



Disciplinary Policy and Procedure

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1 Introduction

Cherwell District Council's Disciplinary Policy and Procedure applies to employees only. It does not apply to agency workers, consultants, self-employed contractors, volunteers or interns.

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.

- 1.1 The purpose of this policy and procedures is to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and 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. The standards of conduct expected of all employees are set out in the Employee Code of Conduct Policy which is available from the intranet and the Council's corporate rules are contained in the contract of employment and in employment policies and procedures.

1.2 Rules

Rules are needed to set standards of conduct for employees to follow. At the Council 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 kept to a minimum but will include (not an exhaustive list):

- Attendance or timekeeping
- Absence
- Damage to Council property
- Discrimination
- Harassment or bullying
- Health and Safety
- Smoking on Council property, including vehicles (except for designated smoking areas)
- Unreasonable failure to follow an instruction issued by a manager or supervisor
- Unsatisfactory work performance (where this isn't classified as capability).

- 1.3 The procedures are designed to help the Council deal consistently with disciplinary issues and to give employees the opportunity to respond before any formal action is taken.

- 1.4 These procedures do not form part of any contract of employment or other contract to provide services, and the Council may review and this document from time to time following consultation with UNISON and subject to agreement with the Personnel Committee may make changes to the content. Changes may result from employee, management and UNISON feedback and/or from changes in employment legislation.

- 1.5 Employees will be advised of the nature of any complaint against them, and they will have the opportunity to explain.
- 1.6 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.
- 1.7 Employees will not normally be dismissed for a first breach of discipline except in the case of gross misconduct.
- 1.8 Employees will have a right of appeal against any disciplinary penalty or action taken.
- 1.9 The level of warning issued by a manager (or committee in the case of Senior 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.
- 1.10 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).
- 1.11 Timescales for meetings, appeals etc, may be varied by mutual agreement. The intention is to avoid unreasonable delay but to allow for reasonable flexibility.
- 1.12 All matters relating to this procedure must be treated as confidential.

2 Scope

This policy, the procedures and the accompanying guidelines apply to all employees of Cherwell District Council. The policy and procedures do not apply to casual workers, agency workers, consultants, self-employed contractors, volunteers or interns. Neither do they apply to those which hold the statutory roles of Chief Executive, Monitoring Officer and Finance Section 151 Officer for which separate statutory procedures apply.

- 2.1 This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases, reference should be made to the appropriate policy or procedure.
- 2.2 The Council 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.
- 2.3 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. Minor conduct issues can often be resolved between the employee and their line manager. Issues arising as a result of misconduct/negligence will be dealt with

under this policy and procedures. 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.

- 2.4 Disciplinary matters are dealt with sensitively by the Council and all employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

3 **Employee's responsibilities**

All employees have a responsibility to:

- Take full accountability for their actions and inactions
- Maintain expected and reasonable levels of attendance and performance at work
- Respect and work in line with the Council's Code of Conduct
- Attend and participate in relevant meetings
- Comply with the Council's policies
- Conform with any Council or statutory rules or agreements applicable to their role
- 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.

4 **Support for employees and managers**

- 4.1 Employees may contact HR for support and guidance about the disciplinary procedure.
- 4.2 UNISON is also able to offer support and guidance to employees who are members of the union and who are facing potential disciplinary action.
- 4.3 Our Employee Assistance Programme provide a 24/7 counselling and information service to assist employees with personal or work-related problems.
- 4.4 If an employee has difficulty at any stage of the procedure because of a disability, they should discuss the situation with their manager or HR as soon as possible.
- 4.5 Managers should contact HR in respect of all potential disciplinary action.

5 **The policy stages**

- 5.1 The possible stages of the disciplinary procedure are as follows:

- Informal action
- Suspension
- Formal stage, including:
 - Stage 1 Oral recorded warning
 - Stage 2 Written warning
 - Stage 3 Final written warning
 - Stage 4a Dismissal with pay or with pay in lieu of notice
 - Stage 4b Summary dismissal

5.2 In exceptional circumstances as part of the Formal stage, alternatives to dismissal may also be considered, at the Council's discretion.

6 Informal action

6.1 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. Minor conduct issues can often be resolved informally between the employee and their manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Managers should record any such informal action for their own reference as information will not be placed on the employee's personal file. In some cases, an informal verbal warning may be given. An informal warning will not form part of the employee's disciplinary records. Formal steps will then be taken under this policy and procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

6.2 Mediation may be used as an alternative way of managing a situation informally. This does not preclude the use of formal disciplinary procedures.

7 Suspension

7.1 The Council may decide to suspend an employee pending an investigation. The suspension will be for no longer than is necessary to investigate any allegations of misconduct against the employee or so long as is otherwise reasonable while any disciplinary proceedings against the employee are outstanding. A manager or supervisor may, in exceptional circumstances, send an employee home pending a decision about suspension rather than suspend immediately.

7.2 The Council will confirm the arrangements of the suspension to the employee in writing. While suspended the employee should not visit Council premises or contact any of the Council's clients, customers, suppliers, contractors or staff, unless the employee has been authorised to do so by manager.

7.3 Suspension is not a disciplinary measure, and is not pre-judging the allegations, the outcome of a disciplinary investigation or possible disciplinary hearing. It is a means by which the Council can protect its interests, and those of its employees, while an investigation takes place. Any such suspension will be with full basic pay.

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

7.5 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 their manager. A log should be kept by the manager of any communications made between the employee and the Council.

- 7.6 The suspension of an employee should take place on a face-to-face basis at a meeting. Where it is not possible to meet with the employee face-to-face, ideally a conversation with the employee should be held via telephone or video conference call to inform them of their suspension. Written confirmation should then 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 the review date.
- 7.7 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 the manager who actioned the suspension and should be done in consultation with HR.
- 7.8 Suspension should be considered on the following grounds:
- 7.8.1 The allegations could constitute gross misconduct.
 - 7.8.2 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).
 - 7.8.3 There is considered to be a chance of a recurrence of the alleged offence.
- 7.9 During the period of suspension, the employee remains employed by the Council, but they are not required to attend work. They are not otherwise required to carry out any of their normal duties and should not attend the workplace unless authorised by their manager to do so or invited to attend meetings in line with the disciplinary process. 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.
- 7.10 Where the Investigation 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.
- 8 Formal stage**
- 8.1 Where a 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.

8.2 **Adjustments to the Procedure**

When following the formal disciplinary procedure managers are required under the Equalities Act 2010 to make reasonable adjustments for employees with a disability. Where a 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.

9 **Investigation**

9.1 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, a fair and balanced view of the facts relating to any disciplinary allegations against the employee, before deciding whether to proceed with a disciplinary hearing.

Investigation meetings are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

9.2 **Investigations relating to staff other than Directors**

For all posts other than Directors, the Investigation Officer will be appointed by the Assistant Director of HR or the Monitoring Officer (if the investigation implicates members of the HR team and independence is required). All Investigation Officers will have been trained in undertaking investigations.

9.3 The Investigation Officer should be at a level either equivalent to or higher than the employee being investigated. The Investigation Officer will usually be an employee of the Council who will not have a conflict of interest that might prejudice a fair hearing. An external workplace investigator may be appointed where it is considered necessary.

9.4 **Investigations relating to Directors**

The decision to conduct an investigation into the alleged misconduct of a Director must be made by a special meeting of the Personnel Committee.

9.5 The investigation should be undertaken by the Monitoring Officer or an external Independent Investigation Officer appointed by the Personnel Committee. Investigation Officers will be supported by a member of HR to ensure the process is followed correctly and to provide any advice.

9.6 **The investigation process**

Generally employees will be informed that an investigation is to take place, however 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, Governance team and following 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 the Governance team and HR) giving reasons why its use is necessary.

- 9.7 Where the alleged disciplinary matter is straightforward, the investigation may be brief and ideally take no longer than 28 working days. In more complex situations, investigations are likely to take longer and employees will be kept apprised of progress by their manager or the Investigation Officer on a weekly basis. The employee will be advised in writing should any additional allegations arise during an investigation.
- 9.8 The Investigation Officer will interview the employee(s) and any witnesses. The employee and witnesses do not normally have the right to bring a companion to an investigation meeting. However, the Council may allow a companion to accompany the employee if it is considered suitable and reasonable in the circumstances, for example to help the employee overcome any disability or any difficulty in understanding English.
- 9.9 In conducting the investigation, the Investigation Officer should ensure that they have spoken to the employee and all relevant witnesses. The employee and all witnesses will be given an opportunity to review their interview notes. They will also be able to provide documentation that they consider is relevant to the matters being investigated.
- 9.10 Once the investigation is complete the Investigation Officer will write a report on his/her findings and present it to the employee's Director 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.
- 9.11 The Employee and witnesses should be made aware that a record of their interview note will form part of the overall investigation report and that the report might also be used in internal and external reporting and processes. They will also be informed that they may be called to attend any subsequent disciplinary hearing and the full investigation report may be made available to all involved in the disciplinary procedure.
- 9.12 It is not the role of the Investigation Officer to recommend any level of disciplinary action, but they should present full findings to enable the manager receiving the investigation report to decide whether any further action should follow as a result of the investigation.
- 9.13 The manager who has reviewed the investigation report will 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. A copy of the investigation report may be attached.

10 Disciplinary hearing

- 10.1 Should a disciplinary hearing be required the employee will be informed in writing of the following:
- 10.1.1 Details of the allegations made, and whether they are being considered as gross misconduct.
 - 10.1.2 The basis for the allegations.
 - 10.1.3 What the likely range of consequences will be if the Council decide after the disciplinary hearing that the allegations are well-founded.
 - 10.1.4 The date, time and place of the disciplinary hearing (giving the employee at least five working days' notice).
 - 10.1.5 The name of who will chair the hearing and the individuals that will form part of the panel or committee.
 - 10.1.6 Their right to be accompanied to the hearing by a work colleague or trained trade union representative.
 - 10.1.7 A summary of relevant information gathered during the investigation.
 - 10.1.8 That they will be supplied with copies of any documents to be referred to in the hearing at least two working days in advance of the hearing OR at the time of Committee agenda publication.
 - 10.1.9 That they will receive a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the Council will provide as much information as possible to the employee while maintaining confidentiality.
 - 10.1.10 That they must submit any documents supporting their response to the allegations to the relevant member of the HR team at least two working days in advance of the hearing OR prior to Committee agenda publication, so that these documents can be referred to in the hearing.
 - 10.1.11 Reminding the employee about the disciplinary policy by providing a copy of the document.
 - 10.1.12 Their right to bring their own witnesses, providing that the Council has been told of the names of the witnesses in advance of the hearing. The witnesses should be given at least two days' notice of the requirement to attend the hearing.
 - 10.1.13 That is the employee is found to have committed misconduct, the Council may decide to issue them with either a written warning, a final written

warning or dismiss them (with notice, pay in lieu of notice or without notice if gross misconduct has been committed).

10.1.14 That the employee has the right to appeal the outcome of the disciplinary hearing.

10.2 The hearing should be held as soon as possible after the investigation. The purpose of a disciplinary hearing is to establish the facts of the case, and to decide what further action (if any) should be taken.

10.3 If the hearing needs to be held remotely, the Council will provide the reason why and notify the employee of the relevant arrangements to join the hearing virtually.

11 The disciplinary panel

11.1 The disciplinary panel relating to staff other than Directors

The disciplinary panel will consist of two officers: a Chair and a HR Business Partner.

11.2 The disciplinary panel relating to Directors

The disciplinary panel will be members of the Personnel Committee.

11.3 Roles of all parties involved in a disciplinary hearing

Chair – a manager authorised to hear the case, possibly from a different service team and more senior in position than the employee.

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.

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.

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

Investigation 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 the Investigation Officer will be determined by Personnel Committee who may nominate an external Independent Investigation Officer.

Witness – a person invited by the employee or the Investigation Officer to give their statement of events relating to the allegations of the case.

HR Business Partner – proactively supports the Chair 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.

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.

Note taker – takes notes of the hearing and circulates final version to employee, Chair, HR and Committee if appropriate. Audio and video recording of the hearing will only be used with the agreement of all parties.

12 The disciplinary hearing process

- 12.1 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.
- 12.2 A disciplinary hearing should usually follow the following format:
- 12.2.1 Introductions of all parties.
 - 12.2.2 The management case will normally be presented by the Investigating Officer, calling witnesses as necessary.
 - 12.2.3 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.
 - 12.2.4 Each side will have the opportunity to ask relevant questions of the other side, including their witnesses.
 - 12.2.5 The Investigation Officer will summarise, followed by the employee.
 - 12.2.6 At the end of the hearing both sides will withdraw while the panel or Committee (and any advisers) consider their decision.
- 12.3 If witnesses are called, they will attend the hearing solely to make their statement / present their evidence and to answer questions. They will then withdraw.
- 12.4 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.

- 12.5 Other than when parties are summing up, the panel or Committee can ask questions of either side.
- 12.6 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 five working days. If the decision is to apply a disciplinary sanction, the employee must also be informed of their right of appeal.
- 12.7 In 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 five working days after the date of the hearing.
- 12.8 If at any stage during the course of the hearing the Chair believes it necessary to obtain additional advice, the proceedings will be adjourned whilst this advice is sought.
- 12.9 Employees will be provided with a copy of the notes from the hearing (or a recording of the hearing in some circumstances).

13 Disciplinary sanctions

- 13.1 Following a disciplinary hearing, and having heard all the evidence, the Chair (or appropriate Committee) will need to decide whether or not disciplinary action is warranted and, if so, at what level. The following sanctions may apply:

13.1.1 Stage 1 - Oral recorded warning

If 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 three months, after which it will be disregarded for disciplinary purposes, subject to no further misconduct by the employee 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.

13.1.2 Stage 2 - Written warning

This may be issued if the first offence by the employee 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 by the employee, or if a further offence has occurred. A copy of this written warning will be kept on the employee's file but will be disregarded for disciplinary purposes after six months, subject to satisfactory conduct and/or performance during this period. Managers will hold regular review meetings with employees who have a 'live' warning.

13.1.3 **Stage 3 - Final written warning**

This may be issued if the first offence by the employee 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 kept on the employees file but will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct and/or performance during this period.

In exceptional cases the period of the final written warning may be extended to 24 months. Managers will hold regular review meetings with employees who have a 'live' warning.

13.1.4 **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.

13.1.5 **Stage 4b – Summary dismissal**

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.

In exceptional circumstances, alternatives to dismissal may also be considered, at the Council's discretion. These would be authorised by a Director and be accompanied by a final written warning. Examples include:

- Demotion
- Transfer to another department
- A period of suspension without pay
- Loss of seniority
- Reduction in pay / benefits
- Loss of future pay increment or bonus
- Loss of overtime

13.2 **Warnings**

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

13.2.1 The reason for and duration of the warning.

13.2.2 The consequences of 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.

13.2.3 Relevant details and timescales relating to the employee's right of appeal.

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

13.4 **Examples of misconduct**

The following list indicates the type of conduct which would normally constitute misconduct. This list is neither exclusive nor exhaustive.

13.4.1 Disregard of safety practices, procedures and rules.

13.4.2 Unsatisfactory job performance (for reasons other than incapability).

13.4.3 Poor timekeeping: late starting, early finishing, excessive break periods.

13.4.4 Excessive and/or unauthorised absence.

13.4.5 Leaving the workplace without permission during working hours.

13.4.6 Undertaking activities detrimental to recovery whilst on sick leave.

13.4.7 Failure to follow Council procedures.

13.4.8 Misuse of Council facilities or equipment.

13.4.9 Insubordination or refusal to obey a reasonable instruction.

13.4.10 Smoking in prohibited areas.

13.5 **Examples of gross misconduct**

The following list indicates the type of conduct which would normally constitute gross misconduct. This list is neither exclusive nor exhaustive.

13.5.1 Serious abuse.

13.5.2 Corrupt practices.

13.5.3 Where an employee is charged with a criminal offence inconsistent with their position.

13.5.4 Theft, fraud and deliberate falsification of records (e.g. expenses claims, time sheets).

13.5.5 Physical violence, threats, fighting, assault on another person.

13.5.6 Serious bullying, harassment or discrimination.

13.5.7 Deliberate damage to Council property or an employee's property.

13.5.8 Removal or disposal of any Council property without management permission.

13.5.9 Serious insubordination.

13.5.10 Interference with safety devices or equipment putting other employees or visitors at risk.

- 13.5.11 Serious misuse of the Council's property or name.
- 13.5.12 Bringing the Council into serious disrepute.
- 13.5.13 Serious incapability whilst on duty brought on by alcohol or illegal drugs, the misuse of drugs or the possession of illegal drugs whilst at work.
- 13.5.14 The supply and trafficking of drugs, money laundering activities, or the use, sale or distribution of illegal substances.
- 13.5.15 Serious negligence which causes or might cause unacceptable loss, damage or injury.
- 13.5.16 Serious infringement of health and safety rules.
- 13.5.17 Serious breach of duty of confidence (subject to the Public Interest Disclosure Act and Confidential Reporting Policy).
- 13.5.18 Deliberate or reckless damage, mis-use or interference with or unauthorised use of Council IT equipment and/or software. Unauthorised entry to electronic records.
- 13.5.19 Serious misuse of electronic systems.
- 13.5.20 Conviction of a criminal offence that is relevant to the employee's employment.
- 13.5.21 Deliberate falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee.
- 13.5.22 Undertaking private work on Council premises and/or in working hours without express prior permission.
- 13.5.23 Serious breach of trust or confidence.

14 Disciplinary action of Trade Union representatives

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.

15 Raising a Grievance during disciplinary action

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).

16 Suspicion of criminal behaviour

If criminal behaviour is suspected or alleged the Investigation Officer and Human Resources (and Chief Executive or Monitoring Officer, if the allegation is against a Director) will discuss the situation and a decision will be taken over notifying the police.

17 Criminal proceedings during disciplinary action

Where criminal proceedings are pending against an employee, the Council will determine whether disciplinary action is appropriate. The disciplinary procedure 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. Managers / Investigation Officers should liaise with HR for further guidance.

18 Criminal charges or convictions / Inappropriate actions outside of work

- 18.1 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.
- 18.2 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

19 Fraud and investigations

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 Director of HR.

20 Right of appeal

- 20.1 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. judgement)
 - 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)
- 20.2 When lodging an appeal, the employee should state the grounds of their appeal, and provide any supporting evidence.
- 20.3 The employee must provide notice of their appeal in writing within five working days of being informed in writing of the disciplinary sanction being imposed against them. All appeal notifications should be sent to the Director of HR. A template appeal form is included at Appendix 3.

20.4 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.

20.5 **Delegated authority to hear appeals**

Appeal hearings will be made up as follows:

| Employee appealing / reason | Who will hear the appeal |
|------------------------------------|--|
| Directors | Appeals committee |
| Employee who is dismissed | Appeals committee |
| Employee who is not dismissed | Director (independent and trained) plus HR rep |

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

20.6 For an appeals committee there will be a Democratic and Elections Officer plus both Legal and HR Advisors in attendance (who will all previously have not been involved in the case – these may therefore be external advisors if appropriate). The 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.

20.7 The employee shall be given notice in writing at least five 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.

20.8 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.

20.9 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).

20.10 In advance of the hearing, the panel or Committee will be provided with a copy of all the documents presented to the original disciplinary hearing. They will also have a copy of the record of the disciplinary hearing, the letter confirming the outcome of the 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 panel or Committee should make their findings based on the documentation and the submissions at the appeal hearing.

20.11 The employee and management side 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 five working days before an appeal hearing. Supplementary documentation produced after this time will only be admitted at the discretion of the panel or committee.

- 20.12 During the appeal hearing both parties will be admitted to the room. The Chair 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.
- 20.13 The employee and their representative will make their case. The employee may be questioned by the management side and then the panel or Committee.
- 20.14 The Council will then make its case and may be questioned by the employee and then the panel or Committee. In making their case witnesses may be called by the employee or the Council. Witnesses must be notified to the Democratic and Elections Officer (for Committees) or to HR (for panels). This must be done by the deadline notified by the Democratic and Elections Officer (for Committees) or to HR (for panels) at least five days before the appeal hearing. The Council and employee 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.
- 20.15 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.
- 20.16 At the end of the appeal hearing the Council will have opportunity to sum up and then the employee 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 employee confirming the decision of the Appeals Committee or panel within five working days of the appeal hearing. A copy of appeals information will be retained on the employee's personal file.

21 Appeal outcomes

21.1 The outcome of the appeal will be either:

- 21.1.1 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).
- 21.1.2 The appeal is unsuccessful, known as rejected- the original decision stands.

- 21.2 The appeal panel or committee's decision is final. No further internal right of appeal exists.
- 21.3 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.

22 Disciplinary records

- 22.1 Documents relating to a disciplinary process may be kept on file in accordance with the Employment Practices Data Protection Code and Data Protection legislation.
- 22.2 Disciplinary records will be kept for 6 months.

Appendices

- Appendix 1 – Guidance to conducting a disciplinary investigation
- Appendix 2 – Guidance to reaching a disciplinary outcome
- Appendix 3 – Disciplinary appeal form

Appendix 1 - Guidance to conducting a disciplinary investigation

It should be made clear the difference between an investigatory meeting (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
- investigate fully
- 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 Investigation Officer as part of an investigation the following guidance should be used.

1. Interview preparation

Before an interview takes place the Investigation 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 Investigation Officer should give reasonable advance notice to the employee and witnesses in writing of the interviews being required.

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 Investigation 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.

2. The interview

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

The Investigation 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. The Investigation 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 and is given little weight. 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.

3. 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.

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 Investigation Officer to see the order of events.

4. Recording the interview

The Investigation 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, voice recording is often the easiest and most efficient method, however this needs to be agreed by both the employee and Investigation Officer. Some employees may feel uncomfortable being voice recorded and no one should feel pressurised into doing so.

There may be instances where voice 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 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 - Guidance to reaching a disciplinary outcome

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.

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?

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

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

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?

The Chair 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 below).

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

Appendix 3

reconsidered.

It is possible to take disciplinary action at any level for a first disciplinary offence dependent on the circumstances. The table below sets out the levels of delegated authority to take disciplinary action at the various stages, and reflects the Constitution of the Council:

| EMPLOYEE GROUP | STAGE | ACTION | RESPONSIBILITY (HR to be consulted about process and consistency of proposed action) | APPEALS | DURATION OF WARNINGS |
|-------------------------------------|--------------|-----------------------|---|----------------|---|
| All staff (except Directors) | 1 | Oral Warning | Line Manager or above | Director | 3 months |
| | 2 | Written Warning | Line Manager or above (or nominated other from another service area) | Director | 6 months |
| | 3 | Final Written Warning | Line Manager or above (or nominated other from another service area) | Director | 12 months (or may be longer in exceptional circumstances) |
| | 4 (A) | Dismissal | Director or delegated other HR representative | Appeals Panel | N/A |
| | 4 (B) | Summary Dismissal | Director or delegated other HR representative | Appeals Panel | N/A |
| Directors | ALL | Any formal action | Personnel Committee | Appeals Panel | N/A |

Appendix 3

Appendix 3 - Disciplinary Appeal Form

Please send this form to the Director of HR within five working days of receiving your disciplinary hearing outcome letter

| | |
|-------------------|--|
| Your Name | |
| Your Job Title | |
| Your Service Area | |
| Your 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) | |
|---|--|

| | |
|-----------|--|
| Signature | |
|-----------|--|

Appendix 3

| | |
|------|--|
| Date | |
|------|--|