

People Framework

Disciplinary Procedure



Version number 1
Date June 2019

Contents

1. Code of Conduct	4
2. Fair Procedure	4
3. Examples of Misconduct & Gross Misconduct	4
4. Criminal Charges or Convictions	5
5. Suspension – Disciplinary	6
6. Informal Stage	6
7. Formal Disciplinary	7
8. Disability	8
9. Disciplinary Hearing	8
10. Disciplinary Outcomes	8
11. Formal Management Action	9
12. Right of Appeal	9
13. Disciplinary Procedure for Casual Workers and Agency Workers ..	9
14. Considerations	10

Tracking

Policy Title	Disciplinary Procedure		
LT sign off	15 November 2019		
Committee	HR Panel Strategy & Resources	Date approved	17 December 2019 (TBC) 30 January 2020 (TBC)
Review due date	15 November 2021	Review completed	
Service			

Revision History

Revision Date	Revisor	Previous Version	Description of Revision

Document Approvals

Each revision requires the following approvals:

Sponsor Approval		Name	Date

1. **Code of Conduct**

Employees are expected to adhere to the Council's Code of Conduct which is set out in the Council's Constitution, Part 5, Section 2, Officers' Code of Conduct – [LINK](#)

Failure to follow the guidelines and requirements set out in the Council's Code of Conduct may result in action being taken under the Disciplinary Procedure.

2. **Fair Procedure**

At all stages of the procedure, employees will be:

- Informed of the nature of the issue(s) of concern or allegations against them
- Given a chance to offer an explanation before any decision is taken
- Given the right to be represented by a member of the Staff Consultative Group, trade union representative or work colleague at any formal meeting or hearing
- Given reasonable notice of any formal meeting or hearing as outlined within the procedure
- Provided with copies of any documents to be used in a Disciplinary hearing
- Notified of the outcome of any formal meeting or hearing in writing
- Given the right to appeal against formal disciplinary action

3. **Examples of Misconduct & Gross Misconduct**

Examples of misconduct and gross misconduct that may result in action being taken under the Disciplinary Procedure include, but are not limited to, the following:

Misconduct

Any actions which could bring the Council into disrepute or which impact negatively on the employee's position (this may include actions outside of work). Examples are listed below:

- Unauthorised absence from duty
- Unauthorised employment
- Neglect of duty
- Discrimination
- Breaches of the Council's Dignity at Work Procedure including harassment, bullying and victimisation;
- Offensive or abusive behaviour
- Drunkenness or being under the influence of drugs other than for medical purposes
- Refusal or deliberate failure to follow a reasonable management instruction
- Responsible for a work error that has serious implications for the Council and for which reasonable steps were not taken to prevent its occurrence
- Improper disclosure of information or breach of confidentiality
- Breaches of health & safety
- Breaches of Council policies
- Persistent misuse of ICT
- Using Council property without authority
- Damaging or misusing or losing by theft Council property
- Refusal or failure to comply with those rules governing the use of information technology, commercial practices, financial regulations, fraud and corruption
- Exhibiting behaviour which may bring the Council into disrepute

Gross Misconduct

Examples of gross misconduct are listed below:

- Theft including fraud and deliberate falsification of records; this may include such things as timesheet and expense claims' irregularities and undertaking paid private work at a time the employee should be working for the Council
- serious breaches of safety rules
- Deliberate or reckless damage to Council buildings/property
- Serious incapability through alcohol or use of illegal drugs on duty, buying or selling drugs on Council premises
- Fighting or other physical assault, threats of violence
- Serious acts of discrimination, bullying, harassment or victimisation
- Disclosing any serious matter which should be kept confidential (or concealing it if it should be reported)
- Serious breaches of Council's codes of conduct, standing orders or financial regulations
- Accepting inappropriate gifts/hospitality or failing to register gifts/hospitality
- Improper use of an employee's position for their own or another's private advantage, or an attempt to do so
- Bringing the Council into serious disrepute;
- Gaining employment with the Council by misrepresentation, lies or deception
- Serious deliberate damage to property
- Breaking a law at (or even away from) work which makes employees unfit for the work they do, or which may seriously damage the Council's reputation.
- Accumulation of persistent instances of serious misconduct

4. Criminal Charges or Convictions

Where an employee is charged or convicted of a criminal offence consideration will be given to the impact on their employment and whether the Disciplinary Procedure should be invoked.

An employee will not be disciplined or dismissed solely because they have been charged with or convicted of a criminal offence

Where it is thought that the employee's conduct may warrant disciplinary action the following guidance should be followed:

- Investigate the facts as far as possible
- Consider whether the conduct is sufficiently serious to warrant disciplinary action
- Where the conduct requires prompt attention the Council need not await the outcome of the criminal prosecution before taking fair and reasonable action
- The police should not be asked to conduct any investigation on behalf of the Council nor should they be present at any meeting or disciplinary hearing.

In some situations, the nature of the alleged offence may not justify disciplinary action, e.g. off-duty conduct which has no bearing on employment, but the employee may not be available for work because they are in custody or on remand. In these cases the Council should consider the needs of the service and decide whether the employee's job can be held open.

Where a criminal conviction leads to the loss of a licence or qualification so that continued employment in a particular job would be illegal, the Council will consider whether alternative work is appropriate and available.

Where an employee who is charged with or convicted of a criminal offence refuses or is unable to cooperate with the Council's disciplinary investigations and proceedings, they will be advised in writing that, unless further information is provided, decisions taken in line with the Disciplinary Procedure will be taken based on the information available.

5. Suspension – Disciplinary

There may be instances where it is necessary to suspend an employee whilst investigations are carried out. It is important to note that suspension is a precautionary measure, does not constitute formal action and does not itself imply any presumption of guilt on the part of the employee.

All suspensions will be conducted in line with the Council's Suspension Procedure.

6. Informal Stage

Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. In some cases additional training, coaching and advice may be what is needed.

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.

The manager should:

- Present the details of the alleged misconduct to the employee.
- Feedback should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.
- Give the employee a full opportunity to respond and explain any factors that may be affecting their 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.

The 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. 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.

If it becomes apparent that the matter may be serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure.

Managers should be aware not to take any informal decision which may turn into a formal action as this may unintentionally deny certain rights for the employee (e.g. right to be accompanied).

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 on Record of Action Form. (LINK to form).

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 the manager will assist the employee (if applicable) to meet the required standards.

Having considered the issue, the manager should confirm in writing to the employee the outcome of the informal stage, as soon as reasonably practicable, using the TEMPLATE form.

A copy of the Record Of Action will be given to the employee and a copy placed along with the employee's My Performance Conversation notes and retained as long as appropriate i.e. 3 months unless the matter is escalated to a formal procedure, then these notes will be referred to in the hearing.

This record is not a formal warning, which will be made clear, and should be phrased in a constructive and helpful manner.

Managers must seek HR advice where appropriate to maintain consistency and fairness with the process.

Managers must ensure that any personal information/record (GDPR 2018) is handled appropriately maintaining confidentiality at all times as advised by HR.

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.

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.

7. Formal Disciplinary

If the manager determines that the matter cannot be dealt with by informal action, they will with advice from HR, determine whether a meeting should be held and how the investigation should progress.

All disciplinary investigations will be conducted in line with the Councils Investigation procedure.

8. Disability

Where there are indications that the Disciplinary process is impacting on an employee's physical/mental health, or where an employee has an existing health condition, the Council will consider any reasonable adjustments which may be required to support the employee.

Where appropriate the manager, with HR advice, will signpost the individual to the Council's Employee Assistance Programme and consider suggesting that the individual seeks advice from their GP and/or the Council's Occupational Health provider.

9. Disciplinary Hearing

All disciplinary hearings will be conducted in line with the Council's Hearing procedure.

10. Disciplinary Outcomes

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

No Further Action

Where it is considered there is no case to answer.

Management Action

Where the alleged offence is proven but an informal warning is considered an appropriate outcome due to mitigating circumstances or the nature of the offence, e.g. a relatively minor issue.

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.
- Where the offence occurs within 3 months of the employee receiving an informal warning

The warning will be regarded as live for disciplinary purposes for 12 months.

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
- Where dismissal would normally be appropriate but significant mitigation is accepted by management

The warning will be regarded as live for disciplinary purposes for 24 months.
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

Dismissal

Dismissal will occur where there has been gross misconduct **OR** where the employee has a warning in force and is deemed appropriate for any further misconduct or unsatisfactory conduct that has taken place.

- **Dismissal with Contractual Notice** - Unless an employee is dismissed for gross misconduct, they will receive the appropriate period of notice.

If the employee attended the hearing and notice was given verbally the notice period starts the day after the hearing. If the employee did not attend the hearing the notice period starts 2 days after posting the outcome letter.

- **Summary Dismissal** - Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

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.

11. 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) will be withheld.

12. Right of Appeal

This is the final stage of this procedure.

If an employee is dissatisfied with the response to their disciplinary at the formal stage they have a right of appeal.

Any appeal should be submitted in line with the Council's Appeals procedure.

13. Disciplinary Procedure for Casual Workers and Agency Workers

Disciplinary process for Casual workers

It is a condition of the contract that the Worker will not engage in any conduct that is or might be detrimental to the interests of the Council. The Worker will ensure that his/her services are carried out with reasonable care and skill to a standard reasonably required by the Council, and in compliance with the Council's policies, procedures and

practices. The key consideration in determining what action should be taken will be determined by the employment status of the Casual worker. HR advice should be sought to determine this.

Disciplinary for agency worker

The Council will refer the issue to the Agency ensuring protocols are followed as per the contract with the Agency. HR advice must be sought in order to ensure fair treatment is provided in dealing with issues.

14. Considerations

Disciplinary – Statutory Officer

The Council seeks to ensure that lawful, fair and effective arrangements exist for dealing with Statutory Officer conduct and disciplinary issues. Where an allegation is made regarding the conduct of the Head of Paid Service, Monitoring Officer or Section 151 Officer, – HR in consultation with the Chair of the Council's HR Panel and with the Monitoring Officer (or Deputy Monitoring Officer where applicable) will decide whether the issue falls within the definition of staff discipline.

Records will be kept by the Monitoring Officer (or Deputy Monitoring Officer where applicable) of any allegations against the Head of Paid Service, Monitoring Officer or Section 151 Officer and any decision reached. The records will reflect whether or not the decision was to invoke the Disciplinary Procedure and if not, whether any other action was recommended. Suspension process will be applicable if required.

The decision to suspend or to proceed to a disciplinary hearing will be on the recommendation of an Independent Person as outlined in the Council's constitution.

The Council's Disciplinary procedure will apply to Statutory Officers. However, regard must be had to a report prepared by the Independent Person and only full Council may dismiss a Statutory Officer.

Grievance raised during Disciplinary Procedure

Where an employee concerned raises a grievance, advice should be sought from HR. The employee must submit the grievance form to their line manager, or manager's manager if their line manager is the subject of the grievance, who will determine the appropriate route for their grievance to be investigated.

The following principles need to be considered:

If the grievance is raised during the course of a disciplinary process and is related to the case/allegations then it should be considered as to whether it forms part of the disciplinary and can be dealt with by the investigating officer and considered at the hearing, or whether the grievance should be investigated separately before concluding the investigation. If the grievance is about another unrelated matter then the grievance procedure may be invoked and run concurrently (this would not impact on any outcome of the disciplinary process as that would be dealt with on its own merit). If the matter does not progress to a disciplinary hearing any outstanding grievance may be considered through the grievance procedure in the usual way.

Capability

In cases where there are capability or performance issues as well as other misconduct issues then the Disciplinary procedure will apply. Where there are only capability or performance issues the Capability Procedure will apply.