



London Borough
of Hounslow

Disciplinary Policy

Human Resources

Issued by HR Policy Team
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DISCIPLINARY POLICY

1 Introduction

Principles

- 1.1 The Council provides vital services to the local community and our aim is to achieve excellence in every service we deliver. The highest standards of conduct are therefore expected from our employees.
- 1.2 This policy provides a process that is fair, objective and transparent when dealing with arrangements for disciplinary concerns that arise in the workplace. Human Resources are available to provide advice and guidance as required.

Policy Summary

- 1.3 This policy reflects the following key principles for dealing with issues of misconduct:
- High standards of behaviour must be maintained at work at all times
 - Employees are expected to read, understand and comply with the Code of Conduct
 - Managers are expected to use this policy where misconduct warrants it
 - Issues will be dealt with fairly, consistently and promptly
 - Employees will be informed about concerns over their conduct and the process to be followed
 - Employees will be given sufficient opportunity to prepare their response
 - Managers will ensure that action and decisions are taken objectively without discrimination
- 1.4 This policy is non-contractual and reflects current legislation and good practice. The council reserves the right to amend the policy from time to time on the recommendation of the Head of HR and will consult the trade unions recognised by the council for collective bargaining purposes before introducing any proposed changes.

Managing Disciplinary Policy and Procedure

- 1.5 The policy operates in conjunction with the Code of Conduct and other rules and standards of performance relevant to the way in which employees should behave at work.
- 1.6 The council will ensure that the policy is applied fairly to all employees and does not have a negative impact in relation to the council's equality strands: race, gender, religion or belief, sexual orientation, age and

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disability, gender reassignment, pregnancy and maternity, marriage and civil partnership.

- 1.7 Where clarification is required about how to handle issues under multiple policies and procedures, advice should be taken from Human Resources. The Grievance Policy is separate from this policy and should not be used for disciplinary matters.

General principles

- 1.8 It is the Council's intention that:

- This policy will be implemented transparently, fairly and consistently
- It applies principally but not solely to conduct at work
- Human Resources will maintain a pool of investigators to ensure that all cases of alleged misconduct can be dealt with in a timely manner
- Hearings must be chaired by an "independent person" senior to the member of staff being disciplined. Section 7.2 defines who an independent person is.
- Documentation submitted outside the timescales of this policy will be considered only in exceptional circumstances.

- 1.9 Application of this policy and decisions taken on disciplinary matters will be monitored to ensure consistency and fairness.

Representation

- 1.10 Employees have a statutory right to be accompanied at the disciplinary hearing and appeal by a trade union representative or a work colleague. Further information on the right to representation is available on the intranet in the Employee Representation – The Right to be Accompanied Policy or by contacting HR.
- 1.11 The investigatory meetings do not attract the statutory right to be accompanied, employees may however be accompanied by a trade union representative or work colleague. Where employees choose to be accompanied to an investigatory meeting, the dates of meetings will, wherever possible, be at a mutually convenient date. Employees are reminded of the need to conclude investigations without undue delay and as such it will not always be possible to rearrange dates to accommodate their representatives.
- 1.12 The representative will be able to address the disciplinary panel to present the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee.
- 1.13 The representative will not be able to answer questions on behalf of the employee or address the panel if the employee does not wish it or prevent the employee from explaining their case.

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2 General

Confidentiality and Fairness

- 2.1 To maintain integrity in the process, and to avoid prejudicing the outcome of any investigation, proceedings must be kept confidential and information kept secure. All parties involved, including witnesses, are therefore required to maintain confidentiality throughout the process and not discuss or disclose information.
- 2.2 Employees have the right to be treated fairly and with respect. Action taken under this policy must be based on the basic principles of fairness and reasonableness. All managers involved in any stage of the process must therefore ensure that they act impartially and not seek to influence the outcome.
- 2.3 It is not the Council's policy to allow recordings of meetings held under this procedure. Any breach will be grounds for disciplinary action.
- 2.4 Officers will deal with issues promptly i.e. not delaying meetings, decisions or confirmation of decisions and will act consistently.

Employees with disabilities

- 2.5 Where an employee has a disability, officers involved in the application of this policy must give consideration to reasonable adjustments, which may be necessary to enable the individual to participate fully in the disciplinary process.
- 2.6 Should the nature of the disability result in or be the cause of the misconduct, advice must be sought from Human Resources and/or Occupational Health.

Complaints raised during disciplinary cases

- 2.7 If, during the course of disciplinary proceedings, an employee raises a complaint, which is related to the case, the complaint will be dealt with as part of the disciplinary process.
- 2.8 Where a grievance is raised which is unrelated to the disciplinary proceedings, the two matters will be dealt with separately.

Financial Misconduct

- 2.9 The Director, Finance and Corporate Services, and the appropriate Chief Officer must be informed of allegations of financial wrongdoing at the outset of any formal proceedings.
- 2.10 Decisions on whether allegations of financial wrongdoing (particularly fraud cases) are to be reported to the police, will be made by the Head of Audit &

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Investigation and the Audit & Investigation Team will be responsible for referring the matter to the police.

Monitoring and Review

- 2.11 All disciplinary action should be notified to the appropriate HR Advisory team for the purpose of monitoring. The monitoring information will include frequency, outcome of disciplinary cases and workforce profile of employees.

3 DEFINITIONS AND GENERAL INFORMATION

Employees

- 3.1 This policy applies to all employees of the council except for:
- Employees in their probationary period. Disciplinary issues during the probationary period should be handled under the council's Probationary Procedure.
 - Temporary employees with less than 12 months' continuous employment with the council.
 - Agency workers. Hounslow does not consider agency workers to be employees of the council. Any disciplinary issues should be addressed with the employing agency.
 - Teachers, and school-based non-teaching staff where the schools have separately agreed processes.
 - Employees within the scope of the Joint Negotiating Committees for Chief Officers and Chief Executives of Local Authorities (who are covered by separate disciplinary arrangements).

Disciplinary policy

- 3.2 This policy applies to all matters relating to:
- All breaches of the Code of Conduct
 - Conduct in the workplace
 - Breaches of council rules and standards
 - Activities and behaviour outside the workplace which may adversely affect the suitability of the employee to do their job, or the relationship between the council and the employee, or the relationship between the employee and work colleagues, elected members or customers
 - Allegations of misconduct arising from action under other council policies and procedures.

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Informal Action

- 3.3 In some cases informal action may be appropriate for the quick resolution of issues before they escalate into more worrying breaches of conduct.
- 3.4 This involves a prompt one-to-one meeting between the manager and the employee, aimed at improvement through advice, discussion, and training, as appropriate. The manager can inform or remind the employee about standards and agree actions for improvement.
- 3.5 Informal action does not count as disciplinary action. There is no right to be accompanied and no right of appeal. A written record of discussion and any action agreed should be given to the employee.
- 3.6 If during the informal discussion, the manager considers more formal action is needed, he or she should stop the discussion and make the arrangements for formal action.
- 3.7 Formal action should follow if this informal approach does not achieve the required improvement.

Misconduct

- 3.8 There are two types of misconduct:
- Misconduct – breaches of Hounslow's rules and procedures which may attract a range of disciplinary sanctions up to and including dismissal;
 - Gross misconduct – breaches that are considered to be so serious that the basis of trust between the council and the employee is seriously damaged or destroyed, and which will normally result in dismissal.
- 3.9 This policy applies principally to conduct at work. However, there may be exceptional circumstances where conduct in an employee's personal life may also involve sanctions up to and including dismissal.
- 3.10 Examples of acts of misconduct and gross misconduct are available on pages 21 and 22.

Sanctions

- 3.11 Disciplinary sanctions, which may be taken, are:
- Written warning(s)
 - Final written warning
 - Dismissal with or without notice
- 3.12 Any formal action will be recorded and retained on an employee's personal file and in certain circumstances may be declared to a statutory body.

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- 3.13 Written warnings must state the period of time over which the warning will be regarded as 'live' for the following periods of time:
- First written warnings – twelve months from date issued;
 - Final written warnings – two years from date issued.
- 3.14 An employee's conduct must be satisfactory during this time and any lapses in conduct will result in a more severe penalty. There may be circumstances where it is appropriate to take account of previous expired warnings at the time of further misconduct. Advice must be sought from a Human Resources Manager.

Contractual Notice

- 3.15 An employee who is dismissed from Hounslow's service will normally be entitled to contractual notice or pay in lieu of notice (subject to normal deductions) except where the dismissal is for gross misconduct where dismissal will be without notice or pay in lieu of notice.

Correspondence

- 3.16 All correspondence with employees' subject to disciplinary action (including letters convening hearings, details of allegations, documentary evidence and decisions of hearings) should be delivered either by 'hand' on behalf of the council, or by recorded or registered post or by email. A further copy should also be sent through the ordinary post.

Criminal Offences

- 3.17 Where allegations against an employee may potentially involve criminal offences, advice must be taken from the Head of HR or HR Managers before any action is taken under this policy.
- 3.18 Where an employee is the subject of a criminal investigation or a charge is pending regarding a criminal act, this will not normally be grounds to delay or prevent a hearing taking place. However, where a request is made by the police or Crown Prosecution Service to defer taking action, the Head of HR may consider this. Any deferral of disciplinary action in response to such a request should not continue on an open-ended basis.
- 3.19 Managers must not rely on obtaining evidence from the police/ external bodies, but should conduct their own investigations prior to the hearing. The focus should be for the investigation to conclude in a timely manner using the evidence available and drawing conclusions on the balance of probability rather than the more stringent test of beyond reasonable doubt used in courts.
- 3.20 In cases of fraud, the continuation of the disciplinary investigation must not compromise any separate criminal investigation; therefore, a decision to continue with the disciplinary case should be made in conjunction with the criminal investigator i.e. Audit & Investigation or the police.

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Criminal Convictions

- 3.21 Where an employee is convicted, dismissal could occur. If the conviction results in prison or similar custodial sentence, the employee may be dismissed on the grounds that they are unable to continue in their role. Dismissal may still occur without a conviction. In these situations, the HR Manager, in conjunction with Legal, will advise on the most appropriate course of action.
- 3.22 If an employee is convicted of a criminal offence, the council will identify how the conviction could affect its reputation, relationship with staff, customers or the public (or otherwise affect the employee's suitability to work for the council) in considering a dismissal.

4 SUSPENSIONS

- 4.1 Suspension should be used during the investigation/disciplinary process when it is clearly inappropriate for the employee to remain in the workplace. Suspension will normally be with full contractual pay and must be approved by the Head of HR or HR Manager in their absence. The Head of Service, with advice from HR, has authority to suspend an employee where a situation arises which requires immediate action.
- 4.2 Suspension should only be used in exceptional circumstances such as where:
- the severity/nature of the offence means that the employee's presence at work cannot be tolerated
 - the employee's continued presence could hinder or prejudice investigations (e.g. they may influence witnesses or interfere with relevant evidence)
 - the employee is charged with a serious criminal offence that is potentially inconsistent with their position
 - there is a clear and real concern that the employee or others may be placed at risk by them remaining in the workplace
- 4.3 Prior to suspension a manager should:
- Engage with the employee to determine their version of events regarding the allegations
 - Consider whether there are any available alternatives to suspension and whether suspension is warranted
 - Keep documentation of the reasons given for any suspension
 - Ensure that the employee has access to or is provided with a copy of the Disciplinary Policy and Employee Representation – Right to be Accompanied Policy
- 4.4 A manager may send the employee home pending a decision on formal suspension by the relevant Head of Service or HR Manager, subject to the

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approval of the Head of HR. Employees must be available to the council at all times during paid suspension (employees who wish to take annual leave must discuss this with their manager and seek approval in the usual way).

- 4.5 The manager will confirm the reasons for suspension to the employee in writing. The manager will advise the employee how long the investigation is likely to last. Suspensions should be for as short a time as possible and should be reviewed on a regular basis. Suspensions should be lifted promptly where there is no risk of prejudice to the investigation, or management consider there is no case to answer.
- 4.6 A suspended employee will require written permission from Human Resources to enter any council premises, whether this is to seek access to information or prepare a case. A suspended employee is not restricted from making contact with their trade union representative.
- 4.7 An employee who is medically unfit for work during suspension will be treated as absent for reasons of sickness and not on suspension. Pay may be withheld if an employee does not cooperate with the investigation during the period of suspension. Advice must be taken from the HR Manager.
- 4.8 The employee must be informed in writing of the decision. This will often be preceded by a meeting with the manager, at which the employee will have the right to be accompanied.
- 4.9 At the suspension meeting, and subsequently confirmed in writing, the employee will be informed:
- of the reason for the suspension decision
 - of the length of the suspension and arrangements for review
 - that the suspension is precautionary, not a sanction, and does not in itself infer blame
 - of the pay arrangement
 - of the course of action to follow e.g. investigation, hearing
 - of the conditions of the suspension, e.g. not attending council premises without prior approval from a named manager, no contact with colleagues or elected members, no contact with customers, contractors, no use of council equipment, resources
 - that they must remain available to cooperate fully with the disciplinary process,
 - that they must not engage in other work (paid or unpaid) during the contracted working time with the council.
 - that should they wish to take annual leave, this must be agreed in advance with a named manager, and in the case of sickness absence reported to the named manager
- 4.10 At the meeting the manager should also discuss with the employee what will be communicated to colleagues (service users if appropriate) to explain their absence from work.

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- 4.11 In implementing the suspension managers must ensure that due consideration is given to the safeguarding of relevant documents, records and other items of Council equipment. This may involve the employee:
- being escorted from the premises,
 - returning keys, ID passes, equipment provided e.g. mobiles, laptops, tablets etc.
 - having limited or no access to Hounslow IT systems
- 4.12 The confirmation letter must be sent to the employee within two working days of the suspension meeting or the decision. The decision to suspend may be applied as an investigation proceeds and further information comes to light. If so the same process should be followed.
- 4.13 The period of the suspension is to be as short as possible and kept under review for the duration of the investigation and hearing.
- 4.14 The HR Manager, in conjunction with the line manager, will review the suspension on a regular basis. The line manager will keep the employee informed of the suspension, progress in the disciplinary case and where appropriate other work-related matters.
- 4.15 In some cases the employee, or their trade union representative, may require information for the preparation of their case from either colleagues or service users. If so, they should make a written request to their HR Manager and not approach colleagues or service users directly. Access to such information will not be unreasonably refused.
- 4.16 The HR Manager should ensure that the Head of Human Resources is kept informed of the level of suspensions across the Council and the costs being incurred.
- 4.17 When the suspension is lifted, the employee's return to work must be managed appropriately, enabling a full transition back to the workplace. Notification of the end of the suspension and any arrangements for their return to work must be provided in writing.

5 QUALIFICATIONS AND COMPLIANCE ISSUES

- 5.1 Employees in certain professions may need to hold a specific regulatory classification and/or maintain certain standards to carry out their job (e.g. registration with a professional organisation). Where this is the case, the London Borough of Hounslow may have a duty to report incidents of alleged professional misconduct or serious performance issues to the appropriate registration authority or statutory body. Advice should be sought from a HR Manager.
- 5.2 If a statutory body is involved (for compliance/regulated posts), it is a requirement that serious allegations must be reported to it whilst disciplinary action is being taken against an employee.

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- 5.3 Where conduct issues involve employees working in safeguarding children or vulnerable adults, it is not appropriate to terminate disciplinary action if the employee resigns before this is completed. Where such circumstances arise, the manager **must** seek advice from the Head of HR or HR Managers.
- 5.4 Misconduct cases involving qualification and compliance, where there are statutory restrictions on employment, will be dealt with by line managers, with the assistance of Human Resources. The manager will meet with the employee to investigate, ensuring that the employee is not continuing to work if it is illegal to do so.
- 5.5 A disciplinary hearing will then be arranged involving a Head of Service or Chief Officer and the employee will have a right of appeal as set out in section 8.

6 ROLES AND RESPONSIBILITIES

Employees

- 6.1 Employees have a responsibility to:
- Familiarise themselves and comply with the disciplinary policy and procedures that apply in relation to their employment
 - Ensure that they have read the Code of Conduct and comply with the corporate standards set by the council
 - Comply with all reasonable management instructions
 - Adopt appropriate standards of behaviour towards others, including employees', members and customers and co-operate with disciplinary investigations
 - Tell managers as soon as possible where problems arise which may impact on their behaviour or performance at work, e.g. personal or health issues
 - Report potential malpractice or fraud to their line manager or to the Head of Audit and Investigations whenever they become aware of it.

Temporary Employees

- 6.2 Where disciplinary issues arise with a temporary employee with less than 12 months' continuous service, the employee's manager or designated senior officer will investigate where appropriate, and a meeting will be convened with the employee to discuss the issues and impose any disciplinary sanction (as set out in 3.6).
- 6.3 The employee will have a right of appeal to a manager of the same level of seniority as or at a higher level of seniority than the manager who made

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the disciplinary decision. An employee may be dismissed without being given a prior warning.

Line managers

- 6.4 Line managers have responsibility for reporting and ensuring that action is taken on misconduct issues that fall within the scope of this policy. This includes reporting potential malpractice or fraud to the Head of Audit & Investigation whenever they become aware of it. Line managers will be called upon to investigate cases and hear disciplinaries for cases of misconduct and gross misconduct outside of their service areas.
- 6.5 Line managers must use these procedures and should not use informal processes. Managers below Head of Service level may **not** carry out suspensions and hear cases which could result in dismissal.

Executive Directors, Directors and Heads of Service

- 6.6 Executive Directors, Directors or Heads of Service will hear gross misconduct cases which may result in dismissal. Executive Directors, Directors or Heads of Service at the same level of seniority or at a higher level of seniority as the Hearing Manager will hear appeals against disciplinary action including dismissal.

Human Resources

- 6.7 The role of Human Resources is to provide advice on this procedure, keep the policy up to date and participate in any associated investigations and hearings. All disciplinary cases must be reported to HR in the first instance.
- 6.8 Where the case involves potential malpractice or fraud, Human Resources should ensure that the Head of Audit and Investigations has been notified.

Trade Unions

- 6.9 The role of the trade unions is to represent the views and interests of their members on this policy and associated procedures, as a need arises, and to advise and represent individual members as appropriate.
- 6.10 Where concerns about conduct involve an employee who is an official of a recognised trade union, the matter should be discussed at an early stage with an official employed by the relevant trade union (prior to the proposed action). The Head of HR or HR Manager should also be notified as soon as possible about cases involving trade union representatives and will advise if any other action is required. This should not delay managers taking the appropriate steps in the normal way under this policy.

7 APPLYING THE DISCIPLINARY PROCEDURES

Timescales

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- 7.1 All parties involved in disciplinary proceedings have an obligation to co-operate in ensuring that processes and reasonable timescales are followed.

Investigation

- 7.2 Where a disciplinary issue has arisen, a manager will seek advice from Human Resources and a decision will be reached as to who will carry out the investigation. This may be an internal investigating officer or an externally appointed investigator. External investigators are appointed by the Head of HR or HR Managers. All internal investigators must have undergone investigation training organised by the council. If it is necessary for an untrained manager to conduct an investigation then approval may be sought from the Head of HR, who will ensure that the officer is briefed on their responsibilities by a HR Adviser.
- 7.3 The Audit and Investigations Team will carry out investigations into cases of alleged fraud, corruption and financial misconduct or anti-fraud and corruption strategies. Normally an employee will be informed in writing about any allegations as soon as possible, save in exceptional circumstances.
- 7.4 Allegations against an employee must be set out comprehensively, this means that initial fact finding is required to determine the correct type of allegations. HR Managers will advise on the appropriate wording of allegations.
- 7.5 Anonymous allegations made against an employee are not normally investigated unless the Head of HR considers by exception otherwise. Employees are required to co-operate with the investigation and further disciplinary action will be taken against an employee who refuses to comply with a reasonable management instruction in relation to an investigation or deliberately misleads the investigation.

Representation

- 7.6 Employees have a statutory right to be accompanied at the disciplinary hearing and appeal by a trade union representative or a work colleague. See paragraphs 1.10 1.13.
- 7.7 The investigatory meetings do not attract the statutory right to be accompanied, employees may however be accompanied by a trade union representative or work colleague.

Investigation report

- 7.8 The Investigating Officer will produce an investigation report as soon as practicable and present it to Human Resources and the Manager who commissioned the investigation. The report will give details of allegations, evidence, mitigation findings and a recommendation on whether the case should proceed to a disciplinary hearing. The employee's account of the

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events, witness statements and supporting documentation should be attached to the report.

- 7.9 If the report is accepted and disciplinary action is required, a formal disciplinary hearing will be convened by the disciplining manager and the employee will be informed in writing. Where it is decided not to proceed to a formal hearing, the employee will be informed.

Records of interviews, meetings and hearings

- 7.10 A written record of all investigation interviews and hearings must be taken. It will not be a verbatim record but will accurately reflect all of the issues raised at the interview/hearing. Following an investigation interview the employee/witness(es) must be asked to sign and date the interview record as being an accurate record of the interview. Any disagreement concerning the record should be annotated in the document by the employee/witness(es) and reflected in the investigation report.
- 7.11 Following a disciplinary hearing the Hearing Manager is responsible for producing the record of the hearing. The Hearing Manager must also provide a letter summarising the case, details of the decision made and the reasons.

Convening a disciplinary hearing

- 7.12 The disciplining manager is responsible for organising disciplinary hearings and for ensuring that an accurate record of events is produced.
- 7.13 If a disciplinary hearing is convened, the employee will be informed in writing of:
- Date, time and place of the hearing
 - Who will hear the case
 - Who will present the management case
 - Details of the allegation(s)
 - The status of the hearing and the possible consequences including where appropriate dismissal
 - How any current 'live' warnings will be treated in reaching a decision
 - The right to be accompanied by a trade union representative or Hounslow council worker
 - The right to call witnesses and to produce relevant information.
 - Any witnesses to be called to support the management case.

The employee will be given:

- At least seven working days written notice of the disciplinary hearing

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- A copy of the Investigating Officer's report (including witness statements) where an investigation has been conducted
 - Access to a copy of Hounslow's Disciplinary Policy.
- 7.14 All documentation from both parties must be provided at least three working days before the hearing along with the names of any witnesses to be called. The employee and the Investigating/Presenting Officer are responsible for arranging any witnesses and organising their attendance.
- 7.15 In certain circumstances it may be appropriate to restrict the calling of witnesses where for example, it could have a detrimental impact on service provision or due to extremely sensitive circumstances. This would be by exception and where there is good cause. The council would not prevent the calling of witnesses in the case of gross misconduct.

Disciplinary hearing

- 7.16 The hearing will normally involve the Hearing Manager and a Human Resources Adviser. The disciplinary manager will also need to arrange for a note taker to be in attendance. In exceptional circumstances, it may be appropriate for a HR Adviser to take the notes. The Hearing Manager will be an independent person who will not have had any previous involvement in the case. An independent person is defined as someone who will not have been involved in a manner which prevents them from determining an objective outcome.
- 7.17 The Hearing Manager will decide whether to consider documentation submitted by either party outside the timescales in this Policy. In exceptional circumstances a specialist may form part of the panel. A manager below Head of Service level may not hear cases which may result in dismissal.
- 7.18 The Hearing Manager will ensure that the process is fair and implement and conduct the proceedings to ensure that:
- Hounslow's procedures are followed
 - The hearing is free from any bias
 - The employee understands the nature of the allegations
 - The employee is given the opportunity to state his/her case.
- 7.19 In summary, the conduct of the hearing will be as follows:
- Manager's case is presented, examined and questioned
 - Case for the employee is presented, examined and questioned
 - Further questioning and clarification as requested by the Hearing Manager
 - Closing statements
 - Decision.

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Guidance on format of Disciplinary Hearings

7.20 A guide to the running order for the hearing is provided below:

- introductions of those present and their roles
- explanation of the purpose of the hearing and the procedure to be followed
- allegations against the employee to be set out
- investigating officer(s) to be invited to present the management case, setting out their supporting evidence and calling witnesses if appropriate
- witnesses will be invited into the room on individual basis to give their evidence, respond to questions as required and will then leave the room
- the employee and/or their representative given the opportunity to question the evidence presented by both management and their witnesses
- the panel to put any questions to management and their witnesses
- the employee and/or their representative to be invited to state their case, present evidence, any mitigating factors and call witnesses
- witnesses will be invited into the room on individual basis to give their evidence, respond to questions as required and will then leave the room
- the investigating officers to be given the opportunity to question the evidence put forward by the employer or their witnesses
- the panel to ask any questions of the employee
- investigating officers to sum up the management case
- the employee or their representative to sum up their case
- no new evidence may be introduced by either side while summing up
- any final questions from panel to either side
- hearing adjourned and the panel will consider the evidence presented to them and arrive at a decision on all the allegations
- the hearing manager will convey the decision to the employee in writing within five working days
- the hearing manager will also inform the Lead Management Officer of the panel's decision

Panel Adjournments

7.21 In some cases the panel may need to adjourn the hearing in order to gather further information. If so, the employee will be informed of the expected duration of any adjournment.

7.22 Where further information is gathered, the employee will be allowed a reasonable period of time, together with their representative, to consider the new information prior to the reconvening of the hearing.

7.23 As soon as possible after the conclusion of the hearing, the hearing manager will convey the decision of the panel to the employee. The decision and right of appeal will be confirmed in writing within five working days. A copy of the written notification must be forwarded to Human Resources Business Support Services (for record retention).

7.24 Where the employee is unable to attend a disciplinary hearing and provides a reason for failing to attend, which is acceptable to the hearing

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manager, the hearing will be rearranged to another day. In making these further arrangements the employee should receive three working days' notice of the rearranged hearing.

- 7.25 Where an employee provides a GP note citing stress as a reason for non-attendance this is not sufficient justification to delay the hearing. The employee, through their GP, should provide accompanying detailed medical reason for the employee being unable to proceed with the disciplinary process at that stage.
- 7.26 If the employee is unable or fails to attend the rearranged hearing, it may take place in the employee's absence. In deciding to proceed, the hearing manager must take the circumstances leading to the non-attendance into consideration. The employee's trade union representative or work colleague may attend without the employee as a last resort and will be allowed the opportunity to present the employee's case. The employee may be allowed to make a written submission as an alternative.

Decision

- 7.27 The Hearing Manager will decide whether the allegation(s) is substantiated, based on the balance of probabilities taking all the evidence into consideration and any disciplinary sanction to be imposed. Where possible, the Hearing Manager will give the decision verbally at the end of the hearing after a period of adjournment to make the decision. In all cases the decision will be given in writing within five working days of the meeting.

Dismissal approval process

- 7.28 All dismissal decisions need to be discussed with the Head of HR or a HR Manager in their absence.

8 APPEALS

Right of appeal

- 8.1 An employee has the right of appeal against disciplinary action taken under this procedure.
- 8.2 An appeal may be lodged on one or more of the following grounds:
- Procedure – where failure to follow the correct procedure has had a material effect on the decision
 - The facts of the case – where the Hearing Manager came to a conclusion on a material point of fact, which no reasonable person could have reached
 - Sanction – where no reasonable Hearing Manager would have decided the particular sanction given the circumstances of the case

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- New evidence is available that could not have reasonably been raised at the disciplinary hearing and the absence of which had a material effect on the decision.

8.3 Appeals will not be allowed on any other grounds.

Timescale

Appeals against dismissal

8.4 Appeals against dismissal must be made to the Head of HR, in writing, within five working days of receipt of the notice of dismissal. The Head of HR will arrange for an Employment Dismissal Appeals Panel. A separate procedure exists for the conduct of the Employment Dismissal Appeals Panel.

Other Appeals

8.5 Appeals against decisions (other than dismissal) must be lodged in writing to the Hearing Manager within five working days of the receipt of the letter informing the employee of the outcome of the disciplinary hearing and must outline the grounds of appeal.

Appeal Panel

8.6 Appeals against decisions, other than dismissal, will be heard by Heads of Service. The Hearing Manager will present the management case. They may be accompanied at the appeal hearing by the officer who presented the management case at the disciplinary hearing i.e. the investigating officer.

8.7 An adviser from Human resources will be present to advise the panel. For some appeals it may be appropriate to have a legal adviser present as well.

Process

8.8 On receipt of the grounds of the appeal, the Hearing Manager will forward the appeal to Human Resources. Human Resources will prepare a response to the employee's appeal and liaise with the disciplining manager to appoint a hearing manager to chair the Appeal.

8.9 An employee will be given seven working days' notice in writing of the appeal hearing. Documentation and information regarding witnesses to be called must be provided by both parties at least three working days prior to the hearing. A copy of the disciplinary policy will be made available to the employee.

8.10 In certain circumstances, it may be appropriate to restrict the calling of witnesses where for example, it could have a detrimental impact on service provision or due to extremely sensitive circumstances. This would be by

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exception and where there is good cause. The council would not prevent the calling of witnesses in the case of gross misconduct.

- 8.11 The appeal hearing will not be a rehearing and will only address the specific grounds of appeal set out in the employee's appeal submission, and new evidence where appropriate.
- 8.12 The appeal hearing should take place within 14 working days of receipt of the employee's written notice of appeal. Where this timescale cannot be met, the employee should be informed of the reason for the delay.

Decisions

- 8.13 The possible outcomes of an appeal hearing are as follows:
- Uphold the original decision in its entirety
 - Allow the appeal in its entirety
 - Allow the appeal in part (where the appeal challenges more than one finding of misconduct)
 - Reduce the severity of the sanction.
- 8.14 Decisions will be confirmed in writing outlining reasons for the findings. There is no further right of appeal.

Appeal Hearing

- 8.15 The panel has the discretion to adjourn the hearing for additional information to be acquired if deemed necessary. If so, the employee will be informed of the expected duration of any adjournment. Where further information is gathered, the employee will be allowed a reasonable period of time, with their representative, to consider the new information prior to the reconvening of the appeal hearing.
- 8.16 The Chair will manage the proceedings and will:
- Invite both the employee, their representative and the management side to be present in the room at the same time
 - Introduce all parties and explain the purpose of the hearing
 - Ask the employee or their representative to present their grounds of appeal, setting out the evidence to support their argument
 - Invite the management side and the panel to put questions to the employee
 - If appropriate, ask the employee to call any witnesses individually
 - Invite the management side and the panel to put questions to the witnesses
 - Call upon the management side to respond to the appeal
 - Allow the employee (or their representative) and the panel to put questions to the management side
 - Ask the manager to call any witnesses individually

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- Invite the employee (or their representative) and the panel to put questions to the witnesses
 - Ask the management side for their closing address to sum up their case. No new evidence may be introduced at this stage.
 - The employee (or their representative) to be invited to make a closing address to sum up their case. No new evidence may be introduced at this stage.
 - Request both sides to withdraw from the hearing to allow the panel to make their deliberations
- 8.17 The panel must decide on the basis of both sets of representations, together with any additional information acquired, whether to allow the appeal, reject it or substitute a lower level warning.
- 8.18 The decision following the appeal is final and there is no further right of appeal. The decision will be confirmed in writing within five working days of the appeal hearing.

9 MISCONDUCT AND GROSS MISCONDUCT

What constitutes Misconduct?

- 9.1 This policy is rooted in the Council's Code of Conduct. The Code sets out the standards expected from employees and includes such matters as: attendance, performance, confidentiality, personal interest, health and safety, use of computers etc. Breaches of these and/or other similar procedures and regulations would normally lead to the disciplinary policy being invoked.
- 9.2 Concerns around performance will normally be addressed through the Capability policy. However, if poor performance is due to negligence or serious error on the part of the employee, it should be addressed under this disciplinary policy.

Misconduct

- 9.3 Examples of misconduct may include, but are not limited to:
- bullying, harassing or other abusive behaviour
 - repeated occurrences of lateness or absence
 - being an accessory to a disciplinary offence
 - negligence in the performance of duty
 - falsehood or abuse of one's position within the Council
 - breaches of the provisions and policies of the Council
 - dishonesty including lying or falsifying records/ documents
 - failure to notify the department of gifts, benefits or hospitality offered
 - unreasonable refusal to follow management instructions
 - failing to declare a conflict of interest (may escalate to gross misconduct depending on the nature of the conflict)
 - disclosing sensitive/ confidential information

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Gross misconduct

9.4 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the employer and may justify dismissal without notice or pay in lieu of notice.

9.5 Matters that the Council views as amounting to gross misconduct may include, but are not limited to:

- fraud or stealing from the Council, Members, employees, service users or contractors
- falsification of a qualification or any other matter that is a stated requirement of the employee's employment or results in financial gain to the employee
- falsification of applications, records, reports, accounts, expense claims or self-certification forms whether or not for personal gain
- sexual misconduct at work
- fighting with, physical assault, or the verbal threat of physical assault on Members, employees, service users or contractors, members of public
- deliberate or serious damage to or misuse of Council property
- being under the influence of alcohol or illegal drugs whilst at work
- possession, custody or control of illegal drugs (other than medically prescribed) or stolen goods
- serious breach of the Council's rules, including, but not restricted to, health and safety rules, rules on computer use and data management
- gross negligence or incompetence where actual or potential consequences of that error are, or could be, extremely serious
- conviction of a criminal offence that is relevant to the employee's employment
- criminal activities outside work, where such conduct is judged to be incompatible with the individual's employment, or where it could bring the council into disrepute
- failing to notify your manager if you are charged with or convicted of a crime
- conduct that brings or may bring the Council's reputation and integrity into disrepute
- discrimination, serious bullying or harassment of a fellow worker or service user on the grounds of sexual orientation, race, disability, age, religion or belief
- acceptance of bribes or bribery offences under the Bribery Act 2010

9.6 Other acts of misconduct may be gross misconduct; including repeated acts of misconduct if sufficiently serious and after warnings issued. The above lists are merely examples and are not an exhaustive list.

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