

# Disciplinary Policy

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## **1.0 Policy Statement**

- 1.1 This policy and procedure is designed to help and encourage all employees of City of Wolverhampton Council (the Council) to achieve and maintain standards of conduct. This policy and 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 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. It excludes NJC employees and Teachers employed by Governing Bodies who are covered by Schools HR Policies. Policies adopted by the Council may, following discussion with relevant trade unions also be recommended as good practice models for adoption by maintained school governing bodies.
- 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 to give prior notice.

## **3.0 Exclusions**

- 3.1 Issues which are excluded from being dealt with under the Disciplinary Policy are:
- Cases involving genuine sickness absence
  - proposed redundancies
  - poor performance
  - termination of an employee's contract during a probationary period.

## **4.0 Principles**

- 4.1 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.

- 4.2 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.
- 4.3 However, employees are responsible for advising managers of any ongoing or pending criminal cases against them and to then confirm any outcome. If the employee is unable to liaise with their manager, then they must provide details of a nominated representative in writing along with signed consent for their personal details to be discussed with the nominated person.
- 4.4 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 Director or their nominee following consideration of an investigation report. No sanction will be issued without a robust investigation and subsequent hearing.
- 4.5 The only exceptions to point 4.4 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. See section 8.0 for further information.
  - b) Where the findings of an initial investigation prove the allegations beyond reasonable doubt.
- 4.6 In all but exceptional cases, if gross misconduct (potentially resulting in dismissal) is alleged then the usual investigation process must apply.

## **5.0 Reasonable adjustments**

- 5.1 If any employee involved in the disciplinary procedure requires reasonable adjustments to support them through the process advice should be sought from Human Resources.
- 5.2 If English is not the employee's first language, they should raise this with HR as soon as possible, who will make appropriate arrangements.
- 5.3 The [Employee Assistance Programme](#) (EAP) is a supportive tool available for all employees at any point of their employment with the Council.

## **6.0 Safe Space**

- 6.1 The Council has an independent reporting service; SeeHearSpeakUp. This service enables employees who feel they are unable to report their concerns using the Council's internal procedure (see Grievance Policy for further

guidance) to utilise this safe space option. Safe Space will act impartially to any concerns raised that may contravene our policies or procedures.

6.2 . Any complaints made through SeeHearSpeakUp may result in the commencement of the Council's grievance procedure and subsequent disciplinary action being taken if allegations of misconduct/ gross misconduct are made.

6.3 Information about SeeHearSpeakUp can be accessed [here](#).

## **7.0 Procedure**

7.1 Employees have a statutory right to be accompanied by a recognised trade union representative or work colleague at any formal meeting which could result in a sanction being issued or at an appeal hearing.

7.2 There is no right to representation at informal meetings.

## **7.3 Informal action**

7.4 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. Examples of misconduct are available in the supporting manager's guidance.

7.5 After an allegation is made against an employee, the first step will normally be to consult the HR Advice team to determine whether:

a) It is appropriate to deal with the issue informally. This is likely to be determined by any previous precedents / similar issues and the seriousness of the issue itself

b) whether a disciplinary investigation is required.

7.6 After consultation with a HR advisor, a decision can then be made by the manager to proceed informally. An informal meeting with the employee should be held as soon as possible. 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. Normally there is no requirement for a HR advisor to attend this meeting, and there is no right to representation for the employee.

7.7 It may be appropriate to consider mediation at this stage, depending on the nature and seriousness of the allegations.

7.8 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. It is advisable to issue an informal outcome letter.

The informal letter won't be considered where it is disproportionate to the seriousness of the matter under consideration, or the time-lapse between incidents that could be considered comparable is unreasonable.

## **7.9 Formal action**

7.10 The formal procedure may become necessary when further or persistent breaches of misconduct arise. In some cases, it may be deemed the incident is too serious to be resolved informally or that the employee has been charged with a criminal offence that impacts their work.

7.11 Formal action is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues.

7.12 Examples of gross misconduct allegations are provided in the supporting managers guide

7.13 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 Safeguarding team must be informed.

## **7.14 Suspension**

7.15 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 and the Service Director (or their nominee) 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.

7.16 Whilst an employee is suspended they will continue to receive normal payments and are still permitted to take annual leave. They will need to notify their line manager of the date(s) they will be on annual leave and therefore unavailable during the process.

## **7.17 The investigation**

7.18 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.

7.19 Where information gathered during the course of an investigation requires allegations(s) to be amended or withdrawn, the employee must be advised of this in writing. A further fact-finding meeting should be held with the employee to investigate any new allegations, if they have not already been addressed as

part of the process

- 7.20 An Independent Investigating Officer must carry out a reasonably thorough investigation before any a decision is made to proceed to a hearing.
- 7.21 Head of Audit and Deputy Director of People and Change must be informed where there is suspected or detected fraud, corruption or impropriety in which case Audit may lead on an investigation. This may be supported by HR Advice and/or an Independent Investigating Officer.
- 7.22 Dependent on the outcome, the audit report and findings may then form part of the investigation report.
- 7.23 The Service Director or nominated representative will review the findings of the investigation and decide whether the matter should proceed to a disciplinary hearing.
- 7.24 This decision will be confirmed in writing to the employee. Further advice on the investigation process is available in the supporting Managers Guidance.
- 7.25 Where there may be a suspected or actual criminal act, consideration will be given as to whether the Council investigation process can run concurrently or would need to await the outcome of the external/police investigation.
- 7.26 The disciplinary hearing**
- 7.27 The disciplinary hearing will be conducted by an independent panel as soon as possible following a decision to proceed.
- 7.28 The panel will be made up of two senior managers who have had no previous involvement in the case so far as is possible, and a HR advisor. One manager will chair the panel. Every effort will be made to ensure all panels are representative of as many of the protected characteristics as possible with a minimum criterion of race and gender diverse to be met. All panel members will be required to undertake Unconscious Bias training, and must sign a confidentiality agreement.
- 7.29 At the hearing the Independent 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.
- 7.30 If the panel decides that further information is needed before a decision can be made, a date to reconvene the hearing will be agreed.
- 7.31 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.

7.32 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 section 7.44 below) as an alternative to dismissal.

7.33 Except in cases of gross misconduct, no employee will be dismissed for a first breach of discipline.

#### **7.34 Sanctions**

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

#### **7.36 First written warning**

7.37 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.

#### **7.38 Final written warning**

7.39 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 a period of 2 years, after which time it will be disregarded for disciplinary purposes provided that there have been no further incidents.

#### **7.40 Dismissal or other penalty short of dismissal**

7.41 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 and normally be issued with the appropriate period of notice.

#### **7.42 Summary dismissal**

7.43 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.

#### **7.44 Alternative to dismissal**

7.45 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.

## **8.0 Uncontested Sanctions**

8.1 In some circumstances, an employee may accept the allegations presented to them through the process. The employee or their representative may request to accept a suitable sanction without proceeding through the investigation process or a disciplinary hearing. The sanction of either a first or final written warning would be awarded and agreed by Service Director or nominee. There is no right of appeal.

## **9.0 Discipline appeals process**

9.1 Where an employee wishes to appeal against the outcome of a disciplinary hearing they should do so in writing to their Director. The employee should clearly state the grounds of the appeal i.e:

- the disciplinary sanction was too harsh for the offence committed
- the allegations against them were untrue or unsubstantiated in part or in whole
- mitigating circumstances put forward by the employee were not properly taken into account
- the proper procedure was not followed.

This should be done within **5 working days** of the employee's receipt of the written notification of the outcome of the disciplinary hearing.

9.2 If the nature of the appeal is unclear or insufficient information is provided, clarification will be sought before the Appeal panel takes place.

9.3 The procedure to be followed at the Appeal panel is set out in the Human Resources Appeals Panel Notes of Guidance

## **10.0 Confidentiality**

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

## **11.0 Roles and responsibilities**

**11.1 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.

#### **11.2 Managers are required to:**

- Managers have a responsibility to ensure that employees are aware of the Disciplinary policy and sanctions for breaches.
- 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.

#### **11.3 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, investigating officers 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.

#### **11.4 The Deputy Director of People and Change is required to:**

- In consultation with the recognised Trade Unions, the Deputy Director of People and Change 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 Cabinet Resources Panel for approval.

#### **11.5 Trade Unions are required to:**

- 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.

#### **12.0 Monitoring and review**

- 12.1 This policy will be reviewed every 3 years or earlier if there are significant changes required in the light of best practice and or any changes to legislation.

#### **13.0 Links to other policies and procedures**

13.1 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.

#### **14.0 Equality and Diversity**

14.1 The Council is committed to equality and fairness for all employees and will not discriminate because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

14.2 In developing this policy we have undertaken an Equality Analysis the results of which indicate that it is lawful to proceed in the way described by this policy. The Council is committed to promoting equality and recognising the diversity of our communities and will work to ensure all parts of our community are treated fairly.