

Disciplinary Policy

Policy Statement

This policy applies to all employees apart from school-based employees employed under a Governing Body's delegated powers. Please seek further advice from the Service Director – Workforce for how this policy applies to posts in tiers 1-3 of the organisational structure.

This procedure is designed to help and encourage all employees to maintain the expected standards of conduct. It aims to ensure consistent and fair treatment for all employees in the organisation and to meet acas good practice guidance.

The Council requires that employees should conduct themselves in a safe and proper manner, abiding by the standards of conduct, rules, regulations set out in the Council's Standing Orders and the appropriate conditions of service. This procedure sets out the action, which may be taken when it is suspected that these rules have been breached.

Process

Wherever possible cases of minor misconduct will be best dealt with informally rather than through the use of the disciplinary procedure. Problems should be discussed by the Line Manager and employee with the objective of encouraging and helping the employee to improve. It is important that the employee knows what needs to be done, how conduct will be reviewed and over what period. Where appropriate a Letter of Expectation will be given to the employee and placed on their employee file for a stated period, usually six months. The employee should also be made aware of what will happen if they do not reach acceptable standards.

Suspension

The Council reserves the right to suspend an employee, with full pay, for the duration of any investigation. Suspension should only be considered if there is no other alternative and after consultation with HR and approval from a Director at tier 3 or above, or their nominated senior officer. Alternatives to suspension include temporary redeployment, restricted duties and closer supervision. Suspension from work is not a disciplinary sanction or a presumption of guilt. It should only be considered in cases of gross misconduct or where the Council believe there is a risk to the investigation process or to the welfare of others.

The reasons for suspension should be made clear to the employee in a meeting which is followed up by letter.

Every effort will be made to ensure that the period of suspension is as short as possible. The employee should be kept up to date with the progress of the investigation and any delays should be communicated. A point of contact will be appointed and that this should be someone not previously involved in the case.

Suspension can be implemented or lifted at any time throughout the process.

Investigation

Before any disciplinary action, an investigation will be conducted into the allegations of misconduct. An appropriate manager will take the role of Commissioning Manager and with support from HR will agree who is the most suitable person to conduct the investigation. In exceptional circumstances, where no suitable person is available within the organisation to conduct the investigation, an external investigator may be appointed.

Prior to an investigation taking place the employee must be informed of the nature of the complaint made against them in writing. They should be given the opportunity to state their case during the investigation process and, if required, at a disciplinary hearing. The investigation should be confined to ascertaining the facts through the collation of evidence, including statements from interviews with witnesses. All parties have the right to be accompanied by their trade union official or an appropriate work colleague.

After the investigation, the report will be shared with the Commissioning Manager who will decide if it is necessary to proceed to a formal hearing. If the Commissioning Manager recommends a formal hearing take place, the employee will be informed in writing.

Alternatively, it may be decided that no formal disciplinary action is required and to deal with the issue via informal action, which could include a Letter of Expectation, the offer of counselling, mediation, coaching or additional training. In this case the employee should be informed of this decision in writing.

Suspected Theft /Fraud

Where there is any suspicion of theft or fraud then the Group Manager, the Monitoring Officer or the Section 151 Officer must be informed immediately. Within 10 working days of the concerns being raised a letter will be issued by the Section 151 Officer or Monitoring Officer explaining what action will be taken. This will be determined, in line with the Financial Regulations and a decision will be made as to whether the auditors should be commissioned to investigate. However, while the audit investigation may form part of the disciplinary investigation, this should not be used instead of a disciplinary investigation when deciding appropriate action to take / recommend.

In certain circumstances it may be necessary to report the start of formal disciplinary proceedings to other professional bodies. This will happen in conjunction with HR and the employee will be notified.

Hearing

The employee must be invited to attend the hearing in writing and given at least 5 working days' notice of the date. Full details of the allegation should be provided including the investigation report and supporting papers and they should be notified of their right to representation.

The hearing will be chaired by an independent manager (not previously involved in the case), advised by a representative from the HR Service. Often this will be the Commissioning Manager. The tier of manager involved should normally be one above the manager previously involved in the case. If necessary, the panel will include an additional member to give expert advice and support.

Where the employee or their representative is unable to attend on the date specified the **HR Officer** should be advised immediately, and a new hearing date will be provided to the employee within five working days of the original date.

The employee will have the right to be accompanied. This can only be by a trade union representative or an appropriate work colleague. Where the employee is aged under 18 or has a specific need, the Council would consider a request to be accompanied by a parent / carer or tutor.

The notification of the hearing must be provided in writing, along with a copy of this procedure, and include the date of the hearing, right to representation and who will be in attendance as well as details of the matter to be considered at the hearing and copies of any supporting documentation (i.e. the investigation and appendices) that will be relied upon by the employer's side during the meeting. The names of any witnesses that the employer's side may call must also be provided. The employee in turn must submit any documentation they wish to be considered at the hearing, and the witnesses they wish to call, at least three working days before the hearing.

Notes will be taken at the Hearing by the Council and the employee and their representative will be provided with a copy upon request. Where appropriate and agreed, a disciplinary hearing may be tape recorded. This should be discussed with the panel in advance of the hearing. It is expressly forbidden for any employee to covertly record any investigation meeting or disciplinary / appeal hearing.

Either party can request an adjournment at any time during the hearing.

Possible Outcomes

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when dismissal will be without notice or payment in lieu of notice.

There are several outcomes of a disciplinary hearing and the employee must have been notified of the most severe possible outcome before the hearing. Not all hearings end with a sanction, the Disciplinary Chair or Panel may decide there is no case to answer and declare that no further action will be taken. A Letter of Expectation may also be issued if the Chair / Panel decide resolution can be more informal.

Where dismissal is a potential outcome of a hearing, the panel must be chaired by a Director at tier 3 or above (or their nominated senior officer).

First Written Warning

If the Disciplinary Chair / Panel decide the allegations are true, it is a first offence and the misconduct is not considered gross, a written warning will be issued. This will give details of the complaint, the improvement required, and the timescale allowed for improvement. It will state that further disciplinary action will be considered if there is no satisfactory improvement and will give advice on the right to appeal. A copy of the written warning will be placed on the employee's personnel file. This will cease to have any cumulative effect after 12 months or any other lesser period, which may be considered appropriate by the Disciplinary Panel.

Final Written Warning

If the misconduct is sufficiently serious, or if there is a failure to improve and conduct is still unsatisfactory following a previous written warning, a final written warning will be issued. This will give details of the complaint, the improvement required, and the timescale allowed for improvement; warn that dismissal will result if there is no satisfactory improvement or further misconduct and will advise on the right to appeal. A copy of the final written warning will be placed on the employee's personnel file. This will normally cease to have any effect after 18 months, though an alternative period may be specified in exceptional circumstances by the Disciplinary Panel.

Dismissal with Notice

Formal warnings may have a cumulative effect. This means that if a warning is still in effect, any further warning for similar misconduct may be at a higher level. If, following a final written warning, at a further formal disciplinary hearing, conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, dismissal with notice or payment in lieu of notice, will normally result. The employee will be provided with written reasons for dismissal, the date of termination and the right to appeal, including details of to whom this should be made.

Summary Dismissal (without Notice)

Gross misconduct is behaviour or action of such gravity as to warrant summary dismissal. If, as a result of the investigation and a formal disciplinary hearing the Council has reason to believe gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

Action Short of Dismissal

The Disciplinary Chair may consider a sanction short of dismissal, such as a demotion or redeployment (where permitted by the employee's contract or in agreement with the employee), or an extension of a previous disciplinary warning, and may make recommendations and place behavioural conditions on the employee for example, regarding their working arrangements or to improve working relationships as appropriate.

Appeals

Employees must be informed that they have the right to appeal against any formal disciplinary penalty imposed. The separate Appeals Procedure details all appeals processes and should always be referred to.

Example of Gross Misconduct Offences.

It is impossible to provide an exhaustive list of such offences, but the following would normally be considered gross misconduct:

- Theft or unauthorised possession from other employees, the Council or clients.
- Assault, abusive or threatening behaviour, to anyone in the course of one's duties, whether or not on council property.
- Falsification and irregular practice in respect of cash, records, returns, clock cards or medical self-certificates etc.
- Fraud, or attempt to defraud, corrupt or bribe.
- Unauthorised access to information held on computer including internet sites containing offensive or obscene material.
- A serious act of insubordination and/or a fundamental breach of trust and/or confidence.
- Gross negligence which causes unacceptable risk, loss, damage, injury, or is likely to damage the public reputation of the Council.
- A criminal conviction offence whether or not committed in connection with employment which may affect the employee's suitability for continued employment.
- Serious discrimination, harassment or bullying of colleagues or clients or fundamental breach of the Council's Equal Opportunities policy.

- Serious infringement of the Council's Health and Safety policies and procedures and also for employees involved in catering activities, food hygiene regulations.
- Malicious damage to Council property.
- Sleeping whilst on waking duty in a residential establishment.
- Behaviour or conduct, whether inside or outside of work, which confirms that an individual is unsuitable to work in a particular field or with particular clients.

Version	1
Date	
Relevant Legislation	