

DISCIPLINARY POLICY

Human Resources and Organisational Development



1. Policy		Approved by
<p>The overriding aim of the Disciplinary Policy is, where possible, to encourage improvement amongst employees whose conduct is unsatisfactory. It also seeks to promote fairness and consistency of treatment across the Council.</p> <p>This document provides a procedural framework and information as to the steps to follow where suspected unsatisfactory conduct needs to be addressed, including circumstances where the employment contract may need to be terminated.</p>		Human Resources and Organisational Development
		Date December 2011
2. In Scope		
<p>Situations covered by this policy are:</p> <ul style="list-style-type: none">▪ Misconduct: where it is suspected that the expected standards of behaviour may have been breached.▪ Gross misconduct: where it is suspected that there may have been a serious breach of expected standards of behaviour which may, if proven, justify consideration of summary dismissal.		
3. Out of Scope		
<p>Employees in probationary periods: please refer to the probation policy.</p> <p>Termination of a fixed term or temporary contract.</p> <p>Termination by reason of redundancy or reorganisation.</p> <p>Retirement / early retirement.</p> <p>Issues relating to Capability (whether health or skills related)</p> <p>Termination for some other substantial reason.</p> <p>Termination for breach of a statutory enactment.</p>		
4. Informal Process		
<p>In the first instance and where appropriate, minor disciplinary issues relating to conduct may be dealt with informally.</p> <p>The advantage of this approach is that it may allow management to resolve any problem or correct any unacceptable behaviour as quickly as possible, thus reducing the risk of disruption to the team, the department and its clients, demotivation of the employee and absenteeism.</p> <p>Where the manager takes the view that the informal process is likely to be appropriate, they should meet with the employee to discuss the issues. The manager should keep notes of such discussions.</p> <p>There is no statutory right to be accompanied at an informal meeting. However, reasonable requests for accompaniment may be considered in the case of employees who may appear to fall within a vulnerable group or those who may, due to exceptional individual circumstances, require support.</p>		

If, at any stage of the informal process, the manager takes the view that the matter should more appropriately be dealt with under the formal process, they should terminate the informal process, instigate the formal process and explain to the employee why they are doing so.

Potential Outcomes of the Informal Process:

There are a range of possible outcomes, including the following:

- No case to answer.
- No action necessary.
- Objective setting: to improve the employee's conduct, normally including specific, measurable, achievable, relevant and time-specific objectives set by the manager and discussed and where possible, agreed with the employee.
- Further Training: training needs may be identified and a programme of learning and development may be implemented, with consultation and support from appropriate training resources. The timescale for any training programme will depend on the individual circumstances of each case and may be extended if appropriate.
- An occupational health referral for consultation, counselling or medical assessment.
- Informal reprimand: the manager will usually confirm any continuing steps he intends to take, such as monitoring and reviewing the situation, often done as part of normal supervision and performance management processes. The manager will also ensure that the employee is notified that if there is little or no improvement in his conduct, formal action may be taken.

Informal action may not always be practical, possible or appropriate. Where the matter is potentially of a more serious nature a formal investigation may be invoked in the first instance, without prior recourse to the informal procedure.

5. The Formal Process

Key Principles

Where management takes the view that the informal process is unsuitable or inappropriate, the matter should be dealt with under the formal process. There are three key stages to the formal procedure:

STEP 1: Investigation, recommendation and if appropriate, preparation for hearing.

STEP 2: The disciplinary hearing.

STEP 3: The right to appeal.

Prior to commencing the formal process, managers should consider the following:

Do the Circumstances Warrant the Suspension of the Employee?

In certain circumstances it may be necessary or desirable to suspend or temporarily redeploy an employee pending a disciplinary investigation and / or disciplinary hearing. The decision to suspend will normally be made by the Assistant Director or delegated officer in consultation with an HR Adviser.

The decision to suspend will depend on the nature of the allegation and the specific circumstances of the case but reasons for suspending may include the following:

- The employee's continued presence in the workplace may put himself or others at risk.
- The employee's continued presence in the workplace may hamper, compromise or lead to a less effective investigation.
- The employee's continued presence in the workplace may be detrimental to the interests of the Council or relevant third parties.
- There appears to have been a breakdown in relationships.
- The allegations raise particularly serious issues and it is likely that, if proven, dismissal is a realistic option.

Suspension is always on normal contractual pay and is not itself a disciplinary sanction, nor does the fact of suspension give rise to any implication that the employee is guilty of the alleged misconduct. The reasons for suspension must be stated in writing to the employee using the [standard suspension letter](#). This letter should set out the broad nature of the alleged misconduct, the reasons for the suspension and any restrictions which apply to the employee during the period of suspension.

During any period of suspension, the employee must remain available to co-operate with any part of the formal process which requires their attendance or response.

Suspension due to allegations of theft or misappropriation of Council property must be reported to audit within 24 hours of the suspension taking effect. Where external investigations are being pursued, for example by the Police, legal services should be notified immediately.

Where possible and appropriate, managers should consider temporary redeployment of the employee as an alternative to suspension.

The right to be accompanied

Suspension Meetings: there is no legal right to be accompanied at a suspension meeting; however the manager may permit the employee to be accompanied if their representative is available and this will not cause delay to the process.

Investigatory Meetings: there is no legal right to be accompanied at investigatory meetings. However, the manager will normally permit the employee to be accompanied at such a meeting, provided it is practical and reasonable to do so in the circumstances and it does not cause undue delay to the investigation process.

Disciplinary Hearings: the employee has the right to be accompanied by a companion who is either a trade union representative or a workplace colleague.

The companion can:

- Put forward the employee's case, by making representations, questioning management witnesses and calling evidence on behalf of the employee.
- Sum up the employee's case at the conclusion of the evidence.
- Respond on the employee's behalf to any view expressed at the hearing

The companion is not permitted to answer questions posed directly to the employee in relation to the disciplinary allegations.

Conflict of interest

If any person involved in the formal process (whether at the investigatory, hearing or appeal stages) believes that they may have a conflict of interest or that there is any good reason why they should not be involved in the process, they should seek immediate guidance from a HR adviser.

6. Step One – Investigation, Recommendation and Preparation

Investigation and Recommendation

An investigation will be conducted by an appropriate manager (often the line manager). The purpose of the investigation is to gather evidence relating to the alleged misconduct, to compile a report and to make a recommendation as to next steps. Managers should refer to the [Managing Investigations Guide](#).

Following the preparation of the investigation report, the case will be reviewed by a more senior manager and a decision will be reached as to whether a disciplinary hearing is necessary.

The employee must co-operate with the investigation process. Willful refusal to do so may be regarded as a disciplinary offence in itself and may result in further disciplinary action being taken. If the employee wishes to submit any evidence during the process, he should do so during the course of the investigation so that this information can be taken into account. If the employee fails to submit such evidence at the investigation stage, it is possible that the Chair of the disciplinary hearing will refuse to accept it, unless there are extenuating circumstances which adequately explain why evidence was not submitted earlier or the Chair takes the view that in view of its relevance, the evidence must be heard in an event.

If, at any stage during the investigation process, it appears that the matter is one of capability rather than conduct, the investigation should transfer to the [Capability Policy](#).

Preparation for hearings

Disciplinary hearings are normally chaired by a senior manager, supported by a HR Adviser. A note taker will be in attendance.

The employee will be notified of the specific disciplinary allegations, the potential gravity of the allegations (and specifically whether dismissal may be a consideration) the arrangements for the hearing, and provided with a copy of the investigation report and any supporting evidence no less than 5 working days in advance of the hearing. If management intends to call witnesses to give evidence, the employee should be told which witnesses have been asked to attend. Similarly, the employee should notify management in advance of the hearing of any witnesses he intends to call to give evidence.

Management will endeavour to set the meeting for a mutually convenient date within a reasonable timescale. Once the date has been set, an application by the employee to change the date of the meeting may be accepted if there is good reason why the date is unsuitable. In such a case, a second and final date will be offered, usually not more than five working days after the original date. Save where there are particular extenuating circumstances, no further changes to the timing of the meeting will be offered and the employee will be informed that if he does not attend, the meeting may go ahead in his absence.

If the employee fails to attend the hearing, advice from a HR Adviser should be sought before a decision is made as to how to proceed. A decision may be made to proceed without the attendance of the employee, on the basis of the evidence available. In cases where the employee has trade union representation, they may present the employee's case in the employee's absence (provided the employee has given them authority to do so) and in any case, the employee will be permitted to make written representations.

7. Step Two - The hearing

Purpose of the hearing

The purpose of the hearing is to:

- Consider the evidence and representations put forward by all parties and establish the facts.
- Consider any mitigating circumstances.
- Consider whether any disciplinary action is necessary and if so, select the appropriate sanction, taking into account all the circumstances, including:
 - the seriousness of the proven allegations
 - the impact this may have had or may have on the Council, the individual, the team, work colleagues, the client and any relevant third parties
 - the steps already taken to support the employee and whether additional support is appropriate
 - whether there were any unexpired disciplinary warnings or sanctions in place in relation to the employee.

Hearing outcomes

There are a number of potential outcomes, as set out below. Summary dismissal should only be used in cases of proven gross misconduct, and can be used even if no previous warnings have been given.

The Chair will usually select one of the following outcomes:

- No case to answer: the allegations have been shown to be without foundation. No further action is necessary and any reference to the disciplinary proceedings may be removed from the employee's personal file.
- Allegations not proven. No further action is necessary and any reference to the disciplinary proceedings may be removed from the employee's personal file.
- No formal disciplinary action to be taken: however written advice will be given providing guidance as to the standards expected.
- Written warning: this will usually remain on the employee's file for 12 months, expiring after this time period if no further conduct issues arise. A longer period may be appropriate, depending on the facts of the case. Advice should be taken from a HR adviser if this is a consideration.
- Final written warning: this will usually remain on the employee's file for 12 months, expiring after this time period if no further conduct issues arise. A longer period may be appropriate depending on the facts of the case and particularly where dismissal was a potential alternative. Advice should be taken from a HR adviser if this is a consideration. In a case of serious misconduct, the employee may be issued with a final written warning even in the absence of a written warning having previously been given.
- Dismissal (with notice); this is normally used where the employee has been issued with one or more warnings previously and there has been further misconduct.
- Summary dismissal (without notice): this sanction will be only be administered in a case of

proven gross misconduct (refer to examples of potential gross misconduct at the end of this document).

The standard of proof required when considering disciplinary allegations is the balance of probabilities (is it more likely than not that the employee is guilty of the alleged misconduct?)

Where the subject matter of the disciplinary process relates to safeguarding standards, the information relating to this will be retained indefinitely on the employee's personal file, irrespective of whether or not the allegations were upheld.

Other remedies

In addition to the above sanctions, a number of other remedies may also be considered by the Chair or appeal panel in consultation with HR, for example:

- Redeployment and compulsory transfer to another role or another part of the Council
- Withholding of incremental progression
- Demotion of the employee to an appropriate role with no protection of wages
- Repayment of fraudulent claims, in accordance with the Council's financial regulations
- Mediation.

This list is not exhaustive and these options can be used in conjunction with each other or with the hearing outcomes.

Notification to professional bodies

In certain circumstances, where relevant misconduct may have occurred, it may be necessary for referrals to be made to relevant organisations or professional bodies. Examples include the Independent Safeguarding Authority, the General Social Care Council, or the General Teaching Council. This is not an exhaustive list.

If there has been or there may be a risk of harm to children or vulnerable adults, or the individual has received a caution or conviction for a relevant offence, a referral to the Independent Safeguarding Authority will be made in accordance with the Safeguarding Vulnerable Groups Act 2006.

Further guidance should be sought from your Department's HR Adviser.

Conduct matters relating to a trade union representative

The above disciplinary standards and process apply to trade union representatives as they do to other employees, however:

- No disciplinary action will take place against a branch official, steward, learning representative or safety representative until a full time official of the union concerned has been notified.

8. Step three – Right to appeal

All employees have the right to appeal against the outcome of a formal hearing. Please refer to the [appeals policy \(general\)](#) or the [appeals policy \(dismissals\)](#) for further information.

9. Examples of gross misconduct

The public are entitled to demand the highest professional standards of conduct of local government officers. Serious failure to uphold such standards may be considered as potential gross misconduct. The following are examples and this list is not exhaustive:

- Theft, fraud, deception or dishonesty, misuse of Council property, or the deliberate falsification of records.
- Assault of any kind on any person.
- Serious breach of ICT, information policies and guidelines.
- Publication and / or distribution of offensive material.
- Harassment, intimidation or bullying of any kind, including, but not limited to, serious breaches of the Equality Act 2010.
- Failure to report actual or suspected physical or sexual abuse of, or other inappropriate behaviour towards, a child or other vulnerable person by any another person.
- Serious breach of any applicable professional code of practice or professional standards.
- Serious breach of safeguarding measures.
- Serious negligence which caused or had the potential to cause loss, damage or injury to any person, including serious breached of Health and Safety policies or standards.
- Serious insubordination.
- Being under the influence of non-prescribed drugs or alcohol whilst on duty.
- Deliberate or malicious damage to Council property.
- Knowing disclosure of matters of a confidential nature, or a serious breach of trust owed to the Council, service users, the client or any relevant third party (but subject to any confidential reporting procedures which are in place to permit employees to raise concerns in good faith).
- Bringing false allegations against employees or other third parties in bad faith.
- Serious misconduct or criminal acts (whether during or outside the course of employment) which brought the employer into disrepute or had the potential to do so.
- Otherwise bringing the Council into serious disrepute.

10. Other relevant guide/policies

Relevant legislation

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| <ul style="list-style-type: none">▪ Probation Policy▪ Capability Policy▪ Code of Conduct▪ Appeals Policy (General)▪ Appeals Policy (Dismissal)▪ Disciplinary Template Letters | <ul style="list-style-type: none">▪ Employment Rights Act 1996▪ Equality Act 2010 |
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