

DISCIPLINARY POLICY

This Disciplinary Policy sets the expected standards of conduct and performance at work, and the procedure helps to ensure that the standards are adhered to and also provide a fair and consistent method of dealing with alleged failures to observe them. This policy and the disciplinary rules which accompany it apply to all the Council's employees except the following:

Those employees who are covered by JNC Negotiating Committee for Chief Executives and the JNC Negotiating Committee for Chief Officers of Local Authorities.

NB (1) The Chief Executive, Executive Directors and Assistant Directors as mentioned throughout this Policy document are all joint posts, but for drafting purposes the word 'Joint' has been omitted from the titles.

NB (2) No disciplinary action will be taken against a recognised Shop Steward, trade union representative or Branch Executive Officer until the circumstances of the case have been discussed with the Regional Organiser of the union concerned.

1. INTRODUCTION

The philosophy of the Authority is to invest in its employees a high degree of trust. Any employee who betrays that trust should expect to be dealt with firmly but fairly. However, the disciplinary procedures should not be viewed primarily as a means of imposing sanctions. It should be borne in mind that the prime aim of the disciplinary process is to improve conduct and/or performance where it has been established that the required standards are not being met. It will, however, be the responsibility of Directors, Assistant Directors and Service Managers to make full use of measures available after having fully considered each case on its individual merits and having consulted with the Assistant Director - Human Resources and Payroll on cases of serious or gross misconduct.

2. RIGHT TO BE ACCOMPANIED

2.1 The employee should be offered the facility of being accompanied at every stage of the disciplinary process, including the investigatory interview, but this is not always possible at the point of suspension. NB the chosen companion will usually be a Trade Union representative or colleague and cannot be any person who is in any way involved in the investigation. Consideration will be given to a request for alternative representation in some circumstances.

2.2 During the formal disciplinary process, the chosen companion cannot answer questions on the employee's behalf but will be allowed to participate as fully as possible in the hearing. In particular the companion has a right to address the hearing and will be permitted to ask questions. The companion should also be permitted reasonable time to confer privately with the employee.

2.3 Where a chosen companion is not available on the date proposed for the hearing, the parties can agree an alternative time and date so long as it is

reasonable and ideally falls within ten working days of the original proposed hearing.

3. OUTSIDE OF THE FORMAL DISCIPLINARY PROCEDURE

- 3.1 Where an employee is not working to the required standard, the reason should be identified by the Manager/Supervisor and an assessment made of how the situation can be improved.
- 3.2 Timely and positive discussion with an employee to highlight problems and encourage/help the employee to improve might be appropriate in certain circumstances and could avoid formal disciplinary action at a later stage. This could include offering informal advice or coaching, or arranging counselling. Managers/Supervisors may, from time to time, take informal action in order to advise an employee of matters of concern.
- 3.3 The employee should be told of the level of improvement required, the time-scale over which such an improvement is required, and how progress will be monitored. This should be noted and confirmed in writing.
- 3.4 NB: It is important that all parties involved understand that such action is being taken outside of the formal disciplinary procedure, but that disciplinary action may follow if the required improvement is not made.

4. SUSPENSION

- 4.1 In certain circumstances, for example in cases involving gross misconduct where relationships have broken down, or where it is considered there are risks to the Council's property or risks or responsibilities to other parties, consideration needs to be given to a brief period of suspension with pay whilst an unhindered investigation is conducted. Such a suspension should only be imposed after careful consideration and in consultation with the Assistant Director - Human Resources and Payroll, and it should be made clear that the suspension is not considered as disciplinary action.
- 4.2 To ensure that the suspension is not unnecessarily protracted, a regular review should take place by the Assistant Director – Human Resources. It is understood that this can be a stressful period for the employee, and that the uncertainty surrounding an open-ended suspension can potentially exacerbate the position. For this reason the suspended employee should be contacted at appropriate intervals as part of the review process.
- 4.3 The Employer (see list of delegations at Appendix 2) has the authority to suspend an employee where this is considered appropriate. At this stage it may only be possible to give a brief outline of allegations made, pending investigation, and the employee will be given the opportunity to make initial

comments. Because of the circumstances giving rise to suspension, the meeting is likely to be called at short notice and there may not always be time to arrange for representation. It should be noted, however, that as suspension is a neutral act to facilitate the disciplinary process there is no automatic right in law to representation.

Suspension should be for as short a time as possible, and should not normally take place before the employee has had an opportunity to explain matters (see above).

However, in exceptional circumstances, if the employee is not available to attend a brief suspension meeting, it may be appropriate to notify them of the suspension in writing. They should be given the same brief outline of the allegations as they would have received at a meeting, and they should be invited to submit an initial response or comments.

- 4.4 In all cases of suspension the employee will continue to receive full pay (NB see 4.5 below).
- 4.5 If an employee falls sick during suspension then they will transfer to the sickness payment scheme whilst they are submitting fit notes. However the conditions of the suspension will still apply, and the suspension will resume if this is considered appropriate when the employee is declared well again.
- 4.6 Access to the workplace will not be allowed during suspension without the prior approval of the Employer (see list of delegations at Appendix 2). If the employee or their representative wishes to contact other employees or gain access to documents for the purpose of preparing the employee's case, provision may be made for this by the Investigating Officer on request.

5. APPOINTMENT OF INVESTIGATING OFFICER

- 5.1 Usually the investigating officer will be the employee's manager (in accordance with the list at Appendix 2 of managers who are suitably trained and delegated to take disciplinary action). However in some circumstances, eg the nature of the offence, it may be appropriate to appoint an investigating officer from another service. This decision will be made in consultation with the Assistant Director – Human Resources and Payroll.

6. INVESTIGATION

- 6.1 Where an employee is alleged to have committed an act of misconduct, the nominated Investigating Officer will carry out an investigation. This should happen promptly before recollections fade, and may include the employee being asked to attend an investigatory interview as well as obtaining statements from available witnesses. If the employee is invited to attend an investigatory interview, the Investigating Officer will explain the reasons for the interview.

- 6.2 The employee has a right to refuse to attend the investigatory interview but in such cases management will decide on whether to call a disciplinary hearing on the information available, without any input from the employee.
- 6.3 It should be made clear that this is not a formal disciplinary hearing but a preliminary investigation as part of a neutral process to establish the facts surrounding an act of suspected or alleged misconduct, and to decide whether or not there is a case to answer.
- 6.4 In certain circumstances it may be felt necessary for a representative from HR (and/or legal if appropriate) to be present at that interview.
- 6.5 The employee should be offered the facility of being accompanied by a Trade Union or other representative/colleague. However, as the investigatory interview is designed to ascertain whether or not there is a case to answer and to allow the employee to provide an explanation of the circumstances, the role of the companion at this stage will be in an advisory and supportive capacity only.
- 6.6 Management side will be making written notes of the investigatory interview to facilitate the process, and the employee's side is free to do the same. However the notes are not formal and will not normally be shared with the employee's side except to the extent that they will form part of a statement of case / witness statement as appropriate, and they will be destroyed as soon as that statement of case / witness statement has been produced. Where it is subsequently found that there is no disciplinary case to answer, any written records of the investigation will also be destroyed.
- 6.7 Where financial irregularities are involved, Internal Audit will be notified immediately.
- 6.8 As a result of the investigation, the Investigating Officer should make a recommendation on the following options:
- no further action
 - arrange informal coaching
 - arrange counselling
 - issue a management recommendation
 - arrange for the matter to be dealt with under the capability procedure
 - arrange for the matter to be dealt with under the disciplinary procedure
 - a combination of the above
- 6.9 It should be noted that investigations undertaken as part of this Disciplinary Policy fall outside the scope of the Regulation of Investigatory Powers Act 2000. On occasion lawful business monitoring may be required, but in such circumstances RIPA standards will be adhered to.

7. WHISTLEBLOWING POLICY

The Council has a separate Whistleblowing Policy and employees are asked to refer to this in appropriate circumstances. However, a summary of relevant provisions is given below:

- 7.1 This Council is committed to the highest standards of openness, probity and accountability. In line with that commitment employees who have serious concerns about the conduct of another employee are encouraged to come forward and voice those concerns as a witness. It is important that they should be able to do so without fear of victimisation, subsequent discrimination or disadvantage.
- 7.2 Under the terms of the Whistleblowing Policy, in certain circumstances a witness may be given the right to remain anonymous throughout the disciplinary process.
- 7.3 If an allegation is made in good faith, but it is not confirmed by the investigation, no action will be taken against the employee making the allegation. If however, an allegation is made that is frivolous, malicious or for personal gain, action may be taken against the employee in accordance with the Council's Disciplinary Procedure.

8 FORMAL DISCIPLINARY ACTION

- 8.1 If on the completion of the investigation, the Investigating Officer conducting it considers that, on the balance of probabilities, there is a case to answer, the Investigating Officer will make a recommendation to the Assistant Director - Human Resources and Payroll and to the initiating officer that a disciplinary hearing should be held (see 6.8 above).
- 8.2 There may follow a short time delay whilst the Investigating Officer conducts a more detailed investigation in order to put together the Statement of Case.
- 8.3 It is the employee's responsibility to notify the Council of their chosen representative if they require copies of correspondence to be sent to them.
- 8.4 During the course of the investigation, additional matters may come to light which may not have been amongst the initial allegations but which nonetheless have to be dealt with. Therefore it should be noted that the allegations which form the basis of the hearing may differ to varying degrees from those listed in the initial correspondence, dependent upon evidence uncovered during the investigation process. However if a completely new issue arises, whilst the issues will be dealt with as part of the same disciplinary process, the employee will be notified of the new allegation and an investigation will be carried out on this also.

9 THE HEARING

- 9.1 The disciplinary case will normally be heard by an Executive Director, an Assistant Director or relevant Service Manager, or their nominated representative (see table of delegations at Appendix 2). The Hearing Officer will be supported by a representative from Human Resources and a legal adviser may also be present. The hearing will normally be recorded to ensure that an accurate record is available. (If the recording equipment is not available then detailed notes will be taken). The notes will be circulated to the employee's side for signature.
- 9.2 The hearing will take place as soon as is practicable after the preparation of the necessary paperwork. Every attempt will be made to ensure that the hearing is scheduled no later than 15 working days after the conclusion of the investigation in order to minimise stress to the employee, although this may not always prove possible, for example in cases of annual leave or sickness. At all stages of the disciplinary process, the terms of the Single Equality Act will be adhered to. Wherever possible, the employer's side will attempt to agree a mutually convenient date within the stated timescale in order to avoid any delay.
- 9.3 The employee will be given at least five working days advance written notice of the hearing, told the purpose of it, with the statement of case, and invited to attend together with their Trade Union or other representative.
- 9.4 If, for good cause, the employee or their representative is unable to attend the hearing, it will be adjourned to a date which the employee and their representative (if any) will be informed of without delay. If the employee is unable to attend the rearranged hearing, it will normally proceed in their absence, but with their representative being provided with an opportunity to present the employee's case on their behalf. Any submission by the employee in writing, or by their representative, will be considered.
- 9.5 The Hearing Officer will use the opportunity of the Disciplinary Hearing to establish facts and to consider the response put by the employee. The main points of the investigation should be examined and a decision made as follows:
- Allegations have not been proved, therefore the case is dismissed; OR
 - Case proved on the balance of probabilities.
- 9.6 If the latter decision is made, the Hearing Officer would consider mitigation and decide upon a penalty as follows:

9.6.1 No sanction

It might be that, having considered all of the evidence and mitigation, the hearing officer considers it appropriate that no sanction be applied at this time.

9.6.2 First warning

One of the following:

Oral For a minor infringement, an employee will be given a formal oral warning. This may include advice as to future conduct. The employee should be advised in writing of the reason for the warning, that it constitutes the first step of the disciplinary procedure, and of their right of appeal. A note of the oral warning will be kept for six months from the date of the letter confirming/giving the warning, and then expunged from the employee's personal file. **OR**

Written If the infringement is regarded as more serious an employee will be given a formal written warning giving details of the complaint, the improvement or change in behaviour required, the time-scale allowed for this and the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A note of the written warning will be kept for 12 months from the date of the letter confirming/giving the warning and then expunged from the employees personal file.

9.6.3 Final Written Warning

Where there is a failure to improve or change behaviour whilst a prior warning is still current, or where the infringement is sufficiently serious, the employee will normally be given a final written warning. This will give details of the complaint(s), warn the employee that failure to improve or modify behaviour will lead to further action under this procedure and could result in dismissal, and refer to the right of appeal. A note of the written warning will be kept for 12 months from the date of the letter confirming/giving the warning and then expunged from the employee's personal file.

9.6.4 Action short of Dismissal

If the employee has received a final written warning, further misconduct or unsatisfactory performance may warrant dismissal. However, in some circumstances it might be that, having considered all of the evidence and mitigation, the hearing officer considers that dismissal would be too severe a penalty. In such cases, consideration might be given to action short of dismissal, for example demotion or disciplinary transfer (ie transfer to a different position within the Council). In such circumstances there would be no salary protection or, in the case of a change of base, no excess travel allowances. Such action would only be taken following consultation with the Assistant Director – Human Resources to ensure consistency of approach.

9.6.5 Dismissal

If the employee's conduct or performance still fails to improve, the employee will normally be liable to dismissal. The decision to dismiss will only be taken by one of the Officers with delegated authority to do so (see Appendix 2) and the employee should be informed as soon as reasonably practicable of the reasons for dismissal, the date on which the contract will terminate, the appropriate period of notice (or pay in lieu of notice) and information on the right of appeal including how to make the appeal and to whom. The decision to dismiss will be confirmed in writing. Employees will be given written reasons for dismissal.

9.6.6 Gross Misconduct

In cases where gross misconduct is alleged and is established on the balance of probabilities, the employee will be liable to summary dismissal unless mitigating circumstances render a lesser penalty appropriate.

9.7 NB When deciding whether a disciplinary penalty is appropriate and what form it should take, it is important to bear in mind the need to act reasonably in all the circumstances. Factors which might be relevant include the extent to which standards have been breached, precedent, the employee's general record, position, length of service and special circumstances which might make it appropriate to adjust the severity of the penalty. Where two or more employees are involved, the penalty for each must be considered separately.

9.8 NB In normal circumstances, recordings, notes of disciplinary meetings and warnings will be expunged from the employee's personal file after a set period, as outlined above. However there may be occasions when it would be appropriate to extend this period, for example if there has been a significant period of absence.

10 APPEALS

10.1 The opportunity to appeal against a disciplinary decision is essential to natural justice. Employees may choose to raise appeals on a number of grounds, which could include the perceived unfairness of the judgement, the severity of the penalty, new evidence coming to light or procedural irregularities. These grounds need to be considered when deciding the extent of any new investigation or re-hearing in order to remedy previous defects in the disciplinary process.

10.2 In all cases of formal disciplinary action an employee has a right of appeal.

10.3 Employees wishing to exercise the right of appeal must do so in writing to the Hearing Officer, with a copy to the Assistant Director – HR and Payroll, either individually or through their Trade Union within 10 working days of the date of the written notification, giving full details of the grounds of the appeal.

- 10.4 Appeals will be heard in accordance with the principles contained within the Council's Appeals Procedure. Wherever possible, the Appeal will be heard by individuals who have not been involved in the case previously.
- 10.5 Appellants will have the right to be accompanied by an appropriate Trade Union representative or other representative of their choice.

11 RECORDS

- 11.1 Written records will be kept securely by HR and Payroll, detailing the breach of the disciplinary rules, the employee's defence or mitigation, the action taken and the reasons, the date the action was taken and details of whether an appeal was lodged and its outcome and any subsequent developments. These records will be kept confidential and retained in accordance with the disciplinary policy and the Data Protection Act 1998 which requires the release of certain data to individuals on their request. Copies of any formal meeting records will be available to the employee in accordance with the Data Protection Act 1998 although in certain circumstances some information may be withheld, for example to protect a witness.
- 11.2 Records of disciplinary decisions will be kept on file but will be expunged from the employee's personal file where required by this policy.
- 11.3 In order to monitor the corporate situation with regard to disciplinary matters, and to give advice as necessary, departments are required to inform the Assistant Director - Human Resources and Payroll in writing whenever formal disciplinary action is taken.

12 GRIEVANCES

- 12.1 In the course of a disciplinary case an employee might sometimes raise a related grievance.
- 12.2 Unless the grievance throws doubt on whether or not that process can be conducted fairly, the substance of the grievance will be discussed in the context of the disciplinary hearing.
- 12.3 However if there are any grievance issues outstanding after the disciplinary hearing, these will be dealt with under the Council's Grievance Procedure.
- 12.4 If the grievance is about the behaviour of the Investigating Officer handling the case, depending on the circumstances it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered. The Council may also consider, if appropriate, bringing in another Investigating Officer to deal with the disciplinary case.

13 CRIMINAL CHARGES OR CONVICTIONS

- 13.1 These should not be treated as automatic reasons for dismissal. The main consideration should be whether the offence is one that makes the employee unsuitable for their type of work. In all cases a decision will need to be made as to whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure. For instance, an employee should not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody.
- 13.2 Disciplinary procedures will not necessarily be postponed because other proceedings are contemplated or pending. The supervisor or manager will investigate the facts, as far as possible, and take action appropriate to the findings.

13 INVOLVEMENT OF POLICE

- 13.1 Where there is a reasonable belief that a criminal offence may be involved,, it may be appropriate to include the police in the investigation. In these circumstances the Chief Executive will need to consult with the Assistant Director – HR and Payroll and the Monitoring Officer.
- 13.2 In accordance with financial regulations where theft, fraud and/or corruption are considered likely to have happened or be occurring the police may be involved following consultation with the Executive Director (Operations) and the Assistant Director – HR and Payroll, who will make the decision following discussions with the Monitoring Officer.

14 DISCIPLINARY RULES

- 14.1 This list of disciplinary rules informs employees of the general standard of conduct expected from them. Conduct which undermines the satisfactory working of the establishment and is not in accordance with these principles will give rise to disciplinary action. The disciplinary procedure which accompanies this list of rules provides a fair method of dealing with alleged failures to meet them.
- 14.2 These rules apply to all the Council's employees.
- 14.3 The public is entitled to demand of a local government employee conduct of the highest standard, and public confidence in their integrity would be shaken were the least suspicion to arise that they could in any way be influenced by improper motives.
- 14.4 **All** employees of the Council are expected to meet this requirement. It is expected that every employee should:-

- Be honest and beyond the reach of suspicion of dishonesty; and
- Maintain at all times a high standard of integrity, conduct and professionalism; and
- Not put their private interests* or those of relatives or friends before their duty to the Council; and
- Not use their position to further private interests* or those of relatives and friends; and
- Perform faithfully the duties specified in their contract of employment;
- Treat others with respect and courtesy.

* NB 'Private Interests' includes any interests or activities that are not directly related to an employee's contracted position. Please note this can include work connected with trade union duties or activities.

Appendix 1

The basis upon which the Council operates is one of trust, high expectations and responsibility. Emphasis is placed upon positive outcomes and achievements.

Gross misconduct is misconduct of so serious a nature that an employer is justified in no longer tolerating the continued presence at the workplace of the employee who committed the offence. Dismissal can either be with notice or without notice (summary dismissal) and gross misconduct may also warrant dismissal for a first offence. The lists below show examples of the types of offences which constitute misconduct and gross misconduct. It should be noted that some offences appear in both lists, and this is because the seriousness of the breach might be minor or significant. The lists are **not** exhaustive and there may be other offences which result in disciplinary action being taken. Every offence will be carefully considered, and disciplinary action taken in accordance with the disciplinary procedure, depending on the seriousness of the case and in the light of all the circumstances.

EXAMPLES OF GROSS MISCONDUCT

Employees should be aware of the type of conduct, often referred to as gross misconduct, which may warrant summary dismissal (ie dismissal without notice). Summary is not synonymous with instant and incidents of gross misconduct will still need to be investigated as part of the formal procedure. Acts which constitute gross misconduct include those resulting in a serious breach of contractual terms. Examples of acts which this Council considers to constitute gross misconduct are as follows:

- Theft, fraud or deliberate falsification of records
- Physical violence
- Deliberate damage to property
- Fraudulent misuse of Council's name or property
- Serious incapability brought on by alcohol or drug abuse
- Serious negligence which causes or might cause unacceptable loss, damage or injury
- Serious acts of insubordination
- Serious infringement or health and safety rules
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)
- Unfair discrimination against an employee or member of the public on the grounds of colour, disability, sex, age, ethnic origin, religion, marital status, sexual orientation or political beliefs.
- Unfair discrimination against an employee undertaking/participating in Trade Union activities.
- Harassment
- Inappropriate use of ICT equipment and systems.

- Inappropriate use of work time
- Serious breach of one or more of the Council's Policies*
- Conflict of Interests
- Inappropriate access and/or disclosure of personal or confidential information obtained through employment with the authority without authorisation.
- Abuse of Position: All employees have a position of trust and responsibility in respect of the effective and efficient operation of the organisation. No person may use an official position for a private advantage for themselves or another, and such activity may be regarded as gross misconduct.
- Failure to disclose personal circumstances that may affect employment with the Council

EXAMPLES OF MISCONDUCT

(This list is not intended to be exhaustive but gives examples of the type of conduct which is considered to constitute misconduct. It should be noted that accumulation may result in dismissal).

- Unauthorised absence from duty
- Insubordination or failure to obey a reasonable instruction
- Disregard of safety practices, procedures and rules
- Misuse or unauthorised use of Council property or equipment, including private use of Council mobile telephones
- Being an accessory to a disciplinary offence by another employee
- Undertaking activities detrimental to recovery whilst on sick leave
- Failure to follow Council procedures
- Harassment
- Inappropriate use of ICT equipment and systems
- Smoking on Council property
- Inappropriate use of work time
- Breach of one or more of the Council's policies*
- Conflict of interests
- Inappropriate access and/or disclosure of personal or confidential information obtained through employment with the authority without authorisation.
- Failure to disclose secondary employment
- Failure to disclose personal circumstances that may affect employment with the Council

*** All employees will observe the provisions of the Council's Standing Orders, Financial Regulations, Employee Code of Conduct, ICT Information Security Policy and other policies / rules applicable to employees. Copies of all these documents are available on the intranet or from Human Resources. A serious breach of these rules is likely to result in a breakdown in trust and confidence and will be treated as gross misconduct.**

Officers delegated to take Disciplinary Action or Suspend from Duty

Investigation & Suspension	Warnings and Dismissals
<p>Chief Executive Chief Executive Officer Assistant Director Economic Growth Assistant Director Planning & Environmental Health Assistant Director – Governance and Monitoring Senior Principal Solicitor (BDC) Chief Executive’s and Partnership Manager (BDC) Economic Development and Investment Manager (BDC) Development Control Manager (BDC) Planning Policy Manager (BDC) Heritage Conservation Manager (BDC) Principal Solicitor (NE) Planning Services Manager (NE) Estates & Valuation Manager (NE) Partnership Co-ordinator (NE) Housing Strategy Manager (BDC and NE)</p>	<p>Chief Executive Officer Assistant Director Economic Growth Assistant Director Planning & Environmental Health Assistant Director - Governance</p>
<p>Transformation Executive Director Transformation Assistant Director Customer Service and Improvement Assistant Director Human Resources and Payroll Assistant Director Leisure Customer Services Operational Manager (NEDDC) Customer Contact Manager (BDC) Senior Duty Officers (Leisure) ICT Manager</p>	<p>Executive Director Transformation Assistant Director Customer Service and Improvement Assistant Director Human Resources and Payroll Assistant Director Leisure</p>

Investigation & Suspension	Warnings and Dismissals
<p>Operations Executive Director Operations Assistant Director Finance, Revenues & Benefits Assistant Director Streetscene Billing & Recovery Manager (BDC) Benefits Manager (BDC) Head of Housing (BDC) Housing Needs Manager (BDC) Housing Enforcement Manager (BDC) Operational Repairs Manager (BDC) Strategic Repairs Manager (BDC) Waste & Recycling Manager Grounds Maintenance and Cleansing Manager Chief Accountant Revenues & Benefits Manager Fleet Transport Manager</p>	<p>Executive Director Operations Assistant Director Finance and Revenues & Benefits Assistant Director Streetscene</p>