

Disciplinary Procedure

Summary

1. This procedure is designed to deal with issues of misconduct and/or poor performance. It is intended to ensure that:
 - Issues are raised and dealt with promptly
 - Issues are dealt with consistently by all parties
 - Any necessary investigations are carried out to establish the facts
 - Employees are informed of the basis of any problem and have an opportunity to put their case in response before any decisions are made
 - Employees can be accompanied at any formal disciplinary meeting
 - An appeal process exists
2. The procedure provides a framework to correct behaviour at work and is not intended to "punish" employees. In certain circumstances this process may result in the dismissal of an employee but this is usually where working relationships are beyond repair. The purpose of the procedure is to ensure that all employees receive fair treatment and that there is a systematic approach to dealing with disciplinary issues.

What does "Poor Performance" mean?

3. Issues of poor performance may arise in relation to qualifications, skills, aptitude, health or any other physical or mental ability that impact on the performance of the post's duties.
4. Examples of issues that may be addressed under this procedure are:
 - Slow work rate or output
 - An inflexible and unadaptable attitude to changes in work requirement.
 - A failure to establish and maintain good working relationships with other employees.
 - A failure to reach the Council's standards of performance for the duties of the post allocated.

- Failure to maintain work related qualifications.
 - Significant absences from work arising from poor health, or poor performance in the job arising from health problems. (Although a number of steps would be taken prior to this going to a formal hearing.)
5. This list is not exhaustive.

What does “Misconduct” mean?

6. Examples of behaviour that may result in a formal hearing on the grounds of misconduct are:
- Persistent lateness
 - Not following Council procedures e.g. not calling in when off sick
 - Breach of Health and Safety rules
 - Misuse of Council equipment or facilities including misuse of IT systems and equipment
 - Inappropriate treatment of customers
7. This list is not exhaustive.

Establishing the facts

8. Before any formal disciplinary meeting is held there will be an investigation to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to a disciplinary hearing. In others, this may just be the collation of evidence for use at any disciplinary hearing.
9. As far as possible, in misconduct cases different people will carry out the investigation and disciplinary hearing.
10. An investigatory meeting will not automatically mean that a formal disciplinary hearing is inevitable. There is no statutory right for an employee to be accompanied at a formal investigatory meeting, but this may be allowed, at the management’s discretion.
11. In some cases suspension may be considered necessary. Any suspension will be with pay, will be as brief as possible and is not, by itself, considered a disciplinary action.

Informing the employee

12. If it is decided that there is a disciplinary case to answer, the employee will be notified in writing. This notification will include:

- Sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case
- Copies of any written evidence, if any
- Details of the time and venue for the hearing
- Details of the right to be accompanied at the hearing

Right to be accompanied

13. Employees have a right to be accompanied where the disciplinary hearing could result in:
- A formal warning being issued
 - The taking of some other disciplinary action
 - The confirmation of a warning or some other disciplinary action (appeal hearings)
14. The companion may be a fellow worker, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.
15. Employees may be accompanied when they have made a reasonable request. What is reasonable will depend on the circumstances of each individual case, but as an example, it would not normally be reasonable for the companion to be someone who might prejudice the hearing.
16. Companions may address the hearing to put and sum the employee's views, respond to any views expressed and confer with the employee. Companions do not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the managers explain their case.

Conduct of the hearing

17. Hearings should be held without unreasonable delay, but the employee must have reasonable time to prepare their case. Both parties must make every effort to attend the hearing.
18. At the hearing, the management side should explain the complaint against the employee and go through the evidence that has been gathered. The employee should have the opportunity to set out their case and answer any allegations made, including asking questions, presenting evidence and calling relevant witnesses.

19. Written evidence is preferred; including witness statements, but witnesses may be called if needed. In such cases advance notice must be given.

20. Where an employee is persistently unable or unwilling to attend a disciplinary hearing a decision can be made on the evidence available.

Deciding on appropriate action

21. Employees will normally be told of the decision at the end of any hearing and in every case the decision will be confirmed in writing within a reasonable period, normally within 5 working days.

22. The usual actions that may be taken and the normal circumstances where these may be considered appropriate are:

Action	
Written Warning	Misconduct or unsatisfactory performance is confirmed
Final written warning	Further misconduct or a failure to improve performance within a set period, or Serious misconduct or unsatisfactory performance where this has had, or are liable to have a serious or harmful impact
Dismissal	Failure to improve performance or a further act of misconduct following a final written warning, or Misconduct or poor performance which is so serious or have such serious consequences that dismissal for a first offence is appropriate (gross misconduct)

23. Other actions that can be taken could include demotion or transfer to a more suitable job or extending the time limit on an existing written or final written warning. A permanent job move will only be offered as an alternative to dismissal unless the employee specifically asks for such a move. Such moves are only possible where a suitable vacancy exists and the appropriate salary for that post is payable immediately i.e. there is no salary protection.

24. Written warnings will set out the nature of the misconduct or poor performance and the change in behaviour or improvement in

performance required. They will also include details of the consequences of further misconduct or failure to improve performance within a set period following a warning. For example, after a final warning this may include dismissal. They will also set out how long the warning remains current. This is 13 months for written warnings and 18 for final written warnings, unless extended following a new hearing.

25. The written warning will also include details of the right to appeal and to be accompanied at any appeal hearing. If dismissal is the decision the employee will be informed of the reasons, the date on which the employment contract ends, the appropriate period of notice and the right of appeal.

26. Examples of gross misconduct include (the list is not exhaustive):

- Serious insubordination or disobedience in the face of reasonable requests from a supervisor
- Serious breach of safety rules
- Persistent or serious unauthorised or unreasonable absence
- Deliberate disclosure of confidential information (subject to Public Interest (Disclosure) Act 1998 considerations i.e. WHISTLEBLOWING)
- Public criticism of the Council with the intent of bringing it in to disrepute
- Misuse of the Council's property including the unauthorised use or misuse of the Council's IT systems and equipment
- Serious incapability whilst on duty brought on by alcohol or illegal drugs
- Actual or threatened assault (physical or verbal)
- Theft, fraud and deliberate falsification of records
- Deliberate damage to property
- Harassment or bullying of another employee or a member of the public
- Discrimination
- Setting up a business in competition with the services provided by the Council.

27. A dismissal for gross misconduct will normally be without notice or payment in lieu of notice.

Appeals

28. Employees have the right to appeal against any disciplinary decision taken. Appeals should be made in writing and state the grounds of the appeal and be made within 5 working days of receiving the written notification of the warning or dismissal.
29. Appeals will be heard by a panel of councillors who have not previously been involved in the case.
30. Employees have a right to be accompanied at appeal hearings and the results of any appeal will be confirmed in writing.
31. Appeal decisions will be confirmed in writing within a reasonable period, normally 5 working days.

Grievances

32. Where an employee raises a grievance during a disciplinary process, the process may be temporarily suspended in order to deal with the grievance. However, grievances and disciplinary cases that are related will be dealt with together.

Special Cases – Trade Union Representatives

33. Normal disciplinary rules and procedures apply to trade union representatives. However, before any formal hearing is held the case must be discussed with an official employed by the union, after obtaining the employee's consent.

Special Cases – Criminal Offences

34. Being charged with or convicted of a criminal offence is not normally in itself reason for disciplinary action. However, it might be appropriate after considering what effect the charge or conviction has on the employee's suitability to do their job and their relationship with colleagues, customers and the Council.