



# DISCIPLINE AND CONDUCT: DISCIPLINARY POLICY

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## QUICK REFERENCE

1. Disciplinary Policy;
  - [Purpose and Scope](#)
  - [Key Principles](#)
  - [Council's Disciplinary Rules](#)

### 2. Disciplinary Procedure:

- [Informal Procedure](#)
- [Formal Procedure](#)
- [Suspension](#)
- [Investigation](#)
- [Disciplinary Hearing](#)
- [Appeal](#)

This policy applies to all employees except:

- Chief Officers
- Employees in their probationary period
- Employees working in education establishments with delegated budgets i.e. voluntary aided schools.



## 1. Purpose and Scope

The aim of this policy is to help managers set and maintain high standards of conduct at work. The disciplinary procedure provides a framework for dealing with instances where employees are alleged not to have met the required standards of conduct.

## 2. Key Principles

At all stages within the Council's disciplinary procedure, the following will be adhered to:

- All employees will be treated fairly and consistently, with any required reasonable adjustments being addressed accordingly.
- Disciplinary matters should be dealt with quickly and without unreasonable delay.
- All employees have the right to be accompanied at any formal meeting by a trade union representative or work colleague. Representatives may not act in a legal capacity.
- It is the responsibility of the employee to arrange their own representation.
- Confidentiality and privacy will be adhered to at all times.
- All authorised officers must have received instruction on the operation of the disciplinary procedures.
- Every effort should be made to attend meetings or interviews. Failure to attend such meetings, without good reason, may lead to the process continuing in their absence.
- The employee must be informed of the nature of the issue(s) or case against them.
- The employee will be given the opportunity to state their case before any decision is taken at a disciplinary hearing.
- Sanctions imposed following a disciplinary hearing will be determined according to the nature and seriousness of the alleged misconduct and based on a balance of probabilities.
- Where misconduct is established and the sanction is a warning then subsequent misconduct may result in further action which may ultimately result in dismissal.
- Employees have a right of appeal against any formal disciplinary action.
- A summary note will be taken at any formal meeting. Any notes should be signed and dated by the employee.
- The Council does not allow the recording of any formal meeting, unless identified as a reasonable adjustment and requested accordingly.
- Any proposed action against a trade union representative must be initially discussed with the Director of People Services and notified, in writing, to the Union Branch Secretary.
- The Local Authority Designated Officer (LADO) or Safeguarding Adult's lead must be contacted within one working day of any allegations relating to safeguarding.



- Where an employee raises a grievance after the disciplinary process has commenced the AO (adjudicating officer) will decide whether it is appropriate to temporarily suspend the disciplinary process. Where the grievance and the disciplinary cases are related it may be appropriate to deal with both issues concurrently.
- The disciplinary policy is part of the contract of employment and a collective agreement between the Council and the recognised trade unions. Any proposed changes will be subject to joint negotiation and agreement.

### 3. Standards of Conduct.

It is expected that management will address conduct and behaviour issues as early as possible and in general through the day to day management process. The following examples of gross misconduct and misconduct are intended to help employees understand the standards required by the Council.

#### Gross Misconduct

The following examples are not exhaustive but indicative of conduct that the Council considers may warrant disciplinary action up to and including summary dismissal<sup>1</sup> in the case of gross misconduct;

Examples of Gross Misconduct;

- 3.1 Theft, dishonesty, falsification of documents or fraud.
- 3.2 Physical violence / intimidation/ aggressive behaviour or bullying.
- 3.3 Sexual misconduct at work.
- 3.4 Deliberate/ wilful negligent, damage to property, assets, cash, investments of the Council.
- 3.5 Causing loss, damage or injury through serious negligence.
- 3.6 Serious misuse of any Council property or name.
- 3.7 Serious misuse or breach of the Council's codes and policies.
- 3.8 Deliberately accessing internet sites containing pornographic, inappropriate, offensive or obscene material.
- 3.9 Serious insubordination.
- 3.10 Unlawful discrimination or harassment.
- 3.11 Bringing the Council into serious disrepute.
- 3.12 Being under the influence of alcohol, illegal substances or any other substance likely to impair judgment, in the workplace or whilst on Council business.



- 3.13 A serious breach of health and safety rules.
- 3.14 Gross negligence in the performance of duties or responsibilities.
- 3.15 A breach of trust and confidence.
- 3.16 Any other misconduct of a similar gravity;

### **Misconduct**

Misconduct is defined as behaviour which, in the view of the Council would not normally destroy the relationship of trust between employer and employee; however, the behaviour is serious enough to warrant action short of dismissal. The following examples are not exhaustive but indicative of behaviour the Council expects of its employees.

### **Examples of misconduct**

- 3.17 Failing to comply with the Council's Code of Conduct.
- 3.18 Negligence in the performance of duties and responsibilities.
- 3.19 Insubordination e.g. when an employee refuses to recognise or follow the reasonable request of a senior officer.
- 3.20 Excessive absenteeism and unauthorised absence from the workplace.
- 3.21 Failure to comply with the Council's Policies and Procedures.
- 3.22 Negligence in maintaining the security of Council property, including information.
- 3.23 Being an accessory to a disciplinary offence e.g. when an employee connives at or is knowingly an accessory to a disciplinary offence.
- 3.24 Falsehood e.g. when an employee knowingly or through neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for the purposes of the Council.
- 3.25 Any act of misconduct of a similar gravity.

<sup>1</sup>Summary Dismissal – is dismissal for gross misconduct which takes immediate effect and there is no notice period or pay in lieu of notice given as a result of the dismissal.

Further examples of expected conduct, both within and outside of work, can be seen outlined within the Code of Conduct which can be found on the knowledge base.



## **Disciplinary Procedure**

When an allegation is made against an employee the employee's line manager will promptly and without delay make a preliminary gathering of facts. If following this preliminary exercise, the alleged misconduct is considered to be only a minor misconduct, then it must be dealt with under the informal stage of the procedure. Any alleged misconduct considered to be a potential breach of the disciplinary policy must be dealt with under the formal stage of the procedure.

### **4. Informal Procedure**

- 4.1 Cases of minor misconduct should be dealt with by the employee's line manager or immediate supervisor, informally and without delay. The manager should meet with the employee in private and encourage them to conduct themselves in accordance with the required standards.
- 4.2 The purpose of these discussions is to ensure that the employee understands the nature of the concerns, expectations of improvements in conduct and where appropriate timescales and the support available.
- 4.3 Following a satisfactory outcome to the use of the informal procedure, the matter will be considered resolved and no note retained on the personnel file. However, should a concern in regards to the employee's conduct remain or further information becomes available which makes the matter sufficiently serious the formal procedure should be invoked.
- 4.4 For concerns relating to a safeguarding nature then a note will be retained on the personnel file. Only a summary of the concerns raised, action taken and outcome will be recorded. It must be clearly noted that no formal action has been taken and the employee must sign the note to indicate that they are aware that such a record is being made.

### **5. Formal Procedure**

- 5.1 The formal procedure will be applied when an employee does not respond appropriately or adequately to informal action or the manager considers that the allegation is of a serious enough nature that it cannot be dealt with informally. Examples of behaviour that may be construed as either misconduct or gross misconduct are set out on pages 4 and 5.



## 6. Suspension

- 6.1 In exceptional circumstances a period of suspension, on full pay, may be helpful or necessary, during the investigation. Suspension is a neutral act and does not imply guilt. Suspension should only be imposed following the completion of a risk assessment (please refer to the [suspension risk assessment](#)). Careful consideration should be made as to whether it is appropriate to remove the employee from the workplace in order to facilitate an investigation.
- 6.2 The decision to suspend will be confirmed to the employee in writing and they will also be kept informed of the outcome of the continual review process by the adjudicating officer. Any decision to suspend in relation to a safeguarding matter will be made with the advice of the LADO.
- 6.3 Whilst an employee is on suspension, they should not attempt to contact colleagues connected to the case or work colleagues with the exception of their Trade Union representative, work colleague (who is to accompany them to any subsequent meeting) or their line manager / investigating officer.
- 6.4 Other than not attending work and not undertaking the duties of their role, all the employee's other contractual obligations remain in force during the period of suspension. Therefore the employee is to make him/herself available to attend interviews and hearings at the request of management.
- 6.5 Only a manager with the correct level of authority (see table in para 7.3) may suspend an employee after obtaining agreement from the relevant EMT Chief Officer and in consultation with the Director of People Services or Business Partners, within schools this will be the Chair of Governors. Likewise only a manager with correct level of authority can lift a suspension after the agreement from the relevant EMT Chief Officer in consultation with the Director of People Services or Business Partners likewise within schools this will also be the Chair of Governors.
- 6.6 Where the outcome of any investigation results in the lifting of suspension, this must be confirmed in writing and implemented as soon as possible.
- 6.7 Guidelines for suspending an employee can be found in [Management Guides – Suspending an employee](#).

## 7. Investigation.



- 7.1 Further guidelines detailing how to carry out an investigation can be found in [Management Guides – Carrying out an Investigation](#).
- 7.2 Where a formal investigation is required, the employee's direct line manager will act as the investigating officer, or an investigator from the council's pool of trained investigators will be used. For the purposes of schools the investigating officer may on occasion be the Headteacher and in exceptional circumstances may refer to the Chair of Governors.
- 7.3 The adjudicating officer, who will chair the disciplinary hearing will be identified, by the assistance of People Services, and will be a different/senior person to the person carrying out the investigation. The adjudicating officer must have the authority to determine disciplinary action, for details on the levels of authority please refer to the below table;

<u>Type of Action</u>	<u>Authorised Officer</u>
Suspension	Chief Officer / EMT / CLT Member <sup>1</sup> / Chair of Governors
Dismissal with notice/ Summary Dismissal	Chief Officer / EMT / CLT Member
Redeployment including Demotion for specified or unspecified period	Chief Officer / EMT / CLT Member
Final Written Warning	As Above
Written Warning	As above
Financial deduction and / or special arrangements to record starting and finishing times – for time keeping offences only – for a specified or unspecified time.	As above
Appeal for sanction less than dismissal	Chief Officer / EMT / CLT member /Chair of Governor.
Appeal for dismissal	Staff Appeals Sub Committee <sup>2</sup> / Governors' Dismissal Appeal Committee <sup>3</sup>

<sup>1</sup>The CLT member must report directly into an EMT member to satisfy the authority to dismiss.

<sup>2</sup>The Staff Appeals Sub Committee comprises of three elected Members of the Council

<sup>3</sup>The Governors' Dismissal Appeal Committee must comprise of three Governors

For schools if the Headteacher has acted as the investigating officer then they will not be permitted to act as adjudicating officer for that case. For further details on the roles within a disciplinary case please refer to the [managements guide – carrying out an investigation](#).





- 7.4 Where allegations against an employee have been made as a result of Audit enquiries or investigations, the investigating officer must carry out the investigation in conjunction with the auditor.
- 7.5 Where allegations of a criminal nature are made against an employee the disciplinary proceedings will proceed, as far as possible, even if the employee is also being prosecuted.
- 7.6 The investigation will take place to establish the facts relating to the allegations prior to any disciplinary action being considered. The purpose of the investigation is to:
- Establish the nature of the allegations
  - Allow the employee to respond to the allegations
  - Gather evidence to enable a decision to be made on whether or not there is a disciplinary case to answer.
  - Consider if the matter should proceed to a disciplinary hearing.
- 7.7 The length of the investigation will depend on the nature and number of allegations being investigated. However, the investigation should be concluded without unreasonable delay (as a guide 1 month) allowing sufficient time to interview all relevant parties and witnesses, and evaluate all available evidence.
- 7.8 The investigating officer will consider all the relevant facts of the case and make a recommendation to the adjudicating officer as to whether there is a case to answer and if the matter should be heard at a disciplinary hearing. It is not the responsibility of the investigating officer to recommend what level of sanction or action is appropriate. The findings and recommendations will be presented to the adjudicating officer as part of the investigation report. Refer to [management guides to see a template investigation report](#)
- 7.9 Upon receipt of the investigating officer's report, the adjudicating officer must decide on what action, if any, should be taken. The two courses of action are:
- There is no case to answer. In such circumstances, the employee concerned must be told immediately and all records of the investigation discarded. Unless relating to a safeguarding concern where a summary record will be retained on the employee's personnel file (please refer to paragraph 4.4).
  - That there is a case to answer and that a disciplinary hearing is to be convened.



- 7.10 If the employee leaves before the procedure is completed the investigating officer must inform the employee that the disciplinary procedure may continue up until the employee's last day of service with the aim of concluding the case. In exceptional circumstances it may be necessary for the case to be continued through to conclusion beyond the employees last day of service especially where concerns are of a safeguarding nature for children and vulnerable adults. Should this be the case the ex-employee will be offered all the rights s/he would have been entitled to if still employed and the outcome of the investigation / hearing will be disclosed on any employment reference request received.

## 8. Disciplinary Hearing

- 8.1 Further guidelines detailing how to carry out a disciplinary hearing can be found in the [management guides – disciplinary hearing](#)
- 8.2 The employee must be given at least 10 working days' notice in writing (unless a shorter period of time is mutually agreed) of the date and time of the disciplinary hearing. The letter, written by the adjudicating officer, will notify the employee of the allegations made against them and an indication as to whether the alleged conduct is considered as a gross misconduct case whereby a dismissal could be an outcome.
- 8.3 The employee has the right to be accompanied by a Trade Union representative or work colleague and they may call witnesses. Any witnesses being called by the employee must be confirmed to the adjudicating officer no later than 2 working days prior to the disciplinary hearing along with any papers they wish to submit. A full copy of the investigation report must be provided to the employee at least 7 working days prior to the disciplinary hearing, including confirmation of any witnesses being called by management.
- 8.4 The purpose of the hearing is to provide the opportunity for the employee to respond to the allegations made. The stages of the disciplinary hearing which must be followed are set out in the [Management Guide – 'Holding a disciplinary hearing'](#). In all cases of gross misconduct or where the case may result in dismissal, a representative from People Services must be present.
- 8.5 Any cases relating to safeguarding may require an independent safeguarding expert from the council to attend in order to advise the panel.
- 8.6 Where the employee accepts that they are blameworthy of the allegations or if the employee is found to be blameworthy after hearing all the evidence, the adjudicating officer / Chair is responsible for deciding what disciplinary



action will be taken. This decision must take full account of the employee's disciplinary record together with any mitigating circumstances.

- 8.7 The types of action which may be taken at the disciplinary hearing and the time limits applied are set out in the attached document [Disciplinary Action and Time limits guide](#).
- 8.8 The adjudicating officer / chair must confirm the decision of the disciplinary hearing to the employee in writing within 5 working days of the disciplinary hearing, unless previously mutually agreed. The letter must state that the employee has a right of appeal and that a record of the hearing will be provided. Where the employee is found not blameworthy all details of the alleged misconduct will be discarded, Unless relating to a safeguarding concern where a summary record will be retained on the employee's personnel file (please refer to paragraph 4.4).
- 8.9 If the employee is unable to attend the hearing, they will need to give notice and the reasons why they are unable to attend. In exceptional circumstances the hearing will be rearranged but must take place within 5 working days. Where an employee fails to attend the disciplinary hearing more than once and without good reason then the meeting may be held in the employee's absence. Any outcomes decided upon in the absence of the employee will be confirmed in writing.

## 9. Appeal

- 9.1 The right to appeal against the outcome of this procedure will be confirmed to the employee in writing with the notification of any disciplinary action.
- 9.2 Any employee who wishes to appeal must do so in writing no later than 10 working days of the date of the written confirmation of the decision.
- 9.3 Appeals against disciplinary action other than dismissal must be addressed to the EMT Director, except where they have previously been involved in which case it must be addressed to the Director of People Services, or for Schools this would be the Chair of Governors, within **10 working days** of receipt of the outcome letter. The appeal hearing will take place within one month of receiving the appeal unless agreed otherwise. The appeals hearing will be chaired by a manager senior to the adjudicating officer / Governors and they will have the responsibility for determining whether or not to uphold the appeal. The appeal cannot be heard by anyone who has been previously directly involved in the disciplinary action.
- 9.4 Appeals against dismissal with notice or summary dismissal will be submitted to the Director of People Services within **10 working days** of receipt of the outcome letter and will be heard by the Staff Appeals Sub



Committee within one month or as soon as practicable (i.e. subject to the availability of Members)

- 9.5 The order of proceedings at the appeals hearing and staff appeals committee are detailed in [Management Guides – ‘Stages of the Appeal Hearing’](#).
- 9.6 The relevant Committee officer / Governor will write to the employee to confirm the date of the appeal 10 working days before the Staff Appeals Sub Committee (Dismissals). If the appellant wishes to call any witnesses and / or submit documentation the relevant Committee Officer / governor must be notified in writing and provided with the documentation at least 7 working days prior to the Staff Appeals Committee (Dismissals).
- 9.7 Any cases relating to safeguarding require an independent safeguarding expert from the Council to attend in order to advise the panel.
- 9.8 The appeal is the final internal stage of the council’s disciplinary procedure and the Members hearing the appeal can confirm, reject, or lessen the level of the disciplinary action. They are not authorised to impose a more severe disciplinary action than that already imposed.
- 9.9 At both the appeals hearing and Staff Appeals Sub Committee (Dismissals), there will only be consideration of the grounds of the appeal and the evidence in support or rebuttal of those grounds. The hearing or committee shall not normally reconsider the case in its entirety.
- 9.10 Where the appeal is upheld and the disciplinary action is overturned all reference to the action will be removed from the employee’s personal file and confirmed to the employee in writing, unless the disciplinary action is relating safeguarding matters then the record will remain on file indefinitely.  
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- 9.11 The Staff Appeals Sub Committee (Dismissals) comprises three elected members of the council but will be quorate with two elected members of the council.
- 9.12 The Governors’ Dismissal Appeal Committee must comprise of three Governors.