

Disciplinary Policy

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1 Introduction

- 1.1 This policy is designed to help and encourage all employees to achieve and maintain high standards of conduct and behaviour at work. It aims to support the Council's need for effective employees and to ensure consistent and fair treatment for all employees.
- 1.2 This policy has been formulated to ensure compliance with relevant employment legislation and also takes into account advice contained in the relevant ACAS Code of Practice and the associated ACAS Guide.
- 1.3 The procedure applies to all employees of the Council, except where nationally negotiated terms and conditions have other mandatory provisions and except in respect of employees working in schools with delegated budgets where different procedures will be adopted by the governing body and made known to the employees affected.
- 1.4 Human Resources (HR) are available to assist managers who are considering or implementing formal disciplinary action and managers are advised to seek their advice at an early stage and certainly in all potentially serious cases. **[Throughout this document, the term HR representative should be read to mean an employee within the HR Team at an appropriate level authorised by the HR Manager].**
- 1.5 Employees facing action under this procedure are encouraged to seek assistance and advice from their trade union, professional association, or any other person of their choice. Employees may seek the advice of an HR representative who is not otherwise involved in the case, only on the operation of the disciplinary procedure.
- 1.6 This procedure has been agreed to deal with disciplinary matters. A separate procedure exists for dealing with cases of unsatisfactory performance by reason of capability.
- 1.7 An employee has no legal right to make a recording of a meeting held as part of the disciplinary process. Requests to record any such meeting must be submitted in writing to the Chair of the relevant meeting in advance, stating the reason for the request. Requests will be considered on a case by case basis.

The covert recording without express knowledge or consent, of any meeting held as part of the disciplinary process, is expressly forbidden and may lead to disciplinary action being taken.

This procedure should be read in conjunction with the Guidance Notes which are referred to throughout

2 Informal Discussions

- 2.1 It is normal practice for a manager to discuss any matters of concern with their employees on a day to day basis. Such informal discussions will be outside the disciplinary procedure. The aim should be to offer such positive advice, assistance and guidance as will help the employee overcome any shortcomings.
- 2.2 Problems should be raised and discussed at the earliest possible moment and resolved whenever possible without recourse to the formal procedure. Sometimes such discussions should be organised in a fairly formal manner, and indeed managers may informally warn employees, but nevertheless such warnings fall outside the disciplinary procedure. Whilst

managers may make a confidential note of such discussions, these notes will not be placed on an employee's personal file.

- 2.3 Employees are free to seek advice and assistance from a trade union representative or other person during informal discussions, subject to the procedure not being unreasonably delayed.

3 Formal Procedures – Introduction and Principles

- 3.1 Counselling and other methods used by managers to address issues informally may not always be successful or, because of the seriousness of the issue, may not be appropriate. Where it becomes necessary to use formal procedures, the principles set out in this section will apply.
- 3.2 The rules of natural justice should be observed. Employees will be given a full and fair opportunity to present their case before any disciplinary action is taken. The same officer will not be responsible for the investigation, formal hearing and appeal in respect of any one case.
- 3.3 The procedures should be followed with the minimum of delay but having regard to the time scales set out in this procedure. The unavailability of a particular representative or manager cannot be allowed to delay the operation of the procedure unreasonably, although it is recognised that in exceptional circumstances this may be unavoidable.
- 3.4 Disciplinary procedures should not be viewed purely as a means of imposing sanctions. They are designed to emphasise and encourage improvements in individual conduct. Minor issues should be dealt with informally but where the matter is more serious or persistent then the formal procedures should be used. In deciding whether to move to formal procedures, managers should have regard to all the circumstances, including the employee's previous record of service and any personal circumstances that may be relevant.
- 3.5 Disciplinary sanctions will be determined having regard to the facts and circumstances of each individual case including, but not automatically determined by, the existence of previously issued, but still valid, sanctions.

With the exception of gross misconduct, dismissal will not take place unless the appropriate warnings have been given.

- 3.6 Employees will be notified that they have the right to consult and be accompanied by a trade union representative or a work colleague at any and all formal stages of the procedure, including investigation, and will be encouraged to do so. Requests to be accompanied by someone other than a trade union representative or work colleague will be considered.
- 3.7 Regard should be had at all times to the [Council's Equal Opportunities Policy](#) and the Equality Act 2010.

4 Investigation

- 4.1 Disciplinary action should not be taken until a full investigation has taken place. The purpose of an investigation is not to determine guilt or innocence but to gather information upon which a course of action can be based.
- 4.2 An investigation will usually be undertaken by the manager of the employee concerned and may involve advice from HR. The Audit Manager or his/her representative will be involved if there is an alleged irregularity involving the Council's Standing Orders or Financial Regulations. Those who take part in an investigation may not hear the case at any subsequent disciplinary hearing or appeal.
- 4.3 The employee concerned will normally be informed that an investigation is underway, except where to do so would compromise the effectiveness of the investigation of potentially serious issues. [An investigation without the employee's knowledge must not be used deliberately to allow or encourage an employee to commit a more serious disciplinary offence]. He/she must be given an opportunity to be interviewed and may be instructed to attend an investigatory interview. If he/she refuses to participate in the interview, that fact must be recorded in writing. No inference may subsequently be drawn from an employee's refusal to be interviewed but at the conclusion of the investigation a course of action will have to be decided upon in the absence of the employee's comments on the issue being investigated.
- 4.4 Where it is suspected that a criminal offence may have been committed, an employee may be interviewed under caution. The form of the caution will be that prescribed under the Police and Criminal Evidence Act. Cautions will only be administered by members of Internal Audit.
- 4.5 An investigation may involve interviews with other employees, and/or any other persons and may include obtaining statements and/or examining records, documents and any other relevant information/items.
- 4.6 At the conclusion of an investigation, a decision will be taken on the most appropriate course of action. The investigation may conclude that no action is required in which case the employee concerned must be told as soon as possible and receive confirmation in writing.
- 4.7 The investigation may conclude that it would be appropriate to offer assistance e.g. guidance or training or other appropriate measures to bring about the change/improvement required or to warn the employee informally.
- 4.8 Where a matter is also being investigated by the Police or by another internal or external body with statutory powers (e.g. Child Protection Team, Registration and Inspection, Inland Revenue, Customs and Excise) the investigation must be carried out in consultation with that body.

Further information is available in:

- ❖ Guidance Note 1 – What to do when a potential disciplinary issue arises
- ❖ Guidance Note 3 – Investigations

- ❖ Guidance Note 4 – Investigatory Interviews
- ❖ Guidance Note 5 – Note taking in an investigatory interview

5 Suspension

5.1 Within the context of this procedure, suspension from work is not a disciplinary measure in itself and should not be seen as punitive or pre-judging the outcome of any investigation.

5.2 An employee may be suspended when:

- ⇒ alleged gross misconduct is being investigated
- ⇒ the presence of an employee at work would prejudice the conduct of the investigation
- ⇒ it is in the interests of the safety of the employee and/or others

5.3 Where practicable, the decision to suspend an employee should be taken by the appropriate Service Delivery Manager, Director or Executive Director in consultation with the appropriate HR representative. However, it is recognised that the nature of the Council's services mean that this is not always possible. If a suspension is carried out by a manager other than the appropriate Service Delivery Manager, Director or Executive Director, the appropriate manager must consider the decision to suspend at the earliest opportunity and confirm or not confirm that decision.

5.4 Suspension will always be on full pay.

5.5 A suspended employee should be instructed to leave the workplace immediately. He/she should be informed that suspension will be on full pay, and should be asked to return keys, ID card and any other Council property as appropriate. A suspended employee may be instructed not to make contact with other specified employees whilst suspended. Any oral instructions should be confirmed in a letter setting out the reason for the suspension. The employee is expected to be available for interview as part of the investigation throughout the period of suspension.

5.6 Periods of suspension should be kept to a minimum consistent with the circumstances.

5.7 A suspended employee may, by prior arrangement, return to the workplace to collect personal belongings or any 'material' that they may need in the preparation of their case. The examination or removal of any items must be overseen by the investigating manager or his/her representative and with the exception of personal possessions, no item may be removed without the manager's permission. Although under a general instruction not to contact specified employees, a suspended employee may wish to talk to his/her representative. If a suspended employee wishes to interview another employee as a potential witness, this must be with the full consent of the person concerned.

Further information is available in:

- ❖ Guidance Note 2 – Suspensions

6 Disciplinary Action Involving Trade Union Representatives

6.1 Disciplinary action should not be taken in respect of trade union representatives until the

matter has been first discussed with the appropriate official as designated by the union concerned. Suspension can take place, as this is not a disciplinary action, although wherever practicable this should also be first discussed with the appropriate official.

7 Criminal Charges and Convictions

- 7.1 An employee should not be dismissed or disciplined merely because he/she has been arrested or charged with or convicted of a criminal offence or been the subject of an official police caution or investigation. The question to be asked in all cases, whether or not the arrest/charge/conviction/caution/investigation relates to an offence during the course of employment or outside of employment, is whether the employee's conduct warrants action because of the employment implications. It may not be possible to answer that question without first conducting an investigation.
- 7.2 Where it is considered that the conduct warrants disciplinary action the normal procedure should be followed.
- 7.3 Such action need not always await the outcome of any investigation, charge or prosecution, but see 4.8 above.

8 Formal Disciplinary Hearings

Instruction to Attend a Disciplinary Hearing

- 8.1 The employee must be given written notification of the disciplinary hearing, instructing him/her to attend. The notification must include:
- Date, time and location of the hearing
 - The names of the managers conducting the hearing
 - The right to representation
 - The nature of the allegations to be considered at the hearing
 - Copies of documentary evidence which it is proposed to present at the hearing
 - The right to call witnesses
 - A copy of the disciplinary procedure
 - In cases of hearings where there is a valid final warning and hearings for alleged gross misconduct, an indication that one possible result of the hearing could be dismissal
- 8.2 In order to ensure that the employee has adequate time to prepare his/her case, a minimum of 10 working days should elapse between the receipt of the written confirmation of a disciplinary hearing and the hearing taking place. This period may be reduced with the consent of all parties. A copy of the notification will be sent to the employee's representative and to members of the panel. The investigating officer or the employee may, with good reason, request that a hearing is deferred and this request will not unreasonably be refused. The employee will have access to his/her trade union or other representative to prepare for the hearing.

Conduct of Disciplinary Hearings

- 8.3 The composition of the panel will be determined by the HR Manager, in consultation with

the employee's representative, having regard to the nature and seriousness of the allegations, the existence of any valid disciplinary warnings, and the size and management structure of the service area. Authority to dismiss shall not be given to any officer other than the Chief Executive, an Executive Director or a Director. Appendix 2 contains guidelines that will be taken into account in forming a disciplinary panel.

8.4 The chair of the panel/manager conducting the hearing must ensure that it is conducted in a fair and reasonable manner and in accordance with the principles of natural justice.

8.5 The procedure to be followed at the hearing will be as laid out in Appendix 1. If more serious matters come to light during the course of the hearing, the Chair of the panel may call a halt to proceedings and order a further investigation.

8.6 The decision of the panel will be confirmed in writing within 5 working days of the hearing. A copy will be sent to the employee's representative, and placed on the employee's personal file. Associated documentation will be stored securely in line with the [Corporate Information Retention Schedule](#).

8.7 Where a disciplinary sanction is applied, the letter confirming the sanction should clearly set out:

- The date of the hearing
- Details of the unsatisfactory conduct, including reference to any previous warnings relevant to the present case, which have been considered
- The corrective action that is required
- Details of the disciplinary sanction and any monitoring or review to be operated
- A warning that further disciplinary action during the life of the warning could lead to more serious disciplinary sanctions including, in the case of final warnings, that this could lead to dismissal
- The period of time after which a warning will lapse
- The right to lodge an intention to appeal within 10 working days from receiving the letter.

8.8 In cases of dismissal the letter should clearly set out:

- The date of the hearing
- Details of the unsatisfactory conduct including reference to any previous warnings, relevant to the present case, that have been considered and in the case of gross misconduct a statement that the behaviour constitutes gross misconduct
- A statement that the panel has decided to dismiss the employee
- The effective date of dismissal bearing in mind, except for summary dismissal, the period of notice given
- The right to lodge an intention to appeal within 10 working days of receiving the letter

Further information is available in:

- ❖ Guidance Note 6 – Retention of records

9 Disciplinary Sanctions

9.1 The panel may issue a warning that will contain the points set out in 8.7 above.

The length of the validity of a warning is set out below.

If a further incident occurs during the validity of the warning, it will be taken into account by the panel at a subsequent hearing in determining the sanction to be applied at the time. As well as applying a higher, or lower level sanction as appropriate, the panel will have the option of extending the validity of the original warning from the date of the subsequent hearing by up to the maximum period for that level of warning.

First Warning

9.2 A First Warning will be issued for matters where informal methods would not be appropriate or where an informal approach has not been effective.

9.3 First warnings will be valid for three months.

Second Warning

9.4 A Second Warning will be issued for matters where a valid First Formal Warning has not been effective or in circumstances which justify omission of earlier stages.

9.5 Second Warnings will be valid for six months

Final Warning

9.6 A Final Warning will be issued for matters where a valid Second Warning has not been effective or in circumstances which justify omission of earlier stages.

9.7 Final Warnings issued for misconduct will be valid for one year. Final Warnings issued for Gross Misconduct will be valid for up to two years.

9.8 In cases of gross misconduct, where dismissal would otherwise be the result, a Final Warning may relate to never to be repeated incidents and if the same incident or very similar incident is repeated the employee will be dismissed no matter how long after the Final Warning the later incident occurs. If a Final Warning is to be treated in this way it will be made clear in the letter confirming the warning. An employee issued with a Final Warning of this type may apply after a period of two years for the Final Warning to expire.

Dismissal

9.9 Dismissal will occur where following a valid Final Warning there is a further instance of unsatisfactory conduct or in cases of gross misconduct (see 10.1)

Other Disciplinary Sanctions

9.10 The panel may decide to take any other appropriate action depending on the circumstances of the case. This will normally be in addition to a disciplinary warning, but may have the

effect of reducing the severity of the warning or reducing its length. Other disciplinary sanctions may include:

- ⇒ Demotion*
- ⇒ Redeployment*
- ⇒ Loss of seniority*
- ⇒ Loss of increment

* Pay protection will not apply.

Depending on the nature of the sanction, it may be appropriate to link it to the period of any warning that is issued. Such additional sanctions will be subject to the appeals procedure.

10 Gross Misconduct

10.1 Gross misconduct is defined as misconduct that is so serious that it breaks the trust between the employee and the Council and cannot under any circumstances be tolerated. If proven, gross misconduct could, and usually would, result in dismissal.

10.2 In the case of alleged gross misconduct, the employee will usually be suspended with full pay until the case has been investigated.

10.3 A dismissal for gross misconduct will only take place after the normal investigation to establish all of the facts have taken place. Dismissal for gross misconduct will be summary - that is without notice or payment in lieu of notice.

11 Appeals

11.1 An employee may appeal against all or any part of the outcome of a disciplinary hearing but not against the decision that a hearing should take place.

11.2 An appeal must be lodged within 10 working days of receipt of written confirmation of the decision appealed against.

11.3 An appeal must be in writing, to the HR Manager. The appeal must make it clear whether it is against the decision of the panel that the allegations were proven or against the sanction applied by the panel or both (i.e. "verdict" or "sentence" or both).

11.4 The HR Manager or his/her representative will acknowledge receipt of the appeal and will arrange for it to be heard as soon as possible by the appropriate manager or by the Appeals Committee (Appendix 2)

11.5 If the appeal is against the panel's finding that the allegations were proven, it will be in the form of a re-hearing of the case. The procedure will be the same as for the conduct of the original hearing. If the appeal is against the sanction applied by the panel, or the way in which the original hearing was conducted, the manager or Appeals Committee will receive an agreed statement of the facts of the case and will only consider representations concerning the severity, length or appropriateness of the sanction, and/or of the conduct of the original hearing.

- 11.6 An appeal hearing may consider new information from either the appellant or management. If new information is introduced, both the appellant and management must have an opportunity to question it. If in documentary form, it should be submitted in advance, normally 10 working days before the appeal. If new information comes to light less than 10 working days before the appeal, it will be open to either side to request a postponement.
- 11.7 An appeal hearing may uphold the decision appealed against, may reduce the sanction and/or may issue such other instructions and sanctions as it sees fit and in line with section 9). An appeal hearing may not result in a more severe sanction than that issued at the original hearing.
- 11.8 The decision of the appeal hearing will be confirmed in writing to the appellant within 5 working days of the hearing.
- 11.9 With the exception of referral to an Employment Tribunal the decision of the manager hearing the appeal or the Appeals Committee is final and may not be the subject of any further appeal or grievance.

12 Disciplinary Rules

- 12.1 For the guidance of managers and employees, the Council will determine and maintain a set of [disciplinary rules](#). These will be amended from time to time.

APPENDIX I

Conduct of Disciplinary Hearings

1 Preamble

This procedure is intended to act as an agreed framework for the conduct of formal meetings. It is recognised that there may be circumstances where it is appropriate to vary the procedure with the agreement of all parties involved.

2 Procedure

- 2.1 The Chair of the panel will introduce all people present and will ensure that everyone present is aware of the procedure to be followed.
- 2.2 The presenting officer will present, in a summarised form, the circumstances that have led to the formal meeting being called and details of what specific allegations are being made against the employee.
- 2.3 The employee will be asked if he/she understands the allegations that are being made and whether he/she accepts or denies them.
- 2.4 The presenting officer will then present the details of the case calling any appropriate witnesses and submitting any appropriate documentary evidence (see [Section 3](#) below concerning witnesses and [Section 4](#) below concerning documentary evidence). If the

allegations have been accepted by the employee, there will be no need to put forward evidence to prove facts that are agreed.

2.5 As each witness is called, he/she will be questioned in the following sequence:

- i) by the presenting officer
- ii) by the employee and/or his/her representative
- iii) by the panel.

2.6 At the conclusion of the presentation by the presenting officer, he/she may be questioned by the employee and/or his/her representatives and by the panel.

2.7 The employee and his/her representative will then be asked to present their case, calling any appropriate witnesses and submitting any appropriate documentary evidence (see [Section 3](#) below concerning witnesses and [Section 4](#) below concerning documentary evidence).

2.8 As each witness is called, he/she will be questioned in the following sequence:-

- i) by the employee, and / or his /her representative
- ii) by the presenting officer
- iii) by the panel.

2.9 At the conclusion of the presentation by the employee and his/her representative, they may be questioned by the presenting officer and the panel.

2.10 The presenting officer and the employee and/or his/her representative will then be asked, in that order, to summarise their case. They must not, at this stage introduce new information. (Should any new information be introduced at this stage all parties will be given the opportunity to question and comment upon it).

2.11 After satisfying itself on any outstanding matters the panel will then adjourn to consider whether the allegations against the employee have been substantiated. At this stage everyone who is not a member of the panel must leave, other than the Legal Services representative, if present, who may remain to advise the panel on matters of law and procedure. If technical advice is required the panel may seek advice from the appropriate technical expert, in the presence of all parties or their representatives.

2.12 During the adjournment, the panel may wish to clarify points of information. In this case, the presenting officer and the employee and his/her representative should be recalled while the matter is clarified. The panel may not enter into discussion with one party in the absence of the other.

2.13 When the panel has reached a decision, both parties will be recalled and the panel will state whether the allegations against the employee have or have not been substantiated. They will announce what action, if any will be taken. The right of appeal against such action will also be explained.

2.14 The outcome of the meeting will be confirmed in writing within 5 working days.

Note

Any party to the proceedings may ask for an adjournment at any time; such a request shall not unreasonably be refused.

3 Witnesses

- 3.1 It is the responsibility of the presenting officer and of the employee and his/her representative to ensure that their witnesses attend the hearing. If any difficulties arise in securing the attendance of a witness, the HR Manager should be consulted.
- 3.2 Witnesses may only be present at the hearing as they are required and must otherwise wait in a separate room.

4 Documentary Evidence

- 4.1 Documentary evidence that is to be used at the hearing will be circulated to all parties including the panel 5 working days in advance of the hearing. On receipt of such evidence there will be a further opportunity for all parties to respond with final supplementary documentary evidence, to be circulated 24 hours in advance of the hearing.
- 4.2 Documentary evidence that has not been circulated in advance will be considered at the hearing at the discretion of the Chair, who will have regard to the nature and complexity of the item and the views of all parties.

APPENDIX 2

Guidelines to be followed when convening a disciplinary panel or appeals panel.

Panels will be composed having regard to these guidelines but taking into account the factors described in Paragraph 8.3 of the Procedure.

DISCIPLINARY SANCTION	PANEL WITH AUTHORITY TO ISSUE	APPEAL IS TO
DISMISSAL	EXECUTIVE DIRECTOR OR DIRECTOR, AND HR REPRESENTATIVE	APPEALS COMMITTEE ADVISED BY LEGAL SERVICES REPRESENTATIVE
FINAL WARNING	AS ABOVE OR SERVICE DELIVERY MANAGER, AND HR REPRESENTATIVE	EXECUTIVE DIRECTOR OR DIRECTOR AS APPROPRIATE AND HR REPRESENTATIVE

FIRST OR SECOND
WARNING

AS ABOVE OR TEAM
LEADER, AND HR
REPRESENTATIVE

AS ABOVE OR
SERVICE DELIVERY
MANAGER AND HR
REPRESENTATIVE