

Appendix 1

Draft - Disciplinary Procedure

1.0 Introduction

- 1.1 The aim of this procedure is to support and encourage all our employees to achieve and maintain standards of conduct, and behaviour. The Council will use this procedure to support employees in making improvement where standards fall below acceptable levels. However, there will be cases where there will be no option but to impose formal disciplinary action. This procedure has been designed to ensure that all disciplinary matters are dealt with in a fair, transparent, reasonable and consistent manner.
- 1.2 The best way to handle disciplinary matters is to prevent them occurring in the first place. Managers are responsible for communicating clearly with employees so that they are aware of the standards that are expected of them, and the policies, procedures and guidelines that they should follow. Employees are responsible for maintaining those standards and complying with the Council's policies, procedures and guidelines. Both managers and employees should raise promptly any issues or concerns.
- 1.3 Minor misconduct is usually best dealt with informally and promptly. However, where matters are more serious or are not resolved through an informal approach then this procedure should be used. A record of the informal discussion may be made which the employee should be asked to sign and be provided with a copy.

2.0 Alternative Procedures

- 2.1 Health related issues will normally be dealt with under the Attendance Management Policy. Capability issues refer to the skills, knowledge and aptitude of an employee and where this can be clearly distinguished from their conduct or misconduct the matter will be dealt with under the Capability procedure. If this distinction can not be clearly made the matter should be considered as a disciplinary issue.
- 2.2 The Council may determine in respect of an issue that it will be considered under an alternative procedure, where it considers it appropriate to do so.

3.0 General Principles

- 3.1 Managers must deal with disciplinary issues promptly and must not unreasonably delay investigations, meetings, decisions or the confirmation of decisions.
- 3.2 No disciplinary action will be taken against an employee until the case has been fully investigated. Unless it is not practicable different people should carry out the investigation and disciplinary hearing.

- 3.3 When an employee is requested to attend a disciplinary hearing, they will be fully informed of the nature of any allegation(s) made against them in writing and provided with the supporting documentation, where appropriate. They will be given the opportunity to state their case before any decision is made at a disciplinary hearing.
- 3.4 At all stages of the procedure the relevant employee will have the right to be accompanied by a Trade Union representative or a work colleague of their choice.
- 3.5 The procedure may be implemented at any stage if the employee's alleged misconduct warrants this. However, no employee will be dismissed for a first breach of discipline, **except in the case of gross misconduct**.
- 3.6 After consideration of all of the facts, a decision may be taken to extend the period that a formal warning will remain "live". This will be dependent on the individual circumstances and will be confirmed in writing to the employee.
- 3.7 An employee will have the right to appeal against any disciplinary action.
- 3.8 If the employee concerned is a trade union representative, before any formal disciplinary action is taken, the case will be discussed with a trade union full time official after obtaining the employee's agreement.

4.0 Suspension

- 4.1 There may be instances where suspension is necessary whilst investigations are carried out. For example in gross misconduct cases, where relationships have broken down, or where there are risks to an employee's or the Council's property or its responsibilities to other parties. Suspension is not a form of disciplinary action. It is intended to allow a full and fair investigation of the circumstances to take place. Suspended employees will receive full pay.
- 4.2 The decision to suspend will be taken by a Chief Officer, after consultation with the Director of Human Resources and Organisational Development (HR&OD), or their authorised officers, taking in to account the individual circumstances known to the Chief Officer (or their authorised officer) at that time. Shift workers and night workers may be suspended with pay only until such time that a Chief Officer (or their authorised officer) becomes available to take the decision to suspend.
- 4.3 Wherever possible the Chief Officer (or their authorised officer) will consider alternatives to suspension such as a temporary relocation. The period of suspension should be kept as brief as possible and should be reviewed periodically.
- 4.4 The suspension will be confirmed in writing, stating, in broad terms, the reason for the suspension. During suspension employees will be allocated a contact person and will be required to return Council property during their period of suspension e.g. security passes, ICT equipment and their access to work email and the network may be removed. Suspended employees must not report to

the workplace or discuss the case with colleagues, service users, with the exception of the contact person without the prior consent of the Chief Officer (or their authorised officer). Doing so could be considered as potential gross misconduct.

4.5 Employees must make themselves available for investigatory meetings. Failure to follow the terms of suspension may result in the suspension continuing on an unpaid basis.

4.6 If a suspended employee is certified as sick during the period of suspension and the employee is entitled to sick pay, their pay at any time during the suspension must not exceed their normal full pay.

5.0 Criminal Offences

5.1 Where it appears that an employee may be or may have been involved in an act or activity that may be a criminal offence, the manager should contact the HR&OD service, who will advise how to proceed.

6.0 Investigation

6.1 Investigations of potential disciplinary matters will be carried out by an appropriate manager without unreasonable delay in order to establish the facts and determine if any further action is required. An investigatory meeting will not of itself result in disciplinary action. A representative from HR&OD will normally support the investigation; however HR&OD may not always be in attendance at the investigatory meetings.

6.2 Whenever any financial irregularity is suspected the Council's Financial Procedure Rules and the Council's Anti Fraud and Corruption Policy require that the Council's Internal Audit team are informed, who will decide whether the Directorate should undertake an investigation.

6.3 Investigatory meetings are used to gather facts and evidence to confirm or reject an allegation(s). In some cases this may involve an investigatory interview with the employee against whom the allegations have been made and any potential witnesses. Employees can be accompanied by a trade union representative or a work colleague of their choice. In advance of the investigative meeting, the employee should inform the relevant manager of who will be accompanying them. On occasion, it may be reasonable to request that the employee chooses another person to accompany them at the meeting, for example, if the person chosen may prejudice the process.

6.4 In other cases the investigatory stage may be the collation of evidence to be used at a disciplinary hearing.

6.5 The investigating officer will produce a report describing the facts of the matter and conclusions, as appropriate. The employee will be informed of the outcome of the investigation.

7.0 Disciplinary Hearing

- 7.1 If it is determined that an employee should be required to attend a disciplinary hearing employees will receive at least 5 working days notice of the Disciplinary Hearing. The employee will receive notification in writing of the full allegation(s), given copies of the documentary evidence to be used at the hearing and notified of their right to be accompanied by a trade union representative or an appropriate work colleague. An employee under 18 years of age shall also have the right to be accompanied by their parent(s) or legal guardian(s).
- 7.2 The letter of notification will state if it is considered that a potential outcome of the hearing may be summary dismissal or dismissal for repeated misconduct.
- 7.3 If the employee advises that they cannot attend on the given date the hearing will normally be rescheduled within 5 working days of the original date at a mutually convenient time. Where a date has already been rescheduled at the employee's request and they request a further rescheduled date, depending on the individual circumstances, they may be advised that the hearing will proceed in their absence on the date given if they do not attend.
- 7.4 During the hearing the employee will be given every opportunity to state their case, present a written statement (should they wish to do so), ask questions, call witnesses and present evidence.
- 7.5 The role of the person accompanying the employee is not to answer questions on behalf of the employee, however, they will be allowed to make an opening statement, take notes, ask questions to clarify issues, ask for reasonable adjournments, and make a closing statement.
- 7.6 If an employee is formally disciplined, they will receive a written explanation of the decision taken and the reasons for this decision. Except where the outcome is dismissal, the employee will also be informed of any improvements expected and advised that any further incidents of misconduct or failure to improve will result in further disciplinary action being taken, which could result in dismissal. The employee will also be notified in writing of the right to appeal against the decision.

8.0 Disciplinary Action

- 8.1 The possible outcomes following a Disciplinary Hearing include:
- No formal action (informal action may be taken)

Formal Stages of Procedure

- First written warning
- Final written warning
- Dismissal or action short of dismissal

These outcomes should not be seen as a stage by stage process. Depending on the degree or nature of the misconduct, the decision may be to conclude that any one of the outcomes is appropriate.

8.2 Informal Action

Informal action will be considered where appropriate to resolve problems. Issues of concern should be discussed and, as necessary, methods to resolve the issues identified and targets set, with timescales, so that the employee fully understands what improvements are required, by when and the potential consequences if these improvements are not made. A record of the informal action taken should be made, which the employee should be asked to sign and be provided with a copy.

8.3 Formal Action - Stage 1 - First Written Warning

If conduct or behaviour is unsatisfactory, the employee will be given a written warning. The warning will be considered to be disregarded for disciplinary purposes after 12 months satisfactory conduct.

8.4 Formal Action - Stage 2 - Final Written Warning

If the matter is sufficiently serious or there is further misconduct or a failure to improve conduct or behaviour whilst the prior warning is still "live", a final written warning may be issued. The warning will be considered to be disregarded for disciplinary purposes after 12 months satisfactory conduct.

8.5 Formal Action - Stage 3 - Dismissal with Notice or Action Short of Dismissal

If the behaviour or conduct has failed to improve, the employee may be dismissed with notice. Action short of dismissal is at the Council's discretion and may involve a compulsory transfer to another post or location and/or demotion. Such action may also be combined with the issuing of a Final Written Warning.

Employees will not be dismissed for a first disciplinary breach, other than in cases of gross misconduct.

8.6 Summary Dismissal

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice, or pay in lieu of notice, for a first offence. A fair disciplinary process, including a full investigation, should always be followed before dismissing for gross misconduct. Examples of potential gross misconduct are provided in Appendix 1.

9.0 Right of Appeal

9.1 The employee will have the right to appeal against any formal Disciplinary Action. If an employee wishes to appeal this must be in writing and received by the appropriate Chief Officer within 10 working days of receipt of the outcome letter and should provide in brief the reason for the appeal. An Appeal Hearing will then be arranged. The employee will be invited to the Appeal in writing, which will include notification of their right to be accompanied by a trade union representative or an appropriate work colleague and any relevant documentation which will be provided to the Appeal Panel.

- 9.2 For disciplinary warnings or transfer, the Appeal will be heard and determined by a Chief Officer (or their authorised officer), advised by the Director of HR&OD (or their authorised officer).
- 9.3 In cases of dismissal or demotion, the Appeal will be heard and determined by a Chief Officer (or their authorised officer), after consultation with a Cabinet Member, and advised by the Director of HR&OD (or their authorised officer).
- 9.4 The chosen panel for the Appeal will, wherever possible, not previously have been involved in the specific disciplinary process, so that an independent review of the decision can be made. The decision made at the Appeal will be confirmed in writing to the employee and will be final with no further internal right of appeal.

10.0 Obligations in respect of External Bodies

- 10.1 There is a legal requirement for the Council to make a referral to the Disclosure and Barring Service (DBS) where it is believed that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child or vulnerable adult or if an individual otherwise poses a risk of harm to a child or vulnerable adult.
- 10.2 In such circumstances, the duty to refer an individual to the DBS arises where the Council has removed the individual from relevant work with children or vulnerable adults or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so (e.g. resigned).
- 10.3 There are other situations where a referral to the DBS may also be made, for example, if following an internal investigation there is insufficient evidence to show relevant conduct occurred, but it is considered that the risk of harm to a child or vulnerable adult exists.
- 10.4 The DBS will consider whether to bar the person from working in regulated activity.
- 10.5 This Council has a statutory duty to make reports, and to provide relevant information to the DBS. Referrals should be made as soon as possible after the resignation or removal of the employee involved. The Chair of the hearing is responsible for actioning this referral through the appropriate procedures. HR&OD can provide advice.
- 10.6 Where an employee is subject to formal disciplinary action, the Council will consider if it has any obligations as an employer in relation to any external regulatory or professional authorities/bodies, and make a referral if it is considered appropriate to do so.

Appendix 1

Gross misconduct

Gross misconduct is conduct by an employee of such a nature that it fundamentally breaches the contract of employment and leaves no trust or confidence in the employee. The following list provides some examples which are normally regarded as gross misconduct:

- Theft, fraud, corruption or embezzlement in relation to their employment.
- A serious breach of trust or confidence in employees, which may arise because of their actions in relation to their employment or their actions outside of work.
- Physical violence or serious cases of bullying or harassment.
- Deliberate and serious damage to property.
- Serious misuse of the Council's property, name or resources.
- Falsification of time records, travel, subsistence and expenses claims etc.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- Serious insubordination.
- Unlawful discrimination or harassment.
- Bringing the Council into serious disrepute.
- Where an employee is charged with a criminal offence inconsistent with their position.
- Serious incapability at work brought on by alcohol or illegal drugs.
- A serious breach of health and safety rules.
- Causing harm to, or placing at risk of harm, a child or vulnerable adult;
- Failing to abide by the General Social Care Council Code of Practice;
- Sleeping at work, except where authorised to do so;
- Causing loss, damage or injury through serious negligence.
- Sexual offences and sexual misconduct at work.

This list is not exhaustive therefore it does not preclude the possibility of dismissal for other offences of similar gravity not specified.

