

Disciplinary Procedure

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1. Aim

The Council is committed to ensuring a supportive, safe, and inclusive working environment and culture. The overall purpose of this policy is to ensure that any disciplinary matter is dealt with promptly, fairly, and that, if appropriate, steps are taken to establish the facts and to give the employee an opportunity to respond before taking any formal action. This includes ensuring that all individuals involved in the disciplinary process are treated reasonably and equitably, with dignity and respect.

Employees are expected to maintain high standards of professional conduct at all times. This includes times when they are not at work and in a situation where their conduct may potentially bring the Council or profession into disrepute.

This procedure takes account of the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice. It also replaces any previous policies and procedure that have been in place.

The aim is to ensure consistent and fair treatment for all in the organisation.

This procedure does not form part of any contract of employment or other contract to provide services.

2. Scope

This procedure applies to all employees of the Authority except:

- Employees in locally managed schools where there are separate arrangements.
- The Chief Executive, Chief Officers and all other officers whose conditions of service are governed by the NJC for Chief Officers, where there are separate arrangements described in the Council's Constitution.

The Council will not take any action under this procedure against a Shop Steward or other accredited Trade Union representative (including safety representatives) until the circumstances of the case have been discussed with a full-time official of the Trade Union concerned, after obtaining the employees agreement.

3. Principles

Matters will be dealt with informally, where appropriate, to resolve problems.

In some cases, it will be appropriate to issue a Management Instruction as an alternative to formal action. This will be confirmed in writing and placed on file.

Formal disciplinary action will not be considered until the case has been fully investigated.

There is the right to representation at any formal meeting or investigatory meeting.

Employees will be informed of the allegations against them and will be given the opportunity to state their case before any decision is taken at a disciplinary hearing.

Employees will be provided with, where appropriate, written copies of evidence and relevant witness statements before a disciplinary hearing.

An employee will not normally be dismissed for a first act of misconduct, except in the case of gross misconduct, when the penalty may be dismissal without notice and without payment in lieu of notice.

Employees have the right to appeal against any formal disciplinary action. See **Appendix 3 – Appeal Procedure**

4. Setting standards of behaviour

In cases of minor misconduct, it may be more appropriate for managers to deal with issues of concern through management action rather than instigating the disciplinary procedure. This can often be the most effective solution.

The manager should try resolving the issue with the employee by:

- Privately talking with the employee
- Listening to their point of view
- Setting out improvements to be made
- Setting up a training or development plan. It may be more appropriate to deal with performance under the capability procedure; however, HR will be able to advise regarding this. Brief confidential notes of the discussion(s) with the employee should be kept by the manager on any agreed actions and may be recorded on file. The manager should also write to the employee (a letter or email) to confirm what was agreed during the meeting. As this is not formal action under the policy there is no right to be accompanied or a right of appeal.

5. Roles and responsibilities

Individual responsibilities

Employees are required to co-operate with the employer in respect of the application of the employer's disciplinary procedure, including attending any disciplinary hearings.

Employees are expected to comply with the Code of Conduct and LET'S values and behaviours and other relevant policies.

Employees may seek advice and representation if needed from Trade Unions or another colleague when a disciplinary issue is identified.

Management responsibilities

Managers should ensure that they are fully conversant with the disciplinary procedure and are able to take action in line with the procedure. Managers should attend any training or briefing sessions in relation to the disciplinary procedure.

Managers should deal with issues where possible through management action rather than instigating the disciplinary procedure to prevent minor disciplinary problems from escalating unnecessarily.

Managers are responsible for creating an environment in which staff feel well supported. The manager is responsible for addressing issues regarding conduct and managing it in accordance with this policy and procedure.

Managers are also responsible for ensuring that their staff are aware of support available to them in terms of health and wellbeing.

HR responsibilities

HR will provide guidance, and support in the application of the procedure, including training for managers to enable them to deal with issues regarding conduct.

Where appropriate HR will liaise with Trade Union colleagues.

6. The disciplinary procedure

Where the allegation is of a more serious nature or cannot be dealt with through a management discussion, the manager must contact HR for advice.

If a grievance is raised at any time during this formal stage, then the disciplinary procedure will not be suspended except in a situation where to continue with the disciplinary process could cause clear prejudice to the employee. Should the disciplinary and grievance issues be related, it may be appropriate for both procedures to run concurrently.

Investigation process

An investigation should normally be carried out prior to a decision being made as to whether to hold a Disciplinary Hearing. In all cases as part of the investigation there should be checks in place to ensure there are no equalities concerns.

If it is decided that an investigation should take place, the manager should inform the employee, giving the reasons for the investigation, as soon as possible and confirm this in writing. The purpose of an investigation is to produce a fair and thorough report that collates evidence which may or may not support a complaint/ allegation (for full details see Managers Guidance: Investigations & Suspension).

Suspension

Suspension is when the matters of concern are so serious it is necessary for the person being investigated not to temporarily carry out work, until the matter has been resolved. Suspension may be considered before an investigation commences or during any part of the investigation.

Employees will receive their normal pay during any period of suspension.

An employee should only be suspended if it is needed. For example:

- suspending an employee whilst an investigation is carried out, if the matter is potentially Gross Misconduct and there is no other alternative see section 2
- medical suspension to protect an employee's health and safety. See Managing Attendance policy.

Suspension is a holding measure only to ensure a fair investigation is carried out and manage risk and is not classed as a disciplinary sanction in any way.

Suspension is a last resort, and other options including temporary redeployment should be considered as an alternative to suspension.

In all circumstances, advice should be sought from HR by the Suspending Manager and the Chief officer from the HR Service must approve any suspension before it is actioned.

For full information on Suspension.

Invitation to a disciplinary hearing

Where the investigation indicates the employee has a sufficient case to answer, the investigating manager will write to them to invite them to attend a disciplinary hearing.

The invitation letter will set out sufficient information about the allegations and the potential consequences to enable the employee to prepare their case.

The investigating manager will present evidence to the Hearing Officer at a disciplinary hearing and may be supported by a HR representative.

See **Appendix 2** Hearing Procedure and Managers Guidance Suspension and Investigations.

The right to be accompanied

An employee can be accompanied at all formal stages of the disciplinary procedure.

They may choose from one of the following:

- a work colleague
- a trade union representative who's certified or trained in acting as a companion
- an official employed by a trade union.

It is the employee's responsibility to make these arrangements.

The person accompanying the employee is permitted to address the disciplinary hearing, including putting the employee's case, asking questions of any witnesses, summing up, and responding on the employee's behalf to any view expressed at the hearing. The person accompanying should not answer questions on behalf of the employee.

Adjustments will be considered in accordance with the Equality Act 2010. This might, for example, include allowing someone else to accompany the individual, such as a support worker or someone with knowledge of a disability and its effects.

The disciplinary hearing

The Chair of the Disciplinary Hearing will consider the findings of the investigation and the response of the employee before deciding whether the allegations are upheld and, if so, what disciplinary sanction should be imposed. The outcome of the disciplinary hearing will be confirmed in writing including any sanctions imposed, or other recommendations made (e.g. further training).

The Chair will not have any previous involvement.

7. Sanctions following a hearing

First written warning

A first written warning would be appropriate for cases of minor misconduct. The warning will be in writing and set out the nature of the misconduct, the change in behaviour required and the right of appeal. The warning will state that a written warning may be considered if there is any further misconduct. A copy of the record will be kept on file, but it will normally be disregarded for disciplinary purposes after 6 months from the date issued.

Written warning

A written warning for misconduct will be issued if the employee commits a further act of misconduct or if conduct does not meet acceptable standards but does not merit a final written warning. The warning will be in writing and set out the nature of the misconduct, the change in behaviour required and the right of appeal. The warning will state that a final written warning may be considered if there is any further misconduct. A copy of the record will be kept on file, but it will normally be disregarded for disciplinary purposes after 12 months from the date issued.

Final written warning

A final written warning will be issued if the offence is sufficiently serious (Serious Misconduct) in itself, or there is further misconduct following a first written warning

A letter will be issued confirming the full details of the misconduct. It will also warn that any further misconduct may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal.

A copy of the record will be kept on file, but it will normally be disregarded for disciplinary purposes after 18 months from the date issued.

Dismissal or other action

If there is further misconduct the final step in the procedure may be dismissal or some other action short of dismissal.

Dismissal with Notice: This may take place where an employee already has a final written warning and commits another act of misconduct which, on its own might not be serious enough to warrant dismissal. In all cases (except gross misconduct – see below), the employee will be given appropriate statutory or contractual notice (whichever is the greater).

Dismissal without Notice: An employee may be dismissed without notice (summarily dismissed) where no previous warnings have been given if the misconduct is considered to be gross misconduct. Gross misconduct is so serious that it fundamentally breaches the contractual relationship between the employee and the employer.

In all cases of dismissal, the employee will be provided in writing with the: reasons for dismissal date the employment will end confirmation of all final payments owed, including holiday pay and notice pay right of appeal

Examples of unsatisfactory conduct can be found in Appendix 1.

Action short of dismissal

A final written warning will be issued for a period of 18 months if action short of dismissal is taken.

Action short of dismissal is disciplinary action taken by employer to signal the gravity of misconduct which would result in dismissal if misconduct persisted. Examples where action short of dismissal may be applicable include committing an act of gross misconduct following a lengthy period of unblemished service or statutory bar from a specific profession.

The action could include demotion within the team or redeployment within the department into a vacant post without pay protection/other job specific benefits.

Regulated roles

For employees in regulated role, it may be necessary to inform the relevant regulatory body and/or the Disclosure and Barring Service of action taken under this procedure.

In circumstances where an employee resigns or leaves employment in the course of disciplinary proceedings, and the allegations are such that it could have led to dismissal, the case may be referred to the relevant regulatory body and/or the Disclosure and Barring Service as appropriate.

If the employee is absent or off sick

Normally, if an employee is sick while suspended, this will over-ride their suspension. During their sickness, they will be subject to the Managing Attendance Policy and require to present medical certificates and be paid at the appropriate rate i.e. Occupational Sick Pay, Statutory Sick Pay, or no pay. If at the end of their period of sickness, the disciplinary investigation has not been completed, they will continue to be suspended.

However, if the employee is a Statutory Officer, then this is covered by the Officer Employment Procedure Rules which is part of the Council Constitution.

If the employee is unable to attend on the date of the disciplinary hearing the hearing will normally be rescheduled on one occasion only.

If the employee is unable to attend on the date of the rescheduled hearing, alternative arrangements may be considered.

For example, the hearing could be held in an alternative location or remotely, or the employee could provide written submissions.

If no other alternative is possible, the hearing may be held in the employee's absence. If so, the employee should be informed of this in writing in advance of the hearing.

Appendix 1: Misconduct and gross misconduct

Examples of misconduct and gross misconduct

Misconduct

- refusing to do work ('insubordination')
- being absent without permission (absent without leave or 'awol')
- persistent lateness/bad timekeeping.
- negligence or deliberate breach of GDPR

Gross misconduct

The following list provides some examples of offences which are normally regarded as gross misconduct:

- attending work when unfit due to the influence of alcohol or drugs (taking into account the Alcohol and Substance Misuse Policy)
- being in possession of or using drugs for non-medical purposes,
- theft or fraud
- inappropriate social networking - for example, posting derogatory or offensive comments on the internet about the company or a work colleague.
- fighting or making violent threats at work
- bullying in the workplace or cyberbullying
- deliberate and serious damage to property
- serious misuse of an organisation's property or name
- serious misuse of computer, email, and internet systems, including accessing pornographic, offensive, or obscene websites or distributing emails of this nature.
- serious insubordination
- discrimination, harassment, or victimisation
- bringing the organisation into serious disrepute
- causing loss, damage, or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of GDPR
- a serious breach of professional standards or registration

Appendix 2 – Hearing Procedure

Arranging the hearing

- Where possible Hearings will be scheduled to take place on one day or, if necessary, on consecutive days; although it may be necessary to adjourn to seek further information or advice.
- The employee must be informed in writing that he/she is required to attend a Hearing and that he/she has the right to be accompanied by a work colleague or a Trade Union representative, or an official employed by a Trade Union. It will be for the employee to arrange the person who will accompany the employee at the Hearing. The employee must be given at least 7 calendar days' notice of the Hearing date, time, and venue from the expected date of receipt of the letter.
- The letter will include the allegations and possible consequences. It will also ask if the employee has any requests for reasonable adjustments for the Hearing.
- The employee will be asked to confirm the name of the Trade Union representative or work colleague attending the Hearing or other companion agreed as a reasonable adjustment. The employee will be asked to provide any documentation that he or she intends to present or rely on at the Hearing at least 3 working days before the Hearing.
- If the employee cannot attend on the scheduled date through circumstances outside of the employee's control, the Hearing will be rearranged for another date. If the employee's Trade Union representative or work colleague cannot attend on the rescheduled date, the employee can suggest an alternative date and the Hearing will be rearranged for that date. However, ideally the rescheduled Hearing will take place no more than 5 working days after the date of the original Hearing.
- If two Hearings have been convened which the employee has been unable to attend, the second Hearing will take place in the employees' absence and a decision will be made based on the evidence available.
- If required, the Chair of the Hearing will seek a medical view from Occupational Health as to whether the employee is fit to attend the Hearing.

Hearing Procedure

The Chair of the Hearing will introduce everybody and explain the following procedure to both sides: -

1. The Investigating Manager will state the nature of the case, referring to evidence gathered. They will be permitted to produce relevant documentation.

2. The employee will be given the opportunity to ask questions of the Investigating Manager.
3. The Chair and the HR representative may also take the opportunity to ask questions.
4. The employee will be given the opportunity to state his/her case, to produce relevant documentation.
5. The employee's companion will be allowed to address the hearing to:
 - Present the employee's case
 - Sum up the employee's case
 - Respond on the employee's behalf
 - Confer with the employee during the hearing
6. The employee's companion will be able to participate as fully as possible in the hearing, including asking witnesses questions. However, the employee's companion cannot answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the management representative from explaining the Management case. An exception may be made if the employee requests their companion to speak on their behalf as a reasonable adjustment.
7. No other person, for example partner or relative, will be allowed to attend the Hearing.
8. The Chair and the HR representative will take the opportunity to ask questions.
9. If appropriate, there may be a general discussion to establish all the facts and/or clear up any misunderstandings.
10. The Investigating Manager and employee may summarise the main points of their case. No new evidence or information may be included.
11. The Chair will adjourn to consider the case, with the HR representative.
12. If the Chair wishes to clarify any points of evidence, both sides will be recalled.
13. The Chair will reconvene the hearing to deliver the decision of the Hearing.
14. The decision of the Chair will normally be given verbally at the end of the Hearing and will be confirmed in writing to both parties.
15. The employee will be given the right of appeal (if appropriate) after the decision.

Appendix 3 – Appeal Procedure

Staff have the right of appeal against any dismissal or any formal sanction within 10 working days of the decision being communicated:

- Appeals against dismissal to be sent to the Director of People and Inclusion for a members' appeal.
- Appeals against any other sanctions should be addressed to the relevant Director/Assistant Director for the service.

The appeal must state the reasons for the appeal, which will be one of the following:

- Any part of the procedure was wrong or unfair.
- The dismissal/ sanction was for an unfair reason.
- There is new evidence.

Upon receipt of an appeal, the Director of People and Inclusion or Director/ Assistant Director for the service will provide acknowledgement in writing, ideally within 2 working days.

Appeal hearings should ideally take place within 30 working days of receipt of the written request. Where this is not possible, the applicant should be informed as soon as practically possible.

Appeals against dismissal.

Following acknowledgement of receipt of the appeal, the Director of People and Inclusion will provide the necessary information to the Democratic Services team, who will co-ordinate and arrange the hearing in consultation with all parties.

The panel is made up of the Chair of the Human Resources and Appeals Panel and elected Members of the Council supported by a HR representative. A member of Democratic Services will be present to take notes of the hearing.

Appeals against other sanctions.

Following acknowledgement of receipt of the appeal, the Director/ Assistant Director for the service will make arrangements for the appeal to be heard.

The panel is made up of 2 Senior Managers who have not previously been involved in the case, supported by a HR representative. A note taker may also be present at the hearing.

Process

- The Chair of the original Hearing will present the management case to the hearing panel and may be accompanied by the HR representative who advised them during the Hearing. The HR representative's role is to provide support during the hearing if required, not to present the case.
- The applicant and respondent will be given at least 12 working days' notice of the date of the appeal.
- All statements and documentation to be referred to at the hearing (including any new evidence to be considered) will be submitted 6 working days prior to the hearing date, along with the names of any witnesses to be called.
- Papers will be distributed to Panel members, applicant, and respondent 5 working days prior to the appeal.

Procedure

The Chair of the appeal Hearing will introduce everybody and explain the following procedure to both sides: -

1. The employee will be given the opportunity to state his/her case, explaining the reasons for the appeal.
2. Management may ask the employee questions.
3. The panel and the HR representative may also take the opportunity to ask questions.
4. Management will state the nature of the case, and the reasons for the sanction/dismissal.
5. The employee and representative may ask management questions.
6. The panel and the HR representative may also take the opportunity to ask questions.
7. If appropriate, there may be a general discussion to establish all the facts and/or clear up any misunderstandings.
8. Management and employee may summarise the main points of their case. No new evidence or information may be included.
9. The panel will adjourn to consider the case, with the HR representative.
10. If the Chair wishes to clarify any points of evidence, both sides will be recalled.

11. The Chair will reconvene the hearing to deliver the decision of the Hearing.
12. The decision of the Chair will normally be given verbally at the end of the Hearing and will be confirmed in writing to both parties.
13. There is no further right of appeal, so the process ends.

Bury
Council