

# Disciplinary Procedure

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## 1. Our policy

- 1.1 The council's approach to discipline in the workplace is primarily to ensure satisfactory standards of behaviour, not to apply disciplinary penalties. It aims for an outcome which is fair and constructive in pursuit of the council's delivery of services to the community. This is a locally agreed formal disciplinary procedure and, to promote good industrial relations, it is necessary to demonstrate that individual employees will be treated fairly, reasonably and consistently. Rules are necessary to ensure order and fairness and are essential to the efficient and effective delivery of the council's services.
- 1.2 The council realises that in general there is no cause to question the discipline and effectiveness of its employees, who can be relied upon to conduct themselves sensibly and with credit to the Council. There are however certain matters and possible breaches of discipline, which need to be brought to the employee's attention and to be dealt with by using this procedure.

## 2. The purpose of this procedure

- 2.1 This procedure is designed to help all employees achieve and maintain satisfactory standards of behaviour. Its aim is to ensure consistent and fair treatment for everyone.

This procedure will:

- Inform employees of the kind of behaviour that is unacceptable
  - Set out what actions managers are expected to take
  - Set out the rights and responsibilities of employees
  - Provide for matters to be dealt with as soon as possible, using a fair and consistent method where there has been a failure to observe the standard of conduct expected by the council, and in accordance with the principles of natural justice and on the balance of probabilities.
- 2.2 This procedure does not replace the normal interchange between manager and employee and recognises that the line manager should deal with minor breaches of conduct informally and promptly without recourse to the formal disciplinary procedures. The following procedure will only be used if behaviour/performance does not improve or if the matter is more serious. The Disciplinary Toolkit provides further guidance on dealing with informal matters.
- 2.3 In certain instances this document will need to be read in conjunction with other council policies (such as the Unfair Discrimination, Harassment and Bullying Procedure, Employee Performance Procedure, Code of Conduct, Policy on Alcohol, Drug and Substance Abuse etc.)
- 2.4 The procedure applies to all employees other than:
- the Chief Executive and the statutory officers (the 'section 151' and council's 'monitoring' officers), for whom separate arrangements exist
  - those in schools operating under the scheme of financial delegation
  - employees within their probationary period
  - agency staff or consultants
- 2.5 The procedure does not apply in cases of: -
- redundancy which would be dealt with under the Handling Organisational Change Procedure;
  - those employees who go absent without leave and are not available at their place of residence to be contacted (See Appendix B for Short Procedure)
  - poor performance which would be dealt with under the Employee Performance Procedure;
  - cases of sickness absence and ill health should initially be dealt with in accordance with the Sickness Absence Procedure

### **3. The principles of this procedure**

- 3.1 Managers must apply the council's commitment to equality of opportunity by treating its employees fairly and without discrimination on the grounds of colour, race, nationality, ethnic or national origins, sex, marital status, disability, age, sexual orientation, trade union membership and activity, political or religious belief and unrelated criminal convictions.
- 3.2 No disciplinary action will be taken against an employee until the case has been investigated. At every stage in the procedure the employee should be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made. The whole process must be given a high priority by the manager and the employee concerned. A decision to take or not to take disciplinary action must be made with the minimum delay and communicated to those involved.
- 3.3 At all stages the employee will have the right to be accompanied by a Trade Union representative, or work colleague. This is particularly critical at any investigatory interview, disciplinary hearing and appeal hearing. Every effort will be made to allow the employee to be accompanied at all stages. However, there may be exceptional cases where this is not practical eg. immediate suspension for alleged gross misconduct.
- 3.4 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty could be dismissal without notice.
- 3.5 Managers undertaking investigations or disciplinary hearings must be trained and assessed by the Service Director as being competent to undertake the task. The council will determine what training is required.
- 3.6 Where the potential disciplinary matter concerns a Service Director or Corporate Director, the Chief Executive will identify the appropriate investigation, hearing and appeal managers.
- 3.7 Action against Trade Union Officials

In all cases every effort will be made by an appropriate manager of the employing department to contact a full time officer of the relevant recognised trade union before carrying out any suspension or investigation against a shop steward or other recognised trade union representative. Where this is not possible, suspension or investigation will only be permitted where the situation demands an immediate response e.g. potential gross misconduct or where a risk to health and safety exists.

### **4. Investigation**

- 4.1 Service Director's must decide, in advance, which members of management (for the investigating manager and the 'designated' hearing manager), the various stages of the procedure below should be handled by. They should take into account their organisational structure and delegate accordingly. Service Directors are responsible for ensuring investigating managers complete the investigation in a timely manner.
- 4.2 Management can seek advice from HR at any stage of the procedure.
- 4.3 A HR Adviser will advise on investigations but will not usually attend interviews.
- 4.4 The investigating manager, with a note taker present, will conduct the interviews.
- 4.5 The investigation will normally be undertaken by the employee's manager or as determined by the Service Director. The investigating manager should be trained, independent of the matter to be investigated and should investigate thoroughly the facts of the matter.
- 4.6 In cases, which appear to involve gross misconduct, consideration must be given to suspending the employee see section 5.

- 4.7 In cases of alleged financial irregularity the Audit Service needs to be notified immediately. For other suspected criminal activity the Corporate Director/Chief Executive will determine whether or nor to refer the matter to the police. See the Disciplinary Toolkit Section 3.
- 4.8 The investigating manager is required to give the employee five working days notice in writing of any investigatory interview and that letter should explain the purpose of the interview, the issues to be investigated and advise on the right to be accompanied by a Trade Union representative or work colleague. The employee will also be sent a copy of the Disciplinary Procedure.
- 4.9 The investigation may comprise interviews and/or written statements and all proceedings, witness statements and records will be confidential in the context of the Disciplinary Procedure.
- 4.10 The investigation interviews may take place over more than a single session and interviews will be recorded in writing and a copy of any notes taken will be sent to the employee concerned.
- 4.11 If after investigation there is no evidence to substantiate the need for further proceedings, the employee will be informed in writing of this, and if under suspension will return to work immediately. All papers relating to this investigation will be sealed in an envelope and placed on the employee's personal file.
- 4.12 If the investigating manager believes the matter can be resolved by means of counselling rather than a disciplinary hearing, he/she should arrange such an interview with the employee and provide the necessary counselling. A copy of the letter of concern issued to the employee should be kept for management purposes.
- 4.13 If on completion of the investigation, the investigating manager considers that on the balance of probability a complaint of misconduct/gross misconduct is justified a formal disciplinary hearing will be arranged. No later than seven working days before the hearing the investigating manager will compile the relevant evidence and prepare a summary of their findings (statement of case) and send this to both the manager designated to hear the case and to the employee. See section 7.

## **5. Suspension**

- 5.1 Where an employee is alleged to have committed gross misconduct, a third tier officer (person reporting to Service Director) from the department concerned may have to take the decision to suspend the employee, for instance to allow an investigation to take place, to allow for a cooling off period or to prevent further acts of potential misconduct. Suspension will be on full pay and should not be regarded as disciplinary action, but as precautionary. The suspending officers should satisfy themselves that there is sufficient evidence to warrant the suspension before authorising the suspension of an employee. See the Toolkit for further guidance. (For employees on variable earnings - pay during the period of suspension will usually be calculated on the basis of gross pay earned, averaged over the previous 3 calendar months.)
- 5.2 Where an employee is suspended management will act as quickly as possible to investigate and determine what course of action is to be pursued. Suspension periods should be as short as possible.
- 5.3 Where an employee falls sick during a period of suspension, the suspension will override the employee's entitlement to sick pay. Care should be taken to ensure that the employee covered by a Fit Note is fit enough to attend any investigatory interviews or disciplinary hearings. Employees should adhere to the sickness reporting procedures.
- 5.4 Should the employee wish to take annual leave during a period of suspension he/she should request permission to do so via the investigating manager. The employee should note that should the suspension span two annual leave years the employee will not automatically be able to carry forward any outstanding leave entitlement from one leave year to the next. If the employee wishes to carry forward any annual leave, he/she should request permission to do so, in good time, in writing addressed to the Corporate Director of the employing department. If the employee is absent due to sickness the accrual of statutory leave entitlement will apply.

5.5 Depending on the circumstances of the suspension, the employee may be given permission by the investigating manager to attend Council premises, otherwise, they are not allowed to do so.

## **6. Witnesses**

6.1 The investigating manager may call upon other employees of the council and sometimes service users and clients, to supply information, which will assist in the investigation. Where other employees are to be questioned, it will be explained that they may be asked to attend a disciplinary hearing and act as a witness.

6.2 Employee witnesses are required to attend interviews and hearings if the investigating manager or hearing manager (designated manager) require them to do so or they may be subject to disciplinary action. Witnesses should be given adequate notice to attend and have the right to be accompanied by a Trade Union representative or work colleague. See the Disciplinary Toolkit for guidance.

## **7. Supporting evidence**

7.1 Either party may provide written material to support their case at any disciplinary/appeal hearing subject to submission of the paperwork to the person conducting the hearing and to the other party at least seven working days before the hearing.

7.2 All paperwork submitted and exchanged is to be safeguarded by all parties and kept confidential. Failure to do so may result in further disciplinary action.

7.3 Material, which has not been previously circulated, will only be admitted at the hearing if both parties agree to it.

## **8. Designated managers**

8.1 The current list of designated managers is available from HR. These line managers are trained and competent and are authorised by their Service Director to take disciplinary action up to the levels indicated.

8.2 For disciplinary hearings the panel will comprise a designated manager from the employing department and where dismissal is a possible outcome, an appropriately qualified and experienced HR Adviser who has not previously been involved in the case. For less serious matters the designated manager can deal with the matter alone. A note taker will be present. Panel members should be independent of the disciplinary investigation.

8.3 Appeals will be heard by an independent senior manager and where appropriate an additional manager or where dismissal is involved, elected members and HR (see section 13).

## **9. Notification of disciplinary hearing**

9.1 The investigating manager is responsible for arranging the disciplinary hearing and notifying the employee of this in writing.

9.2 Where the employee is to be represented by a recognised Trade Union, wherever possible, the date of the disciplinary hearing should be arranged in conjunction with that representative.

9.3 The employee will be given at least ten working days' notice of all hearings, including appeals. The employee will be given all material documentation that will be submitted to the hearing at least seven working days before the start of the hearing. The employee is responsible for arranging the attendance of any witnesses they wish to call and must provide their details and any documentary evidence they wish to be considered at least seven working days before the start of the hearing. (See section 7.)

- 9.4 If the employee is unable to attend the hearing for a reason satisfactory to the council, it will be rearranged to another date taking into account the reason. The employee and his/her representative (if any) will be informed in writing immediately and advised of the possibility that if the employee is unable to attend the re-arranged date, then the hearing could proceed in their absence. The employee should also be advised of their right to present their evidence by alternative means should they be unable to attend in person eg. by full written statement or via a third party.
- 9.5 If the employee is unable to attend the rearranged hearing, it will normally proceed in his/her absence, but with his/her representative being provided with the opportunity to present the employee's case on his/her behalf.

## **10. Conduct of disciplinary hearings**

- 10.1 The designated manager who will chair the disciplinary hearing will ensure that the employee has been:
- given full information about the complaint against them
  - given the opportunity to prepare and state their case
  - notified of their right to bring an accredited Trade Union representative or work colleague to the hearing
- 10.2 A HR representative must attend hearings for cases where gross misconduct is involved, to advise the decision maker where dismissal is a possible outcome. HR will also attend appeals against dismissal. A note taker should also attend the hearings.
- 10.3 The use of recording devices such as mobile phones or MP3 players by either the investigating managers or the employee is prohibited. Any employee using a recording device to record meetings with a manager without their knowledge or permission will be subject to further disciplinary action.
- 10.4 It is unlikely that the disciplinary rules will cover all types of misconduct/gross misconduct, which could warrant disciplinary action. Please see the Appendix A for examples of misconduct and gross misconduct.

## **11. Disciplinary sanctions available**

- 11.1 No disciplinary sanction may be given until the disciplinary procedure (i.e. an investigation and disciplinary hearing) has been complied with.
- 11.2 The following are sanctions that the designated manager can apply following a disciplinary hearing. The manager hearing the case may also decide that there is no case to answer or that no sanction should be applied. The disciplinary measures identified below are not sequential and may be implemented at any level, if the employee's alleged misconduct warrants such action.

### **First written warning**

If conduct does not meet acceptable standards a first warning will be given by the manager. This will give details of the complaint, the improvement required and the period over which it must take place. It will warn that further disciplinary action will be considered if the improvements required are not met, and tell the employee of the right of appeal. A copy of the warning will be kept, but will normally be disregarded for disciplinary purposes after nine months, subject to continued satisfactory conduct.

### **Final written warning**

If there is still a failure to improve following previous disciplinary action OR the misconduct is sufficiently serious, but insufficient to justify dismissal, OR dismissal would have been the proper sanction but for the mitigation which was taken into account, a final warning will be given in writing to the employee by the manager chairing the disciplinary hearing. This will give details of the complaint, will warn that dismissal may result if no satisfactory improvement is made and maintained and will state the right of appeal. A copy of the warning will be kept, but will normally be

disregarded for disciplinary purposes after eighteen months, subject to continued satisfactory conduct.

## Dismissal

If conduct is still unsatisfactory, or the employee is judged to have committed gross misconduct, dismissal by the manager chairing the disciplinary hearing is likely to result. Where possible the hearing manager will provide a decision verbally after the hearing. The employee will be provided, within five days, written details of dismissal, the date on which the contract is to end, the reasons for dismissal and the right of appeal.

### 11.3 Alternative disciplinary measures.

In cases of potential dismissal the hearing manager should consider if any other action short of dismissal is possible. In some cases it may be possible to issue a final written warning and additional measures in order to avoid dismissal. Alternative measures that may accompany a disciplinary action less than dismissal in appropriate circumstances:

- repayment of any loss suffered by the council as a result of the misconduct e.g. repayment of falsely claimed expenses. In such cases repayment should be by deduction from salary and should be formally agreed in writing with the employee unless such deductions are provided for in the contract of employment.
- suspension on reduced pay for a fixed period
- demotion to a lesser graded post without pay protection
- longer period of a warning
- extend the period of a live warning
- withdrawal of any flexible working hours facility
- withdrawal of home working facility where in place

## 12. All sanctions

- 12.1 With all sanctions, the hearing manager should take into account the record of the employee and any mitigating circumstances. Where the employment record is pertinent in reaching the decision on the disciplinary sanction, this must be clearly recorded for any future appeal.
- 12.2 Letters confirming warnings should be sent to the employee within five working days of the hearing and set out the decision, the period the warning will remain live, the improvement required, the possible consequences of any further breach of discipline and the employee's right of appeal.
- 12.3 Letters confirming dismissal should be sent to the employee within five working days of the hearing and should set out the decision, the reasons for it, the date of the dismissal and arrangements (if any) for notice and the employee's right of appeal.
- 12.4 The council reserves the right to recover any monies owing to it, which are identified as a result of a proven disciplinary hearing. Should the employee appeal against this decision, monies will not be recovered until after the appeal hearing. Any monies recovered will be administered in accordance with council guidelines relating to overpayments.

## 13. Appeals

- 13.1 At an appeal hearing, the disciplinary action taken will be reviewed. The outcome will be to confirm it, substitute a lesser penalty, or cancel it. The decision is final.
- 13.2 An employee who wishes to appeal against formal disciplinary action must inform their Service Director in writing within ten working days of being given the written notification of the disciplinary decision. The written notice of appeal **must** give details of the grounds for the appeal. This must make it clear which aspect(s) of the decision the employee wishes to appeal against, and why. The employee must state the grounds upon which they seek to appeal. These may be:

- against the findings that the allegation(s) were substantiated
- against the form of disciplinary action taken
- that the disciplinary procedure has been applied defectively or unfairly
- that new evidence has come to light which was not available to the disciplinary hearing – in this case the employee should state clearly what the evidence is and why it is believed that it would alter the original decision

13.3 The Service Director will identify a suitable independent manager from the department to hear the appeal and will liaise with HR to identify other panel members as appropriate. Appeals panel(s) will comprise:

- **appeals against a written warning** – an independent senior manager (usually a third tier/service manager or above) from the employing department
- **appeals against a final written warning** - an independent senior manager from the employing department plus another independent senior manager from a different department
- **appeals against dismissal** - Elected Members who will be advised by a senior manager and HR Adviser

13.4 Appeals against warnings will wherever possible be heard within fifteen working days of the appeal being lodged. Appeals against dismissal will where possible be heard within thirty working days of being lodged.

## 14. Records

- the nature of any breach of disciplinary rules
- the employee's response
- the action taken and the reasons for it
- whether an appeal was lodged and its outcome
- subsequent developments

These will normally be kept on the employee's personal file, which they can access in accordance with the council's policy on personal files.

## Appendix A

### Misconduct

The following lists of examples are **neither exclusive nor exhaustive**. The following examples of misconduct would normally justify warnings, including, in some cases, final warnings:

- disobedience to orders
- insubordination
- conduct likely to injure the image and standing of the council
- absence from duty
- neglect of duty
- unauthorised employment
- falsification of information
- damage to the Authority's property
- indecency
- alleged criminal conduct (refer to section 3 of the toolkit)
- using unauthorised software or discs on council's computers
- being an accessory to a disciplinary offence
- neglect of health

### Gross misconduct

The council will generally consider gross misconduct to be misconduct of such a nature that the Authority is justified in no longer tolerating the continued presence at the place of work of the employee concerned. Examples of offences, which may amount to gross misconduct, include:

- breach of the council's standing orders, financial regulations, or the employees' code of conduct
- bringing the council into disrepute
- misuse of official position for personal gain
- breach of any professional code of conduct applicable to the job
- dishonesty, including theft and deliberate falsification of records;
- physical violence;
- bullying, discrimination or harassment;
- being incapable of adequately performing duties as a result of drink or illegal drugs;
- negligence which causes or might cause unacceptable loss, damage or injury;
- sexual misconduct (this refers to behaviour at or away from work that affects suitability for employment e.g. child protection and safeguarding of vulnerable adults issues);
- breach of confidence e.g. the inappropriate disclosure of confidential information. Note, appropriate use of the Whistleblowing procedure would not be a breach of confidence.

## Appendix B

### Short procedure for employees absent without permission

1. Where an employee has failed to comply with the council's absence reporting procedures, the line manager should first try to contact the employee by telephone/personal visit/via next of kin to ascertain the employee's personal safety.
2. If the line manager is unable to make contact with the employee or a member of their immediate family for a period of forty eight hours from their normal starting time then the following procedure should be followed.
3. The line manager should write to the employee at their last known address requesting that the employee makes immediate contact to explain their absence. This letter should be sent by recorded delivery. The line manager should also contact the Payroll Team and ensure that any payments from the first day of absence are suspended.
4. Where the employee has still failed to make contact seven working days from the first day of absence, a second letter should be sent by recorded delivery. This letter should request the employee to make immediate contact with their line manager to explain their absence. This letter should also advise the employee that, if they fail to do this within five working days of the date of the letter, a disciplinary hearing will be convened in accordance with the Disciplinary Procedure and the employee's dismissal from the council's service could be the outcome.
5. If the employee still fails to respond then a disciplinary hearing should be set up in accordance with the Disciplinary Procedure.
6. Where the employee fails to attend the disciplinary hearing, send a representative to speak on their behalf, or to offer an adequate explanation for their lack of availability, the disciplinary hearing will continue in their absence. The hearing manager/panel will be required to make a decision on the information available and presented to them at the time.
7. Any decision of the hearing panel will be confirmed in writing, by recorded delivery, to the employee within 5 working days of the disciplinary hearing. The right of appeal as outlined in the Disciplinary Procedure will apply.