



ABERDEEN CITY COUNCIL

10.3 MANAGING DISCIPLINE

POLICY & PROCEDURE

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SECTION 1: INTRODUCTION

Policy statement

It is the policy of our Council to maintain effective working relationships with and between our employees. We require acceptable standards of behaviour at work and are committed to supporting and encouraging our employees, at all times, to achieve these standards.

Where an employee's behaviour falls below what is considered acceptable, the Managing Discipline procedure provides a framework to ensure rules and standards of behaviour are applied in a fair, consistent and systematic manner. The procedure also recognises that each case must be treated on its merits taking account of individual circumstances.

In the interest of good employee relations, issues of discipline should be dealt with as speedily and practicably as possible to allow a return for all to normal working.

SECTION 2: SCOPE AND PRINCIPLES

Scope

This procedure applies to all employees of Aberdeen City Council, including chief officers and teachers; a separate procedure applies to the Chief Executive. The procedure is concerned with employee conduct.

Core principles

- Disciplinary rules and procedures are necessary for fairness and consistency in the treatment of individuals. Rules set standards of conduct at work whilst the disciplinary procedure helps ensure that standards are adhered to and that there is a fair method of dealing with alleged failures to observe them.
- The purpose of disciplinary action should be to encourage the employee to overcome the problem or deficiency identified. However, in cases of gross misconduct leading to dismissal, the action taken is, by its very nature punitive.
- Conduct matters should be dealt with promptly, at the first level of management and should not automatically be subject to the disciplinary procedure.
- Cases of minor misconduct should be dealt with promptly through the use of informal advice, guidance and counselling, except where earlier informal action has failed to bring about an improvement.
- Employees will be offered the right to be accompanied by a trade union representative or work colleague at all stages of the disciplinary procedure, including investigatory meetings. The employee will not normally be permitted to be accompanied by a legal practitioner, partner, spouse or family member.
- The chair of the disciplinary hearing will be someone with no prior involvement in the case.
- An appeal will not be heard by the same person who issued the disciplinary sanction.
- No disciplinary action will be taken until the matter has been fully investigated.
- No disciplinary action will be taken against a trade union representative until the matter has been discussed with a full-time official of the union concerned.

- An employee will not be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
- Employees will receive a written explanation for any disciplinary action taken, the improvement expected, the consequences of failing to improve and their right of appeal.
- In cases of dismissal, the individual will be advised in writing of the reasons for the termination of their contract of employment and of their right of appeal.
- All matters will be dealt with promptly and in confidence.

SECTION 3: THE DISCIPLINARY PROCESS

The Council's procedure comprises **three** critical steps:

Step 1: The investigation

Step 2: The disciplinary hearing

Step 3: Appeal

Step 1: The investigation

- The purpose of the investigation is to allow management to impartially investigate any alleged or suspected misconduct on the part of an employee. The objective will be to establish all the facts of a particular case before a decision is taken as to whether or not there are grounds to consider disciplinary action.
- When a potential disciplinary matter arises it will be investigated by an investigating officer.
- The investigating officer will carry out the investigation promptly, consistent with the principles of fairness and natural justice.
- The employee may be suspended with full pay on precautionary grounds in particular cases whilst the disciplinary process is undertaken. A precautionary suspension will be as short as possible and imposed only after careful consideration. It will be regularly reviewed to ensure that it does not become unnecessarily protracted. It is not an assumption of guilt or a disciplinary

penalty in itself and will be used only where appropriate. As an alternative to suspension, consideration will be given as to whether or not the employee can continue with some of his/her duties, be given alternative duties or be moved to an alternative location. Any decision to suspend will be confirmed in writing.

- The employee involved will normally be interviewed prior to which they must be given adequate notice in writing of what is being alleged, the nature and purpose of the investigation and the procedure to be followed.
- Where the employee is unable to meet with the investigating officer and provides a good reason for failing to attend, the meeting will be rearranged and the employee will be given notice of the rearranged meeting. If the employee is unable to attend the rearranged meeting, the investigating officer will decide whether or not it is appropriate to proceed on the basis of the information and evidence that they have been able to obtain.
- The investigating officer will then produce a summary report of his/her findings, conclusions and recommendations.
- The investigating officer will decide, on the available evidence and balance of probabilities, whether the matter should be dropped, dealt with informally or referred to a disciplinary hearing (**Step 2**).
- On conclusion of the investigation, the investigating officer will inform the employee in writing as to the outcome.

Step 2: The disciplinary hearing

The hearing

- Where the allegation is one of gross misconduct (or where someone is currently under a final written warning which could result in a sanction of dismissal) the Chair of the disciplinary hearing will be a third tier officer or above, but for a teacher will be the Director of Education, Culture & Sport.
- Prior to the hearing, the employee will receive a letter including:
 - the date, time and venue of the hearing
 - the purpose and format of the hearing
 - details of the nature of the alleged misconduct
 - a copy of the evidence that the investigating officer intends relying upon at the hearing, including a copy of the investigating officer's report
 - an explanation of the employee's right to be accompanied at the hearing by a trade union representative or work colleague

- an explanation of the possible attendance of witnesses at the hearing
- The chair of the hearing will be responsible for making the necessary arrangements for the hearing, including issuing relevant documentation.
- The employee and the investigating officer must give advance notice to the chair of the hearing if he/she intends to call relevant witnesses to the hearing.
- The chair of the hearing will notify both the employee and the investigating officer if there is an intention to call witnesses.
- The investigating officer will present his/her evidence and findings and evidence from the investigation at the hearing.
- The employee will be permitted to set out their case and answer the allegations. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses.
- Where the employee's companion (trade union representative or work colleague) is unable to attend the hearing, it will be rescheduled providing that the employee proposes an alternative date and time within **five working days** of the original date.
- Where the employee is unable to attend the hearing and provides a good reason for failing to attend, the hearing will be rearranged. If the employee is unable to attend the rearranged hearing, the hearing will take place in the employee's absence. The employee's companion may attend in such circumstances (at the employee's request) and present the employee's case and the employee will be permitted to make a written submission.

The decision

- No decision will be made until the employee has had the opportunity to state their case.
- The chair of the hearing will consider all evidence presented at the hearing before deciding whether or not to take disciplinary action.
- The chair of the hearing may adjourn the disciplinary hearing if it appears necessary to do so (for the purpose of gathering further information). The employee will be informed of the purpose and period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her companion to consider the new information prior to the disciplinary hearing being reconvened.

- As soon as possible after the conclusion of the disciplinary hearing, the chair of the hearing will convey his/her decision to the employee including what disciplinary action, if any, is to be taken. The decision and the reasons for it will normally be verbally communicated to the employee and then confirmed in writing. The employee will be notified of his/her right of appeal under the procedure.

Disciplinary sanctions

- There are **three** levels of disciplinary sanction:

Level 1: First warning (formal oral or written)

Level 2: Final warning (written)

Level 3: Dismissal or other punitive action

- The chair of the hearing may impose a disciplinary sanction at any level according to the nature/severity of the alleged misconduct (see section 4 - disciplinary rules - for levels of misconduct). However, only managers at third tier or above have the authority to hear cases of alleged gross misconduct (or where someone is currently under a final written warning) and to impose a disciplinary sanction of dismissal. If a case involves a teacher and the outcome could potentially be dismissal then the case must be heard by the Director of Education, Culture and Sport.
- All disciplinary sanctions will be confirmed in writing and a copy will remain in the employee's personal file during the life of any warning issued.
- When being informed of the level of disciplinary sanction, the employee will be advised of the reasons for the decision, what improvement is expected within what timescale, the consequences of failing to improve, that any further breach during the life of the warning may lead to further disciplinary action and of their right of appeal (except in the cases of dismissal where only reasons for the decision and the right of appeal will be appropriate).
- Warnings will normally cease to be "live" following the specified period of satisfactory conduct covering a period of time when the employee is actually at work. Warnings will be extended to reflect any period when the employee is absent such as sick leave or where the employee is contracted to term time working. A disciplinary sanction that has been imposed in relation to a breach of the Council's child protection policies may be retained on the employee's file for a longer period of time.

Level 1 – first warning

- A **first level warning** is appropriate in cases where the employee's conduct fails to meet acceptable standards. At this stage in the procedure either a formal oral warning or a written warning can be issued:
 - a **formal oral warning** will be issued in the case of minor misconduct. This warning will be disregarded for disciplinary purposes after **6 months of work**
 - a **written warning** will be issued if the misconduct is more serious. This warning will be disregarded for disciplinary purposes after **9 months of work**

Level 2 – final warning (written)

- A **final warning (written)** is appropriate where the employee has received a previous warning and further misconduct arises during the life of that warning. It will also be appropriate where the first act of misconduct is sufficiently serious but would not justify dismissal. This warning will be disregarded for disciplinary purposes after **12 months of work**.

Level 3 – dismissal or other punitive action

- Dismissal will be appropriate if there is still a failure to improve or further misconduct arises during the life of a final warning or in cases of gross misconduct. Action short of dismissal is available, which includes demotion or transfer in conjunction with a final written warning. In cases where the employee does not accept this sanction, the Council will dismiss the employee. Action other than dismissal is **NOT** an available sanction where gross misconduct is found to have taken place.

Step 3: Appeal

- An employee has the right to appeal any disciplinary action taken.
- Appeals for non-teaching staff are heard at Head of Service level or above. Appeals for teaching staff are also heard at Head of Service level or above other than in the case of a dismissal, where the appeal would be heard by a Director. Exceptions are appeals against a final written warning or dismissal, where for non-teaching staff the employee has the option of having their appeal

heard by the Council's Appeals by Employees Committee; or for teaching staff the Education, Culture & Sport Committee...

SECTION 4: DISCIPLINARY RULES

Employees' obligations

Employees have a duty to:

- familiarise themselves with the rules governing their employment as specified within their contract of employment, for example, Codes of Conduct, National and Local Agreements, Council Standing Orders and Financial Regulations, Health and Safety Policy and other relevant documentation
- undertake work tasks and activities, as set out in the job description and in conjunction with their line manager
- act in a manner that is consistent with the Council's reputation
- maintain good working relationships with colleagues and managers
- comply with all statutory requirements, for example, all health & safety regulations
- observe all rules affecting their service area, regulations and operating policies and procedures
- disclose to their employer the misconduct of fellow employees

Examples of misconduct

Misconduct is inappropriate behaviour that will normally result in disciplinary action short of dismissal being taken in the first instance.

The action taken will depend on the degree of seriousness of the misconduct, the employee's current disciplinary record and any other relevant factors.

The following list is neither exhaustive nor exclusive but gives an indication of the types of misconduct which will normally result in disciplinary action short of dismissal:

- unauthorised use of Council property

- improper use of organisational facilities such as the Council's telephone, email system and the internet
- acts of discrimination, bullying and harassment
- carelessness or negligence in carrying out the duties and responsibilities of the job
- minor breaches of health and safety requirements
- refusal to follow reasonable instructions, comply with procedures or otherwise fulfil contractual obligations
- persistent poor timekeeping
- unauthorised absence from work and failure to comply with sickness reporting procedure
- wilful or deliberate under performance of duties
- persistent short-term sickness absences
- inappropriate behaviour/conduct outside work that has a bearing on role within the Council

Examples of gross misconduct

Gross misconduct is an act, or acts, which have the effect of destroying the employment relationship between the employee and Council, making trust and a continued working relationship impossible.

The following list is neither exhaustive nor exclusive but gives an indication of the types of misconduct which will normally result in dismissal:

- dishonesty, theft, fraud and deliberate falsification of records and/or benefit claims administered by the Council
- fighting, assault on another person
- deliberate damage to Council property
- serious bullying and harassment

- serious incapability through alcohol or being under the influence of illegal drugs
- serious negligence which causes unacceptable loss, damage or injury
- serious insubordination
- serious infringement of health and safety rules
- serious breach of the Council's ICT Acceptable Use Policy
- unauthorised entry to computer records
- indecent, abusive or threatening behaviour to any person whilst engaged, or purporting to be engaged, on Council business
- wilful provision of false or misleading information, or wilful non-disclosure of information, either during the recruitment process or in subsequent employment which materially affects the contract of employment
- breach of confidentiality (subject to the Public Interest (Disclosure) Act 1988) or breach of authority vested in a job
- non-disclosure of an interest (conflict of interest), whether direct or indirect, in a contractual agreement between an agency and the Council
- serious breach of Standing Orders or Financial Regulations
- serious discriminatory acts or omissions contrary to or inconsistent with the Council's policy on equality of opportunity

Note: Removal from, or lapsed registration with, a professional body, where that registration is a condition of employment, may also be treated as gross misconduct.

Note: Removal from, or lapsed registration with, a Professional body, where that registration is a condition of employment, may be regarded as breach of contract and tantamount to gross misconduct.

Employees who are accused of an act of gross misconduct will normally be suspended from work on full pay, on a precautionary basis, whilst the alleged offence is investigated.

SECTION 5: REVIEW OF THE PROCEDURE

Human Resources and Organisational Development will review this procedure every three years. It will, nevertheless, be subject to continual review and amendment in the light of experience of its operation, employment best practice and statutory requirements. Changes will only be put into effect following the normal consultation arrangements.