

# Disciplinary Policy and Procedure

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This policy and procedure for the Council provides a method of dealing with any concerns regarding an employee's conduct at work.

The Council expects professional standards of behaviour, attendance and adherence to regulations, relevant policies and/or procedures from all the Council's employees.

It is part of the normal people management duties that when there is a lapse in professional standards, employees are reminded of what is required of them.

It ensures compliance with equality & diversity, making sure consideration is given to the needs of employees, balancing these with the needs of the business of the Council.

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# Disciplinary Policy and Procedure

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# Disciplinary Policy & Procedure

## Introduction

The Council will treat any behaviour which may bring them into disrepute or impede the proper execution of its business, very seriously. Such behaviour may be considered either Misconduct or Gross Misconduct.

Any commission of an act(s) of Misconduct or Gross Misconduct by an employee, whether listed within this policy or not, will result in appropriate disciplinary action. If it appears that failure to meet standards may be due to lack of capability on the part of the employee, then this will not be pursued as a disciplinary matter and the Council's Improving Performance (Capability) policy and procedure will be followed.

The Council will not victimise any employee who either represents a colleague or acts as a witness in support of a colleague in disciplinary cases.

Wherever possible, concerns should be resolved informally without recourse to formal procedures. This normal people management practice does not form part of this disciplinary procedure.

Where it is not possible for a concern to be resolved informally, or the severity of an allegation warrants it, the formal procedure detailed below will be followed. The Council however, reserve the right to start investigating a disciplinary matter, without notice, in exceptional circumstances.

The Council reserves the right to implement the disciplinary procedure at any stage as set out below, considering the alleged misconduct of an employee.

Where time limits are referred to in the course of this procedure, they may be varied by agreement between the employee and their employing council.

This policy sets out the right of appeal against any level of disciplinary action, including dismissal.

Disciplinary procedures will not be instigated against a trade union representative until the circumstances have been discussed with the full-time official; with the exception of suspending the employee in the case of suspected gross misconduct.

All employees have access to an employee assistance programme (EAP) throughout all stages of the procedure, which provides external, confidential, free-of-charge support, 24/7 all year round, including counselling, which may assist them with the process. Details are available on the Council's intranet or from HR ([HR@pspl.co.uk](mailto:HR@pspl.co.uk)) and will be highlighted in key correspondence with the employee during the process.

In addition, an appropriate support person (employee) from within the Council, who understands the importance of confidentiality, will be assigned to be a support person for an employee if they are suspended from work.

### **Governing Legislation**

This policy and procedure adhere to UK employment law, the ACAS Code of Practice on Disciplinary & Grievance Procedures together with the CIPD's best practice guidance in good employee relations.

### **Scope of the Policy**

This Disciplinary policy and procedure apply equally to all employees who work for the Council, with the exception of those in statutory chief officer, non-statutory chief officer and deputy chief officer roles where separate procedures will apply. Those procedures are set out in the Council's Constitution.

The following statutory chief officer, non-statutory chief officer and deputy chief officer roles within the Council are exempt, and are instead subject to the Chief Officer Employment Panel and Chief Officer Employment Appeals Panel, as set out in the Constitution and within the Memorandum of Agreement relating to an integrated Shared Workforce structure, between Boston Borough Council, East Lindsey District Council and South Holland District Council, known as the South and East Lincolnshire Councils Partnership (SELCP).

The statutory roles are, as follows:

1. Head of Paid Service
2. Section 151 Officer
3. Monitoring Officer

The Chief Officer roles are, as follows:

1. Chief Executive (if different from the Head of Paid Service)
2. Deputy Chief Executive

The Deputy Chief Officer roles are, as follows:

- Assistant Director – Wellbeing and Community Leadership
- Assistant Director – Regulatory
- Assistant Director – Leisure & Culture

- Assistant Director – Neighbourhoods
- Assistant Director – Corporate
- Assistant Director – Governance & Monitoring Officer
- Assistant Director – Finance
- Assistant Director Housing
- Assistant Director – Economic Growth
- Assistant Director – Planning and Strategic Infrastructure
- Assistant Director – Strategic Projects
- Assistant Director – General Fund Assets
- Assistant Director Strategic Growth & Development

This policy is designed to help the Council’s employees to achieve, and maintain, standards of conduct and adherence to regulations and policies consistent with their terms and conditions of service.

The aim of this policy is to ensure prompt, consistent and fair treatment for all employees and to enable both the individual and the Council to be clear about the expectations of all parties.

## **1. Key Responsibilities**

### **1.1 Employee’s Responsibilities**

- All employees of this Council have a responsibility to conduct themselves in a professional, consistent, and respectful manner and with consideration for others.
- All employees have a responsibility to familiarise themselves with, and adhere to, the Council’s policies which are provided to them on appointment and are available on the HR and Payroll system, First4HR.

### **1.2 Manager’s Responsibilities**

- All Managers are responsible for promoting good standards of work and monitoring & reviewing employee performance and conduct, addressing problems without undue delay and for taking appropriate action.
- Any issues should, wherever possible, be resolved by People Managers informally.
- All Service Managers should discuss potential disciplinary matters with their Assistant Director before starting the formal disciplinary procedure.

### 1.3 Human Resources (HR) Responsibilities

- The Human Resources Team – PSPS Ltd is responsible for providing informed advice and guidance to managers and has specific role to provide professional support during the formal stages of the Disciplinary procedure.
- HR responsibilities will include drafting correspondence under this policy & procedure on behalf of e.g., the Assistant Director, Disciplinary Hearing Chair and Appeal Chair.

### 1.4 Investigating Officer (IO) Responsibilities

- The Assistant Director will consider the facts of the situation and appoint a Manager or other suitable person, as an independent Investigating Officer (IO).
- It is the IO's role to determine whether there is a disciplinary case to answer.
- The IO will consider the initial information about the allegation and, with the Assistant Director, they will determine the level and scope of their investigative actions, dependent on the nature, seriousness, and sensitivities of the case, to ensure that they can deal with it in a fair, proportionate, and efficient manner.
- Training, guidance, and support will be provided to those who are appointed to deal with investigations or chair disciplinary or appeal hearings.

### 1.5 Assistant Director (AD) responsibilities

- To support People Managers in their directorate with any potential misconduct issues, listening carefully to the facts presented and seeking further advice e.g., from HR, before deciding if an investigation should be commissioned, or if the matter is a minor concern which can be dealt with under Informal Resolution (Section 3).
- To appoint a Manager or other suitable person who has received investigations training to act as independent Investigating Officer (IO) where an investigation needs to be commissioned.
- The Assistant Director may appoint an external independent investigator in cases where this is deemed necessary. This will only be done in exceptional circumstances.
- To consider the initial information about the allegation and with the IO, determine the level and scope of their investigative actions.
- To ensure that communication with the employee is conducted efficiently and effectively in line with this policy and procedure, including letters where specified, with the support of HR.
- To monitor the timescales of the investigation and disciplinary procedure, ensuring that any delays are minimised, and that the procedure is conducted thoroughly.
- The Assistant Director is the decision-maker regarding the suspension of any employee

**Where an allegation or other potential disciplinary matter involves an Assistant Director as a potential subject of the investigation, a more senior Director or Officer will be appointed to take on the above responsibilities.**

## 1.6 Witness Responsibilities

- Reasonable requests made by an IO to attend a Fact-Finding Meeting and/or provide a statement to assist the investigation of a case, should be met. Unless there are reasonable grounds for not doing so. These reasons must be given to the IO without undue delay.
- Witnesses may also be called to attend or provide statements during a Disciplinary Hearing.
- Witnesses should provide evidence in good faith, if such evidence is found to be malicious or vexatious, it may be necessary to commence disciplinary action against the individual.
- Witness requests to not have their name put on their statements will only be agreed in very exceptional circumstances. While there is no legal requirement to disclose the identity of witnesses, failure to do so can undermine the employee's right to challenge properly the evidence.
- The Council has an obligation to undertake a fair disciplinary procedure, which will include attempting to obtain reliable, corroborated evidence. Therefore, Investigating Officers will check the validity of a witness, consider any reports of threatening behaviour against them, as well as the witness' credibility, and if they would have any reason not to tell the truth, before agreeing to a request to make a witness statement anonymous.
- This process will be undertaken with HR support.

## 1.7 Companion Responsibilities, including Trade Union Officials & Representatives

- An employee's companion may be a trade union official, trade union representative or work-place colleague; their role is to support the employee (their member) and on occasions, may act as an advocate.
- The role of the companion is to assist and support the employee by acting as a friend and advisor. The companion may put the employee's case forward, summarise it at the end or ask questions to clarify understanding of the situation.
- The employee must notify HR in advance of the meeting, who they have chosen as their companion. Where there may be a conflict of interest with the chosen companion then the employee will be advised by HR to select a different companion.



- Colleagues who do not wish to accept an invitation to act as a companion are not obliged to do so.
- Companions may attend meetings during working hours without loss of pay and will be given reasonable time to familiarise themselves with the matter and confer with the employee both before and after meetings.
- Employees are responsible for ensuring their companions are willing to support them and are able to attend meetings and/or hearings. Employees may not appoint a legal representative or anyone external to the Council, other than a recognised trade union official or representative, to act as a companion.
- In extenuating circumstances, the Council may, as a reasonable adjustment, agree to allow a companion to attend who is not listed above, to support the employee.
- Companions do not have the right to respond to questions posed to the employee or views expressed at the Disciplinary Hearing.

## **2. Interaction with Grievance Policy & Procedure**

### **2.1 Disciplinary proceedings following a grievance which has been upheld**

Where, after investigation, a grievance against an employee is upheld, it may be necessary to commence disciplinary proceedings under this policy. In such cases it will not be necessary to conduct another investigation.

### **2.2 A grievance raised during the disciplinary process**

If a grievance is raised during the disciplinary process, it may be appropriate to pause the disciplinary process until the grievance has been resolved. If the grievance is linked to the disciplinary hearing, both processes may run at the same time.

### 3. Informal Resolution

Where there is minor concern about an employee's conduct, it should be dealt with informally.

Where appropriate, the People Manager should have a two-way discussion, clearly stating the reasons for the discussion, exploring ways that the employee could improve and for the improvement to be sustained.

Both the People Manager and the employee should keep a written record of their discussions and outcomes.

Where this fails to resolve the matter or it is serious enough to warrant the formal process from the outset, the following Disciplinary Procedure should be followed.

### 4. Formal Disciplinary Procedure

#### 4.1. Stage 1 – Commencement of the Investigation

If a complaint against an employee has been formally investigated under the Grievance Policy and the outcome is that disciplinary proceedings should commence then it will not be necessary to investigate again. In these circumstances you should proceed to the stage outlined at Stage 2 – Invitation to the Formal Disciplinary Hearing.

In all other cases where an allegation of a disciplinary matter is raised against an employee, it will be necessary for a Fact-Finding Investigation.

An independent IO will be appointed by the Assistant Director and then together they will establish and agree the scope of the investigation. The IO in consultation with HR, will investigate the facts of the situation. The objective will be to:

- establish the nature of the allegation(s), and whether there is a case to answer, and
- give the employee the opportunity to comment on the issues under investigation.

Investigations will be conducted objectively, fairly, reasonably, and lawfully. They will be conducted as quickly as possible without compromising their completeness.

The nature of the alleged misconduct may result in the employee's suspension from duty at any stage in the investigation.

The employee who is the subject of an allegation(s) should be verbally informed by their people manager of the allegation(s) and that an investigation is commencing into these. In the exceptional circumstance where face to face may not be possible, this may be done over the phone or in writing only. The employee must be informed of the investigation, in writing by the Assistant Director. The employee will be sent a copy of this policy along with the letter which will include:

- the nature of the allegation(s) against the employee;

- the name of the IO and their role;
- that the employee will be contacted during the investigation period to be invited to a fact-finding meeting with the IO regarding the allegation.

## 4.2. Stage 1 – Invitation to the Fact-Finding Meeting

When the IO is ready to hold the fact-finding meeting with the employee, a further letter will be sent to the employee inviting them to the fact-finding meeting. The letter to the employee will include:

- the date, time, location, and purpose of the meeting (which will be held without undue delay whilst also giving the employee sufficient time to prepare for the meeting);
- the right to be accompanied by a work-place colleague or Trade Union Representative and the need to notify HR of the individual in advance of the meeting
- the name of any other person attending the meeting (e.g., HR support if agreed advisable), and their role

## 4.3. Stage 1 -The Fact-Finding Meeting

The purpose of the Fact-Finding Meeting is for the IO to establish the nature of the allegation, find the facts of the case, listen to the employee and others, and determine if there is a case to answer.

Any Fact-Finding meeting with the employee will be held by the IO without undue delay.

At any Fact-Finding Meeting, the employee will be given the opportunity to present their response to the allegation in a calm, fair and objective manner.

Factors to be taken into consideration include:

- What actually occurred;
- Whether there is evidence to substantiate the allegation(s);
- Any precedents;
- Any mitigating circumstances;
- What policies or standards may have been breached and how.

The IO may wish to, at any point during the Fact-Finding process, request an employee attend a further Fact-Finding Meeting or reconvene a meeting if new facts have arisen and further time or information is required to consider the case. This will be done without undue delay.

A record of the witnesses' evidence given at the Fact-Finding Meeting will be kept in the form of a written statement which they have read and signed.

Fact-Finding meetings may be recorded with the permission of all present and their consent will be noted in the written statement as well as in the recording itself.

#### 4.4. Stage 1 - After the Fact-Finding Meeting

After the Fact-Finding Meeting, the IO will; without undue delay, compile an Investigation Report setting out the findings of the Investigation. A copy of the confidential Investigation Report will be provided to the Assistant Director and HR.

The Assistant Director will inform the employee, in writing, of the outcome of the investigation. If it is concluded that there is substance to the allegation(s) then the matter will progress to a Formal Disciplinary Hearing.

If it is found that there is no substance to the allegation(s), then the employee will be notified accordingly. This will be confirmed in writing by the Assistant Director.

A copy of the Investigation Report will be provided by HR to the employee's People Manager, unless there is no case to answer and there are no management or employee action(s) to follow-up.

Some examples of what can constitute Misconduct or Gross Misconduct have been provided in this policy. There may also be other reasons why conduct is classed as misconduct or gross misconduct.

Each alleged breach will be carefully considered and judged on individual circumstances before any disciplinary action is decided.

#### 4.5. Stage 2 – Invitation to the Formal Disciplinary Hearing

The purpose of the Formal Disciplinary Hearing is for the Chair to listen to the allegation(s), to provide the employee with an opportunity to respond and present their case, and to consider what disciplinary action if any is appropriate.

If there is reasonable evidence from the Investigation Report that there is a case for the employee to answer, then a Formal Disciplinary Hearing will be held. A Disciplinary Hearing will be arranged without unreasonable delay.

A letter will be sent to the employee prepared by HR and signed by the AD, without undue delay, informing them of:

- the nature of the allegation(s) and that the meeting is to be a Stage 2 – Formal Disciplinary Hearing;
- the date, time, location, and purpose of the hearing (to be held without undue delay whilst giving the employee sufficient time to prepare);
- to inform you of any reasonable adjustments or accessibility requirements

- the possible level of seriousness implied by the alleged misconduct along with a copy of the Investigation Report and all accompanying witness statements & appendices. A copy of this policy & procedure will also be included if not already provided.
- the right to be accompanied by a work-place colleague, trade union official or trade union representative and the need to notify HR of the individual in advance of the hearing;
- the names and roles of the people who will be present at the hearing;
- the need for the employee to provide the names of any new witnesses or new written witness statements, or any other new evidence to HR for circulation at least 3 working days before the scheduled Stage 2 – Formal Disciplinary Hearing.
- details of the Employee Assistance Programme and any other wellbeing resources as appropriate to the individual situation.
- the need for the employee to notify HR of any special requirements in advance of the Disciplinary Hearing.

Bearing in mind the need to deal with disciplinary matters efficiently and effectively, depending on timescales and all the circumstances of the matter, the letter may be combined with confirmation of the outcome of the investigation in writing by the AD. Alternatively, they may be separate letters, as appropriate to the circumstances of the case.

#### 4.6. Stage 2 – The Formal Disciplinary Hearing

The Disciplinary Hearing will be conducted by an appropriate manager more senior than the employee concerned and not previously involved in the matter (who will act as Chair) along with a member of PSPS HR. The Investigating Officer will also attend to present their findings.

All parties present should conduct themselves in a polite and respectful manner as fits a formal meeting. The Chair may make directions to ensure that all parties comply with these requirements.

The Disciplinary Chair will consider the findings from the Investigation Report and will decide if they need to put further questions to the IO.

The employee will be entitled to present their case and respond to the allegation(s).

The Disciplinary Chair will question the employee and any new witnesses. The employee and/or their companion will be entitled to put forward any questions or responses to the IO, witnesses or witness statements, or other evidence. The HR support may also ask questions of any parties.

The employee will be given the opportunity to summarise their case, if at any time, evidence arises which needs further investigation, then the Disciplinary Hearing will be adjourned to a later date.

If further time is required for consideration of the case, the Disciplinary Hearing will reconvene (without undue delay) and the employee will be sent a letter by HR advising them of the new date.

If the employee is unable to attend then they will be informed of the decision taken at the hearing, in writing.

The Disciplinary Chair will, after due reflection and proper consideration, decide, based on the balance of probabilities, on all available evidence, whether the employee did or did not act or behave as alleged in the way cited. It will also determine what level of disciplinary action should be taken (if any).

Factors to be taken into consideration when making such a decision on disciplinary action are:

- the impact of the misconduct and whether policy or standards have been breached. If so, which policy and/or standard? Which specific section or clause of which particular document?
- the gravity of the case; is disciplinary action warranted? If so, at what level?
- any precedents;
- the employee's disciplinary and service record;
- any relevant mitigating circumstances

A decision reached on the day of the disciplinary hearing will be communicated orally to the employee by the Chair, and then followed up in writing.

#### 4.7. Stage 2 – After the Disciplinary Hearing

The Chair of the Disciplinary Hearing will notify the employee in writing of the decision, as soon as possible after the disciplinary meeting.

The outcome letter will include:

- the date of the meeting and names/titles of those present;
- details of the allegation(s) that are/are not well-founded, on the balance of probabilities;
- what the breach(es) of policy or expected standards was
- the level of disciplinary action and the supporting reasons, including any mitigation taken into account;
- the timescale that any warning will remain current;
- the improvement required of the employee, which will be monitored by their people manager;
- any timescale within which improvement must be achieved
- the right to appeal

The outcome letter will be reviewed by the PSPS HR support present at the disciplinary hearing and then sent to the employee's home address.

A copy of the outcome letter will also be sent to the employee's work email account and if appropriate, to the employee's People Manager. With the written agreement of the employee, a copy may be sent to their personal email address.

Where a disciplinary warning has not been given, the employee will be formally notified in writing by as soon as possible after the Disciplinary Hearing.

#### 4.8. Stage 3 - The Appeal Process

An employee has the right to appeal against the decision of the Disciplinary Panel.

An appeal may be submitted using First4HR or if this is not possible, the appeal can be sent in writing by the employee to the Head of HR at [HR@pspsl.co.uk](mailto:HR@pspsl.co.uk)

The appeal should be submitted within 10 working days from receipt of the decision letter confirming the disciplinary action.

The appeal procedure will normally be carried out as soon as practicable thereafter, and the employee will be notified of the date of their appeal hearing no later than 28 days from receipt of their appeal.

An appeal will be heard by an Appeal Panel that has not previously been involved in the matter, comprising:

- a senior manager (equivalent, or more senior than the Disciplinary Hearing manager) who will act as the Chair of the Appeal Panel.
- another senior manager:
- an advisor from HR, who will provide support and advice to the Appeal Panel but will not be a decision-maker in the appeal process.

The purpose of the Appeal Hearing is not to reinvestigate the case but to establish the validity grounds for appeal and ensure:

- the original decision was reached in a procedurally correct way
- the action taken was reasonable
- the proportionality of any penalty to the offence
- ensure consideration of any new relevant evidence

The Appeal Panel will consider the findings from the Disciplinary Hearing and will decide if they need to interview and put further questions to the Chair of the Disciplinary Panel.

HR will write to the employee notifying them of the time and date of the Appeal Hearing.

HR will send, without undue delay, copies of any written submissions and documentary evidence to all parties prior to the meeting.

The employee must provide any new evidence to HR for circulation at least three working days before the scheduled Appeal hearing.

#### 4.9. Stage 3 - The Appeal Hearing

The purpose of the Appeal Hearing is to listen to the employee's concerns and determine whether the outcome of the Disciplinary Hearing was procedurally correct and to decide whether the outcome of the Disciplinary Hearing was appropriate to the facts of the case.

The Appeal Hearing should proceed in a formal, polite, and respectful manner.

The employee will have the right to be accompanied by a work-place colleague, trade union official or trade union representative.

Members of the Appeal Panel may put questions to the employee.

The employee should present their final submission to the Appeal Panel before the appeal hearing is adjourned to allow the Appeal Panel to consider and make the decision about the appeal.

The Appeal Panel will consider its decision in private. The Chair of the Panel will notify the outcome to the employee on behalf of the Appeal Panel, as soon as possible after the Appeal Hearing.

If the Appeal Panel has been able to reach its decision within an adjournment on the day, the Chair of the Panel will invite the employee and their representative to join the reconvened meeting and will inform the employee of the outcome, which will then be confirmed in writing as per section 13 below.

#### 4.10. Stage 3 – After the Appeal Hearing

The outcome letter of the Appeal Hearing will be sent to the employee's home address.

A copy of the outcome letter will also be sent to the employee's work email account where appropriate. With the agreement of the employee, it may be sent to their personal email address.

The decision of the Appeal Panel will also be conveyed to the chair of the Disciplinary Panel and the employee's People Manager.

Where an appeal against disciplinary action is successful and the decision is not to impose any penalty, the reference to the disciplinary action concerned will be removed from the employee's file and the employee will be notified accordingly in writing.

Where the appeal decision is to substitute a lesser penalty than that previously imposed, the employee's file will be updated, and the employee will be notified accordingly in writing.



Where an appeal against disciplinary sanction is not successful, there will be no change in the level of action previously decided upon at the conclusion of the Disciplinary Hearing.

Where an appeal against dismissal is successful, the employee will be reinstated to their substantive role, at a salary point no less favourable, backdated to the date of the original Disciplinary Hearing. The continuation of the contract of employment remains unaffected. This decision will in effect mean that this decision to dismiss never took place and the employment remained continuous.

Where the employee is reinstated and has accessed their pension benefits on termination of their employment and they are later reinstated, it remains their responsibility to inform the pensions service (West Yorkshire Pension Fund) of this, so the appropriate adjustments can be made. Failure to do so could affect the employee's future pension benefits.

Where the employee is reinstated and has received contractual notice pay and/or payment for outstanding, accrued annual leave, they will be required to repay this money back to the employing council.

The decision of the Appeal Panel is final.

## **5. Levels of Disciplinary Action**

### **5.1 Verbal Recorded Warning**

In appropriate circumstances the employee may be given a verbal recorded warning if their conduct does not meet the acceptable standards set by the Council.

This warning will be delivered verbally and then confirmed in writing. The employee will be advised:

- of the reason for the warning, the improvements required and the timescale for improvement;
- of the right to appeal;
- that, if there is no satisfactory improvement, further disciplinary action will be considered at the next level.

The verbal warning will be effective for a maximum of 6 months from the date of the letter following the disciplinary meeting. After that time, it will be disregarded subject to satisfactory conduct.

If during the 6-month period matters deteriorate further, then disciplinary action at the next level may be considered.

If the employee has been absent from work for a significant period during the 6 months, the period may be extended, however this will be by no more than the period of absence from work.

## 5.2 First Written Warning

A First Written Warning may be given where:

- the employee's misconduct is serious enough to warrant it and/or;
- a verbal recorded warning is still current and there has been no significant improvement and/or;
- a further related breach of policies occur.

The employee will be advised:

- of the reason for the First Written Warning, the improvements required and the timescale for improvement;
- of the right to appeal;
- that, if there is no satisfactory improvement, further disciplinary action will be considered at the next level.

The First Written Warning will be effective for a maximum of 12 months from the date of the letter following the Disciplinary Hearing. After that time, it will be disregarded subject to satisfactory conduct.

If, during the 12 months, matters deteriorate further or there are further issues of misconduct then disciplinary action at the next level may be considered, or the Disciplinary Hearing Chair may extend the warning for up to a further 12 months.

If the employee has been absent from work for a significant period during the 12 months, the period may be extended, however this will be by no more than the period of absence from work.

## 5.3 Final Written Warning

A Final Written Warning may be given where:

- the employee's misconduct is serious enough to warrant it and/or;
- the First Written Warning is still current and there has been no significant improvement and/or;
- a further related breach of rules occurs.

The employee will be advised:

- of the reason for the Final Written Warning, the improvements required and the timescale for improvement;
- of the right to appeal;
- that, if there is no satisfactory improvement, then there may be a recommendation for dismissal.

The Final Written Warning will normally be effective for a maximum of 12 months from the date of the letter following the Disciplinary Hearing. After that time, it will be disregarded subject to satisfactory conduct.

If during the 12 months matters deteriorate further, then dismissal may be considered.

In exceptional circumstances, where there has been insufficient improvement and the decision is not to dismiss the employee, then the Final Written Warning may be extended for a further period at the discretion of the Chair of the original hearing and in consultation with the Assistant Director and HR. If the Chair of the original hearing is no longer available, the Assistant Director and HR will decide.

If the employee has been absent from work for a significant period during the 12 months, then the period may be extended, however this will be by no more than the period of absence from work.

## 5.4 Dismissal

If an employee's Misconduct, failure of application to role, or non-adherence to regulations and policies is serious enough to warrant it, or if a Final Written Warning is still current and there has been no significant improvement or a further related breach of the rules occurs, then the employee may be dismissed with notice or payment in lieu of notice.

In cases of Gross Misconduct, the employee may be dismissed summarily without notice. Previous warnings need not have been given.

Dismissal on the grounds of Gross Misconduct may occur for acts or omissions not mentioned below or in this policy but which are sufficiently grave.

Other substantial acts or omissions may also lead to dismissal. For example, when the contractual relationship between the Council and the employee has broken down or when the relationship between an employee(s) and another employee(s) has become untenable and the cause can be attributed, on the balance of probabilities and all available evidence, to a specific employee(s). In this case, careful consideration should be given to the reason(s) for dismissal as these may include "Some Other Substantial Reason" in addition to misconduct.

The employee will be provided with the written reasons for dismissal, the date on which employment is terminated, and the right of appeal. If the dismissal is 'with notice', the notice period will be as stated in the employee's contract of employment, however in certain circumstances the Council may choose to make a payment in lieu of notice.

In any case of dismissal, the employee has a right to appeal in accordance with Section 11 of this policy.

## 5.5 Action Short of Dismissal

Where misconduct is sufficiently serious to justify dismissal, the Chair may consider alternatives:

Such sanctions may include:

- Transfer to a role in a different area of the council(s);
- Transfer to a role with different responsibilities (subject to a position being available);
- Demotion;
- Withholding of incremental salary progression within a specified timescale determined by the Chair;
- Extension of current warning on file (maximum of an additional 12 months).

Where a transfer or demotion takes place, an employee will not have their terms of employment protected. In this instance, the Chair may need to defer the outcome of the hearing and adjourn to determine whether an 'action short of dismissal' is feasible. If it is not, it is likely that the sanction will defer to dismissal. The hearing will then be re-adjourned and the sanction issued to the employee.

If an employee does not agree to the change to their contract of employment brought into effect by action short of dismissal, the outcome will revert to dismissal.

## **6. Suspension from Duty**

An employee may be suspended from duty by the Assistant Director or other senior manager pending an investigation into cases of alleged gross misconduct or other relevant and urgent cause.

Suspension is not disciplinary action nor an indication of guilt but a procedure to ensure an objective investigation of an incident can be carried out or to mitigate potential serious risks to the employee, colleagues, or the public.

The period of suspension will be as brief as possible and with full pay. Alternatives to suspension will first be considered, such as temporary change in work location or duties. Any temporary changes will be discussed with the employee and will be at no detriment in terms of pay.

If an employee is to be suspended, then they will be told so orally, usually by their People Manager, and this will be confirmed in writing.

The employee will be advised of the reason for the suspension, that the period of suspension will be as brief as possible, and where necessary it will be reviewed after 28 days and the employee will be updated.

Suspension from duty is not a pre-determination of disciplinary action. A letter advising of the start date of the suspension (and the associated terms), the reason for it and confirming basic pay will not be affected, will be handed to the employee at this meeting or sent as soon as possible afterwards.

In addition, an appropriate support person from within the Council, who understands the importance of confidentiality and has good communication skills, will be assigned to the employee where they are suspended from work.

This person will normally be a Team Leader, Supervisor or Service Manager not directly involved in the matter. Their role will be to assist in communication with the employee while they are suspended from work and to support them, and to keep the Investigating Officer (IO) updated on any concerns they may have identified. The support person will also keep the HR support allocated to the investigation updated, where requested on specific matters.

Annual leave entitlement continues, as normal, for the duration of the suspension. Any annual leave pre-booked will be honoured. If an employee wishes to make a further request for annual leave during suspension, they may do so in the usual way. The request will be considered but the investigation and any resulting disciplinary hearing will take priority. In exceptional circumstances where it may not be possible to request it in the usual way, the employee should refer to HR

## **7. Examples of Misconduct**

Any act or omission of a kind not mentioned below could be regarded as misconduct, depending on all the facts and circumstances of the matter, including its gravity. Examples include but not exhaustive:

- Unauthorised absence;
- Abuse of sickness leave;
- Failure to follow the Council's policies or procedures
- Non-compliance of a reasonable instruction;
- Misuse of email and internet;
- Breach of the Council's Code of Conduct;
- Breach of Health and Safety

## **8. Examples of Gross Misconduct**

Any act or omission of a kind not mentioned below could be regarded as gross misconduct, depending on all the facts and circumstances of the matter, including its gravity.

- Theft, fraud, or deliberate falsification of records;
- Unlawful discrimination or harassment;
- Physical violence, actual or threatened, against or in the vicinity of another person;
- Incapability whilst on duty brought on by alcohol or illegal/non-prescribed drugs;
- ICT crimes or serious breach of IT security policies;
- Serious breach of trust and confidence, including failure to inform the Council of any allegation or conviction of criminal offences;
- Serious breach of Health and Safety practices;
- Bringing the organisation into serious disrepute;
- Serious insubordination;

- Serious misuse of Council's name or property.
- Serious breach of the employing Council's Code of Conduct

## **9. Inability to Attend a Formal Fact Finding Meeting or Disciplinary Hearing**

The Council is committed to completing the disciplinary process promptly and without undue delay, so that employees are confident that issues will be dealt with in a timely manner. It expects all employees involved in the process to abide by this principle.

The Council therefore accept that attendance at a Fact-Finding Meeting or Disciplinary/Appeal Hearing should normally take precedence over other commitments.

An employee who cannot attend a meeting should inform HR, in advance whenever possible, and another date will be set. Pre-arranged annual leave periods will be respected in this process.

If an employee cannot attend a re-arranged meeting or hearing within a reasonable period of time, then the meeting will be held in the employee's absence.

Employees are responsible for ensuring their companions are willing to support them and attend meetings/hearings. If an employee's companion cannot attend on a proposed date the employee should notify HR, in writing, as soon as possible.

The employee may suggest another date so long as it is not more than 5 working days after the date originally proposed. The Council reserve the right to determine the length of an extension to this time limit in cases where it considers this necessary.

If an employee is unable to attend a meeting under this procedure due to sickness or injury, a medical certificate (fit note) may be requested and the employee's consent may be sought for a referral to Occupational Health to establish their fitness to attend, at the Council's discretion.

## **10. Criminal Charges & Convictions or Alleged Criminal Activity**

Disciplinary procedures will not automatically be applied if an employee is subject to criminal charges or convictions, which occur in an employee's personal life and do not impact nor conflict with the role in which they are undertaking with the Council. The Council will investigate the facts as far as possible and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure.

If an employee is subject to criminal charges or convictions, which relate directly to the duties of their role, impede the ability to discharge the duties of their role or, which were committed during

the discharge of their duties, a formal investigation will take place in accordance with this procedure.

It is the responsibility of the employee to notify their Service Manager (or officer more senior) of any criminal charges or convictions so that an immediate risk assessment can be undertaken and consideration of whether any internal investigation is relevant.

An employment investigation may run in parallel to a police force, audit and/or safeguarding investigation, as may be necessary and should not be held up by any such investigations unless it is considered that it will prejudice those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

An employee who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover ups will have the right not to be dismissed or victimised for speaking out, in good faith on such malpractice. For further information please see the Whistleblowing policy of the employing Council.

## **11. Safeguarding Allegations**

The Council have a legal duty to refer information to the Disclosure and Barring Service (DBS) where it has removed an individual from working or has concerns in respect of an individual's contact with children or vulnerable adults following an investigation and disciplinary procedure. There may also be a need to refer the circumstances of a particular case to other professional bodies.

## **12. Fraud & Corruption Allegations**

Any suspicion of fraud or corruption will be taken seriously. Any alleged wrongdoing will be dealt with, firstly, in accordance with the Council's Anti-Fraud Policy and Fraud Response Plan and may include criminal investigation, where appropriate.

If an employee is suspected of committing fraudulent activity or corruption, the Section 151 Officer must be informed as a matter of urgency in accordance with the Council's Anti-Fraud Policy and Anti-Fraud Response Plan. This may trigger a workplace investigation in accordance with the Disciplinary policy.

## **13. Data protection and retention of employee records**

The Council will maintain records of the outcome of the investigations and any corrective or disciplinary action taken, in accordance with its data protection policy and data protection law.

Inappropriate access or disclosure of employee data constitutes a data breach and should be reported to the Council's Data Protection Officer immediately.

The data breach may also constitute a disciplinary offence, which will be dealt with under the Disciplinary Policy.

## **14. Exclusions**

The provisions of this policy will not apply to employees who have less than 6 months' service or who are within an extended probationary period.

If difficulties are experienced with the employee's conduct during the probationary period, this will be dealt with under the Council's Probationary Policy.