

Disciplinary Procedure

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1. Introduction

This procedure is designed to help and encourage all colleagues to achieve and maintain high standards of conduct. The disciplinary policy and procedure apply to all colleagues with the aim to ensure consistent and fair treatment for all.

These rules have been agreed following consultation with the GMB and Unison trade unions.

2. Disciplinary procedures

2.1 Ordinary (minor) misconduct

For ordinary or minor misconduct, the colleague's manager/supervisor will decide if the problem can be resolved informally or whether a formal approach is required. Examples of areas of minor misconduct are:

- timekeeping
- absence
- unauthorised use and/or abuse of facilities • personal appearance.

These concerns will be dealt with by a discussion with the colleague, listening to their point of view, agreeing improvements to be made and setting expectations of appropriate behaviour. Where appropriate advice and guidance may be issued by the manager/supervisor to set out the expectations and timescales.

2.2 Formal procedure

Where informal action has been taken and no significant improvement seen in the agreed timeframe or manner, if behaviour falls below expectations again or more seriously in the first instance, the formal procedure should be followed.

Alleged misconduct warranting the use of the formal procedure may be a failure in personal conduct or contravention of the council's policies, procedures or rules. Some examples include the following:

- minor breaches of your contract
- minor breaches of policies (including the Absence Management policy, IT Information Security Policy and Health and Safety Policy)
- damage to, or unauthorised use of, council property
- time wasting
- unauthorised absence from work

- refusal or failure to follow reasonable management instructions
- excessive private use of council telephones or other information and communication systems
- excessive personal e-mail or internet usage
- obscene language or other offensive behaviour, this may be face to face or in a virtual situation
- negligence in the performance of your duties
- health & safety breach
- smoking in no-smoking areas whilst on council premises.

The above list is intended as a guide and is not exhaustive.

When a manager intends to implement the formal disciplinary procedure, the colleague will be notified of this in writing by the manager as soon as reasonably possible after making the decision. The notice will include the allegations against the colleague and that an investigation into them will take place and by whom.

3. The Investigation

The investigation must be conducted without unreasonable delay in all the circumstances. The investigating officer will be an appropriate person, appointed to conduct an impartial investigation. Managers may consider a person from another department where appropriate. Should further action be required, where possible a more senior officer should carry out any subsequent hearing.

The investigator must:

- hold investigation fact finding meetings with the colleague and witnesses if appropriate
- gather evidence from all sides
- establish the facts
- decide if there is a case to answer
- consider if a safeguarding referral should be made
- ensure everyone is treated fairly and BCP policies are followed
- submit a written Investigation report to the investigation commissioning manager.

3.1 Preparing for an investigation

The investigating officer will be required to prepare a plan of action for the investigation, stating exactly what needs to be investigated, who will be interviewed and when, ensuring the disciplinary policy is followed and a full and fair process is carried out.

3.2 Inform the colleague of an investigation interview

The colleague must be given advance notice of the meeting in writing and time to prepare.

The notice should include:

- details of the allegation/s being made
- an outline of the process to be followed
- details of the investigation interview to be held with the colleague
- information of the colleague's entitlement to be accompanied at investigation meetings, this is not a statutory right for fact finding investigations

Note: The investigation meeting is a fact-finding meeting and not a disciplinary hearing, no disciplinary sanction may be issued unless under specific circumstances. Fact finding meetings and interviews may not be audio-recorded, any unauthorised recording may

constitute gross misconduct and potentially information governance breaches, which could lead to disciplinary action.

Should the colleague choose to be accompanied (this is not a statutory right for the initial meeting or interviews) it is up to the colleague to arrange the person to attend the meeting. However, investigation meetings will not be unnecessarily delayed due to a colleague's companion not being available to attend the meeting.

Following the investigation interview the colleague will be given a copy of the interview notes and asked to acknowledge that it is a true reflection of the meeting held.

The investigating officer does not make the decision on whether a disciplinary hearing should be held, this is a decision made by the manager who commissioned the investigation or potential chairperson (which could be the same more senior manager) based on the report from the investigating officer.

The colleague must be informed of the commissioning manager or chairpersons' decision, this is to inform the employee if the case will proceed to a disciplinary hearing.

3.3 Reasonable adjustments

Employers must make reasonable adjustments to ensure workers with disabilities, or physical or mental health conditions, are not substantially disadvantaged. If the colleague or their companion require reasonable adjustments during a hearing or investigation meeting these must be considered and accommodated where possible.

Some conditions are not obvious such as a sight or hearing impairment, language or understanding barrier, it is good practice to ask the colleague at an early stage of the process if any adjustments are required, equally it is the responsibility of the colleague to make the investigator or chair of a hearing aware of any needs they may have. This may be done through the human resources advisor supporting the process.

4. Suspension

There may be occasions such as in allegations of gross misconduct where the suspension of a colleague is necessary while an investigation is carried out. In such circumstances the following will apply:

- Suspension of a colleague is not a disciplinary sanction and other alternatives such as temporary redeployment in their own or another service will be considered with the service having the final say with no further right of appeal.
- The colleague will be verbally informed of the suspension by the manager and will receive written notification of the same. The colleague will cease work immediately upon being informed of the suspension.
- Colleagues will receive their full pay and benefits during a period of suspension, if a suspended colleague becomes unwell and signed off from work payment will revert to contractual sick pay.
- Suspension should be kept as brief as possible, although allowing for a thorough investigation to be carried out.
- The suspension must be regularly reviewed, and the colleague kept informed of progress.

- Suspension would usually only be considered if there is a serious allegation of misconduct potentially amounting to gross misconduct or is necessary to ensure a fair investigation may be carried out.
- Suspension may be considered in the event of a safeguarding referral.

When considering suspending a colleague, a risk assessment must be carried out prior to a decision. Are there reasonable grounds to believe that the colleague may seek to tamper or destroy evidence, influence witnesses, or sway an investigation? Have relationships broken down to a point that there is a risk to colleagues, property, customers or to business interests by the colleague remaining at work? Have all reasonable alternative options to suspension been considered?

Suspension can leave the colleague feeling prejudged, demotivated, and devalued; therefore, it should only take place after careful consideration. It is often the case that colleagues will be required not to contact other potential witnesses during the investigation.

The colleague should be reassured that a fair procedure will be followed, and that suspension is not an assumption of guilt or a disciplinary sanction. Some individuals may find suspension extremely distressing and support should be offered in the form of the Employee Assistance Programme (EAP) or allowing them to ask a colleague for support. Whilst suspended the colleague will not have access to council premises or contact with colleagues involved in the investigation, to this end someone will be appointed as the colleague's point of contact who the colleague may speak to for updates and raise any concerns via their manager. Contact should be made by management throughout the suspension at regular intervals. Supervised access to council IT systems may be granted to support the colleague with their case.

5. The Disciplinary Hearing

Where there is a case for the colleague to answer, the colleague will be invited to a disciplinary hearing in writing by the relevant manager, where there will be an opportunity for the colleague to hear in detail the allegations and associated evidence, and allow them to respond.

5.1 Preparing for the hearing

The hearing should be held as soon as is reasonably possible after the investigation has been completed. The colleague will be invited to the hearing in writing (email communication is acceptable) stating the following:

- the alleged misconduct with specific details for the colleague to prepare their response
- the date, time and venue of the hearing and names of those to be present at the meeting
- information regarding the colleague's right to be accompanied at the hearing
- any other information that will be discussed
- possible outcomes of the hearing
- the 'bundle' of documents to be used at hearing and any evidence from the investigation. If there is a delay in preparing the bundle due to the complexity of a case, the draft index can be shared with the colleague for comments and suggested additions.

5.2 Right to be accompanied

Colleagues have the right to representation in the hearing, this can be one of the following:

- a colleague from the council
- a trade union representative certified as a trained companion
- a trade union official.

The chairperson must be informed if a colleague will be represented and who this is, if it is a colleague, their attendance may need to be agreed in advance with the representative's manager.

The colleague's representative should be allowed to:

- set out the colleague's case
- respond on the colleague's behalf to any view expressed at the hearing, however is not able to answer direct questions to the colleague being interviewed
- talk to the colleague during the hearing
- sum up the case on behalf of the colleague
- and take their own notes.

However, the representative may not:

- answer questions on behalf of the colleague
- address the hearing if the colleague indicates they do not wish them to do so
- prevent the colleague or witnesses from explaining their case or contributing.

6. The Hearing

A meeting is arranged with the following members:

- a chairperson – usually a more senior manager than the investigating officer, this is not always possible, though the chairperson should not have been involved in the investigation process
- a human resources advisor - to advise on process and consistency
- the colleague concerned
- any relevant witnesses
- colleague's representative – trade Union
- a notetaker, with the permission of all parties' recordings may be considered, and only where the colleague alone is not responsible for the audio recording. No transcript will be produced by the council for use of the colleague. The recording may be used to assist the note-taker to make a final draft for accuracy but that the official record of the meeting will be the notes taken at the hearing even where it may be recorded.

The meeting is a formal hearing, the chairperson will outline the meeting format and be supported by a representative from human resources.

Referring to the written invitation to the hearing, the chairperson will read out the allegations to be considered.

The investigating officer will be available to be called and answer questions if needed. Witnesses may be called (with good notice) to assist or clarify any points that were raised or discussed during the investigation meetings.

The colleague will have the opportunity to present their case and respond to the allegation, ask questions, show evidence, and respond to any information given by witnesses. The chairperson will have the opportunity to ask questions or clarify any points made or raised.

After the case has been presented and summed up the chairperson will adjourn the hearing to consider the evidence. Following consideration of the evidence the hearing will be reconvened and if the chairperson was able to arrive at a finding it will be conveyed verbally to the colleague. If additional time is required to make the finding and/or the chairperson wants to investigate part of the evidence in more detail the colleague will be informed of this.

A timescale will be confirmed with the colleague and their companion as to when the decision will be confirmed in writing at the agreed outcome date.

7. Disciplinary outcomes

The scheme of delegation for the council must be referred to when arranging for the appropriate level of manager to carry out investigations or chair hearings. Heads of service and line managers may be authorised to carry out disciplinary proceedings.

7.1 First written warning - for misconduct or 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, the timescale and right of appeal. The warning will also inform the colleague that a final written warning may be considered if there is no sustained satisfactory improvement or change. A record of the warning will be kept, but it will be disregarded for disciplinary purposes after a specified period (e.g. 12 months).

7.2 Final written warning - if the offence is sufficiently serious, or if there is further misconduct during the currency of a warning (whether connected or not), a final written warning may be issued to the colleague. This will give details of the misconduct, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this written warning will be kept by the supervisor but will be disregarded for disciplinary purposes after 12 months subject to achieving and sustaining satisfactory conduct or performance, should however the colleague at a later date face allegations of the same or similar nature which are subsequently proven at a disciplinary hearing the fact that the colleague has an expired warning for the same or similar allegation will be taken into account in determining the appropriate penalty.

Whilst any live disciplinary warning is in place the colleague will not be eligible to receive the annual pay progression increment to their salary. Upon expiry, a pay progression increment can be paid in accordance with the colleague's salary band and will be effective from the 1st month after the disciplinary warning has expired. This will not be backdated.

7.3 Dismissal or other sanction- should an offence be classified as gross misconduct or if there has been further misconduct following a final warning, the final step in the procedure may be dismissal or some other action such as demotion or disciplinary suspension or transfer of post. Dismissal decisions can only be taken by the appropriate senior manager, and the colleague will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal. If the offence is not one of gross misconduct and some other sanction is imposed, the colleague will receive details of the misconduct, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy of the sanction will be kept by the supervisor but will be disregarded for disciplinary purposes after 18 months subject to achievement and

sustained satisfactory conduct, except that the fact of the warning and its effect on any mitigation offered in the future may be considered.

No colleague will be dismissed for a first breach of discipline, except in cases of gross misconduct. In the event of a dismissal please refer to the leavers policy.

7.4 Gross misconduct

The following list (not exhaustive) provides some examples of offences which are normally regarded as gross misconduct:

- theft, or unauthorised removal of our property or the property of a colleague, contractor, customer, or member of the public
- fraud, forgery, or other dishonesty, including fabrication of expense claims and time sheets
- physical violence or bullying
- non-compliance with legislation regarding 'protected' characteristics
- deliberate and serious damage to property, or the property of a colleague, contractor, customer, or member of the public
- serious misuse of our property or name
- deliberately accessing internet sites containing pornographic, offensive, or obscene material
- using another device to covertly record information or discussions in meetings without seeking permission from all parties
- serious insubordination: serious failure to obey instructions
- unlawful discrimination, harassment, or victimisation.
- bringing the organisation into serious disrepute.
- serious incapability at work brought on by alcohol or illegal drugs
- being under the influence of alcohol, illegal drugs, or other substances during working hours
- causing loss, damage, or injury through serious negligence
- serious breach of health and safety rules or serious misuse of safety equipment
- Serious breach of confidence, unauthorised use, or disclosure of confidential information
- failure to ensure that confidential information in your possession is kept secure
- accepting or offering a bribe or other secret payment
- accepting a gift from a customer, supplier, contractor or other third party in connection with your employment
- conviction of a criminal offence that in our opinion may affect our reputation and your suitability to continue to work for us
- possession, use, supply, or attempted supply of illegal drugs
- serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures
- knowing breach of statutory rules affecting your work
- refusal to disclose any of the information required by your employment
- giving false information as to qualifications or entitlement to work
- knowingly taking parental, shared parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child
- making a disclosure of false or misleading information under our whistleblowing policy maliciously, for personal gain, or otherwise in bad faith

- raising a grievance or making untrue allegations in bad faith against a colleague
- serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of e-mail and the internet contrary to our Information security policy)
- undertaking unauthorised paid or unpaid employment during your working hours, or whilst signed off sick

This list is intended as a guide and is not exhaustive.

If, on completion of the investigation and the full disciplinary procedure, the council is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

8. Appeals

Every colleague has the right to appeal against a disciplinary decision at any stage of the formal disciplinary process. Please refer to the appeal procedure (this can be found on the intranet, HR hub).

9.0 Probationary period

Colleagues with fewer than 6 months' service, and/or those who are still within a notified probationary period, will be subject to regular reviews of progress. Minor misconduct will be managed through probation reviews, gross misconduct will be considered under the disciplinary policy, an investigation will be carried out which could lead to a disciplinary sanction, including dismissal.

10.0 Statutory reporting duties

In some specific cases the council has a statutory duty to report disciplinary action against its colleagues to outside bodies. This includes a responsibility to notify:

- The Disclosure and Barring Service if the council dismisses a colleague who is employed in a regulated activity or removes them from undertaking a regulated activity. This includes where such a colleague resigns pending a disciplinary action might have been dismissed.
- The Health and Care Professions Council or Social Work England where a colleague who is required to register with these bodies is subject to disciplinary procedures and or raising a 'fitness to practice' concern.