



EMPLOYMENT ZONE

Conditions of Service – Discipline & Appeals Procedure

1.0 Aim

We have a discipline and appeals procedure in place to ensure that we treat every employee in a fair and consistent way. This allows us to deal with unsatisfactory standards of performance and behaviour.

The procedure provides:

- a sound basis for us to maintain discipline throughout the Council;
- a clear understanding between management and employees, of the need for discipline; and
- a mutually acceptable, and well publicised, procedure for dealing with breaches of discipline.

It's important to remember that 'discipline' doesn't necessarily mean punishment. Often, it's a case of bringing a performance or behavioural problem to someone's attention and giving them the opportunity to improve.

The procedures apply to all council employees and have been jointly agreed with the appropriate trade unions. There are some minor differences for employees on a council training programme or in grades 9 -15. These are explained at the end of this document.

2. Types of offence

2.1 Gross misconduct

These are the most serious acts, and may lead to dismissal, once all the facts and circumstances have been established.

Amongst other things, gross misconduct can include:

- serious offences against the interests of the Council, such as deliberate injury to others, and to Council property;
- incapacity on duty, due to the effect of alcohol or drugs;
- fraudulent financial activity;
- misuse or abuse of documents, clock cards, flexi-time systems or other payment records;
- falsification of official documents;
- gross insubordination;
- neglect of duty resulting in serious consequences;
- failure to obey critical safety rules;
- fighting in the workplace;
- theft from the Council, or fellow employees;
- theft from the public, whilst at work;



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- false details given to secure employment with the Council (which could have affected the decision);
- criminal convictions having a material bearing on employment;
- persistent refusal to comply with a reasonable instruction or order;
- abusive behaviour toward colleagues and/or the public, or customers of the Council, including matters of a discriminatory nature;
- unauthorised use of Council vehicles and equipment; and
- exceptionally serious offences of 'unsatisfactory conduct'.
- sending, posting or accessing information electronically by email, social networking sites or other online forums which is defamatory, obscene or inappropriate even during employees' own time when using their own equipment
- Bribery and corruption

2.2 Unsatisfactory conduct

These acts are normally less serious than gross misconduct and may lead to warnings. In some cases, further action may be taken, up to dismissal, depending on the employee's disciplinary record. Here are some examples of unsatisfactory conduct:

- bad time-keeping;
- abuse of flexi-time;
- unacceptable levels of attendance;
- unauthorised absence;
- unacceptable standards of work performance;
- negligence; and
- refusal to carry out a reasonable instruction or order.

It's impossible to list everything that may incur disciplinary action, or to say what action will be taken in each case, as circumstances will vary.

Every offence will be considered carefully, and fairly, and any action taken will reflect the seriousness of the offence, taking into account the employee's record and any mitigating circumstances.

3. How the process works

There are three main stages involved in the process:

- 1) investigation;
- 2) disciplinary hearing; and
- 3) disciplinary action.



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Timescales

Each stage of the procedure will take place as quickly as possible, with investigations and hearings normally taking place within two days of discovering the offence. However, depending on the circumstances, this may sometimes take longer and affected parties need to be flexible with the timescales.

Right to representation

Employees have the right, at any stage of the procedure, to be represented by a trade union representative/official or an employee of their choice.

Sometimes it may not be appropriate for an employee to be represented by a specific employee for example if by attending the employee would prejudice the hearing.

If their representative is a council employee, that person will be given adequate time off, with pay.

There may be some occasions when employees could be allowed to have legal representation. These are usually circumstances, where the outcome of the disciplinary hearing could result in their registration being withdrawn by their professional body and have a substantial impact on their future employment.

3.1 Stage 1 – Investigation

Before taking any action, a manager, with support from HR if required, will carry out a thorough investigation of the situation or complaint. This could involve talking to different people, who may have been involved, and keeping a record of, and taking into account, the statements of any witnesses. The manager should do this as soon as possible after the event(s), whilst memories are still fresh in people's minds.

3.1.1 Precautionary suspension

In some cases, managers may need to apply 'precautionary suspension' to an employee, if:

- the employee is considered to be a danger to themselves, or to other employees;
- an investigation is needed into charges of gross misconduct or irregularity;
- the alleged conduct has a significant bearing on the employee's duties; or
- circumstances involve, or may involve, criminal proceedings against the employee.



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Managers should speak to their Service HR contact in these circumstances. If suspended, the employee will be sent from their workplace and will normally be expected to report to their Head of Service (or nominated officer) no later than the next working day, unless agreed otherwise.

If the period of suspension is likely to extend for a period of time, the employee must be contacted at least every two weeks, to explain why, and to give an indication of when the investigation is likely to be completed.

Precautionary suspension is not a punitive measure, and employees will receive their contracted pay, including any non-core payments.

Alternatively, an employee may be transferred to other duties during the investigation. They will not lose any pay in these circumstances.

3.1.2 *Theft, fraud or embezzlement*

If the situation relates to possible misappropriation, fraud or embezzlement, managers should seek advice from their Service HR contact before starting any investigation or notifying the employee. In these cases, it may be necessary to involve the Internal Audit team, the police, and even the Chief Executive.

3.1.3 *Notifying the employee*

The manager will write to the employee, explaining the nature of the situation, allegation, or complaint and advising them of their right to representation. They will be asked to attend an investigatory hearing and given reasonable time to prepare their case - within their normal working hours.

3.1.4 *Investigatory interview*

After carrying out their initial investigation, the manager should interview the employee about the allegation(s) and/or complaint(s) made against them.

The manager will give the employee a written statement, detailing the allegations, and explain their rights under the Discipline Procedure, including the right to be represented.

They will listen to the employee's case and keep a record of the meeting. If more time is needed to consider the matter further, the interview may be adjourned and resumed later.



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Outcome - no case to answer

If the manager feels that there is no case to answer, they will let the employee know and take no further action.

Outcome - case to answer

If they feel there is a case to answer, the manager will refer it to the appropriate nominated officer, who will contact the employee, in writing, and advise them of:

- the date, time and place of the disciplinary hearing;
- any action that may result from the hearing, particularly if dismissal is a possible outcome;
- any written statements or relevant documents which will be used as evidence by management during the disciplinary hearing. They should also be given copies of these;
- the reasonable timescales they will be given to prepare their case; and
- their right to be represented.

3.1.5 *Informal Discussions*

After establishing the facts, a manager may decide not to take any disciplinary action, but to discuss the matter informally with the employee. This discussion should take place in a private room.

The manager should explain that the conversation is an informal discussion and isn't a 'verbal warning'. The manager should keep a diary note of the conversation, for reference purposes. Any agreement reached as part of these discussions won't be documented in the employee's personal record.

3.1.6 *Exceptions*

Where there is no dispute of the facts, or where no investigation is needed because the facts are already available, a manager can proceed straight to the disciplinary hearing stage without the need for a prior investigatory hearing. Managers should speak to their Service HR contact in this circumstance.

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3.2 Stage 2 – Disciplinary hearing

3.2.1 *The hearing*

The nominated officer will arrange and chair the hearing and listen to all the allegations. If appropriate, a Service HR representative will also attend. The following actions will take place.

- The investigating officer making the allegations will explain why they have referred the case to a disciplinary hearing following investigation, supporting their case with witnesses and statements, where appropriate.
- The employee and their representative will then respond to the allegations and call their own witnesses, or give statements, where appropriate.
- Each party can question the other's case, as can the chairperson.
- If more time is needed to consider the matter, or further investigations need to be carried out, the hearing should be adjourned, and then resumed as soon as possible.

In some cases, where there is little dispute about the facts, no cause for a major investigation has taken place, or in cases of minor offences, it may not be necessary for a manager to present the case. Instead, the manager chairing the hearing can cover this role, following advice from Service HR.

Considerations

The chairperson at the hearing needs to make sure they're clear about the facts, considering everything they've heard and seen, before making a decision about disciplinary action. They should also consider:

- the employee's disciplinary record;
- the employee's awareness of the standards of behaviour, performance and conduct, that they're expected to follow;
- the employee's position, general performance and conduct;
- any mitigating circumstances, such as health or problems at home;
- whether the discipline procedure indicates what the likely action may be, such as 'gross misconduct';
- the disciplinary action taken in similar cases in the past; and
- whether the proposed action is reasonable and in line with the discipline procedure, giving account of all the circumstances.



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3.3 Special circumstances

3.3.1 Criminal offences

Where there is an allegation of a criminal offence relating to, or having a bearing on, an individual's employment, management must work with Service HR to establish the circumstances and investigate the matter as fully as possible. All likely explanations for what has happened should be considered.

If the Police have to be called in, they will not be involved in conducting any Council-run disciplinary investigation or hearing. Instead, they will handle the criminal investigation separately, as their interests are likely to be different from the Council's.

Before any decision about disciplinary action is taken, management must have reasonable grounds for believing that the employee has committed the particular offence.

If the criminal offence doesn't relate to, or have a bearing on, the individual's employment, management should consider whether the alleged offence makes the employee unsuitable to continue being employed in their type of work, or unacceptable to other employees.

An employee shouldn't be dismissed just because a charge against them is pending, or because they're absent because they've been remanded in custody. Where an employee is on bail, pending a court hearing, or an appeal, and is still available for work, any decision concerning dismissal should be postponed, if possible. The decision should take into account the effect on the Council's activities, until the outcome of the case or appeal is known.

As an employer, the Council has an interest if any employee is alleged to have committed a criminal offence, whether the offence relates to their employment or not. The Head of Service (or nominated officer) should decide whether enough information exists before proceeding to a disciplinary hearing and taking disciplinary action.

Heads of Service and nominated officers aren't expected to establish whether the employee committed the offence beyond reasonable doubt, but instead, whether there is *reasonable belief*, that they committed the offence, on the balance of probability. There is no need to wait for the outcome of a criminal charge through the courts.

Where a custodial sentence is imposed and the employee is unavailable for work, Heads of Service (or nominated officers) must keep in mind the need to act reasonably in light of the needs of the Council before deciding whether to dismiss or not. Where disciplinary action isn't justified by the nature of the actual or alleged offence, but the employee is unavailable for work because of a custodial sentence, or through being remanded in custody, management can if agreed keep the employee's job open, this would be dependent upon the needs of the Council.



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3.3.2 Alcohol, drug misuse and gambling recovery programme

In line with the terms of the Council's policies on Alcohol and Drug Misuse and Gambling Addiction, an employee with an alcohol, drug or gambling problem should be given the opportunity of a referral to our counselling service.

Disciplinary action will be suspended for the offence that led to the referral:

- if the counselling service (or other agreed agency) and the employee accept that an alcohol, drug or gambling problem exists; and
- providing the employee is willing to co-operate and successfully undertake the recovery programme.

If the employee isn't accepted by the counselling service as having an alcohol, drug or gambling problem and as a result can't be considered for the recovery programme, the appropriate disciplinary action should be taken as normal.

If the employee is accepted for counselling, but doesn't complete the recovery programme, the suspension of disciplinary action will be removed. Consideration of the original breach of discipline should be re-opened and the appropriate disciplinary action taken.

Offences that are either not related to the reason for referral or that are considered to be of a serious nature will be dealt with in the normal way.

3.4 Stage 3 – Disciplinary action

Any action up-to dismissal will stay on the employee's record until it expires and will be taken into account if there is any further disciplinary action against the employee.

After a period of satisfactory conduct, any record or warning will be removed from their record, and they will be considered to have made a fresh start.



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Depending on the seriousness of the offence, the following action(s) may be taken.

Action	Circumstances
Verbal Warning	This is normally issued for minor offences. This warning will expire after six months.
Formal written warning	For further minor offences usually following an initial verbal warning. Or, in the case of a more serious instance of unsatisfactory conduct. This warning will expire after six months.
Final Warning	For further minor offences, usually following a formal written warning. Or, in the case of a serious case of unsatisfactory conduct. This warning will expire after 12 months. It could be extended in exceptional circumstances.
Punitive action short of dismissal	Given in addition to a warning. This may include disciplinary transfer, suspension without pay, demotion, withholding occupational sickness allowance or loss of increment. This action will last for 12 months.
Dismissal with notice	For further, repeated minor offences of unsatisfactory conduct, following previous action. We will give you appropriate paid notice.
Dismissal without notice	In cases of gross mis-conduct you will be summarily dismissed. This means that you're dismissed with immediate effect and without paid notice.

4.0 Written confirmation of disciplinary action

The employee will receive a letter confirming:

- the nature of their misconduct;
- the level of disciplinary action taken, and how long it will be held on their employee record;



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- details of how they're expected to improve their performance and/or conduct, and over what period of time;
- what might happen if there is further misconduct; and
- their right to appeal, including how they should go about it, who to contact, and in what timescales.

The employee should acknowledge receipt of this letter by signing and returning a copy to their Service HR team. If the employee agrees to it, a copy will also be made available to their trade union.

5.0 Appeals

5.1 Against disciplinary action short of dismissal

Employees may appeal to the Head of Service against all disciplinary action short of dismissal, within 14 days of receiving the letter confirming the action.

The Head of Service (or nominated officer) will arrange an appeal hearing, normally within a further 14 days.

5.2 Against disciplinary action given by Heads of Service

Where a Head of Service takes disciplinary action, the Chief Executive will hear the appeal.

Where the Chief Executive takes disciplinary action, the Personnel Appeals Committee will hear the appeal.

5.3 Against dismissal

Where an employee has been dismissed, this will be confirmed to them in writing. If the employee considers the dismissal unfair, they may appeal, in writing, either individually, or through a Trade Union. They must write to the Head of Human Resources within 14 days of receiving their letter including their grounds for appeal.

The Personnel Appeals Committee will hear the appeal, normally no later than one month after the appeal has been lodged, unless there are exceptional circumstances.

The person appealing (appellant), and a Trade Union representative/official or an employee of their choice, will have the right to be heard. Details of the procedures adopted by the Personnel Appeals Committee will be supplied to the appellant in advance.

Management representatives within the Service are also required to submit a report detailing the disciplinary action and decision taken to the Head of Human Resources at least eight days before the appeal hearing.



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5.3.1 Appeals procedure

Responsibilities

The term 'Appeals Committee' describes any manager considering an appeal, or the Personnel Appeals Committee, whichever is appropriate.

Where the basis of the appeal is a dispute about matters of fact and there are other people who have personal knowledge of this, it's open to either the appellant or management, to make sure that these people attend the hearing as witnesses.

It's the responsibility of the appellant to approach witnesses on their behalf, to ensure that witnesses attend the hearing, and that they're willing to give evidence. Council employees will be given paid time-off to attend if they give management prior notice.

Similarly, it's the responsibility of management to ensure any witnesses for the Service's case attends.

Both the appellant and management will give the Personnel Appeals Committee/Appeals Officer prior notice of witnesses and will exchange their list of witnesses.

Procedure

- The management representative will present their case in the presence of the appellant and the appellant's representative.
- The appellant and/or their representative will have the opportunity to question management and any witnesses called by management.
- The appellant and/or their representative will present their case in the presence of the management representative.
- The management representative will have the opportunity to question the appellant, their representative and any witnesses called by the appellant.
- The Personnel Appeals Committee/Appeals Officer will have the opportunity to question both parties and all witnesses.



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- Once questioned, witnesses will then leave the hearing. If necessary, the Personnel Appeals Committee/Appeals Officer can recall a witness to clarify any point in question.
- The management representative, followed by the appellant and/or their representative will have the opportunity to sum up their case, but neither can introduce any new material.
- The management representative(s), the appellant and their representative will then withdraw.
- The Appeals Committee/Appeals Officer, together with the officer(s) appointed to assist them, will deliberate in private. If necessary, they will recall the parties involved, but only to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will return.

Decision

Where possible, the Appeals Committee/Appeals Officer will announce the decision to both parties at the end of the hearing. The decision will be one of the following, as appropriate:

- “That the decision was reasonable in the circumstances and therefore the appeal is rejected. This decision concludes the Council’s Appeals Procedure.”
- “That the decision was reasonable in the circumstances. However, in the light of the mitigation offered it was decided to uphold the appeal in part and substitute the decision with (a level of warning and/or other action, as appropriate). This decision concludes the Council’s Appeals Procedure.”
- “That the decision was not reasonable and therefore the appeal is upheld in full. This concludes the Council’s Appeals Procedure.”
- “Due to the failure of the appellant and/or the Trade Union to attend the appeal hearing the appeal is refused. This decision concludes the Council’s Appeals Procedure.”

The decision will be confirmed in writing to the Appellant within two working days, wherever possible.

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If the appeal is being considered by the Personnel Appeals Committee and the appellant remains dissatisfied with the decision, the appeal will end at this level, unless it's agreed by both parties that it can be referred to the Scottish Council.

6.0 Discipline and appeals procedure for employees on a council training programme or in Grades 9-15

The procedures in this document apply to all employees, with the following exceptions.

Council training programme

Appeals against dismissal are heard by a nominated council training board and not the Personnel Appeals Committee.

Grades 9-11

Appeals against verbal and written warnings, given by the Head of Service, may be made to the Chief Executive within 14 days of notification.

Grades 12-14

The Chief Executive will be responsible for all matters affecting the discipline of employees at grades 12-14, but it's recommended that, where formal disciplinary action is contemplated, the relevant Members of the Council should be consulted.

When the work, conduct or omission of employees of Grades 12-14 is such as to warrant disciplinary action, the Chief Executive shall initiate the necessary action and the Head of Human Resources or a representative will be present as an adviser. For cases relating to the actions of the Head of Human Resources an independent representative will be appointed by the Chief Executive as an adviser.

The Personnel Appeals Committee will hear all appeals against disciplinary action. Any such appeal will be lodged with the Head of Human Resources within 14 days of receipt of confirmation of the disciplinary action. Appeals lodged by the Head of Human Resources will be to the Director of Legal and Admin.

Chief Executive

If the Council has cause for complaint against the Chief Executive, it's recommended that a Committee of Members should be set up specifically to investigate the matter. The Chief Executive will have a right of appeal against the findings of this Committee.



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The full Council, or a special Committee set up by the Council with delegated authority will hear the appeal. Members who sat on the Investigating Committee will be excluded. Any meeting of the Council, Committee or Sub-committee relating to disciplinary action in respect of the Chief Executive will be held in private.

7. Roles and responsibilities

The creation and implementation of disciplinary rules is a management responsibility. Heads of Service are responsible for ensuring that all employees are aware of the rules and the accepted standards of behaviour and performance. Employees are also expected to familiarise themselves with these rules and standards, and to follow them.

Role of management

The Council has delegated responsibility to Heads of Service to ensure that standards of behaviour and conduct are maintained. However, it's recognised that it may be appropriate for Heads of Service to delegate this authority to nominated officers within their Service. Heads of Service will identify:

- the appropriate nominated officers;
- the limit of their authority with regard to levels of disciplinary action; and
- the appropriate officers who will consider appeals.

The level of Management authorised to impose a form of disciplinary action will be clearly known to management and employees at Service level.

Role of the Service HR officer

An HR Officer (or person with responsibility for HR matters) is available to advise management about any aspect of the Discipline Procedure.

Although local management is responsible for the investigation and conduct of disciplinary matters within their level of authority, the HR Officer may help to interpret the Discipline Procedure in terms of practice throughout the Council.

In cases of Gross Misconduct and/or instances of potential serious misconduct, the HR Officer will be present at the disciplinary hearing to provide advice.

In the event of appeal, the HR Officer will also be available to assist local managers in the preparation and presentation of their case to the Personnel Appeals Committee and at any subsequent Employment Tribunal.

The HR Officer will also ensure that records are maintained detailing:



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- the nature of the breach of disciplinary rules;
- the action taken, the reasons for it, and the date the action was taken;
- whether an appeal was lodged, and what the outcome was.

Role of the Chief Executive

The Council's appropriate legal officer will, in consultation with the Head of Service and the Head of Human Resources, help with the preparation and presentation of Employment Tribunals.

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