

A nighttime aerial photograph of Wolverhampton, showing city lights, buildings, and a railway line. A semi-transparent olive-green box is overlaid on the top left portion of the image.

Revised Disciplinary Policy

Revised May 2017



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INDEX

Section	Pages
1. Policy Statement	2
2. Scope	2
3. Principles	3
4. Procedure	3
Informal Action	3
Formal Action: Stage 1 The Investigation	4
Formal Action: Stage 2 The Disciplinary Hearing	4
Sanctions	5
Formal Action: Stage 3 The Appeals Process	7
Outcome of Appeal	8
Appeals Against Dismissal	8
Right to be Accompanied & Confidentiality	8
5. Roles and Responsibilities	8
Employees	8
Managers	9
HR	9
Head of HR	9
Trade Unions	10
6. Monitoring and Review	10
7. Links to other policies	10
8. Equality	10
9. Appendix 1 - Process Chart	11

1.0 Policy Statement

- 1.1 This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct. This procedure aims to ensure good practice by applying the standards set out in the relevant sections of the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.2 This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases reference should be made to the appropriate procedure.
- 1.3 The termination of an employees contract during a probationary period should be handled using the Probationary Procedure.
- 1.4 The disciplinary policy and procedure is necessary for ensuring a safe and efficient workplace and for maintaining good employment relations; and to ensure prompt, reasonable and consistent treatment for all employees.

2.0 Scope

- 2.1 This Policy and Procedure applies to all employees of the Council including Strategic Directors and employees based in schools (excluding Teachers covered by Schools' Disciplinary Policy).
- 2.2 The policy also applies to recognised trade union representatives; however, in the event of an allegation being made against an accredited representative the full time official will be notified immediately. In the event of suspension it may not always be possible give prior notice.

3.0 Principles

- 3.1 In applying this policy the Council will:
 - Raise and deal with issues promptly and not unreasonably delay meetings, decisions or confirmation of those decisions
 - Act consistently
 - Carry out a reasonable investigation, to establish the facts of the case
 - Inform employees of the specific allegations and give them an opportunity to put their case in response before any decisions are made
 - Allow employees to be accompanied at any formal meeting, including appeals
 - Allow an employee to appeal against any formal sanctions (warnings) made

- 3.2 If an employee is charged with or convicted of a criminal offence this is not necessarily a reason for disciplinary action. Consideration will be given to what effect the charge or conviction has on the employee's suitability to do the job and the relationship with their employer, work colleagues and customers.
- 3.3 No disciplinary action will be taken against an employee until the case has been fully investigated and the decision to proceed has been made by the Service Manager or their nominee following consideration of an investigation report. No sanction will be issued without a robust investigation and subsequent hearing.
- 3.4 The only exceptions to 3.3 above are as follows:
- a) where an employee fully accepts misconduct has occurred (having had the allegations presented to them at an initial investigation or fact-finding meeting) and requests that a sanction is applied without a full investigation and hearing. This must be agreed by all parties.
 - b) where finding of an initial investigation prove the allegations beyond reasonable doubt.
- 3.5 In all but exceptional cases, if gross misconduct (potentially resulting in dismissal) is alleged then the usual investigation process must apply.

4.0 Procedure

- 4.1 Employees have a statutory right to be accompanied by a trade union representative or work colleague at any formal meeting which could result in a sanction being issued or at an appeal hearing
- 4.2 There is no right to representation at informal meetings

Informal Action

- 4.3 Wherever possible cases of minor misconduct should be dealt with informally. Often a quiet word from the manager is all that is required to improve conduct or performance. In some cases additional support, coaching and advice may be necessary.
- 4.4 Managers should keep brief notes of any informal discussions within the supervision file. These should be shared with employees including any agreed actions and managers should ensure that any agreed progress reviews take place as specified.

- 4.5 After an allegation is made against an employee, the first step will normally be to hold an informal meeting as soon as possible.
- 4.6 The purpose of this is to get an initial version of events and/or explanation from the employee, before a decision is made to progress to a formal investigation
- 4.7 It may be appropriate to consider mediation at this stage, depending on the nature and seriousness of the allegations.
- 4.8 If informal action does not bring about an improvement or the misconduct is considered to be serious, it will be necessary to proceed to the formal stages of the Disciplinary Procedure.

Formal Action

- 4.9 This procedure is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues.

The Investigation

- 4.10 Any employee alleged to have committed a disciplinary offence will be advised of the allegation in writing, invited to a meeting to discuss the matter further and be given the right to be accompanied by a trade union representative or work colleague.
- 4.11 In cases of alleged gross misconduct, there may be circumstances that require an individual to be temporarily moved to an alternate location and/or duties or suspended while the investigation is being conducted. This decision will be taken in consultation with HR following an assessment of the information available at that time. The determining factors would be: the nature of the breach of discipline; the potential for harm or other detriment to the Council or its employees from the continued presence on site of the individual under investigation; or that the continued presence on site would prejudice the investigation.
- 4.12 An independent Investigating Officer must carry out a reasonably thorough investigation before any a decision is made to proceed to a hearing. Further advice on the investigation process is available from HR in Managers Guidance Notes.
- 4.13 The Service Director will review the findings of the investigation and decide whether the matter should now proceed to a disciplinary hearing.

The Disciplinary Hearing

- 4.14 The Disciplinary Hearing will be conducted by a Panel as soon as possible following a decision to proceed to a disciplinary hearing.
- 4.15 The Panel will be made up of 2 senior managers who have had no previous involvement in the case so far as is possible, and a HR Adviser. One manager

will chair the Panel. All panel member to have undergone Unconscious Bias training

- 4.16 At the hearing the Investigating Officer will present the findings of the investigation, go through the evidence that has been gathered and call any witnesses if required. The employee will respond to allegations, ask questions, present evidence and call any witnesses. Either party may request an adjournment at any time.
- 4.17 If the Panel decides that further information is needed before a decision can be made, a date to reconvene the hearing will be agreed.
- 4.18 The Chair of the Panel will notify the employee of the hearing outcome which will be confirmed in writing. The sanctions that may be decided upon are set out below.
- 4.19 Employees will be advised of their right of appeal against disciplinary sanctions and or outcomes of any sanction imposed. There is no right of appeal where the employee is given an opportunity to be transferred to another post (see 4.26 below) as an alternative to dismissal.
- 4.20 Except in cases of gross misconduct, no employee will be dismissed for a first breach of discipline.

Sanctions

- 4.21 Should allegations be proven at the disciplinary hearing, and a sanction deemed necessary, the following options will be considered.

First written warning

- 4.22 Generally issued for first or minor incidents of performance or conduct:
- A letter confirming the warning & setting out the nature of the misconduct, and the change in behaviour required will be issued. This will also confirm what the consequences of failure to improve could be.
 - This warning will remain on file for a period of 12 months after which time it will be disregarded for disciplinary purposes provided that there have been no further incidents

Final written warning

- 4.23 Issued for more serious breaches of discipline or where an employee's conduct does not meet the required standards despite all reasonable steps having been taken by their manager to help the employee improve following a First Written Warning.
- Contents of the letter similar to First Written Warning, but will remain on file for period of 2 years after which time it will be disregarded for disciplinary purposes provided that there have been no further incidents.

Dismissal or other penalty short of dismissal

- 4.24 For acts of gross misconduct or where, following a final written warning, there has been a further breach of discipline, the employee will be dismissed & normally be issued with the appropriate period of notice.
- 4.25 Summary Dismissal will take place where there is deemed to be gross misconduct serious enough to undermine the contract between the employer and employee and make any further working relationship and trust impossible, in which case the employee will be dismissed without notice.
- 4.26 In some cases, as an alternative to dismissal the employee may be offered a transfer to a single, specified and available post. This will usually be a demotion to a lower graded post and there will be no protection of pay and the employee will automatically serve a 6 month probationary period in the new post. Demotion to this post will remain in place for a minimum of 12 months and this sanction will remain on file for period of 2 years after which time it will be disregarded for disciplinary purposes provided that there have been no further incidents.

Gross Misconduct

- 4.27 It is not possible to provide an exhaustive list; however the following are examples of conduct or behaviour which may constitute gross misconduct;
- Theft, fraud or deliberate falsification of records, unauthorised removal of property not belonging to the employee or other dishonesty, including fabrication of expense claims and time sheets.
 - Physical violence, bullying or threatened violence, or behaviour which provokes violence.
 - Bullying, harassment, victimisation or discrimination on grounds of protected characteristics as defined in Equality Act 2010.
 - Deliberate and serious damage to property or the property of a colleague, contractor, customer or member of the public Repeated or serious failure to obey reasonable instructions, or any other serious act of insubordination; misuse of Council property, equipment or brand name/reputation.
 - Bringing the Council into serious disrepute.
 - Being under the influence of alcohol, illegal drugs or other substances. during working hours where decision making or performance impaired
 - negligence which causes or might cause unacceptable loss, damage or injury.
 - Serious infringement of Health and Safety rules.
 - Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in an employee's possession is kept secure, or unauthorised use, processing or disclosure of personal data contrary to the Council's information governance rules and protocol Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).

- Serious breach of the Council's policies which enforce its statutory obligations.
- Unsatisfactory work performance (if a wilful act).
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- Unlawful discrimination, victimisation or harassment, or inciting others to discriminate unlawfully, victimise or harass others.

Safeguarding Allegations

- 4.28 In circumstances where there are allegations of abuse or neglect against children or adults in a vulnerable situation, before a decision is made to proceed with the disciplinary investigation the Head of Safeguarding must be informed.

Appeals Process

- 4.29 An employee is entitled to appeal against any formal sanction including dismissal (but excluding transfer to another post as an alternative to dismissal) in accordance with the disciplinary procedure, where they feel the disciplinary action taken against them is wrong or unjust.
- 4.30 The employee will need to follow the separate Appeals Procedure process and timetable detailed below.

Appeals against First and Final written warnings

- 4.31 These should be made in writing to the appropriate Strategic Director/Director of the employee's Directorate within **5 working days** of written confirmation of the sanction.
- 4.32 The Strategic Director/Director or nominee will nominate an appropriate senior manager, not previously involved in the case to hear the appeal, assisted by HR.

Outcome of Appeals Hearing

- 4.33 The following 3 options will be considered:
1. Disallowing the appeal and upholding the disciplinary sanction.
 2. Disallowing the appeal and applying a lesser sanction.
 3. Allowing the appeal, thereby overturning the decision and withdrawing the disciplinary sanction.
- 4.34 The decision may be made following an adjournment and will be confirmed in writing by HR within **5 working days** of the appeal hearing.

- 4.35 The decision of the Appeal Panel considering the appeal will be final and the employee will have no further internal right of appeal.

Appeals against Dismissal

- 4.36 The right of appeal against dismissal will be to the Human Resources Appeal Panel. The notice of intention to appeal against dismissal should be made in writing to the relevant Service Director within **5 working days** of written confirmation of dismissal.
- 4.37 The purpose of an appeal against dismissal is for an employee to have their case reviewed and to decide whether or not the sanction applied is fair, reasonable, consistent and soundly based.

Outcome of Appeal against Dismissal

- 4.38 The following 3 options will be considered:
1. Disallowing the appeal and upholding the dismissal sanction.
 2. Disallowing the appeal and applying a lesser sanction.
 3. Allowing the appeal, thereby overturning the decision and withdrawing the dismissal sanction.

4.48 Confidentiality

- 4.49 Confidentiality should be maintained throughout the disciplinary process, and all parties involved in the disciplinary process should adhere to this principle.

5.0 Roles and Responsibilities

5.1 Employees are required to:

Employees have a responsibility to comply with all standards, codes and protocols which govern officers' conduct and behaviour. All those persons referred to within the Scope of this policy are required to adhere to its terms and conditions. Failure to comply with this policy will be treated as breach of discipline and measures will be taken to enforce this policy.

5.2 Managers are required to:

- 5.3 Managers have a responsibility to ensure that employees are aware of the Disciplinary Policy and sanctions for breaches.
- 5.4 Individual managers are responsible for ensuring that this policy is applied within their own area. Any queries on the application or interpretation of this policy must be discussed with HR Advice prior to any action being taken for alleged breaches.

5.5 Human Resources Advice are required to:

- Provide operational support to the organisation to enable the effective handling of allegations of misconduct under this policy
- Produce and maintain managers guidance notes
- Provide support and guidance to managers and employees throughout the stages of this policy
- Ensure the communication, maintenance, regular review and updating of this policy
- Monitor and review delivery and impact of this policy

5.6 The Head of HR is required to:

In consultation with the recognised Trade Unions, the Head of HR will exercise delegated authority for and be responsible for the ongoing review and updating of this Policy to ensure compliance with changes in statutory requirements and operational delivery, including responsibility for identifying the appropriate process for the regular evaluation of the effectiveness of this policy. Any fundamental changes to this policy will be brought before the Resources Panel for approval.

5.7 Trade Unions are required to:

- 5.8 Any review and revisions of this policy will be undertaken by HR Advice and will be in consultation with the Council's recognised trade unions.

6.0 Monitoring and Review

- 6.1 The disciplinary policy and procedure will reviewed and updated annually and be available to managers and employees via the HR intranet.

7.0 Links to other Policies and Procedures

- 7.1 The Disciplinary Policy cannot be seen in isolation as it plays a key part in corporate governance, performance and business management, it is closely linked with the following strategies and policies:

- Grievance Policy and Procedure
- Capability Policy and Procedure
- Dignity At Work Policy Statement
- Safeguarding Adults Policy and Procedure.
- Safeguarding Children Policy and Procedure.
- A breach of any code or policy specifying standards of conduct or behaviour for Council employees may result in disciplinary action.

8. Equality

- 8.1 An Equality Analysis has been carried out on this policy and procedure.

- 8.2 The Council has a duty to monitor the application of the policy in relation to protected characteristics under the Equality Act 2010. This is reported annually in the Council's Equality Monitoring Report.
- 8.3 If any aspect of the disciplinary procedure causes you difficulty on account of any disability that you may have, or if you need assistance because English is not your first language, you should raise this issue with HR, who will make appropriate arrangements.

9. Disciplinary Process Chart

Appendix 1

