

Disciplinary and Dismissal Procedure for the Head of Paid Service, Section 151 Officer and Monitoring Officer

HR Service Effective from January 2016

1. Introduction

The aim of this Procedure is to describe the process by which matters of misconduct and under performance are managed.

This procedure sets out the steps to be taken where it is necessary to instigate formal proceedings. This does not prevent dealing with very minor breaches of conduct/capability that are not considered to merit progression to formal stages. This might include dealing with the matter in supervision, or through appropriate written direction or guidance which would include the setting of standards.

The Procedure incorporates the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which came into effect on 11 May 2015.

2. Scope

The Standing Order Regulations require specific arrangements for the Head of Paid Service, Section 151 Officer and the Monitoring Officer. This Procedure therefore applies to the Chief Executive, Director of Finance and the Head of Legal Services.

Disciplinary action under this procedure means any action occasioned by alleged misconduct and/or under-performance which, if proved, would be recorded on the employee's personal file, and includes any proposal for dismissal for any reason other than redundancy, permanent ill-health but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract.

For the avoidance of doubt this includes employment during the 6 months Probationary Period.

3. Offences

A list of examples of disciplinary offences is attached to this document as **Appendix 2**. These are examples only and not an exhaustive list. The list of examples may be reviewed and amended, as necessary, by the Deputy Director HR and Corporate Support.

4. Authority to take action

Authority to take action at each stage is shown at **Appendix 1**.

5. The Procedure

5.1 Referral to Outside Bodies

It may be necessary to report concerns about conduct and/or capability to an appropriate regulatory body, including the Local Authority Designated Officer (LADO), in accordance with statutory or regulatory requirements. The Chief Executive (or the Chairman of the Members Staffing Panel where the Chief Executive is the subject of disciplinary action) must decide if and when this is necessary in consultation with the Deputy Director HR and Corporate Support.

5.2 Suspension

The Chief Executive or Chairman of the Members Staffing Panel as appropriate (see Appendix 1), in consultation with the Deputy Director HR and Corporate Support, will decide if it is necessary to suspend the employee on full pay whilst investigating the allegations.

The suspension will be confirmed in writing and include the following that:

- suspension is considered to be a neutral act
- the reasons for, and the terms of, the suspension
- the individual's Bex-net account and access will be suspended
- the individual must not attend work and contact colleagues or clients without prior permission

The suspension will be regularly reviewed, and all reasonable efforts will be made to investigate and conclude the matter within a reasonable time.

5.3 Investigation

An investigation will be undertaken by the appropriate person (see Appendix 1) without unreasonable delay.

Where an investigation identifies sufficient grounds for disciplinary action, the case will proceed in accordance with this procedure.

5.4 The right to be accompanied

The employee has the right to be accompanied at hearings by a work colleague or trade union representative. If the work colleague or trade union representative is unable to attend the employee may propose an alternative date provided it is no more than 7 calendar days after the original date. The hearing may proceed, and a decision be taken if the employee fails to attend the hearing.

Legal representation will not normally be permitted.

5.5 The hearing

A meeting of the Members Staffing Panel will be arranged. The employee will be notified at least 7 clear calendar days before the meeting of the following details:

- date, time and venue
- the allegations to be considered at the hearing
- possible outcome and, where appropriate, if a recommendation for dismissal may result
- copies of any documents to be relied upon, including witness statements, if applicable
- whether witnesses will be called and who they are
- the right to be accompanied at the hearing (see Section 5.5 below)
- that if the employee fails to attend without reasonable grounds a decision may be made in their absence

- the opportunity to call witnesses, provide any documents, written statements or submissions before the meeting

The timescales can be varied if both parties agree.

5.6 If the employee fails to attend a hearing

The employee is required to attend including when the employee is absent due to sickness unless they are in hospital or have been assessed by the Occupational Health Service as being unfit to attend.

If the employee does not attend a decision will be made either to defer the hearing or proceed in the employee's absence. The employee should be informed in writing that this may be the case and advised that any written representations made on their behalf, or those of a representative attending on their behalf, will be considered.

If the hearing takes place in the absence of the employee, a decision will be made on the evidence available.

5.7 If a grievance is raised

Complaints will usually be considered during the proceedings. The Chairman will decide if the Procedure should be temporarily suspended in order to deal with the complaint.

5.8 How the hearing should be conducted

5.8.1 Note taking

A note will be taken of the hearing. The notes will not be verbatim or formal minutes and will not require the agreement of all parties. A copy of the notes will be shared with the employee as soon as reasonably practicable.

If the employee disagrees with the accuracy of the notes, a record to this effect will be retained with the formal notes.

Recording of the hearing will not be permitted except in exceptional circumstances (for example as a reasonable adjustment for a disabled participant at the hearing) and at the discretion of the Chairman.

5.8.2 The hearing

The Chairman will explain the purpose of the hearing and the process to be followed. All parties at the hearing will be introduced.

5.8.3 Presentation of the case

The allegations will be presented along with any supporting evidence which may include the calling of witnesses. The employee (or their representative) may question the presenting officer and the witnesses.

The employee will be invited to respond to the allegations, refer to any evidence and call witnesses. The employee and their witnesses may be asked questions.

The employee's representative may address the hearing to put the employee's case. The representative may not answer questions on the employee's behalf or address the hearing without permission.

If new facts emerge it may be necessary to adjourn the meeting to undertake further investigation.

5.8.4 Summing up

The officer presenting the allegations will summarise their case. The employee or their representative will then summarise their response including any mitigation.

The hearing will be adjourned while a decision is taken.

5.8.5 The decision

The Members Staffing Panel will consider the evidence presented and decide the outcome. The levels of sanction are set out in Section 5.8.

5.9 Sanctions

There are three possible sanctions as follows:

Level of sanction and time limits	Examples that may attract this level of sanction
1. First Written Warning 12 months	Minor cases of misconduct or lack of improvement.
2.. Final Written Warning 18 months	A more serious offence or repetition of minor offences or continued lack of improvement.
3. Recommendation for Dismissal*	An act of gross misconduct or continued repetition of minor offences or continued lack of improvement.

It is not necessary to progress through each level of sanction. No sanction will be imposed without first holding a hearing.

***The Members Staffing Panel may only make a recommendation for dismissal. The dismissal process is set out at Section 5.12.**

In determining the level of sanction, the Members Staffing Panel will take account of the following:

- the nature and seriousness of the allegations and findings
- the employment record (including any current warnings), general work record, work experience, position within the organisation and length of service
- any special or mitigating circumstances
- whether the sanction is reasonable in all the circumstances

- consistency with the application of the Disciplinary Procedure and rules (determined through consulting with HR)
- whether any training, additional support or adjustments to the work are necessary or appropriate
- where a recommendation to dismiss is being considered, whether there is an alternative to dismissal

The decision and sanction will be retained on the employee's personal file. Expired warnings will not usually be used to increase sanctions but may be taken into account where relevant and appropriate.

5.10 Confirm the outcome (Action Short of Dismissal)

The decision of the Members Staffing Panel and any sanction will be confirmed in writing as soon as reasonably practicable.

Where the allegations are proven, the outcome notification will include the following:

- the nature of the allegation
- the sanction and how long it will last (see Section 5.8)
- any period of time given for improvement and the improvement expected
- the likely consequences of further misconduct/under-performance (i.e. a further sanction or possible dismissal)
- the right to appeal including:
 - how the appeal should be lodge (see table at Appendix 1)
 - that the appeal should be lodged within 14 calendar days
 - the requirement to set out clearly the grounds for appeal

Where appropriate the outcome will be notified to the relevant professional or safeguarding body as described at Section 5.1 (above).

5.11 Right of appeal (Action short of Dismissal)

The employee has the right to appeal the outcome to the Members Appels Panel. Separate guidance is available for managing the appeals process.

The outcome of the Appeal will conclude the Council's internal processes.

5.12 Recommendation for Dismissal and Appeal

5.12.1 Recommendation to dismiss

The employee may not be dismissed by the Members Staffing Panel unless the matter has first been considered by an Independent Panel, the Executive Objections Procedure has been followed and Council have voted on the recommendation.

Where the Members Staffing Panel considers the allegations sufficiently serious to recommend dismissal the following steps will be taken in the following order:

- the employee will be informed of the decision of the Members Staffing Panel and advised that an Independent Panel will be convened to consider the recommendations of the Members Staffing Panel
- the Independent Panel will be established in accordance with the Standing Orders Regulations (please see **Appendix 3**). The Independent Panel must be appointed at least 20 working days before the relevant Council meeting where the recommendations will be considered. The Independent Panel will review the investigation and any recommendations that have been made
- the Executive Objections Procedure should be followed to provide an opportunity to object to the recommendations
- the views of the Independent Panel and the results of the Executive Objections Procedure will be presented to the Council meeting

5.12.2 The Council meeting

The employee will be invited to attend a meeting of the Council. A minimum of 7 clear calendar days' notice of the meeting will be given in order that the employee has a reasonable opportunity to prepare their response. The notification will include the following:

- the date, time and venue for the meeting of Council
- the nature of the allegations
- the possible consequences of the recommendation (i.e. that dismissal may result)
- any written evidence, including the outcome of the Members Staffing Panel hearing, the advice, views and recommendations of the Independent Panel, and the outcome of the Executive Objections Procedure
- the right to be accompanied at the hearing (see Section 5.5 above)
- the opportunity to make written representations in advance of the meeting, provide any documents, written statements or submissions

Council will take account of:

- the recommendations of the Members Staffing Panel
- the outcome of the Executive Objections Procedure
- the Independent Panel's advice, views and recommendations
- any representations made by the employee or their representative

The employee's representation to Council before a vote is taken satisfies any appeal that they may wish to make.

The press and public would be excluded from any Council meeting where disciplinary matters were discussed.

5.12.3 Outcome/Notice of Dismissal

The Chairman of the Members Staffing Panel will write to the employee to confirm the decision taken by Council.

Where the outcome is no action or action short of dismissal this will be confirmed in writing in accordance with Section 5.9 above.

Where summary dismissal is decided there will be no payment for notice or pay in lieu of notice.

The Council may take action to recover or retain, in full or part, the employee's pension benefits in accordance with the prevailing pension regulations.

6. Criminal convictions

The employee will not automatically be disciplined solely because they have been charged with, or convicted of, a criminal offence, or have accepted a police caution. Whether disciplinary action will be merited will depend upon:

- what effect the charge or conviction has on the employee's suitability to undertake their role and their relationship with the Council, work colleagues and customers
- consideration of whether the conduct is sufficiently serious to warrant commencing formal procedures

It is not always necessary to wait for the outcome of criminal proceedings before taking formal action. If the employee refuses or is unable to co-operate with this Procedure, e.g. they have been imprisoned, they will be advised in writing that a decision will be taken on the basis of information available and may result in dismissal.

HR SERVICE/P&P'S/DISCIPLINARY/CE ETC/PROCEDURE/FINAL

Appendix 1 - Authority to take action

Action under the procedure	Level of Officer subject to disciplinary action/Director of Finance and Head of Legal Services	Chief Executive
Investigation	Chief Executive - provided they have had no prior involvement in the matter, or a suitable independent person appointed by the Members Staffing Panel and agreed between the parties	A suitable independent person appointed by the Members Staffing Panel and agreed between the parties
Suspension	Chief Executive or Chairman of the Members Staffing Panel in consultation with the Deputy Director HR and Corporate Support	Chairman of the Members Staffing Panel in consultation with the Deputy Director HR and Corporate Support
Warnings (action short of dismissal)	Members Staffing Panel * (LA Standing Orders Regulations 2001 Schedule 1, Part II, 3)	
Appeal against action short of dismissal	Members Appeals Panel	
Dismissal	The Members Staffing Panel will action the decision of Council. Full Council must vote taking into account the recommendations of the Members Staffing Panel, the outcome of the Executive Objections procedure**, the advice, views or recommendations of the Independent Panel*** and any representations from the employee.	
Appeal against dismissal	This is provided for by the meeting of Council - the employee will respond to the findings of the investigation and recommendations before a vote is taken by Council.	

* This Panel must include at least one member of the Executive as required by the Local Authority (Standing Orders) (England) Regulations 2001 (Schedule 1, Part II, 4(2)).

** Executive Notification/Objections Procedure as defined in the Local Authority (Standing Orders) (England) Regulations 2001 Schedule 1, Part II, (6) as amended by the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015.

*** Independent Panel as required by Schedule 3 the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015.

Appendix 2 - Disciplinary Rules (incorporating matters of Capability)

Below is a list of examples of offences which may lead to disciplinary action or dismissal. The list is not exhaustive, and the Council reserves the right to take action for matters not listed or alluded to. The particular circumstances of any allegations may be treated as misconduct or capability, or gross misconduct or gross incapability.

Officers also need to refer to Council policies and procedures; the Code of Conduct; their contract of employment; and the relevant National Scheme of Conditions of Service where other rules and standards are implied. In addition, Officers are required to work in accordance with relevant statutory obligations, professional standards, health and safety regulations and other rules governing their profession or working environment. For example, the National Scheme of Conditions of Service for Local Government Officers states, "Employees will maintain conduct of the highest standard such that public confidence in their integrity is sustained".

Breaches of any of these rules may lead to disciplinary action being taken in accordance with the Disciplinary Procedure. Officers may be suspended from work as part of the Disciplinary Procedure. Officers dismissed for gross misconduct will not normally receive notice or pay in lieu of notice.

Non-exhaustive lists of examples of misconduct that are likely to attract disciplinary action are given below in Part 1. A non-exhaustive list of examples of serious misconduct, potentially serious enough to be considered gross misconduct, are detailed in Part 2.

Part 1: Examples of Misconduct Offences

Misconduct will not normally warrant dismissal without previous warning. (Please also refer to Gross Misconduct below).

Although not intended to be an exhaustive list, some examples of breaches of discipline, which may render an employee liable to disciplinary action, are as follows:

- repeatedly failing to be in attendance at the employee's place of work at the required time
- being absent from work without prior permission and without reasonable cause
- failing to report absence from work on the day of such absence without a good reason
- failing to conform to established working practices and procedures whether professional or as laid down by the Council
- refusing to carry out legal and reasonable management instructions
- acting in a way prejudicial to the Council's interests in dealing with suppliers, contractors, partner organisations, members of the public or other outside contacts
- failing to take reasonable care of the Council's property; this includes failing to act to prevent loss or damage to it

- contravention of the Council's Fair Treatment at Work Policy. (This will include the use of abusive, offensive or racist language or behaviour to any person in the Council, its customers, clients or contractors)
- failure to perform to an acceptable standard despite having been given guidance and assistance to do so
- failure to wear appropriate protective clothing or use necessary safety equipment provided by the Council for particular duties
- leaving the place of work during the hours of duty without permission or a satisfactory reason
- smoking within a prohibited area including e-cigarettes and vaping products
- knowingly undertaking activities during a period of sick leave likely to inhibit recovery and return to work
- contravention of the Council's ICT policies and procedures in respect of computer, e- mail, text messaging and internet use
- failure to discharge obligations in accordance with Statute, professional standards or contract of employment without sufficient cause

Part II – Examples of Gross Misconduct Offences

Gross misconduct is misconduct that is so serious that dismissal is a reasonable sanction to impose. A dismissal for gross misconduct is justified at the first offence and the employee will normally be dismissed without notice (i.e. summary dismissal).

It is not usually the number of offences, but rather the nature of the offence that determines gross misconduct. Repeated disciplinary offences, however, which individually might otherwise have amounted to misconduct (as opposed to gross misconduct), might, when aggregated, amount to gross misconduct.

Examples of those breaches of discipline which warrant suspension or that could lead to summary dismissal are as follows:

- the theft of; or unauthorised possession of; or wilful damage to property belonging to the Council, suppliers, contractors or any other employee or other persons
- the fraudulent obtaining of money or other property from the Council, suppliers, contractors, or any other employee or other persons
- falsely recording the arrival or departure from work of any other employee; falsifying official records, time sheets, etc
- committing any assault on the Council's premises or whilst on Council business, or physical violence against another person
- committing a criminal offence which renders the employee unsuitable or unable to carry out the duties for which he was employed or otherwise makes continuing employment undesirable
- being unable to carry out normal duties or constituting a serious safety risk as the result of the influence of alcohol or drugs
- the persistent and wilful refusal to carry out instructions despite warnings of the consequences of continued refusal

- gross contravention of the Council's Fair Treatment at Work Policy. This will include serious acts of racism, bullying, harassment or victimisation to any person in the Council, its customers, clients or contractors
- forging, falsifying, altering or defacing medical certificates
- committing a serious breach of duty prejudicial to the Council's relations with other bodies or the general public or any wilful attempt to damage the Council's standing or position
- giving false information when applying for a job including withholding information that is relevant to the employment
- the fraudulent claiming/obtaining of Housing Benefit, Student Award, or other Benefit from this, another local authority or another Government Department/Body
- intentionally, negligently or recklessly disclosing or communicating any confidential information or personal data without authority to any person not entitled to receive it
- acting in a way that could constitute a significant risk to the health or safety of the employee concerned or any other person on the Council's premises or property, or contravening rules drawn up in consequence of the Health and Safety at Work Act. (See above)
- gross contravention of the Council's ICT policies and procedures in respect of computer, e-mail, text messaging and internet use e.g. circulating pornographic or offensive material
- reckless or deliberate failure to discharge obligations in accordance with Statute, professional standards or contract of employment without sufficient cause
- continued failure to perform to an acceptable standard and/or being unable to achieve or sustain an acceptable standard of performance despite support
- soliciting gifts or gratuities
- use, or attempted use, of official position for private advantage or improper personal gain
- performing unauthorised private work (whether paid or unpaid) during hours when contracted to work for the Council or during periods of sick leave
- recording or retaining personal or financial information contrary to Council procedures and in a manner which could lead to this information being improperly or fraudulently used
- making malicious and false accusations against any other employee or other persons
- intentional unauthorised use of Council vehicles whether during or outside the working day
- forging, falsifying, altering or defacing of Council records and/or files
- repeatedly refusing to attend appointments or meetings (including with Occupational Health) under this or other Council procedures (including the Sickness Absence Procedure)
- failure to notify the Chief Executive or the Deputy Director HR and Corporate Support immediately of a charge, conviction or caution for any offence where the offence may impact on the employment relationship
- breach of the agreement on the use of pool cars
- misuse of Council car parking permits or car parking rules, including the falsification of the car parking permit application
- failure to subscribe to, or maintain subscription to bodies as required by the contract of employment e.g. the DBS Update Service or HCPC Registration
- behaviour, either inside or outside of work (including, but not limited to, posts on social media, online forums, message boards or blogs) that causes concern as to suitability for the role, or which brings the organisation into disrepute

Note: These examples may be changed or amended at any time by the Deputy Director HR and Corporate Support.

Appendix 3 - The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

Schedule Regulation 2

“Schedule 3 Regulation 6

Provisions to be incorporated in standing orders in respect of disciplinary action

1. In the following paragraphs:

- a) “the 2011 Act” means the Localism Act 2011(5)
- b) “chief finance officer”, “disciplinary action”, “head of the authority’s paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001(6)
- c) “independent person” means a person appointed under section 28(7) of the 2011 Act
- d) “local government elector” means a person registered as a local government elector in the register of electors in the authority’s area in accordance with the Representation of the People Acts
- e) “the Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972(7) for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority
- f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer
- g) “relevant officer” means the chief finance officer, head of the authority’s paid service or monitoring officer, as the case may be

2. A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

3. The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

4. In paragraph 3 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

5. Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order:

- a) a relevant independent person who has been appointed by the authority and who is a local government elector
- b) any other relevant independent person who has been appointed by the authority
- c) a relevant independent person who has been appointed by another authority or authorities

6. An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

7. The authority must appoint any Panel at least 20 working days before the relevant meeting.
 8. Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular:
 - a) any advice, views or recommendations of the Panel
 - b) the conclusions of any investigation into the proposed dismissal
 - c) any representations from the relevant officer
 9. Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act."
- (5) 2011 c. 20.
- (6) S.I. 2001/3384.
- (7) 1972 c. 70.