



Disciplinary Policy and Procedure

TABLE OF CONTENTS

Contents		
		Page
1.	Introduction	2
2.	Aims	2
3.	Scope	3
4.	Roles and Responsibilities	3
5.	Pandemic Amendments	4
6.	General Principles	5
7.	Definitions	7
8.	Procedure	7
9.	The Informal Procedure – Informal Discussions	8
10.	The Formal Procedure	9
11.	Disciplinary Hearings	14
12.	Sanctions	16
13.	Appeals	17
14.	Pandemic	
15.	Equality Impact Assessment and Monitoring	18
16.	Data Protection Act	18
	Appendix 1 Examples of Misconduct	19
	Appendix 2 Frequently Asked Questions – Paid Suspension	22
	Appendix 3 Guidance on the Conduct of a Disciplinary Hearing	25
	Appendix 4 Frequently asked Questions – Disciplinary Procedure	28

	Appendix 5 Electronic Meeting Guidance	
--	--	--

1. Introduction

- 1.1 The Council and the trade unions attach great importance to establishing and maintaining good working relationships at all levels within the council by encouraging all employees to achieve and maintain acceptable standards of conduct and behaviour.
- 1.2 It is the council's belief that employees should be motivated by their sense of responsibility and involvement rather than by fear of disciplinary action. Disciplinary rules and procedures are nevertheless necessary to promote positive employee relations and fair, consistent treatment of employees, to help ensure that standards are upheld and to provide a fair method of dealing with alleged failures to observe the standards.
- 1.3 It is also recognised that discipline is necessary for the efficient and effective operation of the council and for the health and safety at work of all employees.
- 1.4 Whilst the disciplinary procedure provides a formal process for resolving alleged breaches, the council recognises that in many cases early intervention with the right word at the right time and in the right way may be all that is needed and will often be a more effective and satisfactory method of dealing with such situations.

2. Aims

- 2.1 The aims of this policy are:
 - To encourage corrective rather than punitive action
 - To ensure the consistent and fair treatment of employees
 - To support standards of conduct and behaviour which ensure the efficient and effective operation of the council

3. Scope

- 3.1 This procedure applies to all employees of the council excluding officers employed under J.N.C. Conditions of Service for Chief Officers and for Chief Executives.
- 3.2 This procedure does **not** apply to agency staff, external contractors or external consultants.

4. Roles and Responsibilities

- 4.1 It is the responsibility of individual **Employees** to:

- Be aware of the Council's policy and procedure
- Maintain acceptable standards of performance and conduct.
- Comply with the Council's Code of Conduct at all times
- Carry out their role to the standards expected
- Understand the impact of their behaviour on colleagues and customers of the Council
- Clarify expectations, behaviours and procedures with their line manager if they are unsure about them
- Co-operate fully and promptly if they are asked to be involved in a disciplinary case, this may include giving evidence in an investigation
- Declare any conflict of interest that arises if they are involved in disciplinary matters.

4.2 It is the responsibility of **Managers** to:

- Seek advice from Human Resources in a timely manner
- Be able to demonstrate an appropriate level of competence to deal with disciplinary matters effectively
- Be responsible for setting and maintaining standards of performance
- Comply with the Council's policy and procedure
- Ensure employees understand the policy and procedure
- Ensure the policy and procedure are fairly and consistently applied
- Recognise where circumstances make it difficult from time to time for staff to comply fully with the Council's policy and procedure
- Assist, wherever possible, the employee to correct unacceptable behaviour
- Set a good example through their own conduct and behaviour
- Remain impartial when dealing with disciplinary issues

4.3 It is the responsibility of **Human Resources** to:

- Ensure provision of training, support and guidance for managers
- Regularly review and monitor the operation and effectiveness of the policy and procedure including any adverse impact
- Ensure compliance with legal obligations

5. During a Pandemic

- 5.1 Any disciplinary procedure at this time must be carried out in a way that follows public health guidelines around social distancing and closure of certain business premises.
- 5.2 Going through a disciplinary procedure can be stressful in normal times, and employees might be facing other stressful circumstances at this time. The Council will give careful consideration to the health and wellbeing of employees when deciding whether and how to proceed at this time.

5.3 Whether the Council decides to go ahead with the procedure or postpone it, the Council will explain their decision with those involved. This will help everyone to be clear about what has been agreed and why.

5.4 Where all those involved in the procedure are still going to the workplace, the Council will consider whether the procedure can be carried out in line with public health guidelines.

For example, if interviews and meetings can be held in a place that safely allows for social distancing as well as privacy.

5.5 If some or all of those involved in the procedure are working at home, the Council will need to decide if the procedure can still be carried out in a fair and reasonable way. When making this decision the Council will consider the individual circumstances and sensitivity of the case, for example if it needs to be dealt with urgently, or if it would be dealt with more fairly when people are able to return to the workplace.

5.6 Going ahead with a procedure at this time might mean having to use video meetings for any investigation interviews and hearings. See appendix 5 – Electronic Meeting Guidance. The Council will consider if this can be done in a fair way, including if:

- everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection
- anyone involved has any disability or other accessibility issues that might affect their ability to use video technology, and whether any reasonable adjustments might be needed
- any witness statements or other evidence can be seen clearly by everyone involved during the hearing
- it will be possible to fairly assess and question evidence given by people interviewed in a video meeting
- it's possible to get hold of all the evidence needed for the investigation or hearing, for example records or files that are kept in the office
- it's possible for the person under a disciplinary investigation to be accompanied during the hearing

5.7 If the Council decides to continue or start a disciplinary procedure, the Council will follow Acas's Code of Practice for Pandemic situations.

5.8 The right for an employee to be accompanied at a disciplinary hearing still applies. The employee's chosen companion must be able to attend the hearing, even if it's being carried out through a video meeting.

The hearing must be set up to allow the employee's chosen companion to:

- put forward and sum up the employee's case
- respond on behalf of the employee to anything said (although it should be noted that the companion is not able to answer questions directed at the employee).
- talk privately with the employee at any point

During a pandemic, the availability of an employee's chosen companion might be more limited than usual. For example, they might have more caring responsibilities. The Council will consider if a delay of more than 5 days is reasonable in the circumstances.

6. General Principles

- 6.1 This policy and procedure is designed to encourage all employees to achieve and maintain satisfactory standards of conduct, and not purely as a means of imposing sanctions.
- 6.2 Standards of work and conduct required will be reiterated to ensure that employees are clear as to what is expected of them (this should also have been done at the outset of taking up employment).¹
- 6.3 We are committed to the council's values of Working Collaboratively, One Team One Council and Working Smart (WOW).
- 6.4 All disciplinary proceedings will be dealt with confidentially and treated as an allegation subject to the outcome of any disciplinary hearing.
- 6.5 All disciplinary issues will be dealt with in a fair and timely manner and with clear decisions at all stages.
- 6.6 The Council reserves the right to implement the disciplinary procedure at any stage, if the employee's conduct warrants such action.
- 6.7 The Council's safeguarding policies must be referred to in circumstances where an allegation or incident is in relation to a child, young person or vulnerable adult.
- 6.8 Managers should consult Human Resources before a disciplinary investigation takes place. A representative from Human Resources will normally attend disciplinary hearings and where requested, disciplinary meetings. However, for avoidance of doubt, a disciplinary hearing held without a representative from Human Resources, shall not be regarded as being improperly conducted for the purposes of this procedure.

¹ See also the Wyre Borough Council Capability Procedure

- 6.9 At all stages of the disciplinary procedure, except for the informal stage, an employee will have the right to be accompanied by an approved trade union representative or work colleague of their choice.
- 6.10 Electronic recordings should not be made of any meetings or hearings involved in the disciplinary process without the consent of those present.
- 6.11 An employee will not be dismissed for a first breach of discipline except in a case of gross misconduct, where the penalty will be summary dismissal without notice or pay in lieu of notice.
- 6.12 No disciplinary action will be taken against a trade union representative until circumstances have been discussed with a full time official of the trade union concerned.
- 6.13 Where disciplinary action is withdrawn or where the employee is cleared of any alleged misconduct, any written reference to the matter will be removed from the employee's personal file.
- 6.14 An employee may appeal against any disciplinary action imposed in accordance with this procedure.
- 6.15 The application of this policy and procedure will be non-discriminatory irrespective of an employee's age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender or sexual orientation.

7. Definitions

7.1 **Misconduct**

Examples of misconduct, which would normally justify the use of the Disciplinary Procedure has been attached as Appendix 1.

7.2 **Gross Misconduct**

Examples of serious offences that constitute acts of gross misconduct and potentially could lead to an employee's dismissal have been attached as Appendix 1.

Where misconduct is related to inappropriate conduct towards a child or vulnerable adult and it is perceived that the individual may pose a risk to children or vulnerable adults, details of the offence will be passed to the relevant external authorities by the Human Resources Team.

Similarly, where the misconduct is of a very serious nature, e.g. theft, fraud, details of the offence will be passed to the Head of Business Support who in liaison with Internal Audit/ Section 151 Officer may subsequently refer the matter on to external authorities, for example the police.

Neither of the two lists in Appendix 1 are exhaustive and one test that should be asked when determining if there is a potential for a misconduct allegation is - would a reasonable person be aware that disciplinary action would result from a certain act or omission?

7.3 **Conduct Outside of Work**

The Council does not seek to dictate how employees conduct themselves in their personal lives outside work. However, unlawful, anti-social or other conduct by employees which may jeopardise the Council's reputation or position will be dealt with through the disciplinary procedure. Examples of such behaviours are listed in Appendix 1.

7.4 **Cases of Alleged Criminal Activity**

A disciplinary investigation may run in parallel to any external investigation if necessary (e.g. police, child protection etc.), but should not be held up by it, unless it is prejudicial to those investigations to proceed. Case law clearly indicates that it is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

8. Procedure

8.1 The Disciplinary Procedure comprises of the following stages, where applicable:

- Informal Stage (where appropriate)
 - Informal Resolution
- Formal Stages
 - Investigation (including suspension where necessary)
 - Hearing
 - Sanctions
 - Written Warning
 - Final Written Warning
 - Dismissal with Notice or Summary Dismissal
 - In exceptional circumstances, consideration may be given to some other disciplinary penalty as an alternative to dismissal such as demotion, transfer or loss of seniority/pay.
 - Appeal

No formal disciplinary proceedings will be taken against an employee until a case has been fully investigated. The investigation will be relative to the nature of the allegation.

8.2 At every stage of the formal procedure an employee will be advised of the nature of the allegation against them and will be given the opportunity to state their case before any decision is made.

8.3 At all formal stages of the procedure the Employee will have the right to be accompanied by a workplace colleague or approved trade union representative.

8.4 **Resignation during an investigation or before a Disciplinary**

If the employee resigns either during a disciplinary investigation or prior to a disciplinary hearing then the Council will reserve the right to continue with the investigation and/or hearing despite the resignation.

The results of any findings/decision will be held on the employee's personnel file and any appropriate actions taken in line with the Disciplinary Policy.

8.5 **Criminal Conviction/Imprisonment**

An employee who receives a criminal conviction or imprisonment may be dismissed, however each case will be determined on its own merit. The Council's Disciplinary Policy, including undertaking an internal investigation will be followed on all occasions.

9. The Informal Procedure – Informal Discussions

9.1 Minor offences or lapses by the employee, should in the first instance, be dealt with by an informal discussion between a supervisor/manager and the employee concerned.

9.2 Nothing in this procedure is intended to prevent the normal process of management and supervision whereby managers manage performance including: performance and development reviews and 1:1s, allocating work, monitoring performance, drawing attention to errors, poor quality and minor misconduct whilst also highlighting work that has been done well either through routine management or regular appraisal.

Most cases of minor misconduct are best dealt with through such informal processes rather than through the formal disciplinary procedure.

9.3 The manager should discuss any problem with the employee at the earliest possible opportunity with the objective of encouraging and helping the employee to improve and stopping the matter from escalating. This may cover conduct, work performance, sickness or personal problems. It is an informal process designed to work through difficulties before they become so significant that disciplinary action may be necessary.

9.4 Clear goals need to be set and a review meeting scheduled to ensure improvement in behaviour/conduct is satisfactory within an agreed timeframe.

Failure to improve behaviour or standards of performance within this timeframe may result in formal proceedings being invoked.

- 9.5 An informal written record of any discussion should be made, including date, outline of discussion, details of any agreed action, training or other support to be made available to the employee. Should the behaviour or conduct continue and move to Formal Disciplinary Procedure, these records will be important evidence.

10. The Formal Procedure

10.1 Advice from Human Resources

To ensure compliance with the law, fairness and consistency, managers must consult with a Human Resources Advisor before embarking on the formal procedure or considering any disciplinary action.

10.2 Right to be accompanied

10.2.1 At all stages of the formal procedure the employee has the right to be accompanied by a recognised trade union representative or work colleague.

10.2.2 For the purpose of this policy, the right of representation includes meetings which could result in:

- A formal warning being issued
- The confirmation of a warning or some other disciplinary action (such as an appeal hearing)

and,

- Meetings held as part of the investigation process

It should be noted that the right to be accompanied does not extend to meetings held to inform of an impending issue or to suspend. However, the council will not refuse a reasonable request to be accompanied at such meetings.

It is the employee's responsibility to arrange to be accompanied.

10.2.3 The chosen representative is able to contribute to and ask questions at the hearing, however the chairperson is entitled to expect the employee and not the representative to answer any questions asked.

10.2.4 If the chosen representative is not available at the proposed time of the meeting, the employee may request an alternative time and date so long as it is reasonable and falls within five working days of the original date. This alternative date must have regard to the availability of the other employees involved in the hearing and may be extended by mutual agreement.

During a pandemic it may be necessary to extend this period to a reasonable length as deemed appropriate by the Head of Business Support.

10.2.5 There is no entitlement to external representation, legal or otherwise.

10.3 **Investigation of alleged misconduct/gross misconduct**

When an allegation/s is made which is considered to be more serious than can be dealt with by an informal discussion between the manager and the employee, an investigation must be carried out before any disciplinary action is taken.

10.3.1 **Investigating Officer**

The employee's immediate manager/supervisor will normally be designated as the investigating officer. There will be times when depending on the seriousness of the allegation or if the immediate manager has an involvement an alternative investigating officer will be designated by the Head of Business Support in liaison with the relevant HOS/Director.

If a financial irregularity is alleged, or the allegation involves the loss or suspected loss of assets, the theft or malicious alteration of data or the investigation requires observation of the employee, the investigation will be carried out by Internal Audit.

10.3.2 **Police Involvement**

At any stage during the investigatory process the Investigating Officer, having consulted with the Head of Business Support can recommend that the police should be involved e.g. if the possession of illegal drugs is involved or in the event of claims of abuse, theft or fraud. In the case of theft or fraud, the Audit Section will need to be involved from the outset.

The involvement of the police should not be viewed as a reason to suspend the internal process of the investigation unless the internal investigation would prejudice the police investigation. Usually, the police investigation will run parallel to the internal investigation but by definition, the results of any police investigation may take some considerable time to be made known. In view of this, the internal investigation should continue in the normal manner with the emphasis on fairness and equality², and any recommendation made as a consequence of the internal investigation may be made without waiting for the results of the police investigation.

10.3.3 **Investigation Process**

Once the investigating officer has been nominated, the employee will be issued with a letter confirming that an allegation has been made against them including details of the allegation, that there is to be an investigation and who the investigating officer is.

² Equal treatment of staff regardless of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender or sexual orientation

In the majority of cases such written confirmation will be issued at the commencement of an investigation but in some cases e.g. potential fraud (or where evidence is behaviour based and evidence needs to be collected before the person is informed e.g. attendance), it may be appropriate not to inform the employee until later in the investigation process. In addition there may be occasions where the allegations are less serious in nature and warrant a less formal approach whilst still falling within the parameters of the formal procedure.

Internal Audit must be contacted for advice should it be considered necessary to search the personal property of an employee. Searches of personal property such as coats, bags, briefcases etc. may only be undertaken by Internal Audit and only in the employee's presence. Desks, cupboards, filing cabinets and work vehicles are not considered to be personal property.

Internet and email monitoring and control software has been installed and the investigating officer may, in the course of the investigation, monitor usage and inspect the contents of emails and files.

During the process of the investigation, it will normally be necessary to interview the employee(s) in question. This should be done as soon as reasonably practicable but in any event should normally take place within 10 working days of the investigation commencing. Where either party wished to extend this time limit a request should be made in writing stating the reasons for the delay. Where sickness is the reason for a request by the employee, this must be accompanied by a medical certificate. However, it is not expected that any extension will exceed a further 20 working days and the investigation may have to continue and conclude in an employee's absence if they are unable to attend.

During a pandemic it may be necessary to extend this period to a reasonable length as deemed appropriate by the Head of Business Support.

Detailed records must be kept of any interviews held and witnesses interviewed must sign any statement given and recognise that they could be used at a subsequent hearing.

The Investigating Officer will investigate the matter, interview witnesses and gather documentary evidence as appropriate. They will then prepare a report for submission to Human Resources giving the outcome of the investigation and make one of the following recommendations:

- That no further action to be taken: or
- That Informal Action may be required: e.g. counselling, keeping under review, management action, training etc: or
- That disciplinary hearing should be held

If as a result of the investigation, a disciplinary hearing is deemed appropriate, the investigating officer will be required to present the report at the hearing.

If a disciplinary hearing is not deemed necessary the employee must be informed of this in writing within **5 working days** of the conclusion of the investigation. If currently under suspension, appropriate arrangements will be made for the employee to return to the workplace.

Officers involved in the disciplinary investigation must not lead any subsequent disciplinary hearing. They may, however, be involved in any suspension and it may be appropriate for them to either present or assist in the presentation of management's case at any disciplinary hearing.

- 10.3.4 The Council's Occupational Health Advisor will be consulted if at any stage in the investigation there may be a medical issue.

10.4 **Suspension**

The Council may decide to suspend an employee from work pending the investigation. The decision to suspend must be made in liaison with a member of the Management Team and Human Resources.

Suspension is most likely to be appropriate where the continued presence of the individual at work would pose a risk to themselves or others or where the employee would have an opportunity to frustrate the investigation by destroying or compromising evidence.

An alternative to suspension such as requesting the employee to undertake alternative duties which remove them from their normal workplace or to work from home whilst the investigation is conducted may also be considered.

Suspension or temporary redeployment does not constitute disciplinary action or indicate belief in the employee's guilt and must never be taken as an assumption of guilt. Rather it is a mechanism to allow breathing space for a fair investigation to take place to establish whether or not there is a case to answer.

Once the investigation is completed the employee will either return to work with an unblemished record or will be required to attend a disciplinary hearing.

10.4.1 **Suspending an Employee**

Where it is deemed necessary for an employee to be suspended from duty, the relevant Corporate Director must meet with the employee as quickly as possible to explain:

- What is being alleged.
- Why it is necessary for the employee to be suspended or temporarily redeployed. That the employee will be on full contractual pay for the duration of the suspension.
- That there is no presumption of guilt.
- That an investigation will take place and the employee will have the full opportunity to put his/her case forward.
- That the employee must be available for contact by the manager or investigating officer and to attend meetings as part of the investigation process.
- That whilst suspended the employee should not return to the work premises or have any contact with colleagues with the exception of an agreed liaison officer.
- The employee's right to be accompanied at any further meetings.
- Details of the Council's Employee Support Programme and encourage the employee to make use of it.

The employee will be asked to hand over their ID card and any other equipment belonging to the Council.

Arrangements for contacting the employee and the telephone number to be used must also be agreed. If appropriate a liaison officer will be nominated.

A letter, confirming the suspension and the reason(s) for the suspension, will be sent to the employee within **2 working days** from the date of the suspension.

Should formal disciplinary proceedings be warranted it should be noted that those managers involved in the suspension process are not able to chair the disciplinary hearing or conduct the investigation.

10.4.2 **Contact During Suspension**

Contact with the employee during the period of suspension should be made within **10 working days** from the date of suspension and at regular intervals thereafter. The purpose of contact during suspension is to:

- facilitate investigatory meetings;
- keep the employee informed of the progress of the investigation in terms of it's likely time of conclusion
- inform the employee of the consequences of the conclusions of the investigation and to inform them of any subsequent action.

Every effort must be made to conclude a disciplinary investigation as quickly as possible from the date the suspension commences.

11. Disciplinary Hearings

- 11.1 If the Service Manager/Director accepts a recommendation to proceed to a full disciplinary hearing this will be convened in accordance with the arrangements described below.

Disciplinary hearings will normally be held no more than 10 working days after completion of the investigation.

All hearings and investigation meetings during a pandemic will be held virtually where possible. See section 6.

During a pandemic it may be necessary to extend this period to a reasonable length as deemed appropriate by a Corporate Director.

- 11.2 The intention of the Hearing is to give the employee every opportunity of stating their case and to allow management to consider all relevant information before making a final decision. Guidance on the conduct of a disciplinary hearing has been attached as Appendix 3.

- 11.3 The employee will be notified in writing at least 5 days working days before the Hearing takes place, this notice may be extended to allow an employee to be represented provided that the extended period is for no longer than 5 working days.

During a pandemic it may be necessary to extend this period. See section 6.7.

The notification will include:

- notification that there will be a Hearing held under the Councils disciplinary procedure
- the reason for the Hearing
- the date, time and place of the Hearing
- the right of the employee to be accompanied
- who is expected to be conducting the Hearing and other attendees
- supporting documentary evidence and witness statements

- 11.4 Documents which the employee wishes to be considered and details of any witnesses s/he intends to call at the hearing must be provided to Human Resources at least 3 working days before the hearing.

All parties must respect the need for confidentiality, at all times, in relation to any information exchanged.

- 11.5 Every effort is made to arrange the timing of a hearing, such that it is suitable for all involved parties. However, it should be noted that where an employee is persistently unable or unwilling to attend a disciplinary meeting, the Council will have no option than to make a decision based on the evidence available.

Sickness may be a reason given for non-attendance but is only valid if the employee is genuinely too ill to attend a formal meeting or disciplinary hearing. An employee may be too sick to work but fit enough to attend such a meeting. An occupational health referral must take place if the employee is certificated as sick by their general practitioner or specialist.

A hearing can take place in the employee's absence or the employee can nominate a representative to attend on their behalf.

- 11.6 All disciplinary hearings will be conducted on the basis that there is no presumption of guilt.
- 11.7 A member of Human Resources will normally be present at Hearings to advise the chair of the hearing and ensure a fair and impartial process.
- 11.8 Once all of the evidence has been provided to the manager conducting the hearing, it will ordinarily be adjourned whilst a decision is reached.
- 11.9 The outcome of the Hearing will be conveyed as soon as possible. If it is not possible to confirm the outcome on the same day, the employee will be given an anticipated time scale for confirmation of the outcome and a subsequent meeting will be arranged to convey the decision. The decision will then be confirmed in writing within 5 working days of the hearing decision and be copied to the employee's representative if requested.
- 11.10 A copy of the letter must be placed on the employee's personal file. It forms part of the employee's employment record and must not be removed from the file once the warning is spent.

12. Sanctions

- 12.1 The Disciplinary process can be instigated at any stage dependant on the seriousness of the alleged conduct.

12.2 **Written Warning**

A written warning may be given where:

- Informal attempts to resolve the matter have failed, or
- The matter is considered to be too serious to be resolved by informal processes

A written warning may be issued by a line manager.

The employee will be provided with written reason(s) of the decision within 5 working days of the hearing. A Written Warning will normally remain in force for disciplinary purposes for a period of 12 months from the date the warning was issued. However, a historical note of the Written Warning will remain on an employee's personal file.

The employee has the right of appeal against a Written Warning.

12.3 Final Written Warning

A final written warning may be given where:

- The employee's conduct has not improved as a result of previous written warning(s), that warning is still in force and he/she has committed a further offence requiring disciplinary action.
- No previous warning is in force but the employee has committed an offence which is serious but does not warrant dismissal.

A final written warning may be issued by a Head of Service.

The employee will be provided with written reason(s) of the decision within 5 working days of the hearing. A Final Written Warning will normally remain in force for disciplinary purposes for a period of 2 years from the date the warning was issued. However a historical note of the Final Written Warning will remain on the employee's personal file.

The employee has the right of appeal against a Final Written Warning.

12.4 Dismissal

If an employee's conduct or performance is still unsatisfactory or the case warrants it, dismissal will normally result. Only the Corporate Directors or Chief Executive can take the decision to dismiss after full discussion and consideration of the case. The employee will be provided, within **5 working days** of the decision with written reasons for dismissal and confirmation of the date on which employment was/will be terminated, as well as to their right of appeal.

12.5 Spent Warning

Although disregarded for sequential disciplinary purposes, a record of spent warnings must be kept permanently on the employee's personal file as part of his/her employment record.

13. Appeals

- 13.1 At all stages employees have the right of appeal to the next level of management. For appeals against dismissal, see The Appeals against Dismissal Policy and Procedure.

An employee may choose to appeal because;

- They think the finding or penalty is unfair
- New evidence comes to light
- They think the disciplinary procedure was not used correctly.

The employee should make any appeal in writing to the Head of Business Support, within **10** working days of receipt of the penalty. The employee must state the specific reasons for their appeal. An appeal hearing will be convened within **20** working days of receipt with all information relating to the appeal being available at least **5 working** days before the hearing is held.

During a pandemic it may be necessary to extend this period to a reasonable length as deemed appropriate by the Chair of the Appeal Hearing.

In the event of the Chair upholding an appeal, any reference to the sanction will be deleted from an employee's file with immediate effect.

In the event that the Chair vary the disciplinary sanction then the timescales for keeping information on the employee's file will be adjusted to be in accordance with the Chair's decision.

The decision at the appeal is final.

14. Pandemic

In response to a pandemic all Council employees are expected to follow the social distancing and public health guidelines published by the Government and by the Council in order that the highest level of Health and Safety working practices are met.

Wherever possible, meetings should be held virtually either by video call or by telephone to avoid face to face contact. It is recognised that this is not possible or practical for every situation and therefore meetings should be held with only essential members present and social distancing and personal hygiene measures such as regular hand washing, use of hand sanitiser and surface cleaning at the front of mind.

Pandemic Risk Assessments must be followed at all times and any issues raised immediately with an appropriate line manager.

15. Equality Impact Assessment And Monitoring

The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

16. Data Protection

In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.

Guidance Note on Examples of Misconduct and Gross Misconduct either during or outside work.

Misconduct

The following are examples of misconduct, which would normally justify the use of the Disciplinary Procedure. The list is neither exhaustive nor exclusive and, depending on the precise circumstances, any act listed below may be considered so serious as to be regarded as Gross Misconduct:

- Unjustified refusal of a lawful and reasonable instruction.
- Lateness, unauthorised absences, failure to notify sickness absence.
- Insubordination or verbal assault whilst at work.
- Personal misconduct outside of work, sufficiently serious to affect an employee's position at work.
- Threat of violence.
- Unauthorised use of the Council's resources, or information gained during the course of one's employment.
- Negligence in job performance (other than capability).
- Negligence in carrying out duties in accordance with relevant policies and procedures.
- Unacceptable standards of personal conduct.
- Intentional disregard of legitimate instructions from a line manager/senior officer
- Failure to observe safe working practices at work, including failure to wear personal protection equipment (PPE).
- Breach of smoking policy
- Failure to co-operate with disciplinary cases, including withholding of information known to be pertinent to the case
- Criminal conduct
- Making vexatious complaints or grievances
- Failure to adhere to the Councils Code of Conduct
- Misuse or unauthorised use of Council resources for example; vehicles, equipment or facilities
- Conduct in the workplace that has a negative impact on work, colleagues or service delivery. (for example poor personal hygiene)
- Purporting to represent the views of the Council on social networking sites without prior approval or authorisation
- Failing to act when acts of discrimination are witnessed

Gross Misconduct

The following are examples of serious offences that constitute acts of gross misconduct and potentially could lead to an employee's dismissal. This list is neither exhaustive nor exclusive:

If an employee commits an act of gross misconduct the Council has the right to dismiss the employee without serving them with their contractual notice, subject to a formal investigation and hearing.

- Theft or incitement to steal, attempted theft, fraud or fraudulent falsification of accounts, or other official records including abuse of the flexi time system, ie. swiping in or out for someone else.
- Providing false and misleading information, eg. on application forms, medical questionnaires or examination, at an accident investigation or at a disciplinary investigation.
- Wilful and deliberate damage to the authority's assets or to another employee's property.
- Incitement to or use of physical violence to anyone at all on the authority's premises or whilst on authority business, sufficiently serious to affect an employee's position at work.
- Bringing firearms or offensive weapons on authority premises.
- Accepting gifts or bribes for personal gain and hospitality, outside Wyre Borough Council policy.
- Disclosure of confidential information.
- Grossly offensive behaviour, harassment and bullying.
- Being incapable of work, or of working safely due to the influence of alcohol, or drugs*.
- Negligent or wilful failure to comply with legal requirements of the Council's various policies and procedures such as Health and Safety rules, Equal Opportunities, Safeguarding or the Data Protection Act, or any other legal or statutory requirement.
- Serious neglect of duty and responsibility associated with the post.
- Criminal offence bringing the Council into disrepute.
- Gross insubordination.
- Gross neglect of health and safety rules.
- Accessing material on the Internet of an 'inappropriate nature such as sites containing pornographic, sexist, racist, indecent, rude, obscene, political or violent material.
- Bringing the Council into serious disrepute.
- Deliberate falsification of Council documents.
- Serious breach of safety regulations endangering oneself and/or others.
- Criminal offences which are related to, or impact on an employee's ability to fulfil the terms of their contract, or are incompatible with an employee's role, or have the potential to damage the reputation of the Council.
- Discrimination against Council employees or members of the public in breach of the Council's equality and diversity policies.

- Corrupt or improper practice involving children or vulnerable adults.
- Using social network sites to make derogatory comments about other organisations or individuals in relation to their employment/work activity.
- The posting of photographs on social networking sites, or the distribution of photographs, that could bring the Council and/or its officers into disrepute and/or harm.
- Serious breach of the Councils ICT or Data Protection policy.
- Significant loss of public money or property for which the employee is responsible.
- Negligence whilst carrying out duties on behalf of the Council.
- Wilful neglect to obtain/retain the professional qualifications or membership as required by the job description.
- Failure to disclose any caution or conviction as required under the Rehabilitation of Offenders Act.
- Supplying and/or trafficking or drugs, money laundering activities, or the sale or distribution of illegal substances or products.
- Serious negligence which causes unacceptable loss, damage or injury, or acting in a manner dangerous to others.
- Unauthorised entry to computer records and deliberate misuse of the Council's computer resources and telephone services.
- Serious breach of any of the Council policies and procedures such as Financial Regulations or Financial Procedure Rules.
- Fraudulent claims made within job applications particularly in relation to qualifications, experience or job history.

*Please note - In certain cases drugs prescribed by a doctor or purchased from a chemist can induce drowsiness and will include the advice not to operate machinery. Employees must inform their line manager if they have taken such medicine and would normally be required to operate machinery or drive a vehicle during the course of their work.

Frequently Asked Questions – Paid Suspension

Q. When is paid suspension used?

A. Paid suspension is not considered a disciplinary sanction but a neutral act enabling a full investigation to be carried out. It is normally used where a particularly serious allegation is made, where relationships have broken down or where it would be impossible for a full investigation to be completed if the employee was still in the workplace.

Suspension will not be undertaken without obtaining advice from Human Resources and must be authorised by a Head of Service.

Q. How should I be notified of my suspension?

A. Normally you will be notified by your Head of Service (or nominated manager):

- Verbally - if it is practical or possible for you to be informed in this way;
- By telephone - if it is not possible to meet with you in person;
- By letter - if it is not possible to meet with you or contact you by telephone.

Regardless of how you are informed of your suspension you will be issued with a suspension letter outlining the reasons for your suspension and any terms you must abide by during the period of the suspension.

Q. Will I be paid if I have been suspended?

A. You will normally continue to receive full pay during your suspension. However, if you are certified as unfit to attend for work, owing to ill-health or you are on maternity leave, your payments will be made in accordance with your conditions of service.

Q. Will continuous service be affected by suspension?

A. Suspension does not affect your employment rights. For the purposes of calculating continuous service in relation to benefits such as sickness, maternity, redundancy, pensions etc. the period of suspension counts as normal employment

Q. Do I have to stay at home during my normal working hours in case I am called back to work?

A. You are required to make yourself available to your employer at reasonable notice (e.g. for a meeting or interview). Normally this would mean you should be prepared to report to work on the day following the request for you to report to work. However, you could be asked to return on the same day as the request is made, which would not be unreasonable if the request was made early in the day for an afternoon meeting and a representative was also available.

Q. What happens if I wish to make a trip away from home during the period of suspension?

A. Annual leave arrangements still apply during suspension, therefore if you wish to make a trip away from home, which would make you unavailable to attend work as described above, you will need to seek authorisation for annual leave from your line manager in the normal way.

Given that suspension is not a disciplinary penalty, annual leave which has been arranged prior to suspension will be honoured other than in exceptional circumstances, where the matter will be discussed with you.

You will need to clear any request in advance, including confirming pre-arranged leave, with your line manager. They will need to consider the likelihood of your being required to attend work during the time requested.

Q. Am I allowed access to my workplace and colleagues during suspension?

A. The council does not wish to impede you in preparing your case. If you wish to visit your workplace during the suspension period you must first obtain the permission of your line manager or other nominated manager. S/he will need to be satisfied that there are reasonable grounds for your request and that your visit will not interfere with any related investigation.

Your employer, obviously, cannot prevent you from meeting with colleagues outside normal working hours. However, if you intend discussing the matters relating to your suspension, please be aware that this may place your colleagues in a difficult position. In any event, they may choose not to discuss it with you. You should, therefore approach them sensitively.

Q. What assistance is there for employees on paid suspension?

A. If you are a member of a trade union you are advised to seek advice from your trade union representative.

Your manager, or another nominated person if this is not appropriate, will keep in contact with you to both advise you of progress regarding the investigation and keep you updated with any development in connection with your job.

Q. How long can the suspension last?

A. There are no specified time limits. However, suspension will be for as short a period as possible.

Where a suspended employee is the subject of external investigations, police enquiries or charged with a criminal offence, the length of the suspension may be prolonged pending the outcome of police enquiries or legal proceedings.

Where the investigation is subject to a delay your line manager (or other nominated manager) will write to inform you of the delay and the reason for it.

Q. How will I know when the suspension has ended?

A. Normally, suspension ends when, following the completion of the investigation, a decision is taken.

This decision may be:

- to take no action and end the suspension;
- to proceed with formal disciplinary action;
- to take some other form of action.

In any event you will be notified in writing of the decision.

Where disciplinary action is taken, the suspension will normally continue until the hearing takes place, and it will be decided at the hearing when the suspension will end.

You will remain suspended until informed otherwise by your Head of Service or Human Resources.

Q. How can I return to work after being suspended?

A. Paid suspension is not a disciplinary penalty. Employees can return to work successfully after being suspended and will receive support from both their manager and HR advisor in this event

Guidance on the conduct of a Disciplinary Hearing

The following guidance is to be used by all officers involved in the planning and/or Hearing of a disciplinary case and is designed to assist in ensuring a fair and consistent approach to the administration of all disciplinary hearings.

The Venue

It is imperative that the chosen venue is private and offers suitable access to all those present or who may be called as witnesses during the proceedings.

Disciplinary Hearing – Order of Proceedings

The manager chairing the hearing must be authorised to give the potential sanction proportionate to the alleged misconduct.

At the start of the hearing the chair will outline the order of proceedings, introduce all who are present and explain the reason for their attendance. They will also confirm that the hearing is a disciplinary hearing to consider whether disciplinary action should be taken.

The Management Case

The chair must outline the allegations against the employee.

The investigating officer will then present the management case and in doing so will refer to the investigation report, any witness statements and may call any necessary witnesses to give evidence and question them.

The employee and/or their representative may ask questions of any witnesses and the investigating officer.

The chair of the hearing and the advisor from Human Resources may ask questions of the investigating officer and/or the witnesses at any time.

Witnesses will be called as required and will leave as soon as they have answered all the questions put to them. They will not stay in the room for the course of the hearing.

The Employee's Case

The employee or his/her companion will then present the employee's case, including calling any witnesses one at a time and questioning them.

The investigating officer, the chair and the advisor from Human Resources may ask questions of the employee and/or the witnesses at any time.

Summing Up

The chair of the hearing will then ask the investigating officer to sum up their case. No new evidence may be submitted at this stage.

The employee or his/her companion will then be asked to sum up his/her case and put forward any mitigating circumstances. No new evidence may be submitted at this stage.

If at any time it appears that further investigation is required or further evidence needed the chair has the right to adjourn the hearing to allow this to happen.

The chair has the discretion to determine any issues relating to the admissibility of evidence and is entitled to rule on behaviour by any party within the hearing.

Adjournment

The hearing will then be adjourned and the investigating officer, the employee and their representative (if appropriate), will then withdraw.

The chair will then consider the decision with advice from the Human Resources representative. If it is necessary to recall one or other of the parties to clarify a piece of evidence already given, both parties are to return notwithstanding that only one is concerned with the point giving rise to doubt.

The chair and HR representative will review all the evidence before a decision is reached. In arriving at a decision, they will bear in mind the need to act reasonably in all circumstances. If the employee is found to have committed an offence, before imposing a disciplinary sanction, the following will be considered:

- the gravity of the offence;
- the penalty imposed in similar cases in the past (although each case must be considered on its own merits);
- any special or mitigating circumstances (e.g. health or domestic problems, provocation); and
- whether the proposed penalty is reasonable in all the circumstances.

The chair may decide to:

- exonerate the employee
- not to proceed with any disciplinary action, but rather to set down the required standard of behaviour or conduct of the employee together with dates upon which a review will be performed
- to issue a warning
- to recommend dismissal.

Once a decision has been reached, the hearing will reconvene and the decision is announced. If time and circumstances do not allow this to be on the same day as the hearing an alternative time and date will be agreed.

The Decision

Once the chair has reached a decision the hearing will reconvene. The employee and his/her companion will be told the decision in a statement which should:

- Summarise why the hearing was called by stating the allegation/s.
- Briefly summarise the evidence the chair looked at in respect of each of the allegations, and whether or not the allegation was found to be substantiated.
- Include a reference to any mitigating circumstances.
- Give the decision i.e. no case to answer/first written warning/final written warning/dismissal with notice/summary dismissal.
- Where a warning has been issued state the length of time a warning will remain in effect, what actions or improvements the employee needs to achieve, together with the timescale for achieving these, that the employee's conduct will be monitored throughout the life of the warning, and that any further misconduct may result in further disciplinary action being taken.
- If the employee is to return to work, state what arrangements are to be made. This is particularly important in cases where the employee has been suspended. State what support is to be given to the employee.
- In dismissal cases state whether or not this is summary dismissal. (Summary dismissal is for gross misconduct and is without notice or pay in lieu of notice).
- In cases of summary dismissal, state that the dismissal takes place with immediate effect, and what arrangements are to be made for the employee to leave the premises and to collect any personal effects.
- In cases of professional misconduct, or criminal activity, state the intention to supply details of the outcome of the disciplinary hearing to an appropriate professional body, or to the Police.
- State that the employee has a right of appeal, and should he/she wish to do so, must exercise this within 10 working days of receipt of the decision letter, in writing, and send it to the Head of Business Support.

This statement will form the substance of a decision letter which must be sent to the employee within 5 working days of the hearing decision, and be copied to the employee's representative if requested.

A copy of the letter must be placed on the employee's personal file. It forms part of the employee's employment record and must not be removed from the file once the warning is spent.

DISCIPLINARY PROCEDURE

Frequently Asked Questions

Q. What is the difference between an investigatory meeting and a disciplinary hearing?

A. Essentially, the purpose of an investigatory meeting is to establish what happened, while the purpose of a disciplinary hearing is to decide what to do about it.

Q. Can the Council invite an employee to an investigatory interview or disciplinary hearing if they are on sick leave?

A. Where an employee who is subject to disciplinary proceedings is absent due to a short-term illness, the most appropriate course of action is likely to be for the Council to postpone the interview/hearing until the employee is well enough to attend. If the employee is on long-term sickness absence, the Council will balance the need to avoid unreasonable delay in the process with the importance of allowing the employee to put their case before it makes a decision. The Council will take steps to determine whether or not the employee is well enough to attend a disciplinary hearing, even though they are not fit for work. If necessary, the employee may be required to attend an appointment with the Councils Occupational Health provider to determine their suitability to attend the disciplinary hearing. The Council will obtain medical evidence focused on the employee's ability to take part in a disciplinary hearing, and take into account any medical advice.

Q. What happens if the union representative/work colleague is not available at the proposed time of the meeting?

A. If the companion is not available at the proposed hearing time and the employee suggests another time that is reasonable and falls within five working days of the original time, the hearing will, wherever possible, be postponed until the new time proposed by the employee.

Q. Can the Council reject an employee's choice of companion for the disciplinary meeting?

A. Under section 10 of the Employment Relations Act 1999, employees have the right to be accompanied at a disciplinary or grievance hearing if their request to be accompanied is reasonable. Therefore, the Council can reject an employee's choice of companion if it is unreasonable for him or her to request to be accompanied by that person. This may be the case, for example, if the companion is involved in the proceedings, or because he or she will not be available for a meeting for a substantial length of time.

Q. Is an employee allowed paid time away from their job to accompany a colleague to a disciplinary or grievance meeting?

A. Yes. An employee is permitted to take a reasonable amount of paid time off during their working hours to accompany a colleague to a disciplinary or grievance hearing. The accompanying employee should advise their line manager when they are due to be absent.

Q. Can the Council dismiss an employee on the grounds of a criminal act that happened outside of the workplace?

A. It is permissible to dismiss an employee on the grounds of a criminal act that happened outside of the workplace if it thought likely to affect the continued employment relationship, the ability of the employee to do their job, brings the reputation of the Council into disrepute or frustrates the contract.

Q. What can the Council do if an employee posts derogatory remarks, including comments that may be construed as bullying, or photographs on a social networking site, or circulates inappropriate photographs and comments by any other means?

A. It is recognised that the use of social networking is widespread and an effective means of keeping in contact with friends, family and often with colleagues. When used appropriately there is no problem, but employees should be aware that whilst they may feel a need to express their thoughts and frustrations about work they should be careful to avoid statements or comments that may be defamatory to colleagues or otherwise damaging to the reputation of the Council. Any bullying, harassment, victimisation or threats towards colleagues either face to face or via social networking sites may be classed as gross misconduct and be dealt with accordingly under the scope of the disciplinary policy. Similarly any content or material that is likely to bring the Council into disrepute may also be subject to a disciplinary process.

Electronic Meeting guidance

Where the Chair decides that a meeting should take place using alternative arrangements (e.g. by telephone or video conference) that have been previously agreed then the following will apply:

- the usual notice and arrangements for issuing papers continues except where the Chair has exercised their right to waive the usual notice;
- all participants will receive clear instructions regarding how to access the meeting including where they can access support if they experience difficulty;
- all participants will be given advance notice of the meeting in line with current policy procedures so that they can declare if they have a disability or other accessibility issues that might affect their ability to use video technology, and whether any reasonable adjustments might be needed;
- all participants must attend the meeting with webcams enabled at all times;
- where there is a requirement for an adjournment / breakout for any participant this will be carried out either at a different physical location or separate independent virtual meeting;
- all participants will note and follow any instructions given on how to manage their participation at the meeting. For example confirming attendance, speaking through the Chair of the meeting, etc;
- all panel members will abide by their normal rules, procedures and code of conduct adopted by the Council in relation to holding hearings, giving particular regard to the duty to maintain confidentiality;
- the panel will contribute towards a safe and secure environment for the meeting by giving due regard to the Council policies relating to Data Protection and the appropriate use of ICT;
- a minute taker may be nominated to take notes of the meeting – but it will not ordinarily be recorded;
- under no circumstances can a recording take place without all parties being aware.