**Human Resources and Organisational Development**

# Guide to Managing Discipline

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## 1. Introduction

The disciplinary procedure is designed to help members of staff achieve and maintain satisfactory standards of behaviour and conduct.

Managers are expected to know, communicate, and enforce the standards of behaviour expected by the Council in a fair and consistent way.

Failure to follow the Council’s procedure could result in reputational damage and financial liability for the Council.

## 2. Scope

2.1 The procedure applies to all staff other than the following, for whom separate procedures exist:

* Chief Officers
* staff within their probationary period, for whom separate procedures exist
* contractors or agency workers.

## 3. Importance of acting promptly

Managers should always act promptly to deal with any misconduct. A failure to communicate to a staff member that something that they have done is unacceptable may lead the staff member assuming that their conduct is satisfactory/acceptable. This will make it much more difficult to deal effectively with the problem behaviour, which may get worse, at a later time.

## 4. Meaning of misconduct and gross misconduct

4.1 Examples of misconduct and gross misconduct are provided in Appendix 1 of the disciplinary policy and procedure. This list is not exhaustive. Staff should be made aware of the policies that apply to them and the satisfactory standards of behaviour expected. Rules are useful because they set standards and make it clear to staff what conduct is and is not acceptable, and cover a range of issues such as:

* breach of health and safety
* timekeeping
* bullying and harassment
* serious misuse of office equipment, materials and stationery
* obeying reasonable instructions
* fraudulently claiming expenses
* wilfully or negligently damaging of Council property
* use of email and the internet
	1. Gross misconduct is misconduct of such a serious nature that it fundamentally breaches the contractual relationship between the staff member and the Council.

4.3 In the event that a staff member commits an act of gross misconduct, the Council will be entitled to dismiss the staff member summarily.

## 5. Summary dismissal

* 1. Summary dismissal means dismissal without notice or pay in lieu of notice, and irrespective of whether any previous warnings have been given to the staff member. In other words, once the decision to dismiss has been made, the dismissal takes effect immediately and all the rights and benefits under the contract cease at the end of the day on which the staff member is notified of the dismissal in writing.

5.2 It is important to remember that for such a decision to be fair in an Employment Tribunal the employer must have a justifiable reason for the dismissal, and the manager will be expected to have properly followed the Council’s own procedures and acted reasonably in dismissing the staff member.

## 6. Distinction between misconduct and lack of capability

6.1 Misconduct is any type of behaviour or conduct at work that falls below the standard required by the Council or is in breach of any Council policy or rule.

6.2 Lack of capability, on the other hand, exists where, no matter how hard a staff member tries, they are simply unable to perform the job to the standard required by the employer. If, however, a staff member fails to come up to the required standard as a result of wilful negligence or lack of effort, this could be regarded as misconduct because such behaviour is within the staff member's control.

6.3 It can sometimes be difficult to establish whether poor performance is due to inherent incapability or, in some cases, there may be an element of both.

## 7. Disciplinary procedure stages

7.1 The disciplinary procedure outlines the stages of the procedure, as follows:

|  |
| --- |
| Informal stage – Informal warning  |
| Formal stage 1 – Written warning |
| Formal stage 2 – Final written warning |
| Formal stage 3 - Dismissal |
| Appeal |

7.2 There is no obligation in law to always start at the beginning of the procedure. What is important is that the type of warning issued (i.e., the penalty) should be appropriate for the seriousness of the offence.

7.3 For example, if a staff member with no previous warnings committed a breach of safety rules that was relatively serious (but not serious enough to justify dismissal), a manager might decide to issue a final written warning.

7.4 It is important that managers act fairly and objectively when deciding what type of warning, if any, to impose and take care not to overreact or take a decision in the heat of the moment.

## 8. Handling an Informal Disciplinary

8.1 As a first step in tackling unsatisfactory behaviour, or in the event of a minor breach of the Council's rules, managers should hold an informal meeting with the staff member make them aware of how and why the behaviour in question is causing a problem and clarify standards of behaviour.

8.2 The joint aim of the meeting will be to ensure that the staff member understands why their conduct is unacceptable and to seek agreement on making sure that the behaviour does not continue or recur.

8.3 It is recommended that the manager should conduct the informal meeting in the following way:

* give specific examples of the individual’s conduct and state that the conduct is not satisfactory;
* give the staff member the opportunity to explain and discuss any reasons for the unacceptable conduct;
* if after having heard the staff member’s version of event there is still grounds for misconduct, state clearly the conduct expected, including any timescales for improvement, if appropriate;
* state that if the conduct does not improve to the standard required formal disciplinary proceedings will be started;
* keep a record of the informal warning, actions and timescales, and monitor and review if necessary.

8.4 Managers are advised to keep a record of the discussion and share the notes with the staff member. The record should show the date and time of the meeting, state briefly what was discussed and any follow up action decided upon.

## 9. Handling a Formal Disciplinary

If an informal warning has not produced an improvement in conduct, or the matter is sufficiently serious the formal process should be invoked.

# 9.1 Right to be accompanied

9.1.1 Staff have the right to be accompanied by a workplace colleague or trade union representative at any formal meeting, interview, or subsequent appeal.

# 9.2 Investigation

9.2.1 The Deciding Manager may decide the matter needs investigating before they make a decision. If the matter is straightforward and not in dispute the Deciding Manager may proceed, by agreement, without an investigation. In such instances where this may be the case the Deciding Manager will write to the staff member confirming the allegations and any facts that have been established and seek agreement to the need for no investigation, with the matter proceeding straight to the next stage to decide whether the matter is to be addressed informally, or formally at a formal meeting.

9.2.2 If a matter needs to be investigated, the manager who is to hear the disciplinary (known in the Disciplinary Procedure as the Deciding Manager), may initiate an investigation by appointing an Investigating Officer, and will clarify the terms of reference in writing to all parties before the investigation commences. This will include the allegation(s) and whether they are in breach of a particular policy (for example the Code of Conduct and the specific clause which is breached) and any other details provided. Please note that any information members of staff are not given which is about them can be obtained through a SAR (subject access request).

9.2.3 Certain matters relating to regulated professionals may need referring to and investigated by an external regulator in accordance with their own codes.

9.2.4 The investigation should be completed as soon as is reasonably possible, but this should normally be within 4 working weeks. Any extensions must be justified and the relevant parties informed in writing. This will normally be no longer than a further 10 working days. If it is clear that the investigation will take longer, for example, one of the crucial parties is sick or outside agencies’ reports are needed, further extensions may be necessary. In this event a revised date will be set for completion and the staff member informed by the manager.

9.2.5 The ER & Engagement team in HR can assist with identifying an appropriate investigator. The person carrying out the investigation should not be involved in the issue, for example a witness, and the Deciding Manager should not carry out the investigation.

9.2.6 How to conduct investigations is provided in a separate guide for Investigating Officers.

# 9.3 Suspension

9.3.1 In some circumstances, it may be necessary to suspend a staff member for a short period, perhaps pending the outcome of the investigation, or until such a time as facts can be established that change the need to continue with the suspension. A decision to suspend should be taken only after careful consideration of all the circumstances and having sought agreement from the service Director and Head of HR (ER & Engagement). Prior to any suspension, managers should complete a risk assessment and consider alternatives to suspension. such as a temporary transfer to other duties or another place of work.

9.3.2 The following circumstances are examples of where suspension may be appropriate:

* in exceptional cases where gross misconduct has been alleged, and which, if proven, would result in summary dismissal, for example where the staff member is suspected of theft or bribery;
	+ where there are grounds to believe that the staff member might deliberately cause damage, to the Council’s computer network for example, if they remained in the workplace;
* where there is a perceived threat to security or risk to evidence, witnesses or the safety or well-being of the staff member or others should they remain at work, including where the staff member has acted in a violent manner or has threatened violence.

9.3.3 Staff suspended from work pending the result of an investigation will continue to receive their normal pay and benefits, including regular payments such as shift allowances. Suspension is not a punitive act and any reduction in pay would, in most cases, be a breach of the contract of employment and may create the impression that the staff member is judged to be "guilty" without having investigated the facts.

9.3.4 If suspension is necessary, managers should meet with the staff member to discuss the terms of the suspension and why it is considered necessary. The suspension meeting should be conducted by a senior manager of grade P and above where possible (after agreement has been given to do so by the service Director and HR).

9.3.5 Dependent upon the circumstances, it may be necessary to suspend immediately. If the staff member is a trade union member, the manager should, wherever possible, enable the trade union representative to attend a meeting to suspend, but should not unnecessarily delay the meeting if no representative is available. If the person being suspended is a trade union representative, the manager must notify the branch secretary, or if the person is a branch official, the trade union regional office.

9.3.6 The suspension should be confirmed in writing as early and as clearly as possible, covering the following:

* the reason for the suspension (with details of the alleged gross misconduct);
* when the suspension will start;
* how long the suspension is likely to last;
* at what intervals it will be reviewed;
* that normal pay and benefits will continue to be paid;
* that the suspension is not a penalty or disciplinary action in itself;
* that the suspension does not mean that the staff member has been judged guilty of any offence, or that the outcome of the investigation has already been determined;
* that the staff member will have a full opportunity to put across their version of events, explain their conduct, or answer any allegations;
* that the staff member will be updated as to the progress of the investigation;

9.3.7 It is preferable to hand the staff member a letter confirming the above at the suspension meeting; however, if this is not possible before the meeting then the manager should provide the staff member with a suspension letter within no more than 2 working days.

9.3.8 It might be necessary to remove items such as the staff member's access pass to a workplace building or access to computer data/systems.

9.3.9 Managers should take care to communicate the reason for absence of a staff member who is suspended if asked. An appropriate message would be that the staff member is currently absent from work for reasons it would not be appropriate to discuss.

9.3.10The suspension must be kept under review and the staff member permitted to return to work if it becomes apparent the allegations are unlikely to be substantiated or the original reasons for suspension no longer apply. However, suspension may continue until a decision is taken at a disciplinary hearing. The line manager, with advice from HR, should regularly review the appropriateness of the continued suspension to minimise its duration. This should normally be monthly and in writing unless there are clear factors determining an alternative timescale. During the suspension it may be that the staff member can still undertake certain activities which enable them to continue with their professional development (CPD activities) which are not in the workplace, and the staff member should be updated on key developments or changes within the workplace. Additionally, supportive measures such as access to the Employee Assistance Programme (EAP) should be offered.

9.3.11If the suspension places limitations on accessing documents or witnesses, the individual should discuss access to facilities with HR, to enable the staff member to prepare their response to any allegation(s).

# 9.4 Formal Disciplinary Meeting

9.4.1 If the decision is taken by the deciding manager to progress to a formal meeting, they will write to the staff member to set up a disciplinary meeting. Copies of all written evidence to be considered at the formal meeting, including witness statements, should be included with the letter. The formal meeting will be held as soon as is reasonably practicable, but normally within 4 working weeks of the conclusion of the investigation. For misconduct cases written notice will be given at least 5 working days’ ahead of the formal meeting. For gross misconduct cases 10 working days’ written notice will be given.

9.4.2 If the trade union representative is known it may be helpful and convenient to also check their availability when arranging a formal meeting, so long as this is within a reasonable timeframe. This will reduce the need to rearrange a meeting once a meeting date has been arranged and it subsequently is found that the trade union representative is unavailable.

9.4.3 After the invite letter and all relevant documents are issued, if the staff member or their trade union representative or workplace colleague, is unable to attend for good reason, such as circumstances beyond their control, they should inform the Deciding Manager as soon as possible. The meeting will be rearranged one further time and within 5 working days of the original meeting date.

9.4.4 Failure to attend without explanation may result in the meeting taking place in the staff member’s absence. As an alternative in such circumstances, the individual may be permitted to provide a written submission.

9.4.5 The meeting will be conducted by the Deciding Manager and attended by an HR representative and a notetaker.

9.4.6 If an investigation has taken place the Investigating Officer will present their findings and be available to answer any questions.

9.4.7 All disciplinary hearings should be held in private and it is important to remember that the staff member has the right to be treated with courtesy and respect, irrespective of what they are alleged to have done.

9.4.8 Recommended running order for a formal meeting:

* Introduction by the Deciding Manager including names/roles of everyone in the room
* Investigation Officer [where an investigation has taken place] presents their findings and calls any invited witnesses to speak
* Staff member and/or their representative asks questions for clarification
* Deciding Manager asks questions for clarification
* Staff member presents their case including calling any of their invited witnesses to speak
* Investigating Officer asks questions for clarification
* Deciding Manager asks questions for clarification
* Investigation Officer sums up

* Staff member/Representative sums up
* Adjournment for Deciding Manager to reach a decision. Where possible, this should be communicated verbally after the adjournment or, if more time is needed to consider the matter before reaching a decision, they should close the meeting and state that a decision will be communicated in writing (within 5 working days). Even if a decision is issued verbally this must be still confirmed in writing within 5 working days.

9.4.9 At a formal meeting the trade union representative or workplace companion may:

* address the meeting;
* ask questions/cross-examine on behalf of the staff member;
* present and summarise the case;
* respond to any views expressed at the meeting;
* confer with the staff member during the meeting;
* request adjournments, where reasonable.

The trade union representative or workplace companion may not:

* answer questions on behalf of the staff member;
* address the meeting against the wishes of the staff member;
* prevent the investigating officer, management or witnesses from providing their evidence.

# 9.5 Records

9.5.1 Full records should always be kept of all meetings held with staff members about their conduct, whether they are formal or informal, as well as the meeting outcomes, for example any warnings given. The records will be necessary in case further misconduct occurs or the staff member fails to change their behaviour despite the measures taken. They will also allow managers to follow through the further stages of the disciplinary procedure at a later date if necessary.

9.5.2 In line with the General Data Protection Regulation (GDPR), these records should be held confidentially and kept for no longer than necessary.

9.5.3 Any party involved is not normally permitted to record electronically any meeting as part of the disciplinary procedure. Any breach of this provision may lead to disciplinary action, up to and including dismissal. This may be permissible if for example it is a reasonable adjustment, in which case a copy of the recording/or transcript of the recording will be provided to all parties.

# 9.6 Communication skills for a disciplinary hearing

9.6.1 Conducting a meeting with a staff member to discuss unsatisfactory conduct is never an easy task. Open, honest and unambiguous communication will be essential if such a meeting is to succeed.

9.6.2 Managers should:

* state factually what the staff member has done or not done and avoid expressing personal opinions about it;
* give specific examples, for example "yesterday at the meeting you swore at Angela";
* avoid vague statements and generalisations such as "you have a bad attitude" or "you never meet your deadlines";
* ask open questions (what/why/where/when);
* ask closed questions to seek a definitive answer to an issue (questions which require a yes/no reply);
* listen actively to what the staff member has to say and take it on board;
* ensure that their tone of voice is firm but not accusatory;
* avoid emotional reactions;
* try to establish whether or not there is any underlying reason for the misconduct;
* seek the staff member's agreement that whatever they have done or not done is unacceptable and why this is the case;
* ask the staff member if they are willing to undertake to improve and/or to ensure that there is no repeat of the misconduct;
* check for understanding, for example by asking the staff member to state or summarise their understanding of what has been discussed and agreed.

# 9.7 Formal Warnings

9.7.1 A formal warning should:

* explain the nature of the misconduct;
* state the improvement required, i.e., give a clear indication what the staff member is expected to do, or not do, in the future;
* state what will happen if the misconduct is repeated, i.e., the next stage of the disciplinary procedure;
* provide for a period of time during which the warning will remain "live" for disciplinary purposes (making clear the start date);
* state that the staff member may appeal against the warning and how and to whom they should appeal; and
* be recorded.

9.7.2 A warning will usually remain active for disciplinary purposes for a defined period of time. There are no set time periods laid down in law. Normally a written warning will remain live on a staff member’s file for 12 months, and a final written warning for 18 months. If further misconduct occurs while a warning is still active, managers will be able to move up to the next level of warning. A copy of the warning will be kept on the HR file and will be disregarded for disciplinary purposes after the stated warning period (12 or 18 months), subject to continued satisfactory conduct (except in very exceptional circumstances where the period may be extended, for example, if there is a history of a staff member’s repeated misconduct just after warnings expire).

# 9.8 Dismissal on grounds of misconduct

9.8.1 If, following a series of formal warnings, the staff member's misconduct continues or is repeated, or is so serious as to potentially constitute gross misconduct, managers may be able to proceed a formal meeting to consider dismissal.

9.8.2 A decision to dismiss should not be taken lightly; this is normally a last resort after all other possible courses of action have been explored, or where there is gross misconduct that warrants summary dismissal.

9.8.3 Dismissal for misconduct will be unfair if you have not first given the staff member warnings making it clear that continued or repeated misconduct will lead to dismissal. As discussed above, the exception to this principle is where the staff member has committed an act of gross misconduct, which may justify summary dismissal.

# 9.9 Appeal

9.9.1 The staff member should always be given the opportunity to appeal against any formal warning or a decision to dismiss. Any appeal hearing should be conducted by a manager not previously involved in the case. A staff member can appeal to their Director (or the senior manager who is appointed to deal with the matter on their behalf).

* + 1. Staff have the right of appeal against any formal disciplinary action under this procedure. Appeals must be submitted in writing, to the designated officer identified in the outcome letter, within 10 working days of receipt of the written outcome of a formal disciplinary hearing. Appeals can be made on the following grounds:
* The **PROCEDURE** – the grounds of appeal should detail how

procedural irregularities prejudiced the disciplinary decision.

* The **FACTS** – failure to take account of material evidence. New evidence will only be considered if it was not available to the Deciding Manager and is relevant to the matter.
* The **DECISION** – the decision did not justify the level of disciplinary sanction imposed.

9.9.3 The grounds of appeal should make clear which aspect(s) of the decision the staff member is appealing, and why. A summary should be given identifying any procedural irregularities, or if new facts have come to light which may justify a review of the original decision, or the reason(s) why the level of disciplinary sanction is considered too severe.

9.9.4 Where any Director or senior manager has been involved at the earlier stage, the appeal will be to the Corporate Director or an alternative Corporate Director (as appropriate).

9.9.5 Appeals against dismissal will be heard by elected Members at an Appeals Sub Committee.

9.9.6 The purpose of the appeal hearing is to examine the grounds of appeal and to review the decisions and any disciplinary sanctions. It will not be a rehearing of all the evidence presented at the original hearing. New evidence will only be considered if it was not available to the Deciding Manager at the time the decision was made, and is relevant to the matter.

9.9.7 If the staff member or their trade union representative or workplace colleague is unable to attend the appeal hearing because of circumstances beyond their control, they should inform the manager hearing the appeal as soon as possible. The meeting will be rearranged one further time and within 5 working days of the hearing. Failure to attend without explanation may result in the meeting taking place in the staff member’s absence.

9.9.8 The manager who made the decision at the previous stage will be asked to provide a written statement responding to the grounds of the appeal within 10 working days of the request.

9.9.9 At least 5 working days’ notice in writing will be given for the formal meeting (or 10 working days’ for a dismissal appeal).

9.9.10 The recommended running order of the meeting is similar to a disciplinary hearing, in that both parties present their case and a decision is made by the person or panel hearing the appeal. The key difference is that the appellant presents their case first and then the management side will present.

9.9.11 It is not usual for witnesses to be called to an appeal hearing, as it is not a rehearing of the evidence. However, it might be appropriate if there is new evidence to consider or if they are providing information on procedural irregularities.

9.9.12 The manager chairing the appeal will provide a decision in writing as soon as reasonably possible, and normally within 5 working days of the appeal meeting.

9.9.13 The outcome will be to either uphold the original decision, to overturn the decision, or to substitute the outcome with an alternative sanction. This is the final stage of the Council’s procedure and there is no further right of appeal.