



Disciplinary procedure

1. Introduction

- 1.1 This procedure aims to ensure a fair process is followed in the management of employee conduct and any disciplinary issues that arise.

2 Informal Procedure

- 2.1 Minor breaches of misconduct should be dealt with by the line manager through a discussion. Early intervention and action are essential to avoid matters escalating and may well prevent the need for future disciplinary action.
- 2.2 The purpose of the discussion is for the line manager to discuss the reason the employee's conduct is unacceptable and ways in which their conduct can be improved.
- 2.3 There may be a requirement at the informal/pre-disciplinary stage to issue a management instruction. The purpose of a management instruction is to advise and assist the employee to improve. Providing guidance or training at an early stage may well prevent the need for future disciplinary action.
- 2.4 In all cases a written record of the advice given, or objectives agreed, should be kept and a copy given to the employee concerned. The advice should include a statement that failure to remedy the conduct could lead to formal disciplinary action being taken.

3. Formal Procedure

- 3.1 The formal procedure will be applied where informal action has failed to achieve the required improvement in conduct or behaviour or the manager considers that the alleged breach of conduct is too serious to be dealt with informally.
- 3.2 Misconduct is classified as follows:
- a. **Misconduct**
A breach of rules, regulations or standards, which may warrant the issuing of a formal warning up to and including a final written warning.
 - b. **Gross Misconduct**
Gross misconduct is an act of misconduct that, if substantiated, is considered serious enough on its own to justify the employee's immediate dismissal

3.3 In certain cases it can be difficult to determine the level of alleged misconduct when the matter is first raised as all the facts of the case may not be known. Managers in conjunction with Human Resources should make a judgement based on the available facts at the time. If at any stage as part of the investigation the misconduct is more or less serious than first thought, the level can be reassessed accordingly. This will be confirmed to the employee in writing.

4.0 The Right to be Accompanied

4.1 In any formal hearings under this procedure an employee has the statutory right to request to be accompanied by a work colleague or Trade Union representative. The Council does not permit family members or legal representatives to be present at any stage of the process.

4.2 Whilst there is no statutory right for employees to be accompanied at a formal investigatory interview, the Council's normal practice is to agree to employees request to be accompanied by a work colleague or Trade Union representative. All parties have a responsibility to be available to move through the process without delays.

4.3 Throughout the formal disciplinary process a representative may address the hearing or meeting to put the employee's case, sum up their case or respond on the employee's behalf to any views expressed at the hearing. They may confer with the employee during the hearing, but do not have the right to answer questions on the employee's behalf.

5.0 Formal Disciplinary process

5.1 Allegation

5.11 Where an issue of alleged misconduct is brought to a manager's attention, the manager should refer to the policy which sets out the management levels authorised to implement the formal procedure and issue disciplinary sanctions up to and including dismissal (as outlined in the Disciplinary policy).

5.12 The Manager nominated to deal with the alleged misconduct will determine the level, in consultation with Human Resources.

5.13 The Manager nominated to deal with the alleged misconduct is responsible for informing the employee (in writing) of the allegation of misconduct.

5.14 In situations where the allegations are made anonymously the manager will deal with the facts as far as they can based on the evidence available at that time.

5.2 Suspension

- 5.21 Where there is an allegation of gross misconduct the Manager should consider whether it is necessary to suspend an employee (on full pay). The Manager should seek advice from Human Resources.
- 5.22 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 the disciplinary hearing, or if there is a potential risk to the Council or other employees. It may also be appropriate for the Council to request that the employee return any Council equipment / property at this time.
- 5.23 The Manager should consider in the first instance whether a transfer to another location and/or if they could conduct an alternative role will be considered, if appropriate, as an alternative to suspension. Managers reserve the right to move employees into alternative roles as an alternative to suspension.
- 5.24 The decision to suspend an employee will normally be taken by the Head of Service/Director. There may be situations where an employee is sent away from the workplace in advance of being formally suspended. This would be in response to situations of risk or concerns where immediate action is required to ensure that the employee does not remain on Council premises. A decision about suspension will be made at earliest opportunity.
- 5.25 The suspension with pay should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that suspension is not an assumption of guilt and is not considered a disciplinary sanction.
- 5.26 Where an employee becomes unfit for work during a period of suspension, normal rules of the occupational sick pay scheme apply and that suspension may be lifted during the period of sickness.
- 5.27 The employee will usually be informed of the decision to suspend in a meeting and will receive confirmation of this (in writing) within 2 working days. It is also appropriate at this stage to confirm any conditions which will apply during the period of suspension, for example, communication channels, requirement to refrain from contacting work colleagues etc.
- 5.28 Annual leave which has already been arranged during a period of suspension will be taken and permission to take additional leave may be sought.

5.29 Medical Suspension

- 5.30 In limited circumstances, the Council may suspend an employee on medical grounds to ensure that the Council as the employer exercises its duty of care to the employee under the Health & Safety at Work Act 1974 and its Regulations and Approved Codes of Practice. Some suspensions on medical grounds will be required in accordance with statutory legislation.
- 5.31 Prior to any suspension, a risk assessment would need to be undertaken to identify the hazards and risks to the employee or their colleagues arising from their continued presence in their workplace. It is anticipated that managers will identify any adjustments to the role or any alternative employment that the employee could undertake prior to determining that the individual should be suspended on medical grounds.
- 5.32 If it is determined that an employee should be suspended on medical grounds they will be advised in writing.
- 5.33 During any period of suspension on medical grounds, the employee will receive full salary. The suspension must be kept under review and managers should seek regular advice from the Occupational Health service.

5.4 Allocation of Support Officer

- 5.4.1 Where an employee is suspended from the workplace the Council will appoint a Support Officer. The role of the Support Officer is to provide a link between the employee and the Council during a period of suspension to ensure any practical issues are dealt with during this time. Please see guidance outlining the responsibilities of the Support Officer.

5.5 Investigation

- 5.51 The nature and extent of the investigation will depend on the seriousness of the matter.
- 5.52 It is not always necessary to appoint an Investigating Officer to undertake an investigation. There may be cases of misconduct where a Manager could gather all the relevant facts in relation to the allegation and could invite an employee and their representative to a disciplinary hearing to allow the employee to respond to the allegation before a decision is made. In such circumstances all information/evidence to be considered at the hearing should be provided to the employee in advance (See 5.7).
- 5.5.3 Where the Manager is a witness to an alleged misconduct they cannot conduct the disciplinary hearing.
- 5.5.4 The decision to appoint an Investigating Officer will be made by the manager who is responsible for conducting any subsequent disciplinary hearing and must be made in consultation with Human Resources.

- 5.5.5 Where the Manager takes the decision to appoint a trained Investigating Officer the employee and their representative will be informed (in writing) and the Investigating Officer will contact the employee to arrange an investigatory meeting. The employee must be given advance warning and time to prepare.
- 5.5.6 The Investigating Officer should be a manager or officer who is considered to be independent and not directly involved in alleged offence. There may be exceptional situations where it is appropriate to appoint an external investigator; these cases must be agreed by Human Resources.
- 5.5.7 Employee must fully co-operate with the investigation and be prepared to attend an investigatory meeting to provide answers to questions, including any mitigation in respect of the allegation. Employees may be represented by a trade union representative or work colleague at an investigatory meeting

5.6 No investigation required

- 5.6.1 In cases where an investigation is not required into the alleged misconduct the Officer (who is dealing with the misconduct) will invite the employee and their representative to a formal disciplinary hearing. Refer to section 5.8. Prior to the hearing the person must have all the evidence given to them.

5.7 Outcome of Investigation

- 5.7.1 Investigations should be conducted as quickly as possible. Timescales may vary depending on circumstances but will normally be completed within **twenty working days**. Where it is not possible to complete the investigation within this timescale the nominated Manager will inform the employee and their representative in writing when the investigation is expected to be completed and should keep the employee informed of progress.
- 5.7.2 If an employee fails to co-operate with an investigation, a decision on whether to proceed to a disciplinary hearing will be made on the basis of the evidence available. In these circumstances the Manager \ Investigating Officer should seek advice on the appropriate way forward from Human Resources.
- 5.7.3 At the conclusion of an investigation the Investigating Officer should produce a report which includes a summary of the case, background/context, key facts, evidence gathered including witness statement and / or other evidence, the mitigation offered by the employee and a conclusion of whether there is a case to answer or not. In cases of gross misconduct Human Resources should always be consulted prior to finalising the Investigation report.
- 5.7.4 The report should include recommendations as to whether there is a disciplinary case to answer on each of the allegation(s).

5.7.5 The Manager nominated to consider the case will be responsible for informing the employee and their representative of the outcome of the investigation within five working days of its conclusion. If there is a case to answer the Manager will invite the employee and their representative to a disciplinary hearing. A copy of the investigation report and any appendices should be sent to the employee and their representative with the invite letter.

5.7.6 The Manager \ Investigating Officer will inform all parties involved that the matter is being dealt with confidentially and that they should not discuss the matter with other colleagues etc. In some circumstances statements may be disclosed.

5.8 Disciplinary Hearing

5.8.1 Employees will be given a minimum of **five working days' notice** prior to the date of the hearing. However shorter notice periods may be agreed with the employee.

5.8.2 An employee who has been invited to attend a disciplinary hearing must take all reasonable steps to attend, including ensuring that any representative (TU rep of work Colleague) is available to attend on the proposed date. Where an employee fails to attend a disciplinary hearing, with no reasonable explanation, the hearing may be held in his or her absence and a decision will be made based on the available evidence. Advice must be sought from Human Resources before a decision to proceed in the employee's absence is taken. Similarly advice should be sought on the options available in respect of an employee who is unable to attend because they are on sick leave.

5.8.3 The employee and representative will be provided with copies of all evidence and other relevant information in advance of the disciplinary hearing.

5.8.4 Please refer to guidance outlining the format of the disciplinary hearing.

5.8.5 The Manager will confirm the outcome of the disciplinary hearing to the employee and their representative in writing normally within **five working days** of the conclusion of the hearing, normally the outcome of a disciplinary hearing will not be given on the day of the hearing

5.9 Disciplinary Sanctions

5.9.1 A number of sanctions are available where the Manager concludes that the alleged misconduct is more likely than not to have occurred (i.e. on the balance of probabilities). The available sanctions are:-

- Recorded Verbal Warning
- First Written Warning;
- Final Written Warning;

- Dismissal.

5.9.2 The nature of the disciplinary sanction imposed will depend on the seriousness of the employee's behaviour. Before imposing any level of disciplinary sanction the Manager should consider relevant details of the employee's employment record including his/her disciplinary record, general work record, work experience, position and length of service.

The table below outlines the time limits of the disciplinary sanctions:

Sanction	Time limit
Recorded Verbal Warning	6 months
First Written Warning	12 months
Final Written Warning	12 months

5.9.3 Dismissal

5.9.4 At the conclusion of a disciplinary hearing an employee may be dismissed where:

- The required improvement as stated in a final written warning is not achieved; or
- Further misconduct takes place during the currency of a final warning - whether or not involving a repetition of conduct which was the subject of a previous warning; or
- It is reasonably believed that they have committed an act(s) of gross misconduct.

Unless dismissal is for gross misconduct, the employee will be dismissed with notice.

Where the Manager takes the decision to dismiss an employee they will state the reason, the date on which the dismissal takes effect and inform the employee of their right to appeal. This will be confirmed in writing to the employee and TU representative within **five working days** of the conclusion of the hearing. Confirmation of the decision to dismiss must notified to the Council's Payroll Team to ensure that pay is stopped as soon as possible.

A final written warning may also be issued or where this is already in place it may be extended for a further period.

5.9.4 Expired Warnings

5.9.5 Where a further act of misconduct occurs, any expired disciplinary warnings under this procedure will be disregarded. However, there may be occasions where an employees conduct is satisfactory throughout the period the

warning is live, only to lapse very soon after. Where a pattern emerges and / or there is evidence of abuse, the employee's disciplinary record should be considered.

- 5.9.6 Further advice on the consideration of spent warnings must be sought from Human Resources prior to issuing any warnings.

6.0 Appeals

- 6.1 The right of appeal is normally to the next level of Manager.
- 6.2 Appeals against dismissal will be heard by a panel chaired by a Strategic Director. Details of the appeals process should be outlined in the outcome letter. Further information is provided in the officer appeals procedure.

7.0 Record Keeping

- 7.1 It is important to keep written records during the disciplinary procedure. Records should include:
- The complaint against the employee
 - The employee's mitigation
 - Findings made and actions taken, including sanctions given
 - Whether an appeal was lodged
 - The outcome of the appeal
 - Any grievances raised during the disciplinary procedure
 - Notes of formal meetings
- 7.2 Records must be treated as confidential and must be kept in accordance with the Council's Records Management Policy and the Data Protection Act 1998.
- 7.3 Copies of meeting records will be provided on request, including copies of any formal minutes that may have been taken. In certain circumstances (to ensure Data Protection is not breached) the employer might redact some information.

8.0 Grievances during a Disciplinary Process

- 8.1 The ACAS Code provides that where an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended, to deal with the grievance when:
- The grievance relates to a conflict of interest that the nominated manager is alleged to have.
 - Bias is alleged in the conduct of the disciplinary hearing
 - The line manager/Investigating Officer has been selective in the evidence they have supplied in the disciplinary hearing.

- There is possible discrimination.

8.2 However, where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. Advice should be sought from Human Resources before determining which approach is most appropriate.

9.0 Criminal Conduct

9.1 All employees are required to declare their criminal convictions. Employees are required to inform their Head of Service if they are charged subject to a police investigation for criminal offence(s) at any time during their employment.

9.2 Any employees who work with children and / or vulnerable adults must inform their Head of Service of any police investigations they are subject to.

9.3 A charge or conviction may result in an investigation / action and could result in disciplinary proceedings being taken against the employee where, in the opinion of the Council, the charge or conviction is such as to affect, or be likely to affect, the suitability of the employee for the position in which he/she is employed, or the business or reputation of the Council, or where the existence of the charge or conviction could, in the opinion of the Council, otherwise seriously undermine the trust and confidence that the Council has in the employee.

10 Police Investigations

10.1 Where a police investigation is underway or court proceedings pending it may not be always be reasonable or practical for the Council to await the outcome of that process before dealing with the matter as a disciplinary process. However, advice should be sought from Human Resources on cases with police involvement.

11 Allegations of Misconduct Involving Children or Adults at Risk

11.1 The Council has a statutory duty under the Working together to Safeguard Children 2015 and Safeguarding Vulnerable Groups Act 2006 to refer any relevant information concerning an individual working with children or adults at risk working in a regulated activity where that person has caused harm or poses a risk of harm to children and/or vulnerable adults to the Disclose and Barring Service (DBS) and where appropriate relevant professional body e.g. HCPC

11.2 The procedure should be used when an allegation is made that an employee has:

- Behaved in a way that has harmed, or may have harmed a child or vulnerable adult
 - Possibly committed a criminal offence against, or related to a child or vulnerable adult; or
 - Behaved towards a child, children or vulnerable adult(s) in a way that indicates they are unsuitable to work with children or vulnerable adults.
- 11.3 Discussion should always take place between the responsible manager and the Council's Local Authority Designated Officer (LADO). In such cases managers are also advised to contact Human Resources for advice. Referrals may also be required to the Council's (CADT) team.

12 Duty to Refer

- 12.1 The Council has a statutory duty to refer to the Disclosure and Barring service (DBS) any relevant information concerning an individual working with children or vulnerable adults in a regulated activity where that person has caused harm or poses a risk of harm to children and/or vulnerable adults.
- 12.2 Where the person who is subject to investigation is registered with the Health Care and Professions Council (HCPC), or other relevant professional body the responsible manager should inform that an investigation is taking place. In such cases, managers should consult Human Resources.
- 12.3 Consideration should also be given to other public bodies that may need to be informed of disciplinary proceedings / outcomes. Examples of this include the Information Commissioner Officer (ICO) for breaches of data protection.