
Disciplinary Policy

SHARED SERVICES



Council of the
ISLES OF SCILLY

May 2015

Law relating to this document:

Employment Rights Act 1996

Employment Relations Act 1999

Employment Act 2008

ACAS Code of Practice on disciplinary and grievance procedures

REVISIONS TO SOURCE DOCUMENT

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POLICY STATEMENT

The Council of the Isles of Scilly is committed to being a fair and reasonable employer. All staff are expected to conduct themselves in a manner that reflects well on the organisation as a public body. It is the policy of the Council to encourage all staff to attain and maintain acceptable levels of conduct and to ensure that they know what standards are expected of them in their work. High standards of behaviour and integrity are required from all members of staff.

This policy sets out the procedure when members of staff fall short of these standards or fail to behave in an appropriate manner. Wherever possible, problems will be resolved informally but the Council recognises that there are circumstances that may require formal steps to be taken. The disciplinary rules and procedures in this document are designed to ensure that, where disciplinary action is contemplated, staff are treated fairly and reasonably. The policy is not intended primarily as a means of imposing sanctions but as a means of emphasising and encouraging the attainment of good standards of individual conduct. If these fall below an acceptable standard, then employees will be advised, by managers, to improve by being given constructive feedback, instruction and practical support.

POLICY FRAMEWORK

- The procedure is designed to help and encourage all employees to achieve and maintain required standards. It sets out what action will be taken when staff fall short of these standards.
- The procedure applies to all staff irrespective of length of service or seniority (excepting uniformed members of the Fire Brigade and staff still serving their probationary period).
- The procedure will be applied in a non-discriminatory way, irrespective of an employee's age, disability, gender (including gender reassignment), marital or civil partnership status, race, pregnancy or maternity, religion and beliefs, sexual orientation, trade union status and/or whether they are employed on a full-time, part-time, temporary or permanent basis.
- Issues arising as a result of misconduct/negligence will be dealt with under the Disciplinary Policy, whereas issues which relate to poor performance as a result of a lack of capability generally will be dealt with under the Council's Capability Policy.
- The Council will consider disciplinary action against a member of staff for actions inside or outside of work which may have a bearing on their continued employment or on the reputation of the Council. Staff must notify their managers immediately of any external investigation, criminal charge or conviction.
- Managers will ensure that staff are informed of their obligations and given access to the appropriate documents.

- The policy and procedure has been drawn up in discussion with the trade unions recognised by the Council of the Isles of Scilly.

THE DISCIPLINARY PROCEDURE

GENERAL PRINCIPLES

The principles to be followed if an employee is subject to disciplinary action are:

- 1.1 The procedure is designed to establish the facts and to deal consistently with disciplinary issues. No disciplinary action will be taken until the matter has been properly investigated. What constitutes a proper investigation will depend on the specific circumstances of the case and will be a matter for the Council's judgement (see Appendix 1).
- 1.2 The formal procedures allow a member of staff to be accompanied, if they wish, by a trade union representative or by a colleague (not a family member) from within the Council. The employee's chosen representative has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The representative may also confer with the employee during the hearing. However, they will not be permitted to answer questions on behalf of the employee, or to address the hearing where the employee indicates that they do not wish this.
- 1.3 If the disciplinary procedure is to be used, the employee should be provided with a copy of this document.
- 1.4 If any formal disciplinary action is considered against a trade union official, then the appropriate trade union regional office should always be consulted first.
- 1.5 If any disciplinary action involves potential or actual abuse of children or vulnerable adults, the details must also be passed immediately and confidentially to a member of Children's Social Care or Adult Social Care as appropriate.
- 1.6 In exceptional circumstances it may be necessary to suspend the employee whilst an investigation is undertaken. This is a neutral act by the employer and it should be made clear to the employee that suspension will not prejudice the outcome of the process and during the period of suspension they will continue to receive full pay. Advice from Human Resources advice must be sought prior to a suspension). Suspension should not take place unless there are reasonable and proper grounds to suspend the employee, normally this means gross misconduct appears to exist and the employee's continued presence at work is likely to undermine a possible sanction of summary dismissal. Alternatively, suspension may be deemed necessary in other circumstances, such as instances whereby the employee's presence at work is likely to undermine the investigation or their continued presence in the workplace is considered to represent a risk to others.

- 1.7 The application of the formal procedure will ensure that the employee is advised of the nature of the complaint being made against them and given the opportunity to state their case.
- 1.8 The employee will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct, when the penalty could and normally will be dismissal without notice and without pay in lieu of notice.
- 1.9 The employee will have a right of appeal against any formal disciplinary action taken against them.
- 1.10 The employee will not normally be allowed to raise a grievance related to any action taken, or contemplated, under the disciplinary procedure. Managers will seek advice from HR if the situation arises.
- 1.11 The length of time that any disciplinary sanction or warning should remain on the employee's personnel file will be notified to the employee in writing, the duration being dependent upon the circumstances of the case. As an approximate guide, a verbal warning will remain on file for 6 months; a first written warning is likely to remain on file for 12 months and a final written warning for 3 years. In special instances, for example, those involving the protection of children or other vulnerable client groups, relevant papers concerning the matter may be retained indefinitely on the employee's personnel file.
- 1.12 If the employee, or their representative, is unable, without good reason, to attend the formal disciplinary meeting an alternative date will be re-arranged, once only, within 10 working days of the original meeting. This may be extended if the employee is unfit to attend the meeting due to sickness absence.

INFORMAL DISCUSSION

- 2.2 Wherever possible, a one-to-one informal discussion should take place between the line manager and the employee, before the formal disciplinary procedure is used. Where there is concern about the work or behaviour of a member of staff, the employee should be interviewed informally with the intention of finding the cause of the problem and advising appropriate remedial action, within an agreed timescale.
- 2.3 In the event a manager believes an informal discussion is necessary the manager should arrange a one-to-one meeting with the employee. The meeting should take place in private with the employee, and as soon after the event(s) giving rise to the need for the discussion, as possible. The manager must inform the employee of the conduct or standard expected and should explore whether any support can be provided which may assist the employee. The manager must warn the employee that if there is insufficient improvement within the agreed timescale, or a further instance of misconduct, the matter may need to be considered again, which may result in formal action being taken under the Council's Disciplinary procedures

- 2.4 Should it be the case that this informal discussion does not bring about the required improvement in conduct or behaviour, or the misconduct is considered sufficiently serious, the provisions of the formal disciplinary procedure will apply.
- 2.5 The outcome of the informal meeting should be to provide the employee with clear guidance about why their current conduct is unacceptable, how it should be improved and that a failure to improve may lead to an escalation of the disciplinary procedure.
- 2.6 There is no statutory right to be accompanied at such a meeting, unless there are exceptional circumstances, e.g. the employee has learning difficulties. Also consideration should be given to whether the employee needs any special support or assistance, for example: translator, a signer, an interpreter, an induction loop system or help reading or writing.
- 2.7 The line manager should make a note that the meeting took place, and the key outcomes from the meeting, which the manager should retain on the employee's personnel/supervision file, a copy of which will be shared with the employee.

FORMAL DISCIPLINARY PROCEDURE

- 3.1 If an employee's conduct or work performance is considered unsatisfactory, then the disciplinary procedure should be applied. Following completion of an investigation (see Appendix 1) the employee should be invited, in writing, to a formal disciplinary meeting. The letter should outline the allegations made against the employee and refer to the right to be represented. It should also detail the people who will be present at the meeting. The outcome of the disciplinary meeting may be one of the following:
 - No Case to Answer
 - Informal Discussion with Manager
 - Verbal Warning
 - First Written Warning
 - Final Written Warning
 - Dismissal (with or without notice).

EXAMPLES OF SOME ACTS AT WORK WHICH MAY CONSTITUTE MISCONDUCT ARE:

- Failure to comply with the Council's Code of Conduct, Professional Codes of Conduct, Standing Orders, departmental work rules and reasonable requirements.
- Unacceptable work performance - lapses in work standards, errors, negligence, unacceptable quality or quantity of work. (It can sometimes be difficult to decide if

these are disciplinary or capability issues, therefore managers must take advice from HR before proceeding).

- Failure to comply with health and safety requirements.
- Lapses of conduct - improper, disorderly or unacceptable conduct; unprofessional behaviour; insubordination, use of inappropriate language.
- Discrimination - failure to observe the requirements of the Council's Equal Opportunities policy or Bullying and Harassment policy.
- Being under the influence of alcohol, illegal drugs or other substances.
- Misconduct at work (criminal or otherwise) which could discredit the Council's reputation or misconduct outside of work which could be considered as damaging to the Council's reputation.
- Time-keeping/absence - persistent late attendance, inadequate timekeeping, abuse of flexible working systems or home-working arrangements.
- Unacceptable levels of absenteeism; unauthorised absence.
- Smoking, including e-cigarette or vaping, is prohibited on the Council's premises.
- Bribery offences under the Bribery Act 2010.
- Failure to report or record any material which is required to be reported or kept, improper disclosure of information.
- Failure to comply with the Council's policies and procedures.

EXAMPLES OF SOME ACTS AT WORK WHICH MAY CONSTITUTE GROSS MISCONDUCT ARE:

3.2 Gross misconduct is defined as an act or acts which are a fundamental breach of the employee's obligations to the employer and sufficiently serious to destroy the relationship between the employer and the employee. Each case has to be considered in the light of all its circumstances including the nature of the job and the details of the misconduct.

3.3 The examples given below show the type of misconduct that may be classified as 'gross misconduct', however the list is not exclusive or exhaustive and offences of a similar nature will be dealt with under this procedure.

- Theft, misappropriation, fraud, corruption.
- Deliberate falsification of records including financial claims.

- Fighting, assault on another person, threatening behaviour.
- Sexual misconduct.
- Unlawful discrimination, harassment or bullying.
- Serious incapability through alcohol or being under influence of illegal drugs or other substances.
- Serious negligence that causes unacceptable loss, damage or injury.
- Serious act of insubordination.
- Inappropriate use of information technology or social media.
- Serious breach of specific departmental rules.
- Serious misconduct at work or outside work (criminal or otherwise) which could discredit the Council's reputation.
- Misuse of Council's property and assets - wilful or careless loss, damage to or misuse of equipment, property, assets, facilities, financial irregularities.
- Information - making false, misleading, malicious or inaccurate oral or written statements; unauthorised alteration or destruction of records or documents.
- Serious professional misconduct
- Conduct that brings the Council's name into disrepute

SUSPENSION

- 4.1 In cases of alleged serious misconduct, the employee must not be dismissed instantly. The employee will normally be suspended from duty by a Senior Officer or Senior Manager, after it has been established, following a preliminary assessment, that there is a case to answer and that suspension is appropriate in the circumstances. Managers should consult with HR if they feel suspension may be necessary.
- 4.2 A letter confirming the suspension, and the reasons for it, will be sent to the employee from HR within three working days of being notified verbally of the suspension. The decision to suspend will be kept under review on a fortnightly basis by HR.
- 4.3 The employee will be suspended on the current appropriate rate of pay, pending an investigation and potentially a subsequent disciplinary meeting.
- 4.4 The employee will be asked to return keys, phones and any other Council property that they are in possession of, at the time of suspension, and will be informed whether there

will be any restrictions imposed on them regarding access to email and Council property, as well as details of who will conduct the investigation.

- 4.5 Suspension is not to be regarded as a form of disciplinary action, but rather a neutral act and will be for as short a period as possible.

COMPOSITION OF THE MEETINGS

- 5.1 The Disciplinary Meeting will be Chaired by a Senior Officer or Senior Manager who will be supported by an HR adviser, neither of whom will have had any significant previous involvement in the case.
- 5.2 If the case is against the Chief Executive and the Monitoring Officer the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the '2015 Regulations') will apply.

PROCEDURE TO BE ADOPTED FOR FORMAL DISCIPLINARY MEETINGS

- 4.5 Having established that there appears to be a case to answer, following completion of the investigation (see Appendix 1), the procedure outlined below should be followed:

Invitation to the Disciplinary Meeting – Step 1

- 6.2 HR will set out in a letter the details of the employee's alleged misconduct, the procedure being followed and the right of the employee to be represented at the meeting by a trade union representative or by a colleague (not a family member) from within the Council, if they wish. A current copy of the Disciplinary policy must accompany the letter.
- 6.3 If the outcome of the meeting could result in the employee being dismissed, the employee should be alerted to this possibility in the letter inviting them to the formal disciplinary meeting.
- 6.4 The employee must be given a minimum of 5 working days' notice of the meeting.
- 6.5 The letter must inform the employee of the requirement to confirm whether they intend to be represented at the meeting, and if so, by whom. The employee must supply this information prior to the date of the meeting. In addition, the employee must submit any supporting documentation on which they wish to rely and confirm the names of any witnesses they want to call to present evidence on their behalf.
- 6.6 The letter should also explain to the employee that if they feel they may need special support or assistance, for example: a translator, a signer, an interpreter, an induction loop system or help reading or writing then they should notify Human Resources.

Disciplinary Meeting – Step 2

- 6.7 In the interests of natural justice both parties are expected to disclose to each other any significant issues and papers relevant to the meeting in advance of the meeting. In the case of the management side this will be supplied with the letter inviting the employee to the disciplinary meeting (i.e. 5 working days beforehand). The employee, or their representative, must submit their information to arrive at least two working days prior to the disciplinary meeting.
- 6.8 Normally the meeting will be conducted as follows:
- Management will present their case and call witnesses who will be open to questions by all others present.
 - The employee or their representative will present their case and may call witnesses who will be open to questions by all others present.
 - Panel members may ask questions of all participants in the meeting.
 - Both parties are given an opportunity to sum up. Management shall be given the opportunity to sum up first.
 - The meeting will be adjourned for deliberation. If further clarity is required, both parties and witnesses may be recalled.
 - The employee will be notified of the decision and their right of appeal in writing.
- 6.9 If the panel decides that further clarification is required, they may chose to adjourn the meeting whilst this information is being obtained.
- 6.10 Written confirmation of the outcome will be sent to the employee within three working days of the disciplinary meeting.

POSSIBLE OUTCOMES

- 7.1 If a written warning is felt necessary it should be made clear to the employee the improvement that is required, any support to be provided and the potential consequences of any further misconduct.
- 7.2 A copy of the letter detailing the written warning will be placed on the employee's personnel file. The length of time the warning should remain on the file will be notified to the employee, the duration being dependent upon the circumstances of the case. However, as an approximate guide a first written warning is likely to remain on file for 12 months and a final written warning for 3 years. In special instances, for example those involving the protection of children or other vulnerable client groups, relevant papers relating to the matter may be retained indefinitely on the personnel file of the employee for reference only.

- 7.3 If an employee resigns prior to the disciplinary hearing, a decision will be taken by the Manager with guidance from HR, as to whether proceedings should continue, particularly where the disciplinary matter involves professional misconduct, fraud or safeguarding.
- 7.4 If an employee is unavailable to attend due to sickness absence, advice may be sought from Occupational Health to assess their fitness to attend a meeting, and a decision on a postponement will be made by the Manager and HR based on this information.

DISMISSAL

- 8.1 If the employee's conduct or performance remains unacceptable after a previous formal warning has been issued, or there appears to be a case of gross misconduct, the employee will be invited to a formal disciplinary meeting, with a senior manager (with no previous significant involvement in the case) supported by an HR adviser. Only Senior Managers and the Chief Executive have the authority to dismiss. If the case is against the Chief Executive or the Monitoring Officer then, Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the '2015 Regulations') will apply. The same approach outlined above will be followed.
- 8.2 If the panel considers that there is no alternative to dismissal, the employee will be informed. Notice in accordance with the contract of employment will be given, or a payment made in lieu of notice unless the panel decide the misconduct constitutes gross misconduct, in which case the employee may be dismissed summarily, i.e. without notice or pay in lieu of notice.
- 8.3 A copy of the letter detailing the outcome of the meeting will be sent to the employee within five working days of the meeting, and will include their right of appeal.

APPEALS AGAINST A DISCIPLINARY SANCTION – STEP 3

- 9.1 Employees have the right to appeal against disciplinary action (whether that is a first written warning, a final written warning, dismissal, or summary dismissal). The employee should be advised in writing of their right to appeal against the decision.
- 9.2 Appeals against disciplinary action must be lodged with the person who signed the letter notifying the employee of the outcome of the disciplinary meeting, within 5 working days of receipt of the letter confirming the disciplinary action (10 working days for dismissal), and must state the grounds for the employee's appeal.
- 9.3 The membership of the appeal panel will be a higher authority than that of the original disciplinary panel, and with no previous involvement in the case. The membership will depend on the disciplinary action taken, and is outlined at Section 10 below. The case will be heard within 20 working days of receipt of the appeal application.
- 9.4 If an employee is reinstated on appeal after dismissal, the employee's service will be continuous and any loss of pay between dismissal and reinstatement will be paid to the employee. The pay will be full pay in accordance with the contract of employment and

any regular payments averaged over the 12 weeks immediately before the dismissal or, if applicable, before the period of suspension.

PROCEDURE FOR APPEALS AGAINST A FORMAL DISCIPLINARY SANCTION

- 10.1 If the employee wishes to appeal, this must be lodged in writing within 5 working days of receipt of the letter, and should state:
- a. the grounds of appeal; and
 - b. whether they are appealing against the finding that they have committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.
- 10.2 The employee will be given 5 working days' notice of an appeal meeting organised to consider an appeal against a first or final written warning.
- 10.3 The appeal panel management representatives will be of the same level or a higher authority than that of the original disciplinary panel, and with no significant previous involvement in the case. If the case is against the Chief Executive or the Monitoring Officer then, Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the '2015 Regulations') will apply.
- 10.4 The membership will depend on the disciplinary sanction issued, as follows:
- One manager supported by an HR adviser, not previously involved in the case.
 - During the meeting the management and the employee will have the right to call witnesses and have the right to question witnesses.
 - Normally the employee will be notified of the outcome of the appeal meeting in writing.
 - A letter detailing the outcome of the appeal meeting will be sent to the employee within three working days of the meeting.
 - There will be no further internal right of appeal.

SPECIAL CASES

- 11.1 Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
- 11.2 If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the

charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.

An employee's supervisor or manager will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the organisation's policies or rules or may otherwise be a disciplinary matter. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

There may be instances where suspension with pay (a neutral act) is necessary while investigations are carried out. The organisation has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work. The Manager will seek advice from HR before an employee is suspended.

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview.

There is no right for employees to be accompanied at a formal investigatory interview.

The Council reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.