



# **Disciplinary Procedure**

**Policies and Procedures Control Page**

<b>Title</b>	<b>Disciplinary Procedure</b>
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## **DISCIPLINARY PROCEDURE**

### **Introduction**

The Council's Disciplinary procedure is written in accordance with the ACAS Statutory Code of Practice 1 on Discipline and Grievance.

This procedure is to be used where informal action has not achieved the desired improvement or where the misconduct is considered to be serious.

Cases of unsatisfactory performance or incapacity on ill health grounds should be dealt with in accordance with the Council's Capability procedure.

Cases of misconduct during an employees' probationary period or non-confirmation of a probationary period will fall within the Council's Probationary Period procedure.

The following procedure will be applied fairly and consistently in all instances where disciplinary action is regarded as necessary. Every employee has the right to be represented at any point during the disciplinary process.

This procedure applies to all employees except for the Chief Executive, Strategic Directors, Monitoring Officer and Head of Resources.

The Head of Customer Services may substitute an HR Manager where appropriate.

### **Informal action**

In cases of minor misconduct it is normal practice for a manager to discuss any matters of concern with their staff on a day-to-day basis. Such informal discussions will be outside the disciplinary procedure. In many cases the right word at the right time and in the right place may be all that is needed and will often be a more satisfactory method of dealing with unsatisfactory performance or conduct than formal disciplinary proceedings. The aim should be to offer such positive advice; assistance and guidance which will help the employee overcome any shortcomings. In some cases additional training, coaching, mediation and advice may be what is needed.

It may benefit both Managers and employees to keep brief notes of any agreed informal action for reference purposes. There should be reviews of progress over specified purposes.

### **Investigation**

When a potential conduct matter arises, prior to a formal investigation commencing an initial determination of the facts should be made. This needs to be completed as soon as is practicably possible in order to prevent any delay in the process. It is the responsibility of line managers to complete this initial determination. Any physical evidence should be preserved and/or photographed if reasonable to do so. In the case of any suspected financial irregularity the manager must inform the Head of Resources.

If it is determined that a full investigation is appropriate, the member of staff should be informed in writing of the nature of the allegations, by the designated officer.

The designated officer (the person who will chair the proposed hearing and has responsibility for the implementation of this procedure) will appoint a suitably

trained independent person to conduct an investigation in a fair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. Investigating officers will keep an open mind and will also look for evidence which supports the employee's case as well as evidence against.

Employees will be given advance warning of at least 5 working days notice to attend an investigatory meeting. This is to provide the employee with time to prepare and to allow sufficient time for them to arrange representation. All employees have the right to be accompanied and represented by a person of their choice unless it is determined that there is a conflict of interest.

The investigatory meeting will be confined to establishing the facts of the case. Disciplinary action will not be considered at an investigatory meeting.

All investigations must be concluded as quickly as is reasonably practicable. Statements should be taken from witnesses at the earliest opportunity and must include the date, time and place of any observation or incident. Circumstantial evidence such as knowledge of a system and why certain details are memorable will also be useful. The investigator should keep a written record of the investigation. All witnesses must be given an opportunity to correct their statements. Once completed the investigating officer should prepare a report which outlines the facts of the case, details any mitigating circumstances and presents the findings. The investigating officer should not recommend disciplinary action. The report should be submitted to the designated officer who will decide whether further action is required. The designated officer may decide that the allegations are unfounded and that no further action is necessary, arrange for counselling, take informal action or arrange a disciplinary hearing.

## **Suspension**

An employee may be suspended from duty on full pay where there is alleged gross misconduct or where suspension is necessary to enable a thorough investigation or for some other good reason, for example, to allow time for a "cooling down" period for both parties, for their own or others protection or to prevent them influencing or being influenced by others or to prevent possible interference with evidence. Suspension may only be authorised by the relevant Head of Service or Strategic Director in consultation with the Head of Customer Services, or the Chief Executive in respect of the Head of Customer Services. Suspension is not to be implemented without good reason and serious consideration should also be given to temporarily transferring the employee to other work as an alternative. In any case it should be made clear that suspension on full pay is not a form of disciplinary action but rather a stage in the procedure. The continued need for suspension of the employee should be kept under constant review.

Under these circumstances the Council's counselling service should be offered to the suspended employee.

## **Grievance**

The effect of any grievance raised by an employee subject to this procedure, and during the course of its application, must be considered. Depending upon the circumstances it may be appropriate to suspend the disciplinary procedure for a short period or to hear the two concurrently. In every case, HR advice should be sought.

## **Misconduct**

**Ordinary misconduct** may attract a series of warnings which should be aimed at explaining to the employee what the employer regards as unacceptable, how the employee should improve and the likely consequences if they do not improve. An employee should not be dismissed for a single breach of discipline except in the case of gross misconduct.

Below are listed examples of misconduct. This is not an exhaustive list and on all occasions a full investigation must take place prior to the issue of a warning.

- Persistent lateness and poor time-keeping
- Unauthorised absence
- Smoking in non-designated areas
- Failure to observe Council policies and procedures
- Unreasonable refusal to follow an instruction issued by a manager or supervisor.
- Failure to comply with sickness absence procedures

**Gross misconduct** is serious misconduct such that the employer is justified in no longer tolerating the continued presence of the employee at their place of employment. The contract of employment may be brought to an end immediately without notice and without going through the warning procedure. Examples of gross misconduct are given later because it is important that employees should know the kinds of misconduct that would have this result. However, the examples are not intended to be an exhaustive definition of gross misconduct, but illustrate the gravity of offence that will be treated as such.

In the event than an employee commits an act of gross misconduct, the Council will be entitled to terminate summarily the employees contract of employment without notice or pay in lieu of notice.

The procedure does not attempt to define all types of conduct that may be regarded as gross misconduct but some examples are:

- a. Serious or persistent harassment or abuse of any person, whether or not an employee, on grounds of race, gender, sexual orientation, religious belief, age, disability, marital status, working hours, gender reassignment, criminal convictions and responsibility for dependents or deliberate discrimination on such grounds.
- b. Bullying or any form of serious abuse towards, or assault upon, employees, elected members or members of the public.
- c. Deliberately misusing or damaging Council property.
- d. Removing Council property without authority.
- e. Theft, dishonesty or fraud.
- f. Improper completion of time sheets or claims for expenses or overtime.
- g. Gross disregard for the health, safety or well-being of any other person including deliberate damage to, neglect of, or inappropriate use of, safety equipment and any violations of

safety rules and procedures which could give rise to serious consequences.

- h. Being unfit for duty due to the influence of alcohol and/or drugs whilst on duty or consuming these while at work (This excludes prescribed drugs and their possible effect.)  
Please refer to the Alcohol and Substance Misuse Policy for further guidance.
- i. Gross insubordination or wilful disobedience.
- j. Providing false information to support an application for employment.
- k. Breaches of confidentiality or other action seriously prejudicial to the interests of the Council.
- l. Corruptly soliciting or receiving any benefit or advantage from any person or organisation.
- m. Gross disregard of data protection legislation.
- o. Criminal offences committed. However, criminal offences should not be treated as automatic reasons for dismissal regardless of whether the offences are relevant to the individual's employment. The main consideration should be whether the offence is one that makes the individual unsuitable for this type of work. Employees should not be dismissed solely because a charge against them is pending or because they are remanded in custody.
- p. A serious breach of the Code of Conduct for Employees.
- q. Using Council equipment to download, store or distribute pornographic material or the sending and storage of images or text that may be classed as harassing, obscene, racist, sexist, homophobic, or otherwise offensive.
- r. Loss of confidential or sensitive data through negligence and/or loss of important or expensive equipment through negligence.
- s. Persistent or substantial failure to follow the Council's Contracting Procedures and/or the Council's Tender Guide.
- t. Undertaking other paid employment whilst receiving sick pay or other benefits from the Council during a period of sickness or unauthorised absence.
- u. Gross incompetence or gross negligence on a single occasion, or failure to apply sound professional judgement resulting in serious or potentially serious, financial implications, consequences for the safety of visitors and staff or the reputation of the Council.
- v. Bringing the Council into serious disrepute.

## Hearings

If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing by the designated officer. This notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing. The employee should be provided with a copy of the investigating officer's report including copies of any written evidence, which may include witness statements.

In the case of trade union officials, no disciplinary action should be taken until the circumstances have been discussed with a full time official.

The employee shall be given at least ten working days notice of the hearing. Any new allegations should not be introduced at the hearing itself.

The designated officer will notify the witnesses to be on standby for the time and place of Hearing. Both parties should ensure that only those witnesses whose attendance is necessary to the fair conduct of the hearing are called. The employee must send the designated officer at least five working days before the hearing copies of any documents that they intend to rely on and details of any persons who they will ask to speak in their support, including a written summary completed by them of their evidence. The employee shall be given the opportunity to be represented by a person of their choice unless it is determined that there is a conflict of interest.

The representative/companion has a right to:

1. Address the disciplinary hearing to do any or all of the following:
  - a) Put the employees case
  - b) Sum up the case
  - c) Respond on the employees behalf to any view expressed at the hearing.
2. Confer with the employee during the hearing.

However, a representative/companion is not entitled to:

1. Use their rights under points 1 and 2 above in a way that prevents the employer from explaining their case or prevents any other person at the hearing from making their contribution to it.
2. Address the hearing if the employee indicates that they do not wish their companion to do so.
3. Answer questions on behalf of the employee without prior consultation.

Designated officers must consider the use of an interpreter or facilitator if the employee has understanding or language difficulties. This person may need to attend in addition to the companion.

The designated officer must also make provision for any reasonable adjustments to accommodate the needs of a person with disabilities.

Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's representative, colleague or companion

may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed written submissions in such a situation.

### **Order of Proceedings**

1. Opening

The designated officer should begin by explaining how the hearing will be carried out.

2. The complaint

At the hearing the designated officer will explain the allegations against the employee and go through the evidence that has been gathered.

3. Employees right to reply

The employee will be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions and present evidence.

4. Witnesses

The employee is allowed to bring witnesses or witness statements. They will be allowed to question witnesses brought by the Council unless it is decided that this is unreasonable.

5. Summing up

After questioning is completed the designated officer will summarise the main points of the discussion and will ask the employee if they have anything further to say.

6. Adjournment

The designated officer will then adjourn the hearing before a decision is taken about whether a disciplinary penalty is appropriate. This allows time for reflection and proper consideration.

7. More matters come to light

If new matters come to light in the course of a hearing, not being matters which could have been previously raised by the employee, the hearing shall be adjourned to investigate the new facts and the hearing will be reconvened when this has been done.

8. Penalty/sanction

If it is decided that, on the balance of probability, the employee was guilty of an offence, the appropriate penalty will be considered. At the end of the hearing the designated officer should inform the employee of the outcome of the meeting. The outcome of the meeting should then be confirmed in writing to the employee.

## Notes

It is important for an accurate record of a disciplinary hearing to be kept. This does not necessarily have to be a verbatim account, but should consist at least of the key points made by the designated officer, the employee's response, and the action decided upon.

## Warnings

The hierarchy of warnings is not intended to be sequential, but a judgment needs to be made about the level of sanction appropriate to the circumstances.

The letter conveying the warning and its implications should also indicate the nature of the complaint(s) in respect of why the warning is given. The employee should be asked to sign and return a copy to indicate its receipt.

### (a) Stage 1 – First written warning

A first warning for misconduct will be issued if conduct does not meet acceptable standards. This will be in writing and set out the nature of the misconduct and the change in behaviour required and any timescales.

### (b) Stage 2 – Final written warning

If the offence is sufficiently serious, if there is further misconduct or a failure to improve performance during the period of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and any timescale.

### (c) Stage 3 – Dismissal or other sanction

If there is still further misconduct the final step in the procedure may be dismissal or some other action short of dismissal such as demotion.

## Time limits on warnings

Ordinarily, formal disciplinary warnings will be disregarded for any subsequent disciplinary purpose after a specified period of satisfactory conduct. That period which should be stated in the warning letter, will be:

First written warning	12 months
Final written warning	24 months

## Dismissal

In cases where dismissal may be considered, a Designated Officer may dismiss an employee for gross misconduct or where previous warnings about misconduct have proved ineffective.

A Designated Officer may also agree with the employee that the following lesser penalties should be applied as an alternative to dismissal:

- Transfer to a similar post elsewhere or
- Demotion to another post, paid on a lower scale

## **Appeals against disciplinary warnings**

Employees will be advised in writing about their right to appeal against first or final warnings. The letter will detail who the appeal should be addressed to. The employee's notice of appeal shall include a statement in writing of the grounds on which they wish to challenge the decision and must be made within 10 working days of receipt of the warning.

Appeals against warnings shall be considered by a more senior manager than the officer who applied the sanction, the decision of a Strategic Director shall be considered by another Director or other appropriate person.

Appeal hearings for warnings will normally take place within 15 working days of receipt of the employee's written notice of appeal.

If, having heard the appeal, the relevant Appeal Officer decides to uphold the appeal; they may withdraw the warning or replace it with a lesser warning.

## **Appeals against dismissal or other sanction**

Appeals against dismissal shall be considered by members of the Employment Committee in accordance with the Council's Employment Appeals procedure.

The Employment Appeal Panel shall comprise of 3 Councillors. All panel members shall be trained in hearing employment appeals. No panel members shall sit on an appeal where they have had previous involvement in the case subject to that appeal.

The hearing will be heard no later than 30 working days after notice of appeal is lodged unless both parties agree otherwise.

## **Before the hearing for appeals against dismissal or other sanction**

1. The Monitoring Officer shall notify the employee in writing at least 10 working days in advance of the time, date and place of the hearing
2. Either party may be represented if they wish
3. The Designated Officer shall send the employee and the Monitoring Officer, at least 5 working days before the hearing, a note of the disciplinary hearing, copies of any documents which he/she intends to refer, the names of any witnesses to be called and the name of any representative
4. The employee shall send the Designated Officer and the Monitoring Officer at least 5 working days before the hearing, a statement in writing setting out any essential findings of facts with which they are dissatisfied, any documents to which they intend to refer, the names of any witnesses to be called and the name of any representative.
5. The Monitoring Officer shall send the members of the Employment Appeal Panel copies of all documents supplied at least 3 working days prior to the hearing.

### **At the Appeal hearing**

1. The Designated Officer shall put his/her case and may call witnesses, who may be questioned by the employee and the Employment Appeal Panel.
2. The employee shall put their case and may call witnesses, who may be questioned by the Designated Officer and the Employment Appeal Panel.
3. The Designated Officer and then the employee may sum up.
4. The parties shall withdraw while the Employment Appeal Panel, with the Monitoring Officer or his representative present, come to a decision
5. The Employee Appeal panel may uphold the Designated Officer's decision at the appeal or make any other decision (including exonerating or re-instating the employee or issuing a warning) \*
6. When a decision has been reached, the parties shall be recalled and informed of the decision and the reason for it.

Reinstatement of an employee shall negate the previous decision to dismiss and the employee shall be entitled to payment of salary for the period of the original "dismissal."

### **After the hearing**

The proceedings shall be confidential and only the operative decision shall be published or made public in any way. Any decision shall be confirmed in writing, and any confirmation of dismissal shall inform the employee of any rights they may have to complain to an Employment Tribunal of unfair dismissal.

**Designated Officer**

(A) Use of the procedure for Staff below Head of Service Level

In respect of staff below Head of Service level the following officers shall be Designated Officers with authority to apply the sanction specified below:

- a) First Written Warning - Line Manager or more senior officer
- b) Final Written Warning - Head of Service or more senior officer
- c) Dismissal - Strategic Director and Head of Customer Services (Agreement of both is required)

Appeals

Appeals against warnings shall be considered by a more senior manager than the officer who applied the sanction, the decision of a Strategic Director shall be considered by another Director.

Appeals against dismissal shall be considered by the Employment Appeal Panel.

(B) Use of the procedure for Head of Service (Excluding Heads of Resources and Customer Services)

- a) First Written Warning - Strategic Director
- b) Final Written Warning - Strategic Director
- c) Dismissal - Strategic Director and Head of Customer Services

Appeals

Appeals against warnings shall be considered by the Chief Executive.

Appeals against dismissal shall be considered by the Employment Committee.

N.B.:

Where necessary, in the interests of the efficient discharge of the service, the responsibilities of the Head of Customer Services under this procedure may be delegated to another Human Resources Manager of the District Council.

**INVITATION TO ATTEND INVESTIGATORY INTERVIEW**

Dear

I write to confirm that you are required to attend for an investigatory interview\*  
on \* at \*.

\*\*At this interview the question of disciplinary action against you, in accordance  
with the Council's disciplinary procedure, will be considered with regard to  
\*

The names of the investigating officers are

\*\*The purpose of this interview is to investigate the following areas of concern:

a)....

I attach a copy of the Council's Disciplinary procedures.

You are entitled, if you wish to be accompanied by your Union representative or  
any other person of your choice.

Please confirm your attendance accordingly.

Yours sincerely

Appropriate Manager

## APPENDIX C

### DISCIPLINARY HEARING

Dear

I write to confirm that you are required to attend a disciplinary hearing \* on \* at \* . *(At least 10 working days notice)*

At this hearing the question of disciplinary action against you, in accordance with the Council's disciplinary procedure, will be considered with regard to \* *(specify allegations)*

The evidence collected as part of the investigation and which will be considered at the hearing is *(list here)*.

Copies of the information referred to above are enclosed/will be forwarded in advance of the hearing.

The following people will be asked to attend the hearing to give evidence *(list people here)*.

Please ensure that at least five working days before the hearing you;

- (a) Provide to me copies of any documents that you intend to rely on
- (b) Details of any persons who you will ask to speak in your support, including a written summary completed by them of their evidence.

You are entitled, if you wish to be accompanied by your Union representative or any other person of your choice.

Please confirm your attendance accordingly.

Yours sincerely

Appropriate Manager

## APPENDIX D

### STAFF DISCIPLINARY PROCEDURE (SUSPENSION)

Dear \*

In accordance with the staff disciplinary procedure, at our meeting on ..... you were given verbal details of an alleged breach of conduct namely:

As a result you were suspended from duty, on full pay, pending an investigation to assess the circumstances whereby the..... You will be notified of the date, time and place of the investigation and the names of the investigating officers within the next 5 working days.

You are entitled, if you wish to be accompanied at an investigatory interview by your Union representative or any other person of your choice.

In light of the allegations it was considered necessary to suspend you from duty pending the outcome of the investigation. The suspension is not a finding of guilt but I must advise you that depending on the outcome of the investigatory interview, disciplinary procedures may be invoked.

Yours sincerely

Appropriate manager

## APPENDIX E

### DISCIPLINARY HEARING – POTENTIAL GROSS MISCONDUCT

Dear

I write to confirm that you are required to attend a disciplinary hearing \* on \* at \*.  
(At least 10 working days notice)

\*\*At this interview the question of disciplinary action against you, in accordance with the Council's disciplinary procedure, will be considered with regard to \* (*specify allegations*). I must advise you that the allegations, if proven, would amount to gross misconduct and may result in your dismissal.

The evidence collected as part of the investigation and which will be considered at the hearing is (*list here*).

Copies of the information referred to above are enclosed/will be forwarded at least five days in advance of the hearing.

The following people will be asked to attend the hearing to give evidence (*list people here*). Copies of their interview notes are attached/will be forwarded at least five days before the hearing.

Please ensure that at least five working days before the hearing you;

- (c) Provide to me copies of any documents that you intend to rely on
- (d) Details of any persons who you will ask to speak in your support, including a written summary completed by them of their evidence.

The hearing will be chaired by (*Strategic Director*) who will be supported by the Head of Customer Services.

The format of the hearing will be as follows (*specify the process for presenting the case, questions, summing up etc*)

You are entitled, if you wish to be accompanied by your Union representative or any other person of your choice.

Please confirm your attendance accordingly.

Yours sincerely

Appropriate Manager

**STANDARD LETTER**

**NOTICE OF FIRST/FINAL WRITTEN WARNING**

Dear \*

You attended a disciplinary hearing on \* accompanied by your chosen representative/Unison representative\* (name). I am writing to confirm the decision taken that you be given a first written/final written warning\* under the Council's Disciplinary Procedure.

A copy of this warning will be placed in your personal file and will be removed from your file after a period of 12/24\* months from the date of this letter (*or the misconduct was considered so serious in this case that it has been decided that this warning will not be disregarded for the purposes of any future disciplinary action, and accordingly will never be removed from your file.*)

The relevant matters were discussed fully at the hearing and your explanation was taken into account.

\*(for final written warnings mention any mitigating factors raised by the employee and the Council's response to these)

- a) The nature of the unsatisfactory conduct\* or performance\* was:
- b) The conduct\* or performance\* improvement expected is:
- c) The timescale within which the improvement is required is:
- d) The likely consequence of further misconduct\* or insufficient improvement\* is:

You have the right of appeal against this decision (in writing) to..... within 5 working days of receiving this disciplinary warning. Your written notice of appeal should set out the grounds for your appeal.

Please sign and return immediately the attached copy of this communication.

Yours sincerely

APPROPRIATE MANAGER

Note: \* The wording should be amended as appropriate.

Place copies with - The employee's file

- Head of Customer Services

**STANDARD LETTER  
DISMISSAL**

Dear \*

I am writing to confirm the decision taken at the disciplinary hearing held on (insert date) that you would be dismissed with payment in lieu of one weeks notice, in accordance with the Council's Disciplinary Procedure. Your last day of employment will therefore be (insert date).

The relevant matters were discussed fully at the hearing and your mitigating factors as detailed below were taken into account:

(List)

Having considered the evidence the following findings have been made:

(List)

The reasons for your dismissal were (insert reasons)

You have the right of appeal against this decision in writing to (insert name and job title) within ten working days of receiving this notice of dismissal.

Yours sincerely

Appropriate manager