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# Disciplinary

## Policy and Procedure

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# Policy

## Aim

- 1 The public is entitled to expect the highest standards of conduct from Council employees. All employees are entitled to expect the same high standards from their colleagues, at all levels. All those working for and on behalf of the Council have a responsibility to maintain their honesty and integrity at all times and respect the reputation of the Council.
- 1.1 This policy should be read in conjunction with the Council's Code of Conduct <Link to Code of Conduct> that is applicable to Council employees to ensure a fair and consistent treatment of individuals.
- 1.2 The aim of this policy is to maintain and improve the standards of behaviour and conduct of employees and if a breach occurs encourage an employee whose conduct is unsatisfactory to improve, where possible. However, if unacceptable behaviour and/or an alleged breach of the rules and/ or standards of conduct occur, employees should be aware that these may be dealt with under the Council's Disciplinary Procedure. In general, misconduct is a wilful or intentional action, however on occasions a serious omission may render an employee liable to disciplinary action. Any repeated and/or serious breaches could result in dismissal.

## Scope

- 1.3 This policy applies to all Council employees except employees in locally managed schools and colleges and centrally employed teachers. Managers involved in a disciplinary process that are not employees of the Council are required to follow the procedures below.
- 1.4 This policy does not form part of any employee's contract of employment, and may be amended at any time in consultation with the Employee Side and recognised Trade Unions.
- 1.5 Notwithstanding this point, any dispute arising from the application of this policy, procedure and guidance will be raised with and dealt with in consultation with the ES and resolved at the Council's Employee Joint Committee or escalated to formal dispute resolution procedures with the Local Government Association as appropriate.
- 1.6 It is important that employees read and understand this document. If employees are not sure about any part of it, they should ask their manager, who will be happy to provide the necessary clarification.
- 1.7 It is important that Council employees give a good impression of themselves and the Council by:
  - Giving the public the highest possible standards of service;
  - Maintaining the reputation of the Council;
  - Behaving honestly; and
  - Following policies and procedures.

- 1.8 This policy cannot cover every area of working life but can help everyone to understand the main standards that affect the Council's work.

### **General Standards of Behaviour and Rules**

- 1.9 Employees are expected to follow the Council's constitution <Link to Constitution>, where relevant to their role, at all times. All corporate and Directorate policies, standing orders, codes of practice, legitimate work place instructions and any other legitimate standards will be notified to employees by management where appropriate.
- 1.10 Customer care is very important. Employees are expected to be polite, helpful, constructive and professional to the public either on the telephone, in writing (including electronic communication), or face-to-face.
- 1.11 It is important that employees work constructively to have good working relationships with their manager and colleagues.
- 1.12 Employees are expected to adopt safe working practices and adhere to the requirements of the Council's Health and Safety at Work Policy <Link to Health & Safety at Work Policy>.
- 1.13 Employees have a right to be treated with dignity at work. Employees are also expected to behave respectfully towards their colleagues and other employees. Employees are expected to help other employees if they need information, advice or services.

### **Behaviour Outside Work**

- 1.14 In general this document does not cover an individual's behaviour outside work. However, occasionally there can be exceptions that may warrant starting the disciplinary procedure, such as:-
- Criminal investigations/charges and convictions, including those relating to internet use; and social media use.
- 1.15 Managers are reminded that they will be required to demonstrate evidence of reasonable cause before embarking on any investigation of an employee's activity out of work.
- 1.16 Employees are reminded that they are expected to keep within the law, in line with the requirements of the Code of Conduct, during their employment at all times.

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# Procedure

## Aim

- 2 The aim of this procedure is to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary. The standards of conduct expected of all employees are set out in Council's Code of Conduct. (Link to Code of Conduct)
- 2.1 This procedure deals with misconduct and should not be confused with capability that is primarily concerned with a lack of knowledge, skills and aptitude, and is covered under a separate procedure (see the Council's Managing Capability Procedure) .

## Scope

- 2.2 This procedure applies to all employees (including all those on fixed term contracts) except employees in locally managed schools and colleges and centrally employed teachers and would set the standard required by those indirectly employed i.e. consultants and agency workers
- 2.3 This guidance complies with the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 2.4 This procedure does not form part of any employees' contract of employment and may be amended from time to time in consultation with the Employee Side, except for the provisions relating to Suspension and/or Action Short of Dismissal that have contractual force.
- 2.5 It is important that employees read and understand this document. If employees are not sure about any part of it, they should ask their manager, who will provide the necessary clarification.
- 2.6 All parties in attendance are reminded that it is not permitted to secretly record disciplinary hearings or meetings. Recording may only be undertaken with the prior consent of all parties concerned. Any breach of this rule will be taken seriously, which could lead to separate disciplinary action being taken and may be in breach of the Data Protection Act 1998.

## Informal Stage

- 2.7 Cases of minor misconduct may be dealt with informally at the discretion of the manager, who may need to seek advice from Human Resources depending on the particular circumstances of the case. Any challenge by the employee to this being dealt with informally would make the matter formal and therefore be dealt with as below.
- 2.8 Minor misconduct can be dealt with by giving an informal oral instruction explaining the reason and the improvement needed. This may be done by talking to the employee but it must be made clear that it is being undertaken under the informal stage of the disciplinary procedure.

- 2.9 If such action does not bring about an improvement as instructed, the manager may consider giving clear written instructions to the employee describing the standard of behaviour expected. A written instruction, which be held locally and not on the employee's file, will be in force for 3 months, after which it expires and is removed, providing the employee's conduct during the period in which it was in force has been satisfactory.
- 2.10 Where there is a repeat of unsatisfactory conduct during the period when the instruction is in force, formal disciplinary action can be undertaken.
- 2.11 An employee may be accompanied during the informal stage, if they wish, by a workplace colleague, Employee Side Secretary, Trade Union Representative or Trade Union Official.

## **Formal Stage**

### **Preliminary Investigation**

- 2.12 When an alleged disciplinary matter of a more serious nature arises, or an informal disciplinary procedure has been exhausted, a preliminary investigation must be undertaken at the earliest opportunity. The guidance section below includes a non-exhaustive list of examples of what could constitute misconduct and gross misconduct.
- 2.13 Management will appoint an investigating officer to gather the facts and take statements from witnesses, as appropriate. The employee will be given the opportunity to be interviewed and provide a statement. All statements must be signed and dated. Exceptionally and mainly in circumstances where a witness is genuinely fearful of reprisals, the person making the statement can remain anonymous. Witnesses will be expected to confirm their evidence at a hearing if required to do so.
- 2.14 A preliminary investigation does not constitute disciplinary action in itself, but is designed to provide management with information on an allegation of misconduct as to whether or not there are grounds for disciplinary proceedings to be progressed.
- 2.15 An employee whose conduct is under investigation has the right to be represented by a workplace colleague, Employee Side Secretary, Trade Union Representative or Trade Union Official.

### **Suspension**

- 2.16 In cases where there are allegations of gross or very serious misconduct and/or attendance at work that would be likely to be prejudicial to the satisfactory operation of the department, the employee may be suspended from duty on full pay (to include any regular allowances & regular overtime ) pending the outcome of the investigation. Suspension is not a form of disciplinary action, nor does it represent any prejudgment of the outcome.
- 2.17 The decision to suspend will normally be given verbally and it will be confirmed in writing to the employee within 3 working days by an Executive Head of Service stating:
- The reason(s) for suspension;

- That the employee is advised to consult their Trade Union Representative, as appropriate; and
  - That the matter will be dealt with as quickly as possible.
- 2.18 In exceptional circumstances a manager may consider suspension without pay after a period of 28 days, where the employee is unavailable for work. This should be discussed first with Human Resources and must have the approval of the Executive Head of Human Resources.
- 2.19 In certain circumstances it may be possible for management to consider temporarily redeploying the employee to other duties as an alternative option to suspension without loss of full pay.
- 2.20 If during the course of an investigation an individual is suspended from duty and wishes to contact an employee to carry out their own investigation, they must seek the prior approval of their line manager before making contact.
- 2.21 Harassment of witnesses will constitute a disciplinary offence.
- 2.22 The period of suspension should be kept as brief as possible. An Executive Head of Service will review the employee's suspension from duty every 28 days and make a decision whether it will continue or not and communicate their decision to the employee their representative and HR. In the event of the Executive Head of Service being involved in the investigation, the review will be conducted by a Strategic Director or an Executive Head of Service from a different Directorate.
- 2.23 In the event that a Trade Union representative is suspended the full -time official of the Union concerned and the Lead Councillor for Human Resources will be informed by the relevant Executive Head of Human Resources or their representative.

### **Disciplinary Hearing**

- 2.24 If, following a preliminary investigation, it is decided to proceed with a formal disciplinary hearing; it will be arranged as soon as possible. The employee will be informed in writing before the hearing of:-
- The disciplinary allegations and whether any of these could be construed as gross misconduct\* leading to the possibility of dismissal;
  - The time and place of the hearing (a minimum of 5 working days notice will be given to an employee of the hearing)
  - The disciplinary allegations together with written evidence, witness statements (statements of evidence to be confirmed by witnesses) and names of witnesses to be called must be provided at least 5 working days before the date of the hearing.
  - The Employee will provide details of who will be present, including any witnesses (statements of evidence to be confirmed by witnesses at least 3 working days before the date of hearing);
  - Should Management side seek to submit a statement of evidence, such as new evidence, less than 5 working days before the date of hearing (or in the case of the Employee less than 3 working days), the manager chairing the hearing should consider

whether or not, exceptionally, to admit it as evidence taking account of the reasons for the late submission. The manager must not refuse to accept any evidence which may have a significant bearing on the outcome prior to the hearing.

\*For a non-exhaustive list of offences that could constitute gross misconduct, see the Guidance below.

- 2.25 An employee may be accompanied to the hearing by a workplace colleague, Employee side representative, Trade Union Representative or Trade Union Official.
- 2.26 The hearing will be chaired by a manager (“Chair”) more senior to the employee against whom the case has been taken (see table below), and allegations will be put with any supporting evidence to the employee by a presenting Officer, who may or may not have carried out the investigation. The Chair will be advised by a Human Resources representative. The employee must be given every opportunity to state their case using supporting evidence, including witnesses if required. If more time is needed to consider the matter or further investigation necessary, the hearing should be adjourned and resumed later.
- 2.27 The Chair will come to a decision in terms of what is fair, reasonable and practicable in all the circumstances.
- 2.28 If the allegations are upheld, the Chair will need to determine the appropriate penalty considering the seriousness of the offence and any other factors including any extenuating circumstances and/or mitigation put forward by the employee or their representative.
- 2.29 The Chair must write to the employee within 5 working days of the date of the hearing (unless otherwise agreed between both parties and/or if additional time is required to consider any other factors) with the outcome and stating the time limits and process for registering an appeal.

### Disciplinary Penalties

- 2.30 The range of penalties available to the Chair is outlined below.

**Note:**

A written warning may also be accompanied by a disciplinary measure related to the offence (e.g. written warning plus training/counselling or repayment of monies in the case of damage to property).

Penalty	Authorised by
First written warning	The Chair - [a manager more senior to the person being disciplined]
Intermediate written warning	The Chair - [a manager more senior to the person being disciplined]
Final written warning	The Chair - [a manager more senior to the person being disciplined]

Dismissal after final written warning	The Chair – at least Executive Head of Service status and more senior to the previous Chair
Action short of dismissal	The Chair – at least Executive Head of Service status and more senior to the previous Chair
Summary dismissal without pay or notice or pay in lieu of notice	The Chair – at least Executive Head of Service status and more senior to the previous Chair

### First Written Warning

- 2.31 If it is decided that an Employee's conduct has fallen short of the acceptable standards, a first formal written warning will normally be issued. The employee will be advised of the reason for the warning, that it is the first stage in the formal disciplinary procedure and of their right of appeal.
- 2.32 First level written warnings will apply from the date of the hearing and will expire after 12 months from the date of the letter confirming the outcome of the hearing unless there has been a recurrence of misconduct during the period, where upon a new investigation would take place.

### Intermediate Written Warning

- 2.33 If another offence occurs, or if, on a first offence, a more serious offence occurs for which the penalty of final warning is considered too severe, an intermediate written warning will normally be given. An intermediate written warning could be an extension of a first written warning or the beginning of a formal process but in prior to a final written warning.
- 2.34 Intermediate written warnings will apply from the date of the hearing and will expire after 12 months from the date of the letter confirming the outcome of the hearing unless there has been a recurrence of misconduct during the period, where upon a new investigation would take place.

### Final Written Warning

- 2.35 For serious misconduct as a first offence, or for further acts of misconduct after either a first or intermediate written disciplinary warning, a final written warning may be issued.
- 2.36 Final written warnings will apply from the date of the hearing and will expire after 12 months from the date of the letter confirming the outcome of the hearing.

### Dismissal After Final Written Warning

- 2.37 Where a further offence occurs after a final warning, dismissal will be considered as a last resort. Dismissal will normally be with notice, except where gross misconduct is

found (see paragraph 8 below). A penalty of dismissal will normally be implemented effective from the date of the disciplinary hearing.

### **Action Short of Dismissal**

- 2.38 Alternative options available where dismissal has been concluded may include the following where agreed by all parties:-
- Disciplinary transfer – the employee may be redeployed to another post on similar terms and conditions with their written agreement.
  - Demotion – the employee may be demoted to a lower grade on the terms and conditions (and status/seniority as appropriate) applicable to the lower graded post.
- 2.39 Penalties will remain effective for a period of up to 12 months. Employees who have been demoted or disciplinarily transferred will remain in the position they have been placed until such time as they have either successfully applied for another position upon expiry of the effective period i.e. after 12 months except where they have been moved to an alternative position or been redeployed or have left the employment of the Council. In the case of redeployment, the remaining term of the effective date of the penalty would continue in force in the new position).

### **Gross Misconduct and Summary Dismissal Without Pay or Notice or Pay in Lieu of Notice**

- 2.40 Where the gravity of an offence is sufficiently serious, it may render an employee liable to summary dismissal without pay or notice or pay in lieu of notice, even for a first offence. Gross misconduct is defined as conduct serious enough to constitute a fundamental breach of contract, for which there is no alternative but to dismiss. Examples of offences that may constitute gross misconduct and hence may warrant summary dismissal without pay or pay in lieu of notice are set out in the Council's Guidance below.

### **Appeals**

- 2.41 Employees wishing to appeal against a formal disciplinary penalty must do so in writing stating clearly the grounds of their appeal within 10 working days (unless otherwise stated) of receipt of the letter informing them of the outcome of the disciplinary hearing. Appeals will be arranged at the earliest opportunity and the employee will be informed of the outcome of an appeal hearing within 5 working days of the appeal hearing (unless otherwise agreed between both parties and/or if additional time is required to consider any other factors).

### **Appeals against Warnings/ Action Short of Dismissal**

- 2.42 An employee may appeal by writing to HR stating the grounds for the appeal.

The appeal will be organised by Human Resources at the earliest opportunity and will be heard by:-

Penalty	To be heard by
First, intermediate and final written warning	At least an *Executive Head of Service normally within appellants Group advised by a Human Resources Adviser
Any other action short of dismissal	*Director normally within appellants Group advised by a Human Resources Adviser*

\* should not have been directly involved in disciplinary proceedings or had knowledge of the proceedings in connection with the current case.

- 2.43 The employee will be informed of the appeal hearing members prior to the appeal, and of the date and venue of the hearing.
- 2.44 The Appeal Hearing may uphold or reject the appeal, or substitute another penalty at a lower level.
- 2.45 If the appeal is upheld, all papers relating to the disciplinary case will be removed from the employee's personnel file.

### Appeal Against Dismissal

- 2.46 An employee may appeal against a dismissal by writing to the Executive Head of Human Resources giving the grounds for appeal.
- 2.47 The appeal will be heard by the Council's Appeal Committee and advised by the Executive Head of Human Resources or their nominated representative who should not have been involved in previous disciplinary proceedings in connection with the current case (see Appendix A).
- 2.48 In the event that the appeal against dismissal is upheld without another penalty being substituted (for example one of the penalties described in "Action Short of Dismissal" at paragraph 7 above), the employee will be reinstated. Reinstatement will be, wherever practicable, to the job from which the employee was dismissed and on the same terms and conditions. In the event of reinstatement, any normal pay (and regular allowances) owing from the date of dismissal to the date of reinstatement will be restored accordingly.
- 2.49 Should the decision be to substitute a lesser penalty other than dismissal, the following may be included within the Appeal Committee's consideration, taking account of their appropriateness and practicability:
- If the decision were to be to implement a penalty of disciplinary transfer instead, the employee may be re-engaged to a different post on similar terms and conditions with their agreement

Or

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- Another option could be for the individual to be reemployed on different terms and conditions, which might include demotion (with change to grade/terms and conditions and seniority /status as appropriate)

or

- Another lesser penalty

- 2.50 Should the penalty of dismissal be substituted on appeal, with a penalty involving a reduction in pay, any pay during this period will be adjusted accordingly with pay following the appeal, at the new rate.
- 2.51 In the case of an alternative penalty to dismissal being substituted, service will be regarded as retrospectively continuous.
- 2.52 If an appeal is upheld without a lesser penalty being applied, all papers relating to the disciplinary case will be removed from the employee's personnel file.

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# Additional Guidance

## Aim

- 3 The Council is committed to ensuring that its managers and employees understand the Council's Disciplinary Procedure and how it is applied. This guidance is designed to aid such understanding.
- 3.1 Where there is any doubt as to how the Disciplinary Procedure is applied, further guidance may be accessed or sought from Human Resources.

## Scope

- 3.2 This guidance complies with the ACAS Code of Practice on Disciplinary and Grievance Procedures, and managers should be aware of their responsibilities as investigators to establish the facts of the case.
- 3.3 This guidance does not have contractual status and may be amended by the Council from time to time in consultation with the Employee Side and the recognised Trade Unions.

## Informal Stage

- 3.4 Depending on the circumstances of the matter, managers may consider seeking advice from Human Resources when considering dealing with a matter informally.
- 3.5 Minor misconduct can be dealt with by giving an informal oral instruction giving the reason and the improvement needed. It must be made clear that it is being undertaken under the informal stage of the disciplinary procedure.
- 3.6 If no improvement is made after an informal oral warning has been given, the manager may consider giving clear written instructions to the employee describing the standard of behaviour expected. A written instruction will be in force for 3 months, after which it expires, providing the employee's conduct during the period in which it was in force has been satisfactory.
- 3.7 Where the employee's conduct lapses and there is a repeat of unsatisfactory conduct during the period of an informal oral instruction, formal disciplinary action can be undertaken by the manager.
- 3.8 Incidents must be promptly investigated and documented under the informal procedure outlined in the Disciplinary Procedure. The employee should be fully informed of the allegation against them and given an opportunity to respond in the relevant meeting.
- 3.9 An employee may be accompanied if they wish, by an Employee Side Representative, trade union official or trade union representative or by another work colleague at the informal stage.
- 3.10 The manager will confidentially keep a copy of the written instruction for their reference and monitoring, which should be removed upon expiry.

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- 3.11 Should the employee commit another breach of conduct, a formal disciplinary process should begin, providing the informal instruction remains in force or there is a pattern of persistent breaches of conduct.

### **Suspension**

- 3.12 Suspension is not a form of disciplinary action, nor does it infer any guilt or represent any prejudgment of the outcome.
- 3.13 In certain circumstances, it may be possible for a manager to consider temporarily redeploying the employee to other duties as an alternative option to suspension without loss of pay.
- 3.14 Care should be taken to have regard to the circumstances of the incident when deciding whether to suspend and to keep under review by Exec Head of Service any suspension decision every 28 days thereafter.
- 3.15 In all cases, suspension should be on full pay, unless approval has been granted from the Executive Head of Human Resources as a result of exceptional circumstances. This would be in circumstances where the employee is unavailable for duty and after a period of 28 days from the start of the suspension.

### **Formal Stage**

- 3.16 When an alleged disciplinary matter of a more serious nature arises, or an informal disciplinary procedure has been exhausted, a preliminary investigation must normally be undertaken at the earliest opportunity. The manager conducting the investigations must conclude these investigations as speedily as possible, although it is recognised that some cases will involve a more lengthy and in-depth investigation than others. The investigation must be thorough and balanced. All potential witnesses must be interviewed and their statements taken in writing, signed and dated. At the conclusion of the investigation, the manager will review the evidence, with support from Human Resources, and confirm a decision whether or not there are grounds for disciplinary proceedings to be progressed.
- 3.17 The manager should ensure that the correct information is provided in writing, when instructing the employee to attend the disciplinary hearing, setting out the allegations of misconduct.
- 3.18 Consideration should be given to the choice of venue to ensure the disciplinary hearing can proceed undisturbed in a suitable environment that ensures confidentiality and privacy. Consideration should also be given to the needs of an employee with disabilities. Note: under the Equality Act 2010 if a disability is defined as a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on a person's ability to do normal daily activities.
- 3.19 The Hearing will be chaired by a manager more senior to the employee (see table), and allegations will be put with any supporting evidence to the employee. The Chair will be advised by a Human Resources representative. The manager must not have been previously involved in the procedure.
- 3.20 The manager conducting the disciplinary hearing has the right to instruct key witnesses for both sides to attend (provided advance notice has been given to the employee).

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- 3.21 The employee should make every effort to attend the disciplinary hearing. Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause, the manager chairing the hearing should consider whether a decision should be made in their absence on the available evidence.
- 3.22 The employee is entitled to be accompanied by a workplace colleague, Employee Side Representative, Trade Union Representative or Trade Union Official. It will not normally be considered reasonable for the employee to insist on being accompanied by someone whose presence may prejudice the hearing or where the availability of that person is such that the hearing cannot be held within a reasonable timescale as considered by the manager. Insofar as the employee wishes to be accompanied by someone other than a workplace colleague or Trade Union Representative or Official, this will not normally be allowed.
- 3.23 Managers should take into account the provisions of the Equality Act 2010 at all times. In exceptional circumstances and to enable a fair and balanced hearing (e.g. where a disabled employee may need to be accompanied by a specific companion) such a companion may attend in addition to a Trade Union Representative or Official as a reasonable adjustment. Advice should be sought from Human Resources for permission for them to attend.
- 3.24 Such a companion cannot act as advocate for the employee if a Trade Union Representative or Official is also present.
- 3.25 The employee's chosen advocate is allowed to address the hearing and sum up the employee's case, but does not have the right to answer questions on the employee's behalf, other than in exceptional circumstances as above.
- 3.26 The manager should explain the allegations and the employee and/or their representative on the employee's behalf must be given every opportunity to state their case using supporting evidence, including witnesses if required. If more time is needed to consider the matter or further investigation necessary, the hearing should be adjourned and resumed later.
- 3.27 Witnesses should only be in attendance at the disciplinary hearing whilst giving evidence. Witnesses should not discuss details of the case outside of the formal setting.
- 3.28 Periodic adjournments during meetings may be necessary for refreshments, comfort breaks or to allow the employee to consult with their chosen companion.
- 3.29 Both parties should be given the opportunity to sum up their case at the end of the disciplinary hearing.
- 3.30 After hearing the evidence, the manager should adjourn to consider whether or not the allegations are proven and whether any disciplinary or any other action is justified (taking into account any mitigation). If further investigation is required before a decision can be reached, the manager can adjourn the proceedings, but should reconvene the same as soon as possible.
- 3.31 Managers should note that the level of proof is reasonable assurance 'on the balance of probability' and that the objective of the Disciplinary Procedure is to maintain the behavioural standards required by the Council.

- 3.32 The outcome should be communicated verbally to the employee at the disciplinary hearing if at all possible and then confirmed in writing. If action short of dismissal is taken, the employee should be advised how long the sanction will remain live and of the consequences of further similar conduct, or failure to improve – for instance, that it might result in dismissal or some other contractual penalty such as demotion or loss of seniority.
- 3.33 A finding of gross misconduct does not automatically lead to summary dismissal. The manager must consider the sanctions available and what is reasonable in the circumstances.

### **Grievances Raised During the Disciplinary Procedure**

- 3.34 Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. The matter of grievance must be resolved before the outcome of a disciplinary hearing is finalised.

### **Sickness Absence During the Disciplinary Procedure**

- 3.35 An employee who is unfit to attend a disciplinary hearing as a result of sickness must provide a 'fit note' from a doctor confirming that they are unable to attend.
- 3.36 Where the delay arising from such absence is ongoing, the manager should discuss the matter with Human Resources and the Employee Side Representative, trade union official or trade union representative to find a way to enable the employee to attend the disciplinary hearing as soon as is practicable. Consideration should also be given to allowing the employee to provide written submissions if appropriate, such as where sickness limits attendance.
- 3.37 If the delay is such that there is no possibility of the employee attending the disciplinary hearing within a reasonable timescale, the manager should seek advice from Human Resources to consider whether the disciplinary hearing should take place in the employee's absence, with their chosen companion present.

### **Conduct Outside the Workplace**

#### **Criminal Charges or Convictions**

- 3.38 Whilst being charged with, or convicted of, a criminal offence\* is not in itself a reason for disciplinary action, there are circumstances in which the matter may warrant starting the disciplinary procedure in particular, where the circumstances relate to the role of the employee and/or the Code of Conduct. The manager should seek advice from Human Resources.

#### **Note:**

\*This could also include driving offences where the employee's driving licence may be endorsed and where their job requires them to drive, or where they may be convicted of an offence affecting their employment. For example, if the employee was charged with theft and their job involved dealing with money, or they were charged with an assault and their job involved working with vulnerable clients.

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- 3.39 It is the responsibility of the employee to notify their manager at the earliest opportunity of a criminal investigation which may have an impact on their job or ability to carry out their job and/or of being or having been convicted of a criminal offence that may seriously affect their suitability for their job.
  - 3.40 Where the alleged misconduct involves a potential criminal matter, suspension may be considered. This will not necessarily mean that an internal investigation is delayed until the outcome of a prosecution is known.

### **Social Media/ Internet**

- 3.41 Posting inappropriate or offensive comments on sites such as social media websites may lead to disciplinary action being taken (see the Council's Social Media Policy) <Link to Social Media Policy>.
- 3.42 Employees need to be aware that downloading or accessing and/or sharing extreme/offensive and/or illegal material on websites outside work (this does not cover downloading music/films/photos etc unless the paragraphs above apply) can lead to disciplinary action and can seriously affect their suitability for employment.
- 3.43 The Council may undertake a disciplinary investigation which may lead to disciplinary action in respect of behaviour outside work that contravenes the Code of Conduct and/or where the image or reputation of the Council has been damaged or brought into disrepute. This does not affect an employee's human rights.
- 3.44 The disciplinary procedure may also be applied where membership of an organisation that leads an employee to behave in a way that contravenes the Code of Conduct and/or seriously and adversely affects the way in which they carry out their work and/or represents a conflict of interest. This does not affect an employee's human rights.

### **Examples of Misconduct**

- 3.45 The Advisory Conciliation and Arbitration Service ("ACAS") recommend that examples of misconduct are spelled out. The following list provides examples of offences that could constitute a disciplinary offence. Not all offences which could constitute misconduct are listed and some offences or situations which are not listed may be treated as misconduct for which disciplinary action may be undertaken. Therefore the following list of offences is illustrative of the types of misconduct that may lead to disciplinary action, but is non-exhaustive:-
- 3.46 Fighting / physical violence.
- 3.47 Conduct likely to cause harm or offence to a customer, member of the public or work colleague.
- 3.48 Unauthorised absence, including lateness or poor timekeeping.
- 3.49 Misuse of the Council's facilities / property or name, including money and the misuse of telephones, mobile phones and ICT equipment (see paragraph 8.1.7), including for example calling on premium lines.

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3.50 Foul or abusive language.

3.51 Stealing, for example:

- Employees must not steal anything belonging to the Council's tenants, service users, employees, councillors or anyone who you come into contact with in your work. This would include their money, property, equipment and investments.
- It also includes short-term loans of property or equipment, for example, taking or using the Council's vehicles for private use without permission, or dishonest falsification of flexi time records. Additionally, using the Council's telephone network for making phone calls outside the United Kingdom without the permission of a manager (unless it is business connected) or making phone calls to any premium-rate line (including chat lines).

3.52 Excessive personal use during working hours of any (Council or personal) electronic devices and equipment (unless in an emergency) for non work purposes. Listening to music may be allowed with the permission of the manager.

3.53 Deliberately and/or repeatedly accessing and/or sharing illegal material or material of an extremely offensive nature including pornographic or obscene material

3.54 Dishonesty, including knowingly making a false, misleading or inaccurate oral or written statement in respect of official business.

3.55 Failure to follow a reasonable management instruction.

3.56 Failure to follow Council policies and/or standards including breaches of the Code of Conduct, Disciplinary Procedure, Standing Orders, Financial Regulations, Computer Security Policy, Health and Safety Policy, Guidance and Instructions, Equal Opportunities and the Harassment and Bullying Policy.

3.57 Unlawful discrimination or harassment.

3.58 Failure by an employee to seek their manager's permission to undertake additional employment that impinges on their main employment with Sutton and/ or that may result in a conflict of interest).

3.59 Conducting non-Council business in work time (where it is essential and reasonable that an employee does so, the employee must obtain their manager's permission).

3.60 Using confidential information dishonestly or improperly.

**Note:**

- The particular circumstances and consequences of the breach and whether it is wilful or not, will be taken into account when determining if it is misconduct at a disciplinary hearing
- Breaches of confidence may be subject to the Public Interest (Disclosure) Act 1998.

- Employees in jobs where formal sharing of information protocols with partners exists must be aware of the relevant protocols and guidelines and comply with them.
- 3.61 Sexual offences inside and outside work and sexual misconduct inside work, such as sexual harassment of colleagues that may have a bearing on the person's ability to carry out their duties and/or impact on their position as an employee of the council.
- 3.62 Failure by an employee to carry out duties which may seriously affect the Council or the people who use its services.
- 3.63 Being under the influence of drugs or alcohol in contravention of the Council's Substance Abuse Policy and Procedure (this includes the rule that if the employee drives, uses machinery, works with clients or the public, then the employee must ensure that they are fit for work and able to perform their duties unimpaired by alcohol or drugs). Employees who have an alcohol or drug problem are encouraged to seek support and treatment immediately.
- 3.64 Corrupt behaviour or other improper practice including an employee using or attempting to use their official position for their own or another person's personal gain such as:-
- Asking for, or accepting:
    - (i) Bribes;
    - (ii) Money;
    - (iii) Favours;
    - (iv) Gifts or hospitality; or
  - Supplying, dealing with or influencing a service or benefit to a friend, partner, associate or relative in contravention of Staff Gifts and Hospitality (Audit Guidance Note) and/or the Anti-Bribery Policy and/or under the Bribery Act 2010 and /or Local Government Act 1972.
- 3.65 Employees must be aware that giving or receiving any gift, loan, fee, reward or advantage for doing, or not doing anything or showing favour, or disfavour, to any person in their official capacity may be in contravention of Council's Gift Policy< link to Council Gifts Policy>
- 3.66 Making an unauthorised change or falsification, to any record or document, or removing it, or carrying out an unauthorised and wilful destruction of an official record or document.
- 3.67 Falsifying information used in support of an application for a post, including failure to disclose any convictions.
- Note:** Under the terms of the Rehabilitation of Offenders Act 1974 certain convictions that are 'spent' may be exempted from disclosure.
- 3.68 Failure to declare a close relationship with a Councillor or any senior officer of the Council that would influence the recruitment process.
- 3.69 Misuse of the Council's email system (see Council's Computer Security Policy).

- 3.70 Victimisation or harassment of witnesses during a formal investigation.
- 3.71 Contravention of the Council's Smoke Free Policy.

### Examples of Gross Misconduct

- 3.72 Offences normally constituting gross misconduct are those considered grave enough that, if proven, may justify no longer continuing employment. The following list provides examples of offences that could constitute a disciplinary offence. The list is illustrative and is ***not exhaustive***:-
- 3.73 Repeated and significant accumulated breaches of the Council's Code of Conduct and Disciplinary Procedure.
- 3.74 Serious breaches of standing orders, financial regulations, the Computer Security Policy, or any other Council policies and standards.
- 3.75 Serious sexual offences or sexual misconduct at work.
- 3.76 Serious breaches of the Council's equal opportunities or harassment and bullying policies, unlawful discrimination or harassment.
- 3.77 Repeated and significant failure to follow a legitimate and reasonable management instruction.
- 3.78 Fighting / physical assault.
- 3.79 Deliberately and/or repeatedly accessing and/or sharing illegal material or material of an extremely offensive nature including pornographic or obscene material.
- 3.80 Causing loss, potentially serious loss, damage or injury through serious negligence (including malicious damage to Council property).
- 3.81 Physical violence or bullying.
- 3.82 Deliberate and serious damage to property.
- 3.83 Serious contravention of the Council's Substance Abuse Policy<Link to Substance Abuse Policy>
- 3.84 Theft or fraud\* (including unauthorised removal of Council property).  
\*Where fraud is involved, Internal Audit *must* be involved, who will advise on procedure.
- 3.85 Offences of dishonesty such as falsification of time sheets, expense claims etc.
- 3.86 Corruptly soliciting or receiving any benefit or advantage from any individual or body with whom the Council has dealings.
- 3.87 Bringing the organisation into serious disrepute.
- 3.88 Maltreatment of persons in case or whose personal welfare is otherwise the responsibility of the Council.

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- 3.89 A serious breach of health and safety rules.
  - 3.90 A serious breach of confidentiality.

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## PROCEDURE FOR HEARING APPEALS AGAINST DISMISSAL

1. The appeal will be heard by the Council's Appeal Committee and advised by the EHOHR or their nominated representative who should have not been involved in previous disciplinary proceedings in connection with the current case.
2. An initial 'directions hearing/agenda planning meeting' will be arranged to work out the appeal hearing arrangements with both parties. If there is any new information that would necessitate calling witnesses, together with dealing with any substantive procedural issues or disputes, it will be discussed within this meeting.

The directions hearing/agenda planning meeting would consist of the chair of the Appeal Committee ("Chair" within this Appendix), a representative of the EHOHR, the committee manager, the appellant (and representative) and the management representative (and adviser, if appropriate). The directions hearing/agenda planning meeting would facilitate the resolution of procedural issues between the two parties, as well as identifying any witnesses to be called, and length of likely presentation of the cases.

The directions hearing/agenda planning meeting would be time limited to no more than 1 hour for each party.

3. The appellant will be given notice in writing at least 5 working days in advance of the time and place of the appeal hearing. They may be accompanied by a workplace colleague, Trade Union Representative or Trade Union Official. Copies of any relevant new documents will be made available 2 days in advance of the hearing though exceptionally could be submitted later, but prior to the hearing, on application to the Chair and at their discretion.
4. At the commencement of the hearing, both sides will be given the opportunity to make a brief opening position statement.
5. (i) The Council's representative will put their case in response to the grounds of appeal in the presence of the appellant and this chosen companion and call for such witnesses as agreed at the planning / directions hearing.  
  
(ii) The Appellant (or their chosen companion) will put their case for the grounds of their appeal in the presence of the Council's representative and call for such witnesses as agreed at the planning/directions hearing.
6. The contents of any written statement submitted as evidence where witnesses are not present will be open to challenge.

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7. Each party will have the opportunity to ask questions of the other after the appellants (or their chosen companion) and the Council's representative's presentations respectively and of any witnesses. The Committee will also be able to ask questions about each party's presentation.
  8. The Council's representative and the appellant (or their chosen companion) will have the opportunity to sum up their case if they so wish.
  9. The Council's representative and the appellant and their chosen companion will withdraw and the Committee will deliberate.

If the Committee decide that any information requires further investigation, they may adjourn the hearing.

10. The Committee may uphold the appeal, reject the appeal, or substitute another penalty. If the appeal against dismissal is upheld without another penalty being substituted, the employee will be reinstated to their old post wherever practicable.
11. The Committee will confirm their decision in writing within 5 working days (unless otherwise agreed between both parties and/or if additional time is required to consider any other factors).

