



Discipline Policy & Procedure

The aim of this Disciplinary Policy is to ensure that there is a fair and consistent approach to the enforcement of standards of conduct affecting employees of Wokingham Borough Council. The Policy and Procedure exist to encourage an improvement in employees conduct and behaviour where this falls short of the normal standards expected, and has been drawn up in consultation with Union representatives and the Corporate Works Council. It is based on the principles in the ACAS Code of Practice on disciplinary and grievance procedures.

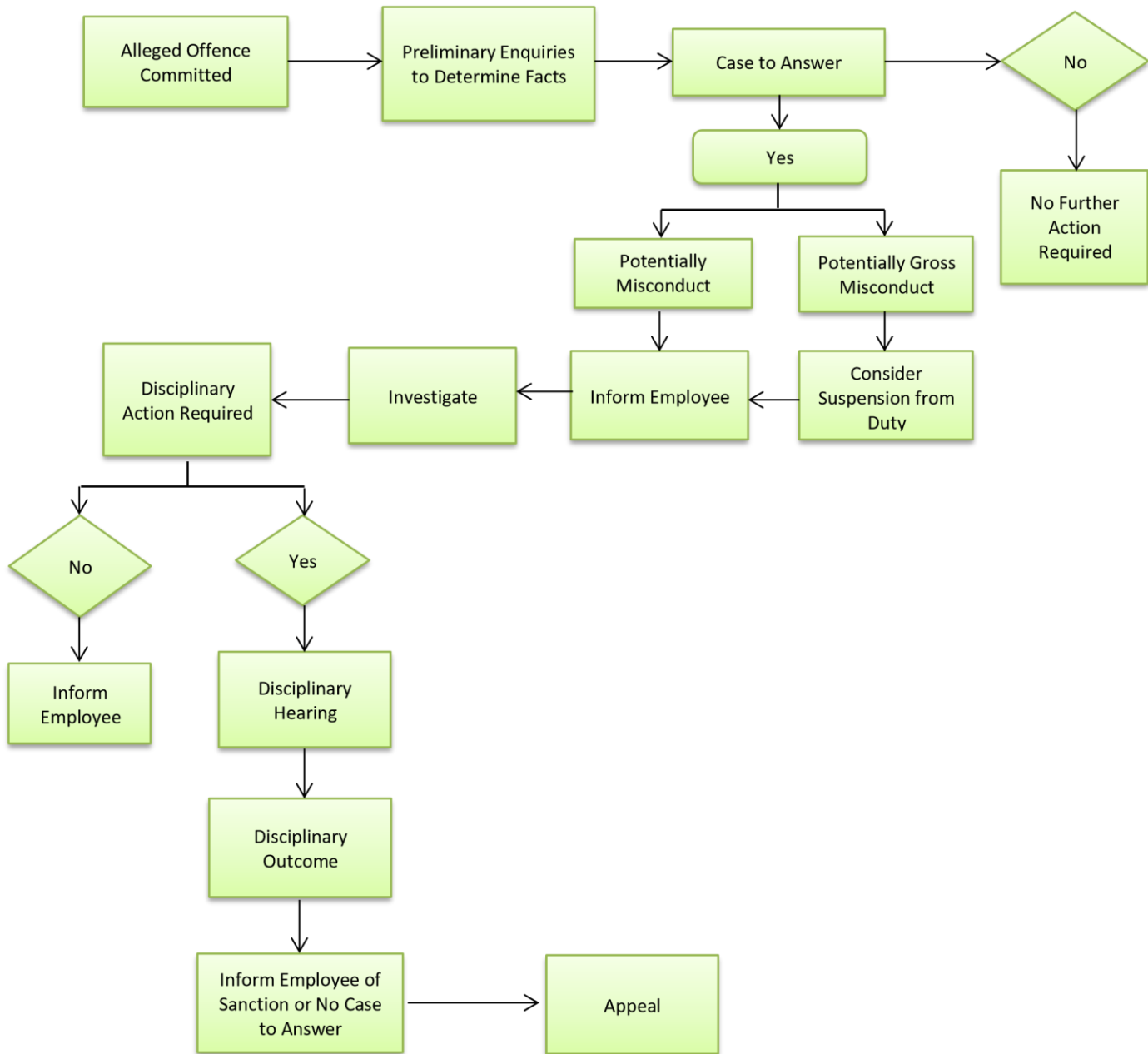
All employees are expected to comply with the Council's policies. These include but are not limited to the Conduct policy; Health and Safety at Work policy; and Financial Regulations.

Contents

Process Flow	4
The right to be accompanied	5
Trade Union officials	5
Criminal prosecutions and convictions	5
Resigning During a Disciplinary Investigation	6
Sickness Absence	6
Grievance	6
Some Other Substantial Reason (SOSR)	6
Formal disciplinary procedure.....	7
Informal Stage	7
Investigation	7
Suspension	8
Disciplinary Hearing	8
Hearing Officer.....	9
Presenting Manager	9
HR Representative	9
Employee	9
Employee Support Representative	9
Witnesses	9
Note Taker	9
Disciplinary Sanctions	9
Formal written warning.....	10
Final Written Warning	10
Dismissal	10
Other Penalties	10
Appeal	11
Appeal Hearing Officer	11
Presenting Manager	11
HR Representative	11
Appellant	11
Employee Support Representative	11
Witnesses	11
Note Taker	11
Keeping written records	11
Further information	12

Version	Date	Description
2	08/06/2006	Human Resource Policy and Procedure Description for Discipline
3	03/07/2008	Amended to reflect Delegated Powers relating to Staffing Matters
4	28/10/2009	Amended to reflect changes in legislation
4.1	14/04/2011	Amended to include the appeal process
5.	10/12/2013	Reviewed to include reference to the Performance Framework
6.	01/09/2016	Overhaul of the disciplinary procedure to bring in line with new format.
6.1	23/03/2017	Amended to reflect HR at Dismissal and Final appeal only
6.2	28/12/2018	Removed Chief Exec, S151 & Monitoring Officer from these procedures
6.3	31/10/2020	Usage of virtual meetings
6.4	03/02/2024	Amended to reflect attendance of HR at all disciplinary hearings Amended to include alternative to suspension Amended to include welfare checks during suspension Amended to reflect sick pay during suspension Amended to include notification of suspension to professional/regulatory bodies
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Process Flow



Scope

This policy applies to all employees of Wokingham Borough Council other than:

- The Chief Executive, Section 151 Officer & Monitoring Officer who are subject to the separate Chief Executive Disciplinary, Capability & Grievance policy and procedure
- Those in their probationary period where separate arrangements apply (see the Guide to Probation Periods on the Intranet)

All employees will be treated with respect and dignity in accordance with the Policy for Equal Opportunities.

The Council reserves the right to implement the procedure at any stage as set out below, taking into account the alleged misconduct of an employee.

A list of typical misconduct and gross misconduct offences can be found in the Conduct policy held on the Intranet. This list is not exhaustive and disciplinary action is not just limited to these offences.

The Council regards all forms of harassment and bullying as serious misconduct, and any employee who is found to have harassed or bullied a colleague will be liable to disciplinary action up to and including summary dismissal.

The right to be accompanied

Employees have a statutory right to be accompanied at a formal disciplinary hearing or appeal hearing by a work colleague or trade union representative. The Council also extends this right to staff being interviewed as part of a formal investigation.

This right to representation does not extend to the informal stages of the disciplinary procedure.

Trade Union officials

No action may be taken against an appointed or elected trade union representative or officer without prior consultation with the relevant union's Regional Office and Human Resources.

Criminal prosecutions and convictions

Employees subject to prosecution by the police through the criminal justice system may also be subject to disciplinary action, irrespective of whether they were convicted of the offence or not.

Management will make an assessment of the prosecution and decide on how the offence or conviction impacts the employee's employment, or whether their action brought the Council into disrepute. Under the Conduct Policy, employees have a duty to report arrests or convictions.

In deciding whether to invoke the disciplinary policy for suspected or proven criminal conduct outside of the scope of their employment the follow questions must be considered:

- Should the employee be suspended while the police conduct their investigations?
- Does the alleged offence indicate a risk to security, customers, clients, or other employees or those in the employee's care?
- Could the employee be reasonably redeployed to a position where his or her particular offence will not affect the service e.g. an employee whose driving licence has been withdrawn to a job that requires no driving?
- Is the offence incompatible with the employee's job role?
- Does the length of any custodial sentence prevent the employment contract from continuing?

- Does the crime damage the relationship of trust that is fundamental to the employment contract?
- Does the crime damage the Council's image or reputation?

Resigning During a Disciplinary Investigation

Where an employee resigns during the investigation they must be informed that it will not prevent an allegation from being followed up and any reference provided to a future employer may include their conduct/performance standards.

Sickness Absence

If an employee starts a period of sick leave after disciplinary allegations, during a disciplinary investigation or a period of suspension this will not prevent the operation of the disciplinary procedure. It is in the interests of the Council and the employee that any disciplinary allegations are resolved within a reasonable timescale. At least two attempts will be made to convene a hearing that the employee can attend. If the employee is still unable to attend, the hearing can proceed with a representative of their choice in attendance. If the employee does not wish any other person to attend as their representative, the hearing can proceed without them and they should be asked to submit a written response for consideration at the hearing.

If appropriate an Occupational Health referral will be made to ascertain if the employee is capable and fit to attend a disciplinary hearing or investigation interview.

Employees must provide evidence of the reason for absence.

Grievance

Where an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. For example:

- Bias is alleged in the conduct of the disciplinary meeting
- There is possible discrimination.

Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Employees may not raise a grievance against a sanction that has been given as they have the right to appeal the decision under the disciplinary procedure.

Some Other Substantial Reason (SOSR)

Dismissal for SOSR may only be used when approved by the Council's HR Lead.

Situations that may fall under this category (but not restricted to these situations) are where the manager believes that there has been a serious breakdown of trust and confidence or serious

breakdown in relationships which do not fall within any one of the other dismissal categories, namely conduct, capability or redundancy.

For a dismissal under SOSR to be fair, the reason put forward must be:

- Substantial and not trivial, and must therefore be capable of amounting to a reason which could justify dismissal
- Substantial, such that dismissal is a reasonable response in the circumstances

And there must be evidence that:

- The employer has investigated thoroughly and where appropriate, made every effort to solve the problem in another way
- The impact on or risk to the employer's business is or could be substantial
- The formal disciplinary procedure has been followed

Formal disciplinary procedure

Informal Stage

In most cases where a minor breach of conduct has occurred, managers should take an informal approach before any formal action is considered. They should meet with the employee to discuss the issue and the conduct and behaviours expected, and:

- Keep a written note of this and any subsequent discussions/reviews so that if the employee fails to improve or maintain this improvement, they can refer to this conversation when beginning any formal procedure
- Agree a plan of improvement and a period for review
- Confirm in writing - give a copy of the notes or improvement plan to the employee and ask the employee to sign to show they have received a copy and understand
- Proceed to the formal stage where the individual's conduct continues to fall below the required standards

If it becomes clear during the informal/investigative meeting that formal disciplinary action needs to be taken then the interview must be terminated and the formal procedure commenced. The manager must not initiate the formal process during the informal interview.

Investigation

If a Manager suspects or reasonably believes that an employee has contravened any of the Council's policies or rules, or allegations have been made, they should carry out preliminary enquiries to confirm if it is justified to undertake or commission an investigation.

Before any formal disciplinary action is taken that could lead to a sanction, a full investigation must take place and the employee must be informed. Advice and support should be sought from HR prior to commencing any formal investigation process. The officer who commissioned the investigation will decide if the case will proceed to formal disciplinary action.

Where there are financial/fraud implications the manager must immediately inform their Assistant Director/Director and the S151 Officer of any alleged irregularity. The investigation must be carried out under the guidance of the S151 Officer. Where the alleged misconduct would, if proved, be a criminal offence, or the Police are already involved, advice should be sought from Human Resources, the Monitoring Officer and if appropriate the S151 Officer before starting an investigation.

Allegations relating to Children or Vulnerable adults should be referred via the relevant internal safeguarding function prior to making a decision with regard to the nature and commissioning of the investigation.

Guidance for carrying out an investigation can be found on the Intranet.

The manager must decide whether it is necessary to recommend suspension or a temporary change to job role or location to the Assistant Director for the period of the investigation, see section Suspension below.

Directors – Preliminary Investigation

In cases of alleged misconduct that involve Directors and other employees on NJC Chief Officers Terms and Conditions of Service, the Chief Executive will carry out a preliminary investigation (following the above process); see the Delegated Powers Relating to Staffing Matters - section 11 of the Constitution which is held on the Council's website.

Suspension

Employees should normally only be suspended in serious cases where there is:

- No possibility of temporary redeployment to another area
- A risk that the presence of the individual may hinder or influence the investigation
- A danger the alleged misconduct might happen again
- Continued risk to customers or clients
- On committing a gross misconduct offence
- An issue relating to some other substantial reason

Suspension from work does not imply guilt and is not a disciplinary sanction in itself, but applied as a precaution. Before suspending an employee approval must be given by the Assistant Director/Director and the decision formally recorded. Where an employee has multiple roles within the Council advice should be sought from the Human Resources.

An employee will normally be suspended on full pay pending the outcome of the investigation and where appropriate, the disciplinary hearing. The period of suspension should be as brief as possible. Where it is identified that a period of suspension can be lifted, even before the completion of the disciplinary proceedings, the employee should return to duty.

Consideration will always be given as to whether there are alternative arrangements that can be made rather than suspending from work. Any case involving a suspension from work will be monitored regularly to ensure that the investigation does not become protracted and continued suspension from work remains appropriate.

The employee must make themselves available for interviews during the procedure and must not take alternative employment while the contract of employment still applies. Where secondary employment has already been approved, this may continue, except where potential conflict of interest is the cause of the suspension.

An employee who is suspended will have a nominated contact put in place, to provide a health and wellbeing check, keep in touch on work updates and be the link between the employee and the Council.

Where certificated sickness absence coincides with suspension, sick pay entitlement as per the employee's terms and conditions of employment will apply and take precedent, whilst still maintaining all the terms of the suspension.

If an employee is required to have a professional registration which is mandatory, such as HCPC or Social Work England, then the Council has an obligation to notify them of any suspension from work. The regulatory bodies will be notified of any suspension immediately and the Council will provide any necessary information that is requested of them throughout the process.

Proformas & template letters relating to Suspension can be found on the Intranet.

Disciplinary Hearing

If the disciplinary investigation determines there is a case to answer (Previously stated identifies that disciplinary action is warranted), a disciplinary hearing will be convened and the case fully heard before any sanction is issued. During the hearing the presenting manager and employee should be given every opportunity to give their side of the case and to call witnesses. The level of Officers authorised to Chair and issue sanctions in a disciplinary case can be found in Section 11 of the Council's constitution held on the Council website. Employees must be given 5 working days' notice of a hearing date.

The hearing may be held virtually, via a WBC supported IT system, where all parties are in agreement with this and have appropriate technical equipment to participate effectively. Electronic recording of the hearing is not permitted by any party. This is to encourage openness and full participation by all during the meeting.

A disciplinary hearing panel will consist of the following:

Hearing Officer - The hearing officer should be independent of the investigation and have had no involvement in the case previously. Their responsibilities are to:

- Chair the hearing.
- Hear the evidence presented from both sides.
- Decide on whether the case is considered proven or not.
- Issue a suitable sanction to the employee in proven cases.

Guidance for hearing officers can be found on the Intranet.

Presenting Manager - Normally the presenting manager will be the officer who commissioned the investigation. Their responsibility is to present the facts of the case for the hearing officer to consider;

answer questions from the hearing panel and the employee or their representative; call witnesses relevant to the case. The presenting manager will be in attendance throughout the disciplinary hearing.

HR Representative - A representative from Human Resources will attend all disciplinary hearings. (Previously stated that HR will only attend if employee is to be dismissed) Their responsibility is to advise the hearing officer on the disciplinary process; ensure the hearing is conducted fairly and in accordance with the disciplinary procedures. The HR representative may ask questions during the hearing but cannot make a decision on the outcome or unduly influence the hearing officer in their decision.

Employee - The employee subject to disciplinary action should attend the hearing to present their own case, call relevant witnesses and be allowed to question the evidence submitted by the presenting manager, witnesses that are called to give evidence, and they may also submit further evidence to support their case. The employee will be in attendance throughout the hearing.

Employee Support Representative - A work colleague or Trade Union Official may support the employee at the hearing. The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

Witnesses - All witnesses called to give evidence will attend the hearing to present their evidence and to answer any questions that are raised. On the conclusion of their evidence they will leave the hearing.

Note Taker - A member of the service administration team will attend to formally record details of the hearing and outcome. A copy of the notes should be passed to the employee being disciplined for them to confirm it is an accurate record.

Disciplinary Sanctions

When deciding whether a disciplinary sanction is appropriate and what form it should take, the Hearing Chair must bear in mind the need to act reasonably and consistently at all times. Factors that should be considered are:

- The extent to which standards have been breached
- Precedent i.e. has this particular breach happened before and what was the penalty; will any precedent be set for the future?
- The employee's employment record within the Council
- The employee's job role and training
- The employee's length of service
- Special circumstances that may impact on the severity of the sanction. Taking into account any mitigation raised during the investigation or disciplinary hearing
- Where an employee has a previous disciplinary record that is still current the penalty should be escalated irrespective of the offence. Different disciplinary sanctions do not have to be issued for different offences and the Council's view is that it is the employees overall conduct and behaviour that is questioned

When the case is considered proven the sanctions available are:

Formal written warning - This penalty would normally be issued to first time offenders who have committed misconduct offences.

Final Written Warning - There are a number of occasions where this penalty may be used:

- Persistent Offenders. A final written warning is used as an escalation penalty for a persistent offender and where a formal written warning was issued previously and has not expired.
- Penalty Short of Dismissal. A final written warning may also be used as a punishment short of dismissal where the conduct has been unacceptable but dismissal is considered too harsh a penalty on this occasion.
- First and Final Written Warning. Where a serious misconduct has been committed that requires a penalty to convey the dissatisfaction of the employee's behaviour. It may also be used as penalty short of dismissal as described above.

All warnings should be confirmed in writing to the employee giving a brief explanation of the reason for the warning. Formal and final written warning will expire after a period of 12 months where no further offences have been committed. This may be escalated to 2 years in exceptional circumstances. The warnings will still remain on the employee's personal file but will be disregarded if no further offence is committed.

Dismissal - Where a gross misconduct has been committed, the most likely outcome of a dismissal penalty will result on most occasions. Dismissal is also given for persistent offenders where previously a final written warning has been given. The decision should be confirmed in writing to the employee giving a brief explanation of the decision. Notice is as follows:

- Gross Misconduct: Employees will be summarily dismissed without notice
- Misconduct and Some Other Substantial Reason: Employees are entitled to notice in accordance with their terms & conditions of employment. The employee should not work their notice period

Other Penalties - Where the severity of the employee's misconduct does not warrant dismissal consideration should be given to the following sanctions which may also be combined with a first and/or final written warning:

- Transfer the employee to another area of work
- Suspension without pay – the length of suspension is dependent on the seriousness of the offence up to a maximum of 5 working days
- Loss of increment
- Impose a financial penalty – e.g. repaying a financial loss borne by the Council
- Demotion.
- Deduction of pay in cases of unauthorised absence

Appeal

Where a sanction is issued to the employee they will have a right to appeal the decision of the Hearing Officer within 5 working days of the written notification of the outcome. Employees will be given 5 working days' notice of the appeal date. The appeal hearing is not a re-run of the disciplinary hearing

but should restrict itself to hearing the grounds of the appeal and any evidence presented to the appeal hearing. The officer hearing the appeal cannot increase the sanction of the original decision.

The appeal hearing may be held virtually, via a WBC supported IT system, where all parties are in agreement with this and have appropriate technical equipment to participate effectively. Electronic recording of the appeal hearing is not permitted by any party. This is to encourage openness and full participation by all during the meeting.

A disciplinary appeal panel will consist of the following:

Appeal Hearing Officer - They will be independent of the case and have had no involvement in the case previously. Their responsibility is to decide on whether the decision of the hearing officer was justified and correct.

If the appeal is against dismissal, it should be made to Service Director. The Director can appoint a senior manager who does not have any previous involvement in the case to Chair the appeal.

Guidance for appeal hearing officers can be found On the Intranet.

Presenting Manager - The presenting manager will be the hearing officer who made the original decision.

HR Representative - A representative from Human Resources will attend appeals against dismissal to advise and guide the hearing officer and ensure the appeal hearing is conducted correctly. They should have had no previous involvement in the case.

Appellant - The employee who submitted the appeal.

Employee Support Representative - A work colleague or Trade Union Official may attend the appeal hearing to support the employee.

Witnesses - If required witnesses may be called to give evidence that was not originally presented at the hearing.

Note Taker - A member of the administration team will attend to formally record details of the appeal hearing and outcome. A copy of the notes should be passed to the employee being disciplined for them to confirm it is an accurate record of the hearing.

The Appeal Hearing Officers decision is final and the decision will be communicated in writing.

Keeping written records

Details of all formal action taken against an employee should be passed to Human Resources for enclosure in the employees registered personal file and would normally include the investigation report; notes of the disciplinary hearing and details of any warning/dismissal letters that were issued.

Further information

Further guidance and template letters can be found on the Intranet.

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