



Disciplinary Policy and Procedure

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Abbreviations and definitions

The table below contains explanations for the abbreviations and definitions used in this policy. If you have any questions about any of these please contact the HR team for clarification.

| Abbreviation or word | Meaning |
|-----------------------------|---|
| Procedure | The series of steps that will be taken in order |
| LGPS | Local Government Pension Service |
| Business days | The days that the Council is open for business, typically Monday - Friday |

1. Introduction

South Cambridgeshire district Council is committed to equality of opportunity and treatment in employment for all its staff. As part of this the Council operates a disciplinary procedure, which addresses breaches of discipline, health and safety, failures in performance, or any other form of misconduct. This policy is applied equally in all instances where disciplinary action is regarded as necessary by the Council's management.

The council will aim to address these issues as early as possible in order to ensure that employees are clear about what is expected of them. The disciplinary procedure is written to support managers and is intended for use when informal means of correcting breaches of discipline or misconduct have not achieved improvement or change, or where more serious breaches have occurred, and an informal approach would not be proportional. It sets out guidance for managers on how to handle disciplinary matters and specifically how to follow the Council's process appropriately as well as providing a source of information to employees.

If you are the subject of a disciplinary investigation, you are advised to read the policy and procedure, as it will tell you what to expect and what your rights are.

Aim of the procedure

The aim of this procedure is to ensure that the Council treats all staff fairly and consistently. It defines the process for dealing with breaches of behavioural standards and failure to meet required standards of work. The procedure aims to encourage staff to improve their conduct and/or performance to meet required standards; it is not primarily intended for use as a means of applying sanctions however the Council accepts that in order to manage behaviours effectively, sanctions may be required and these will be issued where appropriate.

The Policy is not intended to deal with genuine Capability issues; these should be dealt with using the Capability Policy. However, if failure to meet required standards may be

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due to an intentional breach, negligence or recklessness on the employee's part, then the Disciplinary Policy may be instigated (further details of examples of behaviours covered are outlined in Section 5).

Access to this Policy

In the application of this policy, the Council will make reasonable adjustments for employees who are unable to deal with written correspondence and requirements due to disability, as well as any other reasonable adjustments that may be required to enable an Employee to fulfill their obligations as part of the Disciplinary process.

Employees who need assistance with interpreting this policy should contact the HR team for guidance and support.

2. Organisational Context

The Council's disciplinary policy and procedure forms part of our contract of employment and will always be applied fairly and consistently. It is the role of the HR team to ensure that managers apply the policy consistently across the Council. The policy will be reviewed regularly and may be updated to ensure it fits the needs of the Council and meets statutory requirements.

Code of Conduct

The Council has a Code of Conduct, which sets clear standards on issues such as:

- Service to the public
- Disclosure of information
- Political neutrality
- Relationships with Councillors, service users and contractors
- Conflict of interest

If an employee acts in a way which breaches the officer Code of Conduct that will be treated as a disciplinary misconduct.

Dignity at Work

A copy of the code can be found on the Council's Intranet. Breaches of the Code will be dealt with under the disciplinary procedure.

3. Variations and Exemptions to the Policy

The disciplinary policy will be applied fairly and equally to all staff, however there are some variations within the procedure for those on different types of employment

Temporary staff employed through an agency

If, as a manager, you are faced with a disciplinary issue or a failure of performance concerning a temporary member of staff who is employed through an agency, you must discuss this with the agency at the earliest opportunity, and inform the agency that you no longer wish to use the services of the individual concerned and terminate the contract with the agency immediately. For guidance speak to your line manager or the HR team.

Staff on probation

SCDC contracts of employment contain a clause, which places all employees who are new to a role on probation for a period of up to six months. This is intended to allow the employee and their line manager to ensure that the appointment is successful, and that there is a clear induction process to enable the employee to settle into their new post over a defined period of time.

Any failure in performance, or failure to reach an acceptable standard of performance, during this period will be dealt with through the Probation Policy.

Other misconduct – for example, failure to follow the Code of Conduct, harassment of a colleague or member of the public – will be dealt with through the disciplinary procedure. However, staff on probation will normally be given one warning only, no matter what level of disciplinary misconduct they are found to have committed. The right of appeal will still exist for employees within their probation period.

Director Posts

If the subject of the disciplinary investigation is a Director then either the Chief Executive Officer or Chief Operating Officer will undertake the investigation(s) and a HR Business Partner will be present for any investigatory interviews. It may be appropriate to involve an independent consultant to undertake any investigations at this level.

The Chief Executive Officer or Chief Operating Officer plus one member from the Employment and Staffing Committee will conduct the formal disciplinary hearing.

The right to appeal will exist, and any appeal will be made to a panel of members drawn from the Employment and Staffing Committee, but must not include any members previously involved in the investigation.

The Employment and Staffing Committee panel members will have the power to apply disciplinary sanctions other than dismissal. A recommendation to dismiss will have to be approved by full Council

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A Staff member who is also a Trades Union representative

Where an employee is also a Trade Union representative the Council's normal disciplinary procedure will be followed. However, after obtaining the staff member's agreement, contact should be made with the relevant Union. The Union may decide to involve the Regional Officer.

4. Rights and Responsibilities under the policy

The following outlines the roles responsible for carrying out the disciplinary procedure, as well as employees' rights.

Role of the HR Team

It is the responsibility of the HR team to advise managers and employees involved in disciplinary proceedings about the procedure and its application. An HR Advisor, or HR Business Partner, will attend all formal investigatory interviews and hearings to provide advice and ensure that the procedure is followed appropriately, and consistently, throughout the organisation. It is not, however, the role of HR team-members to take part in decision-making or to conduct disciplinary interviews.

Role of Investigating Managers

It is the responsibility of all managers to ensure that any allegations falling under the disciplinary procedure are taken seriously, and to investigate any such issues promptly and fairly.

If you are a line manager and are considering taking formal disciplinary action against a member of your staff, or are unsure of what action to take when you are faced with a possible disciplinary matter, you are advised to speak, in confidence, to a member of the HR team at an early stage.

In some cases, such as gross misconduct, the investigating manager may not be the employees' line manager; this will depend on the situation and the allegations. In these cases another investigating manager will be selected by HR.

Role of Employees

If you are an employee facing disciplinary action you may wish to contact your Trade Union representative, who will be able to discuss the issue(s) with you, and support you through the procedure. You may also wish to contact the HR team to discuss the procedure and what you can expect to happen. Members of the team are not able to discuss the material issues with you and will only be able to advise on the process or any appropriate support mechanisms.

It is also recommended that employees facing disciplinary action familiarise themselves with this policy.

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Right to Representation

If you are the subject of formal disciplinary action you have the right to be represented by a Trade Union representative or a 'supporting colleague' at every stage, including investigatory interviews and appeals. It is up to you to arrange this support, to share any documentation with them, and to notify the HR team who will be representing you at the hearings.

The role of the representative or 'supporting colleague' is to support the employee, and they have the right to speak on the employee's behalf (ask questions, seek clarification, request breaks etc.) However, it is not the role of the representative or 'supporting colleague' to answer questions put directly to the staff member concerned.

Investigating Managers and the HR team are able to reject a 'supporting colleague' or Trade Union representative choice, if they believe there is a potential conflict of interest or that the choice is inappropriate. This may include if the proposed 'supporting colleague' or Trade Union representative is also a witness, is being investigated alongside the employee, is a relative, or is in a directly more senior position to the investigating manager or hearing chair. In such situations, or where an employee isn't able to identify a 'supporting colleague', the employee can request that the HR team assign them a neutral 'supporting colleague' to provide support to the employee in question.

External Consultants

External consultants may be contracted in to assist with disciplinary matters if the Head of HR and Corporate Services feels that such input is necessary. If this is the case, they will be advised of the Council's policies at the earliest stage and will be supported by the HR team where necessary.

Co-operation

It is in employees interest to co-operate fully with the disciplinary process, however, if an employee refuses to attend a disciplinary hearing, the Chair will make a decision based on the information available at that time, and this may result in the employee being dismissed in their absence.

Varying the timescales and officers

In exceptional circumstances, Investigating Managers may not be able to complete their investigation or arrange a hearing within the given time-scales. In such situations time-scales may be extended, but the employee concerned should be given notice of the extension to time-scale and the reason for delay.

Employees may request, with reason, that the time-scales be varied, and such a request will not be unreasonably refused. If the designated officers are not available at a given time (i.e. to conduct the Disciplinary Hearing), then others of the same status may be substituted in order not to prolong proceedings unnecessarily. If either party believe that the process is being unnecessarily delayed, they should notify the HR team.

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Confidentiality of proceedings

If you are involved in any way with a formal disciplinary matter you are expected to keep information confidential and not discuss it. Failure to do so may result in disciplinary action being taken against you. At all stages of proceedings, Officers are reminded of the necessity for confidentiality. If employees believe there has been a breach in this, they should raise it with the HR team immediately.

Conduct outside the workplace

There are circumstances under which action may be taken which relate to an action or omission outside working hours. Off-duty conduct may form the basis of disciplinary action if it is relevant to the individual's employment and is deemed to impact upon their suitability for the post.

Examples of such misconduct include (but are not limited to):

- Disclosure of confidential information
- Damaging the Council's reputation (including on personal social media accounts)
- Behaving in such a way as to compromise the Council or damage public confidence
- Taking outside employment which could or does conflict with the Council's interests
- Accepting personal gifts or hospitality without declaring them

Criminal offences

Employees must immediately inform their manager if they are being investigated and/or charged with, or convicted of, a criminal offence. Criminal charges or convictions for offences of dishonesty or violence committed outside working hours may result in disciplinary proceedings being taken against the employee up to and including summary dismissal. The Council will consider whether or not the employee's conduct or convictions merit action because of employment implications.

A charge or conviction for any other type of offence may result in disciplinary proceedings being taken against the employee where, in the opinion of the Council, the charge or conviction is such as to affect, or be likely to affect, the suitability of the employee for the position in which they are employed, or the business or reputation of the Council, or where the existence of the charge or conviction could, in the opinion of the Council, otherwise seriously undermine the trust and confidence that the Council has in the employee.

In these circumstances, the employee may be suspended on full pay pending the outcome of the court case. However, if the Council reasonably believe that criminal investigations and proceedings are likely to be prolonged, they may instigate the internal disciplinary proceeding for the employee without having to wait for the outcome of the Criminal proceedings.

5. Levels of misconduct

There are three levels of disciplinary warning within the disciplinary procedure, which broadly equate to levels of offence. The three levels are:

- Level 1 - For minor misconduct (level 1 warning)
- Level 2 - For misconduct or repetition of a minor misconduct (level 2 warning)
- Level 3 - For gross misconduct or repetition of serious misconduct (final warning or dismissal (including summary dismissal))

The difference between the levels of misconduct is often one of degree. Which level is applied initially depends on the severity of the offence and whether it is a first offence of that sort, or a repetition of something which has already been dealt with using this procedure.

The level at which the procedure is applied will be decided on a case-by-case basis once the initial investigation has been concluded.

The warning issued at each level has a 'shelf life' – that is, length of time it remains applicable to the employee should there be further disciplinary investigations. If a repetition of a matter, which has already been dealt with under the disciplinary procedure, occurs once the 'shelf life' of the earlier misconduct has expired, then the procedure must apply from the appropriate starting level again. For example, if an employee is disciplined at level 1 for poor timekeeping, and timekeeping improves for a period of time (e.g. 6 months), but lapses again once the shelf life has expired, then the repetition must be dealt with at level 1 again. However, if the repetition occurs before the shelf life has expired, then it will be dealt with at level 2 (See Section 5.5).

If there is an active disciplinary matter on file and the employee commits a different act of misconduct, then a new procedure must be instigated – the second misconduct cannot be 'rolled up' into the first, unless the two misconducts are similar or related (i.e. two separate breaches of health and safety procedures; the breaches need not be exactly the same, but the fact that health and safety procedures have been breached twice can be taken into account). However, if several acts of misconduct are committed at the same time, they can all be dealt with at once.

Level 1 – Minor Misconduct

For acts of minor misconduct the procedure will be initiated at level 1. Examples of minor misconduct include (but are not limited to):

- failure to comply with a reasonable instruction
- accidental failure to observe confidentiality
- accidental failure to record hospitality, a conflict of interest or a potential conflict of interest
- failure to adhere to health and safety rules and procedures
- failure to comply with your terms and conditions of employment, including failure to comply with reporting requirements such as sickness absence
- failure to observe 'Smoke Free' rules
- persistent lateness
- misuse of the Council's information technology systems
- inappropriate communication via the councils social networking sites

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- wilful refusal to reach required standards of performance or follow procedures

Note: these are examples only, and the list is neither exhaustive nor exclusive, and is intended for guidance only.

A minor misconduct attracts a level 1 written warning. The duration (shelf-life) of the warning is 6 months, after which it cannot be relied upon should the same or a similar misconduct be repeated at a later date (section 5.5)

Level 2 – Serious Misconduct

For serious misconduct, the procedure will be initiated at level 2. Examples of serious misconduct include (but are not limited to):

- wilful failure to observe confidentiality
- wilful failure to record hospitality, a conflict of interest or a potential conflict of interest
- destruction, alteration or mutilation of any Council record or document
- negligence or accidental avoidable damage of Council property
- breach of GDPR and Data Protection regulations
- causing loss, damage or injury to any person or property, either carelessly or negligently
- wilful disregard of safety standards, rules or procedures
- bullying or harassing a member of staff or the public
- use or attempted use of position in the Council for private advantage, or the advantage of another individual
- abuse of Council facilities or equipment, including inappropriate use of the Council's time
- continued repetition of previous level 1 misconduct

Note: these are examples only, and the list is neither exhaustive nor exclusive, and is intended for guidance only.

Serious misconduct attracts a level 2 written warning. The duration (shelf-life) of the warning is 9 months, after which it cannot be relied on should the same or a similar misconduct be repeated at a later date. (see Section 5.5).

Note: these are examples only, and the list is neither exhaustive nor exclusive, and is intended for guidance only.

Level 3 – Gross Misconduct

Action at this level may lead to dismissal due to further failure in conduct following a level 2 warning, or based on the severity of one issue on its own. In some cases this could be summary (instant) dismissal for acts of gross misconduct only.

The Council defines gross misconduct as any action serious enough to breach the duty of mutual trust and confidence between employee and employer making any further working relationship impossible.

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Examples of gross misconduct include (but are not limited to):

- discrimination against other employees, members of the Council, members of the public on the grounds of age, disability, religion or belief, race, sex, sexual orientation, gender re-assignment, marriage or civil partnership, pregnancy or maternity, or rurality.
- failure to adhere to health and safety procedures which has led or could have led to significant injury or loss
- repeated or severe bullying or harassment of a member of staff or the public
- being unable to carry out normal duties due to the influence of alcohol or illegal drugs, or being in possession of illegal substances (please refer to Drug and Alcohol policy)
- deliberate acts of theft, fraud, falsification or destruction of records for personal gain (see section 9)
- deliberate or malicious serious damage to the Council's property or that of a colleague, service user or member of the public
- fighting or assault on other employees, members of the public or employees of any organisation having business with the Council
- victimisation of a member of staff who has made an allegation of discrimination or has raised a concern through the whistleblowing process
- soliciting gifts or gratuities or the acceptance of bribes
- committing an offence which renders the employee unsuitable or unable to carry out the duties for which they were employed, or otherwise makes continued employment undesirable
- continued repetition of previous level 2 misconduct or persistent repetition of level 1 misconduct
- some other substantial reason for which the only reasonable clarification is Gross Misconduct.

Note: these are examples only, and the list is neither exhaustive nor exclusive, and is intended for guidance only.

Gross misconduct can attract a final written warning. The duration (shelf-life) of the warning is 12 months, after which it cannot be relied on should the same or a similar misconduct be repeated at a later date. (see section 5.5).

An employee accused of gross misconduct may be suspended from work on full pay while investigations are made into the alleged misconduct.

Summarily dismissed employees are not entitled to receive pay in lieu of contractual notice, untaken annual leave etc.

A Service Manager or above (or any other Manager who has been delegated the authority to recommend dismissal by the Chief Executive Officer) must approve any dismissal (under the Scheme of Delegations).

Time Limit for Warnings

When an employee's conduct is satisfactory throughout the period of the warning, only to lapse very soon after, the employee's disciplinary record may be considered when deciding how long any further warning should last.

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The above stated time-limit for warnings will usually be granted for each level if the case is proven, However, on occasion the Chair of the Disciplinary Hearing may decide to amend the duration of the warning, for example; so as to ensure any development/training targets can be put in place, or where a longer monitoring period might be appropriate.

Exceptionally, there may be circumstances where the misconduct is so serious – verging on Gross Misconduct – that it cannot be realistically ignored for future disciplinary purposes. In such circumstances it should be made very clear that the final written warning will always be taken into account and that any further occurrence of serious misconduct will lead to dismissal. Such instances should be very rare as the Council would not want to keep an employee permanently under threat of dismissal.

Sanctions

For more detail of the potential actions that can be taken as a result of employee misconduct please refer to appendix 6.

6. Informal Disciplinary Procedure

Normal Management Supervision

Day-to-day supervision and monitoring of performance and conduct is an important element in the managerial process. Any oral correction, instruction or advice which managers may give does not constitute formal disciplinary action – such exchanges are an important element in setting and monitoring standards of performance and conduct.

There may be times when managers will want to have an informal discussion with a member of staff in order to improve their conduct or performance or to change behaviour. If problems are brought to their attention at an early stage and discussion is constructive, the need to take formal disciplinary action may be avoided. Discussions of this sort will be recorded as usual in the supervisory meeting notes.

Mediation

In some cases where it is felt that formal disciplinary action by the manager is not appropriate, management and HR, after discussion with the employee, may appoint an independent mediator to try and resolve disagreements regarding disciplinary issues. A mediator will not take sides or make judgements or decisions, but can help the parties reach agreement. The mediator may also recommend a way forward if both parties agree this is what they want to do. The manager requesting the service will meet the cost of mediation.

There may also be occasions when mediation is useful as part of or alongside the disciplinary process. This may be a case where there has been a breakdown in interpersonal relations between an employee and their manager. Mediation may have a more positive long-term effect in modifying future behaviour than the formal disciplinary process. For further information on the mediation process please contact the HR team.

Formal Management Instruction

A Manager, as part of their supervision of an employee, may decide to formalise a management instruction to an employee in writing so as to record formally the guidance or instruction that the employee has received. This in itself does not constitute a disciplinary warning, and will not be deemed as a sanction; however, it may be used as evidence in a disciplinary investigation, if an employee unreasonably fails to follow any such guidance or instructions.

Moving to the Formal Disciplinary Procedure

If informal means fail to affect an improvement in conduct, then the formal disciplinary procedure should be followed.

On some occasions, the informal procedure will not be appropriate, and the formal process ought to be instigated straight away; if managers are unsure which route to take they should seek advice from the HR team.

7. Formal Disciplinary Procedure

This section sets out the basics of the disciplinary procedure, and the steps, which must be followed. Model letters and documents can be found on the Intranet.

Procedural steps

The procedure for each level is broadly similar and, in summary, the steps are as follows:

1. (unless inappropriate) notification to the employee that an investigation is under way
2. the investigation is conducted, (including investigatory interviews with the employee concerned, any witnesses, and gathering documentary evidence)
3. notification to employee of the outcome of the investigation and further action, if any
4. (if appropriate) hold the disciplinary hearing
5. notification to the employee of the outcome of the hearing.

Then, at the employee's instigation:

6. notification of appeal by the employee
7. notification of appeal hearing to employee from management
8. appeal hearing
9. notification of the outcome of the appeal hearing.

Each step has a timescale within which action must be taken. These timescales can be varied at the request of either party and if a reasonable justification is given.

8. The Investigation

Informing the subject of the investigation

The employee concerned must be informed that an investigation is taking place and told what the likely timescale is, except when notifying them may hamper the investigation for example where the investigation is prompted by a suspicion of fraud or theft (Managers should seek guidance from HR where they do not intend to inform the employee).

Gathering & reviewing evidence

As part of the investigation process the Manager should gather all relevant evidence

Evidence may include (but is not limited to):

- attendance records or access details to establish absence patterns
- hours of work if the matter involves poor timekeeping
- examples of work which do not follow correct procedures
- records of management guidance/instructions to the employee
- copies of inappropriate emails or communications
- photographic or video evidence
- letters of complaint
- witness statements

The investigation may also include:

- an investigatory interview with the staff member concerned (See Appendix 1a)
- investigatory interview/s with witnesses (See Appendix 1b)

The timescales of the investigation stage will depend on the availability and complexity of the evidence, and the availability and engagement of the employee under investigation and any witnesses.

It is in the interests of all parties that the investigation is undertaken speedily, therefore, this stage should *not normally* take longer than fifteen business days, however where a matter is particularly complex, or involves the gathering of numerous witness statements, it is important that the investigation be thorough so a longer period of time is likely to be needed. Investigating Managers need to keep the individual who is being investigated updated of likely time-frames.

Investigatory interview

The Investigating Manager will interview the staff member concerned as part of the initial investigation (unless there are exceptional circumstances). The staff member must also be informed that they have the right to be represented by a Trades Union representative or a supporting colleague. (See Appendix 1c)

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Notice of investigatory interview

The employee subject to the investigation must be given at least three business days written notice of an investigatory interview. The letter will set out:

- details of the matter causing concern
- when the interview is to be conducted
- where the interview will be conducted, or if it will be conducted virtually
- who will be conducting the interview and the fact that a HR representative will be present
- that the employee has the right to be represented (but must notify HR who their rep is)

If any documents will be produced at the interview stage, copies should be provided beforehand to the individual (See Appendix 1a). The employee must also be made aware of the need for confidentiality, and that they must only discuss the matter with their representative or supporting colleague.

Witnesses during an Investigation

The Investigating Manager may need to interview witnesses during an investigation. Witnesses should also be given at least three business days' notice of an investigatory interview. The witness should be informed that;

- an investigation is being undertaken (but that they themselves are not being investigated, and are only required to provide evidence as a potential witness).
- when the interview is to be conducted
- where the interview will be conducted, or if it will be conducted virtually
- who will be conducting the interview and the fact that a HR representative will be present
- that they have the right to be accompanied.

Even though a witness is not the subject of an investigation, many individuals asked to provide witness statements may find the process stressful and unsettling; as such they should be provided with any necessary support, and allowed to be accompanied at the interview if they wish.

The witness must also be made aware of the need for confidentiality, and that they must only discuss the matter with their representative or supporting colleague.

Witnesses are not likely to be informed of the details of the entire investigation or the outcome. It is recommended that witnesses are informed of this at the interview stage, so that they do not have expectations of knowing any more than they need to in order to provide the necessary evidence.

Outcome of the Investigation

Once the initial investigation is complete, including any interviews, the Investigating Manager, supported by an HR representative, will write a concise report of their findings and will then reach agreement :

- that there is no case to answer; or
- that the alleged breach was so minor, or the evidence so insubstantial, that the matter should go no further; or

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- that there is a case to answer, but the matter is best dealt with by other means, for example training or counselling, rather than by instigating the formal disciplinary procedure; or
- that there is a case to answer, and the formal disciplinary procedure will be instigated.

The staff member concerned **must** be informed of the result of the initial investigation **within five business days of completion of the investigation** (if this is unlikely to be within 5 business days of their individual interview, they should be informed of the anticipated time frames). They may be told orally or in writing, and any decision communicated orally must be confirmed in writing within three business days of the date the decision is communicated.

If the outcome is that there is no case to answer, or that there is a case to answer, but it will not be dealt with by instigating the disciplinary procedure, this must be outlined within the letter ([Appendix 2a](#))

9. Suspension during investigations

In some cases, it may be appropriate to suspend an employee from work for a temporary period while the disciplinary matter is dealt with. This is in no way intended to indicate guilt on the part of the employee, but is an administrative measure designed to protect the business or ensure the smooth running of the disciplinary procedure. Any period of suspension will be regularly reviewed, kept as short as possible and will be on a fully paid basis

Click [this link](#) to find the latest advice from ACAS.

The HR team must be consulted before an individual is suspended from work and a member of the HR team should be present at the suspension meeting. If it is not possible for HR to be present at the meeting, then HR should be informed as soon as possible thereafter. Please see Appendix 7 – Suspension Letter.

Notifying the employee of suspension

When suspending an employee, the manager concerned should normally inform the employee in person. This can help break the news sensitively and answer any questions they have. You should also let them know what support is available and encourage them to access this if they need it at any stage of the suspension.

At the meeting, the manager should:

- explain the reason for their suspension and that it does not mean they have done anything wrong
- set out what the next steps will be
- confirm they'll continue to get their contractual pay and benefits during suspension
- make clear you will listen to their point of view and consider it before making any decisions

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- explain their responsibilities during suspension, for example what they can and cannot do
- check you have up to date contact details for them, including an emergency contact person
- name someone they can contact if they have any concerns, for example their manager or someone in HR
- remind them what support is available and encourage them to use it.

The suspension will be confirmed in writing within three business days of the employee being told and sent to the employee's home address. This letter will set out:

- the matter being investigated and the fact that there is an allegation of misconduct
- the expected timescale for the investigation, or if that is impossible to estimate, then
- when the employee can expect to hear from the Council again
- what an employee cannot do while on suspension (see below)

It is likely that the Manager will not be able to inform the individual of all the details surrounding the reasons for suspension.

What an employee cannot do while on suspension

If someone is suspended, they will not usually have access to the workplace or work systems. But there might be some situations where it's appropriate to have some access. For example, if they need to attend an investigation meeting.

It's common for an employer to ask the suspended person to not talk to others at work about the investigation. This is to keep things confidential and help protect the investigation. However, if they need to speak to someone at work for another reason, this is usually reasonable. The employee should make sure they're available to return to work. This is because the employer can end the suspension at any time.

10. The Disciplinary Hearing

Notification of disciplinary action

Once the initial investigation has been carried out and the HR team have reviewed the final report, the employee concerned will be notified of the outcome of the investigation.

If the investigation finds that there **is** a case to answer, then the employee concerned must be notified of:

- the fact that the formal disciplinary procedure is to be applied
- the date and place of the disciplinary hearing
- who will conduct the hearing, and who else will be present
- the names of any witnesses to be called
- details of any documents/evidence to be presented

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- the nature of the alleged offence, misconduct, breach of the Council's code of conduct or other disciplinary matter
- if the hearing is being heard as misconduct or gross misconduct
- the right to be accompanied

The hearing may take place in person or virtually using a platform such as Microsoft Teams or Zoom. The hearing manager should consider the circumstances of the case, and which option is most suitable. If the hearing is at a level 3 (Gross Misconduct) then the meeting should take place in person unless there is a particular reason this is not possible – this will be considered on a case by case basis.

If the hearing is at level 3 (Gross Misconduct) the employee must also be notified that the outcome of the hearing may be termination of employment.

Notification of the disciplinary hearing will be issued **at least five business days before the date of the hearing.** (See Appendix 2b)

Supporting documents

The subject of a disciplinary hearing and their representative are entitled to see all supporting documents to be used as evidence during the hearing, including witness statements. Similarly, any documentation, including witness statements, which will be used by the subject of the disciplinary action, must be copied to the manager conducting the hearing prior to the hearing.

Supporting documents must be made available to all parties involved **no less than three business days** before the date of the hearing.

If either the employee or the Investigating Manager attempt to introduce new evidence at a disciplinary hearing, the other side may object, and the Hearing Manager will decide if the hearing ought to be reconvened or if they are willing to allow it to be considered. The Hearing Manager may decide to allow new evidence to be considered if;

- both parties are willing to accept the evidence; or
- the evidence could not have been presented any sooner and the nature of the evidence could not be contested if the other side were afforded more time to consider it; or
- a delay to the hearing would be more detrimental than allowing the evidence to be considered.

The Hearing Manager may also decide that the evidence cannot be considered; if this is the case, the decision can only be made on evidence presented at the hearing, and must not consider the evidence that was disallowed.

The disciplinary hearing

All disciplinary hearings will follow the same agenda, whatever the severity of the misconduct or level of the procedure being applied.

The hearing will be conducted by the Service Manager responsible for the employee's service area, unless:

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- the matter complained of is deemed to be gross misconduct, in which case only officers at Corporate Director level (or as specified in the scheme of delegations) or above may conduct the hearing
- for other reasons it was not deemed appropriate for the Service Manager to hear the matter; this should be decided once the investigation has been completed and the Investigating Manager should seek the guidance of the HR team if this is the case.

Where the Service Manager/Corporate Director for the employees' service area is unavailable, and is likely to be so for the foreseeable future, an alternative Service Manager or Corporate Director should hear the matter, to avoid unnecessary delays.

Agenda

The Chairperson (Hearing Manager) will:

- Introduce those present, and explain their roles;
- Ensure that everyone had correct notice of the hearing;
- Explain that this is a formal disciplinary hearing and at which level of the procedure the matter is being heard at;
- Outline the format of the hearing;
- Explain the nature of the disciplinary matter being reviewed;
- Confirm if any witnesses are expected to attend;
- Confirm that all parties have received the relevant paperwork and understand the proceedings;

Then, the investigating (line) manager will:

- Present the information gathered;
- Call any witnesses, and/or;
- Present witness statements;
- Confirm the conclusion from their investigation

Then, the employee concerned or their representative will:

- Respond to the manager's presentation;
- Call any witnesses, and/or;
- Present witness statements

During the proceedings, the HR team member (supporting the Chairperson) will:

- Advise and ensure correct procedures are followed;
- Ask questions on points of clarification;
- Take notes of the hearing and record the outcome

The Hearing Manager and any other party involved in the proceedings (excluding witnesses) have the right to put questions to anyone involved at any time during the proceedings. However it is advised that each party be allowed to put their case before being asked questions.

Note: the employee's representative cannot respond to any questions put to the employee concerned, they can only ask for clarification of a question raised.

Once both sides have presented their case (and answered any questions if necessary,) the Hearing Manager will summarise both the management and the employee case as presented and call an adjournment. (See Appendix 3– Disciplinary Hearing Pro-forma)

Adjournments

This can happen at any point during the proceedings if it becomes clear that further information is needed or there are other witnesses who have not been called, in order to conclude the matter. Any party can request an adjournment, and the Hearing Manager will decide when to reconvene – this should be done as speedily as possible, in order not to prolong the proceedings unnecessarily. The adjournment may be for any period (i.e. from half an hour up to a few weeks), depending on the circumstances.

The employee or their representative may ask for an adjournment if they need time to discuss an issue or if the employee is finding the hearing unsettling – this will not be unreasonably refused, and will usually be for no more than half an hour.

Note: an adjournment is a break in proceedings, and the reconvened hearing is a continuation of the original hearing, not a second hearing.

Taking a decision

The Hearing Manager will adjourn proceedings while they come to a decision. Everyone except the HR Advisor/HR Business Partner will withdraw. The decision is a matter for the Hearing Manager and while they may choose to consult the HR team member, it is not that person's role to decide the outcome, they can only advise on matters of policy, consistency and review their notes of the hearing discussion.

In coming to their conclusion, the Chairperson will consider matters such as:

- The employee's past record
- The severity of the misconduct
- The nature of the evidence presented by both parties
- Any mitigating circumstances (e.g. provocation, if the issue includes an alleged assault)
- The outcome of other, similar, disciplinary hearings (to ensure consistency).

Note: The matter **does not** have to be proved beyond reasonable doubt, but on the 'balance of probabilities'.

Disciplinary sanctions

The Chairperson of the disciplinary hearing, in consultation with the HR Team member, will decide what disciplinary sanction (if any) is appropriate.

The Chairperson may decide to, for example to:

- Issue a formal first or second level warning, a final written warning, or dismissal
- Recover any property, or the cost of any property if the matter under investigation involves the loss, theft, destruction, abuse or misappropriation of Council property
- Recover any monies if the matter under investigation involves theft
- Impose a monitoring period
- Take no disciplinary action (this may mean that there are no further actions whatsoever, or it may mean the Chairperson recommends another informal resolution; i.e. training or mediation).

(This list is neither exhaustive nor exclusive)

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Under the Single Status Agreement (Section 12.0) salary increments will be withheld where a formal warning has been issued to an employee in the previous 12 months following a formal hearing for misconduct.

Note: Please refer to the Council's Statement & Policy in relation to discretions under the LGPS. In disciplinary cases where a member is dismissed or terminates their employment as a result of/is convicted of an offence in connection with their LGPS employment or as a result of their own criminal, negligent or fraudulent act, the Council will apply for a forfeiture certificate and require that LGPS pension rights be forfeited in connection with that employment if the Council has incurred loss as a consequence of the member's actions.

The Council will make the appropriate recovery and reduce the member's pension rights accordingly where the member has not made good the debt. The Council will recover from Fund any financial loss caused by fraudulent offence or misconduct of the employee (who has left because of that), or amount of refund if less.

Communicating the decision

If the matter is straightforward, the Chairperson will reconvene the group as quickly as possible to communicate the decision orally. The **decision will then be confirmed in writing** to the employee concerned within **no more than three business days**. The decision will include:

- The finding – that is, whether or not the misconduct complained of was found to have occurred
- (If appropriate) the level of warning being issued
- What sanctions, if any, will apply
- The action expected to correct the misconduct (if appropriate)
- The date by which the action must be taken (if appropriate)
- How the action will be monitored, or when the matter will be reviewed (if appropriate)
- How long the warning will have a shelf-life for (dependent upon the level – see section 5)
- A reminder that repetition of the misconduct will invoke the disciplinary procedure at the next level (for level 1 & 2 actions)
- If the disciplinary hearing is at level 2), the fact that further misconduct may lead to dismissal.
- The right to appeal the decision.

See Appendix 4a and 4b – Outcome of Disciplinary Hearing model letter

N.B. For particularly complex cases, it may not be possible for the Chairperson to provide the outcome to the individual on the day of the hearing, where this is the case, all parties should be informed that there will be a delay and when they can expect and outcome (which should be no longer than 3 business days after the hearing). Once the Chairperson has provided the individual with the outcome, they should still provide it in writing within 3 business days of when the decision was communicated orally.

Notes

The notes taken at the disciplinary hearing will be copied to:

- The Chairperson
- The Employee concerned

- The Investigating Manager

Within five business days of the disciplinary hearing (See Appendices 4a and 4b).

11. Appeals

The appeals procedure applies to any disciplinary decision taken after a disciplinary hearing. All appeals **must be put in writing within ten business days** of receipt of the written decision.

An employee may choose to appeal, if for example:

- They think that the finding or penalty is unfair
- New evidence has come to light
- They think the disciplinary procedure was not used correctly

Written notice of appeal

The written notice of appeal must be sent to HR and **must** detail the grounds on which the appeal is being made, which may be for, example:

- The finding of the hearing (the employee feels the case against them was not proved), and/or
- The disciplinary action decided upon (the employee feels the action is not proportionate or appropriate based on the finding), and/or
- The procedure followed during the hearing, (the employee believes that there was a breach of the procedure, or it was otherwise incorrectly applied).

Appeal Panel

Appeals against disciplinary decisions at levels 1 and 2 will be heard by the next highest line manager above the original Chairperson, or a manager of equal level in the organisation.

A Head of Service, Director or Chief Operating Officer will hear appeals against disciplinary decisions at level 3 (Scheme of Delegations).

A separate member of the HR team will accompany the Appeal Chairperson.

Employees have the right to be accompanied by a trade union representative or work place colleague at an Appeal Hearing.

Ordinarily the original Chairperson that made the original decision will be present at the appeal hearing, but not the Investigating Manager from the original hearing.

Timescale

An appeal against a disciplinary decision will normally be heard within ten business days of receipt of the notice of appeal. This may not always be possible, due to the availability of individuals needing to be present; if a delay is likely, the individual appealing will be informed of the likely timescales.

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Agenda

The agenda for an appeals hearing is:

- The Appeal Chairperson will introduce all parties and outline the process
- The Employee concerned (Appellant) or their representative will present the grounds for appeal
- The Chairperson of the original disciplinary hearing will explain the disciplinary decision
- The Appeal Chairperson and HR representative will question the employee concerned, any witnesses and the Original Chairperson.
- All parties may ask questions after each party has presented their side, but are not allowed to interrupt the cases being put forward by the other side.

Once all representations have been made, the Appeal Chairperson and the HR team representative will adjourn to take the decision. This will be **notified, in writing, to the employee concerned within three business days.**

Decisions

The Appeals Chairperson may decide to:

- Uphold the original decision
- Overturn the original decision and issue a different level of warning
- Overturn the original decision and decide no disciplinary action is required (this may include a finding that additional training or support is required)

Appeals against a decision to dismiss

If the appeal is against a decision to summarily dismiss, and the decision is upheld, employment with the Council will be deemed to have been terminated at the operative date of the original disciplinary hearing decision. If any such appeal is successful and the decision to dismiss is overturned, the employee's service will not be deemed to have been broken.

Payment of salary for the period between dismissal and appeal

If an employee is summarily dismissed without notice the Council will not pay salary for the period between dismissal and the appeal **unless** on appeal the employee is re-instated, when backdated salary will be paid for the period between dismissal and the conclusion of the appeal.

Exhausting the appeals procedure

Once the appeal procedure has been completed, there is no further right of internal appeal, and the decision taken at appeal is final.

Delaying a disciplinary hearing pending an appeal

Where there is an appeal outstanding against a previous disciplinary measure then the disciplinary hearing for the further alleged acts of misconduct will, if possible, be delayed pending the outcome of that appeal.

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If this appeal cannot be arranged within a reasonable timescale, then the final disciplinary hearing to decide on the further alleged misconduct and possible dismissal will go ahead. The appeal against the previous disciplinary measure and any appeal against the current disciplinary action and/or dismissal can be held at a later date.

12. Grievances Raised During Disciplinary Process

If a grievance is raised at any point during the disciplinary process, it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered. If the grievance is raised during a hearing this may result in the hearing being stopped. The employee will be communicated with to explain this.

13. Records

It is important, and in the interests of both employer and employee, to keep written records during the disciplinary process. Records will include (but are not limited to):

- The nature of the alleged disciplinary misconduct
- Notes of interviews and meetings
- Evidence
- Action(s) taken
- Reasons for action(s) taken
- Whether there was an appeal and, if so, the outcome
- Subsequent developments

Records will be kept in confidence and in accordance with the Data Protection Act 1998.

A copy of the transcript of the hearing will be provided to the employee. This should be checked and signed by the employee to confirm that it is an accurate reflection of the meeting.

Records of dismissal, including summary dismissal are kept for at least a year after the date of dismissal, in case the employee concerned instigates further statutory action.

14. Process Flow Chart

A process flow chart can be found at Appendix 5. This flow chart is meant to be used as a process guideline but may not reflect the process for all disciplinary cases. It is intended to support the main policy and is not a substitute for it.

15. Revisions to Disciplinary Procedure

The operation of this procedure will be reviewed periodically through the normal consultation process. This policy will also be updated in line with any relevant statutory changes.

Any amendments proposed as a result of these reviews will be advised to all staff, as well as the date from which changes are to be implemented.