



Disciplinary Procedure

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Introduction

It is necessary for the proper operation of the Council's business and the health and safety of employees that the organisation operates a disciplinary procedure. This document provides guidance on how to manage the disciplinary process which will be applied fairly in all instances where disciplinary action is regarded as necessary. The Council does encourage an informal resolution for any minor act of misconduct committed by an employee if it is appropriate in the circumstances.

The organisation reserves the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of an employee. Employees will not ordinarily be dismissed for a first disciplinary offence unless it is considered as gross misconduct.

Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the Council.

Employees have the right to be accompanied at a disciplinary hearing by: a work colleague; a trade union official employed by the union; or a trade union official who is certified in writing by the union as having the necessary experience or training to act as a companion. The work colleague or trade union representative, if employed by the Council, is entitled to reasonable paid time off to fulfil their responsibility as the employee's representative.

Scope of the Procedure

This policy applies to all employees and casual workers regardless of length of service. It does not apply to agency workers, whereby disciplinary matters should be referred to the Employment Agency.

It should not be used in cases of under-performance for which the Capability Procedure will be applied, unless there is wilful reluctance by the employee to carry out their duties effectively or efficiently.

In cases of capability/attendance related to sickness, please refer to the Sickness Absence Management Policy in the first instance.

Examples of Disciplinary Offences/Gross Misconduct

Matters that the Council views as amounting to disciplinary offences include (but are not limited to):

- persistent bad timekeeping;
 - unauthorised absence;
 - damage to the Council's property;
 - failure to observe the Council's procedures;
 - abusive behaviour;
 - unreasonable refusal to follow an instruction issued by a manager or supervisor;
 - absences that are not genuine or not for the reason provided;
 - data protection breaches and misuse of the Council's information;
 - smoking (or use of an e-cigarette) in non-designated areas of the Council's premises;
- and

- bribery offences under the Bribery Act 2010.

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the organisation. If an employee commits an act of gross misconduct, the Council will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

Matters the organisation views as amounting to gross misconduct include (but are not limited to):

- theft or fraud (stealing from the Council, employees or the public)
- other offences of dishonesty;
- unauthorised absence;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- falsification of records including reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
- data protection breaches, disclosure of Council documents or other confidential information to unauthorised third parties;
- indecency;
- physical violence or bullying;
- deliberate damage to or misuse of property;
- gross insubordination;
- the use or distribution of illegal drugs while at work; (please refer to the Alcohol and Substance Misuse Policy in the first instance)
- serious incapability at work brought on by alcohol; (please refer to the Alcohol and Substance Misuse Policy in the first instance)
- possession, custody or control of illegal drugs on the Council's premises;
- serious breach of the Council's rules, including, but not restricted to, health and safety rules and rules on computer use;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- misuse or abuse of social media in and outside work;
- deliberately accessing pornographic, offensive or obscene material;
- conduct that brings the Council's name into disrepute; and
- unlawful discrimination or harassment.

Other acts of misconduct may come within the general definition of gross misconduct.

Investigation

An employee's supervisor or manager will undertake the role of Investigating Officer (or, where appropriate, a different manager). They will initially discuss the situation with a Human Resources (HR) Officer and will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Council's policies or rules or may otherwise be a disciplinary matter. The relevant Director will be advised of the situation, but not in detail as they may become involved at a later stage. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

Depending on the circumstances of the case, the employee will be invited to attend an investigatory interview. The employee will be informed at the outset that the interview is an

investigatory interview. The purpose of this meeting is to establish the facts of the case and does not form part of any disciplinary action. An HR representative will attend this meeting. There is no right for employees to be accompanied at an investigatory interview, although the Council will allow the employee to bring a colleague; a trade union official employed by the union; or a trade union official who is certified in writing by the union as having the necessary experience or training to act as a companion for support if they wish. However, an investigatory meeting will not be unreasonably delayed should a companion not be available.

Anyone called as a witness would be expected to cooperate fully with the investigation. Witnesses do not have the right to be accompanied either at the investigatory meeting or if called to a disciplinary hearing.

All interviews will be electronically recorded, the employee will be advised of this in advance of the meeting. In exceptional circumstances written notes may be taken instead of electronic recordings. The employee and witnesses may request a copy of the recording/written notes from their meeting. These recordings/written notes may be disclosed at hearing/appeal stage.

Surveillance used to monitor employee's activities may be viewed as part of a disciplinary investigation if there is a legitimate interest in protecting the Council or a third party. It will only be used in instances where it is considered an appropriate means of gathering evidence in relation to the allegation. The Council will ensure any surveillance undertaken has been carried out in accordance with the law, is felt both necessary and proportionate and complies with the DPA and GDPR. Examples of surveillance could include records from the door entry system, CCTV footage, e-mails etc, (this list is not exhaustive).

The organisation reserves the right to dispense with an investigatory interview and to proceed directly to a disciplinary hearing in exceptional circumstances, for example, if the employee is being held in custody or some other institution that would prevent the employee from being interviewed within a reasonable timeframe.

Once the Investigating Officer has concluded the investigation process they will write a report outlining their findings which will include their recommendation on whether or not the matter should proceed to a disciplinary hearing. Prior to finalising the report they will contact the employee, who the allegations are against, to establish if they wish to add anything further, such as new evidence or information around mitigating circumstances that they believe the Investigating Officer should be aware of before concluding the report. This may involve the employee attending a further meeting with the Investigating Officer.

Suspension

There may be instances where suspension with pay is necessary while investigations are carried out. The Council has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before a disciplinary hearing, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work. It will also be considered when the alleged gross misconduct is one that is so serious that, if later proven, it strikes at the very root of the employment relationship, destroying it, and making it impossible for the employer to continue to employ the individual.

Suspension is not regarded as an assumption of guilt, fair investigation procedures will be applied. Suspension is not, in itself, a form of disciplinary sanction.

The decision will be made by the Investigating Officer in conjunction with the HR Manager. The decision to suspend will only be made after careful consideration and following a preliminary investigation to establish that there is prima facie evidence of the alleged misconduct. This would usually involve an initial meeting with the employee concerned. Potential damage to professional reputation will be considered as part of the decision making process. Consideration will also be given to placing the employee in another area of the business whilst the investigation is carried out. Suspension will be reviewed regularly to ensure it does not continue for an unreasonable period of time.

Possible Outcomes of the Investigation

No action: The Investigating Officer has no/insufficient evidence to suggest that misconduct has occurred. The employee will be informed of this in writing and details of the investigation will be removed from the individual's HR file.

Informal action: the evidence gathered suggest that the matter is not serious enough to warrant a disciplinary hearing and/or guidance and support is more appropriate. The Investigating Officer will advise the employee in writing of the decision and details of what guidance/support will be provided. The Investigating Officer may keep a time limited record of this decision, to ensure implementation of the guidance and support is carried out, but this will not be held on the individual's HR file. Guidance on how long records should be kept can be obtained from HR.

Formal action: the Investigating Officer has gathered sufficient evidence for consideration at a disciplinary hearing.

Procedure to Initiate a Disciplinary Hearing

Where, upon completion of an investigation, there are reasonable grounds to believe there is a disciplinary case to answer, the employee will be invited to attend a disciplinary hearing before their department manager or Group Head (not the Investigating Officer) who will be supported by a HR Representative.

The Investigating Officer will be required to submit any evidence they wish to present at the hearing to the relevant HR Officer at least 8 working days before a hearing.

In the event of a disciplinary hearing taking place the Council will:

- a. give the employee a minimum of five working days' notice of the hearing;
- b. notify the employee of the purpose of the hearing, its possible consequences and that it will be held under the Council's disciplinary procedure;
- c. explain the employee's right to be accompanied at the hearing;
- d. give the employee written details of the nature of their alleged misconduct; and
- e. provide to the employee all relevant information/evidence that may be referred to at the hearing.

Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the time and/or date of the hearing will be rearranged. If the employee

is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence unless there are special mitigating circumstances. The employee's companion may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

Where the chosen companion is unavailable on the day scheduled for the hearing, the employee may request that the hearing be rescheduled to an alternative time that is reasonable and within five working days of the scheduled date. In exceptional circumstances agreement can be reached to extend this timeframe.

Role of the Companion

The employee's companion has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The companion may also confer with the employee during the hearing. However, there is no requirement for the Council to permit the companion to answer questions on behalf of the employee, or to address the hearing where the employee indicates they do not wish this.

Recording of Meetings

The Council opts to electronically record disciplinary investigatory meetings and hearings, rather than take written notes which can be open to interpretation or challenge. This is to ensure that information provided is completely accurate. It takes responsibility for making the recording and no other recording devices are allowed. The Council will provide a copy of the disk/s on request to the employee being interviewed. Copies of witness recorded meetings will not automatically be supplied to the employee under investigation and disclosure remains at the discretion of the Investigating Officer. If deemed relevant to the investigation, these disks will form part of the pack of information supplied to an employee attending a disciplinary hearing, unless there are exceptional circumstances.

A copy of the disk from the hearing will be supplied to the employee following the outcome.

In exceptional circumstances, for example where the employee has a hearing impairment, written transcripts of the disks can be arranged.

There may also be exceptional circumstances when it is not possible to arrange for recordings to be made. In these instances, written notes will be taken. The same provisions apply to these as with recorded disks, as outlined above.

The Disciplinary Hearing

A disciplinary hearing will normally be conducted by the employee's department manager or Group Head together with an HR Officer (the panel). Any member of management responsible for the investigation of the disciplinary offence(s) shall not be a member of the panel, although such managers may present any relevant facts and material to the disciplinary hearing.

At the hearing the Investigating Officer will present their findings providing the employee with a full explanation of the case against them. The employee will be permitted to set out their case and answer any allegations. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given the opportunity to raise points about any information provided by witnesses or the Investigating Officer. Where the Investigating Officer or the employee intends to call relevant witnesses, they should give advance notice that they intend to do this and take responsibility for arranging for the witness to be present. The hearing will not necessarily be delayed if a witness is unavailable, postponement will be at the discretion of the Hearing Manager.

It is expected that the employee should have presented mitigating evidence to the Investigating Officer prior to the hearing in order for the Investigating Officer to gather the full facts of the case. However, it is accepted that there may be exceptional circumstances where this cannot happen and therefore the Hearing Manager may allow evidence to be produced on the day if appropriate.

The Hearing Manager may adjourn the disciplinary proceedings if it appears necessary or appropriate to do so (including for the purpose of gathering further information or to enable consideration of evidence that is produced on the day). The employee will be informed of the likely period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with their companion, to consider the new information prior to the reconvening of the disciplinary proceedings.

As soon as possible after the conclusion of the disciplinary proceedings, the panel will convey the decision to the employee and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The employee will be notified of their right of appeal under this procedure.

Disciplinary Action

Where, following a disciplinary hearing, the Council reasonably believes the employee has committed a disciplinary offence, the following disciplinary action may be taken:

- a. Where a minor offence or offences have been committed, a first written warning may be issued. This will:
 - i. set out the nature of the offence committed;
 - ii. inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
 - iii. specify the warning will remain "live", for a minimum period of 6 months but no more than 12 months, after such period the warning will automatically lapse; warning letters will remain on an employee's file for a further 12 months and will then be removed;
 - iv. state the employee may appeal against the warning.
- b. Where a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the Council decides, after taking into account all relevant circumstances, that a lesser penalty is appropriate, or, where an employee commits further disciplinary offences after a first written

warning has been issued and remains "live", a final (or combined first and final) written warning may be given. 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 their dismissal;
 - iii. specify the warning will remain "live" for a minimum period of 12 months but no more than 18 months, after such period the warning will automatically lapse; warning letters will remain on an employee's file for a further 12 months and will then be removed;
 - iv. state the employee may appeal against the warning.
- c. Where a final written warning is given to an employee under b. above, the Council may also impose on the employee:
- i. loss of seniority;
 - ii. Re-deployment to an alternative role including transfer to a job of a lower status, on the terms and conditions of the lower role;

The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

Dismissal

Where an employee has committed further acts of misconduct which cause concern (these being acts of misconduct other than gross misconduct) following a final written warning given under b. above, the organisation may elect to dismiss with notice or payment in lieu of notice.

Where the organisation reasonably believes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed without notice.

Note: Only Group Heads or above can take the decision to dismiss.

Expired Warnings

Expired warning letters will be retained on an employee's file for a period of 12 months after the warning has lapsed as it may be necessary to take account of the warning when considering future conduct, for example establishing a pattern of behaviour or an awareness of the relevant rules. Documentation relating to the expired warning will not normally be retained unless there is a justification for this.

Appeal

An employee may appeal against any disciplinary sanction imposed against them, with the exception of an informal warning.

An employee issued with a formal warning has a right to a one stage appeal process. Employees who have been dismissed have a right to two stages of appeal.

First Stage Appeal

The employee must provide written notice of the appeal to the HR Manager within 10 working days of being informed of the disciplinary sanction being imposed against them. They have the statutory right to be accompanied by a work colleague; trade union official

employed by the union; or a trade union official who is certified in writing by the union as having the necessary experience or training to act as a companion at an appeal hearing.

When lodging an appeal, the employee should state:

- a. the grounds of appeal, and;
- b. whether they are appealing against the finding that they have committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

Appeal hearings will normally take place within 10 working days of receipt of the employee's written notice of appeal. Wherever possible, the appeal will be heard by a Group Head or Director, supported by a HR representative, who has not been involved in the decision to impose the disciplinary sanction on the employee.

The Appeal Manager is obliged to consider any representations, written or otherwise, made by the employee, the employee's companion, those of the manager who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction.

Should any new evidence be introduced on appeal, the employee or management will be given the opportunity to consider it and raise comments at the appeal hearing.

Where the original Hearing Manager or the employee intends to call relevant witnesses, they should give advance notice that they intend to do this and take responsibility for arranging for the witness to be present. The hearing will not necessarily be delayed if a witness is unavailable, postponement will be at the discretion of the Appeal Hearing Manager.

Hearings can be adjourned if it appears necessary or desirable to do so, e.g. to gather further relevant information or when evidence is produced on the day of the hearing. The employee will be informed of the period of adjournment. If further information is gathered the employee and their companion will be allowed reasonable time to consider the new information prior to reconvening the hearing.

Once the relevant issues have been thoroughly explored, the Appeal Manager will decide whether or not to uphold the disciplinary sanction. In the event the Appeal Manager does find for the employee, they shall allow the appeal and remove all records of the disciplinary sanction from the employee's record. In the event the Appeal Manager does not find for the employee, they must uphold the disciplinary sanction. Should they partially find for the employee, the Appeal Manager shall partially allow the appeal and impose a lesser disciplinary sanction.

Upon completion of the appeal, the Appeal Manager will convey their decision to the employee. The decision will be confirmed in writing within 5 working days. If the employee had been issued with a formal warning the Council's decision at this appeal is final.

If the employee has been dismissed, they may refer the matter to a final appeal stage.

Final Appeal

As with the first stage appeal, for the final appeal stage the employee should put the grounds of appeal in writing and send this to HR Manager within 10 working days of receiving the outcome of the first stage appeal. An appeal hearing will be arranged which will be heard by

Members, usually three Councillors (Members Appeal Panel) supported by a HR Representative or an external HR consultant. It will take the same form as the first appeal hearing. The first stage Appeal Manager will be responsible for representing the Council's case. The result will be notified to the employee in writing within 5 working days of the final appeal hearing. The outcome will be final.

As this will be an appeal against a dismissal, the employee will not be entitled to be paid or reinstated (unless they are entitled to notice) between the date of dismissal and the conclusion of the appeal process. In the event however that the decision to dismiss is overturned on appeal, the employee will be reinstated with immediate effect and they will be paid for any period between the date of the original dismissal and the successful appeal decision. Their continuous service will not be affected.

Non-Attendance at a Disciplinary or Appeal Hearing

Where an employee is unable or fails to attend the hearing, it will be adjourned to another date. If the employee is unable to attend the re-arranged hearing it will take place in their absence and a decision will be made based on the information available.

In cases where an employee states they are unfit to attend a hearing they will be referred to Occupational Health. If Occupational Health considers the employee fit to attend, then the hearing will go ahead as planned. In these instances, should the employee fail to attend then the hearing will go ahead in their absence and a decision will be made based on the information available.

If Occupational Health does not consider the employee fit to attend the hearing but could do so in a reasonable time period then the hearing will be rearranged. However, if the employee is not fit and is not likely to be fit to attend within a reasonable period then the hearing will go ahead in the employee's absence.

In instances where the employee cannot or does not attend the hearing their companion can attend and present their case. The employee will also be able to make a written submission to the hearing in such a situation.

Miscellaneous Information

Data protection and Record Keeping

The Council processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its Data Protection policy. In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Council's Data Protection Policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.

Documents will be retained on the employee's HR file and will include the following; the complaint, details of the investigation and the hearing (including any appeals), along with the decision made. This list is not exhaustive. All records will be kept in line with the Council's Data Protection Policy.

Copies of the investigatory report and supporting evidence will be given to the employee. In exceptional circumstances the Council may withhold some information, for example, where information may identify a protected witness under the Whistleblowing Policy and Public Interest Disclosure Act 1998.

Unison Representatives

If an employee who is an accredited representative of a trade union recognised by the Council for collective bargaining purposes is suspected of having committed a disciplinary offence, the organisation will take no action under this procedure (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the organisation has had a chance to discuss the matter, with the prior agreement of the employee, with a full-time official of that trade union.

Criminal Proceedings

Where an employee is subject to criminal proceedings or has been convicted of an offence, this will not automatically instigate the disciplinary procedure. In these circumstances the Council will consider the following factors when deciding whether to take disciplinary action;

- If the Council is brought into disrepute
- If the employee is no longer able to carry out their contractual duties

It is not necessary to wait for the outcome of any prosecution before instigating disciplinary action provided the investigation and subsequent findings are fair and reasonable considering the circumstances of the case. However, where the police request that the Council delays its internal investigation to avoid any hindrance to a criminal investigation, the Council will comply where possible. The police will not conduct any investigation on behalf of the Council nor will they be present at any internal investigatory meeting or disciplinary hearing.

Subject Access Requests

If an employee puts in a Subject Access Request during the disciplinary proceedings this will be dealt with under Councils normal processes for such requests. Disciplinary procedures will not be temporarily suspended while the request is being processed unless grounds are presented to substantiate exceptional circumstances. Any decision to delay the disciplinary process will be taken by the Investigating Officer in conjunction with the HR Manager and their decision is final.

Grievances

Where an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

This procedure will be periodically reviewed. Employees will be informed as to the date when any amendment comes into effect. This may be via the Council's intranet or via email.

Date approved by Joint Consultative Panel: 23 September 2020
Date approved by Full Council:

Conducting a Disciplinary Hearing

The Disciplinary Hearing Manager is responsible for 'chairing' the hearing. The order of the hearing should follow the agenda outlined below;

1. Introductions;
 - Introduce those present and confirm their role at the hearing.
 - Explain the purpose of the hearing.
 - Confirm how the meeting will be conducted.
 - Advise that the hearing will be recorded.
2. State precisely the complaint
3. Investigating Officer to state their case;
 - Present evidence.
 - Employee to ask questions of the Investigating Officer.
 - Questions from the Disciplinary Hearing Manager to Investigating Officer.
 - Call and question witnesses (both the employee (including their representative) and Disciplinary Hearing Manager may ask questions).
4. Employee to state their case;
 - Present evidence.
 - Questions from the Disciplinary Hearing Manager to the employee.
 - Call and question witnesses (both the employee (including their representative) and Disciplinary Hearing Manager may ask questions).
5. The Disciplinary Hearing Manager is given an opportunity to ask further questions of either party.
6. Investigating Officer to sum up their case.
7. Employee to sum up their case.
8. The Disciplinary Hearing Manager adjourns the hearing to make their decision.
9. Employee notified of the outcome and, if any, disciplinary sanctions

Conducting an Appeal Hearing

The Appeal Hearing Manager (1st Stage; Director) or the Members Appeal Panel (2nd Stage) is responsible for 'chairing' the hearing. The order of the hearing should follow the agenda outlined below;

1. Introductions;
 - Introduce those present and confirm their role at the hearing.
 - Explain the purpose of the hearing.
 - Confirm how the meeting will be conducted.
 - Advise that the hearing will be recorded.
2. State precisely what the ground(s) of appeal is/are
3. Employee to state their case;
 - Present evidence.
 - Disciplinary Hearing Manager/Appeal Hearing Manager to ask questions of the employee (1st Stage).
 - Questions from the Appeal Hearing Manager/Members Appeal Panel to the employee.
 - Call and question witnesses (both the employee (including their representative) and Appeal Hearing Manager/Members Appeal Panel may ask questions).
4. Disciplinary Hearing Manager/Appeal Hearing Manager to state their case;
 - Present evidence.
 - Employee to ask questions of the Disciplinary Hearing Manager/Appeal Hearing Manager.
 - Questions from the Appeal Hearing Manager/Members Appeal Panel to Disciplinary Hearing Manager/Appeal Hearing Manager (1st Stage).
 - Call and question witnesses (both the employee (including their representative) and Appeal Hearing Manager/Members Appeal Panel may ask questions).
5. Appeal Hearing Manager/Members Appeal Panel given opportunity to ask further questions of either party.
6. Employee to sum up their case.
7. Disciplinary Hearing Manager/Appeal Hearing Manager (1st Stage) to sum up their case.
8. Appeal Hearing Manager/Members Appeal Panel adjourns the hearing to make their decision.
9. Employee to be notified of the outcome