



Disciplinary policy and procedure

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INVESTOR IN PEOPLE

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1. Policy

1.1 Aim

The aim of the disciplinary policy and procedure is to help and encourage all employees to achieve and maintain appropriate standards of conduct.

The disciplinary policy and procedure are intended to provide consistency in the treatment of staff and to promote good practice.

This procedure is closely aligned with the Council's values relating to **Fairness, Respect, Excellence, Service and Honesty**.

1.2 Scope

The disciplinary policy and procedure applies to all employees of the Council with the exception of:

- The Chief Executive,
- The Council's Monitoring Officer and
- The Council's Section 151 Officer

Issues of poor performance should be addressed in line with the Council's **capability policy and procedure**.

No formal disciplinary action will be taken against an accredited trade union representative until the case has been discussed, by HR and the Branch Secretary or full-time officer of the appropriate trade union.

1.3 Responsibilities

Employees are responsible for:

- familiarising themselves with and adhering to the standards of conduct expected of them as set out in the code of conduct

Line Managers are responsible for:

- providing employees with copies of the Council's **disciplinary rules** and **code of conduct**, ensuring that these are understood
- making employees aware of what is expected of them and to act as a role model in setting and maintaining high standards
- dealing with cases of misconduct promptly, in a fair and consistent manner and attending relevant training
- making any reasonable adjustments that may be required in accordance with the Disability Discrimination Act

The **Human Resources Division (HR)** is responsible for:

- providing advice and support throughout the process
- monitoring application of the procedure and reporting trends and non-compliance
- maintaining a list of disciplinary authority within in

each Council department; updating this on a regular basis in conjunction with Heads of Service.

1.4 General principles

- 1.4.1 Disciplinary action is the responsibility of all managers; however, only designated managers may suspend or discipline an employee. Heads of Service are responsible for ensuring that managers know their responsibilities and their level of authority, for example, who can give warnings or dismiss, and for maintaining an up to date record of authorised managers. HR will keep a full register of this information and Heads of Service will be responsible for advising them of any changes to these records.
- 1.4.2 Where an investigation indicates that the outcome of a disciplinary hearing could lead to dismissal, prior approval to proceed must be sought from the Head of Service or Director and advice sought from HR before continuing.
- 1.4.3 In order to comply with the legal requirements as set out in the **Employment Act 2002**, all stages of this procedure must be followed; any deviation from the procedure may be a disciplinary matter in itself. These incorporate the standard statutory procedure which is detailed in the **ACAS Code of Practice**.
- 1.4.5 Employees will not be dismissed for a first breach of discipline except in the case of gross misconduct. In extreme cases the penalty may be summary dismissal without notice or payment in lieu of notice.

2. Procedure

2.1 Introduction

- 2.1.1 The London Borough of Lambeth sets the standard of conduct it expects from all employees in its **disciplinary rules (appendix one)** and **code of conduct**.
- 2.1.2 This procedure has been adopted to ensure that all employees understand the behaviour expected of them and what course of action may be taken should these rules be breached. The Council wishes to ensure that the procedures applied to all staff are fair and consistent; the disciplinary policy and procedure are designed to encourage employees to achieve and maintain acceptable standards of behaviour in the workplace and is not to be used primarily to impose punishment.

2.2 Setting standards

- 2.2.1 It is essential that all employees are aware of the standards of conduct and behaviour expected of them as soon as they start and throughout their employment with the Council. Such standards are communicated in:
- Disciplinary rules
 - Code of conduct
 - recruitment packs
 - information provided at interview
 - induction
 - one-to-one discussions and feedback
 - appraisals/ supervision
 - policies and procedures

2.3 Confidentiality

- 2.3.1 All parties involved in a disciplinary process will be expected to respect the process and must not disclose any confidential information in relation to the disciplinary case, except as required or permitted in accordance with this procedure. Any person who breaches confidentiality in this manner may be subject to disciplinary action. An employee may choose, however, to disclose confidential matters concerning themselves.

2.4 Criminal offences committed in and outside of employment

- 2.4.1 Charges brought against an individual by other parties, including the Police, and investigations by the Police are procedurally separate from this disciplinary procedure. Allegations that employees have committed criminal offences either in or outside of employment may lead to disciplinary action; particularly where the alleged acts are relevant to the employee's employment with the Council or which may bring the Council into disrepute. Investigations conducted by the Police or the Council's Internal Audit Team into alleged criminal or fraudulent activity, may take place outside of the Disciplinary Policy and Procedure and without the employee's knowledge. The outcome of such investigations may be taken into account in a subsequent disciplinary investigation in accordance with section 3.2.4.

- 2.4.2 Action may be taken by management irrespective of Court proceedings. It does not automatically follow that an employee will be disciplined if found guilty in Court or taken into custody. Similarly, disciplinary action may be taken if an employee has been found not guilty in the Courts of a criminal offence or if charges are not brought.
- 2.4.3 It is not necessary for a disciplinary investigation to be put on hold until the criminal or other investigation is complete, however this may be the most reasonable course of action in the circumstances.
- 2.4.4 In all such cases the Head of Service shall investigate the facts as far as possible, and in consultation with HR, come to a view as to whether the conduct warrants invoking the Disciplinary Procedure.
- 2.4.5 The Internal Audit section must be advised by HR where there is any suspicion of fraud or corruption.

3. Informal stage

3.1 Informal discussions

An initial informal discussion can often be a more effective way of dealing with minor conduct issues than a disciplinary hearing. In the event that a manager has concerns about the conduct of an employee they should meet with the employee to discuss their concerns, state expected standards of conduct and take into consideration the employee's comments including any mitigating circumstances.

- 3.1.1 The informal meeting should be in a confidential environment with the managerial concerns being drawn to the employee's attention in a constructive, supportive and respectful manner.
- 3.1.2 The employee will be told of the expected standards of conduct required and when the matter will be reviewed again, which should generally be within three months. Should further problems arise before the review date, the manager may take further action before the timescale has elapsed. The employee should be made aware that this could happen.
- 3.1.3 Notes of the discussion should be written for the manager's own reference and a copy given to the employee. The notes should detail the nature of misconduct discussed, the required standard of conduct, any training, support or additional supervision that is to be provided, and the likely consequence of further breaches of conduct. The notes should be kept confidentially by the manager and disposed of as confidential waste at the end of the review period.
- 3.1.4 Informal discussions may not always be appropriate action. Where a manager is uncertain as to whether or not informal action is appropriate they should seek advice from HR.

3.2 Disciplinary investigation

- 3.2.1 Where, following an initial review, the manager considers that it is inappropriate to have an informal discussion or where an informal discussion has already taken place, a full and impartial investigation must be undertaken.
- 3.2.3. Where a manager wishes to commence a disciplinary investigation they must seek authority from the relevant senior manager with appropriate delegation authority. The senior manager will nominate a manager to lead the investigation with the support of HR
- 3.2.4 The employee under investigation will be informed that an investigation is being carried out, the nature of the complaint or allegation under investigation, together with the name of the person leading the investigation. This will be confirmed in writing together with a copy of the Council's disciplinary policy and procedure, rules and code of conduct.
- 3.2.5 The purpose of the investigation is to establish the facts. The size and make up of the investigation panel will depend on the seriousness and complexity of the allegations. Anyone connected with the allegations should not be involved in conducting the investigation. The investigating officer will present the management case in the event that a case proceeds to a disciplinary hearing.

- 3.2.6 The employee and any witnesses will be required to attend separate investigatory meetings. A minimum of three days written notice shall be provided of such meetings. With the consent of all parties this period of notice may be reduced as it is desirable that such meetings should take place as soon as possible.
- 3.2.7 The employee being investigated has the right to be represented at the investigation meeting, by either a recognised Trade Union representative or a work colleague.
- 3.2.8 An investigation meeting may be postponed at the discretion of the investigating officer if the chosen representative is unavailable. The investigating officer shall generally agree such a postponement where a reasonable alternative date and time in the near future is proposed by the employee/representative.
- 3.2.10 Witnesses will not normally need to be accompanied to an investigation meeting, but may request to be accompanied by a Trade Union representative or work colleague where they feel that there are special circumstances in which they feel that they require such support, for example, where the witness is alleged to have experienced bullying, harassment or discrimination. Where a witness is accompanied at an investigation meeting the role of the person accompanying them is to provide support.
- 3.2.11 Notes of the meeting will be taken in writing by a designated note-taker, arranged by the investigating manager. A copy of the notes taken will be provided to the employee, as soon as is reasonably practicable, to be checked for accuracy. Notes of the meeting should be kept, together with any supporting documents as possible evidence at any future disciplinary hearing, if appropriate
- 3.2.12 The investigating manager will prepare a report of their investigation indicating their findings to the relevant senior manager who will determine whether or not a disciplinary hearing is required based upon the findings of the investigation. If it is decided that it is not appropriate to convene a disciplinary hearing the employee will be informed in writing that no disciplinary action is being taken. Where appropriate, informal advice or guidance may be given to an employee by their line manager.

3.3 Suspension

- 3.3.1 During the investigation, it may be necessary, to suspend the employee where there is the possibility of a charge of **gross misconduct**. This will be in exceptional circumstances in order to enable investigations to be made which could be hindered by an employee's continued presence at work. Before suspending an employee, consideration must be given to whether short-term relocation to another work area or temporary suspension from some duties is a feasible alternative. Whether to suspend or not will depend on the circumstances of the case. Advice must be sought from HR before a suspension is arranged.
- 3.3.2 Where an employee is to be suspended, they should be informed that such suspension is a neutral action and is not in itself a disciplinary sanction. An employee who is to be suspended from some or all of their duties or relocated

shall be invited to a confidential meeting, having been given sufficient notice, where possible, to enable them to arrange to be accompanied by a Trade Union representative or work colleague, so that they may be advised in person of the terms of their suspension/relocation. Where the employee is unable to obtain Trade Union representation at the suspension/relocation meeting, they must be advised that they may seek TU advice/representation at any subsequent meeting.

3.3.3 An employee can only be suspended by an officer with delegated authority to suspend. The Executive Director and the Departmental HR Business Partner or Employee Relations Officer shall be advised of all suspensions.

3.3.4 Suspension will be:

- on full pay
- for a specified period of no more than three months, although this may be extended for further periods of no more than one month on each occasion
- clear as to the conditions that may apply, for example entry to Council premises, contact with Council staff, recording any periods of sickness or of annual leave during the suspension, use of Council equipment and resources etc. (The Council shall not generally prevent employees from using Council facilities as a member of the public, or seek to restrict social contact outside of a work context with fellow employees who may be friends or relatives of the suspended employee)
- subject to regular review in light of changed circumstances and for no longer than necessary
- confirmed in writing to the employee stating the reason(s) for the suspension, its likely duration, and any conditions that apply. A copy of the letter confirming suspension will be given to the employee's representative

3.3.5 HR is responsible for advising Service Directors, on a monthly basis, details of all suspensions in their service area.

4. Formal stage

4.1 Disciplinary hearing

4.1 Where it is genuinely believed that there is a disciplinary case to answer a formal disciplinary hearing will be convened.

4.1.2 The hearing will be conducted by a disciplinary panel and a HR representative, who will provide guidance on the procedural aspects of the process.

4.1.3 The disciplinary panel shall consist of a minimum of two managers neither of whom shall have had any prior involvement in the case and at least one of whom shall not be in the management line of the employee. The panel Chair shall be either trained or suitably experienced in chairing formal panels.

4.2 Notification of formal hearing

4.2.1 The manager will notify the employee in writing, with a copy to the employee's representative of the intention to hold a disciplinary hearing. The letter instructing the employee to attend the disciplinary hearing should:

- give the employee at least 5 full working days notice of the hearing
- set out the date, time and place of the hearing and the names of the managers on the panel
- confirm the nature of the alleged offence, conduct or complaint. This should be set out as one or more disciplinary charges specifying in each case the allegation the Disciplinary Rule which it is alleged that the employee has breached. [e.g. It is alleged that on date X you did Y in breach of disciplinary rule Z]
- advise the employee of their right to be represented at the hearing by either a recognised trade union representative or a workplace colleague
- where possible, be accompanied by the documents that the manager will present at the hearing, although these can be sent under separate cover provided they arrive no later than five full working days before the hearing. Documents to be considered at a formal hearing should be set out in a logical order, indexed and paginated, with a written introduction including any conclusions and recommendations to the panel.
- advise of the names of any witness intended to be called and copies of any documents or statements which will be produced. This will include the investigation report
- advise that the offence, if proved may result in formal disciplinary action being taken. Where the allegations are allegations of gross misconduct or where the employee already has a live final warning, the letter should indicate that the outcome could be dismissal from employment
- advise of the requirement that the employee advise the manager of the name of their representative and the names of any witnesses to be called at least one working day before the hearing
- Advise of the requirement to provide copies of any documentation material at least one working day prior to the hearing. (NB. A disciplinary panel shall have discretion to

consider documentation submitted after this deadline where they consider it to be relevant to the disciplinary charge(s)

4.3 Attendance at a formal hearing

4.3.1 The following may attend a disciplinary hearing:

- The employee facing disciplinary action.
- The Panel of managers who will hear the case
- A HR representative who shall act as an impartial advisor to the panel
- The employee
- The employee's representative
- The investigating officer
- A note taker
- Any other member of staff invited by the Panel to advise or give information as a witness who shall remain only for the duration of their evidence
- Other employees may attend for training purposes with the consent of the Chair of the Panel

4.4 Requests for postponement

4.4.1 At the request of the employee the hearing may be postponed on one occasion. The reasons for the postponement must be explained to the chair of the panel, who will decide whether to agree or not to the postponement. If agreed, the employee must give an alternative date, no more than 5 working days after the original date for the hearing.

4.4.2 The hearing will not normally be re-arranged more than once. Further requests for postponement of a hearing will be considered on their merits by the Chair of the panel and will not always be agreed. Following one postponement the hearing may proceed in the absence of the employee.

4.5 Order of business

4.5.1 The order of business at a disciplinary hearing will normally be:

- Introductions
- Presentation by management, which may include the calling of witnesses, who may give their evidence, be cross-examined by the employee/representative and questioned by the panel
- Questions to management by employee/representative and the panel
- Presentation by the employee/representative, which may include the calling of witnesses, who may give their evidence, be cross-examined by management and questioned by the panel
- Questions to the employee/representative by management and the panel
- Summing up by the management representative
- Summing up by the employee/representative
- Decision of the panel

4.6 Outcomes at a disciplinary hearing

4.6.1 Having considered everything they have heard at the disciplinary hearing, the disciplinary panel shall consider first of all whether the procedure has been correctly applied and, if so, whether the disciplinary charges have been proven.

4.6.2 Where the disciplinary charges have been found proven the panel shall consider whether or not to apply any disciplinary sanction. In discerning an appropriate disciplinary sanction, no account should be taken of any lapsed warnings. The following sanctions are available;

a) Written warning

A written warning will be issued for serious matters or repetition or continuation of an offence for which an informal warning was issued (and remains live). A written warning will generally be given for a first offence of misconduct (other than gross misconduct).

A copy of the warning will remain on the personal file for 12 - 24 months after which time it will be disregarded for disciplinary purposes. The disciplinary panel shall determine the appropriate duration of the warning having regard to the seriousness of the offence and any mitigating circumstances.

b) Final written warning

A final written warning will be issued if a written warning has already been issued and another offence has occurred or, where the conduct is of such a serious nature that a first written warning is not deemed appropriate, or where the offence could have warranted dismissal but the panel decides that this is not appropriate in all the circumstances (including having regard to any mitigating circumstances).

A copy of the warning will normally remain on the personal file for 24 – 60 months after which time it will be disregarded for disciplinary purposes. The disciplinary panel shall determine the appropriate duration of the warning having regard to the seriousness of the offence and any mitigating circumstances.

c) Disciplinary transfer and/or demotion

Disciplinary transfer and/or demotion shall be available as an alternative to dismissal with the consent of the employee. Before deciding to offer disciplinary transfer or demotion as an alternative to dismissal the disciplinary panel shall satisfy themselves that a suitable post has been identified.

In cases of transfer to a lower graded post, the employee will be expected to undertake the full range of duties for that post. There will be no salary protection where a loss of pay is incurred as a result of the transfer or demotion.

d) Dismissal /Summary dismissal

Dismissal may only be applied where a final warning has previously been issued or where an allegation of gross misconduct is found to be proven.

Summary dismissal, dismissal without previous warning and without notice, will only apply in cases of gross misconduct, where there has been a serious breach of discipline and where it would be inappropriate for the employee to remain in the employment of the Council for the notice period.

4.7 Notification of the decision

4.7.1 The outcome of the disciplinary hearing will be communicated to the employee in writing within five working days of the date of the meeting. The outcome letter will contain the following points:

- the allegations addressed at the hearing
- any matters taken into account in reaching the decision
- any mitigating circumstances put forward by the employee
- the decision on the findings of the allegations
- the sanction to be imposed, and the reason for that sanction
- where the sanction is summary dismissal, an explanation of the circumstances warranting summary dismissal
- the period that any warning will stay live for
- full particulars of what is expected of the employee in future in terms of behaviour, performance, attitude etc and the time scale in which improvements must be made
- any actions to be undertaken by management
- that further occurrences of the allegations or any of a similar nature will result in further disciplinary action. Where a final warning has been issued it will be made clear that further occurrences of the allegations or any of a similar nature may, after a further disciplinary hearing, result in dismissal
- details of the employee's right of appeal against the decision of the panel, together with time scales for exercising these rights
- that if there is no need to take further disciplinary action during the time period specified, the warning will be expunged from the employee's record

5. Appeal

5.1 Lodging an appeal

- 5.1.1 The employee can appeal against any formal action taken under this procedure. The purpose of the appeal is to review the decision taken by the disciplinary panel, not to re-hear the case.
- 5.1.2 The appeal must be made in writing, to the Executive Director, within 10 working days of receipt of written confirmation of the decision and will normally be heard within twenty working days from receipt of the appeal letter.
- 5.1.3 The Executive Director or his or her nominee shall arrange for the appeal to be heard by a panel of at least two officers, one of whom must be at the same or higher grade as the chair of the original panel. Neither shall be in the direct line management of the employee.

5.2 Common appeal conditions

- 5.2.1 The grounds of appeal should relate to one or more of the following:
 - a) **The procedure**
An appeal can be lodged on the grounds that the disciplinary procedure was applied unfairly or inaccurately.
 - b) **The facts**
An appeal can be lodged where the employee believes that the facts of the case did not support the decision made; that the facts considered were not relevant; that the facts were not substantiated; or where there are new facts/evidence which needs to be considered that has come to light subsequent to the hearing
 - c) **The decision**
An appeal can be lodged where the employee feels that the sanction received is disproportionate to the charges found taking into account the evidence/mitigating circumstances presented.
- 5.2.1 The appellant will be given 5 working days notice of the appeal hearing along with any documents which management will present at the appeal. The appellant must provide their own documents within two working days of the hearing.
- 5.2.3 The panel will review whether the original decision was reasonable having reviewed the grounds for appeal. The Appeal Panel shall have discretion to go into as much detail as they consider necessary in order to give a fair hearing to the appeal. The decision at appeal shall be either to uphold the original decision of the formal hearing or to issue a lesser sanction the appeal decision, or to overturn the original decision and impose no sanction. This decision shall be final and will be confirmed in writing.
- 5.2.4 Notes shall be taken at an appeal hearing and a copy provided to the appellant within 10 working days of the hearing.

6. Details of approval and variation process

6.1 Where the Council wishes to amend or terminate this procedure, it will consult with the relevant trade union with a view to reaching agreement over the proposed amendment(s)/termination. This procedure may be amended or terminated by agreement with the relevant trade unions at any time. Where agreement has not been reached with the relevant trade unions arising from consultations, the Council reserve the right to implement its proposed amendment(s)/termination by giving one months notice to employees of its proposal(s).

6.2 This policy is approved and signed by:

Nana Amoa-Buahin
Divisional Director Human Resources

Jon Rogers (Branch Secretary – UNISON)
On behalf of Trade Unions

Appendix one: Disciplinary rules

1. Introduction

- 1.1 These rules apply to all Council employees. Any breaches of these rules may result in disciplinary action.
- 1.2 The list of rules amounting to misconduct or gross misconduct are neither exclusive nor exhaustive. There may be other offences of a similar gravity which will constitute misconduct or gross misconduct.
- 1.3 It should be noted that there may be circumstances where breaches listed as misconduct may be regarded as gross misconduct due to the nature, severity and/or frequency of the misconduct and taking into account the seniority of the job held by the employee

2. Misconduct

- 2.1 Misconduct is conduct that falls below the Council expected standards of behaviour as set out in the staff code of conduct. Instances of misconduct will not warrant dismissal on the first occasion or without previous warning.

- 2.2 Examples of misconduct are:

- 1. Refusal to obey legitimate management instructions
- 2. Negligence in performance of duties
- 3. Bad time keeping including taking excess breaks
- 4. Absenteeism and leaving the workplace without permission
- 5. Misconduct in relationships with fellow employees, clients or members of the public
- 6. Damage to Council property
- 7. Swearing or verbal abuse of fellow employees, clients or members of the public
- 8. Being under the influence of drink or other intoxicants
- 9. Breach of safety rules
- 10. Non-compliance with sick pay scheme
- 11. Unauthorised use of Councils facilities, for example, email and internet, telephone, photocopiers and vehicles
- 12. Breaches of the Council's financial regulations, code of conduct

13. Mismanagement of council finances leading to the overspend of a manager's budget.

14. Failure to declare personal interests as outlined in the staff code of conduct

3. Gross Misconduct

3.1 Gross Misconduct is misconduct of such a serious nature that the Council is justified in no longer tolerating an employee's continued presence at their place of work.

3.2 An allegation of gross misconduct may lead to the employee's immediate suspension from work, pending a full investigation. Where, after due consideration, the allegations against the employee are substantiated, the employee will be dismissed without notice, unless there are any mitigating circumstances

3.2 Examples of gross misconduct are:

1. Acts of discrimination, harassment or verbal abuse against employees, clients or members of the public on the grounds of race, colour, creed, ethnic or national origin, disability age, gender, sexuality or marital status. This may include the production, distribution, display or communication of material which may give rise to offence on any of these grounds. (Materials will be taken to include books, posters, magazines, cartoons, cards, emails, advertisements, calendar, photographs, videos etc)
2. Harassment, bullying and victimisation of any employee
3. Unauthorised removal, possession or theft of property belonging to the Council, a fellow employee, client or member of the public.
4. Acts of violence including the physical assault on, or serious threat against a fellow employee, client, or member of the public
5. Falsification of qualifications or information in connection with employment
6. Sexual misconduct at work
7. Malicious damage to Council property
8. Falsification of time sheets, subsistence and expenses claims etc
9. Acceptance or bribes or other corrupt practices
10. Unauthorised access to, use or disclosure of confidential matters including the unauthorised use or disclosure of any computer-held or computer generated information from which a living individual can be identified
11. Conviction for a criminal offence unconnected with the Council but which removes an employees acceptability to remain in employment; for example a cashier convicted of theft, a residential child care officer or a driver convicted of driving under the influence of drink or drugs

12. Serious breaches of safety rules including deliberate damage to, or misappropriation of safety equipment or endangering others under the influence of intoxicants
13. Holding unauthorised (un)paid employment during Council time
14. Acts of fraud against the Council or other public organisations, for example, other local authorities and benefits agencies
15. Serious breaches of the Staff Code of Conduct
16. Unauthorised indebtedness to the Council
17. Serious mismanagement of council finances leading to the significant overspend of a manager's budget.
18. Failure to renew a Criminal Records Bureau (CRB) Disclosure or any membership to a professional body, where this is prerequisite to the role.