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Disciplinary Procedure



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1. **INTRODUCTION**

- 1.1 The primary purpose of the disciplinary procedure is to provide agreed arrangements for managers to make disciplinary decisions about employees. The procedures have been drafted to conform with the ACAS Code of Practice “Disciplinary and Grievance Procedures”. The procedures are designed to ensure that disciplinary decisions are made fairly having regard to all relevant information from both the manager’s and the employee’s point of view.
- 1.2 Where there is a right of appeal, the appeal will be a re-hearing of all the relevant information to decide if the disciplinary decision was reasonable and fair and if not, to make a final decision as to what, if any, disciplinary decision should be taken.
- 1.3 It is not the prime objective of the disciplinary procedure to inflict punishment. The main purpose is to encourage an employee whose conduct is unsatisfactory to improve. The procedure serves to ensure that this is done in a fair and consistent manner.
- 1.4 Managers, particularly those managing employees who care for children or vulnerable adults, should raise awareness of the Council’s Policy on Whistleblowing and the Public Interest Disclosure Act 1998. This enables employees to report actual or suspected abuse of a child or vulnerable adult by a member of employees with the knowledge that the complaint will be treated in the strictest confidence.

1.5 **The Council’s Constitution - Discipline**

Implementation of the Disciplinary Procedure is as provided for within the Council’s Constitution.

The ‘Nominated Officer’ means the appropriate Service/Group Director or in the case of the Corporate Group, the Chief Executive, Director of Human Resources or Head of Service. Senior Officers at GR15 grade are authorised to give warnings up to Final Written Warning level, but cannot dismiss from service. A decision to dismiss can only be made by Head of Service or above.

The Nominated Officer will designate an investigating officer.

Appeal rights against disciplinary action are contained within paragraph 10 of this procedure.

2. ARRANGEMENTS PRIOR TO A DISCIPLINARY HEARING

2.1 The following steps will be taken by the Investigating Officer prior to calling a formal disciplinary hearing:

2.2 Identify the Area of Concern

This may be obvious in some circumstances, for example persistent lateness; in other circumstances, it may be less obvious, for example, in areas of conduct, performance and capability.

In this respect there is a requirement for the employee's manager to submit a report to the relevant Human Resources Section identifying the areas of concern.

2.3 Investigate the Circumstances

It would be reasonable and appropriate in most cases for the employee to be made aware that an investigation is being carried out which may lead to invoking the disciplinary procedure. The purpose of the investigation is for the Investigating Officer to establish all the relevant facts relating to the area of concern. Evidence of witnesses should normally be recorded in writing by means of statements. All relevant documentation should be procured and assembled. The employee or employees concerned may be interviewed as part of the investigation process. Where possible, statements will be written up at the conclusion of the interview, and the witness requested to sign his or her statement at that time.

The employee may represent themselves or may be accompanied by a trade union representative or work colleague. There is no provision for any other representation/accompaniment arrangements.

Investigations should be controlled and properly managed in order to limit the scope to the relevant issues relating to the areas of concern. However, if during the course of the investigation different and unrelated issues emerge also requiring managerial investigation then the employee needs to be informed appropriately. Where appropriate these issues can then be investigated in conjunction with the original investigation.

In cases where serious allegations have been made where a child or vulnerable adult has been harmed or has been at risk of harm then an investigation by the police or child protection agencies may take priority over an internal investigation.

2.4 Clarify any Possible Breaches of Discipline

On conclusion of the management investigation by the Investigating Officer a report outlining the findings will be produced. It should be possible to identify potential breaches of discipline or issues of unacceptable performance and the relevant information and supporting evidence relating to them.

2.5 Consider if a Disciplinary Hearing is necessary

When deciding if any action should be taken the Nominated Officer will consider whether the action should be by way of a management discussion with the employee or formal disciplinary action. A management discussion may occasionally be a more satisfactory method of resolving problems than a disciplinary hearing. This will take the form of a discussion with the objective of helping and encouraging an employee to improve. At the completion of the management discussion a brief note of the outcome will be retained for reference purposes, including a letter to the employee where appropriate. This will not constitute formal disciplinary action.

Discipline is an essential part of management and appropriate priority should be given to enabling the process to be completed speedily and effectively. The Council will endeavour to conclude the investigation process and hold a disciplinary hearing within 3 months of the initial allegation. However, there may be occasions when due to the nature of the investigation, it may go outside the 3 month period. Where this occurs all parties concerned will be informed accordingly. It is important for managers and employees to provide the fullest co-operation. Employees required as witnesses should be released from work to enable attendance.

The formal disciplinary procedures will normally be invoked by issuing the employee(s) involved with a written instruction to attend a disciplinary hearing. At least ten working days notice will be given of a disciplinary hearing.

It is important that the employee subject to disciplinary action within the procedure is made clearly aware of the complaints and/or concerns, which are to be considered at the hearing. The issues must be in writing containing sufficient detail identifying the relevant conduct and/or unacceptable performance including dates and times wherever possible and should be made available to the employee in sufficient time to allow him/her to prepare their case.

The purpose of the procedural formalities is to ensure that all relevant information is aired at the disciplinary hearing from both the management and the employee's point of view to enable a reasonable and fair decision to be made.

In respect of trade union representatives potentially subject to disciplinary action, normal disciplinary standards will apply to their conduct and/or performance as employees, but no action within this context will be taken until the circumstances of the case have been discussed with an appropriate full-time official.

2.6 Fast Tracking Process

There may be instances where the need for a full disciplinary process is not required. These may include such cases where the employee has admitted to the misconduct or poor performance, contrary to the Council's rules. In such cases, the Investigating Officer should consult with the employee and his/her representative.

If agreement can be made with all parties concerned, the Nominated Officer has discretion to arrange a formal disciplinary meeting and issue a warning without the need to undertake a full investigation of the incident that has occurred.

This process cannot be used in investigations, where the issues are considered to be gross misconduct.

Procedure at the Fast Track Hearing

At the beginning of the hearing, the Nominated Officer shall explain the procedure to the parties, and clarify that both are happy to proceed with the fast tracking process.

The procedure at the hearing should be as follows:

- The Council's representative(s) will briefly outline the circumstances of the case.
- The employee and/or his/her representative will be given the opportunity to put the employee's case, to ask questions, to respond and to sum up.
- The Nominated Officer may ask questions of any party during the process.
- The decision of the Nominated Officer will normally be announced orally following the conclusion of the hearing, and the decision, together with the reasons, will be confirmed to the employee in writing, usually within 5 working days of the hearing.
- The normal rights of appeal will be applicable to this process.

3. **PRINCIPLES UNDERLYING THE DISCIPLINARY PROCEDURES**

3.1 **Introduction**

The Council's Disciplinary Procedure has been carefully designed to ensure that standards of conduct and performance are met and to ensure that there is a fair and consistent method of dealing with problems of conduct and performance. Clear guidelines are set out in the Council's disciplinary rules and the Code of Conduct for Local Government employees. These constitute acceptable standards of performance and behaviour. All managers and employees should make themselves aware of the Council's requirements.

3.2 **General Principles**

- No disciplinary action will be taken against an employee until the case has been investigated (except as provided by the Fast Tracking Process above).
- At every stage in the disciplinary procedure the employee will be advised of the specific nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- At all stages in the disciplinary procedure, the employee may represent themselves or may be accompanied by a trade union representative or work colleague. There is no provision for any other representation arrangements. The Nominated Officer will ensure the employee is made aware of this right.
- No employee will be dismissed for a first breach of discipline or instance of unacceptable performance except in the case of serious or gross misconduct.
- The level of warning will depend on the severity of the infringement. For example the Nominated Officer may decide that in the circumstances a written warning or final written warning is a more appropriate sanction than a first warning for an employee's first misconduct or instance of poor performance.
- Any investigation which has resulted in a warning involving children or vulnerable adults will remain on the employee's personal file permanently, and may subsequently be referred to in future investigations.
- An employee will have the right to appeal against any disciplinary penalty imposed.
- An investigation or suspension that does not subsequently result in disciplinary action shall not be retained on file save in exceptional circumstances. For the purpose of this clause, exceptional circumstances include disciplinary matters involving the abuse and/or harassment or the alleged abuse and/or

harassment of children or vulnerable adults. In such circumstances the Council is able to refer to previous records for the purposes of identifying patterns of behaviour, if any. A note will be placed on the employee's file to make clear that the investigation or suspension did not result in disciplinary action.

4. **SUSPENSION**

- 4.1 A Nominated Officer should consider whether to suspend an individual for a period of time while the case is investigated.
- 4.2 Suspension is not a punishment and must not be treated as such. It should be used only in one (or more) of the following circumstances:
 - i) To prevent disturbance to service users, employees or the general public
 - ii) To prevent damage to persons or property
 - iii) To facilitate the carrying out of any enquiries or investigation
 - iv) Where the initial allegation/concern is serious enough to be viewed as potential gross misconduct
 - v) Where the initial allegation/ concern relates to the interests of or the protection of vulnerable adults, children, clients and/or employees
- 4.3 All decisions to suspend employees must be reported to the Director of Human Resources.
- 4.4 If the employee is a member of a trade union then their Branch Secretary must be informed before the suspension takes place.
- 4.5 If the employee is a trade union official, then the appropriate Full Time Union Official will be informed prior to suspension.
- 4.6 The employee is entitled to full pay during the period of suspension (that is, the pay he/she would have received whilst at work or sick pay where the suspended employee is sick at any time during the suspension).
- 4.7 The decision to suspend, the reasons for it and the attendant conditions and implications must be conveyed to the employee in writing and recorded on his/her personal file.

- 4.8 A suspended employee has the right of accompaniment in an investigative interview by a trade union representative or work colleague. Although suspended employees are advised not to contact colleagues to discuss the circumstances of the investigation, they may do so if the person contacted is acting as their nominated individual to assist and accompany them during the investigatory process. There is no provision for any other representation/accompaniment arrangements.
- 4.9 The decision to lift the suspension must be conveyed in writing to the employee including the reasons for the decision.
- 4.10 Suspension should not extend beyond a period of 3 months. Should the suspension last for more than 3 months, the decision to suspend and the attendant conditions will be reviewed at that point and subsequently on a monthly basis, and the suspended employee will be informed of the outcome of the review.
- 4.11 **Annual leave should be requested and taken as normal during a period of suspension in agreement with the Line Manager. Should the period of suspension extend into a new annual leave year, there will be no entitlement to carry over any untaken annual leave into the new leave year. No meetings/interviews will be arranged while employees are on annual leave.**
- 4.12 In certain cases of alleged misconduct (including certain cases of gross misconduct), it may be more appropriate for the employee to remain in work during the investigation process (e.g. if the incident occurred outside of work) rather than to be suspended. In these circumstances the employee may be transferred into a similar post (if available).

The decision will be at the discretion of the Nominated Officer, with the reasons for it and the attendant conditions and implications conveyed in writing and recorded on his/her personal file.

All decisions of this nature must be reported to the Director of Human Resources.

5. **REPRESENTATION**

Where an employee is subject to a disciplinary investigation or hearing he/she may choose to represent himself/herself or request to be represented/accompanied by a fellow worker, a lay trade union official, or an official employed by a trade union ['representative']. A trade union official must comply with the following (as laid down in the Employment Relations Act 1999):

Be employed by a trade union of which he/she is an official within the meaning of section 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992;

An official of a trade union (within the meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings.

The Trade Union and Labour Relations (Consolidation) Act 1992 specifies that the Certification Officer shall keep a list of trade unions. The fact that the name of an organisation is included in the list of trade unions is evidence that the organisation is a trade union.

An employee may ask an official from any trade union to accompany them regardless of whether or not they are a member of that Union.

The right to be accompanied is subject to the employee's request being reasonable in the context of the disciplinary process in question.

6. **DISCIPLINARY PENALTIES**

6.1 **First Warning**

Where the case [complaint] is of sufficient importance or seriousness to bring to the attention of the individual employee formally, a first warning may be given by the Nominated Officer. A letter confirming this warning will be placed on an employee's personal file and a copy given to the Nominated Officer.

6.2 **Written Warning**

Where the case has already involved the First Warning Stage and insufficient improvement has been made, or where the complaint is of sufficient importance or seriousness, a written warning may be given by the Nominated Officer. ***A written warning may also be given for minor misconduct/unacceptable performance where there is an active first warning (for a related or unrelated reason) on the employee's record.***

The Formal Written Warning will include:

- i. The decision to issue the formal warning
- ii. The nature of the offence(s) or unacceptable performance
- iii. Action or performance required of the individual
- iv. Timescale in which improvement is expected

- v. Assistance which the Council will make available to the individual e.g. training, counselling or guidance
- vi. The right of appeal
- vii. The time limit in which the warning will remain on the individual's file for the purpose of discipline
- viii Possible consequences of further misconduct or unacceptable performance

6.3 **Final Written Warning**

- 6.3.1 Where the employee has already received a Written Warning and insufficient improvement has been made or where the complaint is of sufficient importance or seriousness, a Final Written Warning may be given by the Nominated Officer.
- 6.3.2 The Final Written Warning will include points i-viii above, including a statement that the consequences of further misconduct **(whether related or unrelated to the current offence)** or insufficient improvement will lead to dismissal.
- 6.3.3 **A final written warning may also be given for minor misconduct/unacceptable performance where there is an active written warning on the employee's record whether it is for a related or unrelated reason.**
- 6.3.4 Any disciplinary penalty will remain on the employer's file once it has expired, however it will be disregarded for the purposes of any future disciplinary action save in exceptional circumstances. For the purpose of this clause, exceptional circumstances include, but are not limited to, disciplinary matters involving the abuse and/or harassment of children or vulnerable adults or allegations of such abuse.

6.4 **Dismissal**

The Nominated Officer may consider dismissal where:

- **the employee has an active Final Written Warning for any reason (performance or misconduct) and there is a further act of misconduct or poor performance (related or unrelated to the previous reason for the warning);**
- **the case is of sufficient importance or seriousness to constitute gross misconduct.**

7. EMPLOYEE'S WORKING WITH CHILDREN OR VULNERABLE ADULTS

The Safeguarding Vulnerable Groups Act 2006 sets the Council with a legal duty to refer information about individuals who may pose a risk to children or vulnerable adults to the Independent Safeguarding Authority (ISA).

The ISA will consider all information referred to it in relation to whether an individual should be included in a barred list.

The Council also has a responsibility to refer information to other regulatory bodies, e.g. Care Council for Wales and General Teaching Council for Wales.

The Council may also receive information about employees from other regulatory bodies. In such cases, the Council reserves the right to consider whether any action should be taken under the Disciplinary Procedure.

8. TIME LIMIT ON LIFE OF WARNINGS

8.1 In cases of:

First Warning	The time limit will be 6 months
Written Warning	The time limit will be 9 months
Final Written Warning	The time limit will usually be 12 months; however in exceptional circumstances there is discretion to extend beyond 12 months dependent on the nature of the misconduct. Justification will be provided on why warning is over 12-months.

The time limit for Warnings will be applicable for periods when the employee is in work e.g. if an employee is absent due to sickness for a period of 2-months, then the warning will be extended for that length of time.

9. DISCIPLINARY HEARINGS

9.1 Any documents to be presented by management at the hearing must be exchanged no later than 10 working days prior to the hearing and tabled with the Nominated Officer at least 5 working days prior to the hearing. The employee or his/her representative will be required to provide their documents to Human Resources no later than 5 working days prior to the hearing.

It is the responsibility of each party to ensure that the nominated officer receives the relevant documentation within the agreed timescales. If either party cannot comply with this requirement this must be notified to the Nominated Officer as soon as possible.

9.2 Procedure at the Hearing

At the beginning of the hearing, the Nominated Officer shall explain the procedure to the parties.

- The procedure at the hearing should be orderly, but flexible. The following running order will normally be used, but can be varied in the interest of clarifying evidence in order to reach as informed a decision as possible.
- The Council's representative(s) will put the management case and may call witnesses.
- The employee and his/her representative will have the opportunity to ask questions of the Council's representative(s) and any witnesses he/she called.
- The employee and/or his/her representative will put his/her case and may call witnesses. They may confer. The representative may not answer questions on behalf of the employee nor prevent him or her from speaking. The representative must not address the hearing if instructed by the employee not to do so.
- The Council's representative(s) will have the opportunity to ask questions of the employee and any witnesses he/she has called.
- The Nominated Officer may ask questions of any party and call for further information to clarify matters. If, as a result of questioning, new evidence emerges, both parties will be given the opportunity to comment and, if necessary, to seek an adjournment. The decision on whether to adjourn, for how long and what the expected outcome of the adjournment will be is at the discretion of the Nominated Officer. Should it be necessary to adjourn, then both sides will be asked to withdraw.
- The Council's representative(s) will have the opportunity to sum up their case. No new evidence may be introduced at this stage.
- The employee or his/her representative will have the opportunity to sum up his/her case. No new evidence may be introduced at this stage.
- The parties to the case will withdraw from the hearing and the Nominated Officer will consider his/her decision.
- The decision will normally be announced orally as soon as possible following the conclusion of the hearing, and the decision, together with the reasons, will be confirmed to the employee in writing normally within 5 working days of the hearing.

10. **RIGHT OF APPEAL AGAINST DISCIPLINARY ACTION**

- 10.1 An appeal against a First Warning, a Written Warning or a Final Written Warning issued by the Nominated Officer may be exercised by writing to the Chief Executive, Group Director or Director of Human Resources within 5 working days of written notification of the decision. The letter of appeal **must** outline the grounds for the appeal. This is the final level of appeal.
- 10.2 An appeal against dismissal may be exercised by writing to the Director of Human Resources within 5 working days of notification of the decision. The letter of appeal **must** outline the grounds for the appeal. This appeal will be to the **Appeals/Employee Appeals Committee**. This is the final level of appeal.
- 10.3 The employee will have the same right to be accompanied as applied at the disciplinary hearing

11. **DISCIPLINARY APPEAL HEARINGS**

- 11.1 Any documents, including the statements of case, must be presented by both sides to the Director of Human Resources/Chief Executive/Group Director at the earliest opportunity prior to the hearing. The notes of the first hearing will form part of these documents and will be relied on as an accurate record of the hearing. If the appellant has any concerns with these notes, they should inform the Director of Human Resources prior to the appeal hearing taking place.
- 11.2 An appeal against a First Warning, Written Warning or Final Written Warning will usually be to a Chief Officer (Head of Service, Director, Service Director or Group Director) within the employees Service Group or to the Chief Executive. Appeal against dismissal will be to the Council's Appeals/Employee Appeals Committee.
- 11.3 The Director of Human Resources will arrange for both parties to receive relevant documentation 10 working days prior to the hearing. Arrangements will also be made for the Members of the Appeals/Employee Appeals Committee or Chief Officer to review the documentation prior to the date of hearing.
- 11.4 If the date of the hearing is inconvenient for either side, then one postponement is allowed for both parties. If the appellant is unable to attend the re-arranged hearing, it may be heard in their absence. The appellant will however have the right to make written representations and to have their chosen representative present.

11.5 No new evidence will usually be introduced at this stage without the leave of the Chief Officer/Committee. Witnesses that were called for the original disciplinary hearing will not automatically be invited to the appeal hearing; therefore it is the responsibility of both parties to call any witnesses they feel will support their case at the appeal. The procedure for hearing the appeal is as follows:

- **Appeals/Employee Appeals Committee only;** The Chair of Appeals/Employee Appeals Committee should introduce the Panel Members. The Chair will also introduce the adviser(s) to the Committee and confirm that they will be present during the appeal hearing to provide procedural advice to Members of the Panel.
- **All Appeals;** The Chair will request both parties to introduce themselves and any representatives, which are attending the hearing. Representatives will be requested to confirm the capacity in which they are attending the hearing i.e. trade union official or work colleague.
- The Council's representative(s) will put the management case and may call witnesses.
- The employee and his/her representative will have the opportunity to ask questions of the Council's representative(s) and any witnesses he/she has called.
- The employee and/or representative will put his/her case and may call witnesses. They may confer. The representative may not answer questions on behalf of the employee nor prevent him or her from speaking. The representative must not address the hearing if instructed by the employee not to do so.
- The Council's representative(s) will have the opportunity to ask questions of the employee and any witnesses he/she has called.
- The Chief Officer or Chair of the Appeal/Employee Appeals Committee (or other Panel Member) may ask questions of any party and call for further information to clarify matters. If, as a result of questioning, new evidence is brought out, both parties will be given an opportunity to comment and, if necessary, to seek an adjournment. The decision on whether to adjourn, for how long and what the expected outcome of the adjournment will be is at the discretion of the Chairman. Should it be necessary to adjourn, then both sides will be asked to withdraw.
- The Council's representative(s) will have the opportunity to sum up their case.
- The employee and/or his/her representative will have the opportunity to sum up his/her case.

- The parties to the case will withdraw from the hearing and the Chief Officer or Appeal/Employee Appeals Committee Panel will consider the evidence and make a decision.
- The decision will normally be announced orally as soon as possible following the conclusion of the hearing and the decision, together with the reasons, will normally be confirmed in writing within 5 working days of the hearing.
- If the decision is to substitute a different level of discipline or to reinstate the employee, the letter must set out clearly the terms of the reinstatement or of the disciplinary sanction.

ASSOCIATED DOCUMENTS

- Council's Policy on Whistleblowing and the Public Interest Disclosure Act 1998.
- The Safeguarding Vulnerable Groups Act 2006