



Disciplinary Policy & Procedure

Policy Statement

The Council seeks to ensure that lawful, fair and effective arrangements exist for dealing with employee conduct and disciplinary issues.

This policy provides a framework for making employees aware of unacceptable conduct and for developing ways of correcting any such issues whenever possible.

Appendix 1 sets out the process to be undertaken when any concerns about conduct arise.

Objectives

The objectives of this policy are to ensure that:

- The Council meets all relevant legal requirements regarding any disciplinary decisions it takes in relation to employees.
- Employees are treated in a fair and consistent manner in relation to conduct and disciplinary issues.
- Managers are supported in carrying out their responsibilities for the maintenance of high standards of conduct of all Council employees and that standards of conduct of individual employees are improved, wherever necessary and practicable.
- The Council, its employees, clients, the public and recipients of Council services are protected from the consequences of misconduct by ensuring prompt action is taken where there are concerns.

Principles

At all stages in the Council's disciplinary procedure, employees will be:

- informed of the nature of the issue(s) of concern or case against them;
- given a chance to offer an explanation before any decision is taken;
- given the right to be represented by a Council work colleague or a recognised; trade union representative or official, at any formal meeting or hearing;
- given reasonable notice of any formal meeting or hearing as outlined below;
- notified of the outcome of any formal meeting or hearing in writing;
- given a right to appeal against formal disciplinary action; and
- confident the Council will comply with its obligations to disabled employees under the Equality Act in terms of reasonable adjustments.

- treated with dignity and respect at all times;
- recognised to be in a situation of potential stress/anxiety and be treated accordingly;
- confident they will not be judged "guilty" in advance of the conclusion of the process;
- confident of confidentiality of communication; with access to such, by others, limited; and
- confident the process will be carried out speedily and without undue delay.

Standards of Conduct

All Council employees have a contractual responsibility to be aware of and conform to the Council's values, rules, policies and procedures and to co-operate with any investigations, to attend any meetings, interviews and hearings convened in accordance with this policy. Council employees are expected to maintain standards of conduct both at work and outside of work. The following examples of misconduct are intended to help employees understand the standards required by the Council. The Council's Code of Conduct (and relevant professional Codes of Conduct) expands further on some of these standards. This list of examples is illustrative and not exhaustive (see also Note i), below).

- Deliberate provision of false or misleading information, e.g. on application forms, provision of statistics, performance indicators, records of working time etc.
- Breaches of the Council's Information Management Policy (including Data Protection).
- Failure to wear or use appropriate equipment/attire made available or necessary for the job (including safety equipment unless exempted on the grounds of religion or belief following a risk assessment).
- Unauthorised absence, poor timekeeping.
- Failure to comply with sickness absence procedures and Sickness Absence Policy.
- Falsification of official accounts or documents e.g. travel sheets, expense claims.
- Incapacity at work, due to the effects of alcohol or non-prescribed drugs.
- Physical violence, indecent behaviour, action or language that is likely to cause offence, including racial, religious or sexual abuse.
- Harassment, bullying or victimisation of others, including racial, religious or sexual intimidation or prejudice of other employees or members of the public.
- Disruption of others by unruly or disorderly behaviour.
- Discourteous or improper treatment of others, e.g. the public, colleagues, Members, service users, partner organisations.
- Acceptance of bribes or involvement in similar corrupt practice.
- Lack of integrity that may damage public confidence in the Council.
- Unauthorised employment, e.g. engaging in unauthorised employment during hours when contracted to work for the Council, or engaging during off-duty hours in employment considered detrimental to the interests of the Council.

- Political activity whilst occupying a politically restricted post (e.g. acting as a party election agent or sub-agent, failure to give notice of an intention to stand in a parliamentary election).
- Engaging in activities or conduct that may adversely affect recovery from illness.
- Conviction of a criminal offence inconsistent with the position the employee holds.
- Use of Council time/property/equipment for personal reasons without permission.
- Theft of, misuse of, damage to or neglect of property or equipment.
- Failure to report actual or suspected abuse of any service user by another employee or any other person.
- Disregard for the health and safety of yourself and/or others, including reckless driving, driving above the speed limit or operation of vehicles, plant or equipment, breaches of the Highway Code and smoking in prohibited areas (whether driving a council vehicle, another vehicle on Council business or outside of work where this may impact on your ability to carry out your role). Any breach of Health & Safety legislation or breach of the councils Health & Safety policies, procedures or safe working practices.
- Failure to follow either operating instructions/procedures or reasonable instructions.
- Failure to achieve required levels and/or quality of performance, through carelessness or lack of application (but see Note ii), below) particularly where an error/omission is fundamental to the successful performance of the employees role.
- Engaging in activities or conduct that places an individual, e.g. a service user, at risk, including the inappropriate disclosure of confidential information.
- Conduct which may lead to financial loss or some other form of damage to the Council/service.
- Breaches of Council policies and particularly the Employee Code of Conduct.
- Failure to comply with relevant statutory or regulatory requirements.
- Prosecution of an employee by the Council (not as an employer) for serious matters such as non payment of statutory or sundry debts, housing standards prosecutions, etc.

Notes:

- i. Dependent upon the circumstances and seriousness of a particular case the above examples of misconduct may be regarded as gross misconduct. Except in the most exceptional circumstances, gross misconduct will result in summary dismissal, without notice.
- ii. The Council accepts that before employees can be expected to reach required standards of conduct and job performance, it is essential they have been provided with appropriate training and appropriate levels of guidance and supervision. The procedures used for dealing with misconduct are different from those used when dealing with work performance and capability. In cases of work performance and capability

the Council's Capability Policy should be used unless the incident itself is so serious as to justify initiating disciplinary procedures.

Alleged Criminal Activity

An employment investigation may run in parallel to a Police, audit and/or child protection or adult abuse investigation, as may be necessary and should not be held up by any such investigations unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action. An employee who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover ups will have the right not to be dismissed or victimised for speaking out, in good faith on such malpractice. For further information see the Council's Whistleblowing Policy.

Suspension or Temporary Transfer

It may be considered appropriate to suspend an employee from work or have them temporarily transferred to work elsewhere, e.g. in cases where the allegations are serious or to facilitate an investigation. Such actions do not constitute disciplinary action or imply guilt on the part of the employee. The suspended employee will be given support and issued with appropriate guidance. The suspension (or temporary transfer) will be kept under regular review. For further information see the Council's Management Guidance on Suspension from Work.

Additional Relevant Policies

- Appeals Policy
- Capability Policy
- DBS Referral Policy

Disciplinary Procedure

Minor Conduct Issues – Informal stage (including preliminary investigations)

This procedure sets out steps expected by management as well as expectations of employees.

On becoming aware of an employee's alleged misconduct, management (normally the line Manager) will undertake, where practicable, immediate preliminary investigations about the issues of concerns or allegations made. This will normally involve a private discussion with the employee to establish if there is an acceptable explanation for the alleged misconduct. It is not usual for employees to be accompanied at this meeting. However, they may be if both the Manager and the employee consider it appropriate. Minor conduct issues may be persistent lateness but not over a prolonged period, minor breaches of Council policies but each issue will be taken on its own merits.

The Manager should:

- Present the apparent facts of the alleged misconduct to the employee. Give the employee a full opportunity to respond and explain any factors affecting his/her conduct (if any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health for advice).
- Give thorough consideration to all the employee's responses and decide what action is required. It may become apparent during the discussion that the problem is not a disciplinary matter and that other procedures, e.g. those relating to capability or reasonable adjustment, may be more appropriate. NB: In certain cases (e.g. where current and ongoing fraud is suspected) it may be appropriate not to inform the employee at this stage in order to allow necessary observations and collection of evidence to take place. Under statutory provisions, covert surveillance may be conducted though this will require the approval of designated senior officers in accordance with the Council's policy. Advice must be sought from Legal Services, People Services and the Councils lead officer before any covert surveillance takes place.

A Manager will need to determine if an issue can be resolved informally. This will depend upon factors such as the seriousness of the complaint/allegation and the impact on others, e.g. service users, clients, other employees and the public. The Manager should consider whether informal action could quickly and easily be taken to resolve the matter and should make every effort to resolve the matter in this way, immediately, wherever possible.

NB: Any case concerning an employee's conduct in respect of a child or vulnerable adult, where the Safeguarding process is applied, and any case of fraud or theft, will be deemed a major issue and dealt with by formal investigation. Notes will be taken of the Manager's conversation with the employee and, except in the most minor cases, the outcome of the meeting, including any remedial action, will be recorded normally using the Record of Actions (ROA) Form. Action may include inclusion on the relevant non-conformance register.

Notes of discussions on minor conduct issues will normally incorporate:

- A clear statement of what was discussed with regard to the employee's conduct and an explanation of why this is unsatisfactory.

- The required level of improvement discussed and (wherever practicable) agreed with the employee. These should be in measurable terms such as quantity, quality, frequency, timing, etc.
- How management will assist the employee (if applicable) to meet the required standards.

This record is not a formal warning, which will be made clear, and should be phrased in a constructive and helpful manner. A copy of the ROA will be given to the employee and a copy placed on the employee's file. Employees, who disagree with the content of the ROA, have the right to ask for their written comments to be added. Where an employee admits to an allegation at an informal stage and the Manager feels that the allegation is serious enough to warrant disciplinary consideration, the Manager and employee will make and sign a written record of this. The Manager will ensure the employee appreciates the implications of the admission, i.e. that the matter will be fully investigated and may be considered at a formal Disciplinary Hearing.

Major Conduct Issues – Formal stage

If the Manager determines that the matter cannot be dealt with by informal action, they will with advice from People Services, determine whether a Strategy Meeting should be held and how the investigation should progress.

A Strategy Meeting will normally only be required where the issue:

- Involves a complex safeguarding issue (see Safeguarding Concerns section, below).
- Is complex, sensitive, involves potential criminal activity, and/or includes multiple people or counter allegations.
- Is fraud or theft, including misuse of Council property.
- Serious breaches e.g. Health & Safety have occurred.

NB: The above list is not exhaustive and People Services advice should be sought for all cases. If a Strategy Meeting is not required, the Manager will need to decide whether the employee remains in the workplace (see Management Guidance on Suspension from Work) and if the investigation needs to be management, audit led or, exceptionally, undertaken by an external investigator. If a Strategy Meeting is required, it will normally be arranged by the Manager (or by People Services if agreed). The Strategy Meeting will normally involve the relevant Manager (Lead Manager), People Services (and a representative from Audit if required). Dependent upon the nature of the allegation(s) there may be a need for other professionals to attend also; especially if there are other investigations taking place into the allegation(s).

NB: The above list is not exhaustive. In normal circumstance a Strategy Meeting will take place before any decision is made regarding the alleged concerns. However, in certain circumstances, decisions (for example regarding suspension) need to be taken quickly and the employee(s) concerned may already be suspended from work or temporarily transferred to another section/work base, before the Strategy Meeting is held. In these circumstances reference should have been made to the Management Guidance on Suspension from Work and the Strategy Meeting should be arranged at the first available opportunity; normally no later than 5 working days after the suspension or temporary transfer.

The purpose of the Strategy Meeting is to:

- decide on whether the investigation is to be a management, Audit or, exceptionally, external Investigator led (allegations involving fraud and theft will normally be investigated by Audit);
- clarify the allegations/objectives of the investigation and draft the Investigation Brief;
- consider whether suspension or temporary transfers are necessary (or should be continued if already suspended/temporarily transferred);
- complete a risk assessment (see Management Guidance on Suspension from Work);
- determine support arrangements (for the employee(s) concerned, and possibly the complainant(s) and witnesses) (see Guidance on the Role of the Support Officer);
- set dates for any Strategy Review Meetings or preferred update mechanism;
- agree sharing of investigation interviews where multiple investigations are taking place.

The Strategy Meeting Checklist should be used to assist with the above. It is the Lead Manager's responsibility to email the completed documents to all attendees following the Strategy Meeting and attendees should raise any matters of accuracy as soon as possible. People Services will finalise the Investigation Brief, following the Strategy Meeting, and agree this with the Service Manager before the investigation begins. The decision to suspend need not be made at this meeting as this may need to be taken by a more senior officer than those present. However, a deadline for making such a decision should be set and the decision maker should feedback to attendees as soon as possible (see Management Guidance on Suspension from Work).

Safeguarding concerns

Where the matter concerns a safeguarding issue, i.e. there is a concern regarding the conduct of an employee in respect of a child or a vulnerable adult, the Manager must ensure that the Safeguarding Vulnerable Adults Team or the Local Authority Designated Officer (LADO) are aware.

Where the Safeguarding process is applied a safeguarding meeting will be arranged. The initial safeguarding meeting should include People Services. This is necessary to ensure any safeguarding and employment investigations run at the same time or jointly, where possible and appropriate. Employment investigations need not wait until after the resolution of any safeguarding concerns (unless there is on-going police enquiries in which case People Services will advise when the investigation should commence). If the concern is a safeguarding matter People Services and the Service Manager will call a Strategy Meeting as soon as practicable, following the safeguarding meeting, to consider the employment implications. However, it may be possible to consider the employment issues at the safeguarding meeting as all the necessary participants should be in attendance. Any proposed actions relating to the employee (i.e. suspension or temporary transfer and notification of investigation) will be dependent upon the actions of the relevant Safeguarding Team. Safeguarding actions must take priority until risks are satisfactorily managed.

Investigation procedure

The purpose of the employment investigation is to determine all the relevant facts associated with the allegations and establish whether there is a case to answer. Dependent on the case, the investigation may be led by management, a representative from Audit or, exceptionally, an external investigator. This will normally be decided at the Strategy Meeting. Normally within 24 hours of the Strategy Meeting (or decision to investigate) the employee concerned will be notified of the way forward (face to face meeting or letter as appropriate) and the investigation will be formally commissioned. People Services will notify

the employee of the employment investigation; unless the employee has already been notified at the time of his/her suspension from work.

It is likely that a Manager unconnected with the service in question will be asked to take on the role of Investigating Officer. If the employee being investigated has an objection to the Investigating Officer due to any perceived conflict of interest this should be raised with People Services immediately. The matter will be considered and the employee will be advised whether their objection has been upheld or not.

All employees are required to cooperate fully with employment investigations. Failure to do so could be considered misconduct. The Council accepts it may be difficult and distressing and some may be reluctant to co-operate for fear of reprisals however it is expected that employees will make themselves available if required. The Council will not tolerate victimisations of any individual for co-operating with an investigation. Any unfair treatment or unacceptable behaviour should be reported to People Services or raised with the Investigating Officer and may be dealt with as misconduct.

Meetings will usually be tape recorded and transcribed for the avoidance of doubt as to what was said at meetings. Transcription will usually take place externally for confidentiality reasons.

Timescales

Whilst every effort will be made to investigate matters swiftly, there will be occasions where delays will be inevitable. This will depend on complexity of matters, availability of witnesses etc and other matters which may cause such delays.

This might range from 1-3 weeks for straightforward matters to a number of months for more complex matters.

Right to be accompanied

Employees have the right to be accompanied at all formal meetings by either a trade union representative or work colleague. As a matter of good practice in making a choice employees should bear in mind the practicalities of the arrangements. For instance, they may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

To exercise the statutory right to be accompanied employees must make a reasonable request. They must provide enough time for the council to deal with the companions' attendance at the meeting and ensure that their request is made via People Services. Employees also should be clear whether they want correspondence to be sent directly to the companion or whether they will provide this themselves.

Confidentiality

Employees should ensure that any proceedings in which they are involved are kept strictly confidential and must not be discussed with other employees unless they have been authorised to do so. If additional witnesses are required employees who are the subject of any proceedings may request that the Investigating Officer include any such persons in the investigation. If there is a requirement for a witness to be called at a disciplinary hearing, not already involved in the investigation please make this request to the People Services Manager prior to making any arrangements and discussing the matter with the individual concerned. It would normally be expected that any witnesses should be heard at investigation stage but may be permissible to attend hearings where appropriate

Disciplinary procedures and absence

Employees, subject to the disciplinary procedure, who are absent due to sickness, may be referred to Occupational Health for advice on assisting their return to work and/or their participation in the investigation process. Whilst an employee may feel “stressed” and anxious under such circumstances issues will not be put on hold indefinitely awaiting an employee’s return to work.

We will normally postpone meetings to give employees time to recover from illness. This would normally be no later than 14 calendar days after the original meeting. In the case of prolonged absence/illness it may be possible to conduct the investigation by telephone or to submit questions in writing in exceptional circumstances. This will be a last resort and not an option automatically available to employees. If this option is necessary the Council reserves the right to clarify answers provided at a face to face interview if required.

If sickness or other absence prevents an employee attending a Disciplinary Hearing it may be postponed and re-arranged within 5 days or as soon as practicable. Employees will be advised that if they fail to attend the re-arranged hearing, then their case and/or representation may be considered in their absence, based on the written submissions.

Employment investigation outcomes

The investigation report is sent to the Service Manager (where not a witness) and People Services. A meeting will be arranged by People Services involving the Service Manager, the Investigator and People Services, to help clarify any points of fact or evidence and for the Service Manager to decide what the next steps will be. The reason for reaching this decision should be recorded on the Outcome of Investigation Record Form template and should be made within 5 working days of the completed report. If the parties cannot agree, the matter will be referred to the senior Managers of all the parties for resolution. The employee is notified, in writing, of the investigation outcome by People Services.

The following outcomes can result from a formal employment investigation:

1. No Further Action.
2. If it is decided the allegations do not justify further action or there is no evidence to substantiate the allegations, the effect on the employee(s) involved, along with other factors, will nevertheless be considered. This may be particularly the case where an employee has been suspended or temporarily transferred during the investigation. In such instances, arrangements will need to be made for the employee’s return to their place of work. It may be necessary to carefully plan and manage the reintegration of the employee as they may have been away from where they normally work for some time.

It may also be considered appropriate to have the employee transfer, voluntarily, on the same grade, to another section or work base. Any such considerations should be discussed with the employee concerned as a possibility at this time.

3. Informal Management Action

It may be decided the allegations warrant informal management action. Examples of circumstances where informal management action might be appropriate are:

- Employee is advised of the need to improve a particular skill, e.g. communication style and an action plan can be put in place to support this.

- Employee's conduct needs addressing but a formal sanction is considered too severe, e.g. an issue that could be resolved through improved self-awareness. A record of any informal management action taken will be made using the Record of Action (ROA) template, noting that this is not a disciplinary sanction, and held on the employee's file where it will remain. There may also be entry onto the non-conformance register.

Where it is considered that a formal Disciplinary Hearing is not necessary, the Lead Manager will provide verbal feedback to the employee concerned. In certain circumstances (for example to protect a witness) some information from the investigation may be withheld and the reason for withholding information should be explained and recorded.

4. Formal Disciplinary Hearing

Where a formal Disciplinary Hearing is considered appropriate, arrangements for the hearing will be made as soon as is reasonably possible. A Disciplinary Panel consisting of two senior Managers, with no prior involvement in the case, will hear all the evidence and decide the outcome. This will normally be a Head of Service or Director, (with delegated authority to dismiss) one person will assume the role of chair of the hearing;

A People Services representative, also with no prior involvement in the case will also attend, together with a management representative, the employee, his/her representative and, normally, the Investigator. Both management and the employee can submit documentation and call and question witnesses. The People Services Adviser will confirm the arrangements to all parties giving at least 10 working days' notice, based on template Letter

Disciplinary Hearing Notification

Any documentation, that either management or the employee wishes to be considered at the hearing, must be made available to People Services no later than 7 working days prior to the hearing to enable (where practicable) distribution of full documentation packs to all parties 5 working days prior to the hearing. If there is a late submission of evidence it will be the Chair of the Disciplinary Panel to decide whether or not this will be accepted. As part of the disciplinary hearing pack the employee subject to the investigation will be given a copy of the investigation report. In certain circumstances (for example to protect a witness) some information may be withheld.

Further information about a formal hearing can be found in the Guidance on Conducting a Hearing.

Disciplinary hearings may be tape recorded and transcribed externally for confidentiality purposes.

Disciplinary Hearing Outcomes

The Council's Disciplinary Policy and Procedure allows for the following hearing outcomes:

No Further Action

Where it is considered there is no case to answer.

Management Action

Where the alleged offence is proven but a reprimand is considered an appropriate outcome due to mitigating circumstances or the nature of the offence, e.g. a relatively minor issue this will normally be done verbally but a note will usually be made by the Manager. It may be appropriate to include the incident on the non-conformance register.

First Written Warning

- Where the employee's conduct has fallen below acceptable standards or,
- Where the offence is sufficiently serious to justify an immediate formal sanction.

NB: The warning will be usually regarded as live for disciplinary purposes for 6-12 months, as determined at the Disciplinary Hearing unless for other reasons.

Final Written Warning

- Where the employee's conduct continues to be significantly below acceptable standards and previous written warning(s) have not resulted in sufficient improvement, or
- Where the offence is so serious that a final warning is appropriate as a first formal warning; or
- Where dismissal would normally be appropriate but significant mitigation is accepted.

NB: The warning will be regarded as live for disciplinary purposes for between 12 to 24 months, as determined at the Disciplinary Hearing.

All warnings will be confirmed in writing and will include:

- A clear statement of the unsatisfactory conduct or behaviour.
- The level of the warning.
- The length of time it will remain live for disciplinary purposes.
- The required level of improvement (in measurable terms).
- The consequences of no improvement in conduct or behaviour.
- The right to appeal.

NB: The People Services Representative who attended the Disciplinary Hearing will prepare, on behalf of and in the name of the Chair of the Disciplinary Panel, the written confirmation of the hearing outcome. A copy of the outcome warning letter will be placed on the employee's personal file where it will remain. However, it will not normally be regarded for disciplinary purposes beyond the live period determined at the Disciplinary Hearing.

Formal Management Action

The Disciplinary Panel may decide that the circumstances of a particular case are such that in addition to a warning, management action is also appropriate, e.g. the Panel may identify a need for the employee to undertake refresher training or work under supervision for a period of time.

Withholding of incremental salary progression

In cases in which it is decided that a formal written warning (or dismissal with notice) is the appropriate sanction any pay increment(s) due to the employee concerned (during the live period of the warning or notice period) may be withheld. Any such increments withheld during the period of a written warning will become payable to the employee immediately

following the expiry of the identified live period, subject to the improved conduct of the employee concerned but these will not be backdated.

Transfer In cases other than dismissal

There may be circumstances where it is jointly agreed that it is not appropriate for the employee to return to their substantive post. In discussion with the employee a voluntary transfer to another post, at the same or a lower grade, in another service area or work base, should be considered.

As this is a voluntary transfer, 'At Risk' status or Salary Protection would not apply.

Any agreement between the employee and management on such a transfer will be confirmed in writing, separate to any disciplinary warning issued.

Dismissal

Dismissal will occur where there has been gross misconduct or where the employee has a final written warning and further misconduct or unsatisfactory conduct has taken place.

- Dismissal with contractual notice - Unless an employee is dismissed for gross misconduct, he/she will receive the appropriate period of notice.
- Summary dismissal - Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

Note: All dismissal notices will be in writing and will identify the reason(s) for the dismissal, the date on which the employment will terminate and the employee's right of appeal.

Referrals to DBS and other External Organisations

The Council has a legal duty to refer information to the Disclosure and Barring Service (DBS) where it has removed an individual from working or volunteering or has concerns in respect of an individual's contact with children or vulnerable adults. For further information see the Council's Policy on the Referral to the DBS. There may also be a need to refer the circumstances of a particular case to other professional bodies.

Appeals

An employee has the right to appeal against any formal disciplinary action taken against him/her under this procedure.

Any appeal must be in writing, (this includes e mail) and received by the People Services team within 14 calendar days of the employee receiving written notification of the sanction imposed / decision made. The appeal must state whether the employee is appealing against the findings, the severity of the sanction imposed or the decision made. Appeals received outside of this time limit will not be considered.

Appeals against disciplinary warnings will usually be heard by a panel of two senior Managers, with no prior involvement in the case who will hear all the evidence in the same way at the original hearing and decide the outcome. This will normally be a Head of Service or Director, (with delegated authority to dismiss) and the case will be re-heard in full.