



EMPLOYMENT POLICY STATEMENT

Policy Title: DISCIPLINARY & CONTRACT TERMINATION PROCEDURE

Date: June 2015

Policy Statement

Scope

This policy applies to all staff following their probationary period apart from potential dismissal situations involving the Chief Executive, Section 151 Officer and Monitoring Officer for whom a separate procedure applies.

This policy covers all aspects of alleged misconduct. Capability matters, absence management, compulsory retirement and redundancy are all dealt with by separate policies.

Policy Statement

1. General

- 1.2** Where formal disciplinary proceedings become necessary, the Council will ensure that this procedure is applied fairly and consistently.
- 1.3** It is essential that all disciplinary matters are treated confidentially and are not to be made known to anyone unless entitled under this procedure to have access to that information.
- 1.4** Whenever the policy gives the employee the right to be accompanied by a Trade Union representative it is to include a shop steward or a Full-Time official.
- 1.5** Whenever the policy gives authority to an Executive Director to act this authority may also be exercised by the Chief Executive.

2. Disciplinary Rules

- 2.1** Please see Appendices 1 and 2 for examples of actions which might be construed as misconduct and gross misconduct that might result in a warning, disciplinary sanctions or dismissal.
- 2.2** It is important to note that depending on the severity of the actions, misconduct listed in Appendix 1 may constitute Gross Misconduct.
- 2.3** Similarly, repeated acts of the misconduct listed in Appendix 1 may lead to dismissal. If the employee's conduct is unsatisfactory in a number of the areas listed and he/she is issued with one or more of the warnings outlined in Section 7, this may also lead to dismissal.
- 2.4** Whenever an employee is issued with a formal warning it must be made clear what further disciplinary action will/may be taken if the employee does not improve his/her conduct.
- 2.5** If the actions referred to in Appendix 2 are not considered to be sufficiently serious to be construed as Gross Misconduct and do not lead to Dismissal the employee might be issued with a Warning (Formal Written Warning or Final Written Warning) and Disciplinary Sanctions.
- 2.6** In order for the Council to comply with safeguarding requirements in respect of working with children and / or adults at risk it is essential that we have up-to-date criminal record disclosure checks for staff in some council posts. If you are in this category and fail to complete a criminal record disclosure form when asked to do so you may be issued with a Final Written Warning under this procedure. Further failure to complete a form could result in your dismissal.
- 2.7** For a Flowchart showing the main stages of the Disciplinary Procedure see Appendix 3.

3. Informal Management Direction (IMD)

- 3.1** In cases of minor infringements of the rules of conduct, the line manager should seek to effect an improvement in conduct informally.
- 3.2** A line manager may also issue an Informal Management Direction (IMD) in response to minor breaches of discipline. The note will outline the misconduct and the corrective action to be taken by the employee together with the timescale for improvement.

A note containing details of the IMD will be given to the employee and a copy placed on their personal file.

- 3.3** IMDs are part of the normal supervisory process and do not form part of the formal procedure. The employee does not have the right to be accompanied at the meeting and there is no right of appeal.

Stages of the Formal Disciplinary Procedure

4. Preliminary Investigations

In cases of alleged misconduct management will normally undertake a preliminary investigation to determine whether it is appropriate to invoke the disciplinary procedure.

The officer carrying out the preliminary investigation will not normally be a member of any subsequent disciplinary panel.

The Council expects preliminary investigations to be thorough and impartial and conducted speedily while re-collections are still fresh.

5. Suspension Pending Investigations

Suspension is not a form of disciplinary action itself and it does not follow that a disciplinary hearing will inevitably follow. However, it might be appropriate to suspend the employee if for example his/her continuing presence may be prejudicial to the operation of the service or the investigations being carried out. In cases of alleged serious misconduct it may not be appropriate for the employee to be at work.

Suspension will be on normal full pay except where the protected officer is receiving less than full pay (or no pay) under his or her contract of employment in which case this would apply.

Managers have the authority to suspend employees for a maximum period of two working days. Heads of Service may suspend employees for a longer period but only after consultation with the HR Manager or above. The suspension must be confirmed in writing within 48 hours.

Employees who are suspended are not permitted to attend their normal place of work or other Council premises or to contact other employees, unless these are union representatives, without express authority from their manager or HR.

If suspended employees wish to have access to documentation they must be referred to an HR Officer / the HR Manager or their Head of Service. Access to all council systems should be disabled during a period of suspension.

Employees may be dismissed for continuing Misconduct or Gross Misconduct without having been suspended.

6. Disciplinary Hearing

Disciplinary action under the formal elements of this procedure will not be taken without a formal hearing and all disciplinary hearings will be conducted by a nominated manager, hereafter referred to as the Hearing Officer. All Disciplinary Hearings must be referred to an HR Officer / the HR Manager before the Hearing

takes place. HR will organise all hearings unless it has been specifically agreed with a service that hearings at a particular level will be organised by that service.

- 6.1** A Disciplinary Hearing for an issue likely to result, if proven, in a Formal Written Warning or Final Written Warning will normally be carried out by the employee's line manager or another manager if considered more appropriate.
- 6.2** A Disciplinary Hearing for an issue likely to result, if proven, in dismissal will normally be carried out by a Head of Service or above with an HR Officer or the HR Manager present. Exceptionally this may be delegated to a manager one level below this.
- 6.3** A Disciplinary Hearing for an Executive Director will be carried out by the Chief Executive.
- 6.4** Unless a shorter period is mutually agreed, the employee shall be given not less than 2 working days' notice in writing of the hearing arrangements. The letter, which will be sent by the HR section unless otherwise agreed, shall be accompanied by this policy along with all relevant documentation, evidence and witness statements if appropriate. It must clearly state the allegations to be considered.
- 6.5** The letter shall remind the employee of his/her right to be accompanied by a work colleague or a Trade Union representative. In line with the provisions of the Employment Relations Act 2004 the representative may address hearings in order to put the employee's case; sum up their case; respond on their behalf to any view expressed and confer with him/her during the hearing. The representative does not have the right to answer questions on the employee's behalf.
- 6.6** The Hearing Officer must act reasonably in considering any request for a postponement of the hearing if the employee considers that more time is needed for the preparation of his/her response.
- 6.7** In the event of the employee advising the Council of illness which prevents his/her attendance on the stated date for a disciplinary hearing, or the non-availability of a union representative, the Council will consider deferring the hearing. In these circumstances the employee will be notified that further requests for deferment may be refused and that, in the absence of the employee at the re-arranged hearing, the Hearing Officer may need to proceed to hear the evidence and to make a judgement on the information available to him/her at that time.

The employee may be required to produce a medical certificate confirming that he/she is unfit to attend a disciplinary hearing (for which the fitness criteria may be different to that required for work). The Occupational Health service may also be referred to.

- 6.8** Before the hearing proceeds the Hearing Officer must check that the employee has received the formal letter and documentation about the meeting.

- 6.9** Where the Hearing Officer or the employee intend to rely on witness statements made by other employees; documents; CCTV footage; data collected from electronic recording systems or other evidence, copies of the witness statements; documents and other material should be prepared and issued to the other party in good time, normally at least two days in advance of the hearing. The employee will not be charged for copies of this material. These may be sent electronically where agreed. Except in circumstances outlined below, witnesses will normally be requested to be on hand at the Disciplinary Hearing to answer questions from either side.
- 6.10** Either side may provide a witness statement from a non-employee but the decision to invite or allow a non-employee witness to attend the Disciplinary Hearing and give evidence and answer questions from either side will be a decision made by the Hearing Officer.
- 6.11** Where either side intends to call witnesses they must normally give 2 working days advance notice that they intend to do this, unless otherwise agreed between the parties or exceptional circumstances apply.
- 6.12** Where the Hearing Officer considers it essential to introduce statements made either anonymously or in circumstances where the witness justifiably wishes to preserve his/her anonymity, the Hearing Officer must make every effort to provide the employee with such part of the statement as can be released without revealing the identity of the individual. It is also essential in such cases for the Hearing Officer to make particular efforts to find corroborative evidence which can be presented to the employee in a way that allows him/her to respond.
- 6.13** At the disciplinary hearing, the Hearing Officer must ensure that all the evidence is aired and that the employee and his/her representative have every opportunity to question the management representative/s and to present their own evidence, together with any points of mitigation, if appropriate. The Hearing Officer must allow reasonable opportunities for comfort breaks and for the employee to confer with his/her representative. The Hearing Officer must ensure that as far as possible all the factors which might be taken into account in his/her decision are disclosed during the hearing. The Hearing Officer may call whomever he/she chooses to give evidence at the hearing, irrespective of whether or not they have previously been involved in the process.
- 6.14** Where the alleged misconduct involves two employees who face separate disciplinary hearings (e.g. after a fighting incident) the Hearing Officer will normally conclude both disciplinary hearings before announcing his/her decision on either.

7. Disciplinary Outcomes and Measures

At the conclusion of the hearing, the Hearing Officer will adjourn the proceedings to consider the decision in conjunction with the HR representative where involved. He/she will then reconvene the Disciplinary Hearing to announce the outcome which may be one of the options below. Every effort will be made to reach a decision on the day but if this is not possible the hearing will be further adjourned to allow more time. It will however be re-convened as soon as

possible. In exceptional circumstances further information may become available that needs to be examined by the panel, in which case a full resumption of the hearing would be required.

The various stages in the disciplinary process do not represent a sequence that has to be followed at all times. The decision on a Stage 1, 2 or 3 outcome will be based on the nature of the misconduct; the need to act reasonably; the employee's work record and the need to manage disciplinary issues consistently and fairly.

If the employee is able to provide a satisfactory explanation, no formal action will be taken, however, if disciplinary action is considered appropriate the possible outcomes are as follows:

7.1 Stage 1 Formal Written Warning or Stage 2 Final Written Warning.

The warning will be confirmed in writing within 7 working days of the conclusion of the Hearing and will state:

- The severity of the warning
- The reason for issue and its duration;
Stage 1: normally 6 - 12 months but exceptionally up to 18 months.
Stage 2: normally 18 months but exceptionally up to 24 months
- The details of any remedial action or improvement required.
- The consequences, including dismissal if Stage 2, if the employee's conduct fails to improve
- Details of the employee's right of appeal.

7.2 Expired Warnings

When warnings have expired they will be disregarded for disciplinary purposes. This does not however apply to those issued for Health & Safety or children / vulnerable adults related matters (these must always be retained on file).

7.3 Disciplinary Sanctions

If an employee is issued with a Final Written Warning, one or more of the following Disciplinary Sanctions may be imposed:

- Withholding one or more increment under the Positive Increment Scheme.
- Recovery of a specified and quantifiable amount of pay relating specifically to the reason for the issue of the Final Written Warning.
- A period of enforced unpaid leave not to exceed 3 working days

- Transfer to another post at the same or lower grade (demotion) with or without a reduction in one or more of the following: grade, salary or benefits (car allowance etc)

Disciplinary Sanctions may be permanent or temporary and, if the latter, the corrective action required and the timescale involved must be clearly stated.

7.4 Stage 3 Dismissal

Dismissal with Notice. If the Hearing Officer concludes that dismissal with notice is appropriate the letter to confirm dismissal will be despatched within 7 working days of the hearing and will confirm whether or not the notice period is to be worked or not.

Dismissal with notice may occur when the employee's actions fall within the definition of Misconduct and the employee has previously been issued with one or more formal Warnings and these are still valid.

Dismissal without Notice. If the employee's acts or omissions constitute Gross Misconduct the employee will normally be summarily dismissed without notice. The letter of confirmation will be despatched within 5 working days of the hearing and must confirm Gross Misconduct as the reason for dismissal.

Dismissal letters will be prepared in consultation with HR and issued by an Executive Director or Head of Service. All other written disciplinary outcomes (Warnings) will be issued by HR unless otherwise agreed. **All letters must include the employee's right of appeal.**

8. Appeals

8.1 Should an employee wish to appeal against a hearing outcome, he/she must write to the Executive Director (Community, Commercial & Support Services) within 10 working days of the date of the written notification being issued. He/she should state the grounds of appeal under one or more of the following headings:

- severity of the disciplinary action/Disciplinary Sanctions;
- the findings of the disciplinary hearing on a point of fact which is pertinent to the decision of the hearing;
- a failure to adhere to the disciplinary procedure or
- some other stated reason

An appeal Hearing will take place as soon as possible, but normally no more than 28 working days after receipt of the appeal letter. The employee may be accompanied by a work colleague or union representative.

8.2 The Appeal Panel shall consist of an Executive Director or Head of Service and an HR Officer or the HR Manager. Members of the original panel that issued the Warning being appealed against cannot be members of the Appeal panel.

Where the employee is an Executive Director, for disciplinary action up to and including Dismissal the appeal will be heard by 5 Members, including at least 1 Cabinet member, and advised by the Council's Monitoring Officer or their Deputy with an HR Officer or the HR Manager in attendance. If the Panel decides to uphold a dismissal decision then they must make this recommendation to Council.

Where the employee is a Head of Service and the disciplinary sanction is dismissal the appeal will be heard by 5 Members and advised by the Council's Monitoring Officer or their Deputy with an HR Officer or the HR Manager in attendance. If the Panel decides to uphold the dismissal then they must make this recommendation to Council.

- 8.3** In exceptional circumstances another senior manager may be selected to sit on an Appeals Panel if considered appropriate and if authorised to do by the HR Manager or above. The Legal department may also provide advice to the Appeal Panel.
- 8.4** The employee and / or their representative should present their grounds for making the Appeal to Panel. The Appeal Panel must ensure that both parties are provided with the opportunity to present their views about all the issues raised. Either side may raise any issue relevant to the case. It is the Panel's responsibility to ensure that it sufficiently tests the evidence presented to it prior to making its decision. New evidence can be presented but no new allegations unconnected with the Appeal may be made. New documentation or evidence to be introduced at the Appeal must normally be made available by both sides to all parties at least 2 working days before the Appeal hearing.
- 8.5** The Appeal Panel may confirm or reverse the action taken by management; impose a lower level Warning or Disciplinary Sanction or reduce the period for which the Warning is valid.
- 8.6** The Appeal Panel's decision will be notified to the employee in writing within 10 working days (5 working days if against Dismissal) of the conclusion of the appeal hearing. The Panel's decision will be final subject to an employee's statutory rights.
- 8.7** If following an appeal against dismissal the employee is re-instated this would be without a break in service.

9. Safeguards for Union Representatives

In the event of disciplinary action being considered against an accredited union representative, the full time union official must be notified if the employee gives their agreement to this. The union official should be offered the opportunity to discuss the matter with management.

10. Criminal Charges or Convictions

- 10.1** An employee subject to police criminal investigations or charged with, or convicted of, a criminal offence may be subject to disciplinary action, including dismissal, where management believes the criminal matters being investigated or the conduct leading to the charge or conviction affects the employee's ability or suitability for continued employment. This also applies where the employee needs criminal records clearance to perform their role (see Appendix 2).
- 10.2** Any decision to instigate disciplinary proceedings will be based on a reasonable belief following a reasonable investigation into the circumstances of the case. Action will not necessarily be deferred because the outcome of the prosecution is not known.
- 10.3** In assessing any disciplinary action, the Council will take into account the nature of the offences in relation to the employee's post and the possible reaction of other employees and users of Council services to their continued employment.

11. Non-Disciplinary Dismissals

- 11.1** The process to be followed when managing the non-renewal of Fixed Term Contracts of Employment over two years old, termination on the grounds of ill health and other non-disciplinary dismissals is as follows;
- 11.2** Step 1 The Council will outline in writing the reasons why the employee's contract of employment may be terminated.
- 11.3** Step 2 The Council will arrange a formal meeting to be held in order to discuss the reasons why the employee's employment may be terminated, he/she will be given no less than 2 working days notice of this. The meeting will be conducted by the employee's manager or if unavailable another manager authorised by senior management and a representative from HR where appropriate. The employee may be accompanied by a work colleague or a union representative. At the meeting the circumstances of the case will be discussed and reviewed. Following this the employee will be told the decision and offered the right to appeal. The decision; the reasons for the decision and the right of appeal will be confirmed in writing within 10 working days. The employee will, in all cases of non-disciplinary dismissal receive contractual notice unless otherwise agreed with the employee.
- 11.4** Step 3 If the employee wishes to appeal, he/she must write to their Head of Service within 7 working days outlining his/her reasons for appeal. The Appeal Hearing will be conducted by the Head of Service or another appropriate manager, along with HR and will normally take place within 28 working days of receipt of the appeal. The decision will be final subject to the employee's statutory rights.
- 11.5** The non-renewal of a Fixed Term Contract of Employment that is less than two years old must be notified in writing to the employee at least 1 week before the agreed end date. Normal redeployment procedures that apply under the Council's Employment Stability Policy to permanent staff with equivalent service must be applied to these staff, in so far as legally required, properly in advance of the due employment end date.

12. Equality Impact Assessment

This policy applies equally to all staff whether they are full-time or part-time and the provisions of the policy will be implemented to ensure that staff will not be unlawfully discriminated against on any grounds protected by the Equality Act.

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Appendix 1: Examples of misconduct that might result in a warning or disciplinary sanctions

Examples of actions which might be construed as Misconduct and which might attract a Warning and Disciplinary Sanctions are:

- Failure to adhere to Health & Safety requirements
- Poor timekeeping
- Breach of rules
- Inappropriate use of the internet or email
- Failure to respond to guidance or the issue of an Informal Management Direction regarding acts of minor misconduct
- Abuse of sickness schemes
- Where applicable, failure to complete and return a criminal record disclosure form and submit the requested documentation within the required time period (see 2.6 above).
- Failure by a manager to ensure that a member of their team completes a criminal record disclosure form and submits the required documentation within a reasonable time period (see 2.6 above).
- Disregard of a reasonable instruction
- Unacceptable conduct or appearance
- Failure to adhere to operating manuals or instructions issued
- Failure to take reasonable steps to protect Council plant or equipment
- Unauthorised consumption of alcohol on Council premises
- Failure to make a relevant declaration under the Code of Conduct
- Unauthorised use of Council equipment for personal purposes.

Appendix 2: Examples of gross misconduct that might result in Dismissal;

- Providing false (or withholding) information for the purposes of obtaining employment with the Council
- Dangerous, reckless or negligent acts
- Unauthorised access to computer systems
- Deliberately introducing or exposing computer viruses to the Council's ICT systems.
- Unauthorised copying of software
- Unauthorised use of the Internet facility or accessing illegal or unacceptable material (e.g. pornography or material detailing an illegal activity)
- Unauthorised and intentional disclosure of confidential information
- Harassment or unlawful and intentional discrimination on the grounds of gender, ethnic origin, disability and other areas covered by the Council's Equality & Diversity Policy
- Abusive, threatening or aggressive behaviour
- Being under the influence of alcohol or drugs at work or on Council premises
- Taking or possessing prohibited drugs or solvent abuse on Council premises
- Physical assault
- Serious insubordination

- Significant and irreparable breakdown in trust between employer and employee.
- Failure to account properly for cash or other financial transactions
- Fraud including submission of false claims for overtime, expenses etc
- Malicious damage to Council plant and equipment or to other employee's possessions
- Failure to fulfill important Health & Safety requirements e.g. reversing a Council vehicle without using a reversing assistant where required to do so.
- Driving a Council vehicle (or a private vehicle on official duties) whilst disqualified, without a licence, medically unfit, under the influence of drink or drugs or without insurance cover for business use of a private vehicle
- Theft
- Corruption, acceptance of prohibited hospitality or partial treatment of a contractor, job candidate etc as identified by the Code of Conduct
- Working for another employer in Council time or use of Council time, plant or equipment for personal gain
- Omission or commission of an act likely to endanger others or to expose the Council to prosecution, civil proceedings or significant financial loss
- Failure to declare a non-spent criminal conviction or a spent criminal conviction where the provisions of the Rehabilitation of Offenders Act 1974 do not apply.
- Failure to declare a criminal conviction issued after completing the Disclosure & Barring Service or Disclosure Scotland process.
- Where applicable, failure to complete and return a criminal record disclosure form and submit the required documentation within a reasonable time period (see 2.6 above).
- Actions outside work that may bring the Council into disrepute (see section 10 above).

Appendix 3: Disciplinary Procedure Stages - Flowchart:

