

Disciplinary Policy and Procedure

Part 1 - Disciplinary Policy

1. Scope

1.1 The Council's Disciplinary Policy and Procedure applies to all Council employees and forms part of the contract of employment.

1.2 Exceptions to this are:

- The Chief Executive, who is subject to the JNC Conditions of Service for Chief Executives and the Chief Officers who are subject to the Conditions of Service of the JNC for Chief Officers.
- Casual workers, agency workers and self-employed contractors.
- Employees who are still subject to a probationary period. For these employees, the provisions contained within the Probation and Appointment Review Policy will apply.

2. Objectives and Principles

2.1 The objectives of this policy are:

- To provide a consistent and fair framework for addressing unacceptable behaviour;
- To encourage improvement amongst employees whose conduct or standard of work is unsatisfactory;
- To ensure that, where improvement is not possible, dismissal is fair and within the law;
- To ensure that all relevant parties are aware of their respective roles and responsibilities.

2.2 The following principles apply to the Council's procedures for dealing with disciplinary issues:

- Application of the procedure will be fair, prompt (unless there are unavoidable delays), impartial, consistent and applied without discrimination;
- Where possible, issues of minor misconduct will be dealt with informally, to promote the objective of encouraging improvements amongst employees.
- The Council will at all times ensure compliance with legislative requirements and will conduct the management of disciplinary issues sensitively.

3. Roles and Responsibilities

3.1 Management Responsibilities

Managing and monitoring conduct is a responsibility that rests with line managers who will be supported by Human Resources (HR). Managers, therefore, have a responsibility to:

- Effectively communicate the standards of conduct expected from their employees;
- Ensure that all employees understand the Council's Values and Behaviours, and are able to demonstrate how they meet the expected standards;
- Ensure that any required action is taken with reference to the appropriate procedure;
- Ensure that where misconduct issues arise, these are acted upon without undue delay;
- Implement the Disciplinary Policy and Procedure consistently and in line with current legislation and best practice as advised by HR;
- Ensure that the relevant line managers and employees are released to undertake investigations and participate in hearings as required;
- Adhere to the principles of fairness and impartiality when making decisions on the basis of the available facts.

3.2 Employee Responsibilities

Employees are responsible for ensuring that they uphold the standards of conduct required as employees of Lancaster City Council. Employees will therefore:

- Comply with **all** Council wide, Service specific and professional standards of conduct, including the Council's Values and Behaviours;
- Cooperate with the procedure and provisions contained within this policy including, but not limited to, attending formal meetings, investigation interviews and hearings or acting as a witness when required.

3.3 HR Responsibilities

The HR Team are responsible for supporting managers and employees to maintain the correct standards of conduct. To this end, HR will:

- Communicate the Disciplinary Policy and Procedure, and ensure that appropriate training programmes are implemented across the organisation;
- Advise managers and employees on all aspects of the Disciplinary Policy and Procedure to ensure that it is applied in a fair and effective manner;
- Provide support and guidance to managers at disciplinary hearings and other formal disciplinary meetings when required;
- Provide support and strategies to help improve workplace relations;

- Monitor disciplinary cases to: identify any trends, ensure consistency of approach and ensure that any disproportionate impact on any particular group is highlighted and addressed.
- Promote and support the Council's Values and Behaviours

4. **Related Legislation and Council Policies**

- [Code of Conduct](#)
- [Social Media Policy](#),
- [Information Management and Security Policy](#)
- Anti Fraud, Bribery and Corruption Policy
- [Sickness Absence Management Policy and Procedure](#)
- Health and Safety at Work 1974
- Employment Rights Act 1996
- Raising Concerns

5. **The Distinction between Misconduct and Gross Misconduct**

5.1 It is unlikely that any set of definitions can cover all circumstances, but examples of what will normally be considered **misconduct** leading to formal disciplinary action include (this list is not exhaustive):

- Minor breaches of the Code of Conduct for Employees or the Member/Officer Protocol;
- Failure to follow the requirements of Council policies and minor breaches of the financial regulations;
- Unauthorised absences including the abuse of the Council's Sickness Absence Management Policy and Procedure and annual leave provisions;
- Sub-standard performance including poor treatment of Council customers;
- Poor timekeeping;
- Health and safety breaches;
- Equality and diversity breaches;
- Insubordination, e.g. failure to follow reasonable management instructions;
- Misuse of Council facilities or property including computer facilities and inappropriate use of the internet;
- Failure to treat colleagues with an appropriate level of dignity and respect.
- Breach of the contract of employment

- Breach of trust and confidence

5.2 **Acts of gross misconduct are likely to lead to dismissal.** Again, it is unlikely that any set of definitions can cover all circumstances, but a list of examples of **gross misconduct**, which are serious and are normally considered so unacceptable that they may lead to dismissal include (this list is not exhaustive):

- Theft, fraud and deliberate falsification of records, including timesheets;
- Physical violence or making threats of physical violence;
- Deliberate damage to property or belongings;
- Serious infringement of health and safety rules and principles;
- Serious infringement of equal opportunity rules and principles;
- Serious acts of insubordination, i.e. where the employment relationship has been seriously undermined;
- Serious breaches of the Code of Conduct for Employees or other published policies of the Council;
- Serious abuse of the Council's Sickness Absence Management Policy and Procedure;
- Fraudulent misuse of the Council's property or name;
- Serious abuse of the Council's facilities or equipment, including computer facilities and use of the internet;
- Serious negligence whether or not loss, damage or injury is caused;
- Serious breach of trust and confidence
- Bringing the authority into disrepute;
- Harassment or bullying, of other employees or members of the public;
- Failing to manage effectively by knowingly permitting harassment or bullying to take place.
- Serious breach of the contract of employment.

Repeated misconduct which only comes to light upon further investigation and there is clear of a pattern of consistent misbehaviour.

5.3 Dismissal may also occur following **repeated warnings or sanctions** being issued, and the Council may take a cumulative approach due to the repetition or accumulation of less serious offences if they are still LIVE on the employee's file.

6. **Conduct Outside Working Hours**

6.1 The Council's Code of Conduct for Employees paragraph 3.3(c) advises that;

“Personal conduct outside office hours which could conceivably be regarded as undermining your ability to carry out your duties may lead to the Authority seriously considering your suitability as an employee.”

- 6.2 Conduct regarded in this way, or conduct which undermines the confidence the employer needs in its employees, or which it would not be reasonable for an employer to ignore, even though it takes place out of working hours, will be dealt with by way of this policy and procedure.

7. Criminal Charges

- 7.1 Where an employee's conduct is the subject of a criminal investigation, charge or conviction, the Council will investigate the facts before deciding whether to take formal disciplinary action.
- 7.2 The Council will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Council may have to take a decision based on the available evidence.
- 7.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Council considers that it is relevant to the employee's employment.
- 7.4 Where an employee is unable to fulfil their contract of employment, due to the terms of the criminal charges, consideration will be given to whether the employee is able to carry out their work in accordance with their contract of employment.

8. Job Performance

- 8.1 Managers and employees must ensure that they are clear about the standard of work expected during the course of their employment.
- 8.2 Problems with under performance or a failure to meet the required performance standards will normally be dealt with by referring to the Council's Capability and Performance Improvement Policy and Procedure.
- 8.3 Any issues of sub-standard performance that result from deliberate misconduct, however, will be dealt with using the Disciplinary Policy and Procedure.

9. Raising Concerns Whilst at Work

- 9.1 Employees who suspect fraud, corruption or other malpractice at work should report their suspicions to their line manager or Chief Officer. Alternatively, employees can consider the options outlined in the Council's Raising Concerns Policy.
- 9.2 Complaints will be taken seriously. Decisions on how to proceed will depend on a number of factors, e.g. quality of evidence, type of complaint, whether the complaint was anonymous, whether the complainant is willing to be a witness etc.
- 9.3 If it is clear that there may be irregularities, action will be taken in accordance with the disciplinary procedure. If an investigation concludes that the Raising Concerns Policy has been misused and the allegation was unfounded, or may have been made maliciously, this will be a disciplinary matter in itself. This should not deter anyone

with a genuine concern, and will only apply where allegations are considered to have been made maliciously.

10. Representation

- 10.1 Employees have a right to be accompanied by a trade union representative or work colleague (a companion) on occasions when they are required or invited to attend a disciplinary investigation interview or a formal disciplinary hearing.
- 10.2 The Council will inform the employee of the right to be accompanied by a companion at such hearings.
- 10.3 The Council will accommodate all reasonable requests to be accompanied, but such requests should not unduly delay the process. A companion is allowed reasonable time off from duties without loss of pay, but no-one is obliged to act as a companion if they do not wish to do so.
- 10.4 If the employee's choice of companion is considered unreasonable the employee will be asked to choose someone else, for example:
- If the companion is not a work colleague or a trade union representative;
 - If the employee's companion works at another site and someone reasonably suitable is available at the site at which they work;
 - If the employee's companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards;
 - If in the Council's opinion the employee's companion may have a conflict of interest or may prejudice the meeting.
- 10.6 The right to be accompanied by a companion does not extend to attendance at informal meetings or discussions. So long as the informal discussion will not result in any formal action, it is not considered good practice for an employee to be accompanied, as matters at an informal stage are often best resolved directly between manager and employee.
- 10.7 Formal disciplinary proceedings will not take place in respect of a trade union representative or official until the Regional Officer has been informed. However, a trade union representative or local official may be suspended from work without first contacting the Regional Officer.

Part 2 – Disciplinary Procedure

The following guidance provides general procedural advice, but does not exclude the possibility of dealing with unusual cases in slightly different ways, whilst still working within employment legislation and remaining mindful of best practice.

11. The Informal Procedure

- 11.1 There will be occasions when behaviour falls short of what is expected, but is not serious enough to warrant formal disciplinary action. Where there are minor faults in the employee's conduct, the matter should be dealt with promptly through informal discussion between the employee and line manager.
- 11.2 The purpose of an informal discussion will be to:
- Ask for an explanation of what has happened;
 - Explain to the employee why the behaviour was unacceptable;
 - Discuss the required improvements.
- 11.3 Following the informal discussion the manager will write to the employee to:
- Detail the nature of the problem, why the behaviour was unacceptable and the required improvements;
 - Notify them that future incidents or issues may lead to formal action and that the notes of this incident or issue will be retained.
- 11.4 The following formal procedure will be used if conduct does not improve, if there is a repeated pattern of behaviour through the informal procedure or if the disciplinary matter is more serious than a minor fault.

12. The Formal Procedure

- 12.1 Prior to taking any formal disciplinary action managers should discuss all cases with their Service HR Partner. This will ensure consistency in application of the procedure across the Council and ensure that any action taken is in line with legislative guidelines and best practice.

13. Suspension and Alternative Duties

- 13.1 In some cases suspension from duty may be necessary, for example, due to the seriousness of the allegations, the breakdown in working relationships, the risk to the Council's property or the Council's responsibilities to other parties.
- 13.2 Suspension is not a disciplinary sanction, but is intended to protect either or both the employee's and the Council's interests. It is not possible to prejudge cases without them being investigated and, therefore, suspension should never be seen as a presumption that someone is guilty.
- 13.3 The Chief Executive, Chief Officers, and Senior Service Managers, i.e., those with operational responsibility for their own service units, have the authority to suspend employees.

- 13.4 As soon as the relevant Officer determines that there is a case to suspend an employee, they should speak to a member of the HR Team, after which they should speak with the employee.
- 13.5 Prior to suspension, the employee will be informed of the following:
- (a) The details of the allegation made against them;
 - (b) The conditions attached to suspension, which include:
 - contact will be through a named officer only;
 - the employee must not contact colleagues or external work contacts, media etc. without the Council's permission;
 - the employee must not visit Council premises without the Council's permission;
 - the employee should not normally undertake work for other organisation whilst suspended.
 - (c) How the investigation will continue to be conducted;
 - (d) How suspension affects pay. Employees will usually receive 'normal' contractual pay during a period of suspension. Payment will only be withheld in exceptional circumstances, e.g., where an employee has breached their contract of employment;
 - (e) The requirement to pass on information about outstanding work;
 - (f) The handing over of keys, identity card and other council property, as appropriate.
- 13.6 The employee will be given an opportunity to be accompanied to remove personal possessions from the workplace, if they wish. This may need to be outside normal working hours if the employee prefers or other employees are involved.
- 13.7 The reason for suspension and the conditions attached to it will be confirmed in writing to the employee within 2 working days.
- 13.8 Although this will clearly be a trying time for employees, they are expected to act with discretion and comply with the conditions attached to the suspension. A failure to comply with the terms of suspension may result in disciplinary sanction.
- 13.9 If, for example during an investigation, an employee feels that additional witnesses should be approached, they must notify the named contact or Investigating Officer rather than approach that person and obtain evidence directly.
- 13.10 If, during the course of the investigation that there is no longer a need for the employee to be suspended, the suspension should be reviewed (normally by the Officer who carried out the suspension) and, if appropriate, discontinue the suspension.

14. Different Duties as an Alternative to Suspension

- 14.1 In some circumstances it may be appropriate for an employee under investigation to work in a different area. This may, for example, follow a complaint by a customer or work contact.

- 14.2 Any decision to move an employee is subject to agreement by the Chief Officer or Senior Service Manager and does not imply that allegations are accurate, rather it is intended as an interim measure to protect both employee and complainant.

15. Disciplinary Discussion

- 15.1 Following receipt of an allegation the line manager may meet with the employee concerned to discuss the allegations informally.
- 15.2 It is not a requirement that a discussion will be required in all cases. If managers are satisfied that allegations are sufficiently serious then a formal investigation should be carried out straight away.
- 15.3 The employee is not required to be given written notice of their attendance of the discussion, but will be verbally informed that they are required to attend.
- 15.4 If it becomes clear during the discussion that there is a formal case to answer the manager will inform the employee that enough facts have been established and, if appropriate, will appoint an investigating officer.
- 15.5 The line manager may also carry out further enquiries which may involve speaking with other employees or reviewing records or information available to help them determine whether there is a case to answer.
- 15.6 The line manager that carries out the informal discussion can also act as the hearing officer if, following an investigation, there is a formal disciplinary case to answer.

16. Disciplinary Investigations

- 16.1 If on receipt of an allegation, a line manager/Chief Officer is satisfied that the allegations could potentially be considered misconduct or gross misconduct a reasonable investigation into the allegations must be carried out.
- 16.2 In the majority of cases, where the matter to be investigated appears to be clear and the facts are not in dispute, the role of the Investigating Officer may be carried out by any appropriate line manager.
- 16.3 An investigation should not take place if the manager's judgement is that there is no case to answer or if the matter can be resolved by informal arrangements.
- 16.4 The purpose of any investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee. Although the manager may carry out the investigation, if the evidence to be investigated is more serious or complex, then where, possible another appropriate Officer should be appointed as the Investigating Officer.
- 16.5 The fact that an investigation is required will not necessarily mean that disciplinary action will be taken at the end of the process.
- 16.6 An employee who is the subject of a detailed investigation shall be advised in writing, as soon as practicable, of the allegation(s) made against them and the nature of the investigation that will take place.
- 16.7 An employee, against whom an allegation is made, will be expected to co-operate with the investigation process and should ensure that they are available to be interviewed by the Investigating Officer, within a reasonable timescale.

17. Appointment of an Investigating Officer

- 17.1 Where it is necessary to appoint an Investigating Officer, in most cases the manager will, as soon as possible, appoint an officer of the Council or, in exceptional circumstances, an independent person to carry out an investigation into the allegations or other issues raised, to help him/her determine whether or not there is a case to answer under the formal disciplinary procedure.
- 17.2 In complex cases a member of the HR Team will be appointed to act as the Liaison Officer to the Investigating Officer. The role of the Liaison Officer is to act as the advisor to the Investigating Officer and aid access to resources and information, so that the investigation can be completed in a timely manner.
- 17.3 The Investigating Officer will conduct the disciplinary investigation. They will normally be an Officer, who is trained or experienced in this type of work. There may be occasions when it will be necessary to appoint an Investigating Officer with a particular specialism relevant to the investigation, e.g. a financial background where financial irregularities have come to light.
- 17.4 To complete his/her investigation, the Investigating Officer may also need access to other officers who have such specialist/technical knowledge, e.g. health and safety or specific knowledge relating to a service process. In such instances, the Investigating Officer shall request the additional support via their Service HR Partner.
- 17.5 The manager shall be responsible for briefing the Investigating Officer, and ensuring he/she has access to the necessary resources/facilities to undertake his/her role.
- 17.6 The manager, shall provide all available information about the allegations or other issues under investigation, as shall be necessary to enable the Investigating Officer to fulfil their role.
- 17.8 Should the manager on receipt of the investigation report, consider that the outcome of the investigation warrants a formal disciplinary hearing, the designated co-opted officer may be asked to attend the hearing to answer any specific questions. If this is the case, then subsequent attendance at a disciplinary hearing will be in the same context as any other witnesses that are called.

18. The Investigation Arrangements

- 18.1 Once the decision has been made to undertake an investigation into allegations against an employee, the manager, when appropriate shall advise the employee in writing of the name of the Investigating Officer and details of the allegations or the matter under investigation. However, there may be exceptional circumstances where it is not advisable to inform the employee straight away, e.g., where the allegations are particularly sensitive or unclear.
- 18.2 The disciplinary investigation will cover the initial complaint, plus any other issues or breaches of policies that may arise as a result of the investigation that fall within the scope of the Disciplinary Policy and Procedure.
- 18.3 The Investigating Officer shall be entitled to interview such witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's email, internet and other IT systems (including the user accounts of any employee under investigation).
- 18.4 The employee shall fully co-operate with the Investigating Officer and shall make themselves available for such interviews and meetings as the Investigating Officer

reasonably deems necessary. It is expected that once the employee has received the initial letter advising them that an investigation is to be undertaken, that the Investigating Officer will contact the employee to arrange a suitable time for the interview to take place. A member of the HR Team, appointed as the Liaison Officer may be present at the interview with the employee to take his/her statement.

- 18.5 Whilst investigations need to be sufficiently thorough, it is important that they are carried out within a reasonable timeframe. Although it is accepted that more complex cases may take some time to complete, the aim is to complete any investigation within 20 working days. If it is known that the investigation will take longer than 20 working days or if during the course of the investigation, the Investigating Officer believes that more time will be required, he/she must inform the manager/Chief Officer immediately and also provide a revised date by which the investigation will be concluded. The employee will also be advised of any revised arrangements for the investigation.
- 18.6 The employee and other interviewees shall be issued with a draft copy of their statements and will have the right to comment on the factual accuracy of the draft statement. Should the interviewee wish to add additional information that was not provided during the investigation interview, this should be presented to the Investigating Officer in a separate document. Employees will be offered the opportunity to sign their statement, but there is no requirement to do so if they decline.
- 18.7 Where the employee under investigation has been issued with their draft statement, it is not expected that, it would take more than 3 working days to review their statement and provide any additional comments to the Investigating Officer.
- 18.8 The Investigating Officer shall prepare a report following his/her investigation using the facts of the case as they have been presented, noting any policies or standards, etc., that have been breached and submit this to the manager along with copies of all documentation, records, interview statements and evidence. The Investigating Officer will not advise whether or not they believe there is a disciplinary case to answer or whether a sanction should be applied.
- 18.9 Having reviewed the report of the Investigating Officer, the manager may determine that additional information is required, in which case additional lines of enquiry may be pursued as part of the investigation. Alternatively, the manager may decide that there is sufficient information available either for the matter to be concluded at this stage or for the issues to be considered at a disciplinary hearing.

19. Notification to Employees

- 19.1 Employees who are subject to a disciplinary investigation, as detailed above, will be provided with:
- A clear statement of the reason(s) for the disciplinary investigation being undertaken;
 - A timetable for completion of the investigation and updates on the revised timescales if the investigation is extended;
 - An opportunity to provide a statement, followed by the opportunity to review their draft statement;
 - The right to be accompanied by a companion.

- 19.2 Other employees may be interviewed as part of the investigation and may be asked to attend any subsequent hearing under the formal procedure. In certain cases a witness's identity may be kept confidential. In such cases the Hearing Officer will give the employee as much information as possible while maintaining confidentiality.

20. Investigation Documentation/Evidence/Hearing Records

- 20.1 All documentation and evidence relating to a disciplinary investigation shall be treated as strictly confidential. All documents and associated evidence, referred to as the Investigation Report, shall be passed by the Investigating Officer to the manager who will review the information and decide whether a formal disciplinary hearing should be convened.
- 20.2 Should it be determined that a formal disciplinary hearing is required, the manager will liaise with their Service HR Partner concerning the arrangements for a disciplinary hearing.
- 20.3 If a disciplinary hearing is to be called, the employee will be notified of this and will be provided with a copy of the investigation report, along with any other documents that may be considered at the disciplinary hearing.
- 20.4 All paperwork relating to the Disciplinary Hearing or Disciplinary Appeal Hearing will be retained in accordance with the General Data Protection Regulations.

21. Arranging the Formal Disciplinary Hearing

- 21.1 Following any investigation, if it is considered that there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing.
- 21.2 Formal disciplinary hearings will be conducted by the line manager, Chief Officer or other senior officer other than where:
- They have direct involvement with a case, e.g. as a witness;
 - They are absent or unavailable, which would prevent the hearing from taking place within a reasonable timescale.

In such cases, which are expected to be rare, a suitable senior officer from another service unit will be appropriate.

- 21.3 The hearing will be held as soon as reasonably practicable, but the employee will be given notice in writing at least 5 working days prior to the hearing of:
- The date, time and place of the hearing;
 - The allegations against them;
 - The basis for those allegations and what the likely range of consequences will be if the Hearing Officer decides that the allegations are proven;
 - Their right to be accompanied;
 - The details of any witnesses that are to be called to support the management case.

21.4 The hearing will be organised by HR who will:

- Notify (as above) the employee, setting out the arrangements for the hearing;
- Coordinate the attendance of any management witnesses to be called at the hearing;
- Distribute papers for the hearing to the employee, the employee's representative, the Hearing Officer and HR;
- Ensure rooms for the hearing, a waiting adjournment room for the employee and a representative, and a waiting room for witnesses are available.

21.5 Information will be made available to the employee 5 working days prior to the hearing. Information supplied may include:

- Any relevant information gathered during the investigation or a summary of that information;
- A copy of the investigation report, plus associated documents;
- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the Hearing Officer will give the employee as much information as possible while maintaining confidentiality.

21.6 HR will arrange for a record of the proceedings to be taken. It may be necessary for Services to provide administrative support during the hearing to allow a record of the meeting to be taken.

22. Witnesses

22.1 At the hearing, both the employee and management can call witnesses.

22.2 If an employee wishes to call any witnesses to attend the hearing, then he/she is responsible for ensuring that the witness is informed of the date and time of the hearing and that they are required to attend.

22.3 The Hearing Officer and HR should be notified by the employee of any witnesses, at least 2 working days before the hearing.

22.4 The employee will be informed of any management witnesses within the hearing invite letter.

22.5 The employee will be given the opportunity to respond to any information given by a witness. Both the management side and the employee and their companion will be permitted to cross examine witnesses.

23. Employee Absence and Non-attendance at Hearings

23.1 If the employee or their companion cannot attend the hearing the employee should inform the Council immediately and the Council will arrange an alternative time. The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself.

- 23.2 If the employee fails to attend without good reason, or is unable to do so (for example for health reasons), the Council may have to proceed with the disciplinary hearing in their absence and take a decision based on the available evidence.
- 23.3 As outlined in the Sickness Absence Management Policy and Procedure, an employee will not automatically be entitled to Occupational Sick Pay if they submit a medical certificate, which leads to a delay in the disciplinary process or following their suspension in connection with a disciplinary matter.

24. Procedure at the Disciplinary Hearing

The hearing will be conducted in line with [Appendix A](#) – Conducting a Hearing.

25. Disciplinary Sanctions

- 25.1 The level of disciplinary sanction will depend on the facts of each case. The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. Each case will be assessed on its own merits. The Council may take a cumulative approach when dealing with repeated misconduct, where sanctions remain 'live' on the employee's record. Possible formal actions are:
- 25.2 **Formal Verbal warning.** The employee will be given the reason for the warning, the improvement or change in behaviour required and informed that it constitutes the first step of the disciplinary procedure and of the right of appeal. The formal verbal warning will be confirmed in writing, but will not be a written warning. A copy of the written notification of the formal verbal warning will be kept but will normally be disregarded for disciplinary purposes for a period of **12 months**. Where it is considered appropriate the warning can be extended up to 24 months.
- 25.3 **Written warning.** The employee will be given the reasons for issuing a written warning. The written notification will include details of the complaint, the improvement or change in behaviour required, and the employee's right of appeal. It will also state that further action may be considered if there is no appropriate improvement or change. A copy of the warning letter will be kept but will normally be disregarded for disciplinary purposes for a period of **12 months**. The Council reserves the right to extend the length of the warning to 24 months where this is considered appropriate at the managers discretion.
- 25.4 **Final written warning.** The employee will be given reasons for issuing a final written warning. The written notification will include details of the complaint, the improvement or change in behaviour required, the timescale allowed for this and the employee's right of appeal. It will also state that dismissal or some other action short of dismissal may be considered if there is no appropriate improvement or change. A copy of the warning letter will be kept, but will normally be disregarded for disciplinary purposes after **12 months**. The Council reserves the right to extend the length of the warning to 24 months where this is considered appropriate at the manager discretion.
- 25.5 **Demotion/Loss of seniority and Final Written Warning.** This may be appropriate only as an alternative to dismissal in certain limited circumstances and is likely to accompany the issuing of a final written warning. **There is no right to this for employees as an alternative to dismissal.** The offer of an alternative position is at the Council's discretion and need not be within close proximity to the original grade. Salary protection will not apply. Notification will give details of the complaint, the behaviour required in the revised role, any training that may be provided for this and the right of appeal. A copy of the warning letter will be kept, but will normally be disregarded for disciplinary purposes after **12 months**. The Council reserves the right

to extend the length of the warning to 24 months where this is considered appropriate at the manager's discretion.

- 25.6 **Dismissal.** Gross misconduct will usually result in immediate dismissal without notice (summary dismissal). Dismissals due to an accumulation of warnings and misconduct offences will be with contractual notice. Previous warnings that have expired will not be used as a principal reason for dismissal, but may be considered as a relevant factor in the fairness of the decision. The employee will be provided with written confirmation of the reasons for dismissal, the date on which the employment contract terminated, and information on how to appeal.
- 25.7 **Loss of increment.** This sanction is likely to be used rarely and generally in cases where it is considered that an employee's sub-standard performance is wilful, rather than due to a lack of capability. This sanction is available to managers in conjunction with disciplinary sanctions at any level. For reasons of consistency, advice should be sought from HR. Where sanctions result in changes to pay, HR will notify Payroll.

26. **Disciplinary Appeals**

- 26.1 Employees have the right to appeal against any formal disciplinary sanction.
- 26.2 Appeals against disciplinary sanctions must be made in writing to the HR Manager within 5 working days of written notification of the outcome of a disciplinary hearing being received. Appeal hearings will normally be held within 20 working days of being lodged. If an appeal hearing cannot be arranged within 20 working days the appellant will be advised of the delay and a date by when the hearing will take place.
- 26.3 Appeals in this category, which include those against verbal, first and final written warnings will normally be heard by an appropriate officer more senior than the original Hearing Officer. If a Chief Officer heard the original disciplinary hearing then a different Chief Officer can hear the appeal.
- 26.4 An appeal may be lodged for the following reasons only:
- To permit the employee to argue that the Hearing Officer of the original disciplinary hearing reached an unfair decision;
 - To appeal against the severity of a sanction, but not the fact that a sanction was due;
 - To prove an allegation that a dismissal was wrongful, i.e. procedurally unfair;
 - When new evidence has come to light since the original disciplinary hearing.
- 26.5 Employees must detail the reason for their appeal in their appeal letter.
- 26.6 The Appeal Hearing will normally be a review of the decision in light of the grounds for appeal and/or consideration of whether the procedure was followed and whether the sanction was appropriate. It will not be a full rehearing of the case. In this case an Appeal Officer can only substitute the decision for a lower sanction.
- 26.7 If significant new evidence has come to light that is relevant to the case and which the employee could not reasonably have known about and/or was genuinely unavailable at the time of the original decision, it may be appropriate for the Appeals Officer to consider a full re-hearing of the case. This will be at the Appeal Officer's discretion. If the case is re-heard the Appeal Officer can substitute a different higher or lower sanction.

27. Appeals against Dismissal

- 27.1 Appeals against dismissal must be made in writing to the HR Manager within 5 working days of written notification of the outcome of a disciplinary hearing being received. Appeals in this category will be heard by Personnel Committee. Appeal hearings will normally be held within 20 working days of being lodged, other than by mutual agreement.
- 27.2 The Appeal Hearing will normally be a review of the decision in light of the grounds for appeal and/or consideration of whether the procedure was followed and whether the sanction was appropriate. The Appeal Hearing will not be a full re-hearing of the matter. If a full re-hearing is required Personnel Committee will refer the case back and to a different Chief Officer to conduct the re-hearing.
- 27.3 The Chair of Personnel Committee may adjourn the appeal hearing if further investigations are needed in the light of any new points raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 27.4 The date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the employee's appeal is successful he or she will be reinstated with no loss of continuity of employment or pay.

28. Outcome of Appeal

- 28.1 Following the appeal hearing the Council may:
- (a) Confirm the original decision;
 - (b) Revoke the original decision; and
 - (c) Substitute a different sanction
- 28.2 The Chair of Personnel Committee, will inform the employee in writing of the final decision as soon as possible, usually within 5 working days of the appeal hearing.
- There will be no further right of appeal.

29. Action Plan

- 29.1 If during the hearing a case raises additional issues that need to be addressed, the Hearing Officer should make recommendations and require the appropriate officer(s) to devise an action plan. All parties who need to take action will be notified and the required measures should be in place as soon after the hearing as possible.

30. Relationship to Grievance

- 30.1 Where an employee subject to a disciplinary hearing has also submitted a grievance, the grievance will be considered separately. In most cases the disciplinary hearing will take place before the grievance is formally considered. However, the Council reserves the right to change the order of hearings depending upon the content of the grievance.

31. **Review**

This policy will be reviewed 2 years after implementation or earlier in the event of further changes in legislation.

Amendments which are required due to a change to any applicable legislation or regulation will be incorporated into the policy documents at the appropriate time and reported for information to the recognised trade unions and Personnel Committee.

Document Control:

Version No.	Effective date	Reason	Review due
1.0	31.05.2005	Revisions agreed by Personnel Committee	
2.0	25.06.2013	Revisions agreed by Personnel Committee	
3.0	20.09.2018	Revised Policy to be considered by JCC and Personnel Committee	