



DISCIPLINARY PROCEDURES

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DISCIPLINARY PROCEDURES

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REFERENCES

ACAS Guidance on Discipline and Grievance and Code of Practice
SLLC Managers' Handbook on Handling Discipline (Revised July 2009)

1. INTRODUCTION

1.1 These disciplinary procedures have been prepared using the ACAS Guidance on Discipline and Grievances at Work and to comply with the provisions of the Revised ACAS Code of Practice on Disciplinary and Grievance Procedures.

1.2 Where an employee is registered with an external body the Trust is required to make a formal report in instances such as:

Dismissal

Resignation during a disciplinary investigation

Removal from the workplace during an investigation

When the Trust is made aware of any criminal conviction against such a worker

Any other circumstances which the Trust thinks might have a bearing on the worker's registration.

In this event the employee and their trade union will be advised.

1.3 Clear rules and procedures benefit both the Trust as an employer and employees. Rules set standards of conduct and performance at work; procedures help to ensure that the standards are adhered to and also provide a fair method of dealing with any alleged failure to observe them. The aim of these procedures is to ensure consistent and fair treatment for all employees involved in their operation.

1.4 Within the limitations of power delegated to him/her, each Senior Manager will be responsible for the management of their area of operation and will have the power to apply all forms of disciplinary sanction as described in these procedures including that of dismissal, subject to the employee's right of appeal against such disciplinary action. Senior Managers can delegate this responsibility as appropriate to other nominated managers in their area.

Advice on the operation of these procedures will be available at any time from the HR Department.

1.5 Each Senior Manager is responsible for ensuring that all employees in the area are made aware of the standards of conduct and performance expected of them, particularly of what might constitute gross misconduct.

1.6 Before the formal disciplinary process is instigated all problems involving minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. It is essential that all problems of this nature are fully discussed and support will be provided with the objective of encouraging and helping employees to improve. For minor breaches of discipline, misconduct or poor performance, informal action may be taken and confirmed in writing for record purposes. The employee will be advised of the reason and grounds for the informal action, what standards are expected along with timescales, and that any further breach may leave them open to formal disciplinary action.

1.7 Each Senior Manager will ensure that employees are aware that support and counselling are available at all times, even where it has been necessary to take disciplinary action under these procedures. Where an employee is suspected of, or seeks help for, an addiction problem, support will be offered through the SLLC's Addiction Policy by referral to the HR Department.

2. PRINCIPLES

The procedures set out in this document reflect the undernoted principles:

- 2.1 Where appropriate, the initiation of any disciplinary actions/sanctions will be accompanied by the offer of support and counselling accessed through the Employee Support Team in South Lanarkshire Council (SLC).
- 2.2 No disciplinary action will be taken until the matter has been fully investigated (see para 3) and any decision thereafter to impose disciplinary action will not be taken by the same person who conducted the investigation.
- 2.3 An employee removed from the workplace pending investigation, will be entitled to full pay and maintenance of conditions.
- 2.4 Disciplinary action (i.e. issuing of a warning, action short of dismissal, dismissal etc) will not be taken against an employee until they have attended a properly convened hearing accompanied by a companion (See Section 4), been provided with all relevant documentation and been given the opportunity to respond to the allegations. The employee must be advised, in writing, of the date and time of the hearing and reasonable time given to allow the employee to arrange to be accompanied, if wished. *It is the responsibility of the employee to ensure that their companion is present at any stage of the procedure.*
- 2.5 Employees and their companions should be afforded appropriate time in order to prepare for any hearings. This includes interviewing of witnesses, etc.
- 2.6 Depending on the seriousness of the misconduct, disciplinary sanctions may be initiated at any stage and do not need to start at the Formal Warning stage. Apart from gross misconduct, no employee will be dismissed for a first breach of discipline.
- 2.7 Disciplinary action will not take account of previously expired warnings except in the circumstances detailed in para 8.2.
- 2.8 An employee will be informed, in writing, of any disciplinary action taken, the reason for it, consequences of further misdemeanour and the procedure to be followed to submit an appeal.
- 2.9 An employee will have the right of appeal against any disciplinary action. Appeals will not be heard by the manager who initiated the original disciplinary action. All appeals against warnings except a warning signed by the General Manager, dismissal or punitive action will end at the General Manager.
- 2.10 Following an appeal, should any disciplinary action be reconsidered and revised, the employee will be notified accordingly and records amended. Should any disciplinary action be reconsidered and withdrawn, the employee will be notified accordingly, and no further reference will be made to it.
- 2.11 Normally, no action in terms of these procedures will be taken against a trade union representative until the matter has been discussed with a full time official of the union concerned after obtaining the employee's agreement.
- 2.12 An employee will receive copies of all notes of any meetings, sign them and have the

opportunity to comment and/or make amendments. It will be the decision of the investigating/disciplining officer whether to accept the proposed amendments. If not accepted, the employee's comments will be noted.

- 2.13 When an employee is persistently unable or unwilling to attend a fact finding and/or disciplinary hearing without good cause, the employer will make a decision with appropriate notice on the evidence available in their absence. If required, information maybe sought from the Medical Adviser for employees who submit medical certificates before a decision is made.
- 2.14 Employees must inform the General Manager if they have been charged with a criminal offence (refer to Section 3 in Code of Conduct). An employee should not be disciplined solely because they have been charged with or convicted of a criminal offence. The question to be asked in such cases is whether the employee's conduct or conviction merits action because of the employment implications.
- 2.15 Advice and assistance on the implementation of these procedures are available at any time from the HR Department.

3. MEDIATION

- 3.1 An independent third party or mediator can sometimes help resolve misconduct issues before they are escalated into the formal disciplinary procedure. Mediation is a voluntary process where the mediator helps two or more people to attempt to reach a compromise for example to rebuild relationships, personality clashes, communication problems or address minor work issues.
- 3.2 Mediation can be arranged through the HR Department.

4. THE RIGHT TO BE ACCOMPANIED

- 4.1 Employees have a right to be accompanied by a companion at any stage of the disciplinary hearing process.
- 4.2 A companion is either a fellow worker, accredited trade union representative or an official employed by a trade union.
- 4.3 To exercise the statutory right to be accompanied, employees must ensure their request is reasonable. What is reasonable will depend on the circumstances of each individual case. For example, it would not be reasonable for employees to insist on being accompanied by a companion whose presence would prejudice the hearing.
- 4.4 The companion will be allowed to address the hearing, to outline and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The companion does not, however, have the right to answer questions posed to the employee, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

5. THE INVESTIGATORY STAGE

- 5.1 Prior to any employee being required to attend a disciplinary hearing, all relevant facts must be collected to enable a decision to be taken as to whether the matter should be dealt with under these Disciplinary Procedures.
- 5.2 Not all instances will require a formal investigation. Where the matter is straightforward, the manager will gather the necessary information to enable a view to be reached as to the next step e.g. timekeeping.
- 5.3 Where a formal investigation is required, for example where an employee is suspected of serious misconduct, it will be undertaken in accordance with the Revised Handbook for Managers on Handling Disciplinary Matters. The appropriate Senior Manager or nominated manager will appoint an investigating officer who will collect all available evidence, interview all of the parties involved, including the employee in question, and where appropriate prepare signed statements. The investigating officer will then prepare a report which will be considered by the Senior Manager or nominated manager who will decide whether there are grounds to convene a disciplinary hearing.
- 5.4 Where an incident/situation occurs involving the suspected or actual misappropriation or embezzlement of cash, monies etc, placed in a person's charge, the matter will be investigated in accordance with SLLC's Procedures on suspected fraud as set out in the Appendix B to these Procedures.
- 5.5 Any investigation will be conducted as speedily as possible. A timescale will be set in advance based on the complexity of the investigation and the number of witnesses. The investigating officer will notify the Senior Manager or nominated manager if, for any reason the set timescale requires to be revised and the employee and their companion will be advised accordingly.
- 5.6 The employee involved will be advised by their line manager at an early stage of the reasons for, and the scope of, the investigation, as well as the right to be accompanied at any meeting. On conclusion of the investigation, a meeting will be arranged with the investigating officer and nominated manager to inform the employee of the outcome.
- 5.7 If it is decided there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing. It is also appropriate to provide copies of any written evidence, which will include any witness statements with the notification. In certain circumstances (for example to protect a witness) the employer might withhold some information.
- 5.8 Where there is no case to answer, all references to the investigation will be removed from file unless there are exceptional reasons for retaining some record. If informal action is to be taken a note should be kept in the employee's file located within the HR Department.

6. REMOVAL FROM THE WORKPLACE

6.1 As a Precautionary Measure

An immediate supervisor/manager, will have the necessary delegated powers to remove from the workplace any employee who is considered to be creating a situation where the employee is in personal danger or a danger to others (e.g. under the influence of alcohol etc).

This will entail the employee leaving or being sent from the workplace, and arrangements made to report to the Senior Manager/nominated manager immediately where possible, but usually no later than the next working day at midday.

Following investigation and consideration of the matter, the Senior Manager/nominated manager will decide whether or not to proceed to a disciplinary hearing.

As removal from the workplace does not constitute disciplinary action, there is no right of appeal.

6.2 During an Investigation

6.2.1 Where considered absolutely necessary, the General Manager/Senior Manager or nominated officer, may remove an employee from the workplace on full pay whilst an investigation is under way. This is one of the options available to management and will only be applied where the nature of the incident/allegation involving an employee requires the total removal of that employee from duty. This action is not to be associated with any presumption of guilt.

6.2.2 Where the total removal of an employee from duty is not necessary, other options such as redeployment to other duties or relocation on the same or alternative duties should be considered. The decision to remove from the workplace on full pay or to redeploy and/or relocate will be confirmed in writing to the employee and the General Manager advised. The relevant professional bodies must be notified if an employee is removed from the workplace during an investigation.

The decision will be reviewed every 14 days and the employee and the companion advised where appropriate. The Line Manager must also keep in regular contact with the employee in order to keep them up to date on progress. This can also be arranged through the relevant companion if requested.

The Senior Manager/nominated manager will ensure that the employee is offered support during the period of the investigation through the Employee Support Team of SLC.

7. THE DISCIPLINARY HEARING

7.1 Where an incident occurs which may be due to an employee's misconduct and which may lead to some form of disciplinary action being taken, the supervisor/manager should report the matter to a nominated manager whilst at the same time ensuring that the employee is advised of their intention. The "Incident Report Form" STAF'77 should be completed in respect of the employee's details, previous disciplinary record and details of the incident.

The nominated manager should then examine the Incident Report Form and assess the information provided, giving careful consideration to the seriousness and circumstances surrounding the incident, and the previous record of the employee concerned. A decision should then be taken as to whether a disciplinary hearing should be convened, a further investigation is required as set out in Section 5, or the matter dismissed.

To ensure independence and objectivity, the decision to proceed with a

disciplinary hearing will not be taken by the officer who conducts any investigation. It will be taken by the nominated manager.

- 7.2** Once a decision has been taken to proceed with a disciplinary hearing, the employee should be advised in writing of the arrangements and grounds for the hearing, including the right to be accompanied. Reasonable notice should be given, to allow for preparation by the employee's companion and also reasonable facility time allowed. It is the responsibility of the employee to ensure representation and that their companion is present at any stage of the procedure.
- 7.3** At the same time, the employee will be provided with a copy of the evidence that will be used at the hearing including any investigatory report, notes of meetings, witness statements and details of any witnesses who will be called. The employee should also provide the Trust with similar evidence that will be led in their defence in reasonable time before the hearing.
- 7.4** The employee will be given the opportunity at the hearing to present their case, call witnesses and explain their views on the circumstances. The hearing will be conducted in line with the procedures applying at the Appeals Panel as set out in the Appendix A.

If new evidence comes to light during the hearing, it is the responsibility of the disciplining officer to suspend or adjourn the hearing to enable the points raised to be investigated by the Trust. On completion of any further investigation, the hearing will be reconvened and all parties advised of the findings.

In the event of an employee or their companion refraining from offering an explanation or contesting any allegation, the disciplining officer will draw their own conclusions from the information available and reach a decision on the appropriate action to be taken.

- 7.5** On conclusion of the hearing, and having considered all the evidence, where practicable, the disciplining officer should reconvene the hearing and advise the employee and their companion of the decision reached. Written confirmation of disciplinary action being taken will be issued within 7 days of conclusion of the hearing and will contain advice as to the employee's right of appeal, to whom any appeal should be submitted and the designated time limit. All relevant paperwork will be filed in the employee's personal file.
- 7.6** If it is decided that no disciplinary action is to be taken, all references to the case will be kept in the employee's personal file.

8 DISCIPLINARY ACTION

8.1 Types of Disciplinary Action

The following disciplinary action may be taken:

Formal Action

Formal Warning

For minor breaches of discipline, misconduct or poor performance, a Formal Warning may be given and confirmed in writing for record purposes. The employee will be advised of the reason and grounds for the letter of concern, its duration, and that any further breach may leave him/her open to further disciplinary action.

Written Warning

For more serious breaches of discipline, misconduct or continued poor performance, or a failure to improve conduct or performance following receipt of a Formal Warning, a Written Warning may be given. The employee will be advised of the reason and grounds for the Written Warning, its duration, and that a further breach may result in further disciplinary action being taken. They will also be notified of their right to appeal.

Final Written Warning

For serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a Written Warning, a Final Written Warning may be given. The employee will be advised of the reason and grounds for the Final Written Warning, its duration, and that a further breach may result in further disciplinary action being taken which may be punitive action or dismissal. They will also be notified of their right to appeal.

The employee's trade union will be notified, where appropriate, at all warning stages.

Punitive Disciplinary Action

As an alternative to dismissal, punitive disciplinary action may be imposed against an employee who has previously received a Final Warning or where the gravity of an incident/misconduct warrants this level of sanction, even in the absence of any previous disciplinary history. Punitive disciplinary action comprises the imposition of a Final Written Warning in conjunction with one of the following:

- Suspension without pay not exceeding 14 days.
- The withholding of an annual increment – (in matters of performance only)
- Reduction in grade
- Demotion

The General Manager will be formally notified and in such cases where appropriate, the employee's trade union.

Dismissal

An employee may be dismissed for serious repeated misconduct or poor performance during the currency of a Final Written Warning, or for gross misconduct for which no previous warning exists. The employee will be advised of the grounds for the dismissal, its effective date and whether it is summary dismissal or with notice (refer Section 10). They will also be notified of their right to appeal. The General Manager and the employee's trade union, where appropriate will be formally notified.

Some examples of gross misconduct may include:

- Serious offences against the interests of the Trust, including wilful injury to others and wilful damage to Trust property.
- Theft and fraud including fraudulent salary/wage claims and falsification of official documents.
- Falsification of particulars to secure employment.
- Criminal convictions having a material bearing on employment for example any which might result in an employee in a child care position being placed on a sex offenders list.
- Misconduct with regard to service users including serious breach of the Trust's child protection policies.
- Neglect of duty resulting in serious consequences.
- Abusive behaviour towards fellow employees, service users or members of the public including bullying, victimisation or harassment of a racial or sexual nature.
- Fighting in the workplace.
- Serious breach of safety rules.
- Incapacity on duty due to the effect of alcohol or drugs.
- Misuse of Trust vehicles.
- Inappropriate use of the internet or e-mail which includes downloading or sending inappropriate non work related documents.
- Breach of the Equal Opportunities Policies.
- Refusal to obey reasonable instructions.
- Bribery (whether or not it leads to prosecution in terms of the Bribery Act 2010)

This list is not exhaustive.

8.2 Time Limits for Disciplinary Action

Disciplinary action will be recorded and be admissible against further breaches of discipline, misconduct or poor performance for the undernoted periods of time:

Level of Action	Time Limit*
Formal Warning	6 Months
Written Warning	6 Months
Final Written Warning & Punitive Action (demotion, reduction in grade, withholding of an increment, suspension without pay)	12 Months

*This period is calculated from the date of the letter confirming the outcome of a disciplinary hearing.

All disciplinary action will be recorded in writing and remain in the employee's personal file during the period of the currency of the warning together with any relevant records which relate to the disciplinary hearing.

After the appropriate period of time, the warning will normally not be held against an employee in any further incident except in the following circumstances.

Where the employee's conduct is satisfactory for the period that the action is in force only to become unsatisfactory shortly thereafter, or where a pattern of behaviour like this emerged and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding the level of any future action.

Note: Where a Final Written Warning is issued as a result of misconduct which was so serious that it verged on gross misconduct, the employee will be advised that should there be any repetition of the misconduct, the previous action may be taken into account at any future hearing. This does not mean that an employee has been issued with a Final Written Warning without any time limit but that the previous action can be taken into consideration in these circumstances.

For other purposes e.g. appointments, references etc. the action should be held on the file without time limit and used as is felt appropriate in the particular circumstances.

Employees will be advised in writing of the disciplinary sanction and the reason for it, any improvements expected, the availability of appropriate support to achieve and maintain the improvement and the consequences of further misdemeanour. The letter will also advise the employee of the procedure to submit an appeal.

9. APPEALS

9.1 Right of Appeal

Employees will be advised in writing of their right of appeal against all levels of disciplinary action imposed and the procedure and timescales to be followed to submit an appeal. Appeals against disciplinary action will not be heard by the same person who implemented the action in the first place and any appeal should be heard where possible by a more senior manager who has not been previously involved.

The following table outlines as an example the appropriate level at which appeals may be heard:

Level of Warning	Imposed by	Appeal Heard by
Formal Warning	Supervisor/Manager	Manager/Senior Manager previously not involved
Written warning	Supervisor/Manager	Manager/Senior Manager previously not involved
Final Written Warning	Manager/Senior Manager	Manager/Senior Manager previously not involved
Punitive Action (demotion, reduction in grade, withholding of an increment, suspension without pay)	Manager/Senior Manager	Appeals Panel
Dismissal	Manager/Senior Manager	Appeals Panel

In exceptional circumstances, where a warning has been issued by the General Manager any appeal will be heard by the Appeals Panel.

9.2 Time Limits for Submitting an Appeal

If an employee considers the disciplinary action taken to be unfair, an appeal may be submitted in writing, using form STAF'77, in person or through a trade union within 14 days of receipt of notification of the decision of the disciplinary hearing. All sections of the forms should be fully completed.

Appeals being heard within the Trust should be submitted to the Senior Manager and scheduled but not heard within 14 days after receipt unless prevented by exceptional circumstances.

Appeals against Punitive Disciplinary Action/Dismissal should be submitted to the Company Secretary for hearing by the SLLC Board Appeals Panel within 14 days of receipt of the letter.

9.3 Arrangements for an Appeal Hearing within the Trust

Appeals will not be heard by the same officer who implemented the disciplinary action and any appeal should be heard where possible by a more senior manager who has not been previously involved in the case.

Arrangements for the appeal will be undertaken in accordance with those set out for a disciplinary hearing in Section 7 and the procedure followed will be the same as for the Appeals Panel (see Appendix A).

On conclusion of the hearing, and having considered all the evidence, where practicable, the officer hearing the appeal should reconvene the hearing and advise the employee and their representative of the decision reached.

The officer hearing the appeal may uphold, reject or reduce the disciplinary action previously taken. Under no circumstances can the previous disciplinary action imposed be increased.

Written confirmation of the decision will be issued within 3 working days of conclusion of the appeal hearing.

Following an appeal should any disciplinary action be revised, the employee will be notified accordingly and records amended. If an appeal is successful and the original disciplinary sanction is withdrawn, the employee will be notified accordingly and all references to the case will still be kept in the employee's personal file.

At this stage the internal appeals process will have been exhausted.

9.4 The Appeals Panel

Appeals against Punitive Disciplinary Action or against a Warning issued by the General Manager should be submitted in writing and preferably through a trade union (using form STAF'107), to the Company Secretary for hearing by the SLLC Board Appeals Panel which has delegated powers to decide appeals in the interests of a speedy resolution.

Appeals will be considered only if they are lodged using the appropriate form and it is completed in full stating the grounds of the appeal, either individually or through a trade union, within 14 days of the employee receiving written notification of the punitive disciplinary action.

Its decisions will be reported to the full SLLC Board of Directors for information.

Details of the procedures adopted by the Appeals Panel will be supplied to the appellant(s) and their companion and are set out in the Appendix A.

Appeals will be dealt with as soon as possible and normally within 28 days of receipt of the application. Notice will be given in writing at least 7 days in advance, unless otherwise mutually agreed, of the date, time and location for the appeal hearing including the right to be represented at the hearing.

Should the appellant fail to appear on the set date, the Appeals Panel will dismiss the appeal unless, within 14 days of the date of the hearing, the appellant has provided, in writing, an acceptable reason why the Panel should not do so.

9.5 Witnesses

Whilst the necessary time off with pay etc will be granted to witnesses at an appeal hearing, it is the responsibility of the appellant and the companion to liaise with the relevant manager in the Trust to make the necessary arrangements for witnesses for the employee's side to attend.

10. NOTICE PERIODS

10.1 Dismissal without notice

When an employee is summarily dismissed without notice on the grounds of gross misconduct, no payment will be made in lieu of notice. Gross misconduct is generally seen as misconduct serious enough to invalidate the employment contract between the employer and the employee and make any further working relationship and trust impossible. It is normally restricted to very serious offences e.g. physical violence, theft or fraud.

10.2 Dismissal with notice

An employee dismissed for misconduct, as opposed to summary dismissal on the grounds of gross misconduct, will be entitled to notice. Before deciding to make a payment in lieu of notice, consideration should be given to the circumstances since it may be appropriate for the employee to work the period of notice.

10.3 Capability

If the grounds for dismissal are other than misconduct, e.g. lack of capability and it is considered inappropriate for the employee to remain and work the period of notice, it will be appropriate to make a payment in lieu of notice.

In any of the above cases, advice may be sought from the General Manager.

9. PROCEDURE TO BE FOLLOWED AT HEARING OF AN APPEAL AGAINST PUNITIVE DISCIPLINARY ACTION

- 9.1 There may be present at all times, the appellant, their companion and the Trust representative.
- 9.2 A person or persons acting in an advisory capacity only to the appellant, their companion or to the Trust representative, may also be allowed to be present at the hearing provided such persons are made known to the Appeals Panel prior to the case commencing.
- 9.3 The Trust representative will put forward its case in the presence of the appellant and their companion, and call such witness(es) as may be required.
- 9.4 The appellant's companion or the appellant (if not represented) will have the opportunity to ask questions of witnesses called by the Trust.
- 9.5 The members of the Appeals Panel will then have the opportunity to ask questions of the witness.
- 9.6 The Trust representative will have the opportunity to ask further questions to clarify points arising from questions from the appellant's companion and members of the Appeals Panel.
- 9.7 The appellant or their companion will put their case in the presence of the Trust representative and may call any witnesses required.
- 9.8 The Trust representative will have the opportunity to ask questions of any witnesses called by the appellant or their companion.
- 9.9 The members of the Appeals Panel will then have the opportunity to ask questions of the appellant's companion the appellant or any witnesses called.
- 9.10 The appellant or their companion will have the opportunity to ask further questions of the witness, to make points of clarification arising from questions from the Trust representative and members of the Appeals Panel.
- 9.11 The Trust representative followed by the appellant or their companion will have the opportunity, if they wish, to sum up their case introducing no new material.
- 9.12 The Trust representative, the appellant and their companion and any advisers if present, will then withdraw.
- 9.13 The Appeals Panel in the presence of the officer(s) appointed to assist the Panel, will then deliberate in private, only recalling if necessary the Trust representative, the appellant and their companion to clarify points of uncertainty on evidence already given. If recall is necessary, **both** parties have to return even if only one of the parties is required to clarify any point.

- 9.14 The Appeals Panel will recall the Trust representative, the appellant and their companion and announce its decision on the appeal which will be confirmed in writing.

The Appeals Panel is authorised to uphold or reject appeals against disciplinary action or to order the varying of the disciplinary action taken. The form of the decision to be announced by the Appeals Panel will be one of the following as appropriate.

- (1) That the grounds of the appeal have been substantiated and the appeal be upheld.
- (2) That the grounds of the appeal have been substantiated in part and the appeal is upheld to the extent that
- (3) That the grounds of the appeal have not been substantiated and the appeal is rejected.

NOTE:

Where the decision of the Appeals Panel is to vary the disciplinary action to a period of unpaid suspension, the duration of the suspension will be a matter for the determination of the Appeals Panel at its complete discretion having due regard to the circumstances of the case.

Where the grounds of an appeal against dismissal have been substantiated in part and the Appeals Panel varies the disciplinary action previously taken to action other than dismissal, the appellant shall be deemed to have been reinstated to the employ of the Trust with effect from the date of the dismissal.

SPECIAL INVESTIGATION PROCEDURES

In certain cases, where it is considered that the circumstances relating to an incident/situation warrant special investigation prior to punitive disciplinary action being considered, such investigations shall be carried out in accordance with the procedures as contained in the attached appendices.

The instances to which these procedures relate and can be invoked are as follows:

Fraud (See Appendix B)

Where an incident/situation occurs involving the suspected or actual misappropriation or embezzlement of cash, monies, assets etc, placed in a person's charge, or acts of false representation, concealment of material facts, bribery, extortion, collusion or computer fraud;

Addiction (See Appendix C)

Where an incident/situation occurs in which it is suspected or known that an employee's misdemeanour is due to an addiction problem;

Following investigation and consideration of action, a decision will be taken as to whether or not the employee should be disciplined.

If an employee is removed from the workplace during a Special Investigation, this will be with pay.

Removal from the workplace with pay should be notified to the General Manager.

Fraud Response plan

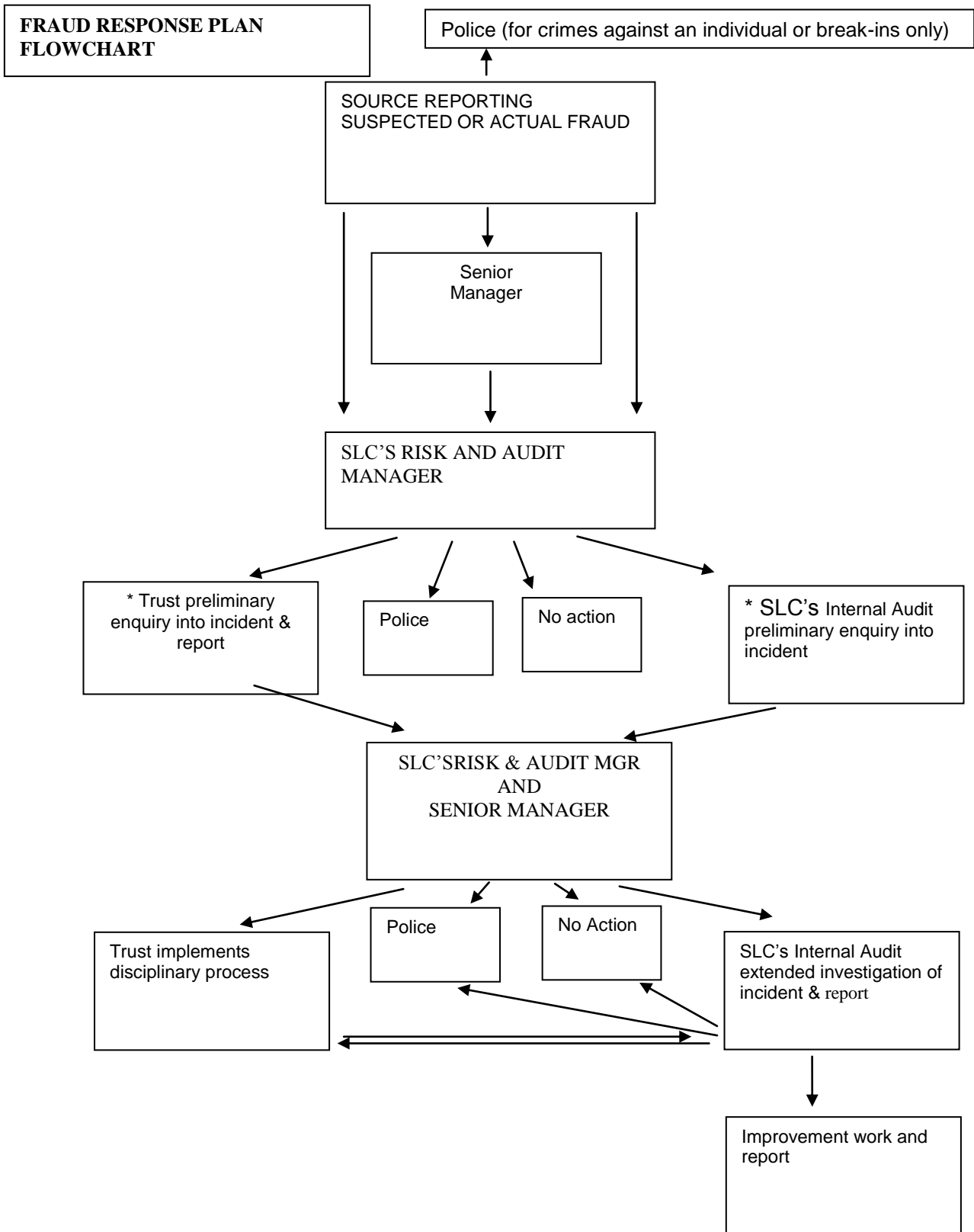
- 1 Introduction
 - 1.1 In line with the Trust's Service Level Agreement with South Lanarkshire Council (SLC), the Trust has adopted SLC's Anti-Fraud Strategy, this section sets out the procedures to be followed where fraud is uncovered or suspected. A separate strategy and response exists for Housing and Council Tax Benefits Fraud.
 - 1.2 The term fraud is used to describe acts such as deception, bribery, forgery, extortion, theft, conspiracy, embezzlement, misappropriation, false representation, concealment of material facts, computer fraud and collusion. Fraud may occur internally or be perpetrated against the Trust from outside.
- 2 Fraud Notification
 - 2.1 Senior Managers must ensure that all matters regarding fraud within their areas of responsibility are reported to them.
 - 2.2 Fraud should be reported to SLC's Internal Audit within 24 hours of an incident occurring or being suspected. Benefits fraud should be reported to SLC's Support Services in Housing and Technical Resources.
- 3 Immediate Management of the Situation
 - 3.1 When an incident is uncovered or suspected it should be reported to the Senior Manager who should immediately contact SLC's Internal Audit. Alternatively, a Senior Manager or the HR Manager may be contacted directly where the Senior Manager is not available who will in turn inform SLC's Internal Audit.
 - 3.2 Fraud is a complex area, and it is important that the correct action is taken. Line managers should not carry out their own investigations before informing SLC's Internal Audit, through their Senior Manager or relevant other Senior Manager, as this may compromise a later investigation, invalidate evidence, and consequently allow a guilty person to get away with a possible crime.
 - 3.3 Immediate action, such as removal of a person from the workplace by the Senior Manager or other Senior Manager, should only be taken where an employee or a third party is caught red handed committing an offence, or there is a risk that evidence will be destroyed e.g. something illegal on a computer. Nevertheless, SLC's Internal Audit through the Senior Manager must be contacted as soon as possible thereafter. Skills needed to preserve evidence may sometimes be specialisms which only trained officers or the Police can apply.
 - 3.4 Where an employee is suspected of committing fraud, the Senior Manager may remove that person from the workplace or redeploy that person. This should only happen after due consideration of the guidance within this Handbook. However, SLC's Internal Audit must be advised of the action taken.
 - 3.5 The approved investigative procedure must then be followed.

4 Investigative procedure

- 4.1 Having been informed of a suspected or actual fraud, SLC's Risk and Audit Manager, after an appropriate level of consultation between SLC's Audit Special Investigation Team and the nominated Trust contact, will decide on the scope of and the responsibility for any investigation. The options will be to take no action, to immediately inform the police, to appoint an auditor to determine the facts of the allegation or to refer the matter to Trust management for further investigation. Depending on circumstances, it may be necessary to involve officers or external professionals with relevant technical expertise to assist.

N.B. SLC's Internal Audit is entitled to access files and make enquiries of individuals to initially establish the facts of any incident. This entitlement is enshrined within the Terms of Reference for Internal Audit and is not part of the disciplinary process. Individual's rights will however be respected.

- 4.2 The level of investigation will be proportionate to the perceived level of risk or concern. The objective, scope and expected outcomes will be laid out in an audit remit to be approved by SLC's Risk and Audit Manager, regardless of whether the responsibility lies with SLC's Internal Audit or the Trust.
- 4.3 On completion of an assigned investigation the Trust will formally report back to SLC's Internal Audit on the outcomes. This may indicate that the Senior Manager has decided to commence disciplinary procedures where employees are suspected of involvement in the fraud. In this case a further formal intimation to SLC's Internal Audit is required to notify the outcome of the disciplinary process when completed.
- 4.4 Where the Trust is not instigating disciplinary procedures, SLC's Internal Audit reserves the right, on receipt of the Trust report, to undertake or request further work or to refer the matter to the police at this stage. The investigation may be closed at this stage if the allegation is unsubstantiated or evidence is weak. The General Manager and Senior Managers may be consulted at this stage.
- 4.5 SLC's Internal Audit does not take decisions on disciplinary action but reserves the right to recommend that the process is invoked.
- 4.6 Where SLC's Internal Audit is investigating, auditors may conclude their work after only preliminary investigation. At this point a report, memo or letter outlining findings and providing an audit opinion will be supplied to the Senior Manager.
- 4.7 Where more in depth investigative work is undertaken by SLC's Internal Audit, a formal audit report will be produced, on completion of all work, for Trust Management outlining findings and providing an audit opinion.
- 4.8 For any investigation SLC's Internal Audit reserves the right to undertake procedural or analytical reviews or exploration of the circumstances that led to the fraud. This will be appropriate to the level of concern. Senior Management may specifically request this type of improvement work. More informal advice and guidance on controls is available and is provided on request but subject to staff availability.
- 4.9 The Flowchart below outlines the above response and investigative procedures.



* Preliminary enquiry could also result in police referral

5 Reporting Procedures

- 5.1 Investigation reports will be prepared by SLC's Internal Audit or by the appointed Trust investigating officer. The investigation report will present the facts obtained during the investigation. It is the responsibility of the Senior Manager, or nominated officer, to assess the findings and decide whether it is necessary to start disciplinary proceedings.
- 5.2 Advising employee(s) on the outcome of investigations is the responsibility of the Senior Manager or the nominated officer.
- 5.3 If it is necessary to prepare a separate improvement report relating to system weaknesses that allowed the fraud to take place, this will be done by SLC's Internal Audit. This will normally carry recommendations which will be monitored and followed up.

6 Disciplinary Hearing

- 6.1 If disciplinary procedures are invoked the Trust's approved policy and procedures will be followed with the investigating officer presenting the case on behalf of management. Even where a SLC internal auditor has undertaken some investigation, his or her role during the hearing is restricted to that of a witness, to discuss the audit findings contained within the report. Only where the complete investigation has fallen entirely within the remit of SLC's Internal Audit will the SLC auditor assume the role of investigating officer.

7 Police Involvement

- 7.1 Where a material crime has been committed or suspected, the police will be contacted by SLC's Risk and Audit Manager after seeking approval from the General Manager. No approach will be made to the Police regarding suspicions of fraud, corruption or irregularity, except by the General manager or other person acting on the General Manager's authority. SLC's Risk and Audit Manager will be informed where this authority is given. Full co-operation will be given to the Police while they conduct their enquiries.
- 7.2 Only where there has been a break-in and this may result in an insurance claim against the Trust or where a crime has been committed against an individual e.g. personal injury should staff in the Trust call the police directly.
- 7.3 Special rules for reporting of benefit fraud apply and SLC's Housing and Technical Resources may pass cases directly to the Procurator Fiscal.
- 7.4 The decision to refer the matter to the Police has no bearing on internal investigations, the decision reached by the Disciplining Officer, or the justification to be relied upon before a Board Appeals Panel.

PROCEDURES FOR DEALING WITH ADDICTION PROBLEMS

The following remarks and procedures outlined apply equally to alcohol related problems, drug related problems, solvent abuse, gambling and other recognised addictions which interfere with an employee's health and/or work capability.

Employees who suspect or know they have such a problem will be encouraged to seek help and treatment voluntarily through the Trust's voluntary procedures.

Employees who come to notice through normal disciplinary procedures or as the result of a decision by the Board Appeals Panel as possibly having an addiction problem will be offered the opportunity to seek diagnosis and treatment, if necessary, from the appropriate agencies approved by the Trust.

Those employees who:

- ◆ decline to accept the offer of referral for diagnosis and/or help and treatment and/or
- ◆ discontinue a course of treatment before its satisfactory completion and/or
- ◆ continue to return unsatisfactory levels of work performance and attendance,

will be subject to the normal and recognised disciplinary procedures.

Where an employee has work capability problems, the cause of which is known or suspected to be addiction related and where disciplinary measures have been applied or are indicated, the following procedures will apply:

1 The Senior Manager (or nominated officer) will interview the employee in the normal course of endeavouring to rectify work performance difficulty, in the presence of a trade union representative or companion, if the employee so wishes.

2 The Senior Manager (or nominated officer) will offer referral to the HR Department.

3 REFERRAL

This can be carried out as an alternative to taking disciplinary action OR, dependant on the nature of the misconduct, after disciplinary action has been applied.

If the employee accepts the offer of referral, the Senior Manager (or nominated officer) will arrange an immediate meeting, for the employee, with the Occupational Health Nurse (Employee Support) through the HR Department.

If an employee rejects the offer of referral, the next stage of the disciplinary procedures will be applied.

- 4 When the referral has been received the Occupational Health Nurse (Employee Support) will meet the employee and arrange an urgent appointment with the Employee Counselling Service. The Occupational Health Nurse (Employee Support) may encourage the employee to seek support from their GP. The Trust also reserve the right to refer the employee for a medical examination with the Trust's Medical Adviser (Employee Support).

The Employee Counselling Service will assess the nature and extent of the problem and arrange a suitable programme of counselling.

- 5 The Employee Counselling Service will also notify the Occupational Health Nurse (Employee Support) whether or not an addiction problem is confirmed. The Occupational Health Nurse (Employee Support) will then obtain the co-operation and agreement of the service concerned regarding any necessary absence from work and any other assistance required.

If the employee co-operates and accepts the programme of support, and returns to an acceptable level of conduct, attendance and work performance, then the problem is resolved.

However if the employee does not co-operate and rejects the programme of support, the Occupational Health Nurse (Employee Support) will refer the employee back to the Senior Manager (or nominated officer).

- 6 If the Employee Counselling Service concludes there is not an addiction problem, the Occupational Health Nurse (Employee Support) will refer the employee back to the Senior Manager and the next appropriate stage of the disciplinary procedures will be applied.
- 7 The Senior Manager (or nominated officer) will then apply the disciplinary procedures.
- 7 If work performance problems continue or recur, a decision will be taken as to whether the employee should be sent for further treatment or if the next stage of the disciplinary procedures should be applied.

Responsible Roles in Relation to the Disciplinary Process

1. Who is the nominated manager?

The person who receives the complaint. This person must be of a sufficient level within the Trust. If not, the complaint should be passed to someone who is.

2. Who appoints the Fact Finding Officer and briefs them on the Scope of the Investigation?

The nominated manager.

3. Who informs the employee that an investigation is underway?

The employees' immediate line manager.

4. Who receives the report from the Fact Finding Officer?

The nominated manager.

5. Who meets the employees and takes them through the fact finding report?

The FF Officer.

6. Who meets the employee and tells them what action, if any, is to be taken?

The nominated manager.

NB: 5 & 6 can be done at the one meeting together.

7. Who appoints the Disciplining Officer?

The nominated manager.

8. Who can be a Disciplining Officer?

Any manager with the required competence including the employee's immediate line manager.

9. Who appoints the Appeal Manager and what level can they be?

The nominated manager appoints the appeal manager who must be senior to the Disciplining Officer.

Throughout this process the FF Officer, Disciplining Officer and Nominated Manager can be of the same grade or higher. They must have sufficient competence to carry out the appropriate role and have undergone the necessary training.