



DISCIPLINARY POLICY

1 Introduction

Purpose

- 1.1 The quality of this Authority's services and public confidence in the integrity of its workforce is dependent on conduct of the highest standard from employees. The underlying principles regarding behaviour that the Council expects from employees are contained in the Code of Conduct; managers and employees should ensure that they are fully aware of these standards.
- 1.2 This policy formalises the procedure to be followed where conduct is considered to fall short of the acceptable standard and provides a framework for how disciplinary matters should be handled. The policy should be regarded primarily as a means of helping and encouraging improvement and it is important that officers apply the procedures consistently and fairly. Concerns around performance should normally be addressed through the Capability Policy, except in so far as it provides otherwise.
- 1.3 The policy seeks to provide a transparent method for dealing with disciplinary matters, ensuring that individuals are treated fairly and equitably.

Who does the Policy apply to?

- 1.4 This Policy applies to all employees of the Council except teachers, for whom there is a separate procedure, and those employed in schools under the control of Governing Bodies, for whom procedures adopted by the Governing Body will apply. Employees are as defined in section 230 of the Employment Rights Act 1996 or any substituting or amending legislation.
- 1.5 In the case of staff whose terms and conditions of employment are governed by the Joint Negotiating Committee for Chief Officers, the Chief Executive will identify the person(s) who will conduct the investigation and form the disciplinary panel. This may involve people from outside of the organisation. Where appropriate the provisions of the Local Government & Housing Act 1989 or other relevant legislation will apply in respect of the Head of Paid Service, Monitoring Officer and the Section 151 officer.

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Representation

- 1.6 This policy will be implemented in accordance with the principles of natural justice. Thus, the employee must be informed of the nature of the allegations against them prior to the formal hearing, given the opportunity to respond and have the right to representation. Employees have the right to be accompanied by a Trade Union representative or a work colleague throughout the formal process.

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2 General Information

Employment legislation

- 2.1 Statutory requirements exist for dismissing and taking disciplinary action against an employee. This policy encompasses these requirements and it is therefore important that managers appreciate the need to comply fully with this policy.
- 2.2 The Advisory, Conciliation and Arbitration Service have produced an “Advisory Handbook – Discipline & Grievances at Work”. This handbook provides managers with practical advice and best practice in dealing with disciplinary matters. Managers can access this handbook on the Advisory, Conciliation and Arbitration Service website.

Equal Opportunities

- 2.3 Every employee has the right to be treated fairly and with respect. Managers must ensure that issues of fair treatment and equality are adhered to when implementing this policy.
- 2.4 The use of this policy will be regularly monitored to assess its impact on the workforce and reported annually.

Informal Action

- 2.5 In some cases informal action may be a more satisfactory or appropriate method for resolving problems. It takes the form of a discussion with the objective of encouraging and helping the employee to improve.
- 2.6 Line managers will talk to employees on a one-to-one basis about any work related issues, including conduct. The manager can inform or remind the employee about standards or can reprimand them for anything they have not done or done wrongly. This is informal action, aimed at bringing about an improvement.
- 2.7 A written record of any action agreed should be given to the employee. Informal action does not count as disciplinary action. There is no right to be accompanied and no right of appeal.
- 2.8 If the manager decides during the course of an informal discussion that formal action is needed, he or she should stop the discussion and make the appropriate arrangements for formal action.
- 2.9 If informal action does not bring about an improvement, the line manager should proceed to the formal stages of this policy.

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Grievances raised during Disciplinary cases

- 2.10 If, during the course of disciplinary proceedings, an employee raises a grievance, which is related to the case, consideration will be given to temporarily suspending the disciplinary case. This is only likely to be agreed where there is clear evidence that it would be inequitable to proceed.
- 2.11 Grievances which related to the disciplinary case, including implementation of the procedure itself, are best dealt with jointly and will be directed to the ongoing investigation / hearing for consideration and response.
- 2.12 Where the grievance is unrelated to the disciplinary proceedings, the two matters should be dealt with separately.

Financial Misconduct

- 2.13 Where the alleged misconduct has financial implications, the Director of Finance must be informed and the Chief Officer of the employing department notified before commencing formal proceedings.

Criminal Offences

- 2.14 Where an employee of the Council is convicted of a criminal offence or is the subject of investigation by the Police or any statutory enforcement agency, disciplinary action should be considered and discussed with the Departmental Head of Human Resources.
- 2.15 Such action may proceed and may be concluded, notwithstanding that the investigations of the Police or other agencies are continuing.
- 2.16 In any case of suspected criminal activity at work, the manager should normally seek the advice of the Director of Legal Services, Director of Human Resources and/or the Director of Finance before contacting the Police.

Trade Union Officials

- 2.17 Where the employee facing disciplinary action is an accredited representative of a trade union recognised by the Council for collective bargaining purposes, the manager should first inform the full-time trade union official of the proposed action. In all other respects the normal disciplinary procedure applies.

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Confidentiality

- 2.18 The Council is committed to maintaining the privacy of all staff; therefore the need for confidentiality is an integral part of this policy. Further guidance is available in the Corporate Confidentiality Policy.

Review

- 2.19 This policy will be kept under review and amended as required.

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3 Misconduct

What constitutes Misconduct?

- 3.1 This policy is rooted in the Council's Code of Conduct. The Code sets out in principle the standards expected from employees and includes such matters as: attendance, performance, confidentiality, personal interest, health and safety, use of computers etc. Breaches of these and/or other similar procedures and regulations would normally lead to the disciplinary policy being invoked.
- 3.2 Concerns around performance will normally be addressed through the Capability policy. However, if poor performance is due to negligence or serious error on the part of the employee, it should be addressed under this disciplinary policy, as provided in the Capability policy.
- 3.3 When misconduct is identified the manager should consider the seriousness of the misconduct, as this will determine whether informal or formal action is appropriate.

Formal Action

- 3.4 Where formal action is considered appropriate the manager will need to categorise the disciplinary offence i.e. minor misconduct, serious misconduct, gross misconduct. When making this assessment it may be helpful to consider the consequences of the alleged misconduct.
- 3.5 When notifying the employee of formal disciplinary action, the employee should always be informed of his or her right to be accompanied and of whether the alleged misconduct is viewed as minor, serious or gross.
- 3.6 As further information comes to light in the course of the disciplinary investigation, the category of the offence may change.

Minor Misconduct

- 3.7 This category comprises misdemeanours, which are relatively minor first time transgressions, where the facts are self-evident and where there are no live/final warnings against the employee. Such misconduct would normally warrant a verbal or first written warning.
- 3.8 Examples of minor misconduct may include concerns around an employee's:
- timekeeping
 - performance (due to negligence)
 - non-compliance with notification of absence procedures

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- failure to follow an instruction
 - refusal to wear protective or appropriate clothing
 - minor breaches of the Council's rules, policies and standards
 - poor standard of customer care or interpersonal behaviour
 - failure to complete a piece of work to time or required standard
- 3.9 These examples are intended to give managers an idea of the type of misconduct that may fall within this category and should not be considered an exhaustive or exclusive list.
- 3.10 All other forms of misconduct would be deemed serious or gross misconduct.
- 3.11 The lists below are **not exhaustive or exclusive** and other acts of misconduct of a similar gravity may also be treated as serious or gross misconduct under this procedure.

Serious Misconduct

- 3.12 Serious misconduct generally warrants a first or final written warning.
- 3.13 Examples of misconduct regarded as a serious offence may include, but are not limited to:
- bullying or harassing behaviour
 - repeated occurrences of minor misconduct over a period of time
 - being an accessory to a disciplinary offence
 - serious negligence in the performance of duty
 - falsehood or abuse of one's position within the Council
 - serious breaches of the provisions and policies of the Council
 - failure to notify the department of gifts, benefits or hospitality offered

Gross misconduct

- 3.14 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the employer and may justify dismissal without notice or pay in lieu of notice.
- 3.15 Matters that the Council views as amounting to gross misconduct may include, but are not limited to:
- fraud
 - stealing from the Council, Members, employees, service users or contractors

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- falsification of a qualification or any other matter that is a stated requirement of the employee's employment or results in financial gain to the employee
 - falsification of records, reports, accounts, expense claims or self-certification forms whether or not for personal gain
 - sexual misconduct at work
 - fighting with, physical assault, or the verbal threat of physical assault on Members, employees, service users or contractors, members of public
 - deliberate damage to or misuse of Council property
 - being under the influence of alcohol or illegal drugs whilst at work
 - possession, custody or control of drugs (other than medically prescribed) or stolen goods on Council premises
 - serious breach of the Council's rules, including, but not restricted to, health and safety rules and rules on computer use
 - gross negligence or incompetence where actual or potential consequences of that error are, or could be, extremely serious
 - conviction of a criminal offence that is relevant to the employee's employment
 - conduct that brings or may bring the Council's reputation and integrity into disrepute
 - discrimination, serious bullying or harassment of a fellow worker or service user on the grounds of sexual orientation, race, disability, age, religion or belief
- 3.16 Other acts of misconduct may be gross misconduct; including even repeated acts of minor misconduct if sufficiently serious and after sufficient warning.

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4 Suspension

- 4.1 In cases of possible gross misconduct consideration should be given to whether suspension is warranted i.e. whether it would be detrimental to allow the employee to remain at work pending an investigation and disciplinary hearing. This may be because of the nature of the alleged misconduct, and/or risk to council property or other employees. The period of suspension should be as short as possible and should be paid.
- 4.2 Other viable alternatives to suspension could also be considered e.g. a temporary move to another office or location.
- 4.3 The decision to suspend should be taken by the Chief Officer, Assistant Director or where applicable the Direct Services Manager. Any decision to suspend will be confirmed in writing within two working days and such written confirmation will state that the nature of the suspension is precautionary, not disciplinary, pending the outcome of the disciplinary proceedings. The letter should inform the employee:
- the reason for the decision
 - that they must be available but not attend the workplace unless required to do so by management and/or to see their Trade Union representative, Employee Counsellor or Occupational Health Adviser
 - that they should not contact service users
 - that they should not contact work colleagues except in a social context outside of work (N.B see 4.4)
 - that they must not seek to influence anyone involved in the investigation
 - where possible, the likely timescale for the suspension
 - what will happen next e.g. investigation, disciplinary hearing.
- 4.4 If the employee or their Trade Union representative needs information during the course of the investigation, which can only be obtained from work colleagues or service users, they should contact either the investigating officer or their Human Resources Manager. Access to such information will not be unreasonably refused.
- 4.5 Where an employee is suspended the Human Resources Manager will review the case with the line manager on a fortnightly basis. Managers should communicate with the employee following the fortnightly review; both to keep them informed of the status of the suspension and of progress on the investigation. It may also be appropriate to convey more general work related information.
- 4.6 Where workplace social activities e.g. Christmas Lunch, have been arranged, the manager should consider whether the suspended

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employee's attendance is appropriate. This may vary dependent on the nature of the allegations and the extent of other team colleagues' involvement in the investigation.

- 4.7 Whilst on suspension the employee must be available to assist with or participate in the disciplinary process and must not take alternative paid employment.
- 4.8 The Director of Human Resources should always be notified of the commencement and ending of any suspension.

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5 Procedural Matters

Timescales

- 5.1 Throughout this procedure reference is made to certain timescales. On occasions it may be necessary to increase timescales to ensure all matters are adequately addressed. In such cases it is important that the parties involved are kept fully informed of progress and of decisions to extend such periods.

Disciplinary Investigation

- 5.2 The line manager should carry out sufficient investigation to enable a clear view of the facts to emerge. The extent of the investigation will depend on the circumstances and seriousness of the case. In serious or complex cases another officer may assist them.
- 5.3 Line managers have a responsibility for ensuring that disciplinary investigations within their remit are carried out without undue delay. Every effort should, therefore, be made to commence and conclude investigations in an efficient and timely manner. Human Resources will be advised of any investigation regarding serious or gross misconduct.
- 5.4 The manager will determine the findings from their investigation and decide on one of the following outcomes:
- proceed to a disciplinary hearing
 - take management action under other Council policy
 - determine that no further formal action is necessary.
- 5.5 The employee should be informed of the outcome from the investigation as soon as is reasonably possible.

Disciplinary Hearing

- 5.6 Where there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be required to attend a disciplinary hearing. The arrangements for such hearings will vary dependent on the category of misconduct identified. When notifying employees of a disciplinary hearing, it is also important that they are informed of the category of the misconduct. The procedures set out below are subject to flexibility at the discretion of the panel (or line manager in cases of minor misconduct). Persons conducting disciplinary hearings may take such steps as they consider reasonable to curtail the length and scope of the hearing (including without limitation disallowing written or oral evidence) and to ensure the hearing is conducted in accordance with the principle of proportionality and that the process does not become unduly protracted.

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Minor Misconduct

- 5.7 Minor misconduct hearings are simplified to reflect the type of misconduct being addressed and to provide a speedier response to the situation.
- 5.8 The line manager will normally hear disciplinary offences that involve minor misconduct. The employee will receive written notification that they are required to attend a disciplinary hearing and be provided with details of the alleged misconduct, their right to be accompanied, the purpose of the hearing and any supporting documents that are being used as evidence by management. A copy of this policy or advice on how it may be accessed on the intranet should also be provided.
- 5.9 Where the employee is unable to attend a disciplinary hearing and provides a reason for failing to attend which is acceptable to the manager, the hearing will be rearranged to convene normally within five working days.
- 5.10 During the hearing the manager will state precisely the nature of the allegations and outline the case briefly by going through the evidence gathered. If necessary the manager may call witnesses. The employee will then be given the opportunity to state their case and answer any questions that have been made. They will also have the opportunity to ask questions, present evidence and call witnesses. The manager should then summarise the main points of discussion and give the employee an opportunity to add any further comments.
- 5.11 At the end of the hearing the manager should consider the case presented by the employee and decide whether disciplinary action is warranted, if so what, and whether any other action is necessary e.g. training. Appropriate disciplinary action for minor misconduct would include a recorded verbal warning, a first written warning or, if deemed necessary, further action under serious misconduct. For further advice on verbal and written warning see sections 5.23 and 5.24.
- 5.12 Once the decision is made, the employee should be informed of the outcome as soon as is reasonably possible. Written notification should be provided within two working days; this should include the right of appeal, where appropriate. A copy of the notification letter must be forwarded to Human Resources.

Serious or Gross Misconduct

- 5.13 Serious or gross misconduct hearings will in all cases be convened by Human Resources. The Panel hearing the case will comprise a

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minimum of two officers, who have not previously been involved in the case.

5.14 The employee will receive:

- a minimum of five working days' notice of the date of the hearing
- notification of the purpose of the hearing and that it will be held under the disciplinary procedure, of the right to be accompanied, a copy of this policy or advice on how it may be accessed on the intranet should also be provided
- written details of the nature of his/her alleged misconduct
- any written material, statements, and names of witnesses that Management intends to rely upon
- notification that the employee must forward details of any witnesses and provide written submissions they may be relying upon, not less than two working days in advance of the hearing.

5.15 Where the employee is unable to attend a disciplinary hearing and provides a reason for failing to attend which is acceptable to the panel, the hearing will be rearranged to another day. In making these further arrangements the employee should receive three working days notice of the rearranged hearing. The panel may reject as sufficient reason General Practitioner sick notes citing "stress" or the like without further and detailed medical evidence constituting objective medical verification of the employee's subjective report of his or her condition.

5.16 If the employee is unable or fails to attend the rearranged hearing, it may take place in the employee's absence. In deciding to proceed, the panel must take the circumstances leading to the non-attendance into consideration. The employee's trade union representative or work colleague may attend without the employee as a last resort and will be allowed the opportunity to present the employee's case. The employee may be allowed to make a written submission as an alternative.

5.17 The procedure is that management, the investigating officer(s), will first present their case, followed by the employee's case. Both sides will then be asked to sum up their respective cases. The panel will ensure that a written record of the hearing is made.

5.18 In presenting their case, management should provide a full explanation of the case, together with their supporting evidence and call witnesses as appropriate. The panel and/or employee may question both management and witnesses once they have presented their evidence.

5.19 The employee will then be entitled to state their case in response to the management case and put forward an explanation of their conduct and/or mitigating factors, calling their witnesses as appropriate. The panel and management may also ask questions of the employee and

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any witnesses.

- 5.20 The panel may adjourn the proceedings if necessary (including for the purpose of gathering further information). The employee will be informed of the expected duration of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with their trade union representative or work colleague, to consider the new information prior to the reconvening of the hearing.
- 5.21 As soon as possible after the conclusion of the hearing, the Chair of the panel will convey the decision of the panel to the employee. The decision and right of appeal will be confirmed in writing within five working days. A copy of the written notification must be forwarded to Human Resources.

Disciplinary Outcomes

- 5.22 The panel/manager will decide whether or not disciplinary action is warranted. Where action is considered appropriate the panel/manager will determine its level. Outcomes include:

Verbal Warning

- 5.23 Where the offence or offences are considered to be minor in nature or mitigating circumstances have been put forward and accepted by the panel/manager, a recorded verbal warning may be given. The warning will ordinarily state:
- (i) the nature of the offence
 - (ii) that any further misconduct will result in further, more severe disciplinary action
 - (iii) the period that the warning will remain 'live'
 - (iv) the right of appeal and how it should be made

First Written Warning

- 5.24 Where a more serious disciplinary offence has been committed or an employee has committed minor offences despite an earlier verbal warning that remains “live”, the employee will receive a first written warning. The warning will set out:
- (i) the nature of the offence
 - (ii) the likely consequences of further misconduct under this procedure
 - (iii) the period for which the warning will remain 'live'
 - (iv) the right of appeal and how it should be made.

Final Written Warning

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- 5.25 A final (or combined first and final) written warning may be given where:
- Serious or gross misconduct has been committed which justifies dismissal, but the panel decides that a lesser penalty is appropriate
 - the employee has committed further disciplinary offences while a first written warning is “live”.
- 5.26 Such a warning will:
- (i) set out the nature of the offence committed
 - (ii) inform the employee that further misconduct is likely to result in his/her dismissal; and
 - (iii) include the right of appeal and how it should be made
- 5.27 Where a written warning is given to an employee, the panel may decide to take additional action which could include:
- deductions from wages for the recovery of any financial loss suffered by the Council or monies falsely claimed by the employee
 - transfer to a job of a lower status and/or grade
 - withholding an annual increment.
 - a direct claim for financial restitution
- 5.28 These outcomes may be imposed in conjunction with other forms of action, or as an alternative to dismissal. However the panel must seek advice from Human Resources prior to making the decision to ensure compliance with employment procedures.

Dismissal

- 5.29 Where the panel establishes that an employee has committed an act of gross misconduct or serious misconduct following a final written warning they will in most circumstances be dismissed. Such dismissal may be with notice or pay in lieu of notice. Alternatively the employee may be summarily dismissed (i.e. dismissed without notice or pay in lieu).
- 5.30 Any decision to dismiss must be approved by the Chief Officer. The employee has the right of appeal to an Employment Appeals Panel.

Time limits for Outcomes

- 5.31 The disciplinary panel will decide the period of the warning based on the nature of the misconduct and the findings of the panel. Warnings (verbal and written) should generally run for no less than six months

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and no more than two years. In all cases they will run from the date of the conclusion of the disciplinary hearing.

- 5.32 Line managers are responsible for the satisfactory monitoring of conduct during the period of the warning. Concerns around conduct and any live warnings should be shared in confidence with any new manager taking responsibility for the employee. If the employee moves to another job within the Council the line manager is responsible for notifying the new manager of a live disciplinary warning.
- 5.33 Warnings should be disregarded for future disciplinary purposes once the relevant timescale has elapsed. However, there may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.
- 5.34 There may be exceptional circumstances where the misconduct is so serious – verging on gross misconduct – or its consequences are very serious, such that it cannot be realistically ignored for future disciplinary purposes, in which case the written warning will remain live because of the nature and/or consequences of the misconduct. In such circumstances, and following consultation with the Director of Human Resources, it must be made clear in the decision letter to the employee that the final warning will never be removed and that any future misconduct will lead to dismissal.

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6 Appeals

Right of Appeal

- 6.1 An employee may appeal against any disciplinary action imposed against them, **with the exception of informal action**. All appeals should be made in writing and lodged within five working days of receipt of the outcome from the disciplinary hearing. The employee should state the grounds of their appeal, including whether they are appealing against:
- the finding that they have committed the alleged act or acts of misconduct
 - or the level of disciplinary action imposed.

Arrangements for Appeals

- 6.2 Appeals against decisions (other than dismissal) should be made to the appropriate Human Resources Unit.
- 6.3 Appeals against a decision to dismiss should be made to the Chief Officer.
- 6.4 The next level of management will normally hear appeals provided this manager has not previously been involved with the process. In cases of serious or gross misconduct, appeals against a decision (other than dismissal) will also involve a representative from Human Resources.

Appeal Hearing

- 6.5 The appeal hearing should take place within fourteen working days of receipt of the employee's written notice of appeal. Where this timescale cannot be met the employee should be informed of the reason for the delay.
- 6.6 The hearing will confine itself to the specific grounds of appeal and will not reconsider the whole case. The panel may call for additional information to be provided and may adjourn the appeal meeting so that this information may be acquired.
- 6.7 The panel must decide on the basis of both sets of representations, together with any additional information acquired, whether to allow the appeal, reject it or substitute a lower level warning.
- 6.8 The decision following the appeal is final and there is no further right of appeal. The decision will be confirmed in writing within five working days of the appeal hearing.

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Appeals against dismissal

- 6.9 An appeal against dismissal will be referred by the Chief Officer to the Director of Legal Services, who will arrange an Employment Appeals Panel. A separate procedure exists for the conduct of the Employment Appeals Panel.
- 6.10 If the decision to dismiss with notice is upheld, the notice period given by the disciplinary panel will not be affected.
- 6.11 If the decision to dismiss without notice is upheld, the original date of termination will stand.

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