



Disciplinary Procedure

Disciplinary Procedure

1. Introduction

This procedure is designed to help and encourage all employees to achieve and maintain satisfactory standards of conduct and performance at work. The procedure supports the policy by setting out the practical steps of the process and is written in accordance with relevant legislation and codes of practice.

This Disciplinary Procedure provides a framework for ensuring that employees are made aware of unacceptable conduct to ensure any workplace disciplinary situation is dealt with in a fair and consistent manner. The Disciplinary procedure will be invoked in cases of alleged misconduct, which are set out in Appendix 1 of this procedure. If, following a disciplinary investigation a disciplinary hearing is convened then the hearing process will be as per Appendix 2 of this procedure.

2. Application

The Disciplinary Procedure covers all employees of the Council with the exception of the Chief Executive and employees covered by the Chief Officer Conditions of Service. Staff on Probation will be subject to the [Probationary Policy](#).

If a member of staff is also a recognised official of a trade union no action under the Disciplinary Procedure must take place until the circumstances of the case have been discussed with a full time Official of the union concerned. HR Services must be consulted in all such cases.

Where an employee is employed under more than one contract of employment with the Council it should be noted that an act of Gross Misconduct which could result in dismissal may similarly influence all of the contracts of employment.

3. Informal procedure

Employees should be aware of the standards required from them in the course of their normal day-to-day duties, through their job description and employment contract and through the Council's policies. These should be drawn to the attention of employees through regular supervision and through the induction of new staff.

Managers should provide feedback and guidance to their employees about their conduct or performance regularly on both an informal and formal basis. This may be through daily contact or one to one discussions. These discussions should be ongoing to address any problem areas and to ensure that employees know what is expected of them in terms of conduct. In the majority of cases these ongoing discussions will assist in ensuring there is no need for more formal action.

Managers should ensure that any informal action does not turn into formal disciplinary action as this may deny the employee certain rights e.g. the right to be accompanied. If during the discussion it becomes obvious that the matter may be more serious, the meeting should be adjourned and the employee should be told that the matter will be continued under the formal disciplinary procedure.

Any matter of concern regarding the actions or failure to act by an employee or an employee's conduct which comes to the attention of a member of staff, or manager should be discussed with the HR Services or the Service Director. If it is decided that formal action under the Disciplinary Procedure is not required but that it should be made clear to the employee what action is required of them in the future, then the Manager may issue them with a **Letter of Expectation**. This will set out the expectations on the employee and explain that if the employee fails to meet those expectations then that may result in the formal disciplinary process being actioned. A copy of the letter must be held on the personal file and where review periods or actions have been agreed, the manager must ensure these take place. A letter of expectation is not a disciplinary sanction. However, it may be referred to for disciplinary purposes in future, if there is a similar issue, as evidence that the employee has had the expectations set out to them. There is no right to appeal against a Letter of expectation.

Comment [LF1]: Letter of Expectations have been used as a method of informal action for a significant number of years. The change to the policy is purely to incorporate this practice within the policy.

4. Formal procedure

Investigation

Where attempts to resolve the issue through the informal procedure are not successful or where an employee's alleged misconduct is more serious then the formal procedure may be entered into. The procedure may be used to address concerns about conduct as detailed in Appendix 1 of this procedure. Very serious allegations may be considered as Gross Misconduct (see Appendix 1). The Service Director or Deputy Chief Executive must agree to a formal Disciplinary investigation taking place. They will decide whether a suspension is appropriate or a temporary transfer to work elsewhere whilst the investigation is undertaken and appoint an Investigating Officer. If the issue relates to safeguarding the Manager must notify the Council's LADO (Local Authority Designated Officer) & Safeguarding and Child Protection Co-ordinator immediately or the Safeguarding Vulnerable Adults Team.

Where there is alleged criminal activity an investigation may run in parallel to a police, audit and/or child protection or adult abuse investigation and should not be held up unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing or criminal investigation before deciding on disciplinary action.

The employee will be notified of the allegations made against them, and this will be confirmed in writing to them. The employee will also be advised whether the investigation will include suspension from duty. If the employee is suspended this will be on full pay. Occasionally new allegations may arise as part of the investigation. If this is the case the employee will be advised of them and they will be added to the terms of the investigation. The employee may be suspended during the investigation by the decision of the Service Director or Deputy Chief Executive where further information comes to light or additional allegations may make suspension necessary.

The investigating officer, who will have had no previous involvement in the case will gather evidence relevant to the investigation and compile a report based on it. The investigating officer must make all reasonable efforts to gather relevant facts, acting promptly in taking statements, conducting information gathering interviews if necessary, including with the employee subject to the allegation and collecting documents, including any relevant policies and procedures. Once the investigation is complete the evidence will be compiled and a recommendation forwarded to the Service Director as to whether or not there is sufficient evidence to proceed to a hearing in line with the formal process, or if informal action or no action may be recommended.

It will then be for the Service Director to accept or reject the recommendation, and either:

- Confirm there is no evidence to support the allegations and close the investigation, or
- Request the investigating officer conducts further investigation, or
- Arrange a disciplinary hearing.
- Or take informal action such as issuing a letter of expectation

The employee will be informed, in writing of whichever of these courses of action is taken. If further investigation is required the investigating officer must complete this and submit an updated report.

6. Disciplinary Hearing

For the purposes of this Policy and Procedure the term "Hearing Officer" refers to the Service Director or Deputy Chief Executive who will consider the case at the formal hearing. In order to ensure impartiality they must not have been involved in the case previously.

The investigating officer will act as the presenting officer, detail their findings and call any relevant witnesses to attend. Where the employee is being supported by a known trade union representative HR will as far as reasonably possible consult with the Trade Union about the potential hearing dates. The employee and the person accompanying them are obliged to make every effort to attend the meeting.

The employee will be given at least **10 working days' notice**, in writing of the date, time and place of the disciplinary hearing. At this point they will be provided with copies of the disciplinary hearing report and any attached evidence, including documents and witness statements. The invite to hearing letter will also advise the employee of:

- The nature and details of the alleged misconduct;
- Their right to be accompanied (**see section 6.1 below**)
- Their right to call witnesses, whose attendance they must arrange
- The name and status of the investigating officer and presenting officer
- Name of any witnesses to be called by the presenting officer

The employee will also be provided with a copy of the disciplinary policy and procedure.

Comment [LF2]: This is a reduction from 15 days' notice. However the policy has been reflected to confirm that when arranging hearings HR will work Trade Unions to establish a suitable and timely date.

Either side may request the postponement of a disciplinary hearing. It is for the hearing officer to decide upon such requests, balancing the principles of natural justice with the desire to carry out the process in the shortest possible time. Where an employee's companion is unable to attend the scheduled hearing date the employee can request that it is deferred and must provide an alternative date no later than five days after the original hearing date.

No later than five working days prior to the hearing, the employee will:

- Provide the name and status of any representative to the hearing officer
- Submit a written statement and any other documentation, either directly or via a representative
- Provide the details of any witnesses they intend to call.

Careful consideration should be given by both parties to the number of witnesses to be called and the numbers limited to that necessary to support their case. The hearing officer will be advised by a member of the HR department who has not previously been involved in the case. The presenting officer may be accompanied by the HR advisor who advised them during the case.

During the hearing, the disciplinary hearing process, outlined in **Appendix 2** will be followed and one of a number of sanctions may be applied. These are shown in the next section.

The hearing officer will be responsible for deciding whether the allegations against the employee are proven on balance of probability and if so, what disciplinary sanction should be applied. In reaching this decision the hearing officer should take into account:

- Whether a fair procedure has been followed;
- The credibility of the evidence and any witness accounts;
- The type, degree and (potential) consequences arising from the alleged misconduct;
- The employee's previous conduct, or frequency of misconduct
- The level of responsibility of the employee concerned, or their position within the organisation;
- The employee's defence and any mitigation put forward by them
- What sanction is reasonable in view of the circumstances;
- What precedents exist, i.e. what sanction has been imposed in similar past cases, and
- Whether there is a current live warning for previous misconduct on the employee's file or a Letter of Expectation relevant to the allegations.

The hearing officer will if possible inform the employee of the decision reached at the end of the hearing, following an adjournment to consider. Alternatively, if this is not possible a decision can be advised in writing. In any case a letter outlining both the decision and the key considerations leading to it will be issued within five working days of the hearing date.

6.1 Right to be accompanied

The employee has a statutory right to be accompanied by a fellow work colleague or a trade union representative. It is the employee's responsibility to arrange the attendance of their companion. At the hearing the companion has the right, (with the employee's agreement), to address the hearing in order to put employee's case, sum up the case or respond on the employee's behalf to any view put forward at the hearing. They do not have the right to answer questions on the employee's behalf.

Any representative will be required to respect the confidentiality of information regarding other employees, service users or commercially sensitive matters which they may become aware of in this role.

Where an employee has been supported by a trade union representative HR Services will liaise with the union when arranging hearing dates. However consideration will be given to the requirement to deal with the matter in a timely way whilst ensuring a fair process is undertaken.

7. Disciplinary sanctions

Once misconduct is found to be proven on balance of probability then the hearing officer will consider what sanction is appropriate. This ranges from:

Written warning. This is appropriate for relatively minor misconduct, a first offence under the formal procedure or where efforts to resolve an issue under the informal procedure are not successful. A letter will be issued confirming the warning, date of issue, duration of the warning and how long the warning will remain live for disciplinary purposes. A first written warning will normally remain live for up to 12 months provided there are no further issues of similar misconduct.

Final written warning. This is appropriate in a case of serious misconduct that is not sufficient to justify summary dismissal or in cases where there is already a live first written warning in place. A letter will be issued confirming the warning, the date of issue, duration of the warning and how long the warning will remain live for disciplinary purposes. A final written warning will normally remain live for up to 18 months, provided there are no further related issues of misconduct.

Dismissal with notice. This is appropriate when there is no improvement in conduct when there is a live written warning in place.

Summary dismissal (dismissal without notice). This is appropriate in cases of gross misconduct, i.e. where an employee's conduct is so serious that it fundamentally breaches the contract between employee and employer.

Disciplinary sanctions other than dismissal should set out the improvement required, the timescale for its achievement, consequences of further misconduct and any support or training identified in order to assist the employee to achieve the required standard.

8. Right of appeal

In the case of any formal disciplinary sanction there will be a right of appeal. The appeal must be submitted in writing no later than 10 working days of the date of receipt of the letter confirming the outcome of the hearing. Arrangements for hearing the appeal are outlined in Appendix 3. The purpose of the appeal will be to review the outcome of the original hearing in terms of either its substantive or procedural fairness, i.e. as to whether the decision itself was believed to be too harsh or whether it is alleged that a flawed process was followed.

New evidence or witnesses will be allowed where they are relevant and when it is in the interests of justice and fairness that they are seen or heard respectively. Declaration of this information should be made as soon as possible and no later than five working days prior to the appeal hearing.

The Appeal will be considered by a Deputy Chief Executive/Chief Executive if the original decision was dismissal. Appeals against all other sanctions will be heard by a Service Director within another department. The Appeal Hearing will be conducted in accordance with the procedure detailed in Appendix 3.

9. Other considerations

9.1 Witnesses and other evidence

All employees must cooperate and assist in a disciplinary investigation if required to do so by the investigating officer and will also be expected to attend to give evidence at a disciplinary hearing if requested by the hearing or investigating officers. Employees are actively encouraged to attend if asked to do so by an employee or their representative in order that a fair hearing of the facts can be pursued.

Where an employee wishes to call a witness to a hearing it is their responsibility or their trade union representative to arrange for the witness to attend once accepted by the Hearing Officer

The investigating officer may decide to interview or obtain evidence from persons who are not employees of the Council. Particular care and sensitivity must be shown if service users or public are to be interviewed. It will not normally be the practice to call witnesses unless they are employees of the Council or representatives of other organisations.

9.2 Grievances raised during a disciplinary case

Where an employee raises a grievance during a disciplinary investigation the process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. Alternatively it may be that the facts of the grievance actually constitute a defence or mitigation in terms of the disciplinary matter, in which case they will be considered as part of the disciplinary investigation.

9.3 Where an employee repeatedly fails to attend a meeting

There may be occasions when the employee is repeatedly unwilling or unable to attend a meeting.

Where there is a clear medical reason then the hearing officer will need to consider, on HR advice and possibly that of Occupational Health, whether the medical issue actually prevents the employee's attendance.

If it does and the employee is not able to attend consideration should be given to the following courses of action:

Allowing the employee's representative or companion to attend and speak on their behalf.

- Postponement of the hearing to another reasonable date when the employee can attend;
- Allowing the employee to provide a written statement and giving this full and proper consideration.
- In either of these two cases the hearing officer must be especially rigorous in their consideration of the evidence and their examination of any witnesses.

When the employee fails to attend without any or good reason for doing so another hearing date will be convened and a further letter sent to the employee requesting their attendance. The letter will advise that failure to attend will result in the case being considered in their absence. The reconvened hearing will then proceed in the absence of the employee if they fail to attend.

9.4 Legal Section

In the event of an employee making a claim to an employment tribunal it is the responsibility of the legal section to provide advice and to lead the response to the claim. A representative from the legal section will also attend the Employment Tribunal Hearing on behalf of the Authority.

Managers will be required to provide information and they and other staff involved in the Disciplinary process may be called as witnesses at the tribunal. HR Services will also be involved in the process.

9.5 Suspensions and Dismissal – Notification

All suspensions and dismissals must be notified to the Chief Executive, The Leader of the Council and the Executive Councillor for Transformation Services

Dismissal Procedure

1. Introduction

Southend on Sea Borough Council is under a legal obligation to have in place a Dismissal Procedure and to ensure that certain stages are followed throughout the procedure. The law states that whenever an employer contemplates dismissal action they must comply with the Acas Code of Practice. As well as ensuring that there is a set process to follow leading to dismissal, there is also the right for employees to appeal against the decision reached.

This Dismissal Procedure has been adopted by the Council and aims to ensure any workplace dispute is dealt with in a fair and consistent manner.

2. Purpose

This procedure should be used as a tool to enable all members of the Council to effectively deal with any dismissal situation. By following the procedure both employees and managers should be fully aware of all stages in the process.

The procedure clarifies responsibilities for anyone involved in a dismissal process. This includes the individual, manager, investigating officer and hearing officer.

It is important to note that the Council is not a court of law. Any Hearing outcomes are based on the balance of probabilities and do not follow the legal rule of "beyond all reasonable doubt".

3. Application

The Dismissal Procedure covers all employees of the Council with the exception of the Chief Executive and employees covered by the Chief Officer Conditions of Service, including those staff who are employed on a fixed term contract of any duration.

Where an employee is employed under more than one contract of employment with the Council, it should be noted that an act of Gross Misconduct which could result in dismissal may similarly influence all of the contracts of employment.

4. Right to be accompanied

When a meeting is called in line with this procedure, employees have a statutory right to be accompanied by a trade union official or some other person of the employee's choice.

Any representative will be required to respect the confidentiality of information regarding other employees, service users or commercially sensitive matters which they may become aware of in this role.

Southend on Sea Borough Council recognises a number of Trade Unions and will work with them where a member is subject to this dismissal procedure.

5. Dismissals

Dismissal may occur for a number of reasons. For example:

- a) dismissal on grounds of capability
- b) dismissal on grounds of conduct
- c) dismissal by reason of redundancy
- d) not confirming employment under Probation process
- e) not renewing a fixed term contract
- f) Other situations where the Council considers dismissal would occur

The Council has separate policies for a, b c and d above which must be followed.

In regard to e and f the procedure outlined in the Discipline and Dismissal Policy must be followed.

6. Non-renewal of fixed term contract

The Acas Code of Practice is not relevant to the non-renewal of fixed term contracts. However, in the case of non-renewal of a fixed term contract the procedure shown in paragraph 7 below should be followed. Managers must ensure that the normal notice period is given to the employee.

In the case of fixed term contracts of less than 2 year, an employee will normally have no right to claim unfair dismissal if the contract is not renewed. However if an employee has previous continuous service in Local Government this may result in their total service being more than two years.

7. Procedure – Not renewing a Fixed Term Contract

Step one: Put it in writing

The employee must be informed in writing that their contract will come to an end. They should be invited to a meeting to discuss their cessation of employment.

Step two: Meet and discuss

A "**dismissal interview**" should be held by a Group Manager/ Head of Service or Service Director for employees who are leaving the Council's employment because their fixed term contract has come to an end. If a Group Manager or Head of Service holds the meeting this must be on the approval of a Service Director or Deputy Chief Executive.

Employees have a statutory right to be accompanied by a Trade Union official or colleague.

The interview should take the form of a meeting and should cover:

1. Explaining that the employment will come to an end on XX date
2. That as a result they are / are not at risk of redundancy (if applicable)
3. That as a result they are / are not able to take advantage of the redeployment procedure (for employees with over 1 years continuous service)
4. Explaining the process and answering any questions they may have.

The employee should be informed in writing of the decision to end the contract and contractual notice issued. The employee should also be informed of their right to appeal.

Step three: Appeals

An appeal meeting should be held by a Service Director if requested by the employee. The process shown in Appendix 6 to the Disciplinary procedure should be followed and the employee must be informed of the outcome of the appeal.

8. Dismissal - Some Other Substantial Reason

Comment [LF1]: New inclusion with the Dismissal Policy

This process applies where a dismissal does not fall under another policy or procedure but where there is some other substantial reason that would warrant dismissal.

The employee will be invited to attend a dismissal hearing. The employee will be given 5 working days notice of this hearing and will have the right to be accompanied by a work colleague or trade union representative.

The employee will be informed of the reason for the dismissal hearing and be provided with a dismissal hearing pack 5 working days prior to the hearing which will contain all relevant information and evidence to be considered.

The dismissal hearing will be conducted by a Service Director supported by a HR Advisor. The Dismissal Hearing will be conducted as per the Hearing Process outlined in the Disciplinary Policy.

The employee will be informed of the outcome of the dismissal hearing in writing within 5 working days.

The employee has a right of appeal against dismissal in with the appeals process outlined in the Disciplinary Policy.

Managing Sickness Absence Policy

3.10 Appeals against dismissal

Employees have a right of appeal against dismissal to a Deputy Chief Executive or Chief Executive. Any appeal must be registered with the Strategic Director of Transformation within 10 working days of receipt of the outcome letter confirming the decision to dismiss and should set out the reason(s) for appealing, outlining why it is believed that the decision to dismiss was unfair.

Employees will be given not less than 15 days notice of the date of the appeal and will be invited to submit any documentation or call witnesses relevant to their case, as will the Presenting Manager (the Hearing Officer at the Contractual Review). 10 days notice should be given to HR where additional documentation is to be submitted.

The procedure to be followed at the appeal hearing is set out in Appendix 11. The decision of the Appeal Hearing Officer will be notified to the Appellant in writing within 5 working days of the appeal hearing. The decision of the Appeal Hearing Officer will be final.

Where an employee is represented by a recognised trade union official, where possible, HR Services should consider agreeing the date with the official to avoid unnecessary delay should the meeting need to be re-arranged in the event that the trade union official is unavailable.

Redundancy Policy & Procedure

4. Appeals Procedure

Where an employee has received notification of:-

- (a) Selection for redundancy
- (b) An offer of suitable alternative employment / redeployment following selection for redundancy which they believe they have reasonable grounds for refusing.

Where an employee believes that they have grounds of an appeal it should first be raised in writing with the Service Director within 5 days of receipt of the notification.

Upon receipt of an appeal the Service Director (or other nominated officer) will contact the employee within 10 working days of receipt of the appeal to arrange a meeting. Also present at the meeting will be the lead manager who undertook the redundancy selection process, and/or the restructure process, and where required a HR Advisor. The Service Director may also be supported by a HR representative. No later than 5 working days prior to the meeting all parties will be provided with a copy of the information used to determine the employee's selection for redundancy or details of the suitable alternative employment. The scores and ranking provide in respect of other employees will be anonymous. Following the meeting the Service Director will confirm the outcome of the appeal in writing to the employee with 5 working days

Where an employee who has received written notification of dismissal on the grounds of redundancy believes that: -

- (a) he or she has been unfairly dismissed;
- (b) he or she has been unfairly selected for redundancy
- (c) and/or their redundancy pay is being withheld due to refusing an offer of alternative employment
- (d) and their appeal to the Director was not satisfactory resolved

They may appeal in writing within 10 working days of receipt of formal notice of redundancy being issued to the Strategic Director of Transformation. The written appeal must state why an appeal has been lodged and the grounds of the appeal.

The Strategic Director of Transformation will then arrange an appeal hearing to be heard by a Deputy Chief Executive or Chief Executive.

The employee shall be given notice in writing at least 15 days in advance of the time and place of the hearing, and shall be allowed to be represented by his or her Trade Union representative, or some other person of his/her choice and shall be enabled to call witnesses and produce documents relevant to the case at the hearing.

Any documents which the Service Director or employee intends to present at the hearing shall be sent to the HR Services not less than 10 days before the hearing. Failure to observe this requirement may result in the documents being excluded or delay in the hearing the appeal.

The time limits referred to above can be varied by agreement with all the parties concerned.

Capability Policy

5. Right of Appeal

An employee may appeal against dismissal on the grounds of lack of capability. The appeal must be made in writing to the Strategic Director - Transformation, stating the grounds of appeal. The appeal will be heard by a Deputy Chief Executive or Chief Executive.

The employee should be advised in writing of the date for the appeal to be heard, and that they may be accompanied by a trade union representative or work colleague.

The appeal process will be carried out in accordance with the appeals procedure set out in the Council's Disciplinary policy and procedure.