



## STAFF DISCIPLINARY AND DISMISSAL POLICY AND PROCEDURES

### 1. Introduction

- 1.1 Disciplinary rules and procedures are necessary for encouraging fairness and consistency in the treatment of people at work. It is recognised that effective performance monitoring and managerial support should reduce the need for formal disciplinary action.
- 1.2 The day to day supervision of employees is part of the normal managerial process and is outside the scope of this procedure. Any shortcomings should be brought to the employee's attention as soon as possible in an effort to achieve an improvement in an informal way. The aim of both informal and formal disciplinary measures is to improve the performance of an employee with a view to helping them to fulfil their duties and responsibilities successfully.
- 1.3 The procedure is designed to establish the facts quickly and deal consistently with disciplinary issues.
  - 1.3.1 Employees will be advised of the nature of any complaint against them and they will have the opportunity to explain.
  - 1.3.2 Employees will be given the opportunity to state their case and be represented or accompanied by a colleague or Trade Union representative of their choice.
  - 1.3.3 Employees will not normally be dismissed for a first breach of discipline except in the case of gross misconduct.
  - 1.3.4 Employees will have a right of appeal against any disciplinary penalty or action taken.
  - 1.3.5 The level of warning issued by a manager (or Committee in the case of JNC Officers) will depend on the severity of the misconduct. The sanction for gross misconduct will normally be dismissal without notice and without pay in lieu of notice.
  - 1.3.6 Where an employee's record shows a pattern of recorded disciplinary issues, e.g. repeated misconduct occurring once a live warning has lapsed, the Council may consider extending the duration of any warning or escalating any new action against the employee to the next stage of the policy (i.e. as if the prior live warning had not lapsed).
  - 1.3.7 Timescales for meetings, appeals etc, may be varied by mutual agreement. The intention is to avoid unreasonable delay but to allow for reasonable flexibility.

- 1.3.8 An employee will be given a copy of this procedure before any formal disciplinary action commences about their misconduct.
- 1.3.9 All matters relating to this procedure must be treated as confidential.
- 1.4 This policy takes account of the amendments made as a result of the Employment Act 2008, which repealed the Employment Act 2002 (Dispute Resolution) Regulations 2004, the introduction of the ACAS Code of Practice on disciplinary and grievance procedures from 6 April 2009 and the JNC Conditions of Service for Chief Officers.
- 1.5 The Councils will review this document from time to time and may make changes to the content. Changes may result from employee, management and UNISON feedback and/or from changes in employment legislation.
- 1.6 This policy does not form part of the contract of employment.

## **2. Scope**

- 2.1 This policy and accompanying guidelines apply to ALL posts at both Cherwell District Council and South Northamptonshire Council with the exception of the statutory roles of Chief Executive (Head of Paid Service), Monitoring Officer and Finance Section 151 Officer for which separate statutory procedures apply
- 2.2 This policy and accompanying guidelines do not apply to employees who are within their probationary period or in the case of redundancy, ill health retirement or a dismissal at the expiry of the term of a fixed contract.
- 2.3 Both Council's will consider disciplinary action against an employee for actions inside or outside of work which may have a bearing on an employee's continued employment or on the reputation of the Council. Employees must notify their managers immediately of any charge or conviction.
- 2.4 Issues arising as a result of misconduct/negligence will be dealt with under the Disciplinary Policy, whereas issues which relate to poor performance as a result of a lack of capability will generally be dealt with under the Council's Capability Policy (CDC) or Performance & Attendance Review Policy (SNC).

### **3. Rules**

- 3.1 Rules are needed to set standards of conduct for employees to follow. At both councils, corporate rules are contained in the contract of employment and in employment policies and procedures. They may be supplemented by other rules or requirements particular to a service area. Rules will be kept to a minimum but will include (not an exhaustive list):
  - 3.1.1 Attendance/Timekeeping
  - 3.1.2 Absence
  - 3.1.3 Damage to Council property
  - 3.1.4 Discrimination
  - 3.1.5 Harassment or Bullying
  - 3.1.6 Health and Safety
  - 3.1.7 Smoking on Council property, including vehicles, with the exception of designated smoking areas
  - 3.1.8 Unreasonable failure to follow an instruction issued by a manager or supervisor
  - 3.1.9 Unsatisfactory work performance (where this isn't classified as capability)

### **4. Principles**

- 4.1 The principles of this policy are to ensure that:
  - 4.1.1 disciplinary procedures are applied in a fair and consistent way
  - 4.1.2 disciplinary procedures only take place when employees are aware of the standards that are expected of them relating to their attitude/conduct and performance as defined in policies and procedures made available to the employee during employment
  - 4.1.3 disciplinary procedures are applied primarily to help and encourage employees to improve rather than just as a way of imposing a punishment
  - 4.1.4 whenever possible informal and low-key methods are used in resolving difficulties around minor misconduct or unsatisfactory performance
  - 4.1.5 whenever possible reasonable adjustments will be made for employees with a disability
  - 4.1.6 employees will receive written confirmation of the allegation made and are aware of any investigations or disciplinary hearings due to take place
  - 4.1.7 employees have the opportunity to state their case before any decision is reached by the disciplinary panel
  - 4.1.8 the disciplinary panel will be independent having no prior knowledge of the case and with no potential conflict of interest

- 4.1.9 all allegations are investigated fully and a disciplinary hearing takes place before formal disciplinary action is agreed
- 4.1.10 all formal disciplinary action is appropriate and proportionate to the nature of the disciplinary offence
- 4.1.11 at all stages of the formal process employees are aware of their right to be accompanied by a fellow worker, or trade union representative
- 4.1.12 in reaching decisions about appropriate sanctions, the disciplinary panel will take account of any mitigating circumstances
- 4.1.13 employees receive a written explanation for any disciplinary action taken, setting out what improvement is expected and within what timescale and informing them of their right of appeal
- 4.1.14 we will not dismiss any employee for a first breach of discipline except in the case of gross misconduct where the chair deems dismissal to be appropriate
- 4.1.15 employees have the right of appeal in relation to any disciplinary sanction taken.

## **5. Employee's Responsibilities**

- 5.1 All employees have a responsibility to:
  - 5.1.1 take full accountability for their actions and inactions
  - 5.1.2 maintain expected and reasonable levels of attendance and performance at work
  - 5.1.3 respect and work in line with the Council's Code of Conduct
  - 5.1.4 attend and participate in relevant meetings
  - 5.1.5 comply with the Council's policies
  - 5.1.6 conform with any Council or statutory rules or agreements applicable to their role
  - 5.1.7 maintain a reasonable standard of behaviour acceptable to management and other employees including behaviour as outlined in the Code of Conduct and in line with the Equal Opportunities policies.

## **6. Support for Employees and Managers**

- 6.1 Employees may contact HR for support and guidance. UNISON is also able to offer support and guidance to employees who are members of the union and who are facing potential disciplinary action.

## **7. The Policy**

- 7.1 The disciplinary policy contains the following possible stages (these are not meant to be undertaken in sequence);
  - 7.1.1 Suspension
  - 7.1.2 Informal action

- 7.1.3 Formal stage - Stage 1 oral recorded warning
- 7.1.4 Formal stage - Stage 2 written warning
- 7.1.5 Formal stage - Stage 3 Final written warning
- 7.1.6 Formal stage - Stage 4a) dismissal with pay or with pay in lieu of notice and 4b) summary dismissal
- 7.1.7 Formal stage - Exceptional circumstances- alternatives to dismissal

## **8. Informal Stage**

- 8.1 In the course of day to day activities there will be occasions when managers will need to advise employees informally of minor breaches of discipline. Mediation may be used as an alternative way of managing a situation informally. This does not preclude the use of formal disciplinary procedures. Managers should record any such action for their own reference as information will not be placed on the employee's personal file.

## **9. Formal Stage**

- 9.1 Where a line manager feels that an allegation about an employee's attitude/conduct or performance is serious enough to warrant an investigation s/he should follow the formal disciplinary procedure as outlined within this policy.

### **9.2 Adjustments to the Procedure**

When following the formal disciplinary procedure line managers are required under the Disability Discrimination Act 1995 to make reasonable adjustments for employees with a disability. Where a line manager is already aware that an employee has a disability or believes this to be the case they should work closely with HR before taking any disciplinary action, seeking advice from the council's occupational health advisers if necessary.

## **10. Suspension**

- 10.1 The Councils may decide to suspend an employee pending an investigation. A manager or supervisor may, in exceptional circumstances, send an employee home pending a decision about suspension rather than suspend immediately.
- 10.2 Suspension is not a disciplinary measure, and is not pre-judging the outcome of a disciplinary investigation or possible disciplinary hearing. Any such suspension will be with full basic pay. It is a means by which the Council can protect its interests, and those of its employees, while an investigation takes place.

### 10.3 **Decision Making Responsibility for Suspension of an Employee**

The decision to suspend an employee will normally be the responsibility of the Head of Transformation (or delegated other HR representative) and/or the Monitoring Officer, in conjunction with the employee's line manager.

The decision to suspend a member of JMT (in a shared post) can only be made by the Joint Personnel Committee in conjunction with the Head of Paid Service, or in circumstances where the member of JMT is employed by a single Council, the decision will be made by the respective Personnel Committee. Where circumstances require suspension to be made quickly, the Head of Paid Service will have the ability to suspend a member of JMT, following consultation with the relevant chairman from the appropriate committee.

- 10.4 The duration of the suspension will vary according to the situation but timescales will be as short as reasonably possible and the employee will be given weekly updates by either their line manager or the Investigating Officer (this should be agreed at the outset of the investigation) as to progress. A log should be kept by the line manager of any communications made between the employee and the organisation.
- 10.5 Suspension should take place on a face to face basis at a meeting, and then written confirmation should be given to the employee concerned as soon as is reasonably possible either at the meeting or immediately afterwards confirming the suspension is on full pay and a review date.
- 10.6 If suspension of an employee is contemplated, alternatives should always be considered, such as a temporary relocation or reallocation of duties, or a short 'cooling off period' (e.g. the remainder of the working day), or, if repetition of the offence is possible, enhanced supervision or monitoring of the employee. Where suspension has taken place, it should be reviewed at regular intervals during the investigation to see if it is appropriate to keep it in place. Any decision to end a suspension before an agreed end date will be made by those who agreed to the suspension in the first place, and should be done in consultation with HR.
- 10.7 Suspension should be considered on the following grounds:
- 10.7.1 the allegations could constitute gross misconduct; and/or
  - 10.7.2 the continued presence at work of one or more of the employees involved would impede a full and impartial investigation (e.g. they may have access to certain records, contact with other employees who may be associated with the investigation or may be likely to sabotage the investigation deliberately); or
  - 10.7.3 there is considered to be a chance of a recurrence of the alleged offence.
- 10.8 During the period of suspension, the employee remains employed by the relevant council but they are not required to attend work. They must, however, be contactable and available to attend work if required and should not undertake any outside work of

any nature during normal working hours including out of hours/standby rota duties or overtime. They must also be available to participate in the investigatory process.

- 10.9 Where the Investigating Officer has reason to believe that the employee concerned has committed a criminal offence they will immediately inform the Monitoring Officer who will decide whether to report the matter to the police.
- 10.10 Suspension or redeployment may be deemed appropriate in cases of personal harassment or bullying. If suspension or redeployment is deemed appropriate in cases of personal harassment or bullying, generally, it will be the alleged harasser who is suspended or moved.

## **11. Investigation in Alleged Misconduct**

- 11.1 Prior to any potential disciplinary action, an investigation will be conducted into the allegations of misconduct by an appointed Investigation Officer. The matter must be investigated in order to ascertain, so far as is reasonably practicable in the circumstances, all the relevant facts. Whether a particular employee was involved or not is for a disciplinary hearing to decide, not an investigation.
- 11.2 For all posts other than Directors and Heads of Service, the Investigating Officer will be appointed by the Head of Transformation or the Monitoring Officer (if the investigation implicates members of the HR team and independence is required). All Investigating Officers will have been trained in undertaking investigations.
- 11.3 The Investigating Officer should be at a level either equivalent to or higher than the employee being investigated, and depending on the nature of the investigation is also likely to be from an independent service area. The Investigating Officer will usually be an employee who will not have a conflict of interest that might prejudice a fair hearing, but may be appointed externally if it considered necessary.
- 11.4 **Investigations Relating to Directors and Heads of Service (JMT).**

The decision to conduct an investigation into the alleged misconduct of a Head of Service or Director must be made by either the Joint Personnel Committee (JPC) or the appropriate Personnel Committee of either Council.

Once the decision has been made to investigate, the investigation should be undertaken by the Monitoring Officer or an external Independent Investigating Officer.

Independent Investigating Officers will be appointed by the appropriate Personnel Committee. (Joint Personnel Committee for shared Directors or Heads of Service or either Appointments and Personnel Committee at SNC or Personnel Committee at CDC for non shared posts). Investigating Officers will be supported by a member of the HR team during investigations to ensure the process is followed correctly and to provide any advice.

- 11.5 Generally employees will be informed that an investigation is to take place. In some circumstances (e.g. potential fraud), it may be appropriate not to inform the employee at the commencement of the investigation. If necessary, covert surveillance may be used subject to consultation with the Monitoring Officer and the completion of a privacy impact assessment in accordance with the Information Commissioner's guidance on the monitoring of employees. In exceptional circumstances, the use of surveillance will be sanctioned by the Monitoring Officer (in consultation with HR) giving reasons why its use is necessary.
- 11.6 Where, during the investigation, the alleged disciplinary matter appears to be one of gross misconduct, the employee's line manager and the employee's Head of Service or Director will be informed immediately by the Investigating Officer. HR should also be informed for monitoring purposes. In such cases, the employee in question may be immediately suspended from work on pay pending the results of an investigation into the matter. Such grounds are outlined later in this policy.
- 11.7 Where the alleged disciplinary matter is straightforward, the investigation may be brief and ideally take no longer than 28 working days in any case. In more complex situations, investigations may take longer and employees will be kept apprised of progress by their line manager or the Investigating Officer on a weekly basis. The employee will be advised in writing should any additional allegations arise during an investigation.
- 11.8 The Investigating Officer may wish to interview the employee(s) and any witnesses. The employee may be represented at such an interview by either a work colleague or a trade union official in accordance with the Employment Relations Act 1999, providing that this does not unreasonably delay the investigation. The decision as to whether or not any delay is unreasonable rests with the person investigating the matter. If the person conducting the investigation wishes to pursue this course of action they should consult the Head of Transformation (or delegated other HR representative).
- 11.9 In conducting the investigation, the person investigating should ensure that they have spoken to all relevant witnesses and obtained signed statements. Any witnesses should be advised that they may be called to attend any subsequent disciplinary hearing.
- 11.10 Once the investigation is complete the Investigating Officer will write a report on his/her findings and present it to the employee's Head of Service (or Director if the employee's service area has no Head of Service) or Monitoring Officer (if appropriate). This person may, upon seeing the results of the investigation, decide that there is no case to answer and therefore no reason to convene a disciplinary hearing. Alternatively it may be decided that a disciplinary hearing should be convened.
- 11.11 In the case of Heads of Service and Directors, the investigation findings and report will be presented to the Joint Personnel Committee (JPC), or respective Personnel



Committee of the employing authority in cases where post holders are not employed in joint roles.

- 11.12 The depth and range of an investigation and the content of a report to any potential disciplinary hearing will depend on the seriousness and/or complexity of the allegations in question.
- 11.13 The following issues may be considered relevant to be considered for inclusion. This list is not exhaustive and, depending on the circumstances, there may be other items considered relevant.
- 11.13.1 Information about the employee concerned, e.g. length of service, experience, training undertaken, previous 'live' warnings.
- 11.13.2 Relevant documents, such as Council procedures (or appropriate extracts)
- 11.13.3 Witness statements (including where relevant/available an explanation of the alleged conduct on the part of the employee).
- 11.13.4 Informal actions (or why informal guidance/counselling is not appropriate in view of the seriousness of the allegation).
- 11.14 It is not the role of the Investigating Officer to recommend any level of disciplinary action, but they should state whether or not any further action should follow as a result of the investigation. This might include:
- No further action to be taken
  - Counselling, keep under review, management action, training
  - A disciplinary hearing is required
- 11.15 The line manager, Joint Personnel Committee or appropriate Personnel Committee may deliver the outcome to the employee at a meeting if it is deemed appropriate, but any outcome will also be confirmed in writing to the employee and their line manager. A copy of the investigation report will also be attached.

## **12. Requirement to Attend a Disciplinary Hearing Following Investigation.**

- 12.1 Once the Head of Service/Director or Monitoring Officer, Joint Personnel Committee or appropriate Personnel Committee has considered the recommendation of the Investigating Officer and the employee has been advised that disciplinary action will be taken as an outcome of the investigation, the employee will be written to:
- 12.1.1 including details of the allegations made, and whether they are being considered as gross misconduct
- 12.1.2 inviting them to a disciplinary hearing stating the time and place of the hearing and giving at least 5 working days' notice

- 12.1.3 informing them who will chair the hearing and form part of the panel or committee
- 12.1.4 informing them that they have the right to be accompanied by a work colleague or trained trade union representative at the hearing
- 12.1.5 informing them that they will be supplied with copies of any additional documents to be referred to in the hearing at least 2 working days in advance of the hearing for panels and at the time of agenda publication for Committees (in exceptional circumstances witness statements may need to be anonymous)
- 12.1.6 asking them to submit any documents supporting their response to the allegations to the relevant member of the HR team (or Democratic/Elections team if the panel is a Committee) at least 2 working days in advance of the hearing to a panel or prior to agenda publication for a Committee so that these documents can be referred to in the hearing
- 12.1.7 reminding the employee about the disciplinary policy by providing a hard copy.
- 12.1.8 informing the employee of the right to bring their own witnesses, providing that they have been named, and provided at least 2 days notice of their intention to do so
- 12.2 The purpose of a disciplinary hearing is to establish the facts of the case, and to decide what action (if any) should be taken.

### **13. The Disciplinary Panel (Non JMT Officers)**

- 13.1 The disciplinary panel will consist of two officers; a Chairman and an HR Advisor for all employees with the exception of Directors and Heads of Service (see para 13.2 below).
- 13.2 **The Disciplinary Panel for JMT**
- 13.3 For Directors and Heads of Service the panel will comprise the Joint Personnel Committee (JPC).
- 13.4 The JPC has responsibility for hearing and determining (including investigating) disciplinary allegations at Director and Head of Service level and/or appointing an independent person to do so.

Note: Where a Director or Head of Service is employed solely by one Council and is not in a shared post, the panel referred to in 13.3 would be replaced with either the Personnel Committee at CDC and Appointments and Personnel Committee at SNC. The composition of the disciplinary panel being determined by the identity of the employee's employing Council.

13.2 Roles of all parties involved in a disciplinary hearing are as follows:

13.2.1 **Chairman** – a manager authorised to hear the case, possibly from a different service team and more senior in position than the employee. (In the case of a committee hearing associated with JMT this would be the nominated Chair of the committee).

Whoever is intending to chair the hearing must have been appropriately trained in discipline handling and must have delegated authority as defined in the Constitution of the employing authority to determine the appropriate sanction if action is considered necessary.

Under no circumstances can an officer chairing a hearing take disciplinary action that is reserved for a more senior manager. The person who chairs the hearing will not be a person who will have been involved in any previous investigation or disciplinary hearing concerning the employee.

13.2.2 **Employee** – opportunity to state their case, answer the allegations, call any relevant witnesses and ask questions of any witnesses.

13.2.3 **Investigating Officer** – appointed by Human Resources and appropriately trained, they will present their investigation findings to the Chair as part of the management case.

For Directors and Heads of Service the Investigating Officer role will be determined by the relevant committee who may nominate an external Independent Investigating Officer.

13.2.4 **Witness** – a person invited by the employee or the investigating officer to give their statement of events relating to the allegations of the case.

13.2.5 **HR Advisor** – accompanies the Chairman on the panel and ensures that the employee and Chair have copies of all documents relating to the hearing and advises all parties on disciplinary procedures where necessary. For any potential dismissal the Head of Service with delegated responsibilities for dismissal should accompany the HR Advisor, as the Chair of the panel. This does not apply to Directors or Heads of Service where the Terms of Reference for the appropriate committee will be used.

13.2.6 **Colleague/Trained Trade Union Representative** - may present the case on behalf of the employee, which could include making opening and closing statements, presenting the case, and asking questions of any witnesses.

13.2.7 **Note taker** – takes notes of the hearing and circulates final version to employee, chair and HR advisor or committee if appropriate. Audio and video recording of the hearing will only be used with the agreement of all parties.

## 14. The Disciplinary Hearing

14.1 A disciplinary hearing can be a very traumatic and stressful experience for any employee, regardless of whether they are the employee against whom the allegations are made, or a witness to either side. It is therefore the role and responsibility of the

Chair of the hearing to ensure that arguments and unpleasantness are avoided. If the hearing shows any signs of getting out of control, it is advisable to call an adjournment for a few minutes to allow the situation to calm down.

- 14.1.1 The management case will normally be presented by the person who undertook the investigation, calling witnesses as necessary.
- 14.1.2 The employee (and their representative, if present) will then have the opportunity to state their case, again with the provision to call witnesses as necessary.
- 14.1.3 Each side will have the opportunity to ask relevant questions of the other side, including their witnesses, and to sum up at the end of the hearing. The management representative will sum up first, followed by the employee.
- 14.1.4 If witnesses are called, they will attend the hearing solely to make their statement and to answer questions. They will then withdraw.
- 14.1.5 If, during the hearing, substantial documentary evidence which has not previously been disclosed is produced by either side, the other party shall have the right to request an adjournment in order to allow sufficient time to examine the evidence. The Chair has the discretion to decide whether evidence can be submitted as time has previously been allowed for both parties to submit evidence, and therefore new evidence should be in exceptional circumstances only.
- 14.1.6 Other than when parties are summing up, the panel or Committee can ask questions of either side.
- 14.1.7 At the end of the hearing both sides will withdraw while the panel or Committee and any advisers consider their decision.
- 14.1.8 At the end of the decision making adjournment, the employee (and their representative, if present) and the person presenting the management case will be recalled and given the decision, which will be confirmed in writing, normally within 5 working days. If the decision is to apply a disciplinary sanction, the employee must also be informed of their right of appeal.
- 14.1.9 In exceptional circumstances, where it is considered necessary to delay making a decision, the employee will be informed of this decision, and advised when and how they will be notified of the decision in respect of the disciplinary hearing. . This will be done as soon as possible and normally no later than 5 working days after the date of the hearing.
- 14.1.10 If at any stage during the course of the hearing the person chairing the hearing believes it necessary to obtain additional advice, the proceedings will be adjourned whilst this advice is sought.

## **15. Disciplinary Sanctions**

15.1 Following a disciplinary hearing the following sanctions may apply:

### **15.1.1 Stage 1 - Oral Recorded Warning**

If following a disciplinary meeting it is decided that an employee's conduct or performance is unsatisfactory, the employee will be issued with an oral recorded warning. This will be a 'live warning' for a duration of 3 months, after which it will be disregarded for disciplinary purposes, subject to no further misconduct during this period. A copy of the note of warning will remain on the employee's personal file for the duration of the oral warning. Managers will hold regular review meetings with employees who have a 'live' warning.

### **15.1.2 Stage 2 - Written Warning**

This may be issued if the first offence is serious enough to warrant action at this level. Alternatively it may be issued after an oral recorded warning, if there is no improvement in standards, or if a further offence occurs. A copy of this written warning will be kept on file but will be disregarded for disciplinary purposes after 6 months, subject to satisfactory conduct and/or performance. Managers will hold regular review meetings with employees who have a 'live' warning.

### **15.1.3 Stage 3 - Final Written Warning**

This may be issued if the first offence is serious enough to warrant action at this level. Alternatively it may be issued after an oral recorded warning, or a written warning, depending on the severity of any subsequent misconduct or the failure to achieve required standards of performance/ conduct. A copy of the warning will be filed but will be disregarded for disciplinary purposes after the end of the sanction. In exceptional cases the period of the warning may be extended to 24 months rather than 12 months when the sanction is given. Managers will hold regular review meetings with employees who have a 'live' warning.

### **15.1.4 Stage 4a - Dismissal with Pay**

If there is no satisfactory improvement or if further serious misconduct occurs following previous warnings, after a consideration of the facts and circumstances of the case, an employee may be dismissed with notice or with pay in lieu of notice.

### **15.1.5 Stage 4b - Gross Misconduct**

If, after investigation, an employee is found to have committed an act of gross misconduct, the normal consequence will be summary dismissal without any notice or pay in lieu of notice. While the alleged gross misconduct is being investigated, employees may be suspended with pay.

15.1.6 Other sanctions may include demotion, withholding pay increments or temporary removal/reduction of benefits.

## 15.2 **Examples of Misconduct**

*This list is neither exclusive nor exhaustive*

The following list indicates the type of conduct which would normally constitute misconduct:

- 15.2.1 Disregard of safety practices, procedures and rules
- 15.2.2 Unsatisfactory job performance (for reasons other than incapability)
- 15.2.3 Poor time-keeping: late starting, early finishing, excessive break periods
- 15.2.4 Excessive and/or unauthorised absence
- 15.2.5 Leaving the workplace without permission during working hours
- 15.2.6 Undertaking activities detrimental to recovery whilst on sick leave
- 15.2.7 Failure to follow Council procedures
- 15.2.8 Misuse of Council facilities or equipment, for example telephones, Information and Communication Technology equipment
- 15.2.9 Insubordination or refusal to obey a reasonable instruction
- 15.2.10 Smoking in prohibited areas.

## 15.3 **Examples of Gross Misconduct**

*This list is neither exclusive nor exhaustive*

Gross misconduct includes, but is not limited to, the following:

- 15.3.1 Serious abuse
- 15.3.2 Corrupt practices
- 15.3.3 Where an employee is charged with a criminal offence inconsistent with their position
- 15.3.4 theft, fraud and deliberate falsification of records (e.g. expenses claims, time sheets, etc)
- 15.3.5 physical violence, threats, fighting, assault on another person
- 15.3.6 serious bullying, harassment or discrimination
- 15.3.7 deliberate damage to Council property or employee's property
- 15.3.8 removal or disposal of any Council property without Management's permission
- 15.3.9 serious insubordination
- 15.3.10 interference with safety devices or equipment putting other employees or visitors at risk at work
- 15.3.11 serious misuse of the Council's property or name
- 15.3.12 bringing the Council into serious disrepute

- 15.3.13 serious incapability whilst on duty brought on by alcohol or illegal drugs, the mis-use of drugs or the possession of illegal drugs whilst at work
- 15.3.14 the supply and trafficking of drugs, money laundering activities, or the use, sale or distribution of illegal substances
- 15.3.15 serious negligence which causes or might cause unacceptable loss, damage or injury
- 15.3.16 serious infringement of health and safety rules
- 15.3.17 serious breach of duty of confidence (subject to the Public Interest (Disclosure) Act 1998 or as revised on 25 June 2013, and Confidential Reporting Policy)
- 15.3.18 deliberate or reckless damage, mis-use or interference with or unauthorised use of the Council computers and/or software or unauthorised entry to computer records
- 15.3.19 serious misuse of electronic systems
- 15.3.20 conviction of a criminal offence that is relevant to the employee's employment
- 15.3.21 deliberate falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee
- 15.3.22 undertaking private work on the premises and/or in working hours without express prior permission
- 15.3.23 serious breach of trust or confidence

#### **15.4 Warnings**

If issued with a warning, an employee will receive written confirmation within 5 working days of the disciplinary hearing. This letter will include:

- 15.4.1 the reason and duration of the warning
- 15.4.2 the consequences of a failure to improve and sustain any improvement for at least the duration of the warning, including the possibility of further disciplinary action up to and including dismissal
- 15.4.3 relevant details and timescales relating to the employee's right of appeal
- 15.4.4 employees will have access to notes of the meeting (or a recording of the meeting in some circumstances).

Note: Employees should also be written to in the event of no further action being taken.

#### **16. Factors To Consider When Deciding What Disciplinary Sanction To Apply**

- 16.1 Having heard all the evidence at a disciplinary hearing, the Chair or, in the case of Heads of Services and Directors, the appropriate Committee will need to decide whether or not disciplinary action is warranted and, if so, at what level.

16.2 A disciplinary hearing is not the same as a court of law, where the defendant has to be proved guilty. The judgement to be made after hearing all the evidence is whether or not, on the balance of probabilities, the misconduct occurred.

16.3 In arriving at the decision, the following questions should be considered:

- Have all the relevant facts been ascertained?
- Was the individual given a chance to put his/her case?
- On the balance of probabilities is it reasonable to believe that the misconduct has occurred?

16.4 Unless the answer to all 3 questions is yes, a disciplinary sanction should not be imposed upon the employee.

16.5 Having decided that the misconduct has taken place, the Chair of the hearing, or in the case of Heads of Service and Directors, the appropriate Committee, should then decide upon an appropriate sanction .

16.6 The following questions will need to be considered:

- What sanctions have been imposed in similar cases in the past?
- Does the disciplinary procedure give any guidance as to whether or not this type of misconduct normally constitutes misconduct or gross misconduct?
- What is the employee's disciplinary record: is he/she already in receipt of some kind of disciplinary warning?
- Are there any extenuating circumstances, for example provocation, justifiable ignorance of the rules, lack of experience, etc?

16.7 The person chairing a disciplinary hearing will also need to take into account the level of sanction he/she is authorised to take under the terms of the Disciplinary Procedure and in accordance with the relevant Constitution (see section 17 below)

16.8 Once all the above have been considered and a tentative decision reached, the following three questions should be considered:

- Is the misconduct sufficiently serious to warrant the proposed level of sanction?
- Is it consistent with good practice?
- Is the proposed sanction reasonable given all the circumstances?

Unless the answer to all 3 of the above is yes, the proposed sanction should be reconsidered.



## 17. Levels of Delegated Authority To Take Action Under the Disciplinary Policy?

17.1 It is possible to take disciplinary action at any level for a first disciplinary offence dependent on the circumstances. Table A below sets out the levels of delegated authority to take disciplinary action at the various stages, and reflects the Constitution of both Councils.

EMPLOYEE GROUP	STAGE	ACTION	RESPONSIBILITY (HR to be consulted about process and consistency of proposed action)	APPEALS	DURATION OF WARNINGS
All staff except JMT Members	ONE	Oral Warning	Line Manager or above	HOS/Director	3 months
	TWO	Written Warning	Line Manager or above (or nominated other from another service area)	HOS/Director	6 months
	THREE	Final Written Warning	Line Manager or above (or nominated other from another service area)	HOS/Director	12 months (or may be longer in exceptional circumstances)
	FOUR	Dismissal	Head of Service/Director or delegated other HR representative	SNC Appeals Committee or CDC Appeals Panel*	N/A
	GROSS MISCONDUCT	Summary Dismissal	Head of Service/Director or delegated other HR representative	SNC Appeals Committee or CDC Appeals Panel*	N/A
HEADS OF SERVICE & STRATEGIC DIRECTORS	ALL	Any formal action	Joint Personnel Committee (or for any other posts at this level not shared the employing Council's equivalent personnel committee. (SNC – Appointments and Personnel Committee and CDC Personnel Committee).	Joint Appeals Committee or for any other posts at this level not shared then the employing Council's equivalent appeals committee (SNC Appeals Committee or CDC Appeals Panel)*	N/A

## 18. Disciplinary Action of Trade Union Representatives

18.1 Although normal disciplinary standards will apply to the conduct and performance of trade union representatives, no disciplinary action will be taken until the circumstances of the case have been discussed with the individual concerned, a senior trade union representative or full time official and in consultation with HR. This arrangement is in place to avoid the action being misconstrued as an attack on the union itself or on its representation and negotiating role, and is in accordance with the ACAS Code of Practice.

## 19. Raising a Grievance During Disciplinary Action

19.1 The decision to suspend or continue with disciplinary action pending the investigation of a grievance will depend upon the circumstances of each individual case. This decision will be made by Human Resources (or Monitoring Officer if applicable).

## **20. Suspicion of Criminal Behaviour**

- 20.1 If criminal behaviour is suspected or alleged the Investigating Officer in conjunction with HR (and the Chief Executive or Monitoring Officer, if the action is against Heads of Service or Directors) will discuss the situation and a decision will be taken over notifying the police in line with the Council's Standing Orders/Financial Regulations.

## **21. Criminal Proceedings During Disciplinary Action**

- 21.1 Where criminal proceedings are pending against an employee, the Council will determine whether disciplinary action is appropriate. Where it is deemed appropriate, the disciplinary procedure will be carried out objectively and will not normally be delayed or deferred because of any such proceedings, unless it would be prejudicial (in the view of the Council) to those investigations to proceed. Line Managers/Investigating Officers should liaise with HR for further guidance.

## **22. Criminal Charges or Convictions/Inappropriate Actions Out of Work**

- 22.1 In addition, criminal charges or convictions may result in disciplinary proceedings being taken against the employee up to and including summary dismissal. This will occur where, in the opinion of the Council the charge or conviction is such as to affect, or be likely to affect, the suitability of the employee for the position in which they are employed, or the business or reputation of the Council, or where the existence of the charge or conviction could, in the opinion of the Council, otherwise seriously undermine the trust and confidence that the Council has in the employee.

## **23. Fraud and Investigations**

- 23.1 Where there is any suspicion of theft or fraud the employee's manager must contact the Section 151 Officer who will refer the matter immediately to Audit and/or Fraud Investigation, and the Head of Transformation or the relevant Head of Service.

## **24. Right of Appeal**

- 24.1 Employees have the right to appeal against any disciplinary action.

Reasons for appeal may include:

- that the sanction is unfair/inconsistent under the circumstances (i.e. judgment)
- new evidence has arisen which was not considered at the original disciplinary hearing and which may have a bearing on the outcome (i.e. facts)
- that the policy and procedure have not been applied correctly (i.e. process)

- 24.2 When lodging an appeal, the employee should state the grounds of an appeal, and provide any supporting evidence.

24.3 The employee must provide notice of their appeal in writing within 5 working days of being informed in writing of the disciplinary sanction being imposed against them. All appeal notifications should be sent to the Head of Transformation or HR Manager. A template appeal form is included at Appendix 12.

24.4 Appeal hearings will take place as soon as reasonably possible upon receipt of the employee's written notice of appeal. Appeals Committees are likely to take longer to set up but will be done so as expediently as possible.

**24.5 Delegated Authority to Hear Appeals**

Appeal hearings will be made up as follows:

<b>Employee Appealing/Reason</b>	<b>Who Will Hear The Appeal</b>
Strategic Directors/Heads of Service	Joint Appeals Committee or for any other posts at this level not shared then the employing Council's equivalent appeals committee (SNC Appeals Committee or CDC Appeals Panel)
Other employee who is dismissed	Employing Council 's Appeals Committee
Other employee who is not dismissed	Head of Service or Strategic Director (independent and trained) plus HR Representative

\* No members of the appeals panels will have been involved previously in the investigation or disciplinary hearing.

24.6 For Appeals Committees there will be a Democratic and Elections Officer, Legal Advisor and HR Advisor in attendance (who will all previously have not been involved with the appeal at a previous stage – this may be external advisors if appropriate). These advisors will brief the Committee prior to the appeal hearing taking place. The advisors may at any point during the appeal seek clarification on any issue with regard to the appeal and will provide procedural guidance to the Committee.

24.7 The employee shall be given notice in writing at least 5 working days in advance of the time and place of the appeal hearing and they will be allowed to be represented or accompanied and shall be entitled to call witnesses (but those witnesses are not entitled to representation). This notice may be extended to allow an employee to be adequately represented.

24.8 The failure of a party to attend an appeal shall not prevent the appeal from being considered in their absence. In such circumstances the appellant will be notified in writing of the decision.

24.9 The management side will be presented by the Chair of the disciplinary hearing who will be able to call witnesses who are not entitled to representation.

- 24.10 In advance of the hearing, the Appeals Panel or Committee will have available all of the documents presented to the original disciplinary hearing. They will also have a copy of the record of the hearing, the letter confirming the outcome of the original disciplinary hearing, the letter of appeal and all other relevant information. The employee and the management side will also be allowed to submit additional evidence that relates to the reasons for the appeal. The Appeals Panel or Committee should make their findings based on the documentation and the submissions at the appeal hearing.
- 24.11 The employee (appellant) and management side (respondent) will provide any documentation they wish the panel or committee to consider prior to the deadline for agenda publication as notified by Law and Governance (for Committees) or no later than 5 working days before an appeals panel. Supplementary documentation produced after this time will only be admitted at the discretion of the panel or the committee and with agreement of all parties to the appeal subject to the provisions of Access to Information legislation.
- 24.12 During the appeal hearing both parties to the appeal will be admitted to the room, the Chairman will introduce those present, the procedure will be outlined by either the Democratic and Elections Officer or the Chair of the panel (if not a Committee) and questions on the procedure will be invited.
- 24.13 The employee (appellant) and their representative (if applicable) will make their case. The appellant may be questioned by the management side (respondent) and then the panel or Committee.
- 24.14 The respondent will then make their case and may be questioned by the appellant and then the panel or Committee. In making their case witnesses may be called by the appellant or the respondent. Witnesses must be notified to the Democratic and Elections Officer (for Committees) or to the HR Advisor (for panels). This must be done by the deadline notified by the Democratic and Elections Officer (for Committees) or to the HR Advisor (for panels) at least 5 days before the appeal hearing. The respondent or appellant will be responsible for ensuring their witnesses are aware of the time, date and place of the hearing. Witnesses may be questioned by all parties and then the panel or Committee. Witnesses will only be admitted to the appeal hearing for the duration of their evidence.
- 24.15 Where the panel or Committee considers that further information or discussion is required the meeting will be adjourned for a period. The length of the adjournment being decided by the Chair.
- 24.16 At the end of the appeal hearing the respondent will have opportunity to sum up and then the appellant will have opportunity to sum up. Both parties will then be asked to adjourn. The panel or Committee will then decide whether to ask the parties to wait whilst a decision is reached or confirm that a letter will be sent confirming the outcome. The Appeals Committee or panel will then make their decision. A formal letter will be

sent to the appellant confirming the decision of the Appeals Committee or panel within 5 working days of the appeal hearing. A copy of appeals information will be retained on the employee's personal file.

## **25. Appeal Outcomes**

25.1 The outcome of the appeal will be either:

25.1.1 The appeal is successful in whole or in part, known as upheld (e.g. could be a lesser sanction imposed or the sanction could be removed altogether)

25.1.2 The appeal is unsuccessful, known as rejected- the original decision stands

25.2 The appeal panel or committee's decision is final. No further internal right of appeal exists.

25.3 Where an appeal against dismissal fails, the effective date of termination of employment will be the date on which the employee was originally dismissed, not the date of appeal.

## **26. Disciplinary records**

26.1 The list of documents below may be kept on a personal file after a disciplinary process has taken place and will be kept on file in accordance with the Employment Practices Data Protection Code and Data Protection Act 1998:

- documents relating to a disciplinary investigation, disciplinary hearing or appeal hearing including letters, notes from meetings and witness statements
- a written record of any warning given including any verbal warning
- written record of any further action sanctioned such as employee transfer, demotion, or written record of dismissal/summary dismissal

26.2 All disciplinary documentation will be removed from personal files on the expiry of the sanction.

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Joint Issue 1: February 2012

Joint Issue 2 Updated August 2013

## **Appendices**

Appendix 1 – Guidance to Conducting a Disciplinary Investigation

Appendix 2 – Appeal Application Form

## **Appendix 1 - Guidance to Conducting a Disciplinary Investigation**

It should be made clear the difference between an investigatory hearing (the purpose of which is to establish the facts and not to make any decisions based on these facts), and a disciplinary hearing (the purpose of which is to determine whether there are any grounds to impose a disciplinary sanction on the employee). Those involved in undertaking investigations should take care:

- not to jump to conclusions prematurely
- to restrict their activities to investigating the facts, rather than making decisions based on the facts
- not to say or do anything that implies judgement of the employee's actions or behaviour.

### **Investigatory Interviews**

When interviews are deemed appropriate by the Investigating Officer as part of an investigation the following guidance should be used.

#### **Interview Preparation**

Before an interview takes place the Investigating Officer should decide who, if anyone, will need to be interviewed and in what order, and this may involve asking the employee under investigation or other witnesses whether anyone important to establishing the facts should be interviewed. The Investigating Officer should give 48 hours advance warning to the employee and witnesses in writing of the interviews being required.

All of the relevant details should be considered carefully, including any relevant personal details such as previous performance and experience, length of service, and any current warnings and history.

Careful thought should be given to further relevant documentation that may be required, and of any facts that will need to be confirmed in writing such as the evidence of witnesses.

The Investigating Officer should prepare an outline of issues and questions that need to be explored in order to establish the facts – what, when, where and how.

Other considerations might include:

- How the situation has already been dealt with
- Have there been any recent changes to the job or working environment?
- Have there been any previous incidents which relate to this one?
- Has the employee received appropriate induction, counselling or training?
- Are there any mitigating circumstances, e.g. health/disability, domestic problems, or provocation?

## **The Interview**

The Investigating Officer should ensure they have all of the relevant facts and documentation available to them at the interview meeting.

The Investigating Officer should ensure a formal but polite and open approach is used that will encourage individuals to talk freely in order to establish the facts. It is important that nothing is prejudged, and that individuals do not feel that blame is being apportioned. Interviews should focus on establishing what was directly observed, heard of done by the employee concerned. The Investigating Officer should try and distinguish between hearsay and speculation from facts.

Hearsay Evidence which is defined as “evidence offered by a witness, based upon what someone else has told him/her” and not upon personal knowledge or observation should not generally be admitted. However, if admitted, it should be dealt with very cautiously and little weight should be given to it.

Anonymous evidence should not normally be used either. Exceptions to this may be:

- where the allegations are serious and can be verified through independent investigation, or
- if a potential witness had a real fear, reasonably held, that they would suffer substantial detriment if they were to sign their statement.

### **Interview Introductions**

- Welcome the interviewee
- Outline the purpose of the interview and the investigation
- Confirm the need for confidentiality
- Introduce those present and explain their roles to the interviewee

### **Interview Style**

- Focus on the evidence and facts relevant to the investigation. i.e. what, where, when and how.
- Pace the interview so that it can be easily followed by the interviewee and the note taker
- The interviewer should be impartial and non-judgemental
- Do not speculate and predict outcomes
- Interviews should not go on longer than an hour and a half without a break
- The interview can be stopped at any time to allow a comfort break or request for a break
- It may be helpful to follow a date order approach to the interview – this will allow the Investigating Officer to see the order of events.

### **Recording The Interview**

The record of the interview should include:

- Date, place and timing of the interview
- Who attended in what capacity
- An accurate account of what was said and by whom



## **Recording The Interview**

The Investigating Officer should decide how to record the interview. Interviews that are likely to be lengthy and complex and particularly when interviewing the employee under investigation, tape recording is often the easiest and most efficient method. However, some employees may feel uncomfortable being interviewed on tape and should not be pressurised into doing so against their will. The employee may request the interview to be recorded in this manner and this should be considered by the Investigating Officer.

There may be instances where tape recording is not deemed appropriate, for example, where a simple statement of fact is required or a prewritten statement is used ad verbatim and can be submitted. Or the minute taker or Investigating Officer is able to work on a lap top and type notes during an interview.

The key is to choose the most efficient and effective way to record information in the circumstances having regard to the interviewee and the nature of the interview.

## Appendix 2 - Disciplinary Appeal Application Form

Your Name	
Your Job Title	
Your Service Area and Line Manager	

### Details of your appeal (Please continue on separate sheet if required).

Please explain the reasons for the appeal (refer to the policy), and attach any supporting evidence.

### Individuals involved in the appeal:

Please provide the names and contact details of any people involved in your appeal, including witnesses you wish to call during the appeal.

### Outcome requested from the appeal:

Please set out what outcome you would like to see from your appeal.

Name of trade union/other representative (if appropriate)	
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Signature	
Date	

Please send this form to the Head of Transformation within five working days of receiving your disciplinary hearing outcome letter.