
DISCIPLINARY PROCEDURE

Section: Conduct in the Workplace
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Appendices: (1) Appeal Against Disciplinary Action Form
(2) Gross Misconduct - Examples
(3) List of Employees Authorised to Implement Sanction
(4) A Managers Guide to the Disciplinary Procedure

A **INTRODUCTION AND SCOPE**

1. It is recognised by the Authority that discipline is necessary for the efficient operation of the Council's business and for the health, safety and well-being of all employees. In order to provide a fair and effective procedure for dealing with disciplinary matters, the following procedure will be applied in all instances where disciplinary action is regarded by management as warranted, other than where an informal reprimand is given for some minor act of misconduct.
2. The procedure applies to all employees other than those covered by the JNC conditions of service for Chief Officers and Teachers to whom separate procedures apply. It does not apply to non-teaching staff at LMS Schools, although it is recommended as a model for use in those schools.
3. The procedure does not apply to:
 - (a) termination of a fixed-term contract of employment where the term of that contract expires without being renewed;
 - (b) termination of temporary appointment where the reason for termination is that the need for the employee's service has expired, or is about to expire;
 - (c) termination during or at the end of a probationary period of service, whether or not extended beyond its originally specified duration;
 - (d) termination of employment by reason of redundancy;
 - (e) resignation by the employee, or other termination by mutual consent;
 - (f) incompetence, incapability or other poor performance at work which is considered not to be attributable to willful opposition by the employee to carry out his/her duties efficiently or effectively, but which is thought to be attributable to a lack of skill or aptitude, or to health or any other physical or mental quality. A separate procedure exists for trying to resolve such problems.
 - (g) Termination of employment by reason of meeting the requirements of the Asylum and Immigration Act 2006.
4. The procedure applies equally to all employees within the scope described above, regardless of age, disability, sex, sexuality, marital status, race, religion, colour, nationality or ethnic or national origin.
5. The timescales referred to in the following procedure may be varied by mutual agreement.

B **INVESTIGATION**

6. Where a matter arises which is alleged to have breached a disciplinary rule or may otherwise be a disciplinary matter, an officer will be nominated to investigate it promptly and adequately (known as the 'Investigating Officer'). The employee (and his/her representative) will be informed in advance of the investigation and the nature of the complaint against him/her.
7. In a case of potential gross misconduct an Assistant Director or other authorised officer must suspend the employee on normal pay whilst the investigation proceeds. Any decision to suspend will be confirmed in writing and this will be a precautionary measure, not disciplinary action, pending the outcome of the matter.
8. If suspension is being considered, a meeting will be convened with the employee. The employee may seek representation or if requested, management can seek this on his/her behalf. The employee will be allowed one hour (and no more than a maximum of three hours in exceptional circumstances) to find a representative. Failure to find representation will not stop the meeting and any decision to suspend. The employee will be told of the allegation(s) made against him/her and offered an opportunity to make a statement. The employee will be informed when he/she must leave Council premises. The employee must be available for contact throughout the period of suspension. All Council property must be returned during the period of suspension, that is keys to buildings, etc. Access to the Council's Internet and E-mail facilities will be suspended along with any other systems the employee has access to.

C **THE PROCEDURE**

9. If on completion of the investigation, the Investigating Officer believes on reasonable grounds that the employee has committed the alleged act of misconduct, then the procedure will be carried out at the stage appropriate to the severity of the employee's alleged misconduct.
10. If the nature of the misconduct is potentially more serious (e.g. for breaches of employment conditions or safety in the workplace), then formal disciplinary action will need to be instigated. The employee has the right to be represented by a Trade Union representative, a work colleague or another person of his/her choice. The employee will be told of this right before any Disciplinary (or Appeal) Hearing. All requests for representation must be reasonable and must not frustrate the progress of the procedure.
11. Employees will not be dismissed for a first breach of discipline, except for gross misconduct when the sanction will be summary dismissal, this is without notice or payment in lieu of notice.

D **THE HEARING**

12. The employee will be given **at least 10 working days'** advance notice of the hearing in writing; told the purpose of it, with the nature of the alleged misconduct being outlined and a copy of the Investigating Officer's report and all documentary evidence included; and invited to attend together with his/her representative. Witness statements or documentary

evidence that the employee wishes to present at the hearing must be submitted **not less than 5 working days** in advance of the hearing.

13. If the employee is unable to attend the hearing, for a good reason, such as sickness covered by a GP's certificate, the hearing may be adjourned to a subsequent date that will be notified to the employee and his/her representative. In cases of sickness, advice from Occupational Health should be sought to determine whether the employee is able to attend the hearing. If the employee is unable to attend the rearranged hearing, it will normally proceed in his/her absence, but with the opportunity for the employee's representative to present the employee's case. Any submission by the employee in writing, or by his/her representative, will be considered.
14. The hearing will normally be conducted by a nominated manager (the 'Disciplining Officer') of the employee's department who will normally be advised by a Personnel Officer. The Investigating Officer will be asked to present the supporting facts and material. The employee and his/her representative, and the Disciplining Officer will be entitled to question the Investigating Officer and any witnesses who may attend the hearing to give their account of the matter. The employee will be entitled to give any explanation he/she wishes and may be questioned by the Investigating Officer as well as by the Disciplining Officer. The Investigating Officer, as well as the employee and/or his/her representative, will be given the opportunity to sum up, including any mitigating circumstances for consideration by the Disciplining Officer.
15. The Disciplining Officer may adjourn the proceedings at any stage if he/she considers that further information is necessary, specifying the nature of that information and the duration of the adjournment.
16. On completion of the proceedings, the Disciplining Officer will normally announce his/her decision and the disciplinary action, if any, to be taken. An explanation for that action will be given together with details of the employee's right of appeal under this procedure. In any case, the outcome of the hearing will be provided in writing to the employee **within 5 working days**.

E **FORMAL DISCIPLINARY ACTION**

17. In cases, other than those involving gross misconduct, where a reasonable belief is established on the balance of probabilities that the employee is responsible for the alleged misconduct, the following formal disciplinary action will be taken. In cases where the misconduct involves an offence of a sexual or violent nature or the maltreatment of service users, disciplinary action will remain live for the timescales specified in paragraph 18.
 - (a) For a minor offence or offences, a formal verbal warning may be given. The employee must be told the specific reason(s) for the warning and that further misconduct will lead to more serious disciplinary action being taken. The duration of the warning is 6 months after which it will be disregarded. A note of the warning will be made and will be referred to during the warning period if the employee commits a further act of misconduct. A copy of the note will be provided to the employee.
 - (b) For a more serious offence, or a further minor offence occurs whilst the employee has a current verbal warning in place, a first written warning will be given. The warning will be

for 12 months from the date of issue. It will set out the nature of the offence, the improvement required and timescale, and inform the employee that if there is no satisfactory improvement or further misconduct occurs this is then liable to result in more serious disciplinary action being taken.

- (c) If the offence is sufficiently serious to warrant a warning but insufficiently serious to justify dismissal, or for an offence after a first written warning has been given and is current, a final written warning will be given. The warning will be for a period of 2 years from the date of issue. It will set out the nature of the offence, the improvement required and timescale, and inform the employee that further misconduct could result in dismissal.
 - (d) For an act or acts of further misconduct, other than gross misconduct, by an employee who is subject to a current final warning given in accordance with (c) above, the employee may be dismissed with notice or, at the Disciplining Officer's discretion, pay in lieu of notice.
 - (e) In cases where gross misconduct is alleged and is established on the balance of probabilities, the employee will be summarily dismissed.
18. Any disciplinary warning arising from misconduct of the type described below will remain live for the timescales specified.
- (a) Where a disciplinary offence of serious dishonesty is established, any warning issued will remain live for 5 years.
 - (b) Where a disciplinary offence of a sexual or violent nature or involving the maltreatment of service users is established any warning will remain live indefinitely.
19. In all cases a warning will be destroyed at the expiry of the live period.

F **APPEALS**

20. The employee has a right of appeal against any formal disciplinary penalty imposed:
- either:**
- to an Assistant Director against a disciplinary sanction issued by a Disciplining Officer at an organisational level subordinate to an Assistant Director. The hearing should take place **within 28 working days** of receipt of the appeal from the employee.
- or:**
- to a nominated Chief Officer against dismissal or any sanction issued by a Assistant Director. The hearing should take place **within 28 working days** from receipt of the appeal from the employee.
21. Should an employee wish to appeal against a decision, he/she must do so in writing on the correct form (attached as Appendix 1) **within 10 working days** of receiving the note/letter confirming the decision, setting out in full the grounds of appeal. The employee must make it clear on the appeal form whether he/she is appealing against the finding that he/she was responsible for the alleged act or acts of misconduct, and/or the form of disciplinary action decided upon.

22. All documentary evidence and statements of case that either side wishes to present at appeal hearings, must be submitted **no later than 10 working days** before the hearing.
23. An appeal will normally be by way of a re-hearing unless the appeal relates solely to the level of disciplinary sanction imposed.
24. In considering the appeal, the nominated Chief Officer may uphold, amend or reject the disciplinary action, but may not impose a greater sanction. If allowing the appeal and the disciplinary action is rejected, the record of the warning will be removed from the employee's record. The result of the appeal must be given in writing to the employee **within 5 working days**.
25. There is only one appeal against any disciplinary decision.

G **MISCELLANEOUS**

26. **Gross misconduct** is regarded as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible. Examples of gross misconduct are given in the Appendix 2. This list is neither exclusive nor exhaustive. Other acts of misconduct may come within the general definition of gross misconduct.
27. **Statutory Ban** "Statutory Ban" is the term used to describe a fair reason for dismissing an employee, when allowing them to continue in employment will contravene (on the employee, or employers part) a duty or restriction imposed by or under enactment.
28. The most common example of a Statutory Ban is a Driving Ban when an employee has lost his/her driving license. However, a Statutory Ban may or may not result in the use of the Disciplinary Procedure, or dismissal, dependant on the circumstances of the case. Further information on Statutory Ban is available in the Manager's Guide to the Disciplinary Procedure.
29. Where an alleged act of misconduct is believed to have been committed by an employee who is an **accredited trade union representative** recognised by the Authority for collective bargaining purposes, no action under the procedure, other than precautionary suspension when serious misconduct is being investigated, will be taken until the case has been discussed with a full-time official of that trade union.
30. The Grievance Procedure and the Disciplinary Procedure are mutually exclusive, the Grievance Procedure will not be available to employees where a disciplining matter has been initiated and whose declared grievance is connected with that matter.
31. Nothing in this procedure is intended to remove the right of a supervisor or manager to give an employee an informal warning when the employee is believed to have committed a minor infringement of the established standards of conduct. Where an informal warning is given the manager will make a personal note of that informal warning for future reference should the employee's conduct on a later occasion justify action under this procedure.

H

REVISION OR TERMINATION OF THIS PROCEDURE

32. The operation of this policy and procedure will be monitored and reviewed by the Personnel Department as appropriate in consultation with the Trade Unions and other appropriate bodies.

APPENDIX 1

SEFTON COUNCIL

CONFIDENTIAL

APPEAL AGAINST DISCIPLINARY ACTION

Please read this note before completing the form

If you have been disciplined and wish to appeal you must use this form. You may complete it personally or your representative can complete it on your behalf.

Your appeal will not be considered unless this completed form is returned to your Assistant Director **within 10 working days** of the date upon which you received written confirmation of the disciplinary action taken against you. In the case of verbal warnings, this written confirmation will be in the form of a note.

You must state clearly why you want to appeal and identify specific points on which you disagree with the decision. Please indicate below:

- (a) the finding
- (b) the sanction
- (c) new information is available
- (d) other reason

In all cases you must detail your reasons clearly on page 2.

Name of Employee: _____

Address: _____

Job Title: _____

Department: _____

Tel no: (Work) _____ (Home) _____

Continuous Service with Sefton MBC: _____

Name/address of Representative: _____

Contact Tel no: _____

Appeal against decision of (name): _____

Nature of decision (e.g. written warning, dismissal etc): _____

G R O S S M I S C O N D U C T

This list is neither exclusive nor exhaustive. Other acts of misconduct may come within the general definition of gross misconduct.

- (a) Failure to comply with a reasonable order, instruction, contractual requirement or a work rule.
- (b) Failure to comply with a health and safety requirement.
- (c) Any act which could result in an action against the employer for negligence or for breach of the duty of care.
- (d) Conduct likely to bring discredit to the employer's business or organisation.
- (e) Improper, disorderly or unacceptable conduct.
- (f) While claiming to be absent sick, working or indulging in activities which are likely to be inconsistent with the reason for absence and/or which are unlikely to aid recovery.
- (g) Committing an act outside work, which is liable to adversely affect the performance of the contract of employment and/or the relationship between the employer and the employee.
- (h) Breach of trust.
- (i) Misuse of the employer's facilities.
- (j) Loss, damage to, or misuse of the employer's equipment and/or property, assets or funds through wilfulness, negligence or carelessness.
- (k) Theft or misappropriation of, or failure to account for, or falsely claiming entitlement to, the employer's property, assets or funds.
- (l) Fraud, providing false information orally or by the falsification of records or documents.
- (m) Unauthorised alteration, mutilation or destruction of the employer's records or documents.
- (n) Failure to observe any requirement of the employer's equal opportunities policy.
- (o) Bullying or harassment, including sexual or racial harassment, of colleagues and/or service users.
- (p) Failure to report or record any matter which it is the employee's duty to report or record.
- (q) Bribery and corruption.

APPENDIX 3

Employees Authorised to Implement Sanctions in Accordance with the Agreed Disciplinary Procedures

Introduction

Authorisation for certain Managers to implement particular sanctions is recommended as good practice in the ACAS Advisory Handbook on Discipline at Work. It ensures that more serious disciplinary matters are dealt with at a senior level, culminating in dismissal being handled at the most senior level.

The list below indicates which Managers are authorised to take action relative to the various stages of the disciplinary procedures.

All cases of discipline will be dealt with in accordance with the principles of natural justice and disciplinary sanctions will only be issued, where necessary, after a full hearing. In the event that, at a hearing, it becomes clear that the misconduct is of a more serious nature than the disciplining Manager is authorised to deal with, then the hearing will be adjourned and referred to an appropriate Manager.

Precautionary Suspension

Authority to suspend employees is limited to those Managers who are authorised to issue final written warnings or dismiss.

It is emphasised that precautionary suspension is not a disciplinary sanction. The purpose of suspension is to remove the employee from the workplace where there is doubt about his/her suitability to remain at work and/or to enable investigations to be undertaken pending a disciplinary hearing (usually in cases of gross misconduct).

Managers Authorised to Implement Disciplinary Action

Sanctions up to and including: -

Dismissal and
Final Written Warnings

Chief Executive and
All Hay Graded Officers

Written Warnings

Grade J and above

Oral Warnings

Direct Line Managers/Supervisors/Team Managers

October 2018