

Appendix B

Disciplinary Policy

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1. Purpose

The Council expects a high standard of behaviour and conduct from all employees.

The processes set out in this document aim to:

- Assist in enabling both the employee and the Council to be clear about the expectations of both parties.
- Provides a framework for dealing with instances where employees are alleged not to have met the required standards of conduct.
- Provide a mechanism for consistent, prompt, and fair treatment for all employees in disciplinary matters.

2. Scope

This policy applies to all Council employees with the exception of teachers directly employed by the council and all staff appointed by schools operating under local management of schools, which have their own policy.

Allegations of misconduct from agency workers should be addressed through their employing agency.

Where there is an alleged conduct issue for an individual who is not an employee of the Council, but may be on secondment to the Council, or working with the employee as part of a multi-disciplinary team, the matter may be referred to the employer of that individual to investigate.

There are circumstances where an allegation or complaint will be investigated and dealt with under another Council policy, but may, following the outcome of the investigation, transfer to be dealt with under the Disciplinary Procedures. Examples of this include allegations investigated under the following Council procedures:

- Dignity at Work;
- Whistleblowing Policy;
- Grievance Policy;
- Anti-fraud Policy.

3. General Principles

This policy sets out the general principles that the Council will use when dealing with any conduct or behaviour which is in breach of the Council's Code of Conduct

3.1 Aims of the Policy

The Council's Code of Conduct sets out the high standard of conduct and behaviour expected from all employees; the aim of the Disciplinary Policy is to resolve issues when an employee's behaviour does not meet those standards. It is expected that every employee should:

- Be honest;
- Maintain at all times a high standard of integrity and conduct;
- Not use their position to further private interests or those of relatives and friends;
- Fulfil the duties specified in their contract of employment and job description.

All allegations of a disciplinary offence are treated very seriously by the Council as the outcome in some instances may mean dismissal. The Council is therefore committed to a basic set of principles to ensure that there is fairness throughout the process.

All disciplinary matters will be dealt with:

- Informally where appropriate;
- Promptly;
- Sensitively;
- Consistently;
- Impartially;
- Transparently.

Disciplinary action would normally be considered in cases of misconduct. There are two levels of misconduct: misconduct (which could be serious) and gross.

Misconduct

This level of misconduct would not lead to dismissal for a first offence on the part of the employee. However, repeated instances of ordinary misconduct can lead to dismissal. Non-exhaustive examples of ordinary misconduct are shown in Appendix A.

Gross misconduct

Conduct so serious that it effectively breaches the contract of employment and could result in dismissal with notice pay or summary dismissal (with no notice pay). Further information and examples of Gross Misconduct can be found in the Code of Conduct.

Principles of the Policy

- Managers are responsible for addressing conduct and behaviour issues as early as possible and for taking appropriate action. Where appropriate, steps will be taken to resolve issues on an **informal** basis in the first instance without recourse to the formal procedure.
- Before disciplinary action is taken an **investigation** shall be undertaken.
- The employee against whom an allegation has been made shall be advised in writing of the **nature of the allegations** made against him/her and will be given the opportunity to respond to the allegations during the investigation.
- Dismissal will not be an outcome for a **first breach of discipline** except in the case of gross misconduct.
- All employees who are the subject of this procedure have the **right to be accompanied** at any formal disciplinary hearing held under the procedure by a recognised trade union representative or work colleague. It is the employee's responsibility to make such arrangements.
- All parties involved in these procedures must ensure that they maintain, as appropriate, the **confidentiality** of the process within and outside the Council. All

disciplinary records will be treated as confidential and will be kept in accordance with the data protection guidelines.

- **Involvement of Human Resources.** A member of the Employee Relations team will be consulted and will advise on suspension, investigation and the formal procedure.
- An employee will have the right to **appeal** against any sanction imposed under the formal disciplinary procedure. Sanctions or warnings issued will remain in force pending the outcome of any appeal.
- The Council will make every effort to deal with disciplinary allegations as quickly as possible, at the appropriate management level. Implementation of any stage of the formal disciplinary procedure will be discussed first between the line manager and the Employee Relations team. Whilst every endeavour will be made to comply with **timescales**, due to the complexity and or specific circumstances of cases, timescales may be extended. In such circumstances the employee will be advised of the reasons for any delay.
- **Criminal Offences** - If an employee is charged with, or convicted of, a criminal offence (outside of employment) this will not in itself be considered a reason for disciplinary action. Consideration will be given to the relevance and effect the charge or conviction has to or on the employee's suitability to do their job and their relationship with the Council, work colleagues, residents and customers. The Council will not usually wait for the outcome of any prosecution before deciding what action, if any to take.
- If at any stage within this procedure it becomes clear that the performance or conduct issue relates to **capability** the matter will then be dealt with under the Capability Policy and the disciplinary process will cease.
- The Council will provide **coaching, support and training** to Heads of Service, managers and supervisors in the appropriate handling of disciplinary issues under this policy and procedure, through the HR department and formal Learning and Development training events.

3.2 Standard Setting

Where appropriate, some concerns of substandard behaviour or conduct may be resolved promptly through day-to-day management interventions. Line managers should take every opportunity to raise concerns informally with employees in order to clarify the standards required. Individuals should be given sufficient time in which to demonstrate improved standards. The manager should confirm the outcomes of any discussion in writing to the employee (email is acceptable), including the agreed objectives, expectations and timescales for review.

However, should the employee's behaviour fail to improve, or their behaviour is viewed as wilful non-compliance or misconduct, then formal disciplinary action may be taken.

3.3 Right to be Accompanied

An individual has the statutory right to be accompanied at any formal stage of a disciplinary, they may be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union.

Legal representation is only permitted where there is potentially a serious ongoing consequence of a disciplinary decision in respect of future employment or career of the employee. Requests for legal representation must be requested in advance of the hearing at a minimum of 5 working days. These requests will be considered by the Chief People Officer.

3.4 Suspensions

In cases where the allegation is sufficiently serious that the employee's continued presence in the workplace cannot be sanctioned, either because the alleged conduct is too serious or because their presence could impede the investigation, then the individual may be suspended.

Suspensions can only be approved by a Head of Service or above, after consultation with the Human Resources team and the suspension risk assessment has been completed and signed off.

The decision to suspend can be made at any point during the investigation and disciplinary process.

A suspension from duty is a neutral act and will be on full pay of basic salary plus any additional contractual payments. It is not a presumption of guilt and will only be used to allow for a full and prompt investigation of the allegation. To ensure that suspension periods are kept to a minimum they will be regularly reviewed to ensure the suspension is still appropriate.

Alternatives to suspension will always be considered. These could include a temporary change of duties or role, or additional supervision or controls put in place.

3.4.1 Suspension Meetings

There is no statutory right for union representation at suspension meetings. Suspension meetings normally have to be done quickly to ensure evidence or equipment can be gathered and inviting an employee to a meeting with representation can delay this. Suspension meetings are an administrative process to inform the employee that they are being suspended whilst an investigation takes place and giving them a letter confirming the decision to suspend. Full details of how a suspension meeting should be conducted, including a script for the meeting, can be found in the practice notes that accompany this policy. The employee will receive a letter confirming the details of the suspension.

No discussion of the allegations can take place in the suspension meeting.

3.5 Investigations

Investigations into alleged misconduct will be carried out without undue delay. The purpose of the investigation will be to establish the facts of the case, gather evidence, and decide whether there is a case to answer in respect of the allegations, and if so, to prepare for the disciplinary hearing.

The employee will be informed in writing of any allegation and that an investigation to establish the facts will be undertaken.

Disciplinary investigations will be dealt with in a reasonable timeframe and carried out or overseen by the employee's line manager. Where this is not appropriate i.e if the line manager is also involved, an investigator will be nominated by the department after consultation with the Employee Relations Team.

In exceptional circumstances it may be necessary to use an external investigator or a manager from another department. They will carry out the investigation and report back to the commissioning manager in the Department, who will decide on outcomes and whether the case will progress to a formal hearing.

The role of the Investigating Officer will be:

- To ensure that, where practicable, all relevant facts and witness statements are obtained in relation to the allegation(s);
- To decide the number and which witnesses are necessary to interview and to invite them to an investigation meeting. Interview statements or transcripts of recorded meetings will be produced;
- To complete the investigation in a confidential manner, within an appropriate timescale;
- To provide a written report outlining the findings of the investigation, and including all evidence collected and interview statements or transcripts.
- To present the findings of the investigation at any subsequent formal hearing.

As part of the investigation, the employee who is the subject of the allegation will be asked to attend an investigatory interview.

All employees (whether they are the employee who has allegedly committed misconduct or other employees participating in the investigation) must co-operate fully and promptly in any investigation. This may include informing the Investigating Officer of the names of any relevant witnesses, disclosing any relevant documents and attending investigation interviews.

The outcomes of an investigation may be:

- There is no case to answer and therefore no disciplinary action is taken.
- The matter is dealt with informally, if appropriate with support and or training to resolve the matter.
- Recommendation that there is a disciplinary case to answer and a disciplinary hearing should be arranged.

The individual will be informed of the outcome and this will be confirmed in writing by the Employee Relations team, indicating any next steps.

Where it has been determined that there is there is a case to answer, the matter will proceed to a formal hearing. This will be arranged as soon as is reasonably practicable after the completion of the investigation report.

Witnesses

At least 2 calendar days prior to the hearing, the employee and Investigating Officer will submit to HR the names of any witnesses they wish to attend, and an explanation of why their evidence is required.

On the basis of the information submitted, the Chair of the panel will determine whether or not such witness evidence is required and will confirm the witnesses to be called. In certain cases the Chair may decide that a witness statement is sufficient. Any witness who will be called to the disciplinary hearing should provide a witness statement prior to the Hearing (where this has not already been provided as part of the investigation report), which will form the basis on which they may be questioned.

Employees are responsible for making arrangements for their witnesses to attend. Where witnesses are employees of the Council, appropriate time off will be facilitated.

Requests for additional witnesses shortly before or at the hearing will be considered and decided by the Chair.

Hearing

The employee will be notified in writing of the date of the disciplinary hearing, with a minimum of 5 calendar days' notice of the hearing date. The letter will outline the allegations/nature of misconduct. If the alleged misconduct is considered as potentially a gross misconduct case and dismissal could be an outcome, then they will be informed of this. Also enclosed will be a copy of the investigation report (including appendices) and any other evidence to be presented including the names of any witnesses to be called by management.

The employee will be invited to submit evidence and / or a written statement, plus witness names and statements which should be received by the Employee Relations team at least 2 calendar days before the disciplinary hearing.

The purpose of the hearing will be to:

- Hear the allegations and the findings of the disciplinary investigation;
- Allow the individual to respond to the allegation(s), ask questions and discuss the evidence;
- Allow the employee to put their case including any mitigating circumstances;
- Provide a full account of the case to inform the outcome of the hearing;
- Hear from witnesses for either the employer or employee and to allow questions.

All hearings will be recorded by the Council unless the employee gives a minimum of 2 days' notice that they do not wish it to be recorded. It is the responsibility of the service where the employee is based to provide a suitable notetaker.

The outcome of the hearing will be based on the evidence that has been presented and will reach a conclusion based on the balance of probabilities. At the end of the process, the employee will be provided with a written transcript of the recording of the hearing, or a copy of the notes of the meeting if it was not recorded.

For information about the conduct and order of the disciplinary hearing, please see the practice notes.

3.6 Sanctions

Where the hearing has concluded that the allegations were substantiated, it may be appropriate to recommend sanctions, depending on the nature and seriousness of the misconduct, up to and including summary dismissal without notice for cases of gross misconduct.

Any sanction made will be consistent with the infringement of the Council's Code of Conduct. For lesser cases of misconduct or where there are pertinent mitigating factors the sanction may be either one or a combination of the following:

- First written warning, usually active for six to twelve months;
- Second written warning, usually active for twelve to twenty-four months;
- Final written warning, usually active for twenty-four months;
- Withholding an increment, usually active for a maximum of twenty-four months but will be reviewed at twelve months.

In appropriate cases, the Council may consider some other sanction short of dismissal, such as demotion, a transfer to another department or job, loss of seniority or a reduction in pay. These sanctions may be used in conjunction with a final written warning.

The outcome of the disciplinary hearing will normally be communicated to the employee in writing within 5 working days of the decision and will set out the findings made by the disciplinary panel and will set out the disciplinary sanction issued, the reasons why this sanction is appropriate and why other sanctions were not appropriate this taking into account any mitigation put forward. It will also set out their right to appeal.

Simplified process

Where the finding and recommendations from the formal investigation are agreed by all parties or there are mitigating circumstances, and where the likely sanction will be less than dismissal, all parties can agree that the simplified process should be used.

More information on this process can be found in the Disciplinary Practice Notes.

3.7 Summary Dismissal

This procedure is to be used for dismissals such as unauthorised absence from work without contact (absent without leave) without contact or returning to work, unsatisfactory DBS disclosures, or a failure to evidence a Right to Work in the UK.

Procedure

Where there are disciplinary or dismissal issues under consideration the following three-step procedure will be used.

1. The employee will be written to with details about the nature of employee's conduct, capability or other circumstances that may result in dismissal or disciplinary action.
2. The employee will be invited to a meeting with the manager at a reasonable time and place where the issue can be discussed and any evidence considered. The employee must take all reasonable steps to attend. The employee has the right to be accompanied at the meeting by a trade union representative or work colleague. After the meeting, the manager must inform the employee in writing, summarising the evidence heard, their decision, and offer the employee the right of appeal.
3. If the employee wishes to appeal, he/she must inform the manager and the Employee Relations Team with reasons/ grounds for the appeal within 5 working days of the original decision. The employee will be invited to attend a further meeting to appeal against the decision. The employee has the right to be accompanied at the meeting by a trade union representative or work colleague. Where possible, a more senior manager should chair the appeal meeting. The final decision will be communicated to the employee in writing. A member of the Employee Relations Team will be present to advise the chair.

3.8 Appeals

The individual may appeal the outcome of the disciplinary hearing.

Appeals lodged against a sanction less than dismissal will be reviewed by an officer of more senior level than the officer who chaired the original hearing.

Appeals against dismissal will be heard by a panel of members.

A member of the HR Employee Relations team will provide HR advice to the panel. The employee is entitled to be represented at the appeal hearing by a workplace colleague or Trade Union Representative. Appeals must be submitted no later than **10 working days** after the date of the final decision/dismissal letter and appeals are to be held normally **no later than 20 days upon receipt of the appeal**. Please see practice notes on how and who to submit appeals to.

The decision of the appeal panel is final.

3.9 Other Considerations

Any attempt to frustrate the conduct of the disciplinary process, the investigation or the business of the hearing or a subsequent appeal, may in itself be viewed as a disciplinary matter.

Should an employee choose to resign during a disciplinary to circumvent the disciplinary process, they may be required to serve a notice period. In this case all efforts should be made to conduct and conclude the disciplinary before the end of their notice period.

Remote proceedings

Where it is not possible to hold a face-to-face meeting under this procedure, the Council will conduct the process remotely. We will ensure that the employee and their representative have access to the necessary technology for participating. Their rights will not be affected, and the Council will ensure that the procedure remains fair and reasonable.

Adjustments to proceedings

If the employee has a disability that may have an impact on their ability to participate fully in this process, they should let the Employee Relations team know who will consider appropriate reasonable adjustments.

Confidentiality

Conduct matters will be dealt with sensitively and with due respect for the individuals involved. Any information communicated during the course of an investigation or as part of a disciplinary must be treated as confidential.

Where an external investigator is commissioned, a signed data processing agreement will be in place.

Rearranging Hearings

If the employee or their representative cannot attend at the time specified for a hearing, the employee must inform their line manager and/or the Employee Relations team immediately and an alternative time will be arranged. The employee must make every effort to attend a hearing. If the employee fails to attend without good reason, or is unable to attend the re-arranged hearing, the hearing may be heard in their absence on the available evidence.

4. Further References

Disciplinary Policy Practice Notes

[Code of Conduct](#)

[Dignity at Work Policy](#)

Appendix A: Examples of Misconduct

Misconduct

Examples of misconduct for which disciplinary action is appropriate include (but are not limited to):

- Condoning serious actions contrary to the interests of the Council;
- Breach of safety procedures or regulations;
- Unsatisfactory performance of the duties of the post (not due to a capability issue);
- Disruptive behaviour;
- Refusing to comply with reasonable instructions;
- Unsatisfactory timekeeping;
- Unauthorised absence from work;
- Breach of confidentiality at work;
- Inappropriate use of social media
- Breach of Council or Departmental safety regulations;
- Breach of other Council policies, rules or regulations;
- Breach of any other condition of employment;
- insulting or offensive behaviour towards others, not amounting to harassment or bullying.

Actions outside work

We may consider your actions outside work (including your use of social media) to be gross misconduct, or misconduct, if they affect your ability to carry out your job or have a negative effect on our reputation.

Document Control

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