal working hours and to attend investigation meetings, as appropriate. If an employee becomes ill during their suspension then they will be on sick leave rather than suspension and will be paid in accordance with their normal contractual sick pay entitlements and will be managed using the attendance management policy and procedure. If the employee is well enough to return to work prior to completion of the disciplinary process, it may be necessary to reinstate the suspension or to place the employee on suspension, where this has not previously been in place.

Annual leave can be taken during suspension subject to approval through the normal procedures.

## 2.4 Investigation

To ensure the fair handling of disciplinary matters, it is essential to carry out a prompt and adequate investigation, which will include:

- Enquiring into the circumstances and establishing the facts of the case;
- Giving the employee a chance to offer an explanation;
- Gathering of evidence relating to the case; and
- Taking a balanced view on whether there are sufficient grounds for an allegation of misconduct.

### 2.4.1 Investigation meetings

The Parish Clerk will write to the employee informing them that a detailed investigation will be conducted and inviting them to a meeting to discuss the allegations, as part of the investigation. There is no statutory right for an employee to be accompanied to meetings during the investigation, however, every effort should be made to accommodate a request from an employee. It is up to the employee to arrange for someone to attend any interview(s) in this capacity. If their chosen representative is not available to attend the employee should arrange for a replacement representative to accompany them, or attend on their own. Meetings will not usually be postponed in these circumstances. The individual accompanying the employee must not be someone whose presence would prejudice the hearing or who might have a conflict of interest.

The Parish Clerk will meet with all relevant people and should ensure that witnesses who are prepared to provide statements as part of the investigatory process are fully aware, from the outset, of the consequences of doing so. This may include the requirement to provide evidence as part of a formal disciplinary hearing or disciplinary appeals process and their statements being provided to a regulatory body.

Should further allegations come to light during the course of the investigation, the Parish Clerk will write to the employee informing them of the additional allegations and the employee will be provided with an opportunity to respond to them during the course of the ongoing investigation.

### 2.4.2 Final investigation meeting

To conclude the investigation, the Parish Clerk must offer a final meeting with the employee who the allegations were raised against.

The will use this meeting to:

- Outline the key points of the investigation i.e. who has been interviewed; and
- Allow the employee the opportunity to respond to any additional allegations that have come up during the investigation and that were not covered at the initial meeting.

### 2.4.3 Concluding the investigation

The Parish Clerk will collate and analyse the evidence gathered and a report of the findings will be prepared setting out whether there are sufficient grounds to merit a referral to a formal disciplinary hearing. Should a recommendation for a hearing be made the employee will receive a copy of the report prior to the disciplinary hearing.

## 3 Capability

The success of the Council depends on the effective contributions from all employees. It is recognised that the vast majority of its employees meet or exceed the demands of their respective roles, however, performance problems can and do arise and this procedure provides a framework for dealing with cases of poor performance in a fair, supportive and consistent way.

In the first instance, any employee performance issues should be dealt with by the manager through day to day support, advice and guidance. However, where the employee's performance does not improve to the required standard, the manager will commence the informal stage of the procedure.

This procedure should only be followed where it is clear that the failure to perform is not due to ill health or misconduct. Issues concerning poor performance that may result in a potential danger or a breach of duty of care will be dealt with as a conduct issue under this procedure.

### 3.1 Informal stage

The informal stage should be a positive process, with the aim of helping the employee to resolve performance problems by providing appropriate support to enable them to perform to the standard required.

#### 3.1.1 Initial meeting

The manager will arrange a meeting with the employee, giving them reasonable notice of the date, time and purpose of the meeting. Whilst there is no statutory right for an employee to be accompanied to meetings during the informal stage of the process, every effort should be made to accommodate a request from an employee.

During the meeting the manager will discuss the following:

- The nature of the performance concerns;
- The expected standards of performance;
- The necessary actions required to be carried out by the employee or manager to aid improvement;
- Any timescales for improvement and review dates; and
- The potential consequences of not achieving the required improvement in performance

The employee will also be given the opportunity to express their views on the concerns raised and to provide any explanation for the poor performance.

The agreed actions, targets and programme of support will be pulled together into an action plan, which will be reviewed throughout the agreed timescale.

If at any point it becomes apparent that the poor performance is caused by lack of willingness or refusal to carry out reasonable duties, then this should be dealt with as a conduct issue rather than capability.

### **3.1.2 Review meetings**

Regular review meetings will be held throughout the agreed timescale to discuss and record progress against the agreed action plan. It also provides the manager with an opportunity to give feedback and for the employee to highlight any areas of concern throughout the review period.

At the end of the agreed review period, a final meeting should be arranged with the employee to assess their overall progress. If satisfactory improvement has been made, the employee should be informed of this, in writing, encouraged to maintain the improvement and the matter will be considered closed.

If satisfactory performance has not been achieved within the agreed timescale, the manager will determine whether or not it is reasonable to extend the review period further or to progress the case to the formal stage of the procedure.

## **3.2 Formal stage**

Where the employee has not met the targets set out in the action plan within the agreed timescale, the employee will be informed by their manager that the case will be progressing to a disciplinary hearing.

In the period leading up to the disciplinary hearing, the action plan will continue to be implemented with the employee continuing to be provided with any professional support, advice and guidance, as agreed in the review process. This may include the withdrawal of support when an acceptable level of performance has been reached to test whether this level can be sustained.

### 4 Disciplinary hearing

If it is considered necessary to convene a disciplinary hearing, either on the grounds of conduct or capability, the employee will be given at least 7 working days' notice of the date and time to allow sufficient time to prepare and arrange representation. A copy of the Parish Clerks report will be provided.

#### 4.1 Right to be accompanied

Employees have a statutory right to be accompanied by a work colleague, a trade union representative or an official employed by the trade union at disciplinary hearings. The individual accompanying the employee must not be someone whose presence would prejudice the meeting or who has a conflict of interest.

An employee may ask an official from any trade union to accompany them, regardless of whether or not they are a member or the union is recognised. A trade union representative who is not an employed official must have been reasonably certified by their union as being competent to accompany the employee.

The representative may play a full part, including addressing the hearing to put and sum up the employee's case, responding on behalf of the employee to any view expressed, asking questions of the witness or witnesses, summing up the employee's case and conferring with the employee during the hearing. However, they should not answer questions that are put directly to the employee.

#### 4.2 At the hearing

The relevant panel will hear evidence from both parties at a formal disciplinary hearing and make a decision regarding the outcome of the hearing including what, if any, disciplinary action will be taken. They will conduct the hearing and make their decision in good faith. If the employee becomes upset or distressed during the hearing it is advised that the Chair should allow a short break to enable the employee to regain composure before continuing. If the distress is too great for the employee to continue then it may be appropriate to reconvene the hearing on another date.

It may also be appropriate to adjourn the hearing for a short time to allow time to check matters further, particularly if there is a dispute over facts or process. If new facts emerge, consideration will need to be given as to whether to reconvene the hearing on another date to allow time for further investigation.

#### 4.3 Postponing the hearing

The employee must make all reasonable efforts to attend the hearing, including securing the attendance of their representative, but if they are not able to attend, they will be offered one alternative date. This should normally be within 5 working days of the original date, although this can be extended by mutual agreement. If the employee fails to attend the rearranged hearing without explanation the hearing may proceed and a decision reached in their absence.

Similarly, if the employee's chosen representative is not available on the original date for the hearing, the employee has the right to have one postponement, within 5 working days of the original date, although this can be extended by mutual agreement.

The employee can choose to put their case in writing for consideration by the Chair of the panel or an employee's representative may attend and present the case in their absence.

### 4.4 Outcomes

The Panel, supported by a member of the HR Advice and Support Team at Durham County Council will hear evidence from all parties present at the hearing and reach a decision based on the 'balance of probabilities' that it is more likely than not that the employee behaved as alleged.

The outcome of the hearing could be:

- No further action – where it is deemed that there is no case to answer;
- Letter of management advice;
- Action plan; or
- Formal disciplinary sanction.

The employee will usually be informed of the decision verbally at the end of the hearing by the Chair of the panel and the decision will be confirmed in writing, by recorded delivery, within 2 working days of the hearing.

#### 4.4.1 Formal disciplinary sanctions

##### Written Warning

This may be issued if the first offence is serious enough to warrant formal action and will set out the nature of the misconduct and the improvement in behaviour required. It will usually last for a period of twelve months, although this can be extended. A copy of the written warning will be kept on the employee's personnel file.

The written warning will clearly state the performance problem, where improvements are required and the level of continued professional support, advice and guidance to be provided. In cases of capability, the frequency of future reviews, now on a formal basis, will also be outlined at this stage.

Depending upon the severity of the situation, this stage may be omitted in cases of both misconduct or capability.

##### Final Written Warning

In circumstances where an offence is sufficiently serious to warrant only one written warning, but not serious enough to justify dismissal, a first and final written warning may be issued. Alternatively, where there has been a failure to improve or change behaviour and previous live warnings have not resulted in sufficient improvement, the employee may be issued with a final written warning. It will usually last for a period of eighteen months, although this can be extended. A copy of the written warning will be kept on the employee's personnel file.

The final written warning will clearly state the performance problem, where improvements are required and the level of continued professional support, advice and guidance to be provided. In cases of capability, the frequency of future reviews, now on a formal basis, will also be outlined at this stage.

### **Dismissal**

If the employee's conduct or performance still fails to improve following previous warnings, an employee may be dismissed with notice.

The employee should be provided with written details of the reasons for dismissal, the date on which employment will terminate, the appropriate period of notice and their right of appeal.

An employee should not be dismissed for a first breach of discipline, except in cases of gross misconduct.

### **Summary dismissal**

In very serious cases, where an employee is found guilty of gross misconduct, the employee may be dismissed without notice. In this circumstance, termination of the contract is immediate.

### **Alternatives to dismissal**

An alternative to dismissal will be considered where the disciplinary outcome is that a dismissal should take place but there are mitigating circumstances to take into account.

The Panel may decide to offer to transfer the individual elsewhere within the Council if possible and in exceptional circumstances a demotion may be applied. In cases of demotion there will be no protection of salary.

The transfer or demotion must be offered in writing as an alternative to dismissal and accepted by the employee. If an alternative to dismissal is refused, this should be recorded and the employee will be dismissed.

#### **4.4.2 Time limits**

There may be occasions where an employee's conduct is satisfactory throughout the period the warning is live, only to lapse very soon thereafter. Where a pattern of behaviour of this type emerges the employee's full disciplinary record may be used in deciding how long any subsequent warning should last.

There must be sound justification for this decision and under no circumstances should a warning be indefinite, as it is not good employment practice to keep someone permanently under threat of dismissal.

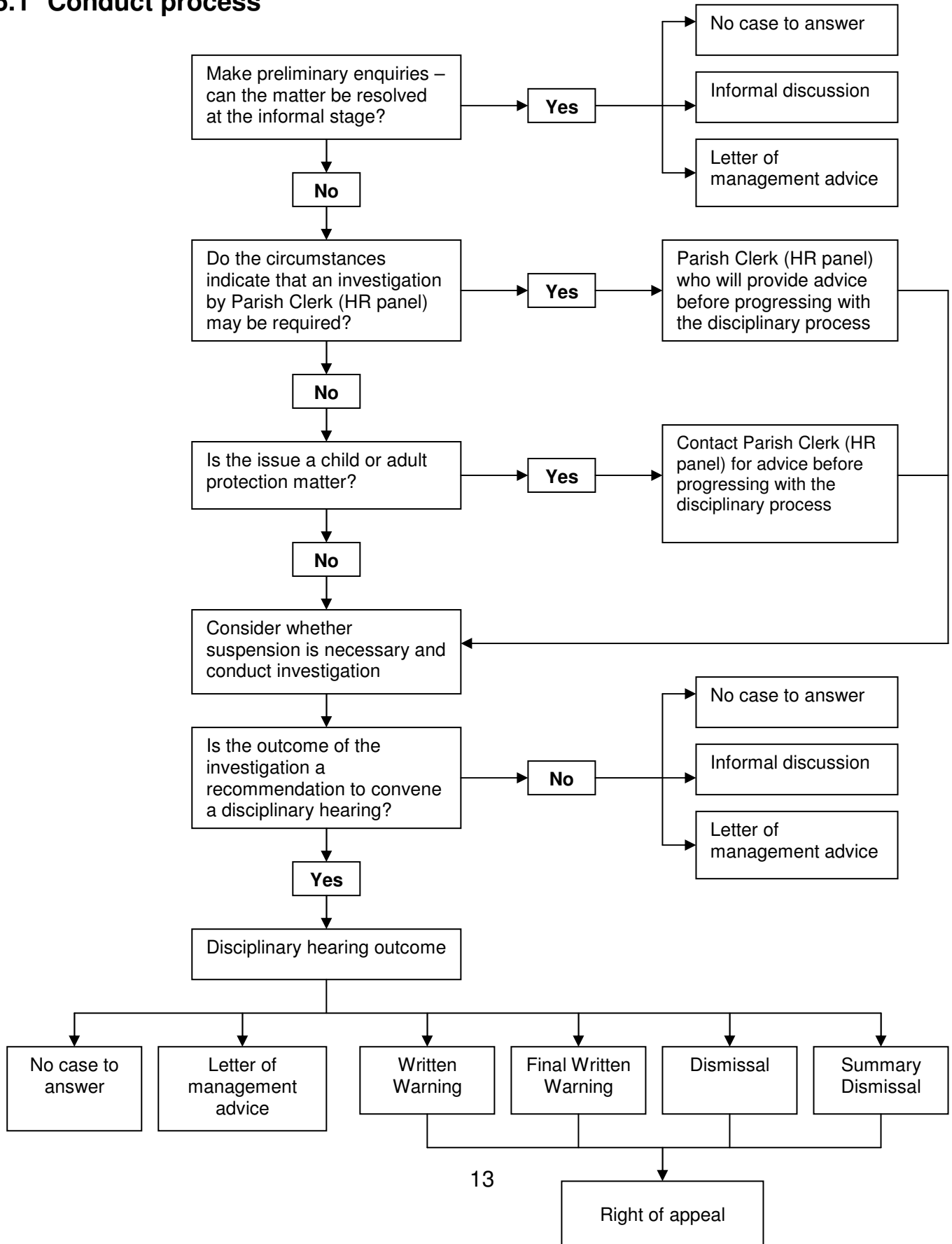
In addition, the fact that a warning has expired does not mean that the misconduct in respect of which the warning was given can never be considered in any subsequent disciplinary process.

#### **4.5 Right of appeal**

Employees have the right of appeal against any formal disciplinary action taken against them.

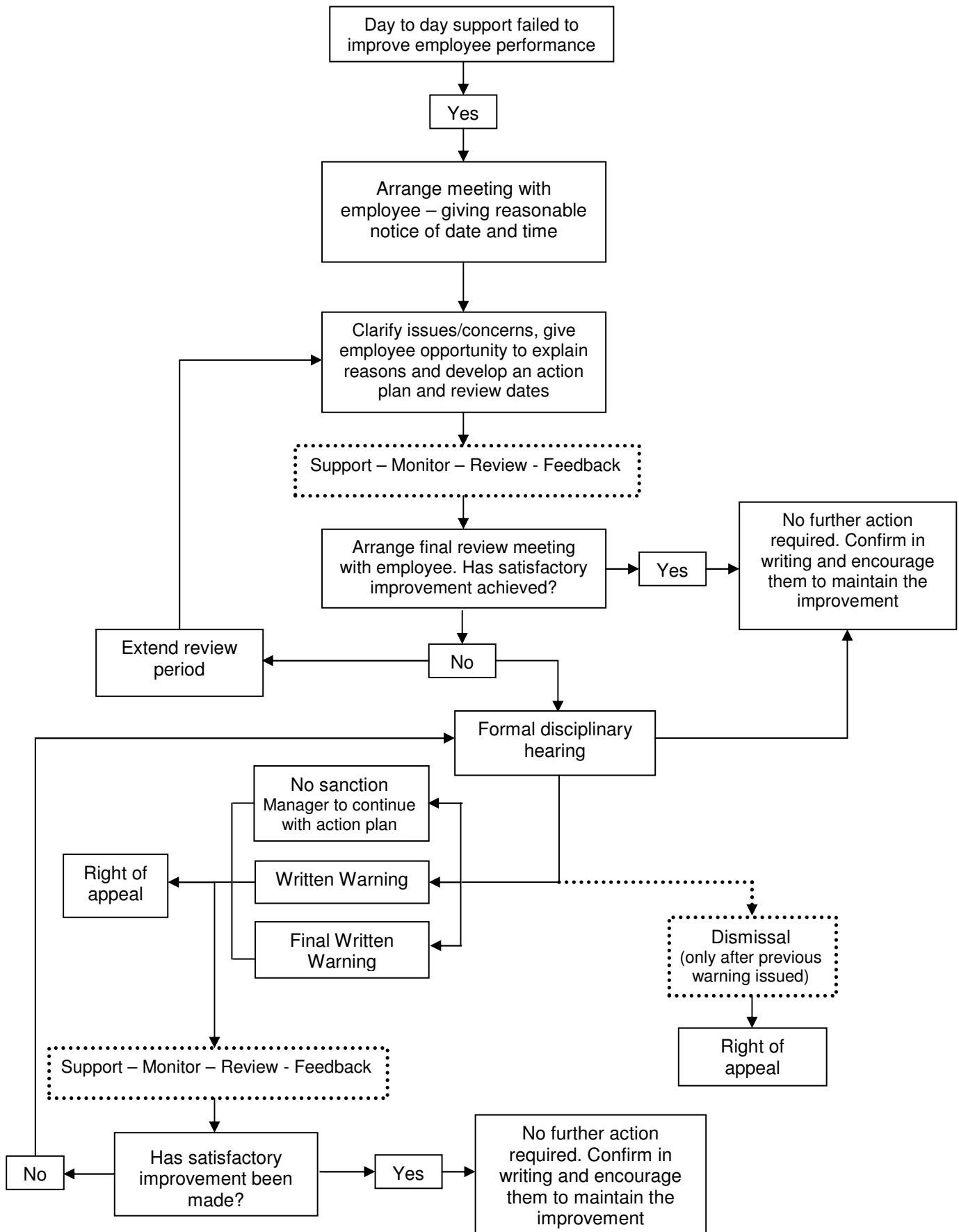
## 5 Flowchart

### 5.1 Conduct process





5.2 Capability process



## 6 Supporting documents

The following supporting documents can be obtained from your manager.

A	Disciplinary Policy – Guidance for Managers
B	Template Letter of Management Advice
C	Suspension Review Form
D	Template Letter confirming Suspension
E	Template Letter from Contact Officer
F	Meeting Record Form
G	Template Invite to Investigation Meeting
H	Template Invitation to Final Investigation Meeting
I	Template Investigation Report
J	Template Action Plan

## 7 Further information

### 7.1 Confidentiality

All information will be handled sensitively and used only for its proper purpose.

Under the Data Protection Act 1998 individuals have the right to see their own personal data held subject to the rights of confidentiality of any third parties involved in that information.

## **7.2 Dealing with abuses of the policy**

Employees who attempt to abuse this policy may face disciplinary action. The Council takes false or misleading accusations very seriously which may result in further action taken through the disciplinary procedure. This will not include ill-founded allegations that were made in good faith.

## **7.3 Equality and diversity**

Coxhoe Parish Council is committed to promoting equality of opportunity, valuing diversity and ensuring discrimination, harassment or victimisation is not tolerated.

Our policy is to treat people fairly, with respect and dignity. We also comply with legal requirements in relation to age, disability, gender, pregnancy and maternity, marriage and civil partnership, gender reassignment, race, religion or belief and sexual orientation.

## **8 Contact details**

If you would like any further advice or would like the document in an alternative format, please contact the Parish Clerk using the contact details below:

Email: [clerk@coxhoeparishcouncil.gov.uk](mailto:clerk@coxhoeparishcouncil.gov.uk)  
Tel: 0191 3773658 / 07988 283287

**This policy was agreed by Coxhoe Parish Council at its meeting on 4<sup>th</sup> April 2018.**

**Signed:**

**(Chair)**

**Date:**